Sunshine Act Meetings

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Vol. 49, No. 215
Monday, November 5, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Friday, November 2, 1984, 11:00 a.m.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84–29136 Filed 11–1–84; 3:18 pm]

BILLING CODE 6351–01–M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Thursday, November 8, 1984, 10:00 a.m.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Budget categories, plans, priorities—FY 1985/1st Quarter.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84–29137 Filed 11–1–84; 3:18 pm]

BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Thursday, November 8, 1984, 11:00 a.m.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement budget categories, plans, priorities—FY 1985/1st Quarter.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84–29138 Filed 11–1–84; 3:18 p.m.]

BILLING CODE 6351–01–M

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: Thursday, November 8, 1984, 11:00 a.m.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84–29139 Filed 11–1–84; 3:18 p.m.]

BILLING CODE 6351–01–M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Tuesday, November 13, 1984, 10:00 a.m.

PLACE: 2033 K Street NW., Washington, D.C. 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Report on the National Futures Association.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84–29140 Filed 11–1–84; 3:18 p.m.]

BILLING CODE 6351–01–M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Friday, November 16, 1984, 11:00 a.m.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84–29141 Filed 11–1–84; 3:18 pm]

BILLING CODE 6351–01–M

7

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: November 19, 1984, 10:00 a.m.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84–29142 Filed 11–1–84; 3:18 pm]

BILLING CODE 6351–01–M

8

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Friday, November 23, 1984, 11:00 a.m.

PLACE: 2033 K Street NW., Washington, DC, 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84–29143 Filed 11–1–84; 3:18 pm]

BILLING CODE 6351–01–M

9

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Tuesday, November 27, 1984, 10:00 a.m.

PLACE: 2033 K Street NW., Washington, DC, 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84–29144 Filed 11–1–84; 3:18 pm]

BILLING CODE 6351–01–M

10

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Friday, November 30, 1984, 11:00 a.m.

PLACE: 2033 K Street NW., Washington, DC, 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84–29145 Filed 11–1–84; 3:18 pm]

BILLING CODE 6351–01–M

11

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE: 9:30 a.m. (Eastern time), Tuesday, November 6, 1984.

PLACE: Commission conference room No. 200–C on the second floor of the Columbia Plaza Office Building, 2401 E Street, NW., Washington, DC 20507.

This is to add an agenda item to the announcement issued by EEOC on October 30, 1984: 13. Request for Competitive Contract for Communication Services Nationwide for EEOC.

CONTACT PERSON FOR MORE INFORMATION: Cynthia Matthews, Executive Officer at (202) 634–6748.

Cynthia Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 84–29123 Filed 11–1–84; 3:18 p.m.]

BILLING CODE 6570–06–M

12

POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Notice of Meeting.

"**Federal Register**" citation of previous announcement 49 FR 43145, October 26, 1984, previously announced date of meeting: November 13–14, 1984.

Change: The following is added as item c. under 11. Capital Investments: Phase I, Stamp Vending Units Project.

David F. Harris,

Secretary.

[FR Doc. 84–29096 Filed 11–1–84; 3:18 pm]

BILLING CODE 7710–12–M

federal register

Monday
November 5, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Part 530

Employment of Homeworkers in Certain Industries; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 530

Employment of Homeworkers in Certain Industries

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final rule on restrictions affecting the employment of industrial homeworkers in the knitted outerwear industry under section 11(d) of the Fair Labor Standards Act (FLSA). Section 11(d) of the FLSA provides that the Secretary of Labor is "authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act." Under this rule, any employer who employs any homeworker in the knitted outerwear industry must first obtain a certificate from the Labor Department authorizing such employment. Any knitted outerwear employer who does not obtain a certificate may not legally employ any homeworker and will be subject to the current restrictions on industrial homeworkers, and to all existing sanctions currently provided by the FLSA.

This action is the result of a comprehensive review started in 1980 of homework regulations which have been in effect for almost 40 years without substantive revision. In addition to testimony and comments received by the agency at public hearings held in 1981, extensive written comments have also been received since that time.

On October 9, 1981, a final rule rescinding the restrictions on the employment of homeworkers in the knitted outerwear industry was issued. That action was challenged by a number of organizations who sought to enjoin the rescission, but the United States District Court for the District of Columbia upheld the Department's rule. On November 29, 1983, the Court of Appeals for the District of Columbia Circuit sustained the challenge and remanded the case to the district court with instructions to return the matter to the Secretary of Labor for further proceedings, and to reinstate the restrictions against industrial homework in the knitted outerwear industry "unless properly modified pursuant to reasoned decisionmaking consistent with the opinion of this court."

Thereafter, the Department published a proposal on March 27, 1984, to repromulgate a permanent rule rescinding the restrictions in question, and soliciting comments on various alternatives to total rescission. On June 22, 1984, a second comment period was announced inviting comments on the alternatives to total rescission, and in particular comments pertaining to licensing/registration of employers of industrial homeworkers.

This final rule, which is based upon the entire record compiled in the foregoing proceedings, requires employers of industrial homeworkers in the knitted outerwear industry to obtain certificates. This requirement will facilitate the ability of the Department to enforce the FLSA in this industry. If employers do not obtain a certificate, they will remain subject to the present ban on employment of industrial homeworkers and to all existing sanctions.

EFFECTIVE DATE: December 5, 1984.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, Room S-3502, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, 202-523-8305. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Background

Statutory Provisions and Homework Regulations

Section 11(d) of the Fair Labor Standards Act (FLSA) provides that the Secretary of Labor is "authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act." Pursuant to this authority, the Secretary has issued regulations, published as Part 530 of Title 29 of the Code of Federal Regulations. As originally issued in the 1940's, these regulations restricted the employment of industrial homework in seven industries: Knitted outerwear; women's apparel; jewelry manufacturing; gloves and mittens; button and buckle manufacturing; handkerchief manufacturing; and embroideries. Homework in all other industries has never been restricted.

The regulations essentially provide that the production of goods in these restricted industries may not be carried on by employees in or about a home, apartment, tenement, or room in a residential establishment except by a certificated homeworker. Under specified conditions, an employer may obtain a certificate for employees who are unable to adjust to factory work because of age or physical or mental disability or who are unable to leave home because their presence is required to care for an invalid there. Individuals may also be employed as industrial homeworkers in the restricted industries under the supervision of a sheltered workshop without obtaining a certificate under Part 530.

Final Rule Removing Homework Restrictions in Knitted Outerwear Industry Effective October 1981

The regulations restricting homework were promulgated following a series of public hearings on the seven industries, held from 1941 through 1943. In 1980, in light of the fact that the homework regulations had been in effect for almost 40 years without substantive revision, the Department decided to review the status of industrial homework. Accordingly, the Department held hearings in January and February of 1981 in Burlington, Vermont and in Washington, D.C. to obtain information with respect to employment conditions in industrial homework and the extent to which the restrictions were still necessary to safeguard the minimum wage. In addition to the oral testimony presented at these hearings, written comments were submitted through March 23, 1981.

The testimony and written comments reflected that there were a number of people doing work at home who wanted to continue to do such work and did not feel they were being abused. The testimony and written comments also reflected concern regarding the feasibility of enforcement of the FLSA monetary, child labor, and recordkeeping requirements in the homework setting, the extent to which wages among homeworkers equal or exceed the minimum wage, the effect of the restrictions on employment opportunities, and the competitive effect of homework on firms not employing homeworkers.

Based on the testimony and comments, the Department published a proposal in the **Federal Register** on May 5, 1981 (46 FR 25108) to remove the existing restrictions on homework in all seven industries. Comments were received from more than 10,000 individuals, organizations, and agencies.

On October 9, 1981, after reviewing the entire record, the Department issued a final rule rescinding the restrictions on

the employment of homeworkers in the knitted outerwear industry only (46 FR 50348). Along with this action, the Department announced that it would undertake a concerted compliance effort among employers of homeworkers. The Department's action was taken after consideration of oral testimony received at hearings held pursuant to the **Federal Register** Notice of December 5, 1980 (45 FR 80555) and of the more than 10,000 written comments received as the result of the Notice of Proposed Rulemaking of May 5, 1981 (46 FR 25108).

In reaching this decision, the Department determined that it would be feasible to enforce the FLSA provisions in the knitted outerwear industry without restricting homework and that retention of the restrictions would unnecessarily curtail employment opportunities in the industry.

After issuance of the October 9, 1981 rule, a number of organizations filed suit seeking an injunction against rescission of the homework restrictions in the knitted outerwear industry. On July 23, 1982, the district court upheld the Department's rule. On November 29, 1983, the court of appeals reversed the district court, vacting the rescission of the restrictions (*International Ladies' Garment Workers' Union* v. *Donovan*, 722 F.2d 795 (D.C. Cir. 1983)). The court of appeals held that the Department had failed to articulate adequately the reasons for its action, and that the rulemaking process had therefore not conformed to the requirements of the Administrative Procedure Act. The case was remanded to the district court with instructions to return the matter to the Department for such further proceedings as might be appropriate, and to reinstate the restrictions against homework in the knitted outerwear industry unless properly modified consistent with the opinion of the court.

Current Proposal to Remove Homework Restrictions in Knitted Outerwear Industry

Following the court of appeals decision, the Department published a proposal in the **Federal Register** on March 27, 1984, (49 FR 11786) to repromulgate a permanent rule rescinding the restrictions on homework in the knitted outerwear industry, and solicited comments on various alternatives to total rescission. In doing so, the Department stated its belief that it could effectively enforce FLSA provisions in this industry without restricting homework. Since 1981, the Department has conducted a concerted compliance effort to detect violations of the Act among homeworkers as an alternative to the imposition of restrictions against homework. As part of this effort, the Department has investigated all compliants received involving homework and it has actively sought, through a variety of information sources, to ensure that homework activity, wherever it occurs, is in compliance with the FLSA. In the March 27 proposal it was noted that between October 1, 1981, and December 31, 1983, a total of 591 investigations of employers utilizing homeworkers were conducted as compared with approximately 75 to 80 such investigations during the previous six-year period.

Interested parties were invited to submit written comments relevant to the March 27 proposal and possible alternatives to total rescission of the restrictions on homework in the knitted outerwear industry. These alternatives included: removing the ban on homework in rural areas only; expanding the conditions for granting certificates permitting homework employment; transferring the responsibilities for homework certification and enforcement to the states; and licensing those employers desiring to employ homeworkers.

A total of 690 letters of comment, containing the views of more than 6,000 commenters, were submitted in response to this invitation, but few addressed the alternatives. A second comment period was announced on June 22, 1984 (49 FR 25641) inviting comments on the alternatives to total rescission, especially comments relevant to licensing/registration of employers of homeworkers. Only seven additional letters of comment were received as a result of the second comment period. All additional comments opposed the alternative, preferring either total retention or total rescission of the restrictions on homework in the knitted outerwear industry.

Description of the Final Rule

After consideration of all the comments, including those submitted in response to the May 5, 1981 proposal and the entire record of the January and February 1981 hearings, the Department has decided to issue a final rule which establishes a certification system for employers who wish to employ homeworkers in the knitted outerwear industry. These employers will be required to obtain a certificate from the Department authorizing their employment of homeworkers. Employers in the knitted outerwear industry who do not obtain a certificate will be prohibited from employing homeworkers. To obtain a certificate, an employer in the knitted outerwear industry must provide the Department with the name of the firm, its mailing address, and the physical location of the firm's principal place of business. A certificated employer must also provide the Department with written notice of each change of address of the principal place of business within 30 days of the change in address.

Violations of any provision of the FLSA may be sufficient grounds for denial of a certificate, and open investigations may result in the withholding of a certificate pending the conclusion and resolution thereof. Violation of any provision of the FLSA may constitute sufficient cause for the revocation of any existing certificate. Where employers are found, pursuant to a Wage-Hour investigation, to have utilized homeworkers without obtaining a certificate, appropriate sanctions will be imposed. Certificates may be denied for a period up to a year, and the employer required to cease employing homeworkers as well as to remedy any monetary violations found. In addition, the Department will continue to seek restraining orders, injunctions, and other remedies, including specifically, orders banning the movement of "hot goods" under section 15(a)(1) of the Act to assure compliance with this rule. Section 15(a)(1) expressly prohibits the shipment in commerce of goods which have been produced in violation of the Act. This specific remedy has long been recognized as an appropriate measure to effect compliance in the knitted outerwear industry involving homeworkers. See, *e.g.*, *Mitchell* v. *Law*, 161 F. Supp. 795 (W.D. Tenn. 1957).

This change to the regulation is based on the conclusion by the Department that it can effectively enforce the FLSA with respect to homeworkers employed by a certificated employer, and there is therefore no justification to deny these employees the opportunity to work at home.

The Department's conclusion that it can effectively enforce the Act in the homework sector of the knitted outerwear industry under a certification system is based on several independent grounds. First, the knitted outerwear industry is extremely small, and the Department can ensure effective enforcement. There are only about 63,000 production employees in the entire industry, only a fraction of whom are homeworkers, compared with a universe of some 60 million employees subject to the FLSA. Even if the homework sector should increase substantially in percentage terms as a result of adoption of the certification system, the number of homeworkers

would still be extremely small. These facts and the Department's firm commitment to provide an appropriate level of resources ensure effective enforcement of the Act in this area.

Second, in the Department's judgment, the existing prohibition against homework has been counterproductive. A flat ban on homework reduces an employee's incentive to file a complaint regarding minimum wage violations, since a successful complaint may well lead to a loss of the homeworker's job. Unlike a certification system a ban provides no alternative basis for identifying those firms employing homeworkers. Also homework firms operating in the restricted industries are operating in violation of the law simply by employing homeworkers. Thus they have little incentive to comply with the Act's wage provisions, since, in any event, their very existence violates the Act, and, if found by the Department, they may be permanently closed regardless of minimum wage or overtime violations.

Third, as discussed below in the comment analysis, the certification system embodied in this rule addresses and substantially resolves one of the major obstacles to enforcement which has been alleged to exist in the case of homework firms: the difficulty of locating homeworkers. By continuing to make homework in the knitted outerwear industry illegal for all employers who are not certificated, the certification system responsibly addresses the concerns of those who believe that the FLSA cannot be enforced in homework, because homeworkers cannot be located and identified. In the case of all employers who request certification, the Department will be able to identify homeworkers. For employers who do not request certification, the current prohibition against homework will remain in place.

A restriction on homework is permissible under the FLSA only when necessary or appropriate to safeguard the minimum wage (Section 11(d)). A restriction is simply one tool among many the Department has available to enforce the Act. It is a harsh tool because it deprives persons of the right they would otherwise have to work at home if the so choose. Many empoyees prefer to work at home because it is more convenient. Others would be unable to work at all if not permitted to work at home. For these reasons, the Department believes that homework should not be prohibited if the Act can effectively be enforced by other means. In light of the fact that homework may be freely engaged in by the vast majority of workers, and that enforcement is facilitated in the knitted outerwear industry under a certification system, continuation of the existing ban on homework would unfairly and arbitrarily deprive workers in the industry of the opportunity to work at home.

Analysis of Comments

Introduction

Comments received by the Department during this entire rulemaking have pertained either to the proposal to rescind the restrictions altogether, i.e., lift the present ban against the employment of homeworkers in the knitted outerwear industry, or to the Department's solicitation of comments on alternatives to total rescission including particularly an employer certification proposal. The following analysis will consider the comments and their relationship to the certification system established in this rule.

Discussion of Comments Regarding Total Rescission of Restrictions

Some 6024 of 6048 commenters expressing their views during the 1984 rulemaking proceedings favored rescission of the restrictions on homework in the knitted outerwear industry. However, as was the case with most of the comments received during the 1981 rulemaking (see 46 FR 50348), the vast majority of comments were not specific but merely expressed individual preferences. Where arguments were presented in these comments for removal of the restrictions, the major arguments were that: (1) The number of homeworkers in the knitted outerwear industry is not large and effective enforcement is feasible; (2) restriction is not effective because it increases the difficulty of identifying employers utilizing homeworkers.

Among the governmental and organizational supporters of the proposal were: Senators Orrin Hatch and William Cohen; Congresswoman Olympia Snowe; nine officials from Northeastern states; the Virginia General Assembly; the Center on National Labor Policy; the Heritage Foundation; the New England Legal Foundation; the American Farm Bureau Federation; and the National Association of Homebased Businesswomen.

Substantive comments opposed to the proposal were received from Congressmen George Miller and Fernand St Germain; Governor Scott Matheson of Utah; former Secretaries of Labor Arthur Goldberg, W. Willard Wirtz and Ray Marshall; former Wage and Hour Administrator Clarence Lundquist; six State officials; the Atlantic Apparel Contractors' Association; Knitted Outerwear Manufacturers' Association; United Knitwear Manufacturers' League; and Teamsters Local 856, San Francisco.

The most detailed and comprehensive comments relating to the total removal of the ban were submitted in May 1984 by the International Ladies' Garment Workers' Union (ILGWU). The ILGWU opposed the total rescission of the restrictions in the knitted outerwear industry, as well as all of the alternatives referenced in the Department's proposal. The ILGWU argues that "the same impediments that precluded enforcement of the FLSA among homeworkers in the knitted outerwear industry in 1942 precludes its enforcement among these homeworkers today, and the results of the Department's enforcement program since 1981 do not support the Secretary's contrary assessment." Specifically, the ILGWU believes that the following impediments would exist:

(1) The difficulty of locating and identifying homework employers and their homeworkers;

(2) The difficulty of determining the hours worked by homeworkers;

(3) The inordinate amount of time required to conduct investigations of employers having homeworkers; and

(4) The difficulty of restoring back wages to homeworkers paid in violation of the FLSA.

There follows a summary of the comments on these four specific areas, as well as of other significant substantive comments received; the Department's analysis of these comments; and a description of how certification of employers of home knitters will address these concerns and result in effective enforcement of the FLSA.

A. Locating Homeworkers. The ILGWU and other commenters contended that it is too difficult to identify and locate homework employers and their homeworkers to effectively enforce the Act in this sector, although the ILGWU conceded that an employer certification system, if used, could provide a partial remedy for identifying and locating homeworkers.

The Department agrees that locating homework employers and their employees is a prerequisite to effectively enforcing the FLSA among homeworkers. Between 1981 and 1983 (the latest year for which complete figures are available), the Department

has located nearly 600 employers of homeworkers. Moreover, since homework employers in the knitted outerwear industry must, under the Department's new rule, obtain a certificate from the Department, and their homework employees will have to be identified in the firm's records under existing FLSA regulations, locating legally authorized employers and their homeworkers will not be an obstacle to FLSA enforcement.

In addition, under this rule, an employer who has obtained a certificate will remain subject to a continuing requirement to file updated information when the address of the principal place of business changes. Failure to either obtain a certificate or to provide updated information would constitute a recordkeeping violation of the Act and/or applicable regulations, and could result in the denial or revocation of a certificate, thereby subjecting that employer to the present ban.

It must be emphasized that the current restrictions on homework in the knitted outerwear industry will remain in effect for all employers in this industry who are not duly certificated by the Department to employ homeworkers.

The ILGWU contends that many employers would not seek certificates. This is not a persuasive objection to a certification system, however, because to the extent that employers do not come forward and register, the existing prohibition against homework will be applicable, and all existing sanctions will be available to the Department to enjoin future violations and to recover unpaid back wages which might have accrued. The Department is committed to a vigorous enforcement program to eliminate all homework in this industry except by duly certificated employers.

B. Achieving Accurate Recordkeeping. Some commentors noted the difficulties in accurately determining the hours worked by homeworkers. The ILGWU contends that neither the existing requirement that handbooks be maintained to record hours worked, nor the investigation techniques used by the Department, are adequate to obtain an accurate accounting of hours worked.

Implementation of the certification procedure will give the Department a valuable enforcement tool and will serve to maximize compliance resources, since the time of compliance personnel can be utilized more completely in conducting investigations, rather than in attempting to locate employers of industrial homeworkers in this industry. Violations of FLSA provisions by certificated employers, including the failure to maintain accurate records of hours worked, as well as other records required under the Act, could be grounds for revocation of their certificates, at which time their employment of homeworkers would be prohibited. The prospect of certificate revocation will create a strong incentive for the employer to ensure that accurate records are kept. The information required in the homeworker handbook provides a sound basis for enforcing the minimum wage. Employers obtaining certificates authorizing homework must maintain records now required under existing regulations. Under this rule, knitted outerwear employers certificated to employ homeworkers would be investigated at regular intervals to determine their compliance with FLSA provisions.

The Department has had 45 years of experience with investigations in industries and occupations where time clocks are not maintained and employees are not closely supervised, including, for example, agriculture, construction, route sales, delivery driving, and security and repair services. In these investigations, to determine the actual hours of work, the Department's compliance officers rely on personal interviews with employees and observations concerning the time period required to produce work products or to perform the duties of the job. Indeed, it has been the Department's experience that the investigative problems raised by commenters in relation to homework situations are often not limited to homework, and the Department has been able to develop techniques to deal with those problems.

The Department has gained additional experience since 1981 in determining hours worked by homeworkers as a result of the concerted homework enforcement program. In homework, these standard procedures are supplemented by a Departmental regulation requiring all the employers to record the hours worked and work units produced by homeworkers in special handbooks (29 CFR 516.31(c)).

The Department will provide handbooks to each employer holding a certificate, and will vigorously enforce the requirement for accurate maintenance of the handbook; failure to maintain these records would constitute a violation of Section 15(a)(5), providing grounds for revocation of the employer's certificate.

C. Enforcement Resources. A further objection to the removal of the restrictions is the contention that homework investigations impose a burden on the Department's resources because of the time required to conduct such investigations. The ILGWU contends that the Department does not now have adequate resources to conduct the necessary number of in-depth investigations essential for enforcement of the FLSA among homeworkers in the knitted outerwear industry.

It is true that in the past investigations of employers utilizing homeworkers have often taken more time to complete than the typical Wage-Hour investigation. However, one of the reasons for this has been the greater amount of time spent in locating and identifying homeworkers. Under the certification system, this problem will be resolved with respect to certificated employers. The prospect for certificate revocation for recordkeeping violations should also encourage more scrupulous adherence to the recordkeeping requirements than has been the case in the past, thereby conserving the amount of resources required to determine hours worked.

Moreover, nationally, knitted outerwear is a relatively small industry, with only about 63,000 production employees or approximately one-tenth of one percent of the 60 million employees subject to the FLSA. Only a fraction of these 63,000 employees are homeworkers. The Department believes it has sufficient enforcement resources to effectively enforce the FLSA in an industry of this size, and the expenditure of these resources is a reasonable alternative to total restriction. The Department's commitment in this regard is shown by the increase of some 1900 percent in the number of homework investigations it has conducted since 1981 as compared with prior years.

As previously noted, under this rule, certificated employers will be investigated by the Department at regular intervals. These investigations will be conducted in accordance with established investigation procedures and techniques to determine compliance with all applicable provisions of the FLSA. Employers found to be in violation of the FLSA will be subject to revocation of their certificate, at which time their employment of homeworkers would again be prohibited.

The resource impact of these periodic reinvestigations will be reduced by the fact that, based upon the historical experience of the Department, reinvestigations typically take less time than the initial investigation. Based on the very small size of this industry, the Department will have adequate compliance resources available to periodically investigate every employer who participates in the certification program.

D. Back Wage Recovery. The ILGWU and other commenters contend that the Department has recovered only a small fraction of the back wages it has found due in knitted outerwear homework investigations conducted since 1981, and that this shows that enforcement in the industry is infeasible.

Under the rule promulgated today, the Department will institute litigation in appropriate cases where employers of homeworkers do not voluntarily agree to correct FLSA violations and restore back wages found due employees. Moreover, since certificated employers will be investigated at regular intervals, monetary violations, where present, will be detected before a large back wage liability has accrued. It has been the experience of the Department that employers are more willing and able to restore back wages to their employees when the total amount of such liability is relatively small. In addition, the fact that certificated employers will be subjected to periodic reinvestigations will minimize the availability of the statute of limitations governing back wage recoveries. Moreover, under this rule, a certificated employer of homeworkers who is found to be in violation of FLSA monetary violations will be subject to revocation of the certificate as well as the full range of sanctions available under FLSA to obtain compliance and payment of back wages.

E. Employment Relationships. Another contention made by those opposing the proposal is that it is difficult to determine the party responsible for FLSA violations and for payment of back wages because of the complex employer-employee relationships in homework. The ILGWU contends that complex employer-employee relationships pose a particular problem in the knitted outerwear industry, because small firms frequently turn to outside contractors to help them cope with the seasonal demand for knitted outerwear.

Under the certification system, the Department will be able to find the employer who is responsible for the violations, since, by obtaining a certificate, the employer will have self identified. Moreover, under this rule, knitted outerwear employers who obtain certification to employ homeworkers remain subject to FLSA recordkeeping regulations which require full identification of all their employees as well as any agent, distributor, or contractor with whom they do business. Failure by a certificated employer to comply with these requirements could be a basis for revocation of the certificate authorizing employment of homeworkers.

We also note that while the employer/employee relationship issue is frequently raised by homework employers as a defense, the Department has been very successful over the years in establishing employment relationships in homework situations. *Goldberg* v. *Whitaker House Cooperative, Inc.*, 366 U.S. 28 (1961); *Fleming* v. *Palmer*, 123 F.2d 749 (1st Cir. 1941), *cert. denied sub nom. Caribbean Embroidery Cooperative, Inc.* v. *Fleming*, 316 U.S. 662; *Walling* v. *American Needlecrafts, Inc.*, 139 F.2d 60 (6th Cir. 1943); *McComb* v. *Homeworkers Handicraft Cooperative*, 176 F.2d 633 (4th Cir. 1949), *cert. denied* 338 U.S. 900; *Tobin* v. *Harwood*, 10 WH Cases 73 (W.D. Tenn. 1951), *aff'd. per curiam* 194 F.2d 538 (6th Cir. 1952); *Mitchell* v. *Law*, 161 F.Supp. 795 (W.D. Tenn. 1957); *Mitchell* v. *Nutter*, 161 F.Supp. 799 (D.Me. 1958); *Wirtz* v. *Wrightenberry*, 218 F.Supp. 404 (M.D.N.C. 1963); *Hodgson* v. *Rancourt*, 336 F.Supp. 1119 (D.R.I. 1972).

There is now a substantial body of case law addressing this issue as a result of successful litigation by the Department against employers in a number of industries where employees were alleged to be independent contractors. As early as 1947, the Supreme Court said in the case of *Rutherford Food Corp.* v. *McComb*, 331 U.S. 722, 729 (1947): "Where the work done, in its essence, follows the usual path of an employee, putting on an 'independent contractor' label does not take the worker from the protection of the FLSA".

F. Employment of Illegal Aliens. Comments were also made that lifting the ban on homework would result in an increase in the employment of illegal aliens as homeworkers. The ILGWU stated that the propensity of illegal alien homeworkers not to complain is a significant impediment to identification of the universe of homeworkers in the knitted outerwear industry, because the skills required for knitting at home are not specialized and are either already known or easily learned by immigrant women who cannot obtain other employment.

Under the certification system it will not be necessary to receive employee complaints in order to locate certificated homework firms and their employees. Moreover, employment of illegal aliens at substandard wages is a matter with which the Department has had considerable experience over a period of many years. The enforcement problems in the employment of illegal aliens in homework are not significantly different from those found in other industries in which illegal aliens have been found. In addition, since 1978, the Department has earmarked resources for targeting special directed investigations of employers in specific industries and geographic areas which are likely to be employing illegal aliens under terms violative of Federal labor laws. During fiscal year 1984, the Wage and Hour Division conducted 16,860 investigations targeted in this manner. In conducting these investigations, the Department often utilizes information provided by the Immigration and Naturalization Service (INS). Moreover, in recognition of language barriers that are frequently present when dealing with legal as well as illegal aliens, the Department has increased its employment of bilingual enforcement personnel who are proficient in Spanish, Chinese, Haitian, Creole, Vietnamese, and other foreign languages.

In addition, as previously discussed, employers seeking certification under this rule to employ homeworkers in the knitted outerwear industry will have to maintain proper records for all employees and will be subject to FLSA investigations at regular intervals.

Rejection of Proposal to Rescind the Ban and Adoption of Proposal to Establish Certification System

In its March 27, 1984, Notice of Proposed Rulemaking, the Department proposed a complete rescission of the ban on homework in the knitted outerwear industry. The Department noted that investigations conducted as part of its concerted enforcement program had found that the rate of minimum wage and overtime violations was roughly comparable for homework and non-homework employers. Some 56 percent of all homework firms investigated were found to be in compliance with the Act's minimum wage and overtime provisions. The compliance rate was 40 percent for investigations arising from complaints and 66 percent for non-complaint investigations. For homework investigations in the knitted outerwear industry alone, the comparable figures were 39 percent overall, 11 percent for complaint investigations and 53 percent for non-complaint investigations. For all investigations for the same period, including non-homework firms, the minimum wage and overtime compliance rate found was 34 to 36 percent (25 to 27 percent for complaint investigations, and 52 to 56 percent for non-complaint investigations).

The results of the Department's concerted enforcement program afford a reasonable basis for concluding that the Act can be effectively enforced with respect to employers of homeworkers, including those in the knitted outerwear industry, just as it can be enforced against factory and the non-homework employers. We note, however, that the commenters, particularly the ILGWU, have raised a number of concerns with respect to reliance on the concerted enforcement program as a basis for rescinding the homework ban. In light of the concerns raised by the commenters, the Department has concluded that it would be reasonable to adopt an employer certification system. As discussed above, the certification system will enable law-abiding employers, who are willing to identify themselves and to submit to regular periodic compliance investigations, to employ persons who, for whatever reason, wish to work in their homes rather than in factories. It will not require excessive paperwork and will be simple to administer. At the same time, it will also address the various specific obstacles to enforcement which the commenters have alleged to exist in the case of homework firms, notably including the problem of locating and identifying homework firms and their employees.

Reasons for Selection of Certification System; Analysis of Comments Regarding Certification System

Commenters responding to the alternatives to total rescission, including the licensing (certification) alternative were essentially opposed to the certification proposal and were either in favor of total retention or rescission of the restrictions. However, some commenters were willing to endorse certification but only as their second choice and under certain limitations. For example, an employer of 40 homeworkers in the knitted outerwear industry in Maine, supported this alternative on the grounds that it would facilitate the regulation of the employer and not the employee. This employer commented further that it is appropriate to have the employer the one to meet the registration requirement rather than the employee.

The ILGWU stated there were two reasons why a certification system would not make enforcement of the FLSA feasible. First, this system would depend on self-identification by employers of homeworkers, and experience has indicated that most employers of homeworkers in this industry are unwilling to identify themselves. To the extent this contention has merit, it should be reiterated that absent certification, the employer will still be subject to the present ban. The second reason given by ILGWU is that even substantial compliance by employers with a certification system would not overcome the other obstacles to effective enforcement of the FLSA among homeworkers, including inadequate recordkeeping, insufficient enforcement resources, and difficulty of restoring back wages. On the contrary, because an employer will know that it is at risk of losing its certification for an FLSA violation, it will have a powerful incentive to comply with the recordkeeping and all other provisions of the FLSA; the employer will also know that it will be subject to investigations at regular intervals to insure compliance with the Act. Self-identification of employers of homeworkers and regular investigations will also substantially reduce the resource and back wage problems. For these and the other reasons fully discussed in subsections B through F above, the Department is convinced that the certification procedure will be a valuable tool for overcoming the recordkeeping, resource, and back wage recovery problems, to the extent that they currently exist.

Other commenters contended that certification would be discriminatory in that it would affect only one industry (knitted outerwear); and certification would be burdensome, costly, time consuming and would be counter to the Paperwork Reduction Act.

In the Department's view, the certification procedure will be simple, require a minimum of paperwork, and be inexpensive to administer. An employer wishing to obtain a certificate need only notify the Department of that fact and furnish its name and actual place of business. In the case of employers who obtain certification, this system will solve a major concern raised by many commenters, that of locating homework employers and their employees. Certification will also provide added incentive for homeworkers to lodge wage and hour complaints since their employment at home will no longer be illegal and they will no longer automatically suffer the loss of their employment as a result of making the Department aware of their status as a homeworker in a restricted industry. Moreover, the certification procedure will result in the Department obtaining investigation leads concerning the employment of other homeworkers, since our investigation experience in this area has indicated that homeworkers often are aware of such work being done by others.

To ensure that knitted outerwear employees are aware that their employer is properly certificated, all homework handbooks issued to employees employed pursuant to a certificate will contain a written notice of such certification from the Administrator of the Wage and Hour Division. That notice will be deemed to be part of the homework handbook for employees in the knitted outerwear industry.

Some commenters have asserted that employers who violate the FLSA may not apply for certification. Employers who do not obtain a certificate will continue to be banned from employing homeworkers in the knitted outerwear industry and will be subject to closure through a Departmental enforcement action. Although we would encourage all employers of homeworkers in the knitted outerwear industry to apply for certification, the Department will continue its concerted enforcement effort to identify and stop illegal homework for those employers who are not certificated. The certification procedure will, however, give employers the opportunity to employ workers who, for whatever reason, prefer to knit in their homes rather than in the employer's place of business.

The certification approach is a well established method of monitoring certain types of economic activity by both Federal and State governments. The Department of Labor has had many years of experience in programs utilizing certificates for various activities under FLSA. These programs include sheltered workshop and handicapped worker certification, as well as subminimum wage certification for full-time students and vocational educational students. The Department has also administered large scale certification programs under the Farm Labor Contractor Registration Act and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). These certification programs were established by Congress, and have been successfully administered despite their comlexity and large size.

In addition, there is considerable precedent for homework certification under State laws. Eighteen States, as well as the District of Columbia and Puerto Rico, have laws governing homework, and all but four States and the District of Columbia have requirements for licenses or certificates for homework under certain conditions. Most of these requirements have been in effect for many years. All employers granted certificates under this rule will

be advised that such certificates do not relieve them from their obligation regarding the employment of homeworkers in compliance with applicable State and local requirements. In addition, the Department will advise appropriate State agencies of the issuance of all certificates authorizing the employment of homeworkers in the knitted outerwear industry.

Rejection of Other Alternatives

The Department's March 27, 1984, proposal solicited views on three alternatives to rescission, in addition to licensing/certification of homeworker employees; namely, providing an exemption for rural homeworker employment, expanding the current employee exemption conditions, and transferring certification and enforcement functions to the States. Very few comments were received on these proposed alternatives; most of those who did comment on the alternatives opposed their adoption and supported either total restriction or total rescission of the restrictions.

The Department has carefully considered these additional alternatives and the comments received. These alternatives were rejected as not feasible or appropriate.

There follows a discussion of these alternatives.

A. Remove the restrictions on knitted outerwear homework in rural areas but retain restrictions for urban areas. Under this alternative proposal only persons residing in rural areas, as defined by the Secretary, would be permitted to engage in knitted outerwear homework. The majority of commenters opposed this alternative, including: The Center on National Labor Policy, which stated that "no workable definition distinguishing between 'urban' and 'rural' could be equitably drafted"; The New England Legal Foundation, which indicated that there was no basis in the record "that would support a restriction on some workers and not on others because of the choice of where they live and work"; State of Vermont Representative Susan Aulc, who stated that this alternative was "discriminatory" because it would still prevent the employment of homeworkers in some sections of metropolitan areas, such as found near Burlington, Vermont, which were "as rural and isolated as those in the hinterlands of rural Vermont"; and the International Ladies Garment Workers Union (ILGWU) which refuted one of the Department's cited advantages of this alternative, that it would overcome the limited availability of factory employment and lack of public transportation in rural areas. The ILGWU stated that "not all rural areas are devoid of factory employment. In fact with the pronounced decentralization trend in factory location in recent years, factory employment and general economic activity have grown faster in rural and non-metropolitan areas than in larger urban areas". In refuting the public transportation consideration, the ILGWU stated that the "lack of suitable public transportation is not less a problem in some major cities, such as Houston, or in smaller cities and towns, than it is in small, predominantly rural states." The ILGWU also opposed this alternative because "ruralness" did not appear to prevent employer wage violations, as evidenced by the "preponderence of monetary violations found by the Labor Department's recent investigations in knitted outerwear were ascribed to employers operating in arguably rural settings, (with) more than 80 percent of the violations by employers based in Vermont, Maine, Colorado, and Lancaster County, Pennsylvania".

The Department has concluded that the alternative of removing the restrictions in knitted outerwear homework in rural areas and retaining the restrictions in urban areas is not appropriate. There is no persuasive evidence that the needs of rural homeworkers are essentially different from those of urban homeworkers. Moreover, it would be difficult to devise a workable definition of "rural" vs. "urban" that would avoid inequitable treatment of employees. There are "urban" areas in States that are generally considered to be "rural" in nature. And there are "rural" areas in States that would generally be characterized as "urban". The Department's enforcement experience does not indicate that minimum wage or overtime violations are less prevalent among rural than among urban homeworkers. Finally, as noted above, the Act authorizes the Department to restrict homework only to the extent necessary to safeguard the minimum wage. The Department believes that under the certification system effective enforcement of the minimum wage provisions of the Act is possible in the homework sector of the knitted outerwear industry in both urban and rural areas. Therefore, the essential predicate for a complete prohibition against homework in urban areas is lacking.

B. Expand the conditions for granting certificates permitting homework employment in the knitted outerwear industry. Under this alternative proposal, the current system for granting special certificates authorizing homework in the knitted outerwear industry would be expanded to include various additional categories of need, such as the following: need to care for children or other family members; lack of accessible factory employment; lack of public transportation; and economic need.

There were no substantive comments in favor of this proposal. The American Farm Bureau and Robert Abrams, Attorney General of the State of New York stated the program would be difficult to design and administer. The ILGWU and the Knitted Outerwear Manufacturers' Association (KOMA) contended that an extension of certificates based on the need to care for children would lead to child labor violations. KOMA also stated that economic need is not a good criterion as these employees are the most likely to be abused. Harold Richter pointed out that a condition based on economic need could be demonstrated by virtually every worker. The ILGWU also stated that current exemptions are limited to conditions that are relatively permanent and involuntary and that the additional conditions proposed would be based on personal preference and convenience.

The Department has concluded that this alternative is not appropriate. The considerations weighing against this proposal include: it would be extremely difficult to define what constitutes a legitimate need for an employee to work at home and yet avoid inequities; this alternative might result in a substantial paperwork burden for the public; and this alternative would be difficult to monitor and guard against abuses, while providing the necessary flexibility to take into account individual circumstances.

C. Transfer homework certification and enforcement responsibilities to the States. Senators Leahy and Stafford, and Attorney General John Easton of Vermont submitted substantive comments in favor of this alternative. They recommended a specific "Vermont Plan" which was first submitted to the Department in 1981, and which would amend existing regulations to add an additional category of workers who could be authorized to work at home in the knitted outerwear industry: A resident of a State designated by the Department to issue homeworker certificates for DOL.

The majority of other commenters opposed the alternative of transferring homework certification and enforcement to the States. The commenters included: the New England Legal Foundation,

which stated that "shifting enforcement powers to the state without changing criteria for issuing the certification is a meaningless regulatory act and should be rejected"; the Center on National Labor Policy, which indicated that instituting this alternative "would take too long, would likely involve unmanageable coordinating efforts between the Department and the States, and cause irreparable harm to all currently employed homeworkers"; KOMA, which stated that this alternative was not viable because required uniform enforcement "can only be accomplished through uniform federal standards and consistent application of uniform policies by a single enforcement agency"; the State of New York Department of Labor, which expressed concern about "whether the federal government is willing to underwrite the full cost to the individual state of providing such services (and) the possible erosion of state standards"; and ILGWU, which stated that the "experience of differential state regulation of homework in the 1930s clearly indicated that employers would transfer homework to states with the weakest regulations or reputation for lax enforcement."

The Department has decided not to adopt this alternative as it is not feasible. The implementation of the transfer of certification and enforcement responsibilities to the States would involve extensive negotiations and coordination between the Department and the States to prevent duplication of effort and inequitable or conflicting enforcement. For example, a transfer of this type could result in situations where employers and their homework employees reside in different States, with different certification requirements or enforcement sanctions. A transfer could also result in a certification system which authorizes the Department to issue homeworker certificates based on a handicap or need to care for an invalid; while one or more States would authorize certificates based on residency or some other criteria. Because of this possibility of different certification requirements among States, the Department is concerned that a transfer of certification and enforcement responsibilities to the States would be contrary to the statutory purpose of the FLSA to establish minimum uniform labor standards so as to prevent unfair competition.

Scope and Description of Final Rule Establishing Certification Procedure

With the exception of seven specific industries, all homework occupations are permitted without restriction under FLSA. While the Department acknowledges that FLSA enforcement in homework requires additional time, we believe this problem can be resolved in the knitted outerwear industry by requiring employers of homeworkers to obtain a certificate from the Department allowing such employment. Under such an arrangement, employers who obtain a certificate would be permitted to employ homeworkers, while employers without such a certificate would continue to be subject to the existing restrictions on the employment of homeworkers. The certification procedure would be simple and inexpensive to administer. Employers legally utilizing homeworkers would be known to the Department and their compliance with the Act could be determined by investigation. The result would be that homeworkers who are being properly paid would not be deprived of employment opportunities and employers who fail to identify themselves as employers of homeworkers could not legally employ homeworkers.

Under this rule, knitted outerwear employers who wish to utilize homeworkers in this industry will provide the Department with the name(s), physical address and mailing address of their firm(s). The certification procedure has been made as simple as possible in order to avoid unnecessary paperwork burdens.

Authorization for such firms to employ homeworkers may be denied or revoked should it be determined that they have failed to notify the Department of material changes in the information already provided, or have failed to comply with any of the provisions of the FLSA.

To ensure effective enforcement of this rule, the Department is prepared to utilize all available and appropriate sanctions under the FLSA and Regulations, 29 CFR Part 530 against employers in the knitted outerwear industry utilizing homeworkers in violation of the FLSA, whether or not they are certificated for their employment of homeworkers.

Violations of any provision of the FLSA could result in the employer's homeworker certification being revoked for up to one year. In determining whether to deny a certificate or to revoke an existing certificate for FLSA violations, the Department will give careful consideration to an employer's past compliance record and the employer's willingness to comply in the future and to restore the full amount of any back wages found due employees. Consistent with the existing provisions of Part 530, before a certificate is denied, interested parties will be given written notice and afforded an opportunity to demonstrate or achieve compliance. In appropriate circumstances, the Administrator shall afford an opportunity for a hearing to resolve a disputed matter. By this procedure, appropriate due process will be provided to affected employers.

The Congress has viewed certification of employers as a viable method of ensuring that workers' employment rights are protected. The Department has had many years of experience in certificating employers for various activities under the Farm Labor Contractor Registration Act and subsequently under the Migrant and Seasonal Agricultural Worker Protection Act. Under these statutes, the certification requirements have applied not only to employment, but also to housing and transportation of workers. In 1983, there were in excess of 19,000 certificates issued to parties seeking to perform farm labor contracting activities involving the employment, housing, and transportation of more than 500,000 workers.

The Department believes that the certification of employers of homeworkers in the knitted outerwear industry provides a reasonable balance between the interests of allowing workers the freedom to work at home and maintaining an effective homework enforcement program.

Responsiveness of Final Rule to Court of Appeals Decision

In formulating this final rule, the Department has carefully considered the court of appeals' November 29, 1983 decision. In that decision, the court of appeals, in reversing a favorable district court decision and in vacating the rescission of the restrictions on homework in knitted outerwear, held that the Department had failed to adequately articulate the reasons for its action. The court rested its conclusion primarily on three factors:

(1) The Department had erred by failing to consider alternatives to complete rescission; (2) the Department had not articulated adequately the basis for its conclusion that it would be feasible to enforce the FLSA if the homework ban were lifted; and (3) in relying on projected gains in employment among homeworkers as a basis for the rescission, the Department had not adequately considered the possibility that any such gains would be offset by reductions in the employment and earning power of factory workers.

The rule published today addresses each of these factors. As explained in the discussion set forth above, the Department has carefully considered the various alternatives and has determined that the certification system is the superior choice. The Department has also given careful consideration to enforcement feasibility in light of the concerns expressed by the Court, and has concluded that the certification system will provide an effective enforcement mechanism. As discussed above, the knitted outerwear industry is extremely small, so that even a substantial percentage increase in the homework share of the industry would not render enforcement impracticable, particularly under a certification system which would relieve the Department of the burden of locating and identifying legal homework. The Department has also explained above that it does not believe that consideration of enforcement feasibility supports adoption of a special rule for rural areas as opposed to urban areas. Finally, although the specific impediments to enforcement found by the Administrator in 1942 are the same as the obstacles alleged to exist today by the commenters, the Department believes that these obstacles can be reasonably handled under the certification system adopted by this final rule.

The Department has also carefully considered the section of the Court of Appeals' November 1983 decision involving the possible effects of legalizing homework in the knitted outerwear industry on factory workers. The Court held that, because the Department had relied on an increase in employment opportunities for homeworkers as a basis for rescinding the ban on homework, it should also have discussed the possibility of a consequent reduction in employment opportunities for factory workers. The final rule promulgated today is not based on the Department's views as to the effect of the rule on employment levels but rather on the Department's conviction that it can effectively enforce the FLSA under a certification system for homework firms in the knitted outerwear industry, and that there is therefore no basis for denying persons who wish to work at home under the conditions of such a system the opportunity to do so.

In the Department's view, its statutory mandate under section 11(d) is to issue such rules regulating homework as are necessary or appropriate to safeguard the minimum wage. One purpose of the federal minimum wage is to protect all employers and employees, including factory employers and their employees, from the effects of unfair competition based on payment of subminimum wages. Given that the Department has determined, after careful consideration, that it can effectively enforce the provisions of the FLSA under the certification system, the Department has fulfilled its obligation to consider the effects of the rule on factory workers and their employers. With effective enforcement of the Act, the Department does not believe it has a statutory mandate to favor one type of employment, homework or factory work, over another, and it does not read the court of appeals opinion as holding otherwise.

A certification system that allows law-abiding employers to employ homeworkers in the knitted outerwear industry is a reasonable and appropriate method to ensure effective enforcement of the FLSA while allowing persons employed in this type of work the same basic freedom to work at home that is allowed under federal law to almost all other workers.

Regulatory Flexibility Act

The Department believes that the rule will have no "significant economic impact on a substantial number of small entities" section 5(b) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 605(b)). The Under Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

This conclusion is based upon all information presently available to the Department, including the comments received in response to the proposal.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulation, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore no regulatory impact analysis is required.

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 530

Employment, Investigations, Labor, Law enforcement, Minimum wages, Wages, Licenses.

Accordingly, 29 CFR Chapter V is amended as set forth below. Signed at Washington, D.C. on this 1st day of November 1964.

Ford B. Ford,

Under Secretary.

Susan R. Meisinger,

Deputy Under Secretary.

William M. Otter,

Administrator, Wage and Hour Division.

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

29 CFR Part 530 is amended as follows:

1. The citation or authority for Part 530 is revised to read as follows:

Authority: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by Sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 6–84, 49 FR 32473, August 14, 1984; and Employment Standards Order No. 78–1, 43 FR 51469, November 3, 1978.

2. Section 530.2 is revised to read as follows:

§ 530.2 Restriction of homework.

Except as provided in § 530.4(c), no work in the industries defined in paragraphs (d) through (j) of § 530.1 shall be done in or about a home, apartment, tenement, or room in a residential establishment unless a special homework certificate issued and in effect pursuant to this part has been obtained for each homemaker or unless the homeworker is so engaged under the supervision of a Sheltered Workshop, as defined in § 525.2 of this chapter.

3. A new paragraph (c) and OMB Control Numbers are added to § 530.4 as follows:

530.4 Terms and conditions for the issuance of certificates.

* * * * *

(c) A certificate may be issued to an employer authorizing the employment of homeworkers in the knitted outerwear industry, as defined in § 530.1(f) of this part; this certificate may be issued irrespective of whether individual homeworkers meet the conditions set forth in paragraph (a) of this section. In the absence of a certificate, the employment of homeworkers in this industry is prohibited, and an employer violating this prohibition is subject to all the sanctions provided in this Act and in this subpart, including an injunction restraining the employment of homeworkers. Certificates authorizing

such employment may be issued on the following terms and conditions upon written notice to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210:

(1) The notice of request for certification shall be signed by the employer and shall contain the name of the firm, its mailing address, and the physical location of the firm's principal place of business. The employer shall provide the Administrator, within thirty (30) days, a notice of each change of address of the principal place of business. The notification shall be in writing and addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, NW., Washington, D.C. 20210. Such change of address shall be deemed effective upon receipt by the Administrator unless a later date is specified in the notice.

(2) A request for certification under this subpart may be denied for cause.

(i) Employment of homeworkers in the knitted outerwear industry without a certificate may be cause for denial of a request for certification for a period up to one year from the final date of the violation.

(ii) Failure to pay back wages found to be due as a result of a violation of sections 15(a)(2) or 15(a)(3) shall be cause for denial of a certificate until the back wages are paid.

(iii) Failure to pay civil money penalties determined to be owing for a violation of section 15(a)(4) shall be cause for denial of a certificate until the civil penalties are paid.

(iv) Violation of any provision of the FLSA or the regulations issued thereunder may be cause for denial of a certificate for a period of up to one year from the final date of the violation.

(v) An open investigation may result in the withholding of a certificate pending the conclusion and resolution thereof.

Before any certificate is denied, interested parties shall be notified in writing of the facts warranting such denial and afforded an opportunity to demonstrate or achieve compliance. In appropriate circumstances, the Administrator shall afford an opportunity for a hearing to resolve the disputed matter.

(3) An employer issued a certificate under this subpart may be subject to investigaton at any time to determine compliance with the provisions of the Fair Labor Standards Act.

(Information collection requirements in paragraph (a) have been approved by OMB under Control No. 1215–0005; information collection requirements in paragraph (c) have been approved by OMB under Control No. 1215–0159.)

4. Section 530.7 is revised to read as follows:

§ 530.7 Revocation and cancellation.

Any certificate may be revoked for cause at any time. Violation of any provision of the Fair Labor Standards Act shall be sufficient grounds for revocation of all certificates issued to an employer, in which event no certificates shall be issued to the offending employer for a period of up to one year. Before any certificate is cancelled, however, interested parties shall be notified in writing of the facts warranting such cancellation and afforded an opportunity to demonstrate or achieve compliance. In appropriate circumstances, the Administrator shall afford an opportunity for a hearing to resolve the disputed matter.

5. Section 530.8 is revised to read as follows:

§ 530.8 Preservation of certificates.

A copy of all certificates provided to the employer under this part shall be maintained for a period of at least three years after the last employment under the certificate.

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