

DEPARTMENT OF LABOR**Wage and Hour Division****29 CFR Part 697****Industries in American Samoa; Wage Order**

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (DOL) is amending regulations to implement changes in the minimum wage rates applicable to various industry classifications in American Samoa under the Fair Labor Standards Act (FLSA). The FLSA provides for a special industry committee appointed by the Secretary of Labor to determine minimum wage rates in American Samoa. Industry Committee for All Industries in American Samoa No. 26 (the Committee) met in public and executive session in Pago Pago, American Samoa during the week of June 20, 2005.

DATES: This rule shall become effective October 18, 2005.

FOR FURTHER INFORMATION CONTACT: Nancy M. Flynn, Director, Office of Planning and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-0551. (This is not a toll free number.)

You may direct questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this notice to the nearest Wage and Hour Division (WHD) District Office. Locate the nearest office by calling the WHD toll-free help line at 1-866-4US-WAGE (1-866-487-9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the agency website for a nationwide listing of WHD District and Area Offices at: <http://www.dol.gov/esa/contacts/whd/america2.htm>.

SUPPLEMENTARY INFORMATION:**I. Paperwork Reduction Act**

This regulation is not subject to the Paperwork Reduction Act (Pub. L. 104-13), because it contains no new information collection requirements and does not modify any existing requirements.

II. Summary of Changes

This regulation implements the recommendations made by the Committee for minimum wage rates

applicable to all industries in American Samoa. The recommendations increase the minimum wages in the government employees, ship maintenance, hotel, tour and travel services as well as miscellaneous activities industry classifications by 5 percent over a two-year period. The Committee retained the previously established minimum wage rates for all other industries. Section 697.2 provides all the industry wage rates and their effective dates in table form. The rates provided under the column heading "October 3, 2005" are those established prior to the effective date of the rates recommended by Industry Committee No. 26. The final two columns of the table provide the rates effective on October 18, 2005 and October 1, 2006. Section 697.4 specifies the overall effective date of the revised minimum wage rates.

III. Background

FLSA section 8 and Regulations 29 CFR 511.18 require and authorize revision of Regulations 29 CFR 697.2 and 697.4, to implement recommendations made by industry committees for setting minimum wage rates in American Samoa. The Secretary of Labor appointed and convened the Committee, pursuant to FLSA sections 5, 6 and 8. The Secretary published an Administrative Order in the **Federal Register** on May 4, 2005 (70 FR 23236), that referred to the Committee the question of minimum wage rates to be paid under FLSA section 6 to employees within the various industries and gave notice of a hearing to be held by the Committee in Pago Pago, American Samoa.

Subsequent to the hearing, the Committee filed a report containing findings of fact and recommendations with respect to minimum wage rates for various industry classifications with the Administrator of the WHD. Attachment A to the Industry Committee No. 26 Report is a written dissent prepared by the two Committee members representing employees. FLSA section 8(d) (29 U.S.C. 208(d)) requires that this rule reflect the recommendations contained in the Committee's report and that it be effective 15 days after publication in the **Federal Register** of the order containing such recommendations. In this instance, because of a delay in the publication of this notice and the statutory requirement that the rule become effective 15 days after publication in the **Federal Register**, it is necessary to delay the effective date of October 1, 2005 recommended by the Committee for the initial increase until October 18, 2005.

IV. Executive Order 12866 and Small Business Regulatory Enforcement Fairness Act

This rule is not a "significant regulatory action" within the meaning of Executive Order 12866, and no regulatory impact analysis is required. This document puts into effect the wage rates recommended by Industry Committee No. 26.

This rule is not expected to: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in Executive Order 12866.

The rule is not a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. Although the rule will solely affect industries in American Samoa, the DOL does not expect its impact on costs or prices to be major, for the reasons previously discussed.

V. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this rule does not include any Federal mandate that may result in excess of \$100 million in expenditures by state, local and tribal governments in the aggregate or by the private sector.

VI. Executive Order 13132 (Federalism)

The Department has (1) reviewed this rule in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government.

VII. Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 553, normally requires notice and an opportunity for public comment when an agency amends a substantive rule. The APA, however, contains exceptions to the notice and comment provisions for (1) "interpretative rules, general statements

of policy, or rules of agency organization, procedure, or practice” and (2) rules where the agency for good cause finds that notice and public comment are “impracticable, unnecessary, or contrary to the public interest.” Agencies may immediately adopt rules subject to the exceptions. The agency hereby finds that good cause exists for dispensing with prior notice and public comment procedures for these changes and for issuance of this rule without publication 30 days in advance of its effective date, as normally required by the APA. (See 5 U.S.C. 553(b) and (d).) FLSA section 8(d) (29 U.S.C. 208(d)) requires that this rule reflect the recommendations contained in the Committee’s report and that it be effective 15 days after publication in the **Federal Register** of the order containing such recommendations.

VIII. Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that pertain to regulatory flexibility analysis do not apply to this rule, because no notice of proposed rulemaking is required for the rule under the APA. (See 5 U.S.C. 601(2).)

IX. Executive Order 13175, Indian Tribal Governments

This rule does not have “tribal implications” under Executive Order 13175 that would require a tribal summary impact statement. The rule does not have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

X. Effects on Families

The undersigned hereby certifies that the rule will not adversely affect the well-being of families, as discussed under section 654 of the Treasury and

General Government Appropriations Act, 1999.

XI. Executive Order 13045, Protection of Children

This rule has no environmental health risk or safety risk that may disproportionately affect children.

XII. Environmental Impact Assessment

A review of this rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*; the regulations of the Council on Environmental Quality, 40 CFR part 1500, *et seq.*; and the Departmental NEPA procedures, 29 CFR part 11, indicates the rule will not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

XIII. Executive Order 13211, Energy Supply

This rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution or use of energy.

XIV. Executive Order 12630, Constitutionally Protected Property Rights

This rule is not subject to Executive Order 12630, because it does not involve implementation of a policy “that has takings implications” or that could impose limitations on private property use.

XIV. Executive Order 12988, Civil Justice Reform Analysis

This rule was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a

clear legal standard for affected conduct and to promote burden reduction.

XV. Document Preparation

This document was prepared under the direction and control of Alfred B. Robinson, Jr., Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 697

American Samoa, Minimum wages.

Signed at Washington, DC, this 26th day of September, 2005.

Victoria A. Lipnic,
Assistant Secretary, Employment Standards Administration.

Alfred B. Robinson, Jr.,
Deputy Administrator, Wage and Hour Division.

■ For the reasons set forth above, title 29, Part 697 of the Code of Federal Regulations is amended as set forth below.

PART 697—INDUSTRIES IN AMERICAN SAMOA

■ 1. The authority citation for part 697 continues to read as follows:

Authority: 29 U.S.C. 205, 206, 208.

■ 2. Section 697.2 is revised to read as follows:

§ 697.2 Industry wage rates and effective dates.

Every employer shall pay to each employee in American Samoa, who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in any enterprise engaged in commerce or in the production of goods for commerce, as these terms are defined in section 3 of the Fair Labor Standards Act of 1938, wages at a rate not less than the minimum rate prescribed in this section for the industries and classifications in which such employee is engaged.

Industry	Minimum wage		
	Effective October 3, 2005	Effective October 18, 2005	Effective October 1, 2006
(a) Government Employees	\$2.77	\$2.84	\$2.91
(b) Fish Canning and Processing	3.26	3.26	3.26
(c) Petroleum Marketing	3.85	3.85	3.85
(d) Shipping and Transportation:			
(1) Classification A	4.09	4.09	4.09
(2) Classification B	3.92	3.92	3.92
(3) Classification C	3.88	3.88	3.88
(e) Construction	3.60	3.60	3.60
(f) Retailing, Wholesaling, and Warehousing	3.10	3.10	3.10
(g) Bottling, Brewing, and Dairy Products	3.19	3.19	3.19
(h) Printing	3.50	3.50	3.50
(i) Publishing	3.63	3.63	3.63

Industry	Minimum wage		
	Effective October 3, 2005	Effective October 18, 2005	Effective October 1, 2006
(j) Finance and Insurance	3.99	3.99	3.99
(k) Ship Maintenance	3.34	3.42	3.51
(l) Hotel	2.86	2.93	3.00
(m) Tour and Travel Services	3.31	3.39	3.48
(n) Private Hospitals and Educational Institutions	3.33	3.33	3.33
(o) Garment Manufacturing	2.68	2.68	2.68
(p) Miscellaneous Activities	2.57	2.63	2.70

■ 3. Section 697.4 is revised to read as follows:

§ 697.4 Effective dates.

The wage rates specified in § 697.2 shall be effective on October 18, 2005, except as otherwise specified.

[FR Doc. 05-19738 Filed 9-30-05; 8:45 am]

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