

CR 85-72

RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPT. OF INDUSTRY,)
LABOR & HUMAN RELATIONS)

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Revisor of Statutes
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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Howard S. Bellman, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Prevailing Wage Rates were duly approved and adopted by this department on 11/27/85.
(Subject) (Date)

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1:30 in the city of Madison, this 27th day of November A.D. 1985.

Howard S. Bellman
Secretary

ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 101.02(1), Stats., the Department of Industry, Labor and Human Relations hereby creates; amends; repeals and recreates; and repeals and adopts rules of Wisconsin Administrative Code chapter(s):

Ind. <u>90 and 92</u> (Number)	<u>Municipal Contracts for Construction of Public Works and State Contract Buildings and Public Projects, Except Bridges and Highways</u> (Title)
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The attached rules shall take effect on on the first day of the month following publication in the Wisconsin Administrative Register pursuant to section 227.026, Stats.

Adopted at Madison, Wisconsin, this 27th day of November, A.D., 1985.

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

Howard S. Bellman

Secretary



RULES in FINAL DRAFT FORM

Rule: Ind 90 and 92
Relating to: Prevailing Wage Rates
Clearinghouse Rule No. 85-72

RULES IN FINAL DRAFT FORM

Pursuant to the authority vested in the Department of Industry, Labor and Human Relations under s. 101.02(1), Stats., the department hereby creates, amends, repeals, recreates and renumbers sections of Chapters Ind 90 and 92 regarding prevailing wage rates as follows:

SECTION 1. Ind 90.01(4), (5), (6), (9)(d), (10), (11), (12), (13) and (15) are amended to read:

(4) "Trade or occupation" means one of the job classifications that identifies the specific work regularly done by laborers, ~~workmen~~ workers and mechanics in the erection, construction, remodeling or repairing of any building or any other works projects, on a contract basis on projects that are similar to the contract work in the area. The duties, kinds of work, and other component elements envisioned by the department for job classifications of trades and occupations are those which prevail and are historically recognized in the construction industry for work on projects of a character similar to the contract work.

(5) "Employes working on the project" means laborers, ~~workmen~~ workers and mechanics employed directly upon the site of the work.

(6) "Laborers, ~~workmen~~ workers and mechanics" include preapprentices, helpers, trainees, learners and properly registered and indentured apprentices but exclude clerical, supervisory, and other personnel not performing manual labor.

(9)(d) The plan or program providing the benefits has been communicated in writing to the laborers, ~~workmen~~ workers and mechanics affected. 5

(10) "Wage determination" includes the original ~~certification~~ determination and subsequent ~~certifications~~ determinations modifying, superseding, ~~correcting~~ or otherwise changing the provisions of the original ~~decision or certification~~ determination. 6

(11) "Project of public works" includes building or work involving the erection, construction, remodeling or repairing, under contract with a Wisconsin municipality as defined in ~~subsection~~ s. 66.293(3)(b), Wis- Stats.-7-

(12) "Building or work" includes construction activity as distinguished from manufacturing, furnishing ~~or~~ of materials, or servicing and maintenance work, ~~excepting for the delivery or~~ of mineral aggregate such as sand, gravel or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.-8- 7

(13) "Highway, street, or bridge construction" includes curb, and gutter and sidewalk projects, and excludes without limitation because of enumeration street lighting systems, sanitary sewer, storm water sewer and water service and main construction projects, unless an integral part of the highway, street or bridge construction.

(15) "Site of work" means the premises and vicinity upon which any building or work is to be performed under the contract.--9- 8

SECTION 2. Ind 90.015 is created to read:

Ind 90.015 COLLECTING AND COMPILING WAGE RATE INFORMATION. (1) For purposes of making wage determinations the department shall conduct a continuing program for the collection and compilation of wage rate information.

(2) The department shall encourage the voluntary submission of wage rate information by employers, employers' associations, labor organizations, public officials and other interested parties, which reflects the wage rates paid to laborers, workers and mechanics on various types of construction projects in the area, except as provided in sub. (6)(b). The information submitted should not only reflect the wage rates paid to a particular classification in an area, but also the type or types of construction on which such rates are paid, and whether or not such rates were paid pursuant to a federal, state or local prevailing wage rate determination.

(3) Except as provided in sub. (6)(b), the following types of information may be considered by the department in making wage rate determinations:

(a) Properly completed form DILHR-ERD-5720. Forms are furnished at no charge by the department.

(b) Signed statements containing all of the information as provided on form DILHR-ERD-5720.

(c) Signed collective bargaining agreements. The department may request the parties to the agreement to submit statements verifying its scope, content and application.

(d) Wage rate information submitted to the department by the United States department of labor or any other federal agency.

(e) Any other information pertinent to the determination of prevailing wage rates.

(4) The department may initially obtain or supplement such information obtained on a voluntary basis by such means, including the holding of hearings, and from such sources as deemed to be necessary.

(5) In order to enable the department to more accurately determine the prevailing wage rates and hours of labor in an area, the information used to compile a determination shall explicitly exclude:

(a) Information from operative builders who build on their own account for resale or lease.

(b) Information from investment builders who build on their own account for rental.

(c) Force account construction (construction work performed by an employer, primarily engaged in a business other than construction, for its own account and use and by its own employes).

Ind 90.015 (Continued)

(d) Information on projects that were subject to a wage determination issued by the U. S. department of labor, this department, or any similar local ordinance or enactment.

(e) Information on projects on which no work has been performed during the current or any of the previous 12 months, except as provided in sub. (6)(b).

(f) Information on projects that, because of their cost or unusual construction characteristics, do not typically reflect the prevailing wage rates or hours of labor in an area.

(6) If there has not been a sufficient number of similar projects completed in the area during the current or any of the previous 12 months, the department may consider:

(a) Information on similar projects completed more than one year prior to the current month.

(b) Information on similar current projects located in surrounding counties.

(c) Information from employers located in the county where the proposed project is located and which reflects the current wage rates and hours of labor that would be paid to their employes for work on similar projects.

(d) Information on projects excluded under sub. (5)(d).

(7) All of the information made available to the department prior to issuing a determination shall be evaluated in accordance with the statutory definitions provided for the word or phrases "area", "prevailing wage rate" and "prevailing hours of labor" in s. 103.49(2), Stats.

NOTE: "Contractors Report of Construction Wage Rates", form DILHR-ERD-5720, may be obtained at no charge from the Department of Industry, Labor and Human Relations, Equal Rights Division, P. O. Box 8928, Madison, WI 53708.

SECTION 3. Ind 90.02 is repealed and recreated to read:

Ind 90.02 APPRENTICES. (1) Apprentices may work at less than the prevailing wage rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program administered by the U. S. department of labor, a state agency recognized by the U. S. department of labor, or under Wisconsin's apprenticeship law, ch. 106, Stats.

(2) Any employe who is not properly registered as an apprentice under sub. (1) shall be paid not less than the prevailing wage rate applicable to the work actually performed.

(3) Apprentices shall be paid a percentage of the applicable journeyman's hourly basic rate of pay specified in the wage determination issued for a project.

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

Ind 90.02 (Continued)

(5) Except as provided in this subsection, apprentices shall receive all fringe benefits specified for the appropriate journeyman classification in the wage determination issued for a project. If the department determines that a different practice prevails for the payment of such benefits, then the fringe benefits shall be paid in accordance with that determination.

SECTION 4. Ind 90.03 is amended to read:

Ind 90.03 WAGES. 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 in the ~~certification~~ determination. 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 labor standards of local practices for in the area.

SECTION 5. Ind 90.04, 90.05, 90.06 and 90.07 are amended to read:

Ind 90.04 MEETING WAGE DETERMINATION OBLIGATIONS. (1) An employer performing work-10- 9

Ind 90.05 OVERTIME PAYMENTS. All hours worked by a laborer, ~~workman~~ worker or mechanic in excess of the prevailing hours of labor per day or per calendar week, must be paid at a rate at least 1-1/2 times ~~his~~ the hourly ~~basis~~ basic rate of pay. Sums paid by an employer for fringe and 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, ~~workman~~ worker or mechanic, or be less than ~~his~~ the hourly basic rate of pay, if it is higher. Contributions by employes are not excluded from the rate upon which the overtime premium is computed; that is, an employe's overtime premium rate is computed on ~~his~~ the taxable earnings before any deductions are made for the employe's contributions to economic and fringe benefits. The employer's contributions, costs or cash payments for 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 wage determination.-10- 9

Ind 90.06 LABORERS, WORKERS AND MECHANICS SUBJECT TO S. 66.293, STATS. Every laborer, ~~workman~~ worker or mechanic employed directly upon the site of the work by the employer shall be subject to ~~section~~ s. 66.293, ~~Wis.~~ Stats., regardless of the contractual relationship alleged to exist.

Ind 90.07 PAYROLLS AND RECORDS. Every employer shall keep, and, upon request of the department or the contracting municipality, promptly furnish copies of any or all payrolls and records relating to work done, hours worked, and wages paid to laborers, ~~workmen~~ workers or mechanics, and shall allow the department to examine original records relating to any and all work as required by ~~sections~~ s. 66.293(3)(e) and (i), ~~Wis.~~ Stats.

SECTION 6. Ind 90.08 is repealed and recreated to read:

IND 90.08 PROCEDURE FOR REQUESTING WAGE DETERMINATION. (1) A municipality shall request the department to ascertain 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 which meets or exceeds the dollar thresholds provided in s. Ind 90.155.

(2) The request shall be made on the form numbered DILHR-ERD-5719, which shall be provided at no charge by the department.

(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 the work contemplated shall be made between 50 and 60 days before making a contract by direct negotiation or soliciting bids.

NOTE: "Application For A Prevailing Wage Rate Determination", form DILHR-ERD-5719, may be obtained at no charge from the Department of Industry, Labor and Human Relations, Equal Rights Division, P. O. Box 8928, Madison, WI 53708.

SECTION 7. Ind 90.10 is repealed and recreated to read:

IND 90.10 PROCEDURE FOR AN ADMINISTRATIVE REVIEW. (1) Any interested person may request the department to review any or all of the wage rates determined for any or all of the trades or occupations included in a determination provided that:

(a) The request shall be made in writing to the department.

(b) The request shall be made within 30 days from the date the determination was issued.

(c) The request shall be made prior to the date the bids are awarded or the contracts are negotiated.

(d) The request shall include evidence which shows that the wage rates do not represent those which prevail in the area. This evidence shall include wage rate information for the contested trade or occupation on at least one similar project located in the city, village or township where the proposed project is located and on which some work has been performed during the current or any of the previous 12 months, except as provided in sub. (5).

(e) The information used in an administrative review shall be limited to that provided in s. Ind 90.015.

(2) If 3 or more similar projects are submitted with the request, and all 3 projects are located in the city, village or township in which the proposed project is located, and if these 3 projects provide wage rate information for the major trades or occupations under review, the department shall compute the modal wage rate for each trade or occupation as set forth in s. Ind 90.10(6), below.

(3) If the wage rate information submitted with the request includes less than 3 similar projects located in the city, village or township where the proposed project is located, the department shall include information on similar projects located in the cities, villages or townships immediately contiguous to the location of the proposed project.

Ind 90.10 (Continued)

(4) If wage rate information on 3 or more similar projects is not found within the geographic area described in subs. (2) and (3) above, the department shall continue selecting and including projects from each subsequent tier of contiguous cities, villages or townships until 3 or more similar projects are located.

(5) If no similar projects were constructed in the city, village or township where the proposed project is located during the current or any of the previous 12 months, the department may accept information on similar projects completed prior to this period, or on similar projects completed during this period but located in any other locality within the county where the proposed project is located.

(6)(a) From the most current data available on the projects finally selected, the department shall prepare a tabulation showing each trade or occupation under review, the hourly basic rate of pay, the hourly contributions paid, the total number of workers employed at each different rate and the total number of hours worked at each different rate, if such figures are available.

(b) If the figures are available for the majority of workers in a given trade or occupation, the figures may be estimated for the remaining workers in such trade or occupation.

(c) If the hourly basic rate of pay plus the hourly contributions paid figure which has the largest number of hours represents a collectively bargained rate for any given trade or occupation, then the department shall accept the comparable current collectively bargained rate for such trade or occupation in the jurisdictional area wherein the project covered by the wage determination under review is located as the prevailing wage rate.

(d) If the hourly basic rate of pay plus the hourly contributions paid figure which has the largest number of hours represents a rate other than a collectively bargained rate for any given trade or occupation, the department shall accept such rate as the prevailing wage rate.

(e) If the number of hours is not available for a given trade or occupation, the department shall accept prevailing wage rates in the same manner as set forth in pars. (c) and (d) above, but on the basis of the largest number of workers employed rather than on the basis of the largest number of hours worked.

(f) If the wage rate information does not specify the actual hourly basic rate of pay and the hourly contributions paid for any given trade or occupation, but merely indicates a collectively bargained rate, the department may include the hours and employment included in such report for such trade or occupation at the current collectively bargained rate in effect in the jurisdictional area wherein the contemplated project is located.

(7) If a request for an administrative review is filed with the department and involves only the prevailing hours of labor, the department will follow the same procedures and use the same criteria to compute the modal hours as it did to compute the modal wage rate.

SECTION 8. Ind 90.11(2) is repealed and recreated to read:

(2) A request for the review of a wage determination issued pursuant to sub. (1) may be filed with the department within 30 days from the date issued. The department shall follow the procedures prescribed in s. Ind 90.10 in conducting such a review.

SECTION 9. Ind 90.11(3) is created to read:

(3) Under the circumstances described in sub. (1), the municipality shall either terminate the contracts and resolicit bids using the determination, or incorporate the determination retroactive to the beginning of construction through supplemental agreement or through a change order, provided that the employer is compensated for any increases in wages resulting from such change. The method of incorporation of the determination and the adjustment in contract or bid price, where appropriate, shall be in accordance with applicable procurement law.

SECTION 10. Ind 90.12 is amended to read:

Ind 90.12 POSTING WAGE RATES AND HOURS. A clearly legible copy of the determination issued by the department, or exempted municipality, for the project, together with the provisions of sections s. 66.293(3)(a) and (e), Wis. Stats., shall be kept posted in at least one conspicuous and easily accessible place at the project site by the employer engaged on the project and such notice shall remain posted during the full time any of his laborers, workmen workers or mechanics are employed on the project.

SECTION 11. Ind 90.13 is repealed and recreated to read:

Ind 90.13 EVIDENCE OF COMPLIANCE BY AGENT AND SUBCONTRACTOR. Each agent and subcontractor shall file with the contractor, upon completion of their portion of work on the public works project, an affidavit stating that all of the provisions and requirements of s. 66.293(3), Stats., have been fully complied with and that full and accurate records have been kept which clearly indicate the name, trade or occupation of every laborer, worker, or mechanic employed on the project, the number of hours worked by each employe and the actual wages paid therefor. The affidavit shall state where these records shall be kept and the name, address and telephone number of the person who shall be responsible for keeping them. These payroll records shall be retained and made available for a period of at least 3 years following the completion of the project of public works and shall not be removed without prior notification to the municipality.

SECTION 12. Ind 90.14(2) is repealed and recreated to read:

(2) That full and accurate records have been kept, which clearly indicate the name and trade or occupation of every laborer, worker or mechanic employed by the contractor in connection with work on the project. The records shall show the number of hours worked by each employe and the actual wages paid therefor; where these records shall be kept and the name, address and telephone number of the person who shall be responsible for keeping them. The records shall be retained and made available for a period of at least 3 years following the completion of the project of public works and shall not be removed without prior notification to the municipality.

SECTION 13. Ind 90.16 is repealed and recreated to read:

Ind 90.16 COST OF INSPECTION. Any person may request an inspection under s. 66.293(3)(m), Stats. The request shall be made in writing, identifying the project, employer and trade or occupation involved and including a statement to the effect that the requestor is willing to pay for the complete cost of the inspection if the employer is found to be in compliance. The department shall maintain a record of the cost it incurs in making the inspection and this amount shall be charged to the requestor if the employer subjected to the inspection is found to be in compliance.

SECTION 14. Footnotes 6(a)1., 2. and 6(b) 1., 2. and 3. of ch. Ind 90 are amended to read:

6(a) Types of wage determinations:

1. When economic and fringe benefits are prevailing for various classes of laborers, ~~workmen~~ workers and mechanics in the area, such benefits are includable in any department determination. Illustrations contained in footnote -10- 9, s. Ind 90.04 and 90.05, set forth some of the different types of wage determinations which may be made in such case.
2. When economic and fringe benefits for various classes of laborers, ~~workmen~~ workers and mechanics do not prevail in the area, the wage determination shall contain only the hourly basic rates of pay, that is, only the cash wages which are prevailing for the various classes of laborers, ~~workmen~~ workers and mechanics. An illustration of this situation is contained in footnote -10- 9, s. Ind 90.04.

(b) Subsequent certifications determinations:

1. Except as provided in sub. (b) 3., subsequent certifications determinations by the department which modifying, modify superseding, correcting or otherwise changing change the provisions of the original decision or certification determination, for a given wage determination request, must shall be made within 30 days after the department receives issued the request for the wage determination.
2. If the bids contracts are not solicited awarded or contract is not awarded by direct negotiation negotiated or if the project is rebid or renegotiated after more than 120 180 days after the date of the original certification determination, then the municipality must shall request a new determination prior to soliciting bids or prior to entering into a contract through direct negotiation.
3. Requests for prevailing wage rates for trades or occupations which are required in the work contemplated, but which are not included in the original certification determination, should may be requested before or after the bids contracts are solicited awarded or negotiated.

SECTION 15. Footnotes 7 and 11 to 14 of ch. Ind 90 are repealed.

SECTION 16. Footnotes 8, 9, 10, 15 and 16 of ch. Ind 90 are renumbered 7, 8, 9, 10 and 11.

SECTION 17. Ind 92.01(4) and (5) are amended to read:

(4) "Trade or occupation" means one of the job classifications that identifies the specific work regularly done by laborers, ~~workmen~~ workers and mechanics in the erection, construction, remodeling or repairing of any building or any other works projects, on a contract basis on projects that are similar to the contract work in the area. The duties, kinds of work, and other component elements envisioned by the department for job classifications of trades and occupations are those which prevail and are historically recognized in the construction industry for work on projects of a character similar to the contract work.

(5) "Laborers, ~~workmen~~ workers and mechanics" include preapprentices, helpers, trainees, learners and properly registered and indentured apprentices but exclude clerical, supervisory and other personnel not performing manual labor.

SECTION 18. Ind 92.01(8)(c)1. is amended to read:

(c) 'Unfunded plans.' 1. The reasonable anticipated costs to an ~~employe~~ employer pursuant to an enforceable written commitment to carry out a financially responsible plan or program, will be considered economic and fringe benefits. 4

SECTION 19. Ind 92.01(8)(c)2.d. is amended to read:

d. The plan or program providing the benefits has been communicated in writing to the laborers, ~~workmen~~ workers and mechanics affected. 5

SECTION 20. Ind 92.01(9) is amended to read:

(9) "Wage determination" includes the original ~~eertification~~ determination and subsequent ~~eertifications~~ determinations modifying, ~~superseding, correcting or~~ otherwise changing the provisions of the original ~~decision or eertification~~ determination. 6

SECTION 21. Ind 92.015 is created to read:

Ind 92.015 COLLECTING AND COMPILING WAGE RATE INFORMATION. The methodology to be used for the collection and compilation of wage rate information shall be the same as described in s. Ind 90.015.

SECTION 22. Ind 92.02 is repealed and recreated to read:

Ind 92.02 APPRENTICES. (1) Apprentices may work at less than the prevailing wage rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program administered by the U. S. department of labor, a state agency recognized by the U. S. department of labor, or under Wisconsin's apprenticeship law, ch. 106, Stats.

(2) Any employe who is not properly registered as an apprentice under sub. (1) shall be paid not less than the prevailing wage rate applicable to the work actually performed.

Ind 92.02 (Continued)

(3) Apprentices shall be paid a percentage of the applicable journeyman's hourly basic rate of pay specified in the wage determination issued for a project.

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

(5) Except as provided in this subsection, apprentices shall receive all fringe benefits specified for the appropriate journeyman classification in the wage determination issued for a project. If the department determines that a different practice prevails for the payment of such benefits, then fringe benefits shall be paid in accordance with that determination.

SECTION 23. Ind 92.03 is amended to read:

Ind 92.03 WAGES. 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 in the ~~certification~~ determination. 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 labor standards ~~or local practices for~~ in the area.

SECTION 24. Ind 92.05 is amended to read:

Ind 92.05 OVERTIME PAYMENTS. All hours worked by a laborer, ~~workman~~ worker or mechanic in excess of the prevailing hours of labor per day or per calendar week, must be paid at a rate at least 1-1/2 times ~~his~~ the hourly basic rate of pay. Sums paid by an employer for fringe and 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, ~~workman~~ worker or mechanic, or be less than ~~his~~ the hourly basic rate of pay, if it is higher. Contributions by employes are not excluded from the rate upon which the overtime premium is computed; that is, an employe's overtime premium rate is computed on ~~his~~ the taxable earnings before any deductions are made for the employe's contributions to economic and fringe benefits. The employer's contributions, costs or cash payments for 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 wage determination. 9

SECTION 25. Ind 92.06 is amended to read:

Ind 92.06 LABORERS, WORKERS AND MECHANICS SUBJECT TO S. 103.49, STATS. Every laborer, ~~workman~~ worker or mechanic employed directly upon the site of the work by the employer shall be subject to ~~section s.~~ s. 103.49, Wis. Stats., regardless of the contractual relationship alleged to exist.

SECTION 26. Ind 92.07 is amended to read:

Ind 92.07 PAYROLLS AND RECORDS. Every employer shall keep, and, upon request of the department, promptly furnish copies of any or all payrolls and records relating to work done, hours worked, and wages paid to laborers, ~~workmen~~ workers or mechanics, and shall allow the department to examine original records relating to any and all work to which section s. 103.49, Wis. Stats., applies.

SECTION 27. Ind 92.075 is created to read:

Ind 92.075 PROCEDURE FOR REQUESTING WAGE DETERMINATION. (1) The department or officer having the authority to prescribe the specifications shall request the department to ascertain 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 which meets or exceeds the dollar thresholds provided in s. Ind 90.155.

(2) The request shall be made on the form numbered DILHR-ERD-5719, which shall be provided at no charge by the department.

(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 the work contemplated shall be made between 50 and 60 days before soliciting bids.

NOTE: "Application For A Prevailing Wage Rate Determination", form DILHR-ERD-5719, may be obtained at no charge from the Department of Industry, Labor and Human Relations, Equal Rights Division, P. O. Box 8928, Madison, WI 53708.

SECTION 28. Ind 92.08 is repealed and recreated to read:

Ind 92.08 PROCEDURE FOR AN ADMINISTRATIVE REVIEW. The procedure to be followed by the department in conducting an administrative review of the prevailing wage rates or hours of labor determined for any project shall be the same as those prescribed for municipal public works projects in s. Ind 90.10.

SECTION 29. Ind 92.09 is amended to read:

Ind 92.09 POSTING OF WAGE RATES AND HOURS. A clearly legible copy of the determination issued by the department for the project, together with the provisions of sections s. 103.49(1) and (4), Wis. Stats., shall be kept posted in at least one conspicuous and easily accessible place at the project site by the employer engaged on the project and such notice shall remain posted during the full time any of his laborers, ~~workmen~~ workers or mechanics are employed on the project.

SECTION 30. Footnotes 6(a)1., 2. and 6(b)1., 2. and 3. of ch. Ind 92 are amended to read:

6(a) Types of wage determinations:

1. When economic and fringe benefits are prevailing for various classes of laborers, ~~workmen~~ workers and mechanics in the area, such benefits are includable in any department determination. Illustrations contained in footnote -10- 9, s. Ind 90.04 and 90.05, set forth some of the different types of wage determinations which may be made in such cases.
2. When economic and fringe benefits for various classes of laborers, ~~workmen~~ workers and mechanics do not prevail in the area, the wage determination ~~will~~ shall contain only the hourly basic rates of pay, that is, only the cash wages which are prevailing for the various classes of laborers, ~~workmen~~ workers and mechanics.

(b) Subsequent certifications determinations:

1. Except as provided in sub. (b) 3., subsequent certifications determinations by the department which modifying, modify superseding, correcting, or otherwise changing change the provisions of the original decision or certification determination for a given wage determination request, must shall be made within 30 days after the department receives issued the request for the wage determination.
2. If the bids contracts are not solicited awarded or if the project is rebid after more than 120 180 days after the date of the original certification determination, then the department or officer having the authority to prescribe the specifications must shall request a new determination prior to soliciting bids.
3. Requests for prevailing wage rates for trades or occupations which are required in the work contemplated, but which are not included in the original certification determination, should may be requested before or after the bids contracts are solicited awarded.

SECTION 31. Footnotes 7 and 9 of ch. Ind 92 are amended to read:

7 The terms include without limitation, buildings, structures, and improvements of all types such as sanitary sewer or sewerage works, garbage incinerators, swimming pools, tennis courts, parks, playgrounds, golf links, bathing beaches, bathhouses, city halls, courthouses, jails, schools, hospitals, homes for the aged or indigent, dams, plants, parkways, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment whether or not a municipal state agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished is not a "building" or "work" within the meaning of these rules and regulations unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence. Section S. 103.49, Wis. Stats., does not apply to wage rates and hours of employment for laborers, ~~workmen~~ workers or mechanics engaged in the processing or manufacture of

Footnote 7 (Continued)

materials or products or to the delivery thereof by or for commercial establishments which have a fixed place of business from which they regularly supply such processed or manufactured materials or products; except that this section does apply to laborers, ~~workmen~~ workers or mechanics who deliver mineral aggregate such as sand, gravel or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle. Ready-mix concrete is not a mineral aggregate under the provisions of ~~section~~ s. 103.49, Wis. Stats. Labor employed by a producer or commercial establishment which, although having a fixed place of business of the kind in some location, operates in a location specifically established in order to supply a particular job within the purview of ~~section~~ s. 103.49, Wis. Stats., or in a location used only sporadically when a project happens to be close at hand, comes under the provisions of ~~section~~ s. 103.49, Wis. Stats. Incidental or casual sale of material from such plants to others does not classify the same as a fixed commercial establishment.

9 See Footnote -10- 9 in ~~Sections~~ s. Ind 90.04 and 90.05 for specific examples of ways to meet wage determination obligations.

SECTION 32. Footnotes 10 and 11 of ch. Ind 92 are repealed.

The above cited rules shall take effect on publication pursuant to s. 227.026(1)(intro.), Stats.

The Wisconsin Department of Industry, Labor and Human Relations

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11/27/85
Gary Poulson
Assistant Revisor of Statutes
for Administrative Rules
411 West, State Capitol
Madison, Wisconsin

Douglas LaFollette
Secretary of State
Room 271, GEF-1
201 East Washington Avenue
Madison, Wisconsin

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 85-72

RULE NO. Ind 90 and 92

RELATING TO: Prevailing Wage Rates

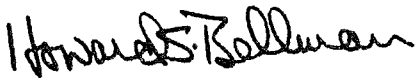
Pursuant to section 227.023, Stats., agencies are required to file a certified copy of every rule adopted by the agency in the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you.

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.016 (6), Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,



Howard S. Bellman
Secretary

cc: Agency Contact Person