



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-3000

In reply refer to
DARS Tracking Number: 2024-O0001

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation—Implementation of Injunction of Executive Order 14026,
Increasing the Minimum Wage for Federal Contractors

Effective immediately, contracting officers shall not use the clause at Federal Acquisition Regulation (FAR) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, with the States of Texas, Louisiana, or Mississippi or agencies of those States. Contracting officers also shall not use the clause in any extension or renewal of an existing contract or exercise of an option with the States of Texas, Louisiana, or Mississippi, or agencies of those States.

This class deviation applies only to these three States and their agencies as parties to Federal contracts, regardless of the place of performance. It does not apply geographically to all contractors or contracts within those three States.

This class deviation is required to implement a court injunction. On September 26, 2023, the U.S. District Court for the Southern District of Texas enjoined President Biden and the Department of Labor (DOL) from enforcing Executive Order (E.O.) 14026 or the DOL final rule (published in the *Federal Register* at 86 FR 67126) against the States of Texas, Louisiana, and Mississippi and their agencies. The minimum wage requirements of the final rule implementing E.O. 14026 are not currently being enforced as to contracts or subcontracts to which the states of Texas, Louisiana, or Mississippi (including their agencies) are a party. The injunction becomes effective on October 4, 2023.

Class Deviation 2024-O0001
Implementation of Injunction on Executive Order 14026,
Increasing Minimum Wage for Federal Contactors

E.O. 13658, Establishing a Minimum Wage for Contractors (signed on February 12, 2014, and published at 79 FR 9851 on February 20, 2014) established the minimum wage for certain Federal contractors at \$10.10 per hour, to be increased annually thereafter by an amount determined by the Secretary of Labor. Subsequently, E.O. 13838, Exemption From Executive Order 13658 for Recreational Services on Federal Lands (signed on May 25, 2018, and published at 83 FR 25341 on June 1, 2018) exempted from the minimum wage requirements of E.O. 13658 contracts or contract-like instruments entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands. This exemption did not apply to lodging and food services associated with seasonal recreational services (e.g., seasonal recreational services include river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps).

Following that exemption, on April 27, 2021, the President signed E.O. 14026, Increasing the Minimum Wage for Federal Contractors (published at 86 FR 22835 on April 30, 2021). E.O. 14026 not only increased the hourly minimum wage to \$15 for Federal contract workers, but also, in Section 6, revoked E.O. 13838 in its entirety and superseded E.O. 13658 to the extent it may be inconsistent with E.O. 14026.

On November 24, 2021, the DOL Wage and Hour Division published a final rule implementing E.O. 14026 (see 86 FR 67126). On January 26, 2022, DoD, GSA, and NASA published an interim rule (FAR Case 2021-014; see 87 FR 4117) amending the FAR to implement E.O. 14026 and the DOL implementing regulations. This interim FAR rule increased the minimum wage for Federal contractors to \$15, effective January 30, 2022, and removed from the FAR the exemption previously authorized by E.O. 13838 for application of the minimum wage requirements for certain seasonal recreational services or the rental of seasonal recreational equipment for the general public on Federal lands.

This class deviation remains in effect until rescinded. My point of contact is Mr. Larry McLaury, who is available at larry.j.mclaury2.civ@mail.mil.

John M. Tenaglia
Principal Director,
Defense Pricing and Contracting