



# Federal Register

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**Monday,  
April 30, 2007**

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**Part XIII**

**Department of Labor**

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**Semiannual Regulatory Agenda**

**DEPARTMENT OF LABOR (DOL)**

**DEPARTMENT OF LABOR**

**Office of the Secretary**

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

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

**30 CFR Ch. I**

**41 CFR Ch. 60**

**48 CFR Ch. 29**

**Semiannual Agenda of Regulations**

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This document sets forth the Department's semiannual agenda of regulations that have been selected for review or development during the coming year. The Department's agencies have carefully assessed their available resources and what they can accomplish in the next 12 months and have adjusted their agendas accordingly.

The agenda complies with the requirements of both Executive Order 12866 and the Regulatory Flexibility Act. The agenda lists all regulations that are expected to be under review or development between April 2007 and April 2008, as well as those completed during the past 6 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, which became effective on January 1, 1981, requires the Department of Labor to publish an agenda, listing all the regulations it expects to propose or promulgate that are likely to have a "significant economic impact on a substantial number of small entities" (5 U.S.C. 602).

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 The purpose of the review is to determine whether the rule should be continued without change, amended, or rescinded.

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

**Occupational Safety and Health Administration**

Excavations (RIN 1218-AC02)

Lead in Construction (RIN 1218-AC18)

Methylene Chloride (RIN 1218-AC23)

**Employee Benefits Security Administration**

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

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

**Elaine L. Chao,**  
*Secretary of Labor.*

**Employment Standards Administration—Prerule Stage**

| Sequence Number | Title   | Regulation Identifier Number |
|-----------------|---|------------------------------|
| 1759            | Child Labor Regulations, Orders, and Statements of Interpretation ..... | 1215-AB44                    |

**Employment Standards Administration—Proposed Rule Stage**

| Sequence Number | Title   | Regulation Identifier Number |
|-----------------|---|------------------------------|
| 1760            | Amendments to the Fair Labor Standards Act .....  | 1215-AB13                    |
| 1761            | Service Contract Act Health and Welfare Benefits .....  | 1215-AB56                    |
| 1762            | Child Labor Regulations, Orders, and Statements of Interpretation .....   | 1215-AB57                    |
| 1763            | Amendment to the Interpretive Guidelines Governing the Employee Protective Provisions of the Federal Transit Act .....    | 1215-AB58                    |
| 1764            | Government Contractors, Affirmative Action Requirements, Revision of the Employer Information Report (EEO-1 Report) ..... | 1215-AB59                    |

## DOL

## Employment Standards Administration—Final Rule Stage

| Sequence Number | Title   | Regulation Identifier Number |
|-----------------|---|------------------------------|
| 1765            | Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Disabled, Recently Separated, Other Protected, and Armed Forces Service Medal Veterans ..... | 1215-AB46                    |
| 1766            | Labor Organization Officer and Employee Reports .....   | 1215-AB49                    |

## Employment Standards Administration—Long-Term Actions

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 1767            | Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models ..... | 1215-AB09                    |
| 1768            | Family and Medical Leave Act of 1993; Conform to the Supreme Court's Ragsdale Decision .....   | 1215-AB35                    |

## Employment Standards Administration—Completed Actions

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 1769            | Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended ..... | 1215-AB51                    |
| 1770            | The Black Lung Benefits Act of 1969, as Amended .....  | 1215-AB60                    |

## Employment and Training Administration—Proposed Rule Stage

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 1771            | Disclosure of State Unemployment Compensation Wage Record Information .....                                      | 1205-AB45                    |
| 1772            | Senior Community Service Employment Program .....  | 1205-AB48                    |
| 1773            | Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations .....                        | 1205-AB50                    |
| 1774            | Federal-State Unemployment Compensation Program; Interstate Arrangement for Combining Employment and Wages ..... | 1205-AB51                    |

## Employment and Training Administration—Final Rule Stage

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 1775            | Post-Adjudication Audits of H-2B Petitions Other Than Logging in the United States .....   | 1205-AB36                    |
| 1776            | Labor Certification for the Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity ..... | 1205-AB42                    |
| 1777            | Labor Conditions Applications for E-3 Visas in Specialty Occupations for Australian Nonimmigrants .....  | 1205-AB43                    |
| 1778            | Senior Community Service Employment Program; Performance Accountability .....  | 1205-AB47                    |
| 1779            | Attestations by Facilities Temporarily Employing H-1C Nonimmigrant Aliens as Registered Nurses; Final Rule .....   | 1205-AB52                    |

## Employment and Training Administration—Long-Term Actions

| Sequence Number | Title   | Regulation Identifier Number |
|-----------------|---|------------------------------|
| 1780            | Revision to the Department of Labor Benefit Regulations for Trade Adjustment Assistance for Workers Under the Trade Act of 1974, as Amended ..... | 1205-AB32                    |
| 1781            | Alternative Trade Adjustment Assistance Benefits; Amendment of Regulations .....  | 1205-AB40                    |

## DOL

## Employment and Training Administration—Long-Term Actions (Continued)

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 1782            | Revision of the Department of Labor Regulations for Petitions and Determinations of Eligibility to Apply for Trade Adjustment Assistance for Workers ..... | 1205-AB44                    |
| 1783            | Workforce Investment Act Amendments .....  | 1205-AB46                    |
| 1784            | YouthBuild Program .....   | 1205-AB49                    |

## Employment and Training Administration—Completed Actions

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 1785            | Federal-State Unemployment Compensation Program; Eligibility ..... | 1205-AB41                    |

## Employee Benefits Security Administration—Proposed Rule Stage

| Sequence Number | Title   | Regulation Identifier Number |
|-----------------|---|------------------------------|
| 1786            | Amendment of Regulation Relating to Definition of Plan Assets—Participant Contributions .....                       | 1210-AB02                    |
| 1787            | Amendment of Section 404(c) Regulation—Disclosure .....   | 1210-AB07                    |
| 1788            | Amendment of Standards Applicable to General Statutory Exemption for Services .....                                 | 1210-AB08                    |
| 1789            | Prohibited Transaction Exemption for Provision of Investment Advice to Participants in Individual Account Plans ... | 1210-AB13                    |
| 1790            | Selection of Annuity Provider for Individual Account Plans .....  | 1210-AB19                    |
| 1791            | Periodic Pension Benefit Statements .....   | 1210-AB20                    |

## Employee Benefits Security Administration—Final Rule Stage

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 1792            | Regulations Implementing the Health Care Access, Portability, and Renewability Provisions of the Health Insurance Portability and Accountability Act of 1996 .....   | 1210-AA54                    |
| 1793            | Health Care Standards for Mothers and Newborns .....   | 1210-AA63                    |
| 1794            | Revision of the Form 5500 Series and Implementing Regulations .....  | 1210-AB06                    |
| 1795            | Section 404 Regulation—Default Investment Alternatives Under Participant Directed Individual Account Plans .....   | 1210-AB10                    |
| 1796            | Proposed Revision of Annual Information Return/Reports .....   | 1210-AB14                    |
| 1797            | Time and Order of Issuance of Domestic Relations Orders .....  | 1210-AB15                    |
| 1798            | Amendments to Safe Harbor for Distributions from Terminated Individual Account Plans and Termination of Abandoned Individual Account Plans to Require Inherited IRAs for Missing Nonspouse Beneficiaries ..... | 1210-AB16                    |
| 1799            | Statutory Exemption for Cross-Trading of Securities .....  | 1210-AB17                    |
| 1800            | Annual Funding Notice for Defined Benefit Plans .....  | 1210-AB18                    |
| 1801            | Multi Employer Plan Information Made Available on Request .....  | 1210-AB21                    |
| 1802            | Amendment to Interpretive Bulletin 95-1 .....  | 1210-AB22                    |

## Employee Benefits Security Administration—Long-Term Actions

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 1803            | Adequate Consideration .....   | 1210-AA15                    |
| 1804            | Independence of Accountant .....   | 1210-AB09                    |
| 1805            | Plan Assets-Participant Contributions Regulation ( <b>Section 610 Review</b> ) ..... | 1210-AB11                    |

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## Employee Benefits Security Administration—Completed Actions

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 1806            | Prohibiting Discrimination Against Participants and Beneficiaries Based on Health Status .....                     | 1210-AA77                    |
| 1807            | Prohibited Transaction Exemption for Provision of Investment Advice to Individual Retirement and Similar Plans ... | 1210-AB12                    |

## Mine Safety and Health Administration—Proposed Rule Stage

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 1808            | Fire Extinguishers in Underground Coal Mines .....                                       | 1219-AB40                    |
| 1809            | Sealing of Abandoned Areas .....   | 1219-AB52                    |
| 1810            | Mine Rescue Teams .....  | 1219-AB53                    |
| 1811            | Diesel Particulate Matter: Conversion Factor from Total Carbon to Elemental Carbon ..... | 1219-AB55                    |

## Mine Safety and Health Administration—Final Rule Stage

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 1812            | High-Voltage Continuous Mining Machine Standard for Underground Coal Mines ..... | 1219-AB34                    |

## Mine Safety and Health Administration—Long-Term Actions

| Sequence Number | Title   | Regulation Identifier Number |
|-----------------|---|------------------------------|
| 1813            | Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust ..... | 1219-AB14                    |
| 1814            | Determination of Concentration of Respirable Coal Mine Dust .....   | 1219-AB18                    |
| 1815            | Asbestos Exposure Limit .....   | 1219-AB24                    |
| 1816            | Respirable Crystalline Silica Standard .....  | 1219-AB36                    |
| 1817            | Revising Electrical Product Approval Regulations .....  | 1219-AB37                    |
| 1818            | Field Modifications of Permissible Mobile Diesel-Powered Equipment .....  | 1219-AB39                    |
| 1819            | Use of or Impairment From Alcohol and Other Drugs on Mine Property .....  | 1219-AB41                    |
| 1820            | Equivalency Evaluation of the U.S. Environmental Protection Agency's Nonroad Diesel Engine Standards .....            | 1219-AB43                    |
| 1821            | Continuous Personal Dust Monitors .....   | 1219-AB48                    |

## Mine Safety and Health Administration—Completed Actions

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 1822            | Emergency Mine Evacuation .....  | 1219-AB46                    |
| 1823            | Criteria and Procedures for Proposed Assessment of Civil Penalties ..... | 1219-AB51                    |

## Occupational Safety and Health Administration—Prerule Stage

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 1824            | Occupational Exposure to Crystalline Silica .....        | 1218-AB70                    |
| 1825            | Occupational Exposure to Beryllium .....                 | 1218-AB76                    |
| 1826            | Ionizing Radiation .....                                 | 1218-AC11                    |
| 1827            | Emergency Response and Preparedness .....                | 1218-AC17                    |
| 1828            | Lead in Construction ( <b>Section 610 Review</b> ) ..... | 1218-AC18                    |

## DOL

## Occupational Safety and Health Administration—Prerule Stage (Continued)

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 1829            | Revision and Update of Standards for Power Presses ..... | 1218-AC22                    |
| 1830            | Methylene Chloride ( <b>Section 610 Review</b> ) .....   | 1218-AC23                    |

## Occupational Safety and Health Administration—Proposed Rule Stage

| Sequence Number | Title   | Regulation Identifier Number |
|-----------------|---|------------------------------|
| 1831            | Confined Spaces in Construction (Part 1926): Preventing Suffocation/Explosions in Confined Spaces ..... | 1218-AB47                    |
| 1832            | General Working Conditions for Shipyard Employment .....  | 1218-AB50                    |
| 1833            | Cranes and Derricks .....   | 1218-AC01                    |
| 1834            | Updating OSHA Standards Based on National Consensus Standards .....                                     | 1218-AC08                    |
| 1835            | Explosives .....  | 1218-AC09                    |
| 1836            | Standards Improvement .....   | 1218-AC19                    |
| 1837            | Hazard Communication .....  | 1218-AC20                    |
| 1838            | Nationally Recognized Testing Laboratories Fee Schedule - Revised Approach .....                        | 1218-AC27                    |

## Occupational Safety and Health Administration—Final Rule Stage

| Sequence Number | Title   | Regulation Identifier Number |
|-----------------|---|------------------------------|
| 1839            | Longshoring and Marine Terminals (Parts 1917 and 1918)—Reopening of the Record (Vertical Tandem Lifts (VTLs)) ..... | 1218-AA56                    |
| 1840            | Electric Power Transmission and Distribution; Electrical Protective Equipment .....                                 | 1218-AB67                    |
| 1841            | Employer Payment for Personal Protective Equipment .....  | 1218-AB77                    |
| 1842            | Procedures for Handling Discrimination Complaints Under Federal Employee Protection Statutes .....                  | 1218-AC25                    |

## Occupational Safety and Health Administration—Long-Term Actions

| Sequence Number | Title  | Regulation Identifier Number |
|-----------------|--|------------------------------|
| 1843            | Walking Working Surfaces and Personal Fall Protection Systems (1910) (Slips, Trips, and Fall Prevention) ..... | 1218-AB80                    |
| 1844            | Hearing Conservation Program for Construction Workers .....  | 1218-AB89                    |

## Occupational Safety and Health Administration—Completed Actions

| Sequence Number | Title   | Regulation Identifier Number |
|-----------------|---|------------------------------|
| 1845            | Revision and Update of Subpart S—Electrical Standards ..... | 1218-AB95                    |
| 1846            | Excavations ( <b>Section 610 Review</b> ) .....             | 1218-AC02                    |
| 1847            | NFPA Standards in Shipyard Fire Protection .....            | 1218-AC16                    |
| 1848            | Notice on Supplier's Declaration of Conformity (SDoC) ..... | 1218-AC21                    |

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

| Sequence Number | Title   | Regulation Identifier Number |
|-----------------|---|------------------------------|
| 1849            | Jobs for Veterans Act of 2002: Contract Threshold and Eligibility Groups for Federal Contractor Program ..... | 1293-AA12                    |

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

Prerule Stage

**1759. CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION**

**Priority:** Other Significant

**Legal Authority:** 29 USC 203(1)

**CFR Citation:** 29 CFR 570

**Legal Deadline:** None

**Abstract:** The Department of Labor is considering possible revisions to the hazardous occupations orders that may be undertaken to address recommendations of the National Institute for Occupational Safety and Health (NIOSH) in its May 2002 report to the Department on the Fair Labor Standards Act child labor regulations (available at

<http://www.youthrules.dol.gov/resources.htm>). This Advance Notice of Proposed Rulemaking seeks additional data and public input to supplement the conclusions and recommendations on certain of the Hazardous Orders contained in the NIOSH report for consideration in subsequent rulemaking actions that may be undertaken. This Advance Notice of Proposed Rulemaking is related to a separate Notice of Proposed Rulemaking (see Related RIN: 1215-AB57).

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| ANPRM  | 04/00/07 |         |

**Regulatory Flexibility Analysis Required:** Undetermined

**Small Entities Affected:** Businesses, Governmental Jurisdictions

**Government Levels Affected:** Local, State

**URL For Public Comments:** [www.regulations.gov](http://www.regulations.gov)

**Agency Contact:** Paul DeCamp, 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-AB57

**RIN:** 1215-AB44

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

Proposed Rule Stage

**1760. 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 to 202

**Legal Deadline:** None

**Abstract:** Small Business Job Protection Act of 1996 (H.R. 3448) enacted on August 20, 1996 (Pub. L. 104-188, title II) 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) Increased the \$4.25 Federal minimum hourly wage in two steps to \$5.15 on September 1, 1997; (2) provided 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. Other updates will address needed clarifications to additional sections of the regulations, including sections affected by Public Law 106-151, section 1 (December 9, 1999), 113 stat. 1731, and Public Law 106-202 (May 18, 2000), 114 stat. 308.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 06/00/07 |         |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** Federal, Local, State

**URL For Public Comments:** [www.regulations.gov](http://www.regulations.gov)

**Agency Contact:** Paul DeCamp, 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

**RIN:** 1215-AB13

**1761. SERVICE CONTRACT ACT HEALTH AND WELFARE BENEFITS**

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

**Unfunded Mandates:** Undetermined

**Legal Authority:** 41 USC 351; 41 USC 38; 41 USC 39; 5 USC 301

**CFR Citation:** 29 CFR 4

**Legal Deadline:** None

**Abstract:** The Department of Labor will seek public input on methods for federal service contractors to meet the health and welfare fringe benefit component required under prevailing wage determinations issued pursuant to the McNamara-O'Hara Service Contract Act.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 08/00/07 |         |

**Regulatory Flexibility Analysis Required:** Undetermined

**Small Entities Affected:** Businesses

**Government Levels Affected:** Federal

**Agency Contact:** Paul DeCamp, 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

**RIN:** 1215-AB56

## DOL—ESA

## Proposed Rule Stage

**1762. CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION****Priority:** Other Significant**Legal Authority:** 29 USC 203(l); 29 USC 212; 29 USC 213(c)**CFR Citation:** 29 CFR 570**Legal Deadline:** None

**Abstract:** The Department of Labor continues to review the Fair Labor Standards Act child labor provisions to ensure that the implementing regulations provide job opportunities for working youth that are healthy and safe and not detrimental to their education, as required by the statute (29 U.S.C. sections 203(l), 212(c), 213(c), and 216(e)). This proposed rule will update the regulations to reflect statutory amendments enacted in 2004, and will propose, among other updates, revisions to address several recommendations of the National Institute for Occupational Safety and Health (NIOSH) in its 2002 report to the Department of Labor on the child labor Hazardous Occupations Orders (HOs) (available at <http://www.youthrules.dol.gov/resources.htm>). This Notice of Proposed Rulemaking is related to a separate Advance Notice of Proposed Rulemaking (see related RIN: 1215-AB44) that requests additional data and public input to supplement the conclusions and recommendations on certain of the HOs contained in the NIOSH report for consideration in additional possible revisions that may be undertaken in subsequent rulemaking actions.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 04/00/07 |         |

**Regulatory Flexibility Analysis****Required:** Undetermined**Small Entities Affected:** Businesses, Governmental Jurisdictions**Government Levels Affected:** Local, State**Agency Contact:** Paul DeCamp, 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

**RIN:** 1215-AB57**1763. AMENDMENT TO THE INTERPRETIVE GUIDELINES GOVERNING THE EMPLOYEE PROTECTIVE PROVISIONS OF THE FEDERAL TRANSIT ACT****Priority:** Substantive, Nonsignificant**Legal Authority:** PL 109-59; 119 Stat 1144; 49 USC 5333(b)**CFR Citation:** 29 CFR 215**Legal Deadline:** None

**Abstract:** Pursuant to Section 5333(b) of the Federal Transit law, the Department of Labor (Department) must certify, as a condition of certain grants of Federal financial assistance, fair and equitable labor protective provisions to protect the interests of employees affected by such Federal assistance. The Department administers this program through guidelines set forth at 29 CFR part 215. The Department's proposed changes conform the guidelines to recently enacted Federal legislation, in particular, sections 3013(h) and 3031 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act — A Legacy for Users (Pub. L. No. 109-59, 119 Stat. 1144 (2005)) (SAFETEA-LU). In addition to changes mandated by statute, the Department also proposes revisions to the guidelines that will enhance the speed and efficiency of the Department's processing of grant certifications. The proposed revisions to existing procedures for processing grant application under Federal transit law will ensure timely certification in a predictable manner, and will remain consistent with the transit law's statutory objectives.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 07/00/07 |         |

**Regulatory Flexibility Analysis****Required:** No**Small Entities Affected:** No**Government Levels Affected:** None**Agency Contact:** Ann Comer, Chief, Division of Statutory Programs, Department of Labor, Employment Standards Administration, Room N5112, 200 Constitution Avenue NW., Washington, DC 20210  
Phone: 202 693-1193  
Email: [comer.ann@dol.gov](mailto:comer.ann@dol.gov)**RIN:** 1215-AB58**1764. GOVERNMENT CONTRACTORS, AFFIRMATIVE ACTION REQUIREMENTS, REVISION OF THE EMPLOYER INFORMATION REPORT (EEO-1 REPORT)****Priority:** Other Significant**Legal Authority:** EO 11246, as amended**CFR Citation:** 41 CFR 60-2; 41 CFR 60-4; 41 CFR 60-50**Legal Deadline:** None

**Abstract:** This proposed rule would amend certain sections of the Office of Federal Contract Compliance Programs (OFCCP) regulations to correspond to the new Employer Information Report (EEO-1 Report), as published in the Federal Register on November 28, 2005 (70 FR 71294) (EEO-1 Notice). The new EEO-1 Report contains revised racial and ethnic categories and job categories.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 06/00/07 |         |

**Regulatory Flexibility Analysis****Required:** No**Small Entities Affected:** No**Government Levels Affected:** None**Agency Contact:** Lynn Clements, Acting Director, Division of Policy, Planning and Program Development, OFCCP, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building, Room N3422, Washington, DC 20210  
Phone: 202 693-0102  
TDD Phone: 202 693-1337  
Fax: 202 693-1304  
Email: [ofccp-public@dol.gov](mailto:ofccp-public@dol.gov)**RIN:** 1215-AB59



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

**Final Rule Stage**

**1765. AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS REGARDING DISABLED, RECENTLY SEPARATED, OTHER PROTECTED, AND ARMED FORCES SERVICE MEDAL VETERANS**

**Priority:** Other Significant

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

**CFR Citation:** 41 CFR 60 to 300

**Legal Deadline:** None

**Abstract:** The Office of Federal Contract Compliance Programs (OFCCP) proposes to create a new regulation implementing the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) 38 USC 4212, to conform to the Jobs for Veterans Act (JVA). JVA amended VEVRAA in four ways. First, JVA raised contract coverage from \$25,000 to \$100,000. Second, JVA 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 was awarded pursuant to Executive Order 12985. Third, JVA 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 release from active duty." Fourth, JVA 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 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 to 250 is RIN 1215-AB24.

**Timetable:**

| Action                     | Date     | FR Cite    |
|----------------------------|----------|------------|
| NPRM                       | 01/20/06 | 71 FR 3351 |
| NPRM Comment<br>Period End | 03/28/06 |            |
| Final Action               | 06/00/07 |            |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** None

**Agency Contact:** Lynn Clements, Acting Director, Division of Policy, Planning and Program Development, OFCCP, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building, Room N3422, Washington, DC 20210

Phone: 202 693-0102  
 TDD Phone: 202 693-1337  
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 Email: ofccp-public@dol.gov

**Related RIN:** Related to 1215-AB24

**RIN:** 1215-AB46

**1766. LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORTS**

**Priority:** Other Significant

**Legal Authority:** 29 USC 432 ; 29 USC 438

**CFR Citation:** 29 CFR 404.3

**Legal Deadline:** None

**Abstract:** This rulemaking action will revise Form LM-30, the report filed by labor organization officers and employees who have engaged in certain transactions or received certain payments from employers and businesses. The proposed revision would clarify a number of ambiguities in the current instructions.

**Timetable:**

| Action   | Date     | FR Cite     |
|--|----------|-------------|
| NPRM   | 08/29/05 | 70 FR 51166 |
| NPRM Comment<br>Period End                       | 10/28/05 |             |
| NPRM Comment<br>Period Extended to<br>01/26/2006 | 10/24/05 | 70 FR 61400 |
| Final Action                                     | 06/00/07 |             |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**URL For More Information:**

www.olms.dol.gov

**Agency Contact:** Kay H. Oshel, Director, Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building, Room N-5609, Washington, DC 20210  
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**RIN:** 1215-AB49

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

**Long-Term Actions**

**1767. 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 U. S. Citizenship and Immigration Services 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; October 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.

## DOL—ESA

## Long-Term Actions

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 the H-1B provisions under the American Competitiveness in the Twenty-First Century Act of 2000 (Pub. L. 106-313; October 17, 2000), the Immigration and Nationality Act—Amendments (Pub. L. 106-311; October 17, 2000), and section 401 of the Visa Waiver Permanent Program Act (Pub. L. 106-396; October 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.

On December 8, 2004, Congress enacted the H-1B Visa Reform Act of 2004 as part of the Consolidated Appropriations Act of 2005 (Pub. L. 108-447, 188 stat. 2809, division J, title IV, subtitle B (December 8, 2004)), which reinstated

(effective March 8, 2005) certain attestation requirements for H-1B dependent employers and employers found to have committed willful violations or misrepresentations of material facts during the 5-year period prior to filing the H-1B Labor Condition Application.

**Agency Contact:** Paul DeCamp, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building, Room S3502, Washington, DC 20210  
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Fax: 202 693-1302

**RIN:** 1215-AB09

**1768. 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 request information on the FMLA regulations.

**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 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 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. The Department is requesting information 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. 2654.

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

**Timetable:**

| Action                 | Date     | FR Cite     |
|------------------------|----------|-------------|
| RFI                    | 12/01/06 | 71 FR 69504 |
| RFI Comment Period End | 02/16/07 | 72 FR 3775  |

Next Action Undetermined

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Small Entities Affected:** Businesses, Governmental Jurisdictions, Organizations

**Government Levels Affected:** Undetermined

**Federalism:** Undetermined

**Agency Contact:** Paul DeCamp, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building, Room S3502, Washington, DC 20210  
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**RIN:** 1215-AB35

**Department of Labor (DOL)**  
**Employment Standards Administration (ESA)**
**Completed Actions**
**1769. CLAIMS FOR COMPENSATION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000, AS AMENDED**

**Priority:** Economically Significant. Major under 5 USC 801.

**Legal Authority:** 42 USC 7384d(a); 42 USC 7385s-10(e); EO 13179

**CFR Citation:** 20 CFR 1; 20 CFR 30

**Legal Deadline:** None

**Abstract:** The regulations govern how the Office of Workers' Compensation Programs (OWCP) administers the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA), 42 U.S.C. 7384 et seq. Since July 31, 2001, OWCP has administered the provisions of part B of the EEOICPA that were not assigned to the Secretary of Health and Human Services, to the Secretary of Energy, or to the Attorney General by E.O. 13179. Part B of the EEOICPA provides for the payment of lump-sum compensation and medical benefits to Department of Energy employees and certain of its contractors and subcontractors (or their survivors) who sustained an occupational illness due to exposure to radiation, beryllium or silica. Part B also provides for medical benefits and a supplemental lump-sum payment to awardees under section 5 of the Radiation Exposure Compensation Act (RECA), 42 U.S.C. 2210 (note).

On October 28, 2004, the President signed legislation repealing former part D of the EEOICPA that had been administered by the Secretary of Energy and creating a new Part E, which provides for the payment of additional

monetary compensation (based on permanent impairment and/or wage loss) and medical benefits for DOE contractor employees (or their survivors) and uranium miners, millers and ore transporters covered by section 5 of the RECA (or their survivors) who sustained a covered illness due to exposure to a toxic substance while working at a DOE facility, or a uranium mine or mill covered under section 5 of RECA. Responsibility for administration of part E of the EEOICPA was assigned to the Secretary of Labor.

**Timetable:**

| Action                                | Date     | FR Cite     |
|---------------------------------------|----------|-------------|
| Interim Final Rule                    | 06/08/05 | 70 FR 33590 |
| Interim Final Rule Comment Period End | 08/08/05 |             |
| Interim Final Rule Effective          | 06/08/05 |             |
| Final Action                          | 12/29/06 | 71 FR 78520 |
| Final Action Effective                | 02/17/07 |             |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Agency Contact:** Peter Turcic, Director, Division of Energy Employees Occupational Illness Compensation, OWCP, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building, Room C-3321, Washington, DC 20210  
 Phone: 202 693-0081  
 Fax: 202 693-1465  
 Email: turcic.peter@dol.gov

**RIN:** 1215-AB51

**1770. • THE BLACK LUNG BENEFITS ACT OF 1969, AS AMENDED**

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 33 USC 901 et seq; 5 USC 533 (d)(3)

**CFR Citation:** 20 CFR 725.477(b)

**Legal Deadline:** None

**Abstract:** The final rule eliminates the requirement that the Office of Administrative Law judges include the claimant's name in decisions and orders. This allows the Department to limit the amount of personal information about the claimant's medical and financial history that is included in published decisions.

**Timetable:**

| Action                 | Date     | FR Cite    |
|------------------------|----------|------------|
| Final Action           | 01/30/07 | 72 FR 4204 |
| Final Action Effective | 01/30/07 |            |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Agency Contact:** James L. DeMarce, Director, Division of Coal Mine Workers' Compensation, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., Room C3520, FP Building, Washington, DC 20210  
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 Fax: 202 693-7395  
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**RIN:** 1215-AB60

**Department of Labor (DOL)**  
**Employment and Training Administration (ETA)**
**Proposed Rule Stage**
**1771. DISCLOSURE OF STATE UNEMPLOYMENT COMPENSATION WAGE RECORD INFORMATION**

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

**Legal Authority:** 42 USC 1302(a); Secretary Order No. 3-2007 (72 FR 15907)

**CFR Citation:** 29 CFR 603, subpart D

**Legal Deadline:** None

**Abstract:** The Employment and Training Administration of the Department of Labor (Department)

proposes a Notice of Proposed Rulemaking (NPRM) to amend 20 CFR part 603 to implement section 303(a)(6) of the Social Security Act (SSA). That section of the SSA requires that a state's UC law provide for the "making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require." The NPRM would interpret this language to determine its scope.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 12/00/07 |         |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** State

**Federalism:** Undetermined

**Agency Contact:** Gerard Hildebrand, Chief, Division of Legislation, Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution

## DOL—ETA

## Proposed Rule Stage

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**RIN:** 1205-AB45

**1772. • SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM**

**Priority:** Other Significant

**Legal Authority:** 42 USC 3056 et seq

**CFR Citation:** 20 CFR 641

**Legal Deadline:** None

**Abstract:** The Older Americans Act Amendments of 2006, Public Law 109-365, enacted on October 17, 2006, contains provisions amending Title V of that Act, which authorizes the Senior Community Service Employment program (SCSEP). The amendments, effective July 1, 2007, make substantial changes to the current SCSEP provisions in the Older Americans Act, including new requirements relating to performance accountability, income eligibility for program participation, competition of national grants and services to participants.

This proposed NPRM consists of 8 subparts: subpart A—Definitions; Subpart B—Coordination with the Workforce Investment Act; subpart C—the State Plan; subpart D—Grant Application, Eligibility, and Award Requirements; Subpart E—Services to Participants; subpart F—Pilots, Demonstration and Evaluation Projects, subpart H—Administrative Requirements; and subpart I—Grievance Procedures and Appeals Process. The performance accountability requirements (subpart G) will be implemented through a separate Interim Final Rule (IFR).

**Timetable:**

| Action                  | Date     | FR Cite |
|-------------------------|----------|---------|
| NPRM                    | 10/00/07 |         |
| NPRM Comment Period End | 12/00/07 |         |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** Federal, State, Tribal

**Agency Contact:** Gay Gilbert, Chief, Division of Employment Service and ALMIS, Department of Labor, Employment and Training Administration, 200 Constitution

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Email: gilbert.gay@dol.gov

**Related RIN:** Related to 1205-AB47

**RIN:** 1205-AB48

**1773. • APPRENTICESHIP PROGRAMS, LABOR STANDARDS FOR REGISTRATION, AMENDMENT OF REGULATIONS**

**Priority:** Other Significant

**Legal Authority:** 50 Stat. 664, as amended (29 USC 50; 40 USC 3145; 5 USC 301)

**CFR Citation:** 29 CFR 29 (Revision)

**Legal Deadline:** None

**Abstract:** Regulations that implement the National Apprenticeship Act at title 29 Code of Federal Regulations (CFR) part 29 have not been updated since first promulgated in 1977. The Department of Labor (DOL) proposes to update 29 CFR part 29 to ensure that the National Registered Apprenticeship System has the necessary tools and flexibility to keep pace with changes in the economy, technological advances, and corresponding workforce challenges. The proposed rule addresses those changes by both making the procedures for apprenticeship program registration more flexible and strengthening oversight of program performance, including DOL's recognition of a State Apprenticeship Agency (SAA) as the appropriate agency for registering local apprenticeship programs for Federal purposes, and DOL's de-recognition of a SAA. The proposed rule also updates part 29 to incorporate gender neutral terms and technological advances in the delivery of related technical instruction. Such revisions will enable DOL to promote apprenticeship opportunity in the 21st century while continuing to safeguard the welfare of apprentices.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 08/00/07 |         |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** State, Tribal

**Agency Contact:** Anthony Swoope, Office of Apprenticeship, Department of Labor, Employment and Training

Administration, 200 Constitution Avenue NW., FP Building, Washington, DC 20210

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Email: swoope.anthony@dol.gov

**RIN:** 1205-AB50

**1774. • FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM; INTERSTATE ARRANGEMENT FOR COMBINING EMPLOYMENT AND WAGES**

**Priority:** Other Significant

**Legal Authority:** 26 USC 3304(a)(9)(B); Secretary's Order No. 3-2007, 72 FR 15907, April 3, 2007

**CFR Citation:** 20 CFR 616 (Revision)

**Legal Deadline:** None

**Abstract:** Section 3304(a)(9)(B) of the Federal Unemployment Tax Act requires States to participate in any arrangement specified by the Secretary of Labor for payment of unemployment compensation on the basis of combining an individual's employment and wages in two or more states. Current regulations implementing this arrangement allow individuals who have worked in more than one State to establish a combined-wage claim (CWC) in the State in which they are physically located, regardless of whether or not they have covered wages in that State. The Employment and Training Administration proposes amending current regulations to provide that individuals can only establish CWC claims in a State in which they have worked.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 08/00/07 |         |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** State

**Federalism:** Undetermined

**Agency Contact:** Betty E. Castillo, Chief, Division of Unemployment Insurance Operations, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., FP Building, Room S4231, Washington, DC 20210  
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**RIN:** 1205-AB51

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

Final Rule Stage

**1775. 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 use H-2B workers, except for applications filed for employment in Guam or in logging, will file directly with the Department of Homeland Security (DHS) instead of first filing an application for labor certification with the Department of Labor (DOL), as required under the current regulation. Under the regulations simultaneously proposed by DOL and 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 identified in the DOL regulation. DHS will administer the petition adjudication process. After adjudication, 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 3 years.

**Timetable:**

| Action                          | Date     | FR Cite     |
|---------------------------------|----------|-------------|
| NPRM                            | 01/27/05 | 70 FR 3993  |
| NPRM Comment<br>Period End      | 02/28/05 |             |
| NPRM Comment<br>Period Reopened | 03/09/05 | 70 FR 11592 |

| Action  | Date     | FR Cite |
|---|----------|---------|
| NPRM Comment<br>Period Extended to<br>April 8, 2005 | 03/09/05 |         |
| Final Action  | 03/00/08 |         |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** State

**Agency Contact:** Dr William Carlson, Administrator, Office of Foreign Labor Certification, Department of Labor, Employment and Training Administration, FP Building, Room C-4312, 200 Constitution Avenue NW., Washington, DC 20210  
Phone: 202 693-3010  
Email: carlson.william@dol.gov

**RIN:** 1205-AB36

**1776. LABOR CERTIFICATION FOR THE PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES; REDUCING THE INCENTIVES AND OPPORTUNITIES FOR FRAUD AND ABUSE AND ENHANCING PROGRAM INTEGRITY**

**Priority:** Other Significant

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

**CFR Citation:** 20 CFR 656

**Legal Deadline:** None

**Abstract:** The Department of Labor proposed changes to reduce the incentives and opportunities for fraud and abuse related to the permanent employment of aliens in the United States. Among other key changes, the Department proposed eliminating the current practice of allowing the substitution of alien beneficiaries on applications and approved labor certifications. DOL proposed to further reduce the likelihood of the submission of fraudulent applications for the permanent employment of aliens in the United States by proposing a 45-day deadline for employers to file approved permanent labor certifications in support of a petition with the Department of Homeland Security. The rulemaking will expressly prohibit the sale, barter, or purchase of permanent labor certifications or applications, as well as related payments. The proposed rule also addresses enforcement mechanisms to protect program integrity, including debarment with appeal rights. These amendments would apply to employers using both the Application for Alien Employment Certification (Form ETA 750) or the

Application for Permanent Employment Certification (Form ETA 9089).

**Statement of Need:** The Immigration and Nationality Act of 1952, as amended, established the permanent labor certification (PERM) program. Through this program, an employer submits a petition to the Department of Homeland Security (DHS) requesting a visa to admit a certain immigrant alien to work permanently in the United States. This petition process requires the Secretary of the Department of Labor (DOL) to certify specific information to the Secretary of Homeland Security and the Secretary of State before DHS may approve the employer's petition request and the Department of State (DOS) may issue a visa to admit such alien.

Specifically, DOL must certify that there is not a U.S. worker able, available, willing and qualified at the time of an application for a visa, and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers. If DOL determines that there is no able, available, willing and qualified U.S. worker and employment of the immigrant alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, then a permanent labor certification is granted. If DOL cannot make both of the above findings, then the application is denied.

This proposed regulation is intended to enhance program integrity and reduce the incentives and opportunities for fraud and abuse. First, the regulation would eliminate the current practice of allowing substitution of alien beneficiaries on the certification applications. Second, the regulation would implement a 45-day period for employers to file approved certifications with DHS. Third, the regulation would expressly prohibit the sale, barter, or purchase of PERM applications and certifications and other related payments. Finally, the regulation would highlight existing law regarding fraudulent activity or falsifying information and corresponding sanctions for such findings.

**Summary of Legal Basis:** This regulation is authorized by 8 USC 1182(a)(5)(A); INA section 212(a)(5)(A).

**Alternatives:** The public was afforded an opportunity to provide comments on

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## Final Rule Stage

the Fraud and Abuse rule implementation when the Department published the proposed rule in the Federal Register (71 FR 7656).

**Anticipated Cost and Benefits:** The Department believes any potential increase in applications filed as a result of either employers withdrawing and then filing a corrected application or employers allowing a certification to expire and then filing a new application or recruitment costs associated with this rule would be more than offset by an anticipated reduction in average processing time because the Department will not expend resources to process as many fraudulent applications. Aliens will save money if they are not forced to pay employer expenses nor provide kickbacks to certain agents and employers. Any cost savings realized, however, will not be greater than \$100 million.

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

**Timetable:**

| Action                     | Date     | FR Cite    |
|----------------------------|----------|------------|
| NPRM                       | 02/13/06 | 71 FR 7656 |
| NPRM Comment<br>Period End | 04/14/06 |            |
| Final Action               | 04/00/07 |            |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

**Agency Contact:** Dr William Carlson, Administrator, Office of Foreign Labor Certification, Department of Labor, Employment and Training Administration, FP Building, Room C-4312, 200 Constitution Avenue NW., Washington, DC 20210  
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**RIN:** 1205-AB42

### 1777. LABOR CONDITIONS APPLICATIONS FOR E-3 VISAS IN SPECIALTY OCCUPATIONS FOR AUSTRALIAN NONIMMIGRANTS

**Priority:** Other Significant

**Legal Authority:** Not Yet Determined

**CFR Citation:** Not Yet Determined

**Legal Deadline:** None

**Abstract:** The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109-13, 119

Stat. 231 was signed into law May 11, 2005. The Act adds a new treaty visa classification for Australian nonimmigrants coming to the U.S. solely to perform services in a specialty occupation. The Department amends the current H-1B regulation to incorporate references and provisions for the new E-3 program.

**Timetable:**

| Action                     | Date     | FR Cite    |
|----------------------------|----------|------------|
| NPRM                       | 01/12/07 | 72 FR 1650 |
| NPRM Comment<br>Period End | 02/12/07 |            |
| Final Action               | 12/00/07 |            |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

**Agency Contact:** Dr William Carlson, Administrator, Office of Foreign Labor Certification, Department of Labor, Employment and Training Administration, FP Building, Room C-4312, 200 Constitution Avenue NW., Washington, DC 20210  
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**RIN:** 1205-AB43

### 1778. SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM; PERFORMANCE ACCOUNTABILITY

**Priority:** Other Significant

**Legal Authority:** 42 USC 3056 et seq

**CFR Citation:** 20 CFR 641

**Legal Deadline:** Other, Statutory, June 30, 2007, Interim Final Rule.

**Abstract:** The Older Americans Act Amendments of 2006, Public Law 109-365, enacted on October 17, 2006, contains provisions amending title V of that Act, that authorizes the Senior Community Service Employment Program (SCSEP). The amendments, effective July 1, 2007, make substantial changes to the current SCSEP provisions in the Older Americans Act relating to performance accountability. Section 513 of title V requires that the Agency establish and implement new measures of performance by July 1, 2007. Section 513(b) requires that the Secretary issue definitions of indicators of performance through regulation after consultation with stakeholders. Therefore, this Interim Final Rule is intended to implement changes to the SCSEP program performance accountability regulations found at 20

CFR 641 in subpart G. Changes to other subparts of part 641 will be implemented through a separate Notice of Proposed Rulemaking.

**Timetable:**

| Action             | Date     | FR Cite |
|--------------------|----------|---------|
| Interim Final Rule | 06/00/07 |         |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** Federal, State, Tribal

**Agency Contact:** Gay Gilbert, Chief, Division of Employment Service and ALMIS, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., FP Building, Room S4231, Washington, DC 20210  
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**Related RIN:** Related to 1205-AB48

**RIN:** 1205-AB47

### 1779. ATTESTATIONS BY FACILITIES TEMPORARILY EMPLOYING H-1C NONIMMIGRANT ALIENS AS REGISTERED NURSES; FINAL RULE

**Priority:** Other Significant

**Legal Authority:** PL 109-423

**CFR Citation:** 22 CFR 655

**Legal Deadline:** None

**Abstract:** This Final Rule reflects the extension of the H-1C visa program, which was extended by Public Law 109-423—Reauthorization of H-1C Program under the Nursing Relief for Disadvantaged Areas Act of 2005. In 2000, the Nursing Relief for Disadvantaged Areas Act of 1999 (Pub. L. 106-95; November 12, 1999) amended the Immigration and Nationality Act to create a 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. The NRDAA specified that the H-1C visas were available only during the 4-year period beginning on the date that interim or final regulations were promulgated. Under this Act, the Department published an interim rule, on August 22, 2000 (65 FR 51137), which was open for public comment through September 20, 2004. On April 24, 2006,

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the Department determined that continued rulemaking was neither necessary nor appropriate at that time, because health care facilities could not sponsor new H-1C visas and no new H-1C visas could be issued. Therefore, the Department discontinued this rulemaking (71 FR 22912). However, given the new statutory authorization for the program, the Department has determined it is appropriate to finalize the rule.

**Timetable:**

| Action       | Date     | FR Cite |
|--------------|----------|---------|
| Final Action | 09/00/07 |         |

**Regulatory Flexibility Analysis Required:** No**Small Entities Affected:** Businesses**Government Levels Affected:** Federal, State**Federalism:** Undetermined

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**RIN:** 1205-AB52

## Department of Labor (DOL)

## Long-Term Actions

## Employment and Training Administration (ETA)

**1780. REVISION TO THE DEPARTMENT OF LABOR BENEFIT REGULATIONS FOR TRADE ADJUSTMENT ASSISTANCE FOR WORKERS UNDER THE TRADE ACT OF 1974, AS AMENDED****Priority:** Other Significant**Legal Authority:** 19 USC 2320; Secretary's Order No. 3-2007, 72 FR 15907**CFR Citation:** 29 CFR 90; 20 CFR 617 to 618; 20 CFR 665; 20 CFR 671;**Legal Deadline:** None

**Abstract:** The Trade Adjustment Assistance Reform 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 changes 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 write it in plain English, while amending the WIA regulations at 20 CFR parts 665 and 671 regarding Rapid Response and National Emergency Grants as they relate to the TAA program.

The proposed part 618 consists of 9 subparts: subpart A—General; subpart B—Petitions and Determinations of Eligibility to Apply for Trade Adjustment Assistance (and Alternative TAA); subpart C—Delivery of Services throughout the One-Stop Delivery

System; subpart D—Job Search Allowances; subpart E—Relocation Allowances; subpart F—Training Services; subpart G—Trade Readjustment Allowances (TRA); subpart H—Administration by Applicable State Agencies; and subpart I—Alternative Trade Adjustment Assistance for Older Workers. Because of the complexity of the subject matter and the States' needs for definitive instructions on providing TAA benefits, the rulemaking for part 618 is divided into three parts. This rulemaking covers the general provisions (most of subpart A) and TAA benefits portions (subpart C through subpart H) of the regulations. Separate rulemakings will cover the two remaining subparts and reserved definitions in subpart A. One rulemaking, subpart I, will cover benefits under the alternative Trade Adjustment Assistance program. The other rulemaking, subpart B, will cover the petitions and certification process.

**Statement of Need:** The Trade Adjustment Assistance Reform 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 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 for Older Workers program that targets older worker groups who are certified as TAA eligible and provides the option of a wage supplement instead of training, job search, and income support.

The Department is mandated to implement the amendments within 90 days from enactment (November 4, 2002), and it issued operating instructions in a guidance letter on October 10, 2002, and later published in the Federal Register (67 FR 69029-41). 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 19 U.S.C. 2320 due to the amendments to the Trade Act of 1974 by the Trade Adjustment Assistance Reform Act of 2002.

**Alternatives:** The public was afforded an opportunity to provide comments on the TAA program changes when the Department published the proposed rule in the Federal Register.

**Anticipated Cost and Benefits:** Preliminary estimates of the anticipated costs of this regulatory action have not

## DOL—ETA

## Long-Term Actions

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                    | 08/25/06 | 71 FR 50760 |
| NPRM Comment Period End | 10/24/06 |             |
| Final Action            | To Be    | Determined  |

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** Federal, State

**Agency Contact:** Erica Cantor, Administrator, Office of National Response, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N5422, Washington, DC 20210  
Phone: 202 693-2757  
Email: cantor.eric@dol.gov

**Related RIN:** Related to 1205-AB40, Related to 1205-AB44

**RIN:** 1205-AB32

### 1781. ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE BENEFITS; AMENDMENT OF REGULATIONS

**Priority:** Other Significant

**Legal Authority:** 19 USC 2320; Secretary's Order No. 3-2007, 72 FR 15907

**CFR Citation:** 29 CFR 90; 20 CFR 618; 20 CFR 665; 20 CFR 671

**Legal Deadline:** None

**Abstract:** The Trade Adjustment Assistance Reform 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, generally 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 changes regarding Trade Adjustment Assistance (TAA) program benefits. They also create the Alternative Trade Adjustment

Assistance (ATAA) program for older workers, which was effective no later than one year after the enactment of the amendments on August 6, 2002.

It is the Agency's intention to create a new 20 CFR part 618 to incorporate the amendments and write it in plain English, while amending the WIA regulations at 20 CFR parts 655 and 671 regarding Rapid Response and National Emergency Grants as they relate to the TAA program.

The proposed part 618 consists of 9 subparts: subpart A—General; subpart B—Petitions and Determinations of Eligibility to Apply for Trade Adjustment Assistance (and alternative TAA); subpart C—Delivery of Services throughout the One-Stop Delivery System; subpart D—Job Search Allowances; subpart E—Relocation Allowances; subpart F—Training Services; subpart G—Trade Readjustment Allowances (TRA); subpart H—Administration by Applicable State Agencies; and subpart I—Alternative Trade Adjustment Assistance (ATAA) for Older Workers.

Because of the complexity of the subject matter and the States' needs for definitive instructions on providing TAA benefits, the rulemaking for part 618 was originally divided into two parts: the first covering TAA benefits (subpart A and subparts C through H); and the second covering petitions and certifications (subpart B and certain definitions in subpart A) and ATAA (subpart I). To expedite the publication of guidance on ATAA, this second NPRM was divided, and ATAA is proceeding under this original RIN 1205-AB40.

This rulemaking covers the issuance of ATAA benefits for older workers (subpart I). Separate rulemakings cover benefits (subpart A and subparts C through H) and petitions and determinations (subpart B and certain definitions in subpart A).

**Statement of Need:** The Trade Adjustment Assistance Reform 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 makes significant amendments to worker benefits under Trade Adjustment Assistance for Workers, as provided for in the Trade Act of 1974.

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 52 weeks 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 for Older Workers program that targets older worker groups who are certified as TAA eligible and provides the option of a wage supplement instead of training, job search, and income support.

The Department issued operating instructions in a guidance letter on October 10, 2002, and later published in the Federal Register (67 FR 69029-41). 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 19 U.S.C. 2320 due to the amendments to the Trade Act of 1974 by the Trade Adjustment Assistance Reform Act of 2002.

**Alternatives:** The public was afforded an opportunity to provide comments on the ATAA program changes when the Department published the proposed 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                    | 10/18/06 | 71 FR 61618 |
| NPRM Comment Period End | 12/18/06 |             |
| Final Action            | To Be    | Determined  |



## DOL—ETA

## Long-Term Actions

**Regulatory Flexibility Analysis****Required:** No**Government Levels Affected:** Federal, State**Agency Contact:** Erica Cantor, Administrator, Office of National Response, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N5422, Washington, DC 20210  
Phone: 202 693-2757  
Email: cantor.eric@dol.gov**Related RIN:** Related to 1205-AB32, Related to 1205-AB44**RIN:** 1205-AB40**1782. REVISION OF THE DEPARTMENT OF LABOR REGULATIONS FOR PETITIONS AND DETERMINATIONS OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR WORKERS****Priority:** Other Significant. Major status under 5 USC 801 is undetermined.**Legal Authority:** 19 USC 2320; Secretary's Order 3-2007, 72 FR 15907**CFR Citation:** 29 CFR 90; 20 CFR 617; 20 CFR 618; 20 CFR 665; 20 CFR 671**Legal Deadline:** None**Abstract:** The Trade Adjustment Assistance Reform 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, generally 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 changes regarding Trade Adjustment Assistance (TAA) program benefits. They also create the Alternative Trade Adjustment Assistance (ATAA) program for older workers, which was effective no later than one year after the enactment of the amendments on August 6, 2002.

It is the Department's intention to create a new 20 CFR part 618 to incorporate the amendments and write it in plain English, while amending the WIA regulations at 20 CFR parts 655 and 671 regarding Rapid Response and National Emergency Grants as they relate to the TAA program.

The proposed part 618 consists of 9 subparts; subpart A—General; subpart B—Petitions and Determinations of Eligibility to Apply for Trade Adjustment Assistance (and Alternative TAA); subpart C—Delivery of Services throughout the One-Stop Delivery System; subpart D—Job Search Allowances; subpart E—Relocation Allowances; subpart F—Training Services; subpart G—Trade Readjustment Allowance (TRA); subpart H—Administration by Applicable State Agencies; subpart I—Alternative Trade Adjustment Assistance (ATAA) for Older Workers.

Because of the complexity of the subject matter and to expedite the rulemaking because of the States' needs for definitive instructions on providing TAA benefits, the rulemaking for part 618 was originally divided into two parts: the first covering TAA benefits (subpart A and subparts C through H); and the second covering petitions and certifications (subpart B and certain definitions in subpart A) and ATAA (subpart I). To expedite the publication of guidance on ATAA, this second NPRM was divided, and ATAA proceeded under its original RIN 1205-AB40.

This proposed rulemaking covers petitions and determinations (subpart B and certain definitions in subpart A of the regulations). Separate notices of proposed rulemaking covered remaining (subpart A and subparts C through H) and the issuance of ATAA benefits for older workers (subpart I).

**Statement of Need:** The Trade Adjustment Assistance Reform 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, provided for the Trade Act of 1974.

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 52 weeks under certain conditions. Waivers of training requirements in order to receive income support are

explicitly defined. Job search and relocation benefits amounts are increased. Within one year of enactment, the amendments offer an Alternative TAA for Older Workers program that targets older worker groups who are certified as TAA eligible and provides the option of a wage supplement instead of training, job search and relocation allowances, and income support.

The Department was required to implement the amendments within 90 days from enactment (November 4, 2002), and it issued operating instructions in a guidance letter on October 10, 2002, and later published in the Federal Register (67 FR 69029-41). 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. In light of changes in the petition process made by the Reform Act, as well as the need to clearly spell out that process for the public and the courts, it is imperative that the regulations be in an easy to read and understandable format.

**Summary of Legal Basis:** The regulation is authorized by 19 USC 2320 due to the amendments to the Trade Act of 1974 by the Trade Adjustment Assistance Reform Act of 2002.**Alternatives:** The public will be afforded an opportunity to provide comments on the TAA program changes when the Department publishes the proposed 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   | To Be | Determined |

**Regulatory Flexibility Analysis****Required:** No**Government Levels Affected:** Federal**Federalism:** Undetermined**Agency Contact:** Erica Cantor, Administrator, Office of National

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Long-Term Actions

Response, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N5422, Washington, DC 20210  
 Phone: 202 693-2757  
 Email: cantor.eric@dol.gov

**Related RIN:** Related to 1205-AB32, Related to 1205-AB40

**RIN:** 1205-AB44

**1783. • WORKFORCE INVESTMENT ACT AMENDMENTS**

**Priority:** Other Significant

**Legal Authority:** 29 USC 49k; section 189(a) of PL 105-220; 29 USC 2939(a)

**CFR Citation:** 20 CFR 661; 20 CFR 662 to 664; 20 CFR 652; 20 CFR 667

**Legal Deadline:** None

**Abstract:** The Department of Labor is implementing several important policy changes to the Workforce Investment Act and Wagner-Peyser Act regulations. Changes in this rulemaking address long-standing issues such as the large size of State and Local Workforce Investment Boards; the sequence of core, intensive and training services; the governor's authority over eligible training providers; and the availability of Individual Training Accounts to youth. In addition, the changes address the method of delivery of Wagner-Peyser Act-funded services.

**Timetable:**

| Action       | Date     | FR Cite    |
|--------------|----------|------------|
| NPRM         | 12/20/06 | 71 FR76558 |
| NPRM Comment | 02/20/07 |            |
| Period End   |          |            |
| Final Action | To Be    | Determined |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** State

**Agency Contact:** Maria K Flynn, Administrator, Office of Policy Development and Research, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N-5641, FP Building, Washington, DC 20210  
 Phone: 202 693-3700  
 TDD Phone: 887 889-5627  
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**RIN:** 1205-AB46

**1784. • YOUTHBUILD PROGRAM**

**Priority:** Other Significant

**Legal Authority:** PL 109-281

**CFR Citation:** Not Yet Determined

**Legal Deadline:** None

**Abstract:** The YouthBuild Transfer Act of 2006, Public Law 109-281, enacted on September 22, 2006, transfers oversight and administration of the

YouthBuild program from the U.S. Department of Housing and Urban Development (HUD) to the U.S. Department of Labor (DOL). The YouthBuild program model targets are high school dropouts, adjudicated youth, youth aging out of foster care, and other at-risk youth population. The program model balances in-school learning, geared toward a high school diploma or GED, and construction skills training, geared toward a career placement for the youth. DOL intends to develop regulations in response to the legislation and to guide the program implementation and management.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 04/00/08 |         |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

**Agency Contact:** Gay Gilbert, Chief, Division of Employment Service and ALMIS, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., FP Building, Room S4231, Washington, DC 20210  
 Phone: 202 693-3428  
 Email: gilbert.gay@dol.gov

**RIN:** 1205-AB49

Department of Labor (DOL)

Employment and Training Administration (ETA)

Completed Actions

**1785. FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM; ELIGIBILITY**

**Priority:** Other Significant

**Legal Authority:** 42 USC 503(a)(5); 26 USC 3304(a)(4); 26 USC 3306(h); 26 USC 3304(a)(1); 42 USC 503(a)(2); 42 USC 1302(a)

**CFR Citation:** 20 CFR 604 (New)

**Legal Deadline:** None

**Abstract:** Federal Unemployment Compensation (UC) law is inherently based on wage insurance principles. The regulation interprets and applies these principles, thereby establishing

minimum standards that states will be required to meet if their employers are to continue to receive credit against the Federal unemployment tax and if the state is to continue to receive UC administrative grants.

**Timetable:**

| Action                 | Date     | FR Cite     |
|------------------------|----------|-------------|
| NPRM                   | 07/22/05 | 70 FR 42474 |
| NPRM Comment           | 09/20/05 |             |
| Period End             |          |             |
| Final Action           | 01/16/07 | 72 FR 1890  |
| Final Action Effective | 02/15/07 |             |

**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.

**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-AB41

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

**Proposed Rule Stage**

**1786. AMENDMENT OF REGULATION RELATING TO DEFINITION OF PLAN ASSETS—PARTICIPANT CONTRIBUTIONS**

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

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 1135

**CFR Citation:** 29 CFR 2510.3-102

**Legal Deadline:** None

**Abstract:** This rulemaking will amend the regulation that defines when participant monies paid to or withheld by an employer for contribution to an employee benefit plan constitute “plan assets” for purposes of title I of ERISA and the related prohibited transaction provisions of the Internal Revenue Code. The regulation contains an amendment to the current regulation that will establish a safe harbor period of a specified number of business days during which certain monies that a participant pays to, or has withheld by, an employer for contribution to a plan would not constitute “plan assets.”

**Statement of Need:** This amendment of the participant contribution regulation would, upon adoption, establish a “safe harbor” period of a specified number of days during which certain monies, a participant pays to or has withheld from wages by an employer for contribution to an employee benefit plan, would not constitute plan assets for purposes of title I of ERISA and the related prohibited transaction provisions of the Internal Revenue Code. The amendment is needed to provide greater certainty to employers, participants and beneficiaries, service providers and others concerning when participant contributions to a plan constitute plan assets.

**Summary of Legal Basis:** Section 505 of ERISA provides that the Secretary may prescribe such regulations as she finds necessary and appropriate to carry out the provisions of title I of the Act. Regulation 29 CFR 2510.3-102 provides that the assets of an employee benefit plan covered by title I of ERISA include amounts (other than union dues) that a participant or beneficiary pays to an employer, or has withheld from wages by an employer, for contribution to the plan as of the earliest date on which such contributions can reasonably be segregated from the employer’s general

assets; the regulation also specifies the maximum time period for deposit of such contributions by the employer.

**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 the safe harbor that would be afforded by the proposed amendment with regard to monies contributed to employee benefit plans would deprive employers, other plan fiduciaries, and service providers of the certainty they need to optimize compliance with the law. Also, any risk of loss or lost earnings resulting from permitting employers who would otherwise transmit contributions to the plan sooner than the time specified in the safe harbor should be minimal, while the benefits attendant to encouraging employers to review and modify their systems or practices to take advantage of the safe harbor may be significant.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 12/00/07 |         |

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Government Levels Affected:** None

**Federalism:** Undetermined

**Agency Contact:** Louis J. Campagna, Chief, Division of Fiduciary Interpretations, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N5669, FP Building, Washington, DC 20210  
 Phone: 202 693-8512  
 Fax: 202 219-7291

**RIN:** 1210-AB02

**1787. AMENDMENT OF SECTION 404(C) REGULATION—DISCLOSURE**

**Priority:** Other Significant

**Legal Authority:** 29 USC 1104(c); 29 USC 1135

**CFR Citation:** 29 CFR 2550

**Legal Deadline:** None

**Abstract:** This rulemaking will amend the regulations governing ERISA section 404(c) plans (29 CFR 2550.404c-1) to ensure that the participants and beneficiaries in such plans are provided the information they need, including information about fees and expenses, to make informed investment decisions. The section 404(c) regulation sets forth the conditions under which participants and beneficiaries are considered to be exercising control over the assets in their account, thereby relieving plan fiduciaries from liability for the results of the investment decisions of the participant or beneficiary. The regulation conditions rely on participants and beneficiaries being furnished or having access to certain information about their plan and the investment options offered thereunder. This amendment is needed to clarify and improve the information currently required to be furnished to participants and beneficiaries.

**Timetable:**

| Action                  | Date     | FR Cite |
|-------------------------|----------|---------|
| Request for Information | 04/00/07 |         |
| NPRM                    | 02/00/08 |         |

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Government Levels Affected:** None

**Agency Contact:** Katherine D. Lewis, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N-5669, Washington, DC 20210  
 Phone: 202 693-8500

**RIN:** 1210-AB07

**1788. AMENDMENT OF STANDARDS APPLICABLE TO GENERAL STATUTORY EXEMPTION FOR SERVICES**

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

**Legal Authority:** 29 USC 1108(b)(2); 29 USC 1135

**CFR Citation:** 29 CFR 2550

**Legal Deadline:** None

**Abstract:** This rulemaking will amend the regulation setting forth the standards applicable to the exemption under ERISA section 408(b)(2) for contracting or making a reasonable arrangements with a party in interest for office spaces for services (29 CFR

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## Proposed Rule Stage

2550.408b-2). This amendment will ensure that plan fiduciaries are provided or have access to that information necessary to a determination of whether an arrangement for services is “reasonable” within the meaning of the statutory exemption, as well as the prudence requirements of ERISA 404(a)(1)(B). This regulation is needed to eliminate the current uncertainty as to what information relating to services and fees plan fiduciaries must obtain and service providers must furnish for purposes of determining whether a contract for services to be rendered to a plan is reasonable.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 07/00/07 |         |

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Government Levels Affected:** None

**Agency Contact:** Kristen Zarenko, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N-5669, Washington, DC 20210  
Phone: 202 693-8500

**RIN:** 1210-AB08

### 1789. ● PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE TO PARTICIPANTS IN INDIVIDUAL ACCOUNT PLANS

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

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 1108(g); 29 USC 1135; PL 109-280, sec 601(a), Pension Protection Act of 2006; ERISA sec 408(g); ERISA sec 505

**CFR Citation:** 29 CFR 2550

**Legal Deadline:** None

**Abstract:** Section 601 of the Pension Protection Act (PL 109-280) amended ERISA by adding new section 408(b)(14) and 408(g). Section 408(b)(14) is a prohibited transaction exemption that permits the provision of investment advice to participants or beneficiaries of certain individual account plans if the investment advice is provided under an “eligible investment advice arrangement,” as defined in section 408(g). In order to qualify as an “eligible investment

advice arrangement,” the arrangement must either provide that any fees received by the adviser do not vary depending on the basis of any investment options selected, or use a computer model under an investment advice program that meets the criteria set forth in section 408(g) in connection with the provision of investment advice. Further, with respect to both types of advice arrangements, the investment adviser must disclose to advice recipients all fees that the adviser or any affiliate is to receive in connection with the advice. Section 408(g) requires that the computer model which serves as the basis for an eligible investment advice arrangement be certified by an “eligible investment expert” in accordance with rules prescribed by the Secretary of Labor. Section 408(g) also directs the Secretary of Labor to issue a model form for the required disclosure of fees. EBSA has prepared a Request for Information that will invite interested persons to submit written comments and suggestions concerning the expertise and procedures that may be needed to certify that a computer model meets the statutory criteria, and the content, types and designs of fee disclosure materials currently used and their usefulness to plan participants.

**Timetable:**

| Action                 | Date     | FR Cite     |
|------------------------|----------|-------------|
| RFI                    | 12/04/06 | 71 FR 70429 |
| RFI Comment Period End | 01/30/07 |             |
| NPRM                   | 09/00/07 |             |

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Government Levels Affected:**

Undetermined

**Agency Contact:** Fred Wong, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building Room N5669, Washington, DC 20210  
Phone: 202 693-8500  
Fax: 202 219-7291

**RIN:** 1210-AB13

### 1790. ● SELECTION OF ANNUITY PROVIDER FOR INDIVIDUAL ACCOUNT PLANS

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

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 1104; ERISA sec 404; PL 109-280 sec 625, Pension Protection Act of 2006; 29 USC 1135; ERISA sec 505

**CFR Citation:** 29 CFR 2550.404a-4

**Legal Deadline:** None

**Abstract:** This rulemaking would establish a safe harbor under which a fiduciary of an individual account plan will be deemed to have satisfied his or her fiduciary responsibilities with respect to the selection of an annuity provider for the purpose of benefit distributions. The Department is proposing this safe harbor in light of revisions to Interpretive Bulletin 95-1 required by section 625 of the Pension Protection Act of 2006 clarifying that the fiduciary standards in Interpretive Bulletin 95-1 do not apply to the selection of an annuity provider for benefit distributions from an individual account plan.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 07/00/07 |         |

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Government Levels Affected:** Undetermined

**Agency Contact:** Janet Walters, Senior Advisor, Department of Labor, Employee Benefits Security Administration, 20 Constitution Avenue NW., FP Building, Room N5669, Washington, DC 20210  
Phone: 202 693-8500  
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**Related RIN:** Related to 1210-AB22

**RIN:** 1210-AB19

### 1791. ● PERIODIC PENSION BENEFIT STATEMENTS

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

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 1025; ERISA sec 105; PL 109-280 sec 508, Pension Protection Act of 2006; 29 USC 1135; ERISA sec 505

**CFR Citation:** 29 CFR 2520

**Legal Deadline:** Final, Statutory, August 18, 2007.

**Abstract:** Section 508 of the Pension Protection Act of 2006 (PPA) amended section 105 of ERISA to require plans that are subject to ERISA to

## DOL—EBSA

## Proposed Rule Stage

automatically provide participants and certain beneficiaries with individual pension benefit statements. Generally, defined benefit plans must provide the statement every three years, with an annual alternative. Individual account defined contribution plans that permit participant direction must provide the statement quarterly and individual account defined contribution plans that do not permit participant direction must provide the statement annually.

The PPA directed the Department of Labor to provide a model statement within one year of enactment of the statute and the Department has been given interim final rulemaking authority.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 08/00/07 |         |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** Undetermined

**Agency Contact:** Suzanne Adelman, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N5669, Washington, DC 20210  
Phone: 202 693-8500  
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**RIN:** 1210-AB20

## Department of Labor (DOL)

## Final Rule Stage

## Employee Benefits Security Administration (EBSA)

### 1792. REGULATIONS IMPLEMENTING THE HEALTH CARE ACCESS, PORTABILITY, AND RENEWABILITY PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

**Priority:** Economically Significant. Major under 5 USC 801.

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

**CFR Citation:** 29 CFR 2590

**Legal Deadline:** None

**Abstract:** The Health Insurance Portability and Accountability Act of 1996 (HIPAA) amended title I of ERISA, the Internal Revenue Code, and the Public Health Service Act with parallel provisions designed to improve health care access, portability and renewability. The Departments of Labor, the Treasury, and the Health and Human Services are mutually dependent due to shared interpretive jurisdiction and are proceeding concurrently to provide additional regulatory guidance regarding 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 |             |
| NPRM  | 12/30/04 | 69 FR 78800 |
| Request for Information                     | 12/30/04 | 69 FR 78825 |
| Final Rule                                  | 12/30/04 | 69 FR 78720 |
| Final Action Effective                      | 02/28/05 |             |
| Request for Information/ Comment Period End | 03/30/05 |             |
| NPRM Comment Period End                     | 03/30/05 |             |
| Final Action                                | 03/00/08 |             |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

**Agency Contact:** Amy Turner, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution

Avenue NW., FP Building, Washington, DC 20210  
Phone: 202 693-8335

**RIN:** 1210-AA54

### 1793. 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) amended title I of ERISA and the Public Health Service Act with parallel provisions that protect mothers and their newborn children with regard to the length of hospital stays following the birth of a child. The Departments of Labor and Health and Human Services are mutually dependent due to shared interpretive jurisdiction and are proceeding concurrently to provide final regulatory 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       | 12/00/07 |             |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

**Agency Contact:** Amy Turner, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution

## DOL—EBSA

## Final Rule Stage

Avenue NW., FP Building, Washington, DC 20210

Phone: 202 693–8335

RIN: 1210–AA63

#### 1794. REVISION OF THE FORM 5500 SERIES AND IMPLEMENTING REGULATIONS

**Priority:** Economically Significant. Major under 5 USC 801.

**Legal Authority:** 29 USC 1135; 29 USC 1021; 29 USC 1023 to 1024

**CFR Citation:** 29 CFR 2520

**Legal Deadline:** None

**Abstract:** This rulemaking would amend and update the regulatory and related requirements for annual reporting by employee benefit plans in conjunction with EBSA's proposal to amend the regulations under section 104 to require that such reports be filed electronically.

**Timetable:**

| Action                  | Date     | FR Cite     |
|-------------------------|----------|-------------|
| NPRM                    | 07/21/06 | 71 FR 41392 |
| NPRM Comment Period End | 09/19/06 |             |
| Final Action            | 05/00/07 |             |

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Government Levels Affected:** None

**Agency Contact:** Elizabeth A. Goodman, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building Room N5669, Washington, DC 20210  
Phone: 202 693–8523  
Fax: 202 219–7291

**Related RIN:** Related to 1210–AB14

**RIN:** 1210–AB06

#### 1795. SECTION 404 REGULATION—DEFAULT INVESTMENT ALTERNATIVES UNDER PARTICIPANT DIRECTED INDIVIDUAL ACCOUNT PLANS

**Priority:** Economically Significant. Major under 5 USC 801.

**Legal Authority:** 29 USC 1104(c)(5); 29 USC 1135

**CFR Citation:** 29 CFR 2550

**Legal Deadline:** Final, Statutory, February 19, 2007.

**Abstract:** This rulemaking would establish a relief under which a

fiduciary of a participant directed individual account pension plan will be deemed to have satisfied his or her fiduciary responsibilities with respect to investment and asset allocation decisions made on behalf of individual participants and beneficiaries who fail to give investment direction. This rulemaking will describe the types of investments that qualify as default investments in order to obtain fiduciary relief. As with other investment alternatives available under the plan, fiduciaries will continue to be responsible for the prudent selection and monitoring of qualifying default investment alternatives.

**Statement of Need:** Section 404(c)(1) of ERISA provides that, where a participant or beneficiary of an employee pension benefit plan exercises control over assets in an individual account maintained for him or her under the plan, the participant or beneficiary is not considered a fiduciary by reason of his or her exercise of control and other plan fiduciaries are relieved of liability under part 4 of title I of ERISA for the results of such exercise of control. As part of the Pension Protection Act of 2006, section 404(c) was amended to provide relief accorded by section 404(c)(1) to fiduciaries that invest participant assets in certain types of investment alternatives in the absence of participant investment direction. The Pension Protection Act directed the Department to issue final default investment regulations under section 404(c)(5)(A) of ERISA no later than 6 months after the date of enactment of the Pension Protection Act. This rulemaking responds to a need on the part of plan sponsors and fiduciaries for guidance on the selection of default investments for plan participants who fail to make an investment election. Such guidance would also improve retirement savings for millions of American workers.

**Summary of Legal Basis:** Promulgation of this regulation is authorized by sections 505 and 404(c) of ERISA.

**Alternatives:** Regulatory alternatives were considered in developing the proposed rule and published in the Federal Register.

**Anticipated Cost and Benefits:** Costs and benefits of regulatory alternatives were estimated and taken into account in developing the proposed rule and published in the Federal Register.

**Risks:** Failure to provide guidance on default investment options for individual account plans may result in diminished retirement savings for the many participants who fail to make an investment election with regard to their accounts. In addition, failure to issue final default investment regulations under section 404(c)(5)(A) of ERISA no later than 6 months after the date of enactment of the Pension Protection Act would contravene section 624 of the Pension Protection Act.

**Timetable:**

| Action                  | Date     | FR Cite     |
|-------------------------|----------|-------------|
| NPRM                    | 09/27/06 | 71 FR 56806 |
| NPRM Comment Period End | 11/13/06 |             |
| Final Action            | 05/00/07 |             |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

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

**RIN:** 1210–AB10

#### 1796. • PROPOSED REVISION OF ANNUAL INFORMATION RETURN/REPORTS

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

**Legal Authority:** 29 USC 1135; 29 USC 1021; 29 USC 1023; 29 USC 1024; PL 109–208, sec 101–116, sec 201–221, sec 503, sec 1103 Pension Protection Act of 2006

**CFR Citation:** 29 CFR 2520

**Legal Deadline:** None

**Abstract:** This proposal supplements previously published proposed revisions to the Form 5500 Annual Return/Report as required by the Pension Protection Act of 2006 (PPA). Specifically, this proposal includes separate Schedules B for single-employer plans and multiemployer plans reflecting PPA changes in funding and annual reporting requirements; new questions to the Schedule R and Schedule H designed to collect additional information regarding single and multiemployer

## DOL—EBSA

## Final Rule Stage

pension defined benefit plans; and a proposal to have the Form 5500-SF Annual Return/Report be the simplified report required under the PPA for plans with fewer than 25 participants.

**Timetable:**

| Action                  | Date     | FR Cite     |
|-------------------------|----------|-------------|
| NPRM                    | 12/11/06 | 71 FR 71562 |
| NPRM Comment Period End | 01/10/07 |             |
| Final Action            | 05/00/07 |             |

**Regulatory Flexibility Analysis**

**Required:** Yes

**Small Entities Affected:** Businesses, Organizations

**Government Levels Affected:** None

**Agency Contact:** Elizabeth A. Goodman, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building Room N5669, Washington, DC 20210  
Phone: 202 693-8523  
Fax: 202 219-7291

**Related RIN:** Related to 1210-AB06

**RIN:** 1210-AB14

**1797. • TIME AND ORDER OF ISSUANCE OF DOMESTIC RELATIONS ORDERS**

**Priority:** Other Significant

**Legal Authority:** 29 USC 1056; ERISA sec 206 (d) (3); PL 109-280, sec 1001, Pension Protection Act of 2006; 29 USC 1135; ERISA sec 505

**CFR Citation:** 29 CFR 2530.206

**Legal Deadline:** Final, Statutory, August 18, 2007.

**Abstract:** Section 1001 of the Pension Protection Act of 2006 requires the Secretary of Labor to issue, not later than one year after the date of enactment, regulations clarifying certain issues relating to the timing and order of domestic relations orders under section 206(d)(3) of the Employee Retirement Income Security Act (ERISA). This rule will provide guidance to plan administrators, service providers, participants, and alternate payees on the qualified domestic relations order requirements under ERISA.

**Timetable:**

| Action             | Date     | FR Cite     |
|--------------------|----------|-------------|
| Interim Final Rule | 03/07/07 | 72 FR 10070 |

| Action                                | Date     | FR Cite |
|---------------------------------------|----------|---------|
| Interim Final Rule Effective          | 04/06/07 |         |
| Interim Final Rule Comment Period End | 05/07/07 |         |
| Final Action                          | 08/00/07 |         |

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Agency Contact:** Susan Rees, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building Room N5669, Washington, DC 20210  
Phone: 202 693-8500  
Fax: 202 219-1791

**RIN:** 1210-AB15

**1798. • AMENDMENTS TO SAFE HARBOR FOR DISTRIBUTIONS FROM TERMINATED INDIVIDUAL ACCOUNT PLANS AND TERMINATION OF ABANDONED INDIVIDUAL ACCOUNT PLANS TO REQUIRE INHERITED IRAS FOR MISSING NONSPOUSE BENEFICIARIES**

**Priority:** Other Significant

**Legal Authority:** 29 USC 1135; ERISA sec 505

**CFR Citation:** 29 CFR 2550.404a-3; 29 CFR 2578.1

**Legal Deadline:** None

**Abstract:** The Department is amending 29 CFR 2578.1 and 29 CFR 2550.404a-3 to reflect changes enacted as part of the Pension Protection Act of 2006, Public Law 109-280, to the Internal Revenue Code of 1986 (the Code), under which a distribution of a deceased plan participant's benefit from an eligible retirement plan may be directly transferred to an individual retirement plan established on behalf of the designated nonspouse beneficiary of such participant.

**Timetable:**

| Action                                | Date     | FR Cite    |
|---------------------------------------|----------|------------|
| Interim Final Rule                    | 02/15/07 | 72 FR 7516 |
| Interim Final Rule Comment Period End | 04/02/07 |            |
| Interim Final Rule Effective          | 03/19/07 |            |
| Final Action                          | 09/00/07 |            |

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Agency Contact:** Stephanie Ward, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N5669, Washington, DC 20210  
Phone: 202 693-8500  
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**RIN:** 1210-AB16

**1799. • STATUTORY EXEMPTION FOR CROSS-TRADING OF SECURITIES**

**Priority:** Other Significant

**Legal Authority:** 29 USC 1108(b)(19)(H); ERISA sec 408(b)(19)(H); PL 109-280, sec 611(g)(3), Pension Protection Act of 2006

**CFR Citation:** 29 CFR 2550.408b-19

**Legal Deadline:** Final, Statutory, February 13, 2007.

**Abstract:** As directed by section 611(g)(3) of Public Law 109-280, this rule implements the content requirements for the written cross-trading policies and procedures required under section 408(b)(19)(H) of the Employee Retirement Income Security Act of 1974. This section exempts the purchase and sale of a security between an employee benefit plan and any other account managed by the same investment manager if certain conditions are satisfied. Among other requirements, section 408(b)(19)(H) stipulates that the investment manager must adopt, and effect cross trades in accordance with, written policies and procedures that are fair and equitable to all accounts participating in the cross-trading program.

**Timetable:**

| Action                                | Date     | FR Cite    |
|---------------------------------------|----------|------------|
| Interim Final Rule                    | 02/12/07 | 72 FR 6473 |
| Interim Final Rule Comment Period End | 04/13/07 |            |
| Interim Final Rule Effective          | 04/13/07 |            |
| Final Action                          | 09/00/07 |            |

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Agency Contact:** Brian Buyniski, Pension Law Specialist, Department of

DOL—EBSA

Final Rule Stage

Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N5649, Washington, DC 20210  
 Phone: 202 693-8540  
 Fax: 202-219-0204  
**RIN:** 1210-AB17

**1800. • ANNUAL FUNDING NOTICE FOR DEFINED BENEFIT PLANS**

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

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 1021(f); ERISA sec 101(f); PL 109-280, sec 501, Pension Protection Act of 2006; 29 USC 1021(b); ERISA sec 104(b)(3); PL 109-280, sec 503, Pension Protection Act of 2006; 29 USC 1135; ERISA sec 505

**CFR Citation:** 29 CFR 2520; 29 CFR 2520.104-46; 29 CFR 2520.104b-10

**Legal Deadline:** Final, Statutory, August 18, 2007.

**Abstract:** This rulemaking implements the requirement of section 501 of the Pension Protection Act of 2006 (PPA), which amended section 101(f) of ERISA to require the administrator of a defined benefit pension plan to provide participants, beneficiaries, and other parties with an annual funding notice, and also implements the requirements of section 503(c) of the PPA which amended section 104(b)(3) of ERISA regarding summary annual reports for defined benefit plans.

**Timetable:**

| Action             | Date     | FR Cite |
|--------------------|----------|---------|
| Interim Final Rule | 08/00/07 |         |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** Undetermined

**Agency Contact:** Michael Baird, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N5669, Washington, DC 20210

Administration, 200 Constitution Avenue NW., FP Building, Room N5669, Washington, DC 20210  
 Phone: 202 693-8523  
 Fax: 202 219-7291  
**RIN:** 1210-AB18

**1801. • MULTI EMPLOYER PLAN INFORMATION MADE AVAILABLE ON REQUEST**

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

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 1021(k); ERISA sec 101(k); PL 109-280 sec 502, Pension Protection Act of 2006; 29 USC 1135; ERISA sec 505

**CFR Citation:** 29 CFR 2520

**Legal Deadline:** Final, Statutory, August 18, 2007.

**Abstract:** This rulemaking implements the requirements of section 502(a)(1) of the Pension Protection Act of 2006 (PPA), which added a new subsection (k) to section 101 of ERISA, under which the plan administrator of a multiemployer plan shall, upon written request, furnish within 30 days to any plan participant or beneficiary, employee representative, or any employer that has an obligation to contribute to the plan a copy of certain actuarial, financial and funding-related documents.

**Timetable:**

| Action             | Date     | FR Cite |
|--------------------|----------|---------|
| Interim Final Rule | 07/00/07 |         |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** Undetermined

**Agency Contact:** Stephanie Ward, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N5669, Washington, DC 20210

Phone: 202 693-8500  
 Fax: 202 219-7921  
**RIN:** 1210-AB21

**1802. • AMENDMENT TO INTERPRETIVE BULLETIN 95-1**

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

**Unfunded Mandates:** Undetermined

**Legal Authority:** PL 109-280 sec 625, Pension Protection Act of 2006; 29 USC 1135; ERISA sec 505

**CFR Citation:** 29 CFR 2509.95-1

**Legal Deadline:** Final, Statutory, August 18, 2007.

**Abstract:** This rulemaking implements the directive in section 625 of the Pension Protection Act of 2006, which requires the Secretary of Labor to issue, not later than one year after the date of enactment, final regulations clarifying that the selection of an annuity contract as an optional form of distribution from an individual account plan is not subject to the safest available annuity requirement under Interpretive Bulletin 95-1 and is subject to all otherwise applicable fiduciary standards.

**Timetable:**

| Action             | Date     | FR Cite |
|--------------------|----------|---------|
| Interim Final Rule | 07/00/07 |         |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** Undetermined

**Agency Contact:** Janet Walters, Senior Advisor, Department of Labor, Employee Benefits Security Administration, 20 Constitution Avenue NW., FP Building, Room N5669, Washington, DC 20210  
 Phone: 202 693-8500  
 Fax: 202 219-7291

**Related RIN:** Related to 1210-AB19

**RIN:** 1210-AB22

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

**Long-Term Actions**

**1803. 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



## DOL—EBSA

## Long-Term Actions

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, 200 Constitution Avenue NW., FP Building, Washington, DC 20210  
Phone: 202 693-8500

**RIN:** 1210-AA15

**1804. INDEPENDENCE OF ACCOUNTANT**

**Priority:** Other Significant

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 1023(a)(3)(A); 29 USC 1135

**CFR Citation:** 29 CFR 2509

**Legal Deadline:** None

**Abstract:** EBSA is conducting a review of the guidelines applicable to determining when a qualified public accountant is independent for purposes of auditing and rendering an opinion on the financial information required to be included in the annual report of an employee benefit plan for purposes of section 103(a)(3)(A) of ERISA. The current guidelines, set forth as an Interpretive Bulletin at 29 CFR 2509.75-

9, were adopted in 1975. Given the changes that have taken place with respect to employee benefit plans and auditing practices and standards, as well as changes in the industry, since the issuance of those guidelines, EBSA is preparing a Request for Information that will invite interested persons to submit written comments and suggestions concerning whether and to what extent the current guidelines should be modified.

**Timetable:**

| Action                                     | Date     | FR Cite     |
|--|----------|-------------|
| Request For Information                    | 09/11/06 | 71 FR 53348 |
| Request For Information—Comment Period End | 12/11/06 |             |

Next Action Undetermined

**Regulatory Flexibility Analysis**

**Required:** No

**Government Levels Affected:** None

**Agency Contact:** John J. Canary, Deputy Director, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Washington, DC 20210  
Phone: 202 693-8500

**RIN:** 1210-AB09

**1805. PLAN ASSETS—PARTICIPANT CONTRIBUTIONS REGULATION (SECTION 610 REVIEW)**

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

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 1135

**CFR Citation:** 29 CFR 2510.3-102

**Legal Deadline:** None

**Abstract:** EBSA is conducting a review of the plan assets - participant contributions regulation in accordance with the requirements of section 610 of the Regulatory Flexibility Act. The review will cover the continued need for the rule; the nature of complaints or comments received from the public concerning the rule; the complexity of the rule; the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with State and local rules; and the extent to which technology, economic conditions, or other factors have changed in industries affected by the rule.

**Timetable:**

| Action       | Date     | FR Cite |
|--------------|----------|---------|
| Begin Review | 03/01/06 |         |
| End Review   | 04/00/08 |         |

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Government Levels Affected:** None

**Federalism:** Undetermined

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

**RIN:** 1210-AB11

## Department of Labor (DOL)

## Employee Benefits Security Administration (EBSA)

## Completed Actions

**1806. PROHIBITING DISCRIMINATION AGAINST PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS**

**Priority:** Other Significant

**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:** The Health Insurance Portability and Accountability Act of 1996 (HIPAA) amended title I of ERISA, the Internal Revenue Code, and

the Public Health Service Act with parallel provisions to prohibit discrimination by a group health plan or a health insurance issuer based on any health status-related factor. The Departments of Labor, the Treasury, and Health and Human Services are mutually dependent due to shared interpretive jurisdiction and are proceeding concurrently to provide final regulatory guidance regarding these provisions.

**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

DOL—EBSA

Completed Actions

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                            | 12/13/06 | 71 FR 75014 |
| Final Action Effective                | 02/12/07 |             |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

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

**Agency Contact:** Amy Turner, Senior Pension Law Specialist, Department of

Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Washington, DC 20210  
Phone: 202 693-8335  
**RIN:** 1210-AA77

**1807. • PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE TO INDIVIDUAL RETIREMENT AND SIMILAR PLANS**

**Priority:** Info./Admin./Other

**Legal Authority:** 26 USC 4975(d)(17); PL 109-280, sec 601(b)(3)(A) Pension Protection Act of 2006

**CFR Citation:** 26 CFR 54

**Legal Deadline:** Other, Statutory, December 31, 2007, A required report. The Department of Labor is required to report the results of its findings with respect to the information requested in this action to the Committee on Ways and Means and the Committee on Education and the Workforce of the House of Representatives and the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate no later than December 31, 2007.

**Abstract:** The purpose of this document is to solicit information from the public concerning the feasibility of the application of computer model investment advice programs for

Individual Retirement Accounts and similar types of plans. The Department has completed its solicitation of information and will report its findings to Congress no later than December 31, 2007.

**Timetable:**

| Action                        | Date     | FR Cite     |
|-------------------------------|----------|-------------|
| RFI                           | 12/04/06 | 71 FR 70427 |
| No Regulatory Action Required | 12/04/06 |             |
| RFI Comment Period End        | 01/30/07 |             |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

**Agency Contact:** Allison Padams-Lavigne, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building Room N5700, Washington, DC 20210  
Phone: 202 693-8540  
Fax: 202 219-0204

Chris Motta, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building Room N5700, Washington, DC 20210  
Phone: 202 693-8540  
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**RIN:** 1210-AB12

Department of Labor (DOL)

Proposed Rule Stage

Mine Safety and Health Administration (MSHA)

**1808. FIRE EXTINGUISHERS IN UNDERGROUND COAL MINES**

**Priority:** Other Significant

**Legal Authority:** 30 USC 811

**CFR Citation:** 30 CFR 75.1100-2

**Legal Deadline:** None

**Abstract:** The fire protection requirement in 30 CFR 75.1100-2(a)(2) requires rock dust and water at the underground workings at anthracite coal mines, and 30 CFR 75.1100-2(e)(2) requires a fire extinguisher and rock dust at temporary electrical installations. MSHA has granted 101(c) petitions for modification allowing operators to use only fire extinguishers in lieu of rock dust and other requirements at these two locations. This direct final rule, also issued as a proposed rule, would eliminate the

need to file petitions to use this alternative method of compliance without reducing protection for miners.

**Timetable:**

| Action            | Date     | FR Cite |
|-------------------|----------|---------|
| NPRM              | 09/00/07 |         |
| Direct Final Rule | 09/00/07 |         |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**URL For More Information:** www.msha.gov/regsinfo.htm  
www.regulations.gov

**URL For Public Comments:** www.regulations.gov

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

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

**RIN:** 1219-AB40

**1809. SEALING OF ABANDONED AREAS**

**Priority:** Other Significant

**Legal Authority:** 30 USC 811

**CFR Citation:** 30 CFR 75.335

**Legal Deadline:** Final, Statutory, December 15, 2007.

**Abstract:** On June 15, 2006, the Mine Improvement and New Emergency Response Act (MINER Act) of 2006,

## DOL—MSHA

## Proposed Rule Stage

Public Law 109-236, became effective. Section 10 of the MINER Act requires the Secretary of Labor to finalize mandatory health and safety standards relating to the sealing of abandoned areas in underground coal mines, no later than 18 months after enactment. Such health and safety standards shall provide for an increase in the existing 20 pounds per square inch (psi) standard currently set forth in 30 CFR 75.335(a)(2).

**Statement of Need:** Section 10 of the MINER Act requires the Secretary of Labor to finalize mandatory standards relating to the sealing of abandoned areas in underground coal mines no later than December 15, 2007, and that provide for an increase in the 20 psi standard currently in effect. Adequate seals are crucial to containing explosions and preventing the migration of potentially explosive methane-air mixtures from worked out areas to the working areas of an underground coal mine. In addition to the requirement in the MINER Act, MSHA's evaluation of alternative seals in underground coal mines has led the Agency to determine that revisions to existing standards for alternative seals are necessary.

**Summary of Legal Basis:** Promulgation of this regulation is authorized by the Federal Mine Safety and Health Act of 1977 and the MINER Act of 2006.

**Alternatives:** As required by the MINER Act, MSHA must publish a regulation that increases the 20 psi standard. The Mine Safety and Health Administration is reviewing the information from recent accidents in underground coal mines and the draft report from the National Institute for Occupational Safety and Health to determine an appropriate and protective regulatory course of action. The Agency is also conducting test explosions in experimental mines to determine the relationships between seal design and construction and the ability to withstand explosive forces. This information will assist the Agency in developing new standards consistent with the requirements of the MINER Act.

**Anticipated Cost and Benefits:** MSHA will develop a preliminary regulatory economic analysis to accompany the proposed rule.

**Risks:** Properly constructed seals contain explosions and prevent the migration of potentially explosive

methane-air mixtures from worked out areas to the working areas of an underground coal mine. Recent mining accidents and MSHA data show that there are problems with the construction and use of alternative methods and materials to create seals. The exact scope of the problem is unknown at this time. However, the reliability of seals in underground coal mines is in question because of their potential to endanger miners who work in sealed areas.

**Timetable:**

| Action       | Date     | FR Cite |
|--------------|----------|---------|
| NPRM         | 06/00/07 |         |
| Final Action | 12/00/07 |         |

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**URL For More Information:**

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

**URL For Public Comments:**

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

**Agency Contact:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209-3939

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**RIN:** 1219-AB52

**1810. MINE RESCUE TEAMS**

**Priority:** Other Significant

**Legal Authority:** 30 USC 957; 30 USC 811; 30 USC 825

**CFR Citation:** 30 CFR 49

**Legal Deadline:** Final, Statutory, December 15, 2007.

**Abstract:** On June 15, 2006, Public Law 109-236 or the Mine Improvement and New Emergency Response Act (MINER Act) of 2006 became effective. This rulemaking will implement section 4 of the MINER Act by amending existing standards and developing new standards to provide for certification composition, and training requirements for mine rescue teams in underground coal mines. Currently, requirements for mine rescue teams are set forth in 30 CFR part 49.

**Statement of Need:** Section 4 of the MINER Act requires the Secretary of Labor to finalize mandatory health and safety standards relating to mine rescue teams in underground coal mines no later than December 15, 2007. Current standards require properly trained mine rescue teams to be immediately available during mine emergencies. The MINER Act requires team members to have underground coal mining experience and requires teams to participate in mine rescue contests. The MINER Act also provides for multi-employer teams, State-sponsored teams, and contract teams to ensure the availability of qualified mine rescue teams.

**Summary of Legal Basis:** Promulgation of this regulation is authorized by the Federal Mine Safety and Health Act of 1977 and the MINER Act of 2006.

**Alternatives:** As required by the MINER Act, MSHA must publish a regulation on mine rescue teams.

**Anticipated Cost and Benefits:** MSHA will develop a preliminary regulatory economic analysis to accompany the proposed rule.

**Risks:** Mine explosions at the Sago Mine and Darby No. 1 Mine and a mine fire at the Alma Mine in 2006 resulted in the deaths of 19 underground coal miners. Explosions, fires, and the migration of potentially explosive methane-air mixtures from worked-out areas to the working areas of an underground coal mine endanger all miners who work in the mine, including potential rescuers.

**Timetable:**

| Action       | Date     | FR Cite |
|--------------|----------|---------|
| NPRM         | 05/00/07 |         |
| Final Action | 12/00/07 |         |

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Small Entities Affected:** Businesses

**Government Levels Affected:** State

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

**URL For More Information:**

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

**URL For Public Comments:**

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

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

## DOL—MSHA

## Proposed Rule Stage

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**RIN:** 1219-AB53

### 1811. DIESEL PARTICULATE MATTER: CONVERSION FACTOR FROM TOTAL CARBON TO ELEMENTAL CARBON

**Priority:** Other Significant

**Legal Authority:** 30 USC 811; 30 USC 813

**CFR Citation:** 30 CFR 57

**Legal Deadline:** None

**Abstract:** On May, 18, 2006, MSHA promulgated its final rule on Diesel Particulate Matter (DPM) Exposure of Underground Metal and Nonmetal Miners (71 FR 28924), phasing in the final diesel particulate matter (DPM) exposure limit over a 2-year period, with the final limit of 160 TC  $\mu/m^3$  to become effective on May 20, 2008. The DPM exposure limit is expressed in terms of a "TC" or "total carbon" limit. MSHA is initiating a new rulemaking to establish the most appropriate measure for determining compliance with the final DPM exposure limit. Using the latest available evidence, MSHA will be examining the most appropriate conversion factor for a comparable elemental carbon (EC) limit. An EC measurement ensures that a TC

exposure limit is valid and not the result of environmental interferences.

**Statement of Need:** The May 18, 2006 final rule at 30 CFR 57.5060(b)(3) requires mine operators to ensure that the miners' personal exposures to diesel particulate matter (DPM) in an underground mine do not exceed an airborne concentration of 160 micrograms of total carbon per cubic meter (TC  $\mu/m^3$ ) of air during an average 8-hour equivalent full shift, effective May 20, 2008. This rulemaking proposes the EC conversion factor for the 160 TC  $\mu/m^3$  limit, which would allow mine operators to implement the requirements of the May 18, 2006 final rule.

**Summary of Legal Basis:** Promulgation of this regulation is authorized by section 101 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 will prepare estimates of the anticipated costs and benefits associated with the selected conversion factor.

**Risks:** A number of epidemiological studies have found that exposure to diesel exhaust presents potential health risks to 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. MSHA believes that the health evidence forms a reasonable basis for reducing miners' exposure to diesel particulate matter. Proceeding with a separate rulemaking to determine the correct TC to EC conversion factor for the phased-in final limits will more effectively reduce miners' exposures to DPM.

#### Timetable:

| Action       | Date     | FR Cite |
|--------------|----------|---------|
| NPRM         | 09/00/07 |         |
| Final Action | 05/00/08 |         |

#### Regulatory Flexibility Analysis Required: No

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**URL For More Information:**  
[www.msha.gov/regsinfo.htm](http://www.msha.gov/regsinfo.htm)  
[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**  
[www.regulations.gov](http://www.regulations.gov)

**Agency Contact:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209-3939  
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**RIN:** 1219-AB55

## Department of Labor (DOL)

### Mine Safety and Health Administration (MSHA)

## Final Rule Stage

### 1812. HIGH-VOLTAGE CONTINUOUS MINING MACHINE STANDARD 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 July 16, 2004, NPRM (69 FR 42812) proposed to establish design requirements for approval of high-voltage continuous mining machines operating where miners work in underground coal mines. The rule also proposed to establish new mandatory electrical safety standards for the

installation, use, and maintenance of the high-voltage continuous mining machines. MSHA published a supplemental NPRM on March 28, 2006 (71 FR 15359).

This supplemental NPRM proposed and requested comments on two issues that arose from oral and written comments that MSHA received during the hearing and post-hearing comment period on the NPRM.

These issues involved: (1) Types of trailing cables that can be used with high-voltage continuous mining machines; and (2) a requirement to use high-voltage insulating gloves or other personal protective equipment when

handling energized high-voltage trailing cables.

MSHA regularly receives petitions for modifications from coal mine operators seeking permission to use high-voltage continuous mining machines. MSHA believes that, with appropriate safeguards, such machines are safe for use and are routinely granted in these petitions.

#### Timetable:

| Action                  | Date     | FR Cite     |
|-------------------------|----------|-------------|
| NPRM                    | 07/16/04 | 69 FR 42812 |
| NPRM Comment Period End | 08/23/04 | 69 FR 51784 |
| Second NPRM             | 03/28/06 | 71 FR 15359 |

## DOL—MSHA

## Final Rule Stage

| Action                               | Date     | FR Cite |
|--------------------------------------|----------|---------|
| Second NPRM<br>Comment Period<br>End | 05/30/06 |         |
| Final Action                         | 09/00/07 |         |

**Regulatory Flexibility Analysis**

Required: No

Government Levels Affected: None

**URL For More Information:**  
www.msha.gov/regsinfo.htm  
www.regulations.gov

**URL For Public Comments:**  
www.regulations.gov

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RIN: 1219-AB34

## Department of Labor (DOL)

## Long-Term Actions

## Mine Safety and Health Administration (MSHA)

**1813. 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:** MSHA's 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 comment period, 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 Continuous Personal Dust Monitors being tested by NIOSH. A Federal Register notice was published on July 3, 2003, extending the comment period indefinitely. NIOSH issued a report on the personal dust monitor in September 2006. MSHA will determine the next course of action after a review of all data and test results.

**Timetable:**

| Action   | Date     | FR Cite     |
|--|----------|-------------|
| NPRM   | 07/07/00 | 65 FR 42122 |
| Notice of Hearings;<br>Close of Record             | 07/07/00 | 65 FR 42186 |
| Close of Record                                    | 08/11/00 |             |
| Extension of Comment<br>Period; Close of<br>Record | 08/11/00 | 65 FR 49215 |
| NPRM   | 03/06/03 | 68 FR 10784 |
| Notice of Public<br>Hearing; Close of<br>Record    | 03/17/03 | 68 FR 12641 |
| Extension of Comment<br>Period                     | 05/29/03 | 68 FR 32005 |
| NPRM Comment<br>Period End                         | 06/04/03 |             |
| Extension of Comment<br>Period                     | 07/03/03 | 68 FR 39881 |
| NPRM   | To Be    | Determined  |

**Regulatory Flexibility Analysis Required:** Undetermined

Government Levels Affected: None

**Additional Information:** This rulemaking is related to RIN 1219-AB18 (Determination of Concentration of Respirable Coal Mine Dust) and RIN 1219-AB48 (Continuous Personal Dust Monitors).

**URL For More Information:**  
www.msha.gov/regsinfo.htm  
www.regulations.gov

**URL For Public Comments:**  
www.regulations.gov

**Agency Contact:** Patricia W. Silvey,  
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Related RIN: Related to 1219-AB18,

Related to 1219-AB48

**1814. 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 (NIOSH) and the Mine Safety and Health Administration (MSHA) jointly proposed that a single, full-shift measurement (single sample) would 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 F.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. MSHA held hearings in May 2003 and the comment period, 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

## DOL—MSHA

## Long-Term Actions

rulemaking record and extended the comment period indefinitely. MSHA collaborated with NIOSH, miners' representatives, industry and the manufacturer to test the production prototype Continuous Personal Dust Monitor (CPDM) unit. NIOSH issued a report on the CPDM in September 2006. MSHA will determine the next course of action after a review of all data and test results.

**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                      | 08/11/00 | 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 |
| Reopening of Record; Correction                  | 04/01/03 | 68 FR 15691 |
| NPRM   | To Be    | Determined  |

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**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) and RIN 1219-AB48 (Continuous Personal Dust Monitor).

**URL For More Information:**

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

**URL For Public Comments:**

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

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**Related RIN:** Related to 1219-AB14, Related to 1219-AB48

**RIN:** 1219-AB18

**1815. 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). The Office of the Inspector General (OIG) recommended in a report that MSHA lower its PEL 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. MSHA proposed a rule to lower the asbestos PEL, which would reduce asbestos-induced occupational disease.

**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 million particles per cubic foot of air (mppcf). Other Federal agencies have addressed this issue by lowering their asbestos PEL. 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 of 0.1 fiber per cubic centimeter (f/cc) of air and the excursion limit to 1.0 f/cc of air as averaged over a 30 minute sampling period. These lower limits reflect new information and studies that compare asbestos-related disease risk to the number of 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 increased sampling efforts in an attempt to determine miners' exposure levels to asbestos. In early 2000, MSHA began an extensive sampling effort at operations with potential asbestos

exposure including taking samples at all existing vermiculite, taconite, talc, and other mines to determine the level of asbestos present. While sampling, MSHA staff also discussed various potential hazards of asbestos with miners and mine operators and the types of preventive measures that could be implemented to reduce exposures.

The final rule will be based, on comments and testimony to the proposed rule, as well as MSHA sampling and inspection experience.

**Anticipated Cost and Benefits:** The anticipated costs of the proposed rule to the mining industry would be approximately \$136,000 annually. Of this total amount, the cost to the metal and nonmetal mining sector would be \$91,500, and the cost to the coal mining sector would be \$44,600.

MSHA estimates that between 1 and 19 deaths could be prevented over the next 65 years, which represents approximately 9 to 84 percent of all occupationally related deaths caused by asbestos exposure. Under the proposed exposure limit, approximately 1 out of every 1,000 miners will avoid the risk of death from asbestosis, lung cancer, mesothelioma, or other forms of cancer attributed to asbestos exposure.

**Risks:** Miners could be exposed to the hazards of asbestos at mine operations where ore body contains asbestos. In addition, miners could be exposed to asbestos at facilities that install material containing asbestos. Overexposure to asbestos causes asbestosis, lung cancer, mesothelioma, and other forms of cancer.

**Timetable:**

| Action                              | Date     | FR Cite     |
|-------------------------------------|----------|-------------|
| ANPRM                               | 03/29/02 | 67 FR 15134 |
| Notice of Change to Public Meetings | 04/18/02 | 67 FR 19140 |
| ANPRM Comment Period End            | 06/27/02 |             |
| NPRM                                | 07/29/05 | 70 FR 42950 |
| NPRM Comment Period End             | 11/21/05 | 70 FR 43950 |
| Public Hearing                      | 10/18/05 | 70 FR 43950 |
| Final Action                        | 06/00/08 |             |

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**Additional Information:** The Office of the Inspector General issued a report entitled, "Evaluation of MSHA's

## DOL—MSHA

## Long-Term Actions

Handling of Inspections at the W.R. Grace & Company Mine in Libby, Montana," in March 2001.

**URL For More Information:**

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

**URL For Public Comments:**

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

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**RIN:** 1219-AB24

**1816. RESPIRABLE CRYSTALLINE SILICA STANDARD**

**Priority:** Other Significant

**Legal Authority:** 30 USC 811; 30 USC 813

**CFR Citation:** 30 CFR 56 to 57; 30 CFR 70 to 72; 30 CFR 90

**Legal Deadline:** None

**Abstract:** Current standards limit exposures to quartz (crystalline silica) in respirable dust. The coal mining industry standard is based on the formula 10mg/m<sup>3</sup> divided by the percentage of quartz where the quartz percent is greater than 5.0 percent calculated as an MRE equivalent concentration. The metal and nonmetal mining industry standard is based on the 1973 American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values formula: 10 mg/m<sup>3</sup> divided by the percentage of quartz plus 2. Overexposure to crystalline silica can result in some miners developing silicosis, which ultimately may be fatal. Both formulas are designed to limit exposures to 0.1 mg/m<sup>3</sup> (100mg) 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 50 mg/m<sup>3</sup> 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 | To Be Determined |         |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** None

**URL For More Information:**

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

**URL For Public Comments:**

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

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**RIN:** 1219-AB36

**1817. REVISING ELECTRICAL PRODUCT APPROVAL REGULATIONS**

**Priority:** Other Significant

**Legal Authority:** 30 USC 957

**CFR Citation:** 30 CFR 7; 30 CFR 17 to 18; 30 CFR 22 to 23; 30 CFR 27

**Legal Deadline:** None

**Abstract:** 30 CFR part 18 (Electric Motor-Driven Mine Equipment and Accessories), describes the approval requirements for electrically operated machines and accessories intended for use in underground gassy mines, and for 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. MSHA is proposing revisions to improve the efficiency of the approval process, recognize new technology, add quality assurance provisions, address existing policies through the rulemaking process, and reorganize portions of the approval regulations. MSHA will be addressing the requirements in this NPRM in phases. The first phase will be Flame-Resistance Testing of Mining Materials. This action will be published first because the MINER Act requires all life lines to be flame-resistant by June 14, 2009. The flame-resistant

requirements are contained in 30 CFR part 18.

**Timetable:**

| Action | Date             | FR Cite |
|--------|------------------|---------|
| NPRM   | To Be Determined |         |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

**URL For More Information:**

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

**URL For Public Comments:**

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**RIN:** 1219-AB37

**1818. FIELD MODIFICATIONS OF PERMISSIBLE MOBILE DIESEL-POWERED EQUIPMENT**

**Priority:** Other Significant

**Legal Authority:** 30 USC 957

**CFR Citation:** 30 CFR 36

**Legal Deadline:** None

**Abstract:** The implementation of diesel regulations in 30 CFR parts 7, 36, 57, 72, and 75 has resulted in an increase in requests from owners of approved equipment, typically underground mine operators, to field modify permissible diesel-powered equipment. Field modifications allow permissible equipment to be modified for mine-specific use or to comply with new diesel standards. Therefore, the Mine Safety and Health Administration is proposing to add field modification provisions to 30 CFR part 36 (Approval Requirements for Permissible Mobile Diesel-Powered Transportation Equipment).

This proposed rule would codify the field modification process for part 36 field modification acceptances, expand the field modification process to allow mine operators to apply for field modifications, and continue to ensure that field-modified equipment operates safely in gassy underground mines. The proposed rule would also implement

## DOL—MSHA

## Long-Term Actions

existing policy which dates from 1985, to reflect current procedures for processing field modifications related to mobile diesel-powered transportation equipment. Further, the proposed rule would require labeling provisions for all new field modifications accepted under part 36. These new provisions would enhance miner safety.

**Timetable:**

| Action | Date  | FR Cite    |
|--------|-------|------------|
| NPRM   | To Be | Determined |

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

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**RIN:** 1219-AB39

**1819. USE OF OR IMPAIRMENT FROM ALCOHOL AND OTHER DRUGS ON MINE PROPERTY**

**Priority:** Other Significant

**Unfunded Mandates:** Undetermined

**Legal Authority:** Not Yet Determined

**CFR Citation:** Not Yet Determined

**Legal Deadline:** None

**Abstract:** MSHA is considering publishing a proposed rule to address the risks and hazards to miner safety from the use of or impairment from alcohol and drugs on mine property.

**Timetable:**

| Action                   | Date     | FR Cite     |
|--------------------------|----------|-------------|
| ANPRM                    | 10/04/05 | 70 FR 57808 |
| ANPRM Comment Period End | 11/27/05 |             |
| NPRM                     | To Be    | Determined  |

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** Businesses, Governmental Jurisdictions

**Government Levels Affected:** Local

**URL For More Information:**  
[www.msha.gov/regsinfo.htm](http://www.msha.gov/regsinfo.htm)  
[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**

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

**Agency Contact:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209-3939  
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**RIN:** 1219-AB41

**1820. EQUIVALENCY EVALUATION OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S NONROAD DIESEL ENGINE STANDARDS**

**Priority:** Other Significant

**Legal Authority:** 30 USC 957

**CFR Citation:** 30 CFR 7

**Legal Deadline:** None

**Abstract:** MSHA is reviewing the U.S. Environmental Protection Agency's (EPA) standards for nonroad diesel engines. The review will determine if certain EPA requirements in 40 CFR part 89 (Control of Emissions From New and In-Use Nonroad Compression-Ignition Engines), provide or can be modified to provide at least the same degree of protection as existing requirements in 30 CFR part 7, subpart E (Diesel Engines Intended for Use in Underground Coal Mines). This review is limited to the testing of Category B diesel engines as defined in 30 CFR 7.82 (Definitions).

**Timetable:**

| Action  | Date     | FR Cite     |
|---|----------|-------------|
| Notice of Intent to Review the U.S. Environmental Protection Agency Title | 03/28/06 | 71 FR 15358 |
| End of Comment Period   | 05/30/06 |             |
| Final Action  | 04/00/08 |             |

**Regulatory Flexibility Analysis**

**Required:** No

**Government Levels Affected:** None

**URL For More Information:**  
[www.msha.gov/regsinfo.htm](http://www.msha.gov/regsinfo.htm)  
[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**  
[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 1219-AB43

**1821. CONTINUOUS PERSONAL DUST MONITORS**

**Priority:** Other Significant

**Legal Authority:** 30 USC 811

**CFR Citation:** Not Yet Determined

**Legal Deadline:** None

**Abstract:** On June 24, 2003, MSHA announced that all work on its Plan Verification and Single-Sample Respirable Coal Mine Dust final rules would cease and the rulemaking record would remain open in order to obtain information concerning Continuous Personal Dust Monitors (CPDMs) currently being tested by NIOSH. A Federal Register notice was published on July 3, 2003, extending the comment periods indefinitely. NIOSH issued a report on the CPDM in September 2001. MSHA will solicit public input on potential applications of this new monitoring technology in coal mines.

**Statement of Need:** Respirable coal mine dust levels in this country are significantly lower than they were over two decades ago. Despite this progress, there continues to be concern about our current sampling program and MSHA's ability to accurately measure and maintain respirable coal mine dust at or below the applicable standard. The new CPDM, unlike the technology that has been employed since 1970 to measure concentrations of respirable coal mine dust, offers the capability to provide accurate and timely continuous readings of the dust level during a shift. Responses to this Request for Information (RFI) will assist the Agency in determining: (1) how to deploy the CPDM in coal mines and utilize its coal dust monitoring capability to further improve miner health protection from disabling occupational lung disease; and (2) the regulatory and non-regulatory actions that would promote its use for exposure monitoring and control.

**Summary of Legal Basis:** This RFI is authorized by sections 101 and 103 of the Federal Mine Safety and Health Act of 1977.



## DOL—MSHA

## Long-Term Actions

**Alternatives:** This RFI would explore options for amending and improving health protection from that afforded by the existing standards.

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

**Risks:** Respirable coal dust is one of the most serious occupational hazards in the mining industry. Occupational exposure to excessive levels of respirable coal mine dust can cause black lung, which is potentially disabling and can cause death. MSHA is pursuing both regulatory and

nonregulatory actions to eliminate this disease through the control of coal mine respirable dust levels in mines and reduction of miners' exposure.

**Timetable:**

| Action                  | Date             | FR Cite |
|-------------------------|------------------|---------|
| Request for Information | To Be Determined |         |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**URL For More Information:**

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

**URL For Public Comments:**

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**Related RIN:** Related to 1219-AB14, Related to 1219-AB18

**RIN:** 1219-AB48

## Department of Labor (DOL)

## Completed Actions

## Mine Safety and Health Administration (MSHA)

**1822. EMERGENCY MINE EVACUATION**

**Priority:** Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:** This action may affect the private sector under PL 104-4.

**Legal Authority:** 30 USC 811; 30 USC 813; 30 USC 825; 30 USC 876

**CFR Citation:** 30 CFR 48; 30 CFR 50; 30 CFR 75

**Legal Deadline:** Final, Statutory, December 9, 2006.

**Abstract:** The Mine Safety and Health Administration (MSHA) published an emergency temporary standard on March 9, 2006. Under section 101(b) of the Federal Mine Safety and Health Act of 1977 (Mine Act) the emergency temporary standard was effective immediately. MSHA, however, must publish a final rule no later than nine months after publication of an emergency temporary standard in accordance with section 101(b) of the Mine Act. MSHA has issued a final rule. The final rule incorporated relevant requirements of the Mine Improvement and New Emergency Response Act (MINER Act) of 2006. The final rule included requirements for immediate accident notification applicable to all underground and surface mines. The final rule also addressed requirements for self-contained self-rescuer storage and use; emergency evacuation and self-rescuer training and drills; and the installation and maintenance of lifelines that are

applicable to all underground coal mines.

**Statement of Need:** MSHA issued the emergency temporary standard, which focused on the evacuation of underground coal mines and immediate accident notification, applicable to all underground and surface mines, to fill a critical need when a mine emergency occurs. Because the emergency temporary standard was immediately effective, MSHA gained experience with the rule. MSHA affirms that the requirements implemented under the emergency temporary standard provide all miners additional critical protection through prompt accident reporting and, in addition, provide all underground coal miners additional critical tools and training to complete a successful mine evacuation.

**Summary of Legal Basis:** Promulgation of this regulation is authorized by section 101 of the Federal Mine Safety and Health Act of 1977 and the Mine Improvement and New Emergency Response Act of 2006 (Public Law 109-236).

**Alternatives:** This final rule provided: (1) the safety protections afforded to miners by the existing temporary standard; and (2) additional protections through implementation of parts of the MINER Act.

**Anticipated Cost and Benefits:** The anticipated costs and benefits of the final rule focus on miners having the tools to successfully escape a serious mine accident that requires emergency evacuation of the mine. MSHA

prepared a regulatory economic analysis for the final rule.

**Risks:** Mining continues to be one of the most hazardous occupations in the United States. In calendar year 2004, there were 634 underground coal mine operators employing 33,490 miners and 3,697 contractor workers who work underground in coal mines. In total, there were 214,450 miners and 72,739 contract workers who work in the 14,480 U.S. mines. In 2004, 56 miners died in mining accidents, over 8,000 miners suffered nonfatal injuries resulting in lost work days; and over 3,400 miners suffered injuries that resulted in no lost work days. The final rule requirements provide underground coal miners necessary tools to successfully escape a serious mine accident.

**Timetable:**

| Action                                   | Date     | FR Cite     |
|--|----------|-------------|
| Emergency Temporary Standard             | 03/09/06 | 71 FR 12252 |
| Emergency Temporary Standard Effective   | 04/10/06 |             |
| Change of Public Hearing Dates           | 03/27/06 | 71 FR 15028 |
| Emergency Mine Evacuation Public Hearing | 04/24/06 |             |
| Emergency Mine Evacuation Public Hearing | 04/26/06 |             |
| Emergency Mine Evacuation Public Hearing | 04/28/06 |             |

## DOL—MSHA

## Completed Actions

| Action                                   | Date     | FR Cite     |
|--|----------|-------------|
| Emergency Mine Evacuation Public Hearing | 05/09/06 |             |
| Comment Period Extended                  | 05/24/06 | 71 FR 29785 |
| Comment Period End                       | 06/29/06 |             |
| Final Action                             | 12/08/06 | 71 FR 71430 |
| Final Action Effective                   | 12/08/06 |             |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

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**RIN:** 1219–AB46

**1823. CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES**
**Priority:** Other Significant

**Legal Authority:** 30 USC 815; 30 USC 820; 30 USC 957

**CFR Citation:** 30 CFR 100

**Legal Deadline:** Final, Statutory, December 30, 2006.

The MINER Act established a deadline of December 30, 2006, for MSHA to complete the Civil Penalties rulemaking. MSHA did not meet that deadline, but the agency has been applying the higher MINER Act penalties since the date of enactment.

**Abstract:** MSHA is proposing to amend its civil penalty regulations to increase penalty amounts, to revise the process for proposing civil penalties and to implement requirements of the Mine Improvement and New Emergency Response Act (MINER Act) of 2006. The key civil penalty provisions of the MINER Act are: minimum penalties of \$2,000 for unwarrantable failure violations and \$4,000 for repeated

similar violations; penalties of \$5,000 to \$60,000 for failure to timely notify MSHA of a death, injury, or entrapment with a reasonable potential to cause death; and penalties of up to \$220,000 for “flagrant” violations.

**Statement of Need:** A recent upward trend in citations for violations of MSHA’s safety and health regulations, coupled with several tragic accidents in 2006, have called into question the effectiveness of the current civil penalty regulations. Congress responded by passing the MINER Act to provide MSHA with statutory authority to change the civil penalty regulations. As a result the final rule strengthens the existing regulations, improves miner safety and health, and reduces fatalities.

**Summary of Legal Basis:** This regulation is authorized by the Federal Mine Safety and Health Act of 1977 and the MINER Act of 2006.

**Alternatives:** The Agency considered a variety of approaches for calculating civil penalties and is publishing the approach that it believes best achieves the objectives of the Agency.

**Anticipated Cost and Benefits:** Using 2005 violation and assessment data as a baseline, MSHA estimated that all violations in 2005, if assessed under the final rule, would result in approximately \$69.3 million in penalties annually, which is an increase of \$44.5 million. However, MSHA projected that the higher penalties will induce operators to increase compliance efforts, which would cost an estimated \$9.5 million and decrease the number of violations by approximately 20 percent. The resulting increase in penalties is estimated to be approximately \$22.1 million. In addition, a new provision requiring a written request for safety and health conferences will have an annual cost of approximately \$0.1 million. Taking all of these effects into account, the total cost of the rule would be \$31.6 million yearly.

MSHA believes the projected increased compliance with health and safety regulations would result in fewer

injuries and fatalities, but these benefits have not been scientifically established. Accordingly, MSHA did not prepare a quantitative estimate of the expected reduction in injuries and fatalities.

**Risks:** The Mine Act imposes civil penalties as a means of ensuring compliance with the requirements of the Act. The Congress intended that the imposition of civil penalties would induce mine operators to be proactive in their approach to mine safety and health, and take necessary action to prevent safety and health hazards before they occur. According to MSHA’s 2005 production data, this regulation applies to 14,666 mine operators and 6,585 independent contractors, as well as the 261,449 miners and 83,267 contract workers they employ.

**Timetable:**

| Action                       | Date     | FR Cite     |
|------------------------------|----------|-------------|
| NPRM                         | 09/08/06 | 71 FR 53054 |
| NPRM Comment Period End      | 10/23/06 |             |
| NPRM Comment Period Reopened | 10/26/06 | 71 FR 62572 |
| NPRM Comment Period End      | 11/09/06 |             |
| Final Action                 | 03/22/07 | 72 FR 13592 |
| Final Action Effective       | 04/23/07 |             |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**URL For More Information:**  
[www.msha.gov/regsinfo.htm](http://www.msha.gov/regsinfo.htm)  
[www.regulations.gov](http://www.regulations.gov)

**URL For Public Comments:**  
[www.regulations.gov](http://www.regulations.gov)

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**RIN:** 1219–AB51

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

**Prerule Stage**

**1824. 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 50µ/m<sup>3</sup> 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.

**Statement of Need:** Over 2 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 workers, and to address some specific issues that will need to be resolved to propose a comprehensive standard.

**Summary of Legal Basis:** The legal basis for the proposed rule is a preliminary determination that workers are exposed to a significant risk of silicosis and other serious disease and that rulemaking is needed to substantially reduce the risk. In addition, the proposed rule will recognize that the PELs for construction and maritime are outdated and need to be revised to reflect current sampling and analytical technologies.

**Alternatives:** Over the past several years, the Agency has attempted to address this problem through a variety of non-regulatory approaches, including initiation of a Special Emphasis Program on silica in October 1997, sponsorship with NIOSH and MSHA of

the National Conference to Eliminate Silicosis, and dissemination of guidance information on its Web site. 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 is under way.

**Timetable:**

| Action   | Date     | FR Cite |
|--|----------|---------|
| Completed SBREFA Report                                    | 12/19/03 |         |
| Complete Peer Review of Health Effects and Risk Assessment | 09/00/07 |         |

**Regulatory Flexibility Analysis**

**Required:** Yes

**Small Entities Affected:** Businesses

**Government Levels Affected:** Undetermined

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**RIN:** 1218-AB70

**1825. 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.

## DOL—OSHA

## Prerule Stage

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.

**Timetable:**

| Action                  | Date     | FR Cite     |
|-------------------------|----------|-------------|
| Request for Information | 11/26/02 | 67 FR 70707 |
| Complete SBREFA Report  | 09/00/07 |             |

**Regulatory Flexibility Analysis****Required:** Yes**Small Entities Affected:** Businesses**Government Levels Affected:** None

**Agency Contact:** Dorothy Dougherty, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N 3718, Washington, DC 20210  
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**RIN:** 1218-AB76**1826. IONIZING RADIATION****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 1910.1096 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. A request for information was published on May 3, 2005. Subsequently, the National Academy of Science released the latest version of a significant report on the biological effects of ionizing radiation. OSHA extended the comment period on the request for information to ensure commenters had the opportunity to consider this new report. The next step for the ionizing radiation project is to hold discussions with key stakeholders. OSHA plans to hold a series of meetings targeted to specific stakeholder groups including state organizations with responsibility for worker exposure to ionizing radiation, professional associations and specific industry groups such as dental, medical and veterinary professionals. OSHA believes that these targeted meetings will be detailed technical discussions that will inform the Agency on current practices, the use of radiation devices and approaches to protecting employees from exposure to ionizing radiation.

**Timetable:**

| Action  | Date     | FR Cite     |
|---|----------|-------------|
| Request for Information (RFI)                   | 05/03/05 | 70 FR 22828 |
| Request for Information Comment Period End      | 08/01/05 | 70 FR 22828 |
| Request for Information Comment Period Extended | 11/28/05 | 70 FR 44074 |
| Stakeholder Meetings                            | 03/05/07 | 72 FR 9716  |
| Stakeholders Meeting                            | 04/00/07 |             |

**Regulatory Flexibility Analysis****Required:** Undetermined**Government Levels Affected:** Undetermined

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**RIN:** 1218-AC11**1827. EMERGENCY RESPONSE AND PREPAREDNESS****Priority:** Other Significant. Major status under 5 USC 801 is undetermined.**Unfunded Mandates:** Undetermined**Legal Authority:** 29 USC 655(b); 29 USC 657**CFR Citation:** 29 CFR 1910**Legal Deadline:** None

**Abstract:** Emergency responder health and safety is currently regulated primarily under the following standards: the fire brigade standard (29 CFR 1910.156); hazardous waste operations and emergency response (29 CFR 1910.120); the respiratory protection standard (29 CFR 1910.134); the permit-required confined space standard (29 CFR 1910.146); and the bloodborne pathogens standard (29 CFR 1910.1030). Some of these standards were promulgated decades ago and none were designed as comprehensive emergency response standards. Consequently, they do not address the full range of hazards or concerns currently facing emergency responders. Many do not reflect major changes in performance specifications for protective clothing and equipment. Current OSHA standards also do not reflect all the major developments in safety and health practices that have already been accepted by the emergency response community and incorporated into National Fire Protection Association (NFPA) and American National Standards Institute consensus standards. OSHA will be collecting information to evaluate what action the agency should take.

**Timetable:**

| Action                  | Date     | FR Cite |
|-------------------------|----------|---------|
| Request for Information | 07/00/07 |         |

**Regulatory Flexibility Analysis****Required:** Undetermined**Government Levels Affected:** Undetermined**Federalism:** Undetermined

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## DOL—OSHA

## Prerule Stage

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RIN: 1218-AC17

### 1828. LEAD IN CONSTRUCTION (SECTION 610 REVIEW)

**Priority:** Substantive, Nonsignificant

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

**CFR Citation:** 29 CFR 1926.62

**Legal Deadline:** None

**Abstract:** OSHA will undertake a review of the Lead in Construction Standard (29 CFR 1926.62) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider the continued need for the rule, 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.

**Timetable:**

| Action             | Date     | FR Cite     |
|--------------------|----------|-------------|
| Begin Review       | 06/06/05 | 70 FR 32739 |
| End Review Comment | 09/06/05 | 70 FR 32739 |
| End Review         | 07/00/07 |             |

**Regulatory Flexibility Analysis**

**Required:** No

**Government Levels Affected:** None

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RIN: 1218-AC18

### 1829. REVISION AND UPDATE OF STANDARDS FOR POWER PRESSES

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

**Unfunded Mandates:** Undetermined

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

**CFR Citation:** 29 CFR Part 1910.217

**Legal Deadline:** None

**Abstract:** The Occupational Safety and Health Administration's (OSHA) mechanical power press standard (29 CFR 1910.217) protects employees from injuries that result from working with or around mechanical power presses through the use of machine guards (prevents hands in danger zone) and through limitations on initiation of a press cycle (either two-hand or foot operated). A presence-sensing device (PSD), typically a light curtain, initiates a press cycle only when the system indicates that no objects, such as a hand, are within the hazard zone. OSHA adopted the use of presence-sensing device initiation (PSDI) on mechanical power presses believing that the provision would substantially protect workers and improve productivity. However, OSHA requires PSDI systems to be validated by an OSHA-certified third party, and no organization has agreed to validate PSDI installations. OSHA performed a lookback review of PSDI and determined that the current ANSI standard permits PSDI without independent validation but includes other provisions to maintain PSDI safety.

Based on its completion of the look-back review of PSDI (69 FR 31927), OSHA is planning to revise and update the standard on power presses, which currently covers only mechanical power presses. OSHA will base the revision of the 2001 or later edition of the American National Standards Institute (ANSI) standard on Mechanical Power Presses, ANSI B11.1. Further, OSHA is considering expanding the standard to cover other presses such as hydraulic and pneumatic power presses and to include the latest guarding techniques. This revision will provide the first major update of the Mechanical Power Presses Standard since it was originally published in 1971.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| ANPRM  | 04/00/07 |         |

**Regulatory Flexibility Analysis**

**Required:** Undetermined

**Small Entities Affected:** Businesses

**Government Levels Affected:** Undetermined

**Federalism:** Undetermined

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RIN: 1218-AC22

### 1830. METHYLENE CHLORIDE (SECTION 610 REVIEW)

**Priority:** Substantive, Nonsignificant

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

**CFR Citation:** 29 CFR 1910.1052

**Legal Deadline:** None

**Abstract:** OSHA will undertake a review of the Methylene Chloride Standard (29 CFR 1910.1052) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider the continued need for the rule, whether the rule overlaps, duplicates or conflicts with other Federal, State, or local regulations, and the degree to which technology, economic conditions or other factors may have changed since the rule was evaluated.

**Timetable:**

| Action               | Date     | FR Cite |
|----------------------|----------|---------|
| Begin Review         | 12/01/06 |         |
| Request for Comments | 06/00/07 |         |
| End Review           | 06/00/08 |         |

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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RIN: 1218-AC23

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

**Proposed Rule Stage**

**1831. CONFINED SPACES IN CONSTRUCTION (PART 1926): PREVENTING SUFFOCATION/EXPLOSIONS IN CONFINED SPACES**

**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 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 work environment.

**Timetable:**

| Action              | Date     | FR Cite |
|---------------------|----------|---------|
| SBREFA Panel Report | 11/24/03 |         |
| NPRM                | 08/00/07 |         |

**Regulatory Flexibility Analysis Required:** Yes

**Small Entities Affected:** Businesses

**Government Levels Affected:** Undetermined

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**RIN:** 1218-AB47

**1832. 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   | 06/00/07 |         |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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**RIN:** 1218-AB50

**1833. CRANES AND DERRICKS**

**Priority:** Other Significant. Major under 5 USC 801.

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

**CFR Citation:** 29 CFR 1926

**Legal Deadline:** None

**Abstract:** A number of industry stakeholders asked OSHA to update the cranes and derricks portion of subpart N (29 CFR 1926.550), specifically requesting that negotiated rulemaking be used.

In 2002 OSHA published a notice of intent to establish a negotiated rulemaking committee. A year later, in 2003, committee members were announced and the Cranes and Derricks Negotiated Rulemaking Committee was established and held its first meeting. In July 2004, the committee reached consensus on all issues resulting in a final consensus document.

**Statement of Need:** There have been considerable technological changes

since the consensus standards upon which the 1971 OSHA standard is based were developed. In addition, industry consensus standards for derricks and crawler, truck and locomotive cranes were updated as recently as 2004.

The industry indicated that over the past 30 years, considerable changes in both work processes and crane technology have occurred. There are estimated to be 64 to 82 fatalities associated with cranes each year in construction, and a more up-to-date standard would help prevent them.

**Summary of Legal Basis:** The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 USC 651).

**Alternatives:** The alternative to the proposed rulemaking would be to take no regulatory action and not update the standards in 29 CFR 1926.550 pertaining to cranes and derricks.

**Anticipated Cost and Benefits:** The estimates of the costs and benefits are still under development.

**Risks:** OSHA's risk analysis is under development.

**Timetable:**

| Action  | Date     | FR Cite     |
|---|----------|-------------|
| 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 |
| Rulemaking Negotiations Completed                   | 07/30/04 |             |
| SBREFA Report                                       | 10/17/06 |             |
| NPRM  | 10/00/07 |             |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** Undetermined

**Agency Contact:** Steven F. Witt, Director, Directorate of Construction, Department of Labor, Occupational

## DOL—OSHA

## Proposed Rule Stage

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**RIN:** 1218-AC01

### 1834. UPDATING OSHA STANDARDS BASED ON NATIONAL CONSENSUS STANDARDS

**Priority:** Other Significant

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

**CFR Citation:** 29 CFR 1910; 29 CFR 1915; 29 CFR 1917 to 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 more than 30 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 undertaking a multi-year project to update these standards. A notice describing the project was published in the Federal Register on November 24, 2004 (69 FR 68283). The first final rule was published on September 13, 2005. Several additional sets of standards are in preparation.

**Timetable:**

| Action                           | Date     | FR Cite     |
|----------------------------------|----------|-------------|
| NPRM                             | 11/24/04 | 69 FR 68706 |
| Direct Final Rule                | 11/24/04 | 69 FR 68712 |
| NPRM Comment Period End          | 12/27/04 | 69 FR 68706 |
| Withdraw Direct Final Rule       | 02/18/05 | 70 FR 8290  |
| Direct Final Rule Effective Date | 02/22/05 |             |
| Final Rule                       | 09/13/05 | 70 FR 53925 |
| Final Rule Effective             | 11/14/05 |             |
| NPRM                             | 05/00/07 |             |
| Direct Final Rule                | 06/00/07 |             |

### Regulatory Flexibility Analysis Required: No

**Government Levels Affected:** Undetermined

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**RIN:** 1218-AC08

### 1835. EXPLOSIVES

**Priority:** Other Significant

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

**CFR Citation:** 29 CFR 1910.109

**Legal Deadline:** None

**Abstract:** OSHA is 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. Initially, OSHA planned to revise the pyrotechnics requirements 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 propose 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.

**Timetable:**

| Action         | Date     | FR Cite |
|----------------|----------|---------|
| NPRM           | 04/00/07 |         |
| Analyze Record | 08/00/07 |         |

### Regulatory Flexibility Analysis Required: No

**Small Entities Affected:** No

**Government Levels Affected:** Undetermined

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**RIN:** 1218-AC09

### 1836. STANDARDS IMPROVEMENT

**Priority:** Other Significant

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

**CFR Citation:** Not Yet Determined

**Legal Deadline:** None

**Abstract:** OSHA is continuing its efforts to remove or revise duplicative, unnecessary, and inconsistent safety and health standards. This effort builds upon the success of the Standards Improvement Project (SIPs) Phase I published on June 18, 1998 (63 FR 33450) and Phase II published on January 5, 2005 (70 FR 1111). The Agency believes that such changes can reduce compliance costs and reduce the paperwork burden associated with a number of its standards. The Agency will only consider such changes if they do not diminish employee protections. To initiate the project, OSHA will be publishing an advance notice of proposed rulemaking (ANPRM) to solicit input from the public on rules that may be addressed in Phase III of SIPs. The Agency plans to include both safety and health topics in Phase III.

**Timetable:**

| Action         | Date     | FR Cite     |
|----------------|----------|-------------|
| ANPRM          | 12/21/06 | 71 FR 76623 |
| Analyze Record | 04/00/07 |             |

### Regulatory Flexibility Analysis Required: Undetermined

**Government Levels Affected:** Undetermined

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**RIN:** 1218-AC19

## DOL—OSHA

## Proposed Rule Stage

**1837. HAZARD COMMUNICATION****Priority:** Other Significant**Legal Authority:** 29 USC 655(b); 29 USC 657**CFR Citation:** 29 CFR 1910.1200; 29 CFR 1915.1200; 29 CFR 1917.28; 29 CFR 1918.90; 29 CFR 1926.59; 29 CFR 1928.21**Legal Deadline:** None

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

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

with the complexities and costs involved.

As a result of this situation, and in recognition of the extensive international trade in chemicals, there has been a longstanding effort to harmonize these requirements and develop a system that can be used around the world. In 2003, the United Nations adopted the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Countries are now considering adoption of the GHS into their national regulatory systems. There is an international goal to have as many countries as possible implement the GHS by 2008. OSHA is considering modifying its HCS to make it consistent with the GHS. This would involve changing the criteria for classifying health and physical hazards, adopting standardized labeling requirements, and requiring a standardized order of information for safety data sheets.

**Statement of Need:** Multiple sets of requirements for labels and safety data sheets present a compliance burden for U.S. manufacturers, distributors and transports involved in international trade. Adoption of the GHS would facilitate international trade in chemicals, reduce the burdens caused by having to comply with differing requirements for the same product, and allow companies that have not had the resources to deal with those burdens to be involved in international trade. This is particularly important for small producers who may be precluded currently from international trade because of the compliance resources required to address the extensive regulatory requirements for classification and labeling of chemicals. Thus every producer is likely to experience some benefits from domestic harmonization, in addition to the benefits that will accrue to producers involved in international trade.

Additionally, comprehensibility of hazard information will be enhanced as the GHS will: (1) Provide consistent information and definitions for hazardous chemicals; (2) address stakeholder concerns regarding the need for a standardized format for material safety data sheets; and (3) increase understanding by using standardized pictograms and harmonized hazard statements.

Several nations, as well as the European Union, are preparing

proposals for adoption of the GHS. US manufacturers, employers, and employees will be at a disadvantage in the event that our system of hazard communication is not compliant with the GHS.

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

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

**Anticipated Cost and Benefits:** The estimates of the costs and benefits are still under development.

**Risks:** OSHA's risk analysis is under development.

**Timetable:**

| Action                                    | Date     | FR Cite     |
|---|----------|-------------|
| ANPRM                                     | 09/12/06 | 71 FR 53617 |
| ANPRM Comment Period End                  | 11/13/06 |             |
| Complete Peer Review of Economic Analysis | 08/00/07 |             |

**Regulatory Flexibility Analysis****Required:** Undetermined**Government Levels Affected:** None

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**RIN:** 1218-AC20**1838. NATIONALLY RECOGNIZED TESTING LABORATORIES FEE SCHEDULE – REVISED APPROACH**

**Priority:** Info./Admin./Other. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 31 USC 9701; 29 USC 653; 29 USC 655; 29 USC 657

**CFR Citation:** Not Yet Determined**Legal Deadline:** None

**Abstract:** The Occupational Safety and Health Administration is proposing to adjust the fees that the Agency charges



## DOL—OSHA

## Proposed Rule Stage

for the services it provides to Nationally Recognized Testing Laboratories (NRTLs). A number of OSHA standards require that certain products and equipment used in the workplace be tested and certified by an organization that has been recognized by OSHA. OSHA requires NRTL applicants to provide detailed and comprehensive information about their programs, processes, and procedures in writing when they apply. OSHA reviews the written information and conducts an on-site assessment to determine whether the organization meets the requirements of 29 CFR 1910.7. OSHA uses a similar process when an NRTL applies for expansion or renewal of its recognition. In addition, the Agency conducts annual audits to ensure that the recognized laboratories maintain their programs

and continue to meet the recognition requirements.

In 2000, OSHA began charging NRTLs for the services it provides them. The services are processing of NRTL applications and audits of NRTL operations, and they define the fundamental functions of the NRTL Program. OSHA has determined that its current NRTL fee schedule does not recoup the full costs of the services performed because it does not recover certain indirect costs of those services. These indirect costs stem from attendant activities and accrue to the benefit of those services. OSHA's proposed fee schedule would account for these indirect costs. In determining the revised fee structure, OSHA will follow the guidelines established by the Office of Management and Budget in Circular Number A-25.

**Timetable:**

| Action | Date     | FR Cite |
|--------|----------|---------|
| NPRM   | 07/00/07 |         |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

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**RIN:** 1218-AC27

## Department of Labor (DOL)

## Final Rule Stage

## Occupational Safety and Health Administration (OSHA)

**1839. 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 February 13, 2004, and an informal public hearing was held on July 29 to 30, 2004. The rulemaking record was open through November 30, 2004. Subsequently, new information was submitted to the docket. The Administrative Law Judge gave hearing participants 45 days to review this

information and comment on it. Comments were due June 27, 2005. The Agency is analyzing the information and comments received to prepare the final action.

**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                     | 07/29/04 | 69 FR 19361 |
| Final Action                       | 12/00/07 |             |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

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**RIN:** 1218-AA56

**1840. ELECTRIC POWER TRANSMISSION AND DISTRIBUTION; ELECTRICAL PROTECTIVE EQUIPMENT**

**Priority:** Economically Significant. Major under 5 USC 801.

**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 has developed a revision of this standard that will prevent many of these fatalities, add flexibility to the standard, and update and streamline the standard. OSHA also intends to amend the corresponding standard for general industry so that requirements for work performed during the maintenance of electric power transmission and distribution installations are the same as those for similar work in construction. In addition, OSHA will be revising a few

## DOL—OSHA

## Final Rule Stage

miscellaneous general industry requirements primarily affecting electric transmission and distribution work, including provisions on electrical protective equipment and foot protection. This rulemaking also addresses fall protection in aerial lifts for power generation, transmission and distribution work. OSHA published an NPRM on June 15, 2005. A public hearing was held March 6 to 14, 2006.

**Timetable:**

| Action                                | Date     | FR Cite     |
|---------------------------------------|----------|-------------|
| SBREFA Report                         | 06/30/03 |             |
| NPRM                                  | 06/15/05 | 70 FR 34821 |
| NPRM Comment Period End               | 10/13/05 |             |
| Comment Period Extended to 01/11/2006 | 10/12/05 | 70 FR 59290 |
| Public Hearing to be held 03/06/2006  | 10/12/05 | 70 FR 59290 |
| Post-Hearing Comment Period End       | 07/14/06 |             |
| Final Action                          | 01/00/08 |             |

**Regulatory Flexibility Analysis**

**Required:** Yes

**Small Entities Affected:** Businesses

**Government Levels Affected:** Local

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**RIN:** 1218-AB67

**1841. 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. In 1999, OSHA proposed to require employers to pay for PPE, with a few exceptions. The Agency continues to consider how to address this issue, and re-opened the record on July 8, 2004, to get input on issues related to PPE considered to be a "tool of the trade." The comment period ended August 23, 2004.

**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 | 07/08/04 | 69 FR 41221 |
| Comment Period End          | 08/23/04 |             |
| Final Action                | 11/00/07 |             |

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** Businesses

**Government Levels Affected:** Federal, Local, State

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**RIN:** 1218-AB77

**1842. PROCEDURES FOR HANDLING DISCRIMINATION COMPLAINTS UNDER FEDERAL EMPLOYEE PROTECTION STATUTES**

**Priority:** Other Significant

**Legal Authority:** 42 USC 300j-9(i); 33 USC 1367; 15 USC 2622; 42 USC 6971;

42 USC 7622; 42 USC 9610; 42 USC 5851;

**CFR Citation:** 29 CFR 24

**Legal Deadline:** None

**Abstract:** Section 629, the employee protection provision of the Energy Policy Act of 2005 amended the Energy Reorganization Act of 1978, 42 U.S.C. section 5851. The amendments add Department of Energy and Nuclear Regulatory Commission employees to the employees covered under the Act, as are contractors and subcontractors of the Commission. In addition, Congress added a "kick-out" provision allowing the complainant to remove the complaint to District Court if the Secretary of Labor has not issued a final decision within a year of the filing of the complaint. These are significant changes to the ERA, necessitating immediate revision of the regulations, 29 CFR part 24, Procedures for the Handling of Discrimination Complaints under Federal Employee Protection Statutes, which governs whistleblower investigations under the Energy Reorganization Act of 1978 as well as under the six EPA statutes.

**Timetable:**

| Action                                | Date     | FR Cite |
|---------------------------------------|----------|---------|
| Interim Final Rule                    | 04/00/07 |         |
| Interim Final Rule Comment Period End | 04/00/07 |         |

**Regulatory Flexibility Analysis**

**Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

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**RIN:** 1218-AC25

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

**Long-Term Actions**

**1843. 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. As a result of the comments received on that notice, OSHA has determined that the rule proposed in 1990 is out-of-date and does not reflect current industry practice or technology. The Agency will develop a new proposal, modified to reflect current information, as well as re-assess the impact.

**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 |

| Action             | Date     | FR Cite     |
|--------------------|----------|-------------|
| Reopen Record      | 05/02/03 | 68 FR 23527 |
| Comment Period End | 07/31/03 |             |
| NPRM               | 04/00/08 |             |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** None

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**RIN:** 1218-AB80

**1844. 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. Work continues on collecting and analyzing information to determine technological and economic feasibility of possible approaches.

**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     |             |
| Next Action                    | Undetermined |             |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** None

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**RIN:** 1218-AB89

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

**Completed Actions**

**1845. REVISION AND UPDATE OF SUBPART S—ELECTRICAL STANDARDS**

**Priority:** Other Significant

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

**CFR Citation:** 29 CFR 1910

**Legal Deadline:** None

**Abstract:** The Occupational Safety and Health Administration (OSHA) proposed to revise and update its 29 CFR 1910 subpart S—Electrical Standards. OSHA relied heavily on 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. An NPRM was published on April 5, 2004. The first stage covers 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. OSHA has evaluated public comment received in response to the NPRM, and a final action is being prepared.

**Timetable:**

| Action                  | Date     | FR Cite     |
|-------------------------|----------|-------------|
| NPRM                    | 04/05/04 | 69 FR 17773 |
| NPRM Comment Period End | 06/04/04 |             |

## DOL—OSHA

## Completed Actions

| Action                 | Date     | FR Cite    |
|------------------------|----------|------------|
| Final Rule             | 02/14/07 | 72 FR 7136 |
| Final Action Effective | 08/13/07 |            |

**Regulatory Flexibility Analysis****Required:** No**Government Levels Affected:** None

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**RIN:** 1218-AB95**1846. EXCAVATIONS (SECTION 610 REVIEW)****Priority:** Substantive, Nonsignificant**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 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.

**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           | 03/29/07 | 72 FR 14727 |

**Regulatory Flexibility Analysis****Required:** No**Government Levels Affected:** None

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**RIN:** 1218-AC02**1847. NFPA STANDARDS IN SHIPYARD FIRE PROTECTION****Priority:** Substantive, Nonsignificant**Legal Authority:** 29 USC 655(b); 29 USC 657**CFR Citation:** 29 CFR 1915.4; 29 CFR 1915.505; 29 CFR 1915.507**Legal Deadline:** None

**Abstract:** In this rulemaking, OSHA is updating National Fire Protection Association (NFPA) standards incorporated by reference in the OSHA 29 CFR part 1915 subpart P fire protection standards. OSHA published a final rule for subpart P in 2004 that included nine NFPA standards that have been updated since the rule was proposed. OSHA plans to issue a direct final rulemaking, along with a notice of proposed rulemaking, to update the NFPA standards.

**Timetable:**

| Action                      | Date     | FR Cite     |
|-----------------------------|----------|-------------|
| NPRM                        | 10/17/06 | 71 FR 60932 |
| Direct Final Rule           | 10/17/06 | 71 FR 60843 |
| NPRM Comment Period End     | 11/16/06 |             |
| Review Comments             | 12/29/06 |             |
| Direct Final Rule Effective | 01/16/07 | 72 FR 7     |

**Regulatory Flexibility Analysis****Required:** No**Government Levels Affected:** None

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**RIN:** 1218-AC16**1848. NOTICE ON SUPPLIER'S DECLARATION OF CONFORMITY (SDOC)****Priority:** Info./Admin./Other**Legal Authority:** 29 USC 655(b)**CFR Citation:** 29 CFR 1910**Legal Deadline:** None

**Abstract:** OSHA requested information and comments on a specific proposal submitted to OSHA to permit the use of a Supplier's Declaration of Conformity (SDoC) as part of, or as an alternative to, the Nationally Recognized Testing Laboratories (NRTLs) product approval process. NRTLs are third-party (i.e., independent) organizations, and many of OSHA's workplace standards require that certain types of equipment be approved by an NRTL. Under SDoC, manufacturers self-approve their products.

Based upon the review and analysis of the information gathered during the RFI process, OSHA has confirmed that its third-party approval requirements are effective in safeguarding product safety in the workplace. OSHA has decided to take no further action on the proposal and to withdraw this agenda item from the Regulatory Agenda.

**Timetable:**

| Action                  | Date     | FR Cite     |
|-------------------------|----------|-------------|
| Request for Information | 11/15/05 | 70 FR 69355 |
| RFI Comment Period End  | 02/13/06 |             |
| Review Comments         | 11/01/06 |             |
| End Review              | 11/01/06 |             |
| Withdrawn               | 12/29/06 |             |

**Regulatory Flexibility Analysis****Required:** No**Small Entities Affected:** No**Government Levels Affected:** None

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**RIN:** 1218-AC21

## Department of Labor (DOL)

Final Rule Stage

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

**1849. JOBS FOR VETERANS ACT OF 2002: CONTRACT THRESHOLD AND ELIGIBILITY GROUPS FOR FEDERAL CONTRACTOR PROGRAM****Priority:** Other Significant**Legal Authority:** 38 USC 4212(d) 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 3-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 9 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   | 08/08/06 | 71 FR 44945 |

| Action                  | Date     | FR Cite |
|-------------------------|----------|---------|
| NPRM Comment Period End | 10/10/06 |         |
| Final Action            | 07/00/07 |         |

**Regulatory Flexibility Analysis Required:** No**Small Entities Affected:** Businesses, Organizations**Government Levels Affected:** None

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**RIN:** 1293-AA12

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