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The Honorable James M. Jeffords
Chairman
The Honorable Edward M. Kennedy
Ranking Minority Member
Committee on Labor and Human Resources
United States Senate

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

Subject: Department of Labor, Occupational Safety and Health Administration: Occupational Exposure to Methylene Chloride

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, Occupational Safety and Health Administration (OSHA), entitled "Occupational Exposure to Methylene Chloride" (RIN: 1218-AA98). We received the rule on January 9, 1997. It was published in the Federal Register as a final rule on January 10, 1997. 62 Fed. Reg. 1493.

The final rule amends the regulations for employee exposure to methylene chloride (MC). The rule reduces the existing 8-hour time weighted average (TWA) exposure from 500 parts MC per million parts (ppm) of air to 25 ppm. Also, the rule deletes the ceiling limit concentration of 1,000 ppm and reduces the short-term exposure limit from 2,000 ppm (measured over 5 minutes in any 2-hour period) to 125 ppm, measured as a 15-minute TWA. Further, OSHA sets an "action level" of 12.5 ppm measured as an 8-hour TWA. The rule also contains provisions for exposure control, personal protective equipment, employee exposure monitoring, training, medical surveillance, hazard communications, regulated areas, and recordkeeping.

Enclosed is our assessment of OSHA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that OSHA complied with the applicable requirements.

We are also enclosing a copy of materials which were forwarded to our office from an industry association regarding the rule.

If you have any questions about this report, please contact James Vickers, Senior Attorney, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Department of Labor, Occupational Safety and Health Administration is Carlotta Joyner, Director, Education and Employment Issues. Ms. Joyner can be reached at (202) 512-7014.

Robert P. Murphy
General Counsel

Enclosures - 2

cc: Joseph A. Dear
Assistant Secretary of Labor for
Occupational Safety and Health
Department of Labor

ENCLOSURE I

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
ENTITLED
"OCCUPATIONAL EXPOSURE TO METHYLENE CHLORIDE"
(RIN: 1218-AA98)

(i) Cost-benefit analysis

The final rule contains a summary of the Final Economic Analysis conducted by OSHA which evaluates the costs and benefits associated with implementation of the rule. Our office was furnished a complete copy of the analysis.

OSHA states that the costs employers are estimated to incur annually will be $101,463,037 and the analysis breaks down the costs per provision of the rule and costs per application group. The cost of engineering controls, at $38,773,642 per year, was the most costly, and the metal cleaning industry and the paint stripping industry will incur the largest costs of compliance.

OSHA believes the health benefits attributable to the rule will be a reduction of 1,405 cancer-related deaths over 45 years, or 31 deaths avoided per year and 3 lives per year from acute overexposure. In addition, the rule will prevent 18,000 workers from daily exposure to MC from acute effects occurring at levels above 125 ppm and will protect 57,000 to 70,000 workers from experiencing acute central nervous system effects and caboxyhemoglobinemia.

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

OSHA has concluded that the rule will have a significant economic impact on a substantial number of small entities and an initial regulatory flexibility analysis and final regulatory flexibility analysis have been prepared and included in the notice of proposed rulemaking and the final rule notice, respectively, as required by sections 603 and 604. The analyses comply with the informational requirements of the sections including the classes of small entities subject to the rule and alternatives considered to reduce the burden on the small entities.

The final analysis discusses what steps OSHA took following input from the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy expressing concerns about the entities with between 20-99 employees, in excess of the size standard of less than 20 employees used by OSHA in the initial

analysis. These firms are mainly in the polyurethane foam manufacturing industry. As a result of the concerns, OSHA has amended the final rule to allow these firms a 1-year extension of the engineering control implementation date.

In addition, the final rule lists the changes made in the final rule to reduce the final rule's impact on small entities including, among others, allowing the use of licensed health care professionals in addition to physicians for medical surveillance, lab tests at the discretion of the physician rather than be automatically required, and written compliance reports no longer required.

The analyses use both quantifiable and general descriptions of the effects on small entities as required by section 607 and details the numerous steps taken to involve small entities in the rulemaking process as required by section 609.

The preamble also discusses the steps taken to assist small entities in their compliance with the final rule including an "Outreach Program," a booklet summarizing the provisions, compliance guides and assisting in setting up workshops to train small entities on compliance with OSHA standards.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

OSHA has determined that the final rule will impose a private sector mandate which will require the expenditure of $101 million each year by employers in the private sector. The rule will not result in a federal intergovernmental mandate since OSHA standards do not apply to state, local, or tribal governments except where a state has adopted a state plan under the Occupational Safety and Health Act and any impact would be insignificant.

Because of the private sector mandate, the rule is subject to section 205 of the act, and OSHA, in accordance with that section, discusses in the preamble and in the Final Economic Analysis, the alternatives that were considered and the reasons why OSHA has concluded that the final rule is the most cost-effective alternative for reducing the health risk.

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

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

The final rule was promulgated pursuant to the notice and comment procedures of 5 U.S.C. § 553.

On November 24, 1986, OSHA published an Advance Notice of Proposed Rulemaking (51 Fed. Reg. 42257). OSHA received 43 comments in response to the

notice. Following consideration of these comments and conducting a conference regarding one of the affected industries, OSHA published a Notice of Proposed Rulemaking (56 Fed. Reg. 57036) on November 7, 1991.

OSHA received 58 comments and several requests for hearings. OSHA scheduled two hearings and reopened the comment period for an additional 2 months. Subsequently, OSHA reopened the rulemaking record on numerous occasions following the release of various studies by affected industries.

OSHA's rulemaking record consists of 129 exhibits and 2,717 pages of hearing transcripts as a result of the 10-year-rulemaking process.

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

The preamble to the final rule requests comments on the proposed information collection requirement subject to the Paperwork Reduction Act. The information collection includes employee medical records, employee exposure monitoring records, and data showing that any materials in the workplace containing MC will not release MC at levels which exceed the action level or the short-term exposure limit.

An explanation of the need for the information and the burden estimates relating to the collection are discussed in the preamble. The initial burden hours are estimated to be 188,728 hours and the recurring burden hours are 74,299 hours with costs estimated at $32,496,380 and $12,282,420, respectively.

Comments are requested until March 11, 1997, at which time the comments will be included or summarized in the request to the Office of Management and Budget for approval of the information collection. The preamble notes that compliance with the information collection requirements of the rule is not required until OMB approves the request and assigns control numbers.

Statutory authorization for the rule

The final rule was promulgated pursuant to sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act (29 U.S.C. §§ 653, 655 and 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. § 333) and section 41 of the Longshore and Harbor Worker's Compensation Act (33 U.S.C. § 941).

Executive Order No. 12866

The rule was determined to be an "economically significant" regulatory action under Executive Order 12866 requiring review by OMB, Office of Information and Regulatory Affairs (OIRA). OIRA approved the final rule on October 21, 1996, as

complying with the requirements of the order based on information supplied by OSHA, including a planned regulatory action document describing the reason for the rule and an assessment of the costs and budgetary impact of the rule.

Executive Order No. 12612 (Federalism)

OSHA has reviewed the rule under Executive Order No. 12612 regarding Federalism. Under the standards contained in the order, OSHA has determined that it was the intent of Congress, as expressed in the Occupational Safety and Health Act, to preempt state laws when OSHA has issued occupational safety or health standards and that the health problem is national in scope.

A state may avoid peremption if it submits an approved plan for the development of such standards and their enforcement if they are at least as effective as the federal standards.

Other statutes or executive orders

OSHA did not identify any other statute or executive order imposing procedural requirements relevant to the final rule.