

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #4

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WorkForce West Virginia TITLE NUMBER: 96

CITE AUTHORITY: West Virginia Code §21-5A-1

AMENDMENT TO AN EXISTING RULE: YES NO

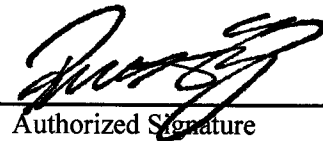
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 04

TITLE OF RULE BEING PROPOSED: West Virginia Prevailing Wage Act

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

**TITLE 96
EMERGENCY RULE
WORKFORCE WEST VIRGINIA**

**SERIES 04
WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS**

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§96-4-1. General.

1.1. Scope and Purpose. – This rule defines the regions of the State that WorkForce West Virginia will use to calculate the prevailing hourly rate of wages in the distinct regions of the state where the construction is performed and sets forth the process that WorkForce West Virginia will use to address written objections to the methodology used to calculate the prevailing hourly rate of wages and the hourly rate of wages in the defined regions of the state.

1.2. Authority. – West Virginia Code § 21-5A-11.

1.3. Filing Date. –

1.4. Effective Date. –

1.5. Applicability. –

1.5.1. Any public authority or political subdivision prior to letting a contract for the construction of a public improvement exceeding \$500,000 in public money shall ascertain from WorkForce West Virginia the prevailing hourly rate of wages in the regions of the state for laborers, workers or mechanics in the various classes of the construction to be performed. The rates so determined shall be incorporated in the contract specifications.

1.5.2. Any affected person may object, in writing, to the methodology applied to calculate the prevailing hourly rate of wages or the hourly rate of wages by filing a written objection with the Executive Director in accordance with the process defined in this rule.

§96-4-2. Definitions.

2.1. “Executive Director” means the Executive Director of WorkForce West Virginia or his or her designee.

§96-4-3. Regions of the State.

3.1. Regions. – Regions for determining the prevailing rate of wages shall align with the seven (7) Workforce Investment Regions prescribed by the West Virginia Workforce Investment Act, W. Va. Code § 5B-2B-1, *et seq.* The designated regions are a combination of regional areas that are partly or completely in a single labor market area or economic development region. The regions are as follows:

3.1.1. Region 1 Counties. – Fayette, Greenbrier, McDowell, Mercer, Monroe, Nicholas, Pocahontas, Raleigh, Summers, Webster, and Wyoming.

3.1.2. Region 2 Counties. – Boone, Cabell, Lincoln, Logan, Mingo, Putnam, and Wayne.

3.1.3. Region 3 Counties. – Kanawha.

3.1.4. Region 4 Counties. – Calhoun, Clay, Jackson, Mason, Pleasants, Ritchie, Roane, Wirt, and Wood.

3.1.5. Region 5 Counties. – Brooke, Hancock, Marshall, Ohio, Tyler, and Wetzel.

3.1.6. Region 6 Counties. – Barbour, Braxton, Doddridge, Gilmer, Harrison, Lewis, Marion, Monongalia, Preston, Randolph, Taylor, Tucker, and Upshur.

3.1.7. Region 7 Counties. – Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, and Pendleton.

§96-4-4. Process for Addressing Written Objections Regarding the Methodology for Calculating the Prevailing Hourly Rate of Wages and Hourly Rate of Wages.

4.1. Time Period for Filing an Objection. – At any time within fifteen (15) days after the prevailing wage rates are filed, any affected person may object, in writing, to the methodology applied to calculate the prevailing hourly rate of wages or the hourly rate of wages by filing an objection with the Executive Director.

4.2. Objection in Writing. – The written objection shall include:

4.2.1. Name and address of the objecting party;

4.2.2. A complete description of the concern, including the affected trade(s);

4.2.3. Documentation or evidence supporting why the method is believed to be calculated incorrectly, if any;

4.2.4. Recommendations for modifying the methodology; and

4.2.5. Signature of the objecting party or counsel.

4.3. Review of Written Objection. –

4.3.1. Within fifteen (15) days of the receipt of such written objection, WorkForce West Virginia's Research, Information and Analysis Division, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and

Economic Research at Marshall University, shall review the written objection and determine if the concerns set forth in the written objection, if addressed, would improve the methodology.

4.3.2. If the Research, Information and Analysis Division, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University determine that addressing the concerns raised in the written objection is warranted, the Research, Information and Analysis Division shall incorporate the recommended changes, as appropriate, into WorkForce West Virginia's prevailing wage data collection process used to calculate prevailing hourly wage rates in the regions of the state for the next succeeding year.

4.3.3. If the Research, Information and Analysis Division, in coordination with the West Virginia University Bureau of Business and Economic Research and the Center for Business and Economic Research at Marshall University determine that addressing the concerns set forth in the written objection will not improve the methodology, such written objection shall be dismissed and no further action is necessary.

4.3.4. The Executive Director shall notify all parties of the decision to accept or reject the recommendations to improve the methodology by personal service or registered mail, return receipt requested.

4.4. Right to Appeal. –

4.4.1. At any time within fifteen (15) days of the receipt of the decision to accept or reject the written objection(s), any affected party may appeal the decision by filing a written notice of appeal with the Executive Director in accordance with subsection 4.5 of this rule.

4.4.2. Within ten (10) days of the receipt of such written notice of appeal, the Executive Director shall set a date for hearing and that date shall be within thirty (30) days after receipt of the notice to appeal.

4.5. Notice to Appeal in Writing. – The written notice to appeal must include:

4.5.1. Name and address of the appealing party;

4.5.2. Statement detailing the grounds and rationale for the appeal and the specific trade(s) affected; and

4.5.3. Signature of the appealing party or counsel.

4.6. Consolidation of Written Objections. – The Executive Director may consolidate written objections for hearing and final determination purposes in the interest of efficiency.

4.7. Notice of Hearing. – Notice of the date, time, and place of the appeal hearing shall be sent to all interested parties at least ten (10) days in advance of the hearing date.

4.8. **Withdrawal of Appeals.** – If, after filing a notice of appeal, the appealing party decides to withdraw the appeal, the party shall file a written notice of withdrawal to the Executive Director.

4.9. **In Camera Treatment of Confidential Information.** – The Executive Director shall have authority to order documents or oral testimony offered in evidence during the appeal hearing, whether admitted or rejected, to be heard in camera.

4.10. **Notice of Decision.** – Upon consideration of all evidence, the Executive Director shall issue a decision within fifteen (15) days of the conclusion of the hearing. Such decision shall be filed with the Secretary of State and a copy delivered to all parties by registered mail, return receipt requested.

4.11. **Right to Appeal.** – Any party affected by the appeal hearing may appeal the decision to the Kanawha County Circuit Court within thirty (30) days of receipt of the notice of decision. The decision of the Kanawha County Circuit Court may be appealed to the Supreme Court of Appeals of West Virginia in the manner provided by law for appeals of administrative action.

4.12. **Calculation of Days.** – If the last day of a time period set forth in this rule is a Saturday, Sunday, or legal holiday, the time period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. The day of the event that triggers the time period shall be excluded from the calculation of the time period.