



Office of the General Counsel

B-278931

January 23, 1998

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:
Respiratory Protection

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 "Respiratory Protection" (RIN: 1218-AA05). We received the rule on January 5, 1998. It was published in the Federal Register as a final rule on January 8, 1998. 63 Fed. Reg. 1152.

The final rule adopts respiratory protection standards applying to general industry, construction, shipyard, longshoring, and marine terminal workplaces. The rule requires employers to establish and maintain a respiratory protection program and includes requirements for program administration; worksite-specific procedures; respirator selection; employee training; fit testing; medical evaluation; respirator use; cleaning, maintenance, and repair; and other provisions.

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.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, 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

Enclosure

cc: The Honorable Charles N. Jeffress
Assistant Secretary of Labor
for OSHA
Department of Labor

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
"RESPIRATORY PROTECTION"
(RIN: 1218-AA05)

(i) Cost-benefit analysis

OSHA conducted an economic analysis of the costs and benefits of the final respiratory protection rule.

The analysis shows that the incremental costs to the industry as a whole are estimated to be \$111 million annually. The costs of annual fit testing, estimated to be \$67 million, and annual training, estimated to cost \$35.9 million, comprise 90 percent of the total costs.

The benefits of the final rule are expected to be an exposure reduction of 10 percent to 43 percent, with a best estimate of 27 percent. Such a reduction is estimated to prevent 289 to 1,187 inhalation injuries/illnesses per year and 554 to 8,095 chronic respiratory illnesses per year, with a best estimate of 4,046 injuries and illnesses prevented per year. This reduction is estimated to save \$18.8 to \$218 million per year, with a best estimate of \$93.9 million per year. Finally, the analysis estimates aversion of 203 to 835 cancer deaths and 125 to 845 deaths related to cardiovascular disease annually, with a best estimate of 932 lives saved annually.

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

OSHA has certified to the Small Business Administration that the final rule will not have a significant impact on a substantial number of small entities. No small entity in any industry would need to increase its prices by more than .05 percent to compensate for the costs of compliance with the final rule.

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

The final rule will impose a private sector mandate of over \$100 million. There is no intergovernmental mandate because the OSHA standards do not apply to state and local governments, except in states that have voluntarily elected to adopt an OSHA State Plan.

In accordance with the act, OSHA, either in the preamble or in the Final Economic Analysis submitted to our Office, gives the statutory authority for the action; a summary of the costs and benefits, in both qualitative and quantitative terms; and a discussion of the regulatory alternatives which OSHA considered.

(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 issued using the notice and comment procedures contained at 5 U.S.C. § 553. OSHA published an Advanced Notice of Proposed Rulemaking on May 14, 1982 (47 Fed. Reg. 20803) which resulted in comments from 81 parties. On November 15, 1994, OSHA published a Notice of Proposed Rulemaking (59 Fed. Reg. 58884), and a public hearing was held on June 6, 1995. The record was reopened on November 7, 1995 (60 Fed. Reg. 56127) requesting additional comments on a later OSHA-ordered study concerning assigned protection factors.

The entire record includes 200 exhibits, 3,000 individual items, and 2,300 transcript pages, all of which were considered in the final rulemaking.

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

The final rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB). The preamble to the final rule contains the information required by the act, including the need for and use of the proposed collection, a description of the respondents, and an estimate of the burden hours and costs associated with the collections.

OSHA has estimated that in the first year there will be 1,300,000 respondents incurring total burden hours of 8,926,558, or an average burden per firm of 6.87 hours, at a cost of \$180,787,295.

The information collections do not have to be complied with until approved by OMB and control numbers are issued.

Statutory authorization for the rule

The final rule was issued pursuant to sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 653, 655, and 657); Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. § 333); Section 41, the Longshore and Harbor Worker's Compensation Act (33 U.S.C. § 941); and Secretary of Labor's Order Nos. 12-71 (36 Fed. Reg. 8754), 8-76 (41 Fed. Reg. 25059), 9-83 (48 Fed. Reg. 35736), 1-90 (55 Fed. Reg. 9033), or 6-96 (62 Fed. Reg. 111), as applicable.

Executive Order No. 12866

The final rule was determined to be an "economically significant" regulatory action under the Executive Order and was reviewed by the Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA).

OIRA approved the final rule as complying with the order on November 7, 1997.