

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; Correction.

SUMMARY: The U.S. Department of Labor (Department or DOL) published the regulatory flexibility agenda of its semiannual regulatory agenda on February 9, 2024 (89 FR 9696). The listing of all of the Department’s regulatory flexibility items were inadvertently omitted from that

document. This **Federal Register** Notice corrects the February 9, 2024, document and contains the Department’s 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.

Julie A. Su,
Acting Secretary of Labor.

WAGE AND HOUR DIVISION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
382	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees (Reg Plan Seq No. 161).	1235-AA39

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

WAGE AND HOUR DIVISION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
383	Employee or Independent Contractor Classification Under the Fair Labor Standards Act (Reg Plan Seq No. 163).	1235-AA43

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

WAGE AND HOUR DIVISION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
384	Updating the Davis-Bacon and Related Acts Regulations	1235-AA40

EMPLOYMENT AND TRAINING ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
385	Temporary Employment of H–2B Foreign Workers in the United States	1205-AB93
386	Improving Protections For Workers in Temporary Agricultural Employment in the United States (Reg Plan Seq No. 164).	1205-AC12
387	National Apprenticeship System Enhancements (Reg Plan Seq No. 165)	1205-AC13
388	Employer-Provided Survey Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program.	1205-AC15

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

EMPLOYEE BENEFITS SECURITY ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
389	Retirement Security Rule: Definition of an Investment Advice Fiduciary (Reg Plan Seq No. 167)	1210-AC02

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

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
390	Process Safety Management and Prevention of Major Chemical Accidents	1218-AC82
391	Prevention of Workplace Violence in Health Care and Social Assistance	1218-AD08

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
392	Infectious Diseases (Reg Plan Seq No. 174)	1218-AC46
393	Communication Tower Safety	1218-AC90
394	Emergency Response (Reg Plan Seq No. 175)	1218-AC91
395	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

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

Regulatory Plan: This entry is Seq. No. 161 in part II of this issue of the **Federal Register**.

RIN: 1235-AA39

DEPARTMENT OF LABOR (DOL)

Wage and Hour Division (WHD)

Final Rule Stage

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

Regulatory Plan: This entry is Seq. No. 163 in part II of this issue of the **Federal Register**.

RIN: 1235-AA43

DEPARTMENT OF LABOR (DOL)

Wage and Hour Division (WHD)

Completed Actions

384. Updating the Davis-Bacon and Related Acts Regulations [1235-AA40]

Legal Authority: 40 U.S.C. 3141 *et seq.*; 40 U.S.C. 3145

Abstract: The Davis-Bacon Act (DBA) was enacted in 1931 and amended in

1935 and 1964. The DBA requires the payment of locally prevailing wages and fringe benefits to laborers and mechanics as determined by the Department of Labor. The DBA applies to direct Federal contracts and District of Columbia contracts in excess of \$2,000 for the construction, alteration, or repair of public buildings or public works. Congress has included DBA prevailing wage requirements in numerous statutes (referred to as Related Acts) under which Federal agencies assist construction projects through grants, loans, guarantees, insurance, and other methods. Covered contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wage rates and fringe benefits as required by the applicable wage determination. The Department issued a final rule on August 23, 2023, to update and modernize the regulations implementing the Davis-Bacon and Related Acts to provide greater clarity and enhance their usefulness in the modern economy.

Timetable:

Action	Date	FR Cite
NPRM	03/18/22	87 FR 15698
NPRM Comment Period End.	05/17/22	
Final Rule	08/23/23	88 FR 57526
Final Rule Effective.	10/23/23	

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-AA40

DEPARTMENT OF LABOR (DOL)

Employment and Training Administration (ETA)

Proposed Rule Stage

385. 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	10/00/24	

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

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

Regulatory Plan: This entry is Seq. No. 164 in part II of this issue of the Federal Register.

RIN: 1205-AC12

387. National Apprenticeship System Enhancements [1205-AC13]

Regulatory Plan: This entry is Seq. No. 165 in part II of this issue of the Federal Register.

RIN: 1205-AC13

388. • Employer-Provided Survey Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program [1205-AC15]

Legal Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(b); 8 U.S.C. 1103(a)(6); 8 U.S.C. 1184(c)(1); Pub. L. 117-328, 12/29/22, 136 Stat. 4459, Div. H, title I, sec. 110; Pub. L. 118-15, 9/30/23, 137 Stat. 71, Division A, sec. 101(8)

Abstract: The Immigration and Nationality Act, as amended, requires the Department of Homeland Security (DHS), prior to the approval of H-2B visa petitions, consult with the Department of Labor (Department). DHS' regulation at 8 CFR 214.2(h)(6) requires that employer must first apply for a temporary labor certification from the Department. Specifically, the Department must certify 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 H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. To ensure that there is no adverse effect, DOL requires employers to pay the prevailing wage to H-2B workers and U.S. workers hired in response to the required recruitment. Employer-provided surveys are one of the prevailing wage sources under the H-2B regulations and has been the subject of recent litigation. On December 23, 2022, the U.S. District Court for the District of Columbia held the employer-provided survey provision under the Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program (2015 Wage Rule) in, 20 CFR part 655 subpart A did not satisfy the notice and comment requirements under the Administrative Procedure Act (APA). *Mary Jane Williams, et al. v. Martin J. Walsh, et al. (Williams), Civil No. 1:21-cv-01150 (RC), 2022 WL 17904227 (D.D.C. December 23, 2022).* The Court remanded the rule without vacatur and ordered act[ion] with haste for further consideration consistent with the Court's opinion. The Department is proposing to issue a notice of proposed rulemaking on the employer-provided survey provision of the 2015 Wage Rule, pursuant to the decision in Williams.

Timetable:

Action	Date	FR Cite
NPRM	01/00/24	

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-AC15

DEPARTMENT OF LABOR (DOL)

Employee Benefits Security Administration (EBSA)

Proposed Rule Stage

389. Retirement Security Rule: Definition of an Investment Advice Fiduciary [1210-AC02]

Regulatory Plan: This entry is Seq. No. 167 in part II of this issue of the Federal Register.

RIN: 1210-AC02

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Prerule Stage

390. 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. OSHA held a stakeholder meeting on October 12, 2022, and kept the docket open for comments until November 14, 2022.

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
RFI Comment Period Extended End.	03/31/14	
Initiate SBREFA ..	06/08/15	
SBREFA Report Completed.	08/01/16	
Stakeholder Meeting.	10/12/22	

Action	Date	FR Cite
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

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

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

Abstract: The Request for Information (RFI) (published on December 7, 2016, 81 FR 88147)) provides OSHA’s history with the issue of workplace violence in health care and social assistance, including a discussion of the Guidelines that were initially published in 1996, a 2014 update to the Guidelines, the agency’s use of 5(a)(1) in enforcement cases in health care. The RFI solicited information primarily from health care employers, workers and other subject matter experts on impacts of violence, prevention strategies, and other information that will be useful to the agency. OSHA was petitioned for a standard preventing workplace violence in health care by a broad coalition of labor unions, and in a separate petition by the National Nurses United. On January 10, 2017, OSHA granted the petitions. OSHA is preparing for SBREFA.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	12/07/16	81 FR 88147
RFI Comment Period End.	04/06/17	
Initiate SBREFA ..	12/29/22	
Complete SBREFA.	05/01/23	
Analyze SBREFA Report.	12/00/23	

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-AD08

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Proposed Rule Stage

392. Infectious Diseases [1218-AC46]

Regulatory Plan: This entry is Seq. No. 174 in part II of this issue of the **Federal Register**.

RIN: 1218-AC46

393. 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	03/00/24	

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

394. Emergency Response [1218-AC91]

Regulatory Plan: This entry is Seq. No. 175 in part II of this issue of the **Federal Register**.

RIN: 1218-AC91

395. 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	01/00/24	

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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