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April 11, 2016

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 C. "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 Respirable Crystalline Silica*

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 Respirable Crystalline Silica" (RIN: 1218-AB70). We received the rule on March 25, 2016. It was published in the *Federal Register* as a final rule on March 25, 2016. 81 Fed. Reg. 16,286.

The rule amends OSHA's existing standards for occupational exposure to respirable crystalline silica. This final rule establishes a new permissible exposure limit of 50 micrograms of respirable crystalline silica per cubic meter of air (50 mg/m³) as an 8-hour time-weighted average in all industries covered by the rule. It also includes other provisions to protect employees, such as requirements for exposure assessment, methods for controlling exposure, respiratory protection, medical surveillance, hazard communication, and recordkeeping. This rule contains two separate standards—one for general industry and maritime, and the other for construction. OSHA determined that employees exposed to respirable crystalline silica at the previous permissible exposure limits face a significant risk of material impairment to their health. The evidence in the record for this rulemaking indicated to OSHA that workers exposed to respirable crystalline silica are at increased risk of developing silicosis and other nonmalignant respiratory diseases, lung cancer, and kidney disease.

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: David Michaels, PhD, MPH
Assistant Secretary of Labor for
Occupational Safety and Health
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 RESPIRABLE CRYSTALLINE SILICA”
(RIN: 1218-AB70)

(i) Cost-benefit analysis

The Occupational Safety and Health Administration (OSHA) estimated the annualized benefits and costs of this final rule. The costs included engineering controls, respirators, exposure assessment, medical surveillance, familiarization and training, regulated areas, and written exposure control plans which OSHA determined have a total annualized cost point estimate of \$1,029,781,777 at a 3 percent discount rate and \$1,056,128,421 at a 7 percent discount rate. With regard to benefits, OSHA estimates this final rule will prevent 124 fatal lung cancers, 325 fatal silicosis and other non-malignant respiratory diseases, and 193 fatal renal diseases. OSHA’s midpoint estimate for both silica-related mortality and silicosis morbidity is \$8,686,913,216 at a 3 percent discount rate and \$4,811,814,147 at a 7 percent discount rate.

(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. That analysis included (1) a statement of the need for and objectives of the rule; (2) a summary of significant issues raised by comments on the Initial Regulatory Flexibility Analysis and OSHA’s assessment of, and response to, those issues; (3) a risk assessment and a statement on benefits issues; (4) a statement on technological feasibility issues; (5) a statement on cost issues; (6) a statement on issues concerning current economic conditions; (7) regulatory alternatives; (8) a statement on issues with respect to small business participation; (9) a description and estimate of the number of small entities to which the rule will apply; and (10) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule.

(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 does not place a mandate on state or local governments and will not require tribal governments to expend, in the aggregate, \$100,000,000 or more in any one year for their commercial activities. OSHA concluded that the final rule would impose a federal mandate on the private sector in excess of \$100,000,000 in expenditures in any one year. The rules contained a qualitative and quantitative assessment of these anticipated costs and benefits.

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

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

On September 12, 2013, OSHA published a proposed rule. 78 Fed. Reg. 56,273. OSHA extended the comment period twice. 78 Fed. Reg. 65,242; 79 Fed. Reg. 4641. The agency held an informal public hearing on March 18, 2014, through April 4, 2014, at which it heard testimony from over 200 stakeholders representing more than 70 organizations, such as public health groups, trade associations, and labor unions. OSHA received more than 2,000 comments on the proposed rule during the entire pre- and post-hearing public participation period. OSHA responded to comments in the final rule.

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

OSHA determined this final rule contains information collection requirements under the Act. OSHA has submitted these information collection requirements to the Office of Management and Budget (OMB) for review. OMB has authorized OSHA to use OMB Control Number 1218-0266 for future submission involving this rulemaking. OSHA also described changes in the information collection requirements it made in response to public comments.

Statutory authorization for the rule

OSHA promulgated this final rule under the authority of sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970; section 107 of the Contract Work Hours and Safety Standards Act; section 41 of the Longshore and Harbor Worker's Compensation Act; Secretary of Labor's Order 1-2012; and part 1911 of title 29, Code of Federal Regulations. 29 U.S.C. §§ 653, 655, 657; 40 U.S.C. § 3704; 33 U.S.C. 941; 77 Fed. Reg. 3912 (Jan. 25, 2012).

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

OSHA determined that this final rule is economically significant under the Order. The rule was submitted to OMB for review.

Executive Order No. 13,132 (Federalism)

OSHA determined that this final rule complies with the Order. The rule establishes requirements for employers in every state to protect their employees from the risks of exposure to respirable crystalline silica. In states without OSHA-approved state plans, OSHA determined that Congress expressly provides for OSHA standards to preempt state occupational safety and health standards in areas addressed by the federal standards. In states with OSHA-approved state plans, OSHA determined that this rule does not significantly limit state policy options.