



National Society of Professional Surveyors

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December 10, 2014

Mr. Michael Lazzeri
Assistant Administrator for Government Contracts
Wage and Hour Division
U.S. Department of Labor
Washington, DC 20210

Dear Mr. Lazzeri:

The National Society of Professional Surveyors (NSPS), representing the more than 30,000 surveying professionals nationwide and in affiliated individual state societies, hereby requests that the Department of Labor rescind and replace All Agency Memorandum (AAM) 212 to more accurately reflect the profession of surveying as distinguished from “laborers and mechanics” for the purpose of application of the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*) and all other relevant laws, regulations and implementation policies.

NSPS believes AAM 212, as issued on March 22, 2013, is based on inaccurate assumptions of the duties of survey crews on construction projects. We have no objection to application of the Act to workers who are truly “laborers and mechanics” and who are involved in construction activities. However AAM 212, and information submitted to the Department of Labor that led to the issuance of AAM 212, do not reflect the reality of today’s workplace as it applies to survey crews. We believe the interests of the Department of Labor, workers, firms that are contractors on Federally-funded projects, other stakeholders, and taxpayers would be well served through revisions to AAM 212. These revisions are intended to apply the Act where proper, legitimate and appropriate, while recognizing and exempting professional surveying services.

NSPS recommends the following specific revisions to AAM 212:

1. **Apply the Davis-Bacon Act to individuals involved in construction, not those engaged in surveying.** Surveying is recognized as a profession by other programs of the Department of Labor and is an activity subject to professional licensure in all 50 states, and U.S. possessions and territories. By law, members of survey crews work under the direct supervision and responsible charge of licensed professional surveyors, not in direct support of construction crews. Therefore, members of survey crews are not “laborers and mechanics”.
2. **Remove all references to terms such as “surveying”, “field surveyors”, “survey crew”, “rodman”, or “chainman”.** Individuals who carry instruments or equipment, set up instruments, or to a dominant extent do not engage in surveying activities, are not members of survey crews. To the extent there are workers whose primary responsibilities involve such activities, they may be “laborers and mechanics”, but should be considered “construction helpers” or by another similar job title, but they should not be considered by any surveying-related title.

3. **Distinguish between “surveying” and “construction”.** The AAM and other implementing policies and documents should be clear that the Davis-Bacon Act does not apply to any work performed under the supervision or responsible charge of a licensed professional surveyor, or which falls under the applicable state law definition of duties related to a surveyor. Information about such state laws is provided below.
4. **Exempt any work that is surveying in nature and for which survey crew members are not directly employed by a construction contractor or subcontractor.** AAM 212 and other correspondence from the Department of Labor is confusing and inconsistent with regard to the types of employers by whom survey crews are employed. Employees of a surveying or engineering firm are not construction contractors or subcontractors, they are employees of professional services firms, and their exemption from the Act should be clarified and applied on a consistent and unequivocal basis.
5. **Exempt workers who are performing surveying services.** Members of survey crews are engaged in duties that are primarily mental or managerial, involve taking measurements or applying mathematical skills, reading, interpreting and applying plans and specifications, and other similar documentation as they relate to the precise location of planned improvements. They are interpreting documents and making judgments based on field situations, evidence and conditions, and establishing and monumenting locations based on those judgments, interpretations, data collection and application of information. Such activities are the primary activities of all members of surveying crews. They are not manual or physical in nature, and should be exempt from the Act. Any minor activities, such as, but not limited to, placing reference marks for construction in the ground, or carrying a surveying instrument to a control point location, are incidental to the primary activities of surveying crew members.
6. **Cover only construction workers not engaged in surveying activities and whose duties are solely manual or physical in nature.** Non-surveying construction workers, such as those carrying or setting up (but not using) measurement tools, clearing brush, sharpening stakes, and who are engaged in actual construction and perform work in direct support of construction crews may be laborers and mechanics under the Act. NSPS has no objection to such workers being covered under the Act, so long as such workers are not considered part of surveying and the Department of Labor does not use surveying-related terminology or titles to describe or classify such workers under the Act.

Licensing of surveying professionals began in 1907 and is critical to public health, welfare, and safety. All 50 states (and the territories) license the design professions, including your home state of Missouri. Every state licensing law requires a licensed professional surveyor to be in direct supervision and responsible charge of technicians, crews and other employees on a surveying project. Again, such laws have been enacted to protect public health, safety and welfare with regard to professional surveyors and those in their employ. These laws clearly distinguish between a construction worker who is a laborer and mechanic on one hand, and a professional and support technician on the other.

While there are differences among the respective state surveying licensing laws (for access to all state licensing boards and relevant state licensing laws, go to www.ncees.org), all state licensing boards are members of the National Council of Examiners for Engineering and Surveying (NCEES). There is an NCEES model licensing law for surveying that has been adopted verbatim, or with minor modification, by several state legislatures, and the model law has been enacted in part in some other states. The model law definition of surveying is as follows:

“Practice of Surveying – The term “Practice of Surveying,” as used in this Act, shall mean providing, or offering to provide, professional services using such sciences as mathematics, geodesy, and photogrammetry, and involving both (1) the making of geometric measurements and gathering related information pertaining to the physical or legal features of the earth, improvements on the earth, the space above, on, or below the earth and (2) providing, utilizing, or developing the same into survey products such as graphics, data, maps, plans, reports, descriptions, or projects. Professional services include acts of consultation, investigation, testimony evaluation, expert technical testimony, planning, mapping, assembling, and interpreting gathered measurements and information related to any one or more of the following:

- a. Determining by measurement the configuration or contour of the earth’s surface or the position of fixed objects thereon,
- b. Determining by performing geodetic surveys the size and shape of the earth or the position of any point on the earth,
- c. Locating, relocating, establishing, reestablishing, or retracing property lines or boundaries of any tract of land, road, right of way, or easement,
- d. Making any survey for the division, subdivision, or consolidation of any tract(s) of land,
- e. Locating or laying out alignments, positions, or elevations for the construction of fixed works,
- f. Determining, by the use of principles of surveying, the position for any survey monument (boundary or non-boundary) or reference point; establishing or replacing any such monument or reference point,
- g. Creating, preparing, or modifying electronic or computerized or other data, relative to the performance of the activities in items a–f above

The model law also provides:

“The term “Responsible Charge,” as used in this Act, shall mean direct control and personal supervision of engineering or surveying work, as the case may be.”

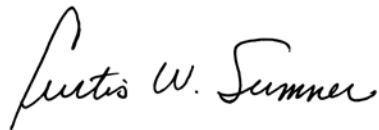
Prior to licensure as a professional surveyor, or for employees who seek a career at the technician level, NSPS sponsors a comprehensive, nationally recognized certification program for survey technicians. The Certified Survey Technician (CST) program recognizes the importance of technicians to the surveying and mapping profession.

This four-level certification program for surveying technicians throughout the United States indicates official recognition by NSPS that a person has demonstrated that he or she is minimally competent to perform surveying tasks at a specified technical level. Certification provides the individual with a sense of achievement, since it reflects advancement in the field of surveying. Certification also provides employers with a method of determining job assignments and advancement since certification is an indication of one's ability to perform specific job tasks. For information, go to: www.nsps.us.com and click on “Certified Survey Technician.” In recognition that surveying is multifaceted, the CST program offers certification in both boundary and construction support categories.

NSPS believes AAM 212 inaccurately considers surveying technicians and members of survey crews as “laborers and mechanics”. Such as classification, definition and policy is inconsistent with the predominant practice in the workplace, state law, and established and accepted certification programs.

We respectfully urge the Department of Labor to rescind and revise AAM 212 to distinguish between construction workers and surveying personnel, and to clarify the exemption of surveying personnel from the application of the Davis-Bacon Act. We also request that the Department of Labor consult with NSPS for input and validation of workplace and marketplace practices affecting surveying prior to the establishment of any such policies.

Kindest regards.

A handwritten signature in black ink that reads "Curtis W. Sumner". The signature is written in a cursive, flowing style.

Curtis W. Sumner, LS
Executive Director