



441 G St. N.W.
Washington, DC 20548

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March 20, 2017

The Honorable Lamar Alexander
Chairman
The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

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

Subject: *Department of Labor, Occupational Safety and Health Administration: Occupational Exposure to Beryllium*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is a revised report on a major rule promulgated by the Department of Labor, Occupational Safety and Health Administration (OSHA), entitled "Occupational Exposure to Beryllium" (RIN: 1218-AB76). We received the rule on January 11, 2017, and, according to the *Congressional Record*, Congress received it on January 10, 2017. It was published in the *Federal Register* as a final rule on January 9, 2017, with an effective date of March 10, 2017. 82 Fed. Reg. 2470. We prepared an initial report on the rule, dated January 25, 2017, which stated that the rule did not meet the 60-day delay in effective date requirement of 5 U.S.C. § 801(a)(3)(A). However, subsequent to issuing our initial report, OSHA provided us with a signed and dated Congressional Review Act delivery receipt showing delivery to Congress actually occurred on January 9, 2017, rather than on January 10, 2017, as reflected in the *Congressional Record*. Based on that record, we are revising our report to remove indications that OSHA had not complied with the 60-day delay in effective date requirement.

The final rule establishes new permissible exposure limits of 0.2 micrograms of beryllium per cubic meter of air as an 8-hour time-weighted average and 2.0 micrograms of beryllium per cubic meter of air as a short-term exposure limit determined over a sampling period of 15 minutes. The final rule also includes other provisions to protect employees, such as requirements for exposure assessment, methods for controlling exposure, respiratory protection, personal protective clothing and equipment, housekeeping, medical surveillance, hazard communication, 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 of the procedural steps taken indicates that OSHA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: William G. Perry
Director, Directorate of Standards
and Guidance
Occupational Safety and Health Administration
Department of Labor

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
ENTITLED
“OCCUPATIONAL EXPOSURE TO BERYLLIUM”
(RIN: 1218-AB76)

(i) Cost-benefit analysis

The Department of Labor, Occupational Safety and Health Administration (OSHA) provided tables in the final rule that summarized an estimate of the costs and benefits of the final rule using a discount rate of 3 percent and 7 percent. The estimated cost of the final rule is \$74 million annually. These costs include control costs, exposure assessments, medical surveillance, and training. OSHA stated that this final rule is estimated to prevent 90 fatalities and 46 beryllium-related illnesses annually once it is fully effective. OSHA estimated that the discounted monetized benefits of the final rule are \$561 million annually. Additionally, OSHA stated that the final rule is estimated to generate net benefits of \$487 million annually.

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

OSHA estimated that approximately 6,600 small business entities would be affected by the beryllium standard. OSHA also estimated that 5,280 very small entities, those with fewer than 20 employees, would be affected by the beryllium standard. OSHA provided a breakdown, by industry, of affected small entities and very small entities in the final rule. OSHA also included a table in the final rule that shows the average costs of the beryllium standard and the costs of compliance as a percentage of profits and revenues for small and very small entities. The estimated cost for small entities ranges from \$832 per entity to \$599,836 per entity. OSHA estimated that the annualized cost for very small entities ranges from \$542 per entity to \$34,222 per entity.

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

OSHA determined that this final rule will not result in the expenditure by state, local, and tribal governments in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.

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

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

On August 7, 2015, OSHA published a proposed rule. 80 Fed. Reg. 47,566. OSHA received substantive comments on a regulatory alternative. OSHA responded to comments in the final rule.

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

On January 9, 2017, OSHA submitted an information collection request for approval by the Office of Management and Budget. The estimated total burden hours for this information collection are 196,894 burden hours with an estimated cost of \$46,158,266.

Statutory authorization for the rule

OSHA stated that it promulgated this rule under 29 U.S.C. §§ 653, 655, and 657; 40 U.S.C. § 3704; 33 U.S.C. § 941; 77 Fed. Reg. 3912, and 29 C.F.R. part 1911.

Executive Order No. 12,866 (Regulatory Planning and Review)

OSHA determined that this rule is an economically significant regulatory action under the Order. The final rule was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

OSHA found that this final rule complies with the Order. OSHA stated that in states without OSHA approved state plans, Congress expressly provides for OSHA standards to preempt state occupational safety and health standards in areas addressed by the federal standards. According to OSHA, in these states this final rule limits state policy options in the same manner as every standard promulgated by OSHA. In states with OSHA approved state plans, OSHA stated that this rulemaking does not significantly limit state policy options to adopt stricter standards.