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**United States General Accounting Office
Washington, DC 20548**

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December 1, 2000

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

The Honorable William F. Goodling
Chairman
The Honorable William Clay
Ranking Minority Member
Committee on Education and the Workforce
House of Representatives

Subject: Department of Labor, Employment Standards Administration: Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts

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), Employment Standards Administration, entitled "Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts" (RIN: 1215-AA94). We received the rule on November 20, 2000. It was published in the Federal Register as a final rule on November 20, 2000. 65 Fed. Reg. 69674.

The final rule amends the regulations that govern the employment of "helpers" on federally-financed and assisted construction contracts subject to the prevailing wage standards of the Davis-Bacon and Related Acts. Specifically, the rule incorporates the Wage and Hour Division's longstanding policy of recognizing helper classifications and wage rates only where their duties are clearly defined and distinct from those of the journeyworker and laborer classifications in the area; the use of such helpers is an established prevailing practice in the area; and the term "helper" is not synonymous with "trainee" in an informal training program.

Enclosed is our assessment of the 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 Cindy Fagnoni, Managing Director, Education, Workforce, and Income Security. Ms. Fagnoni can be reached at (202) 512-7215.

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Mr. William W. Gross
Director, Office of Wage Determinations
Wage and Hour Division
Employment Standards Administration
Department of Labor

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
EMPLOYMENT STANDARDS ADMINISTRATION
ENTITLED
"PROCEDURES FOR PREDETERMINATION OF WAGE RATES; LABOR
STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING
FEDERALLY FINANCED AND ASSISTED CONSTRUCTION AND TO CERTAIN
NONCONSTRUCTION CONTRACTS"
(RIN: 1215-AA94)

(i) Cost-benefit analysis

DOL performed an economic impact analysis of the final rule utilizing several types of data. The savings ranged from \$72.8 million per year utilizing Current Population Survey data to \$296 million utilizing Occupational Employment Statistics data. Finally, with an alternative methodology using both sets of data, DOL estimates possible savings of \$108.6 million. DOL, however, believes that the savings will be closer to \$72.8 million rather than \$296 million.

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

While DOL performed both an Initial and a Final Regulatory Flexibility Analysis, which complied with the requirements of the Act, DOL concludes that the rule will not have a significant economic impact on a substantial number of 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 does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

(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 contained at 5 U.S.C. 553. On April 9, 1999, DOL issued a Notice of Proposed Rulemaking. 64 Fed. Reg. 17442. DOL received 23 comments in response to the Notice and discusses them in the preamble to the final rule. This proposed rulemaking followed a procession of numerous attempted rulemakings and court actions, which began in 1982.

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

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

Statutory authorization for the rule

The final rule was promulgated under the authority contained at 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; 40 U.S.C. 327-332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; 29 U.S.C. 259; and 108 Stat. 4104(c).

Executive Order No. 12866

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

Executive Order No. 13132 (Federalism)

DOL concluded that the final rule does not have federalism implications under the order.