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April 18, 2012

The Honorable Tom Harkin  
Chairman  
The Honorable Michael B. Enzi  
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, Occupational Safety and Health Administration:  
Hazard Communication*

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 "Hazard Communication" (RIN: 1218-AC20). We received the rule on April 4, 2012. It was published in the *Federal Register* as a final rule on March 26, 2012, with an effective date of May 25, 2012. 77 Fed. Reg. 17,574.

The final rule represents OSHA's modifications of its Hazard Communication Standard (HCS) to conform to the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS). OSHA has determined that the modifications will significantly reduce costs and burdens while also improving the quality and consistency of information provided to employers and employees regarding chemical hazards and associated protective measures. Consistent with the requirements of Executive Order 13,563, which calls for assessment and, where appropriate, modification and improvement of existing rules, OSHA has concluded this improved information will enhance the effectiveness of the HCS in ensuring that employees are apprised of the chemical hazards to which they may be exposed, and in reducing the incidence of chemical-related occupational illnesses and injuries.

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: Dorothy Dougherty  
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  
"HAZARD COMMUNICATION"  
(RIN: 1218-AC20)

(i) Cost-benefit analysis

OSHA has prepared a Final Economic Analysis (FEA), including a Final Regulatory Flexibility Screening Analysis (FRFSA), for the modifications to the Hazard Communication Standard (HCS). OSHA's costs and benefits are expressed in 2010 dollars and are discounted at a 7 percent discount rate. OSHA estimates that the total annualized costs will be \$201 million, while the total annual monetized benefits will be \$757 (\$632-\$1,757) million, resulting in net annual monetized benefits (benefits minus costs) of \$556 (\$431-\$1,556) million. OSHA notes that its point estimates do not reflect the uncertainties described throughout its analysis. Additionally, OSHA states that it is reluctant to provide quantified ranges and that these estimates are uncertain.

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

OSHA has analyzed the potential impact of the final rule on small entities, and has prepared a FRFSA in conjunction with this rulemaking to describe the potential effects on small entities. As a result of the analysis of the potential impact on small entities, OSHA concludes and certifies that the rulemaking would not have a significant impact on a substantial number of small entities. Therefore, according to OSHA, a Final Regulatory Flexibility Analysis (FRFA) is not required for this rulemaking. Nevertheless, OSHA has voluntarily provided the elements of the FRFA as part of the FRFSA. As part of this rulemaking, OSHA states that it has fulfilled its requirements under the Regulatory Flexibility Act and under the Small Business Regulatory Enforcement Fairness Act, as applicable, to ensure that no unnecessary burdens are imposed on small businesses.

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

OSHA reviewed this final rule according to the Unfunded Mandates Reform Act of 1995 (UMRA) and Executive Order 12,875 and estimates that this final rule will require private sector employers annualized expenditures of \$201 million per year. However, OSHA notes that its final rule does not place a mandate on state or local

governments, for purposes of UMRA, because OSHA cannot enforce its regulations or standards on state or local governments. (See 29 U.S.C. § 652(5).) Under voluntary agreement with OSHA, some states enforce compliance with their state standards on public sector entities, and these agreements specify that these state standards must be equivalent to OSHA standards. OSHA explains that the Occupational Safety and Health Act of 1970 (OSH Act) also does not cover tribal governments in the performance of traditional governmental functions, though it does when tribal governments engage in commercial activity. However, according to OSHA, this final rule does not require tribal governments to expend, in the aggregate, \$100,000,000 or more in any one year for their commercial activities. Thus, although OSHA may include compliance costs for affected governmental entities in its analysis, OSHA states that this rulemaking did not trigger the requirements of UMRA based on its impact on state, local, or tribal governments.

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

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

An advance notice of proposed rulemaking (ANPR) was published by OSHA on September 12, 2006 (71 Fed. Reg. 53,617). The responses from more than 100 commenters were used to help prepare the required analyses for the proposed rulemaking, as well as to make determinations regarding the proposed text. The notice of proposed rulemaking (NPRM) was published on September 29, 2009 (74 Fed. Reg. 50,280). Public comments were received during a 90-day comment period that ended on December 29, 2009. Public hearings were convened in March 2010 in Washington, DC, and Pittsburgh, PA, for OSHA to receive oral testimony from interested parties. OSHA notes that following completion of the hearings, participants were given an opportunity to provide additional information during a post-hearing comment period, as well as submit briefs summarizing their views for the record. According to OSHA, the public record upon which OSHA is basing the final standard includes all of the comments, testimony, and supporting information submitted by rulemaking participants, as well as by OSHA.

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

The final rule revises existing Hazard Communication collection of information (paperwork) requirements that are currently approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA-95), 44 U.S.C. § 3501 et seq., and OMB's regulations at 5 C.F.R. part 1320. OSHA notes the final standard modifies existing information collection requirements that are currently approved under OMB Control Number 1218-0072. OSHA states that this Information Collection Request has been revised and submitted to OMB. OSHA will publish a separate notice in the *Federal Register* that will announce the result of OMB's reviews.

## Statutory authorization for the rule

OSHA states that it has authority to adopt the revisions to the HCS made in the final rule under the last sentence of section 6(b)(7) and to adopt the proposal under section 6(b)(5) of the Occupational Safety and Health Act of 1970. 29 U.S.C. §§ 655(b)(5) and 655(b)(7).

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

OSHA has determined that this action is “economically significant” within the meaning of 3(f)(1) of the Executive Order because it is likely to have an effect on the economy of \$100 million or more in any one year and, accordingly, the rule has been reviewed by OMB.

## Executive Order No. 13,132 (Federalism)

OSHA states that this final rule complies with the Order. Additionally, OSHA notes that in states that do not have OSHA approved state plans, this rule limits state policy options in the same manner as all OSHA standards.