

implement Executive Order (E.O.) 14026, Increasing the Minimum Wage for Federal Contractors, and a final rule issued by the Department of Labor (DOL). E.O. 14026 seeks to raise the hourly minimum wage paid by contractors to workers performing work on or in connection with covered Federal contracts to \$15.00 per hour beginning January 30, 2022, and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor. This rule makes revisions to the existing FAR coverage regarding minimum wage requirements for Federal contractors by increasing the hourly minimum wage paid by certain Federal contractors to workers performing work on or in connection with covered Federal contracts; referencing DOL's new requirements for tipped workers; expanding the geographical scope of the minimum wage requirements by defining United States as including U.S. territories and possessions; and removing the exemption for seasonal recreational services or seasonal recreational equipment rental from the minimum wage requirements. DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities, because DOL has determined that their rule would not have a significant impact on a substantial number of small entities. DoD, GSA, and NASA agree with this assessment.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 22, and 52

[FAC 2022-04; FAR Case 2021-014, Docket No. FAR-2021-0014, Sequence No. 1]

RIN 9000-AO31

Federal Acquisition Regulation: Increasing the Minimum Wage for Contractors

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement an Executive Order titled "Increasing the Minimum Wage for Federal Contractors" and a final rule issued by the Department of Labor. This Executive Order seeks to raise the hourly minimum wage paid by contractors to workers performing work on or in connection with covered Federal contracts to \$15.00 per hour beginning January 30, 2022, and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor.

DATES:

Effective: January 30, 2022.

Applicability: This rule applies as follows:

1. To solicitations issued on or after January 30, 2022, and their resulting contracts.
2. To new contracts awarded without a prior solicitation (e.g., a purchase order under part 13), on or after January 30, 2022.
3. To new contracts with a prior solicitation awarded on or after March 31, 2022.
4. To existing contracts, including procurements for recreational services, when extending, renewing, or exercising an option on the existing contract on or after the effective date of the rule. Contracting officers shall incorporate the amended clause in this rule at 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026, in the existing contracts through bilateral modifications. In such a circumstance, if the contracting officer is unable to incorporate the clause in an existing contract through bilateral modification, then the contracting officer shall decline to extend, renew, or exercise the option on the existing contract.

5. In accordance with FAR 1.108(d), contracting officers are strongly encouraged to include the amended clause in other contracts awarded before March 31, 2022, with appropriate consideration.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before March 28, 2022 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAC 2022-04, FAR Case 2021-014 to the Federal eRulemaking portal at <https://www.regulations.gov> by searching for "FAR Case 2021-014". Select the link "Comment Now" that corresponds with "FAR Case 2021-

014". Follow the instructions provided on the "Comment Now" screen. Please include your name, company name (if any), and "FAR Case 2021-014" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite "FAR Case 2021-014" in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Malissa Jones, Procurement Analyst, at 571-882-4687 or by email at malissa.jones@gsa.gov, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FAC 2022-04, FAR Case 2021-014.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the FAR to implement Executive Order (E.O.) 14026, Increasing the Minimum Wage for Federal Contractors, signed April 27, 2021, and published in the **Federal Register** at 86 FR 22835, on April 30, 2021. The interim rule also implements a final rule issued by the Wage and Hour Division of the Department of Labor (DOL), published at 86 FR 67126, on November 24, 2021, also entitled "Increasing the Minimum Wage for Federal Contractors." The DOL rule added a new 29 CFR part 23. The DOL rule covers FAR-based contracts, non-FAR-based contracts, and contract-like instruments; this interim rule only applies to FAR-based contracts.

The hourly minimum wage paid to workers on specified Federal contracts was first established by E.O. 13658, Establishing a Minimum Wage for Contractors, which was signed February 12, 2014, and published in the **Federal Register** at 79 FR 9851, on February 20, 2014. E.O. 13658 established an hourly minimum wage of \$10.10 beginning January 1, 2015, and beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary of Labor. The DOL implemented E.O. 13658 through a final rule published at 79 FR 60634, on October 7, 2014, also

entitled “Establishing a Minimum Wage for Contractors.” The 2014 DOL final rule added a new 29 CFR part 10. An interim FAR rule was published in the **Federal Register** at 79 FR 74544 on December 15, 2014. The 2014 interim rule added new FAR subpart 22.19 and new FAR clause 52.222–55, Minimum Wages Under Executive Order 13658. A final rule was published at 80 FR 75915 on December 4, 2015.

Annual increases were announced by DOL. The most recent increases were to \$10.95 on January 1, 2021 (August 31, 2020, 85 FR 53850) and to \$11.25 on January 1, 2022 (September 16, 2021, 86 FR 51683).

Subsequent to E.O. 13658, E.O. 13838, Exemption From Executive Order 13658 for Recreational Services on Federal Lands, was signed on May 25, 2018, and published in the **Federal Register** at 83 FR 25341 on June 1, 2018. E.O. 13838 exempted 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 from the minimum wage requirements of E.O. 13658. The DOL published a rule in the **Federal Register** at 83 FR 48537 on September 26, 2018, to implement the exemption authorized by E.O. 13838. The FAR implemented E.O. 13838 and the 2018 DOL rule through a final rule published in the **Federal Register** at 85 FR 67626 on October 23, 2020. The FAR amended subpart 22.19 and the clause 52.222–55 to implement the exemption for contracts for seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands.

E.O. 14026 revokes E.O. 13838 as of January 30, 2022. E.O. 14026 also supersedes E.O. 13658 as of January 30, 2022, but only to the extent it is inconsistent with E.O. 14026. E.O. 14026 raises the hourly minimum wage paid by certain Federal contractors to workers performing work on or in connection with covered Federal contracts to \$15.00 per hour beginning January 30, 2022, and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor. E.O. 14026 also raises the cash wages to be paid to tipped workers. The higher minimum wage rate(s) for workers are reflected in the 2021 DOL final rule implementing E.O. 14026 (in 29 CFR part 23) as compared to the DOL final rule implementing E.O. 13658 (in 29 CFR part 10). There are some substantive differences between DOL’s final rules implementing E.O. 13658 and E.O. 14026. For example, in the 2021 DOL final rule (86 FR 67126), the

definition of “United States” is expanded to include specified U.S. territories and possessions. These differences are the basis for the revisions made to FAR subpart 22.19 and FAR clause 52.222–55 via this interim rule.

II. Discussion and Analysis

Due to the similarities between E.O. 13658 and 14026, and the similarities between DOL’s implementing regulations at 29 CFR part 10 and part 23 respectively, there are limited changes being made to the FAR. (For details on the E.O. 13658 implementation see the DOL final rule at 79 FR 60634. See 79 FR 74544 for the interim FAR rule implementing E.O. 13658 published in the **Federal Register** on December 15, 2014, and 80 FR 75915 for the final rule published on December 4, 2015).

The following are a list of those changes:

A. References to the E.O. and DOL regulations—The FAR is either replacing the reference to E.O. 13658 with E.O. 14026 or adding references to E.O. 14026, as appropriate, throughout parts 22 and 52. Similarly, the citations to DOL’s implementing regulations of E.O. 13658 at 29 CFR part 10 are either being replaced with citations to DOL’s implementing regulations of E.O. 14026 at 29 CFR part 23, or citations to 29 CFR part 23 are being added.

B. Increasing the minimum wage—Throughout subpart 22.19 and the clause 52.222–55, the initial minimum wage of \$10.10 established by E.O. 13658 is replaced with the minimum wage of \$15.00 specified by E.O. 14026. This update to the minimum wage resulted in revisions to the price adjustment examples provided in FAR 22.1904(b)(2). The calculation process in FAR 22.1904(b)(2) may be used for calculating a contract modification for the changeover from the E.O. 13658 rate to the E.O. 14026 rate of \$15.00. For this example, the E.O. rate as of January 1, 2022, is \$11.25. If the current service or construction wage determination rate applicable to this worker under the contract is \$11.55, and if the actual wage currently paid to the worker is \$12.25, then the price adjustment calculation for this worker is \$2.75 (\$15.00 minus \$12.25 = \$2.75). Some employees who are not covered by the E.O., such as supervisors, may be making close to \$15 an hour. The contractor may wish to voluntarily raise the wages of such employees to avoid wage compression or maintain fairness; however, doing so is not a requirement of compliance with E.O. 14026. While agencies are not required to do so, the

clause language and examples in 22.1904(b)(2) do not prohibit an agency from permitting a price increase (e.g., as prescribed at FAR part 43) to address wage compression impacts of modifying the contract to include the new minimum wage rate of E.O. 14026, if the agency determines such an adjustment will result in better contract performance. The contractor should present to the agency the calculations for those employees separate from the calculations for workers covered by the E.O.

C. New requirements for tipped workers—FAR 22.1902(c) addresses the policies and procedures implemented in accordance with the DOL regulations at 29 CFR 23.240(b) and 23.280 that address the relationship between the E.O. minimum wage and wages of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

D. Dates—Throughout subpart 22.19 and the clause 52.222–55, the January 1, 2015, and January 1, 2016, dates associated with implementation of E.O. 13658 are being replaced with the January 30, 2022, and January 1, 2023, dates associated with implementation of E.O. 14026.

E. Definition of “worker”—Clarification is added to the definition of “worker” at FAR 22.1901 and 52.222–55(a) to explain what it means for a worker to perform on a contract and to perform in connection with a contract. This clarification is consistent with the definition of “worker” in DOL’s final rule implementing E.O. 14026 and the definition of “employee” in FAR subpart 22.21, which implements E.O. 13706, Establishing Paid Sick Leave for Federal Contractors.

F. Definition of “United States”—The definition of “United States” is added to FAR 22.1901, and revised at 52.222–55(a), to include Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf. The expansion of the definition beyond the 50 states and the District of Columbia is consistent with DOL’s final rule implementing E.O. 14026.

G. Revocation of recreational services exemption—Deletions are made throughout subpart 22.19 and the clause 52.222–55 to remove the exemption authorized by E.O. 13838 for seasonal recreational services or seasonal recreational equipment rental. Consistent with E.O. 14026 revoking E.O. 13838, DOL’s implementing regulations at 29 CFR part 23 do not contain the exemption to the minimum wage requirements for seasonal

recreational services or seasonal recreational equipment rental. Recreational services contracts should be modified, similar to other existing contracts, according to the Applicability section of this rule.

H. *New title for the clause*—The title of the clause has been changed to emphasize that, although using the same clause number, the clause implements a different Executive Order.

I. *Conforming changes*—Minor conforming changes are made to the clauses at FAR 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services; 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services); 52.222–62, Paid Sick Leave Under Executive Order 13706; and 52.244–6, Subcontracts for Commercial Products and Commercial Services.

J. *Option exercise*—DOL's final rule implementing E.O. 14026 included a definition for "new contract" at 29 CFR 23.20. The FAR rule did not adopt this definition. However, when FAR rules apply to existing contracts, application is addressed in the Effective Date/Applicability section of the preamble, not in the Code of Federal Regulations. Treatment of bilateral modifications to existing contracts is addressed in the Applicability section at the beginning of this preamble. As a result, in the Effective Date/Applicability section of the preamble, contracting officers are required to incorporate the clause 52.222–55 into existing contracts during option exercise via a bilateral modification. If the contracting officer is unable to incorporate the clause 52.222–55 in an existing contract during option exercise via a bilateral modification, then the contracting officer shall decline to extend, renew, or exercise the option on the existing contract.

K. *Exclusion from 29 CFR part 23*—Section 9(b) of Executive Order 14026 provides that as an "exception" to the general coverage of new contracts, where agencies have issued a solicitation before January 30, 2022, and entered into a new contract resulting from such solicitation within 60 days of such date, agencies are strongly encouraged but not required to ensure that the E.O. 14026 minimum wage rates are paid under the new contract. However, if such contract is later extended or renewed, or an option is subsequently exercised under that contract, the E.O. 14026 minimum wage requirements will apply to that extension, renewal, or option. Accordingly, DOL's final rule included

an exclusion providing that 29 CFR part 23 does not apply to contracts that result from a solicitation issued prior to January 30, 2022, and that are entered into on or between January 30, 2022 and March 30, 2022. Consistent with section 9(b) of the order, the exclusion states that, if such a contract is subsequently extended or renewed, or an option is subsequently exercised under that contract, the Executive order and part 23 would apply to that extension, renewal, or option. The Department noted that this exclusion is only applicable to contracts resulting from solicitations that are issued prior to January 30, 2022, and that are entered into by March 30, 2022. Any covered contract entered into on or after March 31, 2022, will be subject to E.O. 14026 and part 23 regardless of when the solicitation was issued.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or Commercial Services

This rule amends the clause at FAR 52.222–55. As a result of the amendment to the clause 52.222–55, minor conforming changes are also being made to other clauses (see Section II). The clause continues to apply to acquisitions at or below the SAT and to acquisitions for commercial services.

IV. Expected Impact of the Rule

This rule implements the increased minimum wage requirements for Federal contractors in E.O. 14026 and the associated Department of Labor (DOL) implementing regulations at 29 CFR part 23. This rule makes revisions to the existing FAR coverage regarding minimum wage requirements for Federal contractors by—

- Increasing the hourly minimum wage paid by certain Federal contractors to workers performing work on or in connection with covered Federal contracts to \$15.00 per hour, beginning January 30, 2022, and beginning January 1, 2023, and annually thereafter increasing the hourly minimum wage paid by, an amount determined by the Secretary of Labor;

- Referencing DOL's new requirements for tipped workers at 29 CFR part 23, which incorporates the increased hourly minimum cash wage paid to tipped workers as authorized by E.O. 14026;

- Expanding the geographical scope of the minimum wage requirements by defining United States as including specified U.S. territories and possessions; and

- Removing the exemption for seasonal recreational services or seasonal recreational equipment rental from the minimum wage requirements.

These revisions will drive employer costs such as those for regulatory familiarization, implementation, and compliance. These costs may translate into higher contract pricing which results in cost to the taxpayer. These revisions are expected to result in benefits such as improved Government services, increased morale and productivity of contractor staff, and reduced turnover and absenteeism in contractor staff. For more detail on the impacts associated with these revisions, see Section IV of the DOL final rule implementing E.O. 14026 and creating 29 CFR part 23, published at 86 FR 67127, on November 24, 2021, entitled "Increasing the Minimum Wage for Federal Contractors."

The revisions listed above drive costs and benefits that are the result of the implementation of DOL's final rule in the FAR. Therefore, those costs and benefits are attributable to the DOL final rule. The impacts of this FAR rule that are attributable to the FAR are no more than de minimis.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the "Submission of Federal Rules Under the Congressional Review Act" form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because the Department of Labor has determined that their rule would not have a significant impact on a substantial number of small entities. DoD, GSA, and NASA agree with this assessment. DOL has strived to have the final rule implement the minimum wage requirements of E.O. 14026 with the least possible burden for small entities. The DOL final rule provides several efficient and informal alternative dispute mechanisms to resolve concerns about contractor compliance, including having the contracting agency provide compliance assistance to the contractor about the minimum wage requirements and allowing for DOL to attempt an informal conciliation of complaints instead of engaging in extensive investigations. These tools will provide contractors with an opportunity to resolve inadvertent errors rapidly and before significant liabilities develop. Additionally, much of the cost associated with the DOL final rule will either be reimbursed by the Federal Government or offset by productivity gains and cost-savings. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

This rule amends the Federal Acquisition Regulation (FAR) to implement an Executive Order, which increases the minimum wage for Federal contractors, and associated Department of Labor (DOL) regulatory requirements at 29 CFR part 23.

The objective of this rule is to implement Executive Order (E.O.) 14026, Increasing the Minimum Wage for Federal Contractors, signed April 27, 2021, and published in the **Federal Register** at 86 FR 22835, on April 30, 2021, as well as the associated DOL regulatory requirements at 29 CFR part 23. In accordance with E.O. 14026 and DOL regulations at 29 CFR part 23, this rule updates the FAR by—

- Increasing the hourly minimum wage paid by certain Federal contractors to workers performing work on or in connection with covered Federal contracts to \$15.00 per hour, beginning January 30, 2022, and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor;
- Referencing DOL's new requirements for tipped workers at 29 CFR part 23, which incorporates the increased hourly minimum cash wage

paid to tipped workers as authorized by E.O. 14026;

- Expanding the geographical scope of the minimum wage requirements by defining United States as including U.S. territories and possessions; and
- Removing the exemption for seasonal recreational services or seasonal recreational equipment rental from the minimum wage requirements.

This rule applies to contracts awarded under FAR procedures and covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67; see FAR subpart 22.10), including contracts for the acquisition of commercial services, and the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31 subchapter IV; see FAR subpart 22.4). The minimum wage requirements of E.O. 14026 are implemented through revised FAR clause 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026, which is prescribed for solicitations and contracts that include the clause at 52.222–6, Construction Wage Rate Requirements, or 52.222–41, Service Contract Labor Standards, where work is to be performed, in whole or in part, in the United States. FAR clause 52.222–55 flows down to covered subcontractors at all tiers.

As already specified in the existing FAR at 22.1903(b)(2), this rule does not apply to—

- Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., *i.e.*, those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;
- Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—
 - Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a);
 - Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b); and
 - Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

Small businesses in the service or construction industry with FAR-based contracts or subcontracts subject to revised FAR clause 52.222–55 will be impacted unless an exclusion listed above applies. The rule will require these contractors and subcontractors to raise their employees' minimum hourly rate to \$15.00 per hour, beginning January 30, 2022, then annually adjust it thereafter, if necessary, based on the annual minimum wage rate determined by the DOL.

Data available through the Federal Procurement Data System (FPDS) for fiscal year 2020 reveals 21,895 contracts were awarded for services which contained the clause at 52.222–41, Labor Standards, or for construction which contained the clause at 52.222–6, Construction Wage Rate Requirements, to 11,820 unique small businesses.

Subcontract data is available from the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at www.USASpending.gov. However, this system does not distinguish small businesses from other than small businesses and the data does not separate out construction and services subject to the minimum wage requirements. Data for fiscal year 2020 show there were a total of 79,218 subcontracts for services and construction reported; these subcontracts were awarded to 20,120 unique entities. For estimating purposes, DoD, GSA, and NASA assumed that 20 percent of subcontracts have a second-tier subcontractor, 10 percent of second-tier subcontractors have a third-tier subcontractor, and 5 percent of third-tier subcontractors have a fourth-tier subcontractor. This calculation estimates the total number of unique subcontractors is 24,567. However, since the FSRS data does not distinguish small businesses from other than small businesses, products from services, or professional services from those services subject to the minimum wage requirements, this number is an overestimate of the small entities to which this rule will apply.

The DOL noted in their final rule (86 FR 67126 at 67193) that the rule did not impose any additional notice or recordkeeping requirements on contractors, and therefore, the burden for complying with the recordkeeping requirements was not adjusted. However, DOL submitted a revised information collection request to OMB to revise the existing information collection for control number 1235–0018 to incorporate the recordkeeping regulatory citations in its final rule.

The Department of Labor found that, “Small entities will have regulatory familiarization, implementation, and payroll costs (*i.e.*, transfers). Average Year 1 costs and transfers per small contractor with affected employees range from \$4,578 to \$14,221 by industry. Additionally, much of this cost will either be reimbursed by the Federal Government or offset by productivity gains and cost-savings. Therefore, the Department believes this final rule will not have a significant impact on small businesses.”

Section 1 of E.O. 14026 explains that raising the minimum wage enhances worker productivity and generates higher-quality work by boosting workers’ health, morale, effort; reducing absenteeism and turnover; and lowering supervisory and training costs.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA were unable to identify any significant alternatives that would meet the requirements of E.O. 14026 and DOL regulation.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2021–014), in correspondence.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) applies to the information collection described in this rule; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved for the DOL regulations under OMB Control Number 1235–0018, Records to be Kept by Employers—Fair Labor Standards Act.

IX. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate

this interim rule without prior opportunity for public comment. This action is necessary because Executive Order 14026, Increasing the Minimum Wage for Federal Contractors, requires DoD, GSA, and NASA to issue regulations within 60 days of the Department of Labor (DOL) rule and to include a clause that specifies the new \$15.00 per hour minimum wage will be paid to workers performing on or in connection with covered contracts beginning January 30, 2022. The DOL final rule was published November 24, 2021. The DOL rule was published for public comment prior to publication of the final rule. This action is largely a ministerial implementation of the DOL final rule at 86 FR 67126; therefore, prior notice and comment is unnecessary given that DOL took full comment. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), the Department of Defense, General Services Administration, and National Aeronautics and Space Administration will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 22, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 22, and 52 as set forth below:

- 1. The authority citation for 48 CFR parts 2, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

- 2. Amend section 2.101, in paragraph (b)(2), in the definition of “United States” by—
 - a. Redesignating paragraphs (8) through (11) as paragraphs (9) through (12);
 - b. Adding a new paragraph (8); and
 - c. Removing from the newly redesignated paragraph (11) the word “Part” and adding “part” in its place.

The addition reads as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

United States * * *

(8) For use in subpart 22.19, see the definition at 22.1901.

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PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

- 3. Revise section 22.403–4 to read as follows:

22.403–4 Executive Orders 13658 and 14026.

Executive Order (E.O.) 13658 established minimum wages for certain workers at \$10.10 per hour. The E.O. 13658 rate has increased each year since 2015, rising to \$11.25 on January 1, 2022. As of January 30, 2022, E.O. 13658 is superseded by E.O. 14026 to the extent that it is inconsistent with E.O. 14026; the minimum wage rate for certain workers is increased to \$15.00 per hour. The wage rate is subject to annual increases by an amount determined by the Secretary of Labor. See subpart 22.19. The clause at 52.222–55, Minimum Wages for Contractor Workers under Executive Order 14026, requires the E.O. 14026 minimum wage rate to be paid if it is higher than other minimum wage rates, such as the subpart 22.4 statutory wage determination amount.

- 4. Revise section 22.1002–5 to read as follows:

22.1002–5 Executive Orders 13658 and 14026.

Executive Order (E.O.) 13658 established minimum wages for certain workers at \$10.10 per hour. The E.O. 13658 rate has increased each year since 2015, rising to \$11.25 on January 1, 2022. As of January 30, 2022, E.O. 13658 is superseded by E.O. 14026 to the extent that it is inconsistent with E.O. 14026; the minimum wage rate for certain workers is increased to \$15.00 per hour. The wage rate is subject to annual increases by an amount determined by the Secretary of Labor. See subpart 22.19. The clause at 52.222–55, Minimum Wages for Contractor Workers under Executive Order 14026, requires the E.O. 14026 minimum wage rate to be paid if it is higher than other minimum wage rates, such as the subpart 22.10 statutory wage determination amount.

Subpart 22.19—Increasing the Minimum Wage for Contractors

- 5. Revise the heading of subpart 22.19 to read as set forth above.

- 6. Revise section 22.1900 to read as follows:

22.1900 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order (E.O.) 14026, Increasing the

Minimum Wage for Federal Contractors, which requires minimum wages for certain workers; Department of Labor (DOL) implementing regulations are found at 29 CFR part 23. This E.O. superseded E.O. 13658; DOL implementing regulations for E.O. 13658 are found at 29 CFR part 10.

- 7. Amend section 22.1901 by—
- a. Removing the definitions of “Seasonal recreational equipment rental” and “Seasonal recreational services”;
- b. Adding in alphabetical order a definition for “United States”; and
- c. Revising the definition of “Worker”.

The addition and revision read as follows:

22.1901 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*).

Worker (in accordance with 29 CFR 23.20)—

(1)(i) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 14026, and

(A) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV),

(B) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541,

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(ii) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to

special certificates issued under 29 U.S.C. 214(c).

(iii) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor’s Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)(i) A worker performs *on* a contract if the worker directly performs the specific services called for by the contract; and

(ii) A worker performs *in connection with* a contract if the worker’s work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

- 8. Amend section 22.1902 by—
- a. Revising paragraph (a);
- b. Removing from paragraph (b)(1) the phrase “ordinance establishing” and adding “ordinance or any applicable contract establishing” in its place; and
- c. Removing from paragraph (c) the phrase “29 CFR 10.24(b) and 10.28” and adding “29 CFR 23.240(b) and 23.280” in its place.

The revision reads as follows:

22.1902 Policy.

(a) Pursuant to Executive Order 14026, the minimum hourly wage rate required to be paid to workers performing on, or in connection with, contracts and subcontracts subject to this subpart is—

(1) At least \$15.00 per hour beginning January 30, 2022; and

(2) Beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor. The Administrator of the Wage and Hour Division (the Administrator) will notify the public of the new E.O. minimum wage rate at least 90 days before it is to take effect. (See 22.1904.)

* * * * *

■ 9. Amend section 22.1903 by—

- a. Revising paragraph (a);
- b. Removing from paragraph (b)(2)(ii)(C) the phrase “29 CFR part 541); or” and adding “29 CFR part 541).” in its place; and
- c. Removing paragraph (b)(2)(iii).

The revision reads as follows:

22.1903 Applicability.

(a) This subpart applies to contracts covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67, formerly known as the Service Contract Act, subpart 22.10), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, Subchapter IV, formerly known as the Davis Bacon Act, subpart 22.4), that require performance in whole or in part within the United States (the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*)). When performance is in part within and in part outside the United States, this subpart applies to the part of the contract that is performed within the United States.

* * * * *

■ 10. Amend section 22.1904 by—

- a. Removing from paragraph (a) introductory text the date “January 1, 2016” and adding “January 30, 2022” in its place; and
- b. Revising the table in paragraph (b)(2).

The revision reads as follows:

22.1904 Annual Executive Order Minimum Wage Rate.

* * * * *

- (b) * * * *
- (2) * * *

(i) Example 1—New E.O. wage rate is \$16.10.

Previous E.O. wage rate is \$15.70. The current service or construction wage determination rate applicable to this worker under the contract is \$15.75. The actual wage currently paid to the worker is \$15.80.	Analysis: The calculation is \$16.10 – \$15.80 = \$.30. The price adjustment for this worker is \$.30.
--	--

(ii) Example 2—New E.O. wage rate is \$15.50.

Previous E.O. wage rate is \$15.10. The current service or construction wage determination rate applicable to this worker under the contract is \$15.75. The actual wage currently paid to the worker is \$15.80.	Analysis: The calculation is \$15.50 – \$15.80 = –\$.30. There is no price adjustment for this worker.
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* * * * *

22.1905 [Amended]

- 11. Amend section 22.1905 by—
a. Removing from paragraph (a)(1) the phrase “29 CFR part 10” and adding “29 CFR part 10 or part 23” in its place;
b. Removing from paragraph (a)(3) the phrase “Minimum Wages Under Executive Order 13658” and adding “Minimum Wages for Contractor Workers Under Executive Order 14026” in its place;
c. Revising paragraph (b)(3)(iii);
d. Removing from paragraph (c) the phrase “29 CFR part 10.43” and adding “29 CFR part 23.430” in its place;
e. Revising paragraphs (d)(2) and (d)(3)(i); and
f. Removing from paragraph (d)(4) the phrase “which the E.O. applies” and adding “which E.O. 14026 applies” in its place.

The revisions read as follows:

22.1905 Enforcement of Executive Order Minimum Wage Requirements.

* * * * *

- (b) * * *
(3) * * *

(iii) Evidence that clause 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026, (or its predecessor for complaints under 29 CFR part 10) was included in the contract;

* * * * *

- (d) * * *

(2) Antiretaliation. When a contractor has been found to have violated paragraph (i) of clause 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026, the Administrator may provide for relief to the worker in accordance with 29 CFR 23.440.

- (3) * * *

(i) The Department of Labor may initiate debarment proceedings under 29 CFR 23.520 whenever a contractor is found to have disregarded its obligations under 29 CFR part 23.

* * * * *

22.1906 [Amended]

- 12. Amend section 22.1906 by—
a. Removing the phrase “Minimum Wages Under Executive Order 13658” and adding “Minimum Wages for Contractor Workers Under Executive Order 14026” in its place; and
b. Removing the phrase “(the 50 States and the District of Columbia)”.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 13. Amend section 52.212–5 by—
a. Revising the date of the clause;

- b. Revising paragraph (c)(7);
c. Removing from paragraph (c)(8) “JAN 2017” and adding “JAN 2022” in its place;
d. Revising paragraph (e)(1)(xvii);
e. Removing from paragraph (e)(1)(xviii) “JAN 2017” and adding “JAN 2022” in its place; and
f. In Alternate II:
i. Revising the date of the Alternate;
ii. Revising paragraph (e)(1)(ii)(P); and
iii. Removing from paragraph (e)(1)(ii)(Q) “JAN 2017” and adding “JAN 2022” in its place.

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (JAN 2022)

* * * * *

- (c) * * *

(7) 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

* * * * *

- (e)(1) * * *

* * * * *

(xvii) 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

* * * * *

Alternate II (JAN 2022). * * *

- (e)(1) * * *

- (ii) * * *

(P) 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

* * * * *

- 14. Amend section 52.213–4 by—
a. Revising the date of the clause;
b. Revising paragraphs (a)(2)(viii) and (b)(1)(ix); and
c. Removing from paragraph (b)(1)(x) the phrase “(JAN 2017)” and adding “(JAN 2022)” in its place.

The revisions read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services). (JAN 2022)

- (a) * * *

- (2) * * *

(viii) 52.244–6, Subcontracts for Commercial Products and Commercial Services (JAN 2022).

* * * * *

- (b) * * *

- (1) * * *

(ix) 52.222–55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022) (Applies when 52.222–6 or 52.222–41 are in the contract and performance in whole or in part is in the United States (the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.)).

* * * * *

- 15. Amend section 52.222–55 by—
a. Revising the section heading, the clause heading, and the date of the clause;

- b. In paragraph (a)—

i. Removing the definitions of “Seasonal recreational equipment rental” and “Seasonal recreational services”;

ii. Revising the definition of “United States”;

iii. In the definition of “Worker”—

A. Redesignating paragraph (1) introductory text as (1)(i), redesignating paragraphs (1)(i) through (iii) as paragraphs (1)(i)(A) through (C), and redesignating paragraphs (2) and (3) as paragraphs (1)(ii) and (iii);

B. Removing from the newly redesignated paragraph (1)(i) introductory text the phrase “13658” and adding “14026” in its place; and

C. Adding a new paragraph (2);

c. Removing from paragraph (b)(1) the phrases “\$10.10” and “January 1, 2015” and adding “\$15.00” and “January 30, 2022” in their places, respectively;

d. Removing from paragraph (b)(2) the date “January 1, 2016” and adding “January 1, 2023” in its place;

e. Removing from paragraph (b)(6) the phrase “29 CFR 10.23” and adding “29 CFR 23.230” in its place;

f. Removing from paragraph (b)(8) the phrase “ordinance establishing a minimum wage higher than the E.O.” and adding “ordinance or any applicable contract establishing a minimum wage higher than the E.O. 14026” in its place;

g. Removing from paragraph (b)(10) the phrase “29 CFR 10.24(b) and 10.28” and adding “29 CFR 23.240(b) and 23.280” in its place;

h. Removing from paragraph (c)(2)(ii)(C) the phrase “29 CFR part 541); or” and adding “29 CFR part 541.” in its place;

- i. Removing paragraph (c)(2)(iii);
- j. Removing from paragraph (d) the phrase “*www.dol.gov/whd/govcontracts*” and adding “*www.dol.gov/agencies/whd/government-contracts*” in its place;
- k. Removing from paragraph (e)(4) the phrases “29 CFR 10.26” and adding “29 CFR 23.260” in its place; and
- l. Removing from paragraph (h) the phrase “29 CFR 10.51” and “29 CFR part 10” and adding “29 CFR 23.510” and “29 CFR part 23” in their places, respectively.

The revisions and additions read as follows:

52.222–55 Minimum Wages for Contractor Workers Under Executive Order 14026.
* * * * *

Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022)

(a) * * *

“United States” means the 50 states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American

Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*).
“Worker”—

* * * * *

(2)(i) A worker performs *on* a contract if the worker directly performs the specific services called for by the contract; and

(ii) A worker performs *in connection with* a contract if the worker’s work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

* * * * *

- 16. Amend section 52.222–62 by—
- a. Revising the date of the clause; and
- b. Removing from paragraph (i)(6) the phrase “E.O. 13658” and adding “E.O. 14026” in its place.

The revision reads as follows:

52.222–62 Paid Sick Leave Under Executive Order 13706.

* * * * *

Paid Sick Leave Under Executive Order 13706 (JAN 2022)

* * * * *

- 17. Amend section 52.244–6 by—
- a. Revising the date of the clause;
- b. Removing from paragraph (c)(1)(xv) the phrase “Wages under Executive Order 13658” and adding “Wages for Contractor Workers under Executive Order 14026” in its place; and
- c. Removing from paragraph (c)(1)(xvi) the phrase “(JAN 2017)” and adding “(JAN 2022)” in its place.

The revision reads as follows:

52.244–6 Subcontracts for Commercial Products and Commercial Services.

* * * * *

Subcontracts for Commercial Products and Commercial Services (JAN 2022)

* * * * *

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