

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed
Adoption of the Rule of the State
Department of Labor and Industry,
Labor Standards Division, Governing
Prevailing Wage Determinations,
Parts 5200.1000 to 5200.1120

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

In 1973 Minnesota enacted its own prevailing wage law patterned after the Federal Davis-Bacon Act and the Wisconsin Prevailing Wage Law. As in other states which have enacted prevailing wage statutes, the Minnesota law is sometimes known as the Little Davis-Bacon Act.

The Minnesota legislature determined it to be ***"in the public interest that public buildings and other public works be constructed and maintained by the best means and highest quality of labor reasonably available and that persons working on public works projects be compensated according to the real value of the services performed."*** Therefore, the legislature declared it to be the state's policy ***"that wages of laborers, workers and mechanics on projects financed in whole or in part by state funds should be comparable to wages paid for similar work in the community as a whole."*** *Minn. Stat. § 177.41.*

The original Minnesota prevailing wage law required each state agency to make prevailing wage determinations for building-construction projects. The Department of Labor and Industry was granted the authority to enforce compliance with prevailing wages for construction of public buildings and the Department of Highways was given the authority to enforce the prevailing wage rates on highway construction projects. The Department of Labor and Industry was responsible for defining classes of labor for both highway and building construction and for determining the prevailing wage rates for highway construction.

In 1975 the law was amended to require the Department of Labor and Industry to determine rates for building construction. The law was also amended to provide that prevailing wage rates would apply to ***"projects financed in whole or part by state funds,"*** in contrast to the original 1973 law which mandated prevailing wage rates be paid on ***"state projects."*** *Minn. Stat. § 177.41.*

The first administrative rules regarding the statute were promulgated in 1977. The 1977 rules defined the classes of labor which include laborers, heavy-equipment operators, truck drivers, and special crafts. The rule also set procedures for determining the prevailing rates for classes of labor for highway construction projects.

The proposed rules are the result of a series of meetings held by the Minnesota Department of Transportation and the Minnesota Department of Labor and Industry, in response to concerns that the current method of making wage determinations for highway and heavy construction projects contains flaws. This can result in missing wage classifications, county wage determinations that contain disparate wage rates, and wage determinations that, in some areas, do not reflect the actual wages paid for similar work in the area.

During the first set of meetings held in the Winter and early Spring of 1995, representatives of labor organizations, contractor associations, and city and county associations were invited by the departments to participate in open-forum meetings. The forums were designed to allow members to express concerns and problems associated with the wage determinations, to provide input and ideas for modifying the current rules, and to formulate a prevailing wage committee made up of representatives of the construction industry.

The first Prevailing Wage Committee meeting was held on May 24, 1995 and the meetings concluded on August 16, 1995. The consensus of the committee was to proceed with the proposed changes.

The purpose of the Committee was to discuss ideas that were common to all organizations and to develop a consensus on how to modify Parts 5200.1000 to 5200.1120, Prevailing Wage Determinations, in a manner calculated to make the determinations more complete, more uniform, and more reflective of the wages actually paid to workers in the various areas of the state. Highlights of the proposed modifications include new language that sets forth criteria on how projects and workers are selected for inclusion in the wage survey, a provision which requires that a prevailing wage rate be established for all classifications of labor being used on a project, the determination of highway and heavy wage rates by multi-county areas, and a reorganization of the *Master Job Classifications* which allows the department to determine one prevailing wage rate for multiple classes of labor grouped together under the heavy equipment operator and truck classifications.

The Prevailing Wage Committee included representatives from the Minnesota State Building and Construction Trades Council, the International Brotherhood of Teamsters Construction Local 221, the Laborers District Council of Minnesota and North Dakota, the International Union of Operating Engineers Local 49, the Christian Labor Association, the Association of General Contractors, the Associated Builders and

Contractors, the Association of Women Contractors, and the National Association of Minority Contractors. Representatives from the Minnesota County Engineers Association, The Minnesota City Engineers Association, and the Minnesota Laborers Employers Education Trust were also invited to participate in the committee meetings.

II. STATUTORY AUTHORITY TO PROMULGATE THESE RULES

The Department of Labor and Industry has both general and specific rule making authority to promulgate these proposed rules. Pursuant to Minn. Stat. § 175.171(2), the department has the authority to adopt reasonable and proper rules relative to the exercise of its powers and duties, and to regulate the mode and manner of its investigations and hearings.

Statutory authority regarding prevailing wages is found in Minn. Stat. §§ 177.41 to 177.44 *STATE PROJECTS AND STATE HIGHWAY CONSTRUCTION; PUBLIC POLICY*. Specifically, Sections 177.42, Subd. 6, 177.43, Subd. 4, and 177.44, Subd. 3. Section 177.43, Subd. 4 directs the Department to determine the prevailing wage rates for all trades and occupations on projects other than highway; and 177.44, Subd. 3 and 4 directs the department to investigate and define the classes of labor and prevailing wage rates for highway construction projects. These proposed rule amendments deal with both highway and heavy construction and commercial construction.

III. SMALL BUSINESS CONSIDERATIONS, COST TO LOCAL PUBLIC BODIES, IMPACT UPON AGRICULTURAL LAND, AND EFFECT UPON SPANISH SPEAKING PEOPLE

A. SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes § 14.115 (1994) requires state agencies to consider methods for reducing the impact of proposed rules on small businesses when a proposed new rule may affect small businesses. The department has determined that the adoption of these rules will have minimal or no direct effect upon small businesses. Any minor indirect effect upon small businesses is outweighed by the department's need to define classifications of labor and to determine prevailing wage rates.

The private businesses affected by the implementation of these proposed rules are largely construction contractors involved in either highway and heavy, or building construction. Administratively, the effect of the modifications to contractors is two-fold.

First, the modifications change the way contractors are asked to submit reports of construction. However, the changes provide clarification to contractors and other interested parties on how to select projects and workers for inclusion in the wage survey, and expand the length of time to submit reports of construction.

Second, the modifications affect how wage determinations are issued for covered contracts. The purpose of these proposed modifications is to make wage determinations that more accurately reflect area wage standards, and to reduce the rate fluctuations that occur in the wage determinations from one year to the next. In order to achieve this goal, several changes were proposed which include expanding the number of projects that can be included in the wage survey, expanding the number of times an employee can be reported in an area, issuing wage determinations for highway and heavy contracts that represent multi-county areas, and reducing the number of wage rates certified because of the grouping of similar classes under the heavy-equipment operators and truck drivers. The proposed modifications will also reduce the paperwork necessary to issue a wage determination for commercial contracts.

The administrative and financial effect of these modifications is minimal since the changes provide clarification on how to submit information, and will provide a complete schedule of prevailing wage rates for all trades and occupations commonly employed on highway and heavy and building contracts which reflect area wages. Any increase in cost may be attributed to the provisions which require a contracting agency to assign a wage rate for new labor classifications employed on the project. Currently there is no rate determined for new classes of labor not yet contained in the rule, such as the operator of a new type of construction equipment. However, the cost should be minimal since the assigned wage rate must reflect wages paid for similar work in the wage determination.

In proposing these rules the department has considered each of the following methods for reducing the impact of the rule on small businesses:

- (i) the establishment of less stringent compliance or reporting requirements for small businesses;
- (ii) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (iii) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (iv) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (v) the exemption of small businesses from any or all requirements of the rule.

The rule does not impose new reporting requirements for small businesses. The prevailing wage statute does not allow for less stringent compliance or for exemption for any employers large or small, so the options of less stringent compliance or exemption are not appropriate. Adding new language regarding the selection and number of projects that can be reported does not impose schedules or deadlines, since the reporting of survey forms is optional. Likewise, the modification of how labor classifications are reported is non-substantive; therefore, establishment of less stringent deadlines is not an option.

B. FISCAL IMPACT ON LOCAL PUBLIC BODIES

Minnesota Statutes § 14.11, Subdivision 1, requires an agency to include in its Notice of Intent to Adopt Rules a statement which sets forth the agency's estimate of the total cost to all local bodies in the state to implement the proposed rules for the two years immediately following their adoption, if the estimated total cost exceeds \$100,000 in either of those two years. In consultation with the Department of Transportation, the Department of Labor and Industry predicted that the total cost in each of the following two years to local public bodies from the adoption of these new labor classifications and prevailing wage determination methods will not exceed \$100,000.

The proposed modifications affect the way contractors are asked to submit reports of construction for the wage survey, and how wage determinations are issued for covered contracts. The current rule requires the department to notify county engineers, city engineers, city clerks, administrators, and zoning officials that a survey is about to commence. However, the proposed modifications do not affect how public bodies are notified of a survey, therefore, there is no direct impact on public bodies regarding the submission of wage reports.

The proposed modifications also affect how wage determinations are issued for state-funded highway and heavy, and commercial contracts. The purpose of the proposed modifications is to make wage determinations that more accurately reflect the area wage standards, to reduce the rate fluctuations that occur in the wage determinations, and assure that a wage rate be certified for all classes of labor employed on state-financed projects. Therefore, the proposed changes are intended to provide public bodies with prevailing wage determinations that represent the wages paid within the community, and provide a comprehensive list of wage and labor classes for all labor classes employed on a project. These changes are intended to ease the problems associated with the administration and enforcement of prevailing wage determinations on public works contracts.

The major change in the wage determinations for commercial construction projects is the elimination of the provisions which requires public agencies to request a project wage determination 60 days prior to letting a contract. The proposed modifications require commercial wage rates to be issued once each year, without regard to a project. This proposed modification actually reduces the amount of information and paperwork public agencies or their agents are required to submit to the department in order to receive a wage determination for a contemplated project. The proposed modification also insures that a wage determination will be certified each year for all 87 counties for building contracts

The major change in the wage determinations for highway and heavy construction projects is the issuance of area wage determinations. The area wage determinations will

be issued based on ten multi-county areas. The areas created are based on MN/DOT construction districts, with the exception of St. Cloud and Mankato which are divided by MN/DOT maintenance areas.

The purpose of the multi-county area wage determination is to recognize that, in highway and heavy construction, a large percentage of the labor classes normally found under the laborers, heavy-equipment operators, and truck driver groups are needed to construct a highway and heavy project. Therefore, the area from which labor is secured for highway and heavy construction projects is broader than commercial construction projects. Under the proposed rules, wage determinations for highway and heavy-construction projects will be based upon similar work performed in those multi-county areas. These changes do not have a direct financial impact on public bodies that utilize the wage determinations since the changes proposed are to issue wage determinations that reflect wages paid for similar work in the area, and will contain wage rates for all labor classes that are used on highway and heavy construction.

Finally, the only change that may have an impact on public agencies that let state-financed projects is a requirement that a wage rate must be certified for all classes of labor employed on a covered contract. Currently, if no wage rate is determined for a class of labor, a contractor may pay its normal rate of pay. However, the proposed amendments require that if no information is received from the current wage survey for an individual class of labor, the previous rate will apply. Therefore, no additional cost should result from this change. Additionally, the proposed rules require a wage rate to be assigned to classes of labor being used on a project, but not contained in the Master Job Classification list. This change should not have a substantial affect on the cost of the project since the rate assigned must reflect the most similar trade or occupation in the wage determination.

In summary, the impact of these proposed rules on local public bodies relates to contractual implementation. These changes should have minimal or no cost impact on local public bodies because the purpose is to provide wage determinations for all classes of labor common to highway and heavy construction that reflect area wages.

C. AGRICULTURAL LAND IMPACT

The Department of Labor and Industry has determined that the adoption of these amendments will not have a direct and substantial impact on agricultural land under Minn. Stat. § 14.11, Subp. 2 (1994).

D. EFFECT UPON SPANISH SPEAKING PEOPLE

These rules do not have their primary effect on Spanish speaking people and therefore are not subject to Minn. Stat. § 3.9223, subdivision 4 (1994).

IV. NEED FOR AND REASONABLENESS OF THE PROPOSED MODIFICATIONS

PART 5200.1010 DEFINITIONS

This part provides definitions used for the purposes of wage determinations and includes the definitions of **commercial construction, highway and heavy construction, projects, residential construction or agricultural construction, and state projects.** New language was added to this part which defines "adjacent counties."

Subp. 7. Adjacent county. "Adjacent county" means those counties which share a common boarder. This subpart is all new language and describes the meaning of "adjacent county" for use under Part 5200.1035, Subp. 2A (formerly Part 5200.1030, Subd. 3B). When wage reports are received for the commercial wage determination, the department determines if all labor classes are represented in the county. If a labor class is not represented in the county, the department surveys all adjacent counties to determine a prevailing rate.

This subpart is needed to clarify how the department defines the word "adjacent" when implementing Part 5200.1035, Subp. 2A. The subpart is reasonable because it allows the department to look at construction projects performed in surrounding counties when making a wage determination for the area, but puts a limit on how far the department will search to determine a rate.

5200.1020 PREVAILING WAGE DETERMINATIONS

This part describes how often the department shall survey and certify wage rates for highway and heavy, commercial, and residential construction projects. This part also sets forth the criteria used by the department to select projects for inclusion in the survey, and the statutory authority for the commissioner to conduct public hearings for contested rates.

Subpart 1. Highway and heavy construction. This subpart describes how often the department will determine prevailing wage rates for state highway and heavy-construction projects based on rates paid to workers on similar projects in the area. Language was added to this subpart which explains that "similar projects" means those projects, either public or private, where the total cost of completing the project is at least \$25,000.

The proposed modifications are needed to assure that the wage determinations issued for covered projects are "comparable to wages paid for similar work in the community." Minn. Stat. § 177.41. The modifications are also needed to provide guidance to contractors and other interested parties who submit reports of construction in the wage survey. The department needs to advise contractors that "similar projects" means either public or private projects which have a value of \$25,000 or more.

The proposed modifications are reasonable because under the current rule, an area wage determination could reflect the wages paid to workers employed on several small contracts that are not, under any circumstances, similar to highway and heavy-type construction. For example, under the current rules a small driveway re-paving job or pothole repair job could possibly have the same weight as a major highway contract. Therefore, the new language assures that the prevailing wage determinations contained in any highway or heavy contract financed in whole or part with state funds will be "comparable to wages paid for similar work in the community." Minn. Stat. § 177.41. Additionally, the \$25,000 figure is based upon Minn. Stat. § 177.43, Subd. 7 which provides a threshold for public works projects that are covered by the prevailing wage requirement.

Subp. 2. Commercial-type construction. This subpart describes how often the department will determine prevailing wage rates for state-financed building construction projects based on rates paid to workers on similar projects in the area. Language was added to this subpart which explains that "similar projects" means those projects, either public or private, where the total cost of completing the project is \$2,500 or more. Language was eliminated that required the department to make wage determinations upon the request of a state agency if a wage determination had not been issued within six months prior to the request.

The proposed modifications regarding comparative projects are needed to assure that the wage determinations issued for covered projects are "comparable to wages paid for similar work in the community." Minn. Stat. § 177.41. The proposed modifications are also needed to provide guidance to contractors and other interested parties who submit reports of construction in the wage survey. The department needs to advise contractors that "similar projects" means both public and private projects which have a minimum value of \$2,500.

The proposed modifications are reasonable because under the current rule, an area wage determination could reflect the wage paid to workers employed on several small commercial projects, which are not similar to state-financed commercial projects. State-financed projects include, but are not limited to, state buildings, state colleges, independent school district buildings, waste water treatment buildings, economic development projects, highway rest areas, and historical centers. Therefore, the new language assures that the prevailing wage determinations contained in any building contract financed in whole or part with state funds will be "comparable to wages paid for similar work in the community." Minn. Stat. § 177.41. Additionally, the \$2,500 figure is based upon Minn. Stat. § 177.43, Subd. 7 which provides a threshold for public works contracts that are covered by the prevailing wage requirement.

The annual determination of prevailing wage rates for state-financed building construction projects is needed to eliminate the time spent certifying project wage determinations on a daily basis. In the past year nearly 1,000 project wage determinations

were issued, some in each of our 87 counties, which resulted in the department spending considerable time issuing wage determinations. This meant less time available for compliance activities.

The proposed modifications are reasonable because under Minn. Stat. § 177.43, subd. 4, the department is directed to ascertain prevailing wage rates before the state asks for bids. The proposed language merely directs the department to certify wage rates for each county at least once a year, without regard to a project. This modification will insure that a wage determination will be available for state-financed building projects in all counties, regardless of prior notification. The modification is also reasonable because it brings the commercial wage determination procedures into conformance with the highway and heavy wage determinations, thereby reducing confusion between the two.

The proposed changes in commercial construction wage determination are needed to assure that the wage determinations issued for covered projects are "comparable to wages paid for similar work in the community." Minn. Stat. § 177.41. As with the highway and heavy wage determinations, the modifications are also needed to provide guidance to contractors and other interested parties that submit wage surveys that "similar projects" means projects of similar monetary value to covered work, regardless of how the project was financed.

Subp. 3 Information required for certification request. This subpart described the information needed by an agency when requesting a wage determination for a commercial construction project. The entire subpart was eliminated because the modifications to Subp. 2 will eliminate the need for this information.

The modification is needed because, under the new language, prevailing wage rates for commercial construction projects will be issued once every calendar year in all counties. The elimination is reasonable because under the proposed modifications to Subp. 2, agencies that let state-financed projects will not be required to make a request for a project wage determination.

5200.1030 BASIS FOR HIGHWAY AND HEAVY DETERMINATION.

This part sets forth the area, labor classifications, and project criteria for highway and heavy wage determinations. The title of the part was modified to reflect new language under Subparts 1 and 2 which describe the area and labor classes for highway and heavy wage determinations. Language which describes the area and labor classes for commercial construction projects was eliminated under this part, and proposed under a new Part 5200.1035.

Subpart 1. Area. This subpart determines the area for highway and heavy wage determinations, it describes how wage determinations will be issued for classes of labor

commonly used on highway and heavy-construction projects, and it describes the criteria for making wage determinations. Language was eliminated from this subpart which required prevailing wage rates to be issued on a county-by-county basis. New language was added which requires that prevailing wage determinations for highway and heavy-construction projects be based on work performed solely within ten "distinct areas." This subpart also defines the ten areas in terms of what counties are included in each area. The statute, Minn. Stat. §177.42, defines "area" as "the county or other locality from which labor for any project is normally drawn."

The proposed modifications to make highway and heavy wage determinations based solely on information collected within an area, as opposed to issuing county wage determinations, are complex. However, the basic problem is simple. Using counties results in many "gaps" where no rate can be certified and results in rate fluctuations or "spikes" where one job performed in a county can result in an anomalous rate.

The construction of highway and heavy projects requires a large number of employees and labor classifications in order to complete work required by the contract. This includes most of the classifications found under the general classifications of laborers, heavy-equipment operators, truck drivers, and a number of the skilled crafts. Under the current rule, frequently not all classifications needed to construct a highway and heavy project are reported in a county wage determination; therefore, adjacent counties are reviewed to fill in the missing labor classifications. The use of adjacent counties may still result in missing classifications and the county wage determinations, particularly outside of metropolitan areas, will contain disparate wage rates. Therefore, the need to move to a broader area for highway and heavy wage determination is to increase the number of projects and employees surveyed in order to maximize the number of labor classifications and wages reported.

The proposed modifications concerning area wage determinations for highway and heavy projects is reasonable because, as stated by Minn. Stat. § 177.42, Subd. 3., the definition of area is "the county or other locality from which labor for any project is normally secured." In previous wage determinations, it has been necessary for the department to review surrounding counties to determine rates for all classes of labor needed on highway and heavy projects. Additionally, Minn. Stat. § 177.44, Subd. 3 states that the department shall "define classes of laborers and mechanics and to determine the hours of labor and wage rates prevailing in all areas of the state for all classes of labor and mechanics commonly employed in highway-construction work.

Finally, the proposed areas are reasonable because the areas are divided by the MN/DOT Construction Districts already in place. The St. Cloud and Mankato districts were further divided using MN/DOT Maintenance Areas as a base due to the development and population, which could possibly affect the wage determinations for rural areas.

Subp. 2. Labor classes. This subpart requires that the prevailing wage rates for each area must be based solely on work performed within the area. Language was eliminated from this subpart which mandated the department to make wage determinations for highway and heavy, and commercial projects based solely on work performed within the county surveyed. Language was added that requires the department to make area wage determinations for highway and heavy projects based upon work performed within each class of labor.

These proposed modifications are needed to ensure that the department issues highway and heavy wage determinations based solely on work performed within each area, and that the department will not use adjacent counties or areas to obtain missing labor classes.

These proposed modifications are reasonable because, with the adoption of areas for highway and heavy wage determinations, the department has incorporated the concept of a regional wage determination, while putting a limit on how far the department will search to determine a rate before implementing a previously certified rate.

Subp. 2a. Projects to be surveyed, criteria. This subpart determines what projects can be reported in the survey based on the date the work was performed, the area in which the work was performed, and the monetary value of the project. This subpart is further divided into clause A, which requires two projects to be reported in an area; clause B, which provides a method to determine an area rate if a class of labor is not represented in the area determination; and clause C, which provides a method to determine a prevailing wage for a class of labor not included in the Master Job Classifications (5200.1100).

Subpart 2a requires that wage determinations shall be based on projects where the work was performed within the previous 12 months. Language was eliminated from this subpart which required the department to select projects from reports on file, and which are similar to the contemplated project, and language which required the use of reports from adjacent counties. The proposed new language requires that wage determinations be based on work performed within the area and which meet a monetary threshold of \$25,000. The proposed modifications include a technical change which separates this section from Subp. 2 above, and rennumbers this section as Subp. 2a.

These proposed modifications are needed because the selection of projects is actually determined by the contractor or other interested party who submits the report of construction. The contractor or other interested person must determine where the project is located, if the work was performed in the previous 12 months, and if the project has a cost of at least \$25,000. All information submitted in the wage survey is included in the determination of prevailing wage rates provided the information is complete. The modifications are also needed to eliminate obsolete language.

The modifications are reasonable because the selection of projects must be in conformance with Part 5200.1020, Subp. 1 and 4 regarding which projects are selected and used to make a wage determination for state-funded highway and heavy construction projects, and assures that the department does not arbitrarily select projects for inclusion in the wage survey.

Subp. 2a, Clause A. This clause requires a minimum number of projects to be reported in an area before a wage determination can be issued. Language was eliminated which required that wage determinations be issued for "contemplated" projects. Language was added to this section which requires a minimum of two projects to be reported in an area before an area wage determination can be issued.

These modifications are needed to ensure that a wage determination reflects wages paid on more than one project in the area; and to eliminate language that is confusing and no longer applies to this subpart.

These modifications are reasonable because one project reported in an area is unlikely to contain all classes of labor commonly used on state-financed highway and heavy-construction projects. Additionally, the proposed language is clear and concise, and eliminates confusing language.

Subp. 2a, Clause B. This clause requires that a wage determination be issued for all classes of labor used on a project, and provides a method to determine a rate if a labor class is not reported in the wage survey. Language was eliminated that mandated the use of adjacent county wage reports. New language was proposed which allows the department to use a previously certified rate.

These modifications are needed to ensure that a wage determination be issued for all classes of labor commonly employed on highway and heavy construction projects. Under the current rule, there is no procedure to issue a wage determination when there is a lack of information in the current survey.

These modifications are reasonable because Minn. Stat. § 177.43, Subd. 4 and Minn. Stat. § 177.44, Subd. 3 and 4 require that the department determine and certify a prevailing wage rate for all classes of labor utilized on a covered project.

Subp. 2a, Clause C. This clause provides a method to issue a wage determination for a classification of labor not defined by the current rules, but utilized on a covered project. Language was eliminated that allowed the department to issue a wage determination that contained missing labor classes, even if the labor classes are used on a covered project. This subpart contains new language which allows a contracting agency to assign a rate for the missing classification, with a provision which requires the

department to review and certify the assigned rate; and to initiate rulemaking procedures to formally recognize the new labor classification within 90 days.

These modifications are needed to ensure that a wage determination be issued for all classes of labor employed on highway and heavy-construction projects.

These modifications are reasonable because Minn. Stat. § 177.43, Subd. 4 and Minn. Stat. § 177.44, Subd. 3 and 4 require that the department determine and certify a prevailing wage rate for all classes of labor utilized on a covered project. In addition, the rule is reasonable because it allows a contracting agency to assign a wage rate, which must be reviewed and certified by the department. The proposed language also mandates that the department initiate rule making within 90 days in order to incorporate the new classifications of labor into the Master Job Classification, Part 5200.1100. Finally, this language is reasonable because it is based upon federal regulations which require that a wage determination be issued for all classifications of labor employee on a project subject to the federal Davis-Bacon Act. The regulation requires contract officers and contractors or sub-contractors to agree to a labor classification and wage rate for approval by the U. S. Department of Labor.

Subp. 2a, Clause D. This clause provided the method used to determine and calculate the prevailing wage rate for classes of labor obtained from adjacent counties. This section was eliminated.

This modification is technical in nature and is needed because the department will no longer review classes of labor reported in adjacent counties to determine a wage rate. All classes of labor will be determined solely upon work performed within an area.

This modification is reasonable because under the other modifications proposed in this part, the provisions for use of adjacent county reports is no longer required or necessary for highway and heavy wage determinations.

Subp. 3. Frequency of determination. This subpart mandated that following a certification of wage rates for a county, no rates for additional classifications could be issued without a subsequent survey. This entire subpart was eliminated.

This modification is needed because the current rule prohibits the department from making a wage determination for additional classes of labor after certification, which is in conflict with proposed new language under Part 5200.1030, Subp. 3 C.

This modification is reasonable because the current rule conflicts with Minn. Stat. § 177.43, Subd. 4 and § 177.44, Subd. 3 and 4 which require that the department determine and certify prevailing wage rates for all classes of labor utilized on a covered project.

PART 5200.1035 BASIS FOR COMMERCIAL DETERMINATIONS

This part sets forth the areas, labor classifications, and project criteria for commercial wage determinations. This part is new language; however, the method to determine prevailing wage rates for commercial construction projects has not changed with the exception of language that allows the department to issue a wage determination for missing classifications.

Subpart 1. County and labor classes. This subpart provides that the area for commercial wage determinations is the county and requires that the department determine prevailing wage rates on a county-by-county basis for all classes used in commercial construction projects. The method for determining prevailing wage rates for commercial construction projects on a county-by-county basis has not changed from the current method.

The proposed rule is technical in nature and is needed because of the proposed modifications to Part 5200.1030, which eliminate all language pertaining to commercial wage determinations.

The proposed rule is reasonable because it is a non-substantive change to the current method of making wage determinations for commercial construction projects on a county-by-county basis. Additionally, since most of the wage determinations issued for commercial construction projects are from the skilled trades, it has been determined by the department that there have been sufficient reports of building construction in each county to make a wage determination for most classes of labor commonly employed.

Subp. 2. Projects to be surveyed, criteria. This part provides selection criteria for what projects can be used to determine wage rates based on when the work was performed, the county or adjacent county in which the work was performed, and the monetary value of the project. This proposed rule does not change the current method of selecting projects based on work performed in the preceding 12 months and from the county surveyed or its adjacent counties. The two primary changes in the proposed rule are the requirement that the wage determinations must be based upon project information submitted to the department, as opposed to the department selecting projects; and the requirement that the projects must have an estimated cost of \$2,500.

Most of the language in the proposed rule is technical in nature and is needed because of the proposed modifications to Part 5200.1030, which eliminate language pertaining to commercial wage determinations. The proposed rule is also needed because the selection of projects is actually determined by the contractor or other interested party who submits the report of construction. The contractor or interested person must determine where the project is located, if the work was performed in the previous 12 months, and if the project cost is at least \$2,500. All the information submitted in the wage

survey is included in the determination of prevailing wage rates provided the information is complete and correct.

The proposed rule is reasonable because most of the language consists of non-substantive changes to the current method of selecting projects either in the county where the work was performed, or adjacent counties. The proposed rule regarding the selection of projects based on the monetary value is reasonable because this subpart must be in conformance with the proposed changes to Part 5200.1020, Subp. 2.

Subp. 2 A. This clause requires a minimum of two projects to be reported in a county in order to make a wage determination. This proposed rule is technical in nature and is a non-substantive change to the current method of making wage determinations for commercial construction projects

The proposed rule is needed due to the proposed modifications to Part 5200.1030, which eliminate all language pertaining to commercial wage determinations. The proposed rule also eliminates unnecessary and confusing language contained in the current rule.

The proposed rule is reasonable because it does not change the current method of making wage determinations for commercial construction projects based on a minimum of two projects reported in a county.

Subp. 2 B. This clause allows the department to search for missing labor classifications in adjacent counties to the county being surveyed, provided that there be a minimum of two projects reported in any of the adjacent counties. This rule does not change the current method of searching adjacent counties for missing classes of labor.

This proposed rule is needed due to the proposed modifications to Part 5200.1030, which eliminate all language pertaining to commercial wage determinations.

The proposed rule is reasonable because it does not change the current method of searching adjacent counties for missing classes of labor.

Subp. 2 C. This clause provides the method used to calculate the number of workers employed in a labor classification obtained from adjacent counties. This is a non-substantive change to the current method of determining rates for commercial construction projects.

This proposed rule is technical in nature and is needed due to the proposed modifications to Part 5200.1030, which eliminate all language regarding commercial wage determinations.

This proposed rule is reasonable because it does not change the current method of counting workers employed in the same classification in adjacent counties.

Subp. 2 D. This clause requires that a wage determination be made for all classes of labor expected to be utilized on a commercial construction project. If a class of labor is not reported in the county surveyed, or any adjacent county, the department will certify the most recently determined rate.

This rule is needed to ensure that a wage determination be issued for all classes of labor commonly employed on commercial construction projects. Under the current rule, there is no procedure to issue a wage determination when a labor class is not reported in the county under survey, or its adjacent counties.

The rule is reasonable because Minn. Stat. § 177.43, Subd. 4 requires that the department determine and certify a prevailing wage rate for all classes of labor utilized on a covered project.

Subp. 2 E. This clause provides a method to issue a wage determination for a classification of labor not defined by the current Master Job Classifications, but utilized on a covered project. Under this clause, the department shall certify a wage rate for the missing classification which reflects the most similar trade or occupation in the current wage determination. Within 90 days of certifying a rate, the department must initiate rulemaking procedures to formally recognize and implement the new labor classification into the Master Job Classifications list.

This rule is needed to ensure that a wage determination be issued for classes of labor commonly employed on a commercial construction project.

This rule is reasonable because Minn. Stat. § 177.43, Subd. 4 requires that the department determine and certify a prevailing wage rate for all classes of labor utilized on a covered project. Additionally, the rule is reasonable because the proposed rule mandates that the department initiate rule making within 90 days in order to incorporate the new classification into the Master Job Classifications, Part 5200.1100. Finally, this language is based upon federal regulations which require that a wage determination be issued for all classifications of labor employed in a project subject to the federal Davis-Bacon Act. The regulations require contract officers, contractors, or sub-contractors to agree to a labor classification and wage rate for approval by the U. S. Department of Labor.

PART 5200.1040 CLASSES OF LABOR

Clause D. Special crafts. This rule provides a sample of the trades and occupations commonly considered within the construction industry as an individual trade

or craft. Language was eliminated from this rule which required the department to place workers reported as "helpers" into the general labor class "skilled laborer."

This proposed modification is needed because the department determines prevailing wage rates for classifications of labor that are commonly employed on highway and heavy, or commercial construction projects. These classes of labor are further defined under Part 5200.1100 Master Job Classifications. Helpers, apprentices, or other entry-level workers who are paid at reduced wages are not used to determine prevailing wages for state-funded construction projects. The classification referred to as "skilled laborer" is a highly skilled and trained laborer performing duties which support a skilled craft or trade. Additionally, if a contractor employs a skilled laborer on a project being reported for the wage survey, the contractor is required to select the appropriate labor class from the Master Job Classification list.

This proposed modification is reasonable because Minn. State. § 177.41 states in part, "public buildings and public works be constructed and maintained by the best means and highest quality of labor reasonably available and that persons working on public works be compensated according to the real value of the services they perform." Therefore, using rates paid to "helpers" to make area wage determinations for the skilled trades could affect the outcome of a wage determination and not truly represent wages paid for similar work.

Clause E. This clause provides a list of reference material for the department to review when considering particular classes of labor. The proposed modifications are to include the "United States Department of Labor Dictionary of Occupational Titles" as reference material.

This proposed modification is needed to further expand the department's reference material when determining labor classifications that are common to the construction industry.

The proposed modification is reasonable because it is a source often used to describe tasks and duties associated with particular trades, occupations, and labor classifications utilized on highway and heavy, and commercial construction projects.

Clause G. This clause explains how a worker is to be reported on the wage survey if the worker was employed in more than one trade or occupation.

It is common for contractors to employ a person in more than one class of labor, particularly with respect to the general classifications of laborers, heavy-equipment operators, and truck drivers. Therefore, this proposed modification is needed to clarify to a contractor or other interested parties that when submitting a report of construction, an

employee who works in more than one trade or occupation must be reported in the class in which he or she worked the greatest number of hours on the project.

This proposed modification is reasonable because it ensures that an employee is reported only once on each project reported. Additionally, this proposed modification is reasonable because it is consistent with the survey procedures found under Part 5200.1050, Subp. 2 Wage Reports, and Part 5200.1060, Subp. 2 D.

Clause I. This clause provides for the classification of workers that are not used to determine area prevailing wage rates because the rates normally paid to these classifications are either at reduced rates, or above the normal rate of pay.

The proposed modification is needed because it identifies workers who may be employed on a construction project, but at wage rates that do not represent the common rate for the majority of workers employed.

The proposed modification is reasonable because it provides clarification to contractors and other interested parties who submit reports of construction to exclude workers that are paid at a reduced wage, such as an apprentice or helper; and supervisors, who are usually paid a premium rate.

PART 5200.1050 SURVEY PROCEDURES.

Subpart 1. Scope. This subpart describes the purpose of the wage survey. The proposed modifications are technical in nature and strike language that is no longer applicable because of changes to previous parts.

The proposed modification to strike the word "county" is needed because under the proposed modifications to Part 5200.1030, the area for highway and heavy is no longer a county; therefore, it is no longer necessary to modify the word "survey." Similarly, the proposed modification to strike out the word "contemplated" is needed because under the proposed modifications to Part 5200.1030, and proposed Part 5200.1035, wage determinations are conducted on a yearly basis without regard to a contemplated project.

The proposed modifications are reasonable because the words "county" and "contemplated" are no longer necessary and are not technically correct within the context of the proposed rules.

Subp. 2. Wage reports. This subpart sets forth the survey reporting form and includes all information that is gathered by the department to make wage determinations. New language was added to this subpart which requires that contractors who submit reports of construction select projects which have a minimum value of \$2,500 on a commercial project, and \$25,000 on a highway and heavy project. The words "or area"

were added concerning the method used to file reports of construction. Language was added which states that in order to report an employee who worked on a project similar to highway and heavy construction, the employee must have worked a minimum of 24 hours on the project. Similarly, in order to report an employee who worked on a project similar to commercial construction, the employee must have worked a minimum of 8 hours on the project. Finally, language was added to require the contractor to include any identifying project numbers.

The proposed language regarding the selection of projects based on minimum cost is needed to ensure that contractors, and other interested parties who submit reports of construction, select projects that are similar in nature to projects that are covered by the prevailing wage determinations. The proposed language is also needed to prevent a contractor, or interested party, from submitting many small projects which may affect the outcome of the survey.

The proposed modifications are reasonable in order for the survey reporting forms and selection of projects by contractors and other interested parties to be in conformance with the proposed modifications to Part 5200.1020, Subparts 1 and 2; Part 5200.1030, Subpart 2a; and Part 5200.1035, Subpart 2.

The proposed language which mandates the use of project numbers is needed to assure that a project is not reported more than once in an area, and an employee is not reported more than once per project. The proposed language is reasonable because of the large volume of projects that are reported in the wage determination, particularly under the proposed rules which do not limit the number of times an employee can be reported in an area.

The proposed language which requires an employee to have worked a minimum of 24 hours on a highway and heavy project, and 8 hours on a commercial project is needed to assure that contractors are not moving their employees from project to project in order to multiply the number of times the wage rate has been paid in an area. Without the provision, the number of times a wage rate appears could be artificially multiplied, thereby affecting the outcome of the wage determination. The proposed language is reasonable because the department is able to increase the data base of information submitted in the survey based upon work performed by the largest number of workers within each labor class on a project, which is consistent with the definitions as found under Minn. Stat. § 177.42, Subds. 4 and 6.

Subp. 2b. Mailing lists. This subpart requires the department to keep and maintain a mailing list of state, county, and other public officials in order to notify persons when a survey of wages will be taken. The word "county" was eliminated from this subpart.

The proposed modification is needed because under the proposed modifications to Part 5200.1030, the area for highway and heavy wage determinations is no longer a county.

The proposed modification is reasonable because regardless of the type of survey, public officials must be notified.

Subp. 2c. Notification of survey. This subpart sets forth the sequence of events that occurs upon notification of a wage survey, and includes notification of city and county officials, notification of contractors and other interested parties, the time frame for submitting reports of construction, and other information concerning acceptance of reporting forms. The word "wage" was eliminated as a modifier to the word "survey" in the first sentence, and the department changed the survey period from 33 days to 60 days.

The proposed modification to eliminate the word "wage" is needed to eliminate unnecessary language in the rules. The proposed modification is reasonable in order to keep the rules technically correct because the survey is a report of projects, employees, labor classes, and wages paid.

The proposed modification to lengthen the period of time that contractors and other interested parties have to submit reports of construction is needed because contractors and other interested parties have expressed that 33 days is not enough time to generate all the information required to submit a report of construction. Additionally, proposed amendments Part 5200.1060 of this rule include allowing an employee to be reported once on each project reported in an area. Therefore, contractors and other interested parties will have the opportunity to report more projects than under the current rule. The additional time is warranted due to the proposed changes.

The proposed modification is reasonable because it encourages participation by contractors and other interested parties and submission of reports of construction in a timely manner. The longer time frame for submitting reports of construction will also provide the department with additional time to review reports, while still limiting the time frame to assure the wage determinations are current.

Subp. 3a. Reports, attestations. This subpart requires a signature by all persons who submit reports of construction that the information is true and correct. This part also sets forth penalty provisions for submitting false information. Language was added to this part which further penalizes persons who have willfully submitted false information in the wage survey.

The proposed language is needed to remove any information that was submitted in the wage survey that is false and could possibly affect the outcome of the wage

determination. Additionally, the penalty is needed to prevent participation by the offending entity for a reasonable period of time.

The proposed language is reasonable because it allows the department to investigate and determine if information is false, and to remove the information from the wage determination, while limiting the length of time the department can bar participation of the offending entity in future surveys.

Subp. 3b. On site visits. This part required the department to make on-site visits to the offices of contractors or government representatives in order to collect project data. This entire subpart was eliminated.

The elimination of this subpart is needed because it mandates that the department make on-site visits for collecting wage data for the determination of prevailing wage rates. The elimination of this subpart is reasonable because the department already has statutory authority under Minn. Stat. §§ 175.20, and Minn. Stat. 177.27, and Minn. Stat. 177.43, Subd. 6. to make on-site inspections of payroll records. Additionally, mandatory on-site inspections is a budgetary item that would require appropriate legislative funding.

Subp. 4. Area calculation record. This subpart describes the type of report that must be generated when the department makes a wage determination. Language was eliminated which defined the record as a "county abstract." New language was added that renamed the report as an "area calculation record."

The proposed modification is a non-substantive change that merely reflects the current method of generating area calculation reports, which are based on data entered into a computerized record keeping and calculation system. The proposed modification is reasonable because the department no longer generates hand-written "abstracts" to display and calculate wage rate determinations.

PART 5200.1060 DETERMINING LARGEST NUMBER OF WORKERS AND PREVAILING WAGE RATE.

This part describes how the department determines the largest number of workers employed within each labor class, and how the department issues a wage determination if a rate represents a collectively bargained rate. Language was eliminated from this part which limited the number of times an employee could be reported in a county, and language was added that allows a worker to be reported only once per project. Technical changes were also made to clarify how the department certifies a collective bargained rate.

Subpart 1. D. This subpart sets forth the criteria for the number of times an employee is counted. Language was eliminated which limited the number of times an employee could be reported in a county. The proposed language allows a worker to be

reported once per project, in the class in which the person worked the greatest number of hours, thereby allowing a worker to be reported more than once in an area.

The proposed modification is needed to expand the number of wage rates that are reported in an area when making a wage determination, while making sure that workers are reported in the class of labor under which they are normally employed. Additionally, the modification is needed to allow the department to certify prevailing wage rates which are representative of wages paid for comparable work in the area.

The proposed modification is reasonable because under Minn. Stat. § 177.42, Subd. 6, the prevailing wage rate is the rate paid "to the largest number of workers engaged in the same class of labor within the area." This change allows the department to recognize the frequency of projects awarded to contractors within an area. This modification is reasonable because it requires contractors to report workers within the labor classifications in which they work the greatest number of hours.

Subp. 3. Collectively bargained rate. This subpart describes how the department will certify a rate if the rate is a collectively bargained rate. The proposed modifications eliminate language which pertains to a county, and certifying a collective bargained rate for a contemplated project. Language was added which allows the department to determine the collectively bargained rate for the area.

The elimination of language is needed because under the proposed modifications to Parts 5200.1020, 5200.1030 and new Part 5200.1035, the department will no longer issue wage determinations for contemplated projects; and the department has redefined the area for highway and heavy wage determinations as multi-county areas. Therefore, new language is needed to provide clarification on how the department will certify a wage rate for an area when the rate is collectively bargained.

PART 5200.1100 MASTER JOB CLASSIFICATIONS

This part sets forth the labor classes commonly employed in the construction industry under the titles Laborers, Power Equipment Operators, Truck Drivers, and Special Crafts. The proposed modifications include reorganizing individual classifications under the power equipment operators and truck drivers into groups. Under the special crafts, the labor classification for asbestos workers has been renamed to more accurately reflect current practices, and the labor classification for signaler has been renamed to eliminate confusion which was created by the change. The labor classifications for wiring system technician and installer have been included to more accurately reflect the current practices.

Subp. 3. Power equipment operators. This subpart lists the individual pieces of heavy equipment which may be used while constructing a highway and heavy, or building-

type project. Under the current rule, all equipment is listed separately and wage determinations are issued for each piece of equipment. Under the proposed modifications, the individual pieces of equipment have been reorganized and placed into groups based upon the skill level necessary to operate the equipment as reflected in negotiated contracts between the construction industry and organized labor. Wage determinations will be issued based on the wages paid to all workers reported within the group, and one wage rate will apply for each group. For example, under Group 1, the department will determine a prevailing wage rate based upon the wages paid to all workers reported under the sub-classes 201, 202, 203, 204, and 205.

The proposed modifications are needed because under the current rule, all equipment used to construct a state-financed project, particularly highway and heavy construction, may not be listed. Also, it is not uncommon for a wage determination to include wage rates that vary from \$9.00 per hour to \$24.81 per hour. Therefore, under the grouping system, the wage determination will be based upon all workers reported under a classification within one of the six groups. The grouping of heavy equipment will also reduce the number of wage rates that must be considered when bidding on state-funded construction projects, and will reduce the problems associated with the implementation of disparate and/or missing wage classification.

The proposed modifications are reasonable because the individual pieces of equipment are grouped by the skill level necessary to operate the equipment. Additionally, the groupings are based upon collective bargained agreements negotiated by the International Union of Operating Engineers Local 49 and the Associated General Contractors of Minnesota. These groupings have also been implemented by the U.S. Department of Labor when making wage determinations for projects covered by the federal Davis-Bacon Act.

Subp. 4. Truck drivers. This subpart lists the individual trucks which may be used to haul material to, from, or about a construction project. The list also includes labor classifications incidental to trucking such as a truck mechanic, greaser, and pilot car driver. Under the current rule, all trucks are listed separately and wage determinations are issued for each separate truck classification. Under the proposed modification, the truck classifications have been reorganized and placed into groups based upon the number of axles and skills needed to drive the truck. Wage determinations will be issued based on information received from all classifications contained within the group, and one wage rate will apply for each group.

The proposed modifications are needed because under the current rule, all trucks needed to haul material to or from a construction site, or within the project right-of-way, are not always listed in the wage determination. Additionally, the truck classifications that are listed often contain disparate wages. For example, a six-axle tractor-trailer may carry a prevailing wage rate that is less than a single-axle unit. Under the proposed grouping

system, the wage determination will be based upon all workers reported under a classification within one of the four groups. Therefore, the grouping system is needed to assure that all classifications contained under the truck drivers will be issued a wage determination, and all classifications contained within the group will have one wage rate.

The proposed modifications are reasonable because the groups are set up based upon the skill level necessary to drive each unit within the individual groups. Additionally, the groupings are based upon collective bargained agreements negotiated by the Minnesota Construction Conference of Teamsters Local 221, 346, and 160 and the Associated General Contractors of Minnesota. These groupings have also been implemented by the U.S. Department of Labor to determine prevailing wage rates for projects covered by the Davis-Bacon Act.

Subp. 4a. Unit. This subpart is new language and describes how the department determines what group a truck belongs under for the purpose of making wage determinations, and assists compliance officers and workers in determining the minimum rate required for work covered by a contract.

This rule is needed to eliminate confusion by contractors, public officials, and employees when determining the appropriate classification and wage rate. In the past, there has been confusion over whether or not the drive axle is included when counting the number of axles to determine the correct classification.

The rule is reasonable because it allows the department to provide consistent standards for making wage determinations, and provides instructions to contractors, officers and employees who are affected by the wage determinations.

Subp. 5. Special Crafts.

401 Heating and frost insulators

Asbestos work is a trade which involves the insulation of piping for heat and frost. The purpose for the elimination of the term "asbestos worker" is to accurately reflect current construction practices because asbestos is no longer used for insulation purposes in the construction industry. In addition, the term "heat and frost insulator" is needed to make more clear the identification of the kind of work performed in the labor class. The change is reasonable in order to avoid confusion with the Asbestos Abatement Worker (435) when reporting or requesting classes of labor.

411 Ground Person

Ground person refers to a trade which involves the ground wiring for various utilities and is used in conjunction with the labor class 413 Lineman. The purpose of the

elimination of the term "signaler" is needed to accurately reflect current construction identification of this trade. The original term used under labor class 411 was "groundsman." This classification was changed by the Revisor of Statutes in 1994 to promote gender-neutral language. However, the term "signaler" has caused confusion in the construction industry with respect to reporting wage reports, and payment of minimum prevailing wage rates on covered work. The proposed language is needed to eliminate confusion over the type of work that should be reported under labor code 411. The proposed language is reasonable because it clearly identifies the labor classification, is not gender specific, and eliminates confusing language.

430 Wiring System Technician

Wiring system technician's work is a trade which involves low voltage wiring systems. The term "communication system" which was informally used no longer is appropriate nor does it accurately reflect current practices. In addition the term "wiring systems technician" more clearly takes into consideration the scope of the trade. The inclusion of wiring system technician is reasonable in order to identify the expanding scope of the trade and its growing use in construction.

431 Wiring System Installer

Wiring system installer's work is a trade which involves low voltage wiring systems. The term "communication system" which was informally used no longer is appropriate nor does it accurately reflect current practices. In addition the term "wiring systems installer" more clearly takes into consideration the scope of the trade. The inclusion of wiring system installer is reasonable in order to identify the expanding scope of the trade and its growing use in construction.

V. CONCLUSION

In conclusion, based upon the foregoing, the Department of Labor and Industry's proposed amendments to the rules governing prevailing wage determinations are both necessary and reasonable.

Dated: 11-13-95



Gary W. Bastian
Commissioner