



# Federal Register

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**Monday,  
November 24, 2008**

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**Part IX**

**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 October 2008 and October 2009, 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.

In addition, beginning with the fall 2007 edition, the Internet will be the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at [www.reginfo.gov](http://www.reginfo.gov), in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

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**

- Methylene Chloride (RIN 1218-AC23)
- Bloodborne Pathogens (RIN 1218-AC34)

**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.

For this edition of the Department of Labor's regulatory agenda, the most important significant regulatory actions and a Statement of Regulatory Priorities are included in The Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** that includes the Unified Agenda.

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

**Employment Standards Administration—Final Rule Stage**

Sequence Number	Title	Regulation Identifier Number
370	Labor Organization Annual Financial Reports .....	1215-AB62

**DOL**

Employee Benefits Security Administration—Prerule Stage

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

Employee Benefits Security Administration—Final Rule Stage

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

Mine Safety and Health Administration—Prerule Stage

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

Occupational Safety and Health Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
374	Occupational Exposure to Crystalline Silica ( <b>Reg Plan Seq No. 87</b> ) .....	1218-AB70
375	Occupational Exposure to Beryllium .....	1218-AB76
376	Methylene Chloride ( <b>Section 610 Review</b> ) .....	1218-AC23
377	Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl .....	1218-AC33
378	Bloodborne Pathogens (610 Review) ( <b>Section 610 Review</b> ) .....	1218-AC34

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

Occupational Safety and Health Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
379	Confined Spaces in Construction Preventing Suffocation/Explosions in Confined Spaces .....	1218-AB47
380	Electric Power Transmission and Distribution; Electrical Protective Equipment .....	1218-AB67
381	Cranes and Derricks ( <b>Reg Plan Seq No. 88</b> ) .....	1218-AC01

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

**Department of Labor (DOL)**

**Final Rule Stage**

**Employment Standards Administration (ESA)**

**370. LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS**

**Legal Authority:** 29 USC 431(b); 29 USC 438

**Abstract:** The Department of Labor’s Employment Standards Administration proposes to establish standards and procedures by which the Office of Labor Management Standards, pursuant to section 208 of the Labor Management Reporting and Disclosure Act (LMRDA),

29 U.S.C. 438, may revoke the privilege of a labor organization to file a simplified annual financial disclosure report, Form LM-3, and instead require it to file the more detailed Form LM-2. The Department proposes to revise Form LM-2. The proposed revisions will improve financial disclosure and clarity within categories of receipts and disbursements.

**Timetable:**

Action	Date	FR Cite
NPRM	05/12/08	73 FR 27346
NPRM Comment Period End	06/26/08	
NPRM Comment Period Extended	07/11/08	73 FR 3491
Final Rule	01/00/09	

**Regulatory Flexibility Analysis Required:** Yes

## DOL—ESA

Final Rule Stage

**Agency Contact:** Denise Boucher,  
Director, Office of Policy, Reports and  
Disclosure, Department of Labor,  
Employment Standards Administration,

200 Constitution Avenue NW., FP  
Building, Room N-5609, Washington,  
DC 20210  
Phone: 202 693-1185

TDD Phone: 800 877-8399  
Fax: 202 693-1340  
Email: boucher.denise@dol.gov  
**RIN:** 1215-AB62

## Department of Labor (DOL)

Prerule Stage

## Employee Benefits Security Administration (EBSA)

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

**Legal Authority:** 29 USC 1135

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

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

**Timetable:**

Action	Date	FR Cite
Begin Review	03/01/06	
End Review	12/00/08	

**Regulatory Flexibility Analysis Required:** Undetermined

**Agency Contact:** Melissa R. Dennis,  
Pension Law Specialist, Department of  
Labor, Employee Benefits Security  
Administration, 200 Constitution  
Avenue NW., FP Building, Room  
N5655, Washington, DC 20210  
Phone: 202 693-8500  
Fax: 202 219-7291

**RIN:** 1210-AB11

## Department of Labor (DOL)

Final Rule Stage

## Employee Benefits Security Administration (EBSA)

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

**Legal Authority:** 29 USC 1135

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

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

**Timetable:**

Action	Date	FR Cite
NPRM	02/29/08	73 FR 11072
NPRM Comment Period End	04/29/08	
Final Action	12/00/08	

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Louis J. Campagna,  
Chief, Division of Fiduciary  
Interpretations, Department of Labor,  
Employee Benefits Security  
Administration, 200 Constitution  
Avenue NW., Room N5655, FP  
Building, Washington, DC 20210  
Phone: 202 693-8510  
Fax: 202 219-7291

**RIN:** 1210-AB02

## Department of Labor (DOL)

Prerule Stage

## Mine Safety and Health Administration (MSHA)

**373. • EXPLOSIVES AND BLASTING (SECTION 610 REVIEW)**

**Legal Authority:** 30 USC 811

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

**Timetable:**

Action	Date	FR Cite
ANPRM	05/00/09	

**Regulatory Flexibility Analysis Required:** Undetermined

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

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

**RIN:** 1219-AB62

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

Prerule Stage

**374. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA**

**Regulatory Plan:** This entry is Seq. No. 87 in part II of this issue of the **Federal Register**.

**RIN:** 1218-AB70

**375. OCCUPATIONAL EXPOSURE TO BERYLLIUM**

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

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

On November 26, 2002, OSHA published a Request for Information (RFI) (67 FR 70707) to solicit information pertinent to occupational exposure to beryllium including: Current exposures to beryllium; the relationship between exposure to beryllium and the development of adverse health effects; exposure assessment and monitoring methods; exposure control methods; and medical surveillance. In addition, the Agency conducted field surveys of selected work sites to assess current exposures and control methods being used to reduce employee exposures to beryllium. OSHA is planning to use 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
SBREFA Report Completed	01/23/08	
Complete Peer Review of Health Effects and Risk Assessment	03/00/09	

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dorothy Dougherty, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N3718, Washington, DC 20210

Phone: 202 693-1950  
 Fax: 202 693-1678  
 Email: dougherty.dorothy@dol.gov

**RIN:** 1218-AB76

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

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

**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	07/10/07	72 FR 37501
Comment Period End	10/09/07	
Reopen Comment Period	01/08/08	73 FR 1299
Comment Period End	03/10/08	
End Review	05/00/09	

**Regulatory Flexibility Analysis Required:** No

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

**RIN:** 1218-AC23

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

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

**Abstract:** On July 26, 2006, the United Food and Commercial Workers International Union (UFCW) and the International Brotherhood of Teamsters (IBT) petitioned DOL for an Emergency Temporary Standard (ETS) for all employees exposed to diacetyl, a major component in artificial butter flavoring.

Diacetyl and a number of other volatile organic compounds are used to manufacture artificial butter food flavorings. These food flavorings are used by various food manufacturers in a multitude of food products including microwave popcorn, certain bakery goods, and some snack foods. OSHA denied the petition on September 25, 2007, but has initiated 6(b) rulemaking.

Evidence from NIOSH and other sources indicated that employee exposure to diacetyl and food flavorings containing diacetyl is associated with bronchiolitis obliterans, a debilitating and potentially fatal disease of the small airways in the lung. Severe obstructive airway disease has been observed in the microwave popcorn industry and in food flavoring manufacturing plants. Experimental evidence has shown that inhalation exposure to artificial butter flavoring vapors and diacetyl damaged tissue lining, the nose, and airways of rats and mice.

**Timetable:**

Action	Date	FR Cite
Stakeholder Meeting	10/17/07	72 FR 54619
ANPRM	11/00/08	
Complete SBREFA Report	02/00/09	

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dorothy Dougherty, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N3718, Washington, DC 20210  
 Phone: 202 693-1950  
 Fax: 202 693-1678  
 Email: dougherty.dorothy@dol.gov  
**RIN:** 1218-AC33

**378. • BLOODBORNE PATHOGENS (610 REVIEW) (SECTION 610 REVIEW)**

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

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

## DOL—OSHA

## Prerule Stage

economic conditions or other factors may have changed since the rule was evaluated.

**Timetable:**

Action	Date	FR Cite
Begin Review	12/00/08	

Action	Date	FR Cite
Request For Comments	03/00/09	
<b>Regulatory Flexibility Analysis Required:</b> No		
<b>Agency Contact:</b> John Smith, Directorate of Evaluation and Analysis,		

Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N 3641, Washington, DC 20210  
 Phone: 202 693-2400  
 Fax: 202 693-1641  
 Email: smith.john@dol.gov  
**RIN:** 1218-AC34

## Department of Labor (DOL)

## Proposed Rule Stage

## Occupational Safety and Health Administration (OSHA)

**379. CONFINED SPACES IN CONSTRUCTION PREVENTING SUFFOCATION/EXPLOSIONS IN CONFINED SPACES**

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

**Abstract:** In January 1993, OSHA issued a general industry rule to protect employees who enter confined spaces (29 CFR 1910.146). This standard does not apply to the construction industry because of differences in the nature of the worksite in the construction industry. In discussions with the United Steel Workers of America on a settlement agreement for the general industry standard, OSHA agreed to issue a proposed rule to extend confined-space protection to construction workers appropriate to their work environment.

**Timetable:**

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

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Noah Connell, Acting Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room North 3467, Washington, DC 20210  
 Phone: 202 693-2020  
 Fax: 202 693-1689

**RIN:** 1218-AB47

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

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

**Abstract:** Electrical hazards are a major cause of occupational death in the United States. The annual fatality rate for power line workers is about 50 deaths per 100,000 employees. The construction industry standard addressing the safety of these workers during the construction of electric power transmission and distribution lines is over 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 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. OSHA reopened the record to gather additional information on minimum approach distances.

**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	10/12/05	70 FR 59290
Public Hearing to be held	10/12/05	70 FR 59290
Post-Hearing Comment Period End	07/14/06	
Reopen Record	10/22/08	73 FR 62942
Comment Period End	11/21/08	
Close Record	11/21/08	
Analyze Record	02/00/09	

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dorothy Dougherty, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N3718, Washington, DC 20210  
 Phone: 202 693-1950  
 Fax: 202 693-1678  
 Email: dougherty.dorothy@dol.gov

**RIN:** 1218-AB67

**381. CRANES AND DERRICKS**

**Regulatory Plan:** This entry is Seq. No. 88 in part II of this issue of the **Federal Register**.

**RIN:** 1218-AC01

[FR Doc. E8-21258 Filed 11-21-08; 8:45 am]

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