Regulation Review

Regulation Review: OSHA Hazard Communication

MARCH 26, 2012

With notable Dodd-Frank and health care regulations grabbing so many headlines, other rulemakings can get lost in the fray. Except, of course, when they account for more than $4 billion in costs and the pre-publication version is 858 pages long. Today, the Occupational Safety and Health Administration (OSHA) published its final rule on Hazard Communication Standards.

The rule seeks to align national chemical safety standards with the United Nations "Globally Harmonized System of Classification and Labelling [*sic*] of Chemicals (GHS)." It would require entities working with or manufacturing certain hazardous materials to adjust their current system classifying and labeling such products.

Employers would incur capital costs of producing new documentation and training employees to follow revised procedures. Employers must complete initial employee training by December 1, 2013. Affected entities must be fully compliant by June 1, 2015, though extensions are possible.

Breakdown:

- Compliance Costs:
  - Proposed Rule: **$1.97 billion**
  - Final Rule: **$4.05 billion**

- Paperwork Hours:
  - Proposed Rule: **2.1 million hours**
  - Final Rule: **11.3 million hours**

- Net Change: **$2.08 billion** in additional costs; **9.2 million** more burden hours

Analysis:

Changes in underlying assumptions generally drive the dramatic increases in both categories. Nonetheless, their cost-benefit analysis does not represent the rule's true economic impact.

Many rulemakings employ annualized costs as a way to estimate costs or benefits over an extended period. Here, OSHA estimates an annualized cost of $201 million for 20 years. The agency also estimates $757 million in annualized monetized benefits, for a purported net benefit of $556 million (during the same period).

Tucked away in a footnote, OSHA reveals why they provided annualized estimates:

"The choice of a 20-year period is designed to capture out-year benefits given a 4-year phase-in period. A shorter period would place too much emphasis on the phase-in period, where benefits would not be accruing. A longer discount period might over-emphasize the long-term benefits since net benefits increase with the length of the annualization period."

In OSHA's discussion of possible alternatives, they explicitly note that the economy will not realize the benefits for five years. OIRA Administrator Cass Sunstein recently posted about "overall five-year savings" of $2.5 billion. The only way to cite such a number is to disingenuously use the annualized figures. The realistic 5-year projection, as explained by the rule itself, is likely $4 billion in costs with no benefits, a swing of $6.5 billion.

In addition, the cost-benefit analyses provided were "for informational purposes only and have not been used by OSHA as the basis for its decision." This runs contrary to the spirit of President Obama's Executive Order 13,563 which states: "each agency must … adopt a regulation only upon a reasoned determination that its benefits justify its costs."