



# Federal Register

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## The Unified Agenda of Federal Regulatory and Deregulatory Actions

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# Federal Register

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**Tuesday,  
May 27, 2003**

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**Part XIII**

**Department of Labor**

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**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:** This document sets forth the Department's semiannual agenda of regulations that have been selected for review or development during the coming year. The Department's agencies have carefully assessed their available resources and what they can accomplish in the next twelve months and have adjusted their agendas accordingly.

The agenda complies with the requirements of both Executive Order 12866 and the Regulatory Flexibility Act. The agenda lists all regulations that are expected to be under review or development between May 2003 and

May 2004, as well as those completed during the past six months.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Franks, Director for the 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 and the Regulatory Flexibility Act require the semiannual publication in the **Federal Register** of an agenda of regulations. As permitted by law, the Department of Labor is combining the publication of its agendas under the Regulatory Flexibility Act and Executive Order 12866.

Executive Order 12866 became effective September 30, 1993, and, in substance, requires the Department of Labor to publish an agenda listing all the regulations it expects to have under active consideration for promulgation, proposal, or review during the coming 1-year period. The focus of all departmental regulatory activity will be on the development of effective rules that advance the Department's goals and that are understandable and usable to

the employers and employees in all affected workplaces.

The Regulatory Flexibility Act became effective on January 1, 1981, and applies only to regulations for which a notice of proposed rulemaking was issued on or after that date. It requires the Department of Labor to publish an agenda, listing all the regulations it expects to propose or promulgate that are likely to have a "significant economic impact on a substantial number of small entities" (5 U.S.C. 602).

The Regulatory Flexibility Act (under section 610) also requires agencies to periodically review rules "which have or will have a significant economic impact upon a substantial number of small entities" and to annually publish a list of the rules that will be reviewed during the succeeding 12 months. The purpose of the review is to determine whether the rule should be continued without change, amended, or rescinded.

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

**Elaine L. Chao,**  
*Secretary of Labor.*

**Office of the Secretary—Proposed Rule Stage**

Sequence Number	Title	Regulation Identification Number
1756	Production or Disclosure of Information or Materials .....	1290-AA17

**Employment Standards Administration—Proposed Rule Stage**

Sequence Number	Title	Regulation Identification Number
1757	Defining and Delimiting the Term "Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity" (ESA/W-H) .....	1215-AA14
1758	Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors for Special Disabled Veterans and Veterans of the Vietnam Era .....	1215-AB24
1759	Family and Medical Leave Act of 1993 .....	1215-AB35
1760	Requirements for Security of Insurance Obligations Under the Longshore and Harbor Workers' Compensation Act .....	1215-AB38

**Employment Standards Administration—Final Rule Stage**

Sequence Number	Title	Regulation Identification Number
1761	Child Labor Regulations, Orders, and Statements of Interpretation (ESA/W-H) .....	1215-AA09

## DOL

## Employment Standards Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1762	Government Contractors: Nondiscrimination and Affirmative Action Obligations, Executive Order 11246 (ESA/OFCCP) (Revised) .....	1215-AB28
1763	Labor Organization Annual Financial Reports .....	1215-AB34
1764	Affirmative Action and Nondiscrimination Obligations of Government Contractors, Executive Order 11246; Exemption for Religious Entities .....	1215-AB39
1765	Amendments to Title 20 Parts 718 and 725, that Implements the Black Lung Benefits Act .....	1215-AB40

## Employment Standards Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1766	Regulations To Implement the Federal Acquisition Streamlining Act of 1994 .....	1215-AA96
1767	Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models .....	1215-AB09
1768	Implementation of the 1996 Amendments to the Fair Labor Standards Act .....	1215-AB13
1769	Stock Options, Stock Appreciation Rights, and Bona Fide Employee Stock Purchase Programs Under the Fair Labor Standards Act .....	1215-AB31
1770	Obligation of Federal Contractors and Subcontractors, Notice of Employee Rights Concerning Payment of Union Dues or Fees .....	1215-AB33

## Employment Standards Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1771	Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended .....	1215-AB32

## Employment and Training Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1772	Federal-State Unemployment Compensation (UC) Program; Confidentiality and Disclosure of Information in State UC Records .....	1205-AB18
1773	Senior Community Service Employment Program .....	1205-AB28
1774	Trade Adjustment Assistance for Workers .....	1205-AB32

## Employment and Training Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1775	Labor Certification Process for the Permanent Employment of Aliens in the United States .....	1205-AA66
1776	Indian and Native American Welfare-to-Work Program .....	1205-AB16
1777	Unemployment Compensation-Trust Fund Integrity Rule: Birth and Adoption Unemployment Compensation; Removal of Regulations .....	1205-AB33

**DOL**

## Employment and Training Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1778	Attestations by Facilities Temporarily Employing H-1C Nonimmigrant Aliens as Registered Nurses .....	1205-AB27

## Employment and Training Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1779	Disaster Unemployment Assistance Program Amendment .....	1205-AB31

## Employee Benefits Security Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1780	Rulemaking Relating to Notice Requirements for Continuation of Health Care Coverage .....	1210-AA60
1781	Default Rollover Safe Harbor .....	1210-AA92
1782	Electronic Filing By Investment Advisers .....	1210-AA94
1783	Suspension of Benefits Regulation .....	1210-AA96

## Employee Benefits Security Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1784	Regulations Implementing the Health Care Access, Portability, and Renewability Provisions of the Health Insurance Portability and Accountability Act of 1996 .....	1210-AA54
1785	Mental Health Benefits Parity .....	1210-AA62
1786	Health Care Standards for Mothers and Newborns .....	1210-AA63
1787	Rulemaking Relating to the Women's Health and Cancer Rights Act of 1998 .....	1210-AA75
1788	Prohibiting Discrimination Against Participants and Beneficiaries Based on Health Status .....	1210-AA77

## Employee Benefits Security Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1789	Adequate Consideration .....	1210-AA15

## Employee Benefits Security Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1790	Definition of Collective Bargaining Agreement (ERISA Section 3(40)) .....	1210-AA48
1791	Reporting Requirements for MEWAs Providing Medical Care Benefits .....	1210-AA64
1792	Blackout Notice Regulation .....	1210-AA90
1793	Blackout Notice Civil Penalty .....	1210-AA91
1794	Amendment of Procedural Regulations Under ERISA .....	1210-AA93
1795	Civil Monetary Penalty Adjustment Regulation .....	1210-AA95

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## Mine Safety and Health Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1796	Focused Inspections .....	1219-AB30

## Mine Safety and Health Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1797	Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust .....	1219-AB14
1798	Determination of Concentration of Respirable Coal Mine Dust .....	1219-AB18
1799	Asbestos Exposure Limit .....	1219-AB24
1800	Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners .....	1219-AB29

## Mine Safety and Health Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1801	Underground Coal Mine Ventilation — Safety Standards for the Belt Entry as an Intake Air Course .....	1219-AA76
1802	Testing and Evaluation by Independent Laboratories and Non-MSHA Product Safety Standards .....	1219-AA87
1803	Improving and Eliminating Regulations .....	1219-AA98
1804	Emergency Evacuation; Emergency Temporary Standard .....	1219-AB33

## Mine Safety and Health Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1805	Criteria and Procedures for Proposed Assessment of Civil Penalties .....	1219-AB32

## Office of the Assistant Secretary for Administration and Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1806	Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance From the Department of Labor .....	1291-AA21
1807	Department of Labor Acquisition Regulations .....	1291-AA34

## Office of the Assistant Secretary for Administration and Management—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1808	Effectuation of Title VI of the Civil Rights Act of 1964 and Implementation of Section 504 of the Rehabilitation Act of 1973 .....	1291-AA31
1809	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) 29 CFR 98 .....	1291-AA33

## DOL

## Office of the Assistant Secretary for Administration and Management—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1810	Implementation of the Nondiscrimination and Equal Opportunity Requirements of the Workforce Investment Act of 1998 .....	1291-AA29
1811	Grants and Agreements .....	1291-AA30

## Office of the Assistant Secretary for Administration and Management—Completed Actions

Sequence Number	Title	Regulation Identification Number
1812	Audits of States, Local Governments, and Nonprofit Organizations .....	1291-AA26
1813	Audit Requirements for Grants, Contracts, and Other Agreements .....	1291-AA27

## Occupational Safety and Health Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1814	Occupational Exposure to Hexavalent Chromium (Preventing Occupational Illness: Chromium) .....	1218-AB45
1815	Confined Spaces in Construction (Part 1926): Preventing Suffocation/Explosions in Confined Spaces .....	1218-AB47
1816	Occupational Exposure to Ethylene Oxide ( <b>Section 610 Review</b> ) .....	1218-AB60
1817	Electric Power Transmission and Distribution; Electrical Protective Equipment .....	1218-AB67
1818	Occupational Exposure to Crystalline Silica .....	1218-AB70
1819	Ionizing Radiation .....	1218-AC11

## Occupational Safety and Health Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1820	Assigned Protection Factors: Amendments to the Final Rule on Respiratory Protection .....	1218-AA05
1821	Longshoring and Marine Terminals (Parts 1917 and 1918) — Reopening of the Record (Vertical Tandem Lifts (VTLs)) .....	1218-AA56
1822	General Working Conditions for Shipyard Employment .....	1218-AB50
1823	Walking Working Surfaces and Personal Fall Protection Systems (1910) (Slips, Trips, and Fall Prevention) .....	1218-AB80
1824	Standards Improvement (Miscellaneous Changes) for General Industry, Marine Terminals, and Construction Standards (Phase II) .....	1218-AB81
1825	Revision and Update of Subpart S—Electrical Standards .....	1218-AB95
1826	Controlled Negative Pressure Fit Testing Protocol: Amendment to the Final Rule on Respiratory Protection .....	1218-AC05

## Occupational Safety and Health Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1827	Occupational Exposure to Tuberculosis .....	1218-AB46
1828	Fire Protection in Shipyard Employment (Part 1915, Subpart P) (Shipyards: Fire Safety) .....	1218-AB51
1829	Commercial Diving Operations: Revision .....	1218-AB97
1830	Presence Sensing Device Initiation of Mechanical Power Presses ( <b>Section 610 Review</b> ) .....	1218-AC03
1831	Occupational Injury and Illness Recording and Reporting Requirements .....	1218-AC06
1832	Procedures for Handling Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002 .....	1218-AC10

## DOL

## Occupational Safety and Health Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1833	Glycol Ethers: 2-Methoxyethanol, 2-Ethoxyethanol, and Their Acetates: Protecting Reproductive Health .....	1218-AA84
1834	Occupational Exposure to Beryllium .....	1218-AB76
1835	Employer Payment for Personal Protective Equipment .....	1218-AB77
1836	Hearing Conservation Program for Construction Workers .....	1218-AB89
1837	Cranes and Derricks .....	1218-AC01
1838	Excavations ( <b>Section 610 Review</b> ) .....	1218-AC02
1839	Updating OSHA Standards Based on National Consensus Standard .....	1218-AC08
1840	Explosives .....	1218-AC09

## Occupational Safety and Health Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1841	Grain Handling Facilities ( <b>Completion of a Section 610 Review</b> ) .....	1218-AB73
1842	Update and Revision of the Exit Routes Standard .....	1218-AB82
1843	Procedures for Handling of Discrimination Complaints Under the Aviation Investment and Reform Act .....	1218-AB99

## Office of the Assistant Secretary for Veterans' Employment &amp; Training—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1844	Uniformed Services Employment and Reemployment Rights Act Regulations .....	1293-AA09
1845	Jobs For Veterans Act of 2002 .....	1293-AA10

## Office of the Assistant Secretary for Veterans' Employment &amp; Training—Completed Actions

Sequence Number	Title	Regulation Identification Number
1846	Annual Report From Federal Contractors .....	1293-AA07
1847	Annual Report for Federal Contractors (2002 Revisions) .....	1293-AA08

## Department of Labor (DOL)

## Proposed Rule Stage

## Office of the Secretary (OS)

**1756. PRODUCTION OR DISCLOSURE OF INFORMATION OR MATERIALS****Priority:** Substantive, Nonsignificant**Legal Authority:** 5 USC 301; 5 USC 552 as amended; 5 USC Reorganization Plan No. 6 of 1950; EO 12600, 52 FR 23781 (June 25, 1987)**CFR Citation:** 29 CFR 70**Legal Deadline:** None**Abstract:** The regulation will incorporate the provisions of the 1996 FOIA amendments. These include extending DOL processing time from 10

to 20 days for most FOIA requests and requiring that all reading room materials created since November 1, 1996, be made available by electronic means such as the Internet.

**Timetable:**

Action	Date
NPRM	08/00/03

**Regulatory Flexibility Analysis Required:** No**Government Levels Affected:** None**Agency Contact:** Miriam McD. Miller, of Legislation and Legislative Counsel, Department of Labor, Office of the Secretary, Room N2428, 200 Constitution Avenue NW, FP Building, Washington, DC 20210  
Phone: 202 693-5500  
Email: miller-miriam@dol.gov**RIN:** 1290-AA17



**Department of Labor (DOL)**  
**Employment Standards Administration (ESA)**

**Proposed Rule Stage**

**1757. DEFINING AND DELIMITING THE TERM "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY" (ESA/W-H)**

**Priority:** Economically Significant. Major under 5 USC 801.

**Legal Authority:** 29 USC 213(a)(1)

**CFR Citation:** 29 CFR 541

**Legal Deadline:** None

**Abstract:** These regulations set forth the criteria for exemption from the Fair Labor Standards Act's minimum wage and overtime requirements for "executive," "administrative," "professional, and "outside sales employees. "To be exempt, employees must meet certain tests relating to duties and responsibilities and be paid on a salary basis at specified levels. A final rule increasing the salary test levels was published on January 13, 1981 (46 FR 3010), to become effective on February 13, 1981, but was indefinitely stayed on February 12, 1981 (46 FR 11972). On March 27, 1981, a proposal to suspend the final rule indefinitely was published (46 FR 18998), with comments due by April 28, 1981. As a result of numerous comments and petitions from industry groups on the duties and responsibilities tests, and as a result of case law developments, the Department concluded that a more comprehensive review of these regulations was needed. An ANPRM reopening the comment period and broadening the scope of review to include all aspects of the regulations was published on November 19, 1985, with the comment period subsequently extended to March 22, 1986.

The Department has revised these regulations since the ANPRM to address specific issues. In 1991, as the result of an amendment to the Fair Labor Standards Act (FLSA), the regulations were revised to permit certain computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6 1/2 times the applicable minimum wage. Also, in 1992 the Department issued a final rule which modified the exemption's requirement for payment on a "salary basis" for

otherwise exempt public sector employees.

**Statement of Need:** These regulations contain the criteria used to determine if an employee is exempt from the FLSA as an "executive," "administrative," "professional," "or "outside sales" employee. The existing salary test levels used in determining which employees qualify as exempt were adopted in 1975 on an interim basis. These salary level tests are outdated and offer little practical guidance in applying the exemption. In addition, numerous comments and petitions have been received from industry groups regarding the duties and responsibilities tests in the regulations, requesting a review of these regulations.

These regulations have been revised to deal with specific issues. In 1991, as the result of an amendment to the FLSA, the regulations were revised to permit certain computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6 1/2 times the applicable minimum wage. Also in 1991, the Department undertook separate rulemaking on another aspect of the regulations, the definition of "salary basis" for public-sector employees. Because of the limited nature of these revisions, the regulations are still in need of updating and clarification.

**Summary of Legal Basis:** These regulations are issued under the statutory exemption from minimum wage and overtime pay provided by section 13(a)(1) of the Fair Labor Standards Act, 29 USC 213(a)(1), which requires the Secretary of Labor to issue regulations that define and delimit the terms "any employee employed in a bona fide, executive, administrative, or professional capacity... or in the capacity of outside salesman..." for purposes of applying the exemption to employees who meet the specified criteria.

**Alternatives:** The Department will involve affected interest groups in developing regulatory alternatives. Following completion of these outreach and consultation activities, full regulatory alternatives will be developed.

Although legislative proposals have been introduced in Congress to address certain aspects of these regulations, the Department continues to believe revisions to the regulations are the appropriate response to the concerns raised. Alternatives likely to be considered range from particular changes to address "salary basis" and salary level issues to a comprehensive overhaul of the regulations that also addresses the duties and responsibilities tests.

**Anticipated Cost and Benefits:** Some 19 to 26 million employees are estimated to be within the scope of these regulations. Legal developments in court cases are changing the guiding interpretations under this exemption and creating law without considering a comprehensive analytical approach to current compensation concepts and workplace practices. Clear, comprehensive, and up-to-date regulations would provide for central, uniform control over the application of these regulations and ameliorate many concerns. In the public sector, State and local government employers contend that the rules are based on production workplace environments from the 1940s and 1950s that do not readily adapt to contemporary government functions. The Federal Government also has concerns regarding the manner in which the courts and arbitration decisions are applying the exemption to the Federal workforce. Resolution of confusion over how the regulations are to be applied in the public sector will ensure that employees are protected, that employers are able to comply with their responsibilities under the law, and that the regulations are enforceable. Preliminary estimates of the specific costs and benefits of this regulatory action will be developed once the various regulatory alternatives are identified.

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

**Timetable:**

Action	Date
Indefinite Stay of Final Rule	02/12/81 46 FR 11972
Proposal To Suspend Rule	03/27/81 46 FR 18998
ANPRM	11/19/85 50 FR 47696
Extension of ANPRM Comment Period	01/17/86 51 FR 2525

## DOL—ESA

## Proposed Rule Stage

Action	Date
ANPRM Comment Period End	03/22/86
NPRM	03/31/03 68 FR 15560
NPRM Comment Period End	06/30/03

**Regulatory Flexibility Analysis****Required:** Yes**Small Entities Affected:** Businesses, Governmental Jurisdictions, Organizations**Government Levels Affected:** State, Local, Federal**Federalism:** This action may have federalism implications as defined in EO 13132.**Agency Contact:** Tammy D.

McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building Room S3502, Washington, DC 20210

Phone: 202 693-0051

Fax: 202 693-1432

**RIN:** 1215-AA14**1758. AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA****Priority:** Other Significant**Legal Authority:** 38 USC 4211; 38 USC 4212; PL 101-237; PL 102-127; PL 102-16; PL 102-484; PL 105-339; PL 93-508, amended; PL 94-502; PL 95-520; PL 96-466; PL 97-306; PL 98-223**CFR Citation:** 41 CFR 60-250**Legal Deadline:** None

**Abstract:** OFCCP proposes to amend the regulations implementing the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) 38 USC 4212, to conform with the Jobs for Veterans Act of 2002 (JFVA). JFVA amended VEVRAA in four ways. First, JFVA raised contract coverage from \$25,000 to \$100,000. Second, JFVA granted VEVRAA protection to a new group of veterans—those who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985. Third, JFVA changed the definition of "recently separated veteran" to include "any veteran during the three-year

period beginning on the date of such veteran's discharge or release from active duty." Fourth, JFVA changed "Special Disabled Veterans" to "Disabled Veterans," expanding the coverage to conform to 38 U.S.C. section 4211 (3). JFVA also superseded changes to VEVRAA from the Veterans Employment Opportunities Act of 1998 (VEOA) and the Veterans Benefits and Health Care Improvement Act of 2000 (VBHCIA). This proposal revises these regulations to conform to the requirements of JFVA.

**Timetable:**

Action	Date
NPRM	11/00/03

**Regulatory Flexibility Analysis****Required:** Undetermined**Government Levels Affected:** None**Agency Contact:** James I. Melvin, Program Development, OFCCP, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., Room N-3424, FP Building, Washington, DC 20210

Phone: 202 693-0102

TDD Phone: 202 693-1308

Fax: 202 693-1304

Email: ofccp-mail@dol-esa.gov

**RIN:** 1215-AB24**1759. FAMILY AND MEDICAL LEAVE ACT OF 1993****Priority:** Other Significant**Unfunded Mandates:** Undetermined**Legal Authority:** 29 USC 2654**CFR Citation:** 29 CFR 825**Legal Deadline:** None

**Abstract:** The U.S. Supreme Court, in *Ragsdale v. Wolverine World Wide, Inc.*, 122 S. Ct. 1155 (2002), invalidated regulatory provisions issued under the Family and Medical Leave Act (FMLA) pertaining to the effects of an employer's failure to timely designate leave that is taken by an employee as being covered by the FMLA. The Department intends to propose revisions to the FMLA regulations to address issues raised by this and other judicial decisions.

**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.

The FMLA regulations require employers to designate if an employee's use of leave is counting against the employee's FMLA leave entitlement, and to notify the employee of that designation (29 CFR section 825.208). Section 825.700(a) of the regulations provides that if an employee takes paid or unpaid leave and the employer does not designate the leave as FMLA leave, the leave taken does not count against the employee's 12 weeks of FMLA leave entitlement.

On March 19, 2002, the U.S. Supreme Court issued its decision in *Ragsdale v. Wolverine World Wide, Inc.*, 122 S. Ct. 1155 (2002). In that decision, the Court invalidated regulatory provisions pertaining to the effects of an employer's failure to timely designate leave that is taken by an employee as being covered by the FMLA. The Court ruled that 29 CFR section 825.700(a) was invalid absent evidence that the employer's failure to designate the leave as FMLA leave interfered with the employee's exercise of FMLA rights. This proposed rule is being prepared to address issues raised by this and other judicial decisions.

**Summary of Legal Basis:** This rule is issued pursuant to section 404 of the Family and Medical Leave Act, 29 U.S.C. section 2654.

**Alternatives:** After completing a review and analysis of the Supreme Court's decision in *Ragsdale* and other judicial decisions, regulatory alternatives will be developed for notice-and-comment rulemaking.

**Anticipated Cost and Benefits:** The costs and benefits of this rulemaking action are not expected to exceed \$100 million per year or otherwise trigger economic significance under Executive Order 12866.

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

## DOL—ESA

## Proposed Rule Stage

**Timetable:**

Action	Date
NPRM	05/00/03
NPRM Comment Period End	07/00/03

**Regulatory Flexibility Analysis****Required:** Undetermined**Small Entities Affected:** Businesses, Governmental Jurisdictions, Organizations**Government Levels Affected:**

Undetermined

**Federalism:** Undetermined**Agency Contact:** Tammy D.

McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building Room S3502, Washington, DC 20210

Phone: 202 693-0051

Fax: 202 693-1432

**RIN:** 1215-AB35

**1760. • REQUIREMENTS FOR SECURITY OF INSURANCE OBLIGATIONS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT**

**Priority:** Substantive, Nonsignificant**Legal Authority:** 33 USC 939(a)**CFR Citation:** 20 CFR 701 (Revision); 20 CFR 703 to 704 (Revision)**Legal Deadline:** None

**Abstract:** The Longshore and Harbor Workers' Compensation Act (LHWCA) makes a covered employer liable for compensation to employees injured in the course of their work. An employer may satisfy this liability by contracting with a private insurance carrier. By statute, an insurance carrier must obtain authorization from the Secretary of Labor to insure compensation, and the Secretary may revoke authorization for good cause. This proposed regulation would require, as a condition to authorization to write LHWCA insurance, an insurance carrier in certain circumstances to establish that its potential LHWCA obligations are sufficiently secured. Obligations would be considered sufficiently secured if funds would be available to cover all workers' compensation claims in the event of adverse market

conditions and the carrier's insolvency. A carrier could fully secure its obligations by posting security deposits with the Secretary. Carriers would not, however, be required to make this showing in states which have a guaranty fund that fully and immediately covers LHWCA claims in the event of a carrier's insolvency.

**Timetable:**

Action	Date
NPRM	08/00/03

**Regulatory Flexibility Analysis****Required:** Undetermined**Small Entities Affected:** No**Government Levels Affected:**

Undetermined

**Federalism:** Undetermined

**Agency Contact:** Michael Niss, Director, Division of Longshore and Harbor Workers' Compensation, OWCP, Department of Labor, Employment Standards Administration, Room C4315, 200 Constitution Ave., NW, Room C-4315, FP Building, Washington, DC 20210

Phone: 202 693-0038

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**RIN:** 1215-AB38

## Department of Labor (DOL)

## Employment Standards Administration (ESA)

## Final Rule Stage

**1761. CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION (ESA/W-H)**

**Priority:** Other Significant**Legal Authority:** 29 USC 203(l)**CFR Citation:** 29 CFR 570**Legal Deadline:** None

**Abstract:** Section 3(l) of the Fair Labor Standards Act requires the Secretary of Labor to issue regulations with respect to 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. The Secretary is also directed 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, and specifies the number of hours in a day and in a week, and time

periods within a day, that such minors may be employed. The Department has invited public comment in considering whether changes in technology in the workplace and job content over the years require new hazardous occupation orders, and whether changes are needed in some of the applicable hazardous occupation orders. Comment has also been solicited on whether revisions should be considered in the permissible hours and time-of-day standards for 14- and 15-year-olds. Comment has been sought on appropriate changes required to implement school-to-work transition programs. Additionally, Congress enacted Public Law 104-174 (August 6, 1996), which amended FLSA section 13(c) and requires changes in the regulations under Hazardous Occupation Order No. 12 regarding power-driven paper balers and compactors, to allow 16- and 17-year-olds to load, but not operate or unload,

machines meeting applicable American National Standards Institute (ANSI) safety standards and certain other conditions. Congress also passed the Drive for Teen Employment Act, Public Law 105-334 (October 31, 1998), which prohibits minors under age 17 from driving automobiles and trucks on public roads on the job and sets criteria for 17-year-olds to drive such vehicles on public roads on the job.

**Statement of Need:** Because of changes in the workplace and the introduction of new processes and technologies, the Department is undertaking a comprehensive review of the regulatory criteria applicable to child labor. Other factors necessitating a review of the child labor regulations are changes in places where young workers find employment opportunities, the existence of differing Federal and State standards, and the divergent views on how best to correlate school and work experiences.

## DOL—ESA

## Final Rule Stage

Under the Fair Labor Standards Act, the Secretary of Labor is directed to provide by regulation or by order for the employment of youth between 14 and 16 years of age under periods and conditions which will not interfere with their schooling, health and well-being. The Secretary is also directed to designate occupations that are particularly hazardous for youth between the ages of 16 and 18 years or detrimental to their health or well-being. The Secretary has done so by specifying, in regulations, the permissible industries and occupations in which 14- and 15-year-olds may be employed, and the number of hours per day and week and the time periods within a day in which they may be employed. In addition, these regulations designate the occupations declared particularly hazardous for minors between 16 and 18 years of age or detrimental to their health or well-being.

Public comment has been invited in considering whether changes in technology in the workplace and job content over the years require new hazardous occupation orders or necessitate revision to some of the existing hazardous orders. Comment has also been invited on whether revisions should be considered in the permissible hours and time-of-day standards for the employment of 14- and 15-year-olds, and whether revisions should be considered to facilitate school-to-work transition programs. When issuing the regulatory proposals (after review of public comments on the advance notice of proposed rulemaking), the Department's focus was on assuring healthy, safe and fair workplaces for young workers, and at the same time promoting job opportunities for young people and making regulatory standards less burdensome to the regulated community.

**Summary of Legal Basis:** These regulations are issued under sections 3(l), 11, 12, and 13 of the Fair Labor Standards Act, 29 USC sections 203(l), 211, 212, and 213 which require the Secretary of Labor to issue regulations prescribing permissible time periods and conditions of employment for minors between 14 and 16 years old so as not to interfere with their schooling, health, or well-being, and to designate occupations that are particularly hazardous or detrimental to

the health or well-being of minors under 18 years old.

**Alternatives:** Regulatory alternatives developed based on recent legislation and the public comments responding to the advance notice of proposed rulemaking included specific proposed additions or modifications to the paper baler, teen driving, explosive materials, and roofing hazardous occupation orders, and proposed changes to the permissible cooking activities that 14- and 15-year-olds may perform in retail establishments.

**Anticipated Cost and Benefits:** Preliminary estimates of the anticipated costs and benefits of this regulatory action indicated that the rule was not economically significant. Benefits will include safer working environments and the avoidance of injuries with respect to young workers.

**Risks:** The child labor regulations, by ensuring that permissible job opportunities for working youth are safe and healthy and not detrimental to their education as required by the statute, produce positive benefits by reducing health and productivity costs employers may otherwise incur from higher accident and injury rates to young and inexperienced workers. Given the limited nature of the changes in the proposed rule, a detailed assessment of the magnitude of risk was not prepared.

**Timetable:**

Action	Date
Final Action	11/20/91 56 FR 58626
Final Action Effective	12/20/91
ANPRM	05/13/94 59 FR 25167
ANPRM Comment	08/11/94 59 FR 40318
Period End	
NPRM	11/30/99 64 FR 67130
NPRM Comment	01/31/00
Period End	
Final Action	09/00/03

**Regulatory Flexibility Analysis**

**Required:** No

**Government Levels Affected:** None

**Agency Contact:** Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building Room S3502, Washington, DC 20210  
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**RIN:** 1215-AA09

**1762. GOVERNMENT CONTRACTORS: NONDISCRIMINATION AND AFFIRMATIVE ACTION OBLIGATIONS, EXECUTIVE ORDER 11246 (ESA/OFCCP) (REVISED)**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 29 USC 793; EO 11758; EO 11246, as amended; 38 USC 4211; PL 94-502; EO 11758; PL 98-223; PL 102-16; PL 102-127; PL 95-520; PL 105-339; 29 USC 706; PL 97-306; PL 102-484; 38 USC 4212; PL 93-508, amended; PL 96-466; PL 101-237

**CFR Citation:** 41 CFR 60-1 (Revision); 41 CFR 60-250 (Revision); 41 CFR 60-741 (Revision)

**Legal Deadline:** None

**Abstract:** The final rule would remove the obligation to visit an establishment during a compliance check, which is currently required by section 60-1.20(a)(3) in order to enhance efficiency in resource allocation. OFCCP proposes also to make the same revision in section 60-250.60(a)(3) of the regulations implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA). Lastly, OFCCP proposes to conform regulations implementing section 503 of the Rehabilitation Act of 1973, as amended, to the compliance evaluation procedures contained in the regulations implementing Executive Order 11246, as amended, and the affirmative action provisions of VEVRAA, both of which expressly authorize OFCCP to use additional investigative procedures to determine a contractor's compliance with the regulations.

**Timetable:**

Action	Date
NPRM	10/12/00 65 FR 60815
NPRM Comment	12/11/00
Period End	
Final Rule	11/00/03

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Small Entities Affected:** No

**Government Levels Affected:** Undetermined

**Agency Contact:** James I. Melvin, Program Development, OFCCP, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., Room N-3424, FP Building, Washington, DC 20210

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DOL—ESA

Final Rule Stage

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**RIN:** 1215—AB28

**1763. LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS**

**Priority:** Other Significant

**Legal Authority:** 29 USC 431; 29 USC 438; 5 USC 7120(d); 22 USC 4117(d)

**CFR Citation:** 29 CFR 402; 29 CFR 403; 29 CFR 458

**Legal Deadline:** None

**Abstract:** This regulation will revise Form LM-2, which is used by labor organizations with \$200,000 or more in annual receipts to file the annual financial reports required under title II of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). The proposed revisions will improve the transparency and accountability of labor organizations to their members, increase the information available to labor organization members, and make data disclosed in such reports more understandable and accessible. Among other things, unions filing the revised Form LM-2 will be required to report electronically (unless granted an exemption), to identify “major” receipts and disbursements, to allocate disbursements among categories such as contract negotiation and administration, organizing, political activity, lobbying, etc., and to report receipts and disbursements of organizations that meet the statutory definition of a “trust in which a labor organization is interested” on a new Form T-1.

**Timetable:**

Action	Date
NPRM	12/27/02 67 FR 79280
NPRM Comment Period End	03/27/03
Final Rule	09/00/03

**Regulatory Flexibility Analysis**

**Required:** Yes

**Small Entities Affected:** Organizations

**Government Levels Affected:** None

**Agency Contact:** Don Todd, Programs, Department of Labor, Employment

Standards Administration, Room N5605, 200 Constitution Avenue NW., FP Building, Washington, DC 20210  
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**RIN:** 1215—AB34

**1764. ● AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF GOVERNMENT CONTRACTORS, EXECUTIVE ORDER 11246; EXEMPTION FOR RELIGIOUS ENTITIES**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** EO 13279; EO 11246, as amended

**CFR Citation:** 41 CFR 60-1.5

**Legal Deadline:** None

**Abstract:** On December 12, 2002, President Bush issued Executive Order 13279 regarding faith-based and community organizations that, in part, amends Executive Order 11246. Section 4 of Executive Order 13279 amends section 204 of Executive Order 11246 by adding an exemption for religious entities. The final rule would make religious entities exempt from allegations of discrimination based on religion. OFCCP regulations at 41 CFR 60-1.5 will be amended to add the new religious entity exemption. The new exemption is limited to religious discrimination by religious entities. Religious entities will continue to be precluded from basing employment decisions on race, color, sex, or national origin.

**Timetable:**

Action	Date
Final Rule	09/00/03

**Regulatory Flexibility Analysis Required:** Undetermined

**Small Entities Affected:** No

**Government Levels Affected:** Undetermined

**Agency Contact:** James I. Melvin, Program Development, OFCCP, Department of Labor, Employment Standards Administration, 200

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**RIN:** 1215—AB39

**1765. ● AMENDMENTS TO TITLE 20 PARTS 718 AND 725, THAT IMPLEMENTS THE BLACK LUNG BENEFITS ACT**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 5 USC 301; Reorganization Plan No. 6 of 1950; 15 FR 3174; 30 USC 901, et seq, 902(f), 934, 936, 945; 33 USC 901 et seq; 42 USC 405; Secretary’s Order 7-87; 52 FR 48466; Employment Standards Order No. 90-02; ...

**CFR Citation:** 20 CFR 718.2; 20 CFR 725.2; 20 CFR 725.459

**Legal Deadline:** None

**Abstract:** The amendments implement National Mining Ass’n v. Department of Labor, 292 F.3d 849 (D.C. Cir. 2002) which invalidated a portion of 20 CFR 725.459 and required several other provisions which became effective in January 2001 to be prospective only in their application.

**Timetable:**

Action	Date
Final Rule	08/00/03

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Agency Contact:** James L. DeMarce, Director, Division of Coal Mine Workers’ Compensation, Department of Labor, Employment Standards Administration, Room C3520, 200 Constitution Avenue NW, FP Building, Washington, DC 20210  
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 Fax: 202 693-1398  
 Email: nojld@dol-esa.gov

**RIN:** 1215—AB40

**Department of Labor (DOL)**  
**Employment Standards Administration (ESA)**

**Long-Term Actions**

**1766. REGULATIONS TO IMPLEMENT THE FEDERAL ACQUISITION STREAMLINING ACT OF 1994**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** PL 103-355, 108 Stat. 3243

**CFR Citation:** 29 CFR 4; 29 CFR 5; 41 CFR 50-201; 41 CFR 50-206

**Legal Deadline:** NPRM, Statutory, May 11, 1995.  
 Final, Statutory, October 1, 1995.

**Abstract:** The Federal Acquisition Streamlining Act of 1994, signed on October 13, 1994, amended several acts administered by the Department of Labor: (1) the Contract Work Hours and Safety Standards Act (CWHSSA) to limit its applicability to contracts in an amount of \$100,000 or greater; (2) the Davis-Bacon Act (DB) to provide waivers from the Act's prevailing wage requirements under selected laws for volunteers performing services to a State or local government or agency and for volunteers performing services to a public or private nonprofit recipient of Federal assistance; and (3) the Walsh-Healey Public Contracts Act (PCA) to eliminate the requirements that contractors on covered contracts be either manufacturers or regular dealers in the items to be supplied under the contract but retains the Secretary of Labor's authority to define the terms "regular dealer" and "manufacturer." A final rule implementing the CWHSSA and PCA changes was published on August 5, 1996 (61 FR 40714).

**Timetable:**

Action	Date
NPRM	09/07/95 60 FR 46553
NPRM Comment Period End	10/10/95
Final Rule	08/05/96 61 FR 40714
Second NPRM	06/00/04

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** State, Local, Federal

**Agency Contact:** Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building Room S3502, Washington, DC 20210  
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**RIN:** 1215-AA96

**1767. LABOR CONDITION APPLICATIONS AND REQUIREMENTS FOR EMPLOYERS USING NONIMMIGRANTS ON H-1B VISAS IN SPECIALTY OCCUPATIONS AND AS FASHION MODELS**

**Priority:** Other Significant

**Legal Authority:** 29 USC 49 et seq; 8 USC 1101(a)(15)(H)(i)(b); 8 USC 1182(n); 8 USC 1184; PL 102-232; PL 105-277

**CFR Citation:** 20 CFR 655, subparts H and I

**Legal Deadline:** None

**Abstract:** The H-1B visa program of the Immigration and Nationality Act allows employers to temporarily employ nonimmigrants admitted to the United States under the H-1B visa category in specialty occupations and as fashion models, under specified labor conditions. An employer must file a labor condition application with the Department of Labor before the Immigration and Naturalization Service may approve a petition to employ a foreign worker on an H-1B visa. The Department's Employment and Training Administration administers the labor condition application process; the Wage and Hour Division of the Department's Employment Standards Administration handles complaints and investigations regarding labor condition applications. The Department published a proposed rule on January 5, 1999, in response to statutory changes in the H-1B program made by the American Competitiveness and Workforce Improvement Act of 1998 (title IV, Pub. L. 105-277; Oct. 21, 1998). Those changes placed additional obligations on "H-1B-dependent" employers (generally, those with work forces comprised of more than 15 percent H-1B workers) and on willful violators. These employers must recruit for U.S. workers, hire U.S. workers who are at least as qualified as H-1B workers, and not displace U.S. workers by hiring H-1B workers or placing them at another employer's job site. The 1998 amendments also imposed additional obligations on all H-1B employers, such as offering benefits to H-1B workers on the same basis and according to the same criteria as offered to U.S. workers, and payment to H-1B workers during periods they are not working for an employment-related reason. The 1999 proposed rule also requested further public comment on earlier proposed provisions published in October 1995,

and on particular interpretations of the statute and of the existing regulations which the Department proposed to incorporate into the regulations. Since publishing the proposed rule, Congress enacted further amendments to the H-1B provisions under the American Competitiveness in the Twenty-First Century Act of 2000 (Pub. L. 106-313; Oct. 17, 2000), the Immigration and Nationality Act - Amendments (Pub. L. 106-311; Oct. 17, 2000), and section 401 of the Visa Waiver Permanent Program Act (Pub. L. 106-396; Oct. 30, 2000).

**Timetable:**

Action	Date
NPRM	10/31/95 60 FR 55339
NPRM Comment Period End	11/30/95
NPRM	01/05/99 64 FR 628
NPRM Comment Period End	02/04/99
Interim Final Rule	12/20/00 65 FR 80110
Interim Final Rule Effective	01/19/01
Interim Final Rule Comment Period	04/23/01 66 FR 10865
Final Action	01/00/05

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** Federal

**Additional Information:** On December 20, 2000, the Department published an interim final rule to implement the recent amendments and clarify the existing rules, and requested further public comment on those provisions.

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**RIN:** 1215-AB09

**1768. IMPLEMENTATION OF THE 1996 AMENDMENTS TO THE FAIR LABOR STANDARDS ACT**

**Priority:** Other Significant

**Legal Authority:** 29 USC 201 et seq; PL 104-188, sec 2101 to 2105

**CFR Citation:** 29 CFR 4; 29 CFR 531; 29 CFR 541; 29 CFR 778; 29 CFR 785; 29 CFR 790; 29 CFR 870; 41 CFR 50-202

**Legal Deadline:** None

## DOL—ESA

## Long-Term Actions

**Abstract:** The Small Business Job Protection Act of 1996 (H.R. 3448) was enacted on August 20, 1996, as Public Law 104-188. Title II of this enactment amended the Portal-to-Portal Act (PA) and the Fair Labor Standards Act (FLSA). The PA amendment excludes (under certain circumstances) from compensable "hours worked" the time spent by an employee in home-to-work travel in an employer-provided vehicle. The FLSA amendments: (1) increase the \$4.25 Federal minimum hourly wage by \$.90 in two steps over two years (i.e., to \$4.75 on October 1, 1996, and to \$5.15 on September 1, 1997); (2) provide a \$4.25 subminimum wage for youth under age 20 in their first 90 calendar days of employment with an employer; (3) set the employer's direct wage payment obligation for tipped employees at \$2.13 per hour (provided such employees receive the balance of the full minimum wage in tips); and (4) set the hourly compensation requirements at no less than \$27.63 per hour for certain exempt professional employees in computer-related occupations. Changes will be required in the regulations to reflect these amendments.

**Timetable:**

Action	Date
NPRM	01/00/05

**Regulatory Flexibility Analysis****Required:** No**Government Levels Affected:** State, Local, Federal**Agency Contact:** Tammy D.

McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building Room S3502, Washington, DC 20210

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**RIN:** 1215-AB13

### 1769. STOCK OPTIONS, STOCK APPRECIATION RIGHTS, AND BONA FIDE EMPLOYEE STOCK PURCHASE PROGRAMS UNDER THE FAIR LABOR STANDARDS ACT

**Priority:** Other Significant**Legal Authority:** 29 USC 207(e)(8); PL 106-202, sec 2(e)**CFR Citation:** 29 CFR 546; 29 CFR 778**Legal Deadline:** None

**Abstract:** The Worker Economic Opportunity Act, Public Law 106-202 (May 18, 2000), amended section 7(e) of the Fair Labor Standards Act to clarify how certain employer-provided stock option programs are to be treated for purposes of overtime pay. Certain programs meeting prescribed criteria would not have to be factored into the "regular rate" otherwise required when calculating "time-and-one-half" overtime premium pay for overtime hours of work. The legislation calls for regulations to be promulgated as necessary, which will include amendments to some of the existing regulations on overtime pay.

**Timetable:**

Action	Date
NPRM	06/00/04

**Regulatory Flexibility Analysis****Required:** Undetermined**Small Entities Affected:** Businesses, Organizations**Government Levels Affected:** None**Agency Contact:** Tammy D.

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**RIN:** 1215-AB31

### 1770. OBLIGATION OF FEDERAL CONTRACTORS AND SUBCONTRACTORS, NOTICE OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES

**Priority:** Other Significant**Legal Authority:** EO 13201**CFR Citation:** 29 CFR 470**Legal Deadline:** None

**Abstract:** On January 2, 2002, the Federal District Court for the District of Columbia issued a decision in UAW-Labor Employment & Training Corp v. Chao, holding the Executive Order 13201 is invalid because it conflicts with the National Labor Relations Act. The court permanently enjoined the Department of Labor from implementing and enforcing Executive

Order 13201. The decision was appealed. On April 22, 2003, the U.S. Court of Appeals for the District of Columbia reversed the January 2, 2002, decision of the Federal District Court for the District of Columbia in UAW-Labor Employment and Training Corp. v. Chao, and directed the lower court to grant summary judgment to the Secretary of Labor.

This regulation, if promulgated, would implement E.O. 13201 which requires Government contractors and subcontractors to post notices informing their employees that (1) under Federal law they cannot be required to join a union or maintain membership in a union to retain their jobs, and (2) employees who choose not to be union members may object to the use of their compulsory union dues and fees for activities other than collective bargaining, contract administration, and grievance adjustment, and may be entitled to a refund and an appropriate reduction in their future payments. The proposed regulation, in accordance with E.O. 13201, would also require that, where applicable, each Government contracting agency include certain provisions of the Order in its Government contracts, and that Government contractors and subcontractors include these provisions in their nonexempt subcontracts and purchase orders.

**Timetable:**

Action	Date
Interim Procedural Rule	04/18/01 66 FR 19988
NPRM	10/01/01 66 FR 50010
NPRM Comment Period End	11/30/01
Next Action	Undetermined

**Regulatory Flexibility Analysis****Required:** No**Government Levels Affected:** Federal

**Agency Contact:** Don Todd, Programs, Department of Labor, Employment Standards Administration, Room N5605, 200 Constitution Avenue NW., FP Building, Washington, DC 20210

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**RIN:** 1215-AB33

**Department of Labor (DOL)**  
**Employment Standards Administration (ESA)**
**Completed Actions**
**1771. CLAIMS FOR COMPENSATION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000, AS AMENDED**

**Priority:** Economically Significant. Major under 5 USC 801.

**Legal Authority:** 42 USC 7384 et seq; EO 13179

**CFR Citation:** 20 CFR 30

**Legal Deadline:** Other, Statutory, May 31, 2001, Interim Final Rule.

**Abstract:** The Department of Labor has issued regulations for its administration of the provisions of the Energy Employees Occupational Illness Compensation Program Act of 2000, as

amended. These regulations address all questions arising under this act which have not been specifically assigned to the Secretary of Health and Human Services, to the Secretary of Energy, or to the Attorney General.

**Timetable:**

Action	Date
Interim Final Rule	05/25/01 66 FR 28948
Interim Final Rule Effective	07/24/01
Interim Final Rule Comment Period	09/24/02 67 FR 47382
Final Action	12/26/02 67 FR 78874
Final Action Effective	02/24/03

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Agency Contact:** Peter M. Turcic, Director, Division of Energy Employees, Occupational Illness Compensation, OWCP, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building, Room C-4511, Washington, DC 20210

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**RIN:** 1215-AB32

**Department of Labor (DOL)**  
**Employment and Training Administration (ETA)**
**Proposed Rule Stage**
**1772. FEDERAL-STATE UNEMPLOYMENT COMPENSATION (UC) PROGRAM; CONFIDENTIALITY AND DISCLOSURE OF INFORMATION IN STATE UC RECORDS**

**Priority:** Other Significant

**Legal Authority:** 26 USC ch 23; 42 USC 1302 (a); 42 USC 1320b-7; 42 USC 503; Secretary's Orders 4-75 and 14-75

**CFR Citation:** 20 CFR 603

**Legal Deadline:** None

**Abstract:** The Employment and Training Administration of the Department of Labor is preparing to issue a notice of proposed rulemaking (NPRM) on confidentiality and disclosure of State UC information. The NPRM would modify and expand the regulations implementing the Income and Eligibility Verification System (IEVS) to include statutory requirements in title III of the Social Security Act and the Federal Unemployment Tax Act concerning confidentiality and disclosure of State UC information. The use of UC wage records under these and other statutes has increased in recent years while privacy and confidentiality issues have not yet been addressed.

**Timetable:**

Action	Date
NPRM	12/00/03

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** State

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

**Additional Information:** Formerly RIN 1205-AA74; was taken off regulatory agenda in 1994 due to inactivity. An earlier NPRM was published on 3/23/92 at 57 FR 10063 with comment period ending 5/22/92.

**Agency Contact:** Gerard Hildebrand, Chief, Division of Legislation, Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue NW., Room C-4518, Washington, DC 20210  
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**RIN:** 1205-AB18

**1773. SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM**

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 42 USC 3056(b)(2)

**CFR Citation:** 20 CFR 641

**Legal Deadline:** None

**Abstract:** The Employment and Training Administration will implement new regulations to govern the Senior Community Service Employment Program (SCSEP) under title V of the Older Americans Act Amendments of 2000. SCSEP is the only federally sponsored job creation

program targeted to low-income older Americans. The program subsidizes part-time community service jobs for low-income persons age 55 years and older who have poor employment prospects. Approximately 100,000 program enrollees annually work in a wide variety of community service jobs, including nurse's aides, teacher aides, librarians, clerical workers and day care assistants. The Department of Labor allocates funds to operate the program to State agencies on aging and to national organizations.

Proposed regulations will improve integration of SCSEP with the broader workforce investment system and introduce performance measures and sanctions.

**Statement of Need:** As the baby boom generation ages, the demand for employment and training services and income support for low-income older persons will increase. Low-income seniors generally must continue working and many may not be able to find employment without work experience and additional training. The basic goals of the SCSEP are to provide community service employment for older workers with few skills and little work experience, and to move many of those seniors into unsubsidized employment. The Employment and Training Administration will issue regulations and other guidance, provide technical assistance, and establish performance standards that will drive



## DOL—ETA

## Proposed Rule Stage

State and national grantees' efforts towards the program's goals.

**Summary of Legal Basis:** Promulgation of these regulations is authorized by section 502(b)(2) of Pub. L. 106-501 of the Older Americans Act Amendments of 2000.

**Alternatives:** The public provided comments on changes to the statute due to the Older Americans Act Amendments of 2000 during Town Hall meetings held throughout the country in spring 2001. The public also will be afforded an opportunity to comment on the Department's plans for implementing the Amendments in a notice of proposed rulemaking that will be published in the Federal Register.

**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
NPRM	04/28/03 68 FR 22520
NPRM Comment Period End	06/12/03

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** State, Local, Tribal, Federal

**Federalism:** Undetermined

**Agency Contact:** Ria Moore Benedict, Programs, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., FP Building, Room N5306, Washington, DC 20210  
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**RIN:** 1205-AB28

**1774. TRADE ADJUSTMENT ASSISTANCE FOR WORKERS**

**Priority:** Other Significant

**Legal Authority:** 19 USC 2320; Secretary's Order No. 3-81, 46 FR 31117

**CFR Citation:** 29 CFR 90; 20 CFR 617; 20 CFR 618

**Legal Deadline:** None

**Abstract:** The Trade Act of 2002, enacted on August 6, 2002, contains provisions amending title 2, chapter 2 of the Trade Act of 1974, entitled Adjustment Assistance for Workers. The amendments, effective 90 days from enactment (November 4, 2002), make additions to where and by whom a petition may be filed, expand eligibility to workers whose production has been shifted to certain foreign countries and to worker groups secondarily affected, and make substantive amendments regarding trade adjustment assistance (TAA) program benefits.

Although published as a final rule, comments were requested on several material changes, which were not included in the proposed rule.

Comments were received and will be considered and included in the final rule implementing the amendments under the Trade Act of 2002.

Furthermore, it is the agency's intention to create a new 20 CFR part 618 to incorporate the amendments and be written in plain English, while the existing regulations at 20 CFR part 617 and 29 CFR part 90 will remain in effect for individuals covered by certifications under the Workforce Investment Act of 1998 so they conform to the amendments contained in the Trade Act of 2002.

**Statement of Need:** The Trade Act of 2002, enacted August 6, 2002, repeals the North American Free Trade Agreement-Transitional Adjustment Assistance provisions for workers affected by the NAFTA Implementation Act and adds significant amendments to worker benefits under Trade Adjustment Assistance for Workers, as provided for in the Trade Act of 1974.

The Department is mandated to implement the amendments in 90 days from enactment, November 4, 2002. The 2002 Trade Act amends where and by whom a petition may be filed. Program benefits for TAA eligible recipients are expanded to include for the first time a health care tax credit, and eligible recipients now include secondarily affected workers impacted by foreign trade. Income support is extended by 26 weeks and by up to one year under certain conditions. Waivers of training requirements in order to receive income support are explicitly defined. Job search and relocation benefit amounts are increased. Within one year of

enactment, the amendments offer an Alternative TAA Program for Older Workers that targets older worker groups at firms who are certified as TAA eligible and provides the option of a wage supplement instead of training, job search, and income support.

State agencies rely on the regulations to make determinations as to individual eligibility for TAA program benefits. TAA program regulations as written have been described as complicated to interpret. With the new TAA program benefit amendments contained in the Trade Act of 2002, it is imperative that the regulations be in an easy to read and understandable format.

**Summary of Legal Basis:** These regulations are authorized by the Trade Act of 2002 amendments to the Trade Act of 1974.

**Alternatives:** The public will be afforded an opportunity to provide comments on the TAA program changes when the Department publishes the interim final rule in the Federal Register.

**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
NPRM	06/00/03

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** State, Federal

**Agency Contact:** Edward A. Tomchick, Assistance, Department of Labor, Employment and Training Administration, Room C5311, 200 Constitution Avenue NW., Washington, DC 20210  
Phone: 202 693-3577  
Fax: 202 693-3585  
Email: etomchick@doleta.gov

**RIN:** 1205-AB32

**Department of Labor (DOL)**  
**Employment and Training Administration (ETA)**

**Final Rule Stage**

**1775. LABOR CERTIFICATION  
 PROCESS FOR THE PERMANENT  
 EMPLOYMENT OF ALIENS IN THE  
 UNITED STATES**

**Priority:** Other Significant

**Legal Authority:** 29 USC 49 et seq; 8 USC 1182(a)(5)(A), 1189(p)(1)

**CFR Citation:** 20 CFR 656

**Legal Deadline:** None

**Abstract:** The Employment and Training Administration (ETA) is in the process of reengineering the permanent labor certification process. ETA's goals are to make fundamental changes and refinements that will streamline the process, save resources, improve the effectiveness of the program and better serve the Department of Labor's (DOL) customer.

**Statement of Need:** The labor certification process has been described as being complicated, costly and time consuming. Due to the increases in the volume of applications received and a lack of adequate resources, it can take up to 2 years or more to complete processing an application. The process also requires substantial State and Federal resources to administer and is reportedly costly and burdensome to employers as well. Cuts in Federal funding for both the permanent labor certification program and the U.S. Employment Service have made it difficult for State and Federal administrators to keep up with the process. ETA, therefore, is taking steps to improve effectiveness of the various regulatory requirements and the application processing procedures, with a view to achieving savings in resources both for the Government and employers, without diminishing protections now afforded U.S. workers by the current regulatory and administrative requirements.

**Summary of Legal Basis:** Promulgation of these regulations is authorized by section 212(a)(5)(A) of the Immigration and Nationality Act.

**Alternatives:** Regulatory alternatives are now being developed by the Department. The public was afforded an opportunity to comment on the Department's plans for streamlining the permanent labor certification process in a notice of proposed rulemaking which was published in the Federal Register on May 6, 2002.

**Anticipated Cost and Benefits:** Preliminary estimates of the anticipated

costs and benefits have not been determined at this time. Preliminary estimates will be developed after a decision is made as to what regulatory amendments are necessary and after the implementing forms and automated systems to support a streamlined permanent labor certification process have been developed.

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

**Timetable:**

Action	Date
NPRM	05/06/02 67 FR 30465
NPRM Comment Period End	07/05/02 67 FR 30466
Final Rule	07/00/03

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Government Levels Affected:** State, Federal

**Agency Contact:** Dale Ziegler, Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C4318, FP Building, Washington, DC 20210  
 Phone: 202 693-2942  
 Fax: 202 693-2760  
 Email: dmziegler@doleta.gov

**RIN:** 1205-AA66

**1776. INDIAN AND NATIVE AMERICAN  
 WELFARE-TO-WORK PROGRAM**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 42 USC 612(a)(3)(c)(iii); PL 106-113, Division B, section 1000(a)(4)

**CFR Citation:** 20 CFR 646

**Legal Deadline:** Final, Statutory, November 4, 1997, 90 days from enactment.

Other, Statutory, January 1, 2000, for 1999 amendments.

**Abstract:** These are program regulations needed to implement the Indian and Native American set-aside under the Welfare-to-Work program authorized by section 412(a)(3) of the Social Security Act. New interim final regulations are being issued to implement changes made by the Welfare-to-Work and Child Support Amendments of 1999 and other legislation. The Consolidated Appropriations Act of 2001 authorized the Department to extend welfare-to-work grants an additional two years.

Therefore, the grants may operate until September 2004.

The Department received 14 comments on the March 1, 1998 interim final rule, and none would substantively change the regulations. The Department will provide guidance in response to those comments. The March 1, 1998 Interim Final Rule will be adopted as the final rule, subject to the changes made by the new interim final rule implementing the 1999 amendments.

**Timetable:**

Action	Date
Interim Final Rule	04/01/98 63 FR 15985
Interim Final Rule Effective	04/01/98
Interim Final Rule Comment Period	06/01/98
Final Action	09/00/03

**Regulatory Flexibility Analysis**

**Required:** No

**Government Levels Affected:** Tribal

**Additional Information:** Congress has changed eligibility criteria. A final rule will be published to conform with the State programs.

**Agency Contact:** Gregory Gross, Department of Labor, Employment and Training Administration, Room N4641, 200 Constitution Avenue NW, FP Building, Washington, DC 20210  
 Phone: 202 693-3752  
 Email: ggross@doleta.gov

**RIN:** 1205-AB16

**1777. • UNEMPLOYMENT  
 COMPENSATION-TRUST FUND  
 INTEGRITY RULE: BIRTH AND  
 ADOPTION UNEMPLOYMENT  
 COMPENSATION; REMOVAL OF  
 REGULATIONS**

**Priority:** Other Significant

**Legal Authority:** 42 USC 503(a)(2) and 503(a)(5); 42 USC 1302(a); 26 USC 3304(a)(1) and 3304(a)(4); 26 USC 3306

**CFR Citation:** 20 CFR 604

**Legal Deadline:** None

**Abstract:** The Department of Labor is proposing to remove the Birth and Adoption Unemployment Compensation regulations. Those regulations permit states to provide, in the form of UC, partial wage replacement to employees who take approved leave or otherwise leave their employment following the birth or placement for adoption of a child.

## DOL—ETA

## Final Rule Stage

## Timetable:

Action	Date
NPRM	12/04/02 67 FR 72122
NPRM Comment Period End	02/03/03
Final Action	08/00/03

## Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Federalism: Undetermined

Agency Contact: Gerard Hildebrand, Chief, Division of Legislation,

Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue NW., Room C-4518, Washington, DC 20210  
 Phone: 202 693-3038  
 Email: ghildebrand@doleta.gov  
 RIN: 1205-AB33

## Department of Labor (DOL)

## Long-Term Actions

## Employment and Training Administration (ETA)

## 1778. ATTESTATIONS BY FACILITIES TEMPORARILY EMPLOYING H-1C NONIMMIGRANT ALIENS AS REGISTERED NURSES

Priority: Other Significant

Legal Authority: 29 USC 49 et seq; 8 USC 1101(a)(15)(H)(i)(c); 8 USC 1182(m); 8 USC 1184; PL 106-95, 113 Stat. 1312

CFR Citation: 20 CFR 655, subparts L and M

Legal Deadline: Final, Statutory, February 11, 2000.

Abstract: The Nursing Relief for Disadvantaged Areas Act of 1999 (P.L.

106-95; November 12, 1999) amended the Immigration and Nationality Act to create a new temporary visa program for nonimmigrant aliens to work as registered nurses for up to three years in facilities serving health professional shortage areas, subject to certain conditions.

## Timetable:

Action	Date
Interim Final Rule	08/22/00 65 FR 51137
Interim Final Rule Effective	09/21/00
Interim Final Rule Comment Period	09/21/00
Final Action	To Be Determined

## Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: Michael Ginley, Wage and Hour Division, Department of Labor, Employment Standards Administration, Room S3510, 200 Constitution Avenue NW, FP Building, Washington, DC 20210  
 Phone: 202 693-0745

RIN: 1205-AB27

## Department of Labor (DOL)

## Completed Actions

## Employment and Training Administration (ETA)

## 1779. DISASTER UNEMPLOYMENT ASSISTANCE PROGRAM AMENDMENT

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 5177; EO 12673

CFR Citation: 20 CFR 625.5

Legal Deadline: None

Abstract: This new rule on the Disaster Unemployment Assistance Program will only address one aspect of part 625; it adds a definition of "unemployment is a direct result of the major disaster." ETA had not defined

this term in its previous rule. The purpose of the new definition is to clarify eligibility for disaster unemployment assistance in the wake of the major disasters as a result of the terrorist attacks of September 11, 2001.

## Timetable:

Action	Date
Interim Final Rule	11/13/01 66 FR 56959
Interim Final Rule Effective	11/13/01
Interim Final Rule Comment Period	12/13/01
Final Rule	03/06/03 68 FR 10932
Final Rule Effective	03/06/03

## Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: Betty E. Castillo, Operations, Department of Labor, Employment and Training Administration, Room S4231, 200 Constitution Avenue NW, FP Building, Washington, DC 20210  
 Phone: 202 693-3032

RIN: 1205-AB31

**Department of Labor (DOL)**  
**Employee Benefits Security Administration (EBSA)**

**Proposed Rule Stage**

**1780. RULEMAKING RELATING TO NOTICE REQUIREMENTS FOR CONTINUATION OF HEALTH CARE COVERAGE**

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 1135; 29 USC 1166

**CFR Citation:** 29 CFR 2590

**Legal Deadline:** None

**Abstract:** This rulemaking will provide guidance concerning the notification requirements pertaining to continuation coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Section 606 of ERISA requires that group health plans provide employees notification of the continuation coverage provisions of the plan and imposes notification obligations upon plan administrators, employers, employees, and qualified beneficiaries relating to certain qualifying events.

**Statement of Need:** Part 6 of title I of ERISA requires that group health plans provide employees with notice of the continuation of health care coverage provisions of the plan; it imposes notification requirements upon employers, employees, plan administrators, and qualified beneficiaries in connection with certain qualifying events. The public needs guidance from the Department with regard to how they can fulfill their respective obligations under these statutory provisions.

**Summary of Legal Basis:** Section 606 of ERISA specifies the respective notification requirements for employers, employees, plan administrators, and qualified beneficiaries in connection with group health plan provisions relating to continuation of health care coverage. Section 606(a) of ERISA specifically refers to regulations to be issued by the Secretary of Labor clarifying these requirements. Section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

**Alternatives:** Regulatory alternatives will be developed once determinations have been made with regard to the scope and nature of the regulatory guidance which is needed by the public.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs and benefits will be developed once decisions are reached regarding the alternatives to be considered.

**Risks:** Failure to provide guidance to the public concerning their notification obligations under section 606 of ERISA may complicate compliance by the public with the law and may reduce the availability of continued health care coverage in certain commonly encountered situations.

**Timetable:**

Action	Date
ANPRM	09/23/97 62 FR 49894
ANPRM Comment Period End	11/24/97
NPRM	06/00/03

**Regulatory Flexibility Analysis**

**Required:** Yes

**Small Entities Affected:** Businesses, Organizations

**Government Levels Affected:** None

**Agency Contact:** Susan G. Lahne, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room N5669, 200 Constitution Avenue NW., FP Building, Washington, DC 20210  
 Phone: 202 693-8500

**RIN:** 1210-AA60

**1781. DEFAULT ROLLOVER SAFE HARBOR**

**Priority:** Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 1104(c); 29 USC 1105; PL 107-16, sec 657

**CFR Citation:** 29 CFR 2550

**Legal Deadline:** Final, Statutory, June 7, 2004, Deadline prescribed by sec 657(c)(2)(A) of the Economic Growth and Tax Reconciliation Act of 2001 (PL 107-16).

**Abstract:** This regulation would provide safe harbors under which the designation of an institution and investment of funds is deemed to satisfy the fiduciary requirements of sec. 404(a) of ERISA. The Department has issued a request for information in order to obtain additional information from the public to assist it in developing the required safe harbors.

**Timetable:**

Action	Date
Request for Information (RFI)	01/07/03 68 FR 992
NPRM	11/00/03

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Government Levels Affected:** Undetermined

**Agency Contact:** Louis J. Campagna, Supervisory Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room N5669, 200 Constitution Avenue, NW, FP Building, Washington, DC 20210  
 Phone: 202 693-8500

**RIN:** 1210-AA92

**1782. ELECTRONIC FILING BY INVESTMENT ADVISERS**

**Priority:** Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 1002 note; 29 USC 1002(38); 29 USC 1135

**CFR Citation:** 29 CFR 2510.3-38

**Legal Deadline:** None

**Abstract:** Upon adoption, this proposed regulation will clarify that an electronic filing with the Investment Advisers Registration Depository (IARD), a centralized electronic filing system established by the Securities and Exchange Commission in conjunction with the NASD and State securities authorities, will satisfy the filing requirement for investment advisers seeking investment manager status under section 3(38) of ERISA.

**Timetable:**

Action	Date
NPRM	07/00/03

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Government Levels Affected:** Undetermined

**Agency Contact:** Florence Novellino-Ott, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, FP Building, Washington, DC 20210  
 Phone: 202 693-8500

**RIN:** 1210-AA94

## DOL—EBSA

## Proposed Rule Stage

**1783. SUSPENSION OF BENEFITS REGULATION**

**Priority:** Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 1053(2)(3)(B); 29 USC 1135

**CFR Citation:** 29 CFR 2530.203-3

**Legal Deadline:** None

**Abstract:** This regulation would amend the requirements of 29 CFR 2530.203-3(b)(4) relating to notification of suspension of benefit payments.

**Timetable:**

Action	Date
NPRM	10/00/03

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** Undetermined

**Federalism:** Undetermined

**Agency Contact:** Susan G. Lahne, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room N5669, 200 Constitution Avenue NW., FP Building, Washington, DC 20210  
Phone: 202 693-8500

**RIN:** 1210-AA96

## Department of Labor (DOL)

## Final Rule Stage

## Employee Benefits Security Administration (EBSA)

**1784. REGULATIONS IMPLEMENTING THE HEALTH CARE ACCESS, PORTABILITY, AND RENEWABILITY PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996**

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1171; 29 USC 1172; 29 USC 1191c

**CFR Citation:** 29 CFR 2590

**Legal Deadline:** Other, Statutory, April 1, 1997, Interim Final Rule.

**Abstract:** The Health Insurance Portability and Accountability Act of 1996 (HIPAA) amended title I of ERISA by adding a new part 7, designed to improve health care access, portability and renewability. This rulemaking will provide regulatory guidance to implement these provisions.

**Statement of Need:** In general, the health care portability provisions in part 7 of ERISA provide for increased portability and availability of group health coverage through limitations on the imposition of any preexisting condition exclusion and special enrollment rights in group health plans after loss of other health coverage or a life event. Plan sponsors, administrators and participants need guidance from the Department with regard to how they can fulfill their respective obligations under these statutory provisions.

**Summary of Legal Basis:** Part 7 of ERISA specifies the portability and other requirements for group health plans and health insurance issuers. 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, section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

**Risks:** Failure to provide guidance concerning Part 7 of ERISA may impede compliance with the law.

**Timetable:**

Action	Date
Interim Final Rule	04/08/97 62 FR 16894
Interim Final Rule Effective	06/07/97
Interim Final Rule Comment Period	07/07/97
Request for Information	10/25/99 64 FR 57520
Comment Period End	01/25/00
Final Rule	09/00/03

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

**Agency Contact:** Amy Turner, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room N5677, 200 Constitution Avenue NW, FP Building, Washington, DC 20210  
Phone: 202 693-8335

**RIN:** 1210-AA54

**1785. MENTAL HEALTH BENEFITS PARITY**

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 1135; 29 USC 1182; 29 USC 1194; PL 104-204, 110 Stat. 2944

**CFR Citation:** 29 CFR 2590

**Legal Deadline:** None

**Abstract:** The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (Pub. L. 104-204). MHPA amended the Public Health Service Act (PHS Act) and the Employee Retirement Income Security Act of 1974 (ERISA), as amended, to provide for parity in the application of certain mental health benefits with limits on medical surgical benefits. These changes were subsequently added to the Internal Revenue Code (the Code). MHPA provisions are set forth in chapter 100 of subtitle K of the Code, title XXVII of the PHS Act, and part 7 of subtitle B of title I of ERISA. On December 2, 2002, President Bush signed H.R. 5716 (Pub. L. 107-313), the Mental Health Parity Reauthorization Act of 2002. This legislation amended ERISA and the PHS Act to further extend MHPA's original sunset date to December 31, 2003 (the Code provisions already contained a sunset date of December 31, 2003). As a result of this statutory amendment, and to assist employers, plan sponsors, health insurance issuers, and workers, the Department of Labor has amended the interim final regulations, in consultation with the Departments of the Treasury and Health and Human Services, conforming the regulatory sunset date to the new statutory sunset date.

**Timetable:**

Action	Date
Interim Final Rule	12/22/97 62 FR 66932
Interim Final Rule Amendment Effective	09/30/01
Interim Final Rule Amendment	09/27/02 67 FR 60859
Interim Final Rule Amendment Effective	12/02/02 68 FR 18048

## DOL—EBSA

## Final Rule Stage

Action	Date
Interim Final Rule Amendment	04/14/03 68 FR 18048
Final Action	03/00/04

**Regulatory Flexibility Analysis****Required:** No**Government Levels Affected:** None**Additional Information:** LEGAL AUTHORITIES CONT: secs 107, 209, 505, 701 to 703, 711, 712.**Agency Contact:** Mark Connor, Supervisory Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room C5331, 200 Constitution Avenue NW., FP Building, Washington, DC 20210  
Phone: 202 693-8335**RIN:** 1210-AA62**1786. HEALTH CARE STANDARDS FOR MOTHERS AND NEWBORNS****Priority:** Other Significant. Major status under 5 USC 801 is undetermined.**Unfunded Mandates:** Undetermined**Legal Authority:** 29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1185; 29 USC 1191 to 1191c**CFR Citation:** 29 CFR 2590.711**Legal Deadline:** None**Abstract:** The Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) was enacted on September 26, 1996 (PL 104-204). NMHPA amended the Public Health Service Act (PHSA) and the Employee Retirement Income Security Act of 1974, as amended, (ERISA) to provide protection for mothers and their newborn children with regard to the length of hospital stays following the birth of a child. NMHPA provisions are set forth in title XXVII of the PHSA and part 7 of subtitle B of title I of ERISA. This rulemaking will provide further guidance with regard to the provisions of the NMHPA.**Timetable:**

Action	Date
Interim Final Rule	10/27/98 63 FR 57546
Final Action	12/00/03

**Regulatory Flexibility Analysis****Required:** No**Government Levels Affected:** None**Agency Contact:** Amy Turner, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room N5677, 200Constitution Avenue NW, FP Building, Washington, DC 20210  
Phone: 202 693-8335**RIN:** 1210-AA63**1787. RULEMAKING RELATING TO THE WOMEN'S HEALTH AND CANCER RIGHTS ACT OF 1998****Priority:** Other Significant. Major status under 5 USC 801 is undetermined.**Legal Authority:** 29 USC 1135; 29 USC 1185; 29 USC 1191c**CFR Citation:** Not Yet Determined**Legal Deadline:** None**Abstract:** The Women's Health and Cancer Rights Act of 1998 (WHCRA) was enacted on October 21, 1998 (P.L. 105-277). WHCRA amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act (PHS Act) to provide protection for patients who elect breast reconstruction in connection with a mastectomy. The WHCRA provisions are set forth in part 7 of subtitle B of title I of ERISA and in title XXVII of the PHS Act. These interim rules will provide guidance with respect to the WHCRA provisions.**Timetable:**

Action	Date
Request for Information (RFI)	05/28/99 64 FR 29186
Request for Information Comment Period End	06/28/99
Interim Final Rule	01/00/04

**Regulatory Flexibility Analysis****Required:** No**Government Levels Affected:** None**Agency Contact:** Elena Hornsby, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room C5331, 200 Constitution Avenue NW, FP Building, C5331, Washington, DC 20210  
Phone: 202 693-8335**RIN:** 1210-AA75**1788. PROHIBITING DISCRIMINATION AGAINST PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS****Priority:** Other Significant. Major status under 5 USC 801 is undetermined.**Legal Authority:** 29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1182; 29 USC 1191c; 29 USC 1194**CFR Citation:** 29 CFR 2590.702**Legal Deadline:** None**Abstract:** Section 702 of the Employee Retirement Income Security Act of 1974, amended by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes that a group health plan or a health insurance issuer may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any health status-related factor. These provisions are also contained in the Internal Revenue Code under the jurisdiction of the Department of the Treasury, and the Public Health Service Act under the jurisdiction of the Department of Health and Human Services.

On April 8, 1997, the Department, in conjunction with the Departments of the Treasury and Health and Human Services (collectively, the Departments) published interim final regulations implementing the nondiscrimination provisions of HIPAA. These regulations can be found at 26 CFR 54.9802-1 (Treasury), 29 CFR 2590.702 (Labor), and 45 CFR 146.121 (HHS). That notice of rulemaking also solicited comments on the nondiscrimination provisions and indicated that the Departments intend to issue further regulations on the nondiscrimination rules. This rulemaking contains additional regulatory interim guidance under HIPAA's nondiscrimination provisions. In addition, the rulemaking contains proposed guidance on bona fide wellness programs.

**Statement of Need:** Part 7 of ERISA provides that group health plans and health insurance issuers may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any health status-related factor. Plan sponsors, administrators and participants need additional guidance from the Department with regard to how they can fulfill their respective obligations under these statutory provisions.

## DOL—EBSA

## Final Rule Stage

**Summary of Legal Basis:** Section 702 of ERISA specifies the respective nondiscrimination requirements for group health plans and health insurance issuers. 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 ERISA. In addition, section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

**Risks:** Failure to provide guidance concerning part 7 of ERISA may impede compliance with the law.

**Timetable:**

Action	Date	
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Comment Period	07/07/97	
NPRM	01/08/01	66 FR 1421
Second Interim Final Rule	01/08/01	66 FR 1378
NPRM Comment Period End	04/09/01	
Interim Final Rule Comment Period	04/09/01	
Final Rule	12/00/03	

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:**

Undetermined

**Additional Information:** This item has been split off from RIN 1210-AA54 in order to

**Agency Contact:** Amy Turner, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room N5677, 200 Constitution Avenue NW, FP Building, Washington, DC 20210  
Phone: 202 693-8335

**RIN:** 1210-AA77

## Department of Labor (DOL)

## Employee Benefits Security Administration (EBSA)

## Long-Term Actions

**1789. ADEQUATE CONSIDERATION**

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 1002(18); 29 USC 1135

**CFR Citation:** 29 CFR 2510

**Legal Deadline:** None

**Abstract:** The regulation would set forth standards for determining

“adequate consideration” under section 3(18) of ERISA for assets other than securities for which there is a generally recognized market.

**Timetable:**

Action	Date	
NPRM	05/17/88	53 FR 17632
NPRM Comment Period End	07/17/88	
Next Action	Undetermined	

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Government Levels Affected:** None

**Agency Contact:** Morton Klevan, Department of Labor, Employee Benefits Security Administration, N5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210  
Phone: 202 693-8500

**RIN:** 1210-AA15

## Department of Labor (DOL)

## Employee Benefits Security Administration (EBSA)

## Completed Actions

**1790. DEFINITION OF COLLECTIVE BARGAINING AGREEMENT (ERISA SECTION 3(40))**

**Priority:** Other Significant

**Legal Authority:** 29 USC 1002(40); 29 USC 1135

**CFR Citation:** 29 CFR 2510.3-40

**Legal Deadline:** None

**Abstract:** The regulation establishes standards for determining whether an employee benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of its exclusion from the Multiple Employer Welfare Arrangement (MEWA) definition in section 3(40) of ERISA, and thus exempted from State regulation. The regulation clarifies the scope of the exception from the MEWA definition for plans established or maintained under or pursuant to one or more collective bargaining

agreements by providing criteria which will serve to distinguish welfare benefit arrangements which are maintained by legitimate unions pursuant to bona fide collective bargaining agreements from insurance arrangements promoted and marketed under the guise of ERISA-covered plans exempt from State insurance regulation. The regulation also serves to limit the extent to which plans maintained pursuant to bona fide collective bargaining agreements may extend plan coverage to individuals not covered by such agreements.

**Timetable:**

Action	Date	
NPRM	08/01/95	60 FR 39208
NPRM Comment Period Extended to	09/29/95	60 FR 50508
Notice Establishing Negotiated	09/22/98	63 FR 50542
Second NPRM	10/27/00	65 FR 64498

Action	Date	
Second NPRM Comment Period End	12/26/00	
Final Action	04/09/03	68 FR 17484
Final Action Effective	06/09/03	

**Regulatory Flexibility Analysis**

**Required:** Yes

**Small Entities Affected:** Governmental Jurisdictions, Organizations

**Government Levels Affected:** State

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

**Agency Contact:** Elizabeth A. Goodman, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room N5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210  
Phone: 202 693-8500

**RIN:** 1210-AA48

## DOL—EBSA

## Completed Actions

**1791. REPORTING REQUIREMENTS FOR MEWAS PROVIDING MEDICAL CARE BENEFITS****Priority:** Substantive, Nonsignificant**Legal Authority:** 29 USC 1021(g); 29 USC 1135; 29 USC 1191c**CFR Citation:** 29 CFR 2520**Legal Deadline:** None

**Abstract:** These final rules govern certain reporting requirements under title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA) for multiple employer welfare arrangements (MEWAs) that provide benefits consisting of medical care. In part, the rules implement recent changes made to ERISA by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The rules also set forth elements that MEWAs would be required to file with the Department of Labor for the purpose of determining compliance with the portability, nondiscrimination, renewability and other requirements of part 7 of subtitle B of title I of ERISA including the requirements of the Mental Health Parity Act of 1996 and the Newborns' and Mothers' Protection Act of 1996. The rules provide guidance with respect to section 502(c)(5) of ERISA which authorizes the Secretary of Labor to assess a civil penalty of up to \$1,000 a day for failure to comply with the new reporting requirements.

**Timetable:**

Action	Date
Interim Final Rule	02/11/00 65 FR 7152
Final Action	04/09/03 68 FR 17494
Final Action Effective	01/01/04

**Regulatory Flexibility Analysis Required:** No**Government Levels Affected:** None

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**RIN:** 1210-AA64**1792. BLACKOUT NOTICE REGULATION****Priority:** Other Significant**Legal Authority:** 116 Stat 745 (29 USC 1132); 29 USC 1135; PL 107-204**CFR Citation:** 29 CFR 2520**Legal Deadline:** Other, Statutory, October 13, 2002, Interim Final Rule, PL 107-204.

**Abstract:** This regulation provides guidance with respect to the requirement that plan administrators furnish advance notice of blackout periods affecting individual account plans pursuant to section 101(i) of ERISA, as added by section 306 of the Sarbanes-Oxley Act of 2002.

**Timetable:**

Action	Date
Interim Final Rule	10/21/02 67 FR 64765
Interim Final Rule Comment Period	11/20/02
Final Rule	01/24/03 68 FR 3716
Interim Final Rule Effective	01/26/03
Final Action Effective	01/26/03

**Regulatory Flexibility Analysis Required:** No**Government Levels Affected:** None

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**RIN:** 1210-AA90**1793. BLACKOUT NOTICE CIVIL PENALTY****Priority:** Other Significant**Legal Authority:** 29 USC 1021(b)(1); 29 USC 1135; PL 107-204**CFR Citation:** 29 CFR 2560**Legal Deadline:** Final, Statutory, October 13, 2002.

**Abstract:** These regulations provide guidance with respect to the requirement that plan administrators furnish advance notice of blackout periods affecting individual account plans pursuant to section 101(i) of ERISA, as added by section 306 of the Sarbanes-Oxley Act of 2002, as well as the related civil penalty provisions.

**Timetable:**

Action	Date
Interim Final Rule	10/21/02 67 FR 64774
Interim Final Rule Comment Period	11/20/02
Final Rule	01/24/03 68 FR 3729

Action	Date
Interim Final Rule Effective	01/26/03
Final Action Effective	01/26/03

**Regulatory Flexibility Analysis Required:** No**Government Levels Affected:** None

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**RIN:** 1210-AA91**1794. AMENDMENT OF PROCEDURAL REGULATIONS UNDER ERISA****Priority:** Info./Admin./Other**Legal Authority:** 29 USC 1132(c); 29 USC 1135**CFR Citation:** 29 CFR 2570**Legal Deadline:** None

**Abstract:** This rulemaking amends 29 CFR part 2570 to clarify the time at which a notice of intent to assess a civil penalty, where there is a failure to file a statement of reasonable cause, constitutes a final order of the Secretary.

**Timetable:**

Action	Date
Interim Final Rule	10/21/02 67 FR 64774
Interim Final Rule Comment Period	11/20/02
Final Rule	01/24/03 68 FR 3729
Final Rule Effective	01/26/03

**Regulatory Flexibility Analysis Required:** No**Government Levels Affected:** None

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**RIN:** 1210-AA93**1795. CIVIL MONETARY PENALTY ADJUSTMENT REGULATION****Priority:** Info./Admin./Other**Legal Authority:** 29 USC 1135; 29 USC 2461 note**CFR Citation:** 29 CFR 2960**Legal Deadline:** Final, Statutory, July 29, 2001, PL 104-134 sec 3720C.



## DOL—EBSA

## Completed Actions

**Abstract:** The Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires Federal agencies to adjust civil monetary penalties for inflation at least once every four years. This rulemaking satisfies that requirement with respect to the civil monetary penalties under title I of ERISA.

**Timetable:**

Action	Date
Final Rule	01/24/03 68 FR 2875
Final Rule Effective	03/24/03

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

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**RIN:** 1210-AA95

## Department of Labor (DOL)

## Prerule Stage

## Mine Safety and Health Administration (MSHA)

## 1796. FOCUSED INSPECTIONS

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 30 USC 957

**CFR Citation:** 30 CFR 4

**Legal Deadline:** None

**Abstract:** Compliance history and safety and health performance are factors that provide a quantifiable means for focusing MSHA resources. MSHA seeks comment on how best to maximize the effectiveness of resources and to further develop inspection procedures based upon experience.

MSHA will evaluate current guidelines and practices for conducting inspections and determine how to best achieve the complementary objectives of protecting miners while focusing inspection resources on the greatest safety and health needs within each mine.

**Timetable:**

Action	Date
ANPRM	06/00/03

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**Federalism:** Undetermined

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**RIN:** 1219-AB30

## Department of Labor (DOL)

## Proposed Rule Stage

## Mine Safety and Health Administration (MSHA)

## 1797. VERIFICATION OF UNDERGROUND COAL MINE OPERATORS' DUST CONTROL PLANS AND COMPLIANCE SAMPLING FOR RESPIRABLE DUST

**Priority:** Other Significant

**Legal Authority:** 30 USC 811

**CFR Citation:** 30 CFR 70; 30 CFR 75; 30 CFR 90

**Legal Deadline:** None

**Abstract:** Our current regulations require that all underground coal mine operators develop and follow a mine ventilation plan for each mechanized mining unit that we approve. However, we do not have a requirement that provides for verification of each plan's effectiveness under typical mining conditions. Consequently, plans may be implemented by mine operators that could be inadequate to control respirable dust. The proposed rule provides for MSHA to verify the effectiveness of mine ventilation plans to control respirable dust under typical mining conditions. For longwall mine

operators, we proposed to permit the limited use of either approved loose-fitting powered air purifying respirators (PAPRs) or verifiable administrative controls as a supplemental means of compliance if we have determined that further reduction in respirable dust levels cannot be achieved using all feasible engineering controls. Furthermore, MSHA proposed to assume responsibility for all compliance sampling for respirable dust in underground coal mines as required under 30 CFR parts 70 and 90. However, given significant public comments, MSHA repropose this rule.

**Statement of Need:** Respirable coal mine dust levels in this country are significantly lower than they were two decades ago. Despite this progress, there continues to be concern about the respirable coal mine dust sampling program and its effectiveness in maintaining exposure levels in mines at or below the applicable standard. Our regulations require that all underground coal mine operators

develop and follow a mine ventilation plan approved by us. The dust control portion of the mine ventilation plan is the key element of an operator's strategy to control respirable dust in the work environment. Although such plans are required to be designed to control respirable dust, there is no current requirement that provides for verification of each proposed plan's effectiveness under typical mining conditions. Consequently, plans may be implemented that may be inadequate to control respirable dust. Therefore, we proposed to revoke existing operator respirable dust sampling and to implement new regulations that would require each underground coal mine operator to have a verified ventilation plan. MSHA would verify the effectiveness of the mine ventilation plan for each mechanized mining unit in controlling respirable dust under typical mining conditions.

**Summary of Legal Basis:** Promulgation of these regulations is authorized by

## DOL—MSHA

## Proposed Rule Stage

section 101 of the Federal Mine Safety and Health Act of 1977.

**Alternatives:** In developing the final rule, we considered alternatives related to typical production levels, the use of appropriate dust control strategies, use of supplemental controls for mining entities other than longwalls, and the level of protection of loose-fitting powered air purifying respirators (PAPRS) in underground coal mines.

**Anticipated Cost and Benefits:**

Benefits sought are reduced dust levels over a miner's working lifetime by the elimination of overexposures to respirable coal mine dust on each and every production shift. Additional benefits include reduced health care costs and disability and black lung benefit payments. There would be a cost savings for mine operators when MSHA completely takes over compliance and abatement sampling for respirable dust. We developed cost estimates and made them available for public review.

**Risks:** Respirable coal mine 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 black lung and silicosis, which are potentially disabling and can cause death. We are pursuing both regulatory and non-regulatory actions to eliminate these diseases through the control of coal mine respirable dust levels in mines and the reduction of miners' exposure.

**Timetable:**

Action	Date
NPRM	07/07/00 65 FR 42122
Notice of Hearings; Close of Record	07/07/00 65 FR 42186
Extension of Comment Period; Close	09/08/00 65 FR 49215
NPRM	03/06/03 68 FR 10784
NPRM Comment Period End	06/04/03
Final Rule	12/00/03

**Regulatory Flexibility Analysis**

**Required:** Yes

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**Additional Information:** This rulemaking is related to RIN 1219-AB18 (Determination of

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**RIN:** 1219-AB14

**1798. DETERMINATION OF CONCENTRATION OF RESPIRABLE COAL MINE DUST**

**Priority:** Other Significant

**Legal Authority:** 30 USC 811

**CFR Citation:** 30 CFR 72

**Legal Deadline:** None

**Abstract:** The National Institute for Occupational Safety and Health and the Mine Safety and Health Administration jointly proposed that a single, full-shift measurement (single sample) will accurately represent the atmospheric condition to which a miner is exposed. The proposed rule addresses the U.S. Court of Appeals' concerns raised in *National Mining Association v. Secretary of Labor*, 153 3d 1264 (11th Cir. 1998). MSHA has supplemented the record with additional data and reopened the record for comments.

**Statement of Need:** Respirable coal mine dust levels in this country are significantly lower than they were over two decades ago. Despite this progress, there continues to be concern about our current sampling programs' ability to accurately measure and maintain respirable coal mine dust exposure at or below the applicable standard on each shift. For as long as miners have taken coal from the ground, many have suffered respiratory problems due to their occupational exposures to respirable coal mine dust. These respiratory problems affect the current workforce and range from mild impairment of respiratory function to more severe diseases, such as silicosis and pulmonary massive fibrosis. For some miners, the impairment of their respiratory systems is so severe, they die prematurely. Since there is a clear relationship between a miner's cumulative exposure to respirable coal mine dust and the severity of the resulting respiratory conditions, it is imperative that each miner's exposure not exceed the applicable standard on each and every shift.

**Summary of Legal Basis:** Promulgation of this regulation is authorized by

section 101 of the Federal Mine Safety and Health Act of 1977.

**Alternatives:** The requirements of this rule (single sample) will work in tandem with those of the proposed rule (RIN 1219-AB14) in which MSHA proposed to verify the effectiveness of ventilation plans as well as conduct all compliance sampling in underground coal mines. However, given significant public comments, MSHA will repropose RIN 1219-AB14 - Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust.

**Anticipated Cost and Benefits:**

Benefits sought are reduced dust levels over a miner's working lifetime by the elimination of overexposures to respirable coal mine dust on each and every production shift. Additional benefits include reduced health care costs and disability and black lung benefit payments.

**Risks:** Respirable coal mine 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. We are 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.

**Timetable:**

Action	Date
NPRM	07/07/00 65 FR 42068
Notice of Hearings; Close of Record	07/07/00 65 FR 42185
Extension of Comment Period; Close	09/08/00 65 FR 49215
Reopen Record for Comments	03/06/03 68 FR 10940
Reopen Record Comment Period End	06/04/03
Final Rule	12/00/03

**Regulatory Flexibility Analysis**

**Required:** Yes

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**Additional Information:** This rulemaking is related to RIN 1219-AB14 (Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust).

## DOL—MSHA

## Proposed Rule Stage

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**RIN:** 1219-AB18

**1799. ASBESTOS EXPOSURE LIMIT**

**Priority:** Other Significant

**Legal Authority:** 30 USC 811; 30 USC 813

**CFR Citation:** 30 CFR 56; 30 CFR 57; 30 CFR 71

**Legal Deadline:** None

**Abstract:** MSHA's permissible exposure limit (PEL) for asbestos applies to surface (30 CFR part 56) and underground (30 CFR part 57) metal and nonmetal mines and to surface coal mines and surface areas of underground coal mines (30 CFR part 71) and is over 20 years old. Current scientific data indicate that this existing PEL is not adequate to protect miners' health. MSHA is considering rulemaking to lower the PEL in order to reduce the risk of miners developing asbestos-induced occupational disease. A recent report by the Office of the Inspector General (OIG) recommended that MSHA lower its existing permissible exposure limit for asbestos to a more protective level, and address take-home contamination from asbestos. It also recommended that MSHA use Transmission Electron Microscopy to analyze fiber samples that may contain asbestos.

**Statement of Need:** Current scientific data indicate that the existing asbestos PEL is not protective of miners' health. MSHA's asbestos regulations date to 1967 and are based on the Bureau of Mines (MSHA's predecessor) standard of 5 mppcf (million particles per cubic foot of air). In 1969, the Bureau proposed a 2 mppcf and 12 fibers/ml standard. This standard was promulgated in 1969. In 1970, the Bureau proposed to lower the standard to 5 fibers/ml, which was promulgated in 1974. MSHA issued its current standard of 2 fibers/ml at the end of 1978 for metal and nonmetal mining (43 FR 54064). Since enactment of the Mine Act, MSHA has conducted regular inspections at both surface and

underground operations at metal and nonmetal mines. During these inspections, MSHA routinely takes samples, which are analyzed for compliance with its standard.

Other Federal agencies have addressed this issue by lowering their PEL for asbestos. For example, the Occupational Safety and Health Administration, working in conjunction with the Environmental Protection Agency, enacted a revised asbestos standard in 1994 that lowered the permissible exposure limit and the excursion limit to an eight (8) hour time-weighted average limit of 0.1 fiber per cubic centimeter of air and to 1.0 fiber per cubic centimeter of air (1 f/cc) as averaged over a sampling period of thirty (30) minutes. These lowered limits reflected increased asbestos-related disease risk to asbestos-exposed workers.

**Alternatives:** The Agency has increased sampling efforts in an attempt to determine current miners' exposure levels to asbestos, including taking samples at all existing vermiculite, taconite, talc, and other mines to determine whether asbestos is present and at what levels. Since the spring of 2000, MSHA has taken almost 900 samples at more than 40 operations employing more than 4,000 miners. During those sampling events, MSHA staff also discussed with the miners and mine operators the potential hazards of asbestos and the types of preventive measures that could be implemented to reduce exposures. The course of action MSHA takes in addressing asbestos hazards to miners will, in part, be based on these sampling results.

**Anticipated Cost and Benefits:** MSHA will develop a preliminary regulatory economic analysis to accompany any proposed rule that may be developed.

**Risks:** There is concern that miners could be exposed to the hazards of asbestos during mine operations where the ore body contains asbestos. There is also potential for exposure at facilities in which installed asbestos-containing material is present. Overexposure to asbestos causes mesothelioma and other forms of cancers, such as cancers of the digestive system, as well as asbestosis.

**Timetable:**

Action	Date
ANPRM	03/29/02 67 FR 15134

Action	Date
Notice of Public Meetings	03/29/02
Notice of Change to Public Meetings	04/18/02 67 FR 19140
ANPRM Comment Period End	06/27/02
NPRM	09/00/03

**Regulatory Flexibility Analysis Required:** Undetermined

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**Additional Information:** The Office of the Inspector General's "Evaluation of MSHA's Handling of Inspections at the W.R. Grace & Company Mine in Libby, Montana," was issued in March 2001.

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**RIN:** 1219-AB24

**1800. DIESEL PARTICULATE MATTER EXPOSURE OF UNDERGROUND METAL AND NONMETAL MINERS**

**Priority:** Other Significant

**Legal Authority:** 30 USC 811

**CFR Citation:** 30 CFR 57

**Legal Deadline:** None

**Abstract:** On January 19, 2001, MSHA published a final rule addressing diesel particulate matter (DPM) exposure of underground metal and nonmetal miners. The final rule established new health standards for underground metal and nonmetal mines that use equipment powered by diesel engines. The rule establishes an interim concentration limit of 400 micrograms of total carbon per cubic meter of air that became applicable July 20, 2002, and a final concentration limit of 160 micrograms to become applicable after January 19, 2006. Industry challenged the January 19, 2001 standard and organized labor intervened in the litigation. Settlement negotiations with the litigants have resulted in further regulatory actions on several requirements in the January 19, 2001 final rule. One regulatory action has been completed. This new rulemaking will address the remaining issues. MSHA issued an ANPRM on September

## DOL—MSHA

## Proposed Rule Stage

25, 2002 to obtain additional information and to develop a proposed rule in 2003.

**Statement of Need:** As a result of the first partial settlement with the litigants, MSHA published two documents in the Federal Register on July 5, 2001. One document delayed the effective date of 57.5066(b) regarding the tagging provisions of the maintenance standard; clarified the effective dates of certain provisions of the final rule; and gave correction amendments.

The second document was a proposed rule to clarify 57.5066(b)(1) and (b)(2) of the maintenance standards and to add a new paragraph (b)(3) to 57.5067 regarding the transfer of existing diesel equipment from one underground mine to another underground mine. The final rule on these issues was published February 27, 2002, and became effective March 29, 2002.

Also as part of the settlement agreement, MSHA agreed to conduct joint sampling with industry and labor at 31 underground mines to determine existing concentration levels of DPM; assess the performance of the SKC sampler with the NIOSH Analytical Method 5040; assess the feasibility of achieving compliance with the standard's concentration limit at the 31 mines; and, assess the impact of interferences on samples collected in the metal and nonmetal underground mining environment before the limits established in the final rule became effective. Sampling and data analyses have been completed and the final report was issued on January 6, 2003.

MSHA also agreed to proposed specific changes to the 2001 DPM final rule.

On September 25, 2002, MSHA published an Advance Notice of Proposed Rulemaking (ANPRM) (67 FR 60199). In response to commenters, MSHA intends at this time to propose changes only to the interim DPM standard of 400 micrograms per cubic meter of air. In a separate rulemaking, the Agency will propose a rule to revise the final concentration limit of 160 micrograms per cubic meter of air pursuant to the DPM settlement agreement. The scope of both

rulemakings is limited to the settlement agreement. The current rulemaking addresses the following provisions:

57.5060(a) - Propose to change the existing DPM surrogate from total carbon to elemental carbon; propose that a single personal sample of miner's exposure would be an adequate basis for MSHA compliance determinations; and propose the current hierarchy of controls that MSHA applies in its existing metal and nonmetal exposure based health standards for abating violations.

57.5060(c) - Propose to adapt to the interim limit the existing provision that allows mine operators to apply to the Secretary for additional time to come into compliance with the final concentration limit. MSHA also agreed to propose to include consideration of economic feasibility, and to allow for annual renewals of such special extensions.

57.5060(d) - This existing provision permits miners to engage in certain activities in concentrations exceeding the interim and final limits upon application and approval from the Secretary. MSHA asked commenters if this provision should be removed since the Agency agreed to propose the existing hierarchy of controls.

57.5060(e) - MSHA agreed to propose to remove the existing prohibition on the use of personal protective equipment.

57.5060(f) - MSHA agreed to propose to remove the prohibition on the use of administrative controls.

57.5061(b) - MSHA is proposing to change the reference to total carbon to elemental carbon.

57.5061(c) - MSHA is proposing to delete the references to "area" and "occupational" sampling for compliance.

57.5062 - MSHA agreed to propose revisions to the existing diesel control plan.

MSHA also agreed to propose to change the existing DPM surrogate from total carbon to elemental carbon for the final limit that is applicable after January 19, 2006.

**Summary of Legal Basis:** Promulgation of these regulations is authorized by sections 101 and 103 of the Federal Mine Safety and Health Act of 1977.

**Alternatives:** This rulemaking action is a result of the parties' settlement negotiations. This action will not decrease protection for miners.

**Anticipated Cost and Benefits:** MSHA will develop a preliminary economic analysis to accompany the proposed rule.

**Risks:** Several epidemiological studies have found that exposure to diesel exhaust presents potential health risk to the miners. These potential adverse health effects range from headaches and nausea to respiratory disease and cancer. In the confined space of the underground mining environment, occupational exposure to diesel exhaust may present a greater hazard due to ventilation limitations and the presence of other airborne contaminants, such as toxic mine dusts or mine gases. We believe that the health evidence forms a reasonable basis for reducing miners' exposure to diesel particulate matter. Proceeding with rulemaking on the provisions discussed above will more effectively reduce miners exposure to DPM.

**Timetable:**

Action	Date
ANPRM	09/25/02 67 FR 60199
ANPRM Comment Period End	11/25/02
NPRM	07/00/03

**Regulatory Flexibility Analysis Required:** Yes

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

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**RIN:** 1219-AB29

Department of Labor (DOL)

Final Rule Stage

Mine Safety and Health Administration (MSHA)

**1801. UNDERGROUND COAL MINE VENTILATION — SAFETY STANDARDS FOR THE BELT ENTRY AS AN INTAKE AIR COURSE**

**Priority:** Other Significant

**Legal Authority:** 30 USC 811; 30 USC 957; 30 USC 961

**CFR Citation:** 30 CFR 12; 30 CFR 48; 30 CFR 75

**Legal Deadline:** None

**Abstract:** The proposed rule would give a coal mine operator the option of using air from a belt entry (belt air) in mines with three or more entries (parallel tunnels), as an intake air course to ventilate working sections and areas where mechanized mining equipment is being installed or removed. Current regulations require belt air to be separated from intake and return air courses for mines opened after 1970, unless a mine operator is granted a petition for modification of a safety standard (30 CFR 75.350) as set forth in the Federal Mine Safety and Health Act (Mine Act) of 1977 section 101(c), 30 USC 811(c) (1998). For three or more entry mines, regardless of the date they were opened, the proposed rule would supersede the requirements in current petitions for using belt air as an intake air course and standardize these requirements for all mines.

**Timetable:**

Action	Date
NPRM	01/27/88 53 FR 2382
Public Hearing Notice	01/27/03 68 FR 3936
Second NPRM	01/27/03 68 FR 3936
Second NPRM Comment Period End	03/28/03
Final Rule	12/00/03

**Regulatory Flexibility Analysis**

**Required:** Yes

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**Additional Information:** In 1988, MSHA published a proposed rule, 53 Fed. Reg. 2382, to

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**RIN:** 1219-AA76

**1802. TESTING AND EVALUATION BY INDEPENDENT LABORATORIES AND NON-MSHA PRODUCT SAFETY STANDARDS**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 30 USC 957

**CFR Citation:** 30 CFR 18; 30 CFR 19; 30 CFR 20; 30 CFR 22; 30 CFR 23; 30 CFR 27; 30 CFR 33; 30 CFR 35; 30 CFR 36; 30 CFR 6; 30 CFR 7

**Legal Deadline:** None

**Abstract:** The proposed rule contains modifications to MSHA's existing product approval requirements for use of products in gassy underground mines. MSHA currently issues product approvals from MSHA's Approval and Certification Center after MSHA tests and evaluates the products based on regulations in 30 CFR parts 7 through 36. The proposed rule would establish alternative requirements for the testing and evaluation of products for MSHA approval. It would permit manufacturers who seek MSHA product approval to use an independent laboratory to perform the necessary product testing and evaluation in lieu of it being performed by MSHA. It also would allow MSHA product approval to be based on equivalent non-MSHA product safety standards.

**Timetable:**

Action	Date
NPRM	11/30/94 59 FR 61376
NPRM	02/13/95 60 FR 8209
Public Hearing Notice	10/10/95 60 FR 52640
Notice to Reschedule Public Hearing	04/09/96 61 FR 15743
Comment Period End	04/09/96
Public Hearing Notice	10/17/02 67 FR 64196
Second NPRM	10/17/02 67 FR 64196
Second NPRM Comment Period End	12/31/02
Final Rule	09/00/03

**Regulatory Flexibility Analysis**

**Required:** Yes

**Small Entities Affected:** Businesses

**Government Levels Affected:** Federal

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**RIN:** 1219-AA87

**1803. IMPROVING AND ELIMINATING REGULATIONS**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 30 USC 811; 30 USC 957

**CFR Citation:** 30 CFR 1 to 199

**Legal Deadline:** None

**Abstract:** This rulemaking will revise text in the CFR to reduce burden or duplication, and to streamline requirements. We have reviewed our current regulations and identified provisions that are outdated, redundant, unnecessary, or otherwise require change. We will be making these changes through notice and comment rulemaking where necessary. We will also consider new regulations that reflect "best practices" in the mining industry. We view this effort to be evolving and ongoing and will continue to accept recommendations from the public. We are considering the following issues for direct final and/or proposed rulemaking: updating the 1985 SAE seat belt standard to the current 1997 standard; addressing compliance burdens for small mines; reducing paperwork approval burden for sanitary toilet facilities; and allowing the use of spring-loaded locking devices on battery-powered machines, rather than padlocks.

**Timetable:**

Action	Date
NPRM: Phase 5 Methane Testing	09/26/02 67 FR 60611
NPRM Comment Period End	11/25/02
NPRM	01/22/03 68 FR 2941
Direct Final Rule: Phase 10-Spring	01/22/03 68 FR 2879
Notice of Withdrawal Direct Final Rule: Phase 10	03/07/03 68 FR 10965
NPRM: Phase 6 - Seatbelts	04/21/03 68 FR 19474
NPRM: Phase 9 - Sanitary	04/21/03 68 FR 19477
Direct Final Rule: Phase 6-Seat	04/21/03 68 FR 19344
Direct Final Rule: Phase 9-Sanitary	04/21/03 68 FR 19347
Final Rule: Phase 5 - Methane Testing	06/00/03
Final Rule: Phase 10 - Spring-Loaded Locks	07/00/03
Direct Final Rule: Phase 8-Small	09/00/03

**Regulatory Flexibility Analysis**

**Required:** Yes

## DOL—MSHA

## Final Rule Stage

**Small Entities Affected:** Businesses**Government Levels Affected:** None**Additional Information:** The following information should be added in the Timetable for**Agency Contact:** Marvin W. Nichols Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, Room 2352, 1100 Wilson Boulevard, Arlington, VA 22209

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**RIN:** 1219-AA98**1804. • EMERGENCY EVACUATION; EMERGENCY TEMPORARY STANDARD****Priority:** Other Significant**Legal Authority:** 30 USC 811**CFR Citation:** 30 CFR 75.1501; 30 CFR 75.1502**Legal Deadline:** None**Abstract:** The Mine Safety and Health Administration (MSHA) issued an Emergency Temporary Standard (ETS) under the Federal Mine Safety and Health Act of 1977 (Mine Act), section 101(b) in response to the grave danger that underground coal miners are exposed to during mine fires, explosions, and gas or water inundation emergencies. The recent deaths of 14 miners at two underground coal mines demonstrate the need for MSHA to address proper training and mine emergency evacuation procedures. Under the Mine Act, the ETS effective as of December 12, 2002, acts as a proposed rule. MSHA will conduct public hearings and accept written comments. The Mine Act requires that the Secretary promulgate a final rule no later than 9 months after publication of the ETS as provided for under section 101(b) of the Mine Act.**Timetable:**

Action	Date
NPRM	12/12/02 67 FR 76658
NPRM Comment Period End	01/13/03
Post Hearing Comment End	02/28/03
Final Rule	09/00/03

**Regulatory Flexibility Analysis Required:** No**Government Levels Affected:** None**Agency Contact:** Marvin W. Nichols, Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, VA 22209

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**RIN:** 1219-AB33

## Department of Labor (DOL)

## Completed Actions

## Mine Safety and Health Administration (MSHA)

**1805. CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES****Priority:** Info./Admin./Other**Legal Authority:** 30 USC 957; PL 104-134 Debt Collection Improvement Act of 1996.**CFR Citation:** 30 CFR 100**Legal Deadline:** None**Abstract:** This final rule will revise the Mine Safety and Health Administration's (MSHA) statutory penalties found in section 110 of the Mine Act and the specific penalty amounts established in 30 CFR Part 100 as mandated by the Debt Collection Improvement Act of 1996 (DCIA). The

DCIA required that civil penalties be increased by up to 10 percent within 6 months of its enactment. This was last accomplished by a final rule published in the Federal Register, 77 FR 20032, April 22, 1998. It also required subsequent increases at least once every 4 years using a formula based on the Consumer Price Index.

**Timetable:**

Action	Date
Direct Final Rule	02/10/03 68 FR 6609
Direct Final Rule Comment Period End	03/12/03
Direct Final Rule Effective	04/11/03

**Regulatory Flexibility Analysis Required:** No**Small Entities Affected:** Businesses**Government Levels Affected:** None**Agency Contact:** Marvin W. Nichols, Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, VA 22209

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**Related RIN:** Related To 1219-AB03**RIN:** 1219-AB32

## Department of Labor (DOL)

Proposed Rule Stage

## Office of the Assistant Secretary for Administration and Management (OASAM)

**1806. NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF LABOR****Priority:** Substantive, Nonsignificant**Legal Authority:** 42 USC 6101 et seq, Age Discrimination Act of 1975**CFR Citation:** 29 CFR 35**Legal Deadline:** NPRM, Judicial, September 10, 1979, Publication is required within 90 days of submission to HHS of final rule within 120 days of NPRM.**Abstract:** The proposed regulatory action implements the Age Discrimination Act of 1975 (the Act). The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Age Act also contains specific exceptions that permit the use of certain age distinctions and factors other than age that meet the Age Act's requirements. This NPRM will be the third republication of an NPRM published on June 10, 2002, with updates to reflect the passage of the Workforce Investment Act of 1998 and to add the term "program or activity" as it is defined in the Civil Rights Restoration Act of 1987. These changes do not alter the substance of the NPRM.**Timetable:**

Action	Date
NPRM	12/29/98 63 FR 71714
NPRM Comment Period End	03/01/99
Second NPRM	06/10/02 67 FR 39829
Second NPRM Comment Period End	08/09/02
Third NPRM	06/00/03
Third NPRM Comment Period End	08/00/03
Final Rule	12/00/03

**Regulatory Flexibility Analysis Required:** No**Government Levels Affected:** State, Local, Tribal**Agency Contact:** Annabelle T. Lockhart, Director, Civil Rights Center, Department of Labor, Office of the Assistant Secretary for Administration and Management, Room N4123, 200 Constitution Avenue NW, FP Building, Washington, DC 20210  
Phone: 202 693-6500  
TDD Phone: 202 693-6515  
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Email: civilrightscenter@dol.gov  
**RIN:** 1291-AA21**1807. DEPARTMENT OF LABOR ACQUISITION REGULATIONS****Priority:** Info./Admin./Other**Legal Authority:** 40 USC 486(C); 5 USC 301**CFR Citation:** 48 CFR 2900 to 2999**Legal Deadline:** None**Abstract:** The Department of Labor's Acquisition Regulations are being completely revised in order to reflect the significant changes made to the Federal Acquisition Regulation over the last 17 years, as well as organizational changes within DOL.**Timetable:**

Action	Date
NPRM	05/00/03
Direct Final Rule	07/00/03

**Regulatory Flexibility Analysis Required:** No**Small Entities Affected:** Businesses**Government Levels Affected:** None**Agency Contact:** Jeffrey D. Saylor, Management Services, Department of Labor, Office of the Assistant Secretary for Administration and Management, 200 Constitution Avenue NW., Room N5425, FP Building, Washington, DC 20210-0001  
Phone: 202 693-7282  
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Email: oasamregcomments@dol.gov**RIN:** 1291-AA34

## Department of Labor (DOL)

Final Rule Stage

## Office of the Assistant Secretary for Administration and Management (OASAM)

**1808. EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND IMPLEMENTATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973****Priority:** Substantive, Nonsignificant**Legal Authority:** 29 USC 794; 42 USC 2000(d)**CFR Citation:** 29 CFR 31; 29 CFR 32**Legal Deadline:** None**Abstract:** This proposal would incorporate into 29 CFR parts 31 and 32 the term "program or activity" and the definition of that term as it was defined in the Civil Rights Restoration Act of 1987. Part 31 effectuates title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in

programs or activities that receive financial assistance from the Department of Labor. Part 32 implements section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs or activities that receive financial assistance from the Department of Labor. The publication of this rule is being coordinated by the Department of Justice and will be published as part of a Governmentwide issuance.

**Timetable:**

Action	Date
NPRM	12/06/00 65 FR 76460
NPRM Comment Period End	01/05/01
Final Action	09/00/03
Final Action Effective	10/00/03

**Regulatory Flexibility Analysis Required:** No**Small Entities Affected:** No**Government Levels Affected:** State, Local, Tribal**Agency Contact:** Annabelle T. Lockhart, Director, Civil Rights Center, Department of Labor, Office of the Assistant Secretary for Administration and Management, Room N4123, 200 Constitution Avenue NW, FP Building, Washington, DC 20210  
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Fax: 202 693-6505  
Email: civilrightscenter@dol.gov**RIN:** 1291-AA31

## DOL—OASAM

## Final Rule Stage

**1809. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS) 29 CFR 98****Priority:** Substantive, Nonsignificant**Legal Authority:** 40 USC 486(c); 41 USC 701; 5 USC 301**CFR Citation:** 29 CFR 94; 29 CFR 98**Legal Deadline:** None

**Abstract:** This document proposed substantive changes and amendments to the Governmentwide nonprocurement common rule for debarment and suspension and the Governmentwide rule implementing the Drug-Free Workplace Act of 1988. The most significant changes are: (1) This proposed common rule on debarment and suspension would limit the mandatory lower tier application of an exclusion to the first procurement level under a nonprocurement covered transaction; (2) This proposed common rule on debarment and suspension

would set the dollar threshold on prohibited lower-tier procurement transactions with excluded persons at \$25,000; (3) Both this proposed rule on debarment and suspension and the proposed rule on drug-free workplace requirements would eliminate the mandate for agencies and participants to obtain written certifications from awardees or persons with whom they propose to enter into covered transactions. The proposed rules will allow agencies and participants the flexibility to use other means if they so choose, such as award conditions or electronic access to the GSA List on the Internet, to enforce compliance with the rules; and (4) The proposed rule on drug-free workplace requirements would be separated from this proposed rule on debarment and suspension. The drug-free workplace requirements currently are in subpart F of the debarment and suspension nonprocurement common rule.

**Timetable:**

Action	Date
NPRM	01/23/02 67 FR 3265
NPRM Comment Period End	03/25/02
Final Rule	06/00/03

**Regulatory Flexibility Analysis Required:** No**Small Entities Affected:** No**Government Levels Affected:** Undetermined**Additional Information:** Lead agencies are developing responses to the comments submitted**Agency Contact:** Jeffrey D. Saylor, Management Services, Department of Labor, Office of the Assistant Secretary for Administration and Management, 200 Constitution Avenue NW., Room N5425, FP Building, Washington, DC 20210-0001

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**RIN:** 1291-AA33

## Department of Labor (DOL)

## Long-Term Actions

## Office of the Assistant Secretary for Administration and Management (OASAM)

**1810. IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY REQUIREMENTS OF THE WORKFORCE INVESTMENT ACT OF 1998****Priority:** Substantive, Nonsignificant**Legal Authority:** 29 USC 2938 Workforce Investment Act**CFR Citation:** 29 CFR 37**Legal Deadline:** Final, Statutory, August 7, 1999.

**Abstract:** The Workforce Investment Act of 1998 (WIA) was signed into law by President Clinton on August 7, 1998. Section 188 prohibits discrimination by recipients of financial assistance under title I of WIA on the grounds of race, color, national origin, sex, age, disability, religion, political affiliation or belief, and for beneficiaries only, participant status, and against certain noncitizens. Section 188(e) requires that the Secretary of Labor issue regulations necessary to implement section 188 not later than one year after the date of the enactment of the WIA. Such regulations will include standards for determining compliance and procedures for enforcement that are

consistent with the acts referred to in section 188(a)(1), as well as procedures to ensure that complaints filed under section 188 and such acts are processed in a manner that avoids duplication of effort. The reauthorization of WIA is currently under consideration by the Congress. It may include amendments to the nondiscrimination provisions contained in section 188 that would directly impact these regulations. A final rule will be issued after congressional action on the reauthorization of WIA.

**Timetable:**

Action	Date
Interim Final Rule	11/12/99 64 FR 61692
Interim Final Rule Comment Period	12/13/99
Second Interim Final Rule	To Be Determined

**Regulatory Flexibility Analysis Required:** No**Government Levels Affected:** State, Local, Tribal**Agency Contact:** Annabelle T. Lockhart, Director, Civil Rights Center, Department of Labor, Office of the

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**RIN:** 1291-AA29**1811. GRANTS AND AGREEMENTS****Priority:** Other Significant**Legal Authority:** PL 105-277**CFR Citation:** 29 CFR 95**Legal Deadline:** None

**Abstract:** The Department is joining with other Federal agencies to establish revised regulations for grants. Congress included a two-sentence provision in OMB's appropriation for fiscal year 1999, contained in Public Law 105-277, directing OMB to revise section 95.36 of Circular A-110 "to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act." Circular



**DOL—OASAM**

**Long-Term Actions**

A-110 applies to grants and cooperative agreements with institutions of higher education, hospitals, and nonprofit institutions, from all Federal agencies. OMB finalized the revision on September 30, 1999 (64 FR 54926). This interim final rule amends the agencies' codification of Circular A-110 so they reflect OMB's recent action.

**Timetable:**

Action	Date
Interim Final Rule	03/16/00 65 FR 14405

Action	Date
Interim Final Rule Effective	04/17/00
Interim Final Rule Comment Period	05/15/00
Final Rule	To Be Determined

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Additional Information:** HHS is the lead agency and will coordinate the next action with

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**RIN:** 1291-AA30

**Department of Labor (DOL)**

**Completed Actions**

**Office of the Assistant Secretary for Administration and Management (OASAM)**

**1812. AUDITS OF STATES, LOCAL GOVERNMENTS, AND NONPROFIT ORGANIZATIONS**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 31 USC 7501 Single Audit Act Amendments of 1996; OMB Circular A-110; OMB Circular A-133

**CFR Citation:** 29 CFR 99

**Legal Deadline:** None

**Abstract:** Title 29 CFR part 99 created "Audits of States, Local Governments, and Non-Profit Organizations" as a new regulation which codifies the revised Office of Management and Budget (OMB) Circular A-133 in its entirety. The Single Audit Act Amendments of 1996 (Pub.L. 104-156, 110 Stat. 136) and the June 24, 1997, revision of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," required agencies to adopt in codified regulations the standards in the revised OMB Circular A-133 by August 29, 1997, so that they will apply to audits of fiscal years beginning after June 30, 1996. The revised OMB Circular A-133 co-located audit requirements for States, local governments, and nonprofit organizations. As a consequence, the OMB rescinded OMB Circular A-128, "Audits of States and Local Governments." On August 29, 1997, the Department of Labor amended its grants common rules at 29 CFR 95 and 29 CFR 97 in accordance with OMB guidance.

**Timetable:**

Action	Date
Interim Final Rule	03/25/99 64 FR 14537
Interim Final Rule Effective	03/25/99
Interim Final Rule Comment Period	05/24/99 64 FR 14537
Final Rule	04/02/03 68 FR 16162
Final Rule Effective	05/02/03

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** Governmental Jurisdictions, Organizations

**Government Levels Affected:** State, Local

**Agency Contact:** Jeffrey Saylor, Management Services, Department of Labor, Office of the Assistant Secretary for Administration and Management, 200 Constitution Avenue NW, N5425, FP Building, Washington, DC 20210  
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**RIN:** 1291-AA26

**1813. AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS, AND OTHER AGREEMENTS**

**Priority:** Info./Admin./Other

**Legal Authority:** 31 USC 7500 et seq; OMB Circular A-133

**CFR Citation:** 29 CFR 96

**Legal Deadline:** None

**Abstract:** This rule revises title 29 of the Code of Federal Regulations (CFR) part 96 "Audit Requirements for Grants, Contracts, and Other Agreements" to update references to the revised Office of Management and Budget (OMB) Circular A-133, which is simultaneously codified in 29 CFR part 99 and to consolidate various other provisions to ensure consistency and continuity.

**Timetable:**

Action	Date
Interim Final Rule	03/25/99 64 FR 14537
Interim Final Rule Effective	03/25/99
Interim Final Rule Comment Period	05/24/99 64 FR 14537
Final Rule	04/02/03 68 FR 16162
Final Rule Effective	05/02/03

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** State, Local

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**RIN:** 1291-AA27

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

Prerule Stage

**1814. OCCUPATIONAL EXPOSURE TO HEXAVALENT CHROMIUM (PREVENTING OCCUPATIONAL ILLNESS: CHROMIUM)**

**Priority:** Economically Significant. Major under 5 USC 801.

**Legal Authority:** 29 USC 655(b); 29 USC 657

**CFR Citation:** 29 CFR 1910

**Legal Deadline:** None

**Abstract:** In July 1993, the Occupational Safety and Health Administration (OSHA) was petitioned for an emergency temporary standard (ETS) to reduce the permissible exposure limit (PEL) for occupational exposures to hexavalent chromium CrVI. The Oil, Chemical, and Atomic Workers International Union (OCAW) and Public Citizen's Health Research Group (HRG) petitioned OSHA to promulgate an ETS to lower the PEL for CrVI compounds to 0.5 micrograms per cubic meter of air (ug/m3) as an eight-hour, time-weighted average (TWA). The current PEL in general industry is a ceiling value of 100 ug/m3, measured as CrVI and reported as chromic anhydride (CrO3). The amount of CrVI in the anhydride compound equates to a PEL of 52 ug/m3. This ceiling limit applies to all forms of CrVI, including chromic acid and chromates, lead chromate, and zinc chromate. The current PEL for CrVI in the construction industry is 100 ug/m3 as a TWA PEL, which also equates to a PEL of 52 ug/m3. After reviewing the petition, OSHA denied the request for an ETS and initiated a section 6(b)(5) rulemaking.

OSHA began collecting data and performing preliminary analyses relevant to occupational exposure to CrVI. However, in 1997, OSHA was sued by HRG for unreasonable delay in issuing a final CrVI standard. The 3rd Circuit, U.S. Court of Appeals ruled in OSHA's favor and the Agency continued its data collection and analytic efforts on CrVI. In 2002, OSHA was sued again by HRG for continued unreasonable delay in issuing a final CrVI standard. In August, 2002 OSHA published a Request for Information on CrVI to solicit additional information on key issues related to controlling exposures to CrVI and on December 4, 2002 OSHA announced its intent to proceed with developing a proposed standard. On December 24, 2002, the 3rd Circuit, U.S. Court of Appeals ruled

in favor of HRG and ordered the Agency to proceed expeditiously with a CrVI standard.

The major illnesses associated with occupational exposure to CrVI are lung cancer and dermatoses. OSHA estimates that approximately one million workers are exposed to CrVI on a regular basis in all industries. The major uses of CrVI are: as a structural and anti-corrosive element in the production of stainless steel, ferrochromium, iron and steel, and in electroplating, welding and painting.

**Timetable:**

Action	Date
Request for Information	08/22/02 67 FR 54389
Comment Period End	11/20/02
Initiate SBREFA Process	01/00/04

**Regulatory Flexibility Analysis Required:** Yes

**Small Entities Affected:** Businesses

**Government Levels Affected:** Undetermined

**Agency Contact:** Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N-3718, FP Building, Washington, DC 20210  
 Phone: 202 693-1950  
 Fax: 202 693-1678

**RIN:** 1218-AB45

**1815. CONFINED SPACES IN CONSTRUCTION (PART 1926): PREVENTING SUFFOCATION/EXPLOSIONS IN CONFINED SPACES**

**Priority:** Economically Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:** Undetermined

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

**CFR Citation:** 29 CFR 1926.36

**Legal Deadline:** None

**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. OSHA intends to issue a proposed rule addressing this construction industry hazard next year.

**Timetable:**

Action	Date
SBREFA Panel Report	09/00/03

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** Undetermined

**Agency Contact:** Russell B. Swanson, Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, Room N3468, 200 Constitution Avenue NW, FP Building, Washington, DC 20210

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**RIN:** 1218-AB47

**1816. OCCUPATIONAL EXPOSURE TO ETHYLENE OXIDE (SECTION 610 REVIEW)**

**Priority:** Other Significant

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

**CFR Citation:** 29 CFR 1910.1047

**Legal Deadline:** None

**Abstract:** OSHA has undertaken a review of the ethylene oxide (ETO) standard in accordance with the requirements of the Regulatory Flexibility Act and section 5 of EO 12866. The review has considered the continued need for the rule, the impacts of the rule, comments on the rule received from the public, the complexity of 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 last evaluated. The Agency's findings with respect to this review will be published in a report available to the public in 2003.

**Timetable:**

Action	Date
Begin Review	10/01/96
End Review	12/00/03

## DOL—OSHA

## Prerule Stage

**Regulatory Flexibility Analysis****Required:** No**Government Levels Affected:** None

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 Phone: 202 693-2043  
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 Email: john.martonik@osha.gov

**RIN:** 1218-AB60
**1817. ELECTRIC POWER TRANSMISSION AND DISTRIBUTION; ELECTRICAL PROTECTIVE EQUIPMENT**
**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.**Unfunded Mandates:** Undetermined**Legal Authority:** 29 USC 655(b); 40 USC 333**CFR Citation:** 29 CFR 1910.136; 29 CFR 1910.137; 29 CFR 1910.269; 29 CFR 1926 subpart V; 29 CFR 1926.97**Legal Deadline:** None

**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 30 years old. OSHA is developing 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 will also address fall protection in aerial lifts for power generation, transmission and distribution work. The proposed rule is currently in the SBREFA process.

**Timetable:**

Action	Date
SBREFA Report	07/00/03

**Regulatory Flexibility Analysis****Required:** Yes**Small Entities Affected:** Businesses**Government Levels Affected:** Undetermined

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**RIN:** 1218-AB67
**1818. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA**
**Priority:** Economically Significant. Major under 5 USC 801.**Unfunded Mandates:** Undetermined**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 a 50ug/m3 exposure limit 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 of Testing Materials (ASTM) recently published a final recommended standard to address 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.

In developing a proposed standard, OSHA is currently considering several options ranging from proposing comprehensive standards simultaneously for general industry, construction, and maritime, to focusing the proposal on one or more specific issues, such as modernizing the construction and maritime PELs or standardizing sampling and employee exposures. OSHA is continuing to coordinate closely with the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) in collecting and developing information for a proposed standard.

**Statement of Need:** Over 2 million 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 operation, 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. 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

## DOL—OSHA

## Prerule Stage

tuberculosis and other nonmalignant, 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 recently 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, 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 rulemaking 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 nonregulatory 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. OSHA has determined that rulemaking is a necessary step to ensure that

workers are protected from the hazards of crystalline silica. The Agency is currently evaluating several options for the scope of the rulemaking.

**Anticipated Cost and Benefits:** The scope of the proposed rulemaking is still under development, and estimates of the costs and benefits have not yet been developed.

**Risks:** A detailed risk analysis has not yet been completed for this rule.

**Timetable:**

Action	Date
Initiate SBREFA Process	06/00/03

**Regulatory Flexibility Analysis Required:** Yes

**Small Entities Affected:** Businesses

**Government Levels Affected:** Undetermined

**Agency Contact:** Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N-3718, FP Building, Washington, DC 20210  
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**RIN:** 1218-AB70

**1819. • IONIZING RADIATION**

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 655(b)

**CFR Citation:** 29 CFR 1910.109

**Legal Deadline:** None

**Abstract:** OSHA is considering amending 29 CFR 1910.1096 that addresses exposure to ionizing radiation. The OSHA regulations were published in 1974, with only minor revisions since that time. The Department of Energy and the Nuclear Regulatory Commission both have more extensive radiation standards that reflect new technological and safety advances. In addition, radiation is now used for a broader variety of purposes, including health care, food safety, mail processing, and baggage screening. OSHA is in the process of reviewing information about the issue, and will determine the appropriate course of action regarding this standard when the review is completed.

**Timetable:**

Action	Date
Request for Information (RFI)	10/00/03

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** Undetermined

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**RIN:** 1218-AC11

## Department of Labor (DOL)

## Occupational Safety and Health Administration (OSHA)

## Proposed Rule Stage

**1820. ASSIGNED PROTECTION FACTORS: AMENDMENTS TO THE FINAL RULE ON RESPIRATORY PROTECTION**

**Priority:** Other Significant

**Legal Authority:** 29 USC 655(b); 29 USC 657

**CFR Citation:** 29 CFR 1910.134

**Legal Deadline:** None

**Abstract:** In January 1998, OSHA published the final Respiratory Protection standard (29 CFR 1910.134), except for reserved provisions on assigned protection factors (APFs) and

maximum use concentrations (MUCs). APFs are numbers that describe the effectiveness of the various classes of respirators in reducing employee exposure to airborne contaminants (including particulates, gases, vapors, biological agents, etc.). Employers, employees, and safety and health professionals use APFs to determine the type of respirator to protect the health of employees in various hazardous environments. Maximum use concentrations establish the maximum airborne concentration of a contaminant in which a respirator with a given APF may be used.

Currently, OSHA relies on the APFs developed by NIOSH in the 1980s unless OSHA has assigned a different APF in a substance-specific health standard. However, many employers follow the more recent APFs published in the industry consensus standard, ANSI Z88.2-1992. For some classes of respirators, the NIOSH and ANSI APFs vary greatly.

When OSHA published the final Respiratory Protection standard in 1998, it reserved for later rulemaking those provisions of the standard dealing with APFs and MUCs. This rulemaking

DOL—OSHA

Proposed Rule Stage

action will complete the 1998 standard, reduce compliance confusion among employers, and provide employees with consistent and appropriate respiratory protection.

**Statement of Need:** About 5 million employees wear respirators as part of their regular job duties. Due to inconsistencies between the APFs found in the current industry consensus standard (ANSI Z88.2-1992) and in the NIOSH Respirator Decision Logic, employers, employees, and safety and health professionals are often uncertain about what respirator to select to provide protection against hazardous air contaminants. Several industry and professional groups have asked OSHA to proceed with this rulemaking to resolve these inconsistencies and provide reliable protection of employees' health in cases where respirators must be worn.

**Summary of Legal Basis:** The legal basis for this proposed rule is the determination that assigned protection factors and maximum use concentrations are necessary to complete the final Respiratory Protection standard and provide the full protection of that standard.

**Alternatives:** OSHA has considered allowing the current situation to continue, in which OSHA generally enforces NIOSH APFs but many employers follow the more recent consensus standard APFs. However, allowing the continuation of this situation results in inconsistent enforcement, lack of guidance for employers, and the potential for inadequate employee protection.

**Anticipated Cost and Benefits:** Estimates of the costs and benefits have been completed and will be provided when the NPRM is published.

**Risks:** The preamble to the final Respiratory Protection rule (63 FR 1270, Jan. 8, 1998) discusses the significance of the risks potentially associated with the use of respiratory protection. No independent finding of significant risk will be made for the APF rulemaking, since it only addresses a single provision of the larger rule.

**Timetable:**

Action	Date
ANPRM	05/14/82 47 FR 20803
ANPRM Comment Period End	09/13/82

Action	Date
NPRM	11/15/94 59 FR 58884
Final Rule	01/08/98 63 FR 1152
Final Rule Effective NPRM	04/08/98 05/00/03

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** State, Local, Tribal, Federal

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**RIN:** 1218-AA05

**1821. LONGSHORING AND MARINE TERMINALS (PARTS 1917 AND 1918) — REOPENING OF THE RECORD (VERTICAL TANDEM LIFTS (VTLS))**

**Priority:** Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 29 USC 655(b); 33 USC 941

**CFR Citation:** 29 CFR 1918.11; 29 CFR 1918.85

**Legal Deadline:** None

**Abstract:** OSHA issued a final rule on Longshoring on July 25, 1997 (62 FR 40142). However, in that rule, the Agency reserved provisions related to vertical tandem lifts. Vertical tandem lifts (VTLs) involve the lifting of two or more empty intermodal containers, secured together with twist locks, at the same time. OSHA has continued to work with national and international organizations to gather additional information on the safety of VTLs. The Agency is preparing an NPRM to address safety issues related to VTLs.

**Timetable:**

Action	Date
NPRM	06/06/94 59 FR 28594
NPRM Comment Period End	09/23/94
Final Rule on Longshoring/Marine	07/25/97 62 FR 40142
Public Meeting on VTLs - 1/27/1998	10/09/97 62 FR 52671
Second NPRM	06/00/03

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

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**RIN:** 1218-AA56

**1822. GENERAL WORKING CONDITIONS FOR SHIPYARD EMPLOYMENT**

**Priority:** Substantive, Nonsignificant

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 655(b); 33 USC 941

**CFR Citation:** 29 CFR 1915 subpart F

**Legal Deadline:** None

**Abstract:** During the 1980s, OSHA initiated a project to update and consolidate the various OSHA shipyard standards that were applied in the shipbuilding, ship repair, and shipbreaking industries. Publication of a proposal addressing general working conditions in shipyards is part of this project. The operations addressed in this rulemaking relate to general working conditions such as housekeeping, illumination, sanitation, first aid, and lockout/tagout. About 100,000 workers are potentially exposed to these hazards annually.

**Timetable:**

Action	Date
NPRM	07/00/03

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** None

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**RIN:** 1218-AB50

## DOL—OSHA

## Proposed Rule Stage

**1823. WALKING WORKING SURFACES AND PERSONAL FALL PROTECTION SYSTEMS (1910) (SLIPS, TRIPS, AND FALL PREVENTION)**

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 655 (b)

**CFR Citation:** 29 CFR 1910 subparts D and I

**Legal Deadline:** None

**Abstract:** In 1990, OSHA proposed a rule (55 FR 13360) addressing slip, trip, and fall hazards and establishing requirements for personal fall protection systems. Since that time, new technologies and procedures have become available to protect employees from these hazards. The Agency has been working to update these rules to reflect current technology. OSHA is publishing a notice to re-open the rulemaking for comment on a number of issues raised in the record for the NPRM, or related to technological advances. OSHA is updating its regulatory analysis as well.

**Timetable:**

Action	Date	
NPRM	04/10/90	55 FR 13360
NPRM Comment Period End	08/22/90	
Hearing	09/11/90	55 FR 29224
Reopening of Record	05/00/03	
Comment Period End	08/00/03	

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Government Levels Affected:** None

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**RIN:** 1218-AB80

**1824. STANDARDS IMPROVEMENT (MISCELLANEOUS CHANGES) FOR GENERAL INDUSTRY, MARINE TERMINALS, AND CONSTRUCTION STANDARDS (PHASE II)**

**Priority:** Other Significant

**Legal Authority:** 29 USC 655(b)

**CFR Citation:** 29 CFR 1910, subpart Z; 29 CFR 1910.1001 to 1910.1052; 29 CFR 1910.142; 29 CFR 1910.178; 29 CFR 1910.219; 29 CFR 1910.261; 29 CFR 1910.265; 29 CFR 1910.410; 29 CFR 1917.92; 29 CFR 1926.1101; 29 CFR 1926.1127; 29 CFR 1926.1129; 29 CFR 1926.60; 29 CFR 1926.62

**Legal Deadline:** None

**Abstract:** The Occupational Safety and Health Administration (OSHA) is proposing to remove or revise provisions in its health standards that are out of date, duplicative, unnecessary, or inconsistent. The Agency is proposing these changes to reduce the burden imposed on the regulated community by these requirements. In this document, substantive changes are proposed for standards that will revise or eliminate duplicative, inconsistent, or unnecessary regulatory requirements without diminishing employee protections. Phase I of this Standards Improvement process was completed in June 1998 (63 FR 33450). OSHA plans to initiate Phase III of this project at a future date to address problems in various safety and health standards.

**Statement of Need:** Some of OSHA's standards are out of date, duplicative, unnecessary, or inconsistent. The Agency needs to periodically review its standards and make needed corrections. This effort results in standards that are easier for employers and employees to follow and comply with, and thus enhances compliance and worker protection.

**Summary of Legal Basis:** The legal basis for the proposed rule is a preliminary finding that the OSHA standards need to be updated to bring them up to date, reduce inconsistency, and remove unneeded provisions.

**Alternatives:** OSHA has considered updating each standard as problems are discovered, but has determined that it is better to make such changes to groups of standards so it is easier for the public to comment on like standards. OSHA has also considered the inclusion of safety standards that need to be updated. However, the Agency has decided to pursue a separate rulemaking for safety issues because the standards to be updated are of interest to different stakeholders.

**Anticipated Cost and Benefits:** This revision of OSHA's standards is a

deregulatory action. It will reduce employers' compliance obligations.

**Risks:** The project does not address specific risks, but is intended to improve OSHA's standards by bringing them up to date and deleting unneeded provisions. The anticipated changes will have no negative effects on worker safety and health.

**Timetable:**

Action	Date	
NPRM	10/31/02	67 FR 66493
NPRM Comment Period End	12/20/02	
NPRM Comment Period Extended	01/08/03	68 FR 1023
Second NPRM Comment Period End	01/30/03	
Public Hearing	07/00/03	

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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**RIN:** 1218-AB81

**1825. REVISION AND UPDATE OF SUBPART S—ELECTRICAL STANDARDS**

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 29 USC 655(b)

**CFR Citation:** 29 CFR 1910 subpart S

**Legal Deadline:** None

**Abstract:** The Occupational Safety and Health Administration (OSHA) is planning to revise and update its 29 CFR 1910 subpart S-Electrical Standards. OSHA will rely heavily on the 2000 edition of the National Fire Protection Association's (NFPA's) 70 E standard for Electrical Safety Requirements for Employee Workplaces. This revision will provide the first update of General Industry-Electrical Standard since it was originally published in 1981. OSHA intends to complete this project in several stages. The first stage will cover design safety standards for electrical

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## Proposed Rule Stage

systems, while the second stage will cover safety-related maintenance and work practice requirements and safety requirements for special equipment. It will thus allow the latest technological developments to be considered. Several of these state-of-the-art safety developments will be addressed by OSHA for the first time.

**Timetable:**

Action	Date
NPRM	05/00/03
NPRM Comment Period End	07/00/03

**Regulatory Flexibility Analysis Required:** No**Government Levels Affected:** None

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**RIN:** 1218-AB95

**1826. CONTROLLED NEGATIVE PRESSURE FIT TESTING PROTOCOL: AMENDMENT TO THE FINAL RULE ON RESPIRATORY PROTECTION**

**Priority:** Info./Admin./Other

**Legal Authority:** 29 USC 655(b); 29 USC 657

**CFR Citation:** 29 CFR 1910.134

**Legal Deadline:** None

**Abstract:** In January 1998, OSHA published the final Respiratory Protection standard (29 CFR 1910.134). In the final revised respirator standard, OSHA set up a mechanism for OSHA's acceptance of new fit test protocols under Mandatory Appendix A. Any person may submit to OSHA an application for approval of a new fit test protocol, and if the application meets certain criteria, OSHA will initiate a rulemaking proceeding under 6(b)(7) of the OSH Act to determine whether to list the new protocol as an approved fit test protocol in Appendix A. OSHA has been petitioned to allow the use of a modified Controlled Negative Pressure (CNP) fit test protocol.

Employers, employees, and safety and health professionals use fit testing to select respirators. Currently OSHA

relies on fit testing methods specified in Appendix A of the final revised Respiratory Protection standard.

When OSHA published the final Respiratory Protection standard in 1998, it allowed for later rulemaking on new fit test methods. This rulemaking action will allow for the incorporation of new fit test methods into 1910.134.

**Timetable:**

Action	Date
NPRM	05/00/03
NPRM Comment Period End	08/00/03

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** State, Local, Tribal, Federal

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**RIN:** 1218-AC05

## Department of Labor (DOL)

## Occupational Safety and Health Administration (OSHA)

## Final Rule Stage

**1827. OCCUPATIONAL EXPOSURE TO TUBERCULOSIS**

**Priority:** Economically Significant. Major under 5 USC 801.

**Legal Authority:** 29 USC 655(b)

**CFR Citation:** 29 CFR 1910.1035

**Legal Deadline:** None

**Abstract:** In 1993, the Labor Coalition to Fight TB in the Workplace petitioned the Occupational Safety and Health Administration (OSHA) to develop an occupational health standard to protect workers who care for or oversee patients or others with active tuberculosis (TB) against the transmission of TB. After reviewing the available information, OSHA preliminarily concluded that a significant risk of occupational transmission of TB exists for some workers in some work settings and began rulemaking on a proposed standard. Examples of workers at risk of contracting TB as a result of their

work are health care workers, detention facility personnel, and homeless shelter employees. On October 17, 1997, OSHA published its proposed standard for occupational exposure to TB (62 FR 54160). The proposed standard would require employers to protect TB-exposed workers using infection control measures that have been shown to be highly effective in reducing or eliminating work-related TB infections. Such measures include procedures for the early identification of individuals with infectious TB, isolation of individuals with infectious TB using appropriate ventilation, use of respiratory protection in certain situations, and skin testing and training of employees.

After the close of the written comment period for the proposed standard, informal public hearings were held in Washington, DC, Los Angeles, CA, New York City, NY, and Chicago, IL. The post-hearing comment period closed on

October 5, 1998. On June 17, 1999, OSHA reopened the rulemaking record for 90 days to submit the Agency's report on homeless shelters and certain other documents that became available to the Agency after the close of the post-hearing comment period. During this limited reopening of the rulemaking record, OSHA also requested interested parties to submit comments and data on the Agency's preliminary risk assessment in order to obtain the best, most recent data for providing the most accurate estimates of the occupational risk of tuberculosis. OSHA has now decided to withdraw the TB rulemaking.

At the request of Congress, the Institute of Medicine of the National Academy of Sciences (IOM) conducted a study of OSHA's proposal and the need for a TB standard. That study was completed in January 2001, and concluded that OSHA should move forward with a standard modeled after

## DOL—OSHA

## Final Rule Stage

the CDC guidelines and tailored to the extent of TB risk present in the community. The IOM study concluded that an OSHA standard was needed to maintain national TB rates among health care and other employees at their current levels and to prevent future outbreaks of multidrug resistant and other forms of TB among these workers. OSHA reopened the record to obtain comment on the IOM study, the draft final risk assessment and the peer reviewers' comment on the risk assessment. The Agency has decided to withdraw the proposal.

**Timetable:**

Action	Date
SBREFA Panel	09/10/96
NPRM	10/17/97 62 FR 54160
NPRM Comment Period End	02/17/98 62 FR 65388
Post Hearing Comment End	10/05/98
Record Reopening	06/17/99 64 FR 32447
Second Reopening Comment Period End	06/28/99 64 FR 34625
Reopening Comment Period End	08/02/99
Third Reopening Comment Period	01/24/02 67 FR 3465
Extension of Comment Period of	03/05/02 67 FR 9934
Reopening Comment Period End	03/25/02
Comment Period End	05/24/02
To Be Withdrawn	09/00/03

**Regulatory Flexibility Analysis**

**Required:** Yes

**Small Entities Affected:** Businesses, Governmental Jurisdictions, Organizations

**Government Levels Affected:** State, Local, Tribal, Federal

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

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**RIN:** 1218-AB46

**1828. FIRE PROTECTION IN SHIPYARD EMPLOYMENT (PART 1915, SUBPART P) (SHIPYARDS: FIRE SAFETY)**

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 655

**CFR Citation:** 29 CFR 1915, subpart P

**Legal Deadline:** None

**Abstract:** The rule will update and revise an important but outdated part of OSHA's shipyard rules. The original rule was adopted by OSHA in 1971 and has remained unchanged since then. A negotiated rulemaking committee was convened on October 15, 1996. Members of the committee included: OSHA, State government, Federal agency, small and large shipyard employers, and maritime and firefighter union representatives. The committee completed work in February 2002, and recommended proposal requirements to OSHA. The Agency has published an NPRM based on their recommendations.

**Statement of Need:** Fires in the shipyard environment may cause death and serious injuries in this 100,000-employee workforce. Updating OSHA's outdated shipyard requirements for fire extinguishers, sprinkler systems, detection systems, alarm systems, and fire brigades will facilitate compliance by employers and employees and reduce these fire-related injuries and fatalities.

**Summary of Legal Basis:** The legal basis for this proposed rule is a preliminary determination that an unacceptable risk of fire-related injuries and fatalities exists in the shipyard industry.

**Alternatives:** OSHA has considered but rejected the alternative of allowing the existing rule to remain in place, because the Agency believes that doing so would contribute to the unacceptable number of fire-related accidents occurring in shipyards every year.

**Anticipated Cost and Benefits:** The Agency has estimated annual costs of the NPRM to be \$4.3 million, and that there will be cost savings of \$6.2 million, in addition to avoiding fatalities and injuries.

**Risks:** The Agency has estimated that compliance with the NPRM would

avoid one fatality and 110 lost workday injuries annually.

**Timetable:**

Action	Date
NPRM	12/11/02 67 FR 76213
Comment Period End	03/11/03
Final Rule	12/00/03

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** Undetermined

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**RIN:** 1218-AB51

**1829. COMMERCIAL DIVING OPERATIONS: REVISION**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 29 USC 655(b)

**CFR Citation:** 29 CFR 1910.423; 29 CFR 1910.426

**Legal Deadline:** None

**Abstract:** OSHA's Commercial Diving Operations standard (29 CFR 1910.401 to 1910.441) was published in 1977. In the intervening years, major changes in the technology of diving systems and equipment have occurred. In December 1999, OSHA granted a permanent variance to Dixie Divers, Inc., permitting recreational diving instructors employed by that company to comply with the provisions of the variance rather than with paragraphs (b)(2) and (c)(3)(iii) of 1910.423 and paragraph (b)(1) of 1910.426. Since OSHA granted the variance, other employers of recreational diving instructors have asked OSHA to clarify the applicability of the variance to their operations. OSHA published a notice of proposed rulemaking to amend the commercial diving operations standard to reflect the alternative specified in the permanent variance granted to Dixie Divers, Inc.

**Timetable:**

Action	Date
NPRM	01/10/03 68 FR 1399



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Action	Date
Comment Period End	04/10/03
Final Rule	09/00/03

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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**RIN:** 1218-AB97

**1830. PRESENCE SENSING DEVICE INITIATION OF MECHANICAL POWER PRESSES (SECTION 610 REVIEW)**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 29 USC 651 et seq; 5 USC 610

**CFR Citation:** 29 CFR 1910.217(h), app A,B,C

**Legal Deadline:** None

**Abstract:** OSHA will undertake a review of the Agency's Presence Sensing Device Initiation of Mechanical Power Presses rule (29 CFR 1910.217) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider among other things, the need for the rule, the impacts of the rule, public comments on the rule, the complexity of the rule, and whether the rule overlaps, duplicates, or conflicts with other regulations.

**Timetable:**

Action	Date
Begin Review	12/01/01
Request for Comments	08/28/02 67 FR 55181
Comment Period End	01/27/03
End Review	03/00/04

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** Undetermined

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**RIN:** 1218-AC03

**1831. OCCUPATIONAL INJURY AND ILLNESS RECORDING AND REPORTING REQUIREMENTS**

**Priority:** Other Significant

**Legal Authority:** 29 USC 553; 29 USC 657

**CFR Citation:** 29 CFR 1904.10; 29 CFR 1904.12; 29 CFR 1904.29(b)(7)(vi)

**Legal Deadline:** None

**Abstract:** The Occupational Safety and Health Administration (OSHA) issued a final rule on Occupational Injury and Illness Recording and Reporting Requirements (66 FR 5916, January 19, 2001), scheduled to become effective on January 1, 2002. Following a thorough regulatory review, the Agency determined that all but two provisions of the final rule, regarding the recording of occupational hearing (1904.10) and musculoskeletal disorders (MSDs) (1904.12), would take effect as scheduled (66 FR 35113, July 3, 2001). Following notice and comment, OSHA published a final rule delaying the effective dates for sections 1904.10, 1910.12 and a note to 1904.29(b)(7)(vi) until January 1, 2003. The same final rule provided interim guidance on recording hearing loss and MSD cases during 2002 (66 FR 52031, October 12, 2001).

OSHA issued a final 1904.10 regulation setting recording criteria for occupational hearing loss (67 FR 44037, July 1, 2002), and simultaneously issued a proposal to delay the requirements for checking a separate hearing loss column on the 300 Log, as well as an additional one-year delay for the 1904.12 MSD requirements (67 FR 44124, July 1, 2002). The final rule on hearing loss and delay of the effective date was published in December of 2002. OSHA is continuing to reconsider the 300 Log column for MSDs, and for defining "musculoskeletal disorders" for recordkeeping purposes. OSHA will issue a final rule to deal with these injury and illness recording issues for the years 2004 and beyond.

**Timetable:**

Action	Date
NPRM	07/03/01 66 FR 35113

Action	Date
NPRM Comment Period End	09/04/01

Final Rule	10/12/01 66 FR 52031
NPRM	07/01/02 67 FR 44124
Final Rule	07/01/02 67 FR 44037
NPRM Comment Period End	08/30/02
Final Rule	12/17/02 67 FR 77165
Final Rule	06/00/03

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** State

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**RIN:** 1218-AC06

**1832. • PROCEDURES FOR HANDLING DISCRIMINATION COMPLAINTS UNDER SECTION 806 OF THE CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY ACT OF 2002**

**Priority:** Info./Admin./Other

**Unfunded Mandates:** Undetermined

**Legal Authority:** 18 USC 1514A

**CFR Citation:** 29 CFR 1980

**Legal Deadline:** None

**Abstract:** The Sarbanes Oxley Act of 2002, Public Law 107-204 was enacted July 30, 2002. Among other provisions, title VIII, entitled the Corporate and Criminal Fraud Accountability Act of 2002, provides protection for employees of publicly traded companies who provide evidence of fraud to any Federal law enforcement agency, members of Congress, or a person with supervisory authority over the employee. This rule establishes procedures and time frames for the handling of complaints under the Act.

**Timetable:**

Action	Date
Interim Final Rule	05/00/03

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

## DOL—OSHA

## Final Rule Stage

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**RIN:** 1218-AC10

## Department of Labor (DOL)

## Long-Term Actions

## Occupational Safety and Health Administration (OSHA)

### 1833. GLYCOL ETHERS: 2-METHOXYETHANOL, 2-ETHOXYETHANOL, AND THEIR ACETATES: PROTECTING REPRODUCTIVE HEALTH

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 651; 29 USC 655; 29 USC 657

**CFR Citation:** 29 CFR 1910.1000; 29 CFR 1910.1031

**Legal Deadline:** None

**Abstract:** OSHA published an advance notice of proposed rulemaking (ANPRM) on April 2, 1987 (52 FR 10586). OSHA used the information received in response to the ANPRM, as well as other information and analysis, and published a proposal on March 23, 1993 (58 FR 15526), that would reduce the permissible exposure limits for four glycol ethers and provide protection for approximately 46,000 workers exposed to these substances. OSHA re-opened the record to collect updated information to help determine what action should be taken.

OSHA is planning to withdraw this regulation in September 2004.

**Timetable:**

Action	Date
ANPRM	04/02/87 52 FR 10586
ANPRM Comment Period End	07/31/87
NPRM	03/23/93 58 FR 15526
NPRM Comment Period End	06/07/93
Reopen Record	08/08/02 67 FR 51524
Comment Period End	11/06/02
To Be Withdrawn	09/00/04

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Government Levels Affected:**

Undetermined

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**RIN:** 1218-AA84

### 1834. OCCUPATIONAL EXPOSURE TO BERYLLIUM

**Priority:** Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 655(b); 29 USC 657

**CFR Citation:** 29 CFR 1910

**Legal Deadline:** None

**Abstract:** In 1999 and 2001, OSHA was petitioned to issue an emergency temporary standard by 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 efforts 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 work sites to assess current exposures and control methods being used to reduce employee exposures to beryllium. OSHA will use this information to assist the Agency in determining an appropriate course of action regarding occupational exposure to beryllium. While the Agency continues to review the information, it appears that the SBREFA process could be initiated by September 2004.

**Timetable:**

Action	Date
Request for Information	11/26/02 67 FR 70707
Initiate SBREFA Process	09/00/04

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Government Levels Affected:**

Undetermined

**Agency Contact:** Steven F. Witt,  
Director, Directorate of Standards and  
Guidance, Department of Labor,  
Occupational Safety and Health  
Administration, 200 Constitution  
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**RIN:** 1218-AB76

### 1835. EMPLOYER PAYMENT FOR PERSONAL PROTECTIVE EQUIPMENT

**Priority:** Other Significant

**Legal Authority:** 29 USC 655(b); 29 USC 657; 33 USC 941; 40 USC 333

**CFR Citation:** 29 CFR 1910.132; 29 CFR 1915.152; 29 CFR 1917.96; 29 CFR 1918.106; 29 CFR 1926.95

**Legal Deadline:** None

**Abstract:** Generally, OSHA standards require that protective equipment (including personal protective equipment (PPE)) be provided and used when necessary to protect employees from hazards that can cause them injury, illness, or physical harm. In this discussion, OSHA uses the abbreviation "PPE" to cover both personal protective equipment and other protective equipment. The Agency continues to consider how to address this issue.

**Timetable:**

Action	Date
NPRM	03/30/99 64 FR 15401
NPRM Comment Period End	06/14/99
Informal Public Hearing End	08/13/99
Next Action	Undetermined

DOL—OSHA

Long-Term Actions

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** State, Local, Federal

**Agency Contact:** Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N-3718, FP Building, Washington, DC 20210  
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Fax: 202 693-1678

**RIN:** 1218-AB77

**1836. HEARING CONSERVATION PROGRAM FOR CONSTRUCTION WORKERS**

**Priority:** Economically Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:** Undetermined

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

**CFR Citation:** 29 CFR 1926.52

**Legal Deadline:** None

**Abstract:** OSHA issued a section 6(b)(5) health standard mandating a comprehensive hearing conservation program for noise-exposed workers in general industry in 1983. However, no rule was promulgated to cover workers in the construction industry. A number of recent studies have shown that many construction workers experience work-related hearing loss. In addition, the use of engineering, administrative and personal protective equipment to reduce exposures to noise is not extensive in this industry. OSHA published an advance notice of proposed rulemaking to gather information on the extent of noise-induced hearing loss among workers in different trades in this industry, current practices to reduce this loss, and additional approaches and protections that could be used to prevent such loss in the future. The Agency is reviewing the comments received and other information to determine the appropriate course of action, but expects that an NPRM could be published in September 2004.

**Timetable:**

Action	Date
ANPRM	08/05/02 67 FR 50610

Action	Date
Comment Period End	11/04/02
NPRM	09/00/04

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** None

**Agency Contact:** Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N-3718, FP Building, Washington, DC 20210  
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**RIN:** 1218-AB89

**1837. CRANES AND DERRICKS**

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

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

**CFR Citation:** 29 CFR 1926

**Legal Deadline:** None

**Abstract:** Subpart N addresses hazards associated with various types of hoisting equipment used at construction sites. Such equipment includes cranes and derricks. The existing rule, which dates back to 1971, is based in part on industry consensus standards from 1958, 1968, and 1969. There have been considerable technological changes since those consensus standards were developed. Industry consensus standards for derricks and for crawler, truck and locomotive cranes were updated as recently as 1995.

A cross-section of the industry has asked OSHA to update subpart N. OSHA has determined that the existing rule needs to be revised.

**Timetable:**

Action	Date
Notice Establishing Negotiated	07/16/02 67 FR 46612
Comment Period End	09/16/02
Request for Comments	02/27/03 68 FR 9036
Request for Comment Period End	03/31/03 68 FR 9036
NPRM	To Be Determined

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** Undetermined

**Agency Contact:** Russell B. Swanson, Director, Directorate of Construction,

Department of Labor, Occupational Safety and Health Administration, Room N3468, 200 Constitution Avenue NW, FP Building, Washington, DC 20210  
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**RIN:** 1218-AC01

**1838. EXCAVATIONS (SECTION 610 REVIEW)**

**Priority:** Other Significant

**Legal Authority:** 29 USC 651 et seq; 5 USC 610

**CFR Citation:** 29 CFR 1926.650 to 1926.652

**Legal Deadline:** None

**Abstract:** OSHA will undertake a review of the Agency's trenching and excavations standard (29 CFR 1926.650 to 1926.652) 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, the impacts of the rule, public comments on the rule, the complexity of the rule, and whether the rule overlaps, duplicates, or conflicts with other regulations.

**Timetable:**

Action	Date
Begin Review	12/01/01
Request for Comments	08/21/02 67 FR 54103
Comment Period End	11/19/03
End Review	09/00/04

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** None

**Agency Contact:** John F. Martonik, Evaluation, Department of Labor, Occupational Safety and Health Administration, Room N3641, 200 Constitution Avenue NW, FP Building, Washington, DC 20210  
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**RIN:** 1218-AC02

**1839. UPDATING OSHA STANDARDS BASED ON NATIONAL CONSENSUS STANDARD**

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 29 USC 655(b)

## DOL—OSHA

## Long-Term Actions

**CFR Citation:** 29 CFR 1910; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918; 29 CFR 1926

**Legal Deadline:** None

**Abstract:** Under section 6(a) of the OSH Act, during the first two years of the Act, the Agency was directed to adopt national consensus standards as OSHA standards. Some of these standards were adopted as regulatory text, while others were incorporated by reference. In the thirty years since these standards were adopted by OSHA, the organizations responsible for these consensus standards have issued updated versions of these standards. However, in most cases, OSHA has not revised its regulations to reflect later editions of the consensus standards. OSHA standards also continue to incorporate by reference various consensus standards that are now outdated and, in some cases, out of print.

The Agency is now considering the possibility of initiating rulemaking to update some of these standards. In that regard, OSHA has asked various consensus standards organizations to review their standards, compare the latest versions of these standards to the ones currently adopted by OSHA, and determine which ones are most important for OSHA to update. Additionally, OSHA has asked them to consider whether the changes to these standards would be noncontroversial, and if the new versions would reduce risk. The organizations were enthusiastic about the possibility of

updating references to their standards, and they have provided considerable information on priorities and other related issues. OSHA is in the process of evaluating the information it has received in order to determine the best way to proceed. It is possible that a direct final rule may be appropriate to address some of these standards, and others may be more appropriately addressed by an NPRM.

**Timetable:**

Action	Date
NPRM	09/00/04

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** Undetermined

**Agency Contact:** Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N-3718, FP Building, Washington, DC 20210  
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**RIN:** 1218-AC08

**1840. EXPLOSIVES**

**Priority:** Other Significant

**Legal Authority:** 29 USC 655(b)

**CFR Citation:** 29 CFR 1910.109

**Legal Deadline:** None

**Abstract:** OSHA is considering amending 29 CFR 1910.109 that

addresses explosives and blasting agents. These OSHA regulations were published in 1974, and many of the provisions do not reflect technological and safety advances made by the industry since that time. Additionally, the standard contains outdated references and classifications. Two trade associations representing many of the employers subject to this rule have petitioned the Agency to consider revising it, and have recommended changes they believe address the concerns they are raising. OSHA is in the process of reviewing the petition and related information about the issue, and will determine the appropriate course of action regarding this standard when the review is completed. OSHA expects to publish an NPRM by July 2004.

**Timetable:**

Action	Date
NPRM	07/00/04

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** Undetermined

**Agency Contact:** Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N-3718, FP Building, Washington, DC 20210  
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**RIN:** 1218-AC09

## Department of Labor (DOL)

## Occupational Safety and Health Administration (OSHA)

## Completed Actions

**1841. GRAIN HANDLING FACILITIES (COMPLETION OF A SECTION 610 REVIEW)**

**Priority:** Other Significant

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

**CFR Citation:** 29 CFR 1910.272

**Legal Deadline:** None

**Abstract:** OSHA is undertaking a review of its grain handling standard (29 CFR 1910.272) in accordance with the requirements of section 610 of the Regulatory Flexibility Act and section 5 of EO 12866. The review will cover the continued need for the rule; the

nature of complaints or comments received from the public concerning the rule; the complexity of the rule; the extent to which the rule overlaps, duplicates or conflicts with other Federal rules and, to the extent feasible, with State and local rules; and the degree to which technology, economic conditions, or other factors have changed in the industries affected by the rule.

**Timetable:**

Action	Date
Begin Review	10/01/97
End Review	03/14/03 68 FR 12301
End Review Effective	03/14/03

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

**Agency Contact:** John F. Martonik, Evaluation, Department of Labor, Occupational Safety and Health Administration, Room N3641, 200 Constitution Avenue NW, FP Building, Washington, DC 20210  
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**RIN:** 1218-AB73

DOL—OSHA

Completed Actions

**1842. UPDATE AND REVISION OF THE EXIT ROUTES STANDARD**

**Priority:** Other Significant

**Legal Authority:** 29 USC 655(b); 5 USC 353

**CFR Citation:** 29 CFR 1910.35; 29 CFR 1910.36; 29 CFR 1910.37; 29 CFR 1910.38

**Legal Deadline:** None

**Abstract:** Many Occupational Safety and Health Administration (OSHA) standards were adopted under section 6(a) of the Occupational Safety and Health Act (OSH Act; 29 U.S.C. 655(a)). This section of the OSH Act authorized the Agency, in its first 2 years of existence, to adopt national consensus standards without prior notice and comment. The versions of the consensus standards OSHA adopted are now typically well over 30 years old and have been superseded by newer ones. In addition, many of these old standards were written in technical jargon and were hard for many employers and employees to understand.

To address these problems, OSHA has revised exit routes (also known as means of egress) standard. The revisions rewrite the standard in simple, easy-to-understand language that will be easier for employers and employees to follow.

**Timetable:**

Action	Date
NPRM	09/10/96 61 FR 47712

Action	Date
Public Hearing	04/29/97 62 FR 9402
Final Rule	11/07/02 67 FR 67949
Final Action Effective	12/09/02

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

**Agency Contact:** Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N-3718, FP Building, Washington, DC 20210  
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**RIN:** 1218-AB82

**1843. PROCEDURES FOR HANDLING OF DISCRIMINATION COMPLAINTS UNDER THE AVIATION INVESTMENT AND REFORM ACT**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 49 USC 42121; PL 106-181, Wendell H. Ford Aviation Investment and Reform Act, sec 519

**CFR Citation:** 29 CFR 1979

**Legal Deadline:** None

**Abstract:** On March 8, 2000, Congress enacted the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, commonly known as the Air Act. Section 519 of the Act (49 USC 42121) prohibits air carriers or air carrier contractors or subcontractors from discharging or otherwise discriminating against employees for

exercising specified rights under the Act. The Act further provides that the Secretary of Labor investigate employee claims of discrimination and ultimately issue a determination and order after an opportunity for either party to request a hearing on the record. Procedural rules are needed for filing, investigating, litigating, and adjudicating complaints filed pursuant to the Act.

**Timetable:**

Action	Date
Interim Final Rule	04/01/02 67 FR 15453
Interim Final Rule Effective	04/01/02
Interim Final Rule Comment Period	05/31/02
Comment Period Extended	06/07/02 67 FR 40597
Comment Period End	06/30/02
Final Rule	03/21/03 68 FR 14100
Final Action Effective	03/21/03

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

**Agency Contact:** John Robert Spear, Director, Office of Investigative Assistance, Department of Labor, Occupational Safety and Health Administration, Rm 3603, 200 Constitution Ave., NW, Washington, DC 20210

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**RIN:** 1218-AB99

Department of Labor (DOL)

Proposed Rule Stage

Office of the Assistant Secretary for Veterans' Employment & Training (ASVET)

**1844. • UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT REGULATIONS**

**Priority:** Other Significant

**Legal Authority:** 38 USC 4331(a)

**CFR Citation:** Not Yet Determined

**Legal Deadline:** None

**Abstract:** The Uniformed Services Employment and Reemployment Rights Act (USERRA, 38 U.S.C. 4301-4333) is administered by the Secretary of Labor. The statute provides reemployment rights for eligible persons following performance of military service and prohibits employer discrimination on the basis of a person's military service

and obligations. USERRA provides that the Secretary of Labor, in consultation with the Secretary of Defense, may prescribe regulations implementing USERRA's provisions with regard to its application to States, local governments, and private employers. 38 U.S.C. 4331. The proposed regulations would provide Department of Labor guidance on a wide variety of topics, including reemployment positions, discrimination, benefits, pensions, and enforcement. The issuance of such guidance would help the Secretary of Labor perform her statutory obligation to inform protected persons and employers of their rights and

responsibilities under USERRA. 38 U.S.C. 4333.

**Timetable:**

Action	Date
NPRM	11/00/03

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** State, Local

**Agency Contact:** Norman Lance, Chief, Investigation and Compliance Division, Department of Labor, Office of the Assistant Secretary for Veterans' Employment & Training, 200 Constitution Avenue, NW, Room S-1316, Washington, DC 20210

## DOL—ASVET

## Proposed Rule Stage

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**RIN:** 1293-AA09

**1845. • JOBS FOR VETERANS ACT OF 2002****Priority:** Other Significant**Legal Authority:** PL 107-288**CFR Citation:** 41 CFR 61-250**Legal Deadline:** None

**Abstract:** The Veterans' Employment and Training Service (VETS) is proposing to issue a notice of proposed rulemaking (NPRM) to implement changes required by the Jobs For Veterans Act (JFVA) of 2002. This act amended the Vietnam Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), by revising the reporting threshold from \$25,000 to \$100,000. JFVA also eliminated the collection categories of special disabled veterans and veterans of the Vietnam era and added the new collection categories of disabled veterans and armed forces expeditionary medal veterans. JFVA continues the collection for the recently separated veterans category, but changed the definition for that category to include any veteran who served on active duty in the U.S. military ground, naval, or air service during the three-year period beginning

on the date of such veteran's discharge or release from active duty. Additionally, Federal contractors and subcontractors will be required to report the total number of all current employees in each of the nine categories and for each hiring location. This proposal will assist VETS in meeting the statutory requirement of annually collecting the VETS-100 Report.

PL 107-288 also requires VETS to establish in regulations a uniform national threshold entered employment rate for veterans receiving service through the public labor exchange. States will be gauged against a national entered employment rate threshold measured considering the state's unemployment rate and the states economic condition. This proposed rule will assist in determining performance deficiencies.

In addition, the JFCA among other things requires the Department to establish and phase-in a new funding formula for Disabled Veterans Outreach Program (DVOP) and Local Veterans Employment Representatives (LVER) grants to states over a three-year period beginning October 1, 2002. This new formula is based on the number of veterans seeking employment in the civilian labor market, unemployment data as well as other criteria the Secretary may establish.

**Timetable:**

Action	Date
NPRM: Federal Contract Threshold	08/00/03
NPRM: State Grant Funding Formula	09/00/03
NPRM: Unified National Threshold	09/00/03

**Regulatory Flexibility Analysis Required:** No**Small Entities Affected:** Businesses**Government Levels Affected:** None

**Agency Contact:** Norman Lance, Chief, Investigation and Compliance Division, Department of Labor, Office of the Assistant Secretary for Veterans' Employment & Training, 200 Constitution Avenue, NW, Room S-1316, Washington, DC 20210  
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 Phone: 202 693-4749

**RIN:** 1293-AA10

## Department of Labor (DOL)

## Completed Actions

## Office of the Assistant Secretary for Veterans' Employment &amp; Training (ASVET)

**1846. ANNUAL REPORT FROM FEDERAL CONTRACTORS****Priority:** Other Significant**Legal Authority:** PL 105-339 Veterans Employment Opportunities Act of 1998**CFR Citation:** 41 CFR 61-250**Legal Deadline:** None

**Abstract:** The Veterans' Employment and Training Service (VETS) issued a final rule implementing changes required by the Veterans' Employment Opportunities Act of 1998. The Act requires nonexempt Federal contractors and subcontractors with a contract in the amount of \$25,000 or more to report their efforts toward hiring and employment of qualified veterans. The Act adds an additional category of veterans, "other veterans who have served on active duty during a war or

in a campaign or expedition for which a campaign badge has been authorized," to the list of protected veterans under the Vietnam Era Veterans' Readjustment Assistance Act, as amended (VEVRAA). The Act also adds the requirement that covered contractors and subcontractors report their minimum and maximum number of employees. This rule will assist VETS in meeting the statutory requirement of annually collecting the VETS-100 Report. After publication VETS learned that the final rule may inadvertently increase the recordkeeping burden on some contractors. Accordingly, an interim final rule was published permitting contractors flexibility in how they determine the maximum and minimum number of employees reported. A notice has been published to request

comments on best practices to determine how to calculate the minimum and maximum number of employees reported. A notice of guidance was published on 2/14/03 providing the methodologies for calculating the maximum and minimum number of employees for the Federal Contractor Veterans' Employment Report VETS-100.

**Timetable:**

Action	Date
NPRM	10/05/00 65 FR 59683
NPRM Comment Period End	12/06/00
Final Rule	10/11/01 66 FR 51997
Final Rule Effective	11/13/01
Interim Final Rule	12/19/01 66 FR 65452
Notice	03/08/02 67 FR 10804
Notice Comment Period End	04/08/02

## DOL—ASVET

## Completed Actions

Action	Date
Notice of Guidance	02/14/03 68 FR 7617
Notice of Guidance	02/14/03 68 FR 7617
Effective Date	

**Regulatory Flexibility Analysis****Required:** No**Government Levels Affected:** None

**Agency Contact:** Norm Lance, Chief, Investigations and Compliance, VETS, Department of Labor, Office of the Assistant Secretary for Veterans' Employment & Training, S-1316, 200 Constitution Avenue, NW, Washington, DC 20210

Phone: 202 693-4731

Fax: 202 693-4755

**RIN:** 1293-AA07**1847. ANNUAL REPORT FOR FEDERAL CONTRACTORS (2002 REVISIONS)****Priority:** Other Significant

**Legal Authority:** PL 106-419 Veterans Benefits and Health Care Improvement Act of 2000

**CFR Citation:** 41 CFR 61-250**Legal Deadline:** None

**Abstract:** The proposed action is being withdrawn and will be addressed in the notice of proposed rulemaking for implementation of P.L. 107-228.

**Timetable:**

Action	Date
Withdrawn	02/10/03

**Regulatory Flexibility Analysis****Required:** No**Government Levels Affected:** None

**Agency Contact:** Norm Lance, Chief, Investigations and Compliance, VETS, Department of Labor, Office of the Assistant Secretary for Veterans' Employment & Training, S-1316, 200 Constitution Avenue, NW, Washington, DC 20210

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**RIN:** 1293-AA08

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