



Federal Register

**Monday,
December 20, 2010**

Part XII

Department of Labor

Semiannual Regulatory Agenda

DEPARTMENT OF LABOR (DOL)

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.

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 Labor-Management Standards—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
395	Persuader Agreements: Employer and Labor Relations Consultant Reporting Under the LMRDA (Reg Plan Seq No. 95)	1245-AA03
396	Persuader Agreements: Consultant Form LM-21 Receipts and Disbursements Report	1245-AA05

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

Office of Labor-Management Standards—Completed Actions

Sequence Number	Title	Regulation Identifier Number
397	Notification of Employee Rights Under Federal Labor Laws	1245-AA00
398	Form T-1: Reports by Labor Organizations on Related Organizations; Reporting by Public Sector Intermediate Unions	1245-AA02

Employee Benefits Security Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
399	Improved Fee Disclosure for Pension Plan Participants	1210-AB07

DOL

Occupational Safety and Health Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
400	Occupational Exposure to Beryllium	1218-AB76
401	Occupational Exposure to Food Flavorings Containing Diacetyl and Diacetyl Substitutes	1218-AC33
402	Bloodborne Pathogens (Section 610 Review)	1218-AC34

Occupational Safety and Health Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
403	Occupational Exposure to Crystalline Silica (Reg Plan Seq No. 110)	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 Number	Title	Regulation Identifier Number
404	Confined Spaces in Construction	1218-AB47
405	Electric Power Transmission and Distribution; Electrical Protective Equipment	1218-AB67

Occupational Safety and Health Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
406	Cranes and Derricks in Construction	1218-AC01
407	Methylene Chloride (Completion of a Section 610 Review)	1218-AC23

Department of Labor (DOL)

Proposed Rule Stage

Office of Labor—Management Standards (OLMS)

395. PERSUADER AGREEMENTS: EMPLOYER AND LABOR RELATIONS CONSULTANT REPORTING UNDER THE LMRDA

Regulatory Plan: This entry is Seq. No. 95 in part II of this issue of the **Federal Register**.

RIN: 1245-AA03

396. ● PERSUADER AGREEMENTS: CONSULTANT FORM LM-21 RECEIPTS AND DISBURSEMENTS REPORT

Legal Authority: 29 USC 433 and 438

Abstract: The Department intends to publish a notice and comment

rulemaking seeking consideration of the Form LM-21, Receipts and Disbursements Report, which is required pursuant to section 203(b) of the Labor-Management Reporting and Disclosure Act (LMRDA). The rulemaking will propose mandatory electronic filing for Form LM-21 filers, and it will review the layout of the Form LM-21 and its instructions, including the detail required to be reported.

Timetable:

Action	Date	FR Cite
NPRM	07/00/11	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Andrew R. Davis, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Department of Labor, Office of Labor-Management Standards, Room N-5609, FP Building, 200 Constitution Avenue NW., Washington, DC 20210
 Phone: 202 693-1254
 Fax: 202 693-1340
 Email: davis.andrew@dol.gov

RIN: 1245-AA05

Department of Labor (DOL)

Completed Actions

Office of Labor—Management Standards (OLMS)

397. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS**Legal Authority:** EO 13496

Abstract: Pursuant to Executive Order 13496 of January 30, 2009, the Department of Labor proposes to prescribe the size, form, and content of the notice to be posted by a contractor under paragraph 1 of the contract clause described in section 2 of the order. Such notice shall describe the rights of employees under Federal labor laws, consistent with the policy set forth in section 1 of the order.

Timetable:

Action	Date	FR Cite
NPRM	08/03/09	74 FR 38488
NPRM Comment Period End	09/02/09	
Final Action	05/20/10	75 FR 28368
Final Action Effective	06/21/10	

Regulatory Flexibility Analysis**Required:** Yes

Agency Contact: Andrew R. Davis, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Department of Labor, Office of Labor-Management Standards, Room

N-5609, FP Building, 200 Constitution Avenue NW., Washington, DC 20210
Phone: 202 693-1254

Fax: 202 693-1340

Email: davis.andrew@dol.gov

RIN: 1245-AA00**398. FORM T-1: REPORTS BY LABOR ORGANIZATIONS ON RELATED ORGANIZATIONS; REPORTING BY PUBLIC SECTOR INTERMEDIATE UNIONS****Legal Authority:** 29 USC 438

Abstract: On October 2, 2008, the Department published a final rule establishing a Form T-1, Trust Annual Report, which certain labor organizations must file to disclose financial information regarding trusts in which they are interested pursuant to the Labor-Management Reporting and Disclosure Act (LMRDA). This rulemaking would propose to rescind the Form T-1. It would instead propose that filers of Form LM-2, Labor Organization Annual Report, report on their wholly owned, wholly controlled and wholly financed organizations ("subsidiary organizations") on their Form LM-2 report. Additionally, the

rulemaking would propose to change an interpretation of the LMRDA regarding intermediate bodies. The proposed revised interpretation would state that intermediate bodies are covered only if they are themselves composed, in whole or part, of private sector affiliates.

Timetable:

Action	Date	FR Cite
NPRM	02/02/10	75 FR 5456
NPRM Comment Period End	04/05/10	
Final Action	12/01/10	75 FR 74936
Final Action Effective	01/03/11	

Regulatory Flexibility Analysis**Required:** Yes

Agency Contact: Andrew R. Davis, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Department of Labor, Office of Labor-Management Standards, Room N-5609, FP Building, 200 Constitution Avenue NW., Washington, DC 20210
Phone: 202 693-1254
Fax: 202 693-1340
Email: davis.andrew@dol.gov

RIN: 1245-AA02

Department of Labor (DOL)

Completed Actions

Employee Benefits Security Administration (EBSA)

399. IMPROVED FEE DISCLOSURE FOR PENSION PLAN PARTICIPANTS**Legal Authority:** 29 USC 1104; 29 USC 1135

Abstract: This rulemaking will ensure that the participants and beneficiaries in participant-directed individual account plans are provided the information they need, including information about fees and expenses, to make informed investment decisions. The rulemaking may include amendments to the regulation governing ERISA section 404(c) plans

(29 CFR 2550.404c-1). The rulemaking is needed to clarify and improve the information currently required to be furnished to participants and beneficiaries.

Timetable:

Action	Date	FR Cite
Request for Information	04/25/07	72 FR 20457
Comment Period End	07/24/07	
NPRM	07/23/08	73 FR 43014
NPRM Comment Period End	09/08/08	
Final Action	10/20/10	75 FR 64910

Regulatory Flexibility Analysis**Required:** Yes

Agency Contact: Michael Del Conte, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N-5655, Washington, DC 20210
Phone: 202 693-8500
Fax: 202 219-7291

RIN: 1210-AB07

Department of Labor (DOL)

Prerule Stage

Occupational Safety and Health Administration (OSHA)

400. OCCUPATIONAL EXPOSURE TO BERYLLIUM**Legal Authority:** 29 USC 655(b); 29 USC 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

DOL—OSHA

Prerule Stage

(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 work sites 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 is currently conducting a scientific peer review of its draft risk assessment, which is scheduled to be completed in November 2010. Additionally, an economic peer review is scheduled to be completed in May 2011.

Timetable:

Action	Date	FR Cite
Request for Information	11/26/02	67 FR 70707
SBREFA Report Completed	01/23/08	
Initiated Peer Review of Health Effects and Risk Assessment	03/22/10	
Complete Peer Review	11/19/10	
Complete Economic Peer Review	05/00/11	

Regulatory Flexibility Analysis**Required:** Yes

Agency Contact: Dorothy Dougherty, 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
Fax: 202 693-1678
Email: dougherty.dorothy@dol.gov

RIN: 1218-AB76**401. OCCUPATIONAL EXPOSURE TO FOOD FLAVORINGS CONTAINING DIACETYL AND DIACETYL SUBSTITUTES****Legal Authority:** 29 USC 655(b); 29 USC 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. OSHA denied the petition on September 25, 2007, but has initiated 6(b) rulemaking.

Evidence from NIOSH and other sources indicated that employee exposure to diacetyl and food flavorings containing diacetyl is associated with bronchiolitis obliterans, a debilitating and potentially fatal disease of the small airways in the lung. Severe obstructive airway disease has been observed in the microwave popcorn industry and in food flavoring manufacturing plants. Experimental evidence has shown that inhalation exposure to artificial butter flavoring vapors and diacetyl damaged tissue lining the nose and airways of rats and mice. OSHA published an Advanced 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.

The occurrence of severe lung disease among workers in workplaces where diacetyl is manufactured and used has led some manufacturers to reduce or eliminate the amount of diacetyl in some kinds of flavorings, foods, and beverages. They have begun to use substitutes such as 2,3-pentanedione. These substitutes, some of which are structurally similar to diacetyl, have not been well-studied and there is growing concern that they also pose health risks for workers. Research on 2,3-pentanedione conducted by NIOSH and NIEHS suggests that, in rats, 2,3-pentanedione causes airway damage similar to that produced by diacetyl.

NIOSH is currently developing a criteria document on occupational exposure to diacetyl. The criteria

document will also address exposure to 2,3-pentanedione. 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. NIOSH will initiate public peer review of the criteria document in April, 2011.

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	
Initiate Peer Review of Health Effects and Risk Assessment	04/00/11	

Regulatory Flexibility Analysis**Required:** Yes

Agency Contact: Dorothy Dougherty, 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
Fax: 202 693-1678
Email: dougherty.dorothy@dol.gov

RIN: 1218-AC33**402. BLOODBORNE PATHOGENS (SECTION 610 REVIEW)****Legal Authority:** 5 USC 533; 5 USC 610; 29 USC 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	

DOL—OSHA

Prerule Stage

Action	Date	FR Cite
Request for Comments Published	05/14/10	75 FR 27237
Comment Period End	08/12/10	
Analyze Comments	05/00/11	

Regulatory Flexibility Analysis Required: No

Agency Contact: John Smith, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, 200

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Phone: 202 693-2400
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Email: smith.john@dol.gov

RIN: 1218-AC34

Department of Labor (DOL)
Occupational Safety and Health Administration (OSHA)

Proposed Rule Stage

403. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA

Regulatory Plan: This entry is Seq. No. 110 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

404. CONFINED SPACES IN CONSTRUCTION

Legal Authority: 29 USC 655(b); 40 USC 333

Abstract: In January 1993, OSHA issued a general industry rule to protect employees who enter confined spaces (29 CFR 1910.146). This standard does not apply to the construction industry because of differences in the nature of the worksite in the construction industry. In discussions with the United Steel Workers of America on a settlement agreement for the general industry standard, OSHA agreed to issue a proposed rule to extend confined-space protection to construction workers appropriate to their work environment.

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	11/00/11	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Ben Bare, Acting Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, 200

Constitution Avenue NW., FP Building, Room N-3468, Washington, DC 20210
Phone: 202 693-2020
Fax: 202 693-1689

RIN: 1218-AB47

405. ELECTRIC POWER TRANSMISSION AND DISTRIBUTION; ELECTRICAL PROTECTIVE EQUIPMENT

Legal Authority: 29 USC 655(b); 40 USC 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 in 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. The posthearing comment period ended in February 2010. OSHA anticipates publishing a final rule in May 2011.

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
Comment Period End	11/21/08	

DOL—OSHA

Final Rule Stage

Action	Date	FR Cite
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	

Action	Date	FR Cite
Posthearing Comment Period End	02/10/10	
Final Rule	05/00/11	
Regulatory Flexibility Analysis Required: Yes		
Agency Contact: Dorothy Dougherty, 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
 Fax: 202 693-1678
 Email: dougherty.dorothy@dol.gov
RIN: 1218-AB67

Department of Labor (DOL)

Completed Actions

Occupational Safety and Health Administration (OSHA)

406. CRANES AND DERRICKS IN CONSTRUCTION

Legal Authority: 29 USC 651(b); 29 USC 655(b); 40 USC 333

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.

A Notice of Proposed Rulemaking (NPRM) was published on October 9, 2008. The comment period for the NPRM was extended and closed January 22, 2009. A public hearing was held on March 20, 2009. The final rule was posted and made public on July 28, 2010, and published in the Federal Register on August 9, 2010.

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

Action	Date	FR Cite
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	08/09/10	75 FR 47906

Regulatory Flexibility Analysis

Required: Yes

Agency Contact: Ben Bare, Acting Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N-3468, Washington, DC 20210
 Phone: 202 693-2020
 Fax: 202 693-1689

RIN: 1218-AC01

407. METHYLENE CHLORIDE (COMPLETION OF A SECTION 610 REVIEW)

Legal Authority: 5 USC 553; 5 USC 610; 29 USC 655(b)

Abstract: OSHA undertook a review of the Methylene Chloride Standard (29 CFR 1910.1052) in accordance with the

requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review considered 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	12/01/06	
Request for Comments	07/10/07	72 FR 37501
Comment Period End	10/09/07	
Reopen Comment Period	01/08/08	73 FR 1299
Comment Period End	03/10/08	
End Review	05/05/10	75 FR 24509

Regulatory Flexibility Analysis

Required: No

Agency Contact: John Smith, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N-3641, Washington, DC 20210
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RIN: 1218-AC23

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