

STATEMENT OF BASIS, PURPOSE, SPECIFIC STATUTORY AUTHORITY, AND FINDINGS

Prevailing Wage and Residency (PWR) Rules, 7 CCR 1103-6 (2024), as proposed September 29, 2023; to be followed and replaced by a final Statement at the conclusion of the rulemaking process.

I. BASIS: The Director (“Director”) of the Division of Labor Standards and Statistics (“Division”) has the authority to adopt rules and regulations on wage-and-hour and workplace conditions, under the authority listed in Part II, which is incorporated into Part I as well.

II. SPECIFIC STATUTORY AUTHORITY: These Rules are issued under the authority, and as enforcement, of Articles 1, 4 and 17 of C.R.S. (Colorado Revised Statutes) Title 8 (2023), and Article 92 of C.R.S. Title 24, including but not limited to statutes listed in the Prevailing Wage and Residency Rules (PWR), Rule 1.1 (incorporated into this Part II), and are intended to be consistent with the State Administrative Procedure Act, C.R.S. § 24-4-101, et seq.

III. FINDINGS, JUSTIFICATIONS, AND REASONS FOR ADOPTION. Pursuant to C.R.S. § 24-4-103(4)(b), the Director finds as follows: **(A)** demonstrated need exists for these rules, as detailed in the findings in Part IV, which are incorporated into this finding as well; **(B)** proper statutory authority exists for the rules, as detailed in the list of statutory authority in Part II, which is incorporated into this finding as well; **(C)** to the extent practicable, the rules are clearly stated so that their meaning will be understood by any party required to comply; **(D)** the rules do not conflict with other provisions of law; and **(E)** any duplicating or overlapping has been minimized and is explained by the Division.

IV. SPECIFIC FINDINGS FOR ADOPTION. Pursuant to C.R.S. § 24-4-103(6), the Director finds as follows. The “Prevailing Wage and Residency (PWR) Rules” now incorporate further projects that must comply with prevailing wage requirements based on the Colorado Energy Sector Public Works Project and Craft Labor Requirements Act, C.R.S. Title 24, Article 92, Part 3, C.R.S. § 24-92-301 et seq., and the Thermal Energy Act, C.R.S. Title 40, Article 3.2, Part 1 C.R.S. § 40-3.2-105.7. Below are findings and explanations on the nature and basis of the rules proposed to satisfy the Division’s statutory charge.

A. Rule 1: Statement of Purpose, Authority, and Construction; and Definitions

Rule 1.1 lists the recently enacted laws that require compliance with prevailing wages.

B. Rule 2: Definitions

In Rule 2.8.1, this amendment is to fix a statutory citation previously listed. The term “worker” is referenced in C.R.S. § 8-17-105, not C.R.S. § 8-17-101(2)(a).

Rule 2 updates the definition of public project in Rule 2.10.2 to include energy sector public works projects. An energy sector public works project, as defined in C.R.S. § 24-92-301(5), is a public project under C.R.S. § 24-92-201 because an energy sector public works project is a public improvement, financed in part by public funds, and is intended to promote public welfare. Thermal energy systems and thermal energy networks, as defined under C.R.S. § 40-3.2.108, may be public projects, and Rule 2.10.2 now reflects this. It also notes the scope of coverage for the relevant statutory and rule provisions, and provides clarity on which public projects are exempt.

Following the United States Department of Labor’s final rule, “Updating the Davis-Bacon and Related Acts Regulations,” the federal definition of “site of the work” will be modestly expanded, effective October 23, 2023. Rule 2.11, defining “site of the project,” is based entirely on the federal definition in the Davis-Bacon Act and thus will also modestly expand to match the federal definition. While the federal rule has not yet taken effect, the rule is final, with no changes expected, and is expected to be in effect before the effective date of these Rules.

C. Rule 4: Prevailing Wage Act: Contractor Payment Obligations

In Rule 4.1, the citation to C.R.S. § 24-92-202 removes a mislabeled subsection. No substantive changes to contractor obligations are intended.

D. Rule 5: Prevailing Wage Act: Coverage of Energy Projects

Rule 5 describes new coverage of energy projects that must comply with prevailing wage compliance requirements under the Colorado Energy Sector Public Works Project and Craft Labor Requirements Act, C.R.S. Title 24, Article 92, Part 3, C.R.S. § 24-92-301 et seq., and the Thermal Energy Act, C.R.S. Title 40, Article 3.2, Part 1 C.R.S. § 40-3.2-105.7.

Rule 5.1 provides information on which energy sector public works projects must comply with prevailing wage requirements, as specified in C.R.S. § 24-92-304 (1).

Rule 5.2 states a new reporting requirement for owners of energy sector public works projects. Each quarter, these project owners must submit a “craft labor certification” to the Division of Labor Standards and Statistics, unless the energy sector public works project is covered by a project labor agreement, as noted in Rule 5.2.3.

Rule 5.3 provides information on which thermal energy network projects and thermal energy system projects must comply with prevailing wage requirements, as specified in C.R.S. § 40-3.2-105.7 (1).

E. Rule 9: Appeals

Rule 9 is amended for streamlining, to eliminate redundancy, and to note expressly that, to the extent applicable, appeals will be conducted in a manner consistent with the Colorado Administrative Procedure Act.

F. Other amendments are non-substantive updates to, for example, fixed a spelling error in Rule 3.1, and renumbered Rules 6 - 9 to account for the new Rule 5.

V. EFFECTIVE DATE. If adopted, these rules take effect January 1, 2024, or as soon after as rulemaking completes.



Scott Moss
Director
Division of Labor Standards and Statistics
Colorado Department of Labor and Employment

September 29, 2023

Date