

## **Minnesota Department of Labor and Industry**

### **Apprenticeship and Labor Standards Division**

#### **STATEMENT OF NEED AND REASONABLENESS**

#### **Proposed Amendment to Rules Relating to Prevailing Wage Category Descriptions in Primary Classes of Labor for Laborers and Special Crafts, Minnesota Rules, Parts 5200.1000 to 5200.1120.**

#### **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 (DLI) 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 injunctions.

In 1997 rule amendments made major changes to the way prevailing wages for highway and heavy construction are calculated and major changes 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 numerous 1995 and 1996 advisory committee meetings. The 1997 rule amendments provided in major part that:

1. Highway and 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 and heavy construction prevailing wage rates would be set. In the years leading up to the 1997 rule attempting to certify highway and heavy rates by county had produced numerous instances of missing rates which resulted in significant gaps in coverage for the prevailing wage for highway and 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, DLI would look to the adjacent counties to set the rate. Moving to surveying for and setting highway and 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 and heavy construction and commercial construction. This change was needed because the survey process had failed in numerous instances to produce rates in counties. This resulted in gaps in prevailing wage coverage and uncertainty in bidding. Pursuant to Minn. Rule 5200.1040 Clause "E." the department considered the collective bargaining agreements and apprenticeship agreements among other things in determining the 6 groups of equipment to use. The combination of using 10 areas to set highway and heavy construction prevailing wages, and the groupings of power equipment used on both highway and heavy and commercial construction projects resulted in a dramatic drop in "missing" rates throughout the state. This dramatically reduced the gaps in prevailing wage coverage and the bidding uncertainty problems.
3. Subpart 4 of the rule, then consisting of ten classifications, was divided into 4 groups. Five new classifications were added to reflect changes in the types of trucks used in construction and some ancillary equipment. These changes were needed because, as for 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 not recognize or deal with the fact that, although the types the power equipment used in highway and heavy construction and commercial construction did 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 and 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

In 2001 the department promulgated rules resolving the court injunctions from truck rental rate litigation and implementing the surveying for truck operating costs and determination of truck rental rates in 2001.

These 2001 rule amendments related to the master job classifications for which the Department makes prevailing wage determinations. Other topics included definitions, apprentices, corrections of rate determinations, 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. By 2008, the department's master job classifications had not been revamped since 1997. The master job classification rules needed to be updated to reflect these changes in technology and construction practices and to reflect the differences between highway and heavy construction and commercial construction, particularly with respect to power equipment operators.

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

The department's 2008 proposed amendments applied to highway and heavy construction, and also had application to commercial construction because of new classifications created. For commercial construction a new subpart consisting of groupings of power equipment classifications mostly used on commercial construction was created.

After hearing, these 2008 proposed amendments were adopted in 2009. Examples of job classification issues resolved were: creating separate classifications and or rates for pieces of equipment used in highway and heavy and commercial construction; creating new classes for and altering the classifications applying to landscaping and seeding; 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, and off-road trucks.

## CURRENT RULEMAKING

The 2008 rulemaking proceeding resulting in the rules adopted in 2009 dealt primarily with power equipment operator, truck drivers and special types of equipment. During the rulemaking process and at the hearing, commenters suggested that there was a need to define the job responsibilities of the various job classes, in particular the job responsibilities of common and skilled laborers in comparison to those of skilled tradesmen. The need to describe the job responsibilities of common and skilled laborers in comparison to those of skilled tradesmen is not a new need that surfaced only in the 2008- 2009 rulemaking.

There are three major ways in which the prevailing wage can be evaded. One is to completely ignore the law: ignore or falsify the required certified payroll reporting, and take a chance that the prevailing wage violations will not be detected. This method doesn't usually work and seems not to occur very often. The second method is to claim that certain construction workers are not covered by any master job classification because their job duties are new or different. The second method runs afoul of the prevailing statute that provides the worker may not be paid less than the prevailing wage rate for the same or most similar trade or occupation in the area. This method has resulted court decisions in case-by case enforcement actions in which the court suggests DLI resolve future instances through rulemaking. AAA Striping Service Co., vs Minnesota Department of Transportation and Minnesota Department of Labor and Industry 681 N. W. 2d 706; 2004 Minn. App. The third method is to misclassify workers by using common laborers or skilled laborers instead of skilled tradesmen, or the "Special Crafts" as they are called in the master job classifications. The Laborer classifications normally have a lower rate than the Special Crafts classifications. This third method is the source of most prevailing wage complaints, investigations, and prevailing wage enforcement actions at MNDOT and DLI.

Most Contractors, both union and non-union, want certainty in bidding and want to avoid misclassification problems arising during the construction project after the contracts have been awarded and construction commenced.

This rulemaking is for the purpose of describing the Nature of work, typical duties and typical tools used in the Master Job Classifications for Laborers, Classification Nos. 101 -112, and the Special Crafts, Classification Nos. 701 – 730. The proposed rules do not attempt to do the same to the classifications for operators of Special Equipment, Power Equipment Operators and Truck Drivers, because there is not confusion about the scope of work for the operators or drivers of this equipment.

This rulemaking proceeding was instituted by a Request for Comments published in the State Register on August 18, 2008, after the hearing in the 2008 rulemaking proceeding but, before the Report of the Administrative Law Judge was issued and the rules were adopted. In the Request for Comments the department announced the creation of a Prevailing wage work group for definition of the classes of Labor for Laborers and Special Crafts.

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The formation of the work group and its two meeting dates, times, and location of meetings on November 5, 2008 and December 2, 2008 were also included in the Request for Comments. The rule was developed in cooperation with the Department of Transportation, and Department of Transportation staff attended the prevailing wage work group meetings to be available to answer questions of the committee and to listen to committee concerns. DLI gathered input from work group members, In addition, the prevailing wage work group meetings were open to the public, and members of the audience were invited to speak. Comment sheets were also passed out to all meeting attendants and collected after each meeting. The department received a large amount of input from the Request for Comment and the members of the work group. The department considered this input in proposing these rules, in addition to reviewing the sources required by Minn. R. 5200.1040.

### **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 Laura Alsides at the Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155, phone (651) 284-5006, fax (651) 284-5725, or email to [dli.rules@state.mn.us](mailto:dli.rules@state.mn.us). TTY users may call the Department of Labor and Industry at (651) 297-4198.

### **STATUTORY AUTHORITY**

The Department's statutory authority to adopt the rules is set forth in Minnesota Statutes §§ 175.171 and 177.28.

The general rulemaking authority of Minn. Stat. § 175.171, item 2, states in pertinent part:

“The Department of Labor and Industry shall have the following powers and duties:

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(2) to adopt reasonable and proper rule relative to the exercise of its powers and duties...

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The Department's specific statutory authority is set forth in Minn. Stat. §§ 177.21 to 177.44. Section 177.43, subd. 4, directs the department to determine prevailing wage rates for all trades and occupations on projects other than highway; and 177.44, subd. 3 and 4, direct the department to investigate and define the classes of labor and prevailing wage rates for highway construction projects. These proposed rule amendments deal with both highway and heavy construction and commercial construction.

These sources of statutory authority were effective prior to January 1, 1996, and so Minnesota Statutes § 14.125, does not apply. *See* Minnesota Laws 1995, chapter 233, article 2, section 58.

Effective July 1, 2007, Minn. Stat. § 177.28, granted the Department general rulemaking authority to promulgate these rules.<sup>1</sup> Minn. Stat. § 177.28, subd. 1, states:

“The commissioner may adopt rules, including definitions of terms, to carry out the purposes of sections 177.21 to 177.44, to prevent the circumvention or evasion of those sections, and to safeguard the minimum wage and overtime rates established by sections 177.24 and 177.25.”

Pursuant to Minn. Stat. § 14.125, the Department used this general rulemaking authority by publishing a notice of hearing in the June 23, 2008 State Register well within the 18 months of the effective date of Minn. Stat. § 177.28, subd. 1. Because the Department used this rulemaking authority within the statutory time limit the authority has not expired.

Under these statutes, the Department has the necessary statutory authority to adopt the proposed rules.

### **NO IMPACT ON FARMING OPERATIONS**

Minn. Stat. § 14.111 provides that before an agency may adopt or repeal rules affecting farming operations, it must provide a copy of the proposed rule change to the commissioner of agriculture at least 30 days prior to the publication of the rule in the State Register.

These proposed rules deal with describing the master job classifications for Laborers and Special Crafts who work on highway and heavy construction projects and commercial construction projects funded in whole or in part with state funds. The proposed rules have no direct impact and do not impose any burden or restriction on farming operations. The Administrative Law Judge should find that the proposed rules do not have any affect on farming operations and that no additional notice as contemplated by the statute is required.

### **REGULATORY ANALYSIS**

Minnesota Statutes § 14.131, sets out seven factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below restate these factors and then give the agency's response.

**(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:**

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<sup>1</sup> See 2007 Minn. Laws, Chapter 135, Article 3, Section 9; <https://www.revisor.mn.gov/laws/?id=135&doctype=Chapter&year=2007&type=0>

The classes of affected persons: This rule will affect contracting agencies, contractors, subcontractors and employees of contractors working on prevailing wage projects. All of the affected individuals will benefit from the rule as it will give all affected classes a clearer picture of what types of work fall under the Laborer classifications and the Special Crafts skilled trades listed in Minnesota Rule 5200.1100, subparts 2 and 5. Costs for all affected classes should be reduced because of the clarification of the work performed in these two portions of the Master Job Classifications. There should be a reduction in complaints, investigations, and contested case hearings. Currently contractors may mistakenly underbid by using the incorrect labor code to classify employees. This rule will assist contractors in correctly classifying their workers, so their initial bids are more accurate, reducing the chance of increased costs after the project is well underway or completed.

Those that will bear the costs of the proposed rule amendment: The costs to Labor and Industry regarding the implementation and enforcement of this rule should be limited to publishing the rule and notifying stakeholders. The benefit of the rule is an expected drop in prevailing wage violations and contested case hearings. There should be no increased costs to contracting agencies or the enforcing agencies, DOLI and MNDOT, because contractors and subcontractors should be better able to assign the correct classifications and hours for the workers in advance of the bids. Those that may bear some costs with the adoption of the proposed rule amendments in a low bid competitive bidding system include some construction contractors and subcontractors who are currently not paying construction workers the correct prevailing wage; the workers are misclassified as Laborers while performing the work of one of the Special Crafts such as carpenters. It is possible that these contractors and subcontractors will absorb some of the costs of this rule amendment. However, all of the Laborer Classifications and Special Crafts classifications described are currently in place. Because most workers are correctly classified under the current rules, the increased labor costs should be minimal. 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 minimal because none of the work described in affected classifications is uncovered work. Also, the extent of possible increased labor costs is speculative because, although all workers are covered by the existing classifications, the annual prevailing wage survey process may either increase or decrease the certified prevailing wage rate for the type of work being performed.

**(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 costs to Labor and Industry regarding the implementation and enforcement of this rule should be minimal and limited to publishing the rule and notifying stakeholders. 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 and heavy construction discussed below. DLI'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, DLI expects to experience an overall future cost savings in enforcement because the use of case-by-case enforcement on master job classification issues clarified by these rule amendments should be reduced.

The probable costs to any other agency of implementation and enforcement: There should be only minimal additional administrative costs to the Department of Transportation with no increase in the number of classifications available on projects. However, the 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, the cost of a court reporter and the cost for the Assistant Attorney General's services. The Attorney General bills the 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. These lawsuits are costly for MNDOT, DLI, and the construction industry

Any anticipated effect on state revenues: The proposed rule amendments 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 contractors and construction workers, and also affects 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 cannot be achieved through less costly methods: The purpose of the prevailing wage 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.

There are no less costly methods. The major responsibility to correctly classify construction workers falls on contractors and subcontractors. The current rule requires individuals to consult collectively bargained 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 to assist in classification of a type of work. This requires individuals to consult numerous documents on a case-by-case basis. Although the information is kept on file at the department, some contractors do not have direct access to this information, particularly the collectively bargained agreements and apprenticeship agreements, without submitting a public information request.



The proposed rule amendments 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 descriptions of the work performed in the Laborer and Special Craft classifications when prevailing wage rates are required to be paid. This will provide a more level playing field for contractors bidding on projects and ensure that low bids are based on greater efficiency and not made by undercutting the wages of workers through misclassification.

All of the Laborer and Special Craft classifications described are already included in an existing classification and are enforced on prevailing wage projects. These classification descriptions will have no significant cost impact on state funded construction because they are already covered under an existing class. Neither Labor and Industry or MNDOT is aware of a less costly method of describing the Laborer and Special Craft master job classifications.

The purpose of the proposed rule amendment cannot be achieved through less intrusive methods: The purpose of the rule amendments is to describe the master job classifications for Laborers and Special Crafts to reduce the level of misclassification of Laborers and Special Craft workers on prevailing wage projects. 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 under which master job classification to report each worker. These rules should make that task easier. Although there are still a large number of classifications to use, it will be more clear which classification to use for each worker. Contracting agencies do have to include the prevailing wage rates for a large number of job classifications in their construction contracts, but the prevailing wage rates for all the classes, including the descriptions of work performed, are available on the internet and can be downloaded easily at no cost.

**(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:**

The current rule requires individuals who are not already familiar with work performed in the Laborer and Special Crafts classifications to consult collectively bargained 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 to assist in classification of a type of work. This requires individuals to consult numerous documents on a case-by-case basis. Although the information is kept on file at the department, some contractors do not have direct access to this information without asking the department. This type of analysis often leads to contracting agencies determining class of labor after a project is bid and after work is performed. This puts the contractor whose employees were misclassified financially in harm's way. It may initially give the contractor an unfair bidding advantage against contractors who have classified the work appropriately. The new rule reduces the chance of confusion, resulting in a bidding process which is fairer and less costly to the contractor and contracting agency.

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

Case-by-Case Enforcement: MNDOT and DLI have authority to enforce the prevailing wage statute and existing rules on a case-by-case basis. However, this method is not preferred because it is not as effective an implementation method as adopting rules, 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. Also, case-by-case enforcement without clear description of the nature of work, typical duties, and typical tools used for Laborer and Special Crafts master job classifications in the rules has proven to be difficult for contactors, employees and the agencies.

Contract Guidelines: Historically, MNDOT has attempted through the bidding procedure to provide contract guidelines. Due to the general applicability and future effect of these guidelines, the courts have in some of the cases but not in others ruled that these attempted guidelines constituted unpromulgated rulemaking. The bidders' guidelines could be considered less intrusive and are more efficient, but due to the resulting litigation and injunctions they were not considered a viable alternative.

Detailed Descriptions of all Master Job classifications: The existing Master Job Classifications for Special Equipment, Power Equipment Operators Highway and Heavy Projects, Power Equipment Operators Commercial projects, and Truck Drivers, Minn. Rules, Part 5200.1100, Subparts 2a, 3, 3a, and 4, were just adopted and updated effective in March 2009. Consideration was given to a more thorough description of these 166 master job classifications. However, these classifications all refer to the operators of types of construction equipment or drivers of trucks used in construction and are readily understood throughout the construction industry. Assigning the incorrect classification for these operators and drivers almost never, if ever, occurs and should it arise is simply resolved by reference to the type of power equipment or truck operated. The 42 master job classifications for Laborers and Special Crafts are the source of most of the confusion and questions and the vast majority of misclassification of workers. Therefore it was determined to limit the descriptions in this rulemaking to the classifications for Laborers and Special Crafts where the problems and sometimes confusion exist and there is a clear need reduce the amount of misclassification occurring.

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. Contract guidelines or notices were rejected because DOLI is not a contracting agency and MNDOT has abandoned them 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 for the Laborers and Special Crafts classifications.

**(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:**

These rule amendments should not increase the costs of contracting agencies, contractors, subcontractors or employees of contractors working on prevailing wage projects. The purpose is to clarify existing rules, reduce misclassification, reduce the need for case-by-case enforcement, and not to increase costs for any of the affected parties.

### **Estimated Fiscal Impact of Proposed Prevailing Wage Rules Change**

The proposed rules clarify the existing master job classifications for Laborers and Special Crafts by providing descriptions of the nature of the work, typical duties, and typical tools used for the already existing job classifications in these two areas. The master job classifications for Special Equipment, Power Equipment Operators and Truck Drivers are not changed, except for the addition of Class No. 205 Pavement marking or removal equipment,(one or two person operators) in the Special Equipment category and a minor clarification to existing Class No. 601, Mechanic – welder in the Truck Drivers category.

Adding descriptions of the job classifications for Laborers and the Special Crafts is not expected to have any significant impact on construction costs covered by the prevailing wage laws. Workers in each of the classifications described are currently working on public projects and being paid the proper prevailing wage according to their job classification by contractors. The rule amendments do nothing to expand the coverage of the prevailing wage. The prevailing wage rates are based on the modal wages collected by the annual prevailing wage survey. The proposed new language describing the nature of the work, typical duties, and typical tools for the existing master job classifications for Laborers and Special Crafts is designed to better describe the classes to reduce misclassification disputes and confusion in bidding prevailing wage jobs and in assigning workers to the correct classification.

It is possible that reduction of worker misclassifications may result in some workers being paid slightly more money while others could be paid slightly less money, according to the re-classification of workers by various contractors. It is unknown how much of the work in the affected classes is being performed by union or non-union workers, and thus whether the union wage rates are already being used for the work. The wages for workers in the correct classifications will also be used, through the prevailing wage survey, to set the prevailing wages for future years.

To understand the potential effects of reclassifications, the effects of wage level changes per million dollars in total contract costs were examined. If labor costs account for 30 percent of contract costs and five percent of all labor hours are increased by five percent, then contract costs would increase by 0.08 percent (8 hundredths of one percent). This would increase the \$1 million contract by \$750. At this rate, \$2 billion in contracts would be increased by \$1.5 million. However, it is just as likely that costs will decrease. (The total amount of highway and heavy construction projects administered by MNDOT is in the range of \$2 billion.)

Changes in wage levels due to economic conditions and changes in union contracts will also affect

construction wages, and potentially much more than these rules changes. Construction wages have been level or decreasing slightly in the past few years. The annual average weekly wage for private-sector construction workers, calculated by the Minnesota Department of Employment and Economic Development through its Quarterly Census of Employment and Wages program, decreased from \$1,015 in 2008 to \$1,006 in 2009. The average weekly wage for employees of specialty trade contractors decreased from \$953 to \$931, a drop of 2.3 percent. During that same period, the average weekly wages for heavy and civil engineering construction firms increased by 5.6 percent, from \$1,257 in 2007 to \$1,327 in 2008. This trend has continued into 2010; wage estimates from the Current Employment Statistics program indicate a 6.7 percent decrease in the weekly wage from specialty trade contractors.

Recent union contracts also indicate that wage rates are either holding level or dropping. In one case, tile finishers, wages on the new union contract decreased by 18 percent.

Based on a review of the proposed rule changes and analysis of possible effects of prevailing wage changes, it is estimated that these rule changes will have no impact or negligible impact on the overall costs to the parties.

**(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:**

Misclassification disputes will be resolved using required resources outlined in current rule until this proposed rule is adopted. This results in increased costs for investigation, litigation, hidden costs to contractors, increased costs to contracting agencies in regards to the administration and enforcement of prevailing wage, and lower wages to misclassified construction workers. These are the costs and consequences of not adopting the rule amendments

**(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:**

The Federal Department of Labor handles prevailing wage issues differently. They do not have a master job classification list in their rules.

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 that 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 allows 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 wage statute and Chapter 14 of the 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.

Several of the other states that have their own prevailing wage laws have also adopted rules describing or defining their master job classifications.

These differences are part of the reason the department did not seriously consider expanding the number of separate classifications in attempt to deal with misclassification issues. 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. Expanding the number of classifications as a method to reduce misclassification would result in an 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 §§ 14.002 and 14.131, require that this 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.

These rule amendments clarify the scope of the existing Laborer and Special Crafts classifications in Minnesota Rule 5200.1100. The rule will allow an easily accessible list of definitions for laborers and skilled trades. Current reference documents are not easily accessible to the general public. Well-written definitions should assist both contractors and contracting agencies in the administration and enforcement of prevailing wage. The rules were developed using the materials required in Minn. Rule 5200.1040.

These rule amendments promote 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 misclassification of construction workers on prevailing wage projects. Contractors have the primary responsibility of assigning their workers to the correct master job classifications.

## **ADDITIONAL NOTICE**

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a [date] letter by Administrative Law Judge [name].

Minnesota Statutes §§ 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 construction workers, building trade unions, contracting agencies, contractors, subcontractors and owners of construction projects financed wholly or in part with state funds.

The Department will send a news release describing the Notice of Hearing to trade associations including Associated General Contractors, Associated Builders and Contractors, Minnesota Building and Construction Trades Council, and the International Brotherhood of Teamsters with a request that it be published in the associations' newsletters or that notice be sent to all association members.

The Department will mail or email the Notice of Hearing to:

1. Members of the Prevailing Wage Work Group;
2. Associated Builders and Contractors
3. Minnesota Building and Construction Trades Council;
4. Association of General Contractors;
5. Minnesota Electrical Association;
6. Office of Labor Compliance, Minnesota Department of Transportation;
7. Council of Construction & General Laborers;
8. International Brotherhood of Teamsters;
9. Christian Labor Association;
10. Chairperson, Construction Law Section, Minnesota State Bar Association;
11. National Electrical Contractors Association;
12. Joseph Vespa, Chair, Board of Electricity;
13. Office of Hennepin County Attorney, Prevailing Wage Compliance;
14. List of contractors and individuals who have contacted the Department of Transportation's Labor Compliance Office concerning prevailing wage issues;
15. The e-mail list maintained by DLI of persons interested in changes to prevailing wage rates; and
16. Chairs of both the House and Senate transportation policy and transportation budget committees.
17. Association of Minnesota Counties.
18. League of Minnesota Cities

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 on its website.

The Department will post the proposed rules, the Notice of Hearing, and this Statement of Need and Reasonableness on the Department's rulemaking Web page.

The Department's Notice Plan also includes giving notice required by statute. We will mail or email the Notice of Hearing to everyone who has registered to be on the Department's rulemaking mailing lists (email or United States mail lists) pertaining generally to all department rulemakings and specifically, to rulemakings related to all labor standards, which lists are maintained pursuant to Minnesota Statutes § 14.14, subdivision 1a. Notice will also be given to the Legislature pursuant to Minnesota Statutes § 14.116.

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 MMB ON LOCAL GOVERNMENT IMPACT**

As required by Minnesota Statutes § 14.131, the Department has consulted with the Commissioner of the Minnesota Department of Management & Budget (MMB). We did this by sending to the Commissioner of MMB copies of the documents that were sent to the Governor's Office for review and approval by the Governor's Office prior to the Department's publication of the Notice of Hearing. We sent the copies on July 27, 2010. The documents included: the Governor's Proposed Rule and SONAR Form; almost final draft rules, dated December 18, 2009, with handwritten amendments; and the almost final SONAR. The MMB sent a letter dated August 10, 2010 with its comments.

### **DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION**

Minnesota Statutes § 14.128 requires the agency to determine whether a local government will have to adopt or amend an ordinance or other regulation to comply with a proposed agency rule and submit this determination for ALJ approval. An agency must make this determination before the close of the hearing record or before the agency submits the record to the administrative law judge if there is no hearing. The statute defines "local government" as "a town, county, or home rule charter or statutory city."

As required by Minnesota Statutes § 14.128, subdivision 1, the department has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The agency has determined that they do not.

Some cities and counties have adopted their own prevailing wage ordinances for construction projects financed by the city or county, sometimes known as "living wage" ordinances. Examples include the cities of Minneapolis and St. Paul and the counties of Anoka and Hennepin. These local governments are not required to follow the Minnesota Statutes and Rules with regard to the

form of their ordinances, but some follow the master job classifications and perhaps the wage rates by reference. The local governments that have prevailing wage ordinances sometimes follow the Minnesota Law and Rules and may even adopt the stated surveyed prevailing wage determinations issued by the department, but they are not required to do so and may do so for convenience. Therefore, these local government units are not required to adopt or amend any ordinance or regulation as a result of these rules. The Administrative law judge should approve the department's determination. The rules should have the normal effective date, with the proviso that the rules are effective for contracts advertised for bid on or after the day of adoption..

## **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 6 to 13. 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 newly described classification for Laborers and Special Crafts 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 the state-aid highway program and do not receive direct funding from the state transportation 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 the proposed rule than is required under the current statute and rules.

The vast majority of local government construction whether by cities, school districts, or counties, other than highways, are not funded in whole or in part by state funds and are not affected at all by prevailing wages 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 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**

If these rules go to a public hearing, the Department anticipates having the following witnesses testify about the need for and reasonableness of the rules:

1. Director or staff of the Department of Labor and Industry, Apprenticeship and Labor Standards Division; and
2. Members of the Prevailing Wage Work Group.

## **RULE-BY-RULE ANALYSIS**

The proposed rules will clarify the classifications located in Minnesota Rules Part 5200.1100 and provide users with easily accessible definitions of particular laborers and skilled trades. These definitions are intended to assist contractors and contracting agencies determine the applicable code to use in determining the current prevailing wage.

Pursuant to Minn. Rule Part 5200.1040, the Department is required to use certain reference documents in determining particular classes of labor.<sup>2</sup> Because the Department is required to use these reference documents when determining classes of labor, the Department used them to develop the descriptions contained in the proposed rules.

The proposed rules are structured in an easy to use manner, which includes descriptions of the nature of work, typical duties, and typical tools used for each laborer code classification<sup>3</sup> and each of the special craft classifications<sup>4</sup>.

These rules clarify the existing classifications in Minnesota Rule 5200.1100. The rule provides an easily accessible list of definitions for laborers and skilled trades. Current reference documents are not easily accessible to the general public or to workers, contractors, and contracting agencies. Written definitions should assist workers, contractors and contracting agencies in the administration and enforcement of prevailing wage. The rules were developed using the materials

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2 Minn. Rule Part 5200.1040, item F, states: F. "In determining particular classes of labor, the department shall consider 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."

3 Minn. R. Part 5200.1100, subp. 2 (laborers).

4 Minn. R. Part 5200.1100, subp. 5 (special crafts).

required in Minn. Rule 5200.1040. The department also looked to the input from members of the prevailing wage workgroup, contractors, contracting agencies and building trade unions and to the job class descriptions from other states having Little Davis-Bacon Acts in describing the nature of work, typical duties, and typical tools used in the Laborer and Special crafts classifications.

## **5200.1010 DEFINITIONS.**

This rule contains definitions of some general terms relating to prevailing wages, but does not directly bear on master job classifications. The rule does define the two major types of construction commonly subject to the prevailing wage in Minnesota; "commercial construction" and "highway and heavy construction." This rule part has not been changed since 1997. (21 SR 1107)

In these rules the department proposes to amend the definitions of "commercial construction" and "highway and heavy construction" as follows:

"Subp. 2. **Commercial construction.** "Commercial construction" means all building construction projects exclusive of residential construction. Commercial construction includes all site work, paving, sidewalks, parking ramps, landscaping, and covered work incidental to the commercial building contract. Demolition or site work preparatory to building construction is considered a part of commercial construction.

Subp. 3. **Highway and heavy construction.** "Highway and heavy construction" means all construction projects which are similar in nature to those projects based upon bids as provided under Minnesota Statutes, section 161.32 for the construction and maintenance of highways or other public works and includes roads, highways, streets, airport runways, bridges, ~~power plants, dams, and utilities~~ rails and railroads. Highway and heavy construction also includes: athletic fields, playgrounds, park shelters and trails, communication towers, power plants, filtration, water and solid waste treatment plants, dams, dikes, flood control projects, utilities, wind farms, solar collection farms, and landfills. Highway and heavy construction includes all work incidental to the construction of a power, water, or waste plant when the primary scope of work is the utility and the building is an enclosed shelter. "

The amendments are necessary because some confusion has arisen in the construction industry about the distinction between the two basic types of construction subject to the prevailing wage.

Some of the confusion arises when union contractors signatory to a "highway and heavy" collectively bargained agreement assume the prevailing wage rates on a project are the highway and heavy construction rates, when the construction project itself is a commercial construction project. This would have a negative effect on bidding and might have an effect on the prevailing wage rates to be enforced, causing unintentional failure to pay the correct rates.

Some contracting agencies do not understand that there are two main types of construction covered under the prevailing wage law and therefore what the difference is between the two types. With this misunderstanding, it is difficult for contracting agencies to comply with Minn. Stat. § 177.43, subd 3, which requires all the prevailing wage rates applicable to the project to be in the contract and the bid package.

A correct understanding of which projects are commercial construction and which are highway and heavy projects is even more necessary after a 2009 amendment to Minn. Stat. § 177.43, subd. 3, which now provides that failure to incorporate the correct prevailing wage rates into the contract makes the contracting agency liable to make the contractor or subcontractor whole for any increases in wages, including taxes and administrative costs that might result from the failure. 2009 c 78 art 5 s 8

The amendments to the definitions are necessary because the contracting agency needs to know if the project is “commercial” or “highway and heavy” in order to put the correct rates in the contract and the bid specifications. The current rule does not give the contracting agencies enough information to decide whether a project is “commercial” or “highway and heavy” and the new language is necessary give contracting agencies and contractors a better way to make that determination.

"The amendments to the definitions are necessary because survey respondents do not always know how to classify the construction type. Surveys are received by the department and data is input based on the project description and description of work. Sometimes the construction type marked is incorrectly identified based on the contractors misunderstanding or a collectively bargained agreement definition. The department contacts the submitter, and if agreed upon, amends the project description so that data can be entered into the proper data base. Distinguishing between Commercial and Highway and Heavy type construction projects will reduce missing or inaccurate wage rates.

The amendments to the definitions are reasonable because the new definitions of “commercial construction” and “highway and heavy construction” provide sufficient detail to make the determination of whether a project is “commercial” or “highway and heavy” This avoids the problem of the contracting agency trying to divide a project between the two types and makes it easier for the contracting agencies and the contractors to know the correct prevailing wage rates to pay. The amended definitions are reasonable because prevailing wage projects under the proposed definitions will fall into one type or the other, “commercial construction” or “highway and heavy construction.”

The additional language in the Highway and heavy construction definition is necessary because some contracting agencies and contractors apparently think that only road work is included in “highway and heavy construction, even though the current rule even though airport runways, power plants, dams and utilities are indicated in the current language.

There are also instances where some contractors think that if a project is a MNDOT job, then the project is a highway and heavy construction project, yet MNDOT does commercial construction projects as well.

The new language in the “highway and heavy construction” definition is reasonable because it adequately describes the types of construction projects included so it will be easier to determine that the main purpose of the project is one type or the other.

## **5200.1040 CLASSES OF LABOR.**

This rule part includes the five general classes of labor into which all of the prevailing wage master job classifications fall; Laborers, Power equipment operators, Truck drivers, Special equipment, and Special crafts. It also includes, in clause F., the various sources the department is to consider in “determining the particular classes of labor.” One of the sources the department is to consider is the United States Department of Labor Dictionary of Occupational Titles. The Dictionary of Occupational Titles is a large printed book which is outdated and has not been published by the United States Department of Labor since 1991.

The United States Department of Labor has replaced the printed Dictionary of Occupational Titles with an online version called the “O\*NET Online” Website.

These proposed rules delete the reference to The United States Department of Labor Dictionary of Occupational Titles as a source the department must consider and replace it with its descendant and replacement, the United States Department of Labor “O\*NET OnLine Website.

This change is necessary because The Dictionary of Occupational is outdated, out of print, no longer widely available and has been replaced. The change is reasonable because the old printed dictionary has been replaced by the O\*NET OnLine website which serves the same function contains the same type of information, is updated more frequently, and is available to anyone who has access to the internet.

#### **5200.1100 MASTER JOB CLASSIFICATIONS, Subp. 1. Requirement.**

Subpart 1. **Requirement.** This subpart requires contractors to use the codes and classifications of Minn. R. Part 5200.1100 in documenting classes of labor. The language of the current rule has not been amended and is located in clause A of this subpart.

Clause B has been added to instruct contractors that descriptions of the nature of work, the typical duties, and typical tools used for the laborer codes and classifications of Part 5200.1100, subp. 2, and the special crafts of Part 5200.1100, subp. 5, are located in Part 5200.1101 and 5200.1102, respectively.

#### **5200.1100 MASTER JOB CLASSIFICATIONS, Subp. 2. Laborers.**

The language that is proposed to be deleted in this subpart has been moved to proposed part 5200.1101, subparts 10 and 12, for consistency.

#### **5200.1100 MASTER JOB CLASSIFICATIONS, Subp 2a. Special Equipment.**

The department proposes adding only one new master job classification to the 308 existing prevailing wage master job classifications. The new job classification is subpart 2a. of Minn. R. 5200.1100 and it will read as follows:

“205 Pavement marking or removal equipment (one or two person operators); self-propelled, truck or

trailer mounted units. The nature of the work performed by the operator of this equipment is the application of and removal of pavement marking. Normally paint is applied, but tape is also used to mark these lines. The systems included on this equipment include skip line controllers, paint and bead monitoring, air pressure regulators, paint agitators and heaters, marking tape, water jet cutting, line marking grinders, vacuum collection, footage counters, mounted video camera, and laser alignment guiding tools.”

The equipment for pavement marking or removal is not a particularly new piece of equipment, but its use has changed significantly. This is equipment 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 also used to mark these lines. Generally this equipment has two operators, one to drive the equipment and monitor video of skip line distances, and a second person one to operate the other systems mounted on the equipment for marking the pavement and removing pavement marking. Some units are driven by the same person operating the spray equipment.

The bulk of this work is performed on highway and heavy projects, but the equipment is used in commercial construction too. Historically 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 contractor's employees or, more typically, the employees of a subcontractor.

There is a need to create a separate classification for “Pavement marking or removal equipment” because of this change in who performs the work and because they are so unique that they do not fall into an existing classification. There is also a need for the classification of “Pavement marking or removal equipment” 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 “Pavement marking or removal equipment” 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 construction contract, the work is covered by the prevailing wage. It is reasonable this new classification should be placed in subpart 2a “Special Equipment” because this equipment does not fit neatly into any of the existing classification categories and it will be surveyed independently from the other classifications of labor. This will establish an independent wage rate for the unique pieces of equipment covered by this classification.

The equipment for pavement marking or removal is not similar to any of the existing classifications of Power Equipment. This equipment's primary function is not as a truck, but is specialized paint spraying equipment, which includes skip line controllers, paint and bead monitoring systems, air pressure regulators, paint agitators and heaters, water jet cutting systems, line marking grinders, vacuum collection system, footage counters, mounted video camera, and laser alignment guiding tools. In some cases pavement marking tape laying or removal equipment is mounted instead of paint spraying equipment.

#### **5200.1100 MASTER JOB CLASSIFICATIONS, Subp 4. Truck drivers.**

The department proposes to amend the existing Truck driver master job classification, Code No. 601 Mechanic – welder by adding the brief description of words of limitation “(on vehicles in Code Nos. 602 through 616).”

This change is needed because on occasion contractors have misclassified workers by using this classification to apply to welders who perform structural welding in buildings such as Ironworkers.

The change is reasonable because the classification is intended to be applied and almost always has been applied correctly to mechanic – welders who repair and maintain construction trucks in the field. The change is also reasonable because it parallels the similar changes made in the mechanic – welder classifications for Power equipment operators, Code Nos. 318 and 528, in the department’s 2008 prevailing wage rulemaking, adopted in March 2009.

#### **5200.1100 MASTER JOB CLASSIFICATIONS, Subp. 5. Special crafts.**

The language proposed to be deleted for codes number 716 and 725 has been moved to proposed part 5200.1102, subparts 16 and 25. The new language proposed for codes number 727, 728 and 729 has been added for consistency with proposed part 5200.1102, subparts 17, 28 and 29.

#### **5200.1101 JOB CLASSIFICATION DESCRIPTIONS; LABORERS; and 5200.1102 JOB CLASSIFICATION DESCRIPTIONS; SPECIAL CRAFTS.**

This section of the SONAR will describe in general the need for and reasonableness of job classification descriptions for Laborers and Special Crafts. A more detailed analysis of the need for and reasonableness of each job classification description will follow this general discussion.

The need for definition of Laborer and Special Crafts master job classifications is clear and has been growing in recent years. The 2007 Evaluation Report of the Legislative Auditor cited misclassification of workers as a way of evading the prevailing wage law and indicated the lack of definition of the job responsibilities of the various job classifications was the source of the problem. The report stated that **“In particular there is no definition of the responsibilities of common or skilled laborers in comparison to those of skilled tradesmen.”** (Office of the Legislative Auditor, Evaluation Report, Prevailing Wages, February 2007, page 63)

In the department’s 2008 rulemaking regarding mostly Special equipment, Power equipment operator and truck driver classifications, many of the commenters spoke of the need for definitions of the laborer and special crafts classifications, even though they were not a major subject of the rulemaking. The department stated in the 2008 SONAR that members of all segments of the construction industry expressed the desire for the adoption of rule amendments to clarify prevailing wage classifications. This remains true today. The Administrative Law Judge’s Report in the 2008 rulemaking, issued after the Request for Comments in this rulemaking were published, noted initiation of the rulemaking process for these rules. The Administrative Law Judge concluded the Memorandum attached to the 2008 Report with the following words:

“Accordingly as the Department considers possible cures to the rulemaking defects that have been identified in this proceeding, and methods by which it can meet the needs of all stakeholders who will rely on any later rules, one conclusion is clear: additional detail on the boundaries between and among Major Job Classifications would benefit all concerned.”

The department’s proposed descriptions of the Nature of work, Typical duties and Typical tools used are reasonable because they have been derived through consideration of the four sources

listed for this purpose in Minn. Rule 5200.1040, clause (E), “ work classifications 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.”

The descriptions are also reasonable because, in addition to the required sources, the department has considered all and utilized many of the comments of the members of the prevailing wage workgroup which met November 5, 2008 and December 2, 2008. The workgroup included representatives of the Minnesota Building Trades, The International Brotherhood of Electrical Workers, the Associated General Contractors, the Minnesota Associated Builders and Contractors, the Joseph Company, Northfield Construction Company, the Laborers District Council of Minnesota, and the Minnesota Department of Transportation.

The job classification descriptions are reasonable because, in addition to the four sources required for consideration, and the input from the prevailing wage work group. The department considered and utilized prevailing wage class definitions from other states where state governments administer and enforce Little Davis-Bacon Acts. In developing the descriptions of the nature of the work, typical duties and typical tools the department used job class descriptions from the states of Wisconsin, Kentucky, Missouri, Washington, Oregon, and West Virginia.

#### **5200.1101 JOB CLASSIFICATION DESCRIPTIONS; LABORERS.**

The rule part provides users with a job description of the laborer classifications of Minn. R. Part 5200.1100, subp. 2. Each laborer classification includes a description of the nature of work, the typical duties, and the typical tools used for each of the twelve laborer classifications.

Each laborer classification appears in a subpart unique to the classification and contains three primary clauses. Clause A describes the nature of the work. Clause B describes the typical duties involved in the nature of the work. Clause C describes the typical tools used in the nature of the work.

**Subpart 1. Code No. 101, Laborer, common (general labor work).** In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department considered the Laborers Agreement between the Laborers District Council of Minnesota and North Dakota and signatory contractors. The agreement includes special provisions for: Laborers Local 132 and Southwestern Minnesota Building Contractors, Laborers Local 405 and Southeastern Building Contractors, Laborers Local 563 and St. Cloud Area Building Contractors, Laborers Local 1091 and Twin Ports Contractors Association, Laborers Local 1097 and Northern Minnesota Contractors Association, and the Laborers Agreement between the Metropolitan Builders Division of Associated General Contractors of Minnesota and Minnesota Concrete and Masonry Contractors Association and Laborers District Council of Minnesota and North Dakota on behalf of Its affiliated Local Unions.

This description is necessary to reduce the misclassification of workers on prevailing wage

projects. It is reasonable as it clarifies the general tasks and work duties of a Laborer, common. The common Laborer will clean and sweep, dig and fill holes and trenches, clear and grub using hand tools, drive a self-propelled buggy to transport concrete from mixer to source of supply, and install or erect interlocking or modular block walls when mortar is not used.

Subp. 2. **Code No. 102, Laborers, skilled (assisting skilled craft journeyman).** In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department considered the Laborers Agreement between the Laborers District Council of Minnesota and North Dakota and signatory contractors. The agreement includes special provisions for: Laborers Local 132 and Southwestern Minnesota Building Contractors, Laborers Local 405 and Southeastern Building Contractors, Laborers Local 563 and St. Cloud Area Building Contractors, Laborers Local 1091 and Twin Ports Contractors Association, Laborers Local 1097 and Northern Minnesota Contractors Association, and the Laborers Agreement between the Metropolitan Builders Division of Associated General Contractors of Minnesota and Minnesota Concrete and Masonry Contractors Association and Laborers District Council of Minnesota and North Dakota on behalf of Its affiliated Local Unions.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Laborer, skilled. The skilled laborer is able to perform the work of a common laborer in addition to assisting a cement mason by mixing cement; mixing plaster, stucco, or similar materials for a plasterer; mixing mortar by hand or mechanically for a brick mason, stone mason, or block mason; placing concrete and operating a concrete vibrator to consolidate the concrete.

Subp. 3. **Code No. 103, Laborer, landscaping (gardener, sod layer, and nursery).** In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department considered the Laborers Agreement: Landscape and Related Work in the State of Minnesota between Landscape and Erosion Control Contractors and Laborers District Council of Minnesota and North Dakota on Behalf of Its Affiliated Local Unions.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Landscape Laborer. The landscape laborer includes plantings landscape such as seeding, sodding and planting; the installation of edging and groundcover associated with plantings; and installation of erosion control measures like blankets and silt fence.

Subp. 4. **Code No. 104, Flag person.** In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department considered the Laborers Agreement between the Laborers District Council of Minnesota and North Dakota and signatory contractors. The agreement includes special provisions for: Laborers Local 132 and Southwestern Minnesota Building Contractors, Laborers Local 405 and Southeastern Building Contractors, Laborers Local 563 and St. Cloud Area Building Contractors, Laborers Local 1091 and Twin Ports Contractors Association, Laborers Local 1097 and Northern Minnesota Contractors Association, and the Laborers Agreement between the Metropolitan Builders



Division of Associated General Contractors of Minnesota and Minnesota Concrete and Masonry Contractors Association and Laborers District Council of Minnesota and North Dakota on behalf of Its affiliated Local Unions.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Flag person who helps regulate the flow of traffic through a construction project.

Subp. 5. **Code No. 105, Watch person.** In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department considered the Laborers Agreement between the Laborers District Council of Minnesota and North Dakota and signatory contractors. The agreement includes special provisions for: Laborers Local 132 and Southwestern Minnesota Building Contractors, Laborers Local 405 and Southeastern Building Contractors, Laborers Local 563 and St. Cloud Area Building Contractors, Laborers Local 1091 and Twin Ports Contractors Association, Laborers Local 1097 and Northern Minnesota Contractors Association, and the Laborers Agreement between the Metropolitan Builders Division of Associated General Contractors of Minnesota and Minnesota Concrete and Masonry Contractors Association and Laborers District Council of Minnesota and North Dakota on behalf of Its affiliated Local Unions.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Watch person. The watch person monitors access to a construction site.

Subp. 6. **Code No. 106, Blaster.** In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department considered the Laborers Agreement between the Laborers District Council of Minnesota and North Dakota and signatory contractors. The agreement includes special provisions for: Laborers Local 132 and Southwestern Minnesota Building Contractors, Laborers Local 405 and Southeastern Building Contractors, Laborers Local 563 and St. Cloud Area Building Contractors, Laborers Local 1091 and Twin Ports Contractors Association, Laborers Local 1097 and Northern Minnesota Contractors Association, and the Laborers Agreement between the Metropolitan Builders Division of Associated General Contractors of Minnesota and Minnesota Concrete and Masonry Contractors Association and Laborers District Council of Minnesota and North Dakota on behalf of Its affiliated Local Unions.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Blaster who is specialized in assembling and detonating charges of industrial explosives to loosen earth or to demolish structures to facilitate removal.

Subp. 7. **Code No. 107, Pipelayer (water, sewer, and gas).** In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department considered the Laborers Agreement between the Laborers District Council of

Minnesota and North Dakota and signatory contractors. The agreement includes special provisions for: Laborers Local 132 and Southwestern Minnesota Building Contractors, Laborers Local 405 and Southeastern Building Contractors, Laborers Local 563 and St. Cloud Area Building Contractors, Laborers Local 1091 and Twin Ports Contractors Association, Laborers Local 1097 and Northern Minnesota Contractors Association, and the Laborers Agreement between the Metropolitan Builders Division of Associated General Contractors of Minnesota and Minnesota Concrete and Masonry Contractors Association and Laborers District Council of Minnesota and North Dakota on behalf of Its affiliated Local Unions.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Pipelayer for water, sewer, and gas projects. In addition to laying pipe for utility projects, the Pipelayer sets the depth of excavation for proper pipe grade, guides the equipment operator around existing utilities, fine grades the ditch, assembles and installs culverts, and fuses or welds pipe.

**Subp. 8. Code No. 108, Tunnel miner.** In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department considered the Laborers Agreement between the Laborers District Council of Minnesota and North Dakota and signatory contractors. The agreement includes special provisions for: Laborers Local 132 and Southwestern Minnesota Building Contractors, Laborers Local 405 and Southeastern Building Contractors, Laborers Local 563 and St. Cloud Area Building Contractors, Laborers Local 1091 and Twin Ports Contractors Association, Laborers Local 1097 and Northern Minnesota Contractors Association, and the Laborers Agreement between the Metropolitan Builders Division of Associated General Contractors of Minnesota and Minnesota Concrete and Masonry Contractors Association and Laborers District Council of Minnesota and North Dakota on behalf of Its affiliated Local Unions.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Tunnel miner. The tunnel miner performs earth and rock excavation to construct underground shafts or tunnels and includes working in caissons.

**Subp. 9. Code No. 109, Underground and open ditch laborer (eight feet below starting grade level).** In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department considered the Laborers Agreement between the Laborers District Council of Minnesota and North Dakota and signatory contractors. The agreement includes special provisions for: Laborers Local 132 and Southwestern Minnesota Building Contractors, Laborers Local 405 and Southeastern Building Contractors, Laborers Local 563 and St. Cloud Area Building Contractors, Laborers Local 1091 and Twin Ports Contractors Association, Laborers Local 1097 and Northern Minnesota Contractors Association, and the Laborers Agreement between the Metropolitan Builders Division of Associated General Contractors of Minnesota and Minnesota Concrete and Masonry Contractors Association and Laborers District Council of Minnesota and North Dakota on behalf of Its affiliated Local Unions.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of an Underground and open ditch laborer. The Underground and open ditch laborer assists the pipelayer from within the excavation including aligning and assembling pipe, cleaning and joining pipe, and backfilling and compacting earth alongside the pipe.

Subp. 10. **Code No. 110, Survey field technician.** This master job classification was added in the department's 2008 rulemaking and adopted in 2009. At the time of adoption the descriptive language was appended to the title of the job classification. These proposed rules follow the format of leaving the title of the master job classification in Minn. R. 5200.1100 and placing the description of the nature work, typical duties and typical tools used in the newly proposed parts 5200.1101 for the laborer classifications and part 5200.1102 for the Special Crafts classifications. This format was suggested by the department and approved by the revisor.

All the language from the existing classification, Code No. 110, Survey field technician is moved to proposed part 5200.1101, subp. 10. No substantive change is made to the scope of the classification or the words of limitation on its applicability.

The source for the typical duties proposed is the existing rule and the duties are simply placed in the form of a list. The typical tools used are likewise derived from the list of typical duties and consist of the tools used to perform those duties.

The change in format for this classification is needed to conform with the Revisor approved drafting format of compiling the nature of work, typical duties, and typical tools used for each of the described classifications in two new subparts, while leaving the list of classification names and their code numbers in their current list format in part 5200.1100, subparts 2-5. The change is reasonable because it does not substantively change the classification for survey field technician approved in the 2008 rulemaking and adopted in 2009.

Subp. 11. **Code No. 111, Traffic control person (temporary signage).** Like the survey field technician classification, this master job classification was added in the department's 2008 rulemaking and adopted in 2009. At the time of adoption there was no descriptive language included after the title other than (temporary signage). Again, like the previous subpart, the classification title remains in the list. In this subpart the nature of the work, typical duties and typical tools used are outlined. The department received valuable input from the MNDOT Office of Labor Compliance in describing the nature of the work, typical duties, and typical tools used. MNDOT projects and other road projects funded through MNDOT such as County State Aid Highway projects are the primary users of traffic control persons (temporary signage).

The subpart is needed to describe the nature of the work, typical duties, and typical tools used by traffic control persons (temporary signage). The description proposed is reasonable because it adequately describes those items and was largely supplied by MNDOT, the primary user of the classification.

Subp. 12. **Code No. 112, Quality control tester.** Like the survey field technician and traffic control person (temporary signage) classifications, this master job classification was added in the department's 2008 rulemaking and adopted in 2009. The nature of the work and the limitation of the classification to certain types of MNDOT projects were appended to the classification title in the rule as adopted in 2009. On page 4 of the proposed rules, lines 4.15-4.20, it can be seen that the title remains in the general list of classifications and code numbers and that the language setting forth the nature of work and the limitation of the classification to certain types of MNDOT projects are deleted. The deleted language is re-adopted unchanged in this subpart. Additional language outlining the typical duties, and typical tools used is added in this subpart. The department received valuable input on the description of typical duties and typical tools from a MNDOT Labor Compliance staff member who worked for MNDOT as a quality control tester in the past when MNDOT employees did more of the testing. The current trend towards using private subcontractors for this work was the major reason for creating this new classification in 2009.

The change in format for this classification is needed to conform with the Revisor approved drafting format of compiling the nature of work, typical duties, and typical tools used for each of the described classifications in two new subparts. The change is reasonable because it does not substantially change the existing classification for Quality control tester approved in the 2008 rulemaking and adopted in 2009; because the new language further outlining the typical duties and typical tools used is accurate, was supplied by a former quality control tester, and results in no substantive change to the existing classification.

#### **5200.1102 JOB CLASSIFICATION DESCRIPTIONS; SPECIAL CRAFTS.**

The rule part provides users with a job description of the special crafts classifications of Minn. R. Part 5200.1100, subp. 5. Each special craft classification includes a description of the nature of work, the typical duties, and the typical tools used for each one of the thirty special craft classifications.

Each special craft classification appears in a subpart unique to the classification and contains three primary clauses. Clause A describes the nature of the work. Clause B describes the typical duties involved in the nature of the work. Clause C describes the typical tools used in the nature of the work.

The Department reviewed several sources of information to develop descriptions for the special craft classifications. The sources reviewed are identified in each subpart.

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#### **Subpart 1. Code No. 701, Heating and frost insulators.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the Department reviewed several sources of information to develop a

description for heating and frost insulators: O\*Net's Summary Report for 47.2132.00 – Insulation Workers, Mechanical<sup>5</sup>; Wisconsin's Dictionary of Occupational Classifications and Work Descriptions<sup>6</sup>; Kentucky's Definitions and Descriptions of Construction Trades and Related Workers<sup>7</sup>; Missouri's Department of Labor and Industrial Relations, Labor Standards Division, Prevailing Wage Law Rules<sup>8</sup>; and Minnesota's Apprenticeship Standards.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable because it clarifies the general tasks, work duties, and tools used by a Heating and Frost Insulator.

### **Sub. 2. Code No. 702, Boilermakers.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 47-2011.00 – Boilermakers<sup>9</sup>; Wisconsin's Dictionary of Occupational Classifications and Descriptions for Boilermakers<sup>10</sup>; Kentucky's Definitions and Descriptions of Construction Trades and Related Workers<sup>11</sup>; and Missouri's Department of Labor and Industrial Relations, Labor Standards Division, Prevailing Wage Law Rules<sup>12</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable because it clarifies the general tasks and work duties of a Boilermaker including assembling, constructing, repairing, and maintaining boilers, pressure vessels, tanks, and vats.

### **Subp. 3. Code No. 703, Bricklayer.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 47-2021.00 – Brickmasons and Blockmasons,<sup>13</sup> and summary Report for 47-2022.00 – Stonemasons<sup>14</sup>; Wisconsin's Dictionary of Occupational Titles Beginning with B.<sup>15</sup>; Kentucky's Definitions and

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5 <http://online.onetcenter.org/link/summary/47-2132.00>

6 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_main.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_main.htm)

7 <http://www.labor.ky.gov/ows/employmentstandards/prevailingwage/definitions.htm>

8 <http://www.sos.mo.gov/adrules/csr/current/8csr/8c30-3.pdf>

9 <http://online.onetcenter.org/link/summary/47-2011.00>

10 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_b.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_b.htm)

11 <http://www.labor.ky.gov/ows/employmentstandards/prevailingwage/definitions.htm>

12 <http://www.sos.mo.gov/adrules/csr/current/8csr/8c30-3.pdf>

13 <http://online.onetcenter.org/link/summary/47-2021.00>

14 <http://online.onetcenter.org/link/summary/47-2022.00>

15 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_b.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_b.htm)

Descriptions of Construction Trades and Related Workers<sup>16</sup>; and Missouri's Department of Labor and Industrial Relations, Labor Standards Division, Prevailing Wage Law Rules<sup>17</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Bricklayer including brick masonry, stone masonry, artificial masonry and pointing-cleaning and caulk.

**Subp. 4. Code No. 704, Carpenters.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 47-2031.01 – Construction Carpenters<sup>18</sup>; Wisconsin's Dictionary of Occupational Classifications and Descriptions for Occupational Titles Beginning With C<sup>19</sup>; Kentucky's Definitions and Descriptions of Construction Trades and Related Workers<sup>20</sup>; Missouri's Department of Labor and Industrial Relations, Labor Standards Division, Prevailing Wage Law Rules<sup>21</sup>; and information provided by Lakes and Plains District Council of Carpenters.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Carpenter. The carpenter constructs, erects, repairs, and installs structures and structural members made of wood or materials that take the place of wood.

**Subp. 5. Code No. 705, Carpet layers (linoleum).**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 47-2041.00– Carpet Installers<sup>22</sup>; Wisconsin's Dictionary of Occupational Titles Beginning With C<sup>23</sup>; Kentucky's Definitions and Descriptions of Construction Trades and Related Workers<sup>24</sup>; Missouri's Department of Labor and Industrial Relations, Labor Standards Division, Prevailing Wage Law Rules<sup>25</sup>; Title 296, section 296-127-01313 of Washington's Administrative Code<sup>26</sup>; and information provided by Lakes and Plains District Council of Carpenters.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Carpet Layers. The

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16 <http://www.labor.ky.gov/ows/employmentstandards/prevailingwage/definitions.htm>

17 <http://www.sos.mo.gov/adrules/csr/current/8csr/8c30-3.pdf>

18 <http://online.onetcenter.org/link/summary/47-2031.01>

19 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_c.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_c.htm)

20 <http://www.labor.ky.gov/ows/employmentstandards/prevailingwage/definitions.htm>

21 <http://www.sos.mo.gov/adrules/csr/current/8csr/8c30-3.pdf>

22 <http://online.onetcenter.org/link/summary/47-2041.00>

23 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_c.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_c.htm)

24 <http://www.labor.ky.gov/ows/employmentstandards/prevailingwage/definitions.htm>

25 <http://www.sos.mo.gov/adrules/csr/current/8csr/8c30-3.pdf>

26 <http://apps.leg.wa.gov/wac/default.aspx?cite=296-127-01313>

carpet layer installs carpet and other flooring, synthetic turf, and other surface coverings on floors, walls, counters, table tops, and ceilings.

**Subp. 6. Code No. 706, Cement mason.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 47-2051.00 –Cement Masons<sup>27</sup>; Wisconsin's Dictionary of Occupational Classifications and Descriptions for Cement Finisher<sup>28</sup>; Kentucky's Definitions and Descriptions of Construction Trades and Related Workers<sup>29</sup>; Missouri's Department of Labor and Industrial Relations, Labor Standards Division, Prevailing Wage Law Rules<sup>30</sup>; and information provided by Lakes and Plains District Council of Carpenters.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Cement Mason.

**Subp. 7. Code No. 707, Electrician.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed Minnesota Statutes, Chapter 326B; the position description Electrician Local 343; Minnesota Apprenticeship Standards; Missouri's Department of Labor and Industrial Relations, Labor Standards Division, Prevailing Wage Law Rules<sup>31</sup>; and Title 296, section 296- 46B-920 of Washington's Administrative Code<sup>32</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of an Electrician.

**Subp. 8. Code No. 708, Elevator constructors.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 47-2021.00 – Elevator Installers and Repairers<sup>33</sup>; Oregon's Definitions of Covered Occupations for Public Works Contracts in Oregon<sup>34</sup>; and the Department's Apprenticeship Standards, Addendum A, Work Process Schedule.

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27 <http://online.onetcenter.org/link/summary/47-2051.00>

28 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_c.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_c.htm)

29 <http://www.labor.ky.gov/ows/employmentstandards/prevailingwage/definitions.htm>

30 <http://www.sos.mo.gov/adrules/csr/current/8csr/8c30-3.pdf>

31 <http://www.sos.mo.gov/adrules/csr/current/8csr/8c30-3.pdf>

32 <http://apps.leg.wa.gov/WAC/default.aspx?cite=296-46B-920>

33 <http://online.onetcenter.org/link/summary/47-4021.00>

34 [http://www.oregon.gov/BOLI/WHD/PWR/jan08/define\\_revised.pdf](http://www.oregon.gov/BOLI/WHD/PWR/jan08/define_revised.pdf)

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of an Elevator constructor including assembling and installing all commercial conveyances: elevators, escalators, moving walks, ramps and lifts.

**Subp. 9. Code No. 709, Glaziers.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 47-2121.00 – Glaziers<sup>35</sup>; Oregon's Definitions of Covered Occupations for Public Works Contracts in Oregon<sup>36</sup>; and the Department's Apprenticeship Standards, District Council #82 (TC).

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Glaziers.

**Subp. 10. Code No. 710, Lathers.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed Wisconsin's Dictionary of Occupational Classifications and Descriptions for Occupational Titles Beginning With L<sup>37</sup>; Missouri's Department of Labor and Industrial Relations, Labor Standards Division, Prevailing Wage Law Rules<sup>38</sup>; and Title 296, section 296-127-01347 of Washington's Administrative Code<sup>39</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Lather. The Lather erects metal framework to which lath is fastened.

**Subp. 11. Code No. 711, Ground person.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed Wisconsin's Dictionary of Occupational Classifications and Descriptions for Occupational Titles Beginning With G<sup>40</sup>; and Missouri's Department of Labor and Industrial Relations, Labor Standards Division, Prevailing Wage Law Rules<sup>41</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Ground person. The

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35 <http://online.onetcenter.org/link/summary/47-2121.00>

36 [http://www.oregon.gov/BOLI/WHD/PWR/jan08/define\\_revised.pdf](http://www.oregon.gov/BOLI/WHD/PWR/jan08/define_revised.pdf)

37 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_1.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_1.htm)

38 <http://www.sos.mo.gov/adrules/csr/current/8csr/8c30-3.pdf>

39 <http://apps.leg.wa.gov/WAC/default.aspx?cite=296-127-01347>

40 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_g.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_g.htm)

41 <http://www.sos.mo.gov/adrules/csr/current/8csr/8c30-3.pdf>



ground person assists the journeyman lineman on work that is not energized.

**Subp. 12. Code No. 712, Ironworkers.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 47-2171.00 – Reinforcing Iron and Rebar Workers,<sup>42</sup> and summary Report for 47-2221.00 – Structural Iron and Steel Workers<sup>43</sup>; Wisconsin's Dictionary of Occupational Classifications and Descriptions for Occupational Titles Beginning With I<sup>44</sup>; and Title 296, section 296-127-01340 of Washington's Administrative Code<sup>45</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of an Ironworker. The Ironworker erects, aligns, and repairs structural steel and other metals, reinforces concrete, and installs bridge seat assemblies, girders, beams, and related components.

**Subp. 13. Code No. 713, Lineman.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 49-9051.00– Electrical Power-Line Installers and Repairers<sup>46</sup>; Oregon's Definitions of Covered Occupations for Public Works Contracts in Oregon<sup>47</sup>; and Title 296, Section 296-46B-100 of Washington's Administrative Code<sup>48</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Lineman who erects, maintains and repairs high-voltage transmission and distribution lines.

**Subp. 14. Code No. 714, Millwright.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 49-9044.00 – Millwright<sup>49</sup>; Wisconsin's Dictionary of Occupational Classifications and Descriptions for

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42 <http://online.onetcenter.org/link/summary/47-2171.00>

43 <http://online.onetcenter.org/link/summary/47-2221.00>

44 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_i.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_i.htm)

45 <http://apps.leg.wa.gov/WAC/default.aspx?cite=296-127-01339>

46 <http://online.onetcenter.org/link/summary/49-9051.00>

47 [http://www.oregon.gov/BOLI/WHD/PWR/jan08/define\\_revised.pdf](http://www.oregon.gov/BOLI/WHD/PWR/jan08/define_revised.pdf)

48 <http://apps.leg.wa.gov/WAC/default.aspx?cite=296-46B-100>

49 <http://online.onetcenter.org/link/summary/49-9044.00>

Occupational Titles Beginning with M<sup>50</sup>; and Title 296, section 296-127-01352 of Washington's Administrative Code<sup>51</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Millwright. Millwrights assemble, install, align, and dismantle machinery in commercial and industrial sites.

**Subp. 15. Code No. 715, Painter.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 47-2141.00 – Painters, Construction and Maintenance<sup>52</sup>; Wisconsin's Dictionary of Occupational Classifications and Descriptions for Occupational Titles Beginning with P<sup>53</sup>; Oregon's Definitions of Covered Occupations for Public Works Contracts in Oregon<sup>54</sup>; and information from the Minnesota Building Trades.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Painter.

**Subp. 16. Code No. 716, Pile driver.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed Wisconsin's Dictionary of Occupational Classifications and Descriptions for Occupational Titles Beginning with P<sup>55</sup>; and Oregon's Definitions of Covered Occupations for Public Works Contracts in Oregon<sup>56</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Piledriver performing pile work and driving piles of any type.

**Subp. 17. Code No. 717, Pipefitters – steamfitters.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 47-2152.01 – Pipe

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50 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_m.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_m.htm)

51 <http://apps.leg.wa.gov/WAC/default.aspx?cite=296-127-01351>

52 <http://online.onetcenter.org/link/summary/47-2141.00>

53 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_p.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_p.htm)

54 [http://www.oregon.gov/BOLI/WHD/PWR/jan08/define\\_revised.pdf](http://www.oregon.gov/BOLI/WHD/PWR/jan08/define_revised.pdf)

55 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_p.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_p.htm)

56 [http://www.oregon.gov/BOLI/WHD/PWR/jan08/define\\_revised.pdf](http://www.oregon.gov/BOLI/WHD/PWR/jan08/define_revised.pdf)

Fitters and Steamfitters<sup>57</sup>; Wisconsin's Dictionary of Occupational Classifications and Descriptions for Occupational Titles Beginning With S (steamfitter)<sup>58</sup>; Oregon's Definitions of Covered Occupations for Public Works Contracts in Oregon<sup>59</sup>; Minnesota's Apprenticeship Standards and local bargaining agreements; and information from the Minnesota Building Trades.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Pipefitter – Steamfitter to include installing, dismantling, maintaining, and replacing pipe systems and equipment.

#### **Subp. 18. Code No. 718, Plasterers.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 47-2161.00 – Plasterers and Stucco Masons<sup>60</sup>; Wisconsin's Dictionary of Occupational Classifications and Descriptions for Occupational Titles Beginning with P<sup>61</sup>; Oregon's Definitions of Covered Occupations for Public Works Contracts in Oregon<sup>62</sup>; and information from the Minnesota Building Trades.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Plasterer. Plasterers apply plaster or stucco to interior and exterior surfaces, install exterior insulation finish systems, and fireproof building assemblies with plaster or similar materials.

#### **Subp. 19. Code No. 719, Plumbing.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 47-2152.02 – Plumbers<sup>63</sup>; Wisconsin's Dictionary of Occupational Classifications and Descriptions for Occupational Titles Beginning With P<sup>64</sup>; Oregon's Definitions of Covered Occupations for Public Works Contracts in Oregon<sup>65</sup>; Minnesota's Apprenticeship Standards and local bargaining agreements; and information from the Minnesota Building Trades.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Plumber.

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57 <http://online.onetcenter.org/link/summary/47-2152.01>

58 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_s.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_s.htm)

59 [http://www.oregon.gov/BOLI/WHD/PWR/jan08/define\\_revised.pdf](http://www.oregon.gov/BOLI/WHD/PWR/jan08/define_revised.pdf)

60 <http://online.onetcenter.org/link/summary/47-2161.00>

61 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_p.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_p.htm)

62 [http://www.oregon.gov/BOLI/WHD/PWR/jan08/define\\_revised.pdf](http://www.oregon.gov/BOLI/WHD/PWR/jan08/define_revised.pdf)

63 <http://online.onetcenter.org/link/summary/47-2152.02>

64 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_p.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_p.htm)

65 [http://www.oregon.gov/BOLI/WHD/PWR/jan08/define\\_revised.pdf](http://www.oregon.gov/BOLI/WHD/PWR/jan08/define_revised.pdf)

**Subp. 20. Code No. 720, Roofer/waterproofeer.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 47-2181.00 – Roofers<sup>66</sup>; Wisconsin's Dictionary of Occupational Classifications and Descriptions for Occupational Titles Beginning With R<sup>67</sup>; and Oregon's Definitions of Covered Occupations for Public Works Contracts in Oregon<sup>68</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Roofer. The roofer applies and installs any and all types of roofing materials except for sheet metal roofs. The roofer installs all damp resisting preparations in or outside of the building and on foundation work.

**Subp. 21. Code No. 721, Sheet metal worker.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed Wisconsin's Dictionary of Occupational Classifications and Descriptions for Occupational Titles Beginning With S<sup>69</sup>; and Oregon's Definitions of Covered Occupations for Public Works Contracts in Oregon<sup>70</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Sheet metal worker to include fabricating, installing and replacing sheet metal products and equipment.

**Subp. 22. Code No. 722, Sprinkler fitter.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed Delaware's *Classification of Workers Under Delaware's Prevailing Wage Law*<sup>71</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Sprinkler fitter who primarily installs, inspects, and maintains fire protection and fire control systems.

**Subp. 23. Code No. 723, Terrazzo worker.**

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66 <http://online.onetcenter.org/link/summary/47-2181.00>

67 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_r.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_r.htm)

68 [http://www.oregon.gov/BOLI/WHD/PWR/jan08/define\\_revised.pdf](http://www.oregon.gov/BOLI/WHD/PWR/jan08/define_revised.pdf)

69 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_s.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_s.htm)

70 [http://www.oregon.gov/BOLI/WHD/PWR/jan08/define\\_revised.pdf](http://www.oregon.gov/BOLI/WHD/PWR/jan08/define_revised.pdf)

71 <http://www.delawareworks.com/industrialaffairs/forms/ClassificationofWorkers.pdf>

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 47-2053.00 – Terrazzo Workers and Finishers<sup>72</sup>, Title 296, Section 296-127-01370 of Washington's Administrative Code<sup>73</sup>; and West Virginia Division of Labor *Prevailing Wage Classification Work Descriptions 2008*<sup>74</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Terrazzo worker.

**Subp. 24. Code No. 724, Tile setters.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed O\*Net's Summary Report for 47-2044.00 – Tile and Marble Setters<sup>75</sup>, and Title 296, Section 296-127-01386 of Washington's Administrative Code<sup>76</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Tile Setter to include laying, cutting or setting tile.

**Subp. 25. Code No. 725, Tile finishers.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed the "Schedule of Work Processes For Tile Finisher" from the apprenticeship standards for the craft and contacted the apprenticeship program training center staff for typical duties and typical tools used.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Tile Finisher who primarily works after the tile is set and adhered to the floor or wall.

**Subp. 26. Code No. 726, Drywall taper.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed Oregon's Definitions of Covered Occupations for Public Works Contracts in Oregon<sup>77</sup>; and Title 296, Section 296-127-01318 of Washington's Administrative Code<sup>78</sup>.

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72 <http://online.onetcenter.org/link/summary/47-2053.00>

73 <http://apps.leg.wa.gov/WAC/default.aspx?cite=296-127-01379>

74 [http://www.transportation.wv.gov/highways/contractadmin/prevailing\\_Wage\\_rates/Documents/work%20classifications.pdf](http://www.transportation.wv.gov/highways/contractadmin/prevailing_Wage_rates/Documents/work%20classifications.pdf)

75 <http://online.onetcenter.org/link/summary/47-2044.00>

76 <http://apps.leg.wa.gov/WAC/default.aspx?cite=296-127-01384>

77 [http://www.oregon.gov/BOLI/WHD/PWR/jan08/define\\_revised.pdf](http://www.oregon.gov/BOLI/WHD/PWR/jan08/define_revised.pdf)

78 <http://apps.leg.wa.gov/WAC/default.aspx?cite=296-127-01318>

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Drywall taper who seals joints between plaster or wall board and prepares wall surfaces for painting, papering, or any other wall finishing system.

**Subp. 27. Code No. 727, Wiring system technician; communications system technician.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed Minnesota Statutes, Chapter 326B; Missouri's Department of Labor and Industrial Relations, Labor Standards Division, Prevailing Wage Law Rules<sup>79</sup>; Title 296, Section 296-46B-920 of Washington's Administrative Code<sup>80</sup>; and information from the International Brotherhood of Electrical Workers. (IBEW).

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Wiring systems technician. The Wiring systems technician installs, inspects, repairs and services electronic and telecommunications systems and is able to perform the work of the installer.

**Subp. 28. Code No. 728, Wiring system installer; communication system installer.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the Department reviewed Minnesota Statutes, Chapter 326B; Missouri's Department of Labor and Industrial Relations, Labor Standards Division, Prevailing Wage Law Rules<sup>81</sup>; and information from the International Brotherhood of Electrical Workers (IBEW).

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Wiring system installer. The Wiring system installer can pull and splice wire connected to the dead end but cannot test systems nor perform any work at the head end.

**Subp. 29. Code No. 729, Asbestos abatement or environmental remediation worker.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed Wisconsin's Dictionary of Occupational Classifications and Descriptions for Occupational Titles Beginning with Letter A<sup>82</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of an Asbestos Abatement worker. The expanded title, and nature of the work, clarifies that the work includes lead abatement and removal of mold and other dangerous particles.

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79 <http://www.sos.mo.gov/adrules/csr/current/8csr/8c30-3.pdf>

80 <http://apps.leg.wa.gov/WAC/default.aspx?cite=296-46B-920>

81 <http://www.sos.mo.gov/adrules/csr/current/8csr/8c30-3.pdf>

82 [http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_a.htm](http://dwd.wisconsin.gov/er/prevailing_wage_rate/Dictionary/dictionary_a.htm)

**Subp. 30. Code No. 730, Sign erector.**

In addition to the rule required sources and input from the prevailing wage work group members and commenters, the department reviewed Title 296, Section 296-127-01374 of Washington's Administrative Code<sup>83</sup>.

This description is necessary to reduce the misclassification of workers on prevailing wage projects. It is reasonable as it clarifies the general tasks and work duties of a Sign Erector. This classification includes the work of sign makers and installers including repair, maintenance, and dismantling of signs, billboards, bulletins, post and panel signs.

**PUBLIC REVIEW**

The SONAR is available for public review on or after August 26, 2010 on the department's rule docket website at <http://www.dli.mn.gov/PDF/docket/5200ClassesOfLabor.pdf> and by contacting the agency contact person: Laura Alsides, Department of Labor and Industry, 443 Lafayette Rd. N., St. Paul, MN 55155; telephone: (651) 284-5006; e-mail: [dli.rules@state.mn.us](mailto:dli.rules@state.mn.us)

**CONCLUSION**

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

8/18/2010  
Date

Steve Sviggum  
Steve Sviggum  
Commissioner, Department of Labor and Industry

<sup>83</sup> <http://apps.leg.wa.gov/WAC/default.aspx?cite=296-127-01374>