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United States Government Accountability Office
Washington, DC 20548

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November 30, 2007

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, Occupational Safety and Health Administration:
Employer Payment for Personal 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 "Employer Payment for Personal Protective Equipment" (RIN: 1218-AB77). We received the rule on November 16, 2007. It was published in the *Federal Register* as a final rule on November 15, 2007. 72 Fed. Reg. 64,342. The stated effective date of this final rule is February 13, 2008. The final rule must be implemented by May 15, 2008.

This final rule requires employers to pay for the personal protective equipment (PPE) for their employees. Examples of PPE include hard hats, gloves, goggles, safety shoes, and other items. This final rule does not require employers to provide PPE where none was required before; this rule only requires that, in most cases, the employer must pay for the PPE. This rule also sets forth some limited exceptions to this general requirement.

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 indicates that OSHA complied with the applicable requirements.

If you have any questions about this report, please contact Michael R. Volpe,
Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Dorothy Dougherty
Director, OSHA 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
"EMPLOYER PAYMENT FOR PERSONAL PROTECTIVE EQUIPMENT"
(RIN: 1218-AB77)

(i) Cost-benefit analysis

The Occupational Safety and Health Administration (OSHA) prepared a Final Economic Analysis to determine the costs and benefits of this final rule. OSHA's analysis indicated that the final rule will avert approximately 21,798 injuries annually. OSHA estimated the total benefits of the final rule to be \$349 million under a willingness-to-pay methodology and \$228.3 million under a direct-cost methodology. OSHA estimated total compliance costs to be \$85.7 million for all establishments.

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

OSHA concluded that this final rule will not have a significant 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

OSHA reviewed this rule in accordance with the Act and determined that the rule will not impose unfunded mandates within the meaning of the Act. OSHA estimates that compliance with this final rule will cost affected employers \$85.7 million per year. OSHA standards do not apply to state or local governments.

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

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

OSHA promulgated this rule under the notice-and-comment procedures found in the Administrative Procedures Act. 5 U.S.C. § 553. OSHA published a proposed rulemaking on March 31, 1999. 64 Fed. Reg. 15,402. OSHA received nearly 350 comments, to which it responded in the final rule. 72 Fed. Reg. 64,343-78.

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

According to OSHA, this final rule does not contain information collection requirements requiring the approval of the Office of Management and Budget under the Act.

Statutory authorization for the rule

OSHA promulgated this rule under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 653, 655, 657) and section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. § 941).

National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4370f

OSHA reviewed this rule under NEPA and determined that this final rule will have no significant impact on the external environment.

Executive Order No. 12,866

OSHA prepared a Final Economic Analysis to determine the costs and benefits of this final rule to meet the requirements of the Order.

Executive Order No. 13,132 (Federalism)

OSHA determined that this final rule complied with the Order. According to OSHA, the Order provides for preemption of state law when there is clear congressional intent to do so. OSHA has determined that Congress expressed such intent in the case of OSHA's occupational safety and health standards. 29 U.S.C. §§ 651–78.