



Interim "Contractor Minimum Wage" Acquisition Rules To Be Released (Updated 12 18 14)

Insights

12.14.14

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration have announced that they will soon publish interim Federal Acquisition Regulation amendments designed to implement President Obama's directive to raise the minimum-wage rate for workers on federal contracts to \$10.10 per hour beginning January 1, 2015.

See the link below to a pre-publication version of the rule. It includes the agencies' related explanations and commentary.

Will Take Effect Without Public Comment

The agencies will create a new FAR Subpart 22.19 and will amend other portions of the FAR in pertinent ways. For what the agencies describe generally as "urgent and compelling reasons," the additions and changes will become effective immediately upon publication in the *Federal Register*. Bloomberg BNA reports that the anticipated publication date is tomorrow, December 15, 2014.

However, the interim rule will also be subject to a 60-day period for public comment. This period begins on the date of the rule's publication in the *Federal Register*. The agencies say that comments offered will "be considered in the formation of the final rule."

Some Noteworthy Matters

Readily-apparent points of note include these:

- The rule only applies to matters subject to the FAR, whereas the President's directive and the U.S. Labor Department's related regulations cover a broader range of transactions (such as contracts for concessions, for instance);
- The rule addresses how price adjustments relating to increases in the contractor minimum wage will be handled;
- The prescribed contract clause includes a provision saying that "[t]he Contractor is responsible for subcontractor compliance" and "may be held liable for unpaid wages due subcontractor workers," but the accompanying commentary also says that the agencies "have not placed this responsibility on upper-tier subcontractors in this rule because the Government does not have privity of contract with subcontractors";

- The rule instructs contracting officers to withhold contract payments at the U.S. Wage and Hour Administrator's direction or upon their "own action" for non-compliance with the contractor minimum-wage requirement, but it is by no means clear from the provision itself how the due-process concerns this raises will be addressed.

The Bottom Line

A 60-day period does not provide a great deal of time to respond to the interim rule. Affected employers should immediately review the new provisions in depth and should begin formulating and preparing written comments without delay.

UPDATED 12 15 14: The FAR interim amendments have indeed been published in today's *Federal Register*.

However, the effective date is shown in that publication as being February 13, 2015, which appears to be an error. The document filed by DoD, GSA, and NASA (a copy of which is linked below) instructed that the "date of publication in the *FEDERAL REGISTER*" be inserted as the effective date.

Today's *Federal Register* publication further says that the deadline for comments is February 13, 2015, *i.e.*, 60 days from now. This too seems to confirm that the interim amendments' effective date is today.

UPDATED 12 18 14: DoD, GSA, and NASA have today published a correction of the effective date to December 15, 2014.

[Interim FAR Rule.pdf \(90.10 kb\)](#)