

DEPARTMENT OF LABOR

Office of the Secretary

20 CFR Chs. I, IV, V, VI, VII, and IX

29 CFR Subtitle A and Chs. II, IV, V, XVII, and XXV

30 CFR Ch. I

41 CFR Ch. 60

48 CFR Ch. 29

Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Labor.
ACTION: Semiannual regulatory agenda.

SUMMARY: The Internet has become the means for disseminating the entirety of the Department of Labor’s semiannual regulatory agenda. However, the Regulatory Flexibility Act requires publication of a regulatory flexibility agenda in the **Federal Register**. This **Federal Register** notice contains the regulatory flexibility agenda. In addition, the Department’s regulatory plan, a subset of the Department’s regulatory agenda, is being published in the **Federal Register**. The regulatory plan contains a statement of the Department’s regulatory priorities and the regulatory actions the Department wants to highlight as its most important and significant.

FOR FURTHER INFORMATION CONTACT: Kathleen Franks, Director, Office of Regulatory Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–2312, Washington, DC 20210; 202 693–5959.

Note: Information pertaining to a specific regulation can be obtained from the agency contact listed for that particular regulation.

SUPPLEMENTARY INFORMATION: Executive Order 12866 requires the semiannual publication of an agenda of regulations that contains a listing of all the regulations the Department of Labor expects to have under active consideration for promulgation, proposal, or review during the coming one-year period. The entirety of the Department’s semiannual agenda is available online at www.reginfo.gov.

On January 18, 2011, the President issued Executive Order (E.O.) 13563, entitled “Improving Regulation and Regulatory Review.” The Department of Labor’s fall 2011 regulatory agenda aims to achieve more efficient and less burdensome regulation through our renewed commitment to conduct retrospective reviews of regulations.

The Regulatory Flexibility Act (5 U.S.C. 602) requires DOL to publish in the **Federal Register** a regulatory flexibility agenda. The Department’s Regulatory Flexibility Agenda published with this notice, includes only those

rules on its semiannual agenda that are likely to have a significant economic impact on a substantial number of small entities; and those rules identified for periodic review in keeping with the requirements of section 610 of the Regulatory Flexibility Act. Thus, the regulatory flexibility agenda is a subset of the Department’s semiannual regulatory agenda. At this time, there is only one item, listed below, on the Department’s regulatory flexibility agenda.

Occupational Safety and Health Administration

Bloodborne Pathogens (RIN 1218–AC34)

In addition, the Department’s regulatory plan, also a subset of the Department’s regulatory agenda, is being published in the **Federal Register**. The Regulatory Plan contains a statement of the Department’s regulatory priorities and the regulatory actions the Department wants to highlight as its most important and significant.

All interested members of the public are invited and encouraged to let departmental officials know how our regulatory efforts can be improved, and are invited to participate in and comment on the review or development of the regulations listed on the Department’s agenda.

Hilda L. Solis,
Secretary of Labor.

OFFICE OF WORKERS’ COMPENSATION PROGRAMS—COMPLETED ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|--------------|---|---------------------------|
| 397 | Regulations Implementing the Longshore and Harbor Workers’ Compensation Act: Recreational Vessels | 1240–AA02 |

EMPLOYEE BENEFITS SECURITY ADMINISTRATION—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|--------------|--|---------------------------|
| 398 | Filings Required of Multiple Employer Welfare Arrangements and Certain Other Entities That Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers. | 1210–AB51 |

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PRERULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|--------------|--|---------------------------|
| 399 | Bloodborne Pathogens (Section 610 Review) | 1218–AC34 |

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|--------------|---|---------------------------|
| 400 | Occupational Exposure to Crystalline Silica (Reg Plan Seq No. 100) | 1218–AB70 |

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|--------------|---|---------------------------|
| 401 | Confined Spaces in Construction | 1218-AB47 |
| 402 | Electric Power Transmission and Distribution; Electrical Protective Equipment | 1218-AB67 |

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—LONG-TERM ACTIONS

| Sequence No. | Title | Regulation Identifier No. |
|--------------|---|---------------------------|
| 403 | Occupational Exposure to Beryllium | 1218-AB76 |
| 404 | Occupational Exposure to Food Flavorings Containing Diacetyl and Diacetyl Substitutes | 1218-AC33 |

DEPARTMENT OF LABOR (DOL)

RIN: 1240-AA02

RIN: 1210-AB51

Office of Workers' Compensation Programs (OWCP)

Completed Actions

397. Regulations Implementing the Longshore and Harbor Workers' Compensation Act: Recreational Vessels

Legal Authority: 33 U.S.C. 939
Abstract: The American Recovery and Reinvestment Act of 2009 amended the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 to 950, to exclude from the Act's coverage certain employees who repair recreational vessels and who dismantle them for repair, regardless of the vessel's length. On August 17, 2010, (republished on Oct. 15, 2010), the Department issued a Notice of Proposed Rulemaking revising the definition of recreational vessel and addressing coverage of those employees who work in both qualifying maritime employment and employment excluded under the amendment. The comment period ended on November 17, 2010.

Timetable:

| Action | Date | FR Cite |
|--------------------------|----------|-------------|
| NPRM | 08/17/10 | 75 FR 50718 |
| NPRM Republished. | 10/15/10 | 75 FR 63425 |
| NPRM Comment Period End. | 11/17/10 | |
| Final Action | 12/30/11 | 76 FR 82117 |
| Final Action Effective. | 01/30/12 | |

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brandon Miller, Chief, Branch of Financial Management, Insurance and Assessment, Department of Labor, Office of Workers' Compensation Programs, 200 Constitution Avenue NW., FP Building, Room C-4315, Washington, DC 20210, *Phone:* 202 693-0925, *Fax:* 202 693-1380, *Email:* miller.brandon@dol.gov.

DEPARTMENT OF LABOR (DOL)

Employee Benefits Security Administration (EBSA)

Proposed Rule Stage

398. • Filings Required of Multiple Employer Welfare Arrangements and Certain Other Entities That Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers

Legal Authority: sec 6606 of the Patient Protection and Affordable Care Act; Pub. L. 111-148; 124 Stat 119 (2010)

Abstract: This is a proposed rule under title I of the Employee Retirement Income Security Act (ERISA) that, upon adoption, would implement reporting requirements for multiple employer welfare arrangements (MEWAs) and certain other entities that offer or provide health benefits for employees of two or more employers. The proposal amends existing reporting rules to incorporate new requirements enacted as part of the Patient Protection and Affordable Care Act (Affordable Care Act) and to more clearly address the reporting obligations of MEWAs that are ERISA plans.

Timetable:

| Action | Date | FR Cite |
|--------------------------|----------|-------------|
| NPRM | 12/06/11 | 76 FR 76222 |
| NPRM Comment Period End. | 03/05/12 | |

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Amy J. Turner, Senior Advisor, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N-5653, Washington, DC 20210, *Phone:* 202 693-8335, *Fax:* 202 219-1942.

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Prerule Stage

399. Bloodborne Pathogens (Section 610 Review)

Legal Authority: 5 U.S.C. 533; 5 U.S.C. 610; 29 U.S.C. 655(b)

Abstract: OSHA will undertake a review of the Bloodborne Pathogen Standard (29 CFR 1910.1030) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider the continued need for the rule; whether the rule overlaps, duplicates, or conflicts with other Federal, State or local regulations; and the degree to which technology, economic conditions, or other factors may have changed since the rule was evaluated.

Timetable:

| Action | Date | FR Cite |
|---------------------------------|----------|-------------|
| Begin Review | 10/22/09 | 75 FR 27237 |
| Request for Comments Published. | 05/14/10 | |
| Comment Period End. | 08/12/10 | |
| End Review and Issue Findings. | 04/00/12 | |

Regulatory Flexibility Analysis Required: No.

Agency Contact: Dorothy Dougherty, Acting Director, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, Room N-3641, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693-2400, *Fax:* 202 693-1641, *Email:* dougherty.dorothy@dol.gov.

RIN: 1218-AC34

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Proposed Rule Stage

400. Occupational Exposure to Crystalline Silica

Regulatory Plan: This entry is Seq. No. 100 in part II of this issue of the Federal Register.

RIN: 1218-AB70

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Final Rule Stage

401. Confined Spaces in Construction

Legal Authority: 29 U.S.C. 655(b); 40 U.S.C. 333

Abstract: In 1993, OSHA issued a rule to protect employees who enter confined spaces while engaged in general industry work (29 CFR 1910.146). This standard has not been extended to cover employees entering confined spaces while engaged in construction work because of unique characteristics of construction worksites. Pursuant to discussions with the United Steel Workers of America that led to a settlement agreement regarding the general industry standard, OSHA agreed to issue a proposed rule to protect construction workers in confined spaces.

Timetable:

| Action | Date | FR Cite |
|-------------------------------|----------|-------------|
| SBREFA Panel Report. | 11/24/03 | |
| NPRM | 11/28/07 | 72 FR 67351 |
| NPRM Comment Period End. | 01/28/08 | |
| NPRM Comment Period Extended. | 02/28/08 | 73 FR 3893 |
| Public Hearing | 07/22/08 | |
| Close Record | 10/23/08 | |
| Final Action | 06/00/12 | |

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jim Maddux, Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, Room N-3468, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, Phone: 202 693-2020, Fax: 202 693-1689, Email: maddux.jim@dol.gov.

RIN: 1218-AB47

402. Electric Power Transmission and Distribution; Electrical Protective Equipment

Legal Authority: 29 U.S.C. 655(b); 40 U.S.C. 333

Abstract: Electrical hazards are a major cause of occupational death in the United States. The annual fatality rate for power line workers is about 50 deaths per 100,000 employees. The construction industry standard addressing the safety of these workers during the construction of electric power transmission and distribution lines is over 35 years old. OSHA has developed a revision of this standard that will prevent many of these fatalities, add flexibility to the standard, and update and streamline the standard. OSHA also intends to amend the corresponding standard for general industry so that requirements for work performed during the maintenance of electric power transmission and distribution installations are the same as those for similar work in construction. In addition, OSHA will be revising a few miscellaneous general industry requirements primarily affecting electric transmission and distribution work, including provisions on electrical protective equipment and foot protection. This rulemaking also addresses fall protection in aerial lifts for work on power generation, transmission, and distribution installations. OSHA published an NPRM on June 15, 2005. A public hearing was held from March 6 through March 14, 2006. OSHA reopened the record to gather additional information on minimum approach distances for specific ranges of voltages. The record was reopened a second time to allow more time for comment and to gather information on minimum approach distances for all voltages and on the newly revised Institute of Electrical and Electronics Engineers consensus standard. Additionally, a public hearing was held on October 28, 2009.

Timetable:

| Action | Date | FR Cite |
|--|----------|-------------|
| SBREFA Report .. | 06/30/03 | |
| NPRM | 06/15/05 | 70 FR 34821 |
| NPRM Comment Period End. | 10/13/05 | |
| Comment Period Extended to 01/11/2006. | 10/12/05 | 70 FR 59290 |
| Public Hearing To Be Held 03/06/2006. | 10/12/05 | 70 FR 59290 |
| Posthearing Comment Period End. | 07/14/06 | |
| Reopen Record ... | 10/22/08 | 73 FR 62942 |

| Action | Date | FR Cite |
|---------------------------------|----------|-------------|
| Comment Period End. | 11/21/08 | |
| Close Record | 11/21/08 | |
| Second Reopening Record. | 09/14/09 | 74 FR 46958 |
| Comment Period End. | 10/15/09 | |
| Public Hearings ... | 10/28/09 | |
| Posthearing Comment Period End. | 02/10/10 | |
| Final Rule | 05/00/12 | |

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dorothy Dougherty, Acting Director, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, Room N-3641, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, Phone: 202 693-2400, Fax: 202 693-1641, Email: dougherty.dorothy@dol.gov.

RIN: 1218-AB67

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Long-Term Actions

403. Occupational Exposure to Beryllium

Legal Authority: 29 U.S.C. 655(b); 29 U.S.C. 657

Abstract: In 1999 and 2001, OSHA was petitioned to issue an emergency temporary standard by the United Steel Workers (formerly the Paper Allied-Industrial, Chemical, and Energy Workers Union), Public Citizen Health Research Group, and others. The Agency denied the petitions but stated its intent to begin data gathering to collect needed information on beryllium's toxicity, risks, and patterns of usage.

On November 26, 2002, OSHA published a Request for Information (RFI) (67 FR 70707) to solicit information pertinent to occupational exposure to beryllium, including: Current exposures to beryllium; the relationship between exposure to beryllium and the development of adverse health effects; exposure assessment and monitoring methods; exposure control methods; and medical surveillance. In addition, the Agency conducted field surveys of selected worksites to assess current exposures and control methods being used to reduce employee exposures to beryllium. OSHA convened a Small Business Advocacy Review Panel under

the Small Business Regulatory Enforcement Fairness Act (SBREFA) and completed the SBREFA Report in January 2008. OSHA completed a scientific peer review of its draft risk assessment.

Timetable:

| Action | Date | FR Cite |
|--|----------|-------------|
| Request for Information. | 11/26/02 | 67 FR 70707 |
| Request For Information Comment Period End. | 02/24/03 | |
| SBREFA Report Completed. | 01/23/08 | |
| Initiated Peer Review of Health Effects and Risk Assessment. | 03/22/10 | |
| Complete Peer Review. | 11/19/10 | |
| Next Action Undetermined. | | |

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dorothy Dougherty, Acting Director, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, Room N-3641, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693-2400, *Fax:* 202 693-1641, *Email:* dougherty.dorothy@dol.gov.

RIN: 1218-AB76

404. Occupational Exposure to Food Flavorings Containing Diacetyl and Diacetyl Substitutes

Legal Authority: 29 U.S.C. 655(b); 29 U.S.C. 657

Abstract: On July 26, 2006, the United Food and Commercial Workers International Union (UFCW) and the International Brotherhood of Teamsters (IBT) petitioned DOL for an Emergency Temporary Standard (ETS) for all employees exposed to diacetyl, a major component in artificial butter flavoring. Diacetyl and a number of other volatile organic compounds are used to manufacture artificial butter food flavorings. These food flavorings are used by various food manufacturers in a multitude of food products, including microwave popcorn, certain bakery goods, and some snack foods. Evidence indicates that exposure to flavorings containing diacetyl is associated with adverse effects on the respiratory system, including bronchiolitis obliterans, a debilitating and potentially fatal lung disease. OSHA denied the petition on September 25, 2007, but has initiated 6(b) rulemaking. OSHA published an Advance Notice of Proposed Rulemaking (ANPRM) on January 21, 2009, but withdrew the ANPRM on March 17, 2009, in order to facilitate timely development of a standard. The Agency subsequently initiated review of the draft proposed standard in accordance with the Small Business Regulatory Enforcement Fairness Act (SBREFA). The SBREFA Panel Report was completed on July 2, 2009. NIOSH is currently developing a criteria document on occupational exposure to diacetyl. The criteria

document will also address exposure to 2,3-pentanedione, a chemical that is structurally similar to diacetyl and has been used as a substitute for diacetyl in some applications. It will include an assessment of the effects of exposure as well as quantitative risk assessment. OSHA intends to rely on these portions of the criteria document for the health effects analysis and quantitative risk assessment for the Agency's diacetyl rulemaking.

Timetable:

| Action | Date | FR Cite |
|---------------------------|----------|-------------|
| Stakeholder Meeting. | 10/17/07 | 72 FR 54619 |
| ANPRM | 01/21/09 | 74 FR 3937 |
| ANPRM Withdrawn. | 03/17/09 | 74 FR 11329 |
| ANPRM Comment Period End. | 04/21/09 | |
| Completed SBREFA Report. | 07/02/09 | |
| Next Action Undetermined. | | |

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dorothy Dougherty, Acting Director, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, Room N-3641, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693-2400, *Fax:* 202 693-1641, *Email:* dougherty.dorothy@dol.gov.

RIN: 1218-AC33

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