Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–777]

RIN No. 1218–AB36

Ergonomics Program

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; request for comments on economic impact and informal public hearing.

SUMMARY: OSHA is using this document to provide information and analysis concerning the economic impacts of the proposed ergonomics rule (64 FR 65768, published November 23,1999) on State and local governments, the United States Postal Service, and railroads, and to seek comment on these economic impacts. This document supplements the Agency's Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis of the economic impact of the Ergonomics Program Rule (Exhibit 28–1 in the OSHA docket), which did not directly address these employers. OSHA is also setting dates for a pre-hearing comment period, a public hearing, and a post-hearing comment period to address the economic impacts exclusively in these three industries.

The broader context for OSHA's actions can be found in the Notice of Proposed Rulemaking, published in the **Federal Register** of November 23, 1999 (64 FR 65768). The procedures in this continuation of the public hearing process will be the same as those used in the previous nine weeks of public hearings on the proposed ergonomics standard (See OSHA's home page at *www.osha.gov* or 65 FR 11948; March 7, 2000).

DATES: Notice of intention to appear at the informal public hearing: Notices of intention to appear at the informal public hearing must be postmarked by June 14, 2000. If you submit your notice of intention to appear by facsimile or electronically through OSHA's Internet site, you must transmit the notice by June 14, 2000.

Pre-hearing comments: Written comments addressing the economic impacts of the rule in these industries must be postmarked no later than June 22, 2000. If you submit comments by facsimile or electronically through OSHA's Internet site, you must transmit those comments by June 22, 2000.

Hearing Testimony and documentary evidence: If you will be requesting more than 10 minutes for your oral presentation at the hearing, you must submit the full testimony, postmarked no later than June 27, 2000, or if you will be submitting documentary evidence at the hearing, you must submit all of that evidence, postmarked no later than June 27, 2000.

Informal public hearing: The public hearing will be held in Washington, DC, beginning at 9 am, on July 7, 2000 and is expected to conclude that day.

Post-hearing comments: Written post-hearing comments must be postmarked no later than August 10, 2000. If you submit comments by facsimile or electronically through OHSA's Internet site, you must transmit those comments no later than August 10, 2000. The publication of this notice and the related public hearing do not affect the 90-day period established earlier for post-hearing submissions related to the ergonomics program proposed standard [65 FR 11948, March 7, 2000]. That period also ends August 10, 2000.

Addresses: Written comments: *Mail:* Submit two copies of written comments to: OSHA Docket Office, Docket No. S–777, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350.

Facsimile: If your written comments are 10 pages or less, you may fax them to the Docket Office. The OSHA Docket Office fax number is (202) 693–1648.

Electronic: You may also submit comments electronically through OSHA's Homepage at *www.osha.gov.* Please note, you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit them separately in duplicate to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, and subject, so that we can attach them to your electronic comments.

Notice of intention to appear: Mail: Notices of intention to appear at the informal public hearing may be submitted by mail in quadruplicate to: Ms. Veneta Chatmon, OSHA Office of Public Affairs, Docket No. S–777, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3647, Washington, DC 20210; Telephone: (202) 693–2119.

Facsimile: You may fax your notice of intention to appear to Ms. Chatmon at (202) 693–1634.

Electronic: You may also submit your notice of intention to appear electronically through OSHA's Homepage at *www.osha.gov.*

Hearing testimony and documentary evidence: You must submit in quadruplicate your hearing testimony and any documentary evidence you intend to present at the informal public hearing to Ms. Veneta Chatmon, OSHA Office of Public Affairs, Docket No. S–777, U.S. Department of Labor, Room N–3647, 200 Constitution Ave, NW., Washington, DC 20210. Telephone: (202) 693–2119, You may also submit your hearing testimony and documentary evidence on disk (3½ inch) in WP 5.1, 6.0, 6.1, 8.0 or ASCII, provided you also send the original hardcopy at the same time.

Informal public hearing: The one-day public hearing to be held in Washington, D.C. will be located in the Auditorium in the U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue, NW, Washington, D.C. 20210.

FOR FURTHER INFORMATION, CONTACT: OSHA's Ergonomics Team at (202) 693–2116, or visit the OSHA Homepage at www.osha.gov.

SUPPLEMENTARY INFORMATION:

Supplement for State and Local Governments, Railroads and the U.S. Postal Service to the Summary of the Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis of Proposed Ergonomics Program Standard

Introduction

OSHA has prepared this analysis of the costs, benefits, number of

establishments and employees affected, and potential impacts of OSHA's proposed ergonomics program standard on state and local governments in State-plan states, railroads, and the United States Postal Service. The methodology used to analyze the economic effects of the proposed standard for these sectors is the same as that used for other industries in OSHA's Preliminary Economic Analysis of the Proposed Ergonomics Program Standard (PEA) (Ex. 28–1). Where different sources of data or different assumptions are used for these three sectors, they are noted in a Technical Appendix (Ex. 28–15).

As indicated in the preamble to the ergonomics rule [64 FR 66054], OSHA standards do not apply to state and local governments, except in states that have voluntarily elected to adopt an OSHA State Plan. Because state and local governments in State-plan states can be expected to implement the rule, OSHA has analyzed the costs and impacts, as well as benefits, of the proposal for those state and local governments in State-plan states. Currently, California (a State-plan state) has its own ergonomics standard, and other states are in the process of developing their own. However, for simplicity, this summary analysis ignores the effects of existing and proposed state ergonomics regulations.

OSHA shares jurisdiction for occupational safety and health in the railroad industry with the Federal Railroad Administration. Although a number of railroad employees will not be covered by this standard, OSHA has not located data to identify what proportion of employees will be affected by the standard and has therefore decided to include all railroad workers in this analysis. This results in a substantial overestimate of the impact of the proposal on the railroad industry.

The US Postal Service (USPS) is now entirely under the jurisdiction of OSHA, and would thus be affected in the same ways as other private-sector employers.

Industrial Profile

Employment in These Three Industries: Based on Bureau of the Census data, there were 8.7 million state and local government employees in State-plan states in 1997. This total excludes those employees working in some governmental entities, notably hospitals, which have already been included in OSHA's PEA (Ex. 28–1) because they were included in the Census Bureau's *County Business Patterns* data used for that analysis (Ex. 28–2, p. vi). For the railroad industry, the Bureau of Labor Statistics reported that a total of 226,500 employees work for the railroads. Based on the USPS annual report, there were 904,636 employees, including non-career employees, in the Postal Service in 1998 [USPS, 1998].

Number of Musculoskeletal Disorders (MSDs) in These Three Industries: Using data on OSHA recordable MSDs provided to the record by the AFL–CIO [Ex. 32–339–1], and adjusting these data to accord with the scope of the proposed rule and OSHA's definition of MSDs, OSHA estimates that there were approximately 175,000 MSD cases (both lost workday and non-lost workday) among employees in general industry in state and local governments in State-plan states. OSHA estimates, using the same data and methodology for estimating the number of OSHA recordable MSDs that were used for all other private-sector businesses in the Preliminary Economic Analysis (Ex. 28–1), that there were a total of 1,250 MSDs in the railroad industry, of which 781 were lost workday MSDs. For the USPS, information on OSHA-recordable MSDs was not available; OSHA therefore estimated that the number of MSDs among postal workers was equal to the number of filed workers' compensation claims due to ''exertion'' (defined as including both overexertion and repetition cases) filed with the Federal Office of Workers' Compensation Programs in fiscal year 1996 (OWCP, 1996). There were 29,407 such cases in that year.

Number of Establishments in These Three Sectors: Establishment data are needed because portions of the proposed standard are triggered on an establishment basis. Establishment data are not available for any of these sectors; OSHA therefore used a variety of estimation techniques to calculate this information. OSHA estimated that there are 167,788 state and local government establishments, 4,802 railroad establishments, and 33,613 USPS establishments, including both post offices and classified stations. OSHA welcomes comment both on the number of establishments in these sectors, and on how, for regulatory purposes, establishments should be defined for state and local governments and for railroads. For example, if several state agencies work in a single building, would they be considered one or several establishments? Would the reporting structure applying to these agencies, *e.g.,* whether they report to separate branches of state government, affect this definition?

Benefits

OSHA's method for estimating the potential reductions in the number of MSDs the proposed standard would prevent and monetizing the benefits associated with this reduction are described in detail in Chapter IV of the PEA [Ex. 28–1]. The Agency estimates that, during the first ten years after implementation of the proposed standard, the proposal would prevent 476,000 covered MSDs among state and local government employees, nearly 1,900 covered MSDs among railroad employees, and approximately 94,000 covered MSDs among postal workers. The Agency estimates that the proposed standard will capture additional annual benefits of approximately $1 billion as a result of including workers in state and local government in State-plan states, the US Postal Service, and the railroads.

Costs of Compliance

Following the methodology presented in the Chapter V of the Preliminary Economic Analysis [Ex. 28–1], OSHA estimated the annual costs of compliance for these three industries. Table 1 presents the proposal's total annual costs and the total cost to employers for these three sectors. In total, these three industries add $418 million per year to the total costs (to society) of the rule, and $588 million per year to the costs of the proposal to employers. (The difference between these two costs is the cost of the proposal's Work Restriction Protection provisions, which is a cost to employers but does not represent a net cost to society.)

TABLE 1.—ANNUALIZED COSTS OF COMPLIANCE OF THE PROPOSAL TO SOCIETY AND TO EMPLOYERS IN THESE THREE INDUSTRIES

[In millions of dollars]

Industry	Annualized costs to—	
	Society	Employers
State and Local Governments in State-plan States	351	497
Railroads	8	9
United States Postal Service	59	82
Total	418	588

Economic Feasibility Analysis

As in the Preliminary Economic Analysis [Ex. 28–1], OSHA conducted a screening analysis of the potential impacts of the proposed standard on the before-tax profits and sales of the affected industries. A screening analysis

simply looks at the projected costs of the proposal as a percentage of the pre-tax profits and sales of the affected industries but does not actually predict the magnitude of the impacts of these costs on these before-tax profits or sales. Screening analyses are used to determine whether the compliance costs potentially associated with the proposed standard *could* lead to significant impacts on affected establishments under the two worst case scenarios (full cost passthrough and no cost passthrough). OSHA has used the same methodology in its screening analysis for the three industries of interest here. The actual impact of the proposed standard on the profit and sales of establishments in a given private industry will depend on the price elasticity of demand for the products or services produced by establishments in that industry, as discussed in detail in Chapter VI of the Preliminary Economic Analysis [Ex. 28–1]. For the public (government) sector, the impacts of the proposal's compliance costs would indicate the extent to which the government jurisdiction would have to raise taxes or cut back on government services.

According to the Census Bureau, total revenues to state and local government in the State-plan states in Fiscal Year 1996 were $763.3 billion [Census, 1996]. The annual costs of compliance for the proposed standard would therefore be equal to approximately 0.07 percent of these revenues. Increasing the amount of tax collected by these entities by $7 for every $10,000 of revenue currently collected would permit these entities to fully recover outlay. (For comparison, annual increases to payroll made to stay even with inflation are normally 15 to 20 times these costs.) Changes of this small magnitude will have little or no effect on the ability of state and local governments to deliver services to their constituents.

In the railroad industry, estimated annual revenues are $36.9 billion, and thus the costs of compliance with the standard are estimated to equal 0.03% of revenues under the worst-case scenario for price increases [DOT, 1999]. Robert Morris Associates [Ex. 28–10] estimated the pre-tax profit rate for the railroad industry in 1996 to be 12.2%. The standard's costs are therefore estimated to represent 0.21% of profits in the worst case scenario for profits. Even if the costs of compliance were taken entirely from profits (a highly unlikely scenario), they would only reduce, for example, $1,000,000 in profits to $997,900. Such a change in profits would have no measurable effect on the viability or competitive structure of the railroad industry.

The U.S.P.S. reported revenues in 1996 of $56.6 billion [USPS, 1998]. Therefore, the cost of complying with the proposal in SIC 43 would amount to 0.14% of revenue. Such a change in revenues is too small to significantly impact finances or raise questions of economic feasibility. For comparison, annual increases to payroll made to stay even with inflation are 10 to 15 times the annual costs of complying with the proposal. Such an impact will have no effect on the viability of the U.S. Postal Service.

Regulatory Flexibility Information

The Agency also examined the impact of the costs of the proposal on small governmental entities, *i.e.,* those governmental jurisdictions serving fewer than 50,000 people. According to the Census Bureau's employment and payroll survey, there were 17,289 governmental jurisdictions with fewer than 50,000 people in the State-plan states, employing a total of 2,312,873 workers. OSHA estimates that these jurisdictions include approximately 45,357 establishments, although defining these in the public sector is difficult, since no data on this point are available. Employing the assumptions used to analyze the costs of the standard to state and local governments, the estimated annualized cost of the proposal to small governmental entities would be $152 million. According to the Census' survey of government revenues, the revenues in governmental jurisdictions serving fewer than 50,000 people in State-plan states in 1996 were $101 billion. Therefore, the costs of compliance would be equal to 0.15 percent of the revenues of these entities.

The Small Business Administration defines ''small'' railroads as those employing fewer than 1500 employees in SIC 4013 and fewer than 500 in SIC 4011. For the purposes of this analysis, OSHA is classifying all local and regional railroads in the ''small'' category. Using the same methodology as that described above, OSHA estimates the costs of compliance for small railroad companies to be $896,233, or 0.03 of the revenues and 0.24 percent of the profits, of these companies.

Because the U.S. Postal Service represents the only large governmental entity serving all U.S. citizens, there are no small entities in SIC 43.

The impacts of the proposed standard on the small entities in the state and local government and railroad industries do not exceed OSHA's criteria for identifying significant impacts on small entities-compliance costs equal to more than 1 percent of revenues or 5 percent of profits.

References

BLS, 1997. Bureau of Labor Statistics, ''National Employment, Hours, and Earnings'', Found at: *http://146.142.4.24/cgi-bin/dsrv*

U.S. Bureau of the Census. Survey of Government Employment and Payroll, March 1997.

Data found at: *http://www.census.gov/govs/www/apes97loc.html*

U.S. Bureau of the Census. State and Local Finance Estimates, by State: 1995–96. Data found at: *http://www.census.gov/www/esti96.html*

U.S. Department of Transportation, Bureau of Transportation Statistics, *Transportation Statistics Annual Report,* 1999. Found at: *http://www.bts.gov/programs/transtu/tsar/tsar99/tsar99pt.html*

U.S. Postal Service, *1998 Annual Report.* Found at: *http://www.usps.gov/history/anrpt98/pdf.htm*

OWCP 1996. Federal Agency Injury and Illness Data Base, derived from Office of Workers' Compensation Programs Case Create data file, Department of Labor, Fiscal Year 1996. Formatted by OSHA Office of Management and Data Systems. (Unpublished).

Request for Comment

OSHA requests any additional, relevant data and information and comment on all aspects of this analysis, and on the data sources and methodology used for this analysis, as outlined in the Technical Appendix, Exhibit 28–15.

Authority: This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 18th day of May, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

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