

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	AdCom Systems, a.k.a. the following two aliases: —Sky Global Communications; and —Sky Global Communication Systems. Industrial City of Abu Dhabi—ICAD1, Mussafah, Abu Dhabi, UAE; and #2 Mezzanine Level, Block 19, Sharq 40 Al Morour Street, Abu Dhabi Island, Abu Dhabi, UAE.	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	81 FR 14958, 3/21/16. 83 FR [INSERT FR PAGE NUMBER 9/26/2018].
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Dated: September 21, 2018.
Richard E. Ashooh,
Assistant Secretary for Export Administration.
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DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 10

RIN 1235–AA27

Minimum Wage for Contractors; Updating Regulations To Reflect Executive Order 13838

AGENCY: Wage and Hour Division, Department of Labor.
ACTION: Final rule.

SUMMARY: In this final rule, the Department of Labor (the Department) implements Executive Order (E.O.) 13838, issued on May 25, 2018. E.O. 13838 exempts certain contracts with the Federal Government from the requirements of E.O. 13658. In particular, the E.O. exempts contracts in connection with both seasonal recreational services and also seasonal recreational equipment rental when such services and equipment are offered to the general public on Federal lands. E.O. 13838 amends E.O. 13658 by inserting two sentences into that order and also directs executive departments and agencies to promptly implement the exemption. In order to carry out that directive, this rule inserts the same two sentences into the Department’s regulations.

DATES: Effective September 26, 2018.

FOR FURTHER INFORMATION CONTACT: Melissa Smith, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division,

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SUPPLEMENTARY INFORMATION:

I. Background

E.O. 13658, titled “Establishing a Minimum Wage for Contractors,” was issued on February 12, 2014. *See* 79 FR 9849. E.O. 13658 raised the hourly minimum wage for certain workers performing work on covered Federal contracts to \$10.10 per hour in 2015, with annual inflation-based adjustments thereafter as determined by the Secretary of Labor (Secretary). *Id.* As of January 1, 2018, the E.O. 13658 minimum wage rate is \$10.35 per hour. As of January 1, 2019, the E.O. 13658 minimum wage will be \$10.60 per hour. *See* 83 FR 44906.¹

E.O. 13658 and its implementing regulations established that this minimum wage requirement applies only to a “new contract” that qualifies as: (A) A procurement contract for construction covered under the Davis-Bacon Act (DBA); (B) a contract for services covered under the McNamara-O’Hara Service Contract Act (SCA); (C) a contract for concessions, including any concessions contract that the Department’s regulations at 29 CFR 4.133(b) exclude from the SCA; or (D) a contract with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. Further, this minimum wage requirement applies only when the Fair Labor Standards Act (FLSA), the SCA, or the DBA governs

¹ For tipped employees performing work on or in connection with covered contracts, E.O. 13658 established a different minimum wage, which is currently \$7.25 per hour and will increase to \$7.40 per hour beginning January 1, 2019. *Id.*

the workers’ wages. The October 7, 2014 final rule implementing E.O. 13658 applied to covered workers of contractors providing seasonal recreational services or seasonal recreational equipment rental on Federal lands under covered contracts.

On May 25, 2018, President Donald J. Trump issued E.O. 13838, titled “Exemption from Executive Order 13658 for Recreational Services on Federal Lands.” *See* 83 FR 25341. Section 2 of E.O. 13838 amended E.O. 13658 to add language providing that the provisions of E.O. 13658 do “not apply to federal contracts or contract-like instruments” entered into “in connection with seasonal recreational services or seasonal recreational equipment rental.” The E.O. additionally stated that seasonal recreational services include “river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps.” E.O. 13838 further specified that this exemption does not apply to “lodging and food services associated with seasonal recreational activities.”

E.O. 13838 explained that because of the nature of the industry, seasonal recreational workers have “irregular work schedules, a high incidence of overtime pay, and an unusually high turnover rate.” The order further explained that implementing E.O. 13658, therefore, threatened to significantly increase the cost of seasonal recreational services on Federal lands, while limiting the hours that recreational-service workers would be available to work. Thus, exempting these services from E.O. 13658 would help prevent job losses and ensure affordable guided tours for visitors to Federal lands.

E.O. 13838 requires executive departments and agencies to “promptly

take appropriate action to implement this exemption and to ensure that [their] regulations and agency guidance are consistent” with the E.O.

II. Basis and Purpose

A. Basis

The Department is updating 29 CFR 10.4 to conform to the requirements of E.O. 13838. The President issued E.O. 13838 pursuant to his authority under the Constitution and the Federal Property and Administrative Services Act (Procurement Act). 83 FR 25341. The Procurement Act authorizes the President to “prescribe policies and directives that [the President] considers necessary to carry out” the statutory purposes of ensuring “economical and efficient” government procurement and administration of government property. 40 U.S.C. 101, 121(a).

The Secretary has delegated his authority to implement E.O. 13658, and hence E.O. 13838, to the Administrator of the WHD. *See* Secretary’s Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (published Dec. 24, 2014).

B. Purpose

The Department is promulgating this final rule to implement E.O. 13838’s exemption for seasonal recreational services and equipment rental. This action makes no substantive changes to E.O. 13658 or its implementing regulations beyond what E.O. 13838 addresses, as E.O. 13838 itself modified E.O. 13658 and directed Federal agencies and departments to implement that exemption. This action conforms E.O. 13658’s implementing regulations with the requirements of E.O. 13838. This will help ensure that parties contracting with the Federal Government are aware of the scope of coverage under E.O. 13658, as amended by E.O. 13838.

III. Discussion of the Final Rule

To incorporate E.O. 13838 into existing regulations, the Department is amending 29 CFR 10.4 to add a new subsection (g), containing language identical to that which E.O. 13838 inserted into E.O. 13658. New 29 CFR 10.4(g) will reflect that the requirements of E.O. 13658 no longer apply to special-use permits or similar instruments issued by the U.S. Forest Service or other Federal agencies for seasonal recreational outfitter services, seasonal recreational guide services, and other seasonal recreational services, or to permits or instruments issued for seasonal recreational equipment rental.

Consistent with the instruction in E.O. 13838, new 29 CFR 10.4(g) does not

limit E.O. 13658’s coverage of lodging and food services associated with seasonal recreational services, even when seasonal recreational services or seasonal recreational equipment rental are also provided under the same contract. Thus, when a contract contains both exempt and covered services—say, services for equipment rental and also services for food and lodging—E.O. 13658 will continue to apply to the covered services (*i.e.* the contractor minimum wage would apply to the positions in food service and lodging, but not to the positions in equipment rental). In such circumstances, the E.O. minimum wage contract-clause in appendix A of 29 CFR part 10 should therefore be included in all covered contracts and solicitations for such contracts, as described in 29 CFR 10.3. In these instances, the contracting agency, in consultation with the contractor and WHD as needed, shall identify which services are covered and which are exempt from the requirements of E.O. 13658.

E.O. 13838 and new 29 CFR 10.4(g) do not affect the Department’s implementation, administration, or enforcement of the Final Rule implementing E.O. 13658 with respect to any contracts other than those exempted in whole or in part from coverage under E.O. 13838 and 29 CFR 10.4(g). They likewise do not affect contracting agencies’ implementation and administration of E.O. 13658 and its implementing regulations with respect to any contract other than those specifically described in E.O. 13838.

E.O. 13838 and new 29 CFR 10.4(g) also do not limit or otherwise modify a contractor’s obligations under the FLSA, SCA, DBA, or any other law. For example, as reflected in 29 CFR 10.26(c), the requirements of E.O. 13658 do not limit or otherwise modify a contractor’s payroll and recordkeeping obligations, if any, under the FLSA, SCA, or DBA, or their implementing regulations. E.O. 13838 and 29 CFR 10.4(g) therefore do not exempt a contractor who is subject to the exemption, established by E.O. 13838 and by 29 CFR 10.4(g), from the requirements of the FLSA, SCA, DBA, or any other applicable law.

IV. Administrative Procedure Act

The Department promulgates this final rule without notice or an opportunity for public comment because this action is limited to implementing E.O. 13838 by inserting into the Department’s regulations the identical language that E.O. 13838 inserted into E.O. 13658. The Administrative Procedure Act (APA)

provides that the notice-and-comment procedure does not apply when an agency for good cause finds that it is “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(3)(B). Notice and comment are “unnecessary,” within the meaning of the APA, when changes to regulations “merely restate” the changes in the enabling authority that they implement.² *Gray Panthers Advocacy Cmt. v. Sullivan*, 936 F.2d 1284, 1291 (D.C. Cir. 1991). In other words, the normal “notice-and-comment procedures” are not required when an agency “reiterates” an existing requirement by “reprinting” that requirement in its own regulations. *Komjathy v. Nat’l Transp. Safety Bd.*, 832 F.2d 1294, 1297 (D.C. Cir. 1987).

Here, the Department for good cause finds that notice and comment are unnecessary because this rule updates the October 7, 2014, regulation to conform with E.O. 13838 by inserting into the regulation the identical language that E.O. 13838 inserted into E.O. 13658. Thus, the rule is merely restating the changes to the enabling authority—E.O. 13658—that these regulations implement. E.O. 13838 requires agencies “to implement [its] exemption and to ensure that all applicable regulations and agency guidance are consistent with [the E.O.],” and the Department lacks the discretion to deviate from this directive. The Department has explained that in this circumstance, it “may not, in response to public comment, change or decline to implement [an] amendment” to an executive order. 68 FR 56392 (Sept. 30, 2003). Indeed, it has promulgated final rules without notice and comment in similar situations. *See, e.g.,* Affirmative Action Obligations of Government Contractors, 68 FR 56392 (Sept. 30, 2003) (adding religious exemption into regulations by “simply incorporat[ing]” language from executive order in regulations). The Department accordingly finds that notice and comment are “unnecessary” under the APA.

Additionally, this rule is effective on the date of publication because the standard 30-day delay does not apply when a rule recognizes an exemption or relieves a restriction. 5 U.S.C. 553(d)(1). This final rule establishes no new burdens on the regulated community; rather it relaxes an existing restriction. The Department has explained that, under the APA, when a rule “relieves

² Although a separate provision dispenses with notice and comment for matters relating to public contracts, 5 U.S.C. 553(a)(2), the Department generally does not rely on that provision, 29 CFR 2.7.

present restrictions, delay in its effective date is excused by 5 U.S.C. 553(d)(1).” 33 FR 8542 (June 11, 1968); *See also* 45 FR 35325 (May 27, 1980). The Department has followed this interpretation on numerous occasions, having rules become effective upon issuance when they recognized an exemption to a generally applicable duty or relieved a regulated community of a restriction. *See, e.g.*, Cranes and Derricks in Construction, 82 FR 51986 (Nov. 9, 2017); Employment of Homeworkers in Certain Industries, 49 FR 11792 (Mar. 27, 1984); Farm Labor Contractor Registration, 45 FR 25323 (May 27, 1980); Procedures for Consolidation of Existing Exclusively Recognized Units, 40 FR 50714 (Oct. 31, 1975); Federal Extension Service Exemption, 33 FR 8542 (June 11, 1968). Because this rule relieves the regulated community of a compliance duty, a 30-day delay is unnecessary and the rule is effective upon issuance.

In short, the rule promulgated today adds into the Department’s regulations the identical text that E.O. 13838 inserted into E.O. 13658. This action recognizes an exemption to E.O. 13658’s requirements for certain contracts. In this circumstance, issuance of the rule without notice and comment is proper, as is the rule’s effectiveness upon publication.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency’s need for its information collections and their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a rule. *See* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8. This rule does not contain a collection of information subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.

VI. Analysis Conducted in Accordance With E.O. 12866, Regulatory Planning and Review, and E.O. 13563, Improved Regulation and Regulatory Review

A. Introduction

Under E.O. 12866, OMB’s Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and OMB

review.³ Section 3(f) of E.O. 12866 defines a “significant regulatory action” as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of \$100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the E.O.. Because the annual effect of this rule would be less than \$100 million, this rule would not be economically significant under section 3(f) of E.O. 12866.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected the approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

This rule is an E.O. 13771 deregulatory action.

B. Economic Analysis

E.O. 13658 required an increase in the minimum wage to \$10.10 for workers on covered Federal contracts where the solicitation for such contracts was issued (or the contract was awarded outside the solicitation process) on or after January 1, 2015. The E.O. applied only to new contracts. Each year, pursuant to E.O. 13658, the Department adjusts this minimum wage using the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). As of January 2018, the minimum wage for non-tipped covered workers on covered Federal contracts was \$10.35.

E.O. 13838, issued on May 25, 2018, exempts from E.O. 13658 contracts with the Federal Government in connection with seasonal recreational services or

seasonal recreational equipment rental for the general public on Federal lands. E.O. 13838 directs executive departments and agencies to implement promptly the exemption. This economic analysis attempts to quantify the transfers and costs associated with the exemption from E.O. 13658 for recreational services on Federal lands, and it provides a qualitative discussion of benefits. Under E.O. 13838, exempted contractors no longer have to pay a minimum wage of \$10.35; they can instead pay, at least, the higher of either the Federal minimum wage of \$7.25 or any applicable state or local minimum wage. Transfers will occur when employers choose to adjust employees’ wages below \$10.35.

C. Transfer Calculation

To calculate transfers, the Department first determined the number of potential workers that E.O. 13838 could affect. There is no single source that provides data on how many workers are employed on contracts in connection with seasonal recreational services on Federal lands, so the Department relied on a variety of data sources to estimate the number of affected workers. The Department assumes that most impacted workers will fall under two Standard Occupational Classification (SOC) codes: SOC 39–7010 Tour and Travel Guides, and SOC 39–9032 Recreation Workers. The Department recognizes that impacted workers may be found in additional occupations, but this analysis is limited to these two occupations because the Department lacks more substantive data on other workers. The Department also recognizes that E.O. 13658 and E.O. 13838 do not govern all workers in these two occupations, but limiting the number of impacted workers to Federal contract workers in those occupations will help narrow the analysis to the impacted population. According to data from the Bureau of Labor Statistics (BLS) Occupational Employment Statistics (OES) program, as of May 2017, the economy had 46,140 workers employed as Tour and Travel Guides and had 352,350 workers employed as Recreation Workers—totaling 398,490 workers employed in those two occupations.⁴ These two occupations together represent approximately 0.28 percent of employment in the United States.⁵

To estimate the total number of impacted workers, the Department also

⁴ BLS Occupational Employment Statistics, <https://www.bls.gov/oes/2016/may/distribution.htm>.

⁵ May 2017 employment in all occupations was 142,549,250. BLS OES, <https://www.bls.gov/oes/tables.htm>.

³ 58 FR 51735 (Sept. 30, 1993).

needed to determine the number of workers carrying out Federal contracts. The Department has previously estimated that annually, 1,727,000 workers carry out Federal contracts in the four categories covered by E.O. 13658.⁶ This figure is an approximation only. The Department multiplied 0.28 percent (the occupational share) by the number of workers on covered Federal contracts to estimate the number of Federal-contract workers who are employed in connection with recreational services.⁷ The Department thus estimates that there are 4,828 workers ($= 1,727,000 \times 0.28\%$) employed on Federal contracts as outfitters, guides, and other recreational-service workers. Because about 20 percent of Federal contracts are initiated each year and because E.O. 13658 has been in effect for fewer than four years, the Department estimates that 3,862 ($= 4,828 \times 80\%$) workers will be affected by this rule.

This economic analysis attempts to calculate the total potential transfers from employees to employers when employers no longer have to pay the E.O. 13658 minimum wage, which is currently \$10.35. The Department assumes that employers with contracts on Federal lands who were paying \$10.35 before E.O. 13838 will now choose to pay the Federal minimum wage of \$7.25.⁸ The Department assumes that employers who pay workers more than the minimum wage of \$10.35 will continue paying those wages and therefore will not be affected. The analysis assumes that only those making \$10.35 per hour will be affected. Because there is no easily accessible data on the exact wages of seasonal recreational employees on Federal contracts, the Department used the distribution of employment within specific wage ranges from BLS Occupational Employment Statistics to estimate the share of workers earning \$10.35 or less.⁹ The Department

therefore assumes that everyone making \$10.35 or less is actually earning the minimum of \$10.35. Using a linear approximation of the employment share earning \$10.35 within the weighted wage ranges for Tour and Travel Guides and Recreation Workers occupations, the Department estimates that 30.83 percent of workers in the Tour and Travel Guides and Recreation Workers occupations earn \$10.35 or less. Applying this share to the previous calculation of workers employed on Federal contracts as outfitters, guides, and other recreational-service workers, the Department estimates that 1,191 of these workers earn \$10.35 per hour.

The total value of these transfers is estimated to be the difference between \$10.35 and the minimum wage for each of these workers. Because data are not available to distinguish these workers by state, the Department calculated the difference between \$10.35 and the Federal minimum wage of \$7.25. This transfer calculation is therefore likely to be an overestimation because some workers will earn their applicable state minimum wage (which is higher than \$7.25) and because, in many other instances, contractors with contracts that are now exempt from E.O. 13658 will choose to pay these workers more than the applicable Federal or state minimum wage (though less than \$10.35). Multiplying the \$3.10 difference in wages by the 1,191 affected workers for 1,040 hours per year, the Department estimates that total transfers will be \$3,839,784 at discount rates of both 3 percent and 7 percent.¹⁰

D. Costs

The costs associated with this rulemaking are regulatory familiarization costs and any costs that businesses will incur to change their existing payroll systems. Regulatory familiarization costs represent direct costs on businesses associated with reviewing the new regulation. In this rule, regulatory familiarization costs are a function of the number of contractor firms, and only firms that have contracts with the Federal Government in connection with seasonal recreational services will incur costs. For this activity, the Department estimates that contractor firms will spend 15 minutes to determine whether the exemption applies to them, to evaluate and adjust their pay rates, and to modify their payroll systems. For familiarization cost analysis, the Department assumes that a

Compensation, Benefits, and Job Analysis Specialist (SOC 13–1141) (or a staff member in a similar position) with a median wage of \$30.14 per hour in 2017 will review the rule.¹¹ Assuming benefits are paid at a rate of 46 percent of the base wage, and overhead costs are 17 percent of the base wage, the reviewer's effective hourly rate is \$49.13 ($= \$30.14 + (\$30.14 \times 46\%) + (\$30.14 \times 17\%)$); thus, the average cost per establishment is \$12.28 ($= \$49.13 \times .25$ hour of review and adjustment time). According to the 2016 Final Rule to implement E.O. 13706, there are approximately 489,419 potentially affected contractor firms.¹² In order to estimate the share of these contractors involved in seasonal recreational activities, the Department used the occupational employment share for Travel and Tour Guides and Recreation Workers as a proxy for contractor firm industry share. Applying the 0.28 percent share to the 489,419 contractor firms yields 1,368 contractor firms in industries related to seasonal recreational activities. The Department calculated the total estimated cost as \$16,804 ($= 0.25$ hour \times \$49.13/hour \times 1,368 contractor firms) in the first year. This amounts to a 10-year annualized cost of \$1,913 at a discount rate of 3 percent and \$2,236 at a discount rate of 7 percent.

E. Qualitative Discussion of Benefits

Lowering the cost of business for outfitter providers could incentivize small outfitters to enter the market. Likewise, it could also incentivize existing outfitters to hire more guides and to increase the hours of current employees. What all this translates into is more affordable guided tours and recreational services for visitors to Federal lands. And ultimately, greater access to outfitter services affords ordinary Americans a greater opportunity to experience “the great beauty of America's outdoors.” E.O. 13838.

¹¹ Compensation/benefits specialist ensures company compliance with Federal and state laws, including reporting requirements; evaluates job positions, determining classification, exempt or non-exempt status, and salary; plans, develops, evaluates, improves, and communicates methods and techniques for selecting, promoting, compensating, evaluating, and training workers. 13–1141 Compensation, Benefits, and Job Analysis Specialists, <https://www.bls.gov/oes/current/oes131141.htm> (last visited on June 20, 2018).

¹² This estimate includes firms registered in the General Services Administration's (GSA) System for Award Management (SAM) and from additional data sources. For a full discussion of this methodology and estimate, see <https://www.federalregister.gov/documents/2016/09/30/2016-22964/establishing-paid-sick-leave-for-federal-contractors>.

⁶ For a full discussion of this methodology and estimate, see <https://www.federalregister.gov/documents/2016/09/30/2016-22964/establishing-paid-sick-leave-for-federal-contractors>.

⁷ For purposes of this analysis, the Department assumes that the occupational distribution of workers on Federal contracts is the same as in the overall economy. In reality, the occupational distribution may differ, so this number may be imprecise.

⁸ This assumption likely significantly overstates the number of employers who, if currently paying the applicable minimum wage, would lower wages all the way to a new minimum. But the Department lacks data on which employers would pay more than \$7.25 per hour if not obligated to pay \$10.35.

⁹ BLS OES, May 2017 National Occupational Employment and Wage Estimates United States, May 2017. https://www.bls.gov/oes/current/oes_nat.htm.

¹⁰ Full-time, year-round workers usually work around 2,080 hours. Because most affected workers are seasonal, the Department used half of this number as an estimate for usual hours-worked in a year.

F. Summary of Transfers and Costs

Table 1 provides a summary of the quantified transfers and costs for this rule.

TABLE 1—SUMMARY OF TRANSFERS AND COSTS CALCULATIONS

Potential Transfers		
First Year Transfers	\$3,839,784	
	Discount Rate = 3%	Discount Rate = 7%.
10-Year Annualized Transfers	\$3,839,784	\$3,839,784
Regulatory Familiarization and Adjustment Costs		
First Year Costs	\$16,804	
	Discount Rate = 3%	Discount Rate = 7%.
10-Year Annualized Transfers	\$1,913	\$2,236

G. Regulatory Flexibility Analysis

In 2014, the Small Business Association’s Office of Advocacy provided comments on the regulations implementing E.O. 13658 (Establishing a Minimum Wage for Federal Contractors). The comment letter urged the Department to adopt a regulatory alternative that exempts recreational companies and provides regulatory cost savings for small businesses. In 2018, small business stakeholders also recommended this rule for regulatory reform under E.O. 13771. Per the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (as amended), the Department examined the regulatory requirements of the rule to determine whether they

would have a significant economic impact on a substantial number of small entities. As indicated in Section B, Economic Analysis, the annualized burden is estimated to be \$2,236 at a discount rate of 7 percent; therefore, the annualized cost per firm is estimated to be \$1.63 (= \$2,236 ÷ 1,368 firms). See Table 2.

TABLE 2—ANNUALIZED COST PER FIRM

Estimated number of firms	1,368
Compensation, Benefits, and Job Analysis Specialists fully loaded hourly compensation	\$49.13
Time to review rule and make payroll adjustments	* 15

TABLE 2—ANNUALIZED COST PER FIRM—Continued

Total cost	\$16,804
Annualized with 7% Discounting ..	\$2,236
Annualized cost per firm	\$1.63

* Minutes.

Table 3 provides the annualized cost per firm as a percentage of revenue by firm size in the arts, entertainment, and recreation industry. As the table shows, the annualized burden as a percentage of the smallest employer’s revenue would be far less than 1 percent. Accordingly, the Department certifies that the rule would not have a significant economic impact on a substantial number of small entities.

TABLE 3—ANNUAL COST PER FIRM IN THE ARTS, ENTERTAINMENT, AND RECREATION INDUSTRY

	Number of firms	Total number of employees	Annual cost per firm	Annual receipts	Average receipts per firm	Annual cost per firm as percent of receipts
Arts, Entertainment, and Recreation Industry Small Business Size Standard: \$7.5 million–\$38.5 million						
Firms with sales/receipts/revenue below \$100,000	29,796	43,003	\$1.63	\$1,434,271,000	\$48,136	0.003
Firms with sales/receipts/revenue of \$100,000 to \$499,999	46,205	177,421	1.63	11,476,438,000	248,381	0.001
Firms with sales/receipts/revenue of \$500,000 to \$999,999	16,220	161,111	1.63	11,394,483,000	702,496	0.000
Firms with sales/receipts/revenue of \$1,000,000 to \$2,499,999	12,675	260,098	1.63	19,329,326,000	1,524,996	0.000
Firms with sales/receipts/revenue of \$2,500,000 to \$4,999,999	4,776	205,728	1.63	16,246,680,000	3,401,734	0.000
Firms with sales/receipts/revenue of \$5,000,000 to \$7,499,999	1,800	126,508	1.63	10,478,303,000	5,821,279	0.000
Firms with sales/receipts/revenue of \$7,500,000 to \$9,999,999	854	78,319	1.63	6,855,951,000	8,028,046	0.000
Firms with sales/receipts/revenue of \$10,000,000 to \$14,999,999	746	94,755	1.63	8,148,731,000	10,923,232	0.000
Firms with sales/receipts/revenue of \$15,000,000 to \$19,999,999	373	58,407	1.63	5,452,457,000	14,617,847	0.000
Firms with sales/receipts/revenue of \$20,000,000 to \$24,999,999	239	46,528	1.63	4,493,765,000	18,802,364	0.000
Firms with sales/receipts/revenue of \$25,000,000 to \$29,999,999	169	36,443	1.63	3,701,048,000	21,899,692	0.000
Firms with sales/receipts/revenue of \$30,000,000 to \$34,999,999	126	34,942	1.63	3,075,728,000	24,410,540	0.000
Firms with sales/receipts/revenue of \$35,000,000 to \$39,999,999	83	22,145	1.63	2,382,282,000	28,702,193	0.000

H. Unfunded Mandates Reform Act

This rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA).

2 U.S.C. 1501 *et seq.* For the purposes of the UMRA, this rule does not impose any Federal mandate that may result in increased expenditures by State, local, or Tribal governments, or increased

expenditures by the private sector, of more than \$100 million in any year.

I. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999). This rule does not have federalism implications as outlined in E.O. 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

J. Executive Order 13175, Indian Tribal Governments

The Department has reviewed this rule under the terms of Executive Order 13175 (65 FR 67249, November 6, 2000) and determined it does not have “tribal implications.” The rule does not have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” As a result, no Tribal summary impact statement has been prepared.

VII. Regulatory Revision

For the reasons set forth in the preamble, the Department of Labor amends part 10 of title 29 of the Code of Federal Regulations as follows:

PART 10—ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS

■ 1. The authority citation for part 10 is revised to read as follows:

Authority: 5 U.S.C. 301; section 2, E.O. 13838, 83 FR 25341; section 4, E.O. 13658, 79 FR 9851; Secretary’s Order 01–2014, 79 FR 77527.

■ 2. In § 10.4, add paragraph (g) to read as follows:

§ 10.4 Exclusions.

* * * * *

(g) *Contracts in connection with seasonal recreational services and seasonal recreational equipment rental offered for public use on Federal lands.* This part shall not apply to contracts or contract-like instruments entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands, but this exemption shall not apply to lodging and food services associated with seasonal recreational services. Seasonal recreational services include river running, hunting, fishing, horseback riding, camping, mountaineering

activities, recreational ski services, and youth camps.

Signed in Washington, DC, this 18th day of September.

Bryan L. Jarrett,

Acting Administrator, Wage and Hour Division.

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DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 34

RIN 1290–AA32

Rescission of Regulations Implementing the Nondiscrimination and Equal Opportunity Provisions of the Job Training Partnership Act of 1982

AGENCY: Office of the Assistant Secretary for Administration and Management, Department of Labor.

ACTION: Direct final rule.

SUMMARY: The U.S. Department of Labor takes this action to remove regulations for an inoperative program but continues to require non-discrimination and equal-employment opportunity under its programs. The Department is undergoing a process of identifying identify regulations that are “outdated” and “unnecessary.” The regulations being rescinded by this rule are “outdated” because they administer a program that no longer exists. And they are “unnecessary” because they currently serve no purpose, as their existence or non-existence has no impact on the Department’s enforcement of non-discrimination standards under its existing programs. In particular, the Department is rescinding its regulations implementing Section 167 of the Job Training Partnership Act of 1982, as amended (JTPA). Section 167 contained the nondiscrimination and equal-opportunity provisions of the JTPA. In 1998, Congress passed the Workforce Investment Act (WIA), which repealed the JTPA and required the Secretary of Labor to transition any authority under the JTPA to the system that WIA created. WIA, in turn, was subsequently altered by the Workforce Innovation and Opportunity Act (WIOA). In sum, this rule removes regulations for an inoperative program, but has no impact on existing non-discrimination rules.

DATES: This direct final rule is effective on November 26, 2018, unless the Department receives a significant

adverse comment to this direct final rule or the companion proposed rule by October 26, 2018, on any unintended changes this action makes in the nondiscrimination and equal opportunity obligations the Department enforces. If timely, significant adverse comment is received, the Department will publish a notification of withdrawal of the direct final rule in the **Federal Register** before the effective date. Such notification may withdraw the direct final rule in whole or in part.

ADDRESSES: Comments may be submitted, identified by Regulatory Information Number (RIN) 1290–AA32, by any one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 693–6505 (for comments of six pages or less).
- *Mail or Hand Delivery/Courier:* Naomi Barry-Perez, Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N–4123, Washington, DC 20210.
- *Email:* CRC-WIOA@dol.gov.

Please submit your comment by only one method. Receipt of comments will not be acknowledged; however, the Department will post all comments received on <http://www.regulations.gov> without making any change to the comments, including any personal information provided. The <http://www.regulations.gov> website is the Federal e-rulemaking portal, and all comments posted there are available and accessible to the public.

The Department cautions commenters not to include personal information, such as Social Security Numbers, personal addresses, telephone numbers and email addresses, in comments, as such submitted information will become viewable by the public via <http://www.regulations.gov>. It is the responsibility of the commenter to safeguard personal information. Comments submitted through <http://www.regulations.gov> will not include the commenter’s email address unless the commenter chooses to include that information as part of a comment.

Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments via the website indicated above.

The Department will also make all the comments it receives available for public inspection during normal business hours at the Civil Rights Center at the above address. If you need assistance to review the comments, the Department will provide you with