



# Federal Register

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**Monday,  
December 7, 2009**

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**Part X**

**Department of Labor**

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**Semiannual Regulatory Agenda**

DEPARTMENT OF LABOR (DOL)

DEPARTMENT OF LABOR

Office of the Secretary

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

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

30 CFR Ch. I

41 CFR Ch. 60

48 CFR Ch. 29

Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Labor.

ACTION: Semiannual regulatory agenda.

**SUMMARY:** The Internet has become the means for disseminating the entirety of the Department of Labor’s semiannual regulatory agenda. However, the Regulatory Flexibility Act requires publication of a regulatory flexibility agenda in the **Federal Register**. This **Federal Register** Notice contains the regulatory flexibility agenda. In addition, the Department’s Regulatory Plan, a subset of the Department’s regulatory agenda, is being published in the **Federal Register**. The Regulatory Plan contains a statement of the Department’s regulatory priorities and the regulatory actions the Department wants to highlight as its most important and significant.

FOR FURTHER INFORMATION CONTACT:

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

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

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

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

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

Occupational Safety and Health Administration

Methylene Chloride (RIN 1218-AC23)

Bloodborne Pathogens (RIN 1218-AC34)

Employee Benefits Security Administration

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

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

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

**HILDA L. SOLIS,**  
*Secretary of Labor.*

Employment Standards Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
392	Proposal to Rescind the Form T-1; Require Subsidiary Organization Reporting; Revise Interpretation Regarding LMRDA Coverage of Public Sector Intermediate Unions .....	1215-AB75
393	Interpretation of the “Advice” Exemption of Section 203(c) of the Labor-Management Reporting and Disclosure Act ( <b>Reg Plan Seq No. 94</b> ) .....	1215-AB79

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

Employment Standards Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
394	Notification of Employee Rights Under Federal Labor Laws .....	1215-AB70

**DOL**

## Employee Benefits Security Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
395	Plan Assets—Participant Contributions Regulation ( <b>Section 610 Review</b> ) .....	1210–AB11

## Employee Benefits Security Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
396	Amendment of Regulation Relating to Definition of Plan Assets—Participant Contributions .....	1210–AB02

## Mine Safety and Health Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
397	Explosives and Blasting ( <b>Section 610 Review</b> ) .....	1219–AB62

## Occupational Safety and Health Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
398	Occupational Exposure to Crystalline Silica ( <b>Reg Plan Seq No. 108</b> ) .....	1218–AB70
399	Occupational Exposure to Beryllium .....	1218–AB76
400	Methylene Chloride ( <b>Section 610 Review</b> ) .....	1218–AC23
401	Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl .....	1218–AC33
402	Bloodborne Pathogens (610 Review) ( <b>Section 610 Review</b> ) .....	1218–AC34

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

## Occupational Safety and Health Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
403	Confined Spaces in Construction .....	1218–AB47

## Occupational Safety and Health Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
404	Electric Power Transmission and Distribution; Electrical Protective Equipment .....	1218–AB67
405	Cranes and Derricks in Construction ( <b>Reg Plan Seq No. 110</b> ) .....	1218–AC01

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

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

**Proposed Rule Stage**

**392. PROPOSAL TO RESCIND THE FORM T-1; REQUIRE SUBSIDIARY ORGANIZATION REPORTING; REVISE INTERPRETATION REGARDING LMRDA COVERAGE OF PUBLIC SECTOR INTERMEDIATE UNIONS**

**Legal Authority:** 29 USC 438

**Abstract:** On October 2, 2008, the Department published a final rule establishing a Form T-1, Trust Annual Report, which certain labor organizations must file to disclose financial information regarding trusts in which they are interested pursuant to the Labor-Management Reporting and Disclosure Act (LMRDA). This rulemaking would propose to rescind the Form T-1. It would instead propose that filers of Form LM-2, Labor Organization Annual Report, report on their wholly owned, wholly controlled

and wholly financed organizations ("subsidiary organizations") on their Form LM-2 report. Additionally, the rulemaking would propose to change an interpretation of the LMRDA regarding intermediate bodies. The proposed revised interpretation would state that intermediate bodies are covered only if they are themselves composed, in whole or part, of private sector affiliates.

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/10	

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Andrew R. Davis, Chief, Division of Interpretations and Standards, Office of Labor-Management

Standards, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building, Room N-5609, Washington, DC 20210  
 Phone: 202 693-0123  
 Fax: 202 693-1340  
 Email: davis.andrew@dol.gov

**RIN:** 1215-AB75

**393. • INTERPRETATION OF THE "ADVICE" EXEMPTION OF SECTION 203(C) OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT**

**Regulatory Plan:** This entry is Seq. No. 94 in part II of this issue of the **Federal Register**.

**RIN:** 1215-AB79

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

**Final Rule Stage**

**394. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS**

**Legal Authority:** EO 13496

**Abstract:** Pursuant to Executive Order 13496 of January 30, 2009, the Department of Labor's Employment Standards Administration, proposes to prescribe the size, form, and content of the notice to be posted by a contractor under paragraph 1 of the contract clause described in section 2 of the

order. Such notice shall describe the rights of employees under Federal labor laws, consistent with the policy set forth in section 1 of the order.

**Timetable:**

Action	Date	FR Cite
NPRM	08/03/09	74 FR 38488
NPRM Comment Period End	09/02/09	
Final Action	06/00/10	

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Andrew R. Davis, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building, Room N-5609, Washington, DC 20210  
 Phone: 202 693-0123  
 Fax: 202 693-1340  
 Email: davis.andrew@dol.gov

**RIN:** 1215-AB70

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

**Prerule Stage**

**395. PLAN ASSETS—PARTICIPANT CONTRIBUTIONS REGULATION (SECTION 610 REVIEW)**

**Legal Authority:** 29 USC 1135

**Abstract:** EBSA is conducting a review of the plan assets-participant contributions regulation in accordance with the requirements of section 610 of the Regulatory Flexibility Act. The review will cover the continued need for the rule; the nature of complaints or comments received from the public concerning the rule; the complexity of

the rule; the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with State and local rules; and the extent to which technology, economic conditions, or other factors have changed in industries affected by the rule.

**Timetable:**

Action	Date	FR Cite
Begin Review	03/01/06	
End Review	02/00/10	

**Regulatory Flexibility Analysis Required:** Undetermined

**Agency Contact:** Melissa R. Dennis, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N-5655, Washington, DC 20210  
 Phone: 202 693-8500  
 Fax: 202 219-7291

**RIN:** 1210-AB11

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

**Final Rule Stage**

**396. AMENDMENT OF REGULATION RELATING TO DEFINITION OF PLAN ASSETS—PARTICIPANT CONTRIBUTIONS**

**Legal Authority:** 29 USC 1135

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

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

**Timetable:**

Action	Date	FR Cite
NPRM	02/29/08	73 FR 11072
NPRM Comment Period End	04/29/08	
Final Action	01/00/10	

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Louis J. Campagna, Chief, Division of Fiduciary Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N-5655, Washington, DC 20210  
 Phone: 202 693-8510  
 Fax: 202 219-7291

**RIN:** 1210-AB02

**Department of Labor (DOL)**  
**Mine Safety and Health Administration (MSHA)**

**Completed Actions**

**397. EXPLOSIVES AND BLASTING (SECTION 610 REVIEW)**

**Legal Authority:** 30 USC 811

**Abstract:** MSHA is reviewing the existing coal and metal and nonmetal standards for explosives and blasting in view of advances in technology and for consistency. The next action will be an advance notice of proposed rulemaking.

**Timetable:**

Action	Date	FR Cite
Withdrawn	09/03/09	

**Regulatory Flexibility Analysis Required:** Undetermined

**Agency Contact:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Department

of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209-3939  
 Phone: 202 693-9440  
 Fax: 202 693-9441  
 Email: silvey.patricia@dol.gov

**RIN:** 1219-AB62

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

**Prerule Stage**

**398. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA**

**Regulatory Plan:** This entry is Seq. No. 108 in part II of this issue of the *Federal Register*.

**RIN:** 1218-AB70

**399. OCCUPATIONAL EXPOSURE TO BERYLLIUM**

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

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

On November 26, 2002, OSHA published a Request for Information (RFI) (67 FR 70707) to solicit information pertinent to occupational

exposure to beryllium including: Current exposures to beryllium; the relationship between exposure to beryllium and the development of adverse health effects; exposure assessment and monitoring methods; exposure control methods; and medical surveillance. In addition, the Agency conducted field surveys of selected work sites to assess current exposures and control methods being used to reduce employee exposures to beryllium. OSHA convened a Small Business Advocacy Review Panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) and completed the SBREFA Report in January 2008.

**Timetable:**

Action	Date	FR Cite
Request for Information	11/26/02	67 FR 70707
SBREFA Report Completed	01/23/08	
Initiate Peer Review of Health Effects and Risk Assessment	03/00/10	

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dorothy Dougherty, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N-3718, Washington, DC 20210  
 Phone: 202 693-1950  
 Fax: 202 693-1678  
 Email: dougherty.dorothy@dol.gov

**RIN:** 1218-AB76

**400. METHYLENE CHLORIDE (SECTION 610 REVIEW)**

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

**Abstract:** OSHA will undertake a review of the Methylene Chloride Standard (29 CFR 1910.1052) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider the continued need for the rule; whether the rule overlaps, duplicates, or conflicts with

## DOL—OSHA

## Prerule Stage

other Federal, State, or local regulations; and the degree to which technology, economic conditions, or other factors may have changed since the rule was evaluated.

**Timetable:**

Action	Date	FR Cite
Begin Review	12/01/06	
Request for Comments	07/10/07	72 FR 37501
Comment Period End	10/09/07	
Reopen Comment Period	01/08/08	73 FR 1299
Comment Period End	03/10/08	
End Review	04/00/10	

**Regulatory Flexibility Analysis Required:** No

**Agency Contact:** John Smith, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N-3641, Washington, DC 20210  
Phone: 202 693-2400  
Fax: 202 693-1641  
Email: smith.john@dol.gov

**RIN:** 1218-AC23

**401. OCCUPATIONAL EXPOSURE TO DIACETYL AND FOOD FLAVORINGS CONTAINING DIACETYL**

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

**Abstract:** On July 26, 2006, the United Food and Commercial Workers International Union (UFCW) and the International Brotherhood of Teamsters (IBT) petitioned DOL for an Emergency Temporary Standard (ETS) for all employees exposed to diacetyl, a major component in artificial butter flavoring. Diacetyl and a number of other volatile organic compounds are used to manufacture artificial butter food flavorings. These food flavorings are used by various food manufacturers in

a multitude of food products including microwave popcorn, certain bakery goods, and some snack foods. OSHA denied the petition on September 25, 2007, but has initiated 6(b) rulemaking.

Evidence from NIOSH and other sources indicated that employee exposure to diacetyl and food flavorings containing diacetyl is associated with bronchiolitis obliterans, a debilitating and potentially fatal disease of the small airways in the lung. Severe obstructive airway disease has been observed in the microwave popcorn industry and in food flavoring manufacturing plants. Experimental evidence has shown that inhalation exposure to artificial butter flavoring vapors and diacetyl damaged tissue lining, the nose, and airways of rats and mice. OSHA published an Advanced Notice of Proposed Rulemaking (ANPRM) on January 21, 2009, but withdrew the ANPRM on March 17, 2009, in order to facilitate timely development of a standard. The Agency subsequently initiated review of the draft proposed standard in accordance with the Small Business Regulatory Enforcement Fairness Act (SBREFA). The SBREFA Panel Report was completed on July 2, 2009.

**Timetable:**

Action	Date	FR Cite
Stakeholder Meeting	10/17/07	72 FR 54619
ANPRM	01/21/09	74 FR 3937
ANPRM Withdrawn	03/17/09	74 FR 11329
ANPRM Comment Period End	04/21/09	
Completed SBREFA Report	07/02/09	
Initiate Peer Review of Health Effects and Risk Assessment	10/00/10	

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dorothy Dougherty, Director, Directorate of Standards and

Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N-3718, Washington, DC 20210  
Phone: 202 693-1950  
Fax: 202 693-1678  
Email: dougherty.dorothy@dol.gov

**RIN:** 1218-AC33

**402. BLOODBORNE PATHOGENS (610 REVIEW) (SECTION 610 REVIEW)**

**Legal Authority:** 5 USC 533; 5 USC 610; 29 USC 655(b)

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

**Timetable:**

Action	Date	FR Cite
Begin Review	10/22/09	
Request for Comments	04/00/10	

**Regulatory Flexibility Analysis Required:** No

**Agency Contact:** John Smith, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N-3641, Washington, DC 20210  
Phone: 202 693-2400  
Fax: 202 693-1641  
Email: smith.john@dol.gov

**RIN:** 1218-AC34

## Department of Labor (DOL)

## Occupational Safety and Health Administration (OSHA)

## Proposed Rule Stage

**403. CONFINED SPACES IN CONSTRUCTION**

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

**Abstract:** In January 1993, OSHA issued a general industry rule to protect employees who enter confined spaces (29 CFR 1910.146). This standard does

not apply to the construction industry because of differences in the nature of the worksite in the construction industry. In discussions with the United Steel Workers of America on a settlement agreement for the general industry standard, OSHA agreed to issue a proposed rule to extend confined-space protection to

construction workers appropriate to their work environment.

**Timetable:**

Action	Date	FR Cite
SBREFA Panel Report	11/24/03	
NPRM	11/28/07	72 FR 67351
NPRM Comment Period End	01/28/08	

## DOL—OSHA

## Proposed Rule Stage

Action	Date	FR Cite
NPRM Comment Period Extended	02/28/08	73 FR 3893
Public Hearing	07/22/08	
Close Record	10/23/08	
Analyze Comments	03/00/10	

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Noah Connell, Deputy Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, 200

Constitution Avenue NW., FP Building, Room N-3468, Washington, DC 20210  
Phone: 202 693-2020  
Fax: 202 693-1689

**RIN:** 1218-AB47

## Department of Labor (DOL)

## Final Rule Stage

## Occupational Safety and Health Administration (OSHA)

**404. ELECTRIC POWER TRANSMISSION AND DISTRIBUTION; ELECTRICAL PROTECTIVE EQUIPMENT**

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

**Abstract:** Electrical hazards are a major cause of occupational death in the United States. The annual fatality rate for power line workers is about 50 deaths per 100,000 employees. The construction industry standard addressing the safety of these workers during the construction of electric power transmission and distribution lines is over 35 years old. OSHA has developed a revision of this standard that will prevent many of these fatalities, add flexibility to the standard, and update and streamline the standard. OSHA also intends to amend the corresponding standard for general industry so that requirements for work performed during the maintenance of electric power transmission and distribution installations are the same as those for similar work in construction. In addition, OSHA will be revising a few miscellaneous general industry requirements primarily affecting electric transmission and distribution work, including provisions on electrical protective equipment and foot

protection. This rulemaking also addresses fall protection in aerial lifts for work on power generation, transmission, and distribution installations. OSHA published an NPRM on June 15, 2005. A public hearing was held March 6 to 14, 2006. OSHA reopened the record to gather additional information on minimum approach distances for specific range of voltages. The record was reopened a second time to allow more time for comment and to gather information on minimum approach distances for all voltages and on the newly revised Institute of Electrical and Electronics Engineers consensus standard.

**Timetable:**

Action	Date	FR Cite
SBREFA Report	06/30/03	
NPRM	06/15/05	70 FR 34821
NPRM Comment Period End	10/13/05	
Comment Period Extended to 01/11/2006	10/12/05	70 FR 59290
Public Hearing To Be Held 03/06/2006	10/12/05	70 FR 59290
Post-Hearing Comment Period End	07/14/06	
Reopen Record	10/22/08	73 FR 62942
Comment Period End	11/21/08	
Close Record	11/21/08	

Action	Date	FR Cite
Second Reopening Record	09/14/09	74 FR 46958
Comment Period End	10/15/09	
Public Hearings	10/28/09	
Post-Hearing Comment Period End	02/00/10	
Final Action	09/00/10	

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dorothy Dougherty, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N-3718, Washington, DC 20210  
Phone: 202 693-1950  
Fax: 202 693-1678  
Email: dougherty.dorothy@dol.gov

**RIN:** 1218-AB67

**405. CRANES AND DERRICKS IN CONSTRUCTION**

**Regulatory Plan:** This entry is Seq. No. 110 in part II of this issue of the **Federal Register**.

**RIN:** 1218-AC01

[FR Doc. E9-28591 Filed 12-04-09; 8:45 am]

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