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The Unified Agenda of Federal Regulatory and Deregulatory Actions

Federal Register

Monday,
June 28, 2004

Part XIII

Department of Labor

Semiannual Regulatory Agenda

DEPARTMENT OF LABOR (DOL)

DEPARTMENT OF LABOR

Office of the Secretary

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

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

30 CFR Ch. I

41 CFR Ch. 60

48 CFR Ch. 29

Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Labor.

ACTION: Semiannual regulatory agenda.

SUMMARY: This document sets forth the Department's semiannual agenda of regulations that have been selected for review or development during the coming year. The Department's agencies have carefully assessed their available resources and what they can accomplish in the next twelve months and have adjusted their agendas accordingly.

The agenda complies with the requirements of both Executive Order 12866 and the Regulatory Flexibility Act. The agenda lists all regulations that are expected to be under review or development between April 2004 and April 2005, as well as those completed during the past six months.

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

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

SUPPLEMENTARY INFORMATION: Executive Order 12866 and the Regulatory Flexibility Act require the semiannual publication in the **Federal Register** of an agenda of regulations. As permitted by law, the Department of Labor is combining the publication of its agendas under the Regulatory Flexibility Act and Executive Order 12866.

Executive Order 12866 became effective September 30, 1993, and, in substance, requires the Department of Labor to publish an agenda listing all the regulations it expects to have under active consideration for promulgation, proposal, or review during the coming 1-year period. The focus of all departmental regulatory activity will be on the development of effective rules that advance the Department's goals and that are understandable and usable to the employers and employees in all affected workplaces.

The Regulatory Flexibility Act became effective on January 1, 1981, and applies only to regulations for which a notice of proposed rulemaking was issued on or after that date. It requires the Department of Labor to publish an agenda, listing all the regulations it expects to propose or promulgate that are likely to have a ''significant economic impact on a substantial number of small entities'' (5 U.S.C. 602).

The Regulatory Flexibility Act (under section 610) also requires agencies to periodically review rules ''which have or will have a significant economic impact upon a substantial number of small entities'' and to annually publish a list of the rules that will be reviewed during the succeeding 12 months. The purpose of the review is to determine whether the rule should be continued without change, amended, or rescinded.

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

Occupational Safety and Health Administration

Occupational Exposure to Ethylene Oxide (RIN 1218-AB60)

Excavations (RIN 1218-AC02)

Presence Sensing Device Initiation of Mechanical Power Presses (RIN 1218-AC03)

Employee Benefits Security Administration

Prohibited Transaction Exemption Procedures (RIN 1210-AA98)

Statutory Exemption for Loans to Plan Participants (RIN 1210-AA99)

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

Elaine L. Chao,

Secretary of Labor.

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1912	Production or Disclosure of Information or Materials	1290–AA17
1913	Equal Treatment in Department of Labor Programs for Faith-Based and Community Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries	1290–AA21

Employment Standards Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1914	Child Labor Regulations, Orders, and Statements of Interpretation	1215–AB44

DOL

Employment Standards Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1915	Davis Bacon Volunteers Under the Federal Acquisition Streamlining Act	1215–AA96
1916	Amendments to the Fair Labor Standards Act	1215–AB13
1917	Stock Options, Stock Appreciation Rights, and Bona Fide Employee Stock Purchase Programs Under the Fair Labor Standards Act	1215–AB31
1918	Family and Medical Leave Act of 1993; Conform to the Supreme Court's Ragsdale Decision	1215–AB35
1919	Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors for Special Disabled Veterans and Veterans of the Vietnam Era	1215–AB46
1920	Service Contract Act Wage Determination OnLine Request Process	1215–AB47
1921	Standards of Conduct for Federal Sector Unions	1215–AB48

Employment Standards Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1922	Child Labor Regulations, Orders, and Statements of Interpretation (ESA/W-H)	1215–AA09
1923	Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors for Special Disabled Veterans and Veterans of the Vietnam Era	1215–AB24
1924	Government Contractors: Nondiscrimination and Affirmative Action Obligations, Executive Order 11246 (ESA/OFCCP) (Revised)	1215–AB28
1925	Requirements for Security of Insurance Obligations Under the Longshore and Harbor Workers' Compensation Act	1215–AB38
1926	Obligation to Solicit Race and Gender Data for Agency Enforcement Purposes	1215–AB45

Employment Standards Administration—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
1927	Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models	1215–AB09

Employment Standards Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1928	Defining and Delimiting the Term ''Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity'' (ESA/W-H)	1215–AA14
1929	Obligation of Federal Contractors and Subcontractors, Notice of Employee Rights Concerning Payment of Union Dues or Fees	1215–AB33
1930	Amendments to Title 20 Parts 718 and 725 That Implement the Black Lung Benefits Act	1215–AB40

Employment and Training Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1931	Indian and Native American Welfare-to-Work Program	1205–AB16

DOL

Employment and Training Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1932	Federal-State Unemployment Compensation (UC) Program; Confidentiality and Disclosure of Information in State UC Records	1205–AB18
1933	Trade Adjustment Assistance for Workers	1205–AB32
1934	Post-Adjudication Audits of H-2B Petitions Other Than Logging in the United States	1205–AB36
1935	Labor Condition Applications for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Filing Procedures	1205–AB39

Employment and Training Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1936	Labor Certification Process for the Permanent Employment of Aliens in the United States	1205–AA66
1937	Labor Certification for the Permanent Employment of Aliens in the United States; Backlog Reduction	1205–AB37
1938	Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Attestations Re H-1B Visas and Chile and Singapore	1205–AB38

Employment and Training Administration—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
1939	Attestations by Facilities Temporarily Employing H-1C Nonimmigrant Aliens as Registered Nurses	1205–AB27

Employment and Training Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1940	Senior Community Service Employment Program	1205–AB28

Employee Benefits Security Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1941	Prohibited Transaction Exemption Procedures **(Section 610 Review)**	1210–AA98
1942	Statutory Exemption for Loans to Plan Participants (Sec. 610 Review)	1210–AA99

Employee Benefits Security Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1943	Suspension of Benefits Regulation	1210–AA96
1944	Rulemaking Relating to Termination of Abandoned Individual Account Plans	1210–AA97
1945	Annual Funding Notice for Multiemployer Plans	1210–AB00
1946	Civil Penalty for Failure to Provide Section 302 Notice	1210–AB01

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Employee Benefits Security Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1947	Regulations Implementing the Health Care Access, Portability, and Renewability Provisions of the Health Insurance Portability and Accountability Act of 1996	1210–AA54
1948	Mental Health Benefits Parity	1210–AA62
1949	Health Care Standards for Mothers and Newborns	1210–AA63
1950	Rulemaking Relating to the Women's Health and Cancer Rights Act of 1998	1210–AA75
1951	Prohibiting Discrimination Against Participants and Beneficiaries Based on Health Status	1210–AA77
1952	Default Rollover Safe Harbor	1210–AA92
1953	Electronic Filing By Investment Advisers	1210–AA94

Employee Benefits Security Administration—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
1954	Adequate Consideration	1210–AA15

Employee Benefits Security Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1955	Rulemaking Relating to Notice Requirements for Continuation of Health Care Coverage	1210–AA60

Mine Safety and Health Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1956	Respirable Crystalline Silica Standard	1219–AB36

Mine Safety and Health Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1957	Improving and Eliminating Regulations	1219–AA98
1958	Asbestos Exposure Limit	1219–AB24
1959	High-Voltage Continuous Mining Machine Standards for Underground Coal Mines	1219–AB34
1960	Training Standards for Shaft and Slope Construction Workers at Underground Mines	1219–AB35
1961	Revising Electrical Product Approval Regulations	1219–AB37

Mine Safety and Health Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1962	Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners	1219–AB29
1963	Part 5 — Fees for Testing, Evaluation and Approval of Mining Products	1219–AB38

DOL

Mine Safety and Health Administration—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
1964	Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust	1219–AB14
1965	Determination of Concentration of Respirable Coal Mine Dust	1219–AB18

Mine Safety and Health Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1966	Underground Coal Mine Ventilation—Safety Standards for the Belt Entry as an Intake Air Course	1219–AA76

Office of the Assistant Secretary for Administration and Management—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1967	Implementation of the Nondiscrimination and Equal Opportunity Requirements of the Workforce Investment Act of 1998	1291–AA29

Office of the Assistant Secretary for Administration and Management—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
1968	Grants and Agreements	1291–AA30

Office of the Assistant Secretary for Administration and Management—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1969	Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance From the Department of Labor	1291–AA21
1970	Department of Labor Acquisition Regulations	1291–AA34

Occupational Safety and Health Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1971	Occupational Exposure to Ethylene Oxide **(Section 610 Review)**	1218–AB60
1972	Occupational Exposure to Crystalline Silica	1218–AB70
1973	Occupational Exposure to Beryllium	1218–AB76
1974	Hearing Conservation Program for Construction Workers	1218–AB89
1975	Cranes and Derricks	1218–AC01
1976	Excavations **(Section 610 Review)**	1218–AC02
1977	Ionizing Radiation	1218–AC11

DOL

Occupational Safety and Health Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1978	Longshoring and Marine Terminals (Parts 1917 and 1918) — Reopening of the Record (Vertical Tandem Lifts (VTLs))	1218–AA56
1979	Occupational Exposure to Hexavalent Chromium (Preventing Occupational Illness: Chromium)	1218–AB45
1980	Confined Spaces in Construction (Part 1926): Preventing Suffocation/Explosions in Confined Spaces	1218–AB47
1981	General Working Conditions for Shipyard Employment	1218–AB50
1982	Electric Power Transmission and Distribution; Electrical Protective Equipment	1218–AB67
1983	Walking Working Surfaces and Personal Fall Protection Systems (1910) (Slips, Trips, and Fall Prevention)	1218–AB80
1984	Revision and Update of Subpart S—Electrical Standards	1218–AB95
1985	Updating OSHA Standards Based on National Consensus Standards	1218–AC08
1986	Explosives	1218–AC09
1987	Slip Resistance of Skeletal Structural Steel	1218–AC14

Occupational Safety and Health Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1988	Assigned Protection Factors: Amendments to the Final Rule on Respiratory Protection	1218–AA05
1989	Fire Protection in Shipyard Employment (Part 1915, Subpart P) (Shipyards: Fire Safety)	1218–AB51
1990	Employer Payment for Personal Protective Equipment	1218–AB77
1991	Standards Improvement (Miscellaneous Changes) for General Industry, Marine Terminals, and Construction Standards (Phase II)	1218–AB81
1992	Controlled Negative Pressure Fit Testing Protocol: Amendment to the Final Rule on Respiratory Protection	1218–AC05
1993	Procedures for Handling Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002	1218–AC10
1994	Procedures for Handling Discrimination Complaints Under Section 6 of the Pipeline Safety Improvement Act of 2002	1218–AC12
1995	Oregon State Plan	1218–AC13
1996	Rollover Protective Structures; Overhead Protection	1218–AC15

Occupational Safety and Health Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1997	Glycol Ethers: 2-Methoxyethanol, 2-Ethoxyethanol, and Their Acetates: Protecting Reproductive Health	1218–AA84
1998	Occupational Exposure to Tuberculosis	1218–AB46
1999	Commercial Diving Operations: Revision	1218–AB97
2000	Presence Sensing Device Initiation of Mechanical Power Presses **(Section 610 Review)**	1218–AC03

Office of the Assistant Secretary for Veterans' Employment and Training—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2001	Uniformed Services Employment and Reemployment Rights Act Regulations	1293–AA09
2002	Jobs for Veterans Act of 2002: State Grant Funding Formula FY 2005 and Beyond	1293–AA11
2003	Jobs for Veterans Act of 2002: Contract Threshold and Eligibility Groups for Federal Contractor Program	1293–AA12

DOL

Office of the Assistant Secretary for Veterans' Employment and Training—Completed Actions

Sequence Number	Title	Regulation Identifier Number
2004	Jobs for Veterans Act of 2002: Uniform National Threshold	1293–AA13

Department of Labor (DOL)
Office of the Secretary (OS)

Final Rule Stage

1912. PRODUCTION OR DISCLOSURE OF INFORMATION OR MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 552 as amended; 5 USC Reorganization Plan No. 6 of 1950; EO 12600, 52 FR 23781 (June 25, 1987)

CFR Citation: 29 CFR 70

Legal Deadline: None

Abstract: The regulation will incorporate the provisions of the 1996 FOIA amendments. These include extending DOL processing time from 10 to 20 days for most FOIA requests and requiring that all reading room materials created since November 1, 1996, be made available by electronic means such as the Internet.

Timetable:

Action	Date	FR Cite
NPRM	03/30/04	69 FR 16740
NPRM Comment Period End	05/14/04	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Miriam McD. Miller, of Legislation and Legislative Counsel, Department of Labor, Office of the Secretary, Room N2428, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693–5500
Email: miller-miriam@dol.gov

RIN: 1290–AA17

1913. • EQUAL TREATMENT IN DEPARTMENT OF LABOR PROGRAMS FOR FAITH–BASED AND COMMUNITY ORGANIZATIONS; PROTECTION OF RELIGIOUS LIBERTY OF DEPARTMENT OF LABOR SOCIAL SERVICE PROVIDERS AND BENEFICIARIES

Priority: Substantive, Nonsignificant

Legal Authority: EO 13279; EO 13198; Subtitle PL 105–220, subtitle C, sec 506(c); 12 Stat. 936 (20 USC 2881 et seq and 9276(c)); 5 USC 301

CFR Citation: 20 CFR 667(Revision); 20 CFR 670 (Revision); 29 CFR 2 (Revision); 29 CFR 37 (Revision)

Legal Deadline: None

Abstract: The final rule would clarify, within the framework of constitutional guidelines, that faith-based and community organizations are able to participate in DOL social service programs without regard to their religious character or affiliation, and are able to apply for and compete on an equal footing with other eligible organizations to receive DOL support. In addition, in order to consolidate in one place the Department's regulations on religious activities, the final rule would revise both the Employment and Training Administration (ETA) regulation on religious services at Job Corps centers and the Workforce Investment Act of 1998 (WIA) regulations relating to the use of WIA Title I financial assistance to support employment and training in religious activities. DOL supports the participation of faith-based and community organizations in its programs.

Timetable:

Action	Date	FR Cite
NPRM	03/09/04	69 FR 11234
NPRM Comment Period End	05/10/04	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

Federalism: Undetermined

URL For More Information: www.dol.gov/cfbci

URL For Public Comments: www.regulations.gov/grndr@dol.gov

Agency Contact: Brent Orrell, Director, Center for Faith Based and Community Initiatives, Department of Labor, Office of the Secretary, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–2235, Washington, DC 20210
Phone: 202 693–6450
Fax: 202 693–6146
Email: grndr@dol.gov

RIN: 1290–AA21

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

Prerule Stage

1914. CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION

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

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 203(1)

CFR Citation: 29 CFR 570

Legal Deadline: None

Abstract: The Department of Labor is considering further possible revisions to the hazardous occupation orders that may be undertaken to address recommendations of the National Institute for Occupational Safety and Health in its May 2002 report to the Department on child labor regulations. (See the related Plan entry for RIN: 1215-AA09.)

DOL—ESA **Prerule Stage**

Timetable:

Action	Date	FR Cite
ANPRM	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local, State

Federalism: Undetermined

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building Room S3502, Washington, DC 20210
Phone: 202 693–0051
Fax: 202 693–1302

Related RIN: Related to 1215–AA09

RIN: 1215–AB44

Department of Labor (DOL) — Proposed Rule Stage
Employment Standards Administration (ESA)

1915. DAVIS BACON VOLUNTEERS UNDER THE FEDERAL ACQUISITION STREAMLINING ACT

Priority: Substantive, Nonsignificant

Legal Authority: PL 103–355, 108 Stat. 3243

CFR Citation: 29 CFR 4; 29 CFR 5; 41 CFR 50—201; 41 CFR 50—206

Legal Deadline: NPRM, Statutory, May 11, 1995.
Final, Statutory, October 1, 1995.

Abstract: The Federal Acquisition Streamlining Act of 1994, signed on October 13, 1994, amended several acts administered by the Department of Labor: (1) the Contract Work Hours and Safety Standards Act (CWHSSA) to limit its applicability to contracts in an amount of $100,000 or greater; (2) the Davis-Bacon Act (DB) to provide waivers from the Act's prevailing wage requirements under selected laws for volunteers performing services to a State or local government or agency and for volunteers performing services to a public or private nonprofit recipient of Federal assistance; and (3) the Walsh-Healey Public Contracts Act (PCA) to eliminate the requirements that contractors on covered contracts be either manufacturers or regular dealers in the items to be supplied under the contract but retains the Secretary of Labor's authority to define the terms ''regular dealer'' and ''manufacturer.'' A final rule implementing the CWHSSA and PCA changes was published on August 5, 1996 (61 FR 40714).

Timetable:

Action	Date	FR Cite
NPRM	09/07/95	60 FR 46553
NPRM Comment Period End	10/10/95	
Final Rule	08/05/96	61 FR 40714
Second NPRM	11/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State

Agency Contact: Alfred B. Robinson, Acting Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building, S3502, Washington, DC 20210
Phone: 202 693–0051
Fax: 202 693–1302

RIN: 1215–AA96

1916. AMENDMENTS TO THE FAIR LABOR STANDARDS ACT

Priority: Other Significant

Legal Authority: 29 USC 201 et seq; PL 104–188, sec 2101 to 2105

CFR Citation: 29 CFR 4; 29 CFR 531; 29 CFR 541; 29 CFR 778; 29 CFR 785; 29 CFR 790; 29 CFR 870; 41 CFR 50—202

Legal Deadline: None

Abstract: The Small Business Job Protection Act of 1996 (H.R. 3448) was enacted on August 20, 1996, as Public Law 104-188. Title II of this enactment amended the Portal-to-Portal Act (PA) and the Fair Labor Standards Act (FLSA). The PA amendment excludes (under certain circumstances) from compensable ''hours worked'' the time spent by an employee in home-to-work travel in an employer-provided vehicle. The FLSA amendments: (1) increase the $4.25 Federal minimum hourly wage by $.90 in two steps over two years (i.e., to $4.75 on October 1, 1996, and to $5.15 on September 1, 1997); (2) provide a $4.25 subminimum wage for youth under age 20 in their first 90 calendar days of employment with an employer; (3) set the employer's direct wage payment obligation for tipped employees at $2.13 per hour (provided such employees receive the balance of the full minimum wage in tips); and (4) set the hourly compensation requirements at no less than $27.63 per hour for certain exempt professional employees in computer-related occupations. Changes will be required in the regulations to reflect these amendments.

Timetable:

Action	Date	FR Cite
NPRM	01/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State

Agency Contact: Alfred B. Robinson, Acting Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building, S3502, Washington, DC 20210
Phone: 202 693–0051
Fax: 202 693–1302

RIN: 1215–AB13

1917. STOCK OPTIONS, STOCK APPRECIATION RIGHTS, AND BONA FIDE EMPLOYEE STOCK PURCHASE PROGRAMS UNDER THE FAIR LABOR STANDARDS ACT

Priority: Other Significant

Legal Authority: 29 USC 207(e)(8); PL 106–202, sec 2(e)

CFR Citation: 29 CFR 546; 29 CFR 778

Legal Deadline: None

Abstract: The Worker Economic Opportunity Act, Public Law 106-202 (May 18, 2000), amended section 7(e) of the Fair Labor Standards Act to clarify how certain employer-provided stock option programs are to be treated for purposes of overtime pay. Certain programs meeting prescribed criteria would not have to be factored into the ''regular rate'' otherwise required when calculating ''time-and-one-half'' overtime premium pay for overtime

hours of work. The legislation calls for regulations to be promulgated as necessary, which will include amendments to some of the existing regulations on overtime pay.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Alfred B. Robinson, Acting Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building, S3502, Washington, DC 20210
Phone: 202 693–0051
Fax: 202 693–1302

RIN: 1215–AB31

1918. FAMILY AND MEDICAL LEAVE ACT OF 1993; CONFORM TO THE SUPREME COURT'S RAGSDALE DECISION

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 2654

CFR Citation: 29 CFR 825

Legal Deadline: None

Abstract: The U.S. Supreme Court, in Ragsdale v. Wolverine World Wide, Inc., 122 S. Ct. 1155 (2002), invalidated regulatory provisions issued under the Family and Medical Leave Act (FMLA) pertaining to the effects of an employer's failure to timely designate leave that is taken by an employee as being covered by the FMLA. The Department intends to propose revisions to the FMLA regulations to address issues raised by this and other judicial decisions.

Statement of Need: The FMLA requires covered employers to grant eligible employees up to 12 workweeks of unpaid, job-protected leave a year for specified family and medical reasons, and to maintain group health benefits during the leave as if the employees continued to work instead of taking leave. When an eligible employee returns from FMLA leave, the employer must restore the employee to the same or an equivalent job with equivalent pay, benefits, and other conditions of employment. FMLA makes it unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided by the FMLA.

The FMLA regulations require employers to designate if an employee's use of leave is counting against the employee's FMLA leave entitlement, and to notify the employee of that designation (29 CFR section 825.208). Section 825.700(a) of the regulations provides that if an employee takes paid or unpaid leave and the employer does not designate the leave as FMLA leave, the leave taken does not count against the employee's 12 weeks of FMLA leave entitlement.

On March 19, 2002, the U.S. Supreme Court issued its decision in Ragsdale v. Wolverine World Wide, Inc., 122 S. Ct. 1155 (2002). In that decision, the Court invalidated regulatory provisions pertaining to the effects of an employer's failure to timely designate leave that is taken by an employee as being covered by the FMLA. The Court ruled that 29 CFR section 825.700(a) was invalid absent evidence that the employer's failure to designate the leave as FMLA leave interfered with the employee's exercise of FMLA rights. This proposed rule is being prepared to address issues raised by this and other judicial decisions.

Summary of Legal Basis: This rule is issued pursuant to section 404 of the Family and Medical Leave Act, 29 U.S.C. section 2654.

Alternatives: After completing a review and analysis of the Supreme Court's decision in Ragsdale and other judicial decisions, regulatory alternatives will be developed for notice-and-comment rulemaking.

Anticipated Cost and Benefits: The costs and benefits of this rulemaking action are not expected to exceed $100 million per year or otherwise trigger economic significance under Executive Order 12866.

Risks: This rulemaking action does not directly affect risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	03/00/05	
NPRM Comment Period End	05/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Alfred B. Robinson, Acting Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building, S3502, Washington, DC 20210
Phone: 202 693–0051
Fax: 202 693–1302

RIN: 1215–AB35

1919. • AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

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

Legal Authority: 38 USC 4211; 38 USC 4212; 29 USC 793; EO 11758

CFR Citation: 41 CFR 60—300

Legal Deadline: None

Abstract: OFCCP proposes to create a new regulation implementing the Vietnam Era Veterans' Readjustment Assistant Act (VEVRAA) 38 USC 4212, to conform to the Jobs for Veterans Act (JFVA). JFVA amended VEVRAA in four ways. First, JFVA raised contract coverage from $25,000 to $100,000. Second, JFVA granted VEVRAA protection to a new group of veterans-those who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces Service Medal wasawarded pursuant to Executive Order 12985. Third, JFVA changed the definition of ''recently separated veteran'' to include ''any veteran during the three-year period beginning on the date of such veteran's discharge or released from active duty.'' Fourth, JFVA changed ''Special Disabled Veterans'' to ''Disabled Veterans,'' expanding the coverage to conform to 38 USC section 4211(3). This proposal will also increase the AAP threshold from $50,000 to $100,000 and will make other minor changes to the regulations. The VEVRAA Final Rule implementing the Veterans Employment Opportunities Act of 1998 and Veterans Benefits Health Care

Improvement Act of 2000 at 41 CFR 60-250, is RIN 1215-AB24.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Joseph J. DuBray Jr., Director, Division of Policy, Planning and Program Development Office of Federal Contract Compliance, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., Room N–3422, FP Building, Washington, DC 20210
Phone: 202 693–0102
TDD Phone: 202 693–1308
Fax: 202 693–1304
Email: ofccp-mail@dol-esa.gov

Related RIN: Related to 1215–AB24

RIN: 1215–AB46

1920. • SERVICE CONTRACT ACT WAGE DETERMINATION ONLINE REQUEST PROCESS

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 351 et seq; 41 USC 38; 41 USC 39; 5 USC 301

CFR Citation: 29 CFR 4

Legal Deadline: None

Abstract: The Department of Labor is revising the Service Contract Act (SCA) regulations to reflect changes and improvements in the process for requesting SCA wage determinations through the Wage Determinations OnLine (WDOL) system. WDOL (www.wdol.gov) is part of the Integrated Acquisition Environment, one of the e-Government initiatives in the President's Management Agenda. The WDOL program provides a Web-based environment for Federal contracting agencies to use when obtaining appropriate wage determinations for their SCA-covered contract actions. The regulatory requirements set forth at 29 CFR part 4 that refer to the preparation and submission of Standard Form 98/98a, Notice of Intention to Make a Service Contract, will be revised to reflect the wage determination request process contemplated by the new WDOL program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Alfred B. Robinson, Acting Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building, S3502, Washington, DC 20210
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RIN: 1215–AB47

1921. • STANDARDS OF CONDUCT FOR FEDERAL SECTOR UNIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 7120

CFR Citation: 29 CFR 458.4 (New)

Legal Deadline: None

Abstract: This rulemaking action will revise the regulations implementing the standards of conduct for Federal sector unions under the Civil Service Reform Act of 1978 (CSRA). Under the CSRA standards of conduct provisions, the implementing regulations are to conform to the principles applied to private sector unions. Accordingly, the implementing regulations generally follow the provisions of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). However, the standards of conduct regulations do not include one important provision of the LMRDA which requires unions to inform their members of the provisions of the statute. The proposed rule would amend the standards of conduct regulations to include this important provision.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Don Todd, Programs, Department of Labor, Employment Standards Administration, Room N5605, 200 Constitution Avenue NW., FP Building, Washington, DC 20210
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RIN: 1215–AB48

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

Final Rule Stage

1922. CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION (ESA/W–H)

Priority: Other Significant

Legal Authority: 29 USC 203(l)

CFR Citation: 29 CFR 570

Legal Deadline: None

Abstract: Section 3(l) of the Fair Labor Standards Act requires the Secretary of Labor to issue regulations with respect to minors between 14 and 16 years of age ensuring that the periods and conditions of their employment do not interfere with their schooling, health, or well-being. The Secretary is also directed to designate occupations that are particularly hazardous for minors 16 and 17 years of age. Child Labor Regulation No. 3 sets forth the permissible industries and occupations in which 14- and 15-year-olds may be employed, and specifies the number of hours in a day and in a week, and time periods within a day, that such minors may be employed. The Department has invited public comment in considering whether changes in technology in the workplace and job content over the years require new hazardous occupation orders, and whether changes are needed in some of the applicable hazardous occupation orders. Comment has also been solicited on whether revisions should be considered in the permissible hours and time-of-day standards for 14- and 15-year-olds. Comment has been sought on appropriate changes required to

implement school-to-work transition programs. Additionally, Congress enacted Public Law 104-174 (August 6, 1996), which amended FLSA section 13(c) and requires changes in the regulations under Hazardous Occupation Order No. 12 regarding power-driven paper balers and compactors, to allow 16- and 17-year-olds to load, but not operate or unload, machines meeting applicable American National Standards Institute (ANSI) safety standards and certain other conditions. Congress also passed the Drive for Teen Employment Act, Public Law 105-334 (October 31, 1998), which prohibits minors under age 17 from driving automobiles and trucks on public roads on the job and sets criteria for 17-year-olds to drive such vehicles on public roads on the job.

Statement of Need: Because of changes in the workplace and the introduction of new processes and technologies, the Department is undertaking a comprehensive review of the regulatory criteria applicable to child labor. Other factors necessitating a review of the child labor regulations are changes in places where young workers find employment opportunities, the existence of differing Federal and State standards, and the divergent views on how best to correlate school and work experiences.

Under the Fair Labor Standards Act, the Secretary of Labor is directed to provide by regulation or by order for the employment of youth between 14 and 16 years of age under periods and conditions which will not interfere with their schooling, health and well-being. The Secretary is also directed to designate occupations that are particularly hazardous for youth between the ages of 16 and 18 years or detrimental to their health or well-being. The Secretary has done so by specifying, in regulations, the permissible industries and occupations in which 14- and 15-year-olds may be employed, and the number of hours per day and week and the time periods within a day in which they may be employed. In addition, these regulations designate the occupations declared particularly hazardous for minors between 16 and 18 years of age or detrimental to their health or well-being.

Public comment has been invited in considering whether changes in technology in the workplace and job content over the years require new hazardous occupation orders or necessitate revision to some of the existing hazardous orders. Comment has also been invited on whether revisions should be considered in the permissible hours and time-of-day standards for the employment of 14- and 15-year-olds, and whether revisions should be considered to facilitate school-to-work transition programs. When issuing the regulatory proposals (after review of public comments on the advance notice of proposed rulemaking), the Department's focus was on assuring healthy, safe and fair workplaces for young workers, and at the same time promoting job opportunities for young people and making regulatory standards less burdensome to the regulated community.

The Department will also be considering what additional revisions to the hazardous occupation orders will be undertaken to address recommendations of the National Institute for Occupational Safety and Health in its May 2002 report to the Department.

Summary of Legal Basis: These regulations are issued under sections 3(l), 11, 12, and 13 of the Fair Labor Standards Act, 29 U.S.C. sections 203(l), 211, 212, and 213 which require the Secretary of Labor to issue regulations prescribing permissible time periods and conditions of employment for minors between 14 and 16 years old so as not to interfere with their schooling, health, or well-being, and to designate occupations that are particularly hazardous or detrimental to the health or well-being of minors under 18 years old.

Alternatives: Regulatory alternatives developed based on recent legislation and the public comments responding to the advance notice of proposed rulemaking included specific proposed additions or modifications to the paper baler, teen driving, explosive materials, and roofing hazardous occupation orders, and proposed changes to the permissible cooking activities that 14- and 15-year-olds may perform in retail establishments.

Anticipated Cost and Benefits: Preliminary estimates of the anticipated costs and benefits of this regulatory action indicated that the rule was not economically significant. Benefits will include safer working environments and the avoidance of injuries with respect to young workers.

Risks: The child labor regulations, by ensuring that permissible job opportunities for working youth are safe and healthy and not detrimental to their education as required by the statute, produce positive benefits by reducing health and productivity costs employers may otherwise incur from higher accident and injury rates to young and inexperienced workers. Given the limited nature of the changes in the proposed rule, a detailed assessment of the magnitude of risk was not prepared.

Timetable:

Action	Date	FR Cite
Final Rule	11/20/91	56 FR 58626
Final Rule Effective	12/20/91	
ANPRM	05/13/94	59 FR 25167
ANPRM Comment Period End	08/11/94	59 FR 40318
NPRM	11/30/99	64 FR 67130
NPRM Comment Period End	01/31/00	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1215–AA09

1923. AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 4211; 38 USC 4212; 29 USC 793; EO 11758

CFR Citation: 41 CFR 60—250

Legal Deadline: None

Abstract: The regulation is a final rule that revises the current regulations implementing the nondiscrimination and affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA). VEVRAA requires Government contractors and

subcontractors to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era. Today's rule makes three general types of revisions to the VEVRAA regulations. First, it generally conforms the VEVRAA regulations to the Veterans Employment Opportunities Act of 1998 (VEOA) and the Veterans Benefits and Health Care Improvement Act of 2000 (VBHCIA). Second, it removes reference to Letters of Commitment (LOC) because the violations formerly incorporated into the LOC are now summarized in the Compliance Evaluation Closure Letter. Third, it removes language about the effective date of the rule published in 1998 because the language is obsolete, and regulationsno longer contain an ''effective date'' paragraph. The Department of Labor has determined that this rulemaking need not be published as a proposed rule, as generally required by the Administrative Procedures Act (APA), 5 U.S.C. 553, because the revisions in the rule are either nondiscretionary ministerial actions that merely incorporate, without change, statutory amendments into the preexisting regulations or are rules of agency procedures or practice.

Timetable:

Action	Date	FR Cite
Final Rule	10/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph J. DuBray Jr., Director, Division of Policy, Planning and Program Development Office of Federal Contract Compliance, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., Room N–3422, FP Building, Washington, DC 20210
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RIN: 1215–AB24

1924. GOVERNMENT CONTRACTORS: NONDISCRIMINATION AND AFFIRMATIVE ACTION OBLIGATIONS, EXECUTIVE ORDER 11246 (ESA/OFCCP) (REVISED)

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 793; EO 11758; EO 11246, as amended; 38 USC 4211; PL 94–502; EO 11758; PL 98–223; PL 102–16; PL 102–127; PL 95–520; PL 105–339; 29 USC 706; PL 97–306; PL 102–484; 38 USC 4212; PL 93–508, amended; PL 96–466; PL 101–237

CFR Citation: 41 CFR 60—1 (Revision); 41 CFR 60—250 (Revision); 41 CFR 60—741 (Revision)

Legal Deadline: None

Abstract: The final rule would remove the obligation to visit an establishment during a compliance check, which is currently required by section 60-1.20(a)(3) in order to enhance efficiency in resource allocation. OFCCP proposes also to make the same revision in section 60-250.60(a)(3) of the regulations implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA). Lastly, OFCCP proposes to conform regulations implementing section 503 of the Rehabilitation Act of 1973, as amended, to the compliance evaluation procedures contained in the regulations implementing Executive Order 11246, as amended, and the affirmative action provisions of VEVRAA, both of which expressly authorize OFCCP to use additional investigative procedures to determine a contractor's compliance with the regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/12/00	65 FR 60815
NPRM Comment Period End	12/11/00	
Final Rule	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Joseph J. DuBray Jr., Director, Division of Policy, Planning and Program Development Office of Federal Contract Compliance, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., Room N–3422, FP Building, Washington, DC 20210
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RIN: 1215–AB28

1925. REQUIREMENTS FOR SECURITY OF INSURANCE OBLIGATIONS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 939(a)

CFR Citation: 20 CFR 701 (Revision); 20 CFR 703

Legal Deadline: None

Abstract: The Longshore and Harbor Workers' Compensation Act (LHWCA) makes a covered employer liable for compensation to employees injured in the course of their work. An employer may satisfy this liability by contracting with a private insurance carrier. By statute, an insurance carrier must obtain authorization from the Secretary of Labor to insure compensation, and the Secretary may revoke authorization for good cause. This proposed regulation would require, as a condition to authorization to write LHWCA insurance, an insurance carrier in certain circumstances to establish that its potential LHWCA obligations are sufficiently secured. Obligations would be considered sufficiently secured if funds would be available to cover all workers' compensation claims in the event of adverse market conditions and the carrier's insolvency. A carrier could fully secure its obligations by posting security deposits with the Secretary. Carriers would not, however, be required to make this showing in states which have a guaranty fund that fully and immediately covers LHWCA claims in the event of a carrier's insolvency.

Timetable:

Action	Date	FR Cite
NPRM	03/15/04	69 FR 12218
NPRM Comment Period End	05/14/04	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

DOL—ESA **Final Rule Stage**

Agency Contact: Michael Niss, Director, Division of Longshore and Harbor Workers' Compensation, OWCP, Department of Labor, Employment Standards Administration, Room C4315, 200 Constitution Ave., NW, Room C–4315, FP Building, Washington, DC 20210
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RIN: 1215–AB38

1926. • OBLIGATION TO SOLICIT RACE AND GENDER DATA FOR AGENCY ENFORCEMENT PURPOSES

Priority: Other Significant

Legal Authority: EO 11246; EO 11375; EO 12086; EO 13279

CFR Citation: 41 CFR 60—1

Legal Deadline: None

Abstract: The Office of Federal Contract compliance Programs (OFCCP) has promulgated regulations requiring covered federal contractors to maintain certain employment records for OFCCP compliance monitoring and other enforcement purposes. These regulations were amended on November 13, 2000, to require employers to be able to identify, where possible, the gender, race and ethnicity of each applicant for employment. OFCCP promulgated this regulatory requirement to govern OFCCP compliance monitoring and enforcement purposes (e.g., to allow OFCCP to verify EEO data), consistent with the Uniform Guidelines on Employee Selection Procedures.

The Uniform Guidelines on Employee Selection Procedures were issued in 1978 by the Equal Employment Opportunity Commission, the Department of Labor, the Department of Justice, and the predecessor to the Office of Personnel Management (UGESP agencies). The Uniform Guidelines on Employee Selection Procedures require employers to keep certain kinds of information and detail methods for validating tests and selection procedures that are found to have a disparate impact.

In 2000, the Office of Management and Budget instructed the Equal Employment Opportunity Commission to consult with the Department of Labor, the Department of Justice, and the Office of Personnel Management and ''evaluate the need for changes to the Questions and Answers accompanying the Uniform Guidelines necessitated by the growth of the Internet as a job search mechanism.''

The UGESP agencies recently have promulgated interpretive guidelines in question and answer format to clarify how the Uniform Guidelines on Employee Selection Procedures apply in the context of the Internet and related technologies. The recent interpretive guidelines expressly contemplate that '[e]ach agency may provide further information, as appropriate, through the issuance of additional guidance or regulations that will allow each agency to carry out its specific enforcement responsibiliti

Timetable:

Action	Date	FR Cite
NPRM	03/29/04	69 FR 16446
NPRM Comment Period End	05/28/04	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1215–AB45

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

Long-Term Actions

1927. LABOR CONDITION APPLICATIONS AND REQUIREMENTS FOR EMPLOYERS USING NONIMMIGRANTS ON H–1B VISAS IN SPECIALTY OCCUPATIONS AND AS FASHION MODELS

Priority: Other Significant

Legal Authority: 29 USC 49 et seq; 8 USC 1101(a)(15)(H)(i)(b); 8 USC 1182(n); 8 USC 1184; PL 102–232; PL 105–277

CFR Citation: 20 CFR 655, subparts H and I

Legal Deadline: None

Abstract: The H-1B visa program of the Immigration and Nationality Act allows employers to temporarily employ nonimmigrants admitted into the United States under the H-1B visa category in specialty occupations and as fashion models, under specified labor conditions. An employer must file a labor condition application with the Department of Labor before the Immigration and Naturalization Service may approve a petition to employ a foreign worker on an H-1B visa. The Department's Employment and Training Administration administers the labor condition application process; the Wage and Hour Division of the Department's Employment Standards Administration handles complaints and investigations regarding labor condition applications. The Department published a proposed rule on January 5, 1999, in response to statutory changes in the H-1B program made by the American Competitiveness and Workforce Improvement Act of 1998 (title IV, Pub. L. 105-277; Oct. 21, 1998). Those changes placed additional obligations on ''H-1B-dependent'' employers (generally, those with work forces comprised of more than 15 percent H-1B workers) and on willful violators. These employers must recruit for U.S. workers, hire U.S. workers who are at least as qualified as H-1B workers, and not displace U.S. workers by hiring H-1B workers or placing them at another employer's job site. The 1998 amendments also imposed additional obligations on all H-1B employers, such as offering benefits to H-1B workers on the same basis and according to the same criteria as offered to U.S. workers, and payment to H-1B workers during periods they are not working for an employment-related reason. The 1999 proposed rule also requested further public comment on earlier proposed provisions published in October 1995, and on particular interpretations of the statute and of the existing regulations

which the Department proposed to incorporate into the regulations. Since publishing the proposed rule, Congress enacted further amendments to theH-1B provisions under the American Competitiveness in the Twenty-First Century Act of 2000 (Pub. L. 106-313; Oct. 17, 2000), the Immigration and Nationality Act - Amendments (Pub. L. 106-311; Oct. 17, 2000), and section 401 of the Visa Waiver Permanent Program Act (Pub. L. 106-396; Oct. 30, 2000).

Timetable:

Action	Date	FR Cite
NPRM	10/31/95	60 FR 55339
NPRM Comment Period End	11/30/95	
NPRM	01/05/99	64 FR 628
NPRM Comment Period End	02/04/99	
Interim Final Rule	12/20/00	65 FR 80110
Interim Final Rule Effective	01/19/01	
Interim Final Rule Comment Period End	04/23/01	66 FR 10865
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: On December 20, 2000, the Department published an interim final rule to implement the recent amendments and clarify the existing rules, and requested further public comment on those provisions.

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RIN: 1215–AB09

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

Completed Actions

1928. DEFINING AND DELIMITING THE TERM ''ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY'' (ESA/W–H)

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 29 USC 213(a)(1)

CFR Citation: 29 CFR 541

Legal Deadline: None

Abstract: These regulations set forth the criteria for exemption from the Fair Labor Standards Act's minimum wage and overtime requirements as ''executive,'' ''administrative,'' ''professional,'' and ''outside sales employees.'' To be exempt, employees must meet certain tests relating to duties and responsibilities and be paid on a salary basis at specified levels. A final rule increasing the salary test levels was published on January 13, 1981 (46 FR 3010), to become effective on February 13, 1981, but was indefinitely stayed on February 12, 1981 (46 FR 11972). On March 27, 1981, a proposal to suspend the final rule indefinitely was published (46 FR 18998), with comments due by April 28, 1981. As a result of numerous comments and petitions from industry groups on the duties and responsibilities tests, and as a result of case law developments, the Department concluded that a more comprehensive review of these regulations was needed. An ANPRM reopening the comment period and broadening the scope of review to include all aspects of the regulations was published on November 19, 1985, with the comment period subsequently extended to March 22, 1986.

The Department has revised these regulations since the ANPRM to address specific issues. In 1991, as the result of an amendment to the Fair Labor Standards Act (FLSA), the regulations were revised to permit certain computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6.5 times the applicable minimum wage. Also, in 1992 the Department issued a final rule which modified the exemption's requirement for payment on a ''salary basis'' for otherwise exempt public sector employees.

These regulations set forth the criteria for exemption from the Fair Labor Standards Act's minimum wage and overtime requirements ''executive,'' ''administrative,'' ''professional,'' and ''outside sales employees.'' To be exempt, employees must meet certain tests relating to duties and responsibilities and be paid on a salary basis at specified levels. A final rule increasing the salary test levels was published on January 13, 1981 (46 FR 3010), to become effective on February 13, 1981, but was indefinitely stayed on February 12, 1981 (46 FR 11972). On March 27, 1981, a proposal to suspend the final rule indefinitely was published (46 FR 18998), with comments due by April 28, 1981. As a result of numerous comments and petitions from industry groups on the duties and responsibilities tests, and as a result of case law developments, the Department concluded that a more comprehensive review of these regulations was needed. An ANPRM reopening the comment period and broadening the scope of review to include all aspects of the regulations was published on November 19, 1985, with the comment period subsequently extended to March 22, 1986.

The Department has revised these regulations since the ANPRM to address specific issues. In 1991, as the result of an amendment to the Fair Labor Standards Act (FLSA), the regulations were revised to permit certain computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6.5 times the applicable minimum wage. Also, in 1992 the Department issued a final rule which modified the exemption's requirement for payment on a ''salary basis'' for otherwise exempt public sector employees.

Statement of Need: These regulations contain the criteria used to determine if an employee is exempt from the FLSA as an ''executive, ''administrative,'' ''professional,'' or ''outside sales'' employee. The existing salary test levels used in determining which employees qualify as exempt

were adopted in 1975 on an interim basis. These salary level tests are outdated and offer little practical guidance in applying the exemption. In addition, numerous comments and petitions have been received from industry groups regarding the duties and responsibilities tests in the regulations, requesting a review of these regulations.

These regulations have been revised to deal with specific issues. In 1991, as the result of an amendment to the FLSA, the regulations were revised to permit certain computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6 1/2 times the applicable minimum wage. Also in 1991, the Department undertook separate rulemaking on another aspect of the regulations, the definition of ''salary basis'' for public-sector employees. Because of the limited nature of these revisions, the regulations are still in need of updating and clarification.

Summary of Legal Basis: These regulations are issued under the statutory exemption from minimum wage and overtime pay provided by section 13(a)(1) of the Fair Labor Standards Act, 29 USC 213(a)(1), which requires the Secretary of Labor to issue regulations that define and delimit the terms ''any employee employed in a bona fide, executive, administrative, or professional capacity... or in the capacity of outside salesman...'' for purposes of applying the exemption to employees who meet the specified criteria.

Alternatives: The Department will involve affected interest groups in developing regulatory alternatives. Following completion of these outreach and consultation activities, full regulatory alternatives will be developed.

Although legislative proposals have been introduced in Congress to address certain aspects of these regulations, the Department continues to believe revisions to the regulations are the appropriate response to the concerns raised. Alternatives likely to be considered range from particularchanges to address ''salary basis'' and salary level issues to a comprehensive overhaul of the regulations that also addresses the duties and responsibilities tests.

Anticipated Cost and Benefits: Some 19 to 26 million employees are estimated to be within the scope of these regulations. Legal developments in court cases are changing the guiding interpretations under this exemption and creating law without considering a comprehensive analytical approach to current compensation concepts and workplace practices. Clear, comprehensive, and up-to-date regulations would provide for central, uniform control over the application of these regulations and ameliorate many concerns. In the public sector, State and local government employers contend that the rules are based on production workplace environments from the 1940s and 1950s that do not readily adapt to contemporary government functions. The Federal Government also has concerns regarding the manner in which the courts and arbitration decisions are applying the exemption to the Federal workforce. Resolution of confusion over how the regulations are to be applied in the public sector will ensure that employees are protected, that employers are able to comply with their responsibilities under the law, and that the regulations are enforceable. Preliminary estimates of the specific costs and benefits of this regulatory action will be developed once the various regulatory alternatives are identified.

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

Timetable:

Action	Date	FR Cite
Indefinite Stay of Final Rule	02/12/81	46 FR 11972
Proposal To Suspend Rule	03/27/81	46 FR 18998
ANPRM	11/19/85	50 FR 47696
Extension of ANPRM Comment Period	01/17/86	51 FR 2525
ANPRM Comment Period End	03/22/86	
NPRM	03/31/03	68 FR 15560
NPRM Comment Period End	06/30/03	
Final Action	04/23/04	69 FR 22122
Final Action Effective	08/23/04	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, Local, State

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

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RIN: 1215–AA14

1929. OBLIGATION OF FEDERAL CONTRACTORS AND SUBCONTRACTORS, NOTICE OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES

Priority: Other Significant

Legal Authority: EO 13201

CFR Citation: 29 CFR 470

Legal Deadline: None

Abstract: On September 30, 2003, the United States Court of Appeals for the District of Columbia Circuit issued its mandate in UAW-Labor Employment and Training Corp v. Chao. The court's April 22, 2003 decision in this case had upheld Executive Order 13201 and reversed the January 2, 2002 decision of the United States District Court for the District of Columbia which had permanently enjoined the Department of Labor from enforcing Executive Order 13201. The final rule implementing E.O. 13201 was published on March 29, 2004.

This regulation implements E.O. 13201 which requires Government contractors and subcontractors to post notices informing their employees that (1) under Federal law they cannot be required to join a union or maintain membership in a union to retain their jobs, and (2) employees who choose not to be union members may object to the use of their compulsory union dues and fees for activities other than collective bargaining, contract administration, and grievance adjustment, and may be entitled to a refund and an appropriate reduction in their future payments. The regulation, in accordance with E.O. 13201, also requires that, where applicable, each Government

contracting agency include certain provisions of the Order in its Government contracts, and that Government contractors and subcontractors include these provisions in their nonexempt subcontracts and purchase orders.

Timetable:

Action	Date	FR Cite
Interim Procedural Rule	04/18/01	66 FR 19988
NPRM	10/01/01	66 FR 50010
NPRM Comment Period End	11/30/01	
Final Rule	03/29/04	69 FR 16376
Final Rule Effective	04/28/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Don Todd, Programs, Department of Labor, Employment Standards Administration, Room N5605, 200 Constitution Avenue NW., FP Building, Washington, DC 20210
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RIN: 1215–AB33

1930. AMENDMENTS TO TITLE 20 PARTS 718 AND 725 THAT IMPLEMENT THE BLACK LUNG BENEFITS ACT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; Reorganization Plan No. 6 of 1950; 15 FR 3174; 30 USC 901, et seq, 902(f), 934, 936, 945; 33 USC 901 et seq; 42 USC 405; Secretary's Order 7–87; 52 FR 48466; Employment Standards Order No. 90–02; . . .

CFR Citation: 20 CFR 718.2; 20 CFR 725.2; 20 CFR 725.459

Legal Deadline: None

Abstract: The amendments implement National Mining Ass'n v. Department of Labor, 292 F.3d 849 (D.C. Cir. 2002) which invalidated a portion of 20 CFR 725.459 and required several other provisions which became effective in January 2001 to be prospective only in their application.

Timetable:

Action	Date	FR Cite
Final Rule	12/15/03	68 FR 69930
Final Rule Effective	12/15/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1215–AB40

Department of Labor (DOL)
Employment and Training Administration (ETA)

Prerule Stage

1931. INDIAN AND NATIVE AMERICAN WELFARE–TO–WORK PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 612(a)(3)(c)(iii); PL 106–113, Division B, section 1000(a)(4)

CFR Citation: 20 CFR 646

Legal Deadline: Final, Statutory, November 4, 1997, 90 days from enactment.
Other, Statutory, January 1, 2000, for 1999 amendments.

Abstract: These are program regulations needed to implement the Indian and Native American set-aside under the Welfare-to-Work program authorized by section 412(a)(3) of the Social Security Act. New interim final regulations are being issued to implement changes made by the Welfare-to-Work and Child Support Amendments of 1999 and other legislation. The Consolidated Appropriations Act of 2001 authorized the Department to extend welfare-to-work grants an additional two years. Therefore, the grants may operate until September 2004.

The Department received no comments in response to the March 1, 1998, interim final rule, but through consultation received feedback on the interim final rule from 14 interested parties. None of these would substantively change the regulations. Because authority to spend WtW funds will expire on September 30, 2004, we have decided not to finalize the interim final rule. Instead, we will remove 20 CFR part 646 following closeout of these grants.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/01/98	63 FR 15985
Interim Final Rule Effective	04/01/98	
Interim Final Rule Comment Period End	06/01/98	
To Be Repealed	06/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Gregory Gross, Department of Labor, Employment and Training Administration, Room N4641, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693–3752
Email: gross.gregory@dol.gov

RIN: 1205–AB16

Department of Labor (DOL) **Proposed Rule Stage**

Employment and Training Administration (ETA)

1932. FEDERAL–STATE UNEMPLOYMENT COMPENSATION (UC) PROGRAM; CONFIDENTIALITY AND DISCLOSURE OF INFORMATION IN STATE UC RECORDS

Priority: Other Significant

Legal Authority: 26 USC ch 23; 42 USC 1302 (a); 42 USC 1320b–7; 42 USC 503; Secretary's Orders 4–75 and 14–75

CFR Citation: 20 CFR 603

Legal Deadline: None

Abstract: The Employment and Training Administration of the Department of Labor is preparing to issue a notice of proposed rulemaking (NPRM) on confidentiality and disclosure of State UC information. The NPRM would modify and expand the regulations implementing the Income and Eligibility Verification System (IEVS) to include statutory requirements in title III of the Social Security Act and the Federal Unemployment Tax Act concerning confidentiality and disclosure of State UC information. The use of UC wage records and other information under these and other statutes has increased in recent years while privacy and confidentiality issues have not yet been fully addressed.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

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

Additional Information: Formerly RIN 1205-AA74; was taken off regulatory agenda in 1994 due to inactivity. An earlier NPRM was published on 3/23/92 at 57 FR 10063 with comment period ending 5/22/92.

Agency Contact: Gerard Hildebrand, Chief, Division of Legislation, Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue NW., Room C–4518, Washington, DC 20210
Phone: 202 693–3038
Email: hildebrand.gerard@dol.gov

RIN: 1205–AB18

1933. TRADE ADJUSTMENT ASSISTANCE FOR WORKERS

Priority: Other Significant

Legal Authority: 19 USC 2320; Secretary's Order No. 3–81, 46 FR 31117

CFR Citation: 29 CFR 90; 20 CFR 617; 20 CFR 618; 20 CFR 665; 20 CFR 671; . . .

Legal Deadline: None

Abstract: The Trade Act of 2002, enacted on August 6, 2002, contains provisions amending title 2, chapter 2 of the Trade Act of 1974, entitled Adjustment Assistance for Workers. The amendments, effective 90 days from enactment (November 4, 2002), make additions to where and by whom a petition may be filed, expand eligibility to workers whose production has been shifted to certain foreign countries and to worker groups secondarily affected, and make substantive amendments regarding trade adjustment assistance (TAA) program benefits.

It is the agency's intention to create a new 20 CFR part 618 to incorporate the amendments and be written in plain English, while amending WIA regs at 20 CFR parts 665 and 671 regarding Rapid Response and National Emergency Grants as they relate to the TAA program.

Statement of Need: The Trade Act of 2002, enacted August 6, 2002, repeals the North American Free Trade Agreement-Transitional Adjustment Assistance provisions for workers affected by the NAFTA Implementation Act and adds significant amendments to worker benefits under Trade Adjustment Assistance for Workers, as provided for in the Trade Act of 1974.

The Department is mandated to implement the amendments in 90 days from enactment, November 4, 2002. The 2002 Trade Act amends where and by whom a petition may be filed. Program benefits for TAA eligible recipients are expanded to include for the first time a health care tax credit, and eligible recipients now include secondarily affected workers impacted by foreign trade. Income support is extended by 26 weeks and by up to one year under certain conditions. Waivers of training requirements in order to receive income support are explicitly defined. Job search and relocation benefit amounts are increased. Within one year of enactment, the amendments offer an Alternative TAA Program for Older Workers that targets older worker groups at firms who are certified as TAA eligible and provides the option of a wage supplement instead of training, job search, and income support.

State agencies rely on the regulations to make determinations as to individual eligibility for TAA program benefits. TAA program regulations as written have been described as complicated to interpret. With the new TAA program benefit amendments contained in the Trade Act of 2002, it is imperative that the regulations be in an easy to read and understandable format.

Summary of Legal Basis: These regulations are authorized by the Trade Act of 2002 amendments to the Trade Act of 1974.

Alternatives: The public will be afforded an opportunity to provide comments on the TAA program changes when the Department publishes the interim final rule in the Federal Register.

Anticipated Cost and Benefits: Preliminary estimates of the anticipated costs of this regulatory action have not been determined at this time and will be determined at a later date.

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

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Agency Contact: Timothy F. Sullivan, Trade Adjustment Assistance, Department of Labor, Employment and Training Administration, Room S4231, 200 Constitution Avenue NW, FP Building, C5311, Washington, DC 20210
Phone: 202 693–3708
Email: sullivan.timothy@dol.gov

RIN: 1205–AB32

DOL—ETA Proposed Rule Stage

1934. POST–ADJUDICATION AUDITS OF H–2B PETITIONS OTHER THAN LOGGING IN THE UNITED STATES

Priority: Other Significant

Legal Authority: 8 USC 1101(a)(15)(H)(ii)(b); 8 USC 1184; 29 USC 49 et seq

CFR Citation: 8 CFR 214.2(h)(5); 20 CFR 655.1 to 655.4

Legal Deadline: None

Abstract: Under the redesigned H-2B temporary nonagricultural program employers seeking to import H-2B workers, except for applications filed for employment on Guam or in logging, will file directly with the Department of Homeland Security (DHS). The employer will be required to conduct recruitment before filing its petition. The petition will include a number of attestations concerning labor market and related issues. DHS will administer the petition adjudication process. After adjudication, the Department of Labor (DOL) will audit selected approved petitions. In such audits, DOL will exclusively examine whether the employer has complied with those aspects of the approved petition related to the labor market and other related attestations. Employers will be expected to have documentation available supporting their attestations as specified in the regulation and will be required to provide this supporting documentation to DOL within 30 days from notice of audit. If, after completion of the audit, DOL determines that the employer has failed to comply with the terms of the attestations contained in the DHS petition or made material misrepresentations in its attestation, DOL will, after notice to the employer and opportunity for a hearing, recommend to DHS that the employer be debarred, for a period up to three years.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: William L. Carlson, Chief, Division of Foreign Labor Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C4318 FP Building, Washington, DC 20210
Phone: 202 693–3989
Fax: 202 693–2760
Email: carlson.william@dol.gov

RIN: 1205–AB36

1935. • LABOR CONDITION APPLICATIONS FOR EMPLOYERS USING NONIMMIGRANTS ON H–1B VISAS IN SPECIALTY OCCUPATIONS AND AS FASHION MODELS; FILING PROCEDURES

Priority: Other Significant

Legal Authority: 8 USC 1182(n)

CFR Citation: 20 CFR 655.720; 20 CFR 655.730

Legal Deadline: None

Abstract: Currently, Department of Labor Regulations (hereinafter Department or DOL) allows employers to file labor condition applications (LCA) electronically, by facsimile transmission (FAX), and by mail. The Department seeks comments on a proposal to eliminate the provision that allows employers to file LCAs by (FAX). Employers that could not file LCAs electronically due to physical impairments would be allowed to submit LCAs by mail. The Rulemaking would also inform employers of an impending change in address for the submission of LCA by mail. The Department believes the e-filing process will ensure expeditious processing of H-2B petitions and limit the number of potentially incomplete applications. In addition it will ease the filing burden on employers. Through e-filing the Department will be better able to capture statistics and analyze H-1B program data to identify areas that need improvement as well as any fraud or abuse that may lead to future administrative, civil or criminal enforcement actions against H-1B employers or alien beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	11/00/04	
NPRM Comment Period End	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William L. Carlson, Chief, Division of Foreign Labor Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C4318 FP Building, Washington, DC 20210
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RIN: 1205–AB39

Department of Labor (DOL)
Employment and Training Administration (ETA)

Final Rule Stage

1936. LABOR CERTIFICATION PROCESS FOR THE PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

Priority: Other Significant

Legal Authority: 29 USC 49 et seq; 8 USC 1182(a)(5)(A), 1189(p)(1)

CFR Citation: 20 CFR 656

Legal Deadline: None

Abstract: The Employment and Training Administration (ETA) is in the process of reengineering the permanent labor certification process. ETA's goals are to make fundamental changes and refinements that will streamline the process, save resources, improve the effectiveness of the program and better serve the Department of Labor's (DOL) customer.

Statement of Need: The labor certification process has been described as being complicated, costly and time consuming. Due to the increases in the volume of applications received and a lack of adequate resources, it can take up to 2 years or more to complete processing an application. The process also requires substantial State and Federal resources to administer and is reportedly costly and burdensome to employers as well. Cuts in Federal funding for both the permanent labor certification program and the U.S. Employment Service have made it difficult for State and Federal administrators to keep up with the

process. ETA, therefore, is taking steps to improve effectiveness of the various regulatory requirements and the application processing procedures, with a view to achieving savings in resources both for the Government and employers, without diminishing protections now afforded U.S. workers by the current regulatory and administrative requirements.

Summary of Legal Basis: Promulgation of these regulations is authorized by section 212(a)(5)(A) of the Immigration and Nationality Act.

Alternatives: Regulatory alternatives are now being developed by the Department. The public was afforded an opportunity to comment on the Department's plans for streamlining the permanent labor certification process in a notice of proposed rulemaking which was published in the Federal Register on May 6, 2002.

Anticipated Cost and Benefits: Preliminary estimates of the anticipated costs and benefits have not been determined at this time. Preliminary estimates will be developed after a decision is made as to what regulatory amendments are necessary and after the implementing forms and automated systems to support a streamlined permanent labor certification process have been developed.

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

Timetable:

Action	Date	FR Cite
NPRM	05/06/02	67 FR 30465
NPRM Comment Period End	07/05/02	67 FR 30466
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal, State

Agency Contact: William L. Carlson, Chief, Division of Foreign Labor Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C4318 FP Building, Washington, DC 20210
Phone: 202 693–3989
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Email: carlson.william@dol.gov

RIN: 1205–AA66

1937. • LABOR CERTIFICATION FOR THE PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES; BACKLOG REDUCTION

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

Legal Authority: 8 USC 1182(a)(5)A)

CFR Citation: 20 CFR 656

Legal Deadline: None

Abstract: Seeks comment on a proposed amendment to the regulations governing labor certification applications for the permanent employment of aliens in the United States. To reduce an existing backlog in pending applications for permanent employment certification, the amendment would allow that National Certifying Officer to transfer to a centralized ETA processing center(s) applications that are awaiting processing by State Workforce Agencies (SWA's) or ETA Regional Offices or ETA regional offices.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William L. Carlson, Chief, Division of Foreign Labor Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C4318 FP Building, Washington, DC 20210
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RIN: 1205–AB37

1938. • LABOR CONDITION APPLICATIONS AND REQUIREMENTS FOR EMPLOYERS USING NONIMMIGRANTS ON H–1B VISAS IN SPECIALTY OCCUPATIONS AND AS FASHION MODELS; LABOR ATTESTATIONS RE H–1B VISAS AND CHILE AND SINGAPORE

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

Legal Authority: PL 108–77 sec 402; PL 108–78 sec 402

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Department of Labor intends to amend its regulations relating to the temporary employment of foreign professionals to implement procedural requirements applicable to a new visa category - the H-1B1 visa. Congress created the new visa category as part of its approval of the Chile-United States Free Trade Agreement and the Singapore-United States Free Trade Agreement. Under the implementing legislation and the Chile and Singapore agreements, the H-1B1 program is to be implemented in a manner similar to the existing H-1B program for temporary employment in specialty occupations and as fashion models. Employers in the United States seeking to temporarily employ foreign professionals in specialty occupations through H-1B1 visas must file a labor condition application with the Department of Labor making the same attestations regarding payment of prevailing wages, working conditions, absence of strikes or lockouts, and notice to other employees that employers currently make when seeking entry of a foreign worker under the H-1B program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William L. Carlson, Chief, Division of Foreign Labor Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C4318 FP Building, Washington, DC 20210
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RIN: 1205–AB38

Department of Labor (DOL)
Employment and Training Administration (ETA)

Long-Term Actions

1939. ATTESTATIONS BY FACILITIES TEMPORARILY EMPLOYING H–1C NONIMMIGRANT ALIENS AS REGISTERED NURSES

Priority: Other Significant

Legal Authority: 29 USC 49 et seq; 8 USC 1101(a)(15)(H)(i)(c); 8 USC 1182(m); 8 USC 1184; PL 106–95, 113 Stat. 1312

CFR Citation: 20 CFR 655, subparts L and M

Legal Deadline: Final, Statutory, February 11, 2000.

Abstract: The Nursing Relief for Disadvantaged Areas Act of 1999 (P.L. 106-95; November 12, 1999) amended the Immigration and Nationality Act to create a new temporary visa program for nonimmigrant aliens to work as registered nurses for up to three years in facilities serving health professional shortage areas, subject to certain conditions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/22/00	65 FR 51137
Interim Final Rule Comment Period End	09/21/00	
Interim Final Rule Effective	09/21/00	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: Michael Ginley, Director, Office of Enforcement Policy, Department of Labor, Room S3510, 200 Constitution Avenue NW, FP Building, Room S3510, Washington, DC 20210
Phone: 202 693–0745

RIN: 1205–AB27

Department of Labor (DOL)
Employment and Training Administration (ETA)

Completed Actions

1940. SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

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

Legal Authority: 42 USC 3056(b)(2)

CFR Citation: 20 CFR 641

Legal Deadline: None

Abstract: The Employment and Training Administration will implement new regulations to govern the Senior Community Service Employment Program (SCSEP) under title V of the Older Americans Act Amendments of 2000. SCSEP is the only federally sponsored job creation program targeted to low-income older Americans. The program subsidizes part-time community service jobs for low-income persons age 55 years and older who have poor employment prospects. Approximately 100,000 program enrollees annually work in a wide variety of community service jobs, including nurse's aides, teacher aides, librarians, clerical workers and day care assistants. The Department of Labor allocates funds to operate the program to State agencies on aging and to national organizations.

Proposed regulations will improve integration of SCSEP with the broader workforce investment system and introduce performance measures and sanctions.

Statement of Need: As the baby boom generation ages, the demand for employment and training services and income support for low-income older persons will increase. Low-income seniors generally must continue working and many may not be able to find employment without work experience and additional training. The basic goals of the SCSEP are to provide community service employment training for older workers with few skills and little work experience, and to move many of those seniors into unsubsidized employment. The Employment and Training Administration will issue regulations and other guidance, provide technical assistance, and establish performance standards that will drive State and national grantees' efforts towards the program's goals.

Summary of Legal Basis: Promulgation of these regulations is authorized by section 502(b)(2) of Pub. L. 106-501 of the Older Americans Act Amendments of 2000.

Alternatives: The public provided comments on changes to the statute due to the Older Americans Act Amendments of 2000 during Town Hall meetings held throughout the country in spring 2001. The public also will be afforded an opportunity to comment on the Department's plans for implementing the Amendments in a notice of proposed rulemaking that was published in the Federal Register on April 28, 2003. The Final Rule was published on April 9, 2004.

Anticipated Cost and Benefits: Preliminary estimates of the anticipated costs of this regulatory action have not been determined at this time and will be determined at a later date.

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

Timetable:

Action	Date	FR Cite
NPRM	04/28/03	68 FR 22520
NPRM Comment Period End	06/12/03	
Final Rule	04/09/04	69 FR 19014
Final Rule Effective	05/10/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Federalism: Undetermined

Agency Contact: Ria Moore Benedict, Programs, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., FP Building, Room N5306, Washington, DC 20210
Phone: 202 693–3198
Fax: 202 693–3817
Email: benedict.ria@dol.gov

RIN: 1205–AB28

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

Prerule Stage

1941. PROHIBITED TRANSACTION EXEMPTION PROCEDURES (SECTION 610 REVIEW)

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

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1135; 29 USC 1108 (a); Reorganization Plan No. 4 or 1978; Secretary of Labor's Order 1–2003

CFR Citation: 29 CFR 2570.30 to 2570.52

Legal Deadline: None

Abstract: EBSA is conducting a review of the prohibited transaction exemption procedures regulation in accordance with the requirements of Section 610 of the Regulatory Flexibility Act. The review will cover the continued need for the rules; the nature of complaints or comments received from the public concerning the rules; the complexity of the rules; the extent to which the rules overlap, duplicate or conflict 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 rules. EBSA is preparing a Request for Information, which will invite interested persons to submit written comments on the regulation.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/03	
RFI	09/00/04	
End Review	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Brian Burniski, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N5649, Washington, DC 20210
Phone: 202 693–8540

RIN: 1210–AA98

1942. STATUTORY EXEMPTION FOR LOANS TO PLAN PARTICIPANTS (SEC. 610 REVIEW)

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

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1135; 29 USC 1108 (b)(1)

CFR Citation: 29 CFR 2550.408 b—1

Legal Deadline: None

Abstract: EBSA is conducting a review of the participant loan rules under section 408(b)(1) of ERISA in accordance with the requirements of section 610 of the Regulatory Flexibility Act. The review will cover the continued need for the rules; the nature of complaints or comments received from the public concerning the rules; the complexity of the rules; the extent to which the rules overlap, duplicate, or conflict 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 rules.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/03	
End Review	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Rudy Nuissl, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Rm N5669, FP Building, Washington, DC 20210
Phone: 202 693–8500

RIN: 1210–AA99

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

Proposed Rule Stage

1943. SUSPENSION OF BENEFITS REGULATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1053(a)(3)(B); 29 USC 1135(a)(3)(B)

CFR Citation: 29 CFR 2530.203—3

Legal Deadline: None

Abstract: This regulation would amend the requirements of 29 CFR 2530.203-3(b)(4), relating to notification of suspension of benefit payments.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Susan G. Lahne, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room N5669, 200 Constitution Avenue NW., FP Building, Washington, DC 20210
Phone: 202 693–8500

RIN: 1210–AA96

1944. RULEMAKING RELATING TO TERMINATION OF ABANDONED INDIVIDUAL ACCOUNT PLANS

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

Legal Authority: 29 USC 1135; 29 USC 1002(16)(A)

CFR Citation: 29 CFR 2591

Legal Deadline: None

Abstract: This rulemaking will establish a procedure and standards for distributing the benefits of individual account plans that have been abandoned by their sponsoring employers or plan administrators.

Statement of Need: Thousands of individual account plans have, for a variety of reasons, been abandoned by their sponsors, creating problems for plan participants, administrators, financial institutions (e.g., banks, insurance companies, mutual funds), the courts and the Federal government. At present, the potential liability and costs attendant to terminating such plans and distributing the assets inhibits financial institutions and others from taking on this responsibility. Due to ongoing administrative costsand other factors, the continued maintenance of such plans is often not in the interest of the

participants and beneficiaries. This rulemaking will establish a procedure for a financial institution that holds the assets of such a plan to terminate the plan and distribute its assets to the participants and beneficiaries. The rulemaking will also include standards for determining when plans may be terminated pursuant to this procedure and for carrying out the functions necessary to distribute benefits and shut down plan operations.

Summary of Legal Basis: Section 505 of ERISA provides that the Secretary may prescribe such regulations as the Secretary finds necessary and appropriate to carryout the provisions of title I of the Act. Section 403(d)(1) provides that, upon termination of such a plan, the assets shall be distributed generally in accordance with the provisions that apply to defined benefit plans, ''except as otherwise provided in regulations of the Secretary.'' ERISA section 3(16)(A) permits the Secretary to issue regulations designating an administrator for a plan where the plan document makes no designation and the plan sponsor cannot be identified.

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.

Risks: Failure to provide guidance in this area will leave the retirement benefits of participants and beneficiaries in abandoned plans at risk of being significantly diminished by ongoing plan administrative expenses, rather than distributed to participants and beneficiaries in connection with a timely and orderly termination of the plan.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Jeffrey Turner, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, N 5669, 200 Constitution Avenue NW, Room N5669, FP Building, Washington, DC 20210 Phone: 202 693–8500

RIN: 1210–AA97

1945. • ANNUAL FUNDING NOTICE FOR MULTIEMPLOYER PLANS

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

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1021(f); PL 108–218; ERISA sec 101(f); ERISA sec 505

CFR Citation: 29 CFR 2520

Legal Deadline: Final, Statutory, April 10, 2005, PL 108–218 sec 103(a).

Abstract: This rulemaking implements the requirements of section 103 of the Pension Funding Equity Act of 2004, which amended section 101 of ERISA by adding a new subsection (f) that requires the administrator of a defined benefit multiemployer plan to provide participants, beneficiaries, and other parties with an annual funding notice indicating, among other things, whether the plan's funded current liability percentage is at least 100 percent.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	
NPRM Comment Period End	10/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jeffrey Turner, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, N 5669, 200 Constitution Avenue NW, Room N5669, FP Building, Washington, DC 20210 Phone: 202 693–8500

RIN: 1210–AB00

1946. • CIVIL PENALTY FOR FAILURE TO PROVIDE SECTION 302 NOTICE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1132(c)(4); PL 108–218; ERISA sec 502(c)(4); ERISA sec 505

CFR Citation: 29 CFR 2560

Legal Deadline: None

Abstract: This rulemaking implements the civil penalty provisions in section 103 of the Pension Funding Equity Act of 2004 (PFEA), which amended section 502(c)(4) of ERISA to permit the Secretary of Labor to assess a civil penalty of not more than $1,000 a day for each violation by any person of the notice requirement in section 302(b)(7)(F)(vi) of ERISA, also added by the PFEA, relating to an election for deferral of charge for portion of net experience loss. Pursuant to section 101 of Presidential Reorganization Plan No.4 of 1978, 43 FR 47713 (Oct. 17, 1978), all authority of the Secretary of Labor to issue regulations, rulings, opinions, variances and waivers under Parts 2 and 3 of Subtitle B of Title I, including section 302 of ERISA, has been transferred to the Secretary of the Treasury.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	
NPRM Comment Period End	10/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jeffrey Turner, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, N 5669, 200 Constitution Avenue NW, Room N5669, FP Building, Washington, DC 20210 Phone: 202 693–8500

RIN: 1210–AB01

Department of Labor (DOL) **Final Rule Stage**

Employee Benefits Security Administration (EBSA)

1947. REGULATIONS IMPLEMENTING THE HEALTH CARE ACCESS, PORTABILITY, AND RENEWABILITY PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

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

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1171; 29 USC 1172; 29 USC 1191c

CFR Citation: 29 CFR 2590

Legal Deadline: Other, Statutory, April 1, 1997, Interim Final Rule.

Abstract: The Health Insurance Portability and Accountability Act of 1996 (HIPAA) amended title I of ERISA by adding a new part 7, designed to improve health care access, portability and renewability. This rulemaking will provide regulatory guidance to implement these provisions.

Statement of Need: In general, the health care portability provisions in part 7 of ERISA provide for increased portability and availability of group health coverage through limitations on the imposition of any preexisting condition exclusion and special enrollment rights in group health plans after loss of other health coverage or a life event. Plan sponsors, administrators and participants need guidance from the Department with regard to how they can fulfill their respective obligations under these statutory provisions.

Summary of Legal Basis: Part 7 of ERISA specifies the portability and other requirements for group health plans and health insurance issuers. Section 734 of ERISA provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7 of ERISA. In addition, section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

Risks: Failure to provide guidance concerning part 7 of ERISA may impede compliance with the law.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Effective	06/07/97	
Interim Final Rule Comment Period End	07/07/97	
Request for Information	10/25/99	64 FR 57520
Comment Period End	01/25/00	
Final Rule	11/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1210–AA54

1948. MENTAL HEALTH BENEFITS PARITY

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

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1135; 29 USC 1182; 29 USC 1194; PL 104–204, 110 Stat. 2944; PL 107–313; 29 USC 1027; 29 USC 1059; 29 USC 1181; 29 USC 1183; 29 USC 1185

CFR Citation: 29 CFR 2590

Legal Deadline: None

Abstract: The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (Pub. L. 104-204). MHPA amended the Public Health Service Act (PHS Act) and the Employee Retirement Income Security Act of 1974 (ERISA), as amended, to provide for parity in the application of certain mental health benefits with limits on medical surgical benefits. These changes were subsequently added to the Internal Revenue Code (the Code). MHPA provisions are set forth in chapter 100 of subtitle K of the Code, title XXVII of the PHS Act, and part 7 of subtitle B of title I of ERISA. The Department of Labor has amended the interim final regulations, in consultation with the Departments of the Treasury and Health and Human Services, conforming the regulatory sunset date to the current statutory sunset date of December 31, 2004.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/22/97	62 FR 66932
Interim Final Rule Amendment Effective	09/30/01	
Interim Final Rule Amendment	09/27/02	67 FR 60859
Interim Final Rule Amendment Effective	12/02/02	68 FR 18048
Interim Final Rule Amendment	04/14/03	68 FR 18048
Interim Final Rule Amendment	01/26/04	69 FR 3816
Final Action	04/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1210–AA62

1949. HEALTH CARE STANDARDS FOR MOTHERS AND NEWBORNS

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

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1185; 29 USC 1191 to 1191c

CFR Citation: 29 CFR 2590.711

Legal Deadline: None

Abstract: The Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) was enacted on September 26, 1996 (PL 104-204). NMHPA amended the Public Health Service Act (PHSA) and the Employee Retirement Income Security Act of 1974, as amended, (ERISA) to provide protection for mothers and their newborn children with regard to the length of hospital stays following the birth of a child. NMHPA provisions are set forth in title XXVII of the PHSA and part 7 of subtitle B of title I of ERISA. This rulemaking will provide further guidance with regard to the provisions of the NMHPA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/27/98	63 FR 57546
Final Action	03/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Amy Turner, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room N5677, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1210–AA63

1950. RULEMAKING RELATING TO THE WOMEN'S HEALTH AND CANCER RIGHTS ACT OF 1998

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

Legal Authority: 29 USC 1135; 29 USC 1185; 29 USC 1191c

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Women's Health and Cancer Rights Act of 1998 (WHCRA) was enacted on October 21, 1998 (P.L. 105-277). WHCRA amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act (PHS Act) to provide protection for patients who elect breast reconstruction in connection with a mastectomy. The WHCRA provisions are set forth in part 7 of subtitle B of title I of ERISA and in title XXVII of the PHS Act. These interim rules will provide guidance with respect to the WHCRA provisions.

Timetable:

Action	Date	FR Cite
Request for Information (RFI)	05/28/99	64 FR 29186
Request for Information Comment Period End	06/28/99	
Interim Final Rule	06/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1210–AA75

1951. PROHIBITING DISCRIMINATION AGAINST PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS

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

Legal Authority: 29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1182; 29 USC 1191c; 29 USC 1194

CFR Citation: 29 CFR 2590.702

Legal Deadline: None

Abstract: Section 702 of the Employee Retirement Income Security Act of 1974, amended by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes that a group health plan or a health insurance issuer may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any health status-related factor. These provisions are also contained in the Internal Revenue Code under the jurisdiction of the Department ofthe Treasury, and the Public Health Service Act under the jurisdiction of the Department of Health and Human Services.

On April 8, 1997, the Department, in conjunction with the Departments of the Treasury and Health and Human Services (collectively, the Departments) published interim final regulations implementing the nondiscrimination provisions of HIPAA. These regulations can be found at 26 CFR 54.9802-1 (Treasury), 29 CFR 2590.702 (Labor), and 45 CFR 146.121 (HHS). That notice of rulemaking also solicited comments on the nondiscrimination provisions and indicated that the Departments intend to issue further regulations on the nondiscrimination rules. This rulemaking contains additional regulatory interim guidance under HIPAA's nondiscrimination provisions. In addition, the rulemaking contains proposed guidance on bona fide wellness programs.

Statement of Need: Part 7 of ERISA provides that group health plans and health insurance issuers may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any health status-related factor. Plan sponsors, administrators, and participants need additional guidance from the Department with regard to how they can fulfill their respective obligations under these statutory provisions.

Summary of Legal Basis: Section 702 of ERISA specifies the respective nondiscrimination requirements for group health plans and health insurance issuers. Section 734 of ERISA provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7 ERISA. In addition, section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

Risks: Failure to provide guidance concerning part 7 of ERISA may impede compliance with the law.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Comment Period End	07/07/97	
NPRM	01/08/01	66 FR 1421
NPRM Comment Period End	04/09/01	
Second Interim Final Rule	01/08/01	66 FR 1378
Interim Final Rule Comment Period End	04/09/01	
Final Rule	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Additional Information: This item has been split off from RIN 1210-AA54.

Agency Contact: Amy Turner, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room N5677, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1210–AA77

1952. DEFAULT ROLLOVER SAFE HARBOR

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1104(c); 29 USC 1105; PL 107–16, sec 657

CFR Citation: 29 CFR 2550

Legal Deadline: Final, Statutory, June 7, 2004, Deadline prescribed by sec 657(c)(2)(A) of the Economic Growth and Tax Reconciliation Act of 2001 (PL 107–16).

DOL—EBSA **Final Rule Stage**

Abstract: This regulation would provide safe harbors under which the designation of an institution and investment of funds is deemed to satisfy the fiduciary requirements of sec. 404(a) of ERISA. The Department has issued a request for information in order to obtain additional information from the public to assist it in developing the required safe harbors.

Timetable:

Action	Date	FR Cite
Request for Information (RFI)	01/07/03	68 FR 992
NPRM	03/02/04	69 FR 9899
NPRM Comment Period End	04/01/04	69 FR 9900
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1210–AA92

1953. ELECTRONIC FILING BY INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 1002 note; 29 USC 1002(38); 29 USC 1135

CFR Citation: 29 CFR 2510.3—38

Legal Deadline: None

Abstract: Upon adoption, this proposed regulation will clarify that an electronic filing with the Investment Advisers Registration Depository (IARD), a centralized electronic filing system established by the Securities and Exchange Commission in conjunction with the NASD and State securities authorities, will satisfy the filing requirement for investment advisers seeking investment manager status under section 3(38) of ERISA.

Timetable:

Action	Date	FR Cite
NPRM	12/09/03	68 FR 68709
NPRM Comment Period End	02/09/04	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1210–AA94

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

Long-Term Actions

1954. ADEQUATE CONSIDERATION

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

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1002(18); 29 USC 1135

CFR Citation: 29 CFR 2510

Legal Deadline: None

Abstract: The regulation would set forth standards for determining ''adequate consideration'' under section 3(18) of ERISA for assets other than securities for which there is a generally recognized market.

Timetable:

Action	Date	FR Cite
NPRM	05/17/88	53 FR 17632
NPRM Comment Period End	07/17/88	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Morton Klevan, Department of Labor, Employee Benefits Security Administration, N5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1210–AA15

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

Completed Actions

1955. RULEMAKING RELATING TO NOTICE REQUIREMENTS FOR CONTINUATION OF HEALTH CARE COVERAGE

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

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1135; 29 USC 1166

CFR Citation: 29 CFR 2590

Legal Deadline: None

Abstract: This rulemaking will provide guidance concerning the notification requirements pertaining to continuation coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Section 606 of ERISA requires that group health plans provide employees notification of the continuation coverage provisions of the plan and imposes notification obligations upon plan administrators, employers, employees, and qualified beneficiaries relating to certain qualifying events.

Statement of Need: Part 6 of title I of ERISA requires that group health plans provide employees with notice of the continuation of health care coverage provisions of the plan; it imposes notification requirements upon employers, employees, plan administrators, and qualified beneficiaries in connection with certain qualifying events. The public needs guidance from the Department with regard to how they can fulfill their respective obligations under these statutory provisions.

Summary of Legal Basis: Section 606 of ERISA specifies the respective notification requirements for employers, employees, plan

administrators, and qualified beneficiaries in connection with group health plan provisions relating to continuation of health care coverage. Section 606(a) of ERISA specifically refers to regulations to be issued by the Secretary of Labor clarifying these requirements. Section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

Alternatives: Regulatory alternatives will be developed once determinations have been made with regard to the scope and nature of the regulatory guidance which is needed by the public.

Anticipated Cost and Benefits: Preliminary estimates of the anticipated costs and benefits will be developed once decisions are reached regarding the alternatives to be considered.

Risks: Failure to provide guidance to the public concerning their notification obligations under section 606 of ERISA may complicate compliance by the public with the law and may reduce the availability of continued health care coverage in certain commonly encountered situations.

Timetable:

Action	Date	FR Cite
ANPRM	09/23/97	62 FR 49894
ANPRM Comment Period End	11/24/97	
NPRM	05/28/03	68 FR 31832
NPRM Comment Period End	07/28/03	
Final Action	05/26/04	69 FR 30084
Final Action Effective	07/26/04	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

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RIN: 1210–AA60

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

Prerule Stage

1956. RESPIRABLE CRYSTALLINE SILICA STANDARD

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

Legal Authority: 30 USC 811; 30 USC 813

CFR Citation: 30 CFR 70; 30 CFR 71; 30 CFR 90; 30 CFR 72; 30 CFR 58; . . .

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 10mg/m3 divided by the percentage of quartz where the quartz percent is 5.0 percent or greater 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/m3 divided by the percentage of quartz plus 2. Overexposure to crystalline silica can result in some miners developing silicosis which may ultimately be fatal. Both formulas are designed to maintain exposures to 0.1 mg/m3 (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 and ACGIH recommend a 50ug/ m3 exposure limit for respirable crystalline silica. MSHA is considering several options to reduce miners' exposure to crystalline silica.

Timetable:

Action	Date	FR Cite
Request for Information	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 1219–AB36

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

Proposed Rule Stage

1957. IMPROVING AND ELIMINATING REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 811; 30 USC 957

CFR Citation: 30 CFR 1 to 199

Legal Deadline: None

Abstract: This rulemaking will revise text in the CFR to reduce burden or duplication, and to streamline requirements. We have reviewed our current regulations and identified provisions that are outdated, redundant, unnecessary, or otherwise require change. We will be making these changes through notice and comment rulemaking where necessary. We will also consider new regulations that reflect ''best practices'' in the mining industry. We view this effort to be evolving and ongoing and will continue to accept recommendations from the public. MSHA will propose a rule addressing issues related to portable diesel generators.

Timetable:

Action	Date	FR Cite
NPRM Comment Period End: Methane Testing	11/25/02	67 FR 60611

Action	Date	FR Cite
NPRM: Spring–Loaded Locks	01/22/03	68 FR 2941
Direct Final Rule: Spring–Loaded Locks	01/22/03	68 FR 2879
Withdrawal of Direct Final Rule: Spring–Loaded Locks	03/07/03	68 FR 10965
NPRM: Sanitary Toilets	04/21/03	68 FR 19477
NPRM: Seatbelts	04/21/03	68 FR 19474
Direct Final Rule: Sanitary Toilets	04/21/03	68 FR 19347
Direct Final Rule: Seatbelts	04/21/03	68 FR 19344
Final Rule: Sanitary Toilets	06/23/03	68 FR 37082
Final Rule: Spring–Loaded Locks	06/23/03	68 FR 37077
Final Rule Effective (Confirmation): Seatbelts	06/30/03	68 FR 36913
NPRM: Methane Testing	07/07/03	68 FR 40132
Final Rule: Methane Testing	07/07/03	68 FR 40132
Final Rule Effective: Sanitary Toilets	07/23/03	68 FR 37082
Final Rule Effective: Spring–Loaded Locks	08/22/03	68 FR 37077
NPRM: Portable Diesel Generator	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1219–AA98

1958. ASBESTOS EXPOSURE LIMIT

Priority: Other Significant

Legal Authority: 30 USC 811; 30 USC 813

CFR Citation: 30 CFR 56; 30 CFR 57; 30 CFR 71

Legal Deadline: None

Abstract: MSHA's permissible exposure limit (PEL) for asbestos applies to surface (30 CFR part 56) and underground (30 CFR part 57) metal and nonmetal mines and to surface coal mines and surface areas of underground coal mines (30 CFR part 71) and is over 20 years old. MSHA is considering rulemaking to lower the PEL in order to reduce the risk of miners developing asbestos-induced occupational disease. A recent report by the Office of the Inspector General (OIG) recommended that MSHA lower its existing permissible exposure limit for asbestos to a more protective level, and address take-home contamination from asbestos. It also recommended that MSHA use Transmission Electron Microscopy to analyze fiber samples that may contain asbestos.

Statement of Need: Current scientific data indicate that the existing asbestos PEL is not sufficiently protective of miners' health. MSHA's asbestos regulations date to 1967 and are based on the Bureau of Mines (MSHA's predecessor) standard of 5 mppcf (million particles per cubic foot of air). In 1969, the Bureau proposed a 2 mppcf and 12 fibers/ml standard. This standard was promulgated in 1969. In 1970, the Bureau proposed to lower the standard to 5 fibers/ml, which was promulgated in 1974. MSHA issued its current standard of 2 fibers/ml in 1976 for coal mining (41 FR 10223) and 1978 for metal and nonmetal mining (43 FR 54064). During inspections, MSHA routinely takes samples, which are analyzed for compliance with its standard.

Other Federal agencies have addressed this issue by lowering their PEL for asbestos. For example, the Occupational Safety and Health Administration, working in conjunction with the Environmental Protection Agency, enacted a revised asbestos standard in 1994 that lowered the permissible exposure limit to an 8-hour time-weighted average limit of 0.1 fiber per cubic centimeter of air and the excursion limit to 1.0 fiber per cubic centimeter of air (1 f/cc) as averaged over a sampling period of thirty (30) minutes. These lowered limits reflected increased asbestos-related disease risk to asbestos-exposed workers.

Summary of Legal Basis: Promulgation of this regulation is authorized by section 101 of the Federal Mine Safety and Health Act of 1977.

Alternatives: The Agency has increased sampling efforts in an attempt to determine current miners' exposure levels to asbestos, including taking samples at all existing vermiculite, taconite, talc, and other mines to determine whether asbestos is present and at what levels. In early 2000, MSHA began an intensive sampling effort at operations with potential asbestos exposure. These efforts continue. While sampling, MSHA staff discussed with miners and mine operators the potential hazards of asbestos and the types of preventive measures that could be implemented to reduce exposures. The course of action MSHA takes in addressing asbestos hazards to miners will, in part, be based on these sampling results.

Anticipated Cost and Benefits: MSHA will develop a preliminary regulatory economic analysis to accompany any proposed rule that may be developed.

Risks: Miners could be exposed to the hazards of asbestos during mine operations where the ore body contains asbestos. There is also potential for exposure at facilities in which installed asbestos-containing material is present. Overexposure to asbestos causes asbestosis, mesothelioma, and other forms of cancers.

Timetable:

Action	Date	FR Cite
ANPRM	03/29/02	67 FR 15134
Notice of Public Meetings	03/29/02	
Notice of Change to Public Meetings	04/18/02	67 FR 19140
ANPRM Comment Period End	06/27/02	
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The Office of the Inspector General's ''Evaluation of MSHA's Handling of Inspections at the W.R. Grace & Company Mine in Libby, Montana,'' was issued in March 2001.

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RIN: 1219–AB24

DOL—MSHA — Proposed Rule Stage

1959. HIGH–VOLTAGE CONTINUOUS MINING MACHINE STANDARDS FOR UNDERGROUND COAL MINES

Priority: Other Significant

Legal Authority: 30 USC 811; 30 USC 957; 30 USC 961

CFR Citation: 30 CFR 18; 30 CFR 75

Legal Deadline: None

Abstract: Our current standards require that high-voltage equipment and transformers be kept at least 150 feet from coal extraction areas in underground coal mines. These requirements are intended to eliminate an ignition source for methane and coal dust in close proximity to the work area. The use of new mining technology, in the form of high-voltage continuous mining machines, is becoming more widespread in the mining industry. This equipment uses high-voltage electrical equipment and associated cables. Mine operators, however, must apply to MSHA for a petition for modification from the existing standards if they want to use this high-voltage equipment. The proposed rule would eliminate the need for a modification to use this equipment, and would establish safety requirements for its use. The proposed rule would also include design approval requirements for high-voltage continuous mining machines operated in face areas of underground coal mines.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1219–AB34

1960. TRAINING STANDARDS FOR SHAFT AND SLOPE CONSTRUCTION WORKERS AT UNDERGROUND MINES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 30 USC 811; 30 USC 825

CFR Citation: 30 CFR 48.2; 30 CFR 48.3; 30 CFR 48.8; 30 CFR 48.22; 30 CFR 48.23; 30 CFR 49.28

Legal Deadline: None

Abstract: This rule would remove the language that exempts shaft and slope construction workers from being required to take part 48 training. Shaft and slope construction workers, for training purposes, would be treated like underground and surface extraction and production miners.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 1219–AB35

1961. REVISING ELECTRICAL PRODUCT APPROVAL REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 30 USC 957

CFR Citation: 30 CFR 18; 30 CFR 22; 30 CFR 23; 30 CFR 27

Legal Deadline: None

Abstract: Part 18 of 30 CFR, entitled ''Electric Motor-Driven Mine Equipment and Accessories,'' sets out the requirements to obtain MSHA approval of electrically operated machines and accessories intended for use in underground mines, as well as other related matters, such as approval procedures, certification of components, and acceptance of flame-resistant hoses and conveyor belts. Aside from minor modifications, part 18 has been largely unchanged since it was promulgated in 1968. This update of part 18 is intended to improve the efficiency of the approval process, recognize new technology, add quality assurance provisions, and address existing policies through the rulemaking process.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1219–AB37

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

Final Rule Stage

1962. DIESEL PARTICULATE MATTER EXPOSURE OF UNDERGROUND METAL AND NONMETAL MINERS

Priority: Other Significant

Legal Authority: 30 USC 811; 30 USC 813

CFR Citation: 30 CFR 57

Legal Deadline: None

Abstract: On January 19, 2001, MSHA published a final rule addressing diesel particulate matter (DPM) exposure of underground metal and nonmetal miners (66 FR 5706). The final rule established new health standards for underground metal and nonmetal mines that use equipment powered by diesel engines. The rule establishes an interim concentration limit of 400 micrograms of total carbon per cubic meter of air that became applicable July 20, 2002, and a final concentration limit of 160 micrograms to become

applicable after January 19, 2006. Industry challenged the rule and organized labor intervened in the litigation. Settlement negotiations with the litigants have resulted in further regulatory actions on several requirements of the rule. One final rule has been published (67 FR 9180). This new rulemaking will address many of the remaining issues. MSHA issued an ANPRM on September 25, 2002 to obtain additional information and published a NPRM in August 2003.

Statement of Need: As a result of the first partial settlement with the litigants, MSHA published two documents in the Federal Register on July 5, 2001. One document delayed the effective date of 57.5066(b) regarding the tagging provisions of the maintenance standard; clarified the effective dates of certain provisions of the final rule; and gave correction amendments.

The second document was a proposed rule to clarify 57.5066(b)(1) and (b)(2) of the maintenance standards and to add a new paragraph (b)(3) to 57.5067 regarding the transfer of existing diesel equipment from one underground mine to another underground mine. The final rule on these issues was published February 27, 2002, and became effective March 29, 2002.

As a result of the second partial settlement agreement, MSHA proposed specific changes to the 2001 DPM final rule. On September 25, 2002, MSHA published an Advance Notice of Proposed Rulemaking (ANPRM) (67 FR 60199). In response to commenters, MSHA intends at this time to propose changes only to the interim DPM standard of 400 micrograms per cubic meter of air. In a separate rulemaking, the Agency will propose a rule to revise the final concentration limit of 160 micrograms per cubic meter of air. The scope of both rulemakings is limited to the settlement agreement. The current rulemaking addresses the following provisions:

57.5060(a) - Whether to change the existing DPM surrogate for the interim limit from total carbon to elemental carbon; and change the concentration limit to Comparable Permissible exposure limit; propose that a single personal sample of miner's exposure would be an adequate basis for MSHA compliance determinations; and propose the current hierarchy of controls that MSHA applies in its existing metal and nonmetal exposure based health standards for abating violations.

57.5060(c) - Whether to adapt to the interim limit the existing provision that allows mine operators to apply to the Secretary for additional time to come into compliance with the final concentration limit. MSHA also agreed to propose to include consideration of economic feasibility, and to allow for annual renewals of such special extensions.

57.5060(d) — Whether to remove the existing provision permitting miners to engage in certain activities in concentrations exceeding the interim and final limits upon application and approval from the Secretary, since the Agency agreed to propose the existing hierarchy of controls.

57.5060(e) — Whether to remove the existing prohibition on the use of personal protective equipment.

57.5060(f) - Whether to remove the prohibition on the use of administrative controls.

57.5061(a) — Whether to change ''concentration'' to PEL.

57.5061(b) — Whether to change the reference from ''total carbon'' to ''elemental carbon.''

57.5061(c) - Whether to delete the references to ''area'' and ''occupational'' sampling for compliance.

57.5062 — Whether to revise the existing diesel control plan.

Summary of Legal Basis: Promulgation of these regulations is authorized by sections 101 and 103 of the Federal Mine Safety and Health Act of 1977.

Alternatives: This rulemaking would amend and improve health protection from that afforded by the existing standard.

Anticipated Cost and Benefits: MSHA's preliminary economic analysis indicates minimum costs to the mining industry.

Risks: Several epidemiological studies have found that exposure to diesel exhaust presents potential health risk to the miners. These potential adverse health effects range from headaches and nausea to respiratory disease and cancer. In the confined space of the underground mining environment, occupational exposure to diesel exhaust may present a greater hazard due to ventilation limitations and the presence of other airborne contaminants, such as toxic mine dusts or mine gases. We believe that the health evidence forms a reasonable basis for reducing miners' exposure to diesel particulate matter. Proceeding with rulemaking on the provisions discussed above will more effectively reduce miners' exposure to DPM.

Timetable:

Action	Date	FR Cite
ANPRM	09/25/02	67 FR 60199
ANPRM Comment Period End	11/25/02	
NPRM	08/14/03	68 FR 48668
NPRM Comment Period End	10/14/03	
Limited Reopening of the Comment Period	02/20/04	69 FR 7881
Limited Reopening of the Comment Period End	04/05/04	69 FR 7881
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 1219–AB29

1963. • PART 5 — FEES FOR TESTING, EVALUATION AND APPROVAL OF MINING PRODUCTS

Priority: Info./Admin./Other

Legal Authority: 30 USC 957

CFR Citation: 30 CFR 5

Legal Deadline: None

Abstract: MSHA intends to publish a direct final rule to amend provisions of 30 CFR part 5, ''Fees for testing, evaluation, and approval of mining products.'' MSHA has streamlined the manner in which the fee system is administered. This rule would update the existing regulation to reflect these changes, including: (1) The existing rule requires an application fee to offset costs of the initial administrative review of the application. Upon approval, this amount is deducted from

the total fees due. MSHAdeemed the practice to be an unnecessary administrative burden and eliminated the requirement. (2) Most fees are set on an hourly basis; however, the MSHA Stamped Notification Acceptance Program (SNAP) and Stamped Revision Acceptance (SRA) Program charged only a nominal fixed fee for acceptance of certain changes to existing approvals. Each program covered specific types of products. To streamline this process, MSHA replaced both programs with the Revised Acceptance Modification Program (RAM), which provided one process for all types of products. (3) The existing rule requires MSHA to initially research the application and provide the applicant with an estimated maximum fee prior to beginning the technical investigation of the product. To expedite the approval process, MSHA now permits the applicant to pre-authorize an amount for each approval, which in turn allows MSHA to immediately begin the technical investigation while the fee estimate is being processed.

Timetable:

Action	Date	FR Cite
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local, Tribal

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RIN: 1219–AB38

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

Long-Term Actions

1964. VERIFICATION OF UNDERGROUND COAL MINE OPERATORS' DUST CONTROL PLANS AND COMPLIANCE SAMPLING FOR RESPIRABLE DUST

Priority: Other Significant

Legal Authority: 30 USC 811; 30 USC 813; 30 USC 961; 30 USC 957

CFR Citation: 30 CFR 70; 30 CFR 75; 30 CFR 90

Legal Deadline: None

Abstract: Our current standards require that all underground coal mine operators develop and follow a mine ventilation plan for each mechanized mining unit that we approve. However, we do not have a requirement that provides for verification of each plan's effectiveness under typical mining conditions. Consequently, plans may be implemented by mine operators that could be inadequate to control respirable dust.

In response to comments received on the July 2000 proposed rule for MSHA to withdraw the rule, MSHA published a new proposed rule on March 6, 2003. The proposed rule would have required mine operators to verify, through sampling, the effectiveness of the dust control parameters for each mechanized mining unit specified in the approved mine ventilation plan.

The use of approved powered air-purifying respirators and/or verifiable administrative controls would have been allowed as a supplemental means of compliance when MSHA had determined that all feasible engineering or environmental controls were exhausted.

Public hearings were held in May 2003, and the rulemaking record originally scheduled to close on June 4, 2003, was extended until July 3, 2003. On June 24, 2003, MSHA announced that all work on the final rule would cease and the rulemaking record would remain open in order to obtain information concerning Personal Dust Monitors being tested by NIOSH. A Federal Register notice was published on July 3, 2003, extending the comment period indefinitely.

Timetable:

Action	Date	FR Cite
NPRM	07/07/00	65 FR 42122
Notice of Hearings; Close of Record	07/07/00	65 FR 42186
Extension of Comment Period; Close	09/08/00	65 FR 49215
NPRM	03/06/03	68 FR 10784
Notice of Public Hearing; Close of Record	03/17/03	68 FR 12641
Extension of Comment Period	05/29/03	68 FR 32005
NPRM Comment Period End	06/04/03	
Extension of Comment Period	07/03/03	68 FR 39881
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This rulemaking is related to RIN 1219-AB18 (Determination of Concentration of Respirable Coal Mine Dust).

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Related RIN: Related to 1219–AB18

RIN: 1219–AB14

1965. DETERMINATION OF CONCENTRATION OF RESPIRABLE COAL MINE DUST

Priority: Other Significant

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 72

Legal Deadline: None

Abstract: The National Institute for Occupational Safety and Health and the Mine Safety and Health Administration jointly proposed that a single, full-shift measurement (single sample) will accurately represent the atmospheric condition to which a miner is exposed. The proposed rule addresses the U.S. Court of Appeals' concerns raised in National Mining Association v. Secretary of Labor, 153 3d 1264 (11th Cir. 1998). MSHA and NIOSH reopened the rulemaking record on March 6, 2003, to obtain comments on documents added to the rulemaking record since the proposed rule was published July 7, 2000. Public hearings

were held in May 2003 and the rulemaking record, originally scheduled to close on June 4, 2003, was extended until July 3, 2003. However, on June 24, 2003, MSHA announced that all work on the final rule would cease. On August 12, 2003, the Agencies reopened the rulemaking record and extended the comment period indefinitely. MSHA will be collaborating with NIOSH, miners' representatives, industry and the manufacturer in the in-mine testing of production prototype Personal Dust Monitors (PDMs) units. The results of the collaborative effort will guide the Agency in determining the functionality of these real-time dust monitoring devices and need for revisions to the coal respirable dust monitoring requirements.

Timetable:

Action	Date	FR Cite
NPRM	07/07/00	65 FR 42068
Notice of Hearings; Close of Record	07/07/00	65 FR 42185
Extension of Comment Period; Close	09/08/00	65 FR 49215
Reopen Record for Comments	03/06/03	68 FR 10940
Notice of Public Hearings; Close of Record	03/17/03	68 FR 12641
Extension of Comment Period	05/29/03	68 FR 32005
Reopen Record Comment Period End	06/04/03	
Extension of Comment Period; Reopening of Record	08/12/03	68 FR 47886
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This rulemaking is related to RIN 1219-AB14 (Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust).

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Related RIN: Related to 1219–AB14

RIN: 1219–AB18

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

Completed Actions

1966. UNDERGROUND COAL MINE VENTILATION—SAFETY STANDARDS FOR THE BELT ENTRY AS AN INTAKE AIR COURSE

Priority: Other Significant

Legal Authority: 30 USC 811; 30 USC 961

CFR Citation: 30 CFR 75

Legal Deadline: None

Abstract: The final rule gives a coal mine operator the option of using air from a belt entry (belt air) in mines with three or more entries (parallel tunnels), as an intake air course to ventilate working sections and areas where mechanized mining equipment is being installed or removed. Current standards require belt air to be separated from intake and return air courses for mines opened after 1970, unless a mine operator is granted a petition for modification of a safety standard (30 CFR 75.350) as set forth in the Federal Mine Safety and Health Act (Mine Act) of 1977 section 101(c), 30 USC 811(c) (1998). For three or more entry mines, regardless of the date that they were opened, the final rule eliminates the need for mine operators to seek a petition for modification to use belt air and establish safety requirements for its use.

Timetable:

Action	Date	FR Cite
NPRM	01/27/88	53 FR 2382
Public Hearing Notice	01/27/03	68 FR 3936
Second NPRM	01/27/03	68 FR 3936
Second NPRM Comment Period End	03/28/03	
Final Rule	04/02/04	69 FR 17480
Final Action Effective	06/01/04	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The final action effective date is 6/1/04 with the exception of sections 75.351(e)(3) and 75.35(r) which are effective 8/2/04.

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RIN: 1219–AA76

Department of Labor (DOL)

Office of the Assistant Secretary for Administration and Management (OASAM)

Final Rule Stage

1967. IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY REQUIREMENTS OF THE WORKFORCE INVESTMENT ACT OF 1998

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 2938 Workforce Investment Act

CFR Citation: 29 CFR 37

Legal Deadline: Final, Statutory, August 7, 1999.

Abstract: The Workforce Investment Act of 1998 (WIA) was signed into law by President Clinton on August 7, 1998. Section 188 of the Act prohibits discrimination by recipients of financial assistance under title I on the grounds of race, color, national origin, sex, age, disability, religion, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA title I-financial assisted program or activity. Section 188(e) requires that the Secretary of Labor issue regulationsnecessary to implement section 188 not later than one year after the date of the enactment of WIA. Such regulations are to include standards for determining compliance and procedures for enforcement that are consistent with the acts referenced in section 188(a)(1), as well as procedures to ensure that complaints filed under section 188 and such acts are processed in a manner that avoids duplication of effort. The reauthorization of WIA is currently under consideration by the Congress. It may include amendments to the nondiscrimination provisions contained in section 188 that would directly impact these regulations. This final rule will be issued after congressional action on the reauthorization of WIA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/12/99	64 FR 61692
Interim Final Rule Comment Period	12/13/99	
NPRM	09/30/03	68 FR 56386
NPRM Comment Period End	12/01/03	
Final Rule – Faith–Based	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State, Tribal

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RIN: 1291–AA29

Department of Labor (DOL)

Office of the Assistant Secretary for Administration and Management (OASAM)

Long-Term Actions

1968. GRANTS AND AGREEMENTS

Priority: Other Significant

Legal Authority: PL 105–277

CFR Citation: 29 CFR 95

Legal Deadline: None

Abstract: This regulation amends 29 CFR 95.36, to ensure that all data produced under an award will be available to the public through the procedures established in the Freedom of Informatin Act. P.L. 105-277 mandated this change. The regulation was published as ''interim final'' on May 16, 2000, and is in effect. This is a regulation developed and published as a common rule (government-wide). Since its publication, the lead agency (HHS) has not approached other federal agencies to finalize the regulation. Public comments were submitted to HHS and to DOL (1 comment received) to be addressed in the publication of the regulation as final.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/16/00	65 FR 14405
Interim Final Rule Effective	04/17/00	
Interim Final Rule Comment Period End	05/15/00	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1291–AA30

Department of Labor (DOL)

Office of the Assistant Secretary for Administration and Management (OASAM)

Completed Actions

1969. NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF LABOR

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6101 et seq, Age Discrimination Act of 1975

CFR Citation: 29 CFR 35

Legal Deadline: NPRM, Judicial, September 10, 1979, Publication is required within 90 days of submission to HHS of final rule within 120 days of NPRM.

Abstract: The proposed regulatory action is necessary to comply with the Department's statutory and regulatory obligations under the Age Discrimination Act of 1975, as amended (the Act). The Act and the general, government-wide implementing rule issued by the Department of Health and Human Services (HHS) (45 CFR 90), require each Federal agency providing financial

assistance to any program or activity to publish proposed regulations implementing the Act no later than 90 days after the publication date ofthe government-wide rule, and to submit final agency regulations to HHS no later than 120 days after publication of the NPRM.

Timetable:

Action	Date	FR Cite
NPRM	12/29/98	63 FR 71714
NPRM Comment Period End	03/01/99	
Second NPRM	06/10/02	67 FR 39829
Second NPRM Comment Period End	08/09/02	
Third NPRM	07/11/03	
Third NPRM Comment Period End	09/09/03	
Final Rule	04/02/04	69 FR 17570
Final Action Effective	05/03/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State, Tribal

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RIN: 1291–AA21

1970. DEPARTMENT OF LABOR ACQUISITION REGULATIONS

Priority: Info./Admin./Other

Legal Authority: 40 USC 486(C); 5 USC 301

CFR Citation: 48 CFR 2900 to 2999

Legal Deadline: None

Abstract: This document sets forth revisions of the Department of Labor Acquisition Regulation (DOLAR). The DOLAR implements and supplements the terms of the Federal Acquisition Regulation (the Governmentwide procurement regulation). The DOLAR was last revised in 1986 and is considered significantly out of date. The regulation has been substantially revised to: remove references to obsolete policies, procedures, and organizations, incorporate electronic links to primary sources of reference such as the FAR, U.S. Code, and the Code of Federal Regulations in order to allow the DOLAR to be used by procurement professionals and others as a reference tool; establish procedures that follow current best practices in procurement; and restate procedures that have not changed and are still in effect.

Timetable:

Action	Date	FR Cite
NPRM	08/11/03	68 FR 48996
NPRM Comment Period End	10/14/03	
Final Action	04/27/04	69 FR 22990
Final Action Effective	05/27/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 1291–AA34

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

Prerule Stage

1971. OCCUPATIONAL EXPOSURE TO ETHYLENE OXIDE (SECTION 610 REVIEW)

Priority: Other Significant

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

CFR Citation: 29 CFR 1910.1047

Legal Deadline: None

Abstract: OSHA has undertaken a review of the ethylene oxide (ETO) standard in accordance with the requirements of the Regulatory Flexibility Act and section 5 of EO 12866. The review is considering the continued need for the rule, the impacts of the rule, comments on the rule received from the public, the complexity of the rule, whether the rule overlaps, duplicates or conflicts with other Federal, State or local regulations, and the degree to which technology, economic conditions or other factors may have changed since the rule was last evaluated. The Agency's findings with respect to this review will be published in a report available to the public in 2004.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/96	
End Review	11/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1218–AB60

1972. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

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 recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) in 1971 (PEL=10mg/cubic meter/(% silica + 2), as respirable dust). The current PEL for construction and maritime (derived from ACGIH's 1962 Threshold Limit Value) is based on particle counting technology, which is considered obsolete. NIOSH and ACGIH recommend a 50ug/m3 exposure limit for respirable crystalline silica.

Both industry and worker groups have recognized that a comprehensive standard for crystalline silica is needed to provide for exposure monitoring, medical surveillance, and worker training. The American Society for Testing and Materials (ASTM) has published a recommended standard for addressing the hazards of crystalline silica. The Building Construction Trades Department of the AFL-CIO has also developed a recommended comprehensive program standard. These standards include provisions for methods of compliance, exposure monitoring, training, and medical surveillance.

In developing a proposed standard, OSHA is currently considering several options ranging from proposing comprehensive standards simultaneously for general industry, construction, and maritime, to focusing the proposal on one or more specific issues, such as modernizing the construction and maritime PELs or standardizing sampling and analytical methods to ensure that employers and employees are receiving reliable data on employee exposures.

Statement of Need: Over two million 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; between 1990 and 1996, 200 to 300 deaths per year are known to have occurred where silicosis was identified on 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 (IARC) has designated crystalline silica as 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 respiratory 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 maritime, 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. OSHA has determined that rulemaking is a necessary step to ensure that workers are protected from the hazards of crystalline silica. The Agency is currently evaluating several options for the scope of the rulemaking.

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 has not yet been completed for this rule.

Timetable:

Action	Date	FR Cite
Completed SBREFA Report	12/19/03	
Complete Peer Review of Risk Assessment	02/00/05	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 1218–AB70

1973. OCCUPATIONAL EXPOSURE TO BERYLLIUM

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

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

CFR Citation: 29 CFR 1910

Legal Deadline: None

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

On November 26, 2002, OSHA published a Request for Information (RFI) (67 FR 70707) to solicit information pertinent to occupational exposure to beryllium including: current exposures to beryllium; the relationship between exposure to beryllium and the development of adverse health effects; exposure assessment and monitoring methods; exposure control methods; and medical

surveillance. In addition, the Agency conducted field surveys of selected work sites to assess current exposures and control methods being used to reduce employee exposures to beryllium. OSHA is using this information to develop a proposed rule addressing occupational exposure to beryllium. OSHA plans to initiate the SBREFA process by January 2005.

Timetable:

Action	Date	FR Cite
Request for Information	11/26/02	67 FR 70707
Initiate SBREFA Process	01/00/05	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 1218–AB76

1974. HEARING CONSERVATION PROGRAM FOR CONSTRUCTION WORKERS

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

Unfunded Mandates: Undetermined

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

CFR Citation: 29 CFR 1926.52

Legal Deadline: None

Abstract: OSHA issued a section 6(b)(5) health standard mandating a comprehensive hearing conservation program for noise-exposed workers in general industry in 1983. However, no rule was promulgated to cover workers in the construction industry. A number of recent studies have shown that many construction workers experience work-related hearing loss. In addition, the use of engineering, administrative and personal protective equipment to reduce exposures to noise is not extensive in this industry. OSHA published an advance notice of proposed rulemaking to gather information on the extent of noise-induced hearing loss among workers in different trades in this industry, current practices to reduce this loss, and additional approaches and protections that could be used to prevent such loss in the future. The Agency has reviewed the comments received and other information to determine the appropriate course of action. In order to get additional public input, stakeholder meetings have been convened.

Timetable:

Action	Date	FR Cite
ANPRM	08/05/02	67 FR 50610
ANPRM Comment Period End	11/04/02	
Stakeholder Meetings	03/24/04	
Additional Stakeholder Meeting	07/21/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 1218–AB89

1975. CRANES AND DERRICKS

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

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

CFR Citation: 29 CFR 1926

Legal Deadline: None

Abstract: Subpart N addresses hazards associated with various types of hoisting equipment used at construction sites. Such equipment includes cranes and derricks. The existing rule, which dates back to 1971, is based in part on industry consensus standards from 1958, 1968, and 1969. There have been considerable technological changes since those consensus standards were developed. Industry consensus standards for derricks and for crawler, truck and locomotive cranes were updated as recently as 1995.

Across-section of the industry has asked OSHA to update subpart N. OSHA has determined that the existing rule needs to be revised and has established a negotiated rulemaking committee to develop a draft proposed rule.

Timetable:

Action	Date	FR Cite
Notice of Intent To Establish Negotiated Rulemaking	07/16/02	67 FR 46612
Comment Period End	09/16/02	
Request for Comments on Proposed Committee Members	02/27/03	68 FR 9036
Request for Comment Period End	03/31/03	68 FR 9036
Established Negotiated Rulemaking Committee	06/12/03	68 FR 35172
Complete Rulemaking Negotiations	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AC01

1976. EXCAVATIONS (SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: 29 USC 651 et seq; 5 USC 610

CFR Citation: 29 CFR 1926.650 to 1926.652

Legal Deadline: None

Abstract: OSHA has undertaken a review of the Agency's trenching and excavations standard (29 CFR 1926.650 to 1926.652) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review is considering the continued need for the rule, the impacts of the rule, public comments on the rule, the complexity of the rule, and whether the rule overlaps, duplicates, or conflicts with other regulations.

DOL—OSHA

Prerule Stage

Timetable:

Action	Date	FR Cite
Begin Review	12/01/01	
Request for Comments	08/21/02	67 FR 54103
Comment Period End	11/19/02	
End Review	03/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 1218–AC02

1977. IONIZING RADIATION

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

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.109

Legal Deadline: None

Abstract: OSHA is considering amending 29 CFR 1910.1096 that addresses exposure to ionizing radiation. The OSHA regulations were published in 1974, with only minor revisions since that time. The Department of Energy and the Nuclear Regulatory Commission both have more extensive radiation standards that reflect new technological and safety advances. In addition, radiation is now used for a broader variety of purposes, including health care, food safety, mail processing, and baggage screening. OSHA is in the process of reviewing information about the issue, and will determine the appropriate course of action regarding this standard when the review is completed.

Timetable:

Action	Date	FR Cite
Request for Information (RFI)	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N–3718, FP Building, Washington, DC 20210
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RIN: 1218–AC11

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

Proposed Rule Stage

1978. LONGSHORING AND MARINE TERMINALS (PARTS 1917 AND 1918) — REOPENING OF THE RECORD (VERTICAL TANDEM LIFTS (VTLS))

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1918.11; 29 CFR 1918.85

Legal Deadline: None

Abstract: OSHA issued a final rule on Longshoring on July 25, 1997 (62 FR 40142). However, in that rule, the Agency reserved provisions related to vertical tandem lifts. Vertical tandem lifts (VTLs) involve the lifting of two or more empty intermodal containers, secured together with twist locks, at the same time. OSHA has continued to work with national and international organizations to gather additional information on the safety of VTLs. The Agency has published an NPRM to address safety issues related to VTLs. The extended comment period concluded 2/13/04, and an informal public hearing has been scheduled to begin on 7/29/04.

Timetable:

Action	Date	FR Cite
NPRM	06/06/94	59 FR 28594
NPRM Comment Period End	09/23/94	
Final Rule on Longshoring/Marine	07/25/97	62 FR 40142
Public Meeting on VTLs – 1/27/1998	10/09/97	62 FR 52671
Second NPRM	09/16/03	68 FR 54298
NPRM Comment Period End 2/13/04	12/10/03	68 FR 68804
Public Hearing Published in FEDERAL REGISTER – 4/13/04	07/29/04	69 FR 19361

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1218–AA56

1979. OCCUPATIONAL EXPOSURE TO HEXAVALENT CHROMIUM (PREVENTING OCCUPATIONAL ILLNESS: CHROMIUM)

Priority: Economically Significant. Major under 5 USC 801.

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

CFR Citation: 29 CFR 1910

Legal Deadline: NPRM, Judicial, October 4, 2004.

Abstract: In July 1993, the Occupational Safety and Health Administration (OSHA) was petitioned for an emergency temporary standard (ETS) to reduce the permissible exposure limit (PEL) for occupational exposures to hexavalent chromium (CrVI). The Oil, Chemical, and Atomic Workers International Unions (OCAW) and Public Citizen's Health Research Group (HRG) petitioned OSHA to promulgate an ETS to lower the PEL for CrVI compounds to 0.5 micrograms per cubic meter of air (ug/m3) as an eight-hour, time-weighted average (TWA). The current PEL in general industry is a ceiling value of 100 ug/m3, measured as CrVI and reported as chromic anhydride (CrO3). The amount of CrVI in the anhydride compound equates to a PEL of PEL of

52 PEug/m3. The ceiling limit applies to all forms of CrVI, including chromic acid and chromates, lead chromate, and zinc chromate. The current PEL of CrVI in the construction industry is 100 ug/m3 as a TWA PEL, which also equates to a P52 ug/m3. After reviewing the petition,OSHA denied the request for an ETS and initiated a section 6(b)(5) rulemaking.

OSHA began collecting data and performing preliminary analyses relevant to occupational exposure to CrVI. However, in 1997, OSHA was sued by HRG for unreasonable delay in issuing a final CrVI standard. The 3rd Circuit, U.S. Court of Appeals ruled in OSHA's favor and the Agency continued its data collection and analytic efforts on CrVI. In 2002, OSHA was sued again by HRG for continued unreasonable delay in issuing a final CrVI standard. In August, 2002 OSHA published a Request for Information on CrVI to solicit additional information on key issues related to controlling exposures to CrVI and on December 4, 2002, OSHA announced its intent to proceed with developing a proposed standard. On December 24, 2002, the 3rd Circuit, U.S. Court of Appeals ruled in favor of HRG and ordered the Agency to proceed expeditiously with a CrVI standard.

Statement of Need: Approximately one million workers are exposed to CrVI in general industry, maritime, construction, and agriculture. Industries or work processes that could be particularly affected by a standard for CrVI include: Electroplating, welding, painting, chromate production, chromate pigment production, ferrochromium production, iron and steel production, chromium catalyst production, and chromium dioxide and sulfate production. Exposure to CrVI has been shown to produce lung cancer, an often fataldisease, among workers exposed to CrVI compounds. The International Agency for Research on Cancer (IARC) classifies CrVI compounds as a Group 1 Carcinogen: Agents considered to be carcinogenic in humans. The Environmental Protection Agency (EPA) and the American Conference of Governmental Industrial Hygienists (ACGIH) have also designated CrVI compounds as known and confirmed human carcinogens, respectively. Similarly, the National Institute for Occupational Safety and Health (NIOSH) considers CrVI compounds to be potential occupational carcinogens. OSHA's current standards for CrVI compounds, adopted in 1971, were established to protect against nasal irritation. Therefore, there is a need to revise the current standard to protect workers from lung cancer.

Summary of Legal Basis: The legal basis for the proposed rule is a preliminary determination that workers are exposed to a significant risk of lung cancer and dermatoses and that rulemaking is needed to substantially reduce the risk.

Alternatives: OSHA had considered non-regulatory approaches, including the dissemination of guidance on its web site. However, OSHA has determined that rulemaking is a necessary step to ensure that workers are protected from the hazards of CrVI and the Agency has been ordered by the U.S. Court of Appeals to move forward with a final rule. The Agency is currently evaluating several options for the scope of the rulemaking.

Anticipated Cost and Benefits: The scope of the proposed rulemaking is still under development, and estimates of the costs and benefits are being developed.

Risks: A detailed risk analysis is in process.

Timetable:

Action	Date	FR Cite
Request for Information	08/22/02	67 FR 54389
Comment Period End	11/20/02	
Initiate SBREFA Process	12/23/03	
SBREFA Report	04/20/04	
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 1218–AB45

1980. CONFINED SPACES IN CONSTRUCTION (PART 1926): PREVENTING SUFFOCATION/EXPLOSIONS IN CONFINED SPACES

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

Unfunded Mandates: Undetermined

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

CFR Citation: 29 CFR 1926.36

Legal Deadline: None

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 workenvironment. OSHA intends to issue a proposed rule addressing this construction industry hazard next year.

Timetable:

Action	Date	FR Cite
SBREFA Panel Report	11/24/03	
NPRM	03/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AB47

1981. GENERAL WORKING CONDITIONS FOR SHIPYARD EMPLOYMENT

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1915 subpart F

Legal Deadline: None

Abstract: During the 1980s, OSHA initiated a project to update and consolidate the various OSHA shipyard standards that were applied in the shipbuilding, ship repair, and shipbreaking industries. Publication of a proposal addressing general working conditions in shipyards is part of this project. The operations addressed in this rulemaking relate to general working conditions such as housekeeping, illumination, sanitation, first aid, and lockout/tagout. About 100,000 workers are potentially exposed to these hazards annually.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 1218–AB50

1982. ELECTRIC POWER TRANSMISSION AND DISTRIBUTION; ELECTRICAL PROTECTIVE EQUIPMENT

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

Unfunded Mandates: Undetermined

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

CFR Citation: 29 CFR 1910.136; 29 CFR 1910.137; 29 CFR 1910.269; 29 CFR 1926 subpart V; 29 CFR 1926.97

Legal Deadline: None

Abstract: Electrical hazards are a major cause of occupational death in the United States. The annual fatality rate for power line workers is about 50 deaths per 100,000 employees. The construction industry standard addressing the safety of these workers during the construction of electric power transmission and distribution lines is over 30 years old. OSHA is developing 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 will also address fall protection in aerial lifts for power generation, transmission and distribution work. The SBREFA process has been completed, and OSHA is making changes to the regulatory analysis based on that review.

Timetable:

Action	Date	FR Cite
SBREFA Report	06/30/03	
NPRM	11/00/04	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 1218–AB67

1983. WALKING WORKING SURFACES AND PERSONAL FALL PROTECTION SYSTEMS (1910) (SLIPS, TRIPS, AND FALL PREVENTION)

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

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655 (b)

CFR Citation: 29 CFR 1910 subparts D and I

Legal Deadline: None

Abstract: In 1990, OSHA proposed a rule (55 FR 13360) addressing slip, trip, and fall hazards and establishing requirements for personal fall protection systems. Since that time, new technologies and procedures have become available to protect employees from these hazards. The Agency has been working to update these rules to reflect current technology. OSHA published a notice to re-open the rulemaking for comment on a number of issues raised in the record for the NPRM, or related to technological advances. OSHA is currently reviewing the comments and the record will be reopened again for comment on a revised economic analysis.

Timetable:

Action	Date	FR Cite
NPRM	04/10/90	55 FR 13360
NPRM Comment Period End	08/22/90	
Hearing	09/11/90	55 FR 29224
Reopen Record	05/02/03	68 FR 23527
Comment Period End	07/31/03	
Reopen Record	12/00/04	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 1218–AB80

1984. REVISION AND UPDATE OF SUBPART S—ELECTRICAL STANDARDS

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

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910 subpart S

Legal Deadline: None

Abstract: The Occupational Safety and Health Administration (OSHA) is planning to revise and update its 29 CFR 1910 subpart S-Electrical Standards. OSHA will rely heavily on the 2000 edition of the National Fire Protection Association's (NFPA's) 70 E standard for Electrical Safety Requirements for Employee Workplaces. This revision will provide the first update of the General Industry-

Electrical Standard since it was originally published in 1981. OSHA intends to complete this project in several stages. The first stage will cover design safety standards for electrical systems, while the second stage will cover safety-related maintenance and work practice requirements and safety requirements for special equipment. It will thus allow the latest technological developments to be considered. Several of these state-of-the-art safety developments will be addressed by OSHA for the first time.

Timetable:

Action	Date	FR Cite
NPRM	04/05/04	69 FR 17773
NPRM Comment Period End	06/04/04	
Public Hearing	10/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1218–AB95

1985. UPDATING OSHA STANDARDS BASED ON NATIONAL CONSENSUS STANDARDS

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

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918; 29 CFR 1926

Legal Deadline: None

Abstract: Under section 6(a) of the OSH Act, during the first two years of the Act, the Agency was directed to adopt national consensus standards as OSHA standards. Some of these standards were adopted as regulatory text, while others were incorporated by reference. In the thirty years since these standards were adopted by OSHA, the organizations responsible for these consensus standards have issued updated versions of these standards. However, in most cases, OSHA has not revised its regulations to reflect later editions of the consensus standards. OSHA standards also continue to incorporate by reference various consensus standards that are now outdated and, in some cases, out of print.

The Agency is now considering the possibility of initiating rulemaking to update some of these standards. In that regard, OSHA has asked various consensus standards organizations to review their standards, compare the latest versions of these standards to the ones currently adopted by OSHA, and determine which ones are most important for OSHA to update. Additionally, OSHA has asked them to consider whether the changes to these standards would be noncontroversial, and if the new versions would reduce risk. The organizations were enthusiastic about the possibility of updating references to their standards, and they have provided considerable information on priorities and other related issues. OSHA is in the process of evaluating the information it has received in order to determine the best way to proceed. It is possible that a direct final rule may be appropriate to address some of these standards, and others may be more appropriately addressed by an NPRM.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

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RIN: 1218–AC08

1986. EXPLOSIVES

Priority: Other Significant

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.109

Legal Deadline: None

Abstract: OSHA is considering amending 29 CFR 1910.109 that addresses explosives and blasting agents. These OSHA regulations were published in 1974, and many of the provisions do not reflect technological and safety advances made by the industry since that time. Additionally, the standard contains outdated references and classifications. Two trade associations representing many of the employers subject to this rule have petitioned the Agency to consider revising it, and have recommended changes they believe address the concerns they are raising. OSHA has reviewed the petition and related information about the issue. Initially, OSHA planned to revise the pyrotechnics requirement in this NPRM. However, based on our work to date, it appears appropriate to reserve action on these requirements for a second phase of rulemaking. The agency therefore plans to proposed revisions to 29 CFR 1910.109 without any changes to the existing pyrotechnics requirements, and at a future date will develop a proposed rule for pyrotechnics revision. OSHA expects to publish an NPRM by November 2004.

Timetable:

Action	Date	FR Cite
NPRM	11/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AC09

1987. • SLIP RESISTANCE OF SKELETAL STRUCTURAL STEEL

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

Legal Authority: 29 USC 655(b) ; 40 USC 333; 29 CFR 1911

CFR Citation: 29 CFR 1926.754(c)(3)

Legal Deadline: Other, Judicial, July 18, 2004, Notice of limited reopening of record for 1926.754(c)(3).
Final, Judicial, January 18, 2006, Final Rule Deadline.

DOL—OSHA **Proposed Rule Stage**

Per Settlement Agreement (Steel Coaltion, Resilient Floor Covering Institute v. OSHA).

Abstract: On May 11, 1994 OSHA established the Steel Erection Negotiated Rulemaking Advisory Committee. On August 13, 1998 OSHA published a notice of proposed rule making, permitting time for written comments and public hearings. Following notice and comment the final rule for the steel erection standard was published on January 18, 2001. On April 3, 2003, OSHA entered into a settlement agreement with Steel Coalition and Resilient Floor Covering Institute whereby OSHA agreed to a limited reopening of the administrative record of docket S-775 regarding paragraph.754(c)(3). No later than July 18, 2004, OSHA will publish notice in the Federal Register reopening the record for this limited purpose. The July notice will solicit information regarding only section 1926.754(c)(3).

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 1218–AC14

Department of Labor (DOL) — Final Rule Stage
Occupational Safety and Health Administration (OSHA)

1988. ASSIGNED PROTECTION FACTORS: AMENDMENTS TO THE FINAL RULE ON RESPIRATORY PROTECTION

Priority: Other Significant

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

CFR Citation: 29 CFR 1910.134

Legal Deadline: None

Abstract: In January 1998, OSHA published the final Respiratory Protection standard (29 CFR 1910.134), except for reserved provisions on assigned protection factors (APFs) and maximum use concentrations (MUCs). APFs are numbers that describe the effectiveness of the various classes of respirators in reducing employee exposure to airborne contaminants (including particulates, gases, vapors, biological agents, etc.). Employers, employees, and safety and health professionals use APFs to determine the type of respirator to protect the health of employees in various hazardous environments. Maximum use concentrations establish the maximum airborne concentration of a contaminant in which a respirator with a given APF may be used.

Currently, OSHA relies on the APFs developed by NIOSH in the 1980s unless OSHA has assigned a different APF in a substance-specific health standard. However, many employers follow the more recent APFs published in the industry consensus standard, ANSI Z88.2-1992. For someclasses of respirators, the NIOSH and ANSI APFs vary greatly. This rulemaking action will complete the 1998 standard, reduce compliance confusion among employers, and provide employees with consistent and appropriate respiratory protection. On June 6, 2003, OSHA published an NPRM on Assigned Protection Factors in the Federal Register at 68 FR 34036 containing a proposed APF table, and requesting public comment. The extended comment period ended October 2, 2003, and an informal public hearing was held January 28-30, 2004.

Statement of Need: About five million employees wear respirators as part of their regular job duties. Due to inconsistencies between the APFs found in the current industry consensus standard (ANSI Z88.2-1992) and in the NIOSH Respirator Decision Logic, employers, employees, and safety and health professionals are often uncertain about what respirator to select to provide protection against hazardous air contaminants. Several industry and professional groups have asked OSHA to proceed with this rulemaking to resolve these inconsistencies and provide reliable protection of employees' health in cases where respirators must be worn.

Summary of Legal Basis: The legal basis for this proposed rule is the determination that assigned protection factors and maximum use concentrations are necessary to complete the final Respiratory Protection standard and provide the full protection of that standard.

Alternatives: OSHA has considered allowing the current situation to continue, in which OSHA generally enforces NIOSH APFs but many employers follow the more recent consensus standard APFs. However, allowing the continuation of this situation results in inconsistent enforcement, lack of guidance for employers, and the potential for inadequate employee protection.

Anticipated Cost and Benefits: The estimated compliance costs for OSHA's proposed APF rule are $4.6 million. The APFs proposed in this rulemaking help to ensure that the benefits attributed to proper respiratory protection under 29 CFR 1910.134 are achieved, as well as provide an additional degree of protection.

Risks: The preamble to the final Respiratory Protection rule (63 FR 1270, Jan. 8, 1998) discusses the significance of the risks potentially associated with the use of respiratory protection. No independent finding of significant risk has been made for the APF rulemaking, since it only addresses a single provision of the larger rule.

Timetable:

Action	Date	FR Cite
ANPRM	05/14/82	47 FR 20803
ANPRM Comment Period End	09/13/82	
NPRM	11/15/94	59 FR 58884
Final Rule	01/08/98	63 FR 1152
Final Rule Effective	04/08/98	
NPRM	06/06/03	68 FR 34036
NPRM Comment Period End	09/04/03	
NPRM Comment Period Extended	10/02/03	68 FR 53311
Public Hearing on 01/28/2004	11/12/03	68 FR 64036

DOL—OSHA **Final Rule Stage**

Action	Date	FR Cite
Final Rule: Revocation of Respiratory Protection M. TB	12/31/03	68 FR 75767
Public Hearing	01/28/04	
Post–Hearing Comment and Brief Period Extended	03/30/04	69 FR 16510
Post–Hearing Comment Period End	04/29/04	
Post–Hearing Briefs End	05/29/04	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: At the time of the revision of the 1972 standard, OSHA decided that because its proposed standard for occupational exposure to tuberculosis (TB), published three months earlier, included a comprehensive respiratory protection provision, the agency would allow compliance with the previous respirator standard for TB protection until completion of the TB rulemaking. Thus, pending conclusion of the TB rulemaking, OSHA redesignated the old respiratory protection standard in a new section entitled ''Respiratory Protection for M. Tuberculosis.'' Because OSHA has withdrawn its proposed TB standard, the agency also revoked the designated respiratory protection standard, and is applying the general industry respiratory protection standard (29 CFR 1910.134) to respiratory protection against TB.

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RIN: 1218–AA05

1989. FIRE PROTECTION IN SHIPYARD EMPLOYMENT (PART 1915, SUBPART P) (SHIPYARDS: FIRE SAFETY)

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

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655

CFR Citation: 29 CFR 1915, subpart P

Legal Deadline: None

Abstract: The rule will update and revise an important but outdated part of OSHA's shipyard rules. The original rule was adopted by OSHA in 1971 and has remained unchanged since then. A negotiated rulemaking committee was convened on October 15, 1996. Members of the committee included: OSHA, State government, Federal agency, small and large shipyard employers, and maritime and firefighter union representatives. The committee completed work in February 2002, and recommended proposal requirements to OSHA. The Agency has published an NPRM based on their recommendations.

Statement of Need: Fires in the shipyard environment may cause death and serious injuries in this 100,000-employee work force. Updating OSHA's outdated shipyard requirements for fire extinguishers, sprinkler systems, detection systems, alarm systems, and fire brigades will facilitate compliance by employers and employees and reduce these fire-related injuries and fatalities.

Summary of Legal Basis: The legal basis for this proposed rule is a preliminary determination that an unacceptable risk of fire-related injuries and fatalities exists in the shipyard industry.

Alternatives: OSHA has considered but rejected the alternative of allowing the existing rule to remain in place, because the Agency believes that doing so would contribute to the unacceptable number of fire-related accidents occurring in shipyards every year.

Anticipated Cost and Benefits: The Agency has estimated annual costs of the NPRM to be $4.3 million, and that there will be cost savings of $6.2 million, in addition to avoiding fatalities and injuries.

Risks: The Agency has estimated that compliance with the NPRM would prevent one fatality and 102 lost workday injuries annually.

Timetable:

Action	Date	FR Cite
NPRM	12/11/02	67 FR 76213
NPRM Comment Period End	03/11/03	
Final Rule	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 1218–AB51

1990. EMPLOYER PAYMENT FOR PERSONAL PROTECTIVE EQUIPMENT

Priority: Other Significant

Legal Authority: 29 USC 655(b); 29 USC 657; 33 USC 941; 40 USC 333

CFR Citation: 29 CFR 1910.132; 29 CFR 1915.152; 29 CFR 1917.96; 29 CFR 1918.106; 29 CFR 1926.95

Legal Deadline: None

Abstract: Generally, OSHA standards require that protective equipment (including personal protective equipment (PPE)) be provided and used when necessary to protect employees from hazards that can cause them injury, illness, or physical harm. In this discussion, OSHA uses the abbreviation PPE to cover both personal protective equipment and other protective equipment. The Agency continues to consider how to address this issue, and is re-opening the record to get input on issues related to PPE considered to be a ''tool of the trade.''

Timetable:

Action	Date	FR Cite
NPRM	03/30/99	64 FR 15401
NPRM Comment Period End	06/14/99	
Informal Public Hearing End	08/13/99	
Limited Reopening of Record	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, Local, State

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RIN: 1218–AB77

1991. STANDARDS IMPROVEMENT (MISCELLANEOUS CHANGES) FOR GENERAL INDUSTRY, MARINE TERMINALS, AND CONSTRUCTION STANDARDS (PHASE II)

Priority: Other Significant

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910, subpart Z; 29 CFR 1910.1001 to 1910.1052; 29 CFR 1910.142; 29 CFR 1910.178; 29 CFR 1910.219; 29 CFR 1910.261; 29 CFR 1910.265; 29 CFR 1910.410; 29 CFR 1917.92; 29 CFR 1926.1101; 29 CFR 1926.1127; 29 CFR 1926.1129; 29 CFR 1926.60; 29 CFR 1926.62

Legal Deadline: None

Abstract: The Occupational Safety and Health Administration (OSHA) is proposing to remove or revise provisions in its health standards that are out of date, duplicative, unnecessary, or inconsistent. The Agency is proposing these changes to reduce the burden imposed on the regulated community by these requirements. In this document, substantive changes are proposed for standards that will revise or eliminate duplicative, inconsistent, or unnecessary regulatory requirements without diminishing employee protections. Phase I of this Standards Improvement process was completed in June 1998 (63 FR 33450). OSHA plans to initiate Phase III of this project at a future date to address problems in various safety and health standards.

Statement of Need: Some parts of OSHA's standards are out of date, duplicative, unnecessary, or inconsistent. The Agency needs to periodically review its standards and make needed corrections. This effort results in standards that are easier for employers and employees to follow and comply with, and thus enhances compliance and worker protection.

Summary of Legal Basis: The legal basis for the proposed rule is a preliminary finding that the OSHA standards need to be updated to bring them up to date, reduce inconsistency, and remove unneeded provisions.

Alternatives: OSHA has considered updating each standard as problems are discovered, but has determined that it is better to make such changes to groups of standards so it is easier for the public to comment on like standards. OSHA has also considered the inclusion of safety standards that need to be updated. However, the Agency has decided to pursue a separate rulemaking for safety issues because the standards to be updated are of interest to different stakeholders.

Anticipated Cost and Benefits: This revision of OSHA's standards is a deregulatory action. It will reduce employers' compliance obligations.

Risks: The project does not address specific risks, but is intended to improve OSHA's standards by bringing them up do date and deleting unneeded provisions. The anticipated changes will have no negative effects on worker safety and health.

Timetable:

Action	Date	FR Cite
NPRM	10/31/02	67 FR 66493
NPRM Comment Period End	12/20/02	
NPRM Comment Period Extended	01/08/03	68 FR 1023
Second NPRM Comment Period End	01/30/03	
Public Hearing	07/08/03	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1218–AB81

1992. CONTROLLED NEGATIVE PRESSURE FIT TESTING PROTOCOL: AMENDMENT TO THE FINAL RULE ON RESPIRATORY PROTECTION

Priority: Substantive, Nonsignificant

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

CFR Citation: 29 CFR 1910.134

Legal Deadline: None

Abstract: In January 1998, OSHA published the final Respiratory Protection standard (29 CFR 1910.134). In the final revised respirator standard, OSHA set up a mechanism for OSHA's acceptance of new fit test protocols under Mandatory Appendix A. Any person may submit to OSHA an application for approval of a new fit test protocol, and if the application meets certain criteria, OSHA will initiate a rulemaking proceeding under 6(b)(7) of the OSH Act to determine whether to list the new protocol as an approved fit test protocol in Appendix A. OSHA has been petitioned to allow the use of a modified Controlled Negative Pressure (CNP) fit test protocol.

Employers, employees, and safety and health professionals use fit testing to select respirators. Currently OSHA relies on fit testing methods specified in Appendix A of the final revised Respiratory Protection standard.

When OSHA published the final Respiratory Protection standard in 1998, it allowed for later rulemaking on new fit test methods. This rulemaking action will allow for the incorporation of new fit test methods into 1910.134.

Timetable:

Action	Date	FR Cite
NPRM	06/06/03	68 FR 33887
NPRM Comment Period End	09/04/03	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N–3718, FP Building, Washington, DC 20210
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RIN: 1218–AC05

DOL—OSHA **Final Rule Stage**

1993. PROCEDURES FOR HANDLING DISCRIMINATION COMPLAINTS UNDER SECTION 806 OF THE CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY ACT OF 2002

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 18 USC 1514A

CFR Citation: 29 CFR 1980

Legal Deadline: None

Abstract: The Sarbanes Oxley Act of 2002, Public Law 107-204 was enacted July 30, 2002. Among other provisions, title VIII, entitled the Corporate and Criminal Fraud Accountability Act of 2002, provides protection for employees of publicly traded companies who provide evidence of fraud to any Federal law enforcement agency, members of Congress, or a person with supervisory authority over the employee. This rule establishes procedures and time frames for the handling of complaints under the Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/28/03	68 FR 318859
Final Rule	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Marple, Director, Office of Investigative Assistance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, nw, Room N3622, Washington, DC 20210
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RIN: 1218–AC10

1994. PROCEDURES FOR HANDLING DISCRIMINATION COMPLAINTS UNDER SECTION 6 OF THE PIPELINE SAFETY IMPROVEMENT ACT OF 2002

Priority: Other Significant

Legal Authority: 29 USC 60129

CFR Citation: 29 CFR 1981

Legal Deadline: None

Abstract: This rule establishes procedures and timeframes for the handling of complaints under section 6 of the Pipeline Safety Improvement Act of 2002, including investigations by OSHA, appeals to the Administrative Law Judge (ALJ), appeals of ALJ decisions to the Administrative Review Board and judicial review.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/05/04	69 FR 17587
Interim Final Rule Effective	04/05/04	
Interim Final Rule Comment Period End	06/04/04	
Final Action	02/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Robert Spear, Director, Office of Investigative Assistance, Department of Labor, Occupational Safety and Health Administration, Rm 3603, 200 Constitution Ave., NW, Washington, DC 20210
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RIN: 1218–AC12

1995. • OREGON STATE PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 667

CFR Citation: 29 CFR 1952

Legal Deadline: None

Abstract: OSHA will propose to grant final approval under section 18(e) of the OSH Act for the Oregon State occupational safety and health plan, administered by the Division of Occupational Safety and Health (OR-OSHA) of the Oregon Department of Consumer and Business Services. Following a comment period and opportunity to request a public hearing, OSHA will make a final determination as a whether to grant final approval of the State plan. Actual performance by the State must be ''at least as effective''overall as the Federal OSHA program in all areas covered under the State plan. Final approval results in the relinquishment of authority for Federal concurrent enforcement jurisdiction in the State with respect to safety and health issues covered by the plan.

Timetable:

Action	Date	FR Cite
Notice of Eligibility for Final Approval	10/00/04	
Notice of Final Approval Determination	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Paula O. White, Director, Federal–State Operations, Department of Labor, Occupational Safety and Health Administration, Room N3700, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1218–AC13

1996. • ROLLOVER PROTECTIVE STRUCTURES; OVERHEAD PROTECTION

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 29 CFR 1928 subpart C; . . .

CFR Citation: 29 CFR 1926; 29 CFR 1928

Legal Deadline: None

Abstract: XXX

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N–3718, FP Building, Washington, DC 20210
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RIN: 1218–AC15

Department of Labor (DOL)

Occupational Safety and Health Administration (OSHA)

Completed Actions

1997. GLYCOL ETHERS: 2–METHOXYETHANOL, 2–ETHOXYETHANOL, AND THEIR ACETATES: PROTECTING REPRODUCTIVE HEALTH

Priority: Other Significant

Legal Authority: 29 USC 651; 29 USC 655; 29 USC 657

CFR Citation: 29 CFR 1910.1000; 29 CFR 1910.1031

Legal Deadline: None

Abstract: OSHA published an advance notice of proposed rulemaking (ANPRM) on April 2, 1987 (52 FR 10586). OSHA used the information received in response to the ANPRM, as well as other information and analysis, and published a proposal on March 23, 1993 (58 FR 15526), that would reduce the permissible exposure limits for four glycol ethers and provide protection for approximately 46,000 workers exposed to these substances. OSHA re-opened the record to collect updated information to help determine what action should be taken. Based on the information received and a review of the record, the Agency decided to withdraw the proposal.

Timetable:

Action	Date	FR Cite
ANPRM	04/02/87	52 FR 10586
ANPRM Comment Period End	07/31/87	
NPRM	03/23/93	58 FR 15526
NPRM Comment Period End	06/07/93	
Reopen Record	08/08/02	67 FR 51524
Comment Period End	11/06/02	
Effective Date	12/31/03	
Withdrawn	12/31/03	68 FR 75475

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N–3718, FP Building, Washington, DC 20210
Phone: 202 693–1950
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RIN: 1218–AA84

1998. OCCUPATIONAL EXPOSURE TO TUBERCULOSIS

Priority: Economically Significant

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.1035

Legal Deadline: None

Abstract: In 1993, the Labor Coalition to Fight TB in the Workplace petitioned the Occupational Safety and Health Administration (OSHA) to develop an occupational health standard to protect workers who care for or oversee patients or others with active tuberculosis (TB) against the transmission of TB. After reviewing the available information, OSHA preliminarily concluded that a significant risk of occupational transmission of TB exists for some workers in some work settings and began rulemaking on a proposed standard. On October 17, 1997, OSHA published its proposed standard for occupational exposure to TB (62 FR 54160). The proposed standard would require employers to protect TB-exposed workers using infection control measures that have been shown to be highly effective in reducing or eliminating work-related TB infections. Such measures include procedures for the early identification of individuals with infectious TB, isolation of individuals with infectious TB using appropriate ventilation,use of respiratory protection in certain situations, and skin testing and training of employees.

Informal public hearings were held in Washington, DC, Los Angeles, CA, New York City, NY, and Chicago, IL. The post-hearing comment period closed on October 5, 1998. On June 17, 1999, OSHA reopened the rulemaking record for 90 days to submit the Agency's report on homeless shelters and certain other documents that became available to the Agency after the close of the post-hearing comment period. During this limited reopening of the rulemaking record, OSHA also requested interested parties to submit comments and data on the Agency's preliminary risk assessment in order to obtain the best, most recent data for providing the most accurate estimates of the occupational risk of tuberculosis.

At the request of Congress, the Institute of Medicine of the National Academy of Sciences (IOM) conducted a study of OSHA's proposal and the need for a TB standard.

Timetable:

Action	Date	FR Cite
SBREFA Panel	09/10/96	
NPRM	10/17/97	62 FR 54160
NPRM Comment Period End	02/17/98	62 FR 65388
Post Hearing Comment End	10/05/98	
Record Reopening	06/17/99	64 FR 32447
Second Reopening Comment Period End	06/28/99	64 FR 34625
Reopening Comment Period End	08/02/99	
Third Reopening Comment Period	01/24/02	67 FR 3465
Extension of Comment Period	03/05/02	67 FR 9934
Reopening Comment Period End	03/25/02	
Comment Period End	05/24/02	
Withdrawn	12/31/03	68 FR 75767

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N–3718, FP Building, Washington, DC 20210
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Fax: 202 693–1678

RIN: 1218–AB46

1999. COMMERCIAL DIVING OPERATIONS: REVISION

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.423; 29 CFR 1910.426

Legal Deadline: None

Abstract: OSHA's Commercial Diving Operations standard (29 CFR 1910.401 to 1910.441) was published in 1977. In the intervening years, major changes in the technology of diving systems and equipment have occurred. In December 1999, OSHA granted a permanent variance to Dixie Divers, Inc., permitting recreational diving instructors employed by that company to comply with the provisions of the variance rather than with paragraphs (b)(2) and (c)(3)(iii) of 1910.423 and paragraph (b)(1) of 1910.426. Since OSHAgranted the variance, other employers of recreational diving

instructors have asked OSHA to clarify the applicability of the variance to their operations. OSHA published a notice of proposed rulemaking to amend the commercial diving operations standard to reflect the alternative specified in the permanent variance granted to Dixie Divers, Inc. Comments have been received and reviewed, and a final rule has been issued.

Timetable:

Action	Date	FR Cite
NPRM	01/10/03	68 FR 1399
NPRM Comment Period End	04/10/03	
Final Rule	02/17/04	69 FR 7351

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N–3718, FP Building, Washington, DC 20210
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RIN: 1218–AB97

2000. PRESENCE SENSING DEVICE INITIATION OF MECHANICAL POWER PRESSES (SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: 29 USC 651 et seq; 5 USC 610

CFR Citation: 29 CFR 1910.217(h), app A,B,C

Legal Deadline: None

Abstract: OSHA has undertaken a review of the Agency's Presence Sensing Device Initiation of Mechanical Power Presses rule (29 CFR 1910.217) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review is considering among other things, the need for the rule, the impacts of the rule, public comments on the rule, the complexity of the rule, and whether the rule overlaps, duplicates, or conflicts with other regulations.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/01	
Request for Comments	08/28/02	67 FR 55181
Comment Period End	01/27/03	
End Review	06/08/04	69 FR 31927

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John F. Martonik, Evaluation, Department of Labor, Occupational Safety and Health Administration, Room N3641, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1218–AC03

Department of Labor (DOL) — Proposed Rule Stage

Office of the Assistant Secretary for Veterans' Employment and Training (ASVET)

2001. UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT REGULATIONS

Priority: Other Significant

Legal Authority: 38 USC 4331(a)

CFR Citation: 20 CFR 1002

Legal Deadline: None

Abstract: The Secretary's commitment to protecting the employment rights of servicemembers as they return to the civilian work force is reflected by the initiative to promulgate regulations implementing the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) with regard to States, local governments and private employers. USERRA provides employment and reemployment protections for members of the uniformed services, including veterans and members of the Reserve and National Guard. The Department has not previously issued implementing regulations under USERRA, although the law dates back to 1994.

Statement of Need: The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301-4333, provides employment and reemployment rights for members of the uniformed services, including veterans and members of the Reserve and National Guard. Under USERRA, eligible service members who leave their civilian jobs for military service are entitled to return to their jobs with the seniority, status and rate of pay they would have attained had they not been away on duty. USERRA also assures that they will not suffer discrimination in employment because of their military service or obligations.

Following the attacks of September 11, 2001, the President authorized a major mobilization of National Guard and Reserve forces that has continued into 2004. In the past two and one-half years, the Department has experienced a tremendous increase in the number of inquiries about USERRA from employers and members of the Guard and Reserve. The high volume of requests for technical assistance indicates that there is a significant need for consistent and authoritative USERRA guidance. USERRA regulations will provide the Department's interpretations of the law and procedures for enforcing the law.

Summary of Legal Basis: USERRA authorizes the Secretary of Labor, in consultation with the Secretary of Defense, to issue regulations implementing USERRA with regard to States, local governments and private employers. 38 U.S.C. 4331(a).

Alternatives: In lieu of regulations, the Department could choose to continue its compliance assistance efforts, and could issue interpretations of USERRA in the form of a USERRA Handbook, policy memoranda or other less formal means. These would not benefit from broad-based public input, nor would they receive the same level of deference as regulations. See United States v. Mead Corp., 533 U.S. 218, 230 (2001).

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Agency Contact: Robert Wilson, Chief, Investigation and Compliance Division, Department of Labor, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Avenue NW., Room S–1316, Washington, DC 20210
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RIN: 1293–AA09

2002. JOBS FOR VETERANS ACT OF 2002: STATE GRANT FUNDING FORMULA FY 2005 AND BEYOND

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

Legal Authority: 38 USC 4102A (c) (2) (B) as amended by PL 107–288

CFR Citation: 20 CFR 1001.150 to 1001.152

Legal Deadline: None

Abstract: Public Law 107-288, the Jobs for Veterans Act, enacted November 7, 2002 requires establishment of a new grant allocation formula for Disabled Veterans Outreach Program (DVOP) and Local Veterans Employment Representative (LVER) that reflects the ratio of the total number of veterans seeking employment residing in the State to the total number of veterans seeking employment in all States. Congress allowed for the phasing-in of this funding formula requirement ''over the three fiscal-year period'' beginning October 1, 2002. Because funding for fiscal year 2003 had already been established before enactment of the law, this effectively meant the phase-in of this new funding formula would actually take place over a two-year period — fiscal years 2004 and 2005. To help minimize States' annual funding reductions, allocations will be limited to no more than eighty percent of the prior year's funding allocation, during the two-year phase-in period and ninety percent, after the funding formula is fully implemented.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Ronald Drach, Team Leader, Department of Labor, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Avenue, NW, Room S1325, FP Building, Washington, DC 20210
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RIN: 1293–AA11

2003. JOBS FOR VETERANS ACT OF 2002: CONTRACT THRESHOLD AND ELIGIBILITY GROUPS FOR FEDERAL CONTRACTOR PROGRAM

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

Legal Authority: 38 USC 4212(a) as amended by PL 107–288

CFR Citation: 41 CFR 61—300

Legal Deadline: None

Abstract: The Veterans' Employment and Training Service (VETS) is proposing to issue a notice of proposed rulemaking (NPRM) to implement changes required by the Jobs For Veterans Act (JVA) of 2002. This act amended the Vietnam Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), by revising the reporting threshold from $25,000 to $100,000. JVA also eliminated the collection categories of special disabled veterans and veterans of the Vietnam era and added the new collection categories of disabled veterans and armed forces expeditionary medal veterans. JVA continues the collection for the recently separated veterans category, but changed the definition for that category to include any veteran who served on active duty in the U.S. military ground, naval, or air service during the three-year period beginning on the date of such veteran's discharge or release from active duty. Additionally, Federal contractors and subcontractors will be required to report the total number of all current employees in nine job categories for each hiring location. This proposal will assist VETS in meeting the statutory requirement of annually collecting the VETS-100 Report.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Robert Wilson, Chief, Investigation and Compliance Division, Department of Labor, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Avenue NW., Room S–1316, Washington, DC 20210
Phone: 202 693–4719
Fax: 202 693–4755

RIN: 1293–AA12

Department of Labor (DOL) Completed Actions

Office of the Assistant Secretary for Veterans' Employment and Training (ASVET)

2004. JOBS FOR VETERANS ACT OF 2002: UNIFORM NATIONAL THRESHOLD

Priority: Other Significant

Legal Authority: 38 USC 4102(c) (3) (B) as amended by PL 107–288

CFR Citation: 20 CFR 1001

Legal Deadline: None

Abstract: Public Law 107-288, the Jobs for Veterans Act, enacted November 7, 2002 requires the establishment of a uniform national threshold Veterans' Entered Employment Rate (EER). The uniform national threshold Veterans' Entered Employment Rate is the rate at which veterans enter employment after receiving labor exchange services. A state's EER is considered deficient if it falls below this established national threshold for the preceding program year. As a condition for receipt of funds, the Act stipulates that any state found to be deficient in its EER shall develop a plan to improve its performance.

DOL—ASVET **Completed Actions**

Timetable:

Action	Date	FR Cite
Withdrawn	04/23/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

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RIN: 1293–AA13

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