



441 G St. N.W.
Washington, DC 20548

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May 9, 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, Occupational Safety and Health Administration: Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment*

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 "Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment" (RIN: 1218-AB67). We received the rule on April 24, 2014. It was published in the *Federal Register* as a final rule on April 11, 2014. 79 Fed. Reg. 20,316.

The final rule revises the 1972 OSHA-issued rules for the construction of transmission and distribution installations. Those provisions are now out of date and inconsistent with the more recently promulgated general industry standard covering the operation and maintenance of electric power generation, transmission, and distribution lines and equipment. OSHA revised the construction standard to make it more consistent with the general industry standard and made some revisions to both the construction and general industry requirements. The final rules for general industry and construction include new or revised provisions on host employers and contractors, training, job briefings, fall protection, insulation and working position of employees working on or near live parts, minimum approach distances, protection from electric arcs, deenergizing transmission and distribution lines and equipment, protective grounding, operating mechanical equipment near overhead power lines, and working in manholes and vaults. The revised standards will ensure that employers, when appropriate, meet consistent requirements for work performed under the construction and general industry standards.

The final rule also revises the general industry and construction standards for electrical protective equipment. The existing construction standard for the design of electrical protective equipment, which applies only to electric power transmission and distribution work, adopts several national consensus standards by reference. The new standard for electrical protective equipment, which matches the corresponding general industry standard, applies to all

construction work and replaces the incorporation of out-of-date consensus standards with a set of performance-oriented requirements that is consistent with the latest revisions of the relevant consensus standards. The final construction rule also includes new requirements for the safe use and care of electrical protective equipment to complement the equipment design provisions. Both the general industry and construction standards for electrical protective equipment will include new requirements for equipment made of materials other than rubber.

Finally, OSHA revised the general industry standard for foot protection. This standard applies to employers performing work on electric power generation, transmission, and distribution installations, as well as employers in other industries. The final rule removes the requirement for employees to wear protective footwear as protection against electric shock.

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: Andrew Levinson
Deputy Director, Directorate of Standards
and Guidance, OSHA
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
"ELECTRIC POWER GENERATION, TRANSMISSION, AND
DISTRIBUTION; ELECTRICAL PROTECTIVE EQUIPMENT"
(RIN: 1218-AB67)

(i) Cost-benefit analysis

OSHA included a table that summarized the costs, benefits, net benefits, and cost effectiveness of the final rule. More specifically, OSHA states that it expects the final rule to result in an increased degree of safety for the affected employees, thereby reducing the numbers of accidents, fatalities, and injuries associated with the relevant tasks and reducing the severity of certain injuries, such as burns or injuries that employees could sustain as a result of an arrested fall, that may still occur during the performance of some of the affected work procedures. An estimated 74 fatalities and 444 serious injuries occur annually among employees involved in the electric power generation, transmission, and distribution work addressed by the provisions of this rulemaking. Based on a review and analysis of the incident reports associated with the reported injuries and fatalities, OSHA expects full compliance with the final rule to prevent 79.6 percent of the relevant injuries and fatalities, compared with 52.9 percent prevented with full compliance with the existing standards. Thus, OSHA estimates that the final rule will prevent approximately 19.75 additional fatalities and 118.5 additional serious injuries annually. Applying an average monetary value of \$62,000 per prevented injury and a value of \$8.7 million per prevented fatality results in estimated monetized benefits of \$179.2 million annually. OSHA estimated the net monetized benefits of the final rule to be about \$129.7 million annually when costs are annualized at 7 percent (\$179.2 million in benefits minus \$49.5 million in costs), and \$132.0 million when costs are annualized at 3 percent (\$179.2 million in benefits minus \$47.1 million in costs). The rule noted that these net benefits exclude any unquantified benefits associated with revising existing standards to provide updated, clear, and consistent regulatory requirements for electric power generation, transmission, and distribution work. OSHA states that it believes that the updated standards are easier to understand and to apply. Accordingly, OSHA expects the final rule to improve safety by facilitating compliance.

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

OSHA analyzed the potential impact of the final rule on small and very small entities and has prepared a Final Regulatory Flexibility Analysis, which concluded that the compliance costs are equivalent to approximately 0.086 percent of profits for affected small entities generally, and less than approximately 2.9 percent of profits for small entities in any particular industry, and approximately 0.39 percent of profits for affected very small entities generally, and less than approximately 5.61 percent of profits for very small entities in any particular industry. OSHA states that it evaluated many alternatives to the final rule to ensure that the final requirements will best accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the rule 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 states that it reviewed this final rule according to the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 et seq.). OSHA estimated that compliance with the rule will require expenditures of less than \$100 million per year by all affected employers. Therefore, OSHA concluded that this rule is not a significant regulatory action within the meaning of section 202 of UMRA (2 U.S.C. 1532).

OSHA states that its standards do not apply to state or local governments except in states that have elected voluntarily to adopt a state plan approved by OSHA. Consequently, the rule does not meet the definition of a “federal intergovernmental mandate” (2 U.S.C. 658(5)).

Therefore, for the purposes of UMRA, OSHA certifies 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.

OSHA published a proposed rule on June 15, 2005 (70 Fed. Reg. 34,822). That document proposed revising the construction standard for electric power transmission and distribution work and the general industry standards for electric power generation, transmission, and distribution work. That document also proposed a new construction standard for electrical protective equipment and revisions to the general industry standards for foot protection and electrical protective equipment. Public comments were originally due by October 13, 2005, but in response to requests from interested parties, OSHA extended the comment period 90 days to January 11, 2006 (70 Fed. Reg. 59,290, Oct. 12, 2005). OSHA held an informal public hearing beginning on March 6, 2006, and ending on March 14, 2006. After the hearing, interested parties had until May 15, 2006, to submit additional information and until July 14, 2006, to file posthearing briefs. On October 22, 2008, OSHA reopened the record for 30 days to gather information from the public on specific questions related to minimum approach distances (73 Fed. Reg. 62,942). The Edison Electric Institute requested a public hearing and an additional 60 days to submit comments on the issues raised in the reopening notice. On September 14, 2009, OSHA opened the record for an additional 30 days to receive more comments on minimum approach distances and announced a public hearing to be held on October 28, 2009, addressing the limited issues raised in the two reopening notices (74 Fed. Reg. 46,958). After the hearing, interested parties had until December 14, 2009, to submit additional information and until February 10, 2010, to file posthearing briefs. The record for this rulemaking consists of all prehearing comments, the transcripts of the two public hearings, all exhibits submitted prior to and during the two hearings, and posthearing submissions and briefs. Administrative Law Judge Stephen Purcell issued an order closing the record and certified the record to the Assistant Secretary of Labor for Occupational Safety and Health. OSHA states that it carefully considered the entire record in preparing the final standard.

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

OSHA states that the final rule revising the general industry and construction standards for electric power generation, transmission, and distribution, and for electrical protective equipment, contains collection of information requirements (paperwork) subject to review by the Office of Management and Budget (OMB). In accordance with § 3506(c)(2) of the Paperwork Reduction

Act of 1995 (44 U.S.C. 3501 et seq.), OSHA solicited comments on the information collections included in the proposal. For the proposal, the Department of Labor also submitted an information collection request to OMB for review in accordance with 44 U.S.C. 3507(d). OMB subsequently informed the Department of Labor that its “action [was] not an approval to conduct or sponsor an information collection under the Paperwork Reduction Act of 1995.” In the information request for the proposal, OSHA submitted to OMB the following proposed new collections of information and proposed removing existing collections of information: (1) Proposed Electrical Protective Equipment in Construction Collections of Information; (2) Proposed Information-Transfer Collections of Information for General Industry and Construction; (3) Proposed Enclosed Spaces Collections of Information for Construction; and (4) Proposed Removal of General Industry Training Certification.

OSHA states that it responded to public comments addressing the proposed rule’s requirements and that it has submitted to OMB a new information collection request in connection with the final rule titled “Supporting Statement for the Information Collection Requirements of the Electric Power Generation, Transmission, and Distribution Standards for Construction and General Industry (29 C.F.R. 1926 Subpart V and 29 C.F.R. 1910.269) and the Electrical Protective Equipment Standards for Construction and General Industry (29 C.F.R. 1926.97 and 29 C.F.R. 1910.137).” This information collection request includes both the existing information collection requirements from the general industry standards and the new information collection requirements from the construction standards, resulting in a single information collection request for both the general industry and construction standards. Therefore, upon publication of the new information collection request, OSHA will discontinue the existing information collection request for the general industry standards titled “Supporting Statement for the Electrical Protective Equipment Standard (29 C.F.R. 1910.137) and the Electric Power Generation, Transmission, and Distribution Standard (29 C.F.R. 1910.269),” OMB Control Number 1218–0190.

The new information collection request contains several newly identified collections of information requirements in both construction and general industry (that is, collections of information not included in the information collection requests for either the proposal or existing §§ 1910.137 and 1910.269). OSHA explained that in the new information collection request, the majority of the requirements covered by these newly identified collections of information consist of usual and customary practices with zero burden. In addition to adding newly identified collections of information to the new information collection request, OSHA modified the following collections of information. First, the final electrical protective equipment provision for construction (final § 1926.97(c)(2)(xii)) requires, in addition to the collections of information noted in the information collection request for the proposal, that the employer make the required certification available upon request to the Assistant Secretary for Occupational Safety and Health and to employees and their authorized representatives. Second, the final information-transfer provisions for construction and general industry (final §§ 1926.950(c)(1) and (c)(2) and final §§ 1910.269(a)(3)(i) and (a)(3)(ii)) differ substantially from the proposal, and the information collection requests for §§ 1910.137 and 1910.269 and for § 1926.97 and Subpart V reflect these revisions. OSHA included a table that lists the provisions of the final rule that OSHA identified as containing collections of information.

Before publishing this final rule, the Department of Labor submitted the new information collection request to OMB for its approval. According to OSHA, the new information collection request contains a full analysis and description of the burden hours and costs associated with paperwork requirements of the final rule and stated that these can be found online at www.reginfo.gov or by contacting OSHA. OSHA states that it will publish a separate notice in

the *Federal Register* that will announce the results of OMB's review and include in that notice any applicable OMB control number.

Statutory authorization for the rule

This rule is authorized under the Occupational Safety and Health (OSH) Act, Pub. L. No. 91-596, 84 Stat. 1590 (29 U.S.C. 651 et seq.), and the Contract Work Hours and Safety Standards Act, Pub. L. No. 107-217, 116 Stat. 1062 (40 U.S.C. 3704 et seq.).

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

According to OSHA, the OSH Act requires OSHA to demonstrate that standards promulgated under the OSH Act are technologically and economically feasible. Executive Orders 12,866 and 13,563 and the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., require federal agencies to estimate the costs, assess the benefits, and analyze the impacts, including small business impacts, of their rules. Executive Orders 12,866 and 13,563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13,563 states that the federal regulatory system "must take into account benefits and costs" and "reduce burdens and maintain flexibility and freedom of choice." OSHA determined that this action is economically significant within the meaning of section 3(f)(1) of Executive Order 12,866 because it is likely to have an effect on the economy of \$100 million or more in any one year. This final rule is also a major rule under the Congressional Review Act, 5 U.S.C. 801, et seq. OMB's Office of Information and Regulatory Affairs reviewed this final rule. As required by the Regulatory Flexibility Act, OSHA assessed the impacts of this final rule on small entities and prepared a Final Regulatory Flexibility Analysis.

Executive Order No. 13,132 (Federalism)

OSHA reviewed this final rule in accordance with Executive Order 13,132, which requires that federal agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. E.O. 13,132 provides for preemption of state law only with the expressed consent of Congress. Any such preemption must be limited to the extent possible. Under section 18 of the OSH Act, Congress expressly provides that states may adopt, with federal approval, a plan for the development and enforcement of occupational safety and health standards; states that obtain federal approval for such a plan are referred to as "state-plan states" (29 U.S.C. 667). Occupational safety and health standards developed by state-plan states must be at least as effective in providing safe and healthful employment and places of employment as the federal standards. Subject to these requirements, state-plan states are free to develop and enforce under state law their own requirements for safety and health standards. While OSHA drafted this final rule to protect employees in every state, section 18(c)(2) of the Act permits state-plan states and territories to develop and enforce their own standards for electric power generation, transmission, and distribution and electrical protective equipment provided that those requirements are at least as effective in providing safe and healthful employment and places of employment as the requirements in this final rule. OSHA concluded that the final rule complies with E.O. 13,132. In states without OSHA-approved state plans, this final rule limits state policy options in the same manner as every standard promulgated by OSHA. In states with OSHA-approved state plans, this rulemaking does not significantly limit state policy options.