

## DEPARTMENT OF LABOR

### Fall 2011 Statement of Regulatory Priorities

The Department of Labor's fall 2011 agenda continues Secretary Solis' vision of *Good Jobs for Everyone*. It also renews the Labor Department's commitment to efficient and effective regulation through the review and modification of our existing regulations, consistent with Executive Order 13563 ("E.O. 13563").

The Labor Department's vision of a "good job" includes jobs that:

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

The Department continues to use a variety of mechanisms to achieve the goal of *Good Jobs for Everyone*, including increased enforcement actions, increased education and outreach, and regulatory actions that foster compliance. At the same time, the Department is enhancing the efficiency and effectiveness of its efforts through targeted regulatory actions designed to improve compliance while reducing regulatory burdens. The Department's Plan/Prevent/Protect and Openness and Transparency compliance strategies and the implementation of E.O. 13563 create unifying themes that seek to foster a new calculus that strengthens protections for workers. By requiring employers and other regulated entities to take full ownership over their adherence to Department regulations and promoting greater openness and transparency to put workers in a better position to judge whether their workplace is one that values health and safety, work-life balance, and diversity, the Department seeks to significantly increase compliance. The increased effectiveness of this compliance strategy will enable the Department to achieve the *Good Jobs for Everyone* goal in a regulatory environment that is more efficient and less burdensome.

### Plan/Prevent/Protect Compliance Strategy

The Department has already published several regulatory actions toward the completion of requirements that employers develop programs to address specific issues of worker protection, security, and equity. Some of these issues have included controlling the spread of infectious diseases, examining work areas in underground coal mines for mandatory violations, and identifying patterns of violations in mines. The collection of regulatory actions in the Department's Plan/Prevent/Protect strategy is designed to ensure employers and other regulated entities are in full compliance with the law every day, not just when Department inspectors come calling. As announced with the spring 2010 regulatory agenda, this strategy requires employers and other regulated entities to:

*Plan!* Create a plan for identifying and remediating risks of legal violations and other risks to workers; for example, a plan to inspect their workplaces for safety hazards that might injure or kill workers. Workers will be given opportunities to participate in the creation of the plans. In addition, the plans would be made available to workers so they can fully understand them and help to monitor their implementation.

*Prevent!* Thoroughly and completely implement the plan in a manner that prevents legal violations. The plan cannot be a mere paper process. This will not be an exercise in drafting a plan only to put it on a shelf. The

plan must be fully implemented.

*Protect:* Verify on a regular basis that the plan's objectives are being met. The plan must actually protect workers from health and safety risks and other violations of their workplace rights.

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

In the fall 2011 regulatory agenda, the Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA), and the Office of Federal Contract Compliance Programs (OFCCP) will all propose regulatory actions furthering the Department's implementation of the Plan/Prevent/Protect strategy.

### **Openness and Transparency: Tools for Achieving Compliance**

Greater openness and transparency continues to be central to the Department's compliance and regulatory strategies. The fall 2011 regulatory plan demonstrates the Department's continued commitment to conducting the people's business with openness and transparency, not only as good Government and stakeholder engagement strategies, but as important means to achieve compliance with the employment laws administered and enforced by the Department. Openness and transparency will not only enhance agencies' enforcement actions but will encourage greater levels of compliance by the regulated community and enhance awareness among workers of their rights and benefits. When employers, unions, workers, advocates, and members of the public have greater access to information concerning workplace conditions and expectations, then we all become partners in the endeavor to create *Good Jobs for Everyone*.

### **Worker Protection Responsiveness**

The Department believes Plan/Prevent/Protect and increased Openness and Transparency will result in improvements to worker health and safety. However, when the Department identifies specific hazards and risks to worker health, safety, security, or fairness, we will utilize our regulatory powers to limit the risk to workers. The fall 2011 regulatory plan includes examples of such regulatory initiatives to address such specific concerns.

MSHA is planning regulatory initiatives to respond to specific health and safety needs of workers: (1) MSHA plans to finalize the standard Lowering Miners' Exposure to Coal Mine Dust, including Continuous Personal Dust Monitors in April 2012; and (2) MSHA plans to finalize the rule covering Examinations of Work Areas in Underground Coal Mines in March 2012.

Workers across many industries face serious hazards from vehicles perform backing maneuvers and from equipment that can pin, crush, or strike. OSHA and MSHA will both publish regulatory actions concerning these hazards.

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

### **Retrospective Review of Existing Rules**

**Pursuant to section 6 of Executive Order 13563 "Improving Regulation and Regulatory Review" (Jan.**

18, 2011), the following Regulatory Identifier Numbers (RINs) have been identified as associated with retrospective review and analysis in the Department's final retrospective review of regulations plan. Some of these entries on this list may be completed actions, which do not appear in The Regulatory Plan. However, more information can be found about these completed rulemakings in past publications of the Unified Agenda on [Reginfo.gov](http://www.reginfo.gov) in the Completed Actions section for that agency. These rulemakings can also be found on [Regulations.gov](http://www.regulations.gov). The final agency plans can be found at: <http://www.dol.gov/regulations/EO13563Plan.pdf>

<b>Regulatory Identifier Number</b>	<b>Title of Rulemaking</b>	<b>Whether It Is Expected to Significantly Reduce Burdens on Small Businesses</b>
1218-AC20	Hazard Communication	Yes
1218-AC34	Bloodborne Pathogens	No
1218-AC64; 1218-AC65	Updating OSHA Standards Based on National Consensus Standards-Acetylene and Personal Protective Equipment	No
1218-AC67	Standard Improvement Project-Phase IV (SIP IV)	To be determined
1218-AC75	Cranes and Derricks in Construction: Revision to Digger Derricks' Requirements	No
1218-AC74	Review/Lookback of OSHA Chemical Standards	To be determined
1219-AB72	Criteria and Procedures for Proposed Assessment of Civil Penalties (Part 100)	To be determined
1250-AA05	Sex Discrimination Guidelines	To be determined
1210-AB47	Amendment of Abandoned Plan Program	Yes
1205-AB59	Equal Employment Opportunity in Apprenticeship and Training, Amendment of Regulations	To be determined

The fall 2011 regulatory agenda aims to achieve more efficient and less burdensome regulation through our renewed commitment to conduct retrospective reviews of regulations. On January 18, 2011, the President issued Executive Order (E.O.) 13563 entitled "Improving Regulation and Regulatory Review." The E.O. aims to "strike the right balance" between what is needed to protect health, welfare, safety, and the environment for all Americans, and what we need to foster economic growth, job creation, and competitiveness.

In August 2011, as part of a Governmentwide response to E.O. 13563, the Department published its Plan for Retrospective Analysis of Existing Rules, which identifies several burden-reducing review projects. For example, OSHA's Standards Improvement Project III (SIP III) rulemaking achieved a 1.9 million burden hour reduction, and we anticipate that OSHA's SIP IV project will similarly yield savings for employers. OSHA's Hazard Communication/Globally Harmonized System for Classification and Labeling of Chemicals proposal has estimated savings for employers ranging from \$585 million to \$792.7 million. Based on preliminary estimates, EBSA's Abandoned Plan Program amendments may reduce costs by approximately \$1.12 million. These projects estimate monetized savings that would eliminate roughly between \$580 to \$790 million in annual regulatory burdens.

The Plan also formalizes the development of this semiannual regulatory agenda as a system through which the Department identifies potential regulations for review. This regulatory agenda provides public notice of the Department's intention to initiate or continue work on approximately 10 review projects; more than 13 percent of all of the Department's planned regulatory actions.

### **Occupational Safety and Health Administration (OSHA)**

OSHA's regulatory program is designed to help workers and employers identify hazards in the workplace,

prevent the occurrence of injuries and adverse health effects, and communicate with the regulated community regarding hazards and how to effectively control them. Long-recognized health hazards and emerging hazards place American workers at risk of serious disease and death and are initiatives on OSHA's regulatory agenda. In addition to targeting specific hazards, OSHA is focusing on systematic processes that will modernize the culture of safety in America's workplaces and retrospective review projects that will update regulations and reduce burdens on regulated communities. OSHA's retrospective review projects under E.O.13563 include consideration of the Bloodborne Pathogens standard, updating consensus standards, phase IV of OSHA's standard improvement project (SIP IV), and reviewing various permissible exposure levels.

### *Plan/Prevent/Protect*

#### Infectious Diseases

OSHA is considering the need for regulatory action to address the risk to workers exposed to infectious diseases in healthcare and other related high-risk environments. OSHA is interested in all routes of infectious disease transmission in healthcare settings not already covered by its bloodborne pathogens standard (e.g. contact, droplet, and airborne). The Agency is particularly concerned by studies that indicate that transmission of infectious diseases to both patients and healthcare workers may be occurring as a result of incomplete adherence to recognized, but voluntary, infection control measures. The Agency is considering an approach that would combine elements of the Department's Plan/Prevent/Protect strategy with established infection control practices. The Agency received strong stakeholder participation in response to its May 2010 request for information and July 2011 stakeholder meetings.

In 2007, the healthcare and social assistance sector as a whole had 16.5 million employees. Healthcare workplaces can range from small, private practices of physicians to hospitals that employ thousands of workers. In addition, healthcare is increasingly being provided in other settings such as nursing homes, free-standing surgical and outpatient centers, emergency care clinics, patients' homes, and pre-hospitalization emergency care settings. OSHA is concerned with the movement of healthcare delivery from the traditional hospital setting, with its greater infrastructure and resources to effectively implement infection control measures, into more diverse and smaller workplace settings with less infrastructure and fewer resources, but with an expanding worker population.

#### Injury and illness Prevention Program (12P2)

OSHA's Injury and Illness Prevention Program is the prototype for the Department's Plan/Prevent/Protect strategy. OSHA's first step in this important rulemaking was to hold stakeholder meetings. Stakeholder meetings were held in East Brunswick, New Jersey; Dallas, Texas; Washington, DC; and Sacramento, California, beginning in June 2010 and ending in August 2010. More than 200 stakeholders participated in these meetings, and in addition, nearly 300 stakeholders attended as observers. The proposed rule will explore requiring employers to provide their employees with opportunities to participate in the development and implementation of an injury and illness prevention program, including a systematic process to proactively and continuously address workplace safety and health hazards. This rule will involve planning, implementing, evaluating, and improving processes and activities that promote worker safety and health hazards. OSHA has substantial evidence showing that employers that have implemented similar injury and illness prevention programs have significantly reduced injuries and illnesses in their workplaces. The new rule would build on OSHA's existing Safety and Health Program Management Guidelines and lessons learned from successful approaches and best practices that have been applied by companies participating in OSHA's Voluntary Protection Program and Safety and Health Achievement Recognition Program, and similar industry and international initiatives.

### *Openness and Transparency*

## Modernizing Recordkeeping

OSHA held informal meetings to gather information from experts and stakeholders regarding the modification of its current injury and illness data collection system that will help the agency, employers, employees, researchers, and the public prevent workplace injuries and illnesses, as well as support President Obama's Open Government Initiative. Under the proposed rule, OSHA will explore requiring employers to electronically submit to the Agency data required by part 1904 (Recording and Reporting Occupational Injuries). The proposed rule will enable OSHA to conduct data collections ranging from the periodic collection of all part 1904 data from a handful of employers to the annual collection of summary data from many employers. OSHA learned from stakeholders that most large employers already maintain their part 1904 data electronically; as a result, electronic submission will constitute a minimal burden on these employers, while providing a wealth of data to help OSHA, employers, employees, researchers, and the public prevent workplace injuries and illnesses. The proposed rule also does not add to or change the recording criteria or definitions in part 1904. The proposed rule only modifies employers' obligations to transmit information from these records to OSHA.

**Whistleblower Protection Regulations** The ability of workers to speak out and exercise their legal rights without fear of retaliation is essential to many of the legal protections and safeguards that all Americans value. Whether the goal is the safety of our food, drugs, or workplaces, the integrity of our financial system, or the security of our transportation systems, whistleblowers have been essential to ensuring that our laws are fully and fairly executed. In the fall regulatory agenda, OSHA proposes to issue procedural rules that will establish consistent and transparent procedures for the filing of whistleblower complaints under eight statutes. They include procedures for handling employee retaliation complaints filed under the:

- National Transit System Security Act, and Federal Railroad Safety Act, as amended by the Implementing Recommendations of the 9/11 Commission Act
- Surface Transportation Assistance Act, as amended by the Implementing Recommendations of the 9/11 Commission Act
- Consumer Product Safety Improvement Act
- Consumer Financial Protection Act of 2010, and section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
- Sarbanes Oxley Act, as amended by section 922 (b) and (c) and section 929A of the Dodd-Frank Wall Street Reform and Consumer Protection Act
- Affordable Care Act
- Seaman's Protection Act
- FDA Food Safety Modernization Act

These procedural rules will strengthen OSHA's enforcement of its whistleblower program by providing specific timeframes and guidance for filing a complaint with OSHA, issuing a finding, avenues of appeal, and allowable remedies. OSHA is committed to its whistleblower program and to ensuring that all America's workers have a voice in the workplace.

## *Addressing Targeted Hazards*

### Silica

In order to target one of the most serious hazards workers face, OSHA is proposing to address worker exposures to crystalline silica through the promulgation and enforcement of a comprehensive health standard. Exposure to silica causes silicosis, a debilitating respiratory disease, and may cause cancer, other chronic respiratory diseases, and renal and autoimmune disease as well. The seriousness of the health hazards associated with silica exposure is demonstrated by the large number of fatalities and disabling illnesses that continue to occur. Over 2 million workers are exposed to crystalline silica in general industry, construction, and maritime industries. Reducing these hazardous exposures through promulgation and enforcement of a comprehensive health standard will contribute to OSHA's goal of reducing occupational fatalities and illnesses. As a part of the Secretary's strategy for securing safe and healthy workplaces, MSHA will also utilize information provided by OSHA to undertake regulatory action related to silica exposure in mines.

### Preventing Backover Injuries and Fatalities

Workers across many industries face a serious hazard when vehicles perform backing maneuvers, especially vehicles with an obstructed view to the rear. OSHA is collecting information on this hazard and researching emerging technologies that may help to reduce this risk. NIOSH reports, for example, that one-half of the fatalities involving construction equipment occur while the equipment is backing. Backing accidents cause at least 60 occupational deaths per year. Emerging technologies that address the risks of backing operations include cameras, radar, and sonar-to help view or detect the presence of workers on foot in blind areas-and new monitoring technology, such as tag-based warning systems that use radio frequency (RFID) and magnetic field generators on equipment to detect electronic tags worn by workers. Along with MSHA, which is developing regulations concerning Proximity Detection Systems, and based on information collected and the Agency's review and research, the Agency may consider rulemaking as an appropriate measure to address this source of employee risk.

### *E.O. 13563*

### Hazard Communication/Globally Harmonized System for Classification and Labeling of Chemicals

The proposed modifications in its NPRM concerning the HCS are expected to benefit employers in two primary ways. First, the harmonization of hazard classifications, safety data sheet (SDSs) formats, and warning labels will yield substantial savings to businesses, once the standard is fully implemented. On the producer side, fewer different SDSs will have to be produced for affected chemicals, and many SDSs will be able to be produced at lower cost due to harmonization and standardization. Second, for users, OSHA expects that they will see reductions in operating costs due to the decreased number of SDSs, the standardization of SDSs that will make it easier to locate information and determine handling requirements, and other factors related to simplification and uniformity that will improve workplace efficiency. Finally, OSHA estimates that the revisions to the HCS will result in reductions in the cost of training employees on the HCS in future periods because standardized SDS and label formats will reduce the amount of time needed to familiarize employees with the HCS and fewer systems will have to be taught since all producers will be using the same system.

OSHA's preliminary estimate is that establishing a harmonized system for the classification and labeling of chemicals will create a substantial annualized savings for employers ranging from \$585 million to \$792.7 million. The majority of these benefits will be realized through increases in productivity for health and safety managers, as well as for logistics personnel with savings ranging from \$475.2 million to \$569 million. Simplifying requirements for hazard communication training are estimated to provide savings up to \$285.3 million. Additionally, establishing uniform safety data sheets and labels will save between \$16 million and \$32.2 million. OSHA plans to publish the final rule in 2012. This rulemaking is economically significant with an estimated annual cost of over \$200 million.

### Bloodborne Pathogens

OSHA will undertake a review of the Bloodborne Pathogen Standard in accordance with the requirements of the Regulatory Flexibility Act, section 5 of Executive Order 12866, and E.O. 13563. 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.

#### Updating OSHA Standards Based on National Consensus Standards--Acetylene and Personal Protective Equipment Standards

Under section 6(a) of the OSH Act, during the first 2 years of the Act, the Agency was directed to adopt national consensus standards as OSHA standards. In the more than 40 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. This project is part of a multi-year project to update OSHA standards that are based on consensus standards.

#### Standard Improvement Project--Phase IV (SIP IV)

OSHA's Standards Improvement Projects (SIPs) are intended to remove or revise duplicative, unnecessary, and inconsistent safety and health standards. The Agency has published three earlier final standards to remove unnecessary provisions, thus reducing costs or paperwork burden on affected employers. The Agency believes that these standards have reduced the compliance costs and eliminated or reduced the paperwork burden for a number of its standards. The Agency only considers such changes to its standards so long as they do not diminish employee protections. The Agency is initiating a fourth rulemaking effort to identify unnecessary or duplicative provisions or paperwork requirements that is limited solely to its construction standards in 29 CFR 1926.

#### Cranes and Derricks in Construction: Revision to Digger Derricks' Requirements

OSHA published its final Cranes and Derricks in Construction Standard in August 2010. Edison Electric Institute (EEI) filed a petition for review challenging several aspects of the standard, including the scope of the exemption for digger derricks. As part of the settlement agreement with EEI, OSHA agreed to publish a direct final rule expanding the scope of a partial exemption for work by digger derricks. In the direct final rule, OSHA will revise the scope provision on digger derricks as an exemption for all work done by digger derricks covered by subpart V of 29 CFR 1926.

#### Review-Lookback of OSHA Chemical Standards

The majority of OSHA's Permissible Exposure Limits (PELs) were adopted in 1971 under section 6(a) of the OSH Act, and only a few have been successfully updated since that time. There is widespread agreement among industry, labor, and professional occupational safety and health organizations that OSHA's PELs are outdated and need revising in order to take into account newer scientific data that indicates that significant occupational health risks exist at levels below OSHA's current PELs. In 1989, OSHA issued a final standard that lowered PELs for over 200 chemicals and added PELs for 164. However, the final rule was challenged and ultimately vacated by the 11<sup>th</sup> Circuit Court of Appeals in 1991 citing deficiencies in OSHA's analyses. Since that time, OSHA has made attempts to examine its outdated PELs in light of the Court's 1991 decision. Most recently, OSHA sought input through a stakeholder meeting and web forum to discuss various approaches that might be used to address its outdated PELs. As part of the Department's Regulatory Review and Lookback Efforts, OSHA is developing a Request for Information (RFI), seeking input from the public to help the Agency identify effective ways to address occupational exposure to chemicals.

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

The Mine Safety and Health Administration is the worker protection agency focused on the prevention of death, disease, and injury from mining and the promotion of safe and healthful workplaces for the Nation's miners. The Department believes that every worker has a right to a safe and healthy workplace. Workers should never have to sacrifice their lives for their livelihood, and all workers deserve to come home to their families at the end of their shift safe and whole. MSHA's approach to reducing workplace fatalities and injuries includes promulgating and enforcing mandatory health and safety standards. MSHA's retrospective review projects under E.O.13563 addresses revising the process for proposing civil penalties.

### *Plan/Prevent/Protect*

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

MSHA plans to issue a proposed rule to address section 303(d) of the Federal Mine Safety and Health Act that requires mine operators to conduct examinations, in areas where miners work or travel, to address violations of standards. The final rule would assure that underground coal mine operators find and fix violations during pre-shift, supplemental, on-shift, and weekly examinations, thereby improving health and safety for miners.

#### Respirable Crystalline Silica Standard

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

#### Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines

MSHA published a proposed rule to address the danger that miners face when working near continuous mining machines in underground coal mines. MSHA has concluded, from investigations of accidents involving mobile equipment and other reports, that action was necessary to protect miners. From 1984 to 2011, there have been 31 fatalities resulting from crushing and pinning accidents involving continuous mining machines. Continuous mining machines can pin, crush, or strike a miner working near the equipment. Proximity detection technology can prevent these types of accidents. Proximity detection systems can be installed on mining machinery to detect the presence of personnel or equipment within a certain distance of the machine. The rule would strengthen the protection for underground miners by reducing the potential for pinning, crushing, or striking hazards associated with working close to continuous mining machines.

#### Proximity Detection Systems for Mobile Machines in Underground Mines

MSHA plans to publish a proposed rule to require underground coal mine operators to equip shuttle cars, coal hauling machines, continuous haulage systems, and scoops with proximity detection systems. Miners working near these machines face pinning, crushing, and striking hazards that have resulted, and continue to result, in accidents involving life threatening injuries and death. The proposal would strengthen protections for miners



by reducing the potential for pinning, crushing, or striking accidents in underground mines.

### *Openness and Transparency*

#### Pattern of Violations

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

MSHA developed an online service that enables mine operators, miners, and others to monitor a mining operation to determine if the mine could be approaching a potential pattern of violations. The web tool contains the specific criteria that MSHA uses to review a mine for a potential pattern of violations. The pattern of violations monitoring tool promotes openness and transparency in government.

#### Notification of Legal Identity

The existing requirements do not provide sufficient information for MSHA to identify all of the mine "operators" responsible for operator safety and health obligations under the Federal Mine Safety and Health Act of 1977, as amended. This proposed regulation would expand the information required to be submitted to MSHA to create more transparent and open records that would allow the Agency to better identify and focus on the most egregious or persistent violators and more effectively deter future violations by imposing penalties and other remedies on those violators.

### *Addressing Targeted Hazards*

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

MSHA will continue its regulatory action related to preventing Black Lung disease. Data from the NIOSH indicate increased prevalence of coal workers pneumoconiosis (CWP) "clusters" in several geographical areas, particularly in the Southern Appalachian Region. MSHA published a notice of proposed rulemaking to address continued risk to coal miners from exposure to respirable coal mine dust. This regulatory action is part of MSHA's Comprehensive Black Lung Reduction Strategy for reducing miners' exposure to respirable dust. This strategy includes enhanced enforcement, education and training, and health outreach and collaboration.

### *E.O. 13563*

#### Criteria and Procedures for Proposed Assessment of Civil Penalties (Part 100)

MSHA plans to publish a proposed rule to revise the process for proposing civil penalties. The assessment of civil penalties is a key component in MSHA's strategy to enforce safety and health standards. 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. MSHA believes that the procedures for assessing civil penalties can be revised to improve the efficiency of the Agency's efforts and to facilitate the resolution of enforcement issues.

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

Through the work of the Office of Federal Contract Compliance Programs, DOL ensures that contractors and subcontractors doing business with the Federal Government at nearly 200,000 establishments take affirmative action to create fair and diverse workplaces. OFCCP also combats discrimination based on race, color, religion, sex, national origin, disability, or status as a protected veteran by ensuring that Federal contractors recruit, hire, train, promote, terminate, and compensate workers in a non-discriminatory manner. DOL, through OFCCP, protects workers, promotes diversity and enforces civil rights laws.

### *Plan/Prevent/Protect*

#### Construction Contractor Affirmative Action Requirements

OFCCP will publish a proposed rule that would enhance the effectiveness of the affirmative action programs of Federal and federally assisted construction contractors and subcontractors. The proposed rule would strengthen affirmative action programs particularly in the areas of recruitment, training, and apprenticeships. The proposed rule would also provide contractors and subcontractors the tools to assess their progress and appropriately tailor their affirmative action plans. The proposed rule would also allow contractors and subcontractors to focus on their affirmative action obligations earlier in the contracting process. OFCCP is coordinating with the Employment and Training Administration (ETA), which is developing a proposed regulation revising the equal opportunity regulatory framework under the National Apprenticeship Act.

### *E.O. 13563*

#### Sex Discrimination Guidelines

The Office of Federal Contract Compliance Programs (OFCCP) is charged with enforcing Executive Order 11246, as amended, which prohibits Federal Government contractors and subcontractors from discriminating against individuals in employment on the basis of race, color, sex, religion, or national origin, and requires them to take affirmative action. OFCCP regulations at 41 CFR part 60-20 set forth the interpretations and guidelines for implementing Executive Order 11246, as amended, in regard to promoting and ensuring equal opportunities for all persons employed or seeking employment with Government contractors and subcontractors without regard to sex. This nondiscrimination requirement also applies to contractors and subcontractors performing under federally assisted construction contracts. The guidance in part 60-20 is more than 30 years old and warrants a regulatory lookback. OFCCP will issue a Notice of Proposed Rulemaking to create sex discrimination regulations that reflect the current state of the law in this area.

## **Employee Benefits Security Administration (EBSA)**

The Employee Benefits Security Administration (EBSA) is responsible for administering and enforcing the fiduciary, reporting and disclosure, and health coverage provisions of title I of the Employee Retirement Income Security Act of 1974 (ERISA). This includes recent amendments and additions to ERISA enacted in the Pension Protection Act of 2006, as well as new health coverage provisions under the Patient Protection and Affordable Care Act of 2010 (the Affordable Care Act). EBSA's regulatory plan initiatives are intended to improve health benefits and retirement security for workers in every type of job at every income level. EBSA is charged with protecting approximately 140 million Americans covered by an estimated 718,000 private retirement plans, 2.5 million health plans, and similar numbers of other welfare benefit plans, which together hold \$6.7 trillion in assets.

EBSA will continue to issue guidance implementing the health reform provisions of the Affordable Care Act to help provide better quality health care for American workers and their families. EBSA's regulations reduce discrimination in health coverage, promote better access to quality coverage, and protect the ability of

individuals and businesses to keep their current health coverage. Many regulations are joint rulemakings with the Departments of Health and Human Services and the Treasury.

Using regulatory changes to produce greater openness and transparency is an integral part of EBSA's contribution to a departmentwide compliance strategy. These efforts will not only enhance EBSA's enforcement toolbox but will encourage greater levels of compliance by the regulated community and enhance awareness among workers of their rights and benefits. Several proposals from the EBSA agenda expand disclosure requirements, substantially enhancing the availability of information to employee benefit plan participants and beneficiaries and employers, and strengthening the retirement security of America's workers. EBSA's retrospective review project under E.O.13563 is Abandoned Plan Program amendments.

### *Addressing Targeted Issues of Employee Benefits*

#### Health Reform Implementation

Since the passage of health care reform, EBSA has helped put the employment-based health provisions into action. Working with HHS and Treasury, EBSA has issued regulations covering issues such as the elimination of preexisting condition exclusions for children under age 19, internal and external appeals of benefit denials, the extension of coverage for children up to age 26, and a ban on rescissions (which are retroactive terminations of health care coverage). These regulations will eventually impact up to 138 million Americans in employer-sponsored plans. EBSA will continue its work in this regard, to ensure a smooth implementation of the legislation's market reforms, minimizing disruption to existing plans and practices, and strengthening America's health care system.

#### Enhancing Participant Protections

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

#### Lifetime Income Options

EBSA, in 2010, published a request for information concerning steps it can take by regulation, or otherwise, to encourage the offering of lifetime annuities or similar lifetime benefit distribution options for participants and beneficiaries of defined contribution plans. EBSA also held a hearing with the Department of the Treasury and Internal Revenue Service to further explore these possibilities. This initiative is intended to assure retirement security for workers in all jobs regardless of income level by helping to ensure that participants and beneficiaries have the benefit of their plan savings throughout retirement. EBSA now has established a public record which supports further consideration or action in a number of areas including pension benefit statements, participant education, and fiduciary guidance. With regard to pension benefit statements specifically, EBSA is working on a proposed rule under ERISA section 105 that would require or facilitate the presentation of a participant's accrued benefits; i.e., the participant's account balance, as a lifetime income stream of payments, in addition to presenting the benefits as an account balance.

### *Promoting Openness and Transparency*

In addition to its health care reform and participant protection initiatives discussed above, EBSA is pursuing a regulatory program that, as reflected in the Unified Agenda, is designed to encourage, foster, and promote

openness, transparency, and communication with respect to the management and operations of pension plans, as well as participant rights and benefits under such plans. Among other things, EBSA will be issuing a final rule addressing the requirement that administrators of defined benefit pension plans annually disclose the funding status of their plan to the plan's participants and beneficiaries (RIN 1210-AB18). In addition, EBSA will be finalizing amendments to the disclosure requirements applicable to plan investment options, including Qualified Default Investment Alternatives, to better ensure that participants understand the operations and risks associated with investments in target date funds (RIN 1210-AB38). A complete listing of EBSA's regulatory initiatives (both Plan and non-Plan items) is provided in the Unified Agenda portion of this document.

#### *E.O. 13563*

#### Abandoned Plan Program Amendment

In 2006, the Department published regulations that facilitate the termination and winding up of 401(k)-type retirement plans that have been abandoned by their plan sponsors. The regulation establishes a streamlined program under which plans are terminated with very limited involvement of EBSA regional offices. EBSA now has 6 years of experience with this program and believes certain changes would improve the overall efficiency of the program and increase its usage.

EBSA intends to revise the regulations to expand the program to include plans of businesses in liquidation proceedings to reflect recent changes in the U.S. Bankruptcy Code. The Department believes that this expansion has the potential to substantially reduce burdens on these plans and bankruptcy trustees. Plans of businesses in liquidation currently do not have the option of using the streamlined termination and winding-up procedures under the program. This is true even though bankruptcy trustees, pursuant to the Bankruptcy Code, can have a legal duty to administer the plan. Thus, bankruptcy trustees, who often are unfamiliar with applicable fiduciary requirements and plan-termination procedures, presently have little in the way of a blueprint or guide for efficiently terminating and winding up such plans. Expanding the program to cover these plans will allow eligible bankruptcy trustees to use the streamlined termination process to better discharge its obligations under the law. The use of streamlined procedures will reduce the amount of time and effort it would take ordinarily to terminate and wind up such plans. The expansion also will eliminate Government filings ordinarily required of terminating plans. Participation in the program will reduce the overall cost of terminating and winding up such plans, which will result in larger benefit distributions to participants and beneficiaries in such plans.

EBSA preliminarily estimates that approximately 165 additional plans will benefit from the amended abandoned plans regulation and accompanying class exemption. EBSA expects that the cost burden reduction that will result from this initiative will be approximately \$1.12 million.

Please note that this preliminary estimate only reflects short-term burden reduction costs for bankruptcy trustees to terminate plans under the rule. EBSA expects substantial benefits will accrue to participants and beneficiaries covered by these plans, because their account balances will be maximized for two primary reasons. First, prompt, efficient termination of these plans will eliminate future administrative expenses charged to the plans that otherwise would diminish plan assets. Second, by following the specific standards and procedures set forth in the rule, the Department expects that overall plan termination costs will be reduced due to increased efficiency.

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

The Office of Labor-Management Standards (OLMS) administers and enforces most provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). The LMRDA promotes labor-management transparency by requiring unions, employers, labor-relations consultants, and others to file reports, which are

publicly available. The LMRDA includes provisions protecting union member rights to participate in their union's governance, to run for office and fully exercise their union citizenship, as well as procedural safeguards to ensure free and fair union elections. Besides enforcing these provisions, OLMS also ensures the financial accountability of unions, their officers and employees, through enforcement and voluntary compliance efforts. Because of these activities, OLMS better ensures that workers have a more effective voice in the governance of their unions, which in turn affords them a more effective voice in their workplaces. OLMS also administers Executive Order 13496, which requires Federal contractors to notify their employees concerning their rights to organize and bargain collectively under Federal labor laws.

### *Openness and Transparency*

#### Persuader Agreements: Employer and Labor Relations Consultant Reporting under the LMRDA

OLMS published a proposed regulatory initiative in June 2011, which is a transparency regulation intended to provide workers with information critical to their effective participation in the workplace. The proposed regulations would better implement the public disclosure objectives of the LMRDA in situations where an employer engages a consultant in order to persuade employees concerning their rights to organize and bargain collectively. Under LMRDA section 203, an employer must report any agreement or arrangement with a consultant to persuade employees concerning their rights to organize and collectively bargain, or to obtain certain information concerning activities of employees or a labor organization in connection with a labor dispute involving the employer. The consultant is also required to report such an agreement or arrangement with an employer. Statutory exceptions to these reporting requirements are set forth in LMRDA section 203(c), which provides, in part, that employers and consultants are not required to file a report by reason of the consultant's giving or agreeing to give "advice" to the employer. The Department in its proposal reconsidered the current policy concerning the scope of the "advice" exception. When workers have the necessary information about arrangements that have been made by their employer to persuade them whether or not to form, join, or assist a union, they are better able to make a more informed choice about representation.

#### Form LM-30: Labor Organization Officer and Employee Conflict-of-Interest Reporting

OLMS published a final rule in October 2011 revising the Form LM-30 Labor Organization Officer and Employee Report, which discloses actual or likely conflicts between the financial interests of a union official and the interests of the union. In addition to seeking greater transparency of actual or likely conflicts of interest, this rule is also a burden reduction regulation.

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

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

### *Addressing Targeted Concerns of Workers*

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

As part of the Department's foreign labor certification responsibilities, ETA certifies whether U.S. workers capable of performing the jobs for which employers are seeking foreign workers are available and whether the

employment of foreign workers will adversely affect the wages and working conditions of U.S. workers similarly employed. Through the Wage and Hour Division (WHD), the Department enforces compliance with the conditions of an approved temporary labor certification.

This rulemaking seeks to ensure that only those employers who demonstrate a real temporary need for foreign workers will have access to H-2B workers. The rule also will seek to provide U.S. workers with greater access to the jobs employers wish to fill with temporary H-2B workers through more robust recruitment by employers to demonstrate the unavailability of U.S. workers and through the creation of a national, electronic job registry. The rule will explore strengthening existing worker enforcement to ensure adequate protections for both U.S. and H-2B workers. The rulemaking will include greater transparency and openness to provide U.S. workers with greater information and access to job opportunities.

*E.O. 13563*

#### Equal Employment Opportunity in Apprenticeship and Training, Amendment of Regulations

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