ORDER OF THE WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT

The Wisconsin Department of Workforce Development adopts the following order to repeal DWD 111.05 and Figure DWD 147.02; to amend DWD 102.02 (2), 102.02 (3) (am), 103.01 (2), 132.04 (1) and (2) (intro.), 132.04 (3), 147.01 (2), 147.02, 149.001 (2) (c) 1.; and to repeal and recreate Figure DWD 102.02 (2) and DWD 150 (title), relating to converting references from Standard Industrial Classification codes to the North American Industry Classification System codes; and other minor technical changes to the unemployment insurance program.

The Governor approved the scope statement for this rule, SS 116-21, on December 22, 2021. The scope statement was published in register No. 792B, on December 27, 2021. This rule was approved by the Governor on __________, 2022.

Analysis Prepared by the Department of Workforce Development

Statutes Interpreted

Chapter 108, Stats.

Statutory Authority

Section 108.14 (2), Stats.

Explanation of Statutory Authority

Under s. 108.14 (2), Stats., the department may adopt and enforce all rules which it finds necessary or suitable to carry out the unemployment insurance program.

Plain Language Analysis

The Wisconsin unemployment insurance program is administered under chs. DWD 100-150. The rule replaces current references to Standard Industrial Classification (SIC) codes in chs. DWD 102 and 147 with North American Industry Classifications System (NAICS) codes. NAICS codes were first adopted in 1997 to replace the SIC code system. SIC codes have not been updated since 1987 and do not reflect modern changes in the economy.

Under s. 108.18 (2), Stats., an employer's initial contribution rate to the unemployment trust fund is based on certain factors, including whether the employer is "engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects." See s. 108.18 (2) (c), Stats. Chapter DWD 102 requires the Department to determine whether an employer is engaged in those projects based, in part, on
whether the employer's primary business activity is specified in groups assigned in the SIC manual.

In addition, certain employment may be excluded from unemployment insurance coverage, including certain service for a seasonal employer, which is an employer the Department designates as satisfying specified criteria, including being classified by the Department as primarily engaged in the following activities: agricultural production, agricultural services, forestry, or commercial fishing, hunting or trapping. Sections 108.02 (15) (k) 19. and 108.066 (3) (a) 2., Stats. Chapter DWD 147 requires the Department to determine whether an employer is primarily engaged in those activities based on specified groups assigned in the SIC manual.

The rule replaces the above references to SIC codes with NAICS codes to bring the rules up to date with current federal terminology and modern designation codes.

The rule also makes the following minor and technical changes:

- Amends s. DWD 103.01 (2) so that the rule aligns with ch. 108, Stats.
- Repeals s. DWD 111.05, related to filing certain employer reports, because it is obsolete.
- Amends s. DWD 132.04 (1) to correct cross-references to ch. 108, Stats.
- Amends s. DWD 149.001 (2) (c) 1. to correct a reference to the Labor and Industry Review Commission to be consistent with the definition of “commission” in s. DWD 100.02 (9).
- Repeals and recreates the title for ch. DWD 150 from “Miscellaneous” to “Forms” to reflect the purpose of that chapter.

Summary of, and comparison with, existing or proposed federal regulations

Federal regulations require that state laws conform to and substantially comply with federal unemployment laws. 20 C.F.R. § 601.5.

Comparison with rules in adjacent states

Minnesota uses NAICS codes to determine construction industry employers (Minn. Stat. Ann. § 268.051 (5) (b)). Illinois uses SIC codes to determine tax rates (820 Ill. Comp. Stat. Ann. 405/1500 (B)). It appears that Michigan and Iowa do not reference SIC codes or NAICS codes for unemployment employer determinations or tax rates.

Summary of factual data and analytical methodologies

This rule does not depend on complex data analysis. The rule changes are largely minor and technical in nature. The Department reviewed Wisconsin statutes, administrative rules, and other states’ laws to determine the use of NAICS codes instead of SIC codes.
Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

The rule will have no significant economic effect on small businesses as defined in s. 227.114 (1), Stats. and there is no economic impact created by this rule because the rule changes are either minor and technical or do not affect current employers’ tax rates. The Department consulted the Unemployment Insurance Advisory Council regarding the rule.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business

The rule is not expected to have a significant economic effect on small businesses, as defined in s. 227.114 (1), Stats.

Agency contact person

Questions and comments related to this rule may be directed to:

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E-Mail: Janell.Knutson@dwd.wisconsin.gov

Place where comments are to be submitted and deadline for submission

Mark Kunkel, Rules and Records Coordinator
Department of Workforce Development
P.O. Box 7946
Madison, WI 53707
E-Mail: DWDAdminRules@dwd.wisconsin.gov

Comments will be accepted until a date to be determined.

1 Section 1. DWD 102.02 (2) is amended to read:

2 DWD 102.02 (2) The department shall examine the factors enumerated in this section to determine whether an employer is “engaged in the construction of roads, bridges, highways,
sewers, water mains, utilities, public buildings, factories, housing or similar construction projects within the meaning of s. 108.18 (2) (c), Stats. The department shall first determine whether the employer’s primary type of business activity is one of the activities specified in Figure DWD 102.02 (2), which enumerates certain business activities listed in Major Group 17 - Construction - Special Trade Contractors in the Standard Industrial Classification (SIC) Manual furnished by the Federal government the current North American Industry Classification System, Sector 23 – Construction. [See Figure DWD 102.02 (2) following]

**SECTION 2.** DWD Figure 102.02 (2) is repealed and recreated to read:

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>238110</td>
<td>Poured concrete foundation and structure contractors&lt;br&gt;Grouting (i.e., reinforcing with concrete)</td>
</tr>
<tr>
<td>238150</td>
<td>Glass and glazing contractors&lt;br&gt;Glass coating and tinting (except automotive) contractors</td>
</tr>
<tr>
<td>238160</td>
<td>Roofing contractors&lt;br&gt;Solar reflecting coating, roof, application</td>
</tr>
<tr>
<td>238190</td>
<td>Other foundation, structure, and building exterior contractors&lt;br&gt;Awning installation&lt;br&gt;Epoxy application contractors&lt;br&gt;Ornamental metal work installation contractors</td>
</tr>
<tr>
<td>238210</td>
<td>Electrical contractors and other wiring installation contractors&lt;br&gt;Burglar alarm system, electric, installation only&lt;br&gt;Cable splicing, electrical or fiber optic&lt;br&gt;Cable television hookup contractors&lt;br&gt;Communication equipment installation&lt;br&gt;Electronic control system installation&lt;br&gt;Fire alarm system, electric, installation only&lt;br&gt;Intercommunication (intercom) system installation&lt;br&gt;Sound equipment installation&lt;br&gt;Telecommunications equipment and wiring (except transmission line) installation&lt;br&gt;Telephone installation contractors</td>
</tr>
<tr>
<td>238220</td>
<td>Plumbing, heating and air-conditioning contractors&lt;br&gt;Air system balancing and testing&lt;br&gt;Air-conditioning system (except window) installation&lt;br&gt;Boiler, heating, installation&lt;br&gt;Dust collecting and bag house equipment installation</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
</tr>
<tr>
<td>----------</td>
<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td>238290</td>
<td>OTHER BUILDING EQUIPMENT CONTRACTORS</td>
</tr>
<tr>
<td></td>
<td>Boiler and pipe insulation installation</td>
</tr>
<tr>
<td></td>
<td>Dismantling large-scale machinery and equipment</td>
</tr>
<tr>
<td></td>
<td>Gasoline pump, service station, installation</td>
</tr>
<tr>
<td></td>
<td>Lightning rod and conductor installation</td>
</tr>
<tr>
<td></td>
<td>Machinery and equipment, large-scale, installation</td>
</tr>
<tr>
<td></td>
<td>Machine rigging</td>
</tr>
<tr>
<td></td>
<td>Millwrights</td>
</tr>
<tr>
<td></td>
<td>Motor vehicle garage and service station mechanical equipment</td>
</tr>
<tr>
<td></td>
<td>(e.g., gasoline pumps, hoists) installation</td>
</tr>
<tr>
<td></td>
<td>Power generating equipment installation</td>
</tr>
<tr>
<td>238310</td>
<td>DRYWALL AND INSULATION CONTRACTORS</td>
</tr>
<tr>
<td></td>
<td>Fireproofing buildings</td>
</tr>
<tr>
<td>238320</td>
<td>PAINTING AND WALL COVERING CONTRACTORS</td>
</tr>
<tr>
<td></td>
<td>Electrostatic painting, on-site, contractors</td>
</tr>
<tr>
<td></td>
<td>Paint and wallpaper stripping</td>
</tr>
<tr>
<td></td>
<td>Paperhanging or removal contractors</td>
</tr>
<tr>
<td></td>
<td>Ship painting contractors</td>
</tr>
<tr>
<td></td>
<td>Wallpaper stripping</td>
</tr>
<tr>
<td></td>
<td>Whitewashing contractors</td>
</tr>
<tr>
<td>238330</td>
<td>FLOORING CONTRACTORS</td>
</tr>
<tr>
<td></td>
<td>Linoleum, installation only</td>
</tr>
<tr>
<td></td>
<td>Parquet flooring installation</td>
</tr>
<tr>
<td></td>
<td>Resilient floor tile or sheet (e.g., linoleum, rubber, vinyl),</td>
</tr>
<tr>
<td></td>
<td>installation only</td>
</tr>
<tr>
<td></td>
<td>Vinyl flooring contractors</td>
</tr>
<tr>
<td>238340</td>
<td>TILE AND TERRAZZO CONTRACTORS</td>
</tr>
<tr>
<td></td>
<td>Ceramic tile installation</td>
</tr>
<tr>
<td></td>
<td>Tile (except resilient) laying and setting</td>
</tr>
<tr>
<td>238350</td>
<td>FINISH CARPENTRY CONTRACTORS</td>
</tr>
<tr>
<td></td>
<td>Countertop, residential-type, installation</td>
</tr>
<tr>
<td></td>
<td>Ship joinery contractors</td>
</tr>
<tr>
<td>238390</td>
<td>OTHER BUILDING FINISHING CONTRACTORS</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Bathtub refinishing, on-site
Building fixture and fitting (except mechanical equipment) installation
Caulking (i.e., waterproofing) contractors
Coating concrete structures with plastics
Dampproofing contractors
Concrete coating, glazing or sealing
Waterproofing contractors
Weather stripping installation
Window shade and blind installation

**238910 SITE PREPARATION CONTRACTORS**
Boring, for building construction
Core drilling and test boring for construction
Grave excavation contractors
Test boring for construction

**238990 ALL OTHER SPECIALTY TRADE CONTRACTORS**
Artificial turf installation
Cable splicing (except electrical or fiber optic)
Cleaning building interiors during and immediately after construction
Dewatering contractors
Fence installation (except electronic containment fencing for pets)
House moving (i.e., raising from one site, moving, and placing on a new foundation)
Manufactured (mobile) home set up and tie-down work
Posthole digging
Sandblasting, building exterior
Scaffold erecting and dismantling

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**SECTION 3.** DWD 102.02 (3) (am) is amended to read:

DWD 102.02 (3) (am) The department shall determine that the provisions of s. 108.18 (2) (c), Stats., apply to an employer whose primary type of business activity in this state is listed in Major Group 15—Building Construction—General Contractors and Operative Builders or in Major Group 16—Heavy Construction Other Than Building Construction—Contractors in the Standard Industrial Classification (SIC) Manual or is listed in Major Group 17 the current North American Industry Classification System, Sector 23—Construction but not in Figure DWD 102.02 (2), if any of the following factors apply:
1. The primary business activity of the employer in this state involves the improvement of real property rather than improvement or refurbishing of personal property.

2. Employers within the same listing in the Standard Industrial Classification (SIC) Manual current North American Industry Classification System, Sector 23 – Construction as the employer customarily suspend or significantly curtail business operations in this state for regularly recurring periods because of climatic conditions or because of the seasonal nature of the employment.

SECTION 4. DWD 102.02 (3) (am) (Note) is created to read:

DWD 102.02 (3) (am) Note: The current North American Industry Classification System standard is available at https://www.census.gov/naics/.

SECTION 5. DWD 103.01 (2) is amended to read:

DWD 103.01 (2) Unpaid managers of a limited liability company. Under s. 108.02 (15) (k) 8., Stats., service as an unpaid manager of a limited liability company is not “employment”, but all paid managers of a limited liability company are in “employment” under ch. 108, Stats., subject to ss. 108.02 (12), 108.02 (15) (L), and 108.068, Stats.

SECTION 6. DWD 111.05 is repealed.

SECTION 7. DWD 132.04 (1) and (2) (intro.) are amended to read:

DWD 132.04 (1) Scope. Under s. 108.04 (17) (a), (b) and (c) 108.04 (17) (a) to (i), Stats., a claimant is ineligible for benefits based upon services provided to or on behalf of an educational institution for weeks of unemployment which occur between academic years or terms or during an established and customary vacation period or holiday recess if the claimant performed the services in the first such year or term or in the year or term immediately before the vacation period or holiday recess and if there is reasonable assurance that the claimant will perform such services for
any educational institution in the year or term immediately following the academic year, term,
vacation period or holiday recess.

(2) STANDARD. (intro.) Except as provided under sub. (3), the terms and conditions of the employment for which the claimant receives assurance from an educational institution under s. 108.04 (17) (a), (b) and (e) 108.04 (17) (a) to (i), Stats., for the academic year or term immediately following the weeks of unemployment which occurred between academic years or terms or during an established and customary vacation period or holiday recess are reasonably similar if all of the following apply:

SECTION 8. DWD 132.04 (3) is amended to read:

DWD 132.04 (3) EFFECT ON ELIGIBILITY. (a) If the employment for which the claimant receives assurance is not reasonably similar under sub. (2), the claimant is eligible for benefits based on services provided to or on behalf of an educational institution between academic years or terms or during established and customary vacation periods or holiday recesses under s. 108.04 (17) (a), (b) and (e) 108.04 (17) (a) to (i), Stats., if otherwise qualified.

(b) If the employment for which the claimant receives assurance is reasonably similar under sub. (2), the claimant is not eligible for benefits based on services to or on behalf of an educational institution between academic years or terms or during established and customary vacation periods or holiday recesses under s. 108.04 (17) (a), (b) and (e) 108.04 (17) (a) to (i), Stats.

SECTION 9. DWD 147.01 (2) is amended to read:

DWD 147.01 (2) This chapter enumerates which employers specifies the industries that the department shall consider to be primarily engaged in agricultural production, agricultural services, forestry, or commercial fishing, hunting, or trapping.

SECTION 10. DWD 147.02 is amended to read:
DWD 147.02 Affected employers. An employer shall be considered to be primarily engaged in agricultural production, agricultural services, forestry, or commercial fishing, hunting, or trapping if the department determines that the employer’s primary type of business activity is one of those specified in figure DWD 147.02 and assigns the employer one of the Standard Industrial Classification (SIC) codes listed in that figure. [see Figure 147.02 following] the current North American Industry Classification System, Sector 11 – Agriculture, Forestry, Fishing and Hunting.

SECTION 11. DWD 147.02 (Note) is created to read:

DWD 147.02 Note: The current North American Industry Classification System standard is available at https://www.census.gov/naics/.

SECTION 12. Figure DWD 147.02 is repealed.

SECTION 13. DWD 149.001 (2) (c) 1. is amended to read:

DWD 149.001 (2) (c) 1. Information about the organization of the department’s unemployment insurance division and the labor and industrial review commission.

SECTION 14. DWD 150 (title) is repealed and recreated to read:

DWD 150 (Title) FORMS.

SECTION 15. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22 (2) (intro.), Stats.

Signed this ________ day of ______________________, 2022.

Amy Pechacek, Secretary-designee