

**STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY**

STATEMENT OF NEED AND REASONABLENESS

**In the matter of the Proposed
Amendments of the Rules of the
Department of Labor and Industry,
Labor Standards Unit,
Relating to Prevailing Wage Determinations,
Master Job Classifications,
Parts 5200.1030 to 5200.1100**

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 referred to 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.” Minnesota Statutes, section 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 all construction of public works projects 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.” Minnesota Statutes, section 177.41.

The first administrative rules applying to 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.

Subsequently, the Minnesota Department of Labor and Industry promulgated truck rental rules in 1988. The rules set procedures for determining the truck rental rate for independent truck owner - operators (ITOs). These rules were used for only two years, due to various legal challenges and an injunction issued in the *L & D Trucking Inc.* case. Ramsey County District Court File No.: C5-90-1135. The department promulgated rules resolving the court injunctions and implementing the surveying of truck operating costs and determination of truck rental rates in 2001.

These rule amendments relate to the master job classifications for which the Department makes prevailing wage determinations. Other topics include clarifying when rules will be made for new classifications for highway and heavy construction and for commercial construction, adding a general class of labor, and the minimum number of hours of work required for a worker to be included in the wage survey process.

Construction techniques and equipment change over time. The department's master job classifications have not been revamped since 1997.

The 1997 rule amendments made major changes to the way prevailing wages for highway-heavy construction are calculated and major changes to the way to the way master job classifications or Power Equipment and Truck Drivers are organized and the prevailing rates are calculated. The changes were made after a series of stakeholders meetings and an advisory committee which met numerous times in 1995 and 1996. The 1997 rule amendments provided in major part that:

1. Highway-Heavy construction prevailing wage rates, previously set by county, were henceforth to be set by region. Ten regions throughout the state, roughly corresponding to MNDOT'S construction regions, were adopted as the areas by which highway heavy construction prevailing wage rates would be set. In the years leading up to the 1997 rule attempting to certify highway heavy rates by county had produced numerous instances of missing rates which resulted in significant gaps in coverage for the prevailing wage for highway-heavy projects and produced uncertainty in bidding. Also, there were complaints of metro area rates "creeping" into greater Minnesota counties because of the rule providing that where the survey did not produce a rate in a county, DOLI would look to the adjacent counties to set the rate. Moving to surveying for and setting highway heavy rates by region and not importing rates from adjacent counties was a reasonable way to meet these needs.
2. Power Equipment Operator Classifications, then consisting of 94 master job classifications each representing a single piece of equipment, were divided into six groups of pieces of equipment, grouped by similar skill and experience necessary to

operate the equipment. The six groups contain the classifications for pieces of power equipment used on both highway-heavy construction and commercial construction. The same problems with numerous instances of the survey process failing to produce rates in counties resulting in gaps in prevailing wage coverage and uncertainty in bidding prompted the need for this change. Pursuant to Minn. Rule 5200.1040 Clause "E." the department considered work classifications contained in collective bargaining agreements, apprenticeship agreements on file with the department, the "United States Department of Labor Dictionary of Occupational Titles," and customs and usage applicable to the construction industry, among other things in determining the 6 groups of equipment to use. The combination of using 10 areas to set highway-heavy construction prevailing wages, and the groupings of power equipment used on both highway-heavy and commercial construction projects resulted in a dramatic drop in "missing" rates throughout the state and the attendant gaps in prevailing wage coverage and bidding uncertainty problems. The same six groups of equipment are in the current rules and have to be applied in both highway-heavy type construction and commercial type construction. Using the same groups of power equipment to cover both highway-heavy and commercial construction has become increasingly unsatisfactory and confusing since the 1997 rulemaking, prompting the need update the rules to reflect changes in construction technologies and practices over the years, and to separate the power equipment operator classifications by construction type.

3. Subpart 4 of the rule, regarding truck drivers, then consisting of ten classifications was divided into 4 groups and 5 new classifications were added to reflect changes in the types of trucks used in construction and some ancillary equipment. These changes were needed because, like power equipment operators, the survey process was failing to produce rates in a significant number of truck driver classes. The resultant gaps in prevailing wage coverage and uncertainty in bidding were creating problems for the construction industry in trucking, similar to the problems found in power equipment operators.
4. The 1997 rule amendments did recognize or deal with the fact that, although types the power equipment used in highway-heavy construction and commercial construction overlap to some degree, there was in 1997 a good deal of difference between the types of equipment used in the two type of construction. The degree of differences between the types of power equipment used in highway-heavy construction and those used in commercial construction and the pay for the operators has grown over the years since 1997, just as changes in technology and construction practices have changed during that time

The master job classification rules need to be updated to reflect these changes in technology and construction practices and to reflect the differences between highway-heavy construction and commercial construction, particularly with respect to power equipment operators. Without the

updates to the job classifications there would be increasing confusion over which classifications cover new construction techniques, practices and equipment. Without separating the power equipment classifications highway-heavy construction and commercial type construction there would be and has been increasing confusion proper classification and prevailing wage rates for the power equipment operators working in the two types of construction. This particularly true when the updates are needed to avoid gaps in coverage of the prevailing wage law.

Currently, with one set of power equipment classifications to cover highway-heavy construction and commercial type construction, the department conducts two separate wage surveys each year using the same classes, once for highway-heavy type construction and once for commercial type construction. Using the survey data, the department determines, certifies and publishes two separate sets of prevailing wage rates for the same set of power equipment operator classifications. The result is some additional confusion to that arising from new technology in use and the increased degree of differences between the types of power equipment used in highway-heavy construction and those used in commercial construction and the pay for the operators over the years since 1997. This creates a need to have two separate sets of power equipment operator classifications for power equipment operator classifications for highway-heavy construction and commercial type construction. Under the proposed rules the department will survey for two separate sets of power equipment classifications, one for highway-heavy construction and one for commercial type construction, and using the survey data, publish one set of prevailing wage rates for highway-heavy equipment operators and one set for commercial type construction operators.

These amendments apply to highway and heavy construction, and also have application to commercial construction in terms of new classifications created. For commercial construction a new subpart consisting of groupings of power equipment classifications mostly used on commercial construction is created. Examples of job classification issues included are, creating separate classifications and or rates for pieces of equipment used in highway-heavy and commercial- construction; creating new classes for or altering the classifications applying to landscaping and seeding; creating new classes for or altering the classifications applying to painting and striping of roads; creating new classes for or altering the classifications applying to warning lights, warning signs and other methods of traffic control supplied to a project during construction; creating new classes for or altering the classifications applying to survey workers and quality testers; and, articulated haulers and off-road trucks.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Erik Oelker at the Department of Labor and Industry, Labor Standards Division, 443 Lafayette Road, St. Paul, MN 55155, (651) 215-0076, and fax (651) 215-0104. TTY users may call the Department of Labor and Industry at TTY PHONE (651) 297-4198.

STATUTORY AUTHORITY

The Department of Labor and Industry has both general and specific rule making authority to promulgate these proposed rules. Minnesota Statutes, section 175.171(2) grants the department the authority:

. . . to adopt reasonable and proper rules relative to the exercise of its powers and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings . . .

The Department of Labor and Industry's specific statutory authority to adopt these rules is set forth in Minnesota Statutes, sections 177.41 to 177.44. Section 177.43, subdivision 4 directs the department to determine prevailing wage rates for all trades and occupations on projects other than highway; and 177.44, subdivisions 3 and 4 direct the department to investigate and define the classes of labor and prevailing wage rates for highway construction projects. The department also has general rulemaking authority for carrying out the purposes of Minnesota Statutes §§ 177.21 to 177.44. Minn. Stat. 177.28, subd. 1 (2007), Laws of Minnesota for 2007, Chapter 135, Article 3, Sec. 9. This statute, effective July 1, 2007, added general rulemaking authority for Minn. Stat, §§ 177.41 to 177.44, the prevailing wage law. These proposed rule amendments deal with both highway and heavy construction and commercial construction.

All sources of statutory authority, except Minn. Stat. (2007) section 177.28, subd. 1, were adopted and effective prior to January 1, 1996 and this rulemaking consists of amendments to rules, and so Minnesota Statutes, section 14.125, does not apply, except to the extent the new general rulemaking authority in Minn. Stat. Section 177.28, subd. 1, Laws of Minnesota for 2007, Chapter 135, Article 3, Section 9 is utilized. That section was effective July 1, 2007 and the Notice of Hearing for these rule amendments will be (was) published in the *State Register* on June 23, 2008, less than 18 months after the section's effective date, so pursuant to Minn. Stat. § 14.125, the rulemaking authority in this section has not expired. See Minnesota Laws 1995, chapter 233, article 2, section 58.

Under these statutes, the Department of Labor and Industry has the necessary statutory authority to adopt the proposed rule amendment.

REGULATORY ANALYSIS

"(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule"

The classes of affected persons include highway – heavy and commercial construction contractors and subcontractors; construction workers including independent truck owner-operators;

companies with multiple trucks for hire (MTOs); truck drivers; the owners of public works projects; and Minnesota taxpayers.

Those that will bear the costs of the proposed rule amendment in a low bid competitive bidding system include construction contractors and subcontractors who are currently not paying construction workers the prevailing wage because the work is not covered by a classification or who are paying workers less under the current classification the survey process will establish for a new. It is possible that these contractors and subcontractors will absorb some of the costs of this rule amendment. However, the increased labor costs or some portion of the costs will be passed through to the state. Potentially, the state, counties and cities could pay more for projects if these increased labor costs are passed on. However, the extent of possible increased labor costs is moderate because the amount of uncovered work is minimal and it is also speculative because, although almost all workers are covered by the existing classifications, increasing the number of classifications, the survey may either increase or decrease the certified prevailing wage rate for the type of work being performed.

Those that will benefit from the proposed rule amendment include construction workers and truck drivers in both Highway heavy type construction and commercial type construction. Contractors and subcontractors who bid on public works projects will benefit because the rule will clarify who must be paid prevailing wages under each of the classifications and therefore will make the bidding process a more uniform and equitable process. Contractors and subcontractors will also benefit because the rule amendment will clarify definitions and issues that in the past have resulted in litigation. It has been argued that paying the prevailing wage will result in a more experienced labor force, higher quality workmanship and better constructed roads and buildings which will benefit the state and the public. Where bidding competition is based on quality and efficiency there may be fewer cost overruns or adjustments. Local economies will benefit because businesses will see increased revenues from the spending of construction employees' increased wages. Communities could also benefit through less demand on social services programs. This is because prevailing wage rates are calculated on a base and fringe method, which encourages contractors to save employer taxes by providing fringe benefits in the form of medical or pension benefit packages.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

The probable costs to the agency of implementation and enforcement: The Department of Labor and Industry will need to revise its computer program to accommodate the new classifications contained in these rules and will have to increase the number of classes in the survey process. The expectation is that the total cost of making the computer program revisions and surveying a larger number of classes will be \$5,000 per year or less. There is little anticipated cost increase associated with data collection and some negligible increased mailing and staff costs. There is no anticipated increase in costs for data entry. The Department of Labor and Industry also has case by case enforcement authority with regard to commercial construction prevailing wage projects, similar to MNDOT's enforcement authority with respect to highway-heavy construction discussed

below. DOLI's prevailing wage enforcement authority was significantly expanded by the legislature in the 2007 session to include broader investigatory authority and the ability to order contracting agencies to withhold payment from contractors upon finding the prevailing wage has not been paid. Like MNDOT, DOLI expects to experience an overall future cost savings in enforcement because it will not be forced to use case by case enforcement on master job classification issues clarified by these rule amendments.

The probable costs to any other agency of implementation and enforcement: There will be some additional administrative costs to the Department of Transportation with an increase in the number of classifications available on projects. However, Department of Transportation should experience an overall cost savings in enforcement because it will not be forced to use case by case enforcement on master job classification issues clarified by the rules. Case by case enforcement can be very costly. The case by case enforcement costs result from a substantial increase in staff time preparing for and attending administrative hearings, and the costs associated with the Hearings: the Administrative Law Judge fee of \$105 per hour; the cost of a court reporter at \$25 per hour plus \$3.50 per page; and the cost for the Assistant Attorney General's services. The Attorney General bills Department of Transportation on an annual basis for all of its services, however, these hours could be better used to serve other Department of Transportation needs. Currently the Department of Transportation is involved in litigation with contractors on two projects, regarding master job classification issues. Several other potential lawsuits are pending. These lawsuits are costly for both the state and the construction industry. The Department of Labor and Industry was granted additional prevailing wage enforcement authority by the legislature in 2007 and has used the authority, but has no cases in litigation currently.

Any anticipated effect on state revenues: The proposed rules amendment will not increase or decrease collection of revenues by the state in a way that we can estimate. However, payment of prevailing wage is reflected in tax revenues collected from construction workers, and also affects, through their increased purchasing power, state sales tax revenues.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

The purpose of the proposed rule amendment can not be achieved through less costly methods: The purpose of the prevailing wage law is law is set out in Minnesota Statutes, section 177.41 as follows:

It is 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 be compensated according to the real value of the services they perform. It is therefore the policy of this state 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.

The proposed rule amendments for the most part create new job classifications or clarify existing job classifications used in construction covered by the prevailing wage statutes to ensure a common understanding of these terms. Thereby they ensure that all contractors bidding on public works projects are aware of the classifications when prevailing wage rates and truck rental rates are required to be paid. This will ensure that there is a level playing field for contractors bidding on projects and that low bids are based on greater efficiency and not made by undercutting the wages of workers.

Some of the new classifications include work that is not currently included in another classification and therefore is not enforced on highway-heavy construction or commercial construction projects financed in whole or in part by state funds. Addition of these classes is likely to have some upward cost pressure on state-funded construction. Others of the new classifications added are currently included in an existing classification and are enforced on prevailing wage projects. These classifications will have little cost impact on state funded construction because they are already covered under an existing class, and in some cases may have a cost savings impact because the new workers in the new class tend to make less than workers remaining in the current class. An example is “survey field technician” newly proposed class 110. The overall cost of adding new classes is estimated in paragraph “5” below. Neither Labor or Industry or MNDOT is aware a method to add the classes of labor necessary to update the coverage of the prevailing law for changes in construction practices that would be less costly.

The purpose of the proposed rule amendment can not be achieved through less intrusive methods:
The purpose of the rule amendments is to update the master job classifications to reflect changes in construction techniques, practices, and equipment that have developed since classifications were last updated in 1996. The changes are necessary in order to enforce the prevailing wage law as the legislature intended. The changes are not intrusive because the major stakeholders, contractors or others who participate in the prevailing wage survey will still need to determine which master job classification under which to report each worker. Although they will have a larger number of classifications to use, it will be clearer which classification to be used. Contracting agencies will on occasion have to include the prevailing wage rate for a larger number of job classifications in their construction contracts, but the prevailing wage rates for all the classes are available on the internet and can be downloaded easily and at no cost just as they are now.

"(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule"

Alternative methods for achieving the purpose of the proposed rule amendment that were seriously considered:

Pursuant to Minn. Rules Part 5200.1040, Clause “E,” in developing the proposed rules relating to Master Job Classifications, the department considered work classifications contained in collective bargaining agreements, apprenticeship agreements on file with the department, the “United States

Department of Labor Dictionary of Occupational Titles,” and customs and usage applicable to the construction industry, among other things. Alternative methods to achieve the major purposes of the rule amendments were:

Case by Case Enforcement: The Department of Transportation has authority to enforce the prevailing wage statute and existing rules on a case by case basis. (see discussion on p. 6 ***) However, this method is not preferred because it is not as effective an implementation method as adopting rules, and because it does not affect all members of the industry uniformly and it is a much more costly method of implementation for both contracting agencies and for the industry.

Contract Guidelines: Historically, the Department of Transportation has attempted through the bidding procedure to provide contract guidelines. Due to the general applicability and future effect of these guidelines, the courts have consistently ruled that these attempted guidelines have constituted unpromulgated rulemaking. The bidder’s guidelines could be considered less intrusive but due to the resulting litigation and injunctions they are not an available alternative.

Commercial Construction Power Equipment Operators: There is a clear need based upon the changes in construction practices over time to create a set of classifications for commercial power equipment operators. The equipment is more specialized and also more technologically advanced with features such as remote control operation and GPS controlled operation. The degree to which power equipment utilized on highway-heavy construction is the same as used on commercial construction is reduced, although there remains some overlap. Consideration was given to making each separate piece of commercial construction equipment one of 50 separate master job classifications, without grouping the equipment into groups of equipment similar in the skill and experience necessary for operation and similarity in the productivity and applications of the equipment in the field. However, the experience of the department leading up to the 1997 rule changes indicates that, without grouping the new commercial construction classes, the survey process would result in numerous instances of missing rates in the 87 counties.

The reasons why these alternative methods considered were rejected in favor of the proposed rule amendment: The Departments rejected the case by case method as the sole method of enforcement in favor of the proposed rule because it is a much more costly and less effective method for development of prevailing wage policy. The Department of Transportation abandoned the use of contract guidelines or notices because of the resulting litigation and injunctions. The past litigation, which has resulted in several injunctions, has proven to be costly to all segments of the construction industry including employees, contractors, contracting agencies and the general public. Members of all segments of the construction industry have expressed a desire for adoption of a rule amendment to clarify definitions and issues that have surrounded these rules.

"(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals"

Estimated Fiscal Impact of Proposed Prevailing Wage Rules Change

The proposed rules change identifies new job classes and regroups many existing classes into new master job classification groups. Many, and perhaps all, of the new job classes may have been covered by the existing prevailing wage rules under other job classes. Some of the new classes will receive their own prevailing wage rates, while other classes will become part of power equipment operator job groups that will receive one group wage rate.

These changes to the job classification structure are not expected to have a significant impact on construction costs covered by the prevailing wage laws. The prevailing wage rates are based on the modal wages collected by the annual prevailing wage survey. It is not known how many survey responses will identify the new job classes, nor whether their wages will differ from the job classifications under which they may already be covered. It is also unknown how much of the work in the new job classes is being performed by union or non-union workers, and thus whether union wage rates are already being used for the work. Prevailing wages for the re-configured master job classification groups depend on the relative number of survey responses for the new classes and for the existing classes that are part of the job groups. It is possible that the shift in the job groups will lead to some job classes having higher prevailing wages than would be the case under the current system, while other jobs will have lower prevailing wages than under the current system.

Wages for the proposed new laborer job classes (classes 110, 111, 112) have been enforced for highway and heavy construction projects by the Minnesota Department of Transportation (MnDOT) using the existing prevailing wage rate for common laborer. It is not anticipated that the new prevailing wages for these classes will differ much from the common laborer rate. It is also unknown how many hours of labor will involve these job classes.

Wages for many instances of work performed under the proposed new special equipment operator classes (201-205) have been enforced by MnDOT at the rate for drivers, “two axle unit” which is in existing rule, subpart 4, group 4, class 313. Wages for work performed under proposed class 205 for paint truck drivers and spray persons has been enforced under the existing class for painters, class 415.

Other new job classes being proposed are: 508, all-terrain vehicle cranes; 518, overhead crane inside building perimeter; 519, tractor – boom type; 541, brakeperson; and 550, mechanical space heater. These new job classes will be assigned prevailing wages according to various power equipment operator job groups. It is unknown how many hours of labor are involved with each of the job classes, or even how many contracts involve the type of work that uses these equipment. Thus, some specific contracts may be more affected than others.

There is one entirely new special crafts job class for tile finishers (#725). However, this new class is an offshoot of the tile setters class (#724), so the prevailing wage rate for the new class may not

be very different from that for tile setters.

Although the preceding analysis indicates that it is very likely to be little or no measurable cost impact from the addition of the new job classes to construction costs subject to prevailing wage laws, it is possible to provide some estimates of possible wage impacts. Determination of the fiscal impact of new prevailing wage rates for certain job classes is dependent on at least three variables: (1) the percentage of total construction contracts that are labor costs; (2) the percentage of labor costs (or hours) that involve the new job classes; and (3) the percentage increase in labor costs for the work done in the new job classes. Ranges for each of these variable percentages were used to calculate percentage cost increases in construction costs. The impact of the wage changes is calculated as: $(\text{cost of construction}) \times (1) \times (2) \times (3)$.

The cost estimates are based on the assumption that there is a measurable cost impact. Thus, these estimates present “worst-case” scenarios in which there is an increase in construction costs due to significant use of the new job classes subject to the prevailing wage laws. These estimates present a range of possible cost changes to show the relative magnitude of how labor cost increases affect total construction costs.

The share of total construction costs represented by labor has been estimated by various organizations and researchers as somewhere in the 20 percent to 30 percent range (Program Evaluation Division, Office of the Legislative Auditor, State of Minnesota, “Prevailing Wages,” February 2007, pp. 75-77). The Office of the Legislative Auditor estimates that labor costs are about 25 percent to 27 percent of total construction costs nationwide, based on the 2002 Economic Census. Because labor costs may fluctuate depending on the particular project, estimates are provided for labor cost percentages of 20 percent, 30 percent, and 40 percent.

It is not presently possible to determine the share of the total labor costs (or hours) that represent the costs (or amount) of work in the new job classes. This is likely to vary considerably by project and is likely to be a low percentage if a wide range of projects are considered. Estimates are provided for 1 percent, 5 percent and 10 percent of labor costs.

While it is very possible that there will be little or no wage increases as a result of the proposed rule changes, for the sake of these worst-case scenarios changes of 20 percent, 30 percent and 40 percent are considered. Analysis of the 2007 prevailing wage survey results for common laborers showed that if all the reported laborers who received wages lower than the mode were to be paid at the modal rate, there would be a 22 percent increase in wage costs for laborers. An illustrative 20 percent increase in labor costs would be an increase from \$30 per hour to \$36 per hour. Similarly, a 30 percent increase would raise labor costs from \$30 per hour to \$39 per hour, and a 40 percent increase would raise \$30 per hour to \$42 per hour.

The first table shows the estimate construction cost changes as a percentage of total construction contracts.

Table 1: Percentage change in total contract costs

labor cost pct	20%			30%			40%		
pct labor hours affected	1%	5%	10%	1%	5%	10%	1%	5%	10%
pct wage increase									
20%	0.04%	0.20%	0.40%	0.06%	0.30%	0.60%	0.08%	0.40%	0.80%
30%	0.06%	0.30%	0.60%	0.09%	0.45%	0.90%	0.12%	0.60%	1.20%
40%	0.08%	0.40%	0.80%	0.12%	0.60%	1.20%	0.16%	0.80%	1.60%

The second table shows the range of estimated cost increases per million dollars of construction costs. For example, if labor costs accounted for 30 percent of total costs, 5 percent of work hours were in the affected job classes, and these job classes' wages increased an average of 30 percent due to the prevailing wage, a \$1 million construction project would now cost \$1,004,500.

Table 2: Cost increase per \$1 million in total contract costs

labor cost pct	20%			30%			40%		
pct labor hours affected	1%	5%	10%	1%	5%	10%	1%	5%	10%
pct wage increase									
20%	\$ 400	\$ 2,000	\$ 4,000	\$ 600	\$ 3,000	\$ 6,000	\$ 800	\$ 4,000	\$ 8,000
30%	\$ 600	\$ 3,000	\$ 6,000	\$ 900	\$ 4,500	\$ 9,000	\$ 1,200	\$ 6,000	\$ 12,000
40%	\$ 800	\$ 4,000	\$ 8,000	\$ 1,200	\$ 6,000	\$ 12,000	\$ 1,600	\$ 8,000	\$ 16,000

For purposes of this cost estimate, highway and heavy construction projects administered by MnDOT were estimated at \$2 billion, and state-financed commercial construction contracts were estimated at \$0.8 billion. (The estimated highway and heavy project costs were supplied by MnDOT and the estimated commercial construction contracts were based on the 2006 Capital Budget Bill and a cost breakdown provided by the Dept. of Finance.) Total cost estimates were computed using the three lowest percentages (low estimate), the three middle percentages (middle estimate) and the three highest percentages (high estimate). Table 3 shows that the effect of the rules changes for \$2 billion of highway and heavy construction could range from \$800,000 to \$32 million and the effect on \$0.8 billion of commercial construction could range from \$300,000 to \$12.8 million.

Table 3: Cost range for all covered construction (millions of dollars)

	low estimate	middle estimate	high estimate
Highway/heavy	\$ 0.8	\$ 9.0	\$ 32.0
Commercial	\$ 0.3	\$ 3.6	\$ 12.8

"(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals"

The primary consequence of not adopting the proposed rule is that more workers will not be paid the correct prevailing wage rate on projects funded in whole or in part with state funds or they will not be paid the prevailing wage at all. This is directly contrary to both the letter and the intent of the prevailing wage statute. There is no dollar estimate of how much affected workers are underpaid through misclassification or through not being paid any prevailing wage rate on covered projects, but MNDOT has been collecting underpaid or unpaid prevailing wages of approximately \$1,000,000 per year in recent years on behalf of workers on prevailing wage projects administered by it. The 2007 legislative session gave DOLI some prevailing wage enforcement authority for commercial construction type prevailing wage projects akin to the authority MDOT has so not adopting the rule would have the same adverse affect on workers employed on state-funded projects other than Highway-heavy construction.

Another consequence of not adopting the rule is continuation of some confusion regarding the proper classification and pay rate for workers, particularly regarding power equipment operators on highway-heavy construction and commercial construction projects and those in the new master job classifications proposed in the rule. This confusion adversely affects bidding on projects and one of the biggest complaints from contractors is that, if they have workers misclassified, even if they succeed in the bidding process, they may be assessed for underpayments long after the workers have been paid.

Not adopting the rules will have adverse consequences and direct costs to the state because it will mean additional reliance upon case by case enforcement of the prevailing wage law. Case by case enforcement through contested case hearings before the Office of Administrative is very expensive. These case by case enforcement costs result from a substantial increase in staff time preparing for and attending administrative hearings, and the costs associated with the Hearings: the Administrative Law Judge fee of \$105 per hour; the cost of a court reporter at \$25 per hour plus \$3.50 per page; and the cost for the Assistant Attorney General's services. The Attorney General bills the Department of Labor and Industry and the Department of Transportation for all of its services, however, these hours could be better used and resolve more prevailing wage issues if the job classifications were updated for changes in technology and construction practices.

"(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference"

Minnesota is in the minority of states having their own prevailing wage laws. Our statute provides that the prevailing wage rate is set by the arithmetic mode and the federal prevailing wage rates are set by a weighted average method. Our process requires at least two projects in an area report a class of labor to certify a prevailing wage rate and the federal process does not. The federal

process also allow for job specific wage surveys, which Minnesota does not. The federal process also allows for the creation of new prevailing wage classifications outside of the federal rulemaking process. Our prevailing statute and Chapter 14 of Minnesota Statutes do not. Our options are to create classifications by rulemaking or, pursuant to Minn. Stat. §§ 177.43 or 177.44, assure that “the laborer or mechanic must be paid at least in the same or most similar trade or occupation in the area.”

The federal Davis-Bacon process has thousands of job classifications and in Minnesota there are hundreds. The USDOL certifies over a million prevailing rates each year and we certify about 10,000.

These differences are part of the reason the department did not seriously consider adopting all the federal labor classifications. Although the number of different Minnesota classifications has grown over time when the need arises, keeping the number down to a manageable amount helps us avoid “missing” rates. All the major stakeholders in Minnesota prevailing wage issues seem to agree that missing rates are a major problem to be avoided. Adopting the federal job classifications would expand the number of classifications by an order of magnitude and result in a significant increase in the percentage of missing rates, a major problem which Minnesota has avoided by grouping classifications and managing to control the number of different classifications.

PERFORMANCE-BASED RULES

Minnesota Statutes, sections 14.002 and 14.131, require that the Statement of Need and Reasonableness describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

Labor and Industry in cooperation with the Department of Transportation has been careful in drafting this rule amendment to ensure maximum flexibility for persons affected by the rule and for implementation and enforcement of the rule. The goal of this rule is to provide guidance to contractors as to exactly which activities are covered by the prevailing wage rate. This clarity will provide a level playing field for those bidding for public works projects.

In order to achieve the maximum flexibility, the Agencies worked with an Advisory Committee made up of members of the construction Industry, including: prime contractors, subcontractors, material suppliers and trucking firms, unions, employees and other affected parties to determine the best way to address the master job classification issues involved in this rulemaking. Also included were representatives of surveyors, landscapers, traffic control companies, and pavement marking/painting contractors. At the Advisory Committee Hearings oral testimony was taken from members of the committee and from members of the audience, and written comments were collected at the end of each hearing and by mail over the course of the rulemaking project. In

drafting these rules the Agencies considered all comments and information submitted both at the committee hearings and orally or in writing to each department.

This rule amendment promotes superior achievement in meeting the law's regulatory objective of paying prevailing wages in comparison to the case by case enforcement now required because of the court injunctions.

ADDITIONAL NOTICE

Minnesota Statutes, sections 14.131 and 14.23, require that the SONAR contain a description of the Department's efforts to provide additional notice to persons who may be affected by the proposed rules or explain why these efforts were not made.

Every effort has been made to identify and notify persons who may be affected by the proposed rules. The persons or classes of persons likely to be affected by these rule amendments are highway construction contractors and subcontractors; construction workers including independent truck owner-operators, companies with multiple trucks for hire (MTOs), truck brokers; truck drivers; the traveling public; potable batch plant workers; owners, operators and employees of mineral aggregate producers, owners of public works projects, and Minnesota taxpayers.

A Request for Comments was first published in the *State Register* on September 20, 1999, at 24 S. R. 396; and sent to all persons on the Department of Labor and Industry's rulemaking mailing list. Subsequent Requests for Comments were published in the *State Register* on Monday July 30, 2001 at 26 S. R. 107, on Monday October 25, 2004, and on Monday July 24, 2006 at 31 S. R. 91. The Requests for Comments were also sent to all persons who requested information on the rulemaking from either department and to contractors who have inquired about the rulemaking from the Department of Transportation's Labor Compliance Unit. The Requests for Comments described the specific subject areas that would be considered for rule amendment, the statutory authority for the rule, the persons likely to be affected by the rule amendment, and how and where comments could be submitted. All comments received in response to the Requests for Comments were considered by the department in preparing the proposed rules amendment.

Further, additional notice was provided by forming an advisory committee to gather input from affected parties on the subject matter of these rules. The rule was developed in cooperation with the Department of Transportation, and Department of Transportation staff attended all advisory committee meetings to be available to answer questions of the committee and to listen to committee concerns. The Advisory Committee met on February 28, 2002, March 28, 2002, and April 30, 2002. These meetings were open to the public and in addition to gathering input from committee members, members of the audience were invited to speak on each topic that the committee considered. In addition, comment sheets were passed out to all meeting attendants and collected after each meeting. All comments received were considered in drafting the proposed rule.

In addition to mailing a copy of the proposed rule amendment to all persons on the Department of Labor and Industry's rulemaking mailing list a copy was mailed to all contractors who have inquired of the Department of Transportation's Construction Labor Compliance Office about prevailing wage issues in the past, and all persons who have inquired about the rulemaking. A copy of the proposed rule amendment was sent to all members of the advisory committee and to everyone who signed up at the meetings to receive one when it became available. Free copies of the proposed rule were also sent to anyone who requested one.

The Department anticipates holding a public hearing and will publish a Notice of Hearing in the State Register. A list of the members of the Advisory Committee will be included in this notice. This notice will be sent to all persons on the Department of Labor and Industry's rulemaking mailing list, to appropriate legislators as required by Minnesota Statutes, section 14.116. A news release describing the Notice will be sent to trade associations including Associated General Contractors, Associated Builders and Contractors, Minnesota Building and Construction Trades Council, International Brotherhood of Teamsters with a request that it be published in the associations' newsletters or that notice be sent to all association members.

In addition the Notice of Hearing will be sent to the list of contractors and individuals who have contacted the Department of Transportation's Labor Compliance Office concerning prevailing wage issues; and to the chairs of both the House and Senate transportation policy and transportation budget committees.

In addition other means of communications, such as the internet and the department's website will be utilized. Early drafts of the proposed rules and the Request for Comments have been posted have been posted on the department's website since July 2006 and the proposed rules, Notice of Hearing and either the SONAR or a way to get the SONAR will be posted there. The department will ask MNDOT to provide an announcement of the proposed rules and a link to the Notice of Hearing, proposed rules, and the SONAR or a way to get the SONAR on its website. Also the department will use e-mail in addition to regular mail to sent notice to those on the official rulemaking list and the additional notice lists for whom we have e-mail addresses.

The Department believes that this notice plan will provide the required additional notice for this rulemaking project. We believe our Additional Notice Plan complies with the statute because it includes every reasonable and affordable way we are aware of to notify persons or classes of persons, in addition to those on the official rulemaking lists who may be significantly affected by the rule amendments being proposed,

CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department has consulted with the Commissioner of Finance. We did this by sending to the Commissioner of Finance copies of the documents sent to the Governor's Office for review and approval by the Governor's Office prior to the Department publishing the Notice of Hearing. We delivered the copies on May 23, 2008. The documents included: the Governor's Office Proposed Rule and SONAR Form; almost final draft

rules; and almost final SONAR. The Department of Finance sent a letter dated June 13, 2008 with its comments.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business (less than 50 FTE employees) or small city (less than 10 FTE employees). The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

The Department has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR on pages 9-11. The proposed rule is a clarification of the current rules under the statute and not an expansion of coverage by the statutes that small businesses and cities already have to administer. In the case of a small business, they will use the new clarified classification rules to determine their labor costs for a project subject to the state prevailing wage statute. They will then add the labor costs to their materials and profits to develop their low bid for a given public works construction project. The state agency financing the construction in whole or in part will pay the contractor the wages required.

MNDOT is by far the largest state agency in terms of state funded construction. Small cities with less than 10 employees, in general, are not part of state-aid highway program and would do not receive direct funding from the state transport fund which is subject to the state prevailing wage statute. If a small city were to receive state funding for a public works construction project, the cost of administering the application of the state prevailing wage statute on the project would be no different under then is required under the current statute and rules.

The vast majority of local government construction whether by cities, school districts, or counties are not funded in whole or in part by state funds and are not affected at all by the prevailing wage or these amendments to rules about prevailing wages.

It is the department's assessment that the proposed rules have minimal fiscal impact on or benefits for local units of government. Some MNDOT projects in cities are partially paid for by the city, but usually just for infrastructure improvements such as sewer or water repairs or upgrades under the road surface of a state highway or county state aid highway going through the city. In a small number of cases, this would subject the city to some prevailing wage costs, but very little in comparison to the whole project. The department for instance has determined that the cost of compliance with the rule amendments for the first year for any small city (less than 10 FTE employees) would be less than \$25,000.

LIST OF WITNESSES

1. Roslyn Wade, Director of Labor Standards and Apprenticeship, Department of Labor and Industry and Department of Labor and Industry staff who were involved in drafting the rule including: Erik Oelker, Labor Investigator Senior; Michelle Dreier, Labor Investigator, Senior and Brian Zaidman, Economist, Research and Education Unit;
2. Department of Transportation, Office of Construction and Contract Administration staff who are responsible for enforcement of the rule including: Charles Groshens, Supervisor, Labor Investigations; and Clancy Finnegan, Transportation Program Team Leader.

RULE-BY-RULE ANALYSIS

5200.1030 BASIS FOR HIGHWAY AND HEAVY CONSTRUCTION DETERMINATIONS

Subpart 2a. Clause C.

This clause provides a process for payment of the prevailing wage if highway and heavy construction work financed in whole or in part by state funds is performed by a class of labor not included in part 5200.1100, Master Job Classifications. Currently the clause refers to classes of labor “defined” in the master job classifications. The proposed amendment clarifies that part 5200.1100 “names” master job classifications rather than defining them. This has been the case since prevailing wage master job classifications were first adopted in rules in 1977. The definitions of the various job classifications for power equipment operators and truck drivers are obvious from the name and well known from custom and usage in the construction industry and labor agreements. Historically this has been true also with respect to construction laborers and the special crafts. The proposed amendment also clarifies that the Commissioner of Labor and Industry, has an option of determining that work being performed by a class of labor, which somebody claims is not covered by an existing classification, is included in an existing classification. This is an alternative to initiating a rulemaking procedure and is clearly indicated as an option and a duty in the statute in Minn. Stat. § 177.43, subd. 1 with respect state projects generally and Minn. Stat. § 177.44, subd.1 with respect to highway projects.

The changes are necessary because both MNDOT and DOLI routinely encounter attempts to make a slight variation in the scope of work an existing class of work and the argument that, because of the slight change, the work performed in that slight variation is outside that classification and therefore is not prevailing wage covered work. The change is also necessary to clarify the intent of the statute and the first sentence of the existing subpart it does not make sense force a rulemaking when the department has determined that the work is included in an existing classification as the most similar trade or occupation. The changes are reasonable because the statute, in Minn. Stat. §§ 177.43 and 177.44 is very clear in providing that a laborer or mechanic may not be paid a lesser rate of wages than the prevailing wage rate in the same or most similar trade or occupation in the area.

5200.1035 BASIS FOR COMMERCIAL CONSTRUCTION DETERMINATIONS

Subpart 2a. Clause C.

Similar to the previous subpart, This clause provides a process for payment of the prevailing wage if commercial construction work financed in whole or in part by state funds is performed by a class of labor not included in part 5200.1100, Master Job Classifications. The amendments to this clause parallel the amendments to the previous subpart in clarifying that the master job classifications are named in the rule and not defined and that the Commissioner retains the authority to determine that the work in question is covered by an existing job classification and, if it is not, shall initiate a rulemaking proceeding. The changes are necessary and reasonable for the same reasons as the changes to the previous subpart.

5200.1040 CLASSES OF LABOR

This part sets forth the general categories of labor utilized as the framework for organizing the distinct master job classifications in highway-heavy and commercial construction. Since the rules were first adopted, there have been four general classes, laborers, power equipment operators, truck drivers and special crafts. These proposed rule amendments add a fifth general category entitled “Special Equipment” in order to categorize some new master job classifications which do not fall neatly into the existing four categories, yet cover a large amount of work now being performed on highway-heavy and commercial construction projects funded in whole or in part with state funds. These five new master job classifications are found in the newly proposed Subpart 2a. of part 5200.1100, Master Job Classifications found on page 5 of the proposed rules. These 5 new types of equipment do not fit neatly in to any of the existing categories from the perspective collective bargaining agreements, apprenticeship agreements, The United States Department of Labor Dictionary of Occupational Titles, or from the customs and usage in the construction industry, all of which are to be considered in determining master job classifications pursuant to Minn. Rule 5200.1040 Clause ~~E~~F.

Adding the new category “Special Equipment” is necessary because the 5 new types of equipment listed in the proposed subpart 2a. of part 5200.1100 and their operators are performing substantial work on prevailing wage jobs in the state and they need to be included in a category in this rule, part 5200.1040, in order for the department to survey for and make wage determinations for the work. The new category is reasonable because the new equipment listed does not fall clearly in any of the existing categories, or in some cases seem to fit in more than one.

5200.1050, SURVEY PROCEDURES

Subpart 2, Wage Reports

This subpart contains the procedures and requirements for submitting responses to the department’s prevailing wage surveys. Among other things, the subpart sets a dollar level threshold for the size of project in order for the wages to be reportable and includable in the

prevailing wage survey and prevailing wage determinations. It also sets a minimum number of hours an employee must work on a project for inclusion on a survey response. Currently the minimum number of hours an employee must work on a project in order for the employees' wages to be included in the survey process is 24 hours on a highway and heavy construction project and 8 hours on a commercial project. The proposed amendment to the subpart found at page 4, lines 14 to 16, is to require 8 hours or more of work on both highway-heavy and commercial construction projects.

The purpose of the change is to keep pace with changing construction processes and to maximize both the amount of data received and the number or rates set throughout the survey process. Modern highway and heavy construction practices and equipment allow many smaller paving projects which used to take days to complete now can be achieved in 24 hours or less. These projects are more than sufficient in dollar volume and amount of new construction produced, yet take a fraction of the time to complete. It is necessary to make the change proposed to maximize the extent to which the employee's wages are includable in the survey process in order to have more representative rates and minimize "missing" rates. It is reasonable to reduce the minimum number of hours required on highway and heavy projects in recognition of the increased productivity and speed with which similarly sized projects are now completed.

5200.1100 MASTER JOB CLASSIFICATIONS

Subpart 2. Laborers

Three new master job classifications are added to the first category of master job classifications. The three new classes are numbered 110 through 112 and are found on page 4 of the proposed rules at lines 21 through 28.

CLASS 110 Survey field technician

This is a new master job classification proposed to reflect the trend towards including surveying in the scope of work on both highway-heavy and commercial construction prevailing wage projects.

In the past the bulk of the surveying on highway and heavy projects was performed by MNDOT personnel or county surveyors. Now the construction contracts tend to call for the surveying work to be performed by on behalf of the general contractor as part of the work under the construction contract. The new classification covers the person operating the transit and the person holding the rod, not the registered land surveyor or survey foreman/supervisor.

The new classification is necessary to reflect the changes in construction practices where the contracting agency performs less of the surveying services and a growing portion of the surveying work is part of the scope of work under the construction contract. The new classification is reasonable because it covers the work actually performed at the construction site and doesn't include the professional services of registered land surveyors or their foreman/supervisors.

CLASS 111 Traffic control person (temporary signage)

This is a new master job classification which will cover workers who install both temporary traffic control systems such as cones, barriers and flashing lights during highway - heavy and commercial construction projects and upon completion. Similar to the practice of including more surveying services as part of the work under the construction contract, the practice in recent years has to been include providing the traffic control systems and the work of placing and moving the traffic control systems during construction, and at the end of the project, into the scope of work under the construction contract.

The new classification is necessary because both the nature of the work performed and who is doing the work have changed over time. Placing and moving traffic control systems during construction and at the end of the construction process are now performed to a significant degree as part of the scope of work under the construction contract. The new classification is reasonable because it reflects the actual construction practices currently in use and reflects the work performed as part of the scope of work under the construction contract.

Class 112 Quality control tester (field and covered off-site facilities; testing of aggregate, asphalt, and concrete materials)

This is a new classification prompted primarily by changes in construction practices and changes in the scope of work in construction contracts. It covers workers who perform quality tests in the field or covered offsite facilities on construction materials. The classification is encountered mostly in highway heavy construction contracts but applies also in commercial construction. Similar to the new classification for surveying work and traffic control systems during construction, this work has been traditionally done by employees of the contracting agency, but is more often done now by employees of the general contractor or a subcontractor as part of the construction contract. Contracting agencies still employ quality testers as needed and to review the work of quality inspectors employed by the general contractor or a subcontractor to perform the quality testing include in the scope of work under the construction contract.

The new classification is necessary to reflect the changes in the nature of the quality testing work and who is performing the work. Testing of materials in the field such as aggregate, asphalt, and concrete is now routinely done by employees of the general contractor or a subcontractor as part of the scope of work under the construction contract. The classification is reasonable because it covers the work actually performed in the field, reflecting the actual construction practices currently in use and the scope of work in construction contracts.

Subpart 2a. Special Equipment.

Subpart 2a. is a newly proposed general category of “Special Equipment” proposed in order to categorize some new master job classifications which do not fall neatly into the existing four categories, yet cover a large amount of work now being performed on highway-heavy and commercial construction projects funded in whole or in part with state funds. The new subpart is necessary because the new classifications are not similar to classes in the existing subparts, or because they fit in more than one existing subpart, and because the equipment in the new classes perform a significant amount of work on both highway-heavy and commercial prevailing wage

construction projects. The five new classes are numbered 201 through 205 and are found on page 5 of the proposed rules at lines 1 through 10.

Creating a new subpart is reasonable because these new classifications do not fall neatly into any one existing subpart, or in several cases could fall in two subparts. It is also reasonable to place these 5 new classifications in the new subpart because several of them tend to be operated by power equipment operators, truck drivers, either union or non union, in various parts of the state and placing them in a new subpart will be more likely to reflect rates more prevalent in these parts of the state.

CLASS 201 Articulated Hauler

An articulated hauler is a unique piece of earth moving equipment which is in effect a hybrid of a large off road dump truck and a classic earth mover/scrapper. They have become more and more prevalent on high-heavy construction and commercial construction. There is an articulated joint between the “cab” or power unit and the cargo box which allows the hauler to turn in tighter quarters, similar to the way a semi truck turns as opposed to a long straight bodied truck. The same articulated joint allows the cab/power unit and the cargo box to twist independently from each other making the hauler ideal for varied terrain.

There is a need to create a separate classification for articulated haulers because they are so unique that they do not fall into an existing classification, nor is there a classification which is “similar” to articulated hauler. For this reason there is currently no effective prevailing wage rate certification for those driving articulated haulers, yet they perform an ever increasing amount of work on prevailing wage projects. There needs to be a classification for the haulers in order to effectuate the statute in terms of covering the work and to provide certainty in bidding.

It is reasonable to place the articulated hauler classification in the new subpart 2a category because it does not fit neatly in any of 4 existing categories in the rule. An articulated hauler could be categorized as a new type of truck and it has been included in the Teamsters contract for a number of years. An articulated hauler could be categorized as item of Power Equipment and it has been included in the Operating Engineers contract for a number of years. Articulated haulers are operated to a large extent by Teamsters in Northern Minnesota; by operating engineers in the metro area and southeastern Minnesota, and by employees of non-union contractors in western Minnesota. Each of the three primary users have objected to the articulated hauler being placed in the Power equipment category or the trucking category. The placement in the new special equipment category is reasonable because the articulated hauler is a unique piece of equipment that, like the other four new classifications proposed in this new subpart, does not fit neatly or logically in the existing four categories of master job classifications.

CLASS 202 Boom Truck

A boom truck is a straight bodied truck with a telescoping boom mounted on the bed of the truck, usually with a work platform attached at the end of the boom, sometimes called a cherry-picker.

They are used as specialty work platforms. It is necessary to have a classification for the boom truck because it is utilized on highway heavy and commercial prevailing wage projects. Like the other equipment in the newly proposed subpart 2a, Special Equipment, the boom truck doesn't fall neatly into any of the four existing categories and has been utilized on for a number of years.

This truck-mounted equipment has been included in both the Teamsters contract and the in the Operating Engineers contract. Including Boom Truck in the new special equipment category is reasonable because the boom truck is a unique piece of equipment that, like the other four new classifications proposed in this new subpart, does not fit neatly or logically in the existing four categories of master job classifications.

CLASS 203 Landscaping Equipment

Landscaping has been increasingly included in the work under prevailing wage contracts and utilizes different equipment which does not fit neatly or logically in the existing 4 categories of prevailing wage master job classifications. Hydro-seeders and mulchers are one type of landscaping equipment utilized and are truck mounted high capacity pumps used to spray a mixture of seed or mulch onto newly graded areas. Landscapers also use farm tractors mounted with attachments used for seeding, sodding, and planting. Landscaping equipment also includes two framed forklifts, excluding front, posi-track, and skid steer loaders not involving earthwork or grading for elevations.

It is necessary to include landscaping equipment in the master job classifications because of the large degree to which landscaping work is now included in the scope of work under prevailing wage construction projects, both highway-heavy and commercial. It is reasonable to include landscaping equipment in the new special equipment category because it does not fit neatly or logically into an existing category. Landscape workers tend to utilize several or all the basic types of landscape equipment during the workday or on a given project as opposed to spending the majority of their time operating one specific type of equipment, so it is reasonable to include all the landscape equipment under one master job classification.

CLASS 204 Off-Road Truck

The Off-road truck is a large straight-bodied dump truck designed to be used off-road for earth moving on construction process. It is high off the ground and has large tires and is typically four wheel drive. It is similar to an articulated hauler, but lacks the distinctive articulated joint between the cab and the cargo box present on articulated haulers. There is a need to create a separate classification for off-road trucks because, like articulated haulers, they are so unique that they do not fall into an existing classification, nor is there a classification which is "similar" to off-road truck.

Like articulated haulers, there is currently no effective prevailing wage rate certification for those driving off-road trucks, but they perform an ever increasing amount of work on prevailing wage projects. There needs to be a classification for the off-road trucks in order to effectuate the statute in terms of covering the work and to provide certainty in bidding.

The off-road truck does not fit neatly in any of 4 existing categories in the rule and therefore it is reasonable to place the off-road truck classification in the new subpart 2a, specialty equipment, category. An off-road truck could be categorized as a new type of truck, and it has been included in the Teamsters contract for a number of years or, an off-road truck could be categorized as item of Power Equipment and it also has been included in the Operating Engineers contract for a number of years. Off-road trucks are operated to a large extent by Teamsters in Northern Minnesota; by operating engineers in the metro area and southeastern Minnesota; and, by employees of non-union contractors in western Minnesota. Each of the three primary users have objected to the off-road truck being placed in the power equipment category or the trucking category.

The placement in the new special equipment category is reasonable because, like the articulated hauler, the off-road truck is a unique piece of equipment. Similar to the other four new classifications proposed in this new subpart, the off-road truck does not fit neatly or logically in the existing four categories of master job classifications.

Class 205 Truck for pavement marking or removal

The truck for pavement marking or removal is not a particularly new piece of equipment, but its use has changed significantly. This is the truck one might see placing road striping such as lane dividers, no passing lines, and lane/shoulder boundary lines. Normally paint is applied, but tape is used to mark these lines as well. Generally it has two operators, one to drive the truck and one to operate the equipment mounted on the truck for marking the pavement, but some units are driven by the same person operating the spray equipment. The bulk of this work is performed on highway-heavy projects, but the equipment is used in commercial construction also. Classically this work has been performed by MNDOT workers on state highways and city or county workers on local roads, not as part of the scope of work under the general contract for road construction. Increasingly over the years, the work has come to be performed as part of the work under the construction contract by the road contractor's employees, or more typically, employees of a subcontractor. There is a need to create a separate classification for "truck for pavement marking or removal" because of this change in who performs the work and because they are so unique that they do not fall into smoothly in an existing classification. There is also a need for a classification of "truck for pavement marking or removal" to effectuate the statute by covering the work now part of the construction contract and to provide certainty in bidding.

It is reasonable to include the "truck for pavement marking or removal" as a classification because the bulk of this work is now done by employees of contractors or subcontractors rather than by MNDOT or local government street or highway department workers. As part of the work under the road construction contract, the work is covered by the prevailing wage. It is reasonable this new classification in the new subpart 2a because the equipment does not fit neatly into any of the existing categories. The equipment is not primarily a truck, but is specialized paint spraying equipment, or in some cases tape laying equipment mounted on a truck. The truck for pavement marking or removal is also not particularly similar to any of the existing classification of Power Equipment.

POWER EQUIPMENT OPERATORS: EXISTING SUBP. 3, AND PROPOSED SUBP. 3a.

Under the existing rule all the power equipment classifications for both highway-heavy construction and commercial construction are contained in subpart 3. The proposed rules limit subpart 3 to operators of groups of power equipment used primarily on highway-heavy construction and create a new subpart 3a for operators of groups power equipment used primarily on commercial construction projects. This continues the practice authorized in the 1997 rule amendments of grouping power equipment operators by groups of equipment requiring similar levels of skill and experience. The primary need in 1997 and continuing in these proposed rules for the grouping of power equipment operators is that when the large number of separate pieces of equipment are utilized as separate classifications, the prevailing wage survey results in a large number of “missing rates” thus undermining the stated purpose of the prevailing wage law through the resulting gaps in coverage. Also, numerous gaps in coverage create uncertainty in bidding for contracting agencies and contractors, both union and non-union.

At the time the 1997 rules were proceeding through the process there was consideration given to creating a separate of groups of power equipment operators for commercial construction instead of continuing to merge the highway heavy construction power equipment in with the commercial construction power equipment. However, the main focus of the 1997 rules was in the realm of highway-heavy construction. The major changes were in 1997 were to certify highway-heavy construction rates in 10 regions instead of by county, and to place the power equipment operators’ classifications into groups. The primary purposes behind these changes were to eliminate to “missing rates” in the in the prevailing wage rate certification process and to reduce the resulting gaps in coverage. Because the main focus of the proceeding was highway-heavy construction and because addressing the main focus contained some major and controversial changes, the consideration given in 1997 was not serious and separating the highway-heavy and commercial construction power equipment classifications was not proposed. Still, as far back as the 1997 rules there was some indication that creating separate groupings of power equipment operators for highway-heavy and commercial construction

Subpart 3. Power Equipment Operators – highway and heavy projects.

This existing subpart is given a new modifier “highway and heavy projects” that is necessary because of the creation of new Subpart 3a., containing the master job classifications for commercial construction projects. Also, at page 5 of the proposed rules, lines 11- 14 new preamble language is added to subpart 3a. to indicate that equipment operators on prevailing wage projects which are highway-heavy type construction must be paid and documented in accordance with this subpart. This preamble language is also needed because the master job classifications for commercial type construction will be contained in the new subpart 3a. These two changes are a reasonable means of separating the master job classifications for highway-heavy construction and commercial type construction into two separate sets of groupings, to cut down on the overlap in the existing subpart 3. and update each category into groups of power equipment now used in

construction that require similar levels of skill and experience to operate and have similarity in the productivity and applications of the equipment in the field.

Subpart 3 still contains six groupings of power equipment, but some equipment is moved from one group to another, some new pieces of equipment are added, and other pieces of equipment used on commercial type construction are eliminated and moved to the new subpart 3a. , commercial projects.

Group 1, Class 301, All truck crawler Cranes 50 tons and over doing pile driving, sheeting, caisson work, rotary drilling and boring (page 5 of rules, lines 17-18)

This is a new highway-heavy job classification. These large capacity cranes doing the specialized work of pile driving, sheeting, caisson work, and rotary drilling and boring require the highest level of skill and experience for crane operators. Group1 will now consist of this single classification. The new classification has previously been part of existing class 204, pile driving. The change is necessary because these modern very large cranes doing these specialized tasks require high levels of skills and experience. The change is reasonable because the pay for operators of these particular cranes doing these tasks is higher and the operators require “certification” under Laws of Minnesota, 2007, Chapter 87, §1 (Minn. Stat. § 182.6525 (2007) . The high skill and experience required generally results in one of the highest wages in highway-heavy construction.

Group 2, Classes 302 – 308 (page 5 of the rules, lines 19 -29)

This group of power equipment is primarily existing master job classifications from the existing power equipment classifications, group 1, but also includes one new piece of equipment. Primarily the classes have just been renumbered. The classes in group 2 that have new or stricken language are described below.

Class 303, Concrete pump : This classification is underlined in the rules and is a new classification, Its is the truck mounted pump used to pump concrete to higher elevations as part of highway-heavy construction projects. This class used to be included with “pumpcrete,” existing class 221, which is name of one manufacturers’ concrete pump used primarily horizontal pumping of concrete as opposed to the vertical pumping concrete pumps.

Class 304, All cranes with over 135-foot boom, excluding jib. This is existing class 202 which formerly used the word “Crane” in the singular. The new language is “all cranes, a change which is needed for enforcement purposes. It is reasonable to avoid disputes over the argument that the classification applies to only one type of crane.

Class 305, Dragline crawler and hydraulic backhoe. This is existing class 203 for these types of backhoes with large capacities of three cubic yards or more adding some new language needed for enforcement. The addition of “(track or wheel mounted)” and “including all attachments” is reasonable to avoid the argument that the classification only includes either track or wheel

mounted units and not both, and the addition of the “including all attachments” language” is reasonable to avoid disputes over the issue of whether the equipment ceases to be in the same classification if anything other than a bucket is placed on it.

Class 306, Grader or motor patrol, is merely moved from existing classification 212.

Class 307, Pile Driving. This classification is now for the smaller pile driving equipment not as heavy or as specialized as the equipment in the newly created class 301 above. The stricken words “when using three drums are in use” are no longer needed because the term “Pile Driving” includes all the power equipment used in highway-heavy construction, not included in new Group 1, class 301, and pile driving normally requires three drums.

Class 308, Tugboat -100 h.p. and over when license required. This classification is a split of existing class 218, which is renumbered as proposed class 321. The new language “when license required” is necessary because there are now tugboats in use with over 100 h.p. which are smaller and the operators do not require a license, whereas previously most tugboats having over 100 h.p. did require a license.

Group 3, Classes 309 – 322 (page 6 of rule, lines 1- 25)

This group of power equipment is primarily existing master job classifications from the existing power equipment classifications, group 2, but also includes one new piece of equipment. Primarily the classes have been merely renumbered. The classes in proposed group 3 that have new or stricken language are described below.

Class 309, Asphalt bituminous stabilizer plant. This classification is the same classification as Class 225 of the existing rules in existing group 4 and the language there is stricken.

Class 313, Dragline crawler and hydraulic backhoe. This is existing class 203 for these types of backhoes with smaller capacities under three cubic yards with some new language needed for enforcement. If something other than a bucket is placed on the equipment the enforcement issue of whether the equipment is still a dragline, crawler, or hydraulic backhoe arises. The addition of “(track or wheel mounted)” and “including all attachments” parallels the new language in proposed class 305 above and is reasonable to avoid the argument that the classification only includes either track or wheel mounted units and not both. The addition of the “including all attachments” language is reasonable to avoid disputes over the issue of whether the equipment ceases to be in the same classification if anything other than some type of shovel is attached.

Class 315, Front end loader, five cubic yards and over including attachments. This class is existing class 211 with some additional language needed for enforcement. Front end loaders usually seen with large buckets can be mounted with different attachments such as a large blade. This has resulted in enforcement problems in the past when the person operating the loader is using an attachment as to whether the classification of the attachment or the classification of the loader itself, which still requires the same level of skill and experience to operate, should apply. The need derives from the enforcement problems and, because skill and experience requirements are similar, adding “including attachments is reasonable.

Class 317, Mixer (paving) concrete paving, road mole, including mucking operations, Conway or similar type. This is existing class 214 which is renumbered ; changed to remove a now obsolete reference to “pile driving” now covered by proposed classes 301 and 307; and, has the new language “type” added to clarify that the reference is to Conway mucking machines or similar types.

Class 320, Tandem scraper. This is the new classification in group 3. The classification is for equipment pulling two scrapers with one tractor. The classification is necessary because the equipment requires more skill and experience than standard scraper configuration where one scraper is pulled by one tractor. Previously, the operators of both scraper configurations have been covered under existing class 231, which is renumbered and amended for enforcement purposes in the newly proposed class 330 for the standard scraper configuration of one tractor pulling one scraper in group 4.

Group 4, Classes 323 – 368 (page 6 of rule, line 26 though page 8, line 21)

This group of power equipment is primarily existing master job classifications from the existing power equipment classifications, group 4, but also includes one new piece of equipment and several pieces of equipment from the existing group 3. Primarily the classes have been merely renumbered. The classes in group 4 that have new or stricken language are described below.

Class 326, Concrete batch plant operator. This is existing class 228 renumbered and with the word “operator” added. The addition of the word operator is necessary for enforcement purposes and to clarify that the classification includes only the operators of the batch plants and not others who work at or near the batch plants such as quality testers or operators of other equipment such as those moving materials. The change is reasonable because MNDOT has encountered the issue of whether the classification to others working in the vicinity of the batch plants in its case-by-case enforcement of the prevailing wage on highway-heavy projects.

Class 327, Bituminous rollers, rubber tired or steel drummed (Eight tons and over) This existing group 4 classification, existing class 229, is modified to clarify that it covers both rubber tired and steel drummed type bituminous rollers that are rated eight tons and over. The new language is necessary because, since the last time the master job classes have been updated, the use of rubber tired rollers for compaction of bituminous has grown more prevalent. It modifying language is also necessary because there has been confusion between the existing class 229 in group 4 of Power Equipment operators and the existing class 312 of truck drivers, “Rubber tired, self-propelled packer.” Truck drivers have considered rubber tired, self-propelled packers to be a type of truck and existing class 312 has been in the truck driver master job classifications for many years. MNDOT has been confronted with the apparent overlap in these classifications numerous times over the years in its case by case enforcement of highway-heavy prevailing wage projects. The change is reasonable because it resolves the confusion and apparent overlap between these classifications and because truck drivers tend to operate the smaller rubber tired rollers rated under eight tons as proposed in the new class 612.

Class 328, Bituminous spreader and finishing machines (power) including pavers, macro surfacing and micro surfacing, or similar types (operator and screed person). This is existing class 230, renumbered, with some new language added to clarify that the classification covers bituminous spreading and finishing machines, to provide some examples of the names of the machines, and to provide that the two types of workers using the machine, known as “operator and screed person,” are included. The additional language emphasizing that these are machines and to give examples is necessary for enforcement purposes. Previously the screed person was a separate master job classification, current class 281, and now these similarly skilled positions are joined in one classification.

Class 329, Brokk or R.T.C. remote control or similar type with all attachments. This is a new classification. Brokk and R.T.C are brand names of remote control operation equipment. They can be mounted on and used to operate various types of heavy equipment such as bulldozers and blades. The equipment operator actually runs the equipment from remote but nearby location. This remote control equipment is a fairly recent development in construction and its use has expanded. The primary use is when the location where the equipment needs to be operated presents some type of hazard to the operator such as fire, a hazardous atmosphere, and hazardous terrain. Their expanding use is more ordinary types of operations such as grading and sloping ditches. The classification is necessary because the remote control equipment is in use on highway-heavy type construction and the work needs to be covered and the existing rules do not specifically include remote operation of heavy power equipment. The placement of the new classification in group 4 of the highway-heavy equipment operator classifications is reasonable because the skill and experience level is similar to the other equipment in the group.

Class 330, Cat challenger tractors or similar types pulling rock wagons, bulldozers and scrapers. This is existing class 231, renumbered, with some new language for enforcement purposes. The new language is needed to clarify that the classification includes not only “Cat” tractors but also “challenger tractors and similar types.” This change is reasonable because now there are other prevalent brands of this type of tractor doing the same type of pulling the change prevents disputes over the brand name of the pulling tractor. The new language “bulldozers, and scrapers” is needed because this type of tractor also pulls bulldozers and scrapers on occasion, in addition to “rock wagons” It is reasonable to clarify that this classification includes pulling the other implements because, although MNDOT has enforced the classification this way, the issue of whether the other implements hauled by these tractors are included has arisen from time to time.

Class 332. Concrete distributor and spreader finishing machine, longitudinal float, joint machine, and spray machine. This is existing class 265 without any changes in language. The old language is stricken on page 8 of the rules and lines 25&26. This equipment is moved from group 5 of the existing Power Equipment Operators rule, a change necessary to reflect that the level of skill and experience to operate the modern versions of this equipment is most similar to the other equipment in proposed group 4 of the highway-heavy construction power equipment operators.

Class 337, Directional boring machine This is a new classification for this modern type of boring machine which has come into common use in highway-heavy construction since the last time the power equipment operators classifications were updated. The addition is necessary because the work needs to be covered and the existing classifications do not clearly cover the operators of this

equipment. The directional boring machine allows holes to be bored under existing structures such as roads from the machine's location. The machine carries the pipe, tubing or cable to be placed in the hole as the boring proceeds. Placing the new classification in group 4 of the highway-heavy equipment operators classifications is reasonable because the level of skill and experience needed to operate the directional boring machine is comparable the levels needed to operate the other equipment in group 4. .

Class 340, Dual Tractor This is existing class 219 which is simply re-numbered. The identical language is stricken on page 6 of the rules, line 33.

Class 341, Elevating Grader This is existing class 220 which is simply re-numbered. The identical language is stricken on page 6 or the rules, line 21.

Class 344, Front end, positrack or skid steer loaders, over one cubic yard up to five cubic yards with attachments. This class is existing class 241 renumbered and combined with existing class 257. It is necessary to combine the classes because skid steer loaders over one cubic yard, existing class 257, are just a type of front end loader and having two separate classes causes enforcement problems and confusion in the field. The front end loaders over five cubic yards are in proposed group 3, class 316. The new language "with attachments" is necessary and reasonable for the same enforcement reasons outlined in class 316 above.

Class 345, GPS remote operating of equipment This is a new classification to update the power equipment operators classifications for changes in technology. It applies to various items of equipment such as bituminous spreaders and concrete distributors that apply pavement to road beds. Global positioning satellite data is used by the operator to guide the equipment as it lays pavement. The classification is necessary because the equipment is in common use on highway-heavy type construction projects. The new classification and its placement in group 4 is reasonable because the skill and experience necessary to operate the GPS equipment is similar to the skill and experience required for the other equipment in group 4.

Class 350, Milling, Grinding, planning, fine grade, or trimmer machine . This is existing class 247 currently known as "milling, grinding, and planning machine." The new language referencing "fine grade or trimmer" is necessary for enforcement purposes. The need arises because these same machines referenced in the existing classification are also capable of and used in the field for fine grading or trimming of pavement, and there is need to clarify that this classification applies when the machines are used for the fine grading or trimming operations rather than the milling. Grinding and planning functions. The change is reasonable to assure prevailing wage coverage for the operators of the machines when used for fine grading and trimming.

Class 358, Pumpcrete. This is existing class 221. The language remains unchanged but is underlined in the proposed class 358 because the old class "221 pumpcrete is stricken on page 6 of the rules at line 23. The new class 303, Concrete pump, used to be included in the existing "pumpcrete" rule, but the new concrete pump classification is to reference machines used to pump concrete to higher elevations as part of highway-heavy construction projects. "Pumpcrete" is the name of truck mounted machine used to pump concrete horizontally and requires a lower level of skill and experience to operate. Pumpcretes are still used on highway heavy projects and it is still

necessary to have a classification for their operators. Therefore it is reasonable to place the Pumpcrete classification in Group 4.

Class 360, Scrapper. This is the existing class 256 with the language “-up to 32 cubic yards” stricken. The language is stricken because the existing class 222 “scraper struck capacity 32 cubic yards and over” is eliminated in these proposed rules at page 6, line 24. The effect is to combine the two existing classifications which divided scrapers by size. The change is necessary for enforcement purposes because the two sizes are not readily determined in the field and the larger size has become less prevalent over the years. In fact, the use of both sizes of scrapers has declined as more of this work is performed by articulated haulers. (See new class 201, page 5, line 3 of proposed rules) The change is reasonable because the skill and experience necessary to operate scrapers of both sizes is similar.

Class 361, Self-propelled soil stabilizer. This class is simply the existing class 223, “self-propelled traveling soil stabilizer” renumbered and with the redundant word “traveling” removed. The existing language for the classification is stricken at page 6 of the proposed rules, line 22.

Class 365, Tractor, wheel type, over 50 h.p. with P.T.O. unrelated to landscaping. This is a new classification in group 4 of the power equipment classifications because of the addition of the reference to “P.T.O.” or “power take off” necessary to power certain equipment which can be attached to these tractors. The language “unrelated to landscaping” is necessary to avoid confusion with new proposed class 203, Landscaping Equipment. Previously, all the wheel type tractors, with PTO or not, were included in existing class 293, which is renumbered as proposed class 397 at page 10 of the rules, line 1. The change is reasonable because the level of skill and experience necessary to operate PTO equipped tractors with the attached power equipment is similar that required to operate the other equipment in group 4 of the power equipment used on highway-heavy construction.

Class 366, Trenching machine (sewer, water, gas) excludes walk behind trencher. This is existing class 261, and the underlined language is added for enforcement purposes to clarify that the smaller walk behind trenchers which are not normally utilized in highway-heavy construction are not included. This change is necessary for enforcement purposes and to avoid confusion with walk behind trenchers.

Class 367, Tub grinder, morbark or similar type. This is a new classification for this type of equipment which is in common use of highway-heavy construction. The equipment is used as part of tree or forest cleaning in conjunction with highway-heavy construction. The trees are cleared by other equipment, but the stumps and large pieces of tree trunks or limbs are shredded by this the large tub shaped grinder. Morbark is the name of one manufacturer of tub grinders. After the trees are felled, the limbs and smaller pieces of the trunks are removed and dealt with by different equipment. The tree stumps are removed from the soil other equipment such as a track back hoe, and the placed in the tub grinder, along with larger pieces of tree trunks. The tub grinder chews up the stumps and grinds them into small pieces. Inclusion of the new classification to insure the operators have prevailing wage coverage on highway-heavy projects and to differentiate the equipment from some of the other equipment used in tree felling and clearing operations, such

as “chip harvesters and tree cutters”, renumbered as proposed class 331, or “stump chipper and tree chpper, renumbered as proposed class 384. The new classification is reasonable because it is in common use on highway-heavy type construction and the level of skill and experience necessary to operate it is similar to the other classifications in group 4 of the highway-heavy power equipment operators.

Class 368. Well Point Dismantling or Installation. This is existing Class 262 with the words “dismantling or” added. The change is necessary to clarify the existing MNDOT practice of interpreting the term “installation” to be inclusive of “dismantling” as would be the common understanding in the construction industry. The added language is reasonable to assure coverage for the operator of the equipment while dismantling as well as while installing.

Group 5, Classes 369 – 386 (page 8, line 22 of rule, through page 9, line 14)

This group of highway –heavy power equipment is primarily existing master job classifications from the existing power equipment classifications, group 5, but also includes one new piece of equipment and two pieces of equipment which are stricken because they have been moved or combined with other pieces of equipment in groups 3 or 4 above. Primarily the classes have been merely renumbered. The classes in group 5 that have new or stricken language are described below.

Class 373, Front end, skid steer, or posi-track loaders, up to and including one cubic yard with attachments. This is existing class 268 for front end loaders up to one cubic yard, modified to include two common types of loaders, and to include of the use of the attachments with these loaders. This is similar to the modifications made to proposed class 344 in group 4 for loaders larger than one cubic yard up to five cubic yards. Front end loaders are often wheeled, but “skid steer loaders,” which are wheeled but steered like a tracked vehicle, and “posi-track” loaders are also loaders. It is necessary to add the reference to “skid steer” loaders and “posi-track” loaders because they are just a type of front end loader and not referencing them causes enforcement problems and confusion in the field. MNDOT has been confronted with the argument that a skid steer or posi-track is not a front end loader, and therefore there is no prevailing coverage for small units up to one cubic yard. MNDOT has taken the position that the existing language include these two types of loaders, but the clarification is reasonable to avoid confusion and to prevent gaps in prevailing wage coverage for the skid steer and posi-track operators doing the same work. Front end loaders usually seen with buckets can be mounted with different attachments such as a blade. This has resulted in enforcement problems in the past when the person operating the loader is using an attachment. The issue is whether the classification of the attachment or the classification of the loader itself, which still requires the same level of skill and experience to operate, should apply. The need derives from the enforcement problems and, because skill and experience requirements are similar, adding “with attachments” is reasonable.

Existing Class 265. The existing class 265 “Concrete distributor and spreader finishing Machine, longitudinal float, joint machine, and spray” is moved with no change in language to group 4 of the

highway-heavy construction equipment as proposed class 332 on page 7 of the rules, at lines 10 and 11. The old language is stricken at page 8 of the rule, lines 25 and 26.

Existing Class 281. The existing class 281 “Bituminous spreader and bituminous finishing machine operator (helper) is moved to group 4 of the highway-heavy construction equipment and the helper (screed person) position is combined with the operator position in proposed class 328 on page 7 of the rules at lines 3-5. The old language is stricken at page 9 of the rules, line 13, because it is no longer necessary.

Class 386. Vibratory driver or extractor for piling or sheeting operations. This is a new classification for equipment that is in common use during pile driving or sheeting operations. The equipment is a mechanized vibrator, usually hydraulic or air powered, which is attached to the bottom of the lift cables of a crane and attached to pilings or sheeting that are being driven into or extracted from the ground. The vibratory driver or extractor is self powered and has its own operator in addition to operator of the crane from which its is suspended. The new classification is necessary because the equipment is now in common on highway-heavy construction projects. It is reasonable to include the new classification to avoid any lapse in prevailing wage coverage or confusion with other methods of driving and extracting sheeting.

Group 6, Classes 387 – 397 (page 9 of rule, line15 through page 10, line 2)

This group of highway –heavy power equipment is mostly existing master job classifications from the existing power equipment classifications, group 6, but also includes one new piece of equipment and three pieces of equipment which are stricken because they have been combined into one class. Primarily the classes have been merely renumbered. The classes in group 6 of the highway-heavy power equipment operator classifications that have new or stricken language are described below.

Class 387. Cat, Challenger, or similar type of tractors, when pulling disk or roller. This is a new classification created by essentially splitting the existing class 231 “Cat tractors with rock wagons or similar types” Most of the work of that existing classification will now be contained in group 4 of the highway-heavy power equipment operator classifications as proposed class 330 on page 7 of the rules at lines 7 and 8. Proposed class 330 deals with the same types of tractor, but is related to when they are used for pulling rock wagons, bulldozers, and scrapers. New class 387 is for operators of the same types of tractors, but is limited to when they are pulling a disk or a roller. There is need for new classification 387 because proposed classification 330 only refers to this type of equipment when pulling rock wagons, bulldozers, and scrapers, whereas the existing class 231 has covered the equipment when pulling anything that could be considered “similar type”. The new split classification is also needed because, with the reference in new class 330 to pulling rock wagons, bulldozers and scrapers, there is a potential gap in prevailing wage coverage for the operators of Cat, Challenger, or similar types of tractors pulling disks and rollers, which is a common highway-heavy construction practice. The new classification is reasonable because it fulfills these needs and because the level of skill and experience needed is similar to the other equipment in group 6.

Existing Classes 290, 291, and 292 are eliminated because the types of equipment are so similar that they have been combined into a single class, proposed class 396 at page 9 of the rules, lines 29 and 30. The existing language for these three existing classes is stricken at page 9 of the rules, lines 26 – 28.

Class 397. Tractor, wheel type, over 50 h.p., unrelated to landscaping. This is existing class 293, renumbered, and with the additional language “unrelated to landscaping” added to clarify any possible conflict with the proposed class 203, Landscaping equipment, located at page 5 of the rules, lines 5- 8. The additional language is needed to clarify that the landscaping equipment classification, which includes farm type tractors does not overlap with the wheel type tractors over 50 h.p. in proposed class 397.

Subpart 3a. Power Equipment Operators – commercial projects.

This is a new subpart of the rule which will apply to power equipment operators on commercial construction

This subpart applies to Commercial Projects and includes equipment not currently in the Master Job Classification or pieces of equipment that are covered in different wage groupings under collectively bargained contracts.

The current rules provide for 6 groups, all with classes of labor in each group covered by Highway/Heavy wage assignments according to collectively bargained contracts.

Some of the existing classes of labor in the Power Equipment portions of the Master Job Classifications are covered by the Commercial collectively bargained agreements of the Operating Engineers.

Minnesota Rule 5200.1060, Subpart 3, provides that “If the prevailing wage rate determined for any given class of labor represents a collectively bargained rate, then the comparable collectively bargained rate for that class of labor in the area shall be the prevailing wage rate”. This rule requirement creates a problem with a single set of power equipment operators classifications for highway-heavy and commercial type construction. For example, if a contractor reports a crane under a highway-heavy construction survey and the crane is over a certain footage in height, that crane might set a prevailing wage rate that is a higher rate than a smaller crane more commonly used in highway-heavy construction. Then the rate would not be valid for all sizes of cranes.

The Rule is needed so that if an operators wage rate is identified as prevailing and collectively bargained, the proper commercial wage rate can be identified for the group or piece of equipment in order to comply with 5200.1060, Subpart 3.

The new subpart is given a modifier “commercial projects” that is necessary because of the change in Subpart 3., now to contain the master job classifications for highway-heavy construction projects. Similarly, at page 10 of the proposed rules, lines 3 – 5, preamble language is included in subpart 3a., to provide that equipment operators on prevailing wage projects which are commercial type construction must be paid and documented in accordance with this subpart. This

preamble language is also needed because the master job classifications for highway-heavy type construction will be contained in subpart 3. These two changes are a reasonable means of separating the master job classifications for highway-heavy construction and commercial type construction into two separate sets of groupings, to cut down on the overlap in the existing subpart 3 and update each category into groups of power equipment now used in construction that require similar levels of skill and experience to operate and have similarity in the productivity and applications of the equipment in the field.

It is necessary because of the changes in construction practices over time to create a set of classifications for commercial power equipment operators. Similar to the changes in highway-heavy construction, the commercial construction equipment is more specialized and also more technologically advanced with features such as remote control operation and GPS controlled operation. The degree to which power equipment utilized on commercial type construction is the same as used on highway-heavy construction is reduced, although there remains some overlap. It is necessary to group the power equipment used in commercial type construction because the experience of the department leading up to the 1997 rule changes indicates that, without grouping the 50 new commercial construction classes, the prevailing wage survey process would result in numerous instances of missing rates in the 87 counties. The groupings of equipment in the new subpart 3a, because they are based on groupings which require similar levels of skill and experience to operate and have similarity in the productivity and applications of the equipment in the field.

Group 1, Classes 501 – 503 (page 10 of rule, lines 7 through 10)

This group of commercial power equipment is mostly existing master job classifications from the existing power equipment classifications, group 1, but also includes two pieces of equipment which have been split into two or more separate classes for commercial construction purposes. and The classes in group 1 of the commercial power equipment operator classifications that have new or stricken language are described below.

Class 501, Helicopter Pilot. This classification is the same as existing class 201 renumbered and moved without language change to group 1 of the power equipment operators for commercial type construction. The classification is necessary because helicopters are in use in commercial type construction as well as highway-heavy type construction. The class is needed in group 1 to effectuate the change from one set of master job classifications of power equipment operators for highway-heavy construction and commercial construction to separate subparts for power equipment operators for each type of construction. The classification as proposed in group 1 is reasonable because the level of skill and experience required is similar to the other classes in the group.

Class 502, Tower Crane 250 feet and over. This classification is a “split” and consists of the portion of existing class 201, Tower crane, representing cranes over 250 feet in height. In the commercial construction classifications, the tower crane classifications have been divided into

three separate classifications in three different groups, which are needed based on height as representative of the level of skill and experience required. This proposed class 502 for tower cranes of 250 feet and over is reasonable because it represents tower cranes requiring the highest level of skill and experience, including tower cranes in use that reach up in excess of 450 feet.

Class 503, Truck or Crawler crane 200 feet of boom and over, including jib. This classification is a “split” of the existing highway-heavy and commercial combined class 217, Truck crane and crawler crane. In the commercial construction classifications, the Truck and Crawler crane classifications have been divided into three separate classifications in three different groups, divided by height, which is needed because height is representative of the level of skill and experience required. This proposed class 503 for truck or crawler cranes of over 250 feet is reasonable because it represents truck or crawler cranes requiring the highest level of skill and experience. For the commercial construction power equipment classifications, the tallest truck or crawler cranes, those with 250 feet of boom and over, including jib, are included in the proposed group 1, class 503.

Group 2, Classes 504 – 507 (page 10 of rule, lines 11 through 16)

Like group 1 of commercial power equipment operator classification, Group 2 is mostly existing master job classifications from the existing power equipment classifications, one of which is included with no change except renumbering, but also includes three pieces of equipment which have been split into two or more classes separated by size for commercial construction purposes. The classes in group 2 of the commercial power equipment operator classifications that have new or stricken language are described below.

Class 504, Concrete pump with 50 meters/164 feet of boom and over This classification is a “split” of the existing classification 221, Pumpcrete, which is the only concrete pump in the existing classifications. A pumpcrete is primarily truck mounted concrete pump for pumping concrete horizontally, but the existing classification has been used for vertical concrete pumps in the past. Newly proposed class 504 in these commercial construction classifications is for the tallest of three classifications of vertical concrete pumps utilized in commercial construction. The classification is needed because the vertical type concrete pumps of varying heights are in common use in commercial construction. The concrete pumps that are 50 meters/164 feet in height are the tallest in use and require the highest degree of skill and experience to operate. It is reasonable to include the classification in group 2 of the commercial construction operators because the skill and experience necessary to operate the equipment are similar to the other equipment included in the group.

Class 505, Pile Driving when three drums in use This classification is existing class 204, renumbered, without change in language, necessary here because pile driving is in common use in commercial construction as well as highway-heavy construction. It is reasonable to include pile driving in Group 2 of the commercial power equipment classifications because the skill and experience required is comparable to the other equipment included in the group.

Class 506, Tower Crane 200 feet and over This classification is a “split” and consists of the portion of existing class 201, Tower crane, representing cranes over 200 feet in height. In the

commercial construction classifications, the tower crane classifications have been divided into three separate classifications in three different groups, which is needed based on height as representative of the level of skill and experience required. (See proposed class 502, above for tower cranes 250 feet and above.) Including the tower cranes of 200 feet and over in group 2 is reasonable because the level of skill and experience required are similar to the other equipment in the group.

Class 507, Truck or Crawler crane with 150 feet of boom up to and not including 200 feet, including jib Like proposed class 503, the classification is a “split” of the old classification 217, Tower Truck and Crawler Crane. The proposed class 507 is for the middle sized truck and crawler Cranes from 150 feet up to almost 200 feet. (See class 503 above for the taller truck and crawler cranes) The class is necessary because the height of cranes correlates to the level of skill and experience necessary to operate the crane. Group 2 of the commercial power equipment classification is a reasonable spot to include the classification for the middle sized truck and crawler cranes because the level of skill and experience required is similar to the other equipment in the group.

Group 3, Classes 508 – 514 (page 10 of rule, lines 17 through 25)

Group 3 of the commercial power equipment operator classifications, like groups 1 and 2, is mostly comprised of master job classifications derived from the existing power equipment classifications. Of the seven classifications included, one is a new classification, one is an existing classification with no change except renumbering, and five are pieces of equipment in the existing operator equipment classifications which have been split into two or more classes separated by size for commercial construction purposes. The classes in group 3 of the commercial power equipment operator classifications that have new or stricken language are described below.

Class 508, All-terrain vehicle crane This is a new classification for a type of crane now in common use on commercial construction type projects. An all terrain vehicle crane is a specialized type of crane mounted on an off-road type of truck featuring oversize wheels and tires and all wheel steering. These are different cranes than “truck cranes” which are mounted on trucks that can routinely be driven on the streets, but lack the all terrain capabilities of the “all-terrain vehicle crane.” The all-terrain vehicle crane can be driven on the street but routinely are used for moving around construction sites. All-terrain vehicle cranes are large cranes, having a capacity as high as 450 tons and one manufacturer of them is Grove. They are in common use in commercial type construction. There is a need for the classification because their use and capabilities are different than the other crane classifications and because their use is increasingly common. Group 3 of the commercial construction power equipment operator classifications is a reasonable place for the all-terrain vehicle classification to be placed because the level of skill and experience necessary to operate the equipment is similar to the other classifications in the group.

Class 509, Concrete pump 32 – 49 meters/ 102 -164 feet This classification, like proposed class 504 in group 2 above, is a “split” of the existing classification 221, Pumpcrete, which is the only concrete pump in the existing classifications. A pumpcrete is primarily truck mounted concrete pump for pumping concrete horizontally, but the existing classification has been used for vertical concrete pumps in the past. Newly proposed class 509 in these commercial construction

classifications is for the mid-height range of three classifications of vertical concrete pumps utilized in commercial construction. The classification is needed because the vertical type concrete pumps of varying heights are in common use in commercial construction. The concrete pumps that are 32 – 49 meters/102 - 164 feet in height are not the tallest in use and require a higher degree of skill and experience to operate than the shorter concrete pumps. It is reasonable to include the classification in group 2 of the commercial construction operators because the skill and experience necessary to operate the equipment are similar to the other equipment included in the group.

Class 510, Derrick, (guy and stiffleg) This classification is existing classification 208, renumbered, and with some unnecessary language deleted. The deleted language “ (power) (skid are stationary) is not needed because the modifying words (guy and stiffleg) describe all the derrick covered by the commercial classification.

Class 511, Stationary tower crane up to 200 feet The classification is a “split” of the existing “tower crane classification, existing class 205. The old classification is divided into several classifications for the commercial power equipment groupings, including proposed classes 502 and 506 (above) for the taller cranes, and classes 512 and 513 (below) for two specialty types of tower cranes, all of which are in common use on commercial type construction projects. The classification is needed because equipment is in common use on commercial type construction projects and reasonable because the skill and experience required are more akin to those required in the other equipment located in proposed group 3, as compared to the taller cranes in groups 1 and 2.

Class 512, Self-erecting tower crane 100 feet and over measured from boom foot pin This classification is another “split” from existing class 205. A self erecting tower crane is one of the two specialty types of tower cranes mentioned in the description of class 511 above. This piece of equipment is smaller than some of the other tower cranes, but is desirable because of its self erecting capability and is in common use on commercial type construction sites. The classification is necessary because its special capabilities make it different than standard tower cranes and because it has come into more common use. Locating the classification in group 3 is reasonable because the level of skill and experience required to operate the equipment is similar to the other lifting equipment in the group.

Class 513, Traveling tower crane This classification is the other “specialty type” tower crane and is the last “split” from the existing class 205, tower crane. This type of tower crane is actually equipped with tracks and can travel around the commercial construction type jobsite for use in different locations without complete disassembly which make it a unique type of tower crane. The classification is necessary because the equipment’s special capabilities make it different than standard tower cranes, and it is reasonably included in group 3 because the level of skill and experience required to operate the equipment is similar to the other lifting equipment in the group.

Class 514, Truck or crawler crane up to and not including 150 feet of boom, including jib This classification, like classes 503 and 507 above, is another “split” from the existing class 217, for truck and crawler cranes. These are smaller truck or crawler cranes. The classification is

necessary because the truck and crawler cranes are still in common use on commercial type construction sites. Placement in group 3 of the commercial construction power equipment operator classifications is reasonable because the level of skill and experience required to operate the equipment is similar to the other lifting equipment in the group.

Group 4, Classes 515 – 520 (page 10 of rule, line 26 through page 11, line 3)

Group 4 of the commercial power equipment operator classifications, like groups 1 through 3, is largely comprised of job classifications derived from the existing power equipment classifications. Of the six classifications included, one is a new classification, one is an existing classification with no change except renumbering, and four are pieces of equipment in the existing power equipment classifications have been split into two or more classes separated by size or combined for commercial construction purposes. The classes in group 4 of the commercial power equipment operator classifications that have new or stricken language are described below.

Class 515, Crawler Backhoe, including attachments This classification combines existing classes 203 and 209 for power equipment operators of crawler type backhoes and their attachments. The two existing classifications were separated by bucket size, three cubic yards and over, and up to three cubic yards and the corresponding highway-heavy construction power equipment classifications, proposed classes 305 and 314. The new language “including all attachments” is needed for enforcement purpose. The addition “including all attachments” parallels the new language in proposed classes 305 and 314 above and is reasonable to avoid disputes over the issue of whether the equipment ceases to be in the same classification if anything other than a bucket is attached to the equipment. The size differentiation is eliminated because, for commercial construction purposes it is not needed. Crawler backhoes on commercial construction type projects are not the larger size. The smaller sized crawler backhoes in common use on commercial type construction projects are smaller and more uniform in size, and it is reasonable to include a classification for them because the level of skill and experience required to operate the equipment is similar to the other equipment in the group.

Class 516, Fireperson, chief license This classification is a “split” from existing classification 284 for running the largest type boilers which require a Chief operating engineer’s license to run. The existing classification 284 includes all firepersons operating boilers of whatever size. The split classification is necessary because large boilers requiring high levels of skill and experience, as well as special licensure, to operate are in common use on commercial type construction projects. These boilers are often temporary boilers used to extend the traditional construction season and may remain onsite until the permanent boilers are installed. It is reasonable to include this proposed class in group 4 because the level of skill and experience required to operate the equipment is similar to the other equipment in the group and because of the licensure requirement.

Class 517, Hoist Engineer (three drums or more) This proposed classification is also a “split” of an existing power equipment operators classification. The existing class 242 is “split” by the size of the hoist involved, and this class (three drums or more) is for the operators of higher lift capacity hoists. The class is necessary because the higher lift capacity hoists require more skill and experience to operate. The inclusion of the higher lift capacity hoists in group 4 is reasonable

because the level of skill and experience required to operate the equipment is similar to the other equipment in the group.

Class 518, Locomotive, This classification is the existing class 213, renumbered with no additional language. It is necessary because locomotives are in use on commercial construction projects. The primary use is underground railways with smaller locomotives than are used on standard railways for removing materials from tunneling operations. The classification is reasonable because the level of skill and experience required to operate the equipment is similar to the other equipment in the group.

Class 519, Overhead crane (inside building perimeter) This is the new classification in group 4. This overhead crane is suspended from the roof or walls of a building and moves horizontally on tracks and lifts up and down, but does not have a boom or the ability to rotate like other types of cranes. Overhead cranes are in use inside the building perimeter during commercial type construction and therefore a classification for them is needed. They are not directly covered in the existing power equipment operator classifications. Placement in the commercial type construction power equipment operator classifications, group 4 is reasonable because the level of skill and experience required to operate the equipment is similar to the other equipment in the group.

Class 520, Tractor – boom type This type of equipment is utilized on both Highway-heavy construction and commercial construction and is covered under the existing class 216. Proposed class 520 is simply the existing class 216, as used in commercial type construction, renumbered, and with no change in language. Proposed class 319 in group 3 of the highway-heavy construction power equipment operators classifications is the highway-heavy classification for operators of the equipment. The classification is necessary to avoid a gap in prevailing wage coverage for the operators on commercial type prevailing wage construction projects. Including the classification in group 4 of the commercial construction power equipment heavy-equipment because the level of skill and experience required to operate the equipment is similar to the other equipment in the group.

Group 5, Classes 521 – 534 (page 11 of rule, lines 4 through 20)

Group 5 of the commercial power equipment operator classifications, like groups 1 through 4, is largely comprised of job classifications derived from the existing power equipment classifications. Of the fourteen classifications included, there are no new classifications. Of the fourteen, several are existing classifications with no change except renumbering, and several four are pieces of equipment in the existing power equipment classifications that have been split into two or more classes separated by size or combined for commercial construction purposes. The classes in group 5 of the commercial power equipment operator classifications that have new or stricken language are described below.

Class 521, Air Compressor 450 CFM or over (two or more machines) The classification is a “split” from the existing classification 248 which covered several types of machines in addition to air compressors, such as welding machines, generators or pumps, when an operator runs two or more machines. For commercial construction purposes, this proposed class 520 covers the

operation of two or more air compressors each 450 CFM or over. The classification is necessary because operating multiple machines of this size requires a greater degree of skill and experience than single operation and because operation of multiple large air compressors is common in commercial type construction. Including the classification in group 5 of the commercial construction power equipment is reasonable because the level of skill and experience required to operate the multiple compressors is similar to the other equipment in the group.

Class 522, concrete mixer This classification is existing class 233 of the combined power equipment operators classifications, renumbered, and with the language “on jobsite” removed. The classification is necessary because concrete mixers are in common use as part of commercial construction projects. Concrete mixers generally have the capacity of 50 to 300 cubic yards and are much smaller than concrete batch plants. The elimination of the language “on jobsite” is reasonable for enforcement purposes because concrete mixers, although usually located on a jobsite, may be located next to or adjacent to a site, and still be actively used as part of the commercial construction project. The placement of the classification in group 5 is reasonable because the level of skill and experience required to operate concrete mixers is similar to the other equipment in the group.

Class 523, Concrete pump up to 31 meters/101 feet of boom This classification is a “split” of the existing classification 221, Pumpcrete, which is the only concrete pump in the existing classifications. A pumpcrete is primarily truck mounted concrete pump for pumping concrete horizontally, but the existing classification has been used for vertical concrete pumps in the past. Newly proposed classes 504 and 509 (above) in these commercial construction classifications are for the taller of three classifications of vertical concrete pumps utilized in commercial construction. The classification is needed because the vertical type concrete pumps of varying heights are in common use in commercial construction. The concrete pumps that are up to 31 meters/101 feet in height are the shorter vertical concrete pumps in use on commercial type construction projects because they are not as high as the taller classes of pumps do not require the same degree of skill and experience to operate. It is reasonable to include the classification in group 2 of the commercial construction operators because the skill and experience necessary to operate the equipment are similar to the other equipment included in the group.

Class 524, Drill rigs, heavy rotary or churn or cable drill when used for caisson for elevator or building construction This classification is existing classification 238 of the combined power equipment operators classifications, renumbered, with some new language added to describe how the equipment is used in commercial type construction. These types of drill rigs are in common use on commercial type construction projects. The classification is necessary to provide coverage when drill rigs are used for commercial construction purposes. The new language “when used for caisson for elevator or building construction” is necessary to describe the main commercial construction applications for these types of drill rigs. The classification is reasonable because it describes the commercial construction applications of the drill rigs and because the skill and experience necessary to operate the equipment are similar to the other equipment included in the group.

Class 525, Forklift This is existing classification 239 of the combined power equipment operator classifications, renumbered, and with some language unnecessary for commercial construction

removed. The words “or straddle carrier” in the existing classification 239 are removed because a straddle carrier is a different piece of equipment and will be covered under proposed class 532. The classification is necessary because forklifts are in common use on commercial construction projects. The classification is reasonable as proposed because it will cover all forklifts on commercial construction projects and doesn’t require any examples of descriptive language, and because the skill and experience necessary to operate forklifts are similar to the other equipment included in the group.

Class 526, Front end, posi-track, and skid steer type loaders one cubic yard and over, including attachments. This is the existing combined power equipment operator classification 241, renumbered for inclusion in the commercial construction subpart. The language has been changed for enforcement purposes to parallel the changes in the equivalent highway-heavy construction classification, proposed class 344. It is necessary to include the new language “posi-track, and skid steer type loaders” because skid steer loaders and posi-track loaders are just a type of front end loader and having two separate classes causes enforcement problems and confusion in the field. The new language “with attachments” is necessary because front end loaders, usually seen with large buckets can be mounted with different attachments such as a large blade. This has resulted in enforcement problems in the past when the person operating the loader is using an attachment; the issue being to whether the classification of the attachment or the classification of the loader itself should apply. The same level of skill and experience to operate the loader still applies. The need derives from the enforcement problems and, because skill and experience requirements are similar, adding “including attachments” is reasonable.

Class 527, Hoist Engineer (One or two drums). This classification is a split of existing classification 242, Hoist Engineer (Power). The classification is split into two classifications for commercial construction purposes. The larger hoists (three drums or more) are in proposed class 517, group 4 of the commercial construction equipment operators classifications, (above) This proposed class is for the lower capacity hoists (one or two drums). Splitting the classification for commercial construction purposes is necessary to reflect the practice in the commercial construction industry. Placing the lower capacity hoists in group 5 of the commercial construction equipment operators classifications because the skill and experience necessary to operate the lower capacity hoists are similar to the other equipment included in the group.

Class 528, Mechanic - welder (on power equipment). This is existing classification 246 from the combined highway-heavy and commercial construction power equipment operators classifications, renumbered, with a change in language to clarify that that it applies to mechanic – welders working on power equipment as part of covered public works project. The classification is necessary because mechanics and welders commonly work on commercial as well as highway-heavy type construction. Including the classification in group 5 of the commercial construction power equipment operator classifications is reasonable because the skill and experience necessary to perform the duties of mechanics and welders on commercial power equipment are similar to the skill and experience required to operate the other equipment included in the group. The new language “(on power equipment)” is necessary for enforcement purposes because occasionally a misclassification issue arises where a contractor assigns this classification to a welder who is welding on structural steel instead of repairing equipment in the field. Adding

the new language is a reasonable way to clarify that this classification applies to mechanic – welders working on commercial type power equipment.

Class 529, Power plant (100 KW and over or multiples equal to 100 KW and over) This is another existing classification from the combined highway-heavy and commercial construction power equipment operators classifications, existing class 252. There is no change in language. The classification is necessary because these types of generators are in common use on commercial construction projects and including the classification in group 5 is reasonable because the skill and experience necessary to operate the lower capacity hoists are similar to the other equipment included in the group.

Class 530, Pump Operator and/or conveyor (two or more machines) This is a combination of three existing classifications from the combined highway-heavy and commercial construction power equipment operators classifications. Existing class 248 is for operators of “multiple machines, such as air compressors, welding machines, generators and pumps.” Existing class 282 is for operators of a “conveyor” and existing class 275 is for operators of a “pump” The new proposed class is for operators of pumps and covers, when operating two or more machines. The other machines classified in existing class 248, when an operator runs multiple machines, is not needed in the commercial construction classifications because the multiple machine operation classifications are listed separately by machine, such as proposed classes 521 for air compressors and 529 for power plants, both of which are in this Group 5 for commercial construction power equipment operators. This combination of operators of two or more pump and conveyors is necessary because the machine operator positions are listed separately for commercial construction purposes. The classification is reasonable because the skill and experience necessary to operate two or more pumps or conveyors are similar to the other equipment included in the group.

Class 531 Self-erecting tower crane under 100 feet measured from boom foot pin These smaller self erecting tower cranes have been covered under existing class 205. For commercial construction purposes, tower cranes are differentiated by size because the large height differences in the tower cranes in common use require different levels of skill and experience for operation. This classification is necessary to provide commercial construction coverage for these smaller self-erecting tower cranes. The classification is reasonable because the skill and experience necessary to operate these smaller self-erecting tower cranes are similar to the other equipment included in the group.

Class 532 Straddle carrier This classification is a split of existing class 239, forklift or straddle carrier, from the combined highway-heavy and commercial construction power equipment operators classifications. A straddle carrier is a mobile steel overhead frame which lifts the load from above unlike a fork truck which picks up its load from the bottom. An example of what is carried by a straddle carrier is a tub of concrete. The machines are in use on commercial construction projects and therefore it is necessary to have a classification to cover the work of the operator. The classification is reasonable because a straddle carrier is a different machine than a fork lift and because the skill and experience necessary to operate a straddle carrier are similar to the other equipment included in the group.

Class 533 Tractor over D2 This classification is a split of existing class 260, tractor bulldozer, from the combined highway-heavy and commercial construction power equipment operators classifications. These tractors are the larger bulldozers used on commercial construction projects. The classification is necessary to assure coverage for the operators and to account for the level of skill and experience necessary to operate the equipment. The classification is reasonable because the skill and experience necessary to operate the larger bulldozers used on commercial construction projects are similar to the other equipment included in the group.

Class 534 Well point pump, including dismantling and installation. This classification is existing class 262 from the combined highway-heavy and commercial construction power equipment operators classifications, slightly reworded, for use in the commercial construction setting. Well point pumps are used for dewatering earth on both commercial and highway-heavy type construction. They are commonly used in conjunction with sewer and water utility work but also for building and footing construction, to lower the water table temporarily during construction. The new “including dismantling and installation” is added to the old class 262 language to clarify that the classification includes installing and dismantling the well point pumps. The classification is necessary to assure prevailing wage coverage for the operators when these specialized pumps are used in commercial construction. The classification is reasonable because the degree skill and experience necessary to operate the well point pumps are similar to the other equipment included in the group.

Group 6, Classes 535 – 540 (page 11 of rule, line 21 through line 28)

Group 6 of the commercial power equipment operator classifications, like groups 1 through 5, is largely comprised of job classifications derived from the existing power equipment classifications. Of the six classifications included in group 6, there are no new classifications. Of the six, three are existing classifications with no change except renumbering, two are pieces of equipment in the existing power equipment classifications that have been split into two or more classes separated by size or combined for commercial construction purposes and one is an existing classification, but with some enforcement language added to parallel the change in language to the existing class in the highway-heavy construction power equipment operator classifications. The classes in group 6 of the commercial power equipment operator classifications that have new or stricken language are described below.

Class 535 Concrete batch plant This classification is an existing class from the combined highway-heavy and commercial construction power equipment operators classifications, existing class 228. There is no change in language. The classification is necessary to assure prevailing wage coverage for the operators because concrete batch plants are in common use on commercial construction projects. Including the classification in group 6 is reasonable because the skill and experience necessary to operate the lower capacity hoists are similar to the other equipment included in the group.

Class 536 Fireperson, first class license This classification is a split of existing class 284, fireperson or tank car heater, from the combined highway-heavy and commercial construction power equipment operators classifications. A fireperson is a boiler operator, and these boilers that

require a first class boiler operator's license to operate are the larger more powerful boilers utilized on commercial construction projects. The classification is necessary to assure coverage for the operators on commercial construction projects and to account for the level of skill and experience necessary to operate the equipment. The "or tank car heater" language from the existing classification is removed because it is not necessary for commercial construction purposes. The classification is reasonable because the level skill and experience necessary to operate the larger boilers requiring a first class license are similar to the other equipment included in the group.

Class 537 Front end, posi-track, and skid steer type loaders up to one cubic yard, including attachments This is the existing combined power equipment operator classification 268, renumbered for inclusion in the commercial construction subpart. The language has been changed for enforcement purposes to parallel the changes in the equivalent highway-heavy construction classification, proposed class 373. It is necessary to include the new language "posi-track, and skid steer type loaders" because skid steer loaders and posi-track loaders are just a type of front end loader and having two separate classes causes enforcement problems and confusion in the field. The new language "including attachments" is necessary because front end loaders, usually seen mounted with buckets can be mounted with different attachments such as a blade. This has resulted in enforcement problems in the past when the person operating the loader is using an attachment; the issue being to whether the classification of the attachment or the classification of the loader itself should apply. The same level of skill and experience to operate the loader still applies with or without the attachment. The need derives from the enforcement problems and, because skill and experience requirements are similar, adding "with attachments" is also reasonable.

Class 538 Gunite machine This classification is an existing class from the combined highway-heavy and commercial construction power equipment operators classifications, existing class 269, Gunite gunall. There is a minor change in language because including the word "gunall" is not necessary when using the word "machine" to modify the word "Gunite". A Gunite machine is similar to a pump and is used to apply material for the purpose of stabilizing soil. Common uses include soil stabilization in pipelines and sewer and water utility construction. Gunite machines are used in both commercial type construction and highway and heavy type construction. The classification is necessary to assure prevailing wage coverage for the operators because Gunite machines are in common use on commercial construction projects. Including the classification in group 6 is reasonable because the skill and experience necessary to operate the lower capacity hoists are similar to the other equipment included in the group.

Class 539 Tractor operator D2 or similar size This classification is a split of existing class 260, tractor bulldozer, from the combined highway-heavy and commercial construction power equipment operators classifications. These tractors are the smaller bulldozers used on commercial construction projects. The classification is necessary to assure coverage for the operators and to account for the level of skill and experience necessary to operate the equipment. The classification is reasonable because the skill and experience necessary to operate the smaller bulldozers used on commercial construction projects are similar to the other equipment included in the group.

Class 540 Trenching machine (sewer, water, gas) excludes walk behind trencher This classification is an existing class from the combined highway-heavy and commercial construction

power equipment operators classifications, existing class 261. There is no change in language. The classification is necessary to assure prevailing wage coverage for the operators because concrete trenching machines of this type are in common use on commercial construction projects. Including the classification in group 6 is reasonable because the level of skill and experience necessary to operate the trenching machines are similar to the other equipment included in the group.

Group 7, Classes 541 – 547 (page 11 of rule, line 29 through page 12, line 6)

Group 7 of the commercial power equipment operator classifications, similar to groups 1 through 6, is comprised of job classifications derived or simply moved from the existing power equipment classifications. Of the eight classifications included in group 7, there is one new classification. Of the eight, four are existing classifications with no change except renumbering, two are pieces of equipment in the existing power equipment classifications that have been split into two or more classes separated by size or combined for commercial construction purposes, one is combination of two existing classifications and one is a new classification. The classes in group 7 of the commercial power equipment operator classifications that have new or stricken language are described below.

Class 541 Air Compressor 600CFM or over This classification is existing class 263, Air compressor, 600 CFM or over, from the combined highway-heavy and commercial construction power equipment operators classifications. There is no change in language. The classification is necessary to assure prevailing wage coverage for the operators because air compressors of this size are in common use on commercial construction projects as well as highway-heavy type projects. Including the classification in group 7 is reasonable because the required skill and experience necessary to operate air compressors of this size are similar to the other equipment included in the group.

Class 542 Brakeperson This is a new classification. A brakeperson assists in moving railroad cars. Brakepersons are working on working on commercial construction projects. The classification is necessary to assure prevailing wage coverage for the brakepersons because they are at work on commercial construction projects. Like the new proposed class 518, Locomotive, the primary work for brakepersons use is underground small gauge railways with smaller locomotives than are used on standard railways for removing materials from tunneling operations. Including the classification in group 7 is reasonable because the required skill and experience necessary to perform the job are similar to the other equipment operators included in the group.

Class 543 Concrete pump/ pumpcrete or complaco type This classification is existing class 221, Pumpcrete, from the combined highway-heavy and commercial construction power equipment operators classifications. The language is changed slightly to clarify that a “pumpcrete” and a “complaco” are two brands of concrete pumps that are used to move concrete in a horizontal direction as opposed to the vertical lift type concrete pumps. “Pumpcrete” or “complaco” are the brand names of truck mounted machines used to pump concrete horizontally and require a lower level of skill and experience to operate than the tall vertical lift concrete pumps. Pumpcreters and complacos are in use on commercial construction projects and it necessary to have a classification

for their operators to assure prevailing wage coverage on prevailing wage commercial construction. It is reasonable to place the classification in Group 7, because the required skill and experience necessary to operate this type of concrete pump are similar to the other equipment included in the group.

Class 544 Fireperson, temporary heat second class boiler license This classification is a split of existing class 284, fireperson or tank car heater, from the combined highway-heavy and commercial construction power equipment operators classifications. A fireperson is a boiler operator, and these boilers that require boiler operator's license, but not a "first class" license, to operate are the smaller boilers utilized on commercial construction projects, smaller than the boilers covered in proposed class 536 in group 5 above. The boilers smaller than those requiring a first class license to operate are in use on commercial construction projects and the classification is necessary to assure coverage for the operators on these prevailing wage projects. It is reasonable to place the classification in Group 7, because the required skill and experience necessary to operate these smaller boilers are similar to the other equipment included in the group.

Class 545 Oiler (power shovel, crane, truck crane, dragline, crushers and milling machines, or other similar equipment) This classification is proposed class 394, Oiler (power shovel, crane, truck crane, dragline, crushers and milling machines, or other similar equipment), from the highway-heavy construction power equipment operators classifications. The language is identical to the language for proposed class 394. Old class 294 for truck crane oiler is eliminated and the result is that there is one class to include oiler work in each of the new subparts for highway-heavy and commercial construction power equipment operators. The classification is necessary to assure prevailing wage coverage for the oilers because they routinely work on commercial construction projects as well as highway-heavy type projects. Including the classification in group 7 is reasonable because the required skill and experience necessary to operate air compressors of this size are similar to the other equipment included in the group.

Class 546 Pick-up sweeper (one cubic yard hopper capacity) This classification is a "split" of existing classification 289, Power Sweeper, from the combined highway-heavy and commercial construction power equipment classifications. A Pick-up sweeper is a mechanical street sweeper like the ones that sweep city streets in the fall and spring. It has a large power broom and a hopper to pick up the material swept from the driveways and parking lots around commercial type construction projects as part of the scope of work under the construction contract. The hopper contents are dumped into trucks for disposal. The classification is necessary because it is the prevalent type of sweeper in common use on commercial construction type public works projects. The classification is reasonable because the skill and experience necessary to operate air compressors of this size are similar to the other equipment included in the group. Existing class 289 which is renumbered as class 395, Power Sweeper, in the proposed rules remains in the highway-heavy equipment classes and better describes a mechanized sweeper which has a power broom, but does not pick up the swept materials into a hopper. This is the more prevalent type of sweeper used on highway-heavy type projects.

Class 547 Pump and/or conveyor This classification is a combination of existing classes 275, pump, and 282, conveyor, from the combined highway-heavy and commercial construction power equipment operators classifications. The pumps covered are sometimes called "trash" pumps and

are use to remove water and small debris basements, excavations or ditches. Conveyors require a similar level of skill and experience top operate, so the decision was made to combine the classifications. Pumps and conveyors are in use on commercial construction projects and it necessary to have a classification for their operators to assure prevailing wage coverage on prevailing wage commercial construction. Including the classification in group 7 is reasonable because the required skill and experience necessary to perform the job are similar to the other equipment operators included in the group.

Group 8, Classes 548 – 550 (page 12 of rule, lines 7 through 10)

Group 8 of the commercial power equipment operator classifications, like the other groups in the subpart, is comprised of job classifications derived or simply moved from the existing power equipment classifications. Of the two classifications included in group 8, there is one new classification and one for equipment in the existing power equipment classifications that have been split into two or more classes separated by size or combined for commercial construction purposes. The classes in group 8 of the commercial power equipment operator classifications that have new or stricken language are described below.

Class 548 Elevator operator This is a new classification. An elevator operator runs an elevator used as a freight elevator during commercial construction of buildings. It is similar to the work performed by existing class 242, hoist engineer, but the equipment is an elevator in side a building under construction. The position developed in the industry because of delays caused by various work crews or trades working in the building using elevators themselves for their jobs, but locking the elevators out on the floors of their work locations, causing construction delays for other work crews or trades. Designating an elevator operator keeps the elevator in use and available for the crews and trades needing to use it, thereby increasing productivity and reducing delays. Elevator operators are working on working on commercial construction projects for these purposes. . The classification is necessary to assure prevailing wage coverage for the elevator operators. Including the classification in group 8 is reasonable because the required skill and experience necessary to perform the job are similar to the other equipment operators included in the group.

Class 549 Greaser This classification is the commercial type construction version of existing class 286 in the combined highway-heavy and commercial construction power equipment classifications. Greaser is the term used to describe the job of general maintenance on power equipment in the field as opposed to the term Mechanic-welder which is used to describe the workers who perform repairs in the field such as engine or transmission repair and welding broken equipment. The greaser performs general maintenance such as changing the engine oil, greasing the equipment, adding or changing hydraulic fluid, and fueling the equipment. The classification is necessary to insure coverage for the workers performing these tasks on commercial type construction projects. Placing the classification in group 8 is reasonable because the required skill and experience necessary to perform the job are similar to the classifications included in the group.

Class 550 Mechanical space heater (temporary heat) This classification is a split of existing class 284, fireperson or tank car heater, from the combined highway-heavy and commercial construction power equipment operators classifications. A fireperson is a boiler operator, and these boilers that require boiler operator's license. Proposed classes 515, 535, and 544 in the commercial construction power equipment operators classifications are all for operation of various sized boilers. This classification is for temporary heat during construction and the equipment is mechanical space heaters that are not boilers and require no license to operate. The mechanical space heaters are in use on commercial construction projects and the classification is necessary to assure coverage for the operators on these prevailing wage projects. It is reasonable to place the classification in Group 8, because the required skill and experience necessary to operate these smaller boilers are similar to the other equipment included in the group.

Subpart 4. Truck Drivers

This is the existing subpart of the master job classifications rule which applies to truck drivers on both highway-heavy construction and commercial construction type prevailing wage projects. There is very little change to the subpart in the proposed rule.

The most noticeable change is to renumber all the existing truck driver classifications from the "300" series to the "600" series. The renumbering is necessary because of the addition of the two new subparts to the rule, new subpart 2a. "Special equipment," and new subpart 3b. "Power Equipment operators." The existing truck driver master job classifications remain the same, except for a small amendment to one class and the grouping of the classifications is identical to the existing rule. Renumbering the classifications and retaining the existing groups is reasonable because adding two new subparts and retaining the sequential numbering of all the master job classifications from Laborers all the way through to the special crafts in construction would not be possible without renumbering. The only other change to the truck driver classification an amendment to existing class 312 described below.

Group 2 of Subpart 4, Truck Drivers, proposed class 612, Rubber-tired packer, under eight tons is the only truck driver master job classification to any language change. Proposed class 612 is identical to existing class 312 with the addition on the modifying language, "under eight tons" The purpose of the amended language is to clarify that the truck driver classification includes the smaller rubber tired packers used on highway-heavy construction and commercial construction. The change is necessary to aid in enforcement and to avoid confusion with the larger rubber tired packers and the steel drum packers in the highway-heavy classifications, proposed classes 327, and 397 in subpart 3, Power equipment operators – highway and heavy projects. The change is reasonable because it describes the rubber tired packers operated by truck drivers and present in the master job classifications since at least 1990.

Subpart 5. Special Crafts

This is the existing subpart of the master job classifications rule applies to the construction crafts on both highway-heavy construction and commercial construction type prevailing wage projects. There are minor changes to the subpart in the proposed rule.

The first change is renumber all the existing special crafts from the “400” series to the “700” series. The renumbering is necessary because of the addition of the two new subparts to the rule, new subpart 2a. “Special equipment,” and new subpart 3b. “Power Equipment operators.” The existing special craft job classifications remain the same, except for amendments to two existing classes and the addition of one new classification. Renumbering the classifications is reasonable because adding two new subparts and retaining the sequential numbering of all the master job classifications from Laborers through to the Special crafts in construction would not be possible without renumbering . The two amended classifications and one new classification are described as follows.

Class 715 Painters (including hand brushed, hand sprayed, and the taping of pavement markings) This is existing class 415, Painters with the new language “including hand brushed, hand sprayed and the taping of pavement markings.” The new language is necessary to clarify that the hand painting of pavement markings remains part of the painter classification where it has been. The new classification in subpart 2a, Special Equipment, proposed Class 205 “Truck for pavement marking or removal (one or two person operators)” is proposed to cover the operators of truck mounted machines used to mark pavement. Previously the painters classification had covered all pavement marking, which traditionally was paint. The department and MNDOT and DOLI were defendants in case AAA Striping Service Co. V Minnesota Department of Transportation and Minnesota Department of Labor and Industry, 681 N.W.2d 709,9 (Minn. App. 2004). The plaintiffs alleged that painting of road markings was largely done by machine and that the departments should be enjoined from enforcing the painters classification. Subsequently the Advisory committees heard testimony regarding the issue and the decision was made to create a new classification for truck mounted pavement marking machines. Retaining the hand application of the markings remains part of the painters classification is reasonable because that is where it as been and because it is reflected in the painters union contract and the scope of work in painters’ apprenticeship agreements.

Class 723 Terrazzo workers / marble setters This is existing class 423, Terrazzo Workers with the addition of the new language “/marble setters.” The new language is necessary to clarify that the scope of work in the classification includes the work performed by marble setters. The change is necessary for enforcement purposes to assure prevailing wage coverage for marble setters. The change to the classification is reasonable because the marble setters perform work similar to Terrazzo workers and the work requires similar skill and experience to perform.

Class 725 Tile Finisher This is a new classification which is separate from but related to the existing class 424 Tile Setters. The scope of work of a tile finisher is not as broad as tile setter. Tile finisher work includes mixing grout, grouting and surfacing all types of tile, cutting tile, and sealing surfaces. Tile setters set the tile, repair and patch tile, layout the work, install substrates; , install showers, countertops, floors, and steps; lay quarry tile; install ceilings, mantels, hearths, swimming pools, domes, columns, and arches; and other work not performed by tile finishers. The

additional class is necessary because the tile finisher is a separate craft from tile setter. The class is also necessary for enforcement to assure prevailing wage coverage for tile setters. The addition of the class is reasonable because, although related to tile setter work, tile finisher is a recognized apprenticeable construction craft in its own right and tile finishers are performing work on prevailing wage projects.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

June 19, 2008



Steve Sviggum
Commissioner