

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Jane R. Henkel,
Acting Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 99-164

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. Many of the strike-throughs and underscores used in the rule are printed very lightly and, consequently, it is difficult to discern the extent of the various amendments. The rule should be reviewed and this problem corrected, if possible.
- b. The introductory clause preceding the analysis needs a "relating to" clause. [s. 1.02 (1), Manual.]
- c. The amendment to the note to s. DWD 290.01 (10) should contain a treatment clause indicating that the note is being amended.
- d. In SECTION 8 of the rule, it is not appropriate drafting style to repeal and recreate a rule and also renumber it. Section DWD 290.01 (14) should be repealed and a new sub. (9) should be created.
- e. The new sentences at the end of s. DWD 290.01 (17) should be redrafted in conventional definitional style. For example, the sentences could be rewritten in substantially the following form: "Public works project" includes alterations, painting and decorating. "Public works project" does not include maintenance work,"
- f. The treatment clause of SECTION 12 of the rule indicates that all of s. DWD 290.01 (18) is being amended. However, the subdivisions of par. (c) are not reproduced or amended in

the rule. If they do not require amending, the treatment clause should reflect the fact that just pars. (a), (b) and (c) (intro.) are being amended.

g. The treatment clause of SECTION 15 should read: "SECTION 15. DWD 290.01 (22) is renumbered DWD 290.01 (16m) and amended to read:".

h. In s. DWD 290.01 (16m), "Prevailing" should follow "~~Wage~~."

i. In s. DWD 290.015 (6) (a) and elsewhere in the rule, "s." rather than "ss." should be used when citing two statutory sections with the word "or" between them.

j. The title of s. DWD 290.02 should not be reproduced in the rule. [s. 1.05 (3) (c), Manual.]

k. The treatment clause in SECTION 19 of the rule should read: "DWD 290.025 (note) is created to read:".

l. In s. DWD 290.03 (3) and elsewhere in the rule, "the" should replace "such." Also, "shall" should replace "must."

m. All of the examples provided in s. DWD 290.035 should be placed in provisions labeled "note" or "example" after each substantive provision of the section. [s. 1.09 (1), Manual.]

n. In the third sentence of s. DWD 290.05, the period should not be stricken.

o. In s. DWD 290.09 (1) (intro.), "shall" should replace "should."

p. In ss. DWD 290.09 (1) (b) (intro.) and 290.14 (intro.), the phrase "all of the following" should be inserted immediately before the colon.

q. In s. DWD 290.11 (1) (intro.), the phrase "all of the following" should be inserted immediately before the colon. In addition, all of the paragraphs that follow the (intro.) should be reviewed for grammatical completeness.

r. The word "as" in SECTION 34 of the rule should be deleted.

s. The first sentence of the note to s. DWD 290.14 (2) appears to be a substantive provision which should not be in a note. Therefore, the sentence should be removed from the note and relocated to a substantive provision of the rule. [s. 1.09 (1), Manual.]

t. In s. DWD 290.17, "Wis. Admin. Code" should be deleted.

u. The treatment clause of SECTION 40 of the rule should identify the chapter of the Wisconsin Administrative Code to which the appendix is to be appended.

- v. All of the amendatory language in s. DWD 294.01 (1) (a) should precede the existing period.
- w. The term "local governmental unit" in s. DWD 294.02 (5) should be underscored.
- x. The rule should have an effective date clause. [s. 1.02 (4), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

The note to s. DWD 290.01 (10) (c) refers to a formula recognized by the U.S. Department of Labor. The note should indicate where this formula may be obtained.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. DWD 290.01 (16p), the definition of the term "project" is somewhat circular and less than clear. The provision defines "project" to be labor and materials to be supplied by a contractor to construct a specific "project" and excludes certain things that are not a permanent part of the "project." The definition should be clarified.

b. For purposes of clarity, it would appear that the phrase "a contract under which," or a similar phrase, should be inserted in s. DWD 290.01 (20p) after the word "means" and before the phrase "the material." In addition, the period after the subsection number should be deleted.

c. The term "habitable" in s. DWD 290.035 (1) (a) should not be in quotation marks.

d. In s. DWD 290.035 (3) (a), the word "no" should be changed to "not."

e. In s. DWD 290.035 (4) (a), should the word "paving" be inserted after the word "miscellaneous" in the first sentence? It appears that by inserting "paving," the text of the rule would correspond to the title of the provision.

f. In s. DWD 290.04 (1), what is an employer's "straight time obligation"? That term does not appear to be defined in the rule or in the Wisconsin Administrative Code. The rule should be clarified.

WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946



Jane R. Henkel, Acting Director
Legislative Council Staff
(608) 266-1304

Richard Sweet
Assistant Director
(608) 266-2982

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-164

AN ORDER to repeal DWD 290.01 (3), (7), (8), (9) and (12), 290.02 (5) and 290.06; to renumber DWD 290.12 (2); to renumber and amend DWD 290.01 (22); to amend DWD 290.01 (intro.), (4), (6), (10) (a), (b) and (c), (17) and (18), 290.015 (6) (a), 290.02 (3) and (4), 290.03 (title) and (1), 290.05, 290.07, 290.08 (title), (1) and (3), 290.09 (title), (1) (intro.) and (a), (2) and (4), 290.11 (title), (1), (2) and (3), 290.12 (title) and (1), 290.13, 290.14 (title), (intro.), (1) and (2), 294.01 (1) (a) and (c) and (2) (a), 294.02 (2) and (5), 294.03 (1) (b), 294.04 (1), (2) and (3) (a) and (b), 294.05 (2) (a) (intro.) and 4., (3) (b) 2. b. and (5) (a), (b) and (c), 294.06 (title) (1) and (2) and 294.08 (intro.); to repeal and recreate DWD 290.01 (10) (intro.), (14) and (21), 290.035, 290.04, 290.09 (1) (b), 290.16 and 294.02 (3), (9) and (11); and to create DWD 290.01 (16p), (17m) and (20p), 290.03 (3), 290.09 (5), 290.12 (2), 290.17 and 294.08 (3), relating to prevailing wage rates.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

12-13-99 RECEIVED BY LEGISLATIVE COUNCIL.

01-11-00 REPORT SENT TO AGENCY.

RNS:RJC;jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

FISCAL ESTIMATE
DOA-2048 N(R03/97)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
chapters DWD 290 and 294

Amendment No. if Applicable

Subject
Prevailing Wage Rates

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive
 - Mandatory
- 2. Decrease Costs
 - Permissive
 - Mandatory

- 3. Increase Revenues
 - Permissive
 - Mandatory
- 4. Decrease Revenues
 - Permissive
 - Mandatory

5. Types of Local Governmental Units Affected:
- Towns
 - Villages
 - Cities
 - Counties
 - Others _____
 - School Districts
 - WTCS Districts

Fund Sources Affected

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

None of the substantive changes in the rule have a fiscal effect on state or local governments. The two most significant changes affecting government are intended to ensure that existing law is clear and applied consistently. First, the proposed rule provides that local governments must show they have enacted a methodology for enforcing a prevailing wage ordinance before they will be exempted from the state prevailing wage law. Second, state agencies and local governments must ensure that standardized language on the application of the prevailing wage law is in every prime contract. Other changes affecting government are minor with no fiscal effect.

Long-Range Fiscal Implications

None

Agency/Prepared by: (Name & Phone No.)
Patricia Hewitt 266-6469

Authorized Signature/Telephone No.

Howard J. Devastin 266-9427

Date

12/13/99

FISCAL ESTIMATE WORKSHEET

1999 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chapters DWD 290 and 294

Amend.

Subject
Prevailing Wage Rates

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
0

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes		\$0	\$0 -
(FTE Position Changes)		0 (FTE)	0 (- FTE)
State Operations - Other Costs		0	0
Local Assistance		0	0
Aids to Individuals or Organizations		0	0
TOTAL State Costs by Category		\$0	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$0	\$0-
FED		0	0
PRO/PRS		0	0
SEG/SEG-S		0	0
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		Increased Rev.	Decreased Rev.
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
TOTAL State Revenues		\$0	\$0-

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$0	\$0
NET CHANGE IN REVENUES	\$0	\$0

Agency/Prepared by: (Name & Phone No.)
DWD/ Patricia Hewitt 266-6469

Authorized Signature Telephone No.

Patricia Hewitt 266-9427

Date

12/13/99



State Senator
James R. Baumgart

State Capitol: P. O. Box 7882, Madison, WI 53707-7882 • Telephone (608) 266-2056
Toll-free: 1-888-295-8750 • E-Mail: sen.baumgart@legis.state.wi.us

April 24, 2000

TO: Members of the Senate Labor Committee

Senator Russell Decker
Senator Roger Breske

Senator David Zien
Senator Margaret Farrow

FROM: ✓ Senator Jim Baumgart, Chair

Re: Clearinghouse Rules referred to Committee

The following rules were referred to the Committee on April 20, 2000.

CLEARINGHOUSE RULE 99-164 - Relating to prevailing wage rates.

Submitted by the Department of Workforce Development

CLEARINGHOUSE RULE 00-024 - Relating to the annual adjustment of thresholds for application of the prevailing wage rates for state or local public works projects

Submitted by the Department of Workforce Development

Enclosed are copies of the rules. If you have any concerns or questions about the rules or want a public hearing on the rules, please advise immediately.

cc: Dan Fernbach, Legislative Council Attorney

*see note from
A-8-C10*

Tommy G. Thompson
Governor

Linda Stewart
Secretary



**OFFICE OF THE
SECRETARY**

201 East Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
Telephone: (608) 266-7552
Fax: (608) 266-1784
<http://www.dwd.state.wi.us/>

State of Wisconsin

Department of Workforce Development

April 18, 2000

President of the Senate
220 South, State Capitol
Madison, Wisconsin 53702

Speaker of the Assembly
211 West, State Capitol
Madison, Wisconsin 53702

Notice of Administrative Rules in Final Draft Form

Clearinghouse rule number: 99-164

Rule number: chs. DWD 290 and 294

Relating to: Prevailing Wage Rates

Dear Senator Risser and Representative Jensen:

I have enclosed proposed rules in final draft form and a rule report as required by s. 227.19(3), Stats., for referral to the appropriate legislative standing committees. If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in cursive script that reads "Linda Stewart".

Linda Stewart, Ph.D.
Secretary

Tommy G. Thompson
Governor

Linda Stewart
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY

201 East Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
Telephone: (608) 266-7552
Fax: (608) 266-1784
<http://www.dwd.state.wi.us/>

Rule Analysis for Legislative Review

**Proposed rules affecting chs. DWD 290 and 294 relating to prevailing wage rates
(CR 99-164)**

Need for rules

The proposed rules make various changes to existing rule chapters on enforcing the requirement that employers pay prevailing wage rates for work on qualifying public works projects. The proposed rules include substantive changes suggested by a focus group representing the major parties with interests related to these rules, statutory updates, and clarifications to rule language. Further detail may be found in the analysis preceding the rule text.

Public hearing response

No modifications were made in response to testimony received at the public hearing. A list of persons attending the hearing, a summary of the testimony, and the department response are attached.

Response to Legislative Council staff recommendations

All recommendations of the Legislative Council staff were accepted, except the recommendation in 2.t. to delete the reference to Wis. Admin. Code in s. DWD 290.17. This rule section provides standard language that state agencies and local governmental units must insert in every prime contract for public works projects that are subject to the prevailing wage laws. The language cites the statutory and code provisions that apply and includes "Wis. Admin. Code" in the rule citation. Although the rules style manual does not generally allow the full citation form to be used within rules, the purpose of this section is to provide language that is to be used in a construction contract. The full citation form in the contract may assist the public in finding the law, which is unnecessary for internal code citations.

Final regulatory flexibility analysis

A final regulatory flexibility analysis is not required because the rule will not have a significant economic impact on a substantial number of small businesses.

Department contacts

Patricia Hewitt, Section Chief
Construction Wage Standards Section
266-6469

Elaine Pridgen
Administrative Rules Coordinator
267-9403

Summary of Public Hearing

Proposed rule affecting chs. DWD 290 and 294 relating to Prevailing Wage Rates

A public hearing was held in Madison on January 24, 2000. The hearing record was left open until January 31 for receipt of written comments. None were received.

Spoke in support of the proposed rules	5
Registered in support of the proposed rules	1
Spoke to provide information to the Department	1
Observed for information only	3
Opposed the rules	0

Spoke in support of the proposed rules

1. Jim Boullion, Legislative Director
Associated General Contractors
Madison
2. John Mielke, Govt. Affairs Director
Associated Builders and Contractors
Madison
3. Mark Reihl
Wisconsin State Council of Carpenters
Madison
4. Michael Engelberger, President
Sheet Metalworkers, Local 18
Milwaukee
5. Douglas Avery, Business Manager
International Brotherhood of Electrical
Workers, Local 159
Pardeeville

Registered in support of the proposed rules

1. Luman Eggleston
Electrical Workers Union Local 159
Madison

Spoke to provide information to the Department

1. Marilyn Kuick, Prevailing Wage Specialist
Wisconsin Department of Transportation
Madison

Observed for information only

1. Thomas E. Fisher
Wisconsin Laborers District Council
Madison
2. Reginald G. Hansen
Joint Labor-Management Work Preservation Fund
Middleton
3. Richard Busch
Contractor Compliance
Janesville

Summary of Comments on Proposed Rules

1. Jim Bouillion, Associated General Contractors

The proposed rules are what was agreed to in the negotiated process and we support them. Since we had our discussions on this rule package, a member of mine has raised an new issue. If possible I'd like to get it adopted for this rule package. If not, I'd like to have it considered in the future. In counties where there are not 500 hours reported for subjourneypersons in a particular trade, the current rules prohibits the use of subjourneypersons. My member suggests that public works project adopt whatever local bargaining agreement is in effect on the use of subjourneypersons for that trade in that county.

2. John Mielke, Associated Builders and Contractors

I also participated in the focus group discussions. While they were arduous, I think they were productive. I'd like to thank the department for using that process and holding everybody at the table. I think the rule package is acceptable to everybody even though we all have our own beefs with it. We are in support of the rule package.

I do share the concerns that Jim Bouillion brought up regarding the use of subjourneypersons in counties where there are not 500 hours reported. Our suggested remedy is slightly different. We suggest going to contiguous counties to come up with more than 500 hours. If the majority are reported under a collective bargaining agreement, then the provisions of that agreement would apply just like they do if you would have had 500 hours. If the majority of those hours are not under a collective bargaining agreement, then the department would determine the wages of subjourneypersons based on s. DWD 290.025(4) using the 35/65 rules.

3. Marilyn Kuick, Department of Transportation

The proposed rule contains a provision in direct contrast to s. 103.50, Stats, the statute on determining prevailing wage for highway contracts. We interpret it in the same manner as the federal prevailing wage law under Davis-Bacon. It doesn't matter how much time you spend in a classification, you get paid at that classification rate. My understanding was that when the prevailing wage law was changed all the prevailing wage laws were to agree with one another. We work with a lot of these contractors and they get confused because there are different rules on cross-classification on highway projects than on other public works projects.

4. Mark Reihl, Wisconsin State Council of Carpenters

I was also involved in the negotiation process to come up with the rule that is before us today. I want to speak in favor of the rule. This is something we agreed to even though not everybody likes everything.

I am speaking in response to the comments on subjourneypersons. We would be opposed to opening up this rule package again. If the package is going to be opened up for changes, there are some things we would like to bring up as well. Once you start that process, you're back where you were in the first place. If there isn't any information in the county to base the use of subjourneypersons on, then you shouldn't be able to use them.

5. Michael Engelberger, Sheet Metalworkers, Local 18

I agree with Mark Reihl's comments. We support the proposed rules in their current form and they should be left as is. If they were opened again, there are things we would like to change also.

6. Douglas Avery, International Brotherhood of Electrical Workers, Local 159

I agree that the rules should be left as they are. If this was opened up, there are issues we would like to bring up. I'd like to leave it just as it stands now.

Department Response

The substantive changes in the proposed rule were the result of a negotiated agreement that is supported by all the interested parties. Two organizations of contractors, Associated General Contractors and Associated Builders and Contractors, raised a new issue that was not discussed in the negotiation process: the inability to use subjourneypersons in counties where there are not currently sufficient reported hours to allow their use. The issue is controversial and may be discussed in the future, but will not be considered at this stage for the current rule package.

The Department of Transportation commented on the different rules on cross-classification under federal law, state highway projects regulated by DOT, and public works projects regulated by DWD. The proposed DWD rule on cross-classification allows workers to perform tasks in more than one classification during a work week without a requirement that they be paid a separate pay rate for the second classification if the work in the second classification is 15% or less of their work time for the week. Employees typically do incidental work outside their normal job duties and the proposed DWD rule does not require a separate pay rate to avoid imposing unreasonable paperwork obligations on contractors.

**State of Wisconsin
Department of Workforce Development
Equal Rights Division**

Prevailing Wage Rates

The Wisconsin Department of Workforce Development proposes an order to repeal 290.01(3), (7), (8), (9), (12), and (14); 290.02(5); 290.06; and 290.07; to renumber 290.12(2) and 290.155; to renumber and amend 290.01(22); to amend 290.01(intro), (4), (6), (10)(intro)(note), (10)(a), (10)(b), (10)(c), (18)(a), (18)(b), and (18)(c)(intro); 290.02(3) and (4); 290.03(title) and (1); 290.05; 290.08(title), (1), (3), and (note); 290.09(title), (1)(intro), (1)(a), (2), and (4); 290.12(title) and (1); 294.01(1)(a), (1)(c), and (2)(a); 294.02(2) and (5); 294.03(1)(b); 294.04(1), (2), (3)(a), and (3)(b); 294.05(2)(a)(intro), (2)(a)4., (3)(b)2.b., (5)(a), (5)(b), and (5)(c); 294.06(title), (1), and (2); and 294.08(title), (intro), and (note); to repeal and recreate 290.01(10)(intro), (17), and (21); 290.035; 290.04; 290.09(1)(b); 290.11; 290.13; 290.14; 290.16 and 294.02(3), (9), and (11); and to create 290.01(9), (17m), and (20p); 290.025(note); 290.03(3); 290.09(5); 290.12(2); 290.155(2), (3), (4); 290.17; and ch. 290 Appendix A relating to prevailing wage rates.

Analysis Prepared by the Department of Workforce Development

Statutory authority: ss. 66.293, 103.49, and 227.11, Stats.

Statutes interpreted: ss. 66.293 and 103.49, Stats.

The proposed rule includes substantive changes suggested by a focus group representing the major parties with interests related to these rules, statutory updates, and clarifications to rule language.

Substantive changes

Fringe benefits to apprentices. The proposed rule requires a consistent method for providing fringe benefits to apprentices who work on public works projects. In the past, there has been no standard practice on the provision of fringe benefits in the private sector or on public works projects. The proposed rule provides that apprentices receive the same percentage of journeypersons' fringe benefits as they receive of journeypersons' hourly basic rate of pay when they are working on public works projects.

Cross-Classifications. The proposed rule allows workers to perform tasks in more than one classification during a work week without a requirement that they be paid a separate pay rate for the other classifications if the work in the other classifications is performed for 15% or less of their work time for the week. The department previously

had an informal policy of allowing work in other classifications up to 20% of the work week without separate pay rates.

Debarment. Falsifying, deliberately destroying, or failing to keep required payroll records on a public works project is added as an independent cause for debarment. It was previously a cause only when done in combination with one of the other three causes. Only responsible officers and directors of a business that commits a debarable offense may be debarred.

Exempt local governmental units. Local governmental units seeking an exemption from the state prevailing wage law on the grounds that they have their own local ordinance on prevailing wage must show that they have enacted a methodology to enforce the payment of the prevailing wage rates before an exemption from the state law will be granted.

Standard contract language. Every state agency or local governmental unit must ensure that standardized language is in every prime contract that states the contractor's obligation to pay or ensure the payment of the prevailing wage rates to all workers on the project.

Miscellaneous. The classification of projects is updated to reflect current construction industry practices.

The prevailing wage rate determination for projects of a local governmental unit or exempt local governmental unit may be posted at the place normally used to post public notices if there is no appropriate site on a project to post it. This provision does not apply to state-owned projects.

The list of debarred contractors will be sent to exempt local governmental units quarterly only if there has been a change in the list. The debarment list may be sent by a method other than first-class mail.

A written summary or tape recording of a debarment hearing must be requested before the hearing.

Statutory updates

Statutory references and terminology are updated to be consistent with 1995 Wisconsin Act 215. The term "municipality" is changed to "local governmental unit" and "fringe benefit" is changed to "economic benefit." The rule is amended to reflect the statute's addition of demolition work to prevailing wage law coverage. The rule repeals language on hours of labor because the statute now determines what is considered standard hours of labor and what is considered overtime.

Clarification

The section on determining the estimated cost of completion of a project for purposes of meeting the minimum estimated project cost for application of the prevailing wage law is amended to clarify what types of costs should be included and what work may be considered a separate project.

Definitions of the terms “service and maintenance work,” and “supply and installation contract” are created to clarify when work falls in these two categories that are not covered under the prevailing wage law.

“Truck driver” is added to the phrase “laborer, worker, or mechanic” in various places throughout the rule that refer to covered employees. The addition of “truck driver” is for clarification and consistency with statutory language and is not a substantive change.

The definition of “public works project” is rewritten to include information formerly contained in the definition of “erection, construction, remodeling, or repairing” and “erection, construction, remodeling, or repairing” is repealed as a defined term. The definition of the term “trade or occupation” is rewritten for clarity.

Requirements on retention of payroll and records of work done on a project have been moved to a different section of the rule with no effect on the rule content. The record retention requirement was previously in both s. DWD 290.07 and ss. 290.13 and 290.14 and is now only in ss. DWD 290.13 and 290.14.

SECTION 1. DWD 290.01 (intro) is amended to read:

DWD 290.01 (intro) Definitions. The following definitions shall apply ~~in~~ to all prevailing wage rate determinations made- issued by the department pursuant to this chapter:

SECTION 2. DWD 290.01 (3) is repealed.

SECTION 3. DWD 290.01 (4) and (6) are amended to read:

DWD 290.01 (4) “Contractor;” ~~under s. 66.293 (3) (g) and (h), Stats.,~~ means a person, including a construction manager or consultant, who has entered into a contract with a municipality-state agency or local governmental unit for a project of public works project.

DWD 290.01 (6) “Employer;” ~~as used in these rules and in s. 66.293 (3) (f), Stats.,~~ includes means any contractor, subcontractor, agent or other person, doing or contracting to do all or a part of the work.

SECTION 4. DWD 290.01 (7), (8), and (9) are repealed.

SECTION 5. DWD 290.01 (9) is created to read:

DWD 290.01 (9) "Hourly basic rate of pay" has the meaning given in s. 103.49 (1)

(b), Stats.

SECTION 6. DWD 290.01 (10)(intro) is repealed and recreated to read:

DWD 290.01 (10)(intro) "Hourly contributions" is the per hour cost of the economic benefits paid to a laborer, worker, mechanic or truck driver by his or her employer, in addition to the hourly basic rate of pay. Payment for food, lodging, mileage, riding time, waiting time, call-in pay, uniforms, and the use of an employer's vehicle are excluded.

SECTION 7. DWD 290.01 (10)(intro)(note), (a), (b), and (c) are amended to read:

Note: Specific economic ~~and fringe~~ benefits. (Interpretation)

(a) The term "other bona fide economic benefit" is the so-called "open end" provision. This was included so that new ~~fringe~~ economic benefits may be recognized by the department as they become prevailing. A particular ~~fringe~~ economic benefit need not be recognized beyond a particular area in order for the department to find that it is prevailing in that area.

(b) To insure against considering ~~and or~~ giving credit to any and all economic benefits, some of which might be illusory or not genuine, the qualification required by the department is that ~~such the economic and fringe~~ benefits must be bona fide. No difficulty is anticipated in determining whether a particular economic benefit is bona fide in the ordinary case where benefits are those common in the construction industry and which are established under a usual fund, plan or program. The following are typical conventional economic benefits: medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayal of costs of apprenticeship or other similar programs, or other bona fide economic benefits, but only where the employer is not required by other federal, state, or local law to provide any of ~~such the~~ benefits. Employers may take credit for contributions made under such conventional plans without requesting the approval of the department.

(c) Economic benefits which an employer is required to pay pursuant to other federal, state, or local law are excluded. No credit shall be taken for the payments made for such economic benefits. For example, payments for worker's compensation insurance under either a compulsory or elective state statute are not payments for economic benefits under ss. 66.293 or 103.49, Stats. The omission in the above-mentioned statutes of any express reference to these payments, which are common in the construction industry, suggests that these payments shall not be regarded as an economic benefit.

DWD 290.01 (10)(a) *Contribution irrevocably made by an employer to a trustee or to a third person.* Contributions for bona fide economic ~~or fringe~~ benefits made to a trustee or to a third person irrevocably ~~will~~ shall be considered in ascertaining any hourly ~~contributions~~ contribution. The "third person" must be one who is not affiliated with the employer. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund, except those used for apprenticeship training, must be set up ~~in such a way that in no event will so that~~ the employer be able unable to recapture any of the required contributions paid in or ~~in any way~~ to divert the funds.

DWD 290.01 (10)(b) *Fund, plan, or program.* ~~The contributions~~ contribution for an economic and fringe benefits benefit must be made pursuant to a bona fide fund, plan, or program.

Note: The phrase “fund, plan, or program” is intended merely to recognize the various types of arrangements commonly used to provide economic and fringe benefits through employer contributions. In interpreting this phrase, the department will be guided by the experience of the United States department of labor and United States treasury department in administering the Employee Retirement Income Security Act of 1974, of the U.S. department of labor in administering other related programs, and of the Wisconsin state insurance commissioner in administering employe welfare funds under ch. 641, Stats.

DWD 290.01 (10)(c) *Unfunded plans.* 1. The reasonable anticipated ~~costs~~ cost to an employer pursuant to an enforceable written commitment to carry out a financially responsible plan or program, ~~will~~ shall be considered as an economic and fringe benefits benefit.

Note: These provisions are intended to permit the consideration of economic and fringe benefits ~~meeting that~~ meet the requirements and ~~which~~ are provided from the general assets of an employer.

2. No type of economic or fringe benefit is eligible for consideration as a so-called unfunded plan unless all of the following criteria apply:

- a. A copy has been supplied to the department;
- b. It could be reasonably anticipated to provide economic benefits described in s.-ss. 66.293 or 103.49, Stats., and this subsection;
- c. It is a bona fide commitment; ~~and.~~
- d. The plan or program providing the economic benefits has been communicated in writing to the affected laborers, workers, and mechanics and truck drivers affected.

Note: As in the case of ~~other economic and fringe benefits payable under s. 66.293, Stats., benefit contributions made to a fund, plan, or program,~~ an unfunded plan or program must be “bona fide” and not a mere simulation or sham ~~for avoiding to avoid~~ compliance with s.-ss. 66.293 or 103.49, Stats. In evaluating the per hour cost of the fringe benefit contribution for employers that “self-insure” all or a portion of their employes’ health insurance, the department may use guidance from the discussion on determining the applicable premium for self-insured plans under the Consolidated Omnibus Reconciliation Act (COBRA) in the Employer’s Handbook: Mandated Health Benefits, Thompson Publishing Group, 1725 K Street, N.W., Suite 200, Washington, D.C. 20006

SECTION 8. DWD 290.01 (12) and (14) are repealed.

SECTION 9. DWD 290.01 (17) is repealed and recreated to read:

DWD 290.01 (17) “Public works project” or “project” means erection, construction, remodeling, repairing, or demolition building or work under contract with a Wisconsin

state agency or local governmental unit as defined in s. 66.293(1)(d) or 103.49(1)(f), Stats., including alterations, painting, and decorating and not including service and maintenance work, warranty work, and work under a supply and installation contract.

SECTION 10. DWD 290.01 (17m) is created to read:

DWD 290.01 (17m) "Service and maintenance work" means work on facilities or equipment routinely performed to prevent breakdown or deterioration.

SECTION 11. DWD 290.01 (18) (a), (b), and (c)(intro.) are amended to read:

DWD 290.01 (18) (a) "Site of ~~work~~ project" means the physical place or places where the construction called for in the contract will remain when work on it has been completed and other adjacent or nearby property used by a contractor or subcontractor in connection with the project.

(b) "Site of ~~work~~ project" includes fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards and similar facilities, when these facilities are substantially dedicated to the performance of the contract or project and are located in proximity to the actual construction location.

(c) "Site of ~~work~~ project" does not include:

SECTION 12. DWD 290.01(20p) is created to read:

DWD 290.01(20p) "Supply and installation contract" means a contract under which the material is installed by the supplier, the material is installed by means of simple fasteners or connectors such as screws or nuts and bolts and no other work of any kind is performed on the site of a project, and the total labor cost to install the material does not exceed 20% of the total cost of the supply and installation contract.

SECTION 13. DWD 290.01 (21) is repealed and recreated to read:

DWD 290.01 (21) "Trade or occupation" means one of the job classifications recognized by the department that identifies the primary purpose and typical duties regularly performed by laborers, workers, mechanics and truck drivers employed in the

erection, construction, remodeling, repairing or demolition of any building or any other public works project.

Note: A "Dictionary of Occupational Classifications and Work Descriptions for Use on All Public Works Projects in the State of Wisconsin" may be obtained at no charge from the Department of Workforce Development, Equal Rights Division, P. O. Box 8928, Madison, WI 53708 or at the DWD web site at <http://www.dwd.state.wi.us/er/dictionary1.htm>.

SECTION 14. DWD 290.01 (22) is renumbered DWD 290.01 (16m) and amended to read:

DWD 290.01 (16m) "~~Wage-Prevailing wage rate~~ determination" includes the original determination and subsequent determinations modifying or otherwise changing the provisions of the original determination.

SECTION 15. DWD 290.02 (3) and (4) are amended to read:

DWD 290.02 (3) Apprentices shall be paid a percentage of the applicable ~~journeyman's~~ ~~journeyperson's~~ hourly basic rate of pay and hourly fringe benefit contributions specified in the prevailing wage rate determination issued for a project.

(4) The appropriate ~~hourly basic rate~~ percentage shall be obtained from each apprentice's contract or indenture.

SECTION 16. DWD 290.02 (5) is repealed.

SECTION 17. DWD 290.025 (note) is created to read:

DWD 290.025 Subjourneypersons.

Note: "Request to Employ Subjourneyperson," form ERD-10880, may be obtained at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708 or the DWD web site at <http://www.dwd.state.wi.us/er/pdfforms.htm>.

SECTION 18. DWD 290.03 (title) and (1) are amended to read:

DWD 290.03 (title) **Classification of laborers, workers, and mechanics and truck drivers**. (1) Wages paid for work done in any given trade or occupation shall be computed at a wage rate not less than the prevailing wage rate ~~listed~~ specified in the prevailing wage rate determination issued for a project. The type of work done for the most similar trade or occupation, and not a previously assigned occupational title, shall determine the required minimum prevailing wage rate payable. ~~The applicable rate for~~

~~the type of work done shall be determined according to the prevailing local practices in the area.~~

SECTION 19. DWD 290.03 (3) is created to read:

DWD 290.03 (3) A laborer, worker, mechanic or truck driver that performs work in more than one occupational classification during a given work week shall be cross-classified and compensated for all work performed in each classification, unless work other than the primary classification is performed for 15% or less of the time spent working on a particular public works project during a given work week.

SECTION 20. DWD 290.035 is repealed and recreated to read:

DWD 290.035 Classification of projects. (1) BUILDING OR HEAVY CONSTRUCTION. A building or heavy construction project includes sheltered enclosures with walk-in access for the purpose of housing persons, employees, machinery, equipment, or supplies and nonsheltered work such as canals, dams, dikes, reservoirs, and storage tanks. A sheltered enclosure need not be habitable in order to be considered a building. The installation of machinery or equipment, both above and below grade level, does not change a project's character as a building. Building or heavy construction includes on-site grading, utility work, and landscaping.

Note: Examples of building or heavy construction projects include, but are not limited to, antenna towers; apartment buildings of 5 or more stories; enclosed arenas; athletic fields, excluding all paving work; auditoriums; automobile parking garages or ramps; banks or financial buildings; barracks; bathhouses; indoor or outdoor bleachers; breakwaters; caissons; canals; channels; channel cut-offs; chemical complexes or facilities; churches; city halls; civic centers; cofferdams; coke ovens; commercial or retail buildings; courthouses; dams; demolition; detention facilities or jails; dikes; docks; dormitories; dredging; factories; fire stations; flood control; fueling facilities; gas and oil pipelines; golf courses; grandstands; hospitals; hotels; industrial buildings; industrial incinerators; institutional buildings; irrigation; jetties; kennels; kilns; land drainage; land leveling; land reclamation; landfills; landscaping; laterals; levees; libraries; lift stations, excluding drop-in type; locks; manufacturing plants; marine work; mausoleums; motels; museums; nursing and convalescent facilities; office buildings; oil refineries; out-patient clinics; outdoor electrification; passenger or freight terminals; police stations; ponds; post offices; power plants; prefabricated buildings; pumping stations; railroad construction; reservoirs; rest areas; restaurants; revetments; schools; service stations; shopping centers; shoreline rehabilitation; ski tows; storage tanks, including above ground, below grade, or removal; stores; swimming pools, excluding projects subject to sub. (5); subways; theaters; tipples; unsheltered piers or wharves; viaducts other than state highway or local street; warehouses; water or sewage treatment plants; water towers; waterways; water wells, excluding projects under sub. (5).

(2) SEWER, WATER, OR TUNNEL CONSTRUCTION. A sewer, water, or tunnel construction project includes those projects that primarily involve public sewer or water distribution, transmission, or collection systems and related tunnel work, excluding

buildings. Sewer, water, or tunnel construction performed within the lot line of a building or heavy construction project are subject to sub. (1).

Note: Examples of sewer, water, or tunnel construction projects include, but are not limited to, aqueducts; catch basins; cofferdams; compressed air tunnels; culverts; forcemains; free air tunnels; drop-in lift stations; manholes; marine work; open cut trenches; sanitary sewers; sewage collection or disposal lines; shafts; storm sewers; tunnels, except for subways; water mains; and water supply or distribution lines.

(3) AIRPORT PAVEMENT OR STATE HIGHWAY CONSTRUCTION. An airport pavement or state highway construction project includes all airport projects and all projects awarded by the Wisconsin department of transportation that do not include buildings.

Note: Examples of airport pavement or state highway construction projects include, but are not limited to, airport aprons, runways, or taxiways; base courses; bituminous pavement; brick paving; bridges; concrete pavement; curbs; excavation or embankment for road construction; fencing; grade crossing elimination or separation, such as overpasses or underpasses; guard rails; gutters; landscaping; lighting or traffic control; marine work; medians; parkways; public sidewalks; resurfacing; shoulders; signs; stabilizing courses; and storm sewers, sanitary sewers, or water supply lines incidental to airport pavement or state highway construction.

(4) LOCAL STREET OR MISCELLANEOUS PAVING CONSTRUCTION. A local street or miscellaneous paving construction project includes roads, streets, alleys, trails, bridges, paths, parking lots and driveways that are not subject to sub. (5), public sidewalks, and racetracks. Projects awarded by the Wisconsin department of transportation are excluded.

Note: Examples of local street or miscellaneous paving construction projects include, but are not limited to, alleys; athletic field paving work; base courses; bike or bridle paths; bituminous pavement; brick paving; bridges; concrete pavement; curbs; driveways; excavation or embankment for road construction; fencing; grade crossing elimination or separation, such as overpasses or underpasses; guard rails; gutters; landscaping; lighting or traffic control; marine work; medians; parking lots; parkways; public sidewalks; racetracks; recreational trails; resurfacing; roadways; shoulders; signs; and stabilizing courses.

(5) RESIDENTIAL OR AGRICULTURAL CONSTRUCTION. A residential or agricultural construction project includes single family houses or apartment buildings of no more than 4 stories in height and all buildings, structures, or facilities that are primarily used for agricultural or farming purposes, excluding commercial buildings. For classification purposes, the primary consideration is the exterior height of a residential building in stories. Residential or agricultural construction includes all incidental items such as site work, driveways, parking lots, private sidewalks, swimming pools, and private septic systems or sewer and water laterals connected to a public system.

Note: Examples of residential or agricultural construction projects include, but are not limited to, apartment buildings of 4 stories or less, barns, breeding facilities, condominiums of 4 stories or less, convents, cribs, fencing, garages, grain bins, greenhouses that are not incidental to retail, irrigation wells, land clearing, manure pits, nurseries, sheds, silos, single-family houses, stables, storage or outbuildings, student housing of 4 stories or less, swimming pools, town or row houses, training, riding or exhibition facilities, and water wells that are not subject to sub. (1).

SECTION 21. DWD 290.04 is repealed and recreated to read:

DWD 290.04 Straight time wages. (1) An employer may discharge its obligation for payment for work done less than or equal to the prevailing hours of labor as defined in s. 103.49(1)(c), Stats., by paying the total prevailing wage rate in cash or by paying in cash and incurring costs for bona fide economic benefits if the total of the cash payment and the total hourly contribution for the bona fide economic benefits equal or exceed the total prevailing wage rate.

(2) Before an employer can be given credit for any unfunded economic benefit plan or program, the employer shall supply a copy of the plan or program to the department and comply with all other provisions of s. DWD 290.01 (10)(c).

(3) Unconventional plans shall be approved by the department before any credit will be given to an employer.

SECTION 22. DWD 290.05 is amended to read:

DWD 290.05 Overtime wages. All hours worked by a laborer, worker, ~~or~~ mechanic or truck driver in excess of the prevailing hours of labor per day or per calendar week, must be paid at a rate at least ~~1½~~ 1.5 times the hourly basic rate of pay. Sums paid by an employer for ~~fringe and~~ bona fide economic benefits shall be excluded in the computation of the overtime premium. In no event can the rate upon which the overtime premium is calculated be less than the amount determined by the department as the hourly basic rate of pay (~~i.e., cash rate~~). Nor can the rate upon which the overtime premium is calculated be less than the straight time cash payment made to the laborer, worker, ~~or~~ mechanic or truck driver or be less than the employee's normal hourly basic rate of pay, if it is higher. Contributions by employees are not excluded from the rate upon which the overtime premium is computed; that is, an employee's overtime premium rate is computed on the taxable earnings before any deductions are made for the employee's contributions to bona fide economic ~~and fringe~~ benefits. The employer's contributions,

costs or cash payments for bona fide economic ~~and fringe~~ benefits may be excluded in computing the overtime premium rate so long as the exclusions do not reduce the overtime premium rate below the hourly basic rate contained in the prevailing wage rate determination issued for a project.

SECTION 23. DWD 290.06 and 290.07 are repealed.

SECTION 24. DWD 290.08 (title), (1), (3), and (note) are amended to read:

DWD 290.08 (title) Prevailing Wage wage rate determinations in for individual projects. (1) ~~A municipality~~ Every state agency or local governmental unit shall request the department to ~~ascertain~~ determine the prevailing wage rate, ~~hours of labor and hourly basic pay rates~~ for all trades or occupations required to complete any ~~project of public works project~~ which meets or exceeds the dollar thresholds provided in s. DWD 290.155.

(3) The department may be notified about ensuing projects as far in advance as possible. However, the official request to the department to ~~ascertain and determine~~ the prevailing wage rate, ~~hours of labor and hourly basic pay rates~~ for all trades and occupations required ~~in to complete~~ the work contemplated shall be made between 50 ~~and to~~ 60 days before making a contract by direct negotiation or soliciting bids.

Note: "Application for a Prevailing Wage Determination Issued by the Department of Workforce Development" form ERD-5719, may be obtained at no charge from the Department of Workforce Development Equal Rights Division, P.O. Box 8928, Madison WI 53708 or the DWD web site at <http://www.dwd.state.wi.us/er/pdfforms.htm>.

SECTION 25. DWD 290.09 (title), (1) intro, and (1)(a) are amended to read:

DWD 290.09 (title) Procedure for requesting exemption from applying to department for individual project prevailing wage rate determinations.

(1) The petition of any ~~municipality~~ local governmental unit for exemption from applying to the department ~~for ascertainment and determination of~~ to determine the prevailing wage rates for any individual public works projects, ~~hours of labor and hourly basic pay rates~~ pursuant to s. ~~66.293 (3) (d)~~, s. 66.293 (6), Stats., ~~should~~ shall be sent to the department and shall include:

(a) A certified copy of the ordinance or other enactment setting forth the standards, policy, procedure and practice followed in ~~ascertaining and determining~~ the prevailing

wage rates, ~~hours of labor and hourly basic pay rates in~~ for all trades and ~~or~~ occupations required in the work contemplated.

SECTION 26. DWD 290.09 (1)(b) is repealed and recreated to read:

DWD 290.09 (1) (b). A current schedule of prevailing wage rates for all trades or occupations required for any public works project, setting forth all of the following:

1. The trades or occupations required.
2. The current and future hourly basic rates of pay, the hourly contribution for bona fide economic benefits and any premium pay, if applicable, for these trades or occupations.
3. The types of public works projects, by kind and size, that are subject to the ordinance or other enactment.
4. The effective date of the hourly basic rates of pay and hourly contribution for bona fide economic benefits.

SECTION 27. DWD 290.09 (2) and (4) are amended to read:

DWD 290.09 (2) Upon request of the department, the ~~municipality-local~~ governmental unit shall also supplement its petition with information pertinent to determining the granting of an exemption.

(4) Each exemption is subject to revocation for cause at any time, and also subject to observance of the applicable provisions of Wisconsin laws, rules and regulations of the department, and of the agreements included in the petition and application. The provisions of ch. DWD 290 and ss. ~~66.293 (3) (a), (e), (f), (g), (h), 66.293 (1), (3), (4), (5), (8), (9)(b) and (c), (10), (11) and (12), Stats. remain in effect and are not included~~ within an exemption.

SECTION 28. DWD 290.09 (5) is created to read:

DWD 290.09 (5) No exemption shall be granted unless the local governmental unit has enacted a methodology to enforce the payment of the prevailing wage rates determined pursuant to its ordinance or enactment and that methodology has been approved by the department.

SECTION 29. DWD 290.11 is repealed and recreated to read:

DWD 290.11 Procedure when a state agency or local governmental unit fails to request a required prevailing wage rate determination or incorporate a required prevailing wage rate determination into a contract. (1) When the department finds that a state agency or local governmental unit has not requested a prevailing wage rate determination as required under s. 66.293(3)(am) or 103.49(3), Stats., the department shall promptly notify the state agency or local governmental unit of the noncompliance.

(2) The state agency or local governmental unit shall file an application for a prevailing wage rate determination, on a form prescribed by the department, within 10 days of the department's notice of noncompliance.

(3) The department shall issue the prevailing wage rate determination within 30 days of the notice of noncompliance.

(4) The local governmental unit or state agency may request a review of the prevailing wage rate determination within 30 days of the issuance of the determination pursuant to s. DWD 290.10.

(5) If the state agency or local governmental unit failed to incorporate a prevailing wage rate determination into a contract or bid, the local governmental unit or state agency shall either terminate the contract and resolicit bids using the prevailing wage rate determination or incorporate the determination retroactive to the beginning of construction through supplemental agreement or change order. The employer shall be compensated for any increases in wages resulting from the change. The method of incorporation of the prevailing wage rate determination and the adjustment in the contract or bid price shall be in accordance with applicable procurement law.

Note: "Application for a Prevailing Wage Determination Issued by the Department of Workforce Development," form ERD-5719, may be obtained at no charge from the Department of Workforce Development Equal Rights Division, P.O. Box 8928, Madison WI 53708 or the DWD web site at <http://www.dwd.state.wi.us/er/pdfforms.htm>.

SECTION 30. DWD 290.12 (title) and (1) are amended to read:

DWD 290.12 (title) Posting of prevailing wage rates and hours. (1) A clearly legible copy of the prevailing wage rate determination issued by the department or exempted municipality-local governmental unit for the project, together with the

provisions of ~~s. 66.293 (3) (a) and (e), ss. 66.293 (10)(a) and (11)(a) or ss. 103.49 (2) and (6m).~~ Stats., shall be kept posted in at least one conspicuous and easily accessible place at ~~the project on the site of each project~~ by the ~~employer~~ contracting state agency or local governmental unit engaged on the project and such ~~the~~ notice shall remain posted during the full time any ~~laborers, workers or mechanics are~~ laborer, worker, mechanic or truck driver is employed on the project.

SECTION 31. DWD 290.12 (2) is renumbered DWD 290.12 (3).

SECTION 32. DWD 290.12 (2) is created to read:

DWD 290.12 (2) If there is no appropriate site on a project, a local governmental unit may post the prevailing wage rate determination at the place normally used to post public notices.

SECTION 33. DWD 290.13 and 290.14 are repealed and recreated to read:

DWD 290.13 Evidence of compliance by agent and subcontractor.

(1) AFFIDAVIT OF COMPLIANCE. Upon completion of their portion of work on a public works project and prior to receiving final payment for work on the project, each agent or subcontractor shall file an agent or subcontractor affidavit of compliance with the prevailing wage rate determination, on a form prescribed by the department, with its prime contractor.

(2) RECORD RETENTION. (a) Each agent or subcontractor who performed work on a public works project shall retain the following records for at least 3 years after the last day on which the prime contractor and all its agents or subcontractors completed work on the site of the project:

(i) An accurate record of the name, trade or occupation, hours worked, and actual wages paid for all of its employees who performed work on the project.

(ii) A properly completed agent or subcontractor affidavit of compliance with the prevailing wage rate determination, on a form prescribed by the department, from each of its agents or subcontractors that performed work on the project.

(b) The required records shall be made available for inspection upon request of the department, state agency, or local governmental unit.

(c) The location of the required records shall be designated in the affidavit required under sub. (1). The records shall not be moved from the designated location without prior notice of the new location and the expected move date to the state agency or local governmental unit.

Note: "Agent or Subcontractor Affidavit of Compliance with Prevailing Wage Rate Determination," form ERD-10584, may be obtained at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708 or the DWD web site at <http://www.dwd.state.wi.us/er/pdfforms.htm>.

DWD 290.14 Evidence of compliance by prime contractor. (1) AFFIDAVIT OF COMPLIANCE. Upon completion of the public works project and prior to receiving its final payment for work on the project, each prime contractor shall file a prime contractor affidavit of compliance with the prevailing wage rate determination, on a form prescribed by the department, with the state agency or local governmental unit that awarded the contract.

(2) RECORD RETENTION. (a) Each prime contractor shall retain the following records for at least 3 years after the last day on which the prime contractor and all its agents or subcontractors completed work on the site of the project:

(i) An accurate record of the name, trade or occupation, hours worked, and actual wages paid for all of its employees who performed work on the project.

(ii) A properly completed agent or subcontractor affidavit of compliance with the prevailing wage rate determination, on a form prescribed by the department, from each of its agents or subcontractors that performed work on the project.

(b) The required records shall be made available for inspection upon request of the department, state agency, or local governmental unit.

(c) The location of the required records shall be designated in the affidavit required under sub. (1). The records shall not be moved from the designated location without prior notice of the new location and the expected move date to the state agency or local governmental unit.

Note: "Prime Contractor Affidavit of Compliance with Prevailing Wage Rate Determination," form ERD-5724 may be obtained at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708 or the DWD web site at <http://www.dwd.state.wi.us/er/pdfforms.htm>.

SECTION 34. DWD 290.155 is renumbered DWD 290.155(1).

SECTION 35 DWD 290.155 (2), (3), and (4) are created to read:

DWD 290.155. (2) The estimated cost of completion of a public works project shall include all contracts and subcontracts that are closely related in purpose, time, and place. Similar or related work may be considered a separate public works project only if all of the following apply to each portion of work:

- (a) It has a separate budget.
- (b) It is advertised separately.
- (c) It is bid or negotiated separately.
- (d) It is awarded separately.
- (e) It is not dependent on another segment of work for completion.

(3) The estimated cost of completion of a public works project shall include labor costs based on the most current prevailing wage rates available from the department, material, furnishings, and other things of value required to be supplied by a contractor or its subcontractors to construct a specific project.

(4) The estimated cost of completion of a public works project shall not include land cost, architectural fees, engineering fees, planning and research costs, and administrative costs.

SECTION 36. DWD 290.16 is repealed and recreated to read:

DWD 290.16 Complaints. Any person may request an inspection pursuant to s. 66.293 (10)(c) or 103.49 (5)(c), Stats. The request shall be in writing and shall identify the involved project; contractor, subcontractor, or agent; and trade or occupation. The requestor shall sign a statement that he or she understands the obligation to pay costs assessed pursuant to s. 66.293 (10)(c) or 103.49 (5)(c), Stats., if the contractor, subcontractor, or agent is found to be in compliance.

Note: "Wisconsin Prevailing Wage Rate Complaint," form ERD-9850, is available at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708 or the DWD web site at <http://www.dwd.state.wi.us/er/pdfforms.htm>.

SECTION 37. DWD 290.17 is created to read:

DWD 290.17 Standard contract language. Every state agency or local governmental unit shall insert or cause to be inserted a clause in every prime contract that

clearly states that the applicable public works project is subject to the provisions of either s. 66.293 or 103.49, Stats., and Wis. Admin. Code ch. DWD 290.

SECTION 38. Chapter 290 Appendix A is created to read:

Appendix A

Related labor standards state statutes and administrative rules that apply to public works projects

Subject	Administrative Code or Statutory Reference
Child labor	ch. DWD 270
Minimum wage	ch. DWD 272
Business closing	ch. DWD 279
Listing of deductions	s. DWD 272.10
Waiting time	s. DWD 272.12 (2)(b)
Rest and meal periods	s. DWD 272.12 (2)(c)
Pay for training	s. DWD 272.12 (2)(f)
Travel time	s. DWD 272.12 (2)(g)
Wage garnishment	ch. DWD 278
Compensatory time	s. 103.025, Stats.
Grooming	s. 103.14, Stats.
Deductions for faulty workmanship, loss, theft, or damage	s. 103.455, Stats.
Wage payment frequency	s. 109.03, Stats.

SECTION 39. DWD 294.01 (1)(a) and (c) and (2)(a) are amended to read:

DWD 294.01 (1) (a) Prescribes certain policies and procedures governing the debarment of contractors from contracts involving any state agency or ~~municipality~~ local governmental unit.

(c) Prescribes the procedures to be used to inform state agencies, ~~municipalities~~ local governmental units and the general public of the contractors that have been declared ineligible to perform work on public works ~~construction~~ projects.

(2) (a) Every state agency or ~~municipality~~ local governmental unit shall solicit bids from, negotiate with, or award contracts to, and approve or allow subcontracts with only responsible contractors. Debarment is an appropriate means to effectuate this policy.

SECTION 40. DWD 294.02 (2) is amended to read:

DWD 294.02 (2) “Construction business” means:

(a) Any business engaged in erecting, constructing, remodeling, repairing, demolishing, altering, painting and or decorating buildings, structures, or facilities; and

(b) Any business engaged in supplying the delivery of mineral aggregate or the transporting of excavated material or spoil as provided by ~~s. 66.293 (3), 103.49 (2) or 103.50 (2)~~, s. 66.293 (4) or 103.49 (2m), Stats.

SECTION 41. DWD 294.02 (3) is repealed and recreated to read:

DWD 294.02 (3) “Contractor” means any individual or legal entity in a construction business involved on a public works project, including its responsible officers, directors, members, shareholders, or partners, irrespective of the name by which the group is designated, provided that any officer, director, member, shareholder, or partner is vested with the management of the affairs of the individual or legal entity.

SECTION 42. DWD 294.02 (5) is amended to read:

DWD 294.02 (5) “Debarment” means action taken by the department under s. DWD 294.05 to exclude a contractor from performing work, either as a prime contractor or subcontractor, for any state agency or ~~municipality~~ local governmental unit for a specified period. A contractor so excluded is “debarred.”

SECTION 43. DWD 294.02 (9) and (11) are repealed and recreated to read:

DWD 294.02 (9) “Local governmental unit” has the meaning given in s. 66.293 (1)(d), Stats.

DWD 294.02 (11) “State agency” has the meaning given in s. 103.49 (1)(f), Stats.

SECTION 44. DWD 294.03 (1)(b) is amended to read:

DWD 294.03 (1)(b) The department shall use the consolidated list to ensure that every state agency or ~~municipality~~ local governmental unit does not solicit bids from, negotiate with, or award contracts to, and approve or allow subcontracts with listed contractors, except as otherwise provided in s. DWD 294.05.

SECTION 45. DWD 294.04 (1), (2), and (3)(a) and (b) are amended to read:

DWD 294.04 (1) EFFECT. No state agency or ~~municipality~~ local governmental unit may knowingly solicit bids from, negotiate with or award contracts to, and approve or allow subcontracts with a debarred contractor, except as otherwise provided in s. DWD 294.05.

DWD 294.04 (2) REVIEW. Prior to any of the procurement actions enumerated in sub. (1), with respect to a particular bidder, offeror or proposed subcontractor, every state agency or ~~municipality~~ local governmental unit shall review the consolidated list. If a bidder, offeror or proposed subcontractor is listed, it may not be awarded a contract or allowed to participate as a subcontractor, except as otherwise provided in s. DWD 294.05.

DWD 294.04 (3)(a) If the department learns that a debarred contractor is employed on a public works project, it shall require the state agency or ~~municipality~~ local governmental unit to terminate the employment of the contractor, except as otherwise provided in s. DWD 294.05.

DWD 294.04 (3)(b) Contract termination decisions shall be made only after review by and in consultation with the state agency or ~~municipality~~ local governmental unit purchasing personnel, department legal counsel and designated representative, and affected contractors to assure the propriety of the proposed contract termination.

SECTION 46. DWD 294.05 (2)(a)(intro), (2)(a)4., (3)(b)2.b., and (5)(a), (b), and (c) are amended to read:

DWD 294.05(2)(a)(intro) A conviction or civil judgment of a Wisconsin court, a finding of any Wisconsin state agency or ~~municipality~~ local governmental unit, a finding of the department or an admission of:

DWD 294.05(2)(a)4. Falsifying, deliberately destroying, or failing to keep adequate required payroll records on a public works project ~~when such conduct is related to a violation of subd. 1., 2. or 3.~~

DWD 294.05(3)(b)2.b. Ensure that an accurate written summary or tape recording of the hearing is prepared or taken and made available to the contractor, if one is requested before the hearing.

DWD 294.05 (5)(a) The designated representative shall issue a proposed ~~finding~~ findings of fact and order within 60 calendar days after the department received the last written response providing information or arguments in opposition to the proposed debarment as provided for in sub. (4) (c) or within 60 calendar days after a hearing has been held as provided for in sub. (4) (f). Any party to the action may request a copy of the proposed ~~finding~~ findings of fact and order and appeal it within 20 calendar days from the date of issuance by requesting, in writing, an opportunity to present oral or written arguments to the designated representative.

DWD 294.05 (5)(b) If a timely appeal is filed, the designated representative shall hold a hearing or review the written arguments on why the proposed order should be modified or reversed. The designated representative shall issue a ~~finding~~ findings of fact and final order within 30 calendar days of the receipt of the last argument filed.

DWD 294.05 (5)(c) If a timely appeal is not filed, the designated representative shall issue a ~~finding~~ findings of fact and final order within 20 calendar days after the appeal period expires.

SECTION 47. DWD 294.06 (title), (1), and (2) are amended to read:

DWD 294.06 (title) Notification to state agencies and ~~municipalities~~ local governmental units. (1) The department shall notify all state agencies and ~~municipalities~~ local governmental units of the names of all debarred contractors by providing them with a copy of the most current consolidated list available at the same time that the department issues a prevailing wage rate determination to them.

(2) ~~Municipalities~~ Local governmental units exempted from applying to the department for prevailing wage rate determinations, pursuant to s. ~~66.293(3)(d)~~ 66.293(6), Stats., and all state agencies shall be sent a copy of the most current consolidated list, ~~by first class mail~~, at least quarterly, if any addition or deletion was made to the most current list.

SECTION 48. DWD 294.08 (title), (intro), and (note) are amended to read:

DWD 294.08 Disclosure of ownership of other construction business that failed to observe prevailing wage law. On the date a contractor submits a bid to or completes negotiations with a state agency or ~~municipality~~ local governmental unit, the contractor shall disclose the name of any other construction business which the contractor, or a shareholder, officer, or partner of the contractor, owns or has owned within the preceding 3 years only if both of the following apply:

Note: "Disclosure of Ownership," form ERD-7777, may be obtained at no charge from the Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison, WI 53708 or the DWD web site at <http://www.dwd.state.wi.us/er/pdfforms.htm>.

EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.