

**Executive Order 12866**

The removal of 20 CFR part 604 is a "significant regulatory action" within the meaning of Section 3(f)(4) of Executive Order 12866 because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, this final rule was submitted to, and reviewed by, the Office of Management and Budget.

Before publication of the BAA-UC final rule (65 FR 37210 (June 13, 2000)), the Department prepared a Regulatory Impact Analysis which estimated that the rule would result in annual costs ranging from zero to \$196 million, depending upon the number of states choosing to enact this voluntary program. (To establish the upper end of the cost range, the Regulatory Impact Analysis grouped the states into size groups—large, medium and small—and used the extent of state enactment of five representative types of UC benefit expansions (alternative base period, unrestricted good cause for voluntary quits, short-time compensation, dependents' allowances, and supplemental (or "additional") benefits) as an indicator of the likelihood of state enactment.) Since publication of the BAA-UC final rule, no state enacted BAA-UC, which means that no benefits have been paid, nor administrative costs expended. Removing the BAA-UC rule ends the possibility that BAA-UC and its associated administrative costs will be paid out of state unemployment funds with the result that the estimated costs would not be incurred. Therefore, the removal of the rule results in no costs or cost savings and potentially prevents costs from being incurred in the future. Because the Department expects the immediate economic impact of removing the rule to involve no costs, this regulatory action is unlikely to have an annual effect on the economy of \$100 million or more and, consequently, is not "economically significant" within the meaning of Section 3(f)(1) of that Executive Order. No commenter claimed that there were any costs associated with removing the BAA-UC rule.

Finally, we have evaluated this regulatory action and find it consistent with the regulatory philosophy and principles set forth in Executive Order 12866. Though this action removes authority for states to fund a form of family leave from their unemployment funds, states continue to have flexibility to provide paid family leave from other funding sources. Further, because no state has enacted BAA-UC, no state is

adversely affected in a material way by having to dismantle such an experiment. Finally, this action removes a regulation and imposes no alternative regulatory requirements.

**Paperwork Reduction Act**

This regulatory action contains no information collection requirements.

**Executive Order 13132**

We have reviewed this regulatory action in accordance with Executive Order 13132 regarding federalism. This Executive Order requires agencies, when formulating and implementing policies that have federalism implications, to the extent possible, to refrain from limiting state policy options, to consult with states before taking any action which would restrict states' policy options, and to take such action only where there is clear statutory and constitutional authority and the presence of a problem of national scope. The UC program is a matter of national scope, as evidenced by existing federal legislation, which limits state flexibility in certain areas. As discussed above, the Department has the authority to interpret what the test of continued "involuntary" unemployment requires, so long as its interpretation is based on a reasonable construction of FUTA and SSA. Policies with federalism implications are those with 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.

Because this regulatory action would limit state policy options, by eliminating authority to pay for family leave out of unemployment funds, we consulted with organizations representing state elected officials, who did not object to removal of the BAA-UC rule.

**Executive Order 13175**

This regulatory action does not have "substantial direct effects on one or more Indian tribes, or the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." It affects primarily states and state agencies.

**Executive Order 12988**

This regulatory action has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the federal court system. The proposal, a mere one sentence, removes

20 CFR part 604. Given its brevity, it is not likely to lead to litigation resulting from drafting errors or ambiguities.

**Unfunded Mandates Reform Act of 1995**

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and does not include any unfunded federal mandate.

**Regulatory Flexibility Act**

This regulatory action will not have a significant economic impact on a substantial number of small entities. This action affects states and state agencies, which are not within the definition of "small entity" under 5 U.S.C. 601(6). Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

**Effect on Family Life**

We certify that this regulatory action has been assessed in accordance with Section 654 of Public Law 105-277, 112 Stat. 2681, for its effect on family well-being. As discussed earlier in this preamble, we conclude that this action would not adversely affect the well-being of the nation's families. No state has enacted BAA-UC; consequently no families would experience a termination of BAA-UC benefits. Though the rule withdraws authorization for states to amend their UC laws to pay for such benefits from the state's unemployment fund, paid family leave could be provided from other funding sources. This rule preserves the availability of state unemployment funds for times when workers, who may support families, are unemployed due to lack of work.

**Congressional Review Act**

Consistent with the Congressional Review Act, 5 U.S.C. 801, *et seq.*, we will submit to Congress and the Comptroller General of the United States, a report regarding the issuance of this Final Rule prior to the effective date set forth at the outset of this document.

OMB has determined that this rule is not a "major rule" as defined by the Congressional Review Act (Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996). It is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability