

Additional Information about Proposed Rules, Chapter 13, Rules Governing the Establishment and Use of Fair Minimum Wage Rates on State Construction Projects

Section IV, Part A, subpart iii - Provides for acquiring collective bargaining agreement rates via a process outlined in *Rules Governing Community and Workforce Enhancement Standards in Offshore Wind Energy Procurement* and adopting those rates in lieu of survey results if a threshold for substantial work/representation in the industry is met.

[§1308](#) gives the Bureau the power to “ascertain and consider the applicable wage and benefits rates established by collective bargaining agreements.” The Bureau has interpreted this to mean we could treat data provided by unions the same as survey data. This proposed rule allows the Bureau to use its authority more fully to consider collective bargaining agreement rates.

Section VIII parts A and B – Prevailing Wage rate determinations are published for a 30-day notice period before going into effect. Rates currently expire on December 31, expecting new rates will be available on January 1. Changes to the law have added to the complexity of the prevailing wage rate methodology. While the Bureau seeks to meet the deadline each year, if there is a delay in publishing the final Prevailing Wage rates, this has a negative impact on entities trying to finalize contracts to reflect the Prevailing Wage. The proposed rule provides that Prevailing Wage rates remain effective until the next year’s final rates are effective.

Changes to Calculating the Median Rate

In the current rules, Section VIII Part A provides that the median rates for wages and for benefits will be determined separately. The proposed rules, Section I part N, establishes the “median rate” means a geometric median calculated using hourly wage rates and hourly benefit rates together to form a total compensation package.

Changes to Determining Locality

In the current rules, Section IV Part A provides that the “locality” will be the county where the construction will be performed and all immediately adjacent counties, provided that at least two thirds of the wage rates can be based on annual data from the area. The proposed rules, Section I part R, establishes regions that will remain consistent year to year. The Bureau proposes to use the regions defined by the federal Davis-Bacon program during their 2022 Building survey as: Androscoggin, Cumberland, Kennebec, Penobscot, Sagadahoc, York.

Regions will be identical across all the surveys which the Bureau conducts. The Bureau will not combine data between regions when calculating local rates.

Changes to Use of Statewide Rates

In the current rules, Section VIII Part B provides that the Bureau will choose the higher of the rates for trades within their respective locality and construction groups, based on the following order of preference:

1. Locally set rates will be selected over all the others;
2. Statewide “Like Construction” rates will be selected next;
3. All construction rates will be selected last;
4. Rates with under 10 workers in the trade in the group will not be selected.

The proposed rules, Section VII Part B subpart iii updates the order of preference. When comparing the results of both the statewide and the local rates in each region, the Bureau will choose the higher of the rates based on the following order of preference:

- a. If both surveys report 10 or more trade workers in the region, the Bureau will choose the highest total compensation package for the trade;
- b. If only one survey reports 10 or more trade workers in a region, the Bureau will choose that survey’s total compensation package for the trade;
- c. If neither survey reports 10 or more workers for a trade in a locality, the Bureau will use the all-industry rate for the trade if it exists.

If local rates are not available, the Bureau will select the All-Industry rates. Statewide rates will only be used for projects spanning multiple regions.

Changes to Definitions

Per Diem

In the current rules, Section I Part J defines “Per diem in lieu of wages” as payments to a worker to cover personal expenses, that include, but are not limited to, meals, travel, and lodging, where the employer does not require a receipt or other documentation of actual expenses incurred by the worker. The proposed rules, Section I Part Q, clarifies that “Per diem in lieu of wages” means an allowance paid to a worker to cover personal expenses such as meals, travel, lodging, and incidental expenses. This allowance is made in lieu of paying the actual accrued travel expenses. The proposed definition is aligned with IRS definitions of per diem.

Trades

In the current rules, Section I Part N defines “Trade” as a construction work activity engaged in by an individual worker as defined US Office of Management and Budget's 2018 version of the Standard Occupational Classification (SOC) Manual to define trades, but allows the Bureau to consider Davis-Bacon definitions and input from the Advisory Board. The proposed rules, Section I Part W clarifies that “Trade” means a construction work activity engaged in by an individual worker as defined by the SOC Manual only.