

## DEPARTMENT OF HOMELAND SECURITY (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
73	Inspection of Towing Vessels	1625-AB06	Proposed Rule Stage
74	Assessment Framework and Organizational Restatement Regarding Preemption for Certain Regulations Issued by the Coast Guard	1625-AB32	Proposed Rule Stage
75	Updates to Maritime Security	1625-AB38	Proposed Rule Stage
76	Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters	1625-AA32	Final Rule Stage
77	Importer Security Filing and Additional Carrier Requirements	1651-AA70	Final Rule Stage
78	Changes to the Visa Waiver Program To Implement the Electronic System for Travel Authorization (ESTA) Program	1651-AA72	Final Rule Stage
79	Establishment of Global Entry Program	1651-AA73	Final Rule Stage
80	Implementation of the Guam-CNMI Visa Waiver Program	1651-AA77	Final Rule Stage
81	Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program	1652-AA53	Proposed Rule Stage
82	Public Transportation and Passenger Railroads—Security Training of Employees	1652-AA55	Proposed Rule Stage
83	Freight Railroads—Security Training of Employees	1652-AA57	Proposed Rule Stage
84	Over-the-Road Buses—Security Training of Employees	1652-AA59	Proposed Rule Stage
85	Aircraft Repair Station Security	1652-AA38	Final Rule Stage
86	Air Cargo Screening	1652-AA64	Final Rule Stage
87	Continued Detention of Aliens Subject to Final Orders of Removal	1653-AA60	Proposed Rule Stage
88	Continued Detention of Aliens Subject to Final Orders of Removal	1653-AA13	Final Rule Stage
89	Extending Period for Optional Practical Training by 17 Months for F-1 Nonimmigrant Students With STEM Degrees and Expanding the CAP-GAP Relief for All F-1 Students With Pending H-1B Petitions	1653-AA56	Final Rule Stage
90	Update of FEMA's Public Assistance Regulations	1660-AA51	Proposed Rule Stage

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## DEPARTMENT OF JUSTICE

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DEPARTMENT OF LABOR (Continued)

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
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96	Right To Know Under the Fair Labor Standards Act	1235-AA04	Proposed Rule Stage
97	Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers)	1205-AB58	Proposed Rule Stage
98	Equal Employment Opportunity in Apprenticeship and Training, Amendment of Regulations	1205-AB59	Proposed Rule Stage
99	Lifetime Income Options for Participants and Beneficiaries in Retirement Plans	1210-AB33	Prerule Stage
100	Definition of "Fiduciary"	1210-AB32	Proposed Rule Stage
101	Respirable Crystalline Silica Standard	1219-AB36	Proposed Rule Stage
102	Lowering Miners' Exposure to Coal Mine Dust, Including Continuous Personal Dust Monitors	1219-AB64	Proposed Rule Stage
103	Safety and Health Management Programs for Mines	1219-AB71	Proposed Rule Stage
104	Pattern of Violations	1219-AB73	Proposed Rule Stage
105	Maintenance of Incombustible Content of Rock Dust in Underground Coal Mines	1219-AB76	Proposed Rule Stage
106	Proximity Detection Systems for Underground Mines	1219-AB65	Final Rule Stage
107	Infectious Diseases	1218-AC46	Prerule Stage
108	Injury and Illness Prevention Program	1218-AC48	Prerule Stage
109	Backing Operations	1218-AC52	Prerule Stage
110	Occupational Exposure to Crystalline Silica	1218-AB70	Proposed Rule Stage
111	Occupational Injury and Illness Recording and Reporting Requirements—Modernizing OSHA's Reporting System	1218-AC49	Proposed Rule Stage
112	Hazard Communication	1218-AC20	Final Rule Stage

DEPARTMENT OF TRANSPORTATION

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
113	Enhancing Airline Passenger Protections—Part 2	2105-AD92	Final Rule Stage
114	Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers	2120-AJ00	Proposed Rule Stage
115	Air Ambulance and Commercial Helicopter Operations; Safety Initiatives and Miscellaneous Amendments	2120-AJ53	Proposed Rule Stage
116	Flight and Duty Time Limitations and Rest Requirements	2120-AJ58	Final Rule Stage
117	Carrier Safety Fitness Determination	2126-AB11	Proposed Rule Stage
118	Electronic On-Board Recorders and Hours of Service Supporting Documents	2126-AB20	Proposed Rule Stage
119	Hours of Service	2126-AB26	Proposed Rule Stage
120	Drivers of Commercial Vehicles: Restricting the Use of Cellular Phones	2126-AB29	Proposed Rule Stage
121	National Registry of Certified Medical Examiners	2126-AA97	Final Rule Stage
122	Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2017 and Beyond	2127-AK79	Prerule Stage
123	Federal Motor Vehicle Safety Standard No. 111, Rearview Mirrors	2127-AK43	Proposed Rule Stage

**DEPARTMENT OF LABOR (DOL)****U.S. DEPARTMENT OF LABOR****Fall 2010 Statement of Regulatory Priorities**

Secretary Solis has consistently stated that all of the work of the Department of Labor is focused on achieving *Good Jobs for Everyone*. The Labor Department's vision of a "good job" includes jobs that:

- increase workers' incomes and narrow wage and income inequality;
- assure workers are paid their wages and overtime;
- increase workers' incomes and narrow wage and income inequality;
- assure workers are paid their wages and overtime;
- are in safe and healthy workplaces, and fair and diverse workplaces;
- provide workplace flexibility for family and personal care-giving;
- improve health benefits and retirement security for all workers; and
- assure workers have a voice in the workplace.

To achieve this goal, the Department is using every tool in its toolbox, including increased enforcement actions, increased education and outreach, and targeted regulatory actions. Because the Department cannot be in every workplace every day, our targeted regulatory actions are centered on two broad themes—Plan/Prevent/Protect, and Openness and Transparency. These unifying themes seek to foster a new calculus that strengthens protections for workers and results in significantly increased compliance. Employers and other regulated entities must take full ownership over their adherence to Department regulations. The Department also hopes that with greater openness and transparency, workers will be in a better position to judge whether their workplace is one that values health and safety, work-life balance, and diversity.

**Plan/Prevent/Protect Compliance Strategy**

In the fall 2010 regulatory agenda, the Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA), Office of Federal Contract Compliance Programs (OFCCP), and the Wage and Hour Division (WHD) will all propose regulatory actions that would require employers to develop programs to address specific compliance issues

within each agency's portfolio. Although the specifics will vary by law, industry, and regulated enterprise, the Plan/Prevent/Protect strategy seeks to remind employers and other regulated entities that they are responsible for full compliance with the law every day, not just when Department inspectors come calling. As announced with the spring 2010 regulatory agenda, the strategy will require employers and other regulated entities to:

- **"Plan"**: Create a plan for identifying and remediating risks of legal violations and other risks to workers—for example, a plan to inspect their workplaces for safety hazards that might injure or kill workers. Workers will be given opportunities to participate in the creation of the plans. In addition, the plans would be made available to workers so they can fully understand them and help to monitor their implementation.
- **"Prevent"**: Thoroughly and completely implement the plan in a manner that prevents legal violations. The plan cannot be a mere paper process. This will not be an exercise in drafting a plan only to put it on a shelf. The plan must be fully implemented.
- **"Protect"**: Verify on a regular basis that the plan's objectives are being met. The plan must actually protect workers from health and safety risks and other violations of their workplace rights.

Employers and other regulated entities who fail to take these steps to comprehensively address the risks, hazards, and inequities in their workplaces will be considered out of compliance with the law and, depending upon the agency and the substantive law it is enforcing, subject to remedial action. But employers, unions, and others who follow the Department's Plan/Prevent/Protect strategy will assure compliance with employment laws before Labor Department enforcement personnel arrive at their doorsteps. Most important, they will assure that workers get the safe, healthy, diverse, family-friendly, and fair workplaces they deserve.

*Openness and Transparency: Tools for Achieving Compliance*

Greater openness and transparency continues to be central to the Department's compliance and regulatory strategies. The fall 2010 regulatory plan demonstrates the Department's continued commitment to conducting the people's business with openness and transparency, not only as good government and stakeholder

engagement strategies, but as important means to achieve compliance with the employment laws administered and enforced by the Department. Openness and transparency will not only enhance agencies' enforcement actions but will encourage greater levels of compliance by the regulated community and enhance awareness among workers of their rights and benefits. When employers, unions, workers, advocates, and members of the public have greater access to information concerning workplace conditions and expectations, then we all become partners in the endeavor to create Good Jobs for Everyone.

*Worker Protection Responsiveness*

The Department believes Plan/Prevent/Protect and increased Openness and Transparency will result in gradual improvements to worker health and safety. However, when the Department identifies specific hazards and risks to worker health, safety, security or fairness, we will utilize our regulatory powers to limit the risk to workers. The fall 2010 regulatory plan includes examples of such regulatory initiatives to address such specific concerns.

MSHA is planning several regulatory initiatives to respond to specific health and safety needs of workers: (1) MSHA plans to issue an emergency temporary standard (ETS) covering the Maintenance of Incombustible Content of Rock Dust in Underground Coal Mines, (2) MSHA advanced the publication date for the proposed rule covering Examinations of Work Areas in Underground Coal Mines from March 2011 to October 2010, and (3) MSHA decided not to publish a request for information on Safety and Health Management Programs for Mines and is instead planning to hold a series of public meetings in October 2010 followed by the publication of a proposed rule in June 2011.

OSHA plans to issue a proposed rule that will update fatality and catastrophe reporting requirements so the Agency receives more timely information on a broader range of catastrophic events, which will help OSHA conduct more responsive investigations.

Crystalline silica exposure is one of the most serious hazards workers face. OSHA and MSHA are both proposing to address worker exposures to crystalline silica through the promulgation and enforcement of a comprehensive health standard.

## Occupational Safety and Health Administration (OSHA)

OSHA's regulatory program is designed to help workers and employers identify hazards in the workplace, prevent the occurrence of injuries and adverse health effects, and communicate with the regulated community regarding hazards and how to effectively control them. Long-recognized health hazards such as silica, beryllium, and emerging hazards such as food flavorings containing diacetyl place American workers at risk of serious disease and death and are initiatives on OSHA's regulatory agenda. In addition to targeting specific hazards, OSHA is focusing on systematic processes that will modernize the culture of safety in America's workplaces.

### *Plan/Prevent/Protect*

#### Infectious Diseases

OSHA is considering the need for regulatory action to address the risk to workers exposed to infectious diseases in healthcare and other related high-risk environments. The Agency is considering an approach that would combine elements of the Department's Plan/Prevent/Protect strategy with established infection control practices. The Agency received strong stakeholder participation in response to its May 2010 request for information on infectious diseases and is currently reviewing the docket.

In 2007, the healthcare and social assistance sector as a whole had 16.5 million employees. Healthcare workplaces can range from small, private practices of physicians to hospitals that employ thousands of workers. In addition, healthcare is increasingly being provided in other settings such as nursing homes, free-standing surgical and outpatient centers, emergency care clinics, patients' homes, and pre-hospitalization emergency care settings. OSHA is interested in all routes of infectious disease transmission in healthcare settings not already covered by its bloodborne pathogens standard (e.g., contact, droplet, and airborne). The Agency is particularly concerned by studies that indicate that transmission of infectious diseases to both patients and healthcare workers may be occurring as a result of incomplete adherence to recognized, but voluntary, infection control measures. Another concern is the movement of healthcare delivery from the traditional hospital setting, with its greater infrastructure and resources to effectively implement infection control measures, into more diverse and smaller workplace setting

with less infrastructure and fewer resources, but with an expanding worker population.

#### Injury and Illness Prevention Program (I2P2)

OSHA's I2P2 program is the prototype for the Department's Plan/Prevent/Protect strategy. OSHA's first step in this important rulemaking was to hold stakeholder meetings. Stakeholder meetings were held in East Brunswick, NJ; Dallas, Texas; Washington, DC; and Sacramento, California, beginning in June 2010 and ending in August 2010. More than 200 stakeholders participated in these meetings, and in addition, nearly 300 stakeholders attended as observers. The proposed rule will explore requiring employers to provide their employees with opportunities to participate in the development and implementation of an injury and illness prevention program, including a systematic process to proactively and continuously address workplace safety and health hazards. This rule will involve planning, implementing, evaluating, and improving processes and activities that promote worker safety and health, and address the needs of special categories of workers (such as youth, aging, and immigrant workers). OSHA's efforts to protect workers under the age of 18 will be undertaken in cooperation with the Department's Wage and Hour Division, which has responsibility for enforcing the child labor provisions of the Fair Labor Standards Act. OSHA has substantial evidence showing that employers that have implemented similar injury and illness prevention programs have significantly reduced injuries and illnesses in their workplaces. The new rule would build on OSHA's existing Safety and Health Program Management Guidelines and lessons learned from successful approaches and best practices that have been applied by companies participating in OSHA's Voluntary Protection Program and Safety and Health Achievement Recognition Program, and similar industry and international initiatives.

### *Addressing Targeted Hazards*

#### Silica

In order to target one of the most serious hazards workers face, OSHA is proposing to address worker exposures to crystalline silica through the promulgation and enforcement of a comprehensive health standard. Exposure to silica causes silicosis, a debilitating respiratory disease, and may cause cancer, other chronic respiratory

diseases, and renal and autoimmune disease as well. Over 2 million workers are exposed to crystalline silica in general industry, construction, and maritime industries and workers are often exposed to levels that exceed current OSHA permissible limits, especially in the construction industry where workers are exposed at levels that exceed current limits by several fold. It has been estimated that between 3,500 and 7,000 new cases of silicosis arise each year in the U.S., and that 1,746 workers died of silicosis between 1996 and 2005. Reducing these hazardous exposures through promulgation and enforcement of a comprehensive health standard will contribute to OSHA's goal of reducing occupational fatalities and illnesses. As a part of the Secretary's strategy for securing safe and healthy workplaces, MSHA will also utilize information provided by OSHA to undertake regulatory action related to silica exposure in mines.

#### Backing Operations

In order to target one of most serious hazards that construction workers face, OSHA is proposing to address worker exposures to the dangers inherent in backing operations through the promulgation and enforcement of a revised construction standard. NIOSH reports that half of the fatalities involving construction equipment occur while the equipment is backing. Backing accidents cause 500 deaths and 15,000 injuries per year. Emerging technologies in the field of backing operations include after market devices, such as camera, radar, and sonar, to help monitor the presence of workers on foot in blind areas, and new monitoring technology, such as tag-based warning systems that use radio frequency (RFID) and magnetic field generators on equipment to detect electronic tags worn by workers. OSHA is developing this proposal in consultation with MSHA, which will issue an Emergency Temporary Standard concerning Proximity Detection.

### *Openness and Transparency*

#### Hazard Communication

Hearings on OSHA's proposal to modify its Hazard Communication standard have helped the agency to promote transparency in the communication of chemical hazard information. These hearings gathered information to assist OSHA in creating consistency between its current Hazard Communication standard (HCS) and the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS). This rulemaking

involves changing the criteria for classifying health and physical hazards to require information regarding the severity of the hazard, a standardized order of information for safety data sheets, and adopting standardized labeling requirements that would be understandable for low-literacy workers or those who do not speak English. The HCS covers over 945,000 hazardous chemical products in 7 million American workplaces and gives workers the “right to know” about chemical hazards to which they are exposed. OSHA and other Federal agencies have participated in long-term international negotiations to develop the GHS. Revising the HCS to be consistent with the GHS is expected to significantly improve the communication of hazards to workers in American workplaces, reducing exposures to hazardous chemicals, and reducing occupational illnesses and fatalities.

#### Modernizing Recordkeeping

In the first half of this year, OSHA held informal meetings to gather information from experts and stakeholders regarding the modification of its current injury and illness data collection system that will help the agency, employers, employees, researchers, and the public prevent workplace injuries and illnesses, as well as support President Obama’s Open Government Initiative. Under the proposed rule, OSFIA will explore increasing its legal authority to require employers to electronically submit to the Agency any data required by part 1904 (Recording and Reporting Occupational Injuries). In addition it will set ongoing electronic submission requirements of data for a defined set of establishments. This two-part rule will give OSHA the flexibility to define the scope and frequency of data collection without having to undertake additional rulemakings. With OMB approval, OSHA will be able to conduct data collections ranging from the annual collection of data from a handful of employers to the real-time collection of all part 1904 data from all covered employers. In addition, OSHA will be able to request additional data elements that employers are not required to maintain, such as data on race and ethnicity, as a non-mandatory component of a given data collection. OSHA learned from stakeholders that most large employers already maintain their part 1904 data electronically; as a result, electronic submission will constitute a minimal burden on these employers, while providing a wealth of data to help OSHA, employers,

employees, researchers, and the public prevent workplace injuries and illnesses.

#### Mine Safety and Health Administration (MSHA)

The Mine Safety and Health Administration is the worker protection agency focused on the prevention of death, disease, and injury from mining and the promotion of safe and healthful workplaces for the Nation’s miners. The Department believes that every worker has a right to a safe and healthy workplace. Workers should never have to sacrifice their lives for their livelihood, and all workers deserve to come home to their families at the end of their shift safe and whole. MSHA’s approach to reducing workplace fatalities and injuries includes promulgating and enforcing mandatory health and safety standards.

#### *Plan/Prevent/Protect*

##### Safety and Health Management Programs for Mines

Year after year, many mines experience low injury and illness rates and low violation rates. For these mine operators, preventing harm to their miners is more than compliance with safety and health requirements; it reflects the embodiment of a culture of safety—from the CEO to the miner. This culture of safety derives from a commitment to an effective, comprehensive safety and health management program. Since compliance with safety and health standards is the responsibility of mine operators, MSHA plans to publish a proposed rule to require mine operators to develop comprehensive Safety and Health Management Programs for Mines. MSHA believes that operators with effective safety and health management programs would identify and correct hazards in a more timely manner, resulting in fewer accidents, injuries and illnesses. To help develop the proposal, MSHA held public meetings and gathered information from worker organizations, industry, academia, government, and safety and health professionals about model safety and health programs.

##### Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards

To complement the safety and health management programs proposed rule, MSHA also plans to issue a proposed rule to address section 303(d) of the Federal Mine Safety and Health Act that requires mine operators to conduct

examinations, in areas where miners work or travel, for violations of mandatory health or safety standards. The proposal would assure that underground coal mine operators find and fix violations of mandatory health or safety standards, thereby improving health and safety for miners.

#### Pattern of Violations

MSHA has determined that the existing pattern criteria and procedures contained in 30 CFR part 104 do not reflect the statutory intent for section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act). The legislative history of the Mine Act explains that Congress intended the pattern of violations to be an enforcement tool for operators who have demonstrated a disregard for the health and safety of miners. These mine operators, who have a chronic history of persistent significant and substantial (S&S) violations, needlessly expose miners to the same hazards again and again. This indicates a serious safety and health management problem at a mine. The goal of the pattern of violations proposed rule is to compel operators to manage health and safety conditions so that the root causes of S&S violations are found and fixed before they become a hazard to miners. The proposal would reflect statutory intent, simplify the pattern of violations criteria, and improve consistency in applying the pattern of violations criteria.

#### *Addressing Targeted Hazards*

##### Maintenance of Incombustible Content of Rock Dust in Underground Coal Mines

To help prevent explosion hazards, MSHA issued an emergency temporary standard (ETS) in response to the grave danger that miners in underground bituminous coal mines face when accumulations of coal dust are not made inert. MSHA concluded from investigations of mine explosions and other reports that immediate action was necessary to protect miners. Accumulations of coal dust can ignite, resulting in an explosion, or after an explosion, accumulations can propagate, increasing the severity of explosions. The ETS requires mine operators to increase the incombustible content of combined coal dust, rock dust, and other dust to at least 80 percent in underground bituminous coal mines. The ETS strengthens the protections for miners by reducing both the potential for and the severity of coal mine explosions.

##### Regulating Crystalline Silica Exposure

The Agency's regulatory actions also exemplify a commitment to protecting the most vulnerable populations while assuring broad-based compliance. Health hazards are pervasive in both coal and metal/nonmetal mines (including surface and underground mines) and large and small mines. As mentioned previously, as part of the Secretary's strategy for securing safe and healthy workplaces, both MSHA and OSHA will be undertaking regulatory actions related to silica. Overexposure to crystalline silica can result in some miners developing silicosis, an irreversible but preventable lung disease, which ultimately may be fatal. In its proposed rule, MSHA plans to follow the recommendation of the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers, National Institute for Occupational Safety and Health (NIOSH), and other groups to address the exposure limit for respirable crystalline silica. As another example of intra-departmental collaboration, MSHA intends to consider OSHA's work on the health effects of occupational exposure to silica and OSHA's risk assessment in developing the appropriate standard for the mining industry.

#### Lowering Miners' Exposure to Coal Mine Dust, including Continuous Personal Dust Monitors

MSHA will continue its regulatory action related to preventing Black Lung disease. Data from the NIOSH indicate increased prevalence of coal workers pneumoconiosis (CWP) "clusters" in several geographical areas, particularly in the Southern Appalachian Region. MSHA published a notice of proposed rulemaking to address continued risk to coal miners from exposure to respirable coal mine dust. This regulatory action is part of MSHA's Comprehensive Black Lung Reduction Strategy for reducing miners' exposure to respirable dust. This strategy includes enhanced enforcement, education and training, and health outreach and collaboration. The major provisions of the proposal would lower the existing exposure limit from 2.0 mg/m<sup>3</sup> to 1.0 mg/m<sup>3</sup> over a 2-year phase-in period, provide for single full-shift compliance sampling under both mine operator and MSHA inspector sampling programs, and establish sampling requirements for use of the continuous personal dust monitors.

#### Proximity Detection Systems

MSHA will issue an emergency temporary standard (ETS) to address the grave danger that miners face when

working near mobile equipment in underground mines. MSHA has concluded, from investigations of accidents involving mobile equipment and other reports, that immediate action is necessary to protect miners. To date, in 2010, there have been 5 fatalities resulting from crushing and pinning accidents. Mobile equipment can pin, crush, or strike a miner working near the equipment. Proximity detection technology can prevent these types of accidents. Proximity detection systems can be installed on mining machinery to detect the presence of personnel or equipment within a certain distance of the machine. The ETS would strengthen the protection for underground miners by reducing the potential of pinning, crushing or striking hazards associated with working close to mobile equipment. As a part of the Secretary's strategy for securing safe and healthy workplaces, OSHA will also undertake regulatory action related to reducing injuries and fatalities to workers in close proximity to moving equipment and vehicles.

#### Wage and Hour Division (WHD)

The Wage and Hour Division is responsible for administering and enforcing a number of laws that establish the minimum standards for wages and working conditions in the United States. Collectively, these labor standards cover most private, state, and local government employment.

#### Plan/Prevent/Protect

##### Right To Know Under the Fair Labor Standards Act

WHD intends to publish a proposed rule updating the recordkeeping regulation issued under the Fair Labor Standards Act (FLSA) to assist employers in planning to protect workers' entitlement to wages that they have earned and bring greater transparency and openness to the workplace. The proposed rule would address notification of workers' status as employees or some other status such as independent contractors, and whether that worker is entitled to the protections of the FLSA. The proposed rulemaking would also explore requiring employers to provide a wage statement each pay period to their employees. This greater transparency will provide workers with essential information about their employment status and earnings, consistent with the Secretary's strategic vision. This greater transparency will in turn better ensure compliance by regulated entities and assist the Department with its enforcement efforts. This initiative contributes to the

Department's efforts to prevent misclassification that denies workers employment law protections to which they are entitled.

As part of this Departmentwide initiative, OSHA's Injury and Illness Prevention Program NPRM and OFCCP's NPRM on Construction Contractor Affirmative Action Requirements, propose to also address employer analyses and worker notification as to whether an individual is an employee or is an independent business, volunteer, or trainee.

#### Office of Federal Contract Compliance Programs (OFCCP)

Through the work of the Office of Federal Contract Compliance Programs, DOL ensures that the contractors and sub-contractors doing business at over 200,000 establishments provide equal employment opportunities—a fair and diverse workplace. OFCCP ensures workers are recruited, hired, trained, promoted, terminated, and compensated in a non-discriminatory manner by Federal contractors and helps workers in the Federal contractor sector by strengthening affirmative action and by combating discrimination on the basis of race, color, religion, sex, national origin, disability, or status as a protected veteran.

#### Construction Contractor Affirmative Action Requirements

OFCCP will publish a proposed rule that would enhance the effectiveness of the affirmative action program requirements for Federal and federally assisted construction contractors and subcontractors. The proposed rule would strengthen the regulations that set forth the actions construction contractors are required to take to implement their affirmative action programs particularly in the areas of recruitment, training, and apprenticeships. OFCCP is coordinating with the Employment and Training Administration (ETA), which is developing a proposed regulation revising the equal opportunity regulatory framework under the National Apprenticeship Act.

#### Employee Benefits Security Administration (EBSA)

The Employee Benefits Security Administration (EBSA) is responsible for administering and enforcing the fiduciary, reporting and disclosure, and health coverage provisions of title I of the Employee Retirement Income Security Act of 1974 (ERISA). This includes recent amendments and additions to ERISA enacted in the

Pension Protection Act of 2006, as well as new health coverage provisions under the Patient Protection and Affordable Care Act of 2010 (the Affordable Care Act). EBSA's regulatory plan initiatives are intended to improve health benefits and retirement security for workers in every type of job at every income level. EBSA is charged with protecting approximately 150 million Americans covered by an estimated 708,000 private retirement plans, 2.6 million health plans, and similar numbers of other welfare benefit plans which together hold \$5.2 trillion in assets.

EBSA will continue to issue guidance implementing the health reform provisions of the Affordable Care Act and other laws, such as the Mental Health Parity and Addiction Equity Act, to help provide better quality health care for American workers and their families. EBSA's regulations reduce discrimination in health coverage, promote better access to quality coverage, and protect the ability of individuals and businesses to keep their current health coverage. Many regulations are joint rulemakings with the Departments of Health and Human Services and the Treasury.

Using regulatory changes to produce greater openness and transparency is an integral part of EBSA's contribution to a Departmentwide compliance strategy. These efforts will not only enhance EBSA's enforcement toolbox but will encourage greater levels of compliance by the regulated community and enhance awareness among workers of their rights and benefits. Several proposals from the EBSA agenda expand disclosure requirements, substantially enhancing the availability of information to employee benefit plan participants and beneficiaries and employers, and strengthening the retirement security of America's workers.

#### *Health Reform Implementation*

These regulations require better disclosure to participants and beneficiaries regarding their health plan coverage. These disclosures must now provide new and better descriptions regarding:

Certain enrollment opportunities and access to health coverage; rights to internal claims and appeals, and external review of health plan denials; access to providers; and a group health plan's status as a grandfathered health plan, which affects consumer protections under the Patient Protection and Affordable Care Act.

#### *Enhancing participant protections*

EBSA recently proposed amendments to its regulations to clarify the circumstances under which a person will be considered a "fiduciary" when providing investment advice to employee benefit plans and their participants and beneficiaries of such plans. The amendments would take into account current practices of investment advisers and the expectations of plan officials and participants who receive investment advice. This initiative is intended to assure retirement security for workers in all jobs regardless of income level by ensuring that financial advisers and similar persons are required to meet ERISA's strict standards of fiduciary responsibility.

#### *Lifetime Income Options*

In February 2010, EBSA published a request for information concerning steps it can take by regulation, or otherwise, to encourage the offering of lifetime annuities or similar lifetime benefits distribution options for participants and beneficiaries of defined contribution plans. EBSA recently held a hearing with the Department of the Treasury and Internal Revenue Service to further explore these possibilities during the fall 2010 regulatory cycle. This initiative is intended to assure retirement security for workers in all jobs regardless of income level by helping to ensure that participants and beneficiaries have the benefit of their plan savings throughout retirement.

#### *Promoting Openness and Transparency*

In addition to its health care reform and participant protection initiatives, EBSA is pursuing a regulatory program that, as reflected in the Unified Agenda, is designed to encourage, foster, and promote openness, transparency, and communication with respect to the management and operations of pension plans, as well as participant rights and benefits under such plans. Among other things, EBSA will be issuing a final rule that will ensure that the participants and beneficiaries in participant-directed individual account plans are provided the information they need, including information about plan and investment-related fees and expenses, to make informed decisions about the management of their individual accounts and the investment of their retirement savings (RIN 1210-AB07); EBSA also will be issuing a proposed rule addressing the requirement that administrators of defined benefit pension plans annually disclose the funding status of their plan to the plan's participants and beneficiaries (RIN 1210-

AB18). EBSA's Unified Agenda also includes the publication of a proposed rule requiring the automatic furnishing of a statement to pension plan participants informing them of their accrued and vested pension benefits, as well as other information pertinent to their retirement security (RIN 1210-AB20). In addition, EBSA will be amending the disclosure requirements applicable to plan investment options, including Qualified Default Investment Alternatives, to better ensure that participants understand the operations and risks associated with investments in target date funds (RIN 1210-AB38). A complete listing of EBSA's regulatory initiatives (both Plan and non-Plan items) is provided in the Unified Agenda portion of this document.

#### **Office of Labor-Management Standards (OLMS)**

The Office of Labor-Management Standards (OLMS) administers and enforces most provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). The LMRDA promotes labor-management transparency by requiring unions, employers, labor-relations consultants, and others to file reports that are publicly available. The LMRDA includes provisions protecting union member rights to participate in their union's governance, to run for office and fully exercise their union citizenship, as well as procedural safeguards to ensure free and fair union elections. Besides enforcing these provisions, OLMS also ensures the financial accountability of unions, their officers and employees, through enforcement and voluntary compliance efforts. Because of these activities, OLMS better ensures that workers have a more effective voice in the governance of their unions, which in turn affords them a more effective voice in their workplaces. OLMS also administers certain provisions of Executive Order 13496 that require Federal contractors to notify their employees concerning their rights under Federal labor laws.

#### *Openness and Transparency*

Persuader Agreements: Employer and Labor Consultant Reporting under the LMRDA

OLMS is proposing a regulatory initiative to provide workers with information critical to their effective participation in the workplace, both as union members and as employees. OLMS intends to propose regulations to better implement the public disclosure objectives of the LMRDA in situations where an employer engages a consultant

in order to persuade employees concerning their rights to organize and bargain collectively. Under LMRDA section 203, an employer must report any agreement or arrangement with a consultant to persuade employees concerning their rights to organize and collectively bargain, or to obtain certain information concerning the activities of employees or a labor organization in connection with a labor dispute involving the employer. The consultant is also required to report such an agreement or arrangement with an employer. Statutory exceptions to these reporting requirements are set forth in LMRDA section 203(c), which provides, in part, that employers and consultants are not required to file a report by reason of the consultant's giving or agreeing to give "advice" to the employer. The Department is reconsidering the current policy concerning the scope of the "advice exception." When workers have the necessary information about arrangements that have been made by their employer to persuade them whether or not to form, join or assist a union, they are better able to make a more informed choice about representation.

#### **Employment and Training Administration (ETA)**

The Employment and Training Administration (ETA) administers and oversees programs that prepare workers for good jobs at good wages by providing high quality job training, employment, labor market information, and income maintenance services through its national network of One-Stop centers. The programs within ETA promote pathways to economic independence for individuals and families. Through several laws, ETA is charged with administering numerous employment and training programs designed to assist the American worker in developing the knowledge, skills, and abilities that are sought after in the 21st century's economy.

#### *Openness and Transparency*

Temporary Non Agricultural Employment of H-2B Aliens in the United States

As part of the Department's labor certification responsibilities, ETA certifies whether U.S. workers capable of performing the jobs for which employers are seeking foreign workers are available and whether the employment of foreign workers will adversely affect the wages and working conditions of U.S. workers similarly employed. Through the Wage and Hour

Division (WHD), the Department enforces compliance with the conditions of an H-2B petition and Department of Labor-approved temporary labor certification.

The proposed rule seeks to ensure that only those employers who demonstrate a real temporary need for foreign workers will have access to the H-2B program. The proposed rule also will seek to provide U.S. workers with greater access to the jobs employers wish to fill with temporary H-2B workers through more robust recruitment by employers to demonstrate the unavailability of U.S. workers and through the creation of a national, electronic job registry. In addition, the Department is reviewing the current wage determination methodology to ensure that wages are not being adversely affected across industries and occupations. The proposed rule will explore strengthening existing worker protections, establishing new protections, and enhancing ETA program integrity measures and WHD enforcement to ensure adequate protections for both U.S. and H-2B workers. The proposal will include greater transparency and openness to provide U.S. workers with greater information and access to the job opportunities.

#### *Addressing Targeted Concerns of Workers*

Equal Employment Opportunity in Apprenticeship and Training, Amendment of Regulations

The revision of the National Apprenticeship Act Equal Opportunity in Apprenticeship and Training (EEO) regulations is a critical element in the Department's vision to promote and expand registered apprenticeship opportunities in the 21st Century while safeguarding the welfare and safety of all apprentices. In October 2008, ETA issued a final rule updating 29 CFR part 29, the regulatory framework for registration of apprenticeship programs and apprentices, and administration of the National Apprenticeship System. The companion EEO regulations, 29 CFR part 30, have not been amended since 1978. ETA proposes to update part 30 EEO in the Apprenticeship and Training regulations to ensure that they act in concert with the 2008 revised part 29 rule. The proposed EEO regulations also will further Secretary Solis' vision of good jobs for everyone by ensuring that apprenticeship program sponsors develop and fully implement affirmative action efforts that provide equal

opportunity for all applicants to apprenticeship and apprentices, regardless of race, gender, national origin, or disability. ETA is coordinating with OFCCP, which is developing a proposed regulation that would enhance the effectiveness of the affirmative action program requirements for Federal and federally assisted construction contractors and subcontractors.

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#### **DOL—Office of Federal Contract Compliance Programs (OFCCP)**

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#### **PROPOSED RULE STAGE**

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#### **94. CONSTRUCTION CONTRACTOR AFFIRMATIVE ACTION REQUIREMENTS**

##### **Priority:**

Other Significant

##### **Legal Authority:**

sec 201, 202, 205, 211, 301, 302, and 303 of EO 11246, as amended; 30 FR 12319; 32 FR 14303, as amended by EO 12086

##### **CFR Citation:**

41 CFR 60–1; 41 CFR 60–4

##### **Legal Deadline:**

None

##### **Abstract:**

This Notice of Proposed Rulemaking (NPRM) would revise the regulations in 41 CFR part 60-4 implementing the affirmative action requirements of Executive Order 11246 that are applicable to Federal and federally assisted construction contractors. The NPRM will strengthen and enhance the effectiveness of the affirmative action program requirements for Federal and federally-assisted construction contractors and subcontractors, particularly in the area of recruitment and job training.

##### **Statement of Need:**

The regulations implementing construction contractor affirmative action obligations under Executive Order 11246, as amended, were last revised in 1980. Recent data show that disparities in the representation of women and racial minorities continue to exist in on-site construction occupations in the construction industry. The NPRM would remove outdated regulatory provisions, propose a new method for establishing affirmative action goals, and propose

other revisions to the affirmative action requirements that reflect the realities of the labor market and employment practices in the construction industry today.

**Summary of Legal Basis:**

This action is not required by statute or court order. Legal Authority: Sections 201, 202, 205, 211, 301, 302, and 303 of E.O. 11246, as amended, 30 FR 12319; 32 FR 14303, as amended by E.O. 12086.

**Alternatives:**

Regulatory alternatives will be addressed as the NPRM is developed

**Anticipated Cost and Benefits:**

There may be some additional costs to contractors as a result of the increased scope of required actions. The benefits would likely include increased diversity in construction workplaces and increased opportunities for women and minorities to get on-site construction jobs. More detailed cost and benefit analyses will be made as the NPRM is developed.

**Risks:**

Failure to provide updated regulations may impede the equal opportunity rights of some workers in protected classes.

**Timetable:**

Action	Date	FR Cite
NPRM	07/00/11	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

None

**Federalism:**

Undetermined

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**Related RIN:** Previously reported as 1215-AB81

**RIN:** 1250-AA01

**DOL—Office of Labor-Management Standards (OLMS)**

**PROPOSED RULE STAGE**

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

**Priority:**

Other Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:**

29 USC 433; 29 USC 438

**CFR Citation:**

29 CFR 405; 29 CFR 406

**Legal Deadline:**

None

**Abstract:**

The Department intends to publish notice and comment rulemaking seeking consideration of a revised interpretation of section 203(c) of the Labor-Management Reporting and Disclosure Act (LMRDA). That statutory provision creates an “advice” exemption from reporting requirements that apply to employers and other persons in connection with persuading employees about the right to organize and bargain collectively. A proposed revised interpretation would narrow the scope of the advice exemption.

**Statement of Need:**

The Department of Labor is proposing a regulatory initiative to better implement the public disclosure objectives of the Labor-Management Reporting and Disclosure Act (LMRDA) regarding employer-consultant agreements to persuade employees concerning their rights to organize and bargain collectively. Under LMRDA section 203, an employer must report any agreement or arrangement with a third party consultant to persuade employees as to their collective bargaining rights or to obtain certain information concerning the activities of employees or a labor organization in connection with a labor dispute involving the employer. The consultant also is required to report concerning such an agreement or arrangement with an employer. Statutory exceptions to these reporting requirements are set forth in LMRDA section 203(c), which provides, in part, that employers and consultants are not required to file a report by reason of the consultant’s

giving or agreeing to give “advice” to the employer. The Department believes that its current policy concerning the scope of the “advice exception” is overbroad and that a narrower construction would better allow for the employer and consultant reporting intended by the LMRDA. Regulatory action is needed to provide workers with information critical to their effective participation in the workplace.

**Summary of Legal Basis:**

This proposed rulemaking is authorized under U.S.C. sections 433 and 438 and applies to regulations at 29 CFR part 405 and 29 CFR part 406.

**Alternatives:**

Alternatives will be developed and considered in the course of notice and comment rulemaking.

**Anticipated Cost and Benefits:**

Anticipated costs and benefits of this proposed regulatory initiative have not been assessed and will be determined at a later date, as appropriate.

**Risks:**

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

**Timetable:**

Action	Date	FR Cite
NPRM	06/00/11	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**URL For More Information:**

[www.olms.dol.gov](http://www.olms.dol.gov)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**Related RIN:** Previously reported as 1215-AB79

**RIN:** 1245-AA03

**DOL—Wage and Hour Division (WHD)**

**PROPOSED RULE STAGE**

**96. RIGHT TO KNOW UNDER THE FAIR LABOR STANDARDS ACT**

**Priority:**

Other Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:**

29 USC 211(c)

**CFR Citation:**

29 CFR 516

**Legal Deadline:**

None

**Abstract:**

The Department of Labor proposes to update the recordkeeping regulations under the Fair Labor Standards Act in order to enhance the transparency and disclosure to workers of their status as the employer's employee or some other status, such as an independent contractor, and if an employee, how their pay is computed. The Department also proposes to clarify that the mandatory manual preparation of "homeworker" handbooks applies only to employers of employees performing homework in the restricted industries. The title of this proposed rule has changed to better reflect the purpose of this action.

**Statement of Need:**

The recordkeeping regulation issued under the Fair Labor Standards Act (FLSA), 29 CFR part 516, specifies the scope and manner of records covered employers must keep that demonstrate compliance with minimum wage, overtime, and child labor requirements

under the FLSA, or the records to be kept that confirm particular exemptions from some of the Act's requirements may apply. This proposal intends to update the recordkeeping requirements to foster more openness and transparency in demonstrating employers' compliance with applicable requirements to their workers, to better ensure compliance by regulated entities, and to assist in enforcement. In addition, the proposal intends to update the requirements for live-in domestic employees and, to clarify that the mandatory manual preparation of "homeworker" handbooks applies only to employers of employees performing homework in the restricted industries.

**Summary of Legal Basis:**

These regulations are authorized by section 11 of the Fair Labor Standards Act, 29 U.S.C. 211.

**Alternatives:**

Alternatives will be developed in considering proposed revisions to the current recordkeeping requirements. The public will be invited to provide comments on the proposed revisions and possible alternatives.

**Anticipated Cost and Benefits:**

The Department will prepare estimates of the anticipated costs and benefits associated with the proposed rule.

**Risks:**

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

**Timetable:**

Action	Date	FR Cite
NPRM	04/00/11	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Local, State, Tribal

**Federalism:**

Undetermined

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**Related RIN:** Previously reported as 1215-AB78

**RIN:** 1235-AA04

**DOL—Employment and Training Administration (ETA)**

**PROPOSED RULE STAGE**

**97. LABOR CERTIFICATION PROCESS AND ENFORCEMENT FOR TEMPORARY EMPLOYMENT IN OCCUPATIONS OTHER THAN AGRICULTURE OR REGISTERED NURSING IN THE UNITED STATES (H-2B WORKERS)**

**Priority:**

Other Significant

**Legal Authority:**

8 USC 1101(a)(15)(H)(ii)(B)); 8 USC 1184(c)(1); 8 CFR 214.2(h)

**CFR Citation:**

20 CFR 655

**Legal Deadline:**

None

**Abstract:**

The Department of Homeland Security (DHS) regulations require employers to apply for a temporary labor certification from the Department of Labor before H-2B visas may be approved. DOL certifies that there are not sufficient U.S. worker(s) who are capable of performing the temporary services or labor at the time of an application for a visa, and that the employment of the H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. This regulation proposes to re-engineer the H-2B program in order to enhance transparency and strengthen program integrity and protections of both U.S. workers and H-2B workers.

**Statement of Need:**

The Department has determined that a new rulemaking effort is necessary for

the H-2B program. The policy underpinnings of the current regulation, e.g., streamlining the H-2B process to defer many determinations of program compliance until after an application has been adjudicated, do not provide an adequate level of protection for either U.S. or foreign workers. The proposed rule seeks to enhance worker protections and increase the availability of job opportunities to qualified U.S. workers.

**Summary of Legal Basis:**

The Department of Labor’s authority to revise these regulations derives from 8 U.S.C. 1101(a)(15)(H)(ii)(B) and 8 U.S.C. 1184(c)(1) and 8 CFR 214.2(h).

**Alternatives:**

The public will be afforded an opportunity to provide comments on the proposed regulatory changes when the Department publishes the NPRM in the Federal Register. A final rule will be issued after analysis of, and response to, public comments.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs of this regulatory action are under development. The Department of Labor is seeking information on potential additional or actual costs from employers and other interested parties through the NPRM in order to better assess the costs and benefits of the proposed provisions of the program. The proposed changes are thought to raise “novel legal or policy issues” but are not economically significant within the context of Executive Order 12866 and are not a “major rule” under section 804 for the Small Business Regulatory Enforcement Fairness Act.

**Risks:**

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

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/11	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

State

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**RIN:** 1205-AB58

**DOL—ETA**

**98. EQUAL EMPLOYMENT OPPORTUNITY IN APPRENTICESHIP AND TRAINING, AMENDMENT OF REGULATIONS**

**Priority:**

Other Significant

**Legal Authority:**

sec 1, 50 Stat 664, as amended (29 USC 50; 40 USC 276c; 5 USC 301); Reorganization Plan No 14 of 1950, 64 Stat 1267 (5 USC app p 534)

**CFR Citation:**

29 CFR 30 (Revision)

**Legal Deadline:**

None

**Abstract:**

Revisions to the equal opportunity regulatory framework for the National Apprenticeship Act are a critical element in the Department’s vision to promote and expand Registered Apprenticeship opportunities in the 21st century while continuing to safeguard the welfare and safety of apprentices. In October 2008, the Agency issued a Final Rule updating regulations for Apprenticeship Programs and Labor Standards for Registration. These regulations, codified at title 29 Code of Federal Regulations (CFR) part 29, had not been updated since 1977. The companion regulations, 29 CFR part 30, Equal Employment Opportunity (EEO) in Apprenticeship and Training, have not been amended since 1978.

The Agency now proposes to update 29 CFR part 30 to ensure that the National Registered Apprenticeship System is consistent and in alignment with EEO law, as it has developed since 1978, and recent revisions to title 29 CFR part 29. This second phase of regulatory updates will ensure that Registered Apprenticeship is positioned to continue to provide economic

opportunity for millions of Americans while keeping pace with these new requirements.

**Statement of Need:**

Federal regulations for Equal Employment Opportunity (EEO) in Apprenticeship and Training have not been updated since 1978. Updates to these regulations are necessary to ensure that DOL regulatory requirements governing the National Registered Apprenticeship System are consistent with the current state of EEO law, the ADA, and recent revisions to title 29 CFR part 29.

**Summary of Legal Basis:**

These regulations are authorized by the National Apprenticeship Act of 1937 (29 U.S.C. 50) and the Copeland Act (40 U.S.C. 276c). These regulations will set forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor or in State Apprenticeship Agencies recognized by the U.S. Department of Labor.

**Alternatives:**

The public will be afforded an opportunity to provide comments on the proposed amendment to Apprenticeship EEO regulations when the Department publishes a Notice of Proposed Rulemaking (NPRM) in the Federal Register. A Final Rule will be issued after analysis and incorporation of public comments to the NPRM.

**Anticipated Cost and Benefits:**

The proposed changes are thought to raise “novel legal or policy issue” but are not economically significant within the context of Executive Order 12866 and are not a “major rule” under Section 804 of the Small Business Regulatory Enforcement Fairness Act.

**Risks:**

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

**Timetable:**

Action	Date	FR Cite
NPRM	07/00/11	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State, Tribal

**Federalism:**

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

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**RIN:** 1205-AB59

**DOL—Employee Benefits Security Administration (EBSA)**

**PRERULE STAGE**

**99. LIFETIME INCOME OPTIONS FOR PARTICIPANTS AND BENEFICIARIES IN RETIREMENT PLANS**

**Priority:**

Other Significant

**Legal Authority:**

29 USC 1135; ERISA sec 505

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

This initiative will explore what steps, if any, that the Department could or should take, by regulation or otherwise, to enhance the retirement security of American workers by facilitating access to and use of lifetime income or income arrangements designed to provide a stream of income after retirement.

**Statement of Need:**

With a continuing trend away from defined benefit plans to defined contribution plans, employees are not only increasingly responsible for the adequacy of their retirement savings, but also for ensuring that their savings last throughout their retirement. Employees may benefit from access to and use of lifetime income or other arrangements that will reduce the risk of running out of funds during the retirement years. However, both access to and use of such arrangements in defined contribution plans is limited. The Department, taking into

consideration recommendations of the ERISA Advisory Council and others, intends to explore what steps, if any, it could or should take, by regulation or otherwise, to enhance the retirement security of workers by increasing access to and use of such arrangements.

**Summary of Legal Basis:**

Section 505 of ERISA provides that the Secretary may prescribe such regulations as she finds necessary and appropriate to carry out the provisions of title I of the Act.

**Alternatives:**

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

**Timetable:**

Action	Date	FR Cite
RFI	02/02/10	75 FR 5253
RFI Comment Period	05/03/10	
End		
Public Hearing Notice	08/10/10	75 FR 48367
Public Hearing	09/14/10	
Review Public Record	04/00/11	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

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**RIN:** 1210-AB33

**DOL—EBSA**

**PROPOSED RULE STAGE**

**100. DEFINITION OF “FIDUCIARY”**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

29 USC 1002; ERISA sec 3(21); 29 USC 1135; ERISA sec 505

**CFR Citation:**

29 CFR 2510.3-21(c)

**Legal Deadline:**

None

**Abstract:**

This rulemaking would amend the regulatory definition of the term “fiduciary” set forth at 29 CFR 2510.3-21 (c) to more broadly define as employee benefit plan fiduciaries persons who render investment advice to plans for a fee within the meaning of section 3(21) of ERISA. The amendment would take into account current practices of investment advisers and the expectations of plan officials and participants who receive investment advice.

**Statement of Need:**

This rulemaking is needed to bring the definition of “fiduciary” into line with investment advice practices and to recast the current regulation to better reflect relationships between investment advisers and their employee benefit plan clients. The current regulation may inappropriately limit the types of investment advice relationships that should give rise to fiduciary duties on the part of the investment adviser.

**Summary of Legal Basis:**

Section 505 of ERISA provides that the Secretary may prescribe such regulations as she finds necessary and appropriate to carry out the provisions of title I of the Act. Regulation 29 CFR 2510.3-21(c) defines the term fiduciary for certain purposes under section 3(21) of ERISA.

**Alternatives:**

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

**Anticipated Cost and Benefits:**

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

**Timetable:**

Action	Date	FR Cite
NPRM	10/22/10	75 FR 65263
NPRM Comment Period End	01/20/11	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

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**RIN:** 1210-AB32

**DOL—Mine Safety and Health Administration (MSHA)**

**PROPOSED RULE STAGE**

**101. RESPIRABLE CRYSTALLINE SILICA STANDARD**

**Priority:**

Other Significant

**Legal Authority:**

30 USC 811; 30 USC 813

**CFR Citation:**

30 CFR 56 to 57; 30 CFR 70 to 72; 30 CFR 90

**Legal Deadline:**

None

**Abstract:**

Current standards limit exposures to quartz (crystalline silica) in respirable dust. The coal mining industry standard is based on the formula 10 mg/m<sup>3</sup> divided by the percentage of quartz where the quartz percent is greater than 5 percent calculated as an MRE equivalent concentration. The metal and nonmetal mining industry

standard is based on the 1973 American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values formula: 10 mg/m<sup>3</sup> divided by the percentage of quartz plus 2. Overexposure to crystalline silica can result in some miners developing silicosis, an irreversible but preventable lung disease, which ultimately may be fatal. Both formulas are designed to limit exposures to 0.1 mg/m<sup>3</sup> (100 ug) of silica. The Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers made several recommendations related to reducing exposure to silica. NIOSH recommends a 50 ug/m<sup>3</sup> exposure limit for respirable crystalline silica. MSHA will publish a proposed rule to address miners' exposure to respirable crystalline silica.

**Statement of Need:**

MSHA standards are outdated; current regulations may not protect workers from developing silicosis. Evidence indicates that miners continue to develop silicosis. MSHA's proposed regulatory action exemplifies the agency's commitment to protecting the most vulnerable populations while assuring broad-based compliance. MSHA will regulate based on sound science to eliminate or reduce the hazards with the broadest and most serious consequences. MSHA intends to use OSHA's work on the health effects and risk assessment, adapting it as necessary for the mining industry.

**Summary of Legal Basis:**

Promulgation of this standard is authorized by sections 101 and 103 of the Federal Mine Safety and Health Act of 1977.

**Alternatives:**

This rulemaking would improve health protection from that afforded by the existing standards. MSHA will consider alternative methods of addressing miners' exposures based on the capabilities of the sampling and analytical methods.

**Anticipated Cost and Benefits:**

MSHA will prepare estimates of the anticipated costs and benefits associated with the proposed rule.

**Risks:**

For over 70 years, toxicology information and epidemiological studies have shown that exposure to respirable crystalline silica presents potential health risks to miners. These

potential adverse health effects include simple silicosis and progressive massive fibrosis (lung scarring). Evidence indicates that exposure to silica may cause cancer. MSHA believes that the health evidence forms a reasonable basis for reducing miners' exposure to respirable crystalline silica.

**Timetable:**

Action	Date	FR Cite
NPRM	07/00/11	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses, Governmental Jurisdictions

**Government Levels Affected:**

Local, State

**URL For More Information:**

[www.msha.gov/regsinfo.htm](http://www.msha.gov/regsinfo.htm)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 1219-AB36

**DOL—MSHA**

**102. LOWERING MINERS' EXPOSURE TO COAL MINE DUST, INCLUDING CONTINUOUS PERSONAL DUST MONITORS**

**Priority:**

Other Significant

**Legal Authority:**

30 USC 811; 30 USC 813(h)

**CFR Citation:**

30 CFR 70; 30 CFR 71; 30 CFR 72; 30 CFR 75; 30 CFR 90

**Legal Deadline:**

None

**Abstract:**

The Federal Coal Mine Health and Safety Act of 1969 established the first comprehensive respirable dust

standards for coal mines. These standards were designed to reduce the incidence of coal workers' pneumoconiosis (CWP) or (black lung) and silicosis and eventually eliminate these diseases. While significant progress has been made toward improving the health conditions in our Nation's coal mines, miners continue to be at risk of developing occupational lung disease, according to the National Institute for Occupational Safety and Health (NIOSH). In September 1995, NIOSH issued a Criteria Document in which it recommended that the respirable coal mine dust permissible exposure limit (PEL) be cut in half. In February 1996, the Secretary of Labor convened a Federal Advisory Committee on the Elimination of Pneumoconiosis Among Coal Miners (Advisory Committee) to assess the adequacy of MSHA's current program and standards to control respirable dust in underground and surface coal mines, as well as other ways to eliminate black lung and silicosis among coal miners. The Committee represented the labor, industry and academic communities. The Committee submitted its report to the Secretary of Labor in November 1996, with the majority of the recommendations unanimously supported by the Committee members. The Committee recommended a number of actions to reduce miners' exposure to respirable coal mine dust. This proposed rule is an important element in MSHA's Comprehensive Black Lung Reduction Strategy (Strategy) to "End Black Lung Now" and combines the following rulemaking actions: (1) "Occupational Exposure to Coal Mine Dust (Lowering Exposure)," RIN 1219-AB64; (2) "Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust," RIN 1219-AB14; (3) "Determination of Concentration of Respirable Coal Mine Dust," RIN 1219-AB18; and (4) "Respirable Coal Mine Dust: Continuous Personal Dust Monitor (CPDM)," RIN 1219-AB48.

#### Statement of Need:

Comprehensive respirable dust standards for coal mines were designed to reduce the incidence, and eventually eliminate, CWP and silicosis. While significant progress has been made toward improving the health conditions in our Nation's coal mines, miners remain at risk of developing occupational lung disease, according to NIOSH. Recent NIOSH data indicates increased prevalence of CWP "clusters" in several geographical areas,

particularly in the Southern Appalachian Region.

#### Summary of Legal Basis:

Promulgation of this regulation is authorized by the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006.

#### Alternatives:

MSHA is considering amendments, revisions, and additions to existing standards.

#### Anticipated Cost and Benefits:

MSHA developed a preliminary regulatory economic analysis to accompany the proposed rule.

#### Risks:

Respirable coal 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 coal workers' pneumoconiosis and silicosis, which are potentially disabling and can cause death. MSHA is 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. MSHA developed a risk assessment to accompany the proposed rule.

#### Timetable:

Action	Date	FR Cite
NPRM Hearings	10/19/10	75 FR 64412
NPRM Comment Period End	11/15/10	75 FR 69617
NPRM—Rescheduling of Public Hearings; Correction	02/28/11	
Post Hearing Comment Period End	11/30/10	75 FR 73995
	02/28/11	

#### Regulatory Flexibility Analysis Required:

No

#### Small Entities Affected:

Businesses

#### Government Levels Affected:

None

#### URL For More Information:

<http://www.msha.gov/S&HINFO/BlackLung/homepage2009.asp>

#### URL For Public Comments:

<http://www.regulations.gov>

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RIN: 1219-AB64

#### DOL—MSHA

### 103. SAFETY AND HEALTH MANAGEMENT PROGRAMS FOR MINES

#### Priority:

Other Significant

#### Unfunded Mandates:

Undetermined

#### Legal Authority:

30 USC 811 and 812

#### CFR Citation:

Not Yet Determined

#### Legal Deadline:

None

#### Abstract:

MSHA held public meetings and gathered information and suggestions from the mining community on effective, comprehensive safety and health management programs, including programs used in the mining industry. MSHA will use all information received to develop a proposed rule for safety and health management programs to eliminate hazards and prevent injuries and illnesses at mines.

#### Statement of Need:

Mining is one of the most hazardous industries in this country. Yet year after year, many mines experience low injury and illness rates and low violation rates. For these mine operators, preventing harm to their miners is more than compliance with safety and health requirements; it reflects an embodiment of a culture of safety—from CEO to the miner to the contractor. This culture of safety derives from a commitment to a systematic, effective, comprehensive management of safety and health at mines with full participation of all miners.

MSHA believes requiring effective safety and health management

programs in mining will create a sustained industry-wide effort to eliminate hazards and will result in the prevention of injuries and illnesses.

**Summary of Legal Basis:**

Promulgation of this standard is authorized by section 101 of the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006.

**Alternatives:**

No reasonable alternatives to this regulation would be as comprehensive or as effective in eliminating hazards and preventing injuries and illnesses.

**Anticipated Cost and Benefits:**

MSHA will develop a preliminary regulatory economic analysis to accompany the proposed rule.

**Risks:**

The lack of a comprehensive safety and health management program contributes to a higher incidence of injury and illness rates and higher violation rates.

**Timetable:**

Action	Date	FR Cite
NPRM	06/00/11	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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**RIN:** 1219-AB71

**DOL—MSHA**

**104. PATTERN OF VIOLATIONS**

**Priority:**

Other Significant

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

30 USC 814(e); 30 USC 957

**CFR Citation:**

30 CFR 104

**Legal Deadline:**

None

**Abstract:**

MSHA is preparing a proposed rule to revise the Agency's existing regulation for pattern of violations contained in 30 CFR part 104. MSHA has determined that the existing pattern criteria and procedures do not reflect the statutory intent for section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) that operators manage health and safety conditions at mines so that the root causes of significant and substantial (S&S) violations are addressed before they become a hazard to the health and safety of miners. The legislative history of the Mine Act explains that Congress intended the pattern of violations tool be used for operators who have demonstrated a disregard for the health and safety of miners. The proposal would reflect statutory intent, simplify the pattern of violations criteria, and improve consistency in applying the patterns of violations criteria.

**Statement of Need:**

The pattern of violations provision was a new enforcement tool in the Mine Act. The Mine Act places the ultimate responsibility for ensuring the safety and health of miners on mine operators. The goal of the pattern of violations proposed rule is to compel operators to manage health and safety conditions so that the root causes of S&S violations are found and fixed before they become a hazard to miners. MSHA's existing regulation is not consistent with the language, purpose, and legislative history of the Mine Act and hinders the Agency's use of pattern of violations to identify chronic violators who thumb their noses at the law by a continuing cycle of citation and abatement.

**Summary of Legal Basis:**

Promulgation of this standard is authorized by sections 104(e) and 957 of the Federal Mine Safety and Health Act of 1977.

**Alternatives:**

MSHA will consider alternative criteria for determining when a pattern of significant and substantial violations exists in order to improve health and safety conditions in mines and provide

protection for miners. Congress provided the Secretary with broad discretion in determining criteria, recognizing that MSHA may need to modify the criteria as Agency experience dictates.

**Anticipated Cost and Benefits:**

MSHA will prepare estimates of the anticipated costs and benefits associated with the proposed rule.

**Risks:**

Mine operators with a chronic history of persistent serious violations needlessly expose miners to the same hazards again and again. These operators demonstrate a disregard for the safety and health of miners; this indicates a serious safety and health management problem at the mine. The existing regulation has not been effective in reducing repeated risks to miners at these mines.

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/11	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**URL For More Information:**

<http://www.msha.gov/regsinfo.htm>

**URL For Public Comments:**

<http://www.regulations.gov>

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**RIN:** 1219-AB73

**DOL—MSHA**

**105. ● MAINTENANCE OF INCOMBUSTIBLE CONTENT OF ROCK DUST IN UNDERGROUND COAL MINES**

**Priority:**

Other Significant

**Legal Authority:**

30 USC 811, 864

**CFR Citation:**

30 CFR sec 75.403

**Legal Deadline:**

None

**Abstract:**

The Mine Safety and Health Administration (MSHA) issued an emergency temporary standard (ETS) under section 101(b) of the Federal Mine Safety and Health Act of 1977 in response to the grave danger that miners in underground bituminous coal mines face when accumulations of coal dust are not made inert. MSHA concluded from investigations of mine explosions and other reports that immediate action was necessary to protect miners.

Accumulations of coal dust can ignite, resulting in an explosion, or after an explosion, it can propagate, increasing the severity of the explosion. The ETS requires mine operators to increase the incombustible content of combined coal dust, rock dust, and other dust to at least 80 percent in underground areas of bituminous mines. The ETS further requires that the incombustible content of such combined dust be raised 0.4 percent for each 0.1 percent of methane present. The ETS strengthens the protection for miners by reducing the potential for a coal mine explosion.

**Statement of Need:**

MSHA determined that a revised standard for “Maintenance of Incombustible Content of Rock Dust” is necessary to immediately protect underground coal miners from hazards of coal dust explosions. This determination is based on: (1) MSHA’s accident investigation reports of mine explosions in intake air courses that involved coal dust (Dubaniewicz 2009); (2) the National Institute for Occupational Safety and Health’s Report of Investigations 9679 (Cashdollar et al. 2010), “Recommendations for a New Rock Dusting Standard to Prevent Coal Dust Explosions in Intake Airways”; and (3) MSHA’s experience and data.

**Summary of Legal Basis:**

Promulgation of this standard is authorized by section 101(b) of the Federal Mine Safety and Health Act of 1977.

**Alternatives:**

MSHA will consider revisions to the ETS, based on public comments received during the rulemaking process.

**Anticipated Cost and Benefits:**

MSHA estimates that the ETS would result in approximately \$22.0 million in yearly costs for the underground bituminous coal mining industry. The ETS provides additional safety protection for miners in underground bituminous coal mines from the explosion hazard of coal and other dusts. MSHA estimates that, on average, the ETS would prevent approximately 1.5 deaths every year and would prevent one additional injury about every 4 years.

**Risks:**

Based on NIOSH’s data and recommendations, and MSHA’s data and experience, the Secretary determined that miners are exposed to grave danger in areas of underground bituminous coal mines that are not properly and sufficiently rock dusted in accordance with the requirements in this ETS.

**Timetable:**

Action	Date	FR Cite
Emergency Temporary Standard	09/23/10	75 FR 57849
Hearing	10/26/10	
Hearing	10/28/10	
Hearing	11/16/10	
Hearing	11/18/10	
Comment Period End	12/20/10	
Final Action	06/00/11	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**URL For More Information:**

[www.msha.gov/regsinfo.htm](http://www.msha.gov/regsinfo.htm)

**URL For Public Comments:**

[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 1219-AB76

**DOL—MSHA**

**FINAL RULE STAGE**

**106. PROXIMITY DETECTION SYSTEMS FOR UNDERGROUND MINES**

**Priority:**

Other Significant

**Legal Authority:**

30 USC 811

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

The Mine Safety and Health Administration (MSHA) will issue an emergency temporary standard (ETS) under section 101(b) of the Federal Mine Safety and Health Act of 1977 in response to the grave danger that miners face when working near mobile equipment in underground mines. MSHA has concluded, from investigations of accidents involving mobile equipment and other reports, that immediate action is necessary to protect miners. To date, in 2010, there have been five fatalities resulting from crushing and pinning accidents.

Mobile equipment can pin, crush, or strike a miner working near the equipment. Proximity detection technology can prevent these types of accidents. The ETS would strengthen the protection for underground miners by reducing the potential of pinning, crushing or striking hazards associated with working close to mobile equipment. As a part of the Secretary’s strategy for securing safe and healthy workplaces, the Mine Safety and Health Administration will undertake regulatory action related to reducing

injuries and fatalities to workers in close proximity to moving equipment and vehicles.

**Statement of Need:**

Mining is one of the most hazardous industries in this country. Miners continue to be injured or killed resulting from pinning, crushing, or striking accidents involving mobile equipment. Equipment is available to help prevent accidents that cause debilitating injuries and accidental death.

**Summary of Legal Basis:**

Promulgation of this standard is authorized by section 101(b) of the Federal Mine Safety and Health Act of 1977 as amended by the Mine Improvement and New Emergency Response Act of 2006.

**Alternatives:**

No reasonable alternatives to this regulation would be as comprehensive or as effective in eliminating hazards and preventing injuries.

**Anticipated Cost and Benefits:**

MSHA will develop a regulatory economic analysis to accompany the ETS.

**Risks:**

The lack of proximity detection systems on mobile equipment in underground mines contributes to a higher incidence of debilitating injuries and accidental deaths.

**Timetable:**

Action	Date	FR Cite
Request for Information (RFI)	02/01/10	75 FR 5009
Comment Period Ended	04/02/10	
Emergency Temporary Standard	03/00/11	
Final Action	12/00/11	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

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**RIN:** 1219-AB65

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

**PRERULE STAGE**

**107. INFECTIOUS DISEASES**

**Priority:**

Economically Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

5 USC 533; 29 USC 657 and 658; 29 USC 660; 29 USC 666; 29 USC 669; 29 USC 673; . . .

**CFR Citation:**

29 CFR 1910

**Legal Deadline:**

None

**Abstract:**

Employees in health care and other high-risk environments face long-standing infectious diseases hazards such as tuberculosis (TB), varicella disease (chickenpox, shingles), and measles (rubeola), as well as new and emerging infectious disease threats, such as Severe Acute Respiratory Syndrome (SARS) and pandemic influenza. Health care workers and workers in related occupations or who are exposed in other high-risk environments are at increased risk of contracting TB, SARS, MRSA, and other infectious diseases that can be transmitted through a variety of exposure routes. OSHA is concerned about the ability of employees to continue to provide health care and other critical services without unreasonably jeopardizing their health.

OSHA is considering the need for a standard to ensure that employers establish a comprehensive infection

control program and control measures to protect employees from infectious disease exposures to pathogens that can cause significant disease. Workplaces where such control measures might be necessary include: health care, emergency response, correctional facilities, homeless shelters, drug treatment programs, and other occupational settings where employees can be at increased risk of exposure to potentially infectious people. A standard could also apply to laboratories which handle materials that may be a source of pathogens, and to pathologists, coroners' offices, medical examiners, and mortuaries.

OSHA published an RFI on May 6, 2010, the comment period closed on August 4, 2010. OSHA is currently analyzing the comments submitted by stakeholders.

**Statement of Need:**

In 2007, the healthcare and social assistance sector as a whole had 16.5 million employees. Healthcare workplaces can range from small private practices of physicians to hospitals that employ thousands of workers. In addition, healthcare is increasingly being provided in other settings such as nursing homes, free-standing surgical and outpatient centers, emergency care clinics, patients' homes, and prehospitalization emergency care settings. The Agency is particularly concerned by studies that indicate that transmission of infectious diseases to both patients and healthcare workers may be occurring as a result of incomplete adherence to recognized, but voluntary, infection control measures. Another concern is the movement of healthcare delivery from the traditional hospital setting, with its greater infrastructure and resources to effectively implement infection control measures, into more diverse and smaller workplace setting with less infrastructure and fewer resources, but with an expanding worker population.

**Summary of Legal Basis:**

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

**Alternatives:**

The alternative to the proposed rulemaking would be to take no regulatory action.

**Anticipated Cost and Benefits:**

The estimates of the costs and benefits are still under development.

**Risks:**

Analysis of risks is still under development.

**Timetable:**

Action	Date	FR Cite
Request for Information (RFI)	05/06/10	75 FR 24835
RFI Comment Period End	08/04/10	
Analyze Comments	12/00/10	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

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**RIN:** 1218-AC46

**DOL—OSHA**

**108. INJURY AND ILLNESS PREVENTION PROGRAM**

**Priority:**

Economically Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

29 USC 653; 29 USC 655(b); 29 USC 657

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**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 3904-3916), published in 1989. An injury and illness prevention 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. Twelve States have similar rules.

**Statement of Need:**

There are approximately 5,000 workplace fatalities and approximately 3.5 million serious workplace injuries every year. There are also many workplace illnesses caused by exposure to common chemical, physical, and biological agents. OSHA believes that an injury and illness prevention program is a universal intervention that can be used in a wide spectrum of workplaces to dramatically reduce the number and severity of workplace injuries. Such programs have been shown to be effective in many workplaces in the United States and internationally.

**Summary of Legal Basis:**

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

**Alternatives:**

The alternatives to this rulemaking would be to issue guidance, recognition programs, or allow for the states to develop individual regulations. OSHA has used voluntary approaches to address the need, including publishing Safety and Health Program Management Guidelines in 1989. In addition, OSHA has two recognition programs, the Voluntary Protection Program (known as VPP), and the Safety and Health Achievement Recognition Program (known as SHARP). These programs recognize workplaces with effective

safety and health programs. Several States have issued regulations that require employers to establish effective safety and health programs.

**Anticipated Cost and Benefits:**

The scope of the proposed rulemaking and the costs and benefits are still under development for this regulatory action.

**Risks:**

A detailed risk analysis is underway.

**Timetable:**

Action	Date	FR Cite
Stakeholder Meetings	06/03/10	
Initiate SBREFA	06/00/11	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

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**RIN:** 1218-AC48

**DOL—OSHA**

**109. ● BACKING OPERATIONS**

**Priority:**

Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

29 USC 655(b)

**CFR Citation:**

Not Yet Determined

**Legal Deadline:**

None

**Abstract:**

NIOSH reports that half of the fatalities involving construction equipment occur while the equipment is backing. Backing accidents cause 500 deaths and 15,000 injuries per year. Emerging technologies in the field of backing operations include after market devices, such as camera, radar, and sonar, to help monitor the presence of workers on foot in blind areas, and new monitoring technology, such as tag-based warning systems that use radio frequency (RFID) and magnetic field generators on equipment to detect electronic tags worn by workers.

**Statement of Need:**

A study by the Census of Fatal Occupational Injuries found that the most common primary sources of injury to be trucks (45%), road grading and surfacing machinery (15%), and cars (15%). That same study showed that of the 465 vehicle and equipment-related fatalities within work zones, 318 workers on foot were struck by a vehicle. Incidents involving backing vehicles were prominent among the worker-on-foot fatalities that occurred (51%). The primary injury sources of fatalities of workers on foot struck by a construction vehicle were trucks (61%) and construction machines (30%). OSHA believes that regulatory action is necessary to address risks associated with backup operations.

**Summary of Legal Basis:**

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

**Alternatives:**

The alternative to the proposed rulemaking would be to take no regulatory action.

**Anticipated Cost and Benefits:**

The estimates of the costs and benefits are still under development.

**Risks:**

Analysis of risks is still under development.

**Timetable:**

Action	Date	FR Cite
RFI	05/00/11	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

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**RIN:** 1218-AC52

**DOL—OSHA**

**PROPOSED RULE STAGE**

**110. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

This action may affect State, local or tribal governments.

**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 proposed by the American Conference of Governmental Industrial Hygienists (ACGIH) in 1968

(PEL=10mg/cubic meter/(% silica + 2), as respirable dust). The current PEL for construction and shipyards (derived from ACGIH's 1970 Threshold Limit Value) is based on particle counting technology, which is considered obsolete. NIOSH and ACGIH recommend 50µg/m3 and 25µg/m3 exposure limits, respectively, 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 has published recommended standards 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. OSHA is currently developing a NPRM.

**Statement of Need:**

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 operations, 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. In 2005, the most recent year for which data is available, silicosis was identified on 161 death certificates as an underlying or contributing cause of death. It is likely that many more cases have occurred where silicosis went undetected. In addition, the International Agency for Research on Cancer has designated crystalline silica as carcinogenic to humans, and the National Toxicology Program has concluded that respirable crystalline silica is a known human carcinogen. Exposure to crystalline silica has also been associated with an increased risk of developing tuberculosis and other nonmalignant respiratory diseases, as well as renal and autoimmune 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 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 shipyard workers, 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 rule 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 non-regulatory 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.

**Anticipated Cost and Benefits:**

The scope of the proposed rulemaking and estimates of the costs and benefits are still under development.

**Risks:**

A detailed risk analysis is under way.

**Timetable:**

Action	Date	FR Cite
Completed SBREFA Report	12/19/03	
Initiated Peer Review of Health Effects and Risk Assessment	05/22/09	
Completed Peer Review	01/24/10	
NPRM	04/00/11	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal

**Federalism:**

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

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**RIN:** 1218-AB70

**DOL—OSHA**

**111. OCCUPATIONAL INJURY AND ILLNESS RECORDING AND REPORTING REQUIREMENTS—MODERNIZING OSHA'S REPORTING SYSTEM**

**Priority:**

Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

29 USC 657

**CFR Citation:**

29 CFR 1904

**Legal Deadline:**

None

**Abstract:**

OSHA is proposing changes to its reporting system for occupational injuries and illnesses. An updated and modernized reporting system would enable a more efficient and timely collection of data and would improve the accuracy and availability of the relevant records and statistics. This proposal involves modification to 29 CFR part 1904.41 to expand OSHA's legal authority to collect and make available injury and illness information required under part 1904.

**Statement of Need:**

The collection of establishment specific injury and illness data in electronic format on a timely basis is needed to help OSHA, employers, employees, researchers, and the public more effectively prevent workplace injuries and illnesses, as well as support

President Obama's Open Government Initiative to increase the ability of the public to easily find, download, and use the resulting dataset generated and held by the Federal Government.

**Summary of Legal Basis:**

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics (29 U.S.C. 673).

**Alternatives:**

The alternative to the proposed rulemaking would be to take no regulatory action.

**Anticipated Cost and Benefits:**

The estimates of the costs and benefits are still under development.

**Risks:**

Analysis of risks is still under development.

**Timetable:**

Action	Date	FR Cite
Stakeholder Meetings	05/25/10	75 FR 24505
Comment Period End	06/18/10	
NPRM	09/00/11	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

None

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**RIN:** 1218-AC49

**DOL—OSHA**

**FINAL RULE STAGE**

**112. HAZARD COMMUNICATION**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

This action may affect the private sector under PL 104-4.

**Legal Authority:**

29 USC 655(b); 29 USC 657

**CFR Citation:**

29 CFR 1910.1200; 29 CFR 1915.1200; 29 CFR 1917.28; 29 CFR 1918.90; 29 CFR 1926.59; 29 CFR 1928.21

**Legal Deadline:**

None

**Abstract:**

OSHA's Hazard Communication Standard (HCS) requires chemical manufacturers and importers to evaluate the hazards of the chemicals they produce or import, and prepare labels and material safety data sheets to convey the hazards and associated protective measures to users of the chemicals. All employers with hazardous chemicals in their workplaces are required to have a hazard communication program, including labels on containers, material safety data sheets (MSDS), and training for employees. Within the United States (U.S.), there are other Federal agencies that also have requirements for classification and labeling of chemicals at different stages of the life cycle. Internationally, there are a number of countries that have developed similar laws that require information about chemicals to be prepared and transmitted to affected parties. These laws vary with regard to the scope of substances covered, definitions of hazards, the specificity of requirements (e.g., specification of a format for MSDSs), and the use of symbols and pictograms. The inconsistencies between the various laws are substantial enough that different labels and safety data sheets must often be used for the same product when it is marketed in different nations.

The diverse and sometimes conflicting national and international requirements can create confusion among those who seek to use hazard information. Labels and safety data sheets may include symbols and hazard statements that are unfamiliar to readers or not well understood. Containers may be labeled with such a large volume of information that important statements are not easily recognized. Development of multiple sets of labels and safety data sheets is a major compliance burden for chemical manufacturers, distributors, and transporters involved in international trade. Small businesses

may have particular difficulty in coping with the complexities and costs involved.

As a result of this situation, and in recognition of the extensive international trade in chemicals, there has been a long-standing effort to harmonize these requirements and develop a system that can be used around the world. In 2003, the United Nations adopted the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Countries are now adopting the GHS into their national regulatory systems.

**Statement of Need:**

Multiple sets of requirements for labels and safety data sheets present a compliance burden for U.S. manufacturers, distributors, and transports involved in international trade. The comprehensibility of hazard information and worker safety will be enhanced as the GHS will: (1) Provide consistent information and definitions for hazardous chemicals; (2) address stakeholder concerns regarding the need for a standardized format for material safety data sheets; and (3) increase understanding by using standardized pictograms and harmonized hazard statements. The increase in comprehensibility and consistency will reduce confusion and thus improve worker safety and health. In addition, the adoption of the GHS would facilitate international trade in chemicals, reduce the burdens caused by having to comply with differing requirements for the same product, and allow companies that have not had the resources to deal with those burdens to be involved in international trade. This is particularly important for small producers who may be precluded currently from international trade because of the compliance resources required to address the extensive regulatory requirements for classification and labeling of chemicals. Thus every producer is likely to experience some benefits from domestic harmonization, in addition to the benefits that will accrue to producers involved in international trade. Several nations, including the European Union, have adopted the GHS with an implementation schedule through 2015. U.S. manufacturers, employers, and employees will be at a disadvantage in the event that our system of hazard communication is not in compliance with the GHS.

**Summary of Legal Basis:**

The Occupational Safety and Health Act of 1970 authorizes the Secretary of

Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

**Alternatives:**

The alternative to the proposed rulemaking would be to take no regulatory action.

**Anticipated Cost and Benefits:**

The estimates of the costs and benefits are still under development.

**Risks:**

OSHA's risk analysis is under development.

**Timetable:**

Action	Date	FR Cite
ANPRM	09/12/06	71 FR 53617
ANPRM Comment Period End	11/13/06	
Complete Peer Review of Economic Analysis	11/19/07	
NPRM	09/30/09	74 FR 50279
NPRM Comment Period End	12/29/09	
Hearing	03/02/10	
Hearing	03/31/10	
Post Hearing Comment Period End	06/01/10	
Final Action	08/00/11	

**Regulatory Flexibility Analysis Required:**

No

**Government Levels Affected:**

Local, State

**Federalism:**

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

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