



Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <http://rules.wyo.gov>

Revised May 2018

1. General Information

a. Agency/Board Name* Workforce Services, Department of		
b. Agency/Board Address 1510 E. Pershing Blvd. #150	c. City Cheyenne	d. Zip Code 82002
e. Name of Agency Liaison Kelly Roseberry	f. Agency Liaison Telephone Number 307-777-7261	
g. Agency Liaison Email Address kelly.roseberry2@wyo.gov		
h. Date of Public Notice July 12, 2018	i. Comment Period End Date August 31, 2018	
j. Public Comment URL or Email Address: dws-wyolabor@wyo.gov		
k. Program Labor Standards		

* By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.

2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No. **Yes.** Please provide the Chapter Numbers and Years Enacted
(eg: 2015 Session Laws Chapter 154):

3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.
Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification.

Chapter Number: 2	Chapter Name: Contested Prevailing Wage Determination Hearing Rules	<input type="checkbox"/> New <input type="checkbox"/> Amended <input checked="" type="checkbox"/> Repealed
Chapter Number: 6	Chapter Name: Rules of Practice and Procedure for Computing and Determining Wyoming's Prevailing Wage Rates (Prevailing Wages)	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed

4. Public Comments and Hearing Information

a. A public hearing on the proposed rules has been scheduled. **No.** **Yes. Please complete the boxes below.**

Date:	Time:	City:	Location:

b. What is the manner in which interested persons may present their views on the rulemaking action?

By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Agency Liaison listed in Section 1 above.

5. Federal Law Requirements

a. These rules are created/amended/repealed to comply with federal law or regulatory requirements. **No.** **Yes. Please complete the boxes below.**

Applicable Federal Law or Regulation Citation:
--

Indicate one (1):

The proposed rules meet, but do not exceed, minimum federal requirements.

The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

6. State Statutory Requirements

a. Indicate one (1):

The proposed rule change *MEETS* minimum substantive statutory requirements.

The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):

The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

Not Applicable.

7. Additional APA Provisions

a. Complete all that apply in regards to uniform rules:

These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

Chapter 6

(Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

(Provide chapter numbers)

b. Checklist

The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

If applicable: In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

8. Authorization

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	John Cox
<i>Title of Authorized Individual</i>	Director, DWS
<i>Date of Authorization</i>	7/12/18



State of Wyoming

Department of Workforce Services



Matthew H. Mead
Governor

Labor Standards
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Cheyenne, Wyoming 82002
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John Cox
Director
John Ysebaert
Deputy Director

STATEMENT OF PRINCIPAL REASONS

Overview

Statutory authority for Labor Standards to promulgate rules regarding state prevailing wages is established by Wyoming Statute § 27-4-404 of the Wyoming Prevailing Wage Act of 1967, as amended. Labor Standards' rules establish procedures for computing and determining Wyoming's prevailing wage rates, set forth contested case hearing procedures, and establish investigation and enforcement procedures in accordance with the Act.

The following administrative rule changes are necessary for a few reasons. Presently, rules for prevailing wages are located in two separate chapters. To better facilitate public access, the two chapters will be combined. Other changes to these rules simply correct grammar and punctuation, as well as better establish and explain agency procedures within the administrative rules. For many years, Labor Standards has had procedures for determining compliance with prevailing wage requirements, but these were never reduced to rule. Labor Standards believes it in the best interest of the agency and the public to increase transparency by articulating Labor Standards' expectations in administrative rules plainly. Finally, because these chapters have not been amended since 2001 and 2008, other changes have been made in order to conform these rules to the Secretary of State's required format and to reduce the Rules in number and in length consistent with the Governor's previous mandate. Specific changes by chapter are as follows:

Chapter 2 - Contested Prevailing Wage Determination Hearing Rules

This chapter will be repealed in its entirety. Its significant provisions regarding public requests for hearing regarding Labor Standards' prevailing wage determinations, for example, will be incorporated into Chapter 6.

Chapter 6 - Rules of Practice and Procedure for Computing and Determining Wyoming's Prevailing Wage Rates

- The title of the chapter has been renamed to "Prevailing Wages."
- Definitions have been added, removed, or clarified.
- Procedures for objecting to or contesting the prevailing wage through administrative hearing have been added and clarified.
- Procedures by which Labor Standards investigates and enforces compliance with the Act have been added.
- No changes have been made to the process by which Labor Standards annually determines and computes state prevailing wages.

Contact Information

Questions regarding this Statement of Reasons and Labor Standards' request to promulgate rules can be directed to the agency by phone at 307-777-7261 or sent in writing to dws-wyolabor@wyo.gov



We Bridge Human and Economic
Development for Wyoming's Future.



CHAPTER 2

CONTESTED PREVAILING WAGE DETERMINATION HEARING RULES

Repealed 2018.

CHAPTER 6
PREVAILING WAGES

Section 1. Authority.

This Chapter is promulgated by the authority of Wyoming Statute § 27-4-404 of the Wyoming Prevailing Wage Act of 1967, as amended.

Section 2. Purpose.

This Chapter is adopted to establish procedures for computing and determining Wyoming's prevailing wage rates, to set forth contested case hearing procedures, and to establish investigation and enforcement procedures, in accordance with the Prevailing Wage Act.

Section 3. Definitions.

(a) "Affected Person" means any individual or entity who may be affected by Labor Standards' determination.

(b) "Base Wage Rate" means the prevailing hourly rate of wages, less fringe benefits.

(c) "Building Construction" means the construction generally needed to perform construction, reconstruction, improvement, enlargement, alteration, or repair of any public building fairly estimated to cost one-hundred thousand dollars (\$100,000.00) or more.

(d) "Fringe Benefits" means the usual and customary benefits paid to workers in addition to wages.

(e) "Heavy and Highway Construction" means the construction generally needed to perform construction, reconstruction, improvement, enlargement, alteration, or repair of any heavy or highway project fairly estimated to cost one-hundred thousand dollars (\$100,000.00) or more.

(f) "Journeyman Level Worker" means a worker with sufficient experience and training in his or her trade to be proficient in the skills necessary to perform all aspects of the trade.

(g) "Labor Standards" means Labor Standards, a program within the Wyoming Department of Workforce Services.

(h) “Moving Average Wage Adjustment” means an adjustment made to the prevailing hourly rate of wages to allow for economic fluctuations when sufficient data has not been provided for a certain job classifications.

(i) “Prevailing Wage Act” means the Wyoming Prevailing Wage Act of 1967, as amended, Wyoming Statute §§ 27-4-101 through 413.

(j) “Survey” means an instrument to ascertain the prevailing hourly rate of wages for the construction trades through data collection of relevant hourly wages paid to workmen.

Section 4. Annual Surveys.

(a) Labor Standards may engage the services of an independent contractor to distribute surveys and determine the annual prevailing rate of wages.

(b) Surveys shall be sent annually to the appropriate employers and employee organizations for purposes of determining the annual prevailing hourly rate of wages.

(c) For the purposes of determining the annual prevailing hourly rate of wages for the Building Construction trades and the Heavy and Highway Construction trades, surveys shall be conducted in September to collect total number of hours worked by classification of worker for the period of September 1 of the previous year through August 31 of the current year, plus the most recent rate of pay, to include fringe benefits, by classification of worker for the survey period.

Section 5. Survey Types.

There shall be two separate surveys constructed to determine the prevailing hourly rate of wages; one survey for Building Construction and another for Heavy and Highway Construction, as follows:

(a) A survey to determine the prevailing hourly rate of wages for Building Construction shall be sent to employers and employee organizations engaged in construction, reconstruction, improvement, enlargement, alteration, or repair of public works projects or other large commercial projects.

(b) A survey to determine the prevailing hourly rate of wages for Heavy and Highway Construction shall be sent to employers and employee organizations engaged in construction, reconstruction, improvement, enlargement, alteration, or repair of major heavy and/or highway projects.

Section 6. Who is to be Surveyed.

For the purpose of determining the prevailing hourly rate of wages, surveys shall collect data on wages paid to journeymen.

Section 7. Computation of Base Wage Rate.

The base wage rate shall be computed according to the formula and considerations set forth below:

(a) The rate of wages paid in the locality in which the work is to be performed, to the majority of those employed in that classification in construction in the locality similar to the proposed undertaking. A distinction shall be recognized, based on area practice within the State, between Building Construction and Heavy and Highway Construction, and the job classifications typically associated with them.

(b) When fifty percent (50%) or more of those employed in a classification are paid at the same rate, that rate shall be the base wage rate for that job classification.

(c) In the event that not more than fifty percent (50%) of employees in a classification are paid at the same rate, then the rate paid to the greater number shall be used. The greater number must be at least thirty percent (30%) of those employed.

(d) In the event that the thirty percent (30%) threshold of Subsection(c) above is not met, then an average rate shall be used. The average rate for each classification in a locality shall be the rate obtained by:

(i) Adding the hourly rates paid to all workers in the classification and dividing by the total number of such workers.

$$\text{Ex: } \text{AVERAGE RATE 1} = \frac{\text{TOTAL HOURLY RATES PAID}}{\text{TOTAL NUMBER OF WORKERS}}$$

(ii) Dividing the total wages paid by the total number of hours worked in the classification.

$$\text{Ex: } \text{AVERAGE RATE 2} = \frac{\text{TOTAL DOLLAR WAGES PAID}}{\text{TOTAL HOURS WORKED}}$$

(iii) Then the Base Wage Rate will be the average of AVERAGE RATE 1 and AVERAGE RATE 2:

Ex: BASE WAGE RATE = $\frac{\text{AVERAGE RATE 1} + \text{AVERAGE RATE 2}}{2}$

Section 8. Moving Average Wage Adjustment.

In establishing a prevailing hourly rate of wages, Labor Standards shall provide for a moving average wage adjustment as follows:

$$\frac{\text{WCLI (current year)}}{\text{WCLI (previous year)}} \times 100$$

Section 9. Fringe Benefits.

(a) The prevailing hourly rate of wages shall include bona fide fringe benefits set forth as follows:

- (i) Medical and dental payments or hospital care;
- (ii) Pensions on retirement or death;
- (iii) Disability benefits and life insurance;
- (iv) Vacation and holiday pay;

(v) Apprenticeship or other United States Bureau of Apprenticeship and Training approved training program or as approved by the Department of Transportation and Federal Highway Administration; and,

- (vi) Annuity or other 401K plans.

(b) An employer who pays more than the minimum required fringe benefits shall not be permitted to reduce or offset the excess amount from the required base wage rate.

Section 10. Objection to Prevailing Hourly Rate of Wages and Request for Hearing.

(a) Any affected party may submit to Labor Standards its written objection to the determination of the prevailing hourly rate of wages and request for a hearing. A hearing shall be initiated as set forth in Wyoming Statute § 27-4-407(a).

(b) An affected party's written notice of objection and request for hearing shall contain the following:

- (i) The affected party's name, mailing address, and telephone number;
- (ii) A list of the crafts or types of workmen and their hourly rate of wages being objected to;
- (iii) The hourly rate of wages the affected party believes should prevail for each craft or type of workman listed in the objection;
- (iv) The specific grounds for the objection; and
- (v) A description of how the affected party would be affected by the wage determination.

Section 11. Independent Hearing Officer.

Upon receipt of a timely submitted written objection and request for hearing, Labor Standards shall contract with an independent hearing officer to conduct a hearing on the matter.

Section 12. Hearing Procedure.

The hearing officer shall conduct the hearing in accordance with the Wyoming Administrative Procedures Act, Wyoming Statute §§ 16-3-107 through 115, and the Wyoming Office of Administrative Hearings' rules for Contested Case Proceedings, which are hereby incorporated by reference and can be found at:

<https://rules.wyo.gov/Search.aspx?RefNum=270.0001.2.07202017>

(a) The rules for Contested Case Proceedings were adopted by the Wyoming Office of Administrative Hearings and in effect on July 20, 2017.

(b) No later amendments to the rules for Contested Case Proceedings are incorporated by reference.

Section 13. Default.

In the event the objecting party fails to appear at the hearing, the prevailing wage determination shall be deemed valid and final, and shall not be subject to review by the hearing officer.

Section 14. Record of Proceeding.

Labor Standards shall make an audio recording of the hearing proceedings. Any party requesting a transcript of the recorded hearing shall be provided one at his/her own expense.

Section 15. Final Determination.

Within ten (10) days of the close of the hearing, the hearing officer shall issue a written ruling on the objection(s) to the prevailing wage determination(s). The hearing officer's decision shall constitute Labor Standards' final determination.

Section 16. Investigation.

(a) Labor Standards shall investigate a contractor or subcontractor to determine compliance with the provisions of the Prevailing Wage Act if there is reason to suspect noncompliance or upon receipt of a complaint.

(b) Labor Standards' investigation shall include whether the contractor or subcontractor properly classifies its workmen and pays workmen the correct prevailing hourly rate of wages, including the base wage rate and fringe benefits, as applicable.

(c) In determining whether a workman is properly classified, Labor Standards may utilize the 2018 Standard Occupational Classification System, which is hereby incorporated by reference and can be found at: https://www.bls.gov/soc/2018/major_groups.htm

(i) The 2018 Standard Occupational Classification System was adopted

(ii) by United States Department of Labor, Bureau of Labor Statistics, and in effect on May 14, 2018.

(iii) No later amendments to the 2018 Standard Occupational Classification System are incorporated by reference.

(d) For the purpose of any investigation under this Chapter, Labor Standards may issue subpoenas requiring the attendance and testimony of witnesses and the production of any books, papers, documents, or records which Labor Standards deems relevant or material to the inquiry.

Section 17. Enforcement.

(a) Where Labor Standards' investigation reveals a contractor's or subcontractor's noncompliance with the provisions of the Prevailing Wage Act, Labor Standards may:

(i) consult with the noncompliant party and allow for a reasonable opportunity to come into compliance; and

(ii) direct the public entity letting the contract, or the general contractor, to withhold further payment to the noncompliant party until prevailing wages are paid, pursuant to Wyoming Statute § 16-6-117.

(b) Where Labor Standards' investigation reveals a contractor's or subcontractor's intentional and willful violation of the Prevailing Wage Act, or where a noncompliant party fails to come into compliance, Labor Standards shall petition the appropriate district court for enforcement the Prevailing Wage Act and assessment of penalties as set forth in Wyoming Statute § 27-4-412.

Chapter II CHAPTER 2

CONTESTED PREVAILING WAGE DETERMINATION HEARING RULES

~~Section 1. Authority.~~

~~These rules are promulgated pursuant to W.S. 27-4-404 of the Wyoming Prevailing Wage Act of 1967.~~

~~Section 2. Definitions.~~

~~By reference, all definitions set forth in W.S. 27-4-402 and all amendments thereto are incorporated herein. In addition, the following definitions are set forth:~~

- ~~(a) "Act" means the Wyoming Prevailing Wage Act of 1967, W.S. 27-4-401 through 27-4-413, as amended.~~
- ~~(b) "Department" means the Department of Workforce Services.~~
- ~~(c) "Labor Standards" means Labor Standards, a program within the Department of Workforce Services.~~
- ~~(d) "Hearing Officer" means the Director of the Department of Workforce Services or his/her duly authorized representative.~~
- ~~(e) "Affected Person" means any person who may be affected by a wage determination.~~
- ~~(f) "Person" means one (1) or more individuals, partnerships, corporations, associations, limited liability companies, unions or legal representatives of the above.~~

~~Section 3. Commencement of Proceedings.~~

~~Hearings shall be initiated as follows:~~

- ~~(a) Any affected person who objects to the department's wage determination may file a written notice of the objection~~
- ~~(b) The written notice of objection must be filed with Labor Standards within fifteen (15) days after the publication and notification of the wage determination.~~
- ~~(c) The written notice of objection shall contain the following:~~

- (i) ~~The affected party's name, current mailing address and telephone number and, where applicable, the name, current mailing address and telephone number on whose behalf the objection is being made.~~
- (ii) ~~A list of the crafts or types of workmen and their hourly rate of wages being objected to;~~
- (iii) ~~The hourly rate of wages the affected party believes should prevail for each craft or type of workman listed in the objection;~~
- (iv) ~~Specific grounds for the objection; and~~
- (v) ~~A description of how the affected party would be affected by the wage determination.~~

~~Section 4. Notice of Hearing.~~

- (a) ~~Within ten (10) calendar days of the receipt of the written notice of objection, Labor Standards shall set a date for a hearing on the objection.~~
- (b) ~~The date of the hearing shall be within thirty (30) calendar days of the receipt of the objection.~~
- (c) ~~At least five (5) calendar days prior to the hearing date, Labor Standards shall notify the affected party(s), in writing, of the time and place of the hearing.~~
- (d) ~~Labor Standards shall notify the affected party(s) of the hearing by certified mail.~~

~~Section 5. Default Appearance.~~

- (a) ~~In the event an affected party fails to appear or testify at the hearing, the wage determination shall be deemed valid and final, and shall not be subject to review by the hearing officer.~~

~~Section 6. Attorneys.~~

~~All persons appearing before the hearing officer have the right to represent themselves or be represented by an attorney. However, no attorney will be permitted to make statements or examine or cross-examine witnesses on behalf of a party unless such attorney is licensed to practice law in the State of Wyoming, or if not licensed to practice in the State of Wyoming, such attorney shall be associated with a Wyoming attorney qualified to practice law in the State of Wyoming. These rules shall not be construed to prohibit any person from representing himself/herself in any hearing before the hearing officer.~~

Section 7. Reporting Testimony.

~~In all hearings held pursuant to the Act and these rules and regulations, all testimony shall be tape recorded. Any party requesting a transcript of the taped hearing will be provided one at his/her expense.~~

Section 8. Final Determination.

~~Within ten (10) calendar days after the hearing is concluded, the hearing officer shall rule on the objection(s) to the prevailing wage determination(s) and enter a final determination. The hearing officer shall serve by certified mail or personal service a certified copy of the final determination on all parties in accordance with W.S. 27-4407(d).~~

Section 9. Appeals.

~~The hearing officer's final determination may be appealed to the District Court in accordance with W.S. 27-4-407(e) and the Wyoming Administrative Procedure Act [W.S. 16-3-114 through 16-3-115].~~

Section 10. Record on Appeal.

~~Upon appeal of the final determination, Labor Standards shall prepare and transmit to the reviewing court, the entire record of the hearing in accordance with Rule 12.07 of the Wyoming Rules of Appellant Procedure.~~

Repealed (2018).

Chapter ~~VI~~ 6

~~RULES OF PRACTICE AND PROCEDURE FOR COMPUTING AND DETERMINING WYOMING'S PREVAILING WAGES~~RATES

Section 1. Authority.

~~These rules and regulations are promulgated and enacted by the Department of Employment pursuant to W.S. 27-4-404 of the Wyoming Prevailing Wage Act of 1967, as amended, and in accordance with W.S. 16-3-115 of the Wyoming Administrative Procedures Act. This Chapter is promulgated by the authority of Wyoming Statute § 27-4-404 of the Wyoming Prevailing Wage Act of 1967, as amended.~~

Section 2. Purpose and Scope.

~~These rules and regulations are promulgated to assist the Department of Workforce Services in its duty to enforce laws enacted by the legislature relating to labor and to set forth a procedure for computing and determining the wage rates as is required by W.S. 27-4-404 of the Prevailing Wage Act of 1967, as amended. This Chapter is adopted to establish procedures for computing and determining Wyoming's prevailing wage rates, to set forth contested case hearing procedures, and to establish investigation and enforcement procedures, in accordance with the Prevailing Wage Act.~~

Section 3. Definitions.

~~By reference, all definitions set forth in W.S. 27-4-402 are incorporated herein.~~

~~Specifically, the following definitions are set forth:~~

~~(a) "Act" means the Wyoming Prevailing Wage Act of 1967, W.S. 27-4-401 through 27-4-413, as amended.~~

~~(a) "Affected Person" means any individual or entity who may be affected by Labor Standards' determination.~~

(b) “Base Wage Rate” means the prevailing hourly rate of wages, less fringe benefits.

~~(b) “Department” means the Department of Workforce Services.~~

~~(c) “Director” means the Director of the Department of Workforce Services or his/her designee.~~

(c) “Building Construction” means the construction generally needed to perform construction, reconstruction, improvement, enlargement, alteration, or repair of any public building fairly estimated to cost one-hundred thousand dollars (\$100,00.00) or more.

(d) “Fringe Benefits” means the usual and customary benefits paid to workers in addition to wages.

(e) “Heavy and Highway Construction” means the construction generally needed to perform construction, reconstruction, improvement, enlargement, alteration or repair of any heavy or highway project fairly estimated to cost one-hundred thousand dollars (\$100,00.00) or more.

~~(d)(f) “Journeyman Level Worker” means a worker with sufficient experience and training in his or her trade to be proficient in the skills necessary to perform all aspects of the trade.~~

~~(d) “Building Construction” means the construction generally needed to perform construction, reconstruction, improvement, enlargement, alteration or repair of any public building fairly estimated to cost twenty-five thousand dollars (\$25,000.00) or more.~~

~~(e) “Heavy and Highway Construction” means the construction generally needed to perform construction, reconstruction, improvement, enlargement, alteration or repair of any heavy or highway project fairly estimated to cost twenty five thousand dollars (\$25,000.00) or more.~~

(g) “Labor Standards” means Labor Standards, a program within the Wyoming Department of Workforce Services.

~~(i) “Fringe Benefits” means the usual and customary benefits paid to workman in addition to wages as set forth in Section 10 of these rules.~~

(j)(h) “Moving Average Wage Adjustment” means an adjustment made to the prevailing hourly rate of wages to allow for economic fluctuations when sufficient data has not

been provided for a certain job classifications.

(i) “Prevailing Wage Act” means the Wyoming Prevailing Wage Act of 1967, as amended, Wyoming Statute §§ 27-4-101 through 413.

~~(j) “Base Wage Rate” means the Prevailing hourly rate of wages less Fringe Benefits.~~

~~(f)(j)~~ (j) “Survey” means an instrument to ascertain the Prevailing hourly rate of wages for the construction trades through data collection of relevant hourly wages paid to workman.

Section 4. Annual Surveys.

(a) Labor Standards may engage the services of an independent contractor to distribute surveys and determine the annual prevailing rate of wages.

(b) Surveys will be sent annually to the appropriate employers and employee organizations for purposes of determining the annual Prevailing hourly rate of wages.

~~(a)(c)~~ (c) For the purposes of determining the annual Prevailing hourly rate of wages for the Building Construction trades and the Heavy and Highway Construction trades, surveys will be conducted in September to collect total number of hours worked by classification of worker for the period of September 1~~st~~ of the previous year through August 31~~th~~ of the current year plus the most recent rate of pay, which to includes fringe benefits, by classification of worker for the survey period.

~~(b) For the purposes of determining the annual Prevailing hourly rate of wages for the Heavy and Highway Construction trades, surveys will be conducted in September to collect total number of hours worked by classification of worker for the period of September 1st of the previous year through August 30th of the current year plus the most recent rate of pay which includes fringe benefits by classification of worker for the survey period.~~

Section 5. Survey Types.

There shall be two separate surveys constructed to determine the Prevailing hourly rate of wages, one survey for Building Construction and another for Heavy and Highway Construction as follows:

(a) A survey to determine the Prevailing hourly rate of wages for Building Construction shall be sent to employers and employee organizations engaged in

construction, reconstruction, improvement, enlargement, alteration or repair of public works projects or other large commercial projects.

(b) A survey to determine the ~~P~~prevailing hourly rate of wages for Heavy and Highway Construction shall be sent to employers and employee organizations engaged in construction, reconstruction, improvement, enlargement, alteration or repair of major heavy and/or highway projects.

Section 6. Who is to be Surveyed.

For the purpose of determining the ~~P~~prevailing hourly rate of wages, surveys shall collect data on wages paid to journeymen.

Section 7. Computation of Base Wage Rate.

The Base Wage Rate shall be computed according to the formula and considerations set forth below:

(a) The rate of wages paid in the locality (~~as defined in the Act~~) in which the work is to be performed, to the majority of those employed in that classification in construction in the locality similar to the proposed undertaking. A distinction shall be recognized, based on area practice within the State, between the following types of Building Construction and Heavy and Highway eConstruction, and the job classifications typically associated with them:

(i) ~~Building Construction;~~

(ii) ~~Heavy and Highway Construction~~

(b) When fifty percent (50%) or more of those employed in a classification are paid at the same rate, that rate shall be the ~~B~~base ~~W~~wage ~~R~~rate for that job classification.

(c) In the event that not more than fifty percent (50%) of employees in a classification are paid at the same rate, then the rate paid to the greater number shall be used. The greater number must be at least thirty percent (30%) of those employed.

(d) In the event that less than the thirty percent (30%) threshold of Subsection (c) above is not met, then an average rate shall be used. The average rate for each classification in a locality shall be the rate obtained by:

(i) ~~The average rate for each classification in a locality shall be the rate obtained by:~~

(i) Adding the hourly rates paid to all workers in the classification and dividing by the total number of such workers.

$$\text{Ex: AVERAGE RATE 1} = \frac{\text{TOTAL HOURLY RATES PAID}}{\text{TOTAL NUMBER OF WORKERS}}$$

(ii) Dividing the total wages paid by the total number of hours worked in the classification.

$$\text{Ex: AVERAGE RATE 2} = \frac{\text{TOTAL DOLLAR WAGES PAID}}{\text{TOTAL HOURS WORKED}}$$

(iii) Then the Base Wage Rate will be the average of AVERAGE RATE 1 and AVERAGE RATE 2:

$$\text{Ex: BASE WAGE RATE} = \frac{\text{AVERAGE RATE 1} + \text{AVERAGE RATE 2}}{2}$$

Section 8. Moving Average Wage Adjustment.

~~The Department, in establishing a prevailing hourly rate of wages, Labor Standards shall provide for a Moving Average Wage Adjustment as follows:~~

$$\frac{\text{WCLI}(\text{current year})}{\text{WCLI}(\text{previous year})} \times 100$$

Section 9. Fringe Benefits.

~~(a) The prevailing hourly rate of wages shall include bona fide fringe benefits set forth as follows:~~

- (i) Medical and dental payments or hospital care;
- (ii) Pensions on retirement or death;
- (iii) Disability benefits and life insurance;
- (iv) Vacation and holiday pay;

~~(v) Apprenticeship or other United States Bureau of Apprenticeship and Training approved training program or as approved by the Department of Transportation and Federal Highway Administration; and,~~

(vi) Annuity or other 401K plans.

(b) An employer who pays more than minimum required fringe benefits shall not be permitted to reduce or offset the excess amount from the required base wage rate.

Section 10. ~~Notice of Determination.~~ Objection to Prevailing Hourly Rate of Wages and Request for Hearing.

~~The Department shall provide notice of the determination of the Prevailing hourly rate of wages:~~

~~(a) — To the general public by publication in a newspaper of statewide circulation;~~

~~(b) — By certified mail to each state agency;~~

~~(c) — By certified mail to any employer who has filed a written request with the director;~~

~~(d) — By certified mail to any employee organization who has filed a written request with the director; and~~

~~(e) — By certified mail to any person who has filed a written request with the director.~~

(a) Any affected party may submit to Labor Standards its written objection to the determination of the prevailing hourly rate of wages and request for a hearing. A hearing shall be initiated as set forth in Wyoming State § 27-4-407(a).

(b) An affected party's written notice of objection and request for hearing shall contain the following:

(i) The affected party's name, mailing address, and telephone number;

(ii) A list of the crafts or types of workmen and their hourly rate of wages being objected to;

(iii) The hourly rate of wages the affected party believes should prevail for each craft or type of workman listed in the objection;

(iv) The specific grounds for the objection; and

(v) A description of how the affected party would be affected by the wage determination.

Section 11. Independent Hearing Officer.

Upon receipt of a timely submitted written objection and request for hearing, Labor Standards shall contract with an independent hearing officer to conduct a hearing on the matter.

Section 12. Hearing Procedure.

The hearing officer shall conduct the hearing in accordance with the Wyoming Administrative Procedures Act, Wyoming Statute §§ 16-3-107 through 115, and the Wyoming Office of Administrative Hearings' rules for Contested Case Proceedings, which are hereby incorporated by reference and can be found at:

<https://rules.wyo.gov/Search.aspx?RefNum=270.0001.2.07202017>

(a) The rules for Contested Case Proceedings were adopted by the Wyoming Office of Administrative Hearings and in effect on July 20, 2017.

(b) No later amendments to the rules for Contested Case Proceedings are incorporated by reference.

Section 13. Default.

In the event the objecting party fails to appear at the hearing, the prevailing wage determination shall be deemed valid and final, and shall not be subject to review by the hearing officer.

Section 14. Record of Proceeding.

Labor Standards shall make an audio recording of the hearing proceedings. Any party requesting a transcript of the recorded hearing shall be provided one at his/her own expense.

Section 15. Final Determination.

Within ten (10) days of the close of the hearing, the hearing officer shall issue a written ruling on the objection(s) to the prevailing wage determination(s). The hearing officer's decision shall constitute Labor Standards' final determination.

Section 16. Investigation.

(a) Labor Standards shall investigate a contractor or subcontractor to determine

compliance with the provisions of the Prevailing Wage Act if there is reason to suspect noncompliance or upon receipt of a complaint.

(b) Labor Standards' investigation shall include whether the contractor or subcontractor properly classifies its workmen and pays workmen the correct prevailing hourly rate of wages, including the base wage rate and fringe benefits, as applicable.

(c) In determining whether a workman is properly classified, Labor Standards may utilize the 2018 Standard Occupational Classification System, which is hereby incorporated by reference and can be found at: https://www.bls.gov/soc/2018/major_groups.htm

(i) The 2018 Standard Occupational Classification System was adopted

(ii) by United States Department of Labor, Bureau of Labor Statistics, and in effect on May 14, 2018.

(iii) No later amendments to the 2018 Standard Occupational Classification System are incorporated by reference.

(d) For the purpose of any investigation under this Chapter, Labor Standards may issue subpoenas requiring the attendance and testimony of witnesses and the production of any books, papers, documents, or records which Labor Standards deems relevant or material to the inquiry.

Section 17. Enforcement.

(a) Where Labor Standards' investigation reveals a contractor's or subcontractor's noncompliance with the provisions of the Prevailing Wage Act, Labor Standards may:

(i) consult with the noncompliant party and allow for a reasonable opportunity to come into compliance; and

(ii) direct the public entity letting the contract, or the general contractor, to withhold further payment to the noncompliant party until prevailing wages are paid, pursuant to Wyoming Statute § 16-6-117.

(b) Where Labor Standards' investigation reveals a contractor's or subcontractor's intentional and willful violation of the Prevailing Wage Act, or where a noncompliant party fails to come into compliance, Labor Standards shall petition the appropriate district court for enforcement the Prevailing Wage Act and assessment of penalties as set forth in Wyoming Statute § 27-4-412.