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May 6, 2024

The Honorable Bernard Sanders  
Chairman  
The Honorable Bill Cassidy  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Virginia Foxx  
Chairwoman  
The Honorable Bobby Scott  
Ranking Member  
Committee on Education and the Workforce  
House of Representatives

Subject: *Department of Labor, Mine Safety and Health Administration: Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection*

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 "Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection" (RIN: 1219-AB36). We received the rule on April 19, 2024. It was published in the *Federal Register* as a final rule on April 18, 2024. 89 Fed. Reg. 28218. The effective date is June 17, 2024, except for amendments 21, 22, 25, 26, 27, 30, 31, 34, 35, 36, 38, 39, 42, 43, 46, 47, 50, 51, 54, 55, 59, 60, 63, 64, 68, 69, 73, 74, 77, 78, 81, 82, 83, 86, 87, 90, 91, 94, 95, 98, 99, 102, 103, 106, 107, 110, and 111, which are effective April 14, 2025, and amendments 4, 5, 8, 9, 13, 14, 17, and 18, which are effective April 8, 2026.

According to MSHA, this final rule amends existing standards to reduce miners' occupational exposure to respirable crystalline silica and improve respiratory protection against airborne contaminants. MSHA stated the rule also includes other requirements to protect miner health, such as exposure sampling, corrective actions for when exposure exceeds the permissible limit, and medical surveillance for mines.

Enclosed is our assessment of 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. 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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: S. Aromie Noe  
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  
“LOWERING MINERS’ EXPOSURE TO RESPIRABLE CRYSTALLINE SILICA  
AND IMPROVING RESPIRATORY PROTECTION  
(RIN: 1219-AB36)

(i) Cost-benefit analysis

The Department of Labor, Mine Safety and Health Administration (MSHA) prepared an economic analysis for this final rule. MSHA estimated that the rule would cost an average of \$89 million per year in 2022 dollars at an undiscounted rate, \$90 million at a 3 percent discount rate, and \$92 million at a 7 percent discount rate. According to MSHA, the rule’s monetized benefits would exceed its costs with or without discount rates. MSHA explained that monetized benefits are estimated from avoidance of 531 deaths related to nonmalignant respiratory disease, silicosis, end-stage renal disease, and lung cancer and 1,836 cases of silicosis associated with silica exposure over the first 60-year period after the rule’s promulgation. Additionally, MSHA stated that the estimated annualized net benefit is approximately \$294 million at an undiscounted rate, \$157 million at a 3 percent discount rate, and \$40 million 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

MSHA determined that this final rule will not have a significant economic impact on a substantial number of small entities but, in the furtherance of good governance principles and consistent with Small Business Administration guidance, it prepared a Final Regulatory Flexibility Analysis which was included in the rule. The analysis included (1) the objectives of and need for the rule; (2) the agency’s response to public comments; (3) a description of the number of small entities to which the rule will apply; (4) a description of the rule’s reporting, recordkeeping, and other compliance requirements; and (5) steps MSHA has taken to minimize the economic 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

MSHA determined that this final rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million in 1995 dollars, updated annually for inflation.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to

Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

MSHA did not discuss the Act in this final rule or in its submission to us.

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

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

On July 13, 2023, MSHA published a proposed rule. 88 Fed. Reg. 44852. On July 26, 2023, MSHA published a notice in the *Federal Register* scheduling three public hearings on the proposed rule. 88 Fed. Reg. 48146. They were held on August 3, 2023, in Arlington, Virginia; August 10, 2023, in Beckley, West Virginia; and August 21, 2023, in Denver, Colorado. On August 14, 2023, in response to requests from the public, MSHA published a notice in the *Federal Register* extending the comment period by changing the closing date from August 28, 2023, to September 11, 2023. 88 Fed. Reg. 54961. During this period, MSHA received 157 written comments from miners, mine operators, individuals, government officials, labor organizations, advocacy groups, industry groups, trade associations, and health organizations.

According to MSHA, some commenters supported various aspects of the proposal, while others opposed aspects of the proposal and suggested changes to the proposed rule. MSHA stated all public comments and supporting documentation are available at [www.regulations.gov](http://www.regulations.gov) and on MSHA’s website, [www.msha.gov](http://www.msha.gov). Additionally, MSHA stated it carefully reviewed and considered the written comments on the proposed rule and the speakers’ testimonies from the hearings, and addressed them in this final rule.

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

MSHA determined that this final rule contains information collection requirements under the Act. According to MSHA, the rule requires a new information collection as well as modifications to existing collections. MSHA stated that it has submitted information collections, including a new information collection and revisions of two existing collections, to OMB for review to reflect new burdens and changes to existing burdens. MSHA explained that once OMB completes its review, MSHA will publish a notice on the new information collection under OMB Control Number 1219-0156. MSHA estimated that for the entire mining industry, the total annual recordkeeping burden will be 63,972 hours, with capital costs to respondents averaging \$775,683 and hour burden costs (rounded) averaging \$4,401,018 per year.

Statutory authorization for the rule

MSHA promulgated this final rule pursuant to sections 811(a), 813(h), and 957 of title 30, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

MSHA stated that OMB has determined that this final rule is significant under the Order.

Executive Order No. 13132 (Federalism)

MSHA determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.