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United States Government Accountability Office  
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B-317723

January 29, 2009

The Honorable Edward M. Kennedy  
Chairman  
The Honorable Michael B. Enzi  
Ranking Minority Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable George Miller  
Chairman  
The Honorable Howard P. "Buck" McKeon  
Ranking Minority Member  
Committee on Education and Labor  
House of Representatives

Subject: *Department of Labor, Mine Safety and Health Administration: Refuge Alternatives for Underground Coal Mines*

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 "Refuge Alternatives for Underground Coal Mines" (RIN: 1219-AB58). We received the rule on January 14, 2009. It was published in the *Federal Register* as a final rule on December 31, 2008. 73 Fed. Reg. 80,656.

The final rule establishes MSHA requirements for refuge alternatives in underground coal mines and the training of miners in their use. The final rule requires that mine operators include refuge alternatives in their required Emergency Response Plans. The final rule includes requirements for the testing and approval of refuge alternatives and components of refuge alternatives; requirements for assuring that refuge alternatives are readily available, capable of sustaining trapped miners for 96 hours, and maintained in operating condition; and requirements for training miners to locate, deploy and use, maintain, and transport refuge alternatives.

Enclosed is our assessment of the 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 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  
Associate General Counsel

Enclosure

cc: Patricia W. Silvey  
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  
"REFUGE ALTERNATIVES FOR UNDERGROUND COAL MINES"  
(RIN: 1219-AB58)

(i) Cost-benefit analysis

The final rule will increase miner safety and improve mine operator preparedness for mine emergencies by requiring refuge alternatives underground to protect and sustain trapped miners. MSHA estimates, based on its evaluation of accident and injury data from 1900 through 2006, that the final rule potentially could save an average of one to three lives every 2 years.

MSHA estimates that the total yearly cost of the final rule is approximately \$53 million, of which \$3 million will be costs to manufacturers and \$50 million will be costs for underground coal mine operators. MSHA estimates that in the first year of the final rule the costs may be approximately \$129 million.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 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 will result in increased expenditures by state, local, or tribal governments, or significantly or uniquely affect small governments. The final rule will increase private sector expenditures by more than \$100 million in the first year, and MSHA included an analysis of the cost of the requirements of the final rule in its Regulatory Economic Analysis.

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

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

MSHA published a proposed rule for refuge alternatives in the *Federal Register* on June 16, 2008. 73 Fed. Reg. 34,140. MSHA held four public meetings on the proposed

rule and had a comment period that was open until August 18, 2008. MSHA responded to the comments in the final rule. 73 Fed. Reg. 80,656.

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

MSHA prepared an information collection package for the final review, which has been submitted to the Office of Management and Budget (OMB) for review and assigned OMB Control Number 1219-0146. MSHA estimates that the final rule will result in 87,732 burden hours and related costs of approximately \$6.6 million in the first year the rule is in effect. MSHA estimates that in subsequent years the final rule will result in 75,681 burden hours and related costs of approximately \$6.4 million.

Statutory authorization for the rule

The final rule is authorized by section 13 of the Mine Improvement and New Emergency Response (MINER) Act of 2006. Pub. L. 109-236, 120 Stat. 493.

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

MSHA determined that the final rule is an economically significant regulatory action under the Order and prepared a Regulatory Economic Analysis for the final rule.

Executive Order No. 13132 (Federalism)

MSHA determined that the final rule does not have federalism implications.