

## 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:** Under the Fair Labor Standards Act, minimum wage rates in American Samoa are set by a special industry committee appointed by the Secretary of Labor. This document puts into effect the minimum wage rates recommended for various industry categories by Industry Committee No. 23 which met in Pago Pago, American Samoa, during the week of June 7, 1999.

**DATES:** This rule shall become effective on September 20, 1999.

Applicability date: The new minimum wage rates are effective on September 20, 1999, unless otherwise noted.

**FOR FURTHER INFORMATION CONTACT:**

Arthur M. Kerschner, Jr., Office of Enforcement Policy, Child Labor and Special Employment Team, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3510, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-0072. This is not a toll free number. Copies of the Final Rule in alternative formats may be obtained by calling (202) 693-0072 or (202) 693-1461 (TTY). The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audio-tape.

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

This rule contains no reporting or recordkeeping requirements which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104-13).

**II. Background**

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064), as amended (29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and by means of Administrative Order No. 664 (64 FR 13822), the Secretary of Labor appointed and convened Industry Committee No. 23 for Industries in American Samoa, referred to the Committee the question

of the minimum rates of wages to be paid under section 8 of the FLSA to employees within the industries, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted in Pago Pago pursuant to the notice, the Committee filed with the Administrator of the Wage and Hour Division a report containing its findings of fact and recommendations with respect to minimum wage rates for various industry classifications. The Committee also corrected a typographical error that previously appeared in the definition of shipping and transportation. The FLSA requires that the Secretary publish this report in the **Federal Register** and further requires that the recommendations in the report be effective 15 days after publication.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950 and 29 CFR 511.18, this rule hereby revises § 697.1 and 697.3 of 29 CFR part 697 to implement the recommendations of Industry Committee No. 23.

**Executive Order 12866/Section 202 of the Unfunded Mandates Reform Act of 1995 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. 23 which met in Pago Pago, American Samoa during the week of June 7, 1999. The Committee recommended increases over two years in various industry categories; ranging from 3 cents per hour for the bottling, brewing, and dairy products industry; to 12 cents per hour over two years for the government employees industry.

When these increases are fully implemented, wage rates will range from \$2.50 an hour (miscellaneous activities) to \$3.97 an hour (shipping and transportation, classification A, stevedoring, lighterage, and maritime shipping activities).

There are approximately 16,000 employees in the various industry classifications. Based on the number of workers whose wages must be increased to the new minimum wage levels in 1999 and/or 2000, and assuming that employees currently paid at or in excess of the new minimum wages will also receive commensurate wage increases to maintain relative pay comparability, increases in the overall annual wage bill are expected to be very modest—

approximately \$618,000 in 1999 and \$1.4 million (cumulative) in 2000. Thus this rule is not expected to result in a rule that may (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.

For reasons similar to those noted above, the rule does not require a section 202 statement under the Unfunded Mandates Reform Act of 1995. Because the Secretary has no authority to change a recommendation of the Industry Committee, compliance with Executive Order 12875 is neither feasible nor permitted by law, and in any event, the rule is not a significant rule.

Furthermore, a resident of American Samoa is nominated by the Governor of American Samoa as a public member of the Industry Committee. Its representatives also provided testimony and made recommendations at the hearing.

Finally, the rule is not a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. Although the rule will impact solely on American Samoa, its impact is not expected to be significant, for the reasons discussed above.

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

**Administrative Procedure Act**

Good cause exists for issuance of this rule without publication 30 days in advance of its effective date, as normally required by section 553(d) of the Administrative Procedure Act. As discussed above, section 8 of the FLSA requires that the rule be effective 15 days after publication.

*Document Preparation*

This document was prepared under the direction and control of John R. Fraser, 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 30th day of August, 1999.

**Bernard E. Anderson,**

*Assistant Secretary, Employment Standards Administration.*

Accordingly, part 697 of Chapter V of Title 29, Code of Federal Regulations is amended as follows:

**PART 697—INDUSTRIES IN AMERICAN SAMOA**

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

**Authority:** Secs. 5, 6, 8, 52 Stat. 1062, 1064; 29 U.S.C. 205, 206, 208.

2. Section 697.1 is amended by revising paragraphs (a)(1), (b)(1) and (2), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (k)(1), (l)(1), (m)(1), (n)(1); (o)(1) and (p)(1) to read as follows:

**§ 697.1 Wage rates and industry definitions.**

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(a) *Fish canning and processing and can manufacturing industry.* (1) The minimum wage for this industry is \$3.17 an hour effective October 27, 1998, and \$3.20 an hour effective September 20, 2000.

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(b) *Shipping and transportation industry.* (1) The minimum wage for classification A, stevedoring, lighterage and maritime shipping agency activities, is \$3.92 an hour effective September 20, 1999 and \$3.97 an hour effective September 20, 2000. The minimum wage for classification B, unloading of fish, is \$3.76 an hour effective October 27, 1998, and \$3.81 an hour effective September 20, 2000. The minimum wage for classification C, all other activities, is \$3.72 an hour effective October 27, 1998, and \$3.77 an hour effective September 20, 2000.

(2) This industry shall include the transportation of passengers and cargo by water or by air and all activities in connection therewith, including storage

and lighterage operations: *Provided, however,* that this industry shall not include the operation of tourist bureaus and of travel and ticket agencies:

*Provided, further;* that this industry shall not include bunkering of petroleum products or activities engaged in by seamen in American vessels which are documented or numbered under the Laws of the United States which operate exclusively between points in the Samoan Islands, and which are not in excess of 350 tons net capacity. Within this industry there shall be three classifications:

(i) *Classification A: Stevedoring, lighterage and maritime shipping agency activities.* This classification shall include all employees of employers who engage in each of the following three services: Stevedoring, lighterage and maritime shipping agency activities.

(ii) *Classification B: Unloading of fish.* This classification shall include the unloading of raw and/or frozen fish from vessels.

(iii) *Classification C: All other activities.* This classification shall include all other activities in the shipping and transportation industry.

(c) *Tour and travel service industry.* (1) The minimum wage for this industry is \$3.22 an hour effective October 27, 1998.

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(d) *Petroleum marketing industry.* (1) The minimum wage for this industry is \$3.73 an hour effective October 27, 1998, and \$3.78 an hour effective September 20, 2000.

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(e) *Construction industry.* (1) The minimum wage for this industry is \$3.45 an hour effective on September 20, 1999, and \$3.50 an hour effective September 20, 2000.

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(f) *Hotel industry.* (1) The minimum wage for this industry is \$2.78 an hour effective October 27, 1998.

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(g) *Retailing, wholesaling and warehousing industry.* (1) The minimum wage for this industry is \$2.97 an hour effective September 20, 1999, and \$3.01 an hour effective September 20, 2000.

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(h) *Ship maintenance industry.* (1) The minimum wage for this industry is \$3.20 an hour effective October 27,

1998, and \$3.25 an hour effective September 20, 2000.

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(i) *Bottling, brewing and dairy products industry.* (1) The minimum wage for this industry is \$3.07 an hour effective October 27, 1998, and \$3.10 an hour effective September 20, 2000.

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(j) *Printing industry.* (1) The minimum wage for the printing industry is \$3.37 an hour effective September 20, 1999, and \$3.40 an hour effective September 20, 2000.

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(k) *Finance and insurance industry.* (1) The minimum wage for this industry is \$3.83 an hour effective September 20, 1999, and \$3.88 an hour effective September 20, 2000.

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(l) *Private hospitals and educational institutions.* (1) The minimum wage for this industry is \$3.24 an hour effective October 27, 1998.

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(m) *Government employees industry.* (1) The minimum wage for this industry is \$2.63 an hour effective September 20, 1999, and \$2.69 an hour effective September 20, 2000.

\* \* \* \* \*

(n) *Miscellaneous activities industry.* (1) The minimum wage for this industry is \$2.45 an hour effective July 1, 1996, and \$2.50 an hour effective September 20, 2000.

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(o) *Garment manufacturing industry.* (1) The minimum wage for this industry is \$2.55 an hour effective October 27, 1998, and \$2.60 an hour effective September 20, 2000.

\* \* \* \* \*

(p) *Publishing industry.* (1) The minimum wage for the publishing industry is \$3.48 an hour effective September 20, 1999, and \$3.53 an hour effective September 20, 2000.

3. Section 697.3 is revised to read as follows:

**§ 697.3 Effective dates.**

The wage rates specified in § 697.1 shall be effective on September 20, 1999, except as otherwise specified.

[FR Doc. 99-23015 Filed 9-2-99; 8:45 am]

BILLING CODE 4510-27-P