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, VI, VII, and IX
29 CFR Subtitle A and Chs. II, IV, 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. 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 The purpose of the review is to determine whether the rule should be continued without change, amended, or rescinded.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 (Section 610 Review) (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

<table>
<thead>
<tr>
<th>Sequence Number</th>
<th>Title</th>
<th>Regulation Identifier Number</th>
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<tr>
<td>206</td>
<td>Labor Organization Annual Financial Reports</td>
<td>1215–AB62</td>
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Employee Benefits Security Administration—Prerule Stage

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Employee Benefits Security Administration—Final Rule Stage

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<td>208</td>
<td>Amendment of Regulation Relating to Definition of Plan Assets—Participant Contributions</td>
<td>1210–AB02</td>
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Employee Benefits Security Administration—Completed Actions

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<td>209</td>
<td>Proposed Revision of Annual Information Return/Reports</td>
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Occupational Safety and Health Administration—Prerule Stage

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<tr>
<td>210</td>
<td>Occupational Exposure to Crystalline Silica</td>
<td>1218–AB70</td>
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<td>Occupational Exposure to Beryllium</td>
<td>1218–AB76</td>
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<td>212</td>
<td>Methylene Chloride (Section 610 Review)</td>
<td>1218–AC23</td>
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<td>213</td>
<td>Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl</td>
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Occupational Safety and Health Administration—Proposed Rule Stage

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<tr>
<td>214</td>
<td>Confined Spaces in Construction (Part 1926): Preventing Suffocation/Explosions in Confined Spaces</td>
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<td>215</td>
<td>Electric Power Transmission and Distribution; Electrical Protective Equipment</td>
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<td>216</td>
<td>Cranes and Derricks</td>
<td>1218–AC01</td>
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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:

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<tr>
<th>Action</th>
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<tr>
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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
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.

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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

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.”

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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

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:

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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
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
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Completed SBREFA Report | 12/19/03 | 1218–AB70
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
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Request for Information | 11/26/02 | 67 FR 70707
SBREFA Report Completed | 01/23/08 | 72 FR 37501
Complete Peer Review of Health Effects and Risk Assessment | 11/00/08
Regulatory Flexibility Analysis Required: Yes
Agency Contact: John Smith, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N3 3641, Washington, DC 20210
Phone: 202 693–2225
Fax: 202 693–1641
Email: smith.john@dol.gov
RIN: 1218–AC23

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
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Begin Review | 12/01/06 | 73 FR 1299
Request for Comments | 07/10/07 | 73 FR 37501
Comment Period End | 10/09/07 | 73 FR 37501
Reopen Comment Period | 01/08/08 | 73 FR 1299
Comment Period End | 03/10/08 | 73 FR 1299
End Review | 11/00/08
Regulatory Flexibility Analysis Required: No
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

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
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.

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<td>72 FR 54619</td>
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<td>Initiate SBREFA Panel</td>
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**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

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**Department of Labor (DOL)**

**Occupational Safety and Health Administration (OSHA)**

**214. CONFINED SPACES IN CONSTRUCTION (PART 1926): PREVENTING SUCCOFICATION/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:**

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**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 N3718, Washington, DC 20210

**Phone:** 202 693–1950

**Fax:** 202 693–1678

**Email:** dougherty.dorothy@dol.gov

**RIN:** 1218–AB47

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**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:**

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<td>70 FR 59290</td>
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**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
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:

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<td>67 FR 46612</td>
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<td>Request for Comments on Proposed Committee Members</td>
<td>02/27/03</td>
<td>68 FR 9036</td>
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<td>68 FR 9036</td>
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<tr>
<td>Established Negotiated Rulemaking Committee</td>
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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–AC01
[FR Doc. E8–7540 Filed 05–02–08; 8:45 am]
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