

This is an amendment to 11.1.2 NMAC, Section 11, effective 3/15/2004. This rule was also renumbered and reformatted from 11 NMAC 1.1 to comply with current NMAC requirements.

11.1.2.11 PROCEDURE TO BE EMPLOYED IN THE PREDETERMINATION OF WAGE RATES ON PUBLIC WORKS: Authority: Subsections A to G of 11.1.2.11 NMAC adopted pursuant to Section 13-4-11, New Mexico Statutes Annotated, 1978 Compilation.

A. Purpose and scope: The regulations contained in this part set forth the procedure for the determination of prevailing wage rates, on a statewide basis, pursuant to Section 13-4-11, NMSA 1978.

B. Computation of prevailing wage rate and definitions: The prevailing wage rate for laborers and mechanics employed on projects within the street, highway, utility and light engineering construction classification (type "A") and for laborers and mechanics employed on building projects and heavy engineering projects within the general building (type "B") and heavy engineering construction classification (type "H") and for laborers and mechanics employed on projects determined within the residential building classification (type "C") shall be computed on a statewide basis without regard to zone, incentive, or subsistence pay. However, while zone, incentive, or subsistence pay shall not be considered in determining the statewide base wage rate, it shall be computed and applied on a locality basis in type "B" and type "C" construction in accordance with the same formula utilized to determine the prevailing statewide base wage rate. For the purpose of zone, incentive or subsistence pay determination, "locality basis" shall mean location, municipality or site from which the zone, incentive or subsistence pay data emanated for the survey. Working foreman hours shall be included in the determination of the prevailing wage for that particular craft by surveying hours worked with the majority of the mechanics in that classification paid by that contractor/subcontractor. Where working foremen are the only mechanics on that project, those hours will be surveyed at the predetermined rate issued on that project. Working foremen in groupings for truck drivers, operators, and laborers shall not be included. For each classification the director shall employ the following methodology:

(1) The base wage rate paid in each work classification shall be grouped in ten cent (\$.10) numerically consecutive intervals, beginning with \$.01 and including \$.105, from which a weighted average of each group shall be taken, (see the following example).

Example:

Rates paid as follows would be grouped in this manner:

256 man hours at \$10.01 =	\$2,562.56
340 man hours at \$10.05 =	\$3,417.00
204 man hours at \$10.10 =	\$2,060.40
800 man hours (for group) into	\$8,039.96 = \$10.05 base wage for group
2,011 man hours at \$10.11 =	\$20,331.21
722 man hours at \$10.16 =	\$7,335.52
1,067 man hours at \$10.20 =	\$10,883.40
3,800 man hours (for group) into	\$38,550.13 = \$10.14 base wage for group
and so forth	

(2) The prevailing wage rate for a given classification on contract work of a similar nature in the state shall be:

(a) The base wage rate (as determined in Paragraph (1) of Subsection B of 11.1.2.11 NMAC above) paid for the majority of man hours worked in said classification, or

(b) In the event that Subparagraph (a) of Paragraph (2) of Subsection B of 11.1.2.11 NMAC is not applicable, then the base wage rate (as determined in Paragraph (1) of Subsection B of 11.1.2.11 NMAC above) paid for the greater number of man hours, provided that such greater number constitutes at least thirty per cent (30%) of the man hours worked in the classification.

(c) In the event that neither Subparagraphs (a) nor (b) of Paragraph (2) of Subsection B of 11.1.2.11 NMAC above is applicable the weighted average in the classification shall be the prevailing rate.

(d) In the event that the prevailing wage rate as determined by the application of Subparagraphs (a) or (b) of Paragraph (2) of Subsection B of 11.1.2.11 NMAC above (whichever is applicable) would result in lowering the prevailing wage as determined from the last survey immediately preceding by more than 3%, the

director shall compute the rate under Rule (c) above, and unless application of Rule (c) above would have the effect of further lowering the rate, the prevailing rate determined shall be the rate computed by application of Rule (c) above or the rate as was determined by the last survey preceding, whichever is lower.

(e) Fringe benefits as part of wages, as defined in Section 13-4-12 (A) (2), NMSA, 1978, shall be determined by applying Subparagraph (d) of Paragraph (2) of Subsection B of 11.1.2.11 NMAC above to the total dollar amount of fringe benefits paid by each contractor multiplied by the number of hours for which the total was paid. The fringe benefit figure so determined shall be expressed by a single dollar figure representing the total dollar amount of fringe benefits prevailing as a lump sum, rather than by separate dollar amounts representing each individual category of fringe benefits found to be prevailing.

(3) The term "base wage rate" contemplated in this section, shall mean the straight time hours and hourly rate paid each laborer or mechanic.

(4) The term "weighted average" shall mean the sum of the products of the grouped man hours times group base wage rate divided by the total number of man hours worked in the classification.

(5) The term "similar nature" shall mean contract work performed on projects as defined in the several Subparagraphs of Subsection B of 11.1.2.9 NMAC of these regulations.

(6) The term "director" shall mean the public official charged by law with the administration of the Public Works Minimum Wage Act.

(7) The term "state" shall mean the state of New Mexico.

C. Obtaining and compiling wage rate information and preparation of wage rate surveys: For the purpose of making wage determinations, the director shall conduct a continuing program for the obtaining and compiling of wage rate information, as required by Section 13-4-11, NMSA 1978, employing the procedures set forth in this Section.

(1) Separate surveys shall be prepared for the street, highway, utility and light engineering classification (type "A"), and for the general building (type "B") and heavy engineering construction classification (type "H") and for the residential construction classification (type "C"), and wage determination shall be issued on the basis thereof.

(2) The annual survey period shall be the month of June of each year. Wage rate decisions issued as a result of this survey and wage determination shall remain effective until superseded beginning fifteen (15) days following the making of the wage determination pursuant to Subsection D of 11.1.2.11 NMAC of these rules and regulations. Each annual survey and wage determination shall be and remain valid and the director shall issue to requesting agencies wage decisions based thereon until such survey and wage determination is superseded by an effective new survey and wage determination. A wage determination based upon a new survey shall not go into effect pending a final disposition of any appeal to the labor and industrial commission, sitting as the appeals board. If no appeal is timely filed pursuant to properly preserved objection as provided in Subsection D of 11.1.2.11 NMAC, *infra*, such survey and determination shall become effective on the applicable date specified in Paragraph (2) of Subsection C of 11.1.2.11 NMAC, *above*.

(3) Surveys and wage rate determination shall be on a statewide basis.

(4) Wage rate surveys prepared by the director for the street, highway, utility and light engineering construction classification (type "A"), and for the general building (type "B") and for the residential building construction classification (type "C"), and for heavy engineering construction classification (type "H") shall be compiled from certified weekly payrolls and verified wage information submitted and prepared in accordance with Subsection C of 11.1.2.10 NMAC of these rules and regulations and shall be utilized by the director in making wage rate determinations; provided, the director shall encourage the voluntary submission of wage data by contractors, contractors' associations, labor organizations and public officers. He shall give due regard to such information, voluntarily submitted, together with information obtained from field surveys, conducted in accordance with Section 13-4-11, NMSA 1978, in evaluating the validity and accuracy of certified payrolls and verified wage information incorporated in the director's survey.

(a) Certified weekly payrolls and verified wage information: The director shall compile his survey from the information contained in the certified payrolls and verified information submitted for the survey period prepared in accordance with Subsection C of 11.1.2.10 NMAC of these rules and regulations. Not less than twenty-five (25) days prior to the time scheduled for the hearing specified in Subsection D of 11.1.2.11 NMAC *infra*, the director shall prepare a detailed statement of the information, if any, which he has excluded from said certified payrolls or verified wage information in preparing his survey. Said statement, together with all certified payrolls and verified wage information, shall be available for inspection by any interested party in the offices of the director, subject to limitations imposed by Subsection F of 11.1.2.10 NMAC, *supra*. To the extent the director fails

to object in said detailed statement, the information contained in said certified payrolls or verified wage information shall be incorporated by the director directly into the survey for the period concerned and the director shall be barred from raising any objection to said information in any subsequent proceeding before the labor and industrial commission, sitting as the appeals board, or otherwise. The information contained in said certified payrolls or verified wage information shall be conclusive upon him as to its validity, accuracy and completeness. This provision shall not prevent any interested party from objecting to information contained in such certified payrolls or verified wage information.

(b) Within the time limits specified in Subparagraph (a) of Paragraph (4) of Subsection C of 11.1.2.11 NMAC, supra, the director may object to the information contained in certified weekly payrolls or verified wage information timely submitted to him and refuse to incorporate it in his survey only on the ground that information contained therein does not accurately state the wages being paid mechanics or laborers employed under said contract or is not in accordance with the wage rates contained in the contract specifications, if any.

(c) The director may omit from his survey information contained in certified payrolls or in properly prepared and submitted verified wage information only to the extent he has a specific objection as enumerated in Subparagraph (a) of Paragraph (4) of Subsection C of 11.1.2.11 NMAC, supra, thereto.

D. Review of survey results after notice to all interested parties: Survey results shall be reviewed at a meeting with all known interested parties. The time, date and place of said meeting will be established at the discretion of the director. Notice of the subject matter, the time, date and place of the meeting, the manner in which interested persons may present their views, and the method by which copies of the survey results (including lists of contractors and projects covered by the survey) and copies of the director's statement of information excluded from the survey pursuant to Paragraph (4) of Subsection C of 11.1.2.11 NMAC, supra, may be obtained, shall be published once at least thirty (30) days prior to the meeting date in a newspaper of general circulation. Such notice shall also be mailed by the director to all known interested parties at least thirty (30) days prior to the meeting date along with a copy of the survey results (including lists of contractors and projects covered by the survey) and a copy of the labor commissioner's statement of information excluded from the survey pursuant to Paragraph (4) of Subsection C of 11.1.2.11 NMAC, supra. Any objections to the survey results may be communicated to the director by an interested party either orally at such meeting or in writing delivered to the director on or before the date of such meeting, and the director shall make a record of any and all objections and of his rulings thereon prior to making his determination of prevailing wage rates. The director shall notify the objecting party and all other parties in attendance at the meeting of his ruling(s) on objections simultaneously with the making of his wage determination. Objections to the survey results not made by any interested party receiving proper and timely notice of such meeting shall be deemed waived and shall not constitute a ground for appeal unless the basis for such objection shall not have been reasonably discoverable by examination of the certified payrolls and verified wage information upon which the survey results are based, which data and all work papers and other material relating thereto shall be available at the office of the director, not less than thirty (30) days prior to such meeting, for inspection and copying by any interested party. For purposes of this Subsection D of 11.1.2.11 NMAC the term "all interested parties" shall include without limitation the state highway department, incorporated cities and Class A and B counties and their respective school boards or authorities, state institutions of higher learning and other contracting agencies which with regular frequency undertake public works projects subject to the act, and all other persons (including labor organizations, contractors and contractor associations) who make written request to the director to receive notice as provided in this section.

E. When the director has determined it is appropriate to do so, as an alternative and in lieu of the statewide survey provisions in the section the director shall establish the prevailing wage by reference to bona fide collective bargaining agreements (CBA's). The director shall determine such rates pursuant to this subsection by the following methodology.

(1) The director shall collect and verify all available CBA's for building trades in New Mexico.

(2) The director shall use the rates agreed to in the CBA's to establish the prevailing wage rates for crafts and types of construction as available. If the CBA's reflect different rates for subparts of the state, the director shall likewise establish such rates by zone consistent with their definitions in the CBA's.

(3) If there is no statewide CBA for a particular trade, the director shall refer to wage rates the United States department of labor has established pursuant to the Davis-Bacon Act for New Mexico for that trade.

(4) If there is a CBA for a trade, but that CBA does not establish rates for the same or similar types of construction that these regulations identify as A, B, C, and H, the director shall use that rate to establish the B rate. The director shall thereafter adjust this B rate to the other types of construction by the percentage equal to the percentage difference between the building categories in the rates the United States department of labor has

established for all building categories in the same trade.

(5) If there is neither a CBA nor federal Davis-Bacon rate for a particular trade, the director shall determine that rate by reference to the rate a CBA or, secondarily, the United States department of labor pursuant to the Davis-Bacon Act, or, lastly, an applicable national labor agreement has established for the most similar trade.

(6) The rates the director establishes pursuant to this subsection shall be subject to notice, comment, and appeal consistent with Subsection D of this Section

F. Determination of prevailing wage rates: The director shall determine prevailing wage rates applicable in the state for the type of construction proposed based on ~~the~~ survey data, ~~assembled and compiled~~ collective bargaining agreements, federal Davis-Bacon wage rates for New Mexico, applicable national labor agreements, or a combination thereof.

G. Addendum changes: Wage rate corrections or changes to decisions rendered shall not be issued without allowing the requesting agency at least ten (10) days notice before the date bids are to be submitted.

H. Effectiveness of wage rate decisions: Wage rate decisions shall remain effective until superseded; provided that changes to decisions rendered shall not be issued without allowing the requesting agency at least ten (10) days notice before the date bids are to be submitted. New wage rate decisions shall be issued for all contracts on which bids have not been submitted before the date on which a new survey and wage determination becomes effective pursuant to Subsection C of 11.1.2.11 NMAC, supra, provided, that any such new decision shall not supersede any previously issued decision unless such new decision is received by the contracting agency at least ten (10) days prior to the date on which bids are to be submitted. Notwithstanding anything in these regulations to the contrary or apparently to the contrary, the director shall not be required to issue a wage rate decision to a requesting agency unless such agency reasonably expects to advertise the contract for bids and to receive bids within 120 days from the date of its written request.

[5/31/72, 1/14/76, 6/4/79, 3/7/80, 1/29/81, 5/28/81, 11/4/88, 2/8/90, 2/14/94, 8/15/98; 11.1.2.11 NMAC - Rn & A, 11 NMAC 1.1.11, 3/15/2004]