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B-325830

May 15, 2014

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

The Honorable John Kline
Chairman
The Honorable George Miller
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Labor, Mine Safety and Health Administration: Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors*

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, Mine Safety and Health Administration (MSHA) entitled "Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors" (RIN: 1219-AB64). We received the rule on May 1, 2014. It was published in the *Federal Register* as a final rule on May 1, 2014. 79 Fed. Reg. 24,814.

The final rule revises existing standards on miners' occupational exposure to respirable coal mine dust. The purpose of the final rule is to reduce occupational lung diseases in coal miners. The final rule lowers the existing exposure limits, provides for full-shift sampling, redefines the term "normal production shift," and adds reexamination and decertification requirements for persons certified to sample for dust, and maintain and calibrate sampling devices. In addition, the final rule provides for single shift compliance sampling by MSHA inspectors, establishes sampling requirements for mine operators' use of the Continuous Personal Dust Monitor, requires operator corrective action on a single, full-shift operator sample, changes the averaging method to determine compliance on operator samples, and expands requirements for medical surveillance of coal miners.

Enclosed is our assessment of MSHA'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 MSHA 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: Sheila McConnell
Acting Director, Office of Standards,
Regulations, and Variances
Department of Labor

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
MINE SAFETY AND HEALTH ADMINISTRATION
ENTITLED
"LOWERING MINERS' EXPOSURE TO RESPIRABLE
COAL MINE DUST, INCLUDING CONTINUOUS
PERSONAL DUST MONITORS"
(RIN: 1219-AB64)

(i) Cost-benefit analysis

MSHA estimates that the first-year cost of the final rule will be \$61 million and the annualized cost of the final rule at a 7 percent discount rate will be \$28.1 million. MSHA estimates that the net benefits of the final rule are positive, with annualized net benefits of \$12.1 million at a discount rate of 3 percent, and negative with annualized net benefits of -\$8.1 million at a discount rate of 7 percent. Under the Federal Mine Safety and Health Act, MSHA is not required to use estimates of net benefits as the basis for its regulatory decisions. The net benefits at both the 3 and 7 percent discount rates do not include the benefits associated with sampling over a full-shift using the CPDM as well as several other provisions of the final rule. These provisions, although not quantified, will significantly reduce coal mine dust exposures and the incidences of other lung disease and significantly increase benefits.

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

MSHA certified that the final rule will not have a significant economic impact on a substantial number of small entities.

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

MSHA determined that the final rule does not include any federal mandate that may result in increased expenditures by state, local, or tribal governments; nor will it increase private sector expenditures by more than \$100 million (adjusted for inflation) in any one year or significantly or uniquely affect small governments.

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

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

On October 19, 2010, MSHA published a proposed rule "Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors." 75 Fed. Reg. 64,412. The comment period was scheduled to close on February 28, 2011. On October 20, 2010, MSHA held a meeting to brief interested stakeholders on the proposed rule. On November 15, 2010, MSHA published a notice scheduling six public hearings on the proposed rule. 75 Fed. Reg. 69,617. On January 14, 2011, MSHA extended the comment period until May 2, 2011. 76 Fed. Reg. 2617. On May 4, 2011, MSHA again extended the comment period

until May 31, 2011. 76 Fed. Reg. 25,277. On May 27, 2011, MSHA extended the comment period to June 20, 2011. 76 Fed. Reg. 30,878. On March 8, 2011, MSHA published a *Federal Register* notice requesting comment on information that was included in the preamble to the proposed rule and other issues that were raised during the public hearings. MSHA responded to the comments in the final rule.

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

The final rule contains new information collections that will be submitted to the Office of Management and Budget (OMB) for review. MSHA estimates that the final rule will result in 181,955 burden hours in the first year, 175,101 burden hours in the second year, and 171,908 burden hours in the third year. MSHA estimates that the final rule will result in costs of \$9,722,897 in the first year, \$9,413,180 in the second year, and \$9,324,041 in the third year. MSHA also estimates capital costs related to the information collection package: \$69,931 in the first year, \$52,547 in the second year, and \$39,523 in the third year.

Statutory authorization for the rule

The final rule is authorized by sections 101(a)(6)(A), 103(h), and 508 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 811, 813(h), 957.

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

MSHA determined that the final rule may have an effect of \$100 million or more on the economy in at least one year and is therefore an economically significant regulatory action under the Order. MSHA prepared a Regulatory Economic Analysis for the final rule and submitted the rule to OMB for review.

Executive Order No. 13,132 (Federalism)

MSHA concluded that the final rule does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.