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Part XII

Department of Labor

Semiannual Regulatory Agenda

DEPARTMENT OF LABOR

Office of the Secretary

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

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

30 CFR Ch. I

41 CFR Ch. 60

48 CFR Ch. 29

Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Labor
ACTION: Semiannual regulatory agenda.

SUMMARY: The Internet has become the means for disseminating the entirety of the Department of Labor’s semiannual regulatory agenda. However, the Regulatory Flexibility Act requires publication of a regulatory flexibility agenda in the **Federal Register**. This **Federal Register** Notice contains the regulatory flexibility agenda.

FOR FURTHER INFORMATION CONTACT: Kathleen Franks, Director, Office of Regulatory Policy, Office of the

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

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

SUPPLEMENTARY INFORMATION: Executive Order 12866 requires the semiannual publication of an agenda of regulations that contains a listing of all the regulations the Department of Labor expects to have under active consideration for promulgation, proposal, or review during the coming one-year period. The entirety of the Department’s semiannual agenda is available online at www.reginfo.gov.

The Regulatory Flexibility Act (5 U.S.C. 602) requires DOL to publish in the **Federal Register** a regulatory flexibility agenda. The Department’s Regulatory Flexibility Agenda published with this notice, includes only those rules on its semiannual agenda that are likely to have a significant economic impact on a substantial number of small entities; and those rules identified for periodic review in keeping with the requirements of section 610 of the

Regulatory Flexibility Act. Thus, the regulatory flexibility agenda is a subset of the Department’s semiannual regulatory agenda. There is only one item on the Department of Labor’s Regulatory Flexibility Agenda:

Occupational Safety and Health Administration

Bloodborne Pathogens (RIN 1218-AC34)

In addition, the Department’s Regulatory Plan, also a subset of the Department’s regulatory agenda, is being published in the **Federal Register**. The Regulatory Plan contains a statement of the Department’s regulatory priorities and the regulatory actions the Department wants to highlight as its most important and significant.

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

Thomas E. Perez,
Secretary of Labor.

WAGE AND HOUR DIVISION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
354	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.	1235-AA11

EMPLOYMENT AND TRAINING ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
355	Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program	1205-AB72
356	Workforce Innovation and Opportunity Act (Reg Plan Seq No. 96)	1205-AB73

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

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
357	Bloodborne Pathogens (Section 610 Review)	1218-AC34
358	Infectious Diseases (Reg Plan Seq No. 101)	1218-AC46

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

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
359	Occupational Exposure to Crystalline Silica (Reg Plan Seq No. 102)	1218-AB70
360	Occupational Exposure to Beryllium	1218-AB76

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

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
361	Confined Spaces in Construction	1218–AB47

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
362	Combustible Dust	1218–AC41
363	Injury and Illness Prevention Program	1218–AC48
364	Preventing Backover Injuries and Fatalities	1218–AC51

DEPARTMENT OF LABOR (DOL)

Wage and Hour Division (WHD)

Proposed Rule Stage

354. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees

Legal Authority: 29 U.S.C. 213(a)(1) (Fair Labor Standards Act)

Abstract: The Fair Labor Standards Act (FLSA) section 13(a)(1) provides a minimum wage and overtime exemption for any employee employed in a bona fide executive, administrative, professional capacity, or in the capacity of an outside salesperson. President Barack Obama issued a memorandum to the Secretary of Labor on March 13, 2014, directing the Secretary to modernize and streamline the existing overtime regulations for executive, administrative, and professional employees. The Department of Labor last updated these regulations in 2004.

Timetable:

Action	Date	FR Cite
NPRM	02/00/15	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Department of Labor, 200 Constitution Avenue NW., FP Building, Room S–3502, Washington, DC 20210, *Phone:* 202 693–0406, *Fax:* 202 693–1387.

RIN: 1235–AA11

DEPARTMENT OF LABOR (DOL)

Employment and Training Administration (ETA)

Proposed Rule Stage

355. Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program

Legal Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(B); 8 U.S.C. 1148(c); 29 U.S.C. 49k; 8 CFR 214.2(h)(6)(iii)

Abstract: The Immigration and Nationality Act (INA) establishes the H–2B visa classification for a non-agricultural temporary worker “having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country[.]” 8 U.S.C. 1101(a)(15)(H)(ii)(b). The INA also requires an importing employer (H–2B employer) to petition the Department of Homeland Security (DHS) for classification of the prospective temporary worker as an H–2B nonimmigrant, and DHS must approve such petition before the beneficiary can be considered eligible for an H–2B visa or H–2B status. 8 U.S.C. 1184(c)(1). The INA further requires DHS to consult with “appropriate agencies of the Government” before adjudicating an H–2B petition, and DHS has determined that it must consult with the Department of Labor (DOL) to determine whether U.S. workers capable of performing the temporary services or labor are available and that the foreign worker’s employment will not adversely affect the wages or working conditions of similarly employed U.S. workers. 8 CFR 214.2(h)(6)(iii)(A). DHS’s regulation requires H–2B employers to obtain certification from DOL that these conditions are met prior to submitting a petition to DHS. Id. As part of DOL’s certification, DHS requires DOL to

determine the prevailing wage applicable to an application for temporary labor certification. 8 CFR 214.2(h)(6)(iii)(D). DOL has established procedures to certify whether a qualified U.S. worker is available to fill the petitioning H–2B employer’s job opportunity and whether foreign worker’s employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. See 20 CFR part 655, subpart A. As part of DOL’s labor certification process and, pursuant to the DHS regulations, 8 CFR 214.2(h)(6)(iii)(D), DOL sets the wage that employers must offer and pay foreign workers entering the country on an H–2B visa. See 20 CFR 655.10. DOL revised the wage methodology used in the H–2B program in 2011, and jointly with the Department of Homeland Security again in 2013. The later action was an interim final rule (IFR) in response to a court order. However, DOL requested and received comments on all aspects of the 2013 revisions to the H–2B wage methodology in the IFR. DOL has determined that further notice and comment is appropriate on the proper methodology for determining the prevailing wage in the H–2B program, and will consider comments submitted in conjunction with the IFR together with comments submitted on this new proposal in order to issue a final rule.

Timetable:

Action	Date	FR Cite
NPRM	12/00/14	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Lauren Bernstein, Acting Manager, Division of Policy, Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, 200 Constitution Avenue NW., Room C–4312, FP Building, Washington, DC

20210, Phone: 202 693-3010, Email: bernstein.lauren@dol.gov.

RIN: 1205-AB72

356. • Workforce Innovation and Opportunity Act

Regulatory Plan: This entry is Seq. No. 96 in part II of this issue of the **Federal Register**.

RIN: 1205-AB73

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Prerule Stage

357. Bloodborne Pathogens (Section 610 Review)

Legal Authority: 5 U.S.C. 533; 5 U.S.C. 610; 29 U.S.C. 655(b)

Abstract: OSHA will undertake a review of the Bloodborne Pathogen Standard (29 CFR 1910.1030) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider the continued need for the rule; whether the rule overlaps, duplicates, or conflicts with other Federal, State or local regulations; and the degree to which technology, economic conditions, or other factors may have changed since the rule was evaluated.

Timetable:

Action	Date	FR Cite
Begin Review	10/22/09	75 FR 27237
Request for Comments Published.	05/14/10	
Comment Period End.	08/12/10	
End Review and Issue Findings.	05/00/15	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Francis Yebesi, Acting Director, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Bld, Rm N-3641, Washington, DC 20210, Phone: 202 693-2400, Fax: 202 693-1641, Email: yebesi.francis@dol.gov.

RIN: 1218-AC34

358. Infectious Diseases

Regulatory Plan: This entry is Seq. No. 101 in part II of this issue of the **Federal Register**.

RIN: 1218-AC46

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Proposed Rule Stage

359. Occupational Exposure to Crystalline Silica

Regulatory Plan: This entry is Seq. No. 102 in part II of this issue of the **Federal Register**.

RIN: 1218-AB70

360. Occupational Exposure to Beryllium

Legal Authority: 29 U.S.C. 655(b); 29 U.S.C. 657

Abstract: In 1999 and 2001, OSHA was petitioned to issue an emergency temporary standard for permissible exposure limit (PEL) to beryllium by the United Steel Workers (formerly the Paper Allied-Industrial, Chemical, and Energy Workers Union), Public Citizen Health Research Group, and others. The Agency denied the petitions but stated its intent to begin data gathering to collect needed information on beryllium's toxicity, risks, and patterns of usage. On November 26, 2002, OSHA published a Request for Information (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 worksites to assess current exposures and control methods being used to reduce employee exposures to beryllium. OSHA convened a Small Business Advocacy Review Panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) and completed the SBREFA Report in January 2008. OSHA also completed a scientific peer review of its draft risk assessment.

Timetable:

Action	Date	FR Cite
Request for Information.	11/26/02	67 FR 70707
Request For Information Comment Period End.	02/24/03	
SBREFA Report Completed.	01/23/08	
Initiated Peer Review of Health Effects and Risk Assessment.	03/22/10	

Action	Date	FR Cite
Complete Peer Review.	11/19/10	
NPRM	01/00/15	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William Perry, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N-3718, Washington, DC 20210, Phone: 202 693-1950, Fax: 202 693-1678, Email: perry.bill@dol.gov.

RIN: 1218-AB76

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Final Rule Stage

361. Confined Spaces in Construction

Legal Authority: 29 U.S.C. 655(b); 40 U.S.C. 333

Abstract: In 1993, OSHA issued a rule to protect employees who enter confined spaces while engaged in general industry work (29 CFR 1910.146). This standard has not been extended to cover employees entering confined spaces while engaged in construction work because of unique characteristics of construction work sites. Pursuant to discussions with the United Steel Workers of America that led to a settlement agreement regarding the general industry standard, OSHA agreed to issue a proposed rule to protect construction workers in confined spaces.

Timetable:

Action	Date	FR Cite
SBREFA Panel Report.	11/24/03	
NPRM	11/28/07	72 FR 67351
NPRM Comment Period End.	01/28/08	
NPRM Comment Period Extended.	02/28/08	73 FR 3893
Public Hearing	07/22/08	
Close Record	10/23/08	
Final Rule	03/00/15	

Regulatory Flexibility Analysis Required: Yes.

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

202 693-1689, Email: maddux.jim@dol.gov.
RIN: 1218-AB47

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Long-Term Actions

362. Combustible Dust

Legal Authority: 29 U.S.C. 655(b); 29 U.S.C. 657

Abstract: Occupational Safety and Health Administration (OSHA) has commenced rulemaking to develop a combustible dust standard for general industry. The U.S. Chemical Safety Board (CSB) completed a study of combustible dust hazards in late 2006, which identified 281 combustible dust incidents between 1980 and 2005 that killed 119 workers and injured another 718. Based on these findings, the CSB recommended the Agency pursue a rulemaking on this issue. OSHA has previously addressed aspects of this risk. For example, on July 31, 2005, OSHA published the Safety and Health Information Bulletin, "Combustible Dust in Industry: Preventing and Mitigating the Effects of Fire and Explosions." Additionally, OSHA implemented a Combustible Dust National Emphasis Program (NEP) on March 11, 2008, launched a new Web page, and issued several other guidance documents. However, the Agency does not have a comprehensive standard that addresses combustible dust hazards.

OSHA will use the information gathered from the NEP to assist in the development of this rule. OSHA published an ANPRM October 21, 2009. Additionally, stakeholder meetings were held in Washington, DC, on December 14, 2009, in Atlanta, GA, on February 17, 2010, and in Chicago, IL, on April 21, 2010. A webchat for combustible dust was also held on June 28, 2010, and an expert forum was convened on May 13, 2011.

Timetable:

Action	Date	FR Cite
ANPRM	10/21/09	74 FR 54333
Stakeholder Meetings.	12/14/09	
ANPRM Comment Period End.	01/19/10	
Stakeholder Meetings.	02/17/10	
Stakeholders Meetings.	03/09/10	75 FR 10739
Initiate SBREFA ..	02/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William Perry, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N-3718, Washington, DC 20210, Phone: 202 693-1950, Fax: 202 693-1678, Email: perry.bill@dol.gov.

RIN: 1218-AC41

363. Injury and Illness Prevention Program

Legal Authority: 29 U.S.C. 653; 29 U.S.C. 655(b); 29 U.S.C. 657

Abstract: OSHA is developing a rule requiring employers to implement an Injury and Illness Prevention Program. It involves planning, implementing, evaluating, and improving processes and activities that protect employee safety and health. OSHA has substantial data on reductions in injuries and illnesses from employers who have implemented similar effective processes. The Agency currently has voluntary Safety and Health Program Management Guidelines (54 FR 3904 to 3916), published in 1989. An injury and illness prevention program rule would build on these guidelines as well as lessons learned from successful approaches and best practices under OSHA's Voluntary Protection Program, Safety and Health Achievement Recognition Program, and similar industry and international initiatives such as American National Standards Institute/American Industrial Hygiene Association Z10, and Occupational Health and Safety Assessment Series 18001.

Timetable:

Action	Date	FR Cite
Stakeholder Meetings.	06/03/10	75 FR 35360 and 75 FR 23637
Initiate SBREFA.	01/06/12	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William Perry, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N-3718, Washington, DC 20210, Phone: 202 693-1950, Fax: 202 693-1678, Email: perry.bill@dol.gov.

RIN: 1218-AC48

364. Preventing Backover Injuries and Fatalities

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

Abstract: OSHA published an RFI (77 FR 18973; March 29, 2012) that sought information on two subjects: 1) Preventing backover injuries; and 2) the hazards and risks of reinforcing concrete operations in construction, including post-tensioning. Backing vehicles and equipment are common causes of struck-by injuries and can also cause caught-between injuries when backing vehicles and equipment pin a worker against an object. Struck-by injuries and caught-between injuries are two of the four leading causes of workplace fatalities. The Bureau of Labor Statistics reports that in 2011, 75 workers were fatally backed over while working. While many backing incidents can prove to be fatal, workers can suffer severe, non-fatal injuries as well. A review of OSHA's Integrated Management Information System (IMIS) database found that backing incidents can result in serious injury to the back and pelvis, fractured bones, concussions, amputations, and other injuries. Emerging technologies in the field of backing operations may prevent incidents. The technologies include cameras and proximity detection systems. The use of spotters and internal traffic control plans can also make backing operations safer. The Agency has held stakeholder meetings on backovers, and is conducting site visits to employers.

Timetable:

Action	Date	FR Cite
Request for Information.	03/29/12	77 FR 18973
Comment Period End.	07/27/12	
Initiate SBREFA ..	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jim Maddux, Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, FP Building, Room N-3468, 200 Constitution Avenue NW., Washington, DC 20210, Phone: 202 693-2020, Fax: 202 693-1689, Email: maddux.jim@dol.gov.

RIN: 1218-AC51

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