G A O
Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

B-286818

November 29, 2000

The Honorable James M. Jeffords
Chairman
The Honorable Edward M. Kennedy
Ranking Minority Member
Committee on Health, Education, Labor, and Pensions
United States Senate

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

Subject: Department of Labor, Occupational Safety and Health Administration: Ergonomics Program

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 "Ergonomics Program" (RIN: 1218-AB36). We received the rule on November 14, 2000. It was published in the Federal Register as a final rule on November 14, 2000. 65 Fed. Reg. 68262.

The final rule issues a final Ergonomics Program that addresses the risks of employee exposure to ergonomic risk factors in jobs in general industry workplaces. The final standard would affect approximately 6.1 million employers and 102 million employees in general industry workplaces.

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 W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Cindy Fagnoni, Managing

Director, Education, Workforce, and Income Security. Ms. Fagnoni can be reached at (202) 512-7215.

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

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

ENCLOSURE

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
"ERGONOMICS PROGRAM"
(RIN: 1218-AB36)

(i) Cost-benefit analysis

OSHA performed a Final Economic Analysis, which was furnished to our Office and is summarized in the preamble to the final rule. The analysis considers the costs, benefits, technological and economic feasibility, and economic impacts of the final standard.

In the analysis, all costs are expressed in 1996 dollars and annualized using a 7-percent discount rate and a 10-year annualization period. The analysis shows that the total estimated costs to society for the private sector are $3.4 billion per year, and estimated costs for all affected parties, including state and local governments, are $3.9 billion per year. Estimated costs to employers in the private sector as a whole are $4 billion per year and to all affected sectors are $4.5 billion per year. OSHA states that the distinction between costs to society and costs to employers is necessary because costs associated with the standard's work restriction protection provisions represent a cost to employers, but not to society as a whole.

OSHA believes that the incidence of musculoskeletal disorders (MSDs), which the rule seeks to prevent, is underreported by 50 percent. In the first 10 years, OSHA projects that the standard will avert approximately 2.3 million currently reported MSDs and an additional 2.3 million MSDs not currently reported, for a total of 4.6 million MSDs averted.

OSHA estimates that the direct costs savings associated with each currently reported MSD, including the savings in lost productivity, lost tax payments, and administrative costs for workers' compensation claims, are $27,000 and for not currently reported MSDs $7,000. The difference in amounts reflects OSHA's belief that the MSDs not reported currently are less severe than those being reported. Based on this estimate of direct cost savings with each reported MSD avoided, the annualized benefits accruing in the first 10 years are estimated to be $9.1 billion per year.

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

OSHA prepared a Final Regulatory Flexibility Analysis, which is summarized in the preamble to the final rule. It furnishes the information required by the Regulatory

Flexibility Act, including the reasons for the agency action, an estimate of the number of small entities affected by the rule, reporting and recordkeeping requirements, and steps taken to minimize the impact on small entities.

OSHA estimates that there are 4.75 million small establishments in general industry affected by the rule and that 4.2 million of these are very small entities (employing fewer than 20 employees).

Regarding reducing the impact on small entities, OSHA points out that the use of the two-part action trigger will have the effect of decreasing the number of jobs small businesses will need to address through a full ergonomics program or a quick fix. Establishments with fewer than 11 employees do not have to keep records. Existing ergonomic programs will be grandfathered in and considered in compliance with the standards as long as the existing program meets the certain requirements. Finally, OSHA will supply compliance guides for small businesses and a Web-based expert system to guide employers through the applicability of the standard.

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

Since the final rule will require the expenditure of approximately $4.0 billion each year by employers in the private sector, the rule establishes a federal private sector mandate within the meaning of section 202 of the Act.

OSHA notes that its standards do not apply to state and local governments except in states that have voluntarily elected to adopt an OSHA State Plan. Therefore, the final rule does not impose an intergovernmental mandate.

OSHA does not anticipate any disproportionate budgetary effects on any particular region, state, local, or tribal government or urban or rural community. The discussion in the Final Economic Analysis concerning benefits and costs and alternatives considered comply with the requirements of the Act.

(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.

On August 3, 1992, OSHA published an Advanced Notice of Proposed Rulemaking (ANPR) in the Federal Register (57 Fed. Reg. 34192) requesting information for consideration in the development of an ergonomics standard and received 290 comments in response.

Between the issuance of the ANPR and the November 23, 1999, Notice of Proposed Rulemaking (64 Fed. Reg. 65768), OSHA met with various industry, labor and professional groups and organizations. In 1998, OSHA met with 400 stakeholders to discuss the proposed standards. Also, OSHA convened a SBREFA Panel to review and comment on a draft of the standards.

Following the publication of the proposed rule, OSHA extended the time for receipt of comments and held numerous public hearings that resulted in 18,337 page of transcript pages from 714 witnesses. In addition, more than 6,100 comments were received.

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

The final rule contains information collections that are required to be reviewed and approved by the Office of Management and Budget. OSHA has submitted an Information Collection Request (ICR) to OMB for approval, which contains the required information and is summarized in the preamble to the final rule. The ICR describes the collections of information, the need for and proposed use of the information, the covered employers who will be required to collect and maintain information under the standard, and an estimate of the annual cost and reporting burden.

OSHA notes that the time per response will vary from minimal recordkeeping requirements for a quick fix situation to establishing and implementing a complete ergonomics program. OSHA estimates that the annual burden hours will be 36.5 million hours at an estimated cost of $61 million.

Statutory authorization for the rule

The final rule was issued pursuant to the authority contained in sections 4, 6, and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; the Secretary of Labor's Order No. 3-2000 (65 Fed. Reg. 50017); and 29 CFR Part 1911.

Executive Order No. 12866

The final rule was reviewed by the Office of Management and Budget and found to be an "economically significant" regulatory action under the order.

Executive Order No. 13132 (Federalism)

OSHA reviewed the final rule in accordance with the Executive Order on Federalism and determined that section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' intent to preempt state laws with respect to which federal OSHA has promulgated standards.

Under the OSH Act, a state can avoid preemption only if it submits, and obtains federal approval of, a plan for the development of such standards and their enforcement. These state plans must be at least as effective as the federal standards in providing safe and healthful employment and places of employment.

The preamble to the final rule, regarding the requirement to consult with governmental officials, contains various listings of the numerous governmental representatives that attended various stakeholder meetings and public hearings in formulating the final standard.