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June 8, 2015

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

The Honorable John Kline
Chairman
The Honorable Robert “Bobby” Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Labor, Occupational Safety and Health Administration: Confined Spaces in Construction*

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 “Confined Spaces in Construction” (RIN: 1218-AB47). We received the rule on May 22, 2015. It was published in the *Federal Register* as a final rule on May 4, 2015, with a stated effective date of August 3, 2015. 80 Fed. Reg. 25,366.

The final rule provides protections to employees working in confined spaces in construction. This rule replaces OSHA’s training requirement for confined space work with a comprehensive standard that includes a permit program designed to protect employees from exposure to many hazards associated with work in confined spaces, including atmospheric and physical hazards. According to OSHA, the final rule is similar in content and organization to the general industry confined spaces standard, but also incorporates several provisions to address construction-specific hazards, accounts for advancements in technology, and improves enforceability of the requirements.

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: Jim Maddux
Director, Directorate of Construction
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
"CONFINED SPACES IN CONSTRUCTION"
(RIN: 1218-AB47)

(i) Cost-benefit analysis

The Occupational Safety and Health Administration (OSHA) analyzed the costs and benefits of this final rule. OSHA estimated that this rule will prevent 780 injuries and 5.2 fatalities per year, which they estimated has a monetized benefit of \$93.6 million. OSHA estimated the total annualized cost of compliance with the present rulemaking to be between about \$59.2 million (when costs are annualized at 3 percent) and \$60.3 million (when costs are annualized at 7 percent). The final rule's requirements for employers to evaluate, classify, and exchange information account for the largest component of the total compliance costs, at approximately \$12.2 million to \$12.4 million (when costs are annualized at 3 and 7 percent, respectively). Other compliance costs associated with the final rule include costs related to atmospheric monitoring—(\$11.3 million to \$11.4 million), training (\$11.3 million), rescue capability (\$7.6 million to \$8.2 million), written programs, permits, and review procedures (\$4.2 million), attendants (\$3.6 million)—and ventilation and hazard isolation (\$2.7 million to \$2.8 million). Therefore, OSHA estimated the net monetized benefits of the final rule to be about \$33 million annually when costs are annualized at 7 percent (\$93.6 million in benefits minus \$60.3 million in costs).

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

OSHA prepared a Final Regulatory Flexibility Analysis for this final rule. The analysis included (1) a description of the impact of the rule on small entities; (2) a statement of the need for, and objectives of, the rule; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a statement of the significant issues raised by public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (5) a description, and estimate, of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available; (6) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirements, and the type of professional skills necessary for preparation of the report or record; and (7) a description of the steps the agency took to minimize the significant economic impact on small entities consistent with the stated objectives of the applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule, and why the agency rejected each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities.

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

OSHA certified that this final rule does not mandate that state, local, or tribal governments adopt new, unfunded regulatory obligations or increase expenditures by the private sector of more than \$100 million in any year.

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

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

On March 25, 1980, OSHA published an Advanced Notice of Proposed Rulemaking on confined spaces for the construction industry. 45 Fed. Reg. 19,266. OSHA subsequently published a Notice of Proposed Rulemaking (NPRM) for a general industry confined spaces rule on June 5, 1989. 54 Fed. Reg. 24,080. OSHA issued the general industry confined spaces rule on January 14, 1993. 29 C.F.R. § 1910.146; 58 Fed. Reg. 4462. However, the general industry standard does not apply to construction employers, and, as such, does not specify the appropriate level of employee protection based on the hazards created by construction activities performed in confined spaces. OSHA published a proposed rule for confined spaces in construction on November 28, 2007, in which it requested public comments. 72 Fed. Reg. 67,351. During the comment period and the public hearings OSHA held on July 22–23, 2008, OSHA received many comments and much testimony.

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

OSHA determined that this final rule contains information collection requirements under the Act. The form entitled “Confined Spaces in Construction (29 CFR 1926 subpart AA)” has been submitted to the Office of Management and Budget (OMB) for review and has been given OMB Control Number 1218–0258. OSHA estimates that the total annual burden on recipients will be 654,514 hours with other total estimates costs of \$1,015,859.

Statutory authorization for the rule

OSHA cited sections 652(8), 654, and 655(b) of title 29, United States Code, as providing the legal authority for this final rule.

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

OSHA determined that portions of the Final Economic Analysis for this final rule met the requirements of the Order.

Executive Order No. 13,132 (Federalism)

OSHA determined that this final rule complies with the Order because in states without OSHA-approved State Plans, this final rule limits state policy options in the same manner as every standard promulgated by OSHA and that in states with OSHA-approved State Plans, this rulemaking does not significantly limit state policy options.