

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.

FOR FURTHER INFORMATION CONTACT: Albert T. Herrera, Director, Office of Regulatory and Programmatic 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.

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. The Department’s Regulatory Flexibility Agenda does not include section 610 items at this time.

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.

Martin J. Walsh,
Secretary of Labor.

WAGE AND HOUR DIVISION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
361	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (Reg Plan Seq No. 133).	1235-AA39
362	Employee or Independent Contractor Classification Under the Fair Labor Standards Act	1235-AA43

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

EMPLOYMENT AND TRAINING ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
363	Temporary Employment of H–2B Foreign Workers in the United States	1205-AB93
364	Improving Protections For Workers in Temporary Agricultural Employment in the United States	1205-AC12

EMPLOYEE BENEFITS SECURITY ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
365	Implement SECURE Act and Related Revisions to Employee Benefit Plan Annual Reporting on the Form 5500.	1210-AB97

EMPLOYEE BENEFITS SECURITY ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
366	Requirements Related to Surprise Billing, Part 1	1210-AB99
367	Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights	1210-AC03

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
368	Process Safety Management and Prevention of Major Chemical Accidents	1218-AC82

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PRERULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
369	Prevention of Workplace Violence in Health Care and Social Assistance (Reg Plan Seq No. 141)	1218-AD08

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

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
370	Infectious Diseases (Reg Plan Seq No. 143)	1218-AC46
371	Communication Tower Safety	1218-AC90
372	Emergency Response	1218-AC91
373	Tree Care Standard	1218-AD04

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

DEPARTMENT OF LABOR (DOL)

Wage and Hour Division (WHD)

Proposed Rule Stage

361. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees [1235-AA39]

Regulatory Plan: This entry is Seq. No. 133 in part II of this issue of the **Federal Register**.

RIN: 1235-AA39

362. • Employee or Independent Contractor Classification Under the Fair Labor Standards Act [1235-AA43]

Legal Authority: 52 Stat. 1060, as amended; 29 U.S.C. 201–219

Abstract: On January 7, 2021, the Department of Labor (Department) published a final rule on independent contractor status under the Fair Labor Standards Act (FLSA). See 86 FR 1168 (2021 IC Rule). The Department subsequently published final rules to delay and withdraw the 2021 IC Rule on March 4, 2021, and May 6, 2021, respectively. See 86 FR 12535 (Delay Rule); 86 FR 24303 (Withdrawal Rule). On March 14, 2022, a district court in the Eastern District of Texas vacated the Department’s Delay and Withdrawal Rules, concluding that the 2021 IC Rule became effective as of March 8, 2021. The Department continues to believe that the 2021 IC Rule does not fully comport with the FLSA’s text and purpose as interpreted by courts and has proposed to rescind the 2021 IC rule and set forth an analysis for determining employee or independent contractor status under the Act that is more consistent with existing judicial precedent and the Department’s longstanding guidance prior to the 2021 IC rule.

Timetable:

Action	Date	FR Cite
NPRM	10/13/22	87 FR 62218
NPRM Comment Period Extended.	10/26/22	87 FR 64749
NPRM Comment Period Extended End.	12/13/22	
Final Rule	05/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW, FP Building, Room S–3502, Washington, DC 20210, Phone: 202 693–0406.

RIN: 1235-AA43

DEPARTMENT OF LABOR (DOL)

Employment and Training Administration (ETA)

Proposed Rule Stage

363. Temporary Employment of H–2B Foreign Workers in the United States [1205-AB93]

Legal Authority: 8 U.S.C. 1184; 8 U.S.C. 1103; sec. 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii); 8 U.S.C. 1103(a)(6), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238; 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e); Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182

note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; . . .

Abstract: The United States Department of Labor’s (DOL) Employment and Training Administration and Wage and Hour Division, and the United States Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services, are jointly proposing to update the H–2B visa program regulations at 20 CFR part 655, subpart A, the related prevailing wage regulations at 20 CFR 656, and 8 CFR 214 governing the certification of the employment of H–2B non-immigrant workers in temporary or seasonal non-agricultural employment and the enforcement of the obligations applicable to employers of such nonimmigrant workers and U.S. workers in corresponding employment. Specifically, the Notice of Proposed Rulemaking (NPRM) would update the process by which employers seeking to employ H–2B workers would obtain temporary certification from DOL for use in petitioning DHS to employ a nonimmigrant worker in H–2B status. The updates would also establish standards and procedures for employers seeking to hire foreign temporary non-agricultural workers for certain itinerant job opportunities, including entertainers, tree planting, and utility vegetation management.

Timetable:

Action	Date	FR Cite
NPRM	08/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brian Pasternak, Administrator, Department of Labor, Employment and Training Administration, 200 Constitution

Avenue NW, Office of Foreign Labor Certification, Room N-5311, FP Building, Washington, DC 20210, Phone: 202 693-8200, Email: pasternak.brian@dol.gov.
RIN: 1205-AB93

364. • Improving Protections for Workers in Temporary Agricultural Employment in the United States [1205-AC12]

Legal Authority: 8 U.S.C. 1188, 29 U.S.C. 49 *et seq.*

Abstract: The Department of Labor’s (DOL) Employment and Training Administration and Wage and Hour Division propose to amend regulations to improve working conditions and protections for workers engaged in temporary agricultural employment in the United States; and strengthen protections in the recruitment, job order clearance, and oversight processes. The proposed regulatory changes involve the Employment Service and the H-2A non-immigrant visa program at 29 CFR part 501 and 20 CFR parts 651, 653, 654, 655, and 658.

The Department has identified a need to strengthen and clarify protections for all temporary agricultural workers, including U.S. workers and workers employed through the H-2A temporary agricultural program. The H-2A temporary agricultural program allows agricultural employers to perform agricultural labor or services of a temporary or seasonal nature so long as there are not sufficient able, willing, and qualified U.S. workers to perform the work and the employment of H-2A workers does not adversely affect the wages and working conditions of similarly employed workers in the United States. The use of the H-2A program has grown substantially in recent years and the Department is committed to protecting agricultural workers in light of their significant vulnerabilities.

Timetable:

Action	Date	FR Cite
NPRM	06/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brian Pasternak, Administrator, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Office of Foreign Labor Certification, Room N-5311, FP Building, Washington, DC 20210, Phone: 202 693-8200, Email: pasternak.brian@dol.gov.
RIN: 1205-AC12

DEPARTMENT OF LABOR (DOL)

Employee Benefits Security Administration (EBSA)

Final Rule Stage

365. Implement Secure Act and Related Revisions to Employee Benefit Plan Annual Reporting on the Form 5500 [1210-AB97]

Legal Authority: 29 U.S.C. 1021, 1023-24, 1026-27, and 1029-30; 29 U.S.C. 1135

Abstract: This regulatory action would implement SECURE Act and related changes to the Form 5500 Annual Return/Report of Employee Benefit Plan and annual reporting regulations under ERISA.

Timetable:

Action	Date	FR Cite
NPRM	09/15/21	86 FR 51284
NPRM Comment Period End.	11/01/21	
Notice of Proposed Forms Revision.	09/15/21	86 FR 51488
Notice of Proposed Forms Revision Comment Period End.	11/01/21	
Final Rule Phase I.	12/29/21	86 FR 73976
Final Rule Phase II.	05/23/22	87 FR 31133
Final Rule Phase III.	12/00/22	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jeffrey J. Turner, Deputy Director, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, FP Building, Room N-5655, Washington, DC 20210, Phone: 202 693-8500.
RIN: 1210-AB97

DEPARTMENT OF LABOR (DOL)

Employee Benefits Security Administration (EBSA)

Completed Actions

366. Requirements Related to Surprise Billing, Part 1 [1210-AB99]

Legal Authority: Pub. L. 116-260, Division BB, Title I and Title II

Abstract: This interim final rule with comment would implement certain protections against surprise medical bills under the No Surprises Act, including requirements on group health plans, issuers offering group or

individual health insurance coverage, providers, facilities, and providers of air ambulance services.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/13/21	86 FR 36872
Interim Final Rule Comment Period End.	09/07/21	
Interim Final Rule Effective (Applicability Date 1/1/2022).	09/13/21	
Final Rule	08/26/22	87 FR 52618
Final Rule Effective.	10/25/22	

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Amber Rivers, Director, Office of Health Plan Standards and Compliance Assistance, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Washington, DC 20210, Phone: 202 693-8335, Email: rivers.amber@dol.gov.
RIN: 1210-AB99

367. Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights [1210-AC03]

Legal Authority: 29 U.S.C. 1104; 29 U.S.C. 1135

Abstract: This rulemaking implements Executive Order 13990 of January 20, 2021, titled Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, and Executive Order 14030 of May 20, 2021, titled Climate-Related Financial Risks. Among other things, these Executive Orders direct Federal agencies to review existing regulations promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, the policies set forth in section 1 of the orders 86 FR 7037 (January 25, 2021); 86 FR 27967 (May 25, 2021). Such policies include the promotion and protection of public health and the environment and ensuring that agency activities are guided by the best science and protected by processes that ensure the integrity of Federal decision-making, and to advance consistent, clear, intelligible, comparable, and accurate disclosure of climate-related financial risk, including both physical and transition risks. Section 2 of Executive Order 13990 provides that for any such regulatory actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions. Section 4

of Executive Order 14030 directs the Secretary of Labor to consider publishing, by September 2021, for notice and comment a proposed rule to suspend, revise, or rescind “Financial Factors in Selecting Plan Investments,” 85 FR 72846 (November 13, 2020), and “Fiduciary Duties Regarding Proxy Voting and Shareholder Rights,” 85 FR 81658 (December 16, 2020). Following review, the Department of Labor’s Employee Benefits Security Administration proposed amendments to these rules on October 14, 2021. 86 FR 57272.

Timetable:

Action	Date	FR Cite
NPRM	10/14/21	86 FR 57272
NPRM Comment Period End.	12/13/21	
Final Rule	12/01/22	87 FR 73822
Final Rule Effective.	01/30/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jeffrey J. Turner, Deputy Director, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, FP Building, Room N-5655, Washington, DC 20210, *Phone:* 202 693-8500.

RIN: 1210-AC03

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Prerule Stage

368. Process Safety Management and Prevention of Major Chemical Accidents [1218-AC82]

Legal Authority: 29 U.S.C. 655; 29 U.S.C. 657

Abstract: The Occupational Safety and Health Administration (OSHA) issued a Request for Information (RFI) on December 9, 2013 (78 FR 73756). The RFI identified issues related to modernization of the Process Safety Management standard and related standards necessary to meet the goal of preventing major chemical accidents. OSHA completed SBREFA in August 2016.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	12/09/13	78 FR 73756
RFI Comment Period Extended.	03/07/14	79 FR 13006

Action	Date	FR Cite
RFI Comment Period Extended End.	03/31/14	
Initiate SBREFA .. SBREFA Report Completed.	06/08/15 08/01/16	
Stakeholder Meeting.	10/12/22	
Analyze Comments.	11/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Andrew Levinson, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N-3718, Washington, DC 20210, *Phone:* 202 693-1950, *Email:* levinson.andrew@dol.gov.

RIN: 1218-AC82

369. Prevention of Workplace Violence in Health Care and Social Assistance [1218-AD08]

Regulatory Plan: This entry is Seq. No. 141 in part II of this issue of the **Federal Register**.

RIN: 1218-AD08

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Proposed Rule Stage

370. Infectious Diseases [1218-AC46]

Regulatory Plan: This entry is Seq. No. 143 in part II of this issue of the **Federal Register**.

RIN: 1218-AC46

371. Communication Tower Safety [1218-AC90]

Legal Authority: 29 U.S.C. 655(b); 5 U.S.C. 609

Abstract: While the number of employees engaged in the communication tower industry remains small, the fatality rate is very high. Over the past 20 years, this industry has experienced an average fatality rate that greatly exceeds that of the construction industry. Due to recent FCC spectrum auctions and innovations in cellular technology, there will be a very high level of construction activity taking place on communication towers over the next few years. A similar increase in the number of construction projects needed to support cellular phone coverage triggered a spike in fatality and injury rates years ago. Based on information collected from an April

2015 Request for Information (RFI), OSHA concluded that current OSHA requirements such as those for fall protection and personnel hoisting, may not adequately cover all hazards of communication tower construction and maintenance activities. OSHA will use information collected from a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel to identify effective work practices and advances in engineering technology that would best address industry safety and health concerns. The Panel carefully considered the issue of the expansion of the rule beyond just communication towers. OSHA will continue to consider also covering structures that have telecommunications equipment on or attached to them (e.g., buildings, rooftops, water towers, billboards).

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	04/15/15	80 FR 20185
RFI Comment Period End.	06/15/15	
Initiate SBREFA ..	01/04/17	
Initiate SBREFA ..	05/31/18	
Complete SBREFA.	10/11/18	
NPRM	03/00/23	

Regulatory Flexibility Analysis Required: Yes.

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

RIN: 1218-AC90

372. Emergency Response [1218-AC91]

Legal Authority: 29 U.S.C. 655(b); 29 U.S.C. 657; 5 U.S.C. 609

Abstract: OSHA currently regulates aspects of emergency response and preparedness; some of these standards were promulgated decades ago, and none were designed as comprehensive emergency response standards. Consequently, they do not address the full range of hazards or concerns currently facing emergency responders, and other workers providing skilled support, nor do they reflect major changes in performance specifications for protective clothing and equipment. The agency acknowledges that current OSHA standards also do not reflect all the major developments in safety and health practices that have already been accepted by the emergency response community and incorporated into

industry consensus standards. OSHA is considering updating these standards with information gathered through an RFI and public meetings.

Timetable:

Action	Date	FR Cite
Stakeholder Meetings.	07/30/14	
Convene NACOSH Workgroup.	09/09/15	
NACOSH Review of Workgroup Report.	12/14/16	
Initiate SBREFA ..	08/02/21	
Finalize SBREFA	12/02/21	
NPRM	09/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Andrew Levinson, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N-

3718, Washington, DC 20210, *Phone:* 202-693-1950, *Email:* levinson.andrew@dol.gov.
RIN: 1218-AC91

373. Tree Care Standard [1218-AD04]

Legal Authority: Not Yet Determined
Abstract: There is no OSHA standard for tree care operations; the agency currently applies a patchwork of standards to address the serious hazards in this industry. The tree care industry previously petitioned the agency for rulemaking and OSHA issued an ANPRM (September 2008). OSHA completed a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel in May 2020, collecting information from affected small entities on a potential standard, including the scope of the standard, effective work practices, and arboricultural specific uses of equipment to guide OSHA in developing a rule that would best address industry safety and health concerns. Tree care continues to be a high-hazard industry.

Timetable:

Action	Date	FR Cite
Stakeholder Meeting.	07/13/16	
Initiate SBREFA ..	01/10/20	
Complete SBREFA.	05/22/20	
NPRM	05/00/23	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Andrew Levinson, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N-3718, Washington, DC 20210, *Phone:* 202-693-1950, *Email:* levinson.andrew@dol.gov.

RIN: 1218-AD04

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