

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

B-333381

July 9, 2021

The Honorable Patty Murray  
Chair  
The Honorable Richard Burr  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Robert C. "Bobby" Scott  
Chairman  
The Honorable Virginia Foxx  
Ranking Member  
Committee on Education and Labor  
House of Representatives

Subject: *Department of Labor, Occupational Safety and Health Administration: Occupational Exposure to COVID-19; Emergency Temporary Standard*

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 COVID-19; Emergency Temporary Standard" (RIN: 1218-AD36). We received the rule on June 24, 2021. It was published in the *Federal Register* as an interim final rule; request for comments on June 21, 2021. 86 Fed. Reg. 32376. The effective date is June 21, 2021.

According to OSHA, the interim final rule issues an emergency temporary standard (ETS) to protect healthcare and healthcare support service workers from occupational exposure to COVID-19 in settings where people with COVID-19 are reasonably expected to be present. During the period of the emergency standard, OSHA determined covered healthcare employers must develop and implement a COVID-19 plan to identify and control COVID-19 hazards in the workplace. OSHA stated that covered employers must also implement other requirements to reduce transmission of COVID-19 in their workplaces, related to the following: patient screening and management; standard and transmission-based precautions; personal protective equipment, including facemasks or respirators; controls for aerosol-generating procedures; physical distancing of at least 6 feet, when feasible; physical barriers; cleaning and disinfection; ventilation; health screening and medical management; training; anti-retaliation; recordkeeping; and reporting. OSHA stated the standard issued in the interim final rule encourages vaccination by requiring employers to provide reasonable time and paid leave for employee vaccinations and any side effects. OSHA further stated the standard also encourages use of respirators, where respirators are used in lieu of required facemasks, by including a mini respiratory protection program that applies to such use. Finally, OSHA stated the standard exempts from coverage certain workplaces where all employees are fully vaccinated and individuals with possible COVID-19 are prohibited from entry; and it exempts from some of the requirements of

the standard, fully vaccinated employees in well-defined areas where there is no reasonable expectation that individuals with COVID-19 will be present.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). OSHA determined it had good cause to make this rule effective upon publication because it determined notice and comment procedures were impracticable and contrary to the public interest, given the expedited timeline on which the ETS was developed and the grave danger threatening healthcare workers' lives and health.

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. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in cursive script that reads "Shirley A. Jones".

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Andrew Levinson  
Acting Director  
Directorate of Standards and Guidance  
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 COVID-19;  
EMERGENCY TEMPORARY STANDARD”  
(RIN: 1218-AD36)

(i) Cost-benefit analysis

The Department of Labor, Occupational Safety and Health Administration (OSHA) estimated the interim final rule would create costs of \$3,969,645,432, and generate benefits, in the form of infections and deaths prevented, amounting to \$26,851,729,237, for a net benefit total of \$22,882,083,805.

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

OSHA determined an analysis under RFA is impracticable because OSHA promulgated this interim final rule on an expedited basis in response to an emergency.

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

OSHA determined the required analysis under the Act was completed by its analysis of the interim final rule's benefits and economic feasibility.

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

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

OSHA waived the notice and comment procedures for good cause. OSHA determined it had good cause because of the critical importance of implementing the requirements in this emergency temporary standard (ETS), including the recordkeeping and report provisions, as soon as possible to address the grave danger that COVID-19 presents to healthcare workers.

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

OSHA determined the interim final rule contained information collection requirements (ICRs) subject to the Act. The ICRs are entitled “COVID-19 Emergency Temporary Standard (29 part CFR 1910, subpart U),” and are associated with Office of Management and Budget (OMB) Control Number 1218-0277. OSHA estimated the ICRs would lead to 19,260,202 burden hours and a cost of \$3,016,812.57. OSHA stated that it received authorization from OMB to use the emergency procedures under PRA for this ETS, and that it submitted the ICRs to OMB for approval.

Statutory authorization for the rule

OSHA promulgated the interim final rule pursuant to section 553 of title 5; and sections 653, 655, and 657 of title 29, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

OSHA stated the interim final rule is economically significant and has been reviewed by OMB.

Executive Order No. 13132 (Federalism)

OSHA stated it reviewed the interim final rule under the terms of the Order and found that it complies with the Order.