

believes that it has chosen the least burdensome option that updates, clarifies, and simplifies the rule. One alternative option would have set the exemptions' salary level at a rate lower than the proposed \$425 per week, which might impose lower direct payroll costs on employers but may not necessarily be the most cost-effective or least burdensome alternative for employers. A lower salary level could result in a less effective "bright-line" test that separates exempt workers from those nonexempt workers whom Congress intended to cover by the Act. Greater ambiguity regarding who is exempt and nonexempt increases the potential legal liability from unintentionally misclassifying workers, and thus the ultimate cost of the regulation.

VII. Effects on Families

This rule has been assessed under section 654 of the Treasury and General Government Appropriations Act, 1999, for its effect on family well-being and the undersigned hereby certifies that the rule will not adversely affect the well-being of families.

VIII. Executive Order 13045, Protection of Children

In accordance with Executive Order 13045, the Department has evaluated this rule and determined that it has no environmental health risk or safety risk that may disproportionately affect children.

IX. Executive Order 13132, Federalism

This rule will 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." Under the terms of section 6 of E.O. 13132, it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

This rule is issued pursuant to section 13(a)(1) of the Fair Labor Standards Act, 29 U.S.C. 213(a)(1). The section exempts from the FLSA's minimum wage and overtime pay requirements "any employee employed in a *bona fide* executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative

Procedure Act * * *)." The requirements of the exemption provided by this section of the Act are contained in this rule, 29 CFR part 541.

Section 3(e) of the Fair Labor Standards Act, 29 U.S.C. 203(e), defines employee to include most individuals employed by a state, political subdivision of a state, or interstate governmental agency. Section 3(x) of the Fair Labor Standards Act, 29 U.S.C. 203(x), also defines public agencies to include the government of a state or political subdivision thereof, or any interstate governmental agency.

The Department's Preliminary Regulatory Impact Analysis (PRIA) estimates the implementation costs, incremental payroll costs, and benefits of the proposed rule for all state and local government sectors in the aggregate in each state. The results indicate that the total first year costs of the proposed rule on state and local government entities range from \$24.1 to \$43.6 million. This includes \$14.0 to \$19.7 million in first year (nonrecurring) implementation costs and \$10.1 to \$23.9 million in recurring incremental payroll costs. The first year costs represent less than three one-thousandths percent (0.003 percent) of the \$1.434 trillion in general revenues received by all state and local government entities nationwide, and three one-hundredths percent (0.03 percent) of the \$150.8 billion in total payrolls for those entities. The recurring incremental payroll costs are about one-half these very small amounts.

The Department's PRIA also estimates that the benefits of the proposed rule for all state and local government sectors range from \$48.5 to \$86.2 million. These estimates exclude difficult to quantify benefits such as lower human resource costs and additional lower legal and settlement costs stemming from unintentionally misclassifying workers. The PRIA results indicate that the benefits of the proposed rule will exceed the costs for state and local governments in every year. The Federal mandate imposed by the rule is not expected to have substantial direct effects on the States and will not affect the current relationship between the national government and the states or the distribution of power and responsibilities among the various levels of government.

X. Executive Order 13175, Indian Tribal Governments

This rule was reviewed under the terms of E.O. 13175 and determined not to have "tribal implications." 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." As a result, no tribal summary impact statement has been prepared.

XI. Executive Order 12630, Constitutionally Protected Property Rights

This rule is not subject to E.O. 12630 because it does not involve implementation of a policy "that has takings implications" or that could impose limitations on private property use.

XII. Executive Order 12988, Civil Justice Reform Analysis

This rule was drafted and reviewed in accordance with E.O. 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.

XIII. Executive Order 13211, Energy Supply

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

XIV. Environmental Impact Assessment

The Department has reviewed this rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. 1500), and the Department's NEPA procedures (29 CFR part 11). The rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

List of Subjects in 29 CFR Part 541

Labor, Minimum wages, Overtime pay, Salaries, Teachers, Wages.

Signed in Washington, DC, this 25th day of March, 2003.

Tammy D. McCutchen,

Administrator, Wage and Hour Division.

For the reasons set forth above, 29 CFR part 541 is proposed to be amended as set forth below.