



COLORADO

Department of Transportation

**CDOT Trucking Compliance Resource Guide for the
Preliminary Injunction (2025)**

Introduction

The following trucking guidance is the result of the Preliminary Injunction issued by the US District Court for the Northern District of Texas as it relates to offsite delivery trucking. This **temporary** injunction applies to all CDOT construction projects, including maintenance and federally funded (FTA and FHWA) local agency projects. These stipulations will impact the certified payroll / Davis-Bacon and Related Acts (DBRA) requirements for offsite delivery trucking.

This document is broken into five sections:

- I. Determination of Truck Driver Status (Subcontractor / Supplier)
- II. Definition and Application of Site of Work (SoW)
- III. Frequently Asked Questions for Truckers as Subcontractors
- IV. Frequently Asked Questions for Truckers as Suppliers
- V. Miscellaneous

This document includes the following appendix:

- I. Appendix A Trucking Flow Chart

I. Determination of Truck Driver Status (Subcontractor / Supplier)

As a result of the injunction, CDOT has temporarily revised how the status of a truck driver is determined. In relation to this status, consider the CDOT forms 205 and 1425. As applicable, CDOT Forms 205 and 1425 are still required to be submitted and approved in B2Gnow prior to the trucking firm starting work on the contract.

What is a Subcontractor (as a truck driver)?

- Subcontractors are those that:
 - Haul material onsite to onsite.
 - Perform work (“construction, prosecution, completion, or repair”) on the site of work.
 - Haul material off of the project solely (no offsite delivery work is conducted by the truck driver).
- **NOTE:** For the purposes of this trucking guide, any truck drivers performing in the capacities listed above will be called subcontractors. Employees of a prime contractor performing in this capacity will **NOT** be required to have a CDOT Form 205 submitted in B2Gnow. For firms that have an executed written agreement, a CDOT Form 205 will be

required. All truck drivers (including employees of the prime contractor) performing in the roles listed above are required to submit certified payroll (see [Section III](#) of this trucking guide for more details).

What is a Supplier (as a truck driver)?

- Suppliers are those that:
 - Engage in offsite delivery work.

Definition of Offsite Delivery Work

DBRA coverage should not be enforced for any time on the site of the work that truck drivers and truck drivers' assistants spend engaged in offsite delivery work.

Per the US DOL, offsite delivery work means the following:

the delivery of materials, articles, supplies, or equipment from a location that is not part of the site of the work

- including the pickup of the same in addition to, but not exclusive of, delivery, and
- which may also include activities essential or incidental to such delivery and pickup, such as loading, unloading, or waiting for materials to be loaded or unloaded.

Therefore, truck drivers are **not** covered by DBRA any time on the site of work that truck drivers engage in offsite delivery.

- **NOTE:** CDOT Form 1425 will be required for truckers who are engaged in offsite delivery work and have a written agreement that exceeds \$10,000. If a truck driver starts working as a supplier, performing offsite delivery work, and then that status changes, and s/he starts working in a subcontractor role as outlined above, a CDOT Form 205 and certified payrolls are required immediately upon knowledge of this role change.

II. Definition and Application of Site of Work (SoW)

Definition

(1) Per the 29 CFR 5.2, "Site of the work" includes all of the following:

(i) The primary construction site(s), defined as the physical place or places where the building or work called for in the contract will remain.

(ii) Any secondary construction site(s), defined as any other site(s) where a significant portion

of the building or work is constructed, **provided** that such construction is for specific use in that building or work and does not simply reflect the manufacture or construction of a product made available to the general public, and **provided further** that the site is either established specifically for the performance of the contract or project, or is dedicated exclusively, or nearly so, to the performance of the contract or project for a specific period of time. A “significant portion” of a building or work means one or more entire portion(s) or module(s) of the building or work, such as a completed room or structure, with minimal construction work remaining other than the installation and/or final assembly of the portions or modules at the place where the building or work will remain. A “significant portion” **does not include** materials or prefabricated component parts such as prefabricated housing components. A “specific period of time” means a period of weeks, months, or more, and does not include circumstances where a site at which multiple projects are in progress is shifted exclusively, or nearly so, to a single project for a few hours or days in order to meet a deadline.

(iii) Any adjacent or virtually adjacent dedicated support sites, defined as:

(A) Job headquarters, tool yards, batch plants, borrow pits, and similar facilities of a contractor or subcontractor that are dedicated exclusively, or nearly so, to the performance of the contract or project, **and** adjacent or virtually adjacent to either a primary construction site or a secondary construction site, and

(B) Locations adjacent or virtually adjacent to a primary construction site at which workers perform activities associated with directing vehicular or pedestrian traffic around or away from the primary construction site.

(2) With the exception of locations that are on, or that themselves constitute, primary or secondary construction sites as defined in paragraphs (1)(i) and (ii) of this definition, site of the work **does not include**:

(i) Permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project; or

(ii) Fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a material supplier, which are established by a material supplier for the project before opening of bids and not on the primary construction site or a secondary construction site, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

Application of Site of Work

At the start of all projects, it is essential to establish what is considered the SoW as DBRA's

applicability is dependent on that determination. Consider the following:

- The primary construction site(s) -- **considered SoW**
- A secondary construction site exists and/or an adjacent or virtually adjacent dedicated support site (see SoW definition below) -- **considered SoW**
- The material is coming from an offsite location -- **offsite location is not considered SoW**

DBRA Coverage for Site of Work

- Truck drivers of a prime contractor or subcontractor **are covered** by DBRA while working on the “site of the work” as per the “site of work” definition outlined above in (1) (i, ii, and iii).
- Truck drivers that are hauling from a facility deemed part of the SoW to a project location deemed part of the SoW **are covered** under DBRA. **SoW to SoW is covered by DBRA, and de minimis counting is not applicable or allowable in this situation.**
 - For example, truck drivers of a contractor or subcontractor hauling between the job site and a batch plant, hot mix plant, materials pit, or staging area that are dedicated exclusively, or nearly so, to the project, and whose location is adjacent or virtually adjacent, are considered to be hauling exclusively on the SoW, and therefore, all hauling time between the two locations will be covered under DBRA.

When truck drivers are covered under DBRA, they are required to report certified payroll for all time spent on the site of work.

Non-DBRA Coverage as it Relates to Site of Work

DBRA coverage should not be enforced for any time on the site of the work that truck drivers spend engaged in offsite delivery work. See the [definition](#) of offsite delivery in Section I of this trucking guide.

III. Frequently Asked Questions for Truckers as Subcontractors

1. Does the prime contractor need approval from CDOT to sublet?

Per CDOT Specification 108.01, the Contractor shall not sublet, sell, transfer, assign, or dispose of the Contract or Contracts, or any portion thereof without written permission of the Engineer.

2. How does the prime contractor request approval to sublet from CDOT?

Prior to beginning any work by the truck driver (as a subcontractor), the prime contractor shall request permission to sublet from the Project Manager (PM) by submitting a completed Sublet Permit Application, CDOT Form 205, into the B2Gnow software system. The subcontract work shall

not begin until the prime contractor has received the PM's system recommendation (and the approval of CDOT Civil Rights) in B2Gnow.

3. Are truck driver subcontractors required to create an account in the B2Gnow compliance software system?

Yes, truck driver subcontractors are required to create an account in the B2Gnow compliance software system. Approval of the CDOT Form 205 will not occur until the firm has an account created.

4. What happens if a subcontractor begins work prior to being approved through a CDOT Form 205 in B2Gnow?

Any work done by that subcontractor prior to the approval date is considered unauthorized work, per CDOT Specification, Subsection 105.17. The Project Manager has the authority to have the work removed and replaced or to not pay for it.

5. When are truck drivers covered by DBRA and what are the certified payroll requirements?

Per the DBRA Final Rule and the clarification from the US DOL as a result of the preliminary injunction, truck drivers who are determined to be a subcontractor (as per [Section I](#) of this trucking guide), are covered by DBRA prevailing wages in the following situations:

- a. For all on-site driving time (e.g., hauling materials from one onsite location to another onsite location and transporting materials or supplies between a facility that is deemed part of the site of work and the actual construction site)
- b. Solely hauling materials from an onsite location to an offsite location
- c. Performs other non-delivery construction work on the site of work, such as installation or repair. The worker's time spent in the non-delivery construction work is covered by DBRA to the same extent as it would be for any other worker.

6. While engaging in hauling material, can a truck driver's time, who is operating as a subcontractor, be considered de minimis?

As a result of the preliminary injunction, claiming de minimis is not permissible in any situation.

- a. Cannot claim de minimis when hauling material from an onsite location to another onsite location.
- b. Cannot claim de minimis for solely hauling materials from an onsite location to an offsite location.
- c. Certified payroll reporting and paying of prevailing wage is required for all time spent hauling on the site of work.

7. What if a truck driver is solely hauling material from an onsite location to an offsite location?

If a truck driver is engaged in solely hauling material from an onsite location to an offsite location, but not in delivery from an offsite location to an onsite location, the reporting of certified payroll and paying prevailing wage is required and claiming de minimis is not permissible.

8. Is a brokerage firm a subcontractor or supplier?

A brokerage firm is considered a subcontractor, and a CDOT Form 205 is required for that firm. For truckers hired under the brokerage firm, their status will be dependent on the outcome of the determination in [Section I](#) of this trucking guide. For truck drivers tiered under the brokerage firm, DBRA applicability and the required submission of CDOT Forms 205 and 1425 are dependent on the truck driver status as a subcontractor or supplier.

9. If a wage decision contains a truck driver classification on it, do all truck driver suppliers and subcontractors have to submit certified payrolls uniformly?

No, it is vital to evaluate if the firm is categorized as a supplier or subcontractor (see [Section I](#) of this resource guide) to determine certified payroll requirements, even if the wage decision contains a classification of truck driver.

IV. Frequently Asked Questions for Truckers as Suppliers

1. What are the temporary requirements for truck drivers as suppliers in the B2Gnow compliance software?

All truck driver suppliers, in which the written agreement exceeds \$10,000, shall have the following requirements for the contract:

- (a) Create an account in the B2Gnow software system.
- (b) The prime contractor shall submit a completed Form 1425 in the B2Gnow software system at such time that the \$10,000 amount is known to be exceeded and/or before the following occurs on the contract:
 - the supplier's upper tier begins work
 - the truck driver begins work
 - incorporating materials into the contract

Failure to comply with the requirements of this subsection shall be grounds for withholding of progress payments.

2. Is the supplier status governed by the type of material that is being hauled?

No. The type of material does not govern the role of a driver as either a supplier or a subcontractor. The status of the hauler is achieved using the determination of truck driver status as identified in [Section I](#) of this trucking guide.

3. According to the US DOL Field Operation Handbook (FOH) 15e16(c), if a material truck driver spends more than 20 percent of his/her time in a workweek engaged in warranty and/or repair work on the site of work, he/she is DBRA covered for all time spent on the site during that workweek.

For a truck driver that is performing offsite delivery that also engages in warranty or repair work, is the threshold of 20 percent (as referenced above) still allowed to be utilized?

No. The recent rulemaking (2023) eliminated the 20 percent rule, although the FOH has not yet been updated to reflect that. There is no 20% threshold as was formerly outlined in the DOL FOH Chapter 15e16. While the injunction is in place, the US DOL will not be enforcing prevailing wage requirements for any “offsite delivery work.” However, the US DOL (and therefore CDOT) will enforce prevailing wages for any and all time the drivers spend onsite doing the non-delivery construction work itself.

4. Are truck driver suppliers required to submit certified payrolls?

No. Truck driver suppliers are exempt from DBRA requirements. Accordingly, certified payroll is not required.

5. When a material supplier contracts with a truck driver to haul their materials (for a project), is that contracted truck driver (although not an employee of the material supplier) considered a truck driver supplier?

The defining factor here is the determination of the work that is being performed. If the hired truck driver is engaged in offsite delivery work as defined in [Section I](#), that hired driver would be considered a truck driver supplier.

6. When a truck driver supplier is delivering asphalt, and that standard procedure takes a bit of time, for example, either the asphalt has to go into the hopper of a laydown machine, or it can be placed as a windrow (line of asphalt) in front of the laydown machine. Is the truck driver supplier considered to be doing work on the SoW, or are they considered to be engaged in offsite delivery work?

Delivery of materials into equipment or mixing facilities is still offsite delivery as long as the truck driver doesn't begin the physical work of laying down and spreading the asphalt as a laborer or equipment operator. Therefore, regardless of the fact that the process is lengthy, the truck driver that is engaged in offsite delivery work is still considered to be a truck driver supplier.

7. In order for a truck driver to be considered a truck driver supplier on the project, does the truck driver that is hauling materials also have to sell said materials to the contractor?

If a material supplier or contractor that purchased the materials hired a truck driver (as an employee or as an independent trucker to deliver materials), and the hired truck driver's only obligations fall within offsite delivery work (no installation, etc.), then the hired driver is considered a truck driver supplier. In this case, the truck driver that is engaged in offsite delivery work, as defined in [Section I](#), does not need to sell said materials in order to be considered a truck driver supplier.

8. If a firm both sells material supplies and installs material on one project, what is the determination of the status (supplier/subcontractor) of the truck drivers who are engaged in offsite delivery work?

If a material supplier/contractor hired a truck driver (as an employee or as an independent trucker to deliver materials), and the hired truck driver's only obligations fall within offsite delivery work (no installation, etc.), then the hired driver is considered a truck driver supplier.

V. Miscellaneous

1. Consider the following: If a truck driver commits to a scope of work as a subcontractor truck driver as defined in [Section I](#) of this trucking guide, and they also engage in offsite hauling as defined in Section I as a supplier truck driver for the same project hired by the same upper-tier contractor/material supplier, what are the paperwork requirements associated with this work?

If a truck driver's status is that of both a subcontractor and supplier, as outlined in Section I of this trucking guide, the project manager for the prime contractor shall inform the CDOT project manager of the dual roles being performed by the truck driver. The paperwork requirements for this scenario are as follows:

As a truck driver subcontractor:

- A CDOT Form 205 shall be submitted when a truck driver is performing in dual roles.
- Certified payroll is required for this truck driver when he/she is operating in the truck driver subcontractor role.
- When the scope of work of a subcontractor ends, a final certified payroll shall be reported.
- When a truck driver is operating in both roles throughout the project, it is essential that the prime contractor/trucking firm tracks the time spent hauling as a subcontractor truck driver to report certified payrolls accurately.

As a truck driver supplier:

- Solely performing offsite delivery work does not require certified payroll reporting.
- A CDOT Form 1425 will not be required when a truck driver is hired by the same upper-tier

contractor/material supplier to perform in both roles - subcontractor and supplier. The CDOT Form 205 is the required form of record for this situation. If a truck driver is hired by a different contractor/material supplier for the same project, a CDOT Form 205 or CDOT Form 1425 shall be completed as applicable for the scope of work with the new hiring firm.

2. Does a truck driver have to complete certified payroll for every CDOT job?

No. Certified payroll applicability is driven by the DBRA obligations as outlined in each contract. Specific trucking requirements are outlined in this trucking guide. A status determination of subcontractor/supplier will need to be conducted for each truck driver on the project.

3. Is certified payroll reporting required for owner-operators of trucks?

It depends. DOL has an enforcement position with respect to **bona fide** owner-operators of trucks -- an owner-operator is a person who owns and drives their own truck. The first step is to identify the role that the trucker owner-operator is performing (see [Section I](#) of this trucking guide). If it is determined that the trucker owner-operator is a supplier, certified payroll is not required as truck driver suppliers are not subject to DBRA. For those trucker owner-operators that are considered subcontractors, certified payrolls are required by DBRA.

For trucker owner-operators performing in the subcontractor role, this requirement mandates the following for certified payroll reporting:

- a) The full name of the owner-operator within LCPtracker.
- b) The selection of the owner-operator status within LCPtracker.
- c) The attachment of the Contractor Fringe Benefit Statement (CFBS), Owner-Operator Affidavit, driver's license, and truck registration in LCPtracker e-documents.
- d) The entry of the check number and payment date within LCPtracker.

Trucker owner-operators will not need to include the hours worked, nor the rates paid, within LCPtracker. Truck drivers who are independent (and are not another contractor's employee) cannot be listed on any other contractor's payroll, and they must report payroll (and other obligations) independently.

These exemptions **do not** apply to any trucking employees of a trucker owner-operator. Additionally, this position does not apply to owner-operators of other equipment such as bulldozers, cranes, etc.

4. What are the certified payroll reporting requirements for a 1099 truck driver?

The first step is to identify the role that the 1099 truck driver is performing. (See [Section I](#) of this trucking guide for help in determining the role.) If the 1099 driver is considered a subcontractor, certified payroll requirements apply. A 1099 driver is never considered a W-2 employee, and therefore, they are responsible for submitting their own certified payroll in LCPtracker. As stated

above, if it is determined that the 1099 hauler is a truck driver supplier, certified payroll is not required as they are not subject to DBRA.

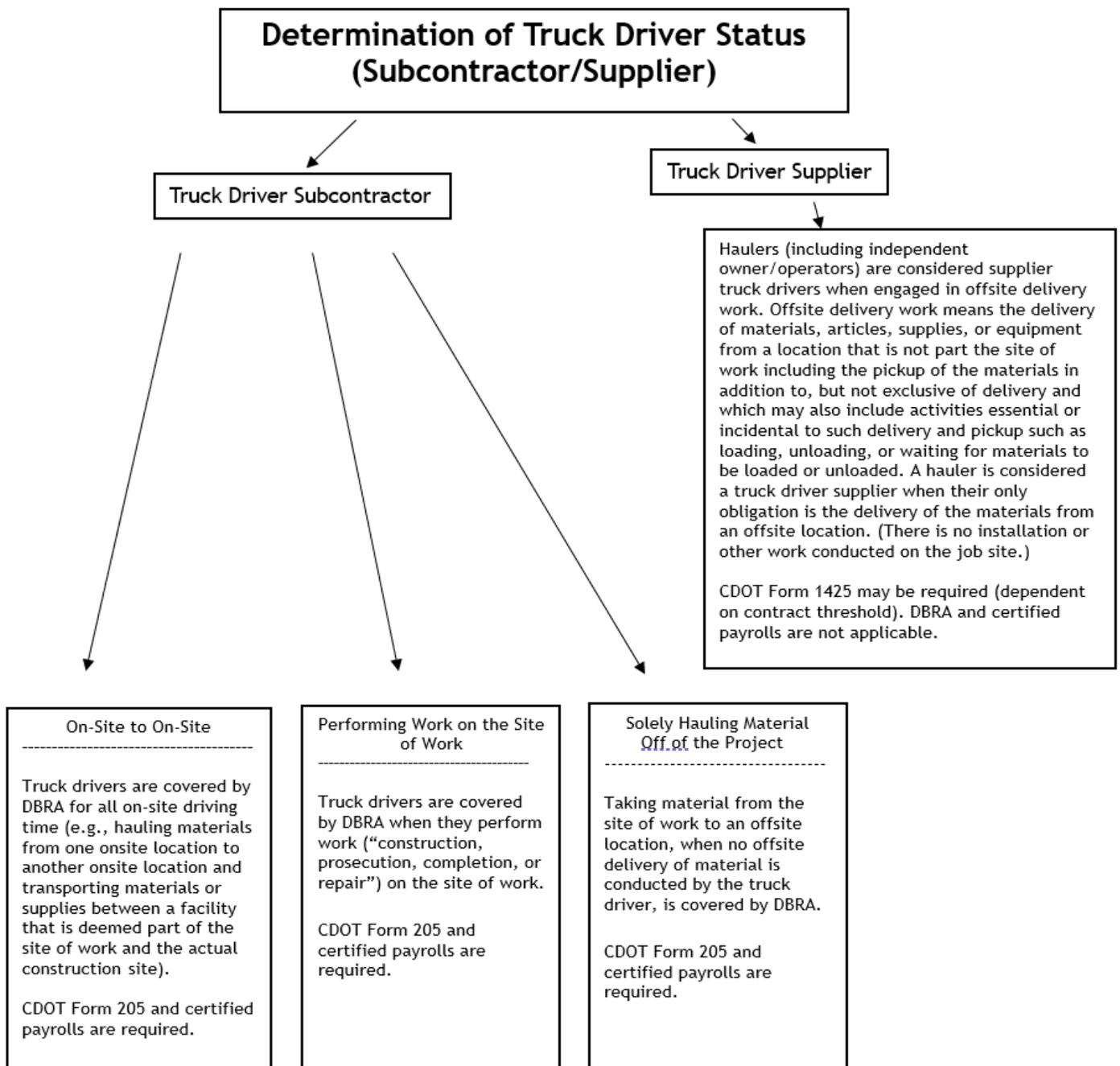
5. How does DBE counting work for trucking for those operating in a subcontractor (including 1099) or supplier role?

With respect to both subcontractor and supplier trucking (as determined in [Section I](#) of this trucking guide), the DBE trucking firm must own and operate at least one (1) fully licensed, insured, and operational truck used on the contract in order to perform a Commercial Useful Function(CUF). Additionally, the DBE trucking firm must be responsible for the management and supervision of their entire trucking operation on the contract. Work, by a DBE trucking firm, will count as eligible participation **only if** the work was performed as follows:

- (i.) with trucks owned and insured by the DBE trucking firm, and those trucks were operated by drivers employed by the trucking firm, or
- (ii.) with trucks leased by the DBE trucking firm from another DBE firm, including owner/operators who are certified DBEs. The DBE who leases trucks from another DBE receives credit for the transportation services that the lessee DBE provides on the contract.

If a DBE trucking firm is considered a supplier, a CDOT Form 1425 will be required to be submitted in B2Gnow regardless of the contract amount (including contracts less than \$10,000).

Appendix A Trucking Flowchart



NOTE: De minimis counting is no longer applicable for truck drivers' time on any project.