22.401 Definitions.

As used in this subpart-

Apprentice means a person-

(1) Employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS; or

(2) Who is in the first 90 days of probationary employment as an *apprentice* in an apprenticeship program, and is not individually registered in the program, but who has been certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an *apprentice*.

Construction, alteration, or repair means all types of work done by laborers and mechanics employed by the *construction* contractor or *construction* subcontractor on a particular *building or work* at the site thereof, including without limitations-

(1)Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, *supplies*, or equipment on the site of the *building or work*;

(4) Transportation of materials and *supplies* between the site of the work within the meaning of paragraphs (1)(i) and (ii) of the "site of the work" definition of this section, and a facility which is dedicated to the *construction* of the *building or work* and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition of this section; and

(5) Transportation of portions of the *building or work* between a secondary site where a significant portion of the *building or work* is constructed, which is part of the "site of the work" definition in paragraph (1)(ii) of this section, and the physical place or places where the *building or work* will remain (paragraph (1)(i) in the "site of the work" definition of this section).

Laborers or mechanics.-

(1) Means-

(i) Workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial;

(ii) *Apprentices*, *trainees*, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards statute, watchmen and guards;

(iii) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR part 541, for the time so

spent; and

(iv) Every person performing the duties of a laborer or mechanic, regardless of any contractual relationship alleged to exist between the contractor and those individuals; and

(2) Does not include workers whose duties are primarily executive, supervisory (except as provided in paragraph (1)(iii) of this definition), administrative, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics.

Public building or public work means *building or work*, the *construction*, prosecution, completion, or repair of which, as defined in this section, is carried on directly by authority of, or with funds of, a *Federal agency* to serve the interest of the general public regardless of whether title thereof is in a *Federal agency*.

Site of the work.-

(1) Means

(i) The primary site of the work. The physical place or places where the *construction* called for in the contract will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the *building or work* is constructed, provided that such site is-

(A) Located in the *United States*; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided-

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraphs (1)(i) of "the secondary site of the work" as defined in paragraph (1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work", even if the operations for a period of time *may* be dedicated exclusively, or nearly so, to the performance of a contract.

Trainee means a person registered and receiving on-thejob training in a *construction* occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

Wages means the basic hourly rate of pay; any contribution irrevocably made by a contractor or

subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which *may* be reasonably anticipated in providing bonafide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated *in writing* to the laborers and mechanics affected. The fringe benefits enumerated in the *Construction* Wage Rate Requirements statute include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or *insurance* to provide any of the foregoing; unemployment benefits; life *insurance*, disability *insurance*, sickness *insurance*, or accident *insurance*; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

Parent topic: Subpart 22.4 - Labor Standards for Contracts Involving Construction