



DEPARTMENT OF LABOR

Office of the Secretary

Establishing a Minimum Wage for Contractors, Notice of Rate Change in Effect as of January 1, 2017.

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Wage and Hour Division (WHD) of the U.S. Department of Labor (the Department) is issuing this notice to announce the applicable minimum wage rate to be paid to workers performing work on or in connection with Federal contracts covered by Executive Order 13658, beginning January 1, 2017.

Executive Order 13658, Establishing a Minimum Wage for Contractors (the Executive Order or the Order), was signed by President Barack Obama on February 12, 2014, and raised the hourly minimum wage paid by contractors to workers performing work on covered Federal contracts to: \$10.10 per hour, beginning January 1, 2015; and beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary of Labor (the Secretary) in accordance with the methodology set forth in the Order. See 79 FR 9851. The Secretary's determination of the Executive Order minimum wage rate also affects the minimum hourly cash wage that must be paid to tipped employees performing work on or in connection with covered contracts. See 79 FR 9851-52. The Secretary is required to provide notice to the public of the new minimum wage rate at least 90 days before such rate is to take effect. See 79 FR 9851. The applicable minimum wage under Executive Order 13658 is currently \$10.15 per hour, in effect since January 1, 2016. See 80 FR 55646. The applicable minimum cash wage that generally

must be paid to tipped employees performing work on or in connection with covered contracts is currently \$5.85 per hour, in effect since January 1, 2016. Id.

Pursuant to Executive Order 13658 and its implementing regulations at 29 CFR Part 10, notice is hereby given that beginning January 1, 2017, the Executive Order minimum wage rate that generally must be paid to workers performing work on or in connection with covered contracts will increase to **\$10.20 per hour**. Notice is also hereby given that, beginning January 1, 2017, the required minimum cash wage that generally must be paid to tipped employees performing work on or in connection with covered contracts will increase to **\$6.80 per hour**.

DATES: This notice is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693-0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693-0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889-5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Executive Order 13658 Background and Requirements for Determining Annual Increases to the Minimum Wage Rate:

Executive Order 13658 was signed by President Barack Obama on February 12, 2014, and raised the hourly minimum wage paid by contractors to workers performing work on or in connection with covered Federal contracts to \$10.10 per hour, beginning January 1, 2015; and

beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary pursuant to the Order. See 79 FR 9851. The Executive Order directed the Secretary to issue regulations to implement the Order's requirements. See 79 FR 9852. Accordingly, after engaging in notice-and-comment rulemaking, the Department published a Final Rule on October 7, 2014 to implement the Executive Order. See 79 FR 60634. The final regulations, set forth at 29 CFR Part 10, established standards and procedures for implementing and enforcing the minimum wage protections of the Order.

The Executive Order and its implementing regulations require the Secretary to 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. See 79 FR 9851; 29 CFR 10.1(a)(2), 10.5(a)(2), 10.12(a). Sections 2(a) and (b) of the Order establish the methodology that the Secretary must use to determine the annual inflation-based increases to the minimum wage rate. See 79 FR 9851. These provisions, which are implemented in 29 CFR 10.5(b), explain that the applicable minimum wage determined by the Secretary for each calendar year 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 (CPI-W) (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics (BLS); and
- (iii) Rounded to the nearest multiple of \$0.05.

Section 2(b) of the Executive Order further provides that, in calculating the annual percentage increase in the CPI-W for purposes of determining the new minimum wage rate, the Secretary

shall compare such CPI-W for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage is in effect) with the CPI-W for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively. See 79 FR 9851. In order to calculate the annual percentage increase in the CPI-W, the Department elected in its Final Rule implementing the Executive Order to compare such CPI-W for the most recent year available with the CPI-W for the preceding year. See 29 CFR 10.5(b)(2)(iii). In its Final Rule, the Department explained that it decided to compare the CPI-W for the most recent year available (instead of using the most recent month or quarter, as allowed by the Order) with the CPI-W for the preceding year, in order “to minimize the impact of seasonal fluctuations on the Executive Order minimum wage rate.” 79 FR 60666.

Once a determination has been made with respect to the new minimum wage rate to be paid to workers performing work on or in connection with covered contracts, the Executive Order and its implementing regulations require the Secretary to notify the public of the applicable minimum wage rate on an annual basis at least 90 days before any new minimum wage is to take effect. See 79 FR 9851; 29 CFR 10.5(a)(2), 10.12(c)(1). The regulations explain that the Administrator of the Department’s Wage and Hour Division (the Administrator) will publish an annual notice in the Federal Register stating the applicable minimum wage rate at least 90 days before any new minimum wage is to take effect. See 29 CFR 10.12(c)(2)(i). Additionally, the regulations state that the Administrator will provide notice of the Executive Order minimum wage rate on Wage Determinations OnLine (WDOL), <http://www.wdol.gov>, or any successor site; on all wage determinations issued under the Davis-Bacon Act (DBA), 40 U.S.C. 3141 et seq., and the Service Contract Act (SCA), 41 U.S.C. 6701 et seq.; and by other means the Administrator deems appropriate. See 29 CFR 10.12(c)(2)(ii)-(iv).

Section 3 of the Executive Order requires contractors to pay tipped employees covered by the Order performing on or in connection with covered contracts an hourly cash wage of at least \$4.90, beginning on January 1, 2015, provided the employees receive sufficient tips to equal the Executive Order minimum wage rate under section 2 of the Order when combined with the cash wage. See 79 FR 9851-52; 29 CFR 10.28(a). The Order further provides that, in each succeeding year, beginning January 1, 2016, the required cash wage must increase by \$0.95 (or a lesser amount if necessary) until it reaches 70 percent of the Executive Order minimum wage. Id. For subsequent years, the cash wage for tipped employees will be 70 percent of the Executive Order minimum wage rounded to the nearest \$0.05. Id. At all times, the amount of tips received by the employee must equal at least the difference between the cash wage paid and the Executive Order minimum wage; if the employee does not receive sufficient tips, the contractor must increase the cash wage paid so that the cash wage in combination with the tips received equals the Executive Order minimum wage. Id.

On September 16, 2015, the Administrator published a notice in the Federal Register informing the public that, effective January 1, 2016, the Executive Order minimum wage and the minimum cash wage required to be paid to tipped employees covered by the Executive Order would be \$10.15 and \$5.85 per hour, respectively. See 80 FR 55646.

II. The 2017 Executive Order Minimum Wage Rate:

In accordance with the methodology set forth in the Executive Order and summarized above, the Department must first determine the annual percentage increase in the CPI-W (United States city average, all items, not seasonally adjusted) as published by BLS in order to determine the new Executive Order minimum wage rate. In calculating the annual percentage increase in the CPI, the Department must compare the CPI-W for the most recent year available with the CPI-W

for the preceding year. The Department therefore compares the percentage change in the CPI-W between the most recent year (i.e., the most recent four quarters) and the prior year (i.e., the four quarters preceding the most recent year). The current Executive Order minimum wage rate must then be increased by the resulting annual percentage change and rounded to the nearest multiple of \$0.05.

In order to determine the Executive Order minimum wage rate beginning January 1, 2017, the Department therefore calculated the CPI-W for the most recent year by averaging the CPI-W for the four most recent quarters, which consist of the first two quarters of 2016 and the last two quarters of 2015 (i.e., July 2015 through June 2016). The Department then compared that data to the average CPI-W for the preceding year, which consists of the first two quarters of 2015 and the last two quarters of 2014 (i.e., July 2014 through June 2015). Based on this methodology, the Department determined that the annual percentage increase in the CPI-W (United States city average, all items, not seasonally adjusted) was 0.278%. The Department then applied that annual percentage increase of 0.278% to the current Executive Order hourly minimum wage rate of \$10.15, which resulted in a wage rate of \$10.18 ($(\$10.15 \times .00278) + \10.15); however, pursuant to the Executive Order, that rate must be rounded to the nearest multiple of \$0.05.

The new Executive Order minimum wage rate that must generally be paid to workers performing on or in connection with covered contracts beginning January 1, 2017 is therefore **\$10.20 per hour**.

III. The 2017 Executive Order Minimum Cash Wage For Tipped Employees:

As noted above, section 3 of the Executive Order requires contractors to pay tipped employees covered by the Order performing on or in connection with covered contracts an hourly cash wage of at least \$4.90, beginning January 1, 2015, provided the employees receive sufficient tips to

equal the Executive Order minimum wage rate under section 2 of the Order when combined with the cash wage. See 79 FR 9851-52; 29 CFR 10.28(a). Section 3 of the Executive Order also provides a methodology to be utilized each year in determining the amount of the minimum hourly cash wage that must be paid to tipped employees performing on or in connection with covered contracts. Pursuant to the Order, in each succeeding year, beginning January 1, 2016, the required cash wage increases by \$0.95 (or a lesser amount if necessary) until it reaches 70 percent of the Executive Order minimum wage rate. For subsequent years, the cash wage for tipped employees will be 70 percent of the Executive Order minimum wage rate rounded to the nearest \$0.05.

In order to determine the minimum hourly cash wage that must be paid to tipped employees performing on or in connection with covered contracts beginning January 1, 2017, the Department first calculated that 70 percent of the new Executive Order minimum wage rate of \$10.20 is \$7.14. The Executive Order provides that the current minimum hourly cash wage of \$5.85 must increase by the lesser of \$0.95 or the amount necessary for the hourly cash wage to equal 70 percent of the applicable Executive Order minimum wage. Because \$0.95 is less than \$1.29 (the amount necessary for the hourly cash wage to reach 70 percent of \$10.20), the hourly cash wage must increase by \$0.95.

The new minimum hourly cash wage that must generally be paid to tipped workers performing on or in connection with covered contracts beginning January 1, 2017 is therefore **\$6.80 per hour**.

IV. Appendices:

Appendix A to this notice provides a comprehensive chart of the CPI-W data published by BLS that the Department utilized to calculate the new Executive Order minimum wage rate

based on the methodology explained herein. Appendix B to this notice sets forth an updated version of the Executive Order 13658 poster that the Department published with its Final Rule, reflecting the updated wage rates that will be in effect beginning January 1, 2017. See 79 FR 60732-33. Pursuant to 29 CFR 10.29, contractors are required to notify all workers performing on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. Contractors with employees covered by the Fair Labor Standards Act who are performing on or in connection with a covered contract may satisfy the notice requirement by displaying the poster set forth in Appendix B in a prominent or accessible place at the worksite.

Dated: September 6, 2016

David Weil,
Wage and Hour Administrator

Billing Code 4510-27-P

Appendix A: Data Used to Determine Executive Order 13658 Minimum Wage Rate Effective January 1, 2017.

Data Source: Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W)
(United States city average, all items, not seasonally adjusted)

	Quarter 3			Quarter 4			Quarter 1			Quarter 2			Annual Average
2014Q3 to 2015Q2	234.525	234.030	234.170	233.229	231.551	229.909	228.294	229.421	231.055	231.520	232.908	233.804	232.0347
2015Q3 to 2016Q2	233.806	233.366	232.661	232.373	231.721	230.791	231.061	230.972	232.209	233.438	234.444	235.308	232.6792
Annual Percentage Increase													0.278%

Appendix B: [insert updated E.O. 13658 Worker Rights poster]

WORKER RIGHTS UNDER EXECUTIVE ORDER 13658

FEDERAL MINIMUM WAGE FOR CONTRACTORS

\$10.20

 PER HOUR

EFFECTIVE JANUARY 1, 2017 – DECEMBER 31, 2017

- MINIMUM WAGE** On February 12, 2014, the President signed Executive Order 13658, Establishing a Minimum Wage for Contractors. The Executive Order requires that parties who contract with the Federal Government pay workers performing work on or in connection with covered Federal contracts at least: (1) \$10.10 per hour beginning January 1, 2015; and (2) beginning January 1, 2016, and annually thereafter, an inflation adjusted amount determined by the Secretary of Labor in accordance with the Executive Order and appropriate regulations. The Executive Order hourly minimum wage in effect from January 1, 2017 through December 31, 2017 is \$10.20.
- TIPS** Covered tipped employees must be paid a cash wage of at least \$6.80 per hour effective January 1, 2017 – December 31, 2017. If a worker's tips combined with the required cash wage of at least \$6.80 per hour paid by the contractor do not equal the hourly minimum wage for contractors (noted above), the contractor must increase the cash wage paid to make up the difference. Certain other conditions must also be met.
- ENFORCEMENT** The U.S. Department of Labor's Wage and Hour Division (WHD) has offices across the country to help. WHD can answer questions, in person or by telephone, about your workplace rights and protections. We can investigate employers, recover wages to which workers may be entitled, and pursue appropriate sanctions against covered contractors, including debarment. All services are free and confidential. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the Executive Order. If you are unable to file a complaint in English, WHD will accept the complaint in any language.
- ADDITIONAL INFORMATION**
- Executive Order 13658 establishes that the Order applies only to new Federal construction and service contracts, as defined by the Secretary in the regulations.
 - Workers with disabilities whose wages are governed by special certificates issued under section 14(c) of the Fair Labor Standards Act must receive no less than the full minimum wage rate as established by the Executive Order.
 - Some workers are excluded. For example, some workers who provide support "in connection with" covered contracts for less than 20 percent of their hours worked in a week may not be entitled to the Executive Order minimum wage. Certain full-time students, learners, and apprentices who are employed under subminimum wage certificates are not entitled to the Executive Order minimum wage. Certain occupations are also exempt from the Executive Order minimum wage.
 - Some state or local laws may provide greater worker protections. Employers need to comply with both.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

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