CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, the following is a concise explanatory statement:

AGENCY: Rhode Island Department of Labor and Training

DIVISION: Workforce Regulation and Safety

RULE IDENTIFIER: 260-RICR-30-15-3

RULE TITLE: Rules and Regulations Relating to Prevailing Wages

REASON FOR RULEMAKING:

The Department proposes amendments to 260-RICR-30-15-3 to conform the Rhode Island prevailing wage regulations to recent statutory amendments to R.I. Gen. Laws Chapter 37-13. The amendments incorporate: 1) the prohibition on cash payments in lieu of healthcare benefits under R.I.G.L. § 37-13-7(b)(2)(ii)(A), effective July 1, 2024; 2) the prohibition on cash payments in lieu of retirement or pension benefits under R.I.G.L. § 37-13-7(b)(2)(ii)(C), effective July 1, 2025; 3) coverage of school transportation services (including school bus drivers, aides, and monitors) under R.I.G.L. § 37-13-7(c)(2); and 4) the Department's annual publication of prevailing retirement or pension benefit rates by classification. The amendments adopt implementing definitions (including "Healthcare Benefit," "Proof of Purchase," "School Transportation Services," and "Short-term basis"), codify the statutory exemptions (e.g. employees currently receiving healthcare benefits or employed on a short-term basis), establish proof-of-purchase documentation requirements, codify the statutory non-waiver provision, and confirm civil penalties consistent with R.I. Gen. Laws § 37-13-7(b)(2)(ii)(D)-(E). Conforming internal cross-references and minor stylistic corrections are also made throughout. No fees are created or increased, and no new licensing categories are established.

ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE EFFECTIVENESS OF THE RULE: None.

TESTIMONY AND COMMENTS:

Comment 1 – Joseph P. Lopes CEO for Associated Builders and Contractors of RI

Joseph P. Lopes, President/CEO of Associated Builders and Contractors of Rhode Island, opposed Section 3.4(BB) which establishes a prevailing retirement or pension benefit rate by classification. Mr. Lopes made three points in his public comment: (1) that the regulation exceeds the Department's statutory authority to establish and mandate specific portions of an employee's fringe benefit package; (2) the regulation may conflict with the structure and intent of federal Davis-Bacon wage determinations which do not require a dedicated retirement or pension portion; and (3) that the regulation may increase administrative complexity and reduce employer flexibility. Mr. Lopes requested that the Department withdraw or postpone Section 3.4(BB).

Agency Response to Comment 1:

The Department considered the comment and declines to withdraw or postpone Section 3.4(BB) for the following reasons. First, the obligation for employers subject to prevailing wage to provide the prevailing retirement or pension benefit rate is imposed by statute, not created by the regulation. R.I.G.L. § 37-13-7(b)(2)(ii)(C) specifically prohibits a contractor or subcontractor from paying the cash equivalent of any applicable retirement or pension benefit, "as predetermined per each classification by the director," in lieu of actually purchasing the benefit. The statute thus both removes the cash-in-lieu option for this benefit component and directs the Director to determine a per-classification amount. Section 3.4(BB) implements that directive. The proposed regulation does not exceed the Department's authority but instead carries out an express statutory instruction.

Second, the federal Davis-Bacon Act applies to federally funded and assisted construction, while Rhode Island's prevailing wage law applies to state and municipally funded public works. The State's authority to set requirements for state funded work is not displaced by federal law, and on projects subject to both frameworks a contractor complies with both by actually purchasing the benefit. Section 3.4(BB) does not increase the total prevailing wage obligation; the total fringe benefit credit remains the "fringes" amount in the applicable General Wage Decision. The regulation simply identifies the retirement or pension portion required to make up the existing total Fringe amount and is derived from the same federally recognized data, and is therefore anchored in, rather than in conflict with, the Davis-Bacon framework.

Third, there may be a reduction in flexibility and possibly an increase in administrative complexity to satisfy the retirement or pension obligation. However, that requirement is based in statute, not regulation, and the Department cannot override statute by regulation. Furthermore, the regulation is neutral as to the type of retirement vehicle that can be used to satisfy the retirement or pension obligation; any bona fide retirement or pension benefit can be used. Employers retain flexibility as to the remainder of the bona fide fringe benefit credits available as described in Section 3.4(Q).

Comment 2 – Kyle DeVivo, Chief Operating Officer for DATTCO

Mr. DeVivo voiced concerns about the process for establishing prevailing wage rates for school bus drivers, aides, and monitors. The commenter expressed concerns about not being consulted during the process of establishing the prevailing wage rates for school bus drivers and concerns about the ultimate rates selected. The commenter asserted that, given the direct impact of these determinations on operational planning and contractual obligations, the perspectives of affected entities should be considered, and requested the Department to solicit input from private contractors prior to finalizing the rates.

Agency Response to Comment 2:

The Department considered the comment and declines to amend the proposed rule for the following reasons.

Under R.I.G.L. § 37-13-8, the Director determines the prevailing wage paid in each political subdivision of the state and may either adopt the federal Davis-Bacon rate determinations or independently investigate and determine the prevailing wage. Both methodologies rely on industry survey responses from employers operating in covered classifications, and every covered employer may participate. The survey is itself the feedback mechanism by which information on wages paid during a peak week is gathered, and the Director sets the rate at the wage earned by the most workers reported during the survey period.

The Department conducted a public survey under R.I.G.L. § 37-13-8 because the federal Davis-Bacon General Wage Decisions do not include classifications for school transportation workers including school bus drivers, aides, and monitors under R.I.G.L. § 37-13-7(c)(2). The Department's first such survey was publicly announced and conducted from August 31, 2025 through October 4, 2025. The notice expressly invited the voluntary participation of vendors and contractors providing bus services, employer organizations in the transportation sector, labor organizations, and trade associations representing bus drivers, aides, and monitors, and encouraged all eligible entities to participate. School districts, transportation providers, and any other interested parties were on equal footing with respect to participation in this survey, and the same opportunity will be available in subsequent survey cycles.

Furthermore, under R.I.G.L. § 37-13-6, every awarding authority is required to ascertain the prevailing wage rate from the Director before awarding a contract and to specify the rate in the call for bids and in the contract itself. It is therefore each school district's responsibility, as the awarding authority, to keep apprised of prevailing rate changes and to plan accordingly. The statute does not require a separate or supplemental consultation process for awarding authorities beyond the public survey process already established.

For these reasons, no change to the proposed regulation is warranted in response to this comment. The Department appreciates the participation of school districts and transportation providers in the rulemaking process and encourages all affected entities to participate in future survey cycles, which provide a direct opportunity to ensure that the established rates reflect actual wages paid. The Department remains available to answer questions about the survey process and about compliance with the prevailing wage requirements applicable to school transportation services.

CHANGE TO TEXT OF THE RULE: Numerical error in Section 3.4(BB) was corrected as it contained two number "4" paragraphs. Paragraphs have been corrected to the proper numbers (5, 6, and 7).

REGULATORY ANALYSIS:

The amendments implement recent statutory changes to R.I. Gen. Laws Chapter 37-13. Because the substantive obligations are imposed directly by statute, the regulatory amendments do not impose new obligations beyond those already imposed by law. The amendments are expected to improve regulatory clarity for contractors, subcontractors, awarding authorities, labor organizations, and covered employees by providing consolidated definitions, exemption criteria, and documentation requirements. The proposal is not anticipated to affect state or municipal budgets, and does not impose new fees, licensing, or bond requirements on regulated parties. Private-sector compliance costs flow from the underlying statute rather than from the regulation.