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United States Government Accountability Office
Washington, DC 20548

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December 21, 2006

The Honorable Michael B. Enzi
Chairman

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

The Honorable Howard P. "Buck" McKeon
Chairman

The Honorable George Miller
Ranking Minority Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Labor, Mine Safety and Health Administration: Emergency Mine Evacuation*

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 "Emergency Mine Evacuation" (RIN: 1219-AB46). We received the rule on December 8, 2006. It was published in the Federal Register as a final rule on December 8, 2006. 71 Fed. Reg. 71430.

The final rule revises the MSHA Emergency Temporary Standard (ETS), including requirements for increased availability and storage of self-contained self-rescue devices (SCSRs), improved emergency evacuation drills and SCSRs training, and the installation and maintenance of lifelines in underground coal mines. Also, the final rule requires immediate accident notification applicable to all mines.

The final rule has an announced effective date of December 8, 2006, the date of publication in the Federal Register. The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of publication in the Federal Register or receipt of the rule by Congress, whichever is later. The rule was received by Congress on December 8, 2006, the same date as its publication in the Federal Register.

While the final rule has a published effective date of December 8, 2006, in the preamble to the final rule, MSHA discusses the implementation date of the final rule, the earliest of which is February 6, 2007, for the submission of a revised training plan by mine operators.

Therefore, the final rule will not “take effect” until 60 days later than the date of publication or receipt by Congress. See Liesegang v. Sec’y of Veterans Affairs, 312 F. 3d 1368 (Fed. Cir. 2002), which held that the 60-day delay requirement in section 801(a)(3) applies to when a rule “takes effect” or “goes into operation,” not necessarily the same date as the announced effective date. See also Natural Resources Defense Council v. Abraham, 355 F. 3d 179 (2d Cir. N.Y. 2004).

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. Our review indicates that MSHA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Patricia W. Silvey
Director, Office of Standards,
Regulations, and Variances
Department of Labor

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
MINE SAFETY AND HEALTH ADMINISTRATION
ENTITLED
"EMERGENCY MINE EVACUATION"
(RIN: 1219-AB46)

(i) Cost-benefit analysis

MSHA conducted a Regulatory Economic Analysis (REA) of the final rule. The final rule's yearly costs for the underground mining industry total approximately \$44.1 million at a 7-percent discount rate and \$41.1 million at a 3-percent discount rate, which include the amortized value of first-year costs of about \$146.9 million.

Regarding the benefits of the final rule, MSHA concludes that if the final rule had been in effect, 45 fatalities may have been prevented in the four mining accidents considered in the analysis.

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

MSHA has 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

The final rule contains an unfunded mandate on the private sector, as defined in title II, of more than \$100 million in any one year. MSHA has used the analysis contained in the REA to comply with the Act.

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

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

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On March 9, 2006, MSHA issued an Emergency Temporary Standard, which served as its Notice of Proposed Rulemaking. 71 Fed. Reg. 12252. MSHA also held four public hearings to gather comments.

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

The final rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. MSHA has submitted the required information to OMB for review and approval, which includes an estimated annual burden for the first year of 23,920 new burden hours (\$1.5 million) and 20,092 hours (\$1.1 million) for subsequent years.

Statutory authorization for the rule

The final rule was promulgated under the authority found in the Mine Improvement and New Emergency Response Act of 2006 (Pub. L. 109-236).

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

The final rule does not have federalism implications under the order.