

# CDOT Civil Rights Trucking Compliance Guidance



Civil Rights &  
Business Resource  
Center

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## Introduction

A number of factors create a framework for contractor compliance on federally -assisted construction projects. Payrolls, nondiscrimination, subletting, labor interviews, etc. are all components that direct compliance in some way. The Colorado Department of Transportation (CDOT) manages the compliance program to meet Federal Highway Administration (FHWA) regulations, and per the FHWA / State of Colorado stewardship agreement, CDOT is required to perform checking procedures to ensure that the contractors and subcontractors meet the defined terms. One of the most fundamental elements to be checked is the Davis-Bacon and Related Acts (DBRA), which governs prevailing wage - are employees being paid the minimum wages for a job with federal funds. This concept is one that is actually determined by other factors when thought about within the scope of trucking which is why this guidance was developed.



## Site of work

### How long is the truck on the “site of work?”

This is the most important question that a prime contractor and trucker can ask. It is the question that guides all other actions for all truckers, including both haulers and material suppliers. While other questions come into play long term (truck type, what is being hauled, etc.), the principal question always returns to the amount of time that the trucker spent on the site of work. This question is used to determine whether a trucker is covered by the Davis-Bacon and Related Acts (DBRA) and if that person is governed by a minimum set of wages on the project.

In order to consider this question there are two things that need to be identified:

#### 1) What counts as “site of work”?

Federal regulations states “*The site of the work* is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, *provided* that such site is established specifically for the performance of the contract or project.” 29 CFR 5.2 (I) 1. Batch plants, borrow pits, job headquarters, tool yards, etc., are part of the site of work provided they are dedicated exclusively or nearly so to the contract or project, and are adjacent or virtually adjacent to the site of the work. 29 CFR 5.2 (I) 2

#### ■ DBA / DBRA applies only to workers on the “site of the work”

- The physical place or places where the construction called for in the contract will remain after work has been completed *and*
- Any other site where a **significant** portion of the building or work is constructed, *provided that* such site is established specifically for the contract

#### 2) What is considered de minimis?

The meaning of de minimis is outlined in the U.S. Department of Labor’s Field Operation Handbook:

“For enforcement purposes, if such an employee spends more than 20 percent of his/her time in a workweek engaged in such activities on the site, he/she is DBRA covered for all time spent on the site during that workweek.” [Chpt 15 FOH 15e16\(c\)](#).

## Site of work

- Regulation found in the 29 CFR 5.2(l)(3) teaches that truck drivers on federally-assisted projects are covered by Davis-Bacon for time:
  - Spent driving on the site of the work
  - Spent loading or unloading materials and supplies on the site of the work, if such time is more than de minimis
  - Transporting materials and supplies between a facility that is part of the site of the work and the actual construction site
  - Transporting portions of a building or work between a site where a significant portion of the project is being constructed and the physical place where the building or work will remain
- Truck drivers are NOT covered in the following instances:
  - Material delivery truck drivers while off the “site of the work”
  - Truck drivers of a contractor or subcontractor traveling between a commercial facility and the Davis-Bacon job when they are off the “site of the work”
  - Truck drivers whose time spent on the “site of the work” is de minimis for pick-up or drop off

This concept of time spent on the site of work becomes the determining factor to decide if truckers are 1) hauling or 2) supplying material. Contractors will use the previously mentioned information about site of work along with the key question: *how much time the trucker is spending on the project*. In order to help make this determination, it is likely that prime contractors will require truck contractors to have some system to track time spent on the site of work, including the time spent in queue. This might include GPS or it might also mean that they are submitting trucker tickets or manifests. In the case of audits or spot checks from the prime or oversight agencies, if time spent on the site of work cannot be demonstrated to be de minimis or less, payrolls and 205s will be required.

It is important to understand that a material supply could be any material. While DOL FOH (15e16) outlines some specific materials (sand, gravel, and ready-mix concrete) that may qualify, these are intended to be examples, and it does not exclude another material (dirt, rock, asphalt) simply because it is not listed. Similarly, if a trucker is hauling a material supply, the decision about hauling vs material supply is determined not by the actual material but by two other questions addressed above: 1) How much time was spent on the site of work and 2) was that time spent on the site of work considered de minimis?

## Certified Payroll

### How does certified payroll apply to trucking?

Trucking firms fall under the definition of laborers and mechanics in the Davis Bacon Act and the Davis Bacon Related Acts. These acts dictate the wages that covered firms must pay their employees for work on federally assisted contracts. Employees to which these payment rules apply are considered covered by the law. CDOT monitors payroll to these covered employees through LCPtracker.

### Do all truckers need to submit certified payroll?

No, truckers who spend no more than a de minimis time on the site of work (see below) do not need to submit certified payroll. De minimis is defined as no more than 20% of the individual's workweek. On the other hand, if the trucker is working on the site of work for more than 20% of the workweek, then the trucker must submit certified payroll.

If a trucker is de minimis one week and not the next, then CDOT requires that the contractor fill out certified payroll for each week that the trucker is on the job more than de minimis. For the weeks when it does fall under de minimis time, the contractor must claim a no workweek through LCPtracker.

These rules apply at any tier. Therefore, if there are truckers that are tiered out under a trucking contract, these are considered haulers. If a trucking hauler has employees, and those employees are spending more than 20% of their workweek on site, even if that time spent is in queue waiting to get on the job site, then the contractor is obligated to pay the employee(s) Davis-Bacon wages.

### How do these rules apply to my covered 1099 employees?

Firms must report certified payroll information for all of their employees. A 1099 driver is never considered an employee. Either those individuals are employees, or they are independent contractors. If they are not W-2 employees, then those 1099 drivers are considered subcontractors and are responsible for submitting their own certified payroll information.

## Owner-Operator Requirements

### How are these requirements different for Owner-Operators?

This information applies to truck owners who own AND drive their own truck. The [US DOL's enforcement position](#) is that the owner/operator status applies only when the owners own AND drive their own truck. This owner/operator position does not apply to any other employee working for the owner. Nor does it apply to any other equipment owner/operator.

### Are certified payrolls required for owner/operators of trucks?

For owner/operator truckers that are de minimis, certified payrolls are not required. For those owner/operators that are on the project more than de minimis (more than 20% of the workweek), certified payrolls must be completed. The certified payrolls must include the names of the owner/operator, and the owner/operator will need to click a button that says “owner/ operator” within LCPtracker. Owner/operators will not need to show the hours worked or the rate paid. Registration and driver’s license must be uploaded into e-documents within LCPtracker. For those owner/operators that are sometimes de minimis and sometimes not, owner/operators must claim a no workweek, with a “working de minimis time,” notation for each week that it is applicable. Truckers who are independent owner/operators cannot be listed on the prime contractor’s certified payroll. Either the truckers are independent owner/operators, or they are employees. They are not both.

Please remember this crucial information from the FHWA 1273:

The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i)

- The contractor or subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the contracting agency or the Department of Labor
- If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to suspend any further payment, advance, or guarantee of funds.
- Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12

## LCPtracker

### **What is needed for back-up documentation for trucker payrolls within LCPtracker?**

All independent truckers need to submit a copy of their license and registration through the e-Documents tab in LCPtracker. They will all need to fill out a Contractor Fringe Benefit and Deduction Statement that they must upload into LCPtracker as well. If they are owner-operators, they have an exemption from DOL in which they don't need to describe the benefits that they are receiving; however, an owner or business must describe any benefits and / or cash fringe for their employees, regardless of the relationship between the owner-operator and the employee. They would also have to upload any supporting documentation required through LCPtracker as outlined by the following guidance:

[https://www.codot.gov/business/civilrights/compliance/assets/cdot-certified-payroll-memo\\_june-2018.pdf](https://www.codot.gov/business/civilrights/compliance/assets/cdot-certified-payroll-memo_june-2018.pdf)

## Disadvantaged Business Enterprise (DBE) Counting

### **How does DBE counting work for trucking firms, including those using 1099 drivers?**

DBE trucking firms receive credit for the total value services provided by trucks that the DBE owns, insures, and operates with either its W-2 employees or 1099 drivers. If a DBE firm's employee drives a truck that is not owned by the DBE, then they cannot get DBE credit. No credit is granted for services provided by leased or subcontracted trucks including those driven by the DBE firm's W-2 employee.

## CDOT form 205

### Do all truckers need a completed CDOT form 205?

Every trucker needs a form 205 unless the project engineer and the Region Civil Rights Office have granted authorization to list the trucking firm as a material supplier on the CDOT Supplier List (Form 1425) instead. The CDOT Form 205 is CDOT's Sublet Application Permit. CDOT must give permission for any company to be on the project site. These forms are how primes request this permission from CDOT. Completing a form 205 ensures three things:

- 1) CDOT knows who is on the job
- 2) CDOT has granted the contractor permission to be on the job
- 3) CDOT is compliant with the FHWA 1273 requirements as it relates to subletting trucker subcontractors.

The 205 is required for firms at every tier. Therefore, because the form 205 is needed for every trucking firm, supply firms listed on the 1425 who hire trucking companies to deliver materials to the job site also need 205s.

Trucking firms need only one 205 per subcontract regardless of how many employees the trucking firm has. A trucking firm that is subcontracted to haul for two different companies would need two different 205s.

A material supplier trucker, who is spending less than 20% of their workweek on the site of work such that only an incidental amount of time was spent there to drop off supplies, would need to be listed on the CDOT form 1425 instead of the CDOT form 205. If there is a question about the amount of time that will be spent on the site of work, OR if the contractor / supplier will be tiering out any of the work, the contractor should fill out a form 205.

### What about 1099 drivers or trucking owner operators?

1099 drivers will need their own 205s as they are serving as independent contractors. These individuals will complete their own prompt payment information in B2GNow and will be responsible for completing any needed certified payroll information.

## Resources

These are the sources that are used for all definitions and guidance listed and should be applied to CDOT's federally-assisted construction projects.

49 CFR 26.55

<https://www.govinfo.gov/content/pkg/CFR-2009-title49-vol1/xml/CFR-2009-title49-vol1-part26.xml#seqnum26.55>

29 CFR 5.2

<https://www.govinfo.gov/content/pkg/CFR-2011-title29-vol1/xml/CFR-2011-title29-vol1-part5.xml#seqnum5.2>

**DOL, Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act sources:**

Field Operation Handbook, Chapter 15

[https://www.dol.gov/whd/FOH/FOH\\_Ch15.pdf](https://www.dol.gov/whd/FOH/FOH_Ch15.pdf)

DBA / DBRA Compliance Principles

<https://www.dol.gov/whd/govcontracts/pwrp/Tab9.pdf>

2019 CDOT Contractor Compliance Manual

<https://www.codot.gov/business/civilrights/compliance/assets/construction-compliance-manual-2019.pdf>

Certified Payroll Guidelines

[https://www.codot.gov/business/civilrights/compliance/assets/cdot-certified-payroll-memo\\_june-2018.pdf](https://www.codot.gov/business/civilrights/compliance/assets/cdot-certified-payroll-memo_june-2018.pdf)

CDOT DBE Program Manual

<https://www.codot.gov/business/civilrights/smallbusiness/assets/cdot-dbe-program-manual-revised-2016.pdf>