



441 G St. N.W.
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B-335542

September 5, 2023

The Honorable Bernard Sanders
Chairman
The Honorable Bill Cassidy
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Virginia Foxx
Chairwoman
The Honorable Bobby Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Labor, Office of the Secretary: Updating the Davis-Bacon and Related Acts Regulations*

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, Office of the Secretary (DOL) entitled “Updating the Davis-Bacon and Related Acts Regulations” (RIN: 1235-AA40). We received the rule on August 23, 2023. It was published in the *Federal Register* as a final rule on August 23, 2023. 88 Fed. Reg. 57526. The effective date is October 23, 2023.

According to DOL, in this final rule, it updated its regulations issued under the Davis-Bacon and Related Acts¹ (DBRA). DOL stated that it last engaged in a comprehensive revision of the regulations governing the DBRA in a 1981–1982 rulemaking. 47 Fed. Reg. 23644 (May 28, 1982); 48 Fed. Reg. 19532 (Apr. 29, 1983). DOL noted that since the time of that last rulemaking, Congress expanded the reach of the Davis-Bacon labor standards significantly and added numerous Related Act statutes to which the DBRA regulations apply. DOL stated that the revisions to the DBRA regulations found in the rule will promote compliance, provide appropriate and updated guidance, and enhance their usefulness in the modern economy.

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. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to

¹ The Davis-Bacon Act is codified as 40 U.S.C. §§ 3141–3148. In the rule, DOL stated that it maintains a list of the more than 70 Related Acts at <https://www.dol.gov/agencies/whd/government-contracts/>.

the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail on the 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Robert Waterman
Senior Policy Advisor
Department of Labor

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY
ENTITLED
“UPDATING THE DAVIS-BACON AND RELATED ACTS REGULATIONS”
(RIN: 1235-AA40)

(i) Cost-benefit analysis

The Department of Labor, Office of the Secretary (DOL) conducted an economic analysis of this final rule. DOL estimated both regulatory familiarization costs and implementation costs for firms affected by the rule. DOL estimated the total costs for Year 1 as \$39.3 million. DOL also estimated that the average annualized costs across the first 10 years of implementation to be \$7.3 million, using a 7 percent discount rate. DOL discussed the rule’s benefits qualitatively due to data limitations and uncertainty. According to DOL, the rule’s benefits include improved government services, increased worker productivity, reduced turnover rates, and possibly more apprenticeships and reduced workplace injuries, disabilities, and fatalities.

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

DOL prepared a Final Regulatory Flexibility Analysis. The analysis included (1) a statement of the need for and objectives of the rule; (2) a description of significant issues raised by public comments, including those filed by the Chief Counsel for Advocacy of the Small Business Administration; (3) an estimate of the number of small businesses affected by the rulemaking; (4) a statement describing the compliance requirements, including reporting and recordkeeping; (5) a statement calculating the impact of the rule on small business firms; and (6) a discussion of alternatives to the final rule and steps taken by DOL to minimize the significant economic impact of the rule 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

DOL noted that the Act requires agencies to prepare a written statement before proposing any unfunded federal mandate that may result in excess of \$100 million (adjusted annually for inflation) in expenditures in any one year by state, local, and tribal governments in the aggregate, or by the private sector. DOL stated that this final rule is not expected to exceed this threshold.

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

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

On March 18, 2022, DOL published a proposed rule. 87 Fed. Reg. 15698. In response to the proposed rule, DOL received 40,938 timely comments. DOL observed that these comments were submitted by a broad array of constituencies, including contractors, unions, employer and industry associations, worker advocacy groups, non-profit organizations, social scientists, law

firms, think tanks, Members of Congress, a state attorney general, a state department of labor, and other interested members of the public. In the rule, DOL noted that all timely received comments may be viewed on the regulations.gov website, Docket ID WHD-2022-0001. DOL stated that commenters expressed a wide variety of views on the merits of particular aspects of the proposed rule, and that most commenters favored some, if not all, of the changes proposed by the proposed rule. DOL stated that it considered the timely submitted comments addressing the proposed changes, and responded to significant issues raised by the comments in this final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

DOL determined that this final rule contains information collection requirements under the Act. According to DOL, the rule would affect existing information collection requirements previously approved under the Office of Management and Budget (OMB) Control Number 1235-0008 (Davis-Bacon Certified Payroll) and OMB Control Number 1235-0023 (Requests to Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans Under the Davis-Bacon and Related Acts/Contract Work Hours and Safety Standards Act). DOL stated that it submitted proposed information collection revisions as part of its proposed rule to OMB for review to reflect changes that will result from this rulemaking. DOL stated that OMB issued a Notice of Action related to each Information Collection Request (ICR) continuing the collection and asking DOL to address any comments received and resubmit with the final rule. In the rule, DOL addressed public comments it received in response to its analysis finding that the final rule created a slight increase in the paperwork burden associated with ICR 1235-0008 and no increase in the burden to ICR 1235-0023. DOL estimated the annual burden hours attributable to the final rule for ICR 1235-0008 to be 3,333 burden hours, and 0 burden hours for ICR 1235-0023.

Statutory authorization for the rule

DOL promulgated this final rule pursuant to sections 3141 to 3148 of title 40, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

According to DOL, OMB determined that this final rule is a significant regulatory action within the scope of the Order.

Executive Order No. 13132 (Federalism)

DOL determined that this final rule does not have federalism implications and does not impose 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.