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May 5, 2004

The Honorable Judd Gregg
Chairman
The Honorable Edward M. Kennedy
Ranking Minority Member
Committee on Health, Education, Labor and Pensions
United States Senate

The Honorable John A. Boehner
Chairman
The Honorable George Miller
Ranking Minority Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Labor, Wage and Hour Division: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Labor (DOL), Wage and Hour Division, entitled “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees” (RIN: 1215-AA14). We received the rule on April 23, 2004. It was published in the Federal Register as a final rule on April 23, 2004. 69 Fed. Reg. 22122.

The final rule revises regulations under the Fair Labor Standards Act implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees. These exemptions are often referred to as the “white collar” exemptions. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and, in most cases, must be paid on a salary basis at not less than minimum amounts as specified in pertinent sections of these regulations.

On September 30, 1999, our Office issued a report entitled “*Fair Labor Standards Act: White Collar Exemptions in the Modern Work Place*” (GAO/HEHS-99-164), which is cited extensively in the preamble to the final rule.

Enclosed is our assessment of DOL's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that DOL complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Cynthia Fagnoni, Education, Workforce, and Income Security. Ms. Fagnoni can be reached at (202) 512-7215.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Richard M. Brennan
Senior Regulatory Officer
Wage and Hour Division
Department of Labor

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
WAGE AND HOUR DIVISION
ENTITLED
"DEFINING AND DELIMITING THE EXEMPTIONS FOR
EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL,
OUTSIDE SALES AND COMPUTER EMPLOYEES"
(RIN: 1215-AA14)

(i) Cost-benefit analysis

DOL performed a Regulatory Impact Analysis, which is included in its entirety in the preamble to the final rule. DOL estimates the first-year implementation costs to employers to be \$738.5 million, of which \$627.1 million is related to reviewing the regulation and revising overtime policies, and \$111.4 million is related to conducting job reviews. Transfers from employers to employees, in the form of greater overtime pay or higher base salaries, are estimated to be \$375 million per year. The total cost to employers is estimated to be \$1.1 billion in year-one and \$375 million per year thereafter.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

DOL prepared Initial and Final Regulatory Flexibility Analyses in conjunction with the proposed and final rules, respectively. The final analysis is contained in the preamble to the final rule and addresses the number of small entities impacted by the rule (5.2 million establishments) and the alternatives considered to reduce the burden on small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule contains a private sector mandate, as defined in title II, of more than \$118 million (adjusted for inflation) in any one year. Therefore, DOL has prepared the required written statement that discusses the macro-economic effects of the rule and alternatives considered, among other items. The entire statement is contained in the preamble to the final rule.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On March 31, 2003, DOL published a Notice of Proposed Rulemaking in the Federal Register. 68 Fed. Reg. 15560. In response, DOL received 75,280 comments, which are discussed in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule does not contain any new information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority found in section 13(a)(1) of the Fair Labor Standards Act, 29 U.S.C. 213(a)(1).

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

DOL has reviewed the rule under the order and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a federalism impact analysis.