



Federal Register

**Monday,
May 5, 2008**

Part IX

Department of Labor

Semiannual Regulatory Agenda

DEPARTMENT OF LABOR (DOL)

DEPARTMENT OF LABOR

Office of the Secretary

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

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

30 CFR Ch. I

41 CFR Ch. 60

48 CFR Ch. 29

Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Labor.

ACTION: Semiannual regulatory agenda.

SUMMARY: 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 12 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 April 2008 and April 2009, as well as those completed during the past 6 months.

FOR FURTHER INFORMATION CONTACT: Kathleen Franks, Director, Office of

Regulatory Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-2312, Washington, DC 20210; (202) 693-5959.

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

SUPPLEMENTARY INFORMATION: Executive Order 12866 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, which became effective on January 1, 1981, 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.

The next 12-month review list for the Department of Labor is provided below, and public comment is invited on the listing. A brief description of each rule, the legal basis for the rule, and the agency contact are provided with each agenda item.

Occupational Safety and Health Administration

Methylene Chloride (RIN 1218-AC23)

Employee Benefits Security Administration

Plan Assets-Participant Contributions Regulations (RIN 1210-AB11)

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.

Employment Standards Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
206	Labor Organization Annual Financial Reports	1215-AB62

Employee Benefits Security Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
207	Plan Assets-Participant Contributions Regulation (Section 610 Review)	1210-AB11

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Employee Benefits Security Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
208	Amendment of Regulation Relating to Definition of Plan Assets—Participant Contributions	1210-AB02

Employee Benefits Security Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
209	Proposed Revision of Annual Information Return/Reports	1210-AB14

Occupational Safety and Health Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
210	Occupational Exposure to Crystalline Silica	1218-AB70
211	Occupational Exposure to Beryllium	1218-AB76
212	Methylene Chloride (Section 610 Review)	1218-AC23
213	Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl	1218-AC33

Occupational Safety and Health Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
214	Confined Spaces in Construction (Part 1926): Preventing Suffocation/Explosions in Confined Spaces	1218-AB47
215	Electric Power Transmission and Distribution; Electrical Protective Equipment	1218-AB67
216	Cranes and Derricks	1218-AC01

Department of Labor (DOL)

Proposed Rule Stage

Employment Standards Administration (ESA)

206. LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

Legal Authority: 29 USC 431(b); 29 USC 438

Abstract: The Department of Labor’s Employment Standards Administration proposes to establish standards and procedures by which the Office of Labor Management Standards, pursuant to section 208 of the Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 438, may revoke the privilege of a labor organization to file a

simplified annual financial disclosure report, Form LM-3, and instead require it to file the more detailed Form LM-2. The Department proposes to revise Form LM-2. The proposed revisions will improve financial disclosure and clarity within categories of receipts and disbursements.

Timetable:

Action	Date	FR Cite
NPRM	05/00/08	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Kay H. Oshel, Director, Office of Policy, Reports and Disclosure, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building, Room N-5609, Washington, DC 20210
 Phone: 202 693-1233
 TDD Phone: 800 877-8399
 Fax: 202 693-1340
 Email: oshel.kay@dol.gov

RIN: 1215-AB62

Department of Labor (DOL)

Prerule Stage

Employee Benefits Security Administration (EBSA)

207. PLAN ASSETS—PARTICIPANT CONTRIBUTIONS REGULATION (SECTION 610 REVIEW)**Legal Authority:** 29 USC 1135

Abstract: EBSA is conducting a review of the plan assets-participant contributions regulation in accordance with the requirements of section 610 of the Regulatory Flexibility Act. 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 extent to which technology, economic conditions, or other factors have changed in industries affected by the rule.

Timetable:

Action	Date	FR Cite
Begin Review	03/01/06	
End Review	12/00/08	

Regulatory Flexibility Analysis Required: Undetermined

Agency Contact: Melissa R. Dennis, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N5655, Washington, DC 20210
Phone: 202 693-8500
Fax: 202 219-7291

RIN: 1210-AB11

Department of Labor (DOL)

Final Rule Stage

Employee Benefits Security Administration (EBSA)

208. AMENDMENT OF REGULATION RELATING TO DEFINITION OF PLAN ASSETS—PARTICIPANT CONTRIBUTIONS**Legal Authority:** 29 USC 1135

Abstract: This rulemaking will amend the regulation that defines when participant moneys paid to or withheld by an employer for contribution to an employee benefit plan constitute "plan assets" for purposes of title I of ERISA and the related prohibited transaction provisions of the Internal Revenue Code. The regulation contains an

amendment to the current regulation that will establish a safe harbor period of a specified number of business days during which certain moneys that a participant pays to, or has withheld by, an employer for contribution to a plan would not constitute "plan assets."

Timetable:

Action	Date	FR Cite
NPRM	02/29/08	73 FR 11072
NPRM Comment Period End	04/29/08	
Final Action	11/00/08	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Louis J. Campagna, Chief, Division of Fiduciary Interpretations, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N5655, FP Building, Washington, DC 20210
Phone: 202 693-8510
Fax: 202 219-7291

RIN: 1210-AB02

Department of Labor (DOL)

Completed Actions

Employee Benefits Security Administration (EBSA)

209. PROPOSED REVISION OF ANNUAL INFORMATION RETURN/REPORTS

Legal Authority: 29 USC 1135; 29 USC 1021; 29 USC 1023; 29 USC 1024; PL 109-208, sec 101 to 116, sec 201 to 221, sec 503, sec 1103 Pension Protection Act of 2006

Abstract: This proposal supplements previously published proposed revisions to the Form 5500 Annual Return/Report as required by the Pension Protection Act of 2006 (PPA). Specifically, this proposal includes separate Schedules B for single-employer plans and multiemployer plans reflecting PPA changes in

funding and annual reporting requirements; new questions to the Schedule R and Schedule H designed to collect additional information regarding single and multiemployer pension defined benefit plans; and a proposal to have the Form 5500-SF Annual Return/Report be the simplified report required under the PPA for plans with fewer than 25 participants.

Timetable:

Action	Date	FR Cite
NPRM	12/11/06	71 FR 71562
NPRM Comment Period End	01/10/07	

Action	Date	FR Cite
Final Action	11/16/07	72 FR 64710
Final Action Effective	01/15/08	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Elizabeth A. Goodman, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N5655, Washington, DC 20210
Phone: 202 693-8523
Fax: 202 219-7291

RIN: 1210-AB14

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

Prerule Stage

210. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA

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

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 50µg/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 for Testing and Materials (ASTM) has published a recommended standard for addressing 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.

Timetable:

Action	Date	FR Cite
Completed SBREFA Report	12/19/03	
Complete Peer Review of Health Effects and Risk Assessment	08/00/08	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Dorothy Dougherty, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health

Administration, 200 Constitution Avenue NW., FP Building, Room N3718, Washington, DC 20210
 Phone: 202 693-1950
 Fax: 202 693-1678
 Email: dougherty.dorothy@dol.gov

RIN: 1218-AB70

211. OCCUPATIONAL EXPOSURE TO BERYLLIUM

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

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

On November 26, 2002, OSHA published a Request for Information (RFI) (67 FR 70707) to solicit information pertinent to occupational exposure to beryllium including: Current exposures to beryllium; the relationship between exposure to beryllium and the development of adverse health effects; exposure assessment and monitoring methods; exposure control methods; and medical surveillance. In addition, the Agency conducted field surveys of selected work sites to assess current exposures and control methods being used to reduce employee exposures to beryllium. OSHA is planning to use this information to develop a proposed rule addressing occupational exposure to beryllium.

Timetable:

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

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Dorothy Dougherty, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution

Avenue NW., FP Building, Room N3718, Washington, DC 20210
 Phone: 202 693-1950
 Fax: 202 693-1678
 Email: dougherty.dorothy@dol.gov

RIN: 1218-AB76

212. METHYLENE CHLORIDE (SECTION 610 REVIEW)

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

Abstract: OSHA will undertake a review of the Methylene Chloride Standard (29 CFR 1910.1052) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider the continued need for the rule; whether the rule overlaps, duplicates, or conflicts with other Federal, State, or local regulations; and the degree to which technology, economic conditions, or other factors may have changed since the rule was evaluated.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/06	
Request for Comments	07/10/07	72 FR 37501
Comment Period End	10/09/07	
Reopen Comment Period	01/08/08	73 FR 1299
Comment Period End	03/10/08	
End Review	11/00/08	

Regulatory Flexibility Analysis Required: No

Agency Contact: John Smith, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N 3641, Washington, DC 20210
 Phone: 202 693-2225
 Fax: 202 693-1641
 Email: smith.john@dol.gov

RIN: 1218-AC23

213. OCCUPATIONAL EXPOSURE TO DIACETYL AND FOOD FLAVORINGS CONTAINING DIACETYL

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

Abstract: On July 26, 2006, the United Food and Commercial Workers International Union (UFCW) and the International Brotherhood of Teamsters (IBT) petitioned DOL for an Emergency Temporary Standard (ETS) for all

DOL—OSHA

Prerule Stage

employees exposed to diacetyl, a major component in artificial butter flavoring. Diacetyl and a number of other volatile organic compounds are used to manufacture artificial butter food flavorings. These food flavorings are used by various food manufacturers in a multitude of food products including microwave popcorn, certain bakery goods, and some snack foods. OSHA denied the petition on September 25, 2007, but has initiated 6(b) rulemaking.

Evidence from NIOSH and other sources indicated that employee exposure to diacetyl and food flavorings containing diacetyl is

associated with bronchiolitis obliterans, a debilitating and potentially fatal disease of the small airways in the lung. Severe obstructive airway disease has been observed in the microwave popcorn industry and in food flavoring manufacturing plants. Experimental evidence has shown that inhalation exposure to artificial butter flavoring vapors and diacetyl damaged tissue lining, the nose, and airways of rats and mice.

Timetable:

Action	Date	FR Cite
Stakeholder Meeting	10/17/07	72 FR 54619
Initiate SBREFA Panel	05/00/08	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Dorothy Dougherty, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N3718, Washington, DC 20210
Phone: 202 693-1950
Fax: 202 693-1678
Email: dougherty.dorothy@dol.gov

RIN: 1218-AC33

Department of Labor (DOL)

Proposed Rule Stage

Occupational Safety and Health Administration (OSHA)

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

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

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

Timetable:

Action	Date	FR Cite
SBREFA Panel Report	11/24/03	
NPRM	11/28/07	72 FR 67351
NPRM Comment Period End	01/28/08	
NPRM Comment Period Extended	02/28/08	73 FR 3893
Public Hearing	09/00/08	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Noah Connell, Acting Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building,

Room North 3467, Washington, DC 20210

Phone: 202 693-2020

Fax: 202 693-1689

RIN: 1218-AB47

215. ELECTRIC POWER TRANSMISSION AND DISTRIBUTION; ELECTRICAL PROTECTIVE EQUIPMENT

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

Abstract: Electrical hazards are a major cause of occupational death in the United States. The annual fatality rate for power line workers is about 50 deaths per 100,000 employees. The construction industry standard addressing the safety of these workers during the construction of electric power transmission and distribution lines is over 30 years old. OSHA has developed a revision of this standard that will prevent many of these fatalities, add flexibility to the standard, and update and streamline the standard. OSHA also intends to amend the corresponding standard for general industry so that requirements for work performed during the maintenance of electric power transmission and distribution installations are the same as those for similar work in construction. In addition, OSHA will be revising a few miscellaneous general industry requirements primarily affecting electric transmission and distribution work, including provisions on electrical protective equipment and foot

protection. This rulemaking also addresses fall protection in aerial lifts for power generation, transmission, and distribution work. OSHA published an NPRM on June 15, 2005. A public hearing was held March 6 to 14, 2006. OSHA is reopening the record to gather additional information on minimum approach distances.

Timetable:

Action	Date	FR Cite
SBREFA Report	06/30/03	
NPRM	06/15/05	70 FR 34821
NPRM Comment Period End	10/13/05	
Comment Period Extended to 01/11/2006	10/12/05	70 FR 59290
Public Hearing to be held 03/06/2006	10/12/05	70 FR 59290
Post-Hearing Comment Period End	07/14/06	
Reopen Record	06/00/08	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Dorothy Dougherty, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N3718, Washington, DC 20210
Phone: 202 693-1950
Fax: 202 693-1678
Email: dougherty.dorothy@dol.gov

RIN: 1218-AB67

DOL—OSHA

Proposed Rule Stage

216. CRANES AND DERRICKS

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

Abstract: A number of industry stakeholders asked OSHA to update the cranes and derricks portion of subpart N (29 CFR 1926.550), specifically requesting that negotiated rulemaking be used.

In 2002 OSHA published a notice of intent to establish a negotiated rulemaking committee. A year later, in 2003, committee members were announced and the Cranes and Derricks Negotiated Rulemaking Committee was established and held its first meeting. In July 2004, the committee reached consensus on all issues resulting in a final consensus document.

Timetable:

Action	Date	FR Cite
Notice of Intent To Establish Negotiated Rulemaking	07/16/02	67 FR 46612
Comment Period End	09/16/02	
Request for Comments on Proposed Committee Members	02/27/03	68 FR 9036
Request for Comments Period End	03/31/03	68 FR 9036
Established Negotiated Rulemaking Committee	06/12/03	68 FR 35172

Rulemaking Negotiations Completed	07/30/04
SBREFA Report NPRM	10/17/06 08/00/08

Regulatory Flexibility Analysis Required: Yes

Agency Contact: Noah Connell, Acting Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room North 3467, Washington, DC 20210
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RIN: 1218-AC01

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