§ 8.17 Decision of the Board.

(a) Unless the petitioner consents to disposition by a single member, decisions of the Board shall be by majority vote.

(b) Where petitioner consents to disposition by a single member, other interested parties shall have an opportunity to oppose such disposition, and such opposition shall be taken into consideration by the Board in determining whether the decision shall be by a single member or majority vote.

§ 8.18 Public information.

Subject to the provisions of part 70 of this title, all papers and documents made a part of the official record in the proceedings of the Board and decisions of the Board shall be made available for public inspection during usual business hours at the Office of the Administrative Review Board, U.S. Department of Labor, Washington, DC 20210.

§ 8.19 Equal Access to Justice Act.

Proceedings under the Service Contract Act and the Contract Work Hours and Safety Standards Act are not subject to the Equal Access to Justice Act (Pub. L. 96–481). Accordingly, in any proceeding conducted pursuant to the provisions of this part 8, the Board shall have no power or authority to award attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act.

PART 9 [RESERVED]

PART 10—ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS

Subpart A—General

Subpart B—Federal Government Requirements

Subpart C—Contractor Requirements

Subpart D—Enforcement

Subpart E—Administrative Proceedings

AUTHORITY: 5 U.S.C. 301; section 4, E.O. 13658, 79 FR 9851, 3 CFR, 2014 Comp., p. 219; section 4, E.O. 14026, 86 FR 22835; Secretary of Labor's Order No. 01–2014, 79 FR 77527.

SOURCE: 79 FR 60721, Oct. 7, 2014, unless otherwise noted.

Subpart A—General

§ 10.1 Purpose and scope.

(a) *Purpose.* This part contains the Department of Labor's rules relating to the administration of Executive Order 13658 (Executive Order or the Order), ''Establishing a Minimum Wage for Contractors,'' and implements the enforcement provisions of the Executive Order. The Executive Order assigns responsibility for investigating potential violations of and obtaining compliance with the Executive Order to the Department of Labor. The Executive Order states that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts

with sources that adequately compensate their workers. There is evidence that raising the pay of low-wage workers can increase their morale and productivity and the quality of their work, lower turnover and its accompanying costs, and reduce supervisory costs. The Executive Order thus states that cost savings and quality improvements in the work performed by parties who contract with the Federal Government will lead to improved economy and efficiency in Government procurement. Executive Order 13658 therefore generally requires that the hourly minimum wage paid by contractors to workers performing on or in connection with covered contracts with the Federal Government shall be at least:

(1) $10.10 per hour, beginning January 1, 2015; and

(2) An amount determined by the Secretary of Labor, beginning January 1, 2016, and annually thereafter.

(b) *Policy*. Executive Order 13658 sets forth a general position of the Federal Government that increasing the hourly minimum wage paid by Federal contractors to $10.10 will increase efficiency and cost savings for the Federal Government. The Executive Order therefore establishes a minimum wage requirement for Federal contractors and subcontractors. The Order provides that executive departments and agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations (collectively referred to as ''contracts'') include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), in the performance of the contract or any subcontract thereunder, shall be at least:

(1) $10.10 per hour beginning January 1, 2015; and

(2) Beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary pursuant to the Order. Nothing in Executive Order 13658 or this part shall excuse noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Order.

(c) *Scope*. Neither Executive Order 13658 nor this part creates or changes any rights under the Contract Disputes Act or any private right of action. The Executive Order provides that disputes regarding whether a contractor has paid the minimum wages prescribed by the Order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued under the Order. However, nothing in the Order or this part is intended to limit or preclude a civil action under the False Claims Act, 31 U.S.C. 3730, or criminal prosecution under 18 U.S.C. 1001. The Order similarly does not preclude judicial review of final decisions by the Secretary in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq*.

(d) *Relation to Executive Order 14026*. As of January 30, 2022, Executive Order 13658 is superseded to the extent that it is inconsistent with Executive Order 14026 of April 27, 2021, ''Increasing the Minimum Wage for Federal Contractors,'' and its implementing regulations at 29 CFR part 23. A covered contract that is entered into on or after January 30, 2022, or that is renewed or extended (pursuant to an option or otherwise) on or after January 30, 2022, is generally subject to the higher minimum wage rate established by Executive Order 14026 and its regulations at 29 CFR part 23.

[79 FR 60721, Oct. 7, 2014, as amended at 86 FR 67224, Nov. 24, 2021]

§ 10.2 Definitions.

For purposes of this part:

Administrative Review Board (ARB or Board) means the Administrative Review Board, U.S. Department of Labor.

Administrator means the Administrator of the Wage and Hour Division and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

Agency head means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency or any persons authorized to act on behalf of the agency head.

Concessions contract or *contract for concessions* means a contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services. The term *concessions contract* includes but is not limited to a contract the principal purpose of which is to furnish food, lodging, automobile fuel, souvenirs, newspaper stands, and/or recreational equipment, regardless of whether the services are of direct benefit to the Government, its personnel, or the general public.

Contract or *contract-like instrument* means an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term *contract* includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term *contract* shall be interpreted broadly as to include, but not be limited to, any contract that may be consistent with the definition provided in the Federal Acquisition Regulation (FAR) or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. The term *contract* includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not otherwise subject to the Service Contract Act, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.

Contracting officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. This term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

Contractor means any individual or other legal entity that is awarded a Federal Government contract or subcontract under a Federal Government contract. The term *contractor* refers to both a prime contractor and all of its subcontractors of any tier on a contract with the Federal Government. The term *contractor* includes lessors and lessees, as well as employers of workers performing on covered Federal contracts whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c). The term *employer* is used interchangeably with the terms *contractor* and *subcontractor* in various sections of this part. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers, or joint employers for purposes of compliance with the provisions of the Executive Order.

Davis-Bacon Act means the Davis-Bacon Act of 1931, as amended, 40 U.S.C. 3141 *et seq.*, and its implementing regulations.

Executive departments and agencies means executive departments, military departments, or any independent establishments within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

Executive Order minimum wage means, for purposes of Executive Order 13658, a wage that is at least:

(1) $10.10 per hour beginning January 1, 2015; and

(2) Beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary pursuant to section 2 of the Executive Order.

Fair Labor Standards Act (FLSA) means the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.*, and its implementing regulations.

Federal Government means an agency or instrumentality of the United States that enters into a contract pursuant to authority derived from the Constitution or the laws of the United States. For purposes of the Executive Order and this part, this definition does not include the District of Columbia, any Territory or possession of the United States, or any independent regulatory agency within the meaning of 44 U.S.C. 3502(5).

Independent agencies means independent regulatory agencies within the meaning of 44 U.S.C. 3502(5).

New contract means a contract that results from a solicitation issued on or between January 1, 2015 and January 29, 2022, or a contract that is awarded outside the solicitation process on or between January 1, 2015 and January 29, 2022. This term includes both new contracts and replacements for expiring contracts. It does not apply to the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government. For purposes of the Executive Order, a contract that is entered into prior to January 1, 2015 will constitute a new contract if, through bilateral negotiation, on or between January 1, 2015 and January 29, 2022:

(1) The contract is renewed;

(2) The contract is extended, unless the extension is made pursuant to a term in the contract as of December 31, 2014, providing for a short-term limited extension; or

(3) The contract is amended pursuant to a modification that is outside the scope of the contract.

Office of Administrative Law Judges means the Office of Administrative Law Judges, U.S. Department of Labor.

Option means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

Procurement contract for construction means a procurement contract for the construction, alteration, or repair (including painting and decorating) of public buildings or public works and which requires or involves the employment of mechanics or laborers, and any subcontract of any tier thereunder. The term *procurement contract for construction* includes any contract subject to the provisions of the Davis-Bacon Act, as amended, and its implementing regulations.

Procurement contract for services means a procurement contract the principal purpose of which is to furnish services in the United States through the use of service employees, and any subcontract of any tier thereunder. The term *procurement contract for services* includes any contract subject to the provisions of the Service Contract Act, as amended, and its implementing regulations.

Service Contract Act means the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 *et seq.*, and its implementing regulations.

Solicitation means any request to submit offers, bids, or quotations to the Federal Government.

Tipped employee means any employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips. For purposes of the Executive Order, a worker performing on or in connection with a contract covered by the Executive Order who meets this definition is a tipped employee.

United States means the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations of which all or substantially all of the stock is owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities. When used in a geographic sense, the *United States*

means the 50 States and the District of Columbia.

Wage and Hour Division means the Wage and Hour Division, U.S. Department of Labor.

Wage determination includes any determination of minimum hourly wage rates or fringe benefits made by the Secretary of Labor pursuant to the provisions of the Service Contract Act or the Davis-Bacon Act. This term includes the original determination and any subsequent determinations modifying, superseding, correcting, or otherwise changing the provisions of the original determination.

Worker means any person engaged in performing work on or in connection with a contract covered by the Executive Order, and whose wages under such contract are governed by the Fair Labor Standards Act, the Service Contract Act, or the Davis-Bacon Act, other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541, regardless of the contractual relationship alleged to exist between the individual and the employer. The term *worker* includes workers performing on or in connection with a covered contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), as well as any person working on or in connection with a covered contract and individually registered in a bona fide apprenticeship or training program registered with the U.S. Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

[79 FR 60721, Oct. 7, 2014, as amended at 86 FR 67224, Nov. 24, 2021]

§ 10.3 Coverage.

(a) This part applies to any new contract with the Federal Government, unless excluded by § 10.4, provided that:

(1)(i) It is a procurement contract for construction covered by the Davis-Bacon Act;

(ii) It is a contract for services covered by the Service Contract Act;

(iii) It is a contract for concessions, including any concessions contract excluded from coverage under the Service Contract Act by Department of Labor regulations at 29 CFR 4.133(b); or

(iv) It is a contract entered into 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; and

(2) The wages of workers under such contract are governed by the Fair Labor Standards Act, the Service Contract Act, or the Davis-Bacon Act.

(b) For contracts covered by the Service Contract Act or the Davis-Bacon Act, this part applies to prime contracts only at the thresholds specified in those statutes. For procurement contracts where workers' wages are governed by the Fair Labor Standards Act, this part applies when the prime contract exceeds the micro-purchase threshold, as defined in 41 U.S.C. 1902(a).

(c) This part only applies to contracts with the Federal Government requiring performance in whole or in part within the United States. If a contract with the Federal Government is to be performed in part within and in part outside the United States and is otherwise covered by the Executive Order and this part, the minimum wage requirements of the Order and this part would apply with respect to that part of the contract that is performed within the United States.

(d) This part does not apply to contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government that are subject to the Walsh-Healey Public Contracts Act, 41 U.S.C. 6501 *et seq.*

§ 10.4 Exclusions.

(a) *Grants.* The requirements of this part do not apply to grants within the meaning of the Federal Grant and Cooperative Agreement Act, as amended, 31 U.S.C. 6301 *et seq.*

(b) *Contracts and agreements with and grants to Indian Tribes.* This part does not apply to contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450 *et seq.*

(c) *Procurement contracts for construction that are excluded from coverage of*

the Davis-Bacon Act. Procurement contracts for construction that are not covered by the Davis-Bacon Act are not subject to this part.

(d) *Contracts for services that are exempted from coverage under the Service Contract Act.* Service contracts, except for those expressly covered by §10.3(a)(1)(iii) or (iv), that are exempt from coverage of the Service Contract Act pursuant to its statutory language at 41 U.S.C. 6702(b) or its implementing regulations, including those at 29 CFR 4.115 through 4.122 and 29 CFR 4.123(d) and(e), are not subject to this part.

(e) *Employees who are exempt from the minimum wage requirements of the Fair Labor Standards Act under 29 U.S.C. 213(a) and 214(a)–(b).* Except for workers who are otherwise covered by the Davis-Bacon Act or the Service Contract Act, this part does not apply to employees who are not entitled to the minimum wage set forth at 29 U.S.C. 206(a)(1) of the Fair Labor Standards Act pursuant to 29 U.S.C. 213(a) and 214(a)–(b). Pursuant to this exclusion, individuals that are not subject to the requirements of this part include but are not limited to:

(1) *Learners, apprentices, or messengers.* This part does not apply to learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a).

(2) *Students.* This part does not apply to student workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b).

(3) *Individuals employed in a bona fide executive, administrative, or professional capacity.* This part does not apply to workers who are employed by Federal contractors in a bona fide executive, administrative, or professional capacity, as those terms are defined and delimited in 29 CFR part 541.

(f) *FLSA-covered workers performing in connection with covered contracts for less than 20 percent of their work hours in a given workweek.* This part does not apply to FLSA-covered workers performing in connection with covered contracts, *i.e.*, those workers who perform work duties necessary to the performance of the contract but who are not directly engaged in performing the specific work called for by the contract, that spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts. This exclusion is inapplicable to covered workers performing on covered contracts, *i.e.*, those workers directly engaged in performing the specific work called for by the contract.

[79 FR 60721, Oct. 7, 2014, as amended at 83 FR 48542, Sept. 26, 2018; 86 FR 67224, Nov. 24, 2021]

§10.5 Minimum wage for Federal contractors and subcontractors.

(a) *General.* Pursuant to Executive Order 13658, the minimum hourly wage rate required to be paid to workers performing on or in connection with covered contracts with the Federal Government is at least:

(1) $10.10 per hour beginning January 1, 2015; and

(2) Beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary pursuant to section 2 of Executive Order 13658. In accordance with section 2 of the Order, the Secretary will determine the applicable minimum wage rate to be paid to workers on covered contracts on an annual basis beginning at least 90 days before any new minimum wage is to take effect.

(b) *Method for determining the applicable Executive Order minimum wage for workers.* The minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), in the performance of a covered contract shall be at least:

(1) $10.10 per hour beginning January 1, 2015; and

(2) An amount determined by the Secretary, beginning January 1, 2016, and annually thereafter. The applicable minimum wage determined for each calendar year by the Secretary shall be:

(i) Not less than the amount in effect on the date of such determination;

(ii) Increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics; and

(iii) Rounded to the nearest multiple of $0.05. In calculating the annual percentage increase in the Consumer Price Index for purposes of this section, the Secretary shall compare such Consumer Price Index for the most recent year available with the Consumer Price Index for the preceding year.

(c) *Relation to other laws.* Nothing in the Executive Order or this part shall excuse noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Executive Order and this part. A covered contract that is entered into on or after January 30, 2022, or that is renewed or extended (pursuant to an option or otherwise) on or after January 30, 2022, is generally subject to the higher minimum wage rate established by Executive Order 14026 of April 27, 2021, ''Increasing the Minimum Wage for Federal Contractors,'' and its regulations at 29 CFR part 23.

[79 FR 60721, Oct. 7, 2014, as amended at 86 FR 67224, Nov. 24, 2021]

§ 10.6 Antiretaliation.

It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or this part, or has testified or is about to testify in any such proceeding.

§ 10.7 Waiver of rights.

Workers cannot waive, nor may contractors induce workers to waive, their rights under Executive Order 13658 or this part.

Subpart B—Federal Government Requirements

§ 10.11 Contracting agency requirements.

(a) *Contract clause.* The contracting agency shall include the Executive Order minimum wage contract clause set forth in appendix A of this part in all covered contracts and solicitations for such contracts, as described in § 10.3, except for procurement contracts subject to the FAR. The required contract clause directs, as a condition of payment, that all workers performing work on or in connection with covered contracts must be paid the applicable, currently effective minimum wage under Executive Order 13658 and § 10.5. For procurement contracts subject to the FAR, contracting agencies must use the clause set forth in the FAR developed to implement this rule. Such clause will accomplish the same purposes as the clause set forth in Appendix A and be consistent with the requirements set forth in this rule.

(b) *Failure to include the contract clause.* Where the Department or the contracting agency discovers or determines, whether before or subsequent to a contract award, that a contracting agency made an erroneous determination that Executive Order 13658 or this part did not apply to a particular contract and/or failed to include the applicable contract clause in a contract to which the Executive Order applies, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department of Labor, shall incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation and termination).

(c) *Withholding.* A contracting officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under the covered contract or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by the Executive Order. In the event of failure to pay any covered workers all or part of the wages due under Executive Order 13658, the agency may, after authorization or by direction of the Department

of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of Executive Order 13658 may be grounds for termination of the right to proceed with the contract work. In such event, the contracting agency may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(d) *Actions on complaints*—(1) *Reporting*—(i) *Reporting time frame.* The contracting agency shall forward all information listed in paragraph (d)(1)(ii) of this section to the Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210 within 14 calendar days of receipt of a complaint alleging contractor noncompliance with the Executive Order or this part or within 14 calendar days of being contacted by the Wage and Hour Division regarding any such complaint.

(ii) *Report contents.* The contracting agency shall forward to the Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210 any:

(A) Complaint of contractor noncompliance with Executive Order 13658 or this part;

(B) Available statements by the worker, contractor, or any other person regarding the alleged violation;

(C) Evidence that the Executive Order minimum wage contract clause was included in the contract;

(D) Information concerning known settlement negotiations between the parties, if applicable; and

(E) Any other relevant facts known to the contracting agency or other information requested by the Wage and Hour Division.

(2) [Reserved]

§ 10.12 Department of Labor requirements.

(a) *In general.* The Executive Order minimum wage applicable from January 1, 2015 through December 31, 2015 is $10.10 per hour. The Secretary will determine the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis, beginning January 1, 2016.

(b) *Method for determining the applicable Executive Order minimum wage.* The Secretary will determine the applicable minimum wage under the Executive Order, beginning January 1, 2016, by using the methodology set forth in § 10.5(b).

(c) *Notice.* (1) The Administrator will notify the public of the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis at least 90 days before any new minimum wage is to take effect.

(2) *Method of notification*—(i) FEDERAL REGISTER. The Administrator will publish a notice in the FEDERAL REGISTER stating the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis at least 90 days before any new minimum wage is to take effect.

(ii) *Wage Determinations OnLine Web site.* The Administrator will publish and maintain on Wage Determinations OnLine (WDOL), *http://www.wdol.gov*, or any successor site, the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts.

(iii) *Wage Determinations.* The Administrator will publish a prominent general notice on all wage determinations issued under the Davis-Bacon Act and the Service Contract Act stating the Executive Order minimum wage and that the Executive Order minimum wage applies to all workers performing on or in connection with such contracts whose wages are governed by the Fair Labor Standards Act, the Davis-Bacon Act, and the Service Contract Act. The Administrator will update this general notice on all such wage determinations annually.

(iv) *Other means as appropriate.* The Administrator may publish the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis at least 90 days before any such new minimum wage is to take effect in any other media that the Administrator deems appropriate.

(d) *Notification to a contractor of the withholding of funds.* If the Administrator requests that a contracting agency withhold funds from a contractor pursuant to §10.11(c), the Administrator and/or contracting agency shall notify the affected prime contractor of the Administrator's withholding request to the contracting agency.

Subpart C—Contractor Requirements

§10.21 Contract clause.

(a) *Contract clause.* The contractor, as a condition of payment, shall abide by the terms of the applicable Executive Order minimum wage contract clause referred to in §10.11(a).

(b) The contractor and any subcontractors shall include in any covered subcontracts the Executive Order minimum wage contract clause referred to in §10.11(a) and shall require, as a condition of payment, that the subcontractor include the minimum wage contract clause in any lower-tier subcontracts. The prime contractor and any upper-tier contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements, whether or not the contract clause was included in the subcontract.

§10.22 Rate of pay.

(a) *General.* The contractor must pay each worker performing work on or in connection with a covered contract no less than the applicable Executive Order minimum wage for all hours worked on or in connection with the covered contract, unless such worker is exempt under §10.4 of this part. In determining whether a worker is performing within the scope of a covered contract, all workers who, on or after the date of award, are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing other duties necessary to the performance of the contract, are thus subject to the Executive Order and this part unless a specific exemption is applicable. Nothing in the Executive Order or these regulations shall excuse noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under Executive Order 13658.

(b) *Workers who receive fringe benefits.* The contractor may not discharge any part of its minimum wage obligation under the Executive Order by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

(c) *Tipped employees.* The contractor may satisfy the wage payment obligation to a tipped employee under the Executive Order through a combination of an hourly cash wage and a credit based on tips received by such employee pursuant to the provisions in §10.28.

§10.23 Deductions.

The contractor may make deductions that reduce a worker's wages below the Executive Order minimum wage rate only if such deduction qualifies as a:

(a) Deduction required by Federal, State, or local law, such as Federal or State withholding of income taxes;

(b) Deduction for payments made to third parties pursuant to court order;

(c) Deduction directed by a voluntary assignment of the worker or his or her authorized representative; or

(d) Deduction for the reasonable cost or fair value, as determined by the Administrator, of furnishing such worker with ''board, lodging, or other facilities,'' as defined in 29 U.S.C. 203(m) and part 531 of this title.

§10.24 Overtime payments.

(a) *General.* The Fair Labor Standards Act and the Contract Work Hours and Safety Standards Act require overtime payment of not less than one and one-half times the regular rate of pay or basic rate of pay for all hours worked over 40 hours in a workweek to covered workers. The regular rate of pay under the Fair Labor Standards Act is generally determined by dividing the worker's total earnings in any workweek by the total number of hours actually worked by the worker in that

workweek for which such compensation was paid.

(b) *Tipped employees.* When overtime is worked by tipped employees who are entitled to overtime pay under the Fair Labor Standards Act and/or the Contract Work Hours and Safety Standards Act, the employees' regular rate of pay includes both the cash wages paid by the employer (*see* §§ 10.22(a) and 10.28(a)(1)) and the amount of any tip credit taken (*see* § 10.28(a)(2)). (*See* part 778 of this title for a detailed discussion of overtime compensation under the Fair Labor Standards Act.) Any tips received by the employee in excess of the tip credit are not included in the regular rate.

§ 10.25 Frequency of pay.

Wage payments to workers shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under Executive Order 13658 may not be of any duration longer than semi-monthly.

§ 10.26 Records to be kept by contractors.

(a) The contractor and each subcontractor performing work subject to Executive Order 13658 shall make and maintain, for three years, records containing the information specified in paragraphs (a)(1) through (6) of this section for each worker and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

(1) Name, address, and social security number of each worker;

(2) The worker's occupation(s) or classification(s);

(3) The rate or rates of wages paid;

(4) The number of daily and weekly hours worked by each worker;

(5) Any deductions made; and

(6) The total wages paid.

(b) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with workers at the worksite during normal working hours.

(c) Nothing in this part limits or otherwise modifies the contractor's recordkeeping obligations, if any, under the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act, or their implementing regulations.

§ 10.27 Anti-kickback.

All wages paid to workers performing on or in connection with covered contracts must be paid free and clear and without subsequent deduction (except as set forth in § 10.23), rebate, or kickback on any account. Kickbacks directly or indirectly to the employer or to another person for the employer's benefit for the whole or part of the wage are prohibited.

§ 10.28 Tipped employees.

(a) *Payment of wages to tipped employees.* With respect to workers who are tipped employees as defined in § 10.2 and this section, the amount of wages paid to such employee by the employee's employer shall be equal to:

(1) An hourly cash wage of at least:

(i) $4.90 an hour beginning on January 1, 2015;

(ii) For each succeeding 1-year period until the hourly cash wage equals 70 percent of the wage in effect under section 2 of the Executive Order, the hourly cash wage applicable in the prior year, increased by the lesser of $0.95 or the amount necessary for the hourly cash wage to equal 70 percent of the wage in effect under section 2 of the Executive Order;

(iii) For each subsequent year, 70 percent of the wage in effect under section 2 of the Executive Order for such year rounded to the nearest multiple of $0.05; and

(2) An additional amount on account of the tips received by such employee (tip credit) which amount is equal to the difference between the hourly cash wage in paragraph (a)(1) of this section and the wage in effect under section 2 of the Executive Order. Where tipped employees do not receive a sufficient amount of tips in the workweek to equal the amount of the tip credit, the employer must increase the cash wage paid for the workweek under paragraph (a)(1) of this section so that the amount of the cash wage paid and the tips received by the employee equal the minimum wage under section 2 of the Executive Order.

(3) An employer may pay a higher cash wage than required by paragraph (a)(1) of this section and take a lower tip credit but may not pay a lower cash wage than required by paragraph (a)(1) of this section and take a greater tip credit. In order for the employer to claim a tip credit, the employer must demonstrate that the worker received at least the amount of the credit claimed in actual tips. If the worker received less than the claimed tip credit amount in tips during the workweek, the employer is required to pay the balance on the regular payday so that the worker receives the wage in effect under section 2 of the Executive Order with the defined combination of wages and tips.

(4) If the wage required to be paid under the Service Contract Act, 41 U.S.C. 6701 *et seq.*, or any other applicable law or regulation is higher than the wage required by section 2 of the Executive Order, the employer shall pay additional cash wages equal to the difference between the wage in effect under section 2 of the Executive Order and the highest wage required to be paid.

(b) *Tipped employees.* (1) As provided in §10.2, a covered worker employed in an occupation in which he or she receives tips is a ''tipped employee'' when he or she customarily and regularly receives more than $30 a month in tips. Only tips actually retained by the employee after any tip pooling may be counted in determining whether the person is a ''tipped employee'' and in applying the provisions of section 3 of the Executive Order. An employee may be a ''tipped employee'' regardless of whether the employee is employed full time or part time so long as the employee customarily and regularly receives more than $30 a month in tips. An employee who does not receive more than $30 a month in tips customarily and regularly is not a tipped employee for purposes of the Executive Order and must receive the full minimum wage in section 2 of the Executive Order without any credit for tips received under the provisions of section 3.

(2) *Dual jobs.* In some situations an employee is employed in dual jobs, as, for example, where a maintenance person in a hotel also works as a server. In such a situation the employee, if the employee customarily and regularly receives at least $30 a month in tips for the work as a server, is engaged in a tipped occupation only when employed as a server. The employee is employed in two occupations, and no tip credit can be taken for the employee's hours of employment in the occupation of maintenance person.

(3) *Engaged in a tipped occupation.* An employee is engaged in a tipped occupation when the employee performs work that is part of the tipped occupation. An employer may only take a tip credit for work performed by a tipped employee that is part of the employee's tipped occupation.

(i) *Work that is part of the tipped occupation.* Work that is part of the tipped occupation is:

(A) Work that produces tips; and

(B) Work that directly supports the tip-producing work, if the directly supporting work is not performed for a substantial amount of time.

(ii) *Tip-producing work.* (A) Tip-producing work is any work performed by a tipped employee that provides service to customers for which the tipped employee receives tips.

(B) Examples: The following examples illustrate *tip-producing work* performed by a tipped employee that provides service to customers for which the tipped employee receives tips. A tipped employee's tip-producing work includes all aspects of the service to customers for which the tipped employee receives tips; this list is illustrative and is not exhaustive. A server's tip-producing work includes providing table service, such as taking orders, making recommendations, and serving food and drink. A bartender's tip-producing work includes making and serving drinks, talking to customers at the bar and, if the bar includes food service, serving food to customers. A nail technician's tip-producing work includes performing manicures and pedicures and assisting the patron to select the type of service. A busser's tip-producing work includes assisting servers with their tip-producing work for customers, such as table service, including filling water glasses, clearing dishes from tables,

fetching and delivering items to and from tables, and bussing tables, including changing linens and setting tables. A parking attendant's tip-producing work includes parking and retrieving cars and moving cars in order to retrieve a car at the request of customer. A service bartender's tip-producing work includes preparing drinks for table service. A hotel housekeeper's tip-producing work includes cleaning hotel rooms. A hotel bellhop's tip-producing work includes assisting customers with their luggage. The tip-producing work of a tipped employee who both prepares and serves food to customers, such as a counterperson, includes preparing and serving food.

(iii) *Directly supporting work.* (A) Directly supporting work is work performed by a tipped employee in preparation of or to otherwise assist tip-producing customer service work.

(B) *Examples:* The following examples illustrate tasks that are *directly supporting work* when they are performed in preparation of or to otherwise assist tip-producing customer service work and when they do not provide service to customers. This list is illustrative and is not exhaustive: A server's directly supporting work includes dining room prep work, such as refilling salt and pepper shakers and ketchup bottles, rolling silverware, folding napkins, sweeping or vacuuming under tables in the dining area, and setting and bussing tables. A busser's directly supporting work includes pre- and post-table service prep work such as folding napkins and rolling silverware, stocking the busser station, and vacuuming the dining room, as well as wiping down soda machines, ice dispensers, food warmers, and other equipment in the service alley. A bartender's directly supporting work includes work such as slicing and pitting fruit for drinks, wiping down the bar or tables in the bar area, cleaning bar glasses, arranging bottles in the bar, fetching liquor and supplies, vacuuming under tables in the bar area, cleaning ice coolers and bar mats, making drink mixes, and filling up dispensers with drink mixes. A nail technician's directly supporting work includes cleaning pedicure baths between customers, cleaning and sterilizing private salon rooms between customers, and cleaning tools and the floor of the salon. A parking attendant's directly supporting work includes cleaning the valet stand and parking area, and moving cars around the parking lot or garage to facilitate the parking of patrons' cars. A service bartender's directly supporting work includes slicing and pitting fruit for drinks, cleaning bar glasses, arranging bottles, and fetching liquor or supplies. A hotel housekeeper's directly supporting work includes stocking the housekeeping cart. A hotel bellhop's directly supporting work includes rearranging the luggage storage area and maintaining clean lobbies and entrance areas of the hotel.

(iv) *Substantial amount of time.* An employer can take a tip credit for the time a tipped employee spends performing work that is not tip-producing, but directly supports tip-producing work, provided that the employee does not perform that work for a substantial amount of time. For the purposes of this section, an employee has performed directly supporting work for a substantial amount of time if:

(A) The directly supporting work exceeds a 20 percent workweek tolerance, which is calculated by determining 20 percent of the hours in the workweek for which the employer has taken a tip credit. The employer cannot take a tip credit for any time spent on directly supporting work that exceeds the 20 percent tolerance. Time for which an employer does not take a tip credit is excluded in calculating the 20 percent tolerance; or

(B) For any continuous period of time, the directly supporting work exceeds 30 minutes. If a tipped employee performs directly supporting work for a continuous period of time that exceeds 30 minutes, the employer cannot take a tip credit for any time that exceeds 30 minutes. Time in excess of the 30 minutes, for which an employer may not take a tip credit, is excluded in calculating the 20 percent tolerance in paragraph (b)(3)(iv)(A) of this section.

(v) *Work that is not part of the tipped occupation.* (A) Work that is not part of the tipped occupation is any work that does not provide service to customers for which tipped employees receive tips, and does not directly support tip-

producing work. If a tipped employee is required to perform work that is not part of the employee's tipped occupation, the employer may not take a tip credit for that time.

(B) *Examples:* The following examples illustrate *work that is not part of the tipped occupation* because the work does not provide service to customers for which tipped employees receive tips, and does not directly support tip-producing work. This list is illustrative and is not exhaustive. Preparing food, including salads, and cleaning the kitchen or bathrooms, is not part of the tipped occupation of a server. Cleaning the dining room or bathroom is not part of the tipped occupation of a bartender. Ordering supplies for the salon is not part of the tipped occupation of a nail technician. Servicing vehicles is not part of the tipped occupation of a parking attendant. Cleaning the dining room and bathrooms is not part of the tipped occupation of a service bartender. Cleaning non-residential parts of a hotel, such as the exercise room, restaurant, and meeting rooms, is not part of the tipped occupation of a hotel housekeeper. Cleaning the kitchen or bathrooms is not part of the tipped occupation of a busser. Retrieving room service trays from guest rooms is not part of the tipped occupation of a hotel bellhop.

(c) *Characteristics of tips.* A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for the customer. It is to be distinguished from payment of a fixed charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer. Customers may present cash tips directly to the employee or may designate a tip amount to be added to their bill when paying with a credit card or by other electronic means. Special gifts in forms other than money or its equivalent such as theater tickets, passes, or merchandise, are not counted as tips received by the employee for purposes of determining wages paid under the Executive order.

(d) *Service charges.* (1) A compulsory charge for service, such as 15 percent of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip and, even if distributed by the employer to its workers, cannot be counted as a tip for purposes of determining if the worker is a tipped employee. Similarly, where negotiations between a hotel and a customer for banquet facilities include amounts for distribution to workers of the hotel, the amounts so distributed are not tips.

(2) As stated above, service charges and other similar sums are considered to be part of the employer's gross receipts and are not tips for the purposes of the Executive Order. Where such sums are distributed by the employer to its workers, however, they may be used in their entirety to satisfy the wage payment requirements of the Executive Order.

(e) *Tip pooling.* Where tipped employees share tips through a tip pool, only the amounts retained by the tipped employees after any redistribution through a tip pool are considered tips in applying the provisions of FLSA section 3(t) and the wage payment provisions of section 3 of the Executive order. There is no maximum contribution percentage on mandatory tip pools. However, an employer must notify its employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each employee ultimately receives, and may not retain any of the employees' tips for any other purpose.

(f) *Notice.* An employer is not eligible to take the tip credit unless it has informed its tipped employees in advance of the employer's use of the tip credit. The employer must inform the tipped employee of the amount of the cash wage that is to be paid by the employer, which cannot be lower than the cash wage required by paragraph (a)(1) of this section; the additional amount by which the wages of the tipped employee will be considered increased on account of the tip credit claimed by the employer, which amount may not exceed the value of the tips actually received by the employee; that all tips received by the tipped employee must be retained by the employee except for a tip pooling arrangement; and that the tip credit shall not apply to any

worker who has not been informed of the requirements in this section.

[79 FR 60721, Oct. 7, 2014, as amended at 85 FR 86788, Dec. 30, 2020; 86 FR 60156, Oct. 29, 2021; 86 FR 71829, Dec. 20, 2021]

§ 10.29 Notice.

(a) The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes.

(b) With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers.

(c) Contractors that customarily post notices to workers electronically may post the notice electronically, provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

Subpart D—Enforcement

§ 10.41 Complaints.

(a) Any worker, contractor, labor organization, trade organization, contracting agency, or other person or entity that believes a violation of the Executive Order or this part has occurred may file a complaint with any office of the Wage and Hour Division. No particular form of complaint is required. A complaint may be filed orally or in writing. If the complainant is unable to file the complaint in English, the Wage and Hour Division will accept the complaint in any language.

(b) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the individual's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual. Disclosure of such statements shall be governed by the provisions of the Freedom of Information Act (5 U.S.C. 552, *see* 29 CFR part 70) and the Privacy Act of 1974 (5 U.S.C. 552a).

§ 10.42 Wage and Hour Division conciliation.

After receipt of a complaint, the Administrator may seek to resolve the matter through conciliation.

§ 10.43 Wage and Hour Division investigation.

The Administrator may investigate possible violations of the Executive Order or this part either as the result of a complaint or at any time on his or her own initiative. As part of the investigation, the Administrator may conduct interviews with the relevant contractor, as well as the contractor's workers at the worksite during normal work hours; inspect the relevant contractor's records (including contract documents and payrolls, if applicable); make copies and transcriptions of such records; and require the production of any documentary or other evidence the Administrator deems necessary to determine whether a violation, including conduct warranting imposition of debarment, has occurred. Federal agencies and contractors shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all aspects of investigations.

§ 10.44 Remedies and sanctions.

(a) *Unpaid wages.* When the Administrator determines a contractor has failed to pay the applicable Executive Order minimum wage to workers, the Administrator will notify the contractor and the applicable contracting agency of the unpaid wage violation and request the contractor to remedy the violation. If the contractor does

not remedy the violation of the Executive Order or this part, the Administrator shall direct the contractor to pay all unpaid wages to the affected workers in the investigative findings letter it issues pursuant to §10.51. The Administrator may additionally direct that payments due on the contract or any other contract between the contractor and the Government be withheld as necessary to pay unpaid wages. Upon the final order of the Secretary that unpaid wages are due, the Administrator may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(b) *Antiretaliation.* When the Administrator determines that any person has discharged or in any other manner retaliated against any worker because such worker filed any complaint or instituted or caused to be instituted any proceeding under or related to the Executive Order or this part, or because such worker testified or is about to testify in any such proceeding, the Administrator may provide for any relief to the worker as may be appropriate, including employment, reinstatement, promotion, and the payment of lost wages.

(c) *Debarment.* Whenever a contractor is found by the Secretary of Labor to have disregarded its obligations under the Executive Order, or this part, such contractor and its responsible officers, and any firm, corporation, partnership, or association in which the contractor or responsible officers have an interest, shall be ineligible to be awarded any contract or subcontract subject to the Executive Order for a period of up to three years from the date of publication of the name of the contractor or responsible officer on the ineligible list. Neither an order for debarment of any contractor or its responsible officers from further Government contracts nor the inclusion of a contractor or its responsible officers on a published list of noncomplying contractors under this section shall be carried out without affording the contractor or responsible officers an opportunity for a hearing before an Administrative Law Judge.

(d) *Civil action to recover greater underpayments than those withheld.* If the payments withheld under §10.11(c) are insufficient to reimburse all workers' lost wages, or if there are no payments to withhold, the Department of Labor, following a final order of the Secretary, may bring action against the contractor in any court of competent jurisdiction to recover the remaining amount of underpayments. The Department of Labor shall, to the extent possible, pay any sums it recovers in this manner directly to the underpaid workers. Any sum not paid to a worker because of inability to do so within three years shall be transferred into the Treasury of the United States as miscellaneous receipts.

(e) *Retroactive inclusion of contract clause.* If a contracting agency fails to include the applicable contract clause in a contract to which the Executive Order applies, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department of Labor, shall incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation and termination).

Subpart E—Administrative Proceedings

§10.51 Disputes concerning contractor compliance.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning a contractor's compliance with subpart C of this part. The procedures in this section may be initiated upon the Administrator's own motion or upon request of the contractor.

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor(s) and the prime contractor (if different) of the investigative findings by certified mail to the last known address.

(2) A contractor desiring a hearing concerning the Administrator's investigative findings letter shall request such a hearing by letter postmarked within 30 calendar days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute with respect to the violations and/or debarment, as appropriate, and explain how the findings are in dispute, including by making reference to any affirmative defenses.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and response thereto, for designation to an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under §10.52, the Administrator shall notify the contractor(s) of the investigation findings by certified mail to the last known address, and shall issue a ruling in the investigative findings letter on any issues of law known to be in dispute.

(2)(i) If the contractor disagrees with the factual findings of the Administrator or believes that there are relevant facts in dispute, the contractor shall so advise the Administrator by letter postmarked within 30 calendar days of the date of the Administrator's letter. In the response, the contractor shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a timely response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor accordingly.

(3) If the contractor desires review of the ruling issued by the Administrator under paragraph (c)(1) or (c)(2)(ii) of this section, the contractor shall file a petition for review thereof with the Administrative Review Board postmarked within 30 calendar days of the date of the ruling, with a copy thereof to the Administrator. The petition for review shall be filed in accordance with the procedures set forth in 29 CFR part 7.

(d) If a timely response to the Administrator's investigative findings letter is not made or a timely petition for review is not filed, the Administrator's investigative findings letter shall become the final order of the Secretary. If a timely response or petition for review is filed, the Administrator's letter shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Administrative Review Board, or otherwise becomes a final order of the Secretary.

§10.52 Debarment proceedings.

(a) Whenever any contractor is found by the Secretary of Labor to have disregarded its obligations to workers or subcontractors under Executive Order 13658 or this part, such contractor and its responsible officers, and any firm, corporation, partnership, or association in which such contractor or responsible officers have an interest, shall be ineligible for a period of up to three years to receive any contracts or subcontracts subject to Executive Order 13658 from the date of publication of the name or names of the contractor or persons on the ineligible list.

(b)(1) Whenever the Administrator finds reasonable cause to believe that a contractor has committed a violation of Executive Order 13658 or this part which constitutes a disregard of its obligations to workers or subcontractors, the Administrator shall notify by certified mail to the last known address, the contractor and its responsible officers (and any firms, corporations, partnerships, or associations in which the contractor or responsible officers are known to have an interest), of the finding. The Administrator shall afford

such contractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under Executive Order 13658 or this part. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter to the Administrator postmarked within 30 calendar days of the date of the investigative findings letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute.

(2) Hearings under this section shall be conducted in accordance with the procedures set forth in 29 CFR part 6. If no hearing is requested within 30 calendar days of the letter from the Administrator, the Administrator's findings shall become the final order of the Secretary.

§ 10.53 Referral to Chief Administrative Law Judge; amendment of pleadings.

(a) Upon receipt of a timely request for a hearing under § 10.51 (where the Administrator has determined that relevant facts are in dispute) or § 10.52 (debarment), the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the respondent. The investigative findings letter from the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings.

(b) At any time prior to the closing of the hearing record, the complaint (investigative findings letter) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. For proceedings pursuant to § 10.51, such an amendment may include a statement that debarment action is warranted under § 10.52. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. The presiding Administrative Law Judge may, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened since the date of the pleadings and which are relevant to any of the issues involved. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

§ 10.54 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the Administrative Law Judge's discretion prior to the issuance of the Administrative Law Judge's decision, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the Administrator's findings letter and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and the Administrative Review Board regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 calendar days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§ 10.55 Proceedings of the Administrative Law Judge.

(a) The Office of Administrative Law Judges has jurisdiction to hear and decide appeals concerning questions of law and fact from the Administrator's investigative findings letters issued under §§ 10.51 and 10.52. Any party may, when requesting an appeal or during the pendency of a proceeding on appeal, timely move an Administrative Law Judge to consolidate a proceeding initiated hereunder with a proceeding initiated under the Service Contract Act or the Davis-Bacon Act.

(b) *Proposed findings of fact, conclusions, and order.* Within 20 calendar days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and a proposed order, together with a supporting brief expressing the reasons for such proposals. Each party shall serve such proposals and brief on all other parties.

(c) *Decision.* (1) Within a reasonable period of time after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 calendar days of receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall issue a decision. The decision shall contain appropriate findings, conclusions, and an order, and be served upon all parties to the proceeding.

(2) If the respondent is found to have violated Executive Order 13658 or this part, and if the Administrator requested debarment, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the ineligible list, including findings that the contractor disregarded its obligations to workers or subcontractors under the Executive Order or this part.

(d) *Limit on scope of review.* The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, Administrative Law Judges shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(e) *Orders.* If the Administrative Law Judge concludes a violation occurred, the final order shall mandate action to remedy the violation, including, but not limited to, monetary relief for unpaid wages. Where the Administrator has sought imposition of debarment, the Administrative Law Judge shall determine whether an order imposing debarment is appropriate.

(f) *Finality.* The Administrative Law Judge's decision shall become the final order of the Secretary, unless a timely petition for review is filed with the Administrative Review Board.

§ 10.56 Petition for review.

(a) Within 30 calendar days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Administrative Review Board), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Administrative Review Board with a copy thereof to the Chief Administrative Law Judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on debarment shall also state the disregard of obligations to workers and/or subcontractors, or lack

thereof, as appropriate. A party must serve the petition for review, and all briefs, on all parties and the Chief Administrative Law Judge. It must also timely serve copies of the petition and all briefs on the Administrator, Wage and Hour Division, and on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210.

(b) *Effect of filing.* If a party files a timely petition for review, the Administrative Law Judge's decision shall be inoperative unless and until the Administrative Review Board issues an order affirming the letter or decision, or the letter or decision otherwise becomes a final order of the Secretary. If a petition for review concerns only the imposition of debarment, however, the remainder of the decision shall be effective immediately. No judicial review shall be available unless a timely petition for review to the Administrative Review Board is first filed.

§ 10.57 Administrative Review Board proceedings.

(a) *Authority*—(1) *General.* The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from investigative findings letters of the Administrator issued under §10.51(c)(1) or (2), Administrator's rulings issued under §10.58, and decisions of Administrative Law Judges issued under §10.55.

(2) *Limit on scope of review.* (i) The Board shall not have jurisdiction to pass on the validity of any provision of this part. The Board is an appellate body and shall decide cases properly before it on the basis of substantial evidence contained in the entire record before it. The Board shall not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, the Administrative Review Board shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Decisions.* The Board's decision shall be issued within a reasonable period of time following receipt of the petition for review and shall be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders.* If the Board concludes a violation occurred, an order shall be issued mandating action to remedy the violation, including, but not limited to, monetary relief for unpaid wages. Where the Administrator has sought imposition of debarment, the Board shall determine whether an order imposing debarment is appropriate. The ARB's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 (or any successor to that order).

[85 FR 30617, May 20, 2020]

§ 10.58 Administrator ruling.

(a) Questions regarding the application and interpretation of the rules contained in this part may be referred to the Administrator, who shall issue an appropriate ruling. Requests for such rulings should be addressed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

(b) Any interested party may appeal to the Administrative Review Board for review of a final ruling of the Administrator issued under paragraph (a) of this section. The petition for review shall be filed with the Administrative Review Board within 30 calendar days of the date of the ruling.

APPENDIX A TO 29 CFR PART 10—CONTRACT CLAUSE

The following clause shall be included by the contracting agency in every contract, contract-like instrument, and solicitation to which Executive Order 13658 applies, except for procurement contracts subject to the Federal Acquisition Regulation (FAR):

(a) *Executive Order 13658.* This contract is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

(b) *Minimum Wages.* (1) Each worker (as defined in 29 CFR 10.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and

worker, shall be paid not less than the applicable minimum wage under Executive Order 13658.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 1, 2015 and December 31, 2015 shall be $10.10 per hour. The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Secretary of Labor will publish annual determinations in the FEDERAL REGISTER no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on *www.wdol.gov* (or any successor Web site). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 10.23), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the 14(c) worker the greater commensurate wage.

(c) *Withholding.* The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 13658.

(d) *Contract Suspension/Contract Termination/Contractor Debarment.* In the event of a failure to pay any worker all or part of the wages due under Executive Order 13658 or 29 CFR part 10, or a failure to comply with any other term or condition of Executive Order 13658 or 29 CFR part 10, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 10.52.

(e) The contractor may not discharge any part of its minimum wage obligation under Executive Order 13658 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

(f) Nothing herein shall relieve the contractor of any other obligation under Federal, State or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than $10.10 (or the minimum wage as established each January thereafter) to any worker.

(g) *Payroll Records.* (1) The contractor shall make and maintain for three years records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

(i) Name, address, and social security number.

(ii) The worker's occupation(s) or classification(s)

(iii) The rate or rates of wages paid.

(iv) The number of daily and weekly hours worked by each worker.

(v) Any deductions made; and

(vi) Total wages paid.

(2) The contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 10 and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

(h) The contractor (as defined in 29 CFR 10.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

(i) *Certification of Eligibility.* (1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(j) *Tipped employees.* In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 13658. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the contractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 13658. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

(k) *Antiretaliation.* It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR part 10, or has testified or is about to testify in any such proceeding.

(l) *Disputes concerning labor standards.* Disputes related to the application of Executive Order 13658 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 10. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

(m) *Notice.* The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically

may post the notice electronically provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

PART 11—DEPARTMENT OF LABOR NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE PROCEDURES

Subpart A—General Provisions

Subpart B—Administrative Procedures

AUTHORITY: NEPA, (42 U.S.C. 4321 *et seq.*), Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977) and Council on Environmental Quality Regulations (National Environmental Policy Act, Implementation of Procedural Provisions) 40 CFR parts 1500–1508 (43 FR 55978).

SOURCE: 45 FR 51188, Aug. 1, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 11.1 Purpose and scope.

(a) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) directs that, ''to the fullest extent possible, * * * the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies set forth'' in the Act for the preservation of the environment. As a means for achieving this objective, Executive Order 11991 of May 24, 1977 (amending E.O. 11514 of March 5, 1970) directed the Council on Environmental Quality (CEQ) to issue uniform regulations for implementation of NEPA by all Federal agencies. These regulations were published in final form on November 29, 1978 (43 FR 55978) as 40 CFR parts 1500–1508. The CEQ's NEPA regulations require that each Federal agency adopt implementing procedures to supplement their regulations (40 CFR 1507.3). Accordingly, the purpose of this part is to prescribe procedures to be followed by Department of Labor agencies when such agencies are contemplating actions which may be subject to the requirements of NEPA. These regulations do not replace 40 CFR parts 1500–1508; rather they are to be read together with, and as a supplement to, the CEQ's regulations.

(b) It is the responsibility of each agency to comply with the policies set forth in NEPA to the fullest extent possible and consistent with its statutory authority. Each agency shall comply with all applicable requirements of this part except where compliance would be inconsistent with other statutory requirements. However, no trivial violation of, or noncompliance with, these procedures shall give rise to an independent cause of action (cf. 40 CFR 1500.3 and 1507.3(b)).

§ 11.2 Applicability.

Although all Department of Labor agencies are subject to NEPA, only three of its agencies routinely propose or consider actions which may require the preparation of environment assessments or environmental impact statements. These are the Occupational Safety and Health Administration (OSHA), which acts pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*); the Mine Safety and Health Administration (MSHA), which acts pursuant to the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801, *et seq.*); and the Office of Job Corps which purchases and leases land and constructs Job Corps centers pursuant to the Workforce Investment Act of 1998 (29 U.S.C. 2801, *et seq.*). Therefore, these procedures have been designed primarily with the duties and rulemaking processes of these agencies in mind. If and when other Department of Labor agencies propose actions requiring environmental impact analyses, they shall use these procedures, to the extent that they are applicable, in performing such analyses.

[45 FR 51188, Aug. 1, 1980, as amended at 72 FR 37098, July 9, 2007]