

## DEPARTMENT OF LABOR (DOL)

### Statement of Regulatory and Deregulatory Priorities

#### Executive Summary

The Department of Labor's (DOL) mission is to protect workers by improving working conditions, advancing opportunities for employment, protecting retirement and health care benefits, helping employers find workers, and strengthening collective bargaining. Secretary of Labor Hilda L. Solis' vision is that the work of the Labor Department will ensure there are *good jobs for everyone*.

To achieve this broad vision, the Secretary has established a series of 12 specific strategic outcomes, which span across all of the Department's agencies. These outcomes are:

- Increasing workers' incomes and narrowing wage and income inequality.
- Securing safe and healthy workplaces, wages and overtime, particularly in high-risk industries.
- Assuring skills and knowledge that prepare workers to succeed in a knowledge-based economy, including in high-growth and emerging industry sectors like "green" jobs.
- Breaking down barriers to fair and diverse work places so that every worker's contribution is respected.
- Improving health benefits and retirement security for all workers.
- Providing work place flexibility for family and personal care-giving.
- Facilitating return to work for workers experiencing work place injuries or illnesses who are able to work and sufficient income and medical care for those who are unable to work.
- Income support when work is impossible or unavailable.
- Helping workers who are in low-wage jobs or out of the labor market find a path into middle class jobs.
- Ensuring workers have a voice in the work place.
- Assuring that global markets are governed by fair market rules that protect vulnerable people, including women and children, and provide workers a fair share of their productivity and voice in their work lives.
- Helping middle-class families remain in the middle class.

Critical to this vision is ensuring these outcomes achieve *good jobs for*

*everyone*. This includes vulnerable workers, workers in traditionally less safe industry sectors, farmworkers, health care workers and seniors, and those facing barriers to good employment.

The Secretary has directed each agency to ensure that all priority regulatory projects support achievement of one or more of the strategic outcomes that support the *good jobs for everyone* vision. The DOL Fall 2009 Regulatory Plan reflects this direction.

#### Openness and Transparency

Using regulatory changes to produce greater openness and transparency is an integral part of a Department-wide compliance strategy. These efforts will not only enhance DOL agencies' enforcement tool set, but will encourage greater levels of compliance by the regulated community and enhance awareness among workers of their rights and benefits.

The Department's commitment to achieving greater openness and transparency is exemplified in its Regulatory Plan and Agenda. Several proposals from the Employee Benefits Security Administration expand disclosure requirements, substantially enhancing the availability of information to pension plan participants and beneficiaries and employers, and strengthening the retirement security of America's workers. These rulemakings are:

- *Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans*, which would increase transparency between individual account pension plans and their participants and beneficiaries by ensuring that participants and beneficiaries are provided the information they need, including information about fees and expenses, to make informed investment decisions.
- *Amendment of Standards Applicable to General Statutory Exemption for Services*, which would require service providers to disclose to plan fiduciaries services, fees, compensation and conflicts of interest information.
- *Annual Funding Notice for Defined Benefit Plans*, which would require defined benefit plan administrators to provide all participants, beneficiaries and other parties with detailed information regarding their plan's funding status.
- *Periodic Pension Benefits Statements*, which would require pension plans to

provide participants and certain beneficiaries with periodic benefit statements.

- *Multiemployer Plan Information Made Available on Request*, which would require pension plan administrators to provide copies of financial and actuarial reports to participants and beneficiaries, unions and contributing employers on request.

Several other Labor Department agencies will also be proposing regulatory projects that will foster greater openness and transparency. These include:

- The Mine Safety and Health Administration's proposed regulation on *Notification of Legal Identity*, which aims to require mine operators to provide increased identification information, would allow the agency to better target the most egregious and persistent violators and deter future violations.
- The Office of Labor-Management Standards' proposed regulations on *Notification of Employee Rights Under Federal Labor Laws*, which would implement Executive Order 13496 and require all Government contracting agencies to include a contract clause requiring contractors to inform workers of their rights under Federal labor laws.
- The Wage and Hour Division's rulemaking, *Records to be Kept by Employers Under the Fair Labor Standards Act*, which would update decades old recordkeeping regulations in order to enhance the transparency and disclosure to workers as to how their wages are computed and to allow for new workplace practices such as telework and flexiplace arrangements.
- The Occupational Safety and Health Administration's modification of its *Hazard Communication Standard*, which would adopt standardized labeling requirements and order of information for safety data sheets.
- The Occupational Safety and Health Administration's *Occupational Injury and Illness Recording and Reporting Requirements* rule, which would propose the collection of additional data to help employers and workers track injuries at individual workplaces, improve the Nation's occupational injury and illness information data, and assist the agency in its enforcement of the safety and health workplace requirements.

### The Department's Regulatory Priorities

The Department of Labor's (DOL) 2009 Regulatory Plan highlights the most noteworthy and significant regulatory projects that will be undertaken by its regulatory agencies: the Employment Standards Administration (ESA), Mine Safety and Health Administration (MSHA), Occupational Safety and Health Administration (OSHA), Employee Benefits Security Administration (EBSA), and Employment and Training Administration (ETA). The initiatives and priorities in the regulatory plan represent those that are essential to the fulfillment of the Secretary's vision for the Department and America's workforce.

### Employment and Training Administration

ETA is charged with assuring our Nation's workers have the skills and knowledge that will prepare them to succeed in a knowledge-based economy, including high-growth and emerging industry sectors such as "green jobs." For those workers who are in low-wage jobs or out of the labor market, ETA programs will help them find a path to self-sufficiency and good, middle class jobs. And for those who are unable to work, or for whom work is unavailable, ETA programs provide income support and a path to self-sufficiency. ETA is playing a pivotal role in the implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act) to jumpstart our economy, create or save millions of jobs, and make a down payment on addressing long-neglected challenges so our country can thrive. Through these efforts and others, ETA is transforming the way it provides services to all workers.

ETA is highlighting four regulatory priorities that reflect the Secretary's vision to advance *good jobs for everyone* with measurable and substantial outcomes. These are:

- The *Trade Adjustment Assistance (TAA) for Workers Program* Regulations propose to implement changes to the TAA program that arose when the program was reauthorized and expanded in the Recovery Act. The Recovery Act amended the certification criteria, expanded the types of workers who may be certified, and expanded the available program benefits. The TAA regulations will help provide opportunities for participants to acquire skills and knowledge needed to become, or remain, employable in

the middle-class jobs market. The TAA regulations will also help provide guidance on supplying participants with income support for times when work is impossible or unavailable. The overarching outcomes for the completion of the TAA regulations are to help middle-class families remain middle class and help workers who are out of the labor market find a path into the middle class.

- The *Trade Adjustment Assistance: Merit Staffing of State Administration and Allocation of Training Funds to States Regulation* proposes that personnel carrying out the worker adjustment assistance provisions of the TAA program must be State employees covered by the merit system of personnel administration and addresses how the Department distributes TAA training funds to the States. It will be finalized after the public comments on the regulation have been analyzed and considered. The Allocation of Training Funds portion of this regulation explains, for the first time, the new formula that the Department uses to allocate training funds to the States.
- The *Temporary Agricultural Employment of H-2A Aliens in the United States* regulatory revisions set forth the requirements for using temporary foreign agricultural workers and establish wages and working conditions to cover both U.S. and foreign agricultural workers. The H-2A program assists in achieving the Secretary's goal to increase workers' incomes and narrow wage and income inequality by protecting the wages and working conditions of both American workers and foreign nationals working in the United States.
- The *YouthBuild Program* regulation proposes to implement the YouthBuild Transfer Act of 2006, which transferred the YouthBuild program from the Department of Housing and Urban Development to DOL, and amended certain program features to emphasize skill training and connections to the public workforce system. The YouthBuild regulations will help achieve the Secretary's goals by assuring participants gain the skills and knowledge that will prepare them to succeed in a knowledge-based economy, including in high-growth and emerging industry sectors like "green jobs."

In addition, the proposed amendments to regulations for equal employment opportunity (EEO) in apprenticeship and training are a critical second phase of regulatory updates to modernize the National Apprenticeship System. The first phase was completed in October 2008 with the publication of a final rule updating regulations for Apprenticeship Programs and Labor Standards for Registration. The existing companion EEO regulations for apprenticeship were promulgated over 30 years ago. Proposed amendments to these regulations will help achieve the Secretary's goal of a fair and diverse workplace free of discrimination and harassment by reflecting current EEO law.

Finally, the Department proposes amendments to the temporary non-agricultural foreign worker (H-2B Worker) regulations. As part of its statutory responsibility as an advisor to the Department of Homeland Security, the Department certifies that there is not sufficient U.S. worker(s) able, available, willing and qualified at the time of an application for a visa, and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers. The Department currently administers such certification through an attestation-based program. The regulatory review of the H-2B program will assist in achieving the Secretary's goal to increase workers' incomes and narrow wage and income inequality by protecting the wages and working conditions of both American workers and foreign nationals working in the United States.

### Employee Benefits Security Administration

The Employee Benefits Security Administration is responsible for administering and enforcing the fiduciary, reporting and disclosure, and health coverage provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). This includes recent amendments and additions to ERISA enacted in the Pension Protection Act of 2006, as well as new COBRA Continuation Coverage Provisions under the Recovery Act. EBSA's regulatory plan initiatives are intended to improve health benefits and retirement security for workers in every type of job at every income level.

#### Health Benefits for Workers

EBSA will issue guidance implementing the Genetic Information Nondiscrimination Act of 2008 (GINA)

amendments to ERISA. Generally, GINA prohibits group health plans from discriminating in health coverage based on genetic information and from collecting genetic information. This rulemaking helps ensure that workers will have access to high quality health coverage, free from discrimination based on a genetic predisposition towards a disease. This is a joint rulemaking with the Departments of Health and Human Services and the Treasury.

EBSA also will be providing guidance regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) amendments to ERISA. MHPAEA creates parity for mental health and substance use disorder benefits under group health plans by mandating that any financial requirements and treatment limitations applicable to mental health and substance abuse disorder benefits to be no more restrictive than predominant requirements or limitations applied to substantially all medical and surgical benefits covered by a plan. EBSA's MHPAEA guidance will help ensure the desired outcome of affording workers access to reliable and high quality health benefits.

EBSA also will issue guidance clarifying the circumstances under which health care arrangements established or maintained by state or local governments for the benefit of non-governmental employees do not constitute an employee welfare benefit plan for purposes of ERISA. Such clarification is intended to remove perceived impediments to state and local government efforts to improve access to and opportunities for quality and affordable health care coverage for vulnerable, uninsured populations. The clarifications provided by this regulation also will reduce uncertainty and, therefore, potential regulatory and litigation costs for both plan sponsors and state and local governments concerning the scope of ERISA regulation.

#### *Retirement Security for Workers*

EBSA will propose amendments to its regulations to clarify the circumstances under which a person will be considered a fiduciary when providing investment advice to employee benefit plans and their participants and beneficiaries of such plans. EBSA also will explore steps it can take by regulation, or otherwise, to encourage the offering of lifetime annuities or similar lifetime benefits distribution options for participants and

beneficiaries of defined contribution plans. These initiatives are intended to assure retirement security for workers in all jobs regardless of income level by ensuring that financial advisers and similar persons are required to meet ERISA's strict standards of fiduciary responsibility and helping to ensure that participants and beneficiaries have the benefit of their plan savings throughout retirement.

#### **Occupational Safety and Health Administration**

The Secretary's vision for workers requires securing a safe and healthy workplace. OSHA's regulatory program is designed to help workers and employers identify hazards in the workplace, prevent the occurrence of injuries and adverse health effects, and communicate with the regulated community regarding hazards and how to effectively control them. Longstanding health hazards such as silica and beryllium and emerging hazards such as food flavorings containing diacetyl and airborne infectious diseases place American workers at risk of serious disease and death and are initiatives on OSHA's regulatory agenda. OSHA's regulatory program demonstrates a renewed commitment to worker health by addressing health hazards and the prevention of construction injuries and fatalities.

First, OSHA is proposing to address worker exposures to crystalline silica through the promulgation and enforcement of a comprehensive health standard. Exposure to silica causes silicosis, a debilitating respiratory disease, and may cause cancer, other chronic respiratory diseases, and renal and autoimmune disease as well. Over 2 million workers are exposed to crystalline silica in general industry, construction, and maritime industries and workers are often exposed to levels that exceed current OSHA permissible limits, which is frequent in the construction industry where workers are exposed at levels that exceed current limits by several fold. It has been estimated that between 3,500 and 7,000 new cases of silicosis arise each year in the U.S., and that 1,746 workers died of silicosis between 1996 and 2005.

Reducing these hazardous exposures through promulgation and enforcement of a comprehensive health standard supports both the Secretary's vision and will contribute to OSHA's goal of reducing occupational fatalities and illnesses. As a part of the Secretary's strategy for securing safe and healthy

workplaces, the Mine Safety and Health Administration will also be undertaking regulatory action related to silica utilizing information provided by OSHA.

OSHA's second health initiative would revise its Hazard Communication Standard (HCS) to make it consistent with a globally harmonized approach to hazard communication. The HCS covers over 945,000 hazardous chemical products in seven million American workplaces and gives workers the "right to know" about chemical hazards they are exposed to. OSHA and other Federal agencies have participated in long-term international negotiations to develop the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Revising the HCS to be consistent with the GHS is expected to significantly improve the communication of hazards to workers in American workplaces, reducing exposures to hazardous chemicals, and reducing occupational illnesses and fatalities.

Workers in construction suffer the most fatalities of any industry. In 2008, OSHA estimated that crane-related accidents in construction cause over 80 fatalities a year. Therefore, OSHA's major construction initiative is an update of the 1971 Cranes and Derricks Standards. Completion of this standard will contribute to a reduction in occupational injuries and fatalities, which helps achieve the Secretary's outcome goal of securing safe and healthy workplaces in high-risk industries. The Agency is currently evaluating the public comments and planning to issue a final rule in July 2010.

#### **Mine Safety and Health Administration**

MSHA's regulatory projects support the Secretary's vision by protecting the health and safety of the Nation's miners. Despite the agency's past efforts, miners face safety and health hazards daily at levels unknown in most other occupations. While the Federal Mine Safety and Health Act of 1977 (Mine Act) places primary responsibility for preventing unsafe and unhealthy working conditions in mines on the operators, the collective commitment of miners, mine operators, and government is needed to ensure safe workplaces.

The agency's proposed regulatory actions exemplify a commitment to protecting the most vulnerable populations while assuring broad-based compliance. Health hazards are pervasive in both coal and metal/nonmetal mines (including

surface and underground mines) and large and small mines.

Recent data from the National Institute for Occupational Safety and Health indicate increased prevalence of coal workers pneumoconiosis (CWP) "clusters" in several geographical areas, particularly in the Southern Appalachian Region. MSHA plans to publish a notice of proposed rulemaking to address continued risk to coal miners from exposure to respirable coal mine dust.

On January 16, 2009, MSHA and NIOSH published a proposed rule that would revise requirements for the approval of coal mine personal dust sampling devices. The proposed rule would also establish performance-based and other requirements for approval of the continuous personal dust monitor (CPDM) and revise requirements for the existing sampler. As a part of the agency's efforts in this area, MSHA plans to publish a Request for Information on the use of the CPDM to measure a miner's exposure to respirable coal mine dust. The CPDM represents advanced technology and the RFI will solicit information from the public to help the Agency determine how to best use the technology to assess coal miners' dust exposures. MSHA is also considering a rulemaking to address ways in which mine operators can improve protections in their dust control plans, emphasizing that the burden of compliance is on the mine operator, rather than relying exclusively on enforcement interventions.

These regulatory actions are a part of MSHA's Comprehensive Black Lung Reduction Strategy for reducing miners' exposure to respirable dust. This strategy includes enhanced enforcement, education and training, and health outreach and collaboration.

As a part of the Secretary's strategy for securing safe and healthy workplaces, both MSHA and OSHA will be undertaking regulatory action related to silica. Overexposure to crystalline silica can result in some miners developing silicosis, an irreversible but preventable lung disease which ultimately may be fatal. Both the coal mine and metal/nonmetal formulas are designed to limit exposures to 0.1 mg/m<sup>3</sup> (100 µg) of silica. MSHA plans to follow the recommendation of the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers, NIOSH, and other industry groups by publishing a proposed rule to address the exposure limit for respirable crystalline silica. To assure consistency within the

Department, MSHA intends to use OSHA's work on the health effects of occupational exposure to silica and OSHA's risk assessment, adapting it as necessary for the mining industry.

MSHA is placing an emphasis on routinely evaluating the success of existing enforcement and regulatory strategies and plans to issue an Advance Notice of Proposed Rulemaking (ANPRM) on dams in metal and nonmetal mines. Mining operations regularly find it necessary to construct dams to dispose of large volumes of mine waste from processing operations, or to provide water supply, sediment control, or water treatment. The failure of these structures can have a devastating effect on both the mine and nearby communities. MSHA evaluated its existing requirements for metal and nonmetal dams and has determined that the current standards do not provide sufficient guidance to determine what is needed to effectively design and construct dams with high or significant hazard potential. The ANPRM will solicit information on proper design, construction and other safety issues for impoundments at metal and nonmetal mines whose failure could cause loss of life or significant property damage.

#### **Employment Standards Administration**

ESA's Wage and Hour Division enforces several statutes that establish minimum labor standards and protect the Nation's workers, including the Fair Labor Standards Act (FLSA), the Migrant and Seasonal Agricultural Worker Protection Act, the Family and Medical Leave Act (FMLA), the Service Contract Act, the Davis-Bacon and Related Acts, the Employee Polygraph Protection Act, and certain provisions of the Immigration and Nationality Act. The regulatory initiatives required to implement these statutory workplace protections represent an important aspect of the Division's work and affect over 130 million workers across all sectors of the economy.

Updating the child labor regulations issued under the FLSA will help meet the challenge of ensuring good jobs for the Nation's working youth, by balancing their educational needs with job-related experiences that are safe, healthy, and fair. This will enhance young workers' opportunities to gain the skills to find and hold good jobs with the potential to increase their earnings over time.

The Wage and Hour Division will review the implementation of the new military family leave amendments to the Family and Medical Leave Act that were

included in the National Defense Authorization Act for FY 2008, as well as other provisions of the FMLA regulations that were revised and implemented in January 2009. This regulatory initiative assists in achieving the Secretary's goal of workplace flexibility for family and personal caregiving and, particularly through the job protection and the maintenance of health benefits provisions, helps middle-class families remain in the middle class.

The Wage and Hour Division also intends to initiate rulemaking to update the recordkeeping regulation issued under the Fair Labor Standards Act. Consistent with the Secretary's strategic vision, this proposal will foster more openness and transparency by demonstrating employers' compliance with minimum wage and overtime requirements to workers. In turn, this will better ensure compliance by regulated entities and assist the Department with its enforcement efforts.

ESA's Office of Federal Contract Compliance Programs (OFCCP) is charged with assuring that the door to opportunity is open to every American regardless of race, color, religion, sex, national origin, veteran status, or disability. OFCCP enforces Executive Order 11246, as amended, and selected provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), and Section 503 of the Rehabilitation Act of 1973, as amended (Section 503). Regulations issued under the Executive Order and the two acts govern the nondiscrimination and affirmative action obligations for Federal contractors and subcontractors. OFCCP's enforcement of these statutory obligations contributes to achieving several of the Secretary's desired outcomes, including increasing workers' incomes and narrowing wage and income inequality, breaking down barriers to fair and diverse work places so that every worker's contribution is respected and helping workers who are in low-wage jobs or out of the labor market find a path into middle-class jobs.

OFCCP is highlighting three regulatory initiatives that reflect the Secretary's vision of *good jobs for everyone*. The Evaluation of Recruitment and Placement Results under Section 503 ANPRM will invite the public to provide input on how the Department can strengthen affirmative action requirements by requiring Federal contractors and subcontractors to conduct more substantive analyses and monitoring of their recruitment and

placement efforts targeted to individuals with disabilities.

The Evaluation of Recruitment and Placement Results under VEVRRRA NPRM will propose to revise provisions in the regulations to strengthen compliance with affirmative action requirements, including the establishment of outreach, recruitment, and placement goals for the employment and advancement of covered veterans. This effort will help support the creation of good jobs for veterans, especially those returning from recent service in Iraq and Afghanistan. Through this initiative, OFCCP will help servicemen and women successfully transition into civilian life.

The Construction Contractor Affirmative Action Requirements proposed rule would revise the regulations implementing the affirmative action requirements of Executive Order 11246 that are applicable to federal and federally-assisted construction contractors. The initiative would update regulatory provisions that set forth the actions construction contractors are required to take to implement their affirmative action obligations.

ESA's Office of Labor-Management Standards (OLMS) administers and enforces most provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). The LMRDA requires unions, employers, labor-relations consultants, and others to file financial disclosure reports, which are publicly available. The LMRDA includes provisions protecting union member rights to participate in their union's governance, to run for office and fully exercise their union citizenship, as well as procedural safeguards to ensure free and fair union elections.

OLMS intends to publish a Request for Information regarding the use of Internet voting in union officer elections conducted under the LMRDA to better inform the agency in administering its obligation under the union democracy provisions of the Act to ensure that the voting right of each union member is protected. OLMS also will propose a regulatory initiative to better implement the public disclosure objectives of the LMRDA regarding employer-consultant agreements to persuade employees concerning their rights to organize and bargain collectively. Under LMRDA section 203 an employer must report any agreement or arrangement with a third party consultant to persuade employees as to their collective bargaining rights or to obtain certain

information concerning the activities of employees or a labor organization in connection with a labor dispute involving the employer. The consultant, also, is required to report concerning such an agreement or arrangement with an employer. An exemption to these reporting requirements is set forth in LMRDA section 203(c), which provides, in part, that employers and consultants are not required to file a report by reason of the consultant's giving or agreeing to give "advice" to the employer. The Department believes that current policy concerning the scope of the "advice exemption" is over-broad and that a narrower construction would better allow for the employer and consultant reporting intended by the LMRDA. Regulatory action is needed to provide workers with information critical to their effective participation in the workplace. When workers or union members have more information about what arrangements have been made by their employer to persuade them whether or not to join a union, this information helps them make more informed choices and acts to level the labor-management relations playing field. Both initiatives support the Secretary's vision of good jobs for everyone by advancing the goal to ensure that workers and union members have a voice in the workplace.

ESA's Office of Workers' Compensation Programs (OWCP) administers four major disability compensation programs that provide wage replacement benefits, medical treatment, vocational rehabilitation and other benefits (such as survivors benefits) to certain workers who experience work-related injury or occupational disease. The Federal Employees' Compensation Act (FECA) provides workers' compensation benefits to federal workers for employment related injuries and occupational diseases as well as survivor benefits for a covered employee's employment-related death. The Longshore and Harbor Workers' Compensation Act (LHWCA) provides vocational rehabilitation, medical benefits, and financial compensation to covered maritime workers who incurred occupational injuries or illnesses as a result of exposure to their employment. The LHWCA provides similar coverage for employees covered by the Defense Base Act (DBA).

These programs serve to advance the Secretary's vision of *good jobs for everyone* by securing the desired outcomes of facilitating return to work for workers experiencing workplace

injuries or illnesses who are able to work and sufficient income and medical care for those who are unable to work; providing income support when work is impossible or unavailable; and providing compensation to eligible survivors after the death of a covered worker, thereby helping middle class families remain in the middle class.

OWCP plans to update its regulations governing administration of claims under the FECA. The regulations will be revised to reflect changes already in place since the regulations were comprehensively updated ten years ago and to incorporate new procedures that will enhance OWCP's ability to administer FECA. Among other benefits, changes to the regulations will facilitate the return to work of injured workers who are able to work, will enhance OWCP's ability to efficiently provide sufficient income and medical care for those who are unable to work, and will foster greater openness and transparency by better explaining the increased automation of the medical billing process.

In addition, OWCP will modernize the provision of compensation for employees situated overseas who are neither citizens nor residents of the United States to reflect current realities in regard to such employees. The regulations will also be revised to reflect a recent statutory change to the FECA moving the three-day waiting period before qualifying for wage-loss compensation for employees of the Postal Service. These revisions will increase the transparency of program operations and improve program implementation with efficiency providing better service in a more timely fashion.

OWCP plans to issue regulations under the LHWCA to clarify the application of the waiver provisions of the DBA, by explaining the DOL procedures for reviewing and granting a waiver. These rules will facilitate return to work for employees experiencing workplace injuries or illnesses who are able to work and sufficient income and medical care for those who are unable to work.

**DOL—Employment Standards Administration (ESA)****PROPOSED RULE STAGE****92. • THE FAMILY AND MEDICAL LEAVE ACT OF 1993, AS AMENDED****Priority:**

Economically Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:**

29 USC 2654

**CFR Citation:**

29 CFR 825

**Legal Deadline:**

None

**Abstract:**

The Department of Labor continues to review the implementation of the new military family leave amendments to the Family and Medical Leave Act included in the National Defense Authorization Act for FY 2008, and other revisions of the current regulations implemented in January 2009.

**Statement of Need:**

The FMLA requires covered employers to grant eligible employees up to 12 workweeks of unpaid, job-protected leave a year for specified family and medical reasons, and to maintain group health benefits during the leave as if the employees continued to work instead of taking leave. When an eligible employee returns from FMLA leave, the employer must restore the employee to the same or an equivalent job with equivalent pay, benefits, and other conditions of employment. FMLA makes it unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided by the FMLA. In addition, section 585(a) of the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, amended the FMLA effective January 28, 2008, to permit an eligible employee who is the “spouse, son, daughter, parent, or next of kin of a covered servicemember” to take up to a total of 26 workweeks of leave during a single 12-month period to care for the covered servicemember, defined as “a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary

disability retired list, for a serious injury or illness.” The NDAA amendment to FMLA also permits an eligible employee to take up to 12 workweeks of FMLA leave for “any qualifying exigency (as the Secretary [of Labor] shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.” Regulations implementing these amendments were published November 17, 2008, and took effect January 16, 2009 (73 FR 67934). The Department is reviewing the implementation of these new military family leave amendments and other revisions of the current regulations.

**Summary of Legal Basis:**

These regulations are authorized by section 404 of the Family and Medical Leave Act, 29 U.S.C. 2654.

**Alternatives:**

After completing a review of the implementation of the new military family leave amendments and other revisions of the regulations implemented in January 2009, regulatory alternatives will be developed for notice-and-comment rulemaking.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs and benefits of this initiative will be determined once regulatory alternatives are developed.

**Risks:**

This rulemaking action does not directly affect risks to public health, safety, or the environment.

**Timetable:**

Action	Date	FR Cite
NPRM	11/00/10	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Local, State, Tribal

**Federalism:**

Undetermined

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**RIN:** 1215-AB76

**DOL—ESA****93. • RECORDS TO BE KEPT BY EMPLOYERS UNDER THE FAIR LABOR STANDARDS ACT****Priority:**

Other Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:**

29 USC 211(c)

**CFR Citation:**

29 CFR 516

**Legal Deadline:**

None

**Abstract:**

The Department of Labor proposes to update the recordkeeping regulations under the Fair Labor Standards Act in order to enhance the transparency and disclosure to workers of how their pay is computed, and to modernize other recordkeeping requirements for employees under “telework” and “flexiplace” arrangements.

**Statement of Need:**

The recordkeeping regulation issued under the Fair Labor Standards Act (FLSA), 29 CFR part 516, specifies the scope and manner of records covered employers must keep that demonstrate compliance with minimum wage, overtime, and child labor requirements under the FLSA, or the records to be kept that confirm particular exemptions from some of the Act’s requirements may apply. This proposal intends to update the recordkeeping requirements to foster more openness and transparency in demonstrating employers’ compliance with applicable requirements to their workers, to better ensure compliance by regulated entities and to assist in enforcement. In addition, the proposal intends to modernize the requirements, consistent with the increasing emphasis on flexi-place and telecommuting, to allow for

automated or electronic recordkeeping systems instead of the mandatory manual preparation of "homeworker" handbooks currently required for all work that an employee may perform in the home.

**Summary of Legal Basis:**

These regulations are authorized by section 11 of the Fair Labor Standards Act, 29 U.S.C. 211.

**Alternatives:**

Alternatives will be developed in considering proposed revisions to the current recordkeeping requirements. The public will be invited to provide comments on the proposed revisions and possible alternatives.

**Anticipated Cost and Benefits:**

Preliminary estimates of anticipated costs and benefits of this regulatory initiative have not been determined at this time and will be determined at a later date as appropriate.

**Risks:**

This action does not affect public health, safety, or the environment.

**Timetable:**

Action	Date	FR Cite
NPRM	08/00/10	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Local, State, Tribal

**Federalism:**

Undetermined

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**RIN:** 1215-AB78

**DOL—ESA**

**94. • INTERPRETATION OF THE "ADVICE" EXEMPTION OF SECTION 203(C) OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT**

**Priority:**

Other Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:**

29 USC 433; 29 USC 438

**CFR Citation:**

29 CFR 405; 29 CFR 406

**Legal Deadline:**

None

**Abstract:**

The Department intends to publish notice and comment rulemaking seeking consideration of a revised interpretation of Section 203(c) of the Labor-Management Reporting and Disclosure Act (LMRDA). That statutory provision creates an "advice" exemption from reporting requirements that apply to employers and other persons in connection with persuading employees about the right to organize and bargain collectively. A proposed revised interpretation would narrow the scope of the advice exemption.

**Statement of Need:**

The Department of Labor is proposing a regulatory initiative to better implement the public disclosure objectives of the Labor-Management Reporting and Disclosure Act (LMRDA) regarding employer-consultant agreements to persuade employees concerning their rights to organize and bargain collectively. Under LMRDA section 203 an employer must report any agreement or arrangement with a third party consultant to persuade employees as to their collective bargaining rights or to obtain certain information concerning the activities of employees or a labor organization in connection with a labor dispute involving the employer. The consultant, also, is required to report concerning such an agreement or arrangement with an employer. Statutory exceptions to these reporting requirements are set forth in LMRDA section 203(c), which provides, in part, that employers and consultants are not required to file a report by reason of the consultant's giving or agreeing to give "advice" to the employer. The Department believes that its current policy concerning the scope of the "advice exception" is over-broad and that a narrower construction

would better allow for the employer and consultant reporting intended by the LMRDA. Regulatory action is needed to provide workers with information critical to their effective participation in the workplace.

**Summary of Legal Basis:**

This proposed rulemaking is authorized under U.S.C. §§ 433 and 438 and applies to regulations at 29 CFR Part 405 and 29 CFR Part 406.

**Alternatives:**

Alternatives will be developed and considered in the course of notice and comment rulemaking.

**Anticipated Cost and Benefits:**

Anticipated costs and benefits of this proposed regulatory initiative have not been assessed and will be determined at a later date, as appropriate.

**Risks:**

This action does not affect public health, safety, or the environment.

**Timetable:**

Action	Date	FR Cite
NPRM	11/00/10	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**URL For More Information:**

[www.olms.dol.gov](http://www.olms.dol.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 1215-AB79

## DOL—ESA

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**FINAL RULE STAGE**


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**95. CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION****Priority:**

Other Significant

**Legal Authority:**

29 USC 203(l); 29 USC 212; 29 USC 213(c)

**CFR Citation:**

29 CFR 570

**Legal Deadline:**

None

**Abstract:**

The Department of Labor continues to review the Fair Labor Standards Act child labor provisions to ensure that the implementing regulations provide job opportunities for working youth that are healthy and safe and not detrimental to their education, as required by the statute (29 U.S.C. sections 203(l), 212(c), 213(c), and 216(e)). This proposed rule will update the regulations to reflect statutory amendments enacted in 2004, and will propose, among other updates, revisions to address several recommendations of the National Institute for Occupational Safety and Health (NIOSH) in its 2002 report to the Department of Labor on the child labor Hazardous Occupations Orders (HOs) (available at <http://www.youthrules.dol.gov/resources.htm>).

**Statement of Need:**

The Fair Labor Standards Act (FLSA) requires the Secretary of Labor to issue regulations on the employment of minors between 14 and 16 years of age, ensuring that the periods and conditions of their employment do not interfere with their schooling, health, or well-being, and to designate occupations that are particularly hazardous for minors 16 and 17 years of age. Child Labor Regulation No. 3 sets forth the permissible industries and occupations in which 14- and 15-year-olds may be employed, specifies the number of hours in a day and in a week, and time periods within a day, that such minors may be employed. Updating the child labor regulations issued under the FLSA will help meet the challenge of ensuring good jobs that

are safe, healthy, and fair for the Nation's working youth, while balancing their educational needs with job-related experiences that are safe. Updated child labor regulations that better address the safety needs of today's workplaces will ensure our young workers have permissible job opportunities that are safe, enhancing their opportunity to gain the skills to find and hold good jobs with the potential to increase their earnings over time. Ensuring safe and reasonable work hours for working youth will also ensure that top priority is given to their education, consistent with the purposes of the statute.

**Summary of Legal Basis:**

These regulations are issued pursuant to sections 3(1), 11, 12, and 13 of the Fair Labor Standards Act, 29 U.S.C. 203(1), 211, 121, and 213.

**Alternatives:**

When developing regulatory alternatives in the analysis of recommendations of the National Institute for Occupational Safety and Health in its 2002 report to the Department on the child labor hazardous occupations orders and other proposals, the Department has focused on assuring healthy, safe, and fair workplaces for young workers that are not detrimental to their education, as required by the statute. Some of the regulatory alternatives were developed based on recent legislative amendments.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs and benefits of this rulemaking initiative indicated it was not economically significant. Benefits to the public, including employers and workers, will include safer working conditions and the avoidance of injuries and lost productivity involving young workers.

**Risks:**

The Department's child labor regulations, by ensuring that permissible job opportunities for working youth are safe and healthy and not detrimental to their education, produce positive benefits by reducing health-related and lost-productivity costs employers might otherwise incur from higher accident and injury rates to young and inexperienced workers. Because of the limited nature of the regulatory revisions contemplated under this initiative, a detailed assessment of the magnitude of risk was not prepared.

**Timetable:**

Action	Date	FR Cite
NPRM	04/17/07	72 FR 19337
NPRM Comment Period End	07/16/07	
Final Action	04/00/10	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses, Governmental Jurisdictions

**Government Levels Affected:**

Local, State

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**RIN:** 1215-AB57

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**DOL—Employment and Training Administration (ETA)**


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**PROPOSED RULE STAGE**


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**96. YOUTHBUILD PROGRAM REGULATION****Priority:**

Other Significant

**Legal Authority:**

PL 109-281

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

The YouthBuild Transfer Act of 2006, Public Law 109-281, enacted on September 22, 2006, transfers oversight and administration of the YouthBuild program from the U.S. Department of Housing and Urban Development (HUD) to the U.S. Department of Labor (DOL). The YouthBuild program model targets are high school dropouts, adjudicated youth, youth aging out of foster care, and other at-risk youth populations. The program model

balances in-school learning, geared toward a high school diploma or GED, and construction skills training, geared toward a career placement for the youth. DOL intends to develop regulations in response to the legislation and to guide the program implementation and management.

**Statement of Need:**

The YouthBuild Transfer Act of 2006 (Transfer Act), PL 109-281, transfers the YouthBuild program from the HUD to the DOL. The transfer incorporates technical modifications and amends certain program features. The Employment and Training Administration is proposing new regulations which will govern its administration of the YouthBuild program.

The Transfer Act maintains all the goals of the YouthBuild program as originally developed under HUD, including supporting the development of affordable housing, but shifts the emphasis to skills training for youth participants. The Transfer Act makes the YouthBuild program consistent with the job training, education, and employment goals under the Workforce Investment Act, PL 105-220, as amended. This includes authorizing DOL to apply the common performance measures developed for Federal youth activities employment and training programs. The Transfer Act authorizes education and workforce investment, such as occupational skills training, internships, and job shadowing, as well as community service and peer-centered activities. In addition, the Transfer Act allows for greater coordination of the YouthBuild program with the workforce investment system, including local workforce investment boards, and One-Stop Career Centers, and their partner programs. These strengthened connections will enhance the job training and employment opportunities available to participating at-risk youth.

**Summary of Legal Basis:**

These regulations are authorized by Public Law 109-281, The YouthBuild Transfer Act of 2006, to implement changes to the amendments to subtitle D of Title I of the Workforce Investment Act of 1998 as amended (WIA).

**Alternatives:**

The public will be afforded an opportunity to provide comments on the YouthBuild program changes when the Department publishes the NPRM in the Federal Register. A Final Rule will be issued after analysis and

incorporation of public comments to the NPRM.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs of this regulatory action have not been determined at this time and will be determined at a later date.

**Risks:**

This action does not affect public health, safety, or the environment.

**Timetable:**

Action	Date	FR Cite
NPRM	06/00/10	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

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**RIN:** 1205-AB49

**DOL—ETA**

**97. TRADE ADJUSTMENT ASSISTANCE FOR WORKERS PROGRAM; REGULATIONS**

**Priority:**

Other Significant

**Legal Authority:**

19 USC 2320; Secretary’s Order 3-2007, 72 FR 15907

**CFR Citation:**

20 CFR 617, 618, 665, 671; 29 CFR 90

**Legal Deadline:**

None

**Abstract:**

The Trade and Globalization Assistance Act of 2009 (Act), Div. B, Title I, Subtitle I of the American Recovery and Reinvestment Act of 2009, reauthorizes the Trade Adjustment Assistance for Workers program. More specifically, the law amends the criteria for certification of worker groups as eligible to apply for benefits and services and substantially expands

those benefits and services. It also requires reports on the program’s effectiveness. The Act amends section 248 of the Trade Act of 1974 (19 U.S.C. 2320) and requires that the Secretary issue regulations to carry out these provisions.

**Statement of Need:**

The Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA) is the portion of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. No. 111-5, Div. B, Title I, Subtitle I) that reauthorized and substantially amended the Trade Adjustment Assistance for Workers (TAA) program. Significant program changes enacted in the TGAAA include amending the certification criteria to expand the types of workers who may be certified and expanding the available program benefits. This proposed rule is important because it will update the program’s regulations to be in concert with the notable program changes wrought by the TGAAA.

**Summary of Legal Basis:**

These regulations are authorized by sections 248 of the Trade Act (19 U.S.C. 2320), as amended by the TGAAA.

**Alternatives:**

The public will be afforded an opportunity to provide comments on the proposed regulatory changes when the Department publishes the NPRM in the Federal Register. A final rule will be issued after analysis of, and response to, public comments.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs of this regulatory action have not been determined at this time and will be determined at a later date.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/10	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal

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**RIN:** 1205-AB57

**DOL—ETA****98. • EQUAL EMPLOYMENT OPPORTUNITY IN APPRENTICESHIP AND TRAINING, AMENDMENT OF REGULATIONS****Priority:**

Other Significant

**Legal Authority:**

Sec. 1, 50 Stat. 664, as amended (29 USC 50; 40 USC 276c; 5 USC 301); Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 USC App. P. 534)

**CFR Citation:**

29 CFR 30 (Revision)

**Legal Deadline:**

None

**Abstract:**

Revisions to the equal opportunity regulatory framework for the National Apprenticeship Act are a critical element in the Department's vision to promote and expand registered apprenticeship opportunities in the 21st century while continuing to safeguard the welfare and safety of apprentices. In October 2008, the Agency issued a Final rule updating regulations for Apprenticeship Programs and Labor Standards for Registration. These regulations, codified at Title 29 Code of Federal Regulations (CFR) part 29, had not been updated since first promulgated in 1977. The companion regulations, 29 CFR part 30, Equal Employment Opportunity (EEO) in Apprenticeship and Training, have not been amended since first promulgated in 1978.

The Agency now proposes to update 29 CFR part 30 to ensure that the National Registered Apprenticeship System is consistent and in alignment with changes in Affirmative Action regulations and EEO laws and court cases that have occurred over the past three decades [e.g. Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act

(ADEA)], and recent revisions to Title 29 CFR part 29. This second phase of regulatory updates will ensure that Registered Apprenticeship is positioned to continue to provide economic opportunity for millions of Americans while keeping pace with these new requirements.

**Statement of Need:**

Federal regulations for Equal Employment Opportunity (EEO) in Apprenticeship and Training have not been updated since first promulgated in 1978. Updates to these regulations are necessary to ensure that DOL regulatory requirements governing the National Registered Apprenticeship System are consistent with the current state of EEO law, including affirmative action, the passage of, for example, the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA), and recent revisions to Title 29 CFR part 29, regulations for Apprenticeship Programs and Labor Standards for Registration.

**Summary of Legal Basis:**

These regulations are authorized by the National Apprenticeship Act of 1937 (29 U.S.C. 50) and the Copeland Act (40 U.S.C. 276c). These regulations will set forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor or in State Apprenticeship Agencies recognized by the U.S. Department of Labor.

**Alternatives:**

The public will be afforded an opportunity to provide comments on the proposed amendment to Apprenticeship EEO regulations when the Department publishes a Notice of Proposed Rulemaking (NPRM) in the Federal Register. A Final Rule will be issued after analysis and incorporation of public comments to the NRPM.

**Anticipated Cost and Benefits:**

Preliminary estimates of anticipated costs and benefits of this regulatory action have not been determined at this time. The Department will explore options for conducting a cost-benefit analysis for this regulatory action, if necessary.

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/11	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State, Tribal

**Federalism:**

This action may have federalism implications as defined in EO 13132.

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**RIN:** 1205-AB59

**DOL—ETA****FINAL RULE STAGE****99. TEMPORARY AGRICULTURAL EMPLOYMENT OF H-2A ALIENS IN THE UNITED STATES****Priority:**

Other Significant

**Legal Authority:**

8 USC 1101(a)(15)(H)(ii)(a); 8 USC 1188

**CFR Citation:**

20 CFR 655

**Legal Deadline:**

None

**Abstract:**

The Department of Labor (the Department of DOL) proposes to amend its regulations governing the certification of temporary employment of nonimmigrant workers in temporary or seasonal agricultural employment and the enforcement of the contractual obligations applicable to employers of such nonimmigrant workers. This Notice of Proposed Rulemaking would reexamine the process by which employers obtain a temporary labor certification from the Department for use in petitioning the Department of Homeland Security (DHS) to employ a nonimmigrant worker in H-2A status.

**Statement of Need:**

The Department has determined for a variety of reasons that a new

rulemaking effort is necessary for the H-2A program. The Department believes that the policy underpinnings of the 2008 Final Rule, e.g., streamlining the H-2A regulatory process to defer many determinations of program compliance until after an application has been fully adjudicated, do not provide an adequate level of protection for either U.S. or foreign workers.

In addition, the Department's experience under the program since January 2009 demonstrates that the policy goals of the 2008 Final Rule have not been met. One of the clear goals of the 2008 Final Rule was to increase the use of the H-2A program and to make the program easier and more affordable to use for the average employer. However, applications have actually decreased since the implementation of the new program. Not only has usage not increased under the program revisions, there has actually been a reversal of an existing multi-year trend toward increased program use. While factors other than the regulatory changes may play a role in this decrease, the Department can not justify the significant decrease in worker protections if the prior rules' goal of increasing program use is not being accomplished.

The Department believes that there are insufficient worker protections in the attestation-based model in which employers merely confirm, and do not actually demonstrate, that they have performed an adequate test of the U.S. labor market. Even in the first year of the attestation model, it has come to the Department's attention that employers, either from a lack of understanding or otherwise, are attesting to compliance with program obligations with which they have not complied. Such non-compliance appears to be sufficiently substantial and widespread for the Department to revisit the use of attestations, even with the use of back-end integrity measures for demonstrated non-compliance.

The Department has also determined that the area in which agricultural workers are most vulnerable — wages — has been adversely impacted to a far more significant extent than anticipated by the 2008 Final Rule. The shift from the AEWR as calculated under the 1987 Rule to the AEWR of the 2008 Final Rule resulted in a substantial reduction of farmworker wages in a number of labor categories, and the obvious effects of that reduction on the workers' and their

families' ability to meet necessary costs is an important concern.

**Summary of Legal Basis:**

These proposed regulations are authorized under Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, as amended. 8 U.S.C. 1101(a)(15)(H)(ii)(a); see also 8 U.S.C. 1184(c)(1) and 1188.

**Alternatives:**

The Department took into account both the regulations promulgated in 1987, as well as the significant reworking of the regulations in the 2008 Final Rule, in order to arrive at a balance between the worker protections of the 1987 Rule and the program integrity measures of the 2008 Final Rule.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated monetized costs of this proposed regulatory action are \$10.56 million in 2009 to \$18.07 million in 2018. A final estimate of costs and benefits will be prepared at the Final Rule stage in response to public comments.

**Timetable:**

Action	Date	FR Cite
NPRM	02/13/08	73 FR 8538
NPRM Comment Period End	03/31/08	
NPRM Comment Period Extended	04/14/08	73 FR 16243
Final Rule	12/18/08	73 FR 77110
Final Rule Effective	01/17/09	
Notice of Proposed Suspension	03/17/09	74 FR 11408
Comment Period End	03/27/09	
Notice of Final Suspension	05/29/09	74 FR 25972
NPRM	09/04/09	74 FR 45905
NPRM Comment Period End	10/05/09	
NPRM Comment Period Extended	10/20/09	74 FR 50929
Final Rule	02/00/10	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal, State

**Agency Contact:**

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**RIN:** 1205-AB55

**DOL—Employee Benefits Security Administration (EBSA)**

**PRERULE STAGE**

**100. • LIFETIME INCOME OPTIONS FOR PARTICIPANTS AND BENEFICIARIES IN RETIREMENT PLANS**

**Priority:**

Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

29 USC 1135; ERISA sec 505

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

This initiative will explore what steps, if any, that the Department could or should take, by regulation or otherwise, to enhance the retirement security of American workers by facilitating access to and use of lifetime income or income arrangements designed to provide a stream of income after retirement.

**Statement of Need:**

With a continuing trend away from defined benefit plans to defined contribution plans, employees are not only increasingly responsible for the adequacy of their retirement savings, but also for ensuring that their savings last throughout their retirement. Employees may benefit from access to and use of lifetime income or other arrangements that will reduce the risk of running out of funds during the retirement years. However, both access to and use of such arrangements in defined contribution plans is limited.

The Department, taking into consideration recommendations of the ERISA Advisory Council and others, intends to explore what steps, if any, it could or should take, by regulation or otherwise, to enhance the retirement security of workers by increasing access to and use of such arrangements.

#### Summary of Legal Basis:

Section 505 of ERISA provides that the Secretary may prescribe such regulations as she finds necessary and appropriate to carry out the provisions of title I of the Act.

#### Alternatives:

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

#### Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

#### Timetable:

Action	Date	FR Cite
RFI	01/00/10	

#### Regulatory Flexibility Analysis Required:

Undetermined

#### Government Levels Affected:

Undetermined

#### Federalism:

Undetermined

#### Agency Contact:

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RIN: 1210-AB33

## DOL—EBSA

### PROPOSED RULE STAGE

#### 101. • DEFINITION OF “FIDUCIARY” — INVESTMENT ADVICE

##### Priority:

Economically Significant. Major under 5 USC 801.

##### Unfunded Mandates:

Undetermined

##### Legal Authority:

29 USC 1002; ERISA sec 3(21); 29 USC 1135; ERISA sec 505

##### CFR Citation:

29 CFR 2510.3-21(c)

##### Legal Deadline:

None

##### Abstract:

This rulemaking would amend the regulatory definition of the term “fiduciary” set forth at 29 CFR 2510.3-21 (c) to more broadly define as employee benefit plan fiduciaries persons who render investment advice to plans for a fee within the meaning of section 3(21) of ERISA. The amendment would take into account current practices of investment advisers and the expectations of plan officials and participants who receive investment advice.

##### Statement of Need:

This rulemaking is needed to bring the definition of “fiduciary” into line with investment advice practices and to recast the current regulation to better reflect relationships between investment advisers and their employee benefit plan clients. The current regulation may inappropriately limit the types of investment advice relationships that should give rise to fiduciary duties on the part of the investment adviser.

##### Summary of Legal Basis:

Section 505 of ERISA provides that the Secretary may prescribe such regulations as she finds necessary and appropriate to carry out the provisions of title I of the Act. Regulation 29 CFR 2510.3-21(c) defines the term fiduciary for certain purposes under section 3(21) of ERISA.

##### Alternatives:

Alternatives will be considered following a determination of the scope

and nature of the regulatory guidance needed by the public.

#### Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

#### Timetable:

Action	Date	FR Cite
NPRM	06/00/10	

#### Regulatory Flexibility Analysis Required:

Undetermined

#### Government Levels Affected:

Undetermined

#### Federalism:

Undetermined

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RIN: 1210-AB32

## DOL—EBSA

#### 102. • HEALTH CARE ARRANGEMENTS ESTABLISHED BY STATE AND LOCAL GOVERNMENTS FOR NON-GOVERNMENTAL EMPLOYEES

##### Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

##### Unfunded Mandates:

Undetermined

##### Legal Authority:

29 USC 1135; ERISA sec 505

##### CFR Citation:

29 CFR 2510.3-1

##### Legal Deadline:

None

##### Abstract:

Department of Labor regulation 29 C.F.R. 2510.3-1 clarifies the definition of the terms “employee welfare benefit plan” and “welfare plan” for purposes

of title I of the Employee Retirement Income Security Act of 1974 (ERISA) by identifying certain practices which do not constitute employee welfare benefit plans. This rulemaking would amend that regulation to clarify the circumstances under which health care arrangements established or maintained by state or local governments for the benefit of non-governmental employees do not constitute an employee welfare benefit plan for purposes of section 3(1) of ERISA and 29 CFR 2510.3-1.

**Statement of Need:**

Questions have been raised regarding the extent to which health care reform efforts on the part of state and local governments result in the creation of ERISA-covered employee welfare benefit plans or otherwise implicate ERISA. This regulation is needed to provide certainty to both governmental bodies and employers concerning the application of ERISA to such efforts.

**Summary of Legal Basis:**

Section 505 of ERISA provides that the Secretary may prescribe such regulations as she finds necessary and appropriate to carry out the provisions of title I of the Act. Regulation 29 CFR 2510.3-1 clarifies definitions of the terms "employee welfare benefit plan" and "welfare plan" for purposes of title I of ERISA.

**Alternatives:**

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

**Timetable:**

Action	Date	FR Cite
NPRM	09/00/10	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Agency Contact:**

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RIN: 1210-AB34

**DOL—EBSA**

**FINAL RULE STAGE**

**103. GENETIC INFORMATION NONDISCRIMINATION**

**Priority:**

Other Significant

**Legal Authority:**

29 USC 1182; 29 USC 1191b(d); 29 USC 1132

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

Final, Statutory, May 21, 2009, As per GINA section 101(f)(1).

**Abstract:**

Pursuant to ERISA sections 702, 733(d), and 502, as amended by the Genetic Information Nondiscrimination Act of 2008 (GINA) (Pub. L. 110-233) enacted May 21, 2008, the Department is developing regulatory guidance. Regulatory guidance will provide clarification regarding GINA's prohibition against discrimination in group premiums based on genetic information, its limitations on genetic testing, its prohibition on collection of genetic information, and its new civil monetary penalties under ERISA.

**Statement of Need:**

GINA section 101(f)(1) requires the Secretary to issue regulations to carry out its statutory provisions no later than May 21, 2009.

**Summary of Legal Basis:**

Section 505 of ERISA provides that the Secretary may prescribe such regulations as she considers necessary and appropriate to carry out the provisions of title I of ERISA. Section 734 of ERISA provides that the Secretary may promulgate such

regulations as may be necessary or appropriate to carry out the provisions of part 7 of ERISA. In addition, GINA section 101(f) requires the Secretary to issue regulations to carry out GINA's amendments.

**Alternatives:**

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

**Timetable:**

Action	Date	FR Cite
Request for Information	10/10/08	73 FR 60208
Request for Information Comment Period End	12/09/08	
Interim Final Rule	10/07/09	74 FR 51664
Interim Final Rule Effective	12/07/09	
Interim Final Rule Comment Period End	01/05/10	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

None

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RIN: 1210-AB27

**DOL—EBSA**

**104. MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT**

**Priority:**

Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

29 USC 1185a

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

Final, Statutory, October 8, 2009, as per MHPAEA section 512(d).

**Abstract:**

Pursuant to ERISA section 712, as amended by the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) (Pub. L. 110-343) enacted on October 8, 2008, the Department is developing regulatory guidance.

**Statement of Need:**

In response to a Request for Information in April 2008, over 400 comment letters were received raising questions regarding compliance with the federal parity provisions. This regulation is needed to provide clarifications to participants, beneficiaries, health care providers, employment-based health plans, health insurance issuers, third-party administrators, brokers, underwriters, and other plan service providers regarding such provisions.

**Summary of Legal Basis:**

Section 505 of ERISA provides that the Secretary may prescribe such regulations as she finds necessary and appropriate to carry out the provisions of title I of the Act. Section 734 of ERISA provides that the Secretary may prescribe regulations necessary or appropriate to carry out the provisions of ERISA Part 7. MHPAEA created new federal parity provisions in ERISA section 712 and provides, in section 512(d), that the Secretary shall issue regulations to carry out the provisions of MHPAEA.

**Alternatives:**

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

**Timetable:**

Action	Date	FR Cite
Request for Information	04/28/09	74 FR 19155

**Action**

Action	Date	FR Cite
Request for Information	05/28/09	
Comment Period End		
Interim Final Rule	04/00/10	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

None

**Federalism:**

Undetermined

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**Related RIN:** Related to 0938-AP65,  
Related to 1545-BI70

**RIN:** 1210-AB30

**DOL—Mine Safety and Health Administration (MSHA)****PRERULE STAGE****105. • METAL AND NONMETAL IMPOUNDMENTS****Priority:**

Other Significant

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

30 USC 811; 30 USC 812

**CFR Citation:**

30 CFR 56; 30 CFR 57

**Legal Deadline:**

None

**Abstract:**

Water, sediment, and slurry impoundments for metal and nonmetal mining and milling operations are located throughout the country. Some of these impoundments would impact homes, well-traveled roads, and other important infrastructure if they were to

fail. Impoundment failures could endanger lives and cause property damage. MSHA will issue an advance notice of proposed rulemaking to solicit information relative to proper design, construction, operation, maintenance, and other safety issues for impoundments at metal and nonmetal mines whose failure could cause loss of life or significant property damage.

**Statement of Need:**

Mining operations regularly find it necessary to construct dams to dispose of large volumes of mine waste (tailings or slurry) from processing operations, or to provide water supply, sediment control, or water treatment. Impoundments are structures that are used to impound water, sediment, or slurry or any combination of materials. Dams that form impoundments must be designed to be stable under the various conditions they will be subjected to, including runoff from rainfall, seepage, and possibly earthquake shaking. The failure of these structures can have a devastating effect on both the mine and nearby communities.

Every two years since 1980, a report has been prepared by the Federal Emergency Management Agency (FEMA) and sent to Congress on the status of dam safety in the U.S. These reports are required by a 1979 Presidential Memorandum which directed the Federal agencies responsible for dams to adopt and implement the Federal Guidelines for Dam Safety. MSHA has been criticized in these biennial reports for its lack of regulation of metal and nonmetal dams. MSHA's Metal and Nonmetal standards do not provide sufficient guidance to determine what is needed to effectively design and construct dams with high or significant hazard potential. The Metal and Nonmetal standards need to more effectively address requirements for dam design, construction, operation and maintenance.

**Summary of Legal Basis:**

Promulgation of this regulation is authorized by the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006.

**Alternatives:**

MSHA is considering amendments, revisions, and additions to existing standards.

**Anticipated Cost and Benefits:**

MSHA will develop a preliminary regulatory economic analysis to

accompany any proposed rule that may be developed.

**Risks:**

The failure of impoundments can have a devastating affect on both the mine and nearby communities by causing loss of life and property damage.

**Timetable:**

Action	Date	FR Cite
ANPRM	06/00/10	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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**RIN:** 1219-AB70

**DOL—MSHA****PROPOSED RULE STAGE****106. RESPIRABLE CRYSTALLINE SILICA STANDARD****Priority:**

Other Significant

**Legal Authority:**

30 USC 811; 30 USC 813

**CFR Citation:**

30 CFR 56 to 57; 30 CFR 70 to 72;  
30 CFR 90

**Legal Deadline:**

None

**Abstract:**

Current standards limit exposures to quartz (crystalline silica) in respirable dust. The coal mining industry standard is based on the formula 10mg/m<sup>3</sup> divided by the percentage of quartz where the quartz percent is greater than 5.0 percent calculated as

an MRE equivalent concentration. The metal and nonmetal mining industry standard is based on the 1973 American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values formula: 10 mg/m<sup>3</sup> divided by the percentage of quartz plus 2. Overexposure to crystalline silica can result in some miners developing silicosis, an irreversible but preventable lung disease, which ultimately may be fatal. Both formulas are designed to limit exposures to 0.1 mg/m<sup>3</sup> (100ug) of silica. The Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers made several recommendations related to reducing exposure to silica. NIOSH recommends a 50 ug/m<sup>3</sup> exposure limit for respirable crystalline silica, and ACGIH recommends a 25 ug/m<sup>3</sup> exposure limit. MSHA will publish a proposed rule to address miners' exposure to respirable crystalline silica.

**Statement of Need:**

MSHA standards are outdated; current regulations may not protect workers from developing silicosis. Evidence indicates that miners continue to develop silicosis. MSHA's proposed regulatory action exemplifies the agency's commitment to protecting the most vulnerable populations while assuring broad-based compliance. MSHA will regulate to eliminate or reduce the hazards with the broadest and most serious consequences based on sound science. MSHA intends to use OSHA's work on the health effects and risk assessment, adapting it as necessary for the mining industry.

**Summary of Legal Basis:**

Promulgation of this standard is authorized by sections 101 and 103 of the Federal Mine Safety and Health Act of 1977.

**Alternatives:**

This rulemaking would amend and improve health protection from that afforded by the existing standard. MSHA will consider alternative methods of addressing miners' exposure based on the capabilities of the sampling and analytical methods.

**Anticipated Cost and Benefits:**

MSHA will prepare estimates of the anticipated costs and benefits associated with the proposed rule.

**Risks:**

For over 70 years, toxicology information and epidemiological

studies have shown that exposure to respirable crystalline silica presents potential health risks to miners. These potential adverse health effects include simple silicosis, progressive massive fibrosis (lung scarring). Evidence indicates that exposure to silica may cause cancer. MSHA believes that the health evidence forms a reasonable basis for reducing miners' exposure to respirable crystalline silica.

**Timetable:**

Action	Date	FR Cite
NPRM	04/00/11	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses, Governmental Jurisdictions

**Government Levels Affected:**

Local, State

**URL For More Information:**

[www.msha.gov/regsinfo.htm](http://www.msha.gov/regsinfo.htm)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 1219-AB36

**DOL—MSHA****107. OCCUPATIONAL EXPOSURE TO COAL MINE DUST (LOWERING EXPOSURE)****Priority:**

Other Significant

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

30 USC 811; 30 USC 812

**CFR Citation:**

30 CFR 70; 30 CFR 71; 30 CFR 75; 30 CFR 90

**Legal Deadline:**

None

**Abstract:**

The Federal Coal Mine Health and Safety Act of 1969 established the first comprehensive respirable dust standards for coal mines. These standards were designed to reduce the incidence of coal workers' pneumoconiosis (black lung) and silicosis and eventually eliminate these diseases. While significant progress has been made toward improving the health conditions in our Nation's coal mines, miners continue to be at risk of developing occupational lung disease, according to the National Institute for Occupational Safety and Health (NIOSH). In September 1995, NIOSH issued a Criteria Document in which it recommended that the respirable coal mine dust permissible exposure limit (PEL) be cut in half. In February 1996, the Secretary of Labor convened a Federal Advisory Committee on the Elimination of Pneumoconiosis Among Coal Miners (Advisory Committee) to assess the adequacy of MSHA's current program and standards to control respirable dust in underground and surface coal mines, as well as other ways to eliminate black lung and silicosis among coal miners. The Committee represented the labor, industry and academic communities. The Committee submitted its report to the Secretary of Labor in November 1996, with the majority of the recommendations unanimously supported by the Committee members. The Committee recommended a number of actions to reduce miners' exposure to respirable coal mine dust. MSHA will publish a proposed rule to address miners' exposure to respirable coal mine dust.

**Statement of Need:**

Comprehensive respirable dust standards for coal mines were designed to reduce the incidence, and eventually eliminate, CWP and silicosis. While significant progress has been made toward improving the health conditions in our Nation's coal mines, miners remain at risk of developing occupational lung disease, according to NIOSH. Recent NIOSH data indicates increased prevalence of CWP "clusters" in several geographical areas, particularly in the Southern Appalachian Region.

**Summary of Legal Basis:**

Promulgation of this regulation is authorized by the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006.

**Alternatives:**

MSHA is considering amendments, revisions, and additions to existing standards.

**Anticipated Cost and Benefits:**

MSHA will develop a preliminary regulatory economic analysis to accompany the proposed rule.

**Risks:**

Respirable coal dust is one of the most serious occupational hazards in the mining industry. Occupational exposure to excessive levels of respirable coal mine dust can cause workers' pneumoconiosis and silicosis, which are potentially disabling and can cause death. MSHA is pursuing both regulatory and nonregulatory actions to eliminate these diseases through the control of coal mine respirable dust levels in mines and reduction of miners' exposure. MSHA will develop a risk assessment to accompany the proposed rule.

**Timetable:**

Action	Date	FR Cite
NPRM	09/00/10	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Additional Information:**

1219-AB14 (Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust) and 1219-AB18 (Determination of Concentration of Respirable Coal Mine Dust) have been integrated.

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**Related RIN:** Related to 1219-AA81, Related to 1219-AB14, Related to 1219-AB18

**RIN:** 1219-AB64

**DOL—Occupational Safety and Health Administration (OSHA)****PRERULE STAGE****108. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA****Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

This action may affect State, local or tribal governments.

**Legal Authority:**

29 USC 655(b); 29 USC 657

**CFR Citation:**

29 CFR 1910; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918; 29 CFR 1926

**Legal Deadline:**

None

**Abstract:**

Crystalline silica is a significant component of the earth's crust, and many workers in a wide range of industries are exposed to it, usually in the form of respirable quartz or, less frequently, cristobalite. Chronic silicosis is a uniquely occupational disease resulting from exposure of employees over long periods of time (10 years or more). Exposure to high levels of respirable crystalline silica causes acute or accelerated forms of silicosis that are ultimately fatal. The current OSHA permissible exposure limit (PEL) for general industry is based on a formula recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) in 1971 (PEL=10mg/cubic meter/(% silica + 2), as respirable dust). The current PEL for construction and maritime (derived from ACGIH's 1962 Threshold Limit Value) is based on particle counting technology, which is considered obsolete. NIOSH and ACGIH recommend 50µg/m<sup>3</sup> and 25µg/m<sup>3</sup> exposure limits, respectively, for respirable crystalline silica.

Both industry and worker groups have recognized that a comprehensive standard for crystalline silica is needed to provide for exposure monitoring, medical surveillance, and worker training. The American Society for Testing and Materials (ASTM) has published a recommended standard for addressing the hazards of crystalline silica. The Building Construction Trades Department of the AFL-CIO has

also developed a recommended comprehensive program standard. These standards include provisions for methods of compliance, exposure monitoring, training, and medical surveillance.

#### Statement of Need:

Workers are exposed to crystalline silica dust in general industry, construction, and maritime industries. Industries that could be particularly affected by a standard for crystalline silica include: Foundries, industries that have abrasive blasting operations, paint manufacture, glass and concrete product manufacture, brick making, china and pottery manufacture, manufacture of plumbing fixtures, and many construction activities including highway repair, masonry, concrete work, rock drilling, and tuckpointing. The seriousness of the health hazards associated with silica exposure is demonstrated by the fatalities and disabling illnesses that continue to occur; between 1990 and 1996, 200 to 300 deaths per year are known to have occurred where silicosis was identified on death certificates as an underlying or contributing cause of death. It is likely that many more cases have occurred where silicosis went undetected. In addition, the International Agency for Research on Cancer (IARC) has designated crystalline silica as a known human carcinogen. Exposure to crystalline silica has also been associated with an increased risk of developing tuberculosis and other nonmalignant respiratory diseases, as well as renal and autoimmune respiratory diseases. Exposure studies and OSHA enforcement data indicate that some workers continue to be exposed to levels of crystalline silica far in excess of current exposure limits. Congress has included compensation of silicosis victims on Federal nuclear testing sites in the Energy Employees' Occupational Illness Compensation Program Act of 2000. There is a particular need for the Agency to modernize its exposure limits for construction and maritime workers, and to address some specific issues that will need to be resolved to propose a comprehensive standard.

#### Summary of Legal Basis:

The legal basis for the proposed rule is a preliminary determination that workers are exposed to a significant risk of silicosis and other serious disease and that rulemaking is needed to substantially reduce the risk. In addition, the proposed rule will recognize that the PELs for construction

and maritime are outdated and need to be revised to reflect current sampling and analytical technologies.

#### Alternatives:

Over the past several years, the Agency has attempted to address this problem through a variety of non-regulatory approaches, including initiation of a Special Emphasis Program on silica in October 1997, sponsorship with NIOSH and MSHA of the National Conference to Eliminate Silicosis, and dissemination of guidance information on its Web site. The Agency is currently evaluating several options for the scope of the rulemaking.

#### Anticipated Cost and Benefits:

The scope of the proposed rulemaking and estimates of the costs and benefits are still under development.

#### Risks:

A detailed risk analysis is under way.

#### Timetable:

Action	Date	FR Cite
Completed SBREFA Report	12/19/03	
Initiate Peer Review of Health Effects and Risk Assessment	05/22/09	
Complete Peer Review	01/00/10	
NPRM	07/00/10	

#### Regulatory Flexibility Analysis Required:

Yes

#### Small Entities Affected:

Businesses

#### Government Levels Affected:

Federal

#### Federalism:

This action may have federalism implications as defined in EO 13132.

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RIN: 1218-AB70

## DOL—OSHA

### PROPOSED RULE STAGE

#### 109. HAZARD COMMUNICATION

##### Priority:

Economically Significant. Major under 5 USC 801.

##### Unfunded Mandates:

This action may affect the private sector under PL 104-4.

##### Legal Authority:

29 USC 655(b); 29 USC 657

##### CFR Citation:

29 CFR 1910.1200; 29 CFR 1915.1200; 29 CFR 1917.28; 29 CFR 1918.90; 29 CFR 1926.59; 29 CFR 1928.21

##### Legal Deadline:

None

##### Abstract:

OSHA's Hazard Communication Standard (HCS) requires chemical manufacturers and importers to evaluate the hazards of the chemicals they produce or import, and prepare labels and material safety data sheets to convey the hazards and associated protective measures to users of the chemicals. All employers with hazardous chemicals in their workplaces are required to have a hazard communication program, including labels on containers, material safety data sheets (MSDS), and training for employees. Within the United States (U.S.), there are other Federal agencies that also have requirements for classification and labeling of chemicals at different stages of the life cycle. Internationally, there are a number of countries that have developed similar laws that require information about chemicals to be prepared and transmitted to affected parties. These laws vary with regard to the scope of substances covered, definitions of hazards, the specificity of requirements (e.g., specification of a format for MSDSs), and the use of symbols and pictograms. The inconsistencies between the various laws are substantial enough that different labels and safety data sheets must often be used for the same product when it is marketed in different nations.

The diverse and sometimes conflicting national and international requirements can create confusion among those who seek to use hazard information. Labels and safety data sheets may include

symbols and hazard statements that are unfamiliar to readers or not well understood. Containers may be labeled with such a large volume of information that important statements are not easily recognized. Development of multiple sets of labels and safety data sheets is a major compliance burden for chemical manufacturers, distributors, and transporters involved in international trade. Small businesses may have particular difficulty in coping with the complexities and costs involved.

As a result of this situation, and in recognition of the extensive international trade in chemicals, there has been a long-standing effort to harmonize these requirements and develop a system that can be used around the world. In 2003, the United Nations adopted the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Countries are now adopting the GHS into their national regulatory systems. OSHA is considering modifying its HCS to make it consistent with the GHS. This would involve changing the criteria for classifying health and physical hazards, adopting standardized labeling requirements, and requiring a standardized order of information for safety data sheets.

#### Statement of Need:

Multiple sets of requirements for labels and safety data sheets present a compliance burden for U.S. manufacturers, distributors, and transports involved in international trade. Adoption of the GHS would facilitate international trade in chemicals, reduce the burdens caused by having to comply with differing requirements for the same product, and allow companies that have not had the resources to deal with those burdens to be involved in international trade. This is particularly important for small producers who may be precluded currently from international trade because of the compliance resources required to address the extensive regulatory requirements for classification and labeling of chemicals. Thus every producer is likely to experience some benefits from domestic harmonization, in addition to the benefits that will accrue to producers involved in international trade.

Most importantly, comprehensibility of hazard information and worker safety will be enhanced as the GHS will: (1) provide consistent information and definitions for hazardous chemicals; (2) address stakeholder concerns regarding

the need for a standardized format for material safety data sheets; and (3) increase understanding by using standardized pictograms and harmonized hazard statements. The increase in comprehensibility and consistency will reduce confusion and thus improve worker safety and health.

Several nations, including the European Union, have adopted the GHS with an implementation schedule through 2015. U.S. manufacturers, employers, and employees will be at a disadvantage in the event that our system of hazard communication is not compliant with the GHS.

#### Summary of Legal Basis:

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

#### Alternatives:

The alternative to the proposed rulemaking would be to take no regulatory action.

#### Anticipated Cost and Benefits:

The estimates of the costs and benefits are still under development.

#### Risks:

OSHA's risk analysis is under development.

#### Timetable:

Action	Date	FR Cite
ANPRM	09/12/06	71 FR 53617
ANPRM Comment Period End	11/13/06	
Complete Peer Review of Economic Analysis	11/19/07	
NPRM	09/30/09	74 FR 50279
NPRM Comment Period End	12/29/09	
Hearing	02/00/10	

#### Regulatory Flexibility Analysis Required:

No

#### Government Levels Affected:

Local, State

#### Federalism:

This action may have federalism implications as defined in EO 13132.

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RIN: 1218-AC20

#### DOL—OSHA

#### FINAL RULE STAGE

#### 110. CRANES AND DERRICKS IN CONSTRUCTION

#### Priority:

Economically Significant. Major under 5 USC 801.

#### Legal Authority:

29 USC 651(b); 29 USC 655(b); 40 USC 333

#### CFR Citation:

29 CFR 1926

#### Legal Deadline:

None

#### Abstract:

A number of industry stakeholders asked OSHA to update the cranes and derricks portion of subpart N (29 CFR 1926.550), specifically requesting that negotiated rulemaking be used.

In 2002, OSHA published a notice of intent to establish a negotiated rulemaking committee. A year later, in 2003, committee members were announced and the Cranes and Derricks Negotiated Rulemaking Committee was established and held its first meeting. In July 2004, the committee reached consensus on all issues resulting in a final consensus document.

#### Statement of Need:

There have been considerable technological changes since the consensus standards upon which the 1971 OSHA standard is based were developed. In addition, industry consensus standards for derricks and crawler, truck and locomotive cranes were updated as recently as 2004.

The industry indicated that over the past 30 years, considerable changes in

both work processes and crane technology have occurred. There are estimated to be 64 to 89 fatalities associated with cranes each year in construction, and a more up-to-date standard would help prevent them.

**Summary of Legal Basis:**

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 USC 651).

**Alternatives:**

The alternative to the proposed rulemaking would be to take no regulatory action and not update the standards in 29 CFR 1926.550 pertaining to cranes and derricks.

**Anticipated Cost and Benefits:**

The estimates of the costs and benefits are still under development.

**Risks:**

OSHA's risk analysis is under development.

**Timetable:**

Action	Date	FR Cite
Notice of Intent To Establish Negotiated Rulemaking	07/16/02	67 FR 46612
Comment Period End	09/16/02	
Request for Comments on Proposed Committee Members	02/27/03	68 FR 9036
Request for Comments Period End	03/31/03	68 FR 9036
Established Negotiated Rulemaking Committee	06/12/03	68 FR 35172
Rulemaking Negotiations Completed	07/30/04	
SBREFA Report	10/17/06	
NPRM	10/09/08	73 FR 59714
NPRM Comment Period Extended	12/02/08	73 FR 73197
NPRM Comment Period End	01/22/09	
Public Hearing	03/20/09	
Close Record	06/18/09	
Final Rule	07/00/10	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Undetermined

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