

AMENDATORY SECTION (Amending WSR 94-01-100, filed 12/16/93, effective 1/16/94)

WAC 296-127-010 Definitions for chapter 296-127 WAC. (1)

"Department" means the department of labor and industries.

(2) "Director" means the director of the department or his or her duly authorized deputy or representative.

(3) "Industrial statistician" means the industrial statistician of the ~~((department's employment standards, apprenticeship, and crime victims (ESAC) division))~~ department.

(4) "Assistant director" means the assistant director of ~~((the employment standards, apprenticeship, and crime victims (ESAC) division or his or her duly authorized deputy or representative))~~ specialty compliance services.

(5) "Contractor" means:

(a) The prime contractor, and each and every subcontractor, required to be registered under chapter 18.27 RCW and/or licensed under chapter 19.28 RCW, that performs any work on a public works project site, and/or is required to pay industrial insurance premiums as a construction company.

(b) Employers engaged in shipbuilding and ship repair, building service maintenance, and any fabricator or manufacturer that produces nonstandard items specifically for a public works project.

(c) Employers that contract with contractors or subcontractors for the purpose of the production and/or delivery of materials pursuant to the terms of WAC 296-127-018.

(6) The term municipality shall include every city, county, town, district, political subdivision, or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

(7) (a) For purposes of chapter 39.12 RCW, the term "public work" shall include:

(i) All work, construction, alteration, enlargement, improvement, repair, and/or demolition that is executed ~~((by contract, purchase order, or any other legal agreement and that is executed))~~ at the cost of the state of Washington or of any municipality. The source of the funding shall not determine the applicability of the statute, and may include, but is not limited to, such sources as those payments made through contracts with

insurance companies on behalf of the insured state or municipality;

(ii) All work, construction, alteration, enlargement, improvement, repair, and/or demolition which, by law, constitutes a lien or charge on any property of the state or of a municipality;

(iii) All work, construction, alteration, repair, or improvement, other than ordinary maintenance that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities, pursuant to RCW 39.04.260;

(iv) Maintenance, except ordinary maintenance as defined by (b)(iii) of this subsection, when performed by contract. Maintenance is defined as keeping existing facilities in good usable, operational condition;

(v) Janitorial and building service maintenance as defined by WAC 296-127-023, when performed by contract, on public buildings and/or assets; and

(vi) The fabrication and/or manufacture of nonstandard items produced by contract specifically for a public works project as defined by (a)(i) through (v) of this subsection.

(b) For purposes of chapter 39.12 RCW, the term "public work" shall not include:

(i) Work, construction, alteration, enlargement, improvement, repair, demolition, and/or maintenance for which no wage or salary compensation is paid, consistent with the requirements of RCW 35.21.278;

(ii) ~~((The construction, alteration, repair, or improvement of any municipal street railway system;~~

~~(iii))~~ "Ordinary maintenance," which is defined only as ((work not)) maintenance which is performed by ((contract and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually, but not less frequently than once per year), to service, check, or replace items that are not broken; or work not performed by contract that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary)) laborers, workers, or mechanics regularly employed by the state, or any county, municipality, or political subdivision created by its laws.

(8) "Contract" means a contract, purchase order, or any other legal agreement ~~((in writing))~~ for public work to be performed for a fixed or determinable amount ~~((, which is duly awarded after advertisement and competitive bid. A contract that is awarded from a small works roster, or under the emergency provisions of state law, need not be advertised))~~.

(9) "Residential construction" means construction, alteration, repair, improvement, or maintenance of single family dwellings, duplexes, apartments, condominiums, and other residential structures not to exceed four stories in height, including basement, when used solely as permanent residences. It does not include the utilities construction (water and sewer lines), or work on streets, or work on other structures (e.g., for recreation and business).

(10) "Filing," "filed," or to "file" means actual receipt of the document during office hours at the office of the director, or at such other place designated by the department for filing of the document.

(11) "Service," with respect to documents, means service pursuant to RCW 34.05.010(19), except as otherwise provided by these rules.

(12) "Issue," "issued," or "issuance" means service pursuant to RCW 34.05.010(19).

Note: See RCW 39.12.030 regarding awarding agency contract specification requirements with respect to "residential construction."

Note: The definitions in this rule, including the "ordinary maintenance" definition, are for purposes of prevailing wage law, chapter 39.12 RCW. Other areas of statute may have their own independent use or definition for such terms.

AMENDATORY SECTION (Amending WSR 04-10-083, filed 5/4/04, effective 6/4/04)

WAC 296-127-011 Time for determining prevailing wage. (1) Prevailing wage rates for all public work contracts will be determined by the industrial statistician and published on the first business day of February and the first business day of August of each year. These rates shall become effective thirty days after the date of publication. However, the industrial statistician may revise an established prevailing wage rate in response to an administrative or judicial finding overturning the established rate, or at any time necessary to correct an error, with such revision becoming effective thirty days after the date of publication. However, in the event of an emergency as determined by the director of the department, such revised rate shall take effect upon publication.

(2) The department shall establish deadlines for the submission of:

(a) Completed wage surveys, for inclusion of submitted data in the survey computations;

(b) Newly ratified collective bargaining agreements for inclusion in the semiannual prevailing wage publication;

(c) Notice of collectively bargained wage and benefit adjustments, and/or relevant contractual changes, for inclusion in the semiannual prevailing wage publication; and

(d) Notice of changes in apprenticeship standards and incremental wage rates for inclusion in the semiannual prevailing wage publication.

(3) The applicable prevailing wage rates for a (~~given public works~~) contract subject to chapter 39.12 RCW will be determined as follows:

(a) For all (~~public works~~) contracts (~~(, except janitorial or building service maintenance contracts)~~) subject to chapter 39.12

RCW, the applicable prevailing wage rates shall be the rates that are in effect on the date when bids by prime contractors are due for submission to contract awarding agencies. Except for maintenance, service, and building service maintenance contracts covered in subsection (5) of this section, these rates shall remain in effect for the duration of the contract.

(b) If contracts are not awarded within six months of the date bids are due, the applicable prevailing wage rates shall be those that are in effect on the date the contract is awarded. Except for maintenance, service, and building service maintenance contracts covered in subsection (5) of this section, these rates shall remain in effect for the duration of the contract.

(c) For work orders issued under job order contracts (~~((pursuant to chapter 301, Laws of 2003))~~), the appropriate prevailing wage rates shall be the rates that are in effect on the date when the individual work order is issued.

(4) If a contract (~~((for public work))~~) is not awarded pursuant to bids, the applicable prevailing wage rates shall be those that are in effect on the date when the contract is executed. Except for maintenance, service, and building service maintenance contracts covered in subsection (5) of this section, these rates shall remain in effect for the duration of the contract.

(5) Maintenance, service, and building service maintenance contracts of more than one year in duration must include wage increase language requiring an update to, and payment of, the applicable prevailing wages for each year after the first year of the contract. The cost of the increases in wages due employees shall be borne by the contract awarding agency.

(6) A schedule of the applicable journey-level prevailing wage rates must be included by:

(a) Contract awarding agencies, in the bid specifications and contract documents for each contract.

(b) Contractors, in the bid and/or contract documents provided to subcontractors.

AMENDATORY SECTION (Amending WSR 92-01-104, filed 12/18/91, effective 1/31/92)

WAC 296-127-015 Applicability of prevailing wages for supervisors. Determinations as to whether individuals are workers, laborers, or mechanics are based on the scope of work actually performed by the individuals, rather than the title of their occupations.

(1) (~~((Where additional supervisory duties are required of workers, laborers, or mechanics by statute or regulation, the industrial statistician shall establish a rate of pay for a work classification to be called "journey level in charge." These rates shall be published in the semiannual prevailing wage publication.~~

~~(2)~~) Supervisors (e.g., foremen, general foremen, superintendents, etc.) are entitled to receive at least the journey level prevailing rate of wage for performing manual or physical labor:

(a) For each hour spent in the performance of manual or physical labor if it is for more than (~~twenty~~) ten percent (~~but less than fifty percent~~) of their hours worked on a public works project during any given (~~week~~) day.

(b) For all hours worked in any given week if they perform manual or physical labor for fifty percent or more of their hours worked on a public works project during such week.

~~(3)~~) (2) If supervisors subject to the journey level prevailing wage rate are paid a salary, the compensation (salary divided by number of hours worked) must be equal to or greater than the prevailing wage rate for the type of work performed.

AMENDATORY SECTION (Amending WSR 92-01-104, filed 12/18/91, effective 1/31/92)

WAC 296-127-019 Survey methodology. (1) The industrial statistician shall establish prevailing wage rates by:

(a) Conducting wage and hour surveys for established trades and occupations;

(b) Adopting the wage and benefit adjustments established in collective bargaining agreements for those trades or occupations where the most recently established prevailing wage rates were derived from a collective bargaining agreement; and/or

(c) In instances when the procedures established in (a) and (b) of this subsection are not feasible, employing other methods deemed appropriate by the industrial statistician as set out in subsection (8) of this section.

(2) The department will determine the identity of employers to be surveyed for a specific trade or occupation by:

(a) Mailing trade and occupation questionnaires to all contractors whose registration under chapter 18.27 RCW or license under chapter 19.28 RCW is active;

(b) Mailing trade and occupation questionnaires to Washington state department of transportation prequalified contractors; and

(c) Compiling and maintaining lists of employers that are not required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, but that employ workers in building service maintenance, in shipbuilding or ship repair, in the fabrication and/or manufacture of nonstandard items produced specifically for a public works project, and/or in the production and delivery of materials as defined in WAC 296-127-018. Trades and occupations utilized by the shipbuilding and ship repair industries shall not have their survey data combined with their construction counterparts, for the purpose of establishing prevailing wage rates

for that industry.

(3) (a) Wage survey forms will be mailed to:

(i) Those contractors and employers whose businesses currently are active and were active during the established survey period, and whose response to the trade and occupation questionnaire indicates that they employ one or more of the trades or occupations being surveyed; and

(ii) Labor unions representing workers in the trades or occupations being surveyed.

(b) The department annually shall mail to statewide trade associations and statewide labor organizations a proposed schedule of trades intended to be surveyed during the upcoming fiscal year. In addition, the department shall notify those statewide trade associations and labor organizations, reasonably known to be affected, of the mailing of wage surveys.

(4) Data reported on survey forms may be verified by the department, and will be used only when submitted on behalf of or by:

(a) Individual contractors identified by a contractor registration number that currently is valid, and was valid during the established survey period;

(b) Employers that are not required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, that directly employ and supervise workers as employees in building service maintenance, in shipbuilding or ship repair, in the manufacture of nonstandard items specifically produced for a public works project, or in the production and delivery of materials, as defined in WAC 296-127-018;

(c) Labor unions submitting wage and hour data on behalf of contractors and/or employers who are signatory to those unions' collective bargaining agreements covering the trade or occupation being surveyed; or

(d) Interested parties providing wage and hour data by trade and occupation from certified payroll records and/or from hours reported by trade and occupation on affidavits of wages paid, according to guidelines established by the department.

(5) The department shall use affidavit forms that include a requirement that contractors report the actual number of hours worked by each trade and occupation utilized on the public works project for which the affidavit is filed.

(6) Valid data reported on wage surveys shall be calculated, as follows:

(a) If the majority of hours reported for a trade or occupation in the largest city in a county is paid at the same wage rate, then that rate shall be established as the prevailing wage rate.

(b) If the same wage rate is not reported to have been paid for the majority of hours reported in the largest city in a county for a trade or occupation, then the average wage rate shall be established as the prevailing wage rate, based on a weighted average of the hours, wages, and benefits reported in the largest city.

(c) If a statistically significant number of hours fails to be reported for the largest city in a county, then the average wage rate for the county is established as the prevailing wage, based on a weighted average.

~~((d) If there fails to be reported for an entire county, sufficient hours to validate the survey data, that county's hours shall be combined with those reported for other counties that are adjacent, until the established hours threshold for validation has been met.))~~

(7) Survey data will not be accepted if the data report the hours and wages of those who are exempt from the prevailing wage requirements of chapter 39.12 RCW, as defined in WAC 296-127-026.

(8)(a) The industrial statistician may utilize alternative methods to establish prevailing wage rates consistent with the terms of (b) of this subsection. These methods include, but are not limited to:

(i) The use of wage and hour data from the department of employment security;

(ii) The use of wage and hour data from the industrial insurance division of the department of labor and industries;

(iii) The use of data from surveys performed by the United States Department of Labor, wage and hour division; ~~((or))~~

(iv) The use of wage and hour data reported to the department on affidavits of wages paid.

(b) These alternative methods will not be used for trades or occupations for which surveys had been completed as of the effective date of this section unless a subsequent survey produces insufficient data. In addition, these alternative methods may be used under circumstances that include, but are not limited to, the following:

(i) To establish prevailing wage rates for a new trade or occupation where a survey is not immediately feasible;

(ii) In response to an administrative or judicial determination of invalid wage rate or scope of work description;

(iii) In response to changes or additions in licensing, safety, or other requirements of other state agencies, departments or divisions; ~~((or))~~

(iv) To establish rates if there fails to be reported sufficient hours for an entire county to validate the survey data;
or

(v) To establish rates for industries and trades and occupations generally not surveyed, in order to meet the requirement of having established wage rates for publication in contract or bid specifications as required by RCW 39.12.030.

(9) Any party that submits false information under this section shall, after a determination to that effect has been issued by the director after a hearing pursuant to chapter 34.05 RCW, forfeit as a civil penalty the sum of five hundred dollars.

AMENDATORY SECTION (Amending WSR 92-01-104, filed 12/18/91, effective 1/31/92)

WAC 296-127-020 Interpretation of phrases used in chapter 39.12 RCW. (1) The "acceptance date of the public works project" referred to in RCW 39.12.065 is the date that the contract awarding agency formally accepts the completed public works project pursuant to state law.

(2) RCW 39.12.050 and 39.12.065 refer to "inadvertent filing or reporting error." The department defines an error as "inadvertent" if it is made by a contractor, as defined by WAC 296-127-010(5), or employer that shows that the error was made notwithstanding the use of due care by the contractor or employer. The burden of proving that an error is inadvertent rests with the contractor or employer charged with the error.

(3) The definition of "locality" in RCW 39.12.010(2) contains the phrase "wherein the physical work is being performed." The department interprets this phrase to mean the actual work site. For example, if nonstandard items specifically produced for public works projects are prefabricated in a county other than the county wherein the public works project is to be completed, the wage for the offsite prefabrication shall be the applicable prevailing wage for the county in which the actual prefabrication takes place. Workers who deliver such nonstandard items, as well as materials pursuant to the terms of WAC 296-127-018, shall be paid the applicable prevailing wage for the county in which the public works project is located.

(4) In the implementation and enforcement of chapter 39.12 RCW ((39.12.050)) the terms "contractor" and "subcontractor" include ~~((an))~~ a successor entity, however organized, with substantially identical corporate and/or operational structure to an entity that has been found to violate RCW 39.12.050 and/or 39.12.065, when the successor entity has actual or constructive notice of the former entity's violation of chapter 39.12 RCW. The factors used to determine substantial identity shall include an assessment of whether there is: Substantial continuity of the same business operation; use of the same machinery and/or equipment; similarity of jobs and types of working conditions; continuity of supervisors; and similarity of product or services.

AMENDATORY SECTION (Amending Order 88-22, filed 10/31/88)

WAC 296-127-026 ((Exemptions for)) Sole owners and their spouses, partnerships, limited liability companies, corporations, and employees of public agencies. (1) The prevailing wage requirements of chapter 39.12 RCW do not apply to the work of:

~~((1))~~ (a) Sole owners and their spouses ~~((2))~~;

(b) Any partner who owns at least thirty percent of a partnership (~~(-~~
~~3))~~);

(c) Any member who owns at least thirty percent of a limited liability company;

(d) The president, vice-president and treasurer of a corporation if each one owns at least thirty percent of the corporation (~~(-~~
~~4))~~); or

(e) Workers regularly employed (~~(on monthly or per diem salary)~~) by the state or any political subdivision created by its laws.

(2) Individuals identified in subsections (1)(a) through (e) of this section, although not subject to requirements to be paid prevailing wages under chapter 39.12 RCW, must comply with all other provisions of chapter 39.12 RCW including, but not limited to, the requirements for filing of intents to pay prevailing wage, affidavits of wages paid, and certified payroll records.

AMENDATORY SECTION (Amending WSR 92-01-104, filed 12/18/91, effective 1/31/92)

WAC 296-127-050 Alternate filing of combined statements of intent to pay prevailing wages and affidavits of wages paid forms for contracts ((under)) of two thousand five hundred dollars or less including sales tax. A contract awarding agency may, as part of a public works contract, (~~(enter into an agreement)~~) agree with ~~((a))~~ an individual contractor to approve on behalf of the department a combined statement(~~((s))~~) of intent to pay prevailing wages and affidavit(~~((s))~~) of wages paid (~~(on behalf of the department)~~) form for contracts with the individual contractor wherein the total amount does not exceed two thousand five hundred dollars including sales tax as provided in RCW 39.12.040(2), pursuant to the following terms:

(1) When there is only a single payment made on the entire contract to a single contractor, with no subcontractors, the single contractor that performs the entire public work contract may at the sole option of the contract awarding agency be allowed to file with the contract awarding agency a combined statement of intent to pay prevailing wages and affidavit of wages paid form;

(2) The agreement must be incorporated into the bid specifications and contract document;

~~((2))~~ (3) The combined statement of intent (~~((forms))~~) and affidavit of wages paid form(~~((s))~~), provided by the department, must be filed by the contractor with, and approved by, the contract awarding agency (~~(by the contractor)~~) prior to the disbursement of public funds;

~~((3))~~ (4) Contract awarding agencies must retain copies of

all combined statements of intent to pay prevailing wages ~~((received))~~ and affidavits of wages paid forms approved pursuant to this section for a period of not less than three years;

~~((+4))~~ (5) Contract awarding agencies must send to the department copies of all combined statements of intent to pay prevailing wages and affidavits of wages paid ~~((received))~~ forms approved pursuant to this section within thirty days of receipt from the contractor;

~~((+5))~~ (6) The contract awarding agency shall accept full responsibility and liability for payment to the claimant of any valid wage claims ~~((directly to the claimant))~~;

~~((+6))~~ (7) The contract awarding agency may proceed against any contractor found to have violated the provisions of ~~((the statute))~~ chapter 39.12 RCW, and may debar such contractor from consideration for future contracts with the agency for up to one year and ~~((will))~~ must provide to the department ~~((with))~~ the names and contractor registration or other employer identification numbers of any such debarred contractors within thirty days of the debarment; and

~~((+7))~~ (8) Contract awarding agencies and contractors shall not ~~((enter into contracts or agreements to perform public work that subdivide or otherwise disaggregate any public works project of more than two thousand five hundred dollars, to enable such public works project to be awarded pursuant to this section))~~ break any project into units or accomplish any projects by phases if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

NEW SECTION

WAC 296-127-055 Alternate filing of combined statement of intent to pay prevailing wages and affidavit of wages paid forms for limited public works contracts less than thirty-five thousand dollars including sales tax. A contract awarding agency may, as part of a public works contract awarded pursuant to the limited public works provisions of RCW 39.04.155(3), agree with an individual contractor to approve, on behalf of the department, a combined statement of intent to pay prevailing wages and affidavit of wages paid form for contracts with the individual contractor wherein the total amount is less than thirty-five thousand dollars including sales tax pursuant to the following terms:

(1) When there is only a single payment made on the entire contract to a single contractor with no subcontractors, the single contractor that performs the entire public work contract may at the sole option of the contract awarding agency be allowed to file with the contract awarding agency a combined statement of intent to pay prevailing wages and affidavit of wages paid form;

(2) The agreement must be incorporated into the bid specifications and contract document;

(3) The combined statement of intent and affidavit of wages paid form, provided by the department, must be filed by the contractor with, and approved by, the contract awarding agency prior to the disbursement of public funds;

(4) Contract awarding agencies must retain copies of all combined statements of intent to pay prevailing wages and affidavits of wages paid forms approved pursuant to this section for a period of not less than three years;

(5) Accompanied by the required filing fees for both a statement of intent to pay prevailing wages and an affidavit of wages paid form, contract awarding agencies must send to the department copies of all combined statement of intent to pay prevailing wages and affidavits of wages paid forms approved pursuant to this section within thirty days of receipt from the contractor;

(6) The contract awarding agency shall accept full responsibility and liability for payment to the claimant of any valid wage claims;

(7) The contract awarding agency may proceed against any contractor found to have violated the provisions of chapter 39.12 RCW, and may debar such contractor from consideration for future contracts with such agency for up to one year and must provide to the department the names and contractor registration or other employer identification numbers of any such debarred contractors within thirty days of the debarment; and

(8) Contract awarding agencies and contractors shall not break any project into units or accomplish any projects by phases if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

AMENDATORY SECTION (Amending Order 82-28, filed 8/27/82)

WAC 296-127-060 Director of department of labor and industries to arbitrate disputes--General provisions. (1) The contract executed between a public authority and the successful bidder or contractor and all ((of his)) subcontractors shall contain a provision that in case any dispute arises as to what are the prevailing rates of wages for a specific trade, craft or occupation and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director, and ((his)) the director's decision shall be final, conclusive, and binding on all parties involved in the dispute.

(2) In exercising ((his)) the director's authority to hear and decide disputes the director shall consider among other things,

timeliness, the nature of the relief sought, matters of undue hardship or injustice, or public interest. A "timely" request for arbitration is one received within thirty days after the contract has been awarded.

(3) Any party in interest who is seeking a modification or other change in a wage determination under RCW 39.12.015, and who has requested the industrial statistician to make such modification or other change and the request has been denied, after appropriate reconsideration by the assistant director shall have a right to petition for arbitration of the determination.

(a) For purpose of this section, the term "party in interest" is considered to include, without limitation:

(i) Any contractor, or an association representing a contractor, who is likely to seek or to work under a contract containing a particular wage determination, or any worker, laborer or mechanic, or any council of unions or any labor organization which represents a laborer or mechanic who is likely to be employed or to seek employment under a contract containing a particular wage determination, and

(ii) Any public agency concerned with the administration of a proposed contract or a contract containing a particular wage determination issued pursuant to chapter 39.12 RCW.

(b) For good cause shown, the director may permit any party in interest to intervene or otherwise participate in any proceeding held by the director. A petition to intervene or otherwise participate shall be in writing, and shall state with precision and particularity:

(i) The petitioner's relationship to the matters involved in the proceedings, and

(ii) The nature of the presentation which ~~((he))~~ the petitioner would make. Copies of the petition shall be served on all parties or interested persons known to be participating in the proceeding, who may respond to the petition. Appropriate service shall be made of any response.

AMENDATORY SECTION (Amending Order 82-28, filed 8/27/82)

WAC 296-127-061 Requests for arbitration. (1) The petition for arbitration (original and ~~((four))~~ two copies) shall be filed with the Director ~~((of the))~~ of the Department of Labor and Industries, ~~((General Administration Building))~~ 7273 Linderson Way Southwest, Tumwater, Washington 98501, or mailing address: Post Office Box 44001, Olympia, Washington 98504-4001. In addition, copies of the petition shall be served personally or by mail upon each of the following:

(a) The public agency or agencies involved ~~((of the))~~ ;

(b) The industrial statistician ~~((of the))~~ ; and

(c) Any other person (or the authorized representatives of

such person) known to be interested in the subject matter of the petition.

(2) The director shall under no circumstances request any administering agency to postpone any contract performance because of the filing of a petition. This is a matter which must be resolved directly with the administering agency by the petitioner or other party in interest.

(3) A petition for arbitration of a wage determination shall:

(a) Be in writing and signed by the petitioner or his counsel (or other authorized representative) ((~~7~~))i and

(b) Identify clearly the wage determination, location of project or projects in question, and the agency concerned((~~7~~))i and

(c) State that the petitioner has requested reconsideration of the wage determination in question and describe briefly the action taken in response to the request((~~7~~))i and

(d) Contain a short and plain statement of the grounds for review((~~7~~))i and

(e) Be accompanied by supporting data, views, or arguments((~~7~~))i and

(f) Be accompanied by a filing fee of \$75.00. Fees shall be made payable to the department of labor and industries.

AMENDATORY SECTION (Amending Order 82-28, filed 8/27/82)

WAC 296-127-062 Conduct of arbitration hearing. (1) Interested persons other than the petitioner shall have a reasonable opportunity as specified by the director in particular cases to submit to the director written data, views, or arguments relating to the petition. Such material (original and ((~~four~~)) two copies) shall be filed with the Director((~~7~~)) of the Department of Labor and Industries, ((~~General Administration Building~~)) 7273 Linderson Way Southwest, Tumwater, Washington 98501, or mailing address: Post Office Box 44001, Olympia, Washington 98504-4001 and be accompanied by a filing fee of \$35.00. Fees shall be made payable to the department of labor and industries. Copies of any such material shall be served on the petitioner and other interested persons.

(2) Each party in interest shall have the right to appear in person or by or with counsel or other qualified representatives in any proceeding before the director. If all parties agree, oral testimony may be waived and arguments submitted in writing.

(3) Upon ((~~his~~)) the director's own initiative or upon motion of any interested person or party, the director may consolidate in any proceeding or concurrently consider two or more appeals which involve substantially the same persons or parties, or issues which are the same or closely related, if ((~~he~~)) the director finds that such consolidation or concurrent review will contribute to an efficient review and to the ends of justice, and it will not unduly

delay consideration of any such appeals.

(4) The director shall prescribe the time and place for hearing. The director shall schedule the hearing within forty-five days of the request. For good cause shown, the director may allow a continuance at the request of a party in interest.

(a) With respect to any proceeding (~~before him, the director may~~) over which the director presides, upon (~~his~~) the director's own initiative or (~~upon the~~) in response to a request of any interested person or party, the director may direct the interested persons or parties to appear before the director at a specified time and place in order to simplify the issues presented or to take up any other matters which may tend to expedite or otherwise facilitate the disposition of the proceeding.

(b) All papers submitted to the director under this section shall be filed with the Department of Labor and Industries, (~~General Administration Building~~) 7273 Linderson Way Southwest, Tumwater, Washington, or mailing address: Post Office Box 44001, Olympia, Washington 98504-4001. An original and (~~four~~) two copies of all papers shall be submitted. Service under this (~~part~~) section shall be by the filing party or interested person; service may be personal or may be by mail. Service by mail is complete on mailing.

(5) The final disposition shall be by the director.

(a) The director may decline review of any case whenever in (~~his~~) the director's judgment a review would be inappropriate or because of the lack of timeliness, the nature of the relief sought, or other reasons.

(b) The director shall decide the case upon the basis of all relevant matter contained in the entire record (~~before him~~) but the director may utilize (~~his~~) the director's experience, technical competence, and specialized knowledge in evaluating the evidence.

(c) Upon reasonable notice to the parties or interested persons, the director may vary the procedures specified in this (~~part~~) section in particular cases.

(6) The director may allow all parties a period of ten days for filing post-hearing briefs prior to closing the record and concluding the hearing.

(7) The director shall issue a written decision within (~~30~~) thirty days of the conclusion of the hearing. A copy shall be sent to each party in interest.

AMENDATORY SECTION (Amending Order 85-28, filed 1/17/86)

WAC 296-127-150 Notice of violation. (1) If the department determines after its investigation that there is reasonable cause to believe that the prevailing wage law has been violated, the department shall notify the violator of its determination. The

notice of violation shall be served on the violator personally or by certified mail.

(2) The notice of violation shall:

(a) Describe concisely the violation;

(b) Specify which statute or statutes were violated;

(c) For RCW 39.12.065 violations only:

(i) If known, identify the laborers, workers, and mechanics who are affected by the violation;

~~((d))~~ (ii) If known, state the amount of unpaid prevailing wages the violator owes;

~~((e))~~ (iii) State that an employee cannot by contract or agreement waive the right to receive the prevailing wage;

~~((f))~~ (d) State the penalty that the department will assess for a violation, if any, of RCW 39.12.065 and 39.12.050; and

~~((g))~~ (e) If applicable, state the date the complaint was filed with the department.

(3) RCW 39.12.065 and 39.12.050 establish the penalty amounts.

(4) If the notice alleges a violation of RCW 39.12.065, the department shall serve a copy of the notice of violation on the violator's sureties under chapters 39.08, 18.27, 19.28, and 60.28 RCW.

(5) The notice of violation shall inform the violator and, if a violation of RCW 39.12.065 is alleged, its sureties, that they may request a hearing on the violations, the amount of unpaid prevailing wages owed, or the penalties assessed. The notice shall specify that if no request for hearing is ~~((requested))~~ filed within thirty days of the date of issuance of the notice, the director shall issue a final, unappealable order finding that the violation did occur, ordering the violator to pay any unpaid prevailing wages, and assessing penalties.

AMENDATORY SECTION (Amending Order 85-28, filed 1/17/86)

WAC 296-127-160 Appeal of notice of violation. The violator or any of its sureties who are interested in the matter may file a request ~~((a))~~ for hearing on a notice of violation. One original and ~~((four))~~ two copies of the request must be filed with the director within thirty days after the date the department issued the notice. The party ~~((requesting))~~ filing the request for the hearing must also serve a copy of the notice on all interested sureties and, if the requestor is a surety, on the violator.

The request for hearing must be in writing and must specify:

(1) The name and address of the party requesting the hearing;

(2) The notice of violation that is being appealed;

(3) The items of the notice of violation that the requestor believes are erroneous; and

(4) The reasons the notice of violation is erroneous.

WAC 296-127-170 Hearing on notice of violation. (1) Upon filing of a timely request for hearing from a notice of violation, the director may hear the appeal personally or may delegate the authority to hold the hearing and draft a proposed decision to an administrative law judge pursuant to chapters ~~((34.12))~~ 39.12 and 34.05 RCW. The plaintiff in the hearing shall be the department, and the defendants shall be the violator and its interested sureties. The department shall have the burden of proving, by a preponderance of the evidence, that the violations occurred and that any wages were unpaid as stated in the notice.

(2) Any interested party may upon motion, be allowed to intervene as a plaintiff in the hearing. "Standing" shall be construed broadly to effectuate the remedial purposes of the prevailing wage law. An interested party, whether or not admitted as a plaintiff, may submit written arguments and affidavits. The parties shall be given an opportunity to respond to or rebut any arguments and affidavits before the person presiding over the hearing makes his or her decision.

(3) The hearing shall be conducted in accordance with ~~((the Uniform procedure rules,))~~ chapters ~~((1-08 WAC))~~ 39.12 and 34.05 RCW, and chapter 10-08 WAC.

(4) If the director presides over the hearing, the director shall issue a final decision that includes findings of fact and conclusions of law, and if appropriate an order to pay unpaid prevailing wages, a penalty, or both.

(5) If an administrative law judge presides over the hearing, she or he shall issue a proposed decision that includes findings of fact, conclusions of law, and if appropriate an order to pay unpaid prevailing wages, a penalty, or both. The proposed decision shall be served by certified mail or personally on the violator, the interested sureties, the department, and any interested parties who have intervened as plaintiffs. Any of these parties, if aggrieved by the proposed decision, may appeal to the director within thirty days after the date of issuance of the proposed decision. If none of the parties appeals within thirty days, the proposed decision may not be appealed either to the director or the courts.

(6) An appellant must file with the director an original and ~~((four))~~ two copies of its notice of appeal. The notice of appeal must specify which findings and conclusions are erroneous. The appellant must attach to the notice the written arguments supporting its appeal.

The appellant must serve a copy of the notice of appeal and the arguments on the other parties. The respondent parties must file with the director their written arguments within thirty days after the date the notice of appeal and the arguments were served upon them.

(7) The director shall review the proposed decision in accordance with the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW. The director may: Allow the parties to present oral arguments as well as the written arguments; require the parties to

specify the portions of the record on which the parties rely; require the parties to submit additional information by affidavit or certificate; remand the matter to the administrative law judge for further proceedings; and require a departmental employee to prepare a summary of the record for the director to review. The director shall issue a final decision that can affirm, modify, or reverse the proposed decision.

(8) The director shall serve the final decision on all parties. Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW (~~(34.04.130)~~) unless the final decision affirms an unappealed proposed decision. If no party appeals within the period set by chapter 34.05 RCW (~~(34.04.130)~~), the director's decision is conclusive and binding on all parties.

AMENDATORY SECTION (Amending Order 85-28, filed 1/17/86)

WAC 296-127-190 Filing of lien against retainage or bonds.

(1) Upon receipt of a timely complaint that a contractor has violated RCW 39.12.065, and that the contractor owes unpaid prevailing wages, the department may file a lien against the retainage or bond obtained by the contractor under RCW (~~(60.28.010)~~) 60.28.011.

(2) Upon issuance by the director of a final decision that finds that a contractor has violated RCW 39.12.065 or 39.12.050, and that sets a civil penalty for the violation, the department shall file liens for the penalty amount against the retainage and bonds the contractor obtained under RCW 39.12.065 (2)(c), 39.08.010, and (~~(60.28.010)~~) 60.28.011.

AMENDATORY SECTION (Amending Order 85-28, filed 1/17/86)

WAC 296-127-200 Surety bond payable to director. (1) RCW 39.12.065 (2)(c) authorizes the director to require a contractor to obtain a surety bond "running to the director in the amount of the violation found." The intent and wording indicates that the director may require such a bond only after issuing a final decision finding that the contractor has violated RCW 39.12.065.

(2) The director may demand that a violating contractor post the bond when:

(a) The director has issued a final decision that finds that the contractor owes unpaid prevailing wages or a penalty, whether or not the decision has been appealed to the courts; and

(b) The retainage or bonds provided under RCW (~~(60.28.010)~~)

60.28.011, 18.27.040, and 19.28.120 are or may be insufficient to pay the amount of prevailing wages or the penalty owed.

(3) A contractor may at any time voluntarily obtain a bond running to the director to guarantee the payment of the prevailing wages and any penalty. The contractor may allow the director to satisfy any claim for unpaid wages or the penalty from this bond instead of from the retainage or bonds obtained under RCW (~~60.28.010~~) 60.28.011, 18.27.040, 19.28.120, and 39.08.010.

AMENDATORY SECTION (Amending Order 85-28, filed 1/17/86)

WAC 296-127-300 Filing (~~and service~~) location. All papers required to be filed with the director under this chapter or chapter 39.12 RCW shall be addressed to Director, Department of Labor and Industries, (~~General Administration Building~~) 7273 Linderson Way Southwest, Tumwater, Washington 98501, or mailing address: Post Office Box 44001, Olympia, WA. 98504-4001.

(~~Filing and service shall be made as allowed by WAC 1-08-090 through 1-08-140.~~)

AMENDATORY SECTION (Amending WSR 92-01-104, filed 12/18/91, effective 1/31/92)

WAC 296-127-320 Payroll. (1) Each contractor shall keep accurate payroll records for three years from the date of acceptance of the public works project by the contract awarding agency, showing the name, address, Social Security number, trade or occupation, hours worked, straight time rate, hourly rate of usual benefits as defined by WAC 296-127-014(1), and overtime rate and hours worked each day and week, including any employee authorizations executed pursuant to WAC 296-127-022, and the actual rate of wages paid, for each laborer, worker, and mechanic employed by the contractor for work performed on a public works project.

(2) A contractor shall, within ten days after it receives a written request, from the department or from any interested party as defined by RCW 39.12.010(4), file a certified copy of the payroll records with the agency that awarded the public works contract and with the department. Certified payroll records requested by the department as part of an investigation into potential violation of prevailing wage law must include in the records the full Social Security number for each employee. Certified payroll records provided to satisfy any other type of request need include only the last four digits of the Social Security number for each employee. Certification shall be on the

"Affirmation" section of an Industrial Statistician approved Certified Payroll Report form or on a contractor's own form which incorporates the exact "Affirmation" language from the Industrial Statistician approved Certified Payroll Report form.

(3) A contractor's noncompliance with this section shall constitute a violation of RCW 39.12.050.