

DEPARTMENT OF LABOR (DOL)**Statement of Regulatory Priorities**

The Department of Labor's mission is to protect and promote the well-being of workers and retirees as well as those who are seeking new or better jobs. The 180 labor laws the Department is charged with administering form a framework that defines what the Department of Labor (DOL) must do to carry out its mission. This framework is further delineated by the implementing regulations issued by the Department. In carrying out its mission, DOL has an impact on many of the most important aspects of workers' lives—their health and safety; their right to a workplace without discrimination; their ability to take job-protected time off to care for family members in times of family or medical crisis; and their desire for job-training so they can meet the challenges of a changing economy. Also of great importance to workers are the Department's efforts to protect workers' rights to unemployment insurance and to provide job market information should they lose their jobs; to secure workers' overtime pay when they work long hours; to assure their right to a minimum wage; and to guard their hard-earned pensions and benefits.

Not only is the Department's mission broad, but its coverage is vast and its constituency varied. Over 130 million current and former employees, and millions of first-time job applicants and retirees, come under the provisions of one or more of the laws and regulations administered by the Department. These workers are a very diverse group—they range from an 18-year-old cashier in need of job training to a 40-year-old laid-off engineer in need of job market information—and from a 25-year-old seamstress who wants her overtime pay to a 65-year-old janitor who wants to be sure his retirement pay is safe. In addition, these workers perform their jobs in almost 7 million establishments across the country. These workplaces range from small retail stores to large international software corporations—from local weekly newspapers to tractor assembly lines—and from small county libraries to large interstate construction companies. Faced with the enormous size, diversity and complexity of workers' and employers' needs and circumstances, the Department has begun to find new and better ways to administer and enforce labor laws—it is traveling along a new road, under new rules, with new partners.

As the Department began its journey down this road, it established new

guiding principles for the development of its rules. First, new rules must be both effective and must minimize any burdens on the regulated community. In doing so, DOL recognized that new and different regulatory approaches may need to be considered. In fact, in some cases, different regulatory approaches may be used to solve the same problem to allow for the diversity in DOL's constituencies. Second, the rules must be easily understood, sensible and consistent, and they must be reviewed on a periodic basis to ensure that they continue to be effective and are up-to-date. And third, the Department's constituencies—workers, employers, labor unions, associations, educational institutions, and State and local governments—must not only be partners in this journey but must participate in writing the new rules.

This regulatory plan is a reflection of the Department's commitment to these principles, which will help DOL better fulfill its mission to protect and promote the well-being of workers, job applicants, and retirees. The Department will use these principles in promulgating new regulations or in revising old ones. When writing or revising rules, DOL will explore new approaches that achieve our regulatory goals at lower costs and with greater flexibility for the regulated community; it will produce consistent and easy-to-understand rules; and it will make sure that those who are protected by the new rules or must abide by them have participated in the rulemaking process and that they have been provided timely, user-friendly compliance assistance materials.

DOL's 1996 regulatory plan highlights the Department's 23 most important significant regulations from five of our major regulatory agencies: Employment Standards Administration (ESA), Mine Safety and Health Administration (MSHA), Occupational Safety and Health Administration (OSHA), Pension and Welfare Benefits Administration (PWBA) and Employment and Training Administration (ETA). The entries in The Regulatory Plan were carefully selected as the most important; that is, they are essential to the Department's mission to improve worker protections and job services. And, in keeping with the Department's commitment to our regulatory principles, these proposals will be designed in conjunction with our partners so that they are effective, consistent, sensible, and understandable.

Regulatory Priorities

DOL has always recognized that, over time, changes in the workplace such as new business practices, improved or safer technologies, or new hazards may render existing rules ineffective or demand the creation of new ones. The following are the DOL agencies' responses to the most important of these workplace changes.

ESA's Wage and Hour Division is responsible for implementing and enforcing several statutes establishing minimum labor standards that protect the Nation's work force, including the Fair Labor Standards Act (FLSA), the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the Family and Medical Leave Act, the Employee Polygraph Protection Act, and certain provisions of the Immigration and Nationality Act. These labor standards include requirements for payment of minimum wages and overtime pay, protections for working youth under child labor standards, job protections for employees who take leave for certain family or medical reasons, and minimum working conditions for agricultural workers. The regulatory activities required to implement these statutory responsibilities represent a very important aspect of the Division's work, the results of which affect over 100 million employees in the work force. When developing regulatory proposals, the Division's focus is on assuring fair, safe and healthful workplaces for the Nation's workers, while at the same time minimizing burdens on the regulated community.

The particular regulations selected for inclusion in this Plan affect a wide array of workers and workplaces. Under the FLSA, the Wage and Hour Division is continuing its comprehensive review of the regulatory criteria applicable to child labor and to the minimum wage and overtime exemption for "executive," "administrative," "professional," and "outside sales employees." Other regulatory actions include clarifying the criteria to be followed in determining whether a joint employment relationship exists in the employment of migrant and seasonal farm workers under MSPA, and defining the circumstances in which "helpers" may be used on federally funded and assisted construction contracts subject to the Davis-Bacon Act.

ESA's Office of Federal Contract Compliance Programs (OFCCP) is charged with enforcing the requirements of Executive Order 11246, selected provisions of the Vietnam Era Veterans'

Readjustment Assistance Act of 1974 (VEVRAA), and section 503 of the Rehabilitation Act of 1973. Regulations issued under the Executive order and the two Acts cover nondiscrimination and affirmative action obligations for Federal contractors and subcontractors. OFCCP's regulatory plan entry, the proposed amendments to regulations implementing Executive Order 11246, will streamline and clarify the regulatory language and reduce paperwork requirements of covered Federal contractors while ensuring that their obligations under the Executive order and the two Acts are met. The VEVRAA proposal (an Agenda Item) will provide parallel changes conforming the VEVRAA regulations to the May 1, 1996, final rule on section 503 of the Rehabilitation Act of 1973.

The mission of the Mine Safety and Health Administration is to achieve the goal of the Federal Mine Safety and Health Act of 1977: Making the first priority and concern of all in the mining industry the health and safety of its most precious resource—the miner. MSHA is committed to providing the Nation's miners a safer and healthier workplace. Despite MSHA's past efforts, miners face safety and health hazards daily at levels unknown in most other professions. Government intervention alone cannot eliminate occupational deaths, injuries, and illnesses in mining. Effective regulation can best be accomplished through the combined commitment of miners, mine operators, and the Government to prevent accidents and illnesses. To facilitate this commitment, MSHA's regulatory plan concentrates on improving existing safety and health standards and addressing technological advances in mining.

Four significant regulatory actions exemplify MSHA's commitment to improving workplace safety and health for miners. The first action addresses the need to update the Agency's existing standard for exposure to noise. The proposed noise rule would reexamine the level of protection provided by existing standards. Many miners are currently exposed to the maximum noise levels currently permitted and, as a result, may be suffering hearing impairments.

The introduction of diesel-powered equipment in underground coal mines over the past decade has created new hazards associated with the presence of a potential ignition source and diesel fuel in an environment that may contain methane gas. In addition, the exhaust from such equipment can expose miners

to hazardous airborne contaminants. To assure that diesel-powered equipment does not adversely affect the safety or health of miners, MSHA plans to issue a final rule that includes criteria for the approval of such equipment, safety standards for the storage and distribution of diesel fuel, training requirements for diesel mechanics, and requirements for monitoring miners' exposure to diesel exhaust.

To complement the diesel equipment standard, MSHA intends to issue a separate proposed rule for diesel particulate to reduce the potential health hazards associated with particulate in the exhaust emitted by diesel-powered equipment in the mining environment.

While there have been significant reductions in levels of respirable coal mine dust over the years, some miners exposed to respirable coal mine dust at certain mine operations continue to develop coal workers' pneumoconiosis—"black lung"—and silicosis. In February 1996, MSHA convened a Federal advisory committee to take a broad look at ways to eliminate black lung and silicosis among coal miners. The committee is charged with assessing the adequacy of MSHA's current program and standards to control respirable dust in underground and surface coal mines.

In the past 2 years, the Occupational Safety and Health Administration has changed its fundamental mode of operation from one of command and control to one that provides employers with a real choice between a partnership with OSHA and a traditional enforcement relationship. In the regulatory arena, this means that OSHA has changed its regulatory approach to enable the Agency, for the first time, to establish and act on clear and sensible priorities; emphasize consensus-based approaches to rulemaking; focus on developing a basic safety and health programs rule; and eliminate out-of-date, confusing, or duplicative rules from the books. Despite the change in OSHA's methods, OSHA's mission remains as important as it was on the day President Nixon signed the OSH Act into law in 1970: Saving the lives and improving the safety and health of America's working men and women.

Some of OSHA's standards, particularly those adopted wholesale from national consensus standards in 1971, have become technologically obsolete, while others are written in highly detailed, specification-driven language that limits compliance flexibility. To address these problems,

OSHA has launched a series of initiatives aimed at streamlining and rationalizing the Agency's regulations and ensuring that all future OSHA rules will pass plain language and common sense tests. In addition, the Agency is actively soliciting input from stakeholders—business, labor, small employers, professional associations, and affected government entities—as it moves forward on these rulemaking initiatives. The OSHA rules featured in the 1996 Regulatory Plan reflect the rulemaking approach that is being followed by "the new OSHA." For example, the Agency is carefully reviewing the massive docket resulting from months of public hearings and comments on one of the Agency's highest priorities, a standard for Indoor Air Quality, and staff will continue to work on this project over the next year. The size of the docket and the complexity of the issues raised by the Indoor Air rulemaking, however, have necessitated a delay in the expected promulgation date, as indicated in the regulatory agenda. Regulatory action to address the serious risks posed to America's workers by environmental tobacco smoke and unhealthy indoor air is now planned for FY 1997.

One of the most important regulatory initiatives ever undertaken by OSHA—development of a safety and health programs rule—is the centerpiece of the Agency's current regulatory plan. This standard will ensure that employers in all industries treat worker protection as a fundamental goal of their business and will help employers identify job-related hazards in the workplace, correct those so identified, and prevent others from occurring. Evidence of the effectiveness of safety and health programs in achieving OSHA's ultimate goal—the prevention of deaths, injuries, and illnesses on the job—is widespread and growing daily, as more and more companies report that their accident rates and their workers' compensation costs have fallen after the implementation of such programs. For the past year, OSHA has been engaging in a series of stakeholder meetings designed to identify ways of meeting the small business community's need for a strong but simple rule and of recognizing existing safety and health programs that are demonstrably effective. The Department believes that, by actively involving both employers and employees in the implementation of safety and health programs, this standard will help to produce the high-performance workplaces of tomorrow.

In summary, OSHA's new regulatory strategy is designed to achieve a body of standards that will make sense to ordinary people and protect the safety and health of the U.S. workforce.

The Pension and Welfare Benefits Administration (PWBA) protects the integrity of pensions, health plans, and other employee benefits for over 150 million workers, retirees, and dependents. PWBA's mission is to protect participants and beneficiaries in employment-based benefit plans by deterring and correcting violations of the law, by developing policies and laws that simplify compliance and encourage the growth and preservation of employment-based benefits, by assisting plan officials in understanding the requirements of the law, and by ensuring that employees receive the information they need to protect and secure their benefit rights.

PWBA's regulatory priorities for 1997 will build on legislative efforts to simplify and facilitate compliance with benefit laws, improve pension and welfare plan coverage, and protect the benefits of American workers. PWBA's top regulatory priorities will implement the disclosure, portability, access, and renewability provisions of the Health Insurance Portability and Accountability Act of 1996 and the portions of the pension simplification provisions of the Small Business Job Protection Act of 1996, for which the Department of Labor has responsibility.

With the enactment of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), American workers will for the first time be guaranteed increased portability of health care coverage through restrictions on preexisting condition limitations and protection from discrimination in health care coverage on the basis of health status. PWBA's most significant regulatory activities will include the timely and meaningful implementation of these important worker protections, in conjunction with the Department of the Treasury and the Department of Health and Human Services. Related significant regulatory activities include PWBA's implementation of important statutory changes to ERISA's disclosure provisions that ensure improved and timely disclosure of health plan information to participants and beneficiaries.

Also among PWBA's top priorities, in conjunction with the Internal Revenue Service and the Pension Benefit Guaranty Corporation, is the release for public comment of simplified annual return/report forms (the Form 5500

Series) for all employee benefit plans subject to ERISA's annual reporting requirements.

Reinvention

In accord with its regulatory principles, the Department has an ongoing effort to reinvent its regulations. DOL has already eliminated over 1,100 pages of out-of-date or obsolete rules in the Code of Federal Regulations (CFR). DOL is also well on its way to reinventing those rules which are difficult to enforce or understand. Almost 500 CFR pages have been revised (as notices of proposed rulemaking or final rules). This regulatory plan reaffirms the Department's commitment to make its rules easier to understand and less burdensome while increasing their effectiveness.

ESA's OFCCP reinvention efforts include revisions to the Executive Order 11246 regulations, which will reduce paperwork burdens, eliminate unnecessary provisions, and simplify and clarify the regulations while improving the efficiency and effectiveness of the contract compliance program. The Wage and Hour Division's child labor initiative is intended, in part, to eliminate unnecessary overlap and duplication in rules, provide full opportunity for input from the regulated community, and ensure that regulatory standards are easily understood and have reasonable compliance standards consistent with the underlying statute they implement.

MSHA is continuing work on the noise and longwall rulemakings, two reinvention initiatives included in last year's regulatory plan. Occupationally induced hearing loss is a serious problem in the Nation's mining communities. MSHA estimates that almost 50,000 current miners are expected to incur an impairment of their hearing as a result of their work during their working lifetimes. MSHA will be proposing a rule to reinvent how mining industry resources are utilized to address this serious health problem. Consideration will be given to eliminating existing requirements that have not been proven to be effective and replacing them with practices that have been demonstrated to be effective in reducing the risk of hearing loss. Emphasis will be placed on performance-oriented requirements to permit mine operators the flexibility to address this problem in the context of varying mine environments. The Agency is planning to provide compliance assistance to mine

operators, particularly small mine operators, to facilitate the implementation of this important new health standard.

Advanced longwall mining systems that employ high-voltage electrical circuits have resulted in significant production gains for many underground coal mines with no loss of safety—provided certain conditions are met. MSHA's electrical standards for underground coal mines currently prohibit high-voltage circuits in the area of the mine where coal is produced. As a result, mine operators have had to seek variances from MSHA to use high-voltage equipment. Over the past decade, MSHA has processed approximately 100 variances. MSHA intends to issue a final rule allowing the use of this type of equipment, reducing the burden on those mines that use this safe and highly productive method of mining coal.

The elimination and revision of outdated and restrictive regulations, most of which were adopted by OSHA nearly 25 years ago and have remained unchanged, is another important aspect of the new OSHA's way of regulating. Several of the entries in this year's regulatory plan, including "Walking Working Surfaces and Personal Fall Protection Systems," "Steel Erection," and "Revision of Certain Standards promulgated under section 6(a) of the Williams-Steiger Occupational Safety and Health Act of 1970," reflect the importance OSHA attaches to these projects. Finding and fixing confusing, hard-to-follow, and unnecessary regulations and streamlining and updating the Agency's excessively detailed and technologically obsolete standards will further OSHA's primary goal—the protection of worker safety and health—and make it easier and less burdensome for employers to comply.

In this fiscal year, one of OSHA's most dramatic regulatory initiatives—rewriting the Agency's detailed, specification-driven industry standards in plain language—will become a reality. In the next 12 months, OSHA intends to propose streamlined, modern versions of its safety rules for Access/Egress (called "Exit Routes" in its plain language version), Flammable/Combustible Liquids, Dip Tanks, and Spray Booths. Based on focus groups' input, stakeholder response to this initiative is expected to be overwhelmingly favorable, as employers and employees alike find that they can understand—and therefore comply with—the new OSHA's rules.

PWBA is working to simplify and improve the security of the private pension system through legislation and other regulatory reform efforts. For example, audit legislation has been proposed that will help PWBA detect serious problems with a plan's financial security in a timely manner and require that the Secretary of Labor be notified more promptly when there is evidence that a crime has occurred.

The Employment and Training Administration, as part of the reinvention effort, has undertaken a reengineering of the labor certification process for the permanent employment of aliens in the United States. The labor certification process has been criticized as being complicated, time-consuming, costly, and burdensome to employers. ETA's goals are to make changes and refinements in that process that will better serve customers, streamline the process, improve effectiveness, and save resources. The reengineering effort has been a collaborative undertaking of Federal and State staff who are involved in the administration of alien certification programs. The reengineering effort also has involved consultation throughout the process with sponsors, stakeholders, State partners, and outside interest groups to solicit ideas and suggestions for change.

Through these reengineering efforts, ETA has identified three major processes that will benefit from change: The permanent labor certification process; the process for determining prevailing wages; and the H1-B approval process. Modification of the prevailing wage determination process and the H1-B approval process has begun. Although changes are being made to the permanent labor certification process within the constraints of current law, major modifications must be held in abeyance until Congress has completed its deliberations regarding the need to make legislative changes to the program.

DOL—Employment Standards Administration (ESA)

PROPOSED RULE STAGE

55. CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION (ESAW-H)

Priority:

Other Significant

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

29 USC 203(1)

CFR Citation:

29 CFR 570

Legal Deadline:

None

Abstract:

Section 3(l) of the Fair Labor Standards Act requires the Secretary of Labor to issue regulations with respect to minors between 14 and 16 years of age ensuring that the periods and conditions of their employment do not interfere with their schooling, health, or well-being. The Secretary is also directed to designate occupations that may be particularly hazardous for minors 16 and 17 years of age. Child Labor Regulation No. 3 sets forth the permissible industries and occupations in which 14- and 15-year-olds may be employed, and specifies the number of hours in a day and in a week, and time periods within a day, that such minors may be employed. The Department has invited public comment in considering whether changes in technology in the workplace and job content over the years require new hazardous occupation orders, and review of some of the applicable hazardous occupation orders and the method of their promulgation. Comment has also been solicited on whether revisions should be considered in the permissible hours and time of day standards for 14- and 15-year-olds. Comment has been sought on appropriate changes required to implement school-to-work transition programs. Additionally, Congress enacted Public Law 104-174 (August 6, 1996), which amended FLSA Section 13(c) and requires changes in the regulations under Hazardous Occupation Order No. 12, regarding power-driven paper balers and compactors, to allow 16- and 17-year olds to load, but not operate or unload, machines meeting applicable American National Standards Institute (ANSI) safety standards and certain other conditions.

Statement of Need:

Because of changes in the workplace and the introduction of new processes and technologies, the Department is undertaking a comprehensive review of

the regulatory criteria applicable to child labor. Other factors necessitating a review of the child labor regulations are changes in places where young workers find employment opportunities, the existence of differing Federal and State standards, and the divergent views on how best to correlate school and work experiences.

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

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

Alternatives:

Regulatory alternatives will be developed based on the public comments responding to the advance notice of proposed rulemaking. Alternatives likely to be considered include specific additions or

modifications to the hazardous occupation orders and changes to the hours 14- and 15-year-olds may work.

Anticipated Costs and Benefits:

Preliminary estimates of the anticipated costs and benefits of this regulatory action will be developed once decisions are reached on particular proposed changes in the child labor regulations. Benefits will include safer working environments and the avoidance of injuries with respect to young workers.

Risks:

An assessment of the magnitude of the risk addressed by this action will be prepared once decisions are reached on particular proposed changes in the child labor regulations.

Timetable:

Action	Date	FR Cite
Final Action on HOs 2, 10, 12	11/20/91	56 FR 58626
Final Action Effective Date	12/20/91	
ANPRM	05/13/94	59 FR 25167
ANPRM Comment Period End	08/11/94	59 FR 40318
NPRM	12/00/96	

Small Entities Affected:

None

Government Levels Affected:

None

Agency Contact:

Maria Echaveste
Administrator, Wage and Hour Division
Department of Labor
Employment Standards Administration
200 Constitution Avenue NW.
Rm S3502, FP Bldg.
Washington, DC 20210
Phone: 202 219-8305

RIN: 1215-AA09

DOL—ESA

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

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal governments and the private sector.

Legal Authority:

29 USC 213(a)(1)

CFR Citation:

29 CFR 541

Legal Deadline:

None

Abstract:

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

The Department has revised these regulations since the ANPRM to address specific issues. In 1991, as the result of an amendment to the Fair Labor Standards Act (FLSA), the regulations were revised to permit certain computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6-1/2 times the applicable minimum wage. Also, in 1992 the Department issued a final rule which provided, in part, that an otherwise exempt public sector employee would not be disqualified from the exemption's requirement for payment on a "salary basis" solely because the employee is paid according to a public pay and leave system that, absent the use of paid leave, requires the employee's pay to be reduced for absences of less than one workday. In addition, a number of court rulings have caused confusion on the factors

to consider in meeting the regulation's "salary basis" criteria, in both the public and private sectors.

Statement of Need:

These regulations set forth the criteria used in the determination of the application of the FLSA exemption for "executive," "administrative," "professional," and "outside sales employees." The existing salary test levels used in determining which employees qualify as exempt from the minimum wage and overtime rules were adopted in 1975 on an interim basis. These salary level tests are outdated and offer little practical guidance in the application of the exemption. In addition, numerous comments and petitions have been received in recent years from industry groups regarding the duties and responsibilities tests in the regulations. These factors, as well as recent case law developments, have led the Department to conclude that a review of these regulations is needed.

These regulations have been revised in recent years to deal with specific issues. In 1991, as the result of an amendment to the FLSA, the regulations were revised to permit certain computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6 1/2 times the applicable minimum wage. Also in 1991, the Department undertook separate rulemaking on another aspect of the regulations, the definition of "salary basis" for public-sector employers. This interim final rule provided, in part, that an otherwise exempt public-sector employee would not be disqualified from the exemption's requirement for payment on a "salary basis" solely because the employee is paid according to a public pay and leave system that, absent the use of paid leave, requires the employee's pay to be reduced for absences of less than one workday. In 1992, the Department issued its final rule on this matter.

Because of the limited nature of these revisions, the regulations are still in need of updating and clarification. In addition, recent court rulings have caused confusion as to what constitutes compliance with the regulation's "salary basis" criteria in both the public and private sectors.

Alternatives:

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

Although legislative proposals have been introduced in the Congress to address certain aspects of these regulations, the Department will continue to pursue revisions to the regulations as the appropriate response to the concerns raised. Alternatives likely to be considered include particular changes to address "salary basis" and salary level issues to a comprehensive overhaul of the regulations that also addresses the duties and responsibilities tests.

Anticipated Costs and Benefits:

Some 23 million employees are estimated to be within the scope of these regulations. Legal developments in court cases are causing progressive loss of control of the guiding interpretations under this exemption and are creating law without considering a comprehensive analytical approach to current compensation concepts and workplace practices. These court rulings are creating apprehension in both the private and public sectors. Clear, comprehensive, and up-to-date regulations would provide for central, uniform control over the application of these regulations and ameliorate this apprehension. In the public sector, State and local government employers contend that the rules are based on production workplace environments from the 1940s and 1950s, and that they do not readily adapt to contemporary government functions. The Federal government also has concerns regarding the manner in which the courts and arbitration decisions are applying the exemption to the Federal workforce. Resolution of confusion over how the regulations are to be applied in the public sector will ensure that employees are protected, that employers are able to comply with their responsibilities under the law, and that the regulations are enforceable. Preliminary estimates of the specific costs and benefits of this regulatory action will be developed once the various regulatory alternatives are identified.

Risks:

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

Timetable:

Action	Date	FR Cite
Indefinite Stay of Final Rule	02/12/81	46 FR 11972
Proposal To Suspend Rule Indefinitely	03/27/81	46 FR 18998
ANPRM	11/19/85	50 FR 47696
Extension of ANPRM Comment Period From 01/21/86 to 03/22/86	01/17/86	51 FR 2525
ANPRM Comment Period End	03/22/86	51 FR 2525
NPRM	09/00/97	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Federal

Agency Contact:

Maria Echaveste
 Administrator, Wage and Hour Division
 Department of Labor
 Employment Standards Administration
 200 Constitution Avenue NW.
 Room S3502, FP Bldg.
 Washington, DC 20210
 Phone: 202 219-8305

RIN: 1215-AA14

DOL—ESA

57. PROCEDURES FOR PREDETERMINATION OF WAGE RATES (29 CFR PART 1) AND LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (29 CFR PART 5)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal governments and the private sector.

Legal Authority:

40 USC 276a to 276a(7)

CFR Citation:

29 CFR 1; 29 CFR 5

Legal Deadline:

None

Abstract:

The Department attempted to implement revised rules governing the circumstances in which "helpers" may be used on federally funded and

assisted construction contracts subject to the Davis-Bacon Act in May 1982 (see 47 FR 23644, 23658 (May 28, 1982); 47 FR 32090 (July 20, 1982)). After protracted litigation, a final rule was published in January 1989 (see 54 FR 4234) which became effective on February 4, 1991. Thereafter, on two occasions, Congress acted to prevent the Department from expending any funds to implement these revised helper regulations--through the Dire Emergency Supplemental Appropriations Act of 1991, PL 102-27, 105 Stat. 130,151 (1991), and then through section 104 of the DOL Appropriations Act of 1994, PL 103-112. There is no such prohibition in the DOL's Appropriations Act for fiscal year 1996, Public Law 104-134 (April 26, 1996). Given the uncertainty of continuation of such moratoriums, the Department has determined that the helper issue needs to be addressed through further rulemaking. A notice inviting public comment on a proposal to continue the suspension of the former helper regulations while the Department conducts additional rulemaking proceedings was published August 2, 1996 (61 FR 40366).

Statement of Need:

The current helper rules are difficult to administer and enforce, and--as evidenced by the prolonged litigation history and subsequent Congressional actions--are highly controversial. In May 1982, the Department attempted to implement revised rules governing the circumstances in which "helpers" may be used on federally funded and assisted construction contracts subject to the Davis-Bacon Act. After protracted litigation, a final rule was published in January 1989 and became effective on February 4, 1991. Thereafter, on two occasions, Congress acted to prevent the Department from expending any funds to implement these revised helper regulations through appropriations riders. Given the uncertainty of continuation of such moratoriums, the Department has determined that the helper issue needs to be addressed through further rulemaking. No such prohibition applies under DOL's Appropriations Act for fiscal year 1996, PL 104-134 (April 26, 1996).

Alternatives:

The Administration has determined that there are only limited alternatives to addressing this issue through rulemaking, in addition to possible legislative changes.

Anticipated Costs and Benefits:

A new rulemaking regarding the helper criteria will seek to make administration of the Davis-Bacon Act more efficient by establishing reasonable "helper" criteria and methodology--thus resolving the controversy and uncertainty currently experienced by interested parties. Changes in the helper regulations may affect prior estimates of potential construction procurement cost savings anticipated from the earlier rulemaking. Estimates of the financial impacts of revised "helper" regulations will be prepared for inclusion in the NPRM.

Risks:

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

Timetable:

Action	Date	FR Cite
NPRM Continue Suspension	08/02/96	61 FR 40367
Final Continue Suspension	11/00/96	
NPRM	12/00/96	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Agency Contact:

Maria Echaveste
 Administrator, Wage and Hour Division
 Department of Labor
 Employment Standards Administration
 200 Constitution Avenue NW.
 Room S3502, FP Building
 Washington, DC 20210
 Phone: 202 219-8305
 Fax: 202 219-5122

RIN: 1215-AA94

DOL—ESA

FINAL RULE STAGE

58. GOVERNMENT CONTRACTORS: NONDISCRIMINATION AND AFFIRMATIVE ACTION OBLIGATIONS (ESA/OFCCP) (SECTION 610 REVIEW)

Priority:

Other Significant

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden

or duplication, or streamline requirements.

Legal Authority:

EO 11246, as amended; 38 USC 4212; 29 USC 793

CFR Citation:

41 CFR 60-1; 41 CFR 60-2; 41 CFR 60-20; 41 CFR 60-30; 41 CFR 60-50; 41 CFR 60-60; 41 CFR 60-250; 41 CFR 60-741; 41 CFR 60-742; 41 CFR 60-4

Legal Deadline:

None

Abstract:

These regulations cover nondiscrimination and affirmative action obligations of Federal contractors under Executive Order 11246, as amended; 38 USC 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; and Section 503 of the Rehabilitation Act of 1973, as amended (Section 503). The NPRM published 08/25/81 and supplemented on 04/23/82 extended the effective date of a final rule published 12/30/80 and proposed amendments to that rule. The NPRM published 5/21/96 proposed revisions to reduce burdens on the regulated community and to improve the administration of the Executive Order. OFCCP's review of regulatory options continues with emphasis on streamlining and clarifying the regulatory language and reducing paperwork requirements associated with compliance.

Statement of Need:

Parts of the regulations implementing Executive Order 11246 need to be revised to reflect changes in the law that have occurred over time, streamlined, and clarified. Executive Order 11246 requires all Federal contractors and subcontractors and federally assisted construction contractors and subcontractors to apply a policy of nondiscrimination and affirmative action in employment with respect to race, color, religion, sex, and national origin. The regulatory revisions are necessary in order to allow the DOL to effectively and efficiently enforce the provisions of the Executive Order. As a first step in updating its Executive Order regulations, the Department proposed changes to the provisions that govern preaward review requirements; recordkeeping and record retention requirements; certification requirements; and related provisions. In addition, revisions will be made that will conform Executive Order 11246

regulations to the recent changes made in the Department's regulations implementing Section 503 of the Rehabilitation Act.

A second phase of revision will contain proposals to change provisions that govern requirements for written affirmative action plans and the provisions concerning evaluation of contractor procedures.

Summary of the Legal Basis:

No aspect of this action is required by statute or court order.

Alternatives:

After careful review, it was decided that the most effective way to improve compliance with the Executive Order 11246 provisions, and reduce burdens on contractors, was to propose revisions to these regulations. Administrative actions alone could not produce the desired results. A determination was also made to publish revisions to the remaining regulatory provisions of the Executive Order at a later date so that careful consideration can be given to what changes are needed in each of the parts of the regulations.

Anticipated Costs and Benefits:

It is anticipated that the net effect of the proposed changes will increase compliance with the nondiscrimination and affirmative action requirements of the Executive Order and reduce compliance costs to Federal contractors. The Department will also be able to utilize its resources more efficiently and more effectively.

Risks:

An assessment of the magnitude of the risk addressed by this action and how it relates to other risks within the jurisdiction of DOL will be prepared once decisions are reached on specific proposed changes in Executive Order 11246.

Timetable:

Action	Date	FR Cite
ANPRM	07/14/81	46 FR 36213
NPRM Compliance Reviews (60-1)	05/21/96	61 FR 25516
NPRM Compliance Reviews (60-60)	05/21/96	61 FR 25516
FINAL Compliance Reviews (60-1)	12/00/96	
FINAL Compliance Reviews (60-60)	12/00/96	
NPRM Affirmative Action Plans (60-2)	02/00/97	
FINAL Affirmative Action Plans (60-2)	06/00/97	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State

Additional Information:

Under the reinventing government initiative, OFCCP's emphasis is on regulatory reform, e.g., to revise the Executive Order 11246 regulations to reduce paperwork burdens, eliminate unnecessary regulations, and simplify and clarify the regulations while improving the efficiency and effectiveness of the contract compliance program.

Agency Contact:

Joe N. Kennedy
Deputy Director, OFCCP
Department of Labor
Employment Standards Administration
200 Constitution Avenue
Room C3325, FP Bldg.
Washington, DC 20210
Phone: 202 219-9475

RIN: 1215-AA01

DOL—ESA

59. MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION (29 CFR PART 500)

Priority:

Other Significant

Legal Authority:

29 USC 1801 to 1872, as amended

CFR Citation:

29 CFR 500

Legal Deadline:

Final, Statutory, May 13, 1996.

Abstract:

The legislative history of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) indicates that the principles found in *Hodgson v. Griffin and Brand*, 471 F.2d 235, are to be followed in determining whether a joint employment relationship exists in the employment of migrant and seasonal farm workers in a given fact situation. The Department intends to publish an NPRM to solicit comments on a clarification of the regulations to more closely comport with the legislative history of MSPA and the principles found in *Hodgson v. Griffin and Brand* and also possible modifications to the procedures for MSPA hearings, seeking more timely

decisions. In addition, Public Law 104-49 (November 15, 1995) amended MSPA's private right of action, transportation insurance requirements, and disclosure obligations to agricultural workers. Implementing regulations were published May 16, 1996 (61 FR 24858), for the revised transportation insurance requirements. The joint employer NPRM was published March 29, 1996 (61 FR 14035).

Statement of Need:

These regulations need to be revised in order to provide needed clarifications and to make the hearing process more efficient. In the legislative history to the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), Congress stated that the term "joint employment" in MSPA was to have the same meaning as is found in the Fair Labor Standards Act (FLSA). Further remarks in the legislative history indicate that the principles found in *Hodgson v. Griffin and Brand*, 471 F.2d 235, were to be determinative. However, subsequent legal developments have created confusion as to appropriate criteria for determining the existence of a joint employment relationship. In its rulemaking, the Department will solicit comments to clarify the regulatory criteria for determining when a joint employment relationship exists between two or more employers. The Department will also consider modifying the rules relating to procedures for hearings, seeking more timely decisions.

Alternatives:

Regulatory alternatives will be developed as part of this review.

Anticipated Costs and Benefits:

There is no significant cost impact to the contemplated clarifying change in the regulations. Employers in the agricultural community will benefit from the clearer, more definitive criteria provided regarding joint employment relationships. An expedited hearing process will also be beneficial to all parties.

Risks:

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

Timetable:

Action	Date	FR Cite
Final Action	11/00/96	
Joint Employment		
NPRM 03/29/96	(61 FR 14035)	
NPRM Comment Period End	06/12/96	

Worker's Compensation

NPRM 03/18/96 (61 FR 10911)
NPRM Comment Period End 04/17/96
Final Action 05/16/96 (61 FR 24858)

Small Entities Affected:

None

Government Levels Affected:

None

Agency Contact:

Maria Echaveste
Administrator, Wage and Hour Division
Department of Labor
Employment Standards Administration
200 Constitution Avenue NW.
Room S3502, FP Building
Washington, DC 20210
Phone: 202 219-8305

RIN: 1215-AA93

DOL—Employment and Training Administration (ETA)

PROPOSED RULE STAGE

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

Priority:

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

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

INA 212(a)(5)(A)

CFR Citation:

20 CFR 656

Legal Deadline:

None

Abstract:

The Department of Labor (DOL) is currently re-engineering the labor certification process that is set forth in DOL regulations at 20 CFR 656. DOL's goals are to make fundamental changes and refinements that will (a) better serve customers, (b) streamline the process, (c) improve effectiveness, and (d) save resources. The re-engineering effort is a collaborative effort of Federal and State staff who are involved in the administration of alien certification programs. The re-engineering effort also

involves consultation throughout the process with sponsors, stakeholders, State partners, and outside interest groups to solicit ideas and suggestions for change.

Statement of Need:

The labor certification process has been criticized as being complicated and time-consuming. It can take up to 2 years or more to complete the process; the process requires substantial government resources to administer, and it is reportedly costly and burdensome to employers. The Employment and Training Administration (ETA), therefore, is reexamining the effectiveness of the various regulatory requirements and the application processing procedure, with a view to achieving considerable savings in resources both for the Government and employers, without diminishing the significant protections now afforded U.S. workers by the current regulatory and administrative requirements.

Summary of the Legal Basis:

Before the Department of State and the Immigration and Naturalization Service may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor, pursuant to section 212(a)(5)(A) of the Immigration and Nationality Act (INA), must certify to the Secretary of State and to the Attorney General that: (a) there are not sufficient U.S. workers who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to work; and (b) the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers (8 USC 1182(a)(5)(A)). The Department of Labor has promulgated regulations at 20 CFR 656 pursuant to and to implement section 212(a)(5)(A) of the INA. These regulations set forth the fact-finding process designed to support the granting or denial of a permanent labor certification.

Anticipated Costs and Benefits:

As indicated above, it is anticipated that the re-engineering effort will result in significant cost savings to the Government and to the regulated community. DOL will be able to provide a more precise estimation of anticipated cost reductions after the re-engineering of the permanent labor certification process is completed.

Timetable:

Action	Date	FR Cite
NPRM	09/00/97	

Small Entities Affected:

None

Government Levels Affected:

State, Federal

Agency Contact:

James Norris
Chief, Division of Foreign Labor
Certifications
Department of Labor
Employment and Training Administration
200 Constitution Avenue NW.
Room N4456, FP Building
Washington, DC 20210
Phone: 202 219-5263

RIN: 1205-AA66

DOL—Pension and Welfare Benefits Administration (PWBA)

PROPOSED RULE STAGE

61. REVISION OF THE FORM 5500 SERIES AND IMPLEMENTING AND RELATED REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA)

Priority:

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

Unfunded Mandates:

Undetermined

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

29 USC 1021; 29 USC 1022; 29 USC 1023; 29 USC 1024; 29 USC 1025; 29 USC 1026; 29 USC 1027; 29 USC 1029; 29 USC 1030; 29 USC 1059; 29 USC 1135; 29 USC 1166; 29 USC 1168

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

Each year, pension and welfare benefit plans subject to title I of ERISA are generally required to file an annual

return/report, the Form 5500 Series, regarding their financial condition, investments, and operations. The Form 5500 Series is the primary source of information concerning the operation, funding, assets, and investments of pension and other employee benefit plans. The Form 5500 Series is not only an important compliance and research tool for the Department, but is also a disclosure document for plan participants and beneficiaries and a source of information and data for use by other Federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. As part of the President's Pension Simplification proposal, the agencies are undertaking a comprehensive review of the annual return/report forms in an effort to streamline the information required to be reported and the methods by which such information is filed and processed.

Statement of Need:

This project was included in PWBA's Fall 1995 Regulatory Plan and will be included in the Fall 1996 Plan. Each year, pension and welfare benefit plans subject to Title I of ERISA are generally required to file an annual return/report, the Form 5500 Series, regarding their financial condition, investments, and operations. The Form 5500 Series is the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans, and is both an important compliance and research tool for the Department, and a disclosure document for plan participants and beneficiaries and a source of information and data for use by other Federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

As part of the President's Pension Simplification initiative, the Department, the IRS and the PBGC are conducting a comprehensive review of the annual return/report forms in an effort to streamline and information required to be reported and the methods by which the information is filed and processed. The proposed revised Form 5500 Series and regulations are being developed as a result of this review

Summary of the Legal Basis:

Title I of ERISA, sections 101 through 105, 107, 209, and 606, impose specific reporting and disclosure obligations on administrators of employee benefit plans. Section 104(a)(3) and 110 of

ERISA provide the Secretary with the authority to prescribe exemptions and alternative methods of compliance for employee welfare benefit plans and employee pension benefit plans. Section 505 provides the Secretary with general authority to prescribe regulations necessary or appropriate to carry out the provisions of Title I of ERISA.

Alternatives:

Regulatory alternatives will be developed once determinations have been made, in conjunction with other concerned agencies, with regard to the scope and nature of the revisions to the Form 5500 Series which are necessary.

Anticipated Costs and Benefits:

By simplifying the Form 5500 Series and creating an automated processing system for the filed reports, it is anticipated that filer costs of preparing forms, and Government processing costs, will be reduced. It is the goal of the Department to eliminate reporting requirements for information that is not needed to discharge its statutory responsibilities, while ensuring that participants and beneficiaries have access to the information they need to protect their rights and benefits under ERISA.

This project is expected to reduce Government processing costs.

Risks:

Failure to revise the Form 5500 Series Annual Reports for Employee Benefit Plans could deprive plans, sponsors and participants and beneficiaries, as well as the Government, of the cost savings and related benefits associated with streamlining the forms and their processing.

Timetable:

Action	Date	FR Cite
NPRM	08/00/97	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Agency Contact:

John J. Canary
 Supervisory Pension Law Specialist
 Department of Labor
 Pension and Welfare Benefits Administration
 200 Constitution Avenue NW.
 Room N5669
 Washington, DC 20210
 Phone: 202 219-8521

RIN: 1210-AA52

DOL—PWBA

FINAL RULE STAGE

62. • REGULATIONS IMPLEMENTING THE HEALTH CARE ACCESS, PORTABILITY AND RENEWABILITY PROVISION OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

PL 104-91 section 101; 29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1171; 29 USC 1172; 29 USC 1177

CFR Citation:

Not yet determined

Legal Deadline:

NPRM, Statutory, April 1, 1997.

Per Section 707 of ERISA, as added by Section 101 of HIPAA

Abstract:

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

Statement of Need:

HIPAA added a new part 7 to title I of ERISA, containing provisions designed to improve the availability and portability of health insurance coverage. Part 7 includes provisions limiting exclusions for preexisting conditions and providing credit for prior coverage, guaranteeing availability of health coverage for small employers, prohibiting discrimination against employees and dependents based on health status, and guaranteeing renewability of health coverage to employers and individuals. Section 702(g)(4), also added by HIPAA, provides that the Secretary shall, consistent with section 104 of HIPAA, first issue by not later than April 1, 1997, such regulations as may be necessary to carry out these provisions.

Alternatives:

Regulatory alternatives will be developed once determinations have

been made, in conjunction with other concerned agencies, with regard to the scope and nature of the regulatory guidance which will be necessary to carry out the new provisions.

Anticipated Costs and Benefits:

Preliminary estimates of the anticipated costs and benefits of the regulatory actions found to be necessary to implement the new provision will be developed once decisions are reached on which specific actions are necessary.

Risks:

Failure to provide regulatory guidance necessary to carry out these important health care forms would adversely impact the availability and portability of health insurance coverage for American families.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/00/97	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

Agency Contact:

Daniel J. Maguire
 Senior Legislative and Regulatory Attorney
 Plan Benefits Security Division
 Department of Labor
 Pension and Welfare Benefits Administration
 200 Constitution Avenue NW.
 Room N-4611, FP Building
 Washington, DC 20210
 Phone: 202 219-4592

RIN: 1210-AA54

DOL—PWBA

63. • AMENDMENT OF SUMMARY PLAN DESCRIPTION AND RELATED ERISA REGULATIONS TO IMPLEMENT STATUTORY CHANGES IN THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

Priority:

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

Unfunded Mandates:

Undetermined

Legal Authority:

PL 104-191 section 101; 29 USC 1021; 29 USC 1022; 29 USC 1024; 29 USC 1026; 29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1136; 29 USC 1168; 29 USC 1177

CFR Citation:

29 CFR 2520.102-3; 29 CFR 2520.102-5; 29 CFR 2520.1042-3; 29 CFR 2520.1042-4; 29 CFR 2520.1046-1; 29 CFR 2520.1046-3

Legal Deadline:

NPRM, Statutory, April 1, 1997.

Per Section 707 of ERISA, as added by Section 101 of HIPAA.

Abstract:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) amended ERISA's summary plan description (SPD) and related reporting and disclosure provisions to require that participants and beneficiaries receive from their group health plans: (i) more timely notice if there is a material reduction in services or benefits under the plan; (ii) more information regarding the financing and administration of the plan; and (iii) specific identification of Department of Labor offices through which they can seek assistance or information about HIPAA. This rulemaking will amend the Department's SPD and related regulations to implement those statutory changes.

Statement of Need:

The existing SPD and related reporting and disclosure provisions need to be revised to reflect the changes made by HIPAA. HIPAA's statutory changes modify the requirements concerning the manner and timing of how certain important plan information is communicated to participants and beneficiaries by plan administrators. Without revised regulatory guidance, administrators may not be able to improve the timely disclosure of plan information on both a quantitative and qualitative basis. HIPAA also requires the Secretary to issue regulations within 180 days after its enactment providing alternative mechanisms to delivery by mail through which group health plans may notify participants and beneficiaries of material reductions in covered services or benefits.

Alternatives:

Regulatory alternatives will be developed once determinations have been made with regard to the scope and nature of the regulatory guidance which will be necessary to carry out the new provisions.

Anticipated Costs and Benefits:

Preliminary estimates of the anticipated costs and benefits of the regulatory actions found to be necessary to

implement the new provision will be developed once decisions are reached on which specific actions are necessary.

Risks:

The SPD is a critical plan document for participants and beneficiaries. Without access to accurate and timely information, participants and beneficiaries will not be able to protect their rights under ERISA. Improved disclosure requirements also should serve to facilitate compliance by plan administrators, thereby reducing litigation and penalty risks to plan administrators. The failure to issue revised disclosure regulations also may result in a failure to achieve HIPAA's objective of improving the disclosure of plan information.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/00/97	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

Agency Contact:

John J. Canary
Supervisory Pension Law Specialist
Department of Labor
Pension and Welfare Benefits Administration
200 Constitution Avenue NW.
Room N-5669, FP Building
Washington, DC 20210
Phone: 202 219-8521

RIN: 1210-AA55

DOL—Mine Safety and Health Administration (MSHA)**PRERULE STAGE****64. ADVISORY COMMITTEE ON THE ELIMINATION OF PNEUMOCONIOSIS AMONG COAL MINERS****Priority:**

Other Significant

Legal Authority:

30 USC 811; 30 USC 812; 5 USC app

CFR Citation:

30 CFR 70; 30 CFR 71; 30 CFR 90

Legal Deadline:

None

The Committee will terminate 180 days from the date of its appointment.

Abstract:

The Federal Coal Mine Health and Safety Act of 1969 established the first comprehensive respirable dust standards for coal mines. These standards were designed to reduce the incidence of coal workers' pneumoconiosis "black lung" and silicosis and eventually eliminate these diseases. While significant progress has been made toward improving the health conditions in our Nation's coal mines, miners continue to be at risk of developing occupational lung disease, according to the National Institute for Occupational Safety and Health (NIOSH). On January 31, 1995, Secretary of Labor Robert Reich established an advisory committee to make recommendations for the elimination of black lung and silicosis among coal miners. The advisory committee convened in February 1996, concluded its series of 5 public meetings in July 1996, and is due to deliver its recommendations to the Secretary by September 1996. The recommendations will cover a number of different areas. MSHA anticipates that some of the recommendations may only require changes to Agency policies which can be made on a short term basis. Other changes to regulations may be of a more long term nature.

Statement of Need:

Although respirable coal mine dust levels in this country are significantly lower than they were 25 years ago, there continues to be concern about the respirable coal-mine-dust sampling program and its effectiveness in presenting an accurate picture of exposure levels. In response to this concern, MSHA undertook an extensive review of the Agency's respirable coal-mine-dust program. The MSHA Coal Mine Respirable Dust Task Group Report, issued in June 1992, found that vulnerabilities exist which could impact miner health protection and made recommendations for improving the monitoring program.

There are, however, significant differences of opinion among representatives of industry, labor, and government over the best approach to improving the effectiveness of the existing MSHA dust control program. These differences involve three primary areas: the current risk to miners of developing pneumoconiosis; the strategy for monitoring respirable coal mine dust; and the adequacy of existing control measures. MSHA has concluded that resolution of these critical issues requires a cooperative approach

between the coal mining industry, labor, and the Federal Government. The ultimate objective of this cooperative undertaking is to devise a progressive occupational health protection strategy that focuses on control of the respirable dust hazard in coal mines to ensure elimination of pneumoconiosis.

Alternatives:

MSHA's Dust Task Group Report identified a number of deficiencies in the existing dust control program. The report included recommendations for improving both MSHA's enforcement and the operator's sampling program, the majority of which would require regulatory change. MSHA initially planned to proceed to notice and comment rulemaking to implement these recommendations, but concluded that a Federal advisory committee would provide the best forum for considering the various views of the mining community. Consistent with this conclusion, in January 1995, the Secretary of Labor announced his intention to convene a Federal advisory committee to address these issues. Appropriate regulatory action will be initiated after the advisory committee delivers its recommendations.

Anticipated Costs and Benefits:

While it is not yet known what changes the Committee will recommend, any modifications of the current program will seek a balance between anticipated benefits and associated costs. Benefits sought are reduced dust levels over a miner's working lifetime--the key to eliminating black lung and silicosis as a risk to coal miners. Enhanced protection to miners from these diseases will also reduce the cost of future black lung benefits and lead to lower operator insurance premiums.

Risks:

Respirable coal mine dust is considered one of the most serious occupational hazards in the mining industry. Long-term exposure to excessive levels of respirable coal mine dust can cause black lung and silicosis, which are both potentially disabling and can cause death. There is concern about the adequacy of the respirable coal mine dust sampling program, an essential part of the overall strategy to protect miners' health. For these reasons, MSHA is seeking recommendations from a Federal advisory committee on how to eradicate pneumoconiosis through the control of coal mine respirable dust and the reduction of miners' exposure.

Timetable:

Action	Date	FR Cite
Recommendations Expected	11/00/96	
Issue Policy Document Phase 1	12/00/96	
NPRM - Phase 2	06/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

None

Agency Contact:

Patricia W. Silvey
 Director, Office of Standards
 Regulations, and Variances
 Department of Labor
 Mine Safety and Health Administration
 4015 Wilson Boulevard
 Room 631
 Arlington, VA 22203
 Phone: 703 235-1910

RIN: 1219-AA81

DOL—MSHA

PROPOSED RULE STAGE

65. NOISE STANDARD

Priority:

Other Significant

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

30 USC 811

CFR Citation:

30 CFR 56; 30 CFR 57; 30 CFR 62; 30 CFR 70; 30 CFR 71

Legal Deadline:

None

Abstract:

Many miners are exposed consistently to noise levels that are at or near maximum levels currently permitted by Mine Safety and Health Administration (MSHA) regulations. Notwithstanding MSHA's enforcement of its current noise regulations, miners are continuing to incur hearing impairment. Data indicate that protective action needs to be taken at a lower noise level than is currently

required. MSHA is developing a proposed rule that would establish uniform noise standards to apply to all mining, and which will consider requiring additional measures to protect miners, such as hearing protection and audiometric testing.

Statement of Need:

MSHA's experience under its current standards for occupational exposure to hazardous noise levels indicates that current standards do not provide the protection intended. Many miners are exposed consistently to noise levels that are near the maximum currently permitted by MSHA regulations. Notwithstanding MSHA's enforcement of existing noise standards, miners continue to suffer hearing impairment. This proposed rule will consider establishing a lower action level for requiring hearing protection and will address methods for controlling exposure. The proposed rule also will consider requiring hearing conservation programs to determine the effectiveness of control measures in reducing the amount of hearing damage in exposed miners.

In addition, MSHA's current noise standards for coal mines differ from those for metal and nonmetal mines. MSHA's proposed rule would provide consistent requirements for all mines.

Alternatives:

MSHA published an Advance Notice of Proposed Rulemaking which requested comments and data on a number of issues. Based upon its own research and experience, and data and information submitted to the record, MSHA has considered numerous alternatives on a wide variety of complex issues. For example, MSHA has considered (1) the respective roles of personal hearing protection and engineering controls in controlling miners' exposures; (2) lowering the permissible exposure level; and (3) whether or not to require a hearing conservation program, including audiometric testing, exposure monitoring, and miner training. This proposed rule will derive from MSHA's deliberations and decisions on these issues and alternatives.

Anticipated Costs and Benefits:

Depending on the form of the rule, MSHA expects costs could be incurred for engineering controls, personal hearing protection, exposure monitoring, audiometric testing, training, and recordkeeping. The major benefit of implementing the protection sought would be an average annual

reduction of several hundred cases of hearing impairment from occupational noise exposure in mining, assuming that existing exposure levels and the number of miners remained constant and that miners were exposed for 20 years at these levels. The scope and nature of the proposed rule is currently under development and, thus, estimates of costs and benefits are preliminary.

Risks:

Noise is a serious occupational hazard in the mining industry. Occupational exposure to loud noises results in hearing loss and hearing impairment, which affects both quality of life and functional capacity. The Agency believes that the health evidence forms a reasonable basis for proposing revisions to MSHA's existing noise standards. In addition, cases of hearing loss reported to MSHA indicate that a significant number of these miners received all of their noise exposure under existing standards.

Timetable:

Action	Date	FR Cite
ANPRM	12/04/89	54 FR 50209
ANPRM Comment Period End	06/22/90	55 FR 6011
NPRM	11/00/96	
Final Action	09/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

None

Agency Contact:

Patricia W. Silvey
Director, Office of Standards
Regulations, and Variances
Department of Labor
Mine Safety and Health Administration
4015 Wilson Boulevard
Room 631
Arlington, VA 22203
Phone: 703 235-1910

RIN: 1219-AA53

DOL—MSHA

66. DIESEL PARTICULATE

Priority:

Other Significant

Legal Authority:

30 USC 811

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

Several epidemiological studies have found that diesel exhaust presents potential health risks to workers. These possible health effects range from headaches and nausea to respiratory disease and cancer. In 1988, the National Institute for Occupational Safety and Health recommended that "whole diesel exhaust be regarded as a potential occupational carcinogen." In addition, in 1989 the International Agency for Research on Cancer concluded that "diesel engine exhaust is probably carcinogenic to humans."

In 1988, a Secretarial advisory committee made recommendations to the Secretary of Labor concerning safety and health standards for the use of diesel-powered equipment in underground coal mines. One of the recommendations was for the Secretary of Labor to set in motion a mechanism whereby a diesel particulate standard could be set. Based on that recommendation, the Mine Safety and Health Administration (MSHA) published an advance notice of proposed rulemaking, in January 1992, seeking information relative to exposure limits, risk assessment, sampling and monitoring methods, and control feasibility. Because of the potential health risk to miners from exposure to diesel particulate, MSHA is investigating a variety of approaches that would control the exposure of miners to diesel particulate. In 1995, MSHA held a series of three public workshops bringing together U.S. organizations having a vested interest in limiting the exposure of miners to diesel particulate. The information gathered during these workshops supplements the information obtained as a result of the ANPRM and includes suggestions for possible approaches that would limit miners exposure to diesel particulate.

Statement of Need:

The use of diesel-powered equipment in both surface and underground mines has increased significantly and rapidly during the past decade. It is currently estimated that approximately 30,000 miners are occupationally exposed to diesel exhaust emissions in underground mines and another 200,000 are potentially exposed at surface operations.

Several epidemiological studies have shown a positive carcinogenic risk associated with exposure to diesel exhaust. Other reported health effects associated with exposure to diesel exhaust include dizziness, drowsiness,

headaches, nausea, decrement of visual acuity, and decrement in forced expiratory volume. In addition, studies by MSHA and the Bureau of Mines show that miners working in underground dieselized mining operations are probably the most heavily exposed workers of any occupational group. Based on the levels of diesel particulate measured in underground mining operations and the evidence of adverse health effects associated with exposure to diesel exhaust, MSHA is concerned about the potential health risk to miners. MSHA currently has no health regulations that specifically address the exposure of miners to diesel particulate.

Alternatives:

Over the past 10 years, MSHA and the Bureau of Mines have conducted research on methodologies for the measurement and control of diesel particulate in the mining environment. This research has demonstrated that the use of low sulfur fuel, good engine maintenance, exhaust after-treatment, new engine technology, and optimized application of ventilating air all play a role in reducing miners' exposure to diesel particulate matter. MSHA, therefore, is considering whether or not to require any of these methods or other approaches (such as establishing a permissible exposure limit -- a PEL) to limit miners' exposure to diesel particulate.

To obtain additional information and public input on health risks, measurement and control technologies, and alternative approaches applicable to limiting miners' exposure to diesel particulate, MSHA held public workshops in the fall of 1995.

Anticipated Costs and Benefits:

MSHA is in the early stages of developing potential cost figures related to the various possible approaches in a proposed diesel particulate standard for surface and underground coal and metal and nonmetal mines. Costs will depend on the ultimate approach chosen, but will relate to the degree of implementation of engine control technology, fuel requirements, ventilation changes, sampling practices, and requirements for exhaust control devices on diesel-powered equipment.

The projected costs of technology development are expected to be somewhat minimized by research and development conducted by the Bureau of Mines and others which has resulted in a number of exhaust control devices that have proven effective and safe

when properly maintained. In addition, low sulfur fuel is readily available because of current Environmental Protection Agency (EPA) regulations.

Benefits to health and safety would result from reducing miners' exposure to diesel particulate in workplaces where diesel-powered equipment is used. One such benefit would be a reduction in the incidence of potential illnesses associated with exposure to diesel exhaust particulate.

Risks:

Laboratory tests have shown diesel exhaust to be carcinogenic in rats, as well as toxic and mutagenic. In addition, several epidemiological studies have found that exposure to diesel exhaust presents potential health risks to workers. These potential adverse health effects range from headaches and nausea to respiratory disease and cancer. In the confined space of the underground mine 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. The Agency believes that the health evidence forms a reasonable basis for exploring possible methods to reduce miners' exposure to diesel particulate.

Timetable:

Action	Date	FR Cite
ANPRM	01/06/92	57 FR 500
ANPRM Comment Period End	07/10/92	57 FR 7906
NPRM	02/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Agency Contact:

Patricia W. Silvey
 Director, Office of Standards
 Regulations, and Variances
 Department of Labor
 Mine Safety and Health Administration
 4015 Wilson Boulevard
 Room 631
 Arlington, VA 22203
 Phone: 703 235-1910

RIN: 1219-AA74

DOL—Occupational Safety and Health Administration (OSHA)

PRERULE STAGE

67. • STANDARDS ADVISORY COMMITTEE ON METALWORKING FLUIDS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

Section 6(b)(1) and 7(b) of the OSH Act

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

In December 1993, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) petitioned OSHA to take emergency regulatory action to protect workers from the risks of occupational cancers and respiratory illnesses due to exposure to metalworking fluids. In July 1994, OSHA sent an interim response to the UAW stating that the decision to proceed with rulemaking would depend on the results of the OSHA Priority Planning Process. Following the December 1995 Priority Planning Process report, which identified metalworking fluids as an issue worthy of Agency action, the Assistant Secretary asked the National Advisory Committee on Occupational Safety and Health (NACOSH) for a recommendation about how to proceed with a rulemaking for metalworking fluids. In May 1996, NACOSH unanimously recommended that OSHA form a Standards Advisory Committee (SAC) to address the health risks caused by occupational exposure to metalworking fluids. The Assistant Secretary accepted the recommendation of NACOSH; OSHA intends to establish a 15-member SAC to make recommendations regarding a proposed rule for occupational exposure to metalworking fluids under Sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act. The Committee is required to have a balanced membership, including individuals appointed to represent the following affected interests: industry; labor; federal and state safety and health organizations; professional

organizations; and national standards-setting groups.

Statement of Need:

Under Table Z-1 of the 1971 air contaminants rule, OSHA enforces a permissible exposure limit of 5 mg/m3 for mineral oil mists, but evidence suggests this level is outdated and that exposure to metalworking fluids can lead to cancer, non-malignant lung disease and dermatitis. Giving a SAC the opportunity to examine and comment upon current studies and data concerning the risks associated with all metalworking fluid mixtures (straight oils, synthetic, and semisynthetic) will provide valuable information the Agency can use to develop a proposed rule for metalworking fluids. The SAC will also report on related regulatory issues such as fluid management, engineering controls, medical surveillance, and economic and technological feasibility.

Alternatives:

The Agency recognizes the complex and difficult nature of the issues surrounding the regulation of metalworking fluids and believes a SAC can best alleviate some areas of confusion. The Committee has a unique opportunity to provide needed data and academic and professional expertise, as well as large and small industry and labor perspectives. Through OSHA's exhaustive Priority Planning Process and NACOSH recommendation, metalworking fluids was identified as a regulatory candidate that could be handled most successfully through a SAC. The option of going directly to 6(b) rulemaking has been passed up because of the added benefits the Agency will gain from the deliberations of the SAC; the ability to learn more from the SAC recommendations than from any other data gathering method, and the opportunity to build some consensus before the proposal is issued.

Anticipated Costs and Benefits:

Because the SAC has yet to meet, the form of the Committee's recommendations is unknown at the present time. However, once the SAC report is written, the scope of the proposed rule will be determined. Quantitative estimates of costs and benefits will be made only after the proposed rule has been drafted.

Timetable:

Action	Date	FR Cite
Appointed Names	11/00/96	
Charter	11/00/96	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Federal

Additional Information:

The Agency is particularly concerned with the potential impact a metalworking fluids rule would have on small businesses. OSHA has been working closely with the Small Business Administration to reach small employers to involve them in the process at the earliest possible time. At least 30 small business interests have been identified to date. The Agency is required to have balanced committee representation, and small business will be represented on the SAC.

Agency Contact:

Adam M. Finkel
Director, Directorate of Health Standards Programs
Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue NW.
Room N-3718, FP Building
Washington, DC 20210
Phone: 202 219-7075

RIN: 1218-AB58

DOL—OSHA

PROPOSED RULE STAGE

**68. STEEL ERECTION (PART 1926)
(SAFETY PROTECTION FOR
IRONWORKING)**

Priority:

Economically Significant. Major under 5 USC 801.

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

29 USC 655; 40 USC 333

CFR Citation:

29 CFR 1926.750 (Revision); 29 CFR 1926.751 (Revision); 29 CFR 1926.752 (Revision)

Legal Deadline:

None

Abstract:

On December 29, 1992, the Occupational Safety and Health Administration (OSHA) announced its intention to form a negotiated rulemaking advisory committee to negotiate issues associated with a revision of the existing steel erection standard. The Steel Erection Negotiated Rulemaking Advisory Committee (SENAC), a 20-member committee, was established, and the SENAC charter was signed by Secretary Reich on May 26, 1994. Four of the primary issues the committee has negotiated include the need to expand the scope and application of the existing standard, construction specifications and work practices, written construction safety erection plan, and fall protection. The Committee met 11 times over an 18-month period and completed work on the regulatory text for the proposed steel erection standard on December 1, 1995.

The negotiated rulemaking process has been successful in bringing together the interested parties that will be affected by the proposed revision to the steel erection rule to work out contrasting positions, find common ground on the major issues, and develop language for a proposed rule. The use of this process and a neutral facilitator allowed the stakeholders to develop an ownership stake in the proposal that they would not have had without the use of this process.

The process has led to a draft revision to Subpart R of 29 CFR 1926 that contains innovative provisions that will help to minimize the major causes of steel erection injuries and fatalities. Many of these provisions could not have been developed without this process, which has brought together industry experts, via face-to-face negotiations, to discuss different approaches to resolving the issues. This process has proved mutually beneficial to all the parties involved (including OSHA), with each Committee member participating in resolving the issues and developing practical and effective rules to make the steel erection industry safer.

The Agency benefitted from this process by having industry members participate and add to the Agency's knowledge about steel erection. Also, the Agency has been able to work together constructively with the various parties and has avoided the adversarial environment that sometimes develops during OSHA rulemaking. The negotiated rulemaking process will enable the Agency to publish a

proposal and go from proposal to final rule more quickly and with less controversy than would otherwise have been possible.

Statement of Need:

In 1989, OSHA was petitioned by the Iron Workers Union and National Erectors Association to revise its construction safety standard for steel erection through the negotiated rulemaking process. OSHA asked an independent consultant to review the issues involved in a steel erection revision, render an independent opinion, and recommend a course of action to revise the standard. The consultant recommended that OSHA address the issues by using the negotiated rulemaking process. Based on the consultant's findings and the continued requests for negotiated rulemaking, OSHA decided to use the negotiated rulemaking process to develop a proposed revision of Subpart R. The use of negotiated rulemaking was thought to be the best approach to resolving steel erection safety issues, some of which have proven intractable in the past.

Alternatives:

An alternative to using the negotiated rulemaking process is to publish a notice of proposed rulemaking developed by Agency staff and consider the concerns of the affected interests through the public comment and public hearing process. It is anticipated that using this alternative would result in an extremely long and contentious rulemaking proceeding, with subsequent challenge in the Court of Appeals. This alternative was therefore rejected. Another alternative would be not to revise the Agency's current steel erection rules for construction. This alternative was rejected because it would permit steel erection-related injuries and fatalities to continue.

Anticipated Costs and Benefits:

The scope and nature of the proposed rule are currently under development, and thus estimates of costs and benefits have not been determined at this time. Costs are not likely to exceed \$100 million annually, and benefits will include the prevention of numerous fatalities and hundreds of injuries associated with steel erection activities.

Risks:

The magnitude of the risk associated with steel erection activities is great. It is estimated that about 30 workers are killed every year during steel erection activities. Falls are currently

the number one killer of construction workers, and since the erection of buildings necessarily involves high exposure to fall hazards, the central focus of this rule will be to eliminate or reduce the risks associated with falls. All other construction trades are afforded a higher level of protection from falls by other rules in the construction safety and health standards.

Timetable:

Action	Date	FR Cite
Notice of Committee Establishment	05/11/94	59 FR 24389
NPRM	12/00/96	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

Agency Contact:

Russell B. Swanson
Director, Directorate of Construction
Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue NW.
Rm N3306, FP Building
Washington, DC 20210
Phone: 202 219-8644

RIN: 1218-AA65

DOL—OSHA

69. PREVENTION OF WORK-RELATED MUSCULOSKELETAL DISORDERS

Priority:

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

Legal Authority:

29 USC 655(b); 40 USC 333

CFR Citation:

29 CFR 1910; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918; 29 CFR 1926; 29 CFR 1928

Legal Deadline:

None

Abstract:

Work-related musculoskeletal disorders are a leading cause of pain, suffering, and disability in American workplaces. Since the 1980's, the Occupational Safety and Health Administration (OSHA) has had a number of initiatives related to addressing these problems, including enforcement under the general duty clause, issuance of guidelines for the meatpacking

industry, and development of other compliance-assistance materials.

Ultimately, the Agency decided that, given the increasing magnitude of the problem, a regulatory approach should be explored to ensure that the largest possible number of employers and employees become aware of the problems and ways of preventing work-related musculoskeletal disorders. An open process to develop and consider regulatory alternatives was initiated by the Bush Administration with the publication of an advance notice of proposed rulemaking on August 3, 1992 (57 FR 34192). About 300 comments were received in response to that request. In addition to the public comments, OSHA has examined and analyzed the extensive scientific literature documenting the problem of work-related musculoskeletal disorders, the causes of the problem, and effective solutions; conducted a telephone survey of over 3,000 establishments regarding their current practices to prevent work-related musculoskeletal disorders; and completed a number of site visits to facilities with existing programs. The Agency has also held numerous stakeholder meetings to solicit input from individuals regarding the possible contents of a standard to prevent work-related musculoskeletal disorders, and on a draft proposed regulatory text and supporting documents. Agency representatives have delivered numerous outreach presentations to people who are interested in this subject; consulted professionals in the field to obtain expert opinions on various aspects of the options considered by the Agency; and had some employers field-test certain requirements under consideration for the standard. A quantitative risk assessment has been drafted, as well as a preliminary assessment of potential costs and benefits.

The Agency believes that the scientific evidence supports the need for a standard and that the availability of effective and reasonable means to control these hazards has been amply demonstrated. The criteria that have been developed for setting OSHA priorities support the Agency's determination that action is needed now to stop the escalating occurrence of work-related musculoskeletal disorders. The Agency was precluded from issuing a standard or guidelines in this area by a rider or its FY 96 appropriations bill. It is unclear at this point whether similar Congressional restrictions will prevent OSHA from

addressing this important occupational health issue in FY 97.

Statement of Need:

OSHA estimates that the occurrence of work-related musculoskeletal disorders in the United States ranges from more than 700,000 lost workday injuries and illnesses (30% of all lost workdays reported to the Bureau of Labor Statistics (BLS)) to more than 2.7 million annually awarded workers' compensation claims. These disorders now account for one out of every three dollars spent on workers' compensation. It is estimated that employers spend \$20 billion a year on direct costs for workers' compensation, and up to five times that much for indirect costs, such as those associated with hiring and training replacement workers. In addition to these monetary effects, these disorders often impose a substantial personal toll on workers who experience their effects, and as a result are no longer able to work or to perform simple personal tasks like buttoning their clothes or brushing their hair.

Scientific evidence associates these disorders with stresses to various body parts caused by the way certain tasks are performed. The positioning of the body and the type of physical work that must be done to complete the tasks of a job may cause persistent pain and lead over time to deterioration of the affected joints, tissues, and muscles. The longer the time the worker must maintain a fixed or awkward posture, exert force, repeat the same movements, experience vibration, or handle heavy items, the greater the chance that such a disorder will occur. These job-related stresses are referred to as "workplace risk factors," and the scientific literature demonstrates that exposure to these risk factors, particularly in combination with each other, significantly increases an employee's risk of developing a work-related musculoskeletal disorder. Jobs involving exposure to workplace risk factors appear in all types of industries and in all sizes of facilities.

Musculoskeletal disorders occur in all parts of the body-- the upper extremity, the lower extremity, and the back. An example of the increasing magnitude of the problem involves repeated trauma to the upper extremity, or that portion of the body above the waist, in forms such as carpal tunnel syndrome and shoulder tendinitis. In 1994, employers reported 332,000 upper extremity repeated trauma cases to the BLS. As a point of comparison, the number of

reported cases in this category was only 22,700 in 1981. Adjusting the data to reflect changes in the size of the employee population indicates that there has been a greater than 7-fold increase in such cases in the last ten years. In industries such as meatpacking, 13 out of every 100 workers report a work related musculoskeletal disorder from repeated trauma each year. In automotive assembly, 10 out of 100 workers are affected. The number of work-related back injuries occurring each year is even larger. Industries reporting a large number of cases of back injuries include hospitals and personal care facilities.

The evidence OSHA has assembled and analyzed indicates that there are technologically and economically feasible measures available that can significantly reduce exposures to workplace risk factors and the risk of developing work-related musculoskeletal disorders. Many companies that have voluntarily implemented ergonomics programs have demonstrated that effective ergonomic interventions are available and implementation of them is beneficial to the employer and the employee. Many of these interventions are simple and inexpensive, but nevertheless have a significant effect on the occurrence of work-related musculoskeletal disorders. Substantial savings in workers' compensation costs, increased productivity, and decreased turnover are among the benefits found.

Alternatives:

OSHA has considered many different regulatory alternatives since initiating the rulemaking process. These include variations in the scope of coverage, particularly with regard to industrial sectors. Various phasing options related to the size of facility have also been considered. Other alternatives include varying the types of disorders intended to be covered by the proposed rule. The agency is still in the process of developing and refining a number of regulatory alternatives.

Anticipated Costs and Benefits:

Implementation costs associated with a regulatory approach would include those related to identifying and correcting problem jobs using engineering and administrative controls. Benefits expected include reduced pain and suffering, both from prevented disorders as well as reduced severity in those disorders that do occur, fewer workers' compensation claims and lower associated costs, and

reduced lost work time. Secondary benefits may accrue from improved quality and productivity due to better designed work systems.

Risks:

The data OSHA has obtained and analyzed indicate that employees are at a significant risk of developing or aggravating musculoskeletal disorders due to exposure to risk factors in the workplace. In addition, information OSHA has obtained from site visits, scientific literature, compliance experience, and other sources indicates that there are economically and technologically feasible means of addressing and reducing these risks to prevent the development or aggravation of such disorders, or to reduce their severity. These data and analyses will be presented in the preamble to any proposed standard published in the Federal Register.

Timetable:

Action	Date	FR Cite
ANPRM	08/03/92	57 FR 34192
ANPRM Comment	02/01/93	
Period End		
NPRM	00/00/00	

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Agency Contact:

Adam Finkel
Director, Health Standards Programs
Department of Labor
Occupational Safety and Health
Administration
200 Constitution Avenue NW.
Room N3718, FP Building
Washington, DC 20210
Phone: 202 219-7075

RIN: 1218-AB36

DOL—OSHA

70. COMPREHENSIVE SAFETY AND HEALTH PROGRAMS (FOR GENERAL INDUSTRY AND AGRICULTURE)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

29 USC 655

CFR Citation:

29 CFR 1910; 29 CFR 1928

Legal Deadline:

None

Abstract:

The Occupational Safety and Health Administration (OSHA), many of the States, members of the safety and health community, insurance companies, professional organizations, companies participating in the Agency's Voluntary Protection Program, and many proactive employers in all industries have recognized the value of worksite-specific safety and health programs in preventing job-related injuries, illnesses, and fatalities. The effectiveness of these programs is seen most dramatically in the reductions in job-related injuries and illnesses, workers' compensation costs, and absenteeism that occur after employers implement such programs. To assist employers in establishing safety and health programs, OSHA in 1989 (54 FR 3904) published nonmandatory guidelines that were based on a distillation of the best safety and health management practices observed by OSHA in the years since the Agency was established. OSHA's decision to expand on these guidelines by developing a safety and health programs rule is based on the Agency's recognition that occupational injuries, illnesses, and fatalities are continuing to occur at an unacceptably high rate, for example, on average about 17 workers were killed each day in 1995 in occupational fatalities.

Although the precise scope of the standard (e.g., what industries will be covered, what sizes of firms will be covered) has not yet been determined, the safety and health programs contained in the proposed rule will include at least the following elements: management leadership of the program; active employee participation in the program; analysis of the worksite to identify serious safety and health hazards of all types; requirements that employers eliminate or control those hazards in an effective and timely way; safety and health training for employees, supervisors, and managers; and regular evaluation of the effectiveness of the safety and health program. OSHA is also developing a program evaluation directive and a program evaluation profile to be used by compliance officers to evaluate the completeness and effectiveness of an employer's safety and health program. Employers who have employees with effective and comprehensive programs will receive penalty reductions for any cited violations found by the compliance officer. OSHA believes that the effect of these enforcement initiatives, coupled with the regulatory

requirements of the safety and health programs rule, will act as incentives to employers to establish safety and health programs that protect workers, enhance productivity, and decrease employer costs. In addition, in response to extensive stakeholder involvement, OSHA has, among other things, focused the rule on serious hazards, deleted required medical surveillance, and reduced burdens on small business.

Statement of Need:

Worksite-specific safety and health programs are increasingly being recognized as the most effective way of reducing job-related accidents, injuries, and illnesses. Ten States have to date passed legislation and/or regulations mandating such programs for some or all employers, and insurance companies have also been encouraging their client companies to implement these programs, because the results they have achieved have been so dramatic. In addition, all of the companies in OSHA's Voluntary Protection Program have established such programs and are reporting injury and illness rates that are sometimes only 20 percent of the average for other establishments in their industry. Safety and health programs apparently achieve these results by actively engaging front-line employees, who are closest to operations in the workplace and have the highest stake in preventing job-related accidents, in the process of identifying and correcting occupational hazards. Finding and fixing workplace hazards is a cost-effective process, both in terms of the avoidance of pain and suffering and the prevention of the expenditure of large sums of money to pay for the direct and indirect costs of these injuries and illnesses. For example, many employers report that these programs return between \$5 and \$9 for every dollar invested in the program, and almost all employers with such programs experience substantial reductions in their workers' compensation premiums. OSHA believes that having employers evaluate the job-related safety and health hazards in their workplace and address any hazards identified before they cause occupational injuries, illnesses, or deaths is an excellent example of "regulating smarter," because all parties will benefit: workers will avoid the injuries and illnesses they are currently experiencing; employers will save substantial sums of money and increase their productivity and competitiveness; and OSHA's scarce resources will be leveraged as employers and employees join together to identify, correct, and

prevent job-related safety and health hazards.

Alternatives:

In the last few years, OSHA has considered both nonregulatory and regulatory alternatives in the area of safety and health program management. First, OSHA published, in 1989, a set of voluntary management guidelines designed to assist employers to establish and maintain programs such as the one envisioned by the proposed safety and health programs rule. Although these guidelines have received widespread praise from many employers and professional safety and health associations, they have not been effective in stemming the growing tide of job-related deaths, injuries, and illnesses, which have continued to occur at unacceptably high levels. Many of the States have also recognized the value of these programs and have mandated that some or all covered employers establish them; however, this has led to inconsistent coverage from State-to-State, with many States having no coverage and others imposing stringent program requirements. OSHA believes that this experience clearly points to the need for a national regulation that will be consistent across State lines, will apply to all or to a clearly identified group of employers, will have provisions that are widely recognized as being effective, and will be cost-effective in implementation.

Anticipated Costs and Benefits:

The scope and nature of the proposed rule are currently under development, and thus estimates of costs and benefits have not been determined at this time. Costs are likely to exceed \$1 billion annually, and benefits will include the prevention of many of the thousands of fatalities and millions of injuries and illnesses associated with a broad spectrum of occupational hazards.

Risks:

Workers in all major industry sectors in the United States continue to experience an unacceptably high rate of occupational fatalities, injuries, and illnesses. In 1994 the Bureau of Labor Statistics reports that 6.8 million injuries and illnesses occurred within private industry, and in 1995, 6,210 workers lost their lives on the job. There is increasing evidence that addressing hazards in a piecemeal fashion, as employers tend to do in the absence of a comprehensive safety and health program, is considerably less effective in reducing accidents than a

systematic approach. Dramatic evidence of the seriousness of this problem can be found in the staggering workers' compensation bill paid by America's employers and employees: \$54 billion annually. These risks can be reduced by the implementation of safety and health programs, as evidenced by the experience of OSHA's Voluntary Protection Program participants, who regularly achieve injury and illness rates averaging one-fifth to one-third those of competing firms in their industries. Other benefits of reducing accidents include enhanced productivity, improved employee morale, and reduced absenteeism. Because these programs address serious all job-related hazards--including those that are covered by OSHA standards as well as those not currently addressed by these standards--the proposed rule will be effective in ensuring a systematic approach to the control of long-recognized hazards, such as lead, and emerging hazards, such as lasers and heat stress.

Timetable:

Action	Date	FR Cite
NPRM	12/00/96	

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Additional Information:

Separate standards are being developed for the construction (29 CFR 1926) and the maritime (29 CFR 1915, 1917 and 1918) industries.

Agency Contact:

Thomas H. Seymour
Acting Director, Safety Standards
Programs
Department of Labor
Occupational Safety and Health
Administration
200 Constitution Avenue NW.
Room N3605, FP Building
Washington, DC 20210
Phone: 202 219-8061

RIN: 1218-AB41

DOL—OSHA

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

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

Not yet determined

CFR Citation:

29 CFR 655(b); 29 CFR 657

Legal Deadline:

None

Abstract:

In July 1993, the Occupational Safety and Health Administration (OSHA) was petitioned for an emergency temporary standard (ETS) to reduce the permissible exposure limit (PEL) for occupational exposures to hexavalent chromium. The Oil, Chemical, and Atomic Workers International Union (OCAW) and Public Citizen's Health Research Group (HRG) petitioned OSHA to promulgate an ETS to lower the PEL for chromium (CrVI) compounds to 0.5 micrograms per cubic meter of air (ug/m³) as an eight-hour, time-weighted average (TWA). This represents a significant reduction in the current PEL. The current PEL in general industries is found in 29 CFR 1910.1000 Table Z and is a ceiling value of 100 ug/m³ for "Chromic acid and chromates (as CrO₃)." These are measured as chromium (VI) and reported as chromic anhydride (CrO₃). This equates to a PEL of 52 ug/m³ of chromium (VI) measured and reported as chromium (VI). This ceiling limit applies to all forms of hexavalent chromium (VI) including chromic acid and chromates, lead chromate, and zinc chromate. The current PEL for chromium (VI) in the construction industry is 100 ug/m³ as a TWA PEL.

The major illnesses associated with occupational exposures to hexavalent chromium are lung cancer and dermatoses. OSHA estimates that more than 1 million workers are exposed to hexavalent chromium on a regular basis in all industries. The major uses of hexavalent chromium are: as a structural and anti-corrosive element in the production of stainless steel, ferrochromium, iron and steel, and in electroplating, welding, and painting. After reviewing the petition, OSHA denied the request for an ETS and initiated a section (6)(b) rulemaking. OSHA is currently pursuing a dialog with interested parties outside the Agency with regard to the development of the proposal.

Statement of Need:

In the past several years, a number of agencies have reviewed the epidemiological evidence and have classified chromium (VI) as a human

carcinogen. For example, the Environmental Protection Agency (EPA), the National Institute for Occupational Safety and Health (NIOSH), and the International Agency for Research on Cancer (IARC) have reviewed the epidemiological evidence and have classified chromium (VI) as a human carcinogen. Estimates of the population exposed to hexavalent chromium (chromium(VI)) suggest that more than 1 million workers are exposed. The major industries in which excess cancer mortality has been observed are: Chromate production (US, UK, Germany, Japan, Italy); Chrome pigment production (US, Germany, France, Norway, UK); Chrome plating (US, UK, Japan, Italy); Ferrochromium (Sweden, Norway, USSR); and Welding (European countries, WHO). Occupational exposure to chromium (VI) occurs primarily via inhalation but can also occur to a lesser extent through dermal and oral routes. Exposure to chromium (VI) is known to cause lung cancer, bronchial asthma, nasal septum perforations, skin ulcers, and irritative dermatitis. Chromium (VI) causes ulcers of the skin and acute irritative dermatitis among workers exposed to chromium alloys and chromium-plated objects. Inhalation of chromium (VI) aerosols at levels of about 100 ug/m³ may give rise to necrosis in the nasal septum, leading to perforation. Bronchial asthma may occur as a result of inhalation of low levels of chromium (VI) dust or fumes. Such asthma occurs among platers, welders, and ferrochromium workers. In adults, the lethal oral dose of chromates (chromium (VI)) is 50-70 milligrams per kilogram of body weight. The clinical features of acute poisoning are vomiting, diarrhea, hemorrhage and blood loss into the gastrointestinal tract, causing cardiovascular shock. Thirty-five epidemiological studies of lung cancer among workers exposed to chromium have been reviewed extensively by IARC and by other agencies. Thirty-three of these 35 studies showed elevated lung cancer death rates. In at least 20 studies, lung cancer death rates were statistically significantly elevated among workers in either the total cohort, or a subset of the cohort. The Mancuso study (1975) of lung cancer among workers at a U.S. chromate-production plant has been thoroughly reviewed by the Environmental Protection Agency (EPA-Health Assessment Document (HAD), 1984). EPA's evaluation of this study has formed part of EPA's basis for subsequent regulatory activities to

reduce exposures to Chromium (VI) - (53 FR 10206, 3/29/88; 57 FR 31576, 7/16/92; 58 FR 65767, 12/16/93). Reviews of updates of another major cohort study (Hayes) are currently underway by the Agency.

Alternatives:

Before deciding to publish a proposal, OSHA has considered a number of options including whether or not to develop an ETS, publish an advanced notice of proposed rulemaking, or enforce the existing PEL. Despite the fact that OSHA acknowledges that the risks of serious adverse health affects at the current PEL are significant, OSHA denied the petition for an ETS and initiated section (6)(b) rulemaking. A Section 6(b) rulemaking results in a lower PEL with additional protective provisions and allows scientific evaluation of the data as well as public input into the standard.

The decision to deny the petition for an ETS was based on the following considerations. To promulgate an emergency temporary standard (ETS), section 6(c) of the OSH Act requires that the Secretary determine that "employees are exposed to grave danger from exposure to substances...determined to be toxic...and...that such emergency standard is necessary to protect employees from such danger." The Act further requires that an ETS take effect immediately upon publication in the Federal Register and can remain in effect for no longer than six months after such publication, by which time a permanent standard must be promulgated. Courts have interpreted these provisions to mean that both the "grave danger" from which employees must be protected and the "necessity" for issuing an ETS to protect them must be a danger of incurable, permanent or fatal consequences arising from six months of exposure to the substance. The ETS must be able to achieve the expected benefits in terms of disease avoided within the 6 months.

Although it is unclear from court decisions whether the requisite "grave danger" implies a risk of harm quantitatively and/or qualitatively more serious than the significant risk required to justify 6(b) standards, it probably does. In light of the legislative history of the provision and the courts' general concern to narrowly limit exceptions to notice and comment procedures conventionally required in rulemakings, the courts have treated an ETS as an extraordinary power to be exercised only when drastic measures

are needed. For example, if a risk of one in a thousand of death from cancer over a working lifetime is considered a significant risk, a risk of one in a thousand of death from cancer due to exposure for 6 months, which would be a greater risk, might well constitute a "grave danger."

The petition for the ETS points to the evidence of chromium (VI)-induced lung cancer as the basis for the "grave danger." The risk assessment in the petition indicates that over 100 out of 1,000 workers would be expected to develop lung cancer with a working lifetime hexavalent chromium exposure (45 years) at the current PEL. In addition to cancer risk, there is evidence that other adverse health effects may occur at exposure levels at the current PEL, e.g., nasal septum perforation.

OSHA evaluated the risk estimates of cancer and other adverse health effects due to exposures to chromium (VI) to determine whether such risk constitutes a grave danger. Despite the fact that OSHA acknowledges that the risks of serious adverse health affects that the current PEL are significant, OSHA denied the petition and initiated section (6)(b) rulemaking. A Section 6(b) rulemaking results in a lower PEL with additional protective provisions and allows scientific evaluation of the data as well as public input into the standard. OSHA is preliminarily considering a new TWA PEL in the range of 0.5 - 5.0 ug/m³, measured and reported as chromium (VI). OSHA has initiated a Section 6(b) rulemaking for all hexavalent chromium compounds in all industries. OSHA intends to develop a new rule in the general, agriculture, and maritime industries and to adapt the rule to reflect conditions in the construction industry. OSHA anticipates that these two proposed rules will be published in the Federal Register later in 1997.

Anticipated Costs and Benefits:

OSHA prepares an Economic Analysis (EA) to accompany each proposed and final OSHA standard. This report provides details on the industries expected to be affected by a standard; the number of affected workers; the economic and technological feasibility of the standard; and the health benefits, costs, and impacts associated with the standard. A preliminary economic analysis will be published in the Federal Register notice containing the proposed standard for chromium (VI), and the analysis will be subject to

public comment during the public hearings.

The principal industrial uses of chromium (VI) are as a structural element and as an anticorrosive. Large quantities are used to make stainless steel and to "chromeplate" regular steel. In both cases, the chromium (VI) protects the iron in steel from corrosion. The principal industrial consumers of chromium are the metallurgical, refractory, and chemical industries. Other important consumers of chromium (VI) are pigment production industries, pigment application industries, and industries using chromium alloys or plated (chromium (VI)) materials. Chromium (VI) is used in industries that produce the following products: ferrochromium, iron and steel, chromates, chromated pigments, plating mixtures, chromium catalysts, colored plastics, and wood preservatives. Chromium (VI) is also used in electroplating, welding, painting, and in printing. Welding on stainless steel will generate chromium (VI) fumes. We are currently reviewing information on chromium (VI) exposures across many industry processes to determine the technological feasibility of achieving compliance with a new PEL. A determination of technological feasibility means that OSHA can demonstrate that current or immediately forthcoming technologies and methods to comply are or will be available for implementation by affected industries. This may include technologies and methods that will reduce worker exposure during existing chromium (VI) processes or substitute technologies and methods that do not make use of chromium (VI).

We are in the process of preparing cost estimates for achieving compliance with a new standard based on the use of those technologies and methods which we believe will be effective in reducing worker exposure. We are aware that several small business entities, e.g., electroplaters, will be covered by a new OSHA standard. We will conduct a regulatory flexibility analysis to determine whether a substantial number of small firms will be significantly affected by the forthcoming chromium (VI) standard. Information provided by employers in this industry sector would help improve the quality of the regulations.

The strength of the epidemiological data leads OSHA to conclude that occupational exposures to chromium (VI) must be reduced. There are several issues that need to be addressed during

the rulemaking. Estimates of the number of workers in various industries and the population exposed to various levels need to be refined as does information on current control technologies. Any new PEL for chromium (VI) must be greatly reduced. Assuming that the petitioners' risk estimate is approximately correct, technological and economic feasibility also need to be addressed during the rulemaking.

Risks:

OSHA has performed a preliminary quantitative risk assessment using all epidemiological studies for which dose-response information was available. OSHA preliminarily estimates that the risk of excess lung cancer deaths over a working lifetime at the current PEL ranges from 88 to 342 excess lung cancer deaths per thousand exposed workers. OSHA preliminarily estimates that the risk of excess lung cancer deaths over a working lifetime at a new PEL of 0.5 micrograms per cubic meter of air ranges from 0.9 to 4.4 excess lung cancer deaths per thousand exposed workers. This preliminary risk assessment is available in the docket of this rulemaking (Ex. 13-5; Docket H-054a).

OSHA is of the opinion that the epidemiological data on cancer mortality associated with chromium (VI) exposures are sufficient for the Agency to proceed with reduction of chromium (VI) exposures through regulation. The evidence of material impairment from exposure to chromium (VI) is strong and of high quality. There appears to be no dispute that the current PEL is too high, and the sooner the PELs are reduced, the sooner the risk of death from lung cancer due to occupational chromium (VI) exposure will be reduced. In addition, the number of cases of asthma, dermatitis, nasal septum perforation, and skin ulceration due to chromium (VI) will also be reduced. The risk estimates for chromium (VI) are similar to risk estimates from exposures to other substances that have been regulated through the Section 6(b) rulemaking process.

Timetable:

Action	Date	FR Cite
NPRM	09/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Agency Contact:

Adam Finkel
 Director, Health Standards Programs
 Department of Labor
 Occupational Safety and Health
 Administration
 200 Constitution Avenue NW.
 Room N3718, FP Building
 Washington, DC 20210
 Phone: 202 219-7075

RIN: 1218-AB45

DOL—OSHA**72. OCCUPATIONAL EXPOSURE TO TUBERCULOSIS****Priority:**

Economically Significant. Major under 5 USC 801.

Legal Authority:

29 USC 655(b)

CFR Citation:

29 CFR 1910.1035

Legal Deadline:

None

Abstract:

On August 25, 1993, the Occupational Safety and Health Administration (OSHA) was petitioned by the Labor Coalition to Fight TB in the Workplace to initiate rulemaking for a permanent standard to protect workers against occupational transmission of tuberculosis (TB). Although the Centers for Disease Control and Prevention (CDC) have developed recommendations for controlling the spread of TB in several work settings (e.g., correctional institutions, health-care facilities, and homeless shelters), the petitioners stated that in every recent TB outbreak investigated by the CDC, noncompliance with CDC's TB control guidelines was evident. After reviewing the available information, OSHA has preliminarily concluded that significant risk of occupational transmission of TB does exist for some workers and has decided to initiate a standard 6(b) rulemaking. The Agency is currently developing a proposed rule which would require certain employers to take steps to eliminate or minimize employee exposure to TB. OSHA already regulates the biological hazard of bloodborne pathogens (e.g., HIV, hepatitis B) under 29 CFR 1910.1030 and believes that development of a TB standard is consistent with the Agency's mission and previous activity. OSHA is currently pursuing a dialog with parties outside of the Agency with

regard to the developing proposal. The draft preliminary Risk Assessment has been peer-reviewed by four individuals with specific knowledge in the areas of tuberculosis and risk assessment. One reviewer is from the Centers for Disease Control and Prevention (CDC) and three are from academia. In addition, OSHA has conducted stakeholder meetings with representatives of relevant professional organizations, trade associations, labor unions, and other groups. These meetings provided the opportunity for both general and frontline stakeholder representatives to present OSHA with their individual comments, observations, and concerns about the contents of the draft proposal.

Statement of Need:

For centuries, TB has been responsible for the deaths of millions of people throughout the world. TB is a contagious disease caused by the bacterium *Mycobacterium tuberculosis*. Infection is generally acquired by the inhalation of airborne particles carrying the bacterium. These airborne particles, called droplet nuclei, can be generated when persons with pulmonary or laryngeal tuberculosis in the infectious state of the disease cough, sneeze, speak, or sing. In some individuals exposed to droplet nuclei, TB bacilli enter the alveoli and establish an infection. In most cases, the bacilli are contained by the individual's immune response. However, in some cases, the bacilli are not contained by the immune system and continue to grow and invade the tissue, leading to the progressive destruction of the organ involved. While in most cases this organ is the lung (i.e., pulmonary tuberculosis), other organs outside of the lung may also be infected and become diseased (i.e., extrapulmonary tuberculosis).

From 1953, when active cases began to be reported in the United States, until 1984, the number of annual reported cases declined 74 percent, from 84,304 to 22,255. However, this steady decline in TB cases has not continued. Instead, from 1985 through 1992, the number of reported TB cases increased 20.1 percent. In 1992, more than 26,000 new cases of active TB were reported in the United States. In New York City alone, 3,700 cases of active TB were reported in 1991. While a decrease in active cases has been observed recently, there were still 22,813 reported cases in 1995. A large portion of the decrease occurred in high incidence areas where intervention efforts have been focused. However, over twenty states showed an

increase or no change in the number of reported cases. In addition, the factors which led to the recent resurgence of TB (e.g., increases in homelessness, HIV infection, immigration from countries with high rates of infection) still exist and the job duties of certain workers require them to be exposed to patients and clients with suspected or confirmed infectious TB. In addition, strains of tuberculosis have emerged that are resistant to several of the first-line anti-TB drugs. This multidrug-resistant TB (MDR-TB) is often more fatal due to the difficulty of halting the progression of the disease. Individuals with MDR-TB often remain infectious for longer periods of time due to delays in diagnosing resistance patterns and initiating proper treatment. This lengthened period of infectiousness increases the risk that the organism will be transmitted to other persons coming in contact with such individuals.

Providing health care for individuals with the disease increases the risk of occupational exposure to TB among health care workers. In fact, several outbreaks of tuberculosis, including MDR-TB, have recently occurred in health care facilities, resulting in transmission to both patients and health care workers. CDC found that factors contributing to these outbreaks included delayed diagnosis of TB, delayed recognition of drug resistance, delayed initiation of effective therapy, delayed initiation and inadequate duration of TB isolation, inadequate ventilation in TB isolation rooms, lapses in TB isolation practices, inadequate precautions for cough-inducing procedures, and lack of adequate respiratory protection. CDC's analysis of data collected from three of the health care facilities involved in the outbreaks indicated that transmission of TB decreased significantly or ceased entirely in areas where recommended TB control measures were implemented. In addition, workers outside of health care may provide services to patient or client populations that have an increased rate of TB. For example, occupational transmission of TB has been documented in correctional facilities.

Alternatives:

Prior to a decision to publish a proposal, OSHA considered a number of options, including whether or not to develop an emergency temporary standard, publish an advance notice of proposed rulemaking, or to enforce existing regulations.

Anticipated Costs and Benefits:

Costs will be incurred by employers for engineering controls, respiratory protection, medical surveillance, training, exposure control, recordkeeping, and work practice controls. Benefits will include the prevention of occupationally-related TB transmissions and infections, and a corresponding reduced risk of exposure among the general population. The scope and nature of the proposed rule are currently under development and thus estimates of costs and benefits have not been determined at this time.

Risks:

From 1985 to 1992, the number of reported cases of TB in the U.S. increased, reversing a previous 30-year downward trend. While there has been a recent decrease in the reported number of cases of TB in the general population, a large part of this decrease can be attributed to focused intervention efforts in areas of high incidence of TB. Over 20 states showed an increase or no change in the number of reported TB cases and the factors that contributed to the resurgence continue to exist, along with exposure of certain workers to patient and client populations with an increased rate of TB. In addition, strains of multidrug-resistant TB have emerged which are more often fatal. Therefore, employees in work settings such as health care or correctional facilities, who have contact with infectious individuals, retain a risk of occupational transmission. TB is a contagious disease spread by airborne particles known as droplet nuclei. Active disease can cause signs and symptoms such as fatigue, weight loss, fever, night sweats, loss of appetite, persistent cough, and shortness of breath, and may possibly result in serious respiratory illness or death.

Timetable:

Action	Date	FR Cite
NPRM	11/00/96	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

During the rulemaking, OSHA will meet with small business stakeholders to discuss their concerns, and will conduct an initial Regulatory Flexibility Analysis to identify any significant impacts on a substantial number of small entities.

Agency Contact:

Adam Finkel
 Director, Health Standards Programs
 Department of Labor
 Occupational Safety and Health Administration
 200 Constitution Avenue NW.
 Room N3718, FP Building
 Washington, DC 20210
 Phone: 202 219-7075

RIN: 1218-AB46

DOL—OSHA

73. PERMISSIBLE EXPOSURE LIMITS (PELS) FOR AIR CONTAMINANTS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

29 USC 655 (b)

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

OSHA enforces hundreds of permissible exposure limits (PELs) for toxic air contaminants found in U.S. workplaces. These PELs set OSHA-enforceable limits on the magnitude and duration of employee exposure to each contaminant. The amount of exposure permitted by a given PEL depends on the toxicity and other characteristics of the particular substance. OSHA's PELs for air contaminants are codified in 29 CFR 1910.1000, Tables Z-1, Z-2, and Z-3. The air contaminant limits were adopted by OSHA in 1971 from existing national consensus standards issued by the American Conference of Governmental Industrial Hygienists and the American National Standards Institute. These PELs, which have not been updated since 1971, thus reflect the results of research conducted in the 1950s and 1960s. Since then, much new information has become available that indicates that, in most cases, these early limits are outdated and insufficiently protective of worker health. To correct this situation, OSHA published a proposal in 1988 updating the air contaminant limits in general industry. That proposal became a final rule in 1989 (54 FR 2332); it lowered the existing PEL for 112 toxic air contaminants and established PELs for 164 previously unregulated air contaminants. On June 12, 1992 (57 FR

26001), OSHA proposed a rule that would have extended these limits to workplaces in the construction, maritime, and agriculture industries. However, on July 10, 1992, the Eleventh Circuit Court of Appeals vacated the 1989 final rule on the grounds that "(1) OSHA failed to establish that existing exposure limits in the workplace presented significant risk of material health impairment or that new standards eliminated or substantially lessened the risk; (2) OSHA did not meet its burden of establishing that its 428 new permissible exposure limits (PELs) were either economically or technologically feasible." The Court's decision to vacate the rule forced the Agency to return to the earlier, insufficiently protective limits.

OSHA continues to believe that establishing a rulemaking approach that will permit the Agency to update existing air contaminant limits and establish new ones as toxicological evidence of the need to do so becomes available is a high priority. The rulemaking described in this Regulatory Plan entry reflects OSHA's intention to move forward with this process. In determining how to proceed, OSHA is being guided by the OSH Act and the Eleventh District Court decision regarding the extent of the risk and feasibility analyses required to support revised and new air contaminant limits. The Agency will rely on a risk-based prioritization system to identify those air contaminants that present significant risks to exposed employees and for which technologically and economically feasible controls exist. State-of-the-art risk assessment methodologies will be utilized for both carcinogens and noncarcinogens, and the determinations of feasibility contained in the economic analysis accompanying the proposal will be extensive. OSHA published (61 FR 1947) the substances selected for proposed new PELs for the first update of the air contaminants rule: carbon disulfide, carbon monoxide, chloroform, dimethyl sulfate, epichlorohydrin, ethylene dichloride, glutaraldehyde, n-hexane, 2-hexanone, hydrazine, hydrogen sulfide, manganese and compounds, mercury and compounds, nitrogen dioxide, perchloroethylene, sulfur dioxide, toluene, toluene diisocyanate, trimellitic anhydride, and vinyl bromide. The specific hazards associated with the air contaminants preliminarily selected for regulation include cancer, neurotoxicity, respiratory sensitivity, etc. As in the

Priority Planning Process, OSHA evaluated each substance using the following criteria: severity of the health effect, the number of exposed workers, toxicity of the substance, uses and prevailing exposure levels of the substance, the potential risk reduction, availability and quality of information useful in quantitative risk assessment to ensure that significant risks are addressed and that workers will experience substantial benefits in the form of enhanced health and safety. Publication of the proposal will allow OSHA to institutionalize a mechanism for updating and extending its air contaminant limits, which will, at the same time, provide added protection to many workers who are currently being overexposed to toxic substances in the workplace.

Statement of Need:

OSHA's current Tables Z-1, Z-2, and Z-3 contain approximately 470 PELs for various forms (e.g., dust, fumes, vapors) of the regulated contaminants, many of which are widely used in industrial settings. These PELs, which were adopted wholesale by OSHA in 1971 and have not been revised since then, often lead to adverse effects when workers are exposed to them. In addition, new chemicals are constantly being introduced into the working environment, and exposure to these substances can result in both acute and chronic health effects. Acute effects include respiratory and sensory irritation, chemical burns, and ocular damage; chronic effects include cardiovascular disease, respiratory, liver and kidney disease, reproductive effects, neurological damage, and cancer. For these reasons, it is a high OSHA priority to establish an ongoing regular process that will allow OSHA routinely to update existing PELs and establish limits for previously unregulated substances. The first step in achieving this goal is to publish an air contaminants proposal for approximately 20 substances that will establish streamlined but scientifically sound and defensible procedures for conducting risk assessments and performing feasibility analyses that will permit regular updating and review of permissible exposure limits for air contaminants. The ability to lower existing limits and establish limits for new contaminants is an essential component of OSHA's mandate to protect the health and functional well-being of America's workers.

Alternatives:

OSHA has considered a variety of nonregulatory approaches to address the problem of the Agency's outdated exposure limits for air contaminants. These include the issuance of nonmandatory guidelines, enforcing lower limits through the "general duty" clause of the OSH Act in cases where substantial evidence exists that exposure presents a recognized hazard of serious physical harm, and the issuance of hazard alerts. OSHA believes, however, that the problem of overexposure to hazardous air contaminants is so widespread, and the Agency's current limits are so out of date, that only a regulatory approach will achieve the necessary level of protection. The regulatory approach also has advantages for employers, because it gives them the information they need to establish appropriate control strategies to protect their workers and reduce the costs of job-related illnesses. This first phase of an ongoing air contaminants updating and revision process will begin to resolve a problem of long-standing and major occupational health import.

Anticipated Costs and Benefits:

The scope of the proposed rule is currently under development, and thus quantitative estimates of costs and benefits have not been determined at this time. Implementation costs associated with the proposed standard include primarily those related to identifying and correcting over-exposures using engineering controls and work practices. Additional costs may be incurred for the implementation of administrative controls and the purchase and use of personal protective equipment. Estimates of the magnitude of the problem of occupational illnesses, both acute and chronic, vary considerably. In 1989, OSHA concluded that its Air Contaminants rule in general industry, which lowered 212 exposure limits and added 164 where none had previously existed, would result in a reduction of approximately 55,000 illnesses and over 23,300 lost-workday illnesses annually. Chronic effects include cardiovascular disease, respiratory, liver and kidney disease, reproductive effects, neurological damage, and cancer. Acute effects include respiratory and sensory irritation, chemical burns, and ocular effects.

Timetable:

Action	Date	FR Cite
NPRM	06/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Federal

Additional Information:

During the rulemaking, OSHA will meet with small business stakeholders to discuss their concerns, and will conduct an initial Regulatory Flexibility Analysis to identify any significant impacts on a substantial number of small entities.

Agency Contact:

Adam Finkel
 Director, Health Standards Programs
 Department of Labor
 Occupational Safety and Health Administration
 200 Constitution Avenue NW.
 Room N3718, FP Building
 Washington, DC 20210
 Phone: 202 219-7075

RIN: 1218-AB54

DOL—OSHA

74. REVISION OF CERTAIN STANDARDS PROMULGATED UNDER SECTION 6(A) OF THE WILLIAMS-STEIGER OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Priority:

Other Significant

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

29 USC 655(b); 5 USC 533

CFR Citation:

29 CFR 1910.106; 29 CFR 1910.107; 29 CFR 1910.108; 29 CFR 1910.94(c); 29 CFR 1910.94(d); 29 CFR 1911; 29 CFR 1910.35; 29 CFR 1910.36; 29 CFR 1910.37; 29 CFR 1910.38

Legal Deadline:

None

Abstract:

The Occupational Safety and Health Administration (OSHA) adopted its initial package of workplace safety and health standards from various nationally recognized consensus standards and from standards that had already been promulgated by other Federal agencies. These standards

reflected technologies that were current at the time the Williams-Steiger Occupational Safety and Health Act of 1970 (the Act) became law. Section 6(a) of the Act permitted OSHA to adopt nationally recognized consensus standards, developed by groups such as the National Fire Protection Association (NFPA) and the American National Standards Institute (ANSI), and existing Federal standards for use as OSHA standards without public participation or public comment. OSHA refers to the standards it adopted under section 6(a) of the Act as "6(a) standards." Since their adoption, many of these 6(a) standards have been identified by the regulated community as being overly complex, difficult to read and follow, and out of date with current technology.

This project is part of a Presidential initiative to respond to the general criticism concerning the complexity and obsolescence of certain Federal regulations. OSHA believes that some of the Agency's section 6(a) standards in subpart E and subpart H of part H of part 1910 meet the criteria for critical review set forth in the Presidential initiative. OSHA has identified the means of egress standard from subpart E and two standards from subpart H that need to be revised and updated to eliminate their complexity and obsolescence. These standards include 29 CFR 1910, subpart E - Means of Egress, 29 CFR 1910.107, Spray Finishing Using Flammable and Combustible Materials; and 29 CFR 1910.108, Dip Tanks Containing Flammable or Combustible Materials.

With this project, OSHA is initiating three separate rulemakings that will revise and update three of OSHA's most complex and out-of-date section 6(a) standards. These specific sections address means of egress (exit routes), handling, and use; spray finishing using flammable and combustible liquids; and dip tanks containing flammable and combustible liquids. The regulations contained in 29 CFR 1910.35 through 1910.38, 1910.107, and 1910.108 have long been noted by labor, management, and government for their complexity, duplicative nature, and obsolescence. 29 CFR 1910.107 and 1910.108 also contain substantive ventilation requirements that are duplicative with ventilation requirements contained in 29 CFR 1910.104, paragraphs (c) and (d).

OSHA intends to issue three separate proposals individually addressing 29 CFR 1910.107 and 1910.94(c); 29 CFR 1910.35 through 1910.38 and 29 CFR

1910.108 and 1910.94(d). The purpose of these rulemakings will be to solicit public participation in the revision and updating of these standards to current levels of technology. It is also the purpose of the rulemakings to eliminate the complexity, duplicative nature, and obsolescence of the current existing standards and to write them in "plain language," as directed by the President's report.

Statement of Need:

These three OSHA safety standards are being revised and updated as part of the President's initiative on Federal regulations discussed in the U.S. Department of Labor report of June 15, 1995. The Department of Labor report was issued in response to the President's Regulatory Reform Initiative dated April 24, 1995.

Fire hazards in the workplace associated with exposure to flammable and combustible liquids create a variety of safety and health problems, including thermal burns, chemical burns, smoke inhalation, respiratory inflammations, nausea, dizziness, other serious physical injuries and death. Overexposure to vapors, fumes, and mists created during spray applications or dipping processes involving flammable or combustible liquids create a variety of health problems, including respiratory infections, nausea, dizziness, respiratory allergies, heart disease, lung cancer, decreases in pulmonary function, other serious illnesses, and death.

Fires and explosions continue to occur frequently in the industrial environment. Such fires, which are often catastrophic, are often caused by flammable and combustible liquids, including improper or inadequate ventilation of their vapors, fumes, or mists. Control of the fire and health hazards that employees are exposed to during operations involving flammable and combustible liquids requires adequate fire control and ventilation procedures. These procedures can protect employees from the adverse physical safety or health effects resulting from exposure to flammable and combustible liquids and their vapor, fumes, or mists.

In case of an emergency, proper exit routes are needed to protect employees from being trapped in hazardous work areas and lead them to safety.

Employees are also exposed to significant health hazards when they work around spray finishing operations or dip tank operations that use nonflammable or noncombustible

liquids. Many employers will use such nonflammable or noncombustible liquids in spray finishing or dipping operations to eliminate fire or explosion hazards. However, some chemicals, such as perchlorethylene, create significant health hazards to employees when used by spray finishing and dip tank operations. Health problems such as respiratory infections, nausea, dizziness, respiratory allergies, heart disease, lung cancer, decreases in pulmonary function, other serious illnesses, and death may occur if employee exposure to toxic, nonflammable or toxic noncombustible liquids are not controlled.

When 29 CFR 1910.94(c), 1910.94(d), 1910.107, and 1910.108 were promulgated, many of the protective technologies and work practices recognized today in industries using flammable and combustible liquids did not exist. Advances in fire prevention strategies and equipment and in ventilation techniques and equipment necessitate the updating of these OSHA standards. Revising and updating these sections of Subpart H to recognize these new technologies and work practices will improve the occupational safety and health of employees by introducing new fire control and ventilation techniques into the workplace. The revision of these standards will also make them consistent with current nationally recognized consensus standards adopted by various organizations having jurisdiction over fire safety and health hazards. A consistent set of standards will make compliance with these rules easier for the regulated populations of employees and employers, including small employers.

Alternatives:

OSHA has considered several alternative approaches to controlling these hazards, including issuing guidelines, using the "general duty clause" of the OSHA Act to cite serious and unsafe work practices not regulated by the existing standards, issuing hazard alerts, issuing program directives, and revising and updating the current OSHA standards to reflect the updated national consensus standards. OSHA believes that, in this case, revising and updating these standards is the most appropriate way to proceed. It is the only approach that will assure public participation in the updating and revision of outdated, complex, and obsolete rules. It will also assure that employers will provide the most recent technologies to protect

their employees from fire and explosion hazards.

Anticipated Costs and Benefits:

The benefits and costs associated with these revisions are undetermined at this time; however, OSHA anticipates that cost savings and increased benefits will be associated with these actions due to the use of newer technologies, equipment, and procedures to reduce employee injuries and fatalities in the workplace.

Risks:

Physical injuries and fatalities caused by thermal burns, chemical burns, smoke inhalation and traumatic injuries are common among employees exposed to fire or explosion hazards in the workplace. Without proper exit routes, risk of fatalities and injuries is greatly increased when employees cannot quickly exit to safety. In addition, overexposure to vapors, fumes, and mists created during spray applications or dipping processes involving flammable or combustible liquids can create a variety of health problems, including respiratory infections, nausea, dizziness, respiratory allergies, heart disease, lung cancer, decreases in pulmonary function, other serious illnesses, and death.

Timetable:

Action	Date	FR Cite
NPRM Exit Routes (Means of Egress)	09/10/96	61 FR 47712
NPRM Dip Tanks	12/00/96	
NPRM Spray Finishing	12/00/96	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Local, Federal

Additional Information:

Means of Egress, 29 CFR 1910 subpart E, Spray Finishing Using Flammable and Combustible Materials, 29 CFR 1910.107, Dip Tanks Containing Flammable and Combustible Liquids, 29 CFR 1910.108 are three standards selected for revision and updating under a Presidential Initiative to revise and update outdated, duplicative, or obsolete federal regulations. These standards were adopted under section 6(a) of the Williams-Steiger Occupational Safety and Health Act of 1970. 29 CFR 1910.106 will be revised and updated to be consistent with the current National Fire Protection Association source standard. It will also be formatted to make it easier to read.

29 CFR 1910.94(c) will be combined with 29 CFR 1910.107 to eliminate duplicative standards. Flammable and Combustible Liquids 1910.106 has been moved to RIN 1218-AB61.

Agency Contact:

Thomas H. Seymour
Acting Director, Safety Standards Programs
Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue NW.
Room N3605, FP Building
Washington, DC 20210
Phone: 202 219-8061
Fax: 202 219-7477

RIN: 1218-AB55

DOL—OSHA

FINAL RULE STAGE

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

Priority:

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

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

29 USC 655(b)

CFR Citation:

29 CFR 1910.21; 29 CFR 1910.22; 29 CFR 1910.23; 29 CFR 1910.24; 29 CFR 1910.25; 29 CFR 1910.26; 29 CFR 1910.27; 29 CFR 1910.28; 29 CFR 1910.29; 29 CFR 1910.30; 29 CFR 1910.31; 29 CFR 1910.32; 29 CFR 1910.128; 29 CFR 1910.129; 29 CFR 1910.130; ...

Legal Deadline:

None

Abstract:

Standards for walking and working surfaces and personal fall protection systems will be issued concurrently as a final rule. The Occupational Safety and Health Administration's (OSHA's) existing standards for walking and working surfaces need to be revised because they are out of date and limit

technological innovation in the means employers can use to comply. The final rule is performance-oriented, written in plain language, and flexible in the means of compliance permitted. In addition, OSHA's existing standards do not contain criteria for personal fall protection systems. Consequently, requirements containing criteria for such systems will be added to 29 CFR Part 1910, Subpart I, Personal Protection Equipment, to enhance employee protection from injury and death due to falls to different elevations.

Statement of Need:

The existing standards for walking/working surfaces were originally adopted in 1971 under Section 6(a) rulemaking procedures. These standards are now out of date, restrict technological innovation, and contain gaps in coverage. Currently, there are also no standards for personal fall protection systems that cover all general industry applications. This rulemaking action will thus revise and update OSHA's existing regulations for walking/working surfaces (29 CFR Part 1910, Subpart D) and add new coverage for personal fall protection systems to the current personal protective equipment standards (29 CFR Part 1910, Subpart I). The revised rules will be written in plain English so that they will be easier for employers and employees to understand.

The new standard will use a performance-oriented approach to permit flexibility in the means of compliance and to encourage innovation. New criteria for personal fall protection systems will be added to allow these systems to be used as additional alternatives to provide fall protection and to ensure that this type of equipment functions properly and is used correctly.

The legal basis for this action is that employees in general industry are exposed to a significant risk of falls, both falls on the same level and falls from an elevation. However, this action is not specifically required by statute, and is not required by court order.

The new standard will reduce risks to workers by providing clearer, up-to-date requirements to minimize fall hazards. The standard will also cover new areas of fall protection such as special surfaces and manhole steps, and the use of qualified climbers. The new standard will also recognize personal fall protection systems as an acceptable option for fall protection, as well as

provide the criteria to ensure that such systems will safely stop a worker's fall.

Alternatives:

The following alternatives were considered for analysis:

1. Retaining the existing regulation unchanged. A number of the existing requirements are specification-oriented provisions that in some situations are inappropriate, unnecessarily costly, and inflexible. For example, the existing standard mandates guardrails for most roof perimeters when employees are working there and requires that fixed ladders on most towers and other structures be fitted with cages or ladder safety devices; but in some limited circumstances, such requirements are unnecessarily restrictive. Also, personal fall protection systems, which are suited to many difficult fall protection situations, are not permitted under the existing rule.
2. Issuing the final rule without an exemption for qualified climbers. This option would require that all fixed ladders over 24 feet in height utilize cages or ladder-safety devices. Under this option, the benefits of the standard would be about the same as they are for the version reflected in the final rule, but the first-year capital cost of compliance would be increased by more than a factor of eleven.
3. Issuing the revised final rule as a final standard, including the exemption for qualified climbers, requirements for fall protection systems, and other flexible provisions for such protective devices as guardrails. OSHA believes that this alternative will result in the greatest amount of employee protection at the least cost to employers of all the alternatives considered. It will align these standards more closely to those used in the model building codes with the result of greater compatibility.

Anticipated Costs and Benefits:

Modifications to existing requirements are expected to involve annual costs of less than \$20 million. Benefits include the prevention of dozens of fatalities and thousands of injuries associated with falls and other work-surface-related incidents.

Risks:

Nearly all workplaces and employees covered by the OSHA general-industry standards are affected by the standards for walking and working surfaces. These standards cover about 84 million workers. Examples of walking and working surfaces included in these standards are stairs, step bolts, manhole

steps, ramps, ladders, floors, fall-protection systems, scaffolds, and mobile ladder stands.

The Bureau of Labor Statistics (BLS) reported from the 1994 National Census of Fatal Occupational Injuries that falls accounted for 10 percent of all deaths of employees in workplaces.

The National Institute of Occupational Safety and Health (NIOSH) publication, "Fatal Injuries to Workers in the United States, 1980-1989: A Decade of Surveillance," reports that deaths from falls are the fourth leading cause of occupational fatalities, accounting for 10 percent of all deaths in the workplace. According to the Insurance Institute for Highway Safety, falls are the second largest cause of occupational fatalities, next after death due to over-the-road motor vehicle accidents. Falls are also second only to motor vehicle accidents as a cause of brain injuries.

OSHA has determined that hazards associated with walking and working surfaces persist and must be addressed with improved standards. OSHA's preliminary regulatory impact analysis estimated that as many as 105,000 disabling injuries and 132 fatalities that occur annually are potentially preventable by compliance with the revised final rule.

A number of special studies have also been conducted to gain a better understanding of the nature and causes of employee injuries, and the methods required for reducing their numbers. One such study on ladders, conducted by BLS, indicated that in about 55 percent of ladder-related accidents where employee injuries occurred, the ladder either moved, slipped, fell or broke. The study also indicated that ladders were not secured or braced in about 50 percent of these injury incidents. Furthermore, in nearly 60 percent of the incidents, employees were carrying something in their hands at the time of the incident. The final standard will address these problems by requiring design criteria and employee training in the use of ladders. Another study of scaffold fatalities and catastrophes developed by OSHA indicated that 90 percent of fatally injured employees were performing their normal job activities at the time of the accident, and 55 percent of these employees were performing their basic or primary work tasks.

Timetable:

Action	Date	FR Cite
NPRM	04/10/90	55 FR 13360

Action	Date	FR Cite
NPRM Comment Period End	08/22/90	
Hearing	09/11/90	55 FR 29224
Final Action	09/00/97	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

Additional Information:

Because RINs 1218-AB05 and 1218-AA48 will be issued concurrently, they have been combined under this RIN 1218-AB04.

Agency Contact:

Thomas H. Seymour
Acting Director, Safety Standards Programs
Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue NW.
Rm N3605, FP Bldg.
Washington, DC 20210
Phone: 202 219-8061

RIN: 1218-AB04

DOL—OSHA

76. RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES (SIMPLIFIED INJURY/ILLNESS RECORDKEEPING REQUIREMENTS)

Priority:

Other Significant. Major under 5 USC 801.

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

29 USC 657; 29 USC 673

CFR Citation:

29 CFR 1904.1

Legal Deadline:

None

Abstract:

Over the years, concerns about the reliability and utility of injury and illness data derived from the employer-maintained OSHA records have been raised by Congress, NIOSH, the Bureau of Labor Statistics (BLS), the National Academy of Sciences, the Office of

Management and Budget (OMB), the General Accounting Office, business, and labor, as well as OSHA. In the late 1980s, to facilitate national policy dialogues, OSHA brought together representatives of industry, labor, government, and academia in a year-long effort to discuss problems with OSHA's injury and illness recordkeeping system. Keystone issued a report with specific recommendations on how to improve the system. Despite this effort, a regulatory revision was not formally begun. Earlier last year OSHA initiated an intensified effort to revive the revision process. Several meetings were again held with stakeholders from business, labor, and government in order to obtain feedback on a draft OSHA recordkeeping proposal and to gather related information. As a result of these efforts, OSHA published a Notice of Proposed Rulemaking (NPRM) in the February 2, 1996 Federal Register that contained revised recordkeeping requirements, new recordkeeping forms, and new interpretive material. The stated goals of the NPRM are to improve the Nation's injury and illness statistics, simplify the injury and illness recordkeeping system, and reduce the burden of the new rule on employers. Benefits will include: (1) a system that is more compatible with modern computer technology and is easier for employers, employees and government to use; (2) more reliable and useful records; (3) for the first time, comprehensive injury and illness records for construction sites; and (4) greater employee involvement in and awareness of safety and health matters. The original 90-day public comment period was extended another 60 days and ended July 1, 1996. In addition, two public meetings were held in Washington, DC (March 26-29 and April 30-May 1). Over 450 sets of comments were entered into Docket R-02, along with 1200 pages of input derived from nearly 60 presentations given at the public meetings.

OSHA is now planning to issue a final rule that incorporates changes based upon an analysis of the comments and testimony received during the public comment period discussed above.

Statement of Need:

A revision to OSHA's outdated recordkeeping system has been contemplated for some time. The process of revision originated in BLS in 1987 and moved in 1990 to OSHA, when the recordkeeping function was transferred to the Agency.

The proposed rule reflects the input of many stakeholders, including OSHA field and national office staff, the participants in the 1987 Keystone policy dialogue, staff from other government agencies (BLS, MSHA, the Federal Railroad Administration (FRA) NIOSH and the States), and members of OSHA's advisory committees. OSHA has discussed the proposed revision with thousands of employers and representatives of the safety/health community in over 100 presentations for employer groups, trade associations, safety councils, and union groups.

The occupational injury and illness records maintained by employers are an important component of OSHA's program. The records are used by employers and employees to discover and evaluate workplace safety and health hazards, and they provide OSHA personnel with necessary information during workplace inspections. The records also provide the source data for the Annual Survey of Occupational Injuries and Illnesses conducted by the BLS.

The records have their greatest value when they are used by employers and employees to manage and develop workplace safety and health programs. These records are an effective way to quantify a firm's injury and illness experience. When problems are quantified and presented to employers and employees, they are much more likely to be solved. Hazardous conditions, departments and jobs also can be identified by reviewing injury and illness records. Once hazards are discovered and corrective actions are taken, the records can be used to monitor the effectiveness of control approaches taken. Employers and employees can also use injury and illness records to develop and operate safety and health programs. When information on workplace injuries and illnesses is not available or is incorrect, the ability to identify problems and take corrective action is diminished.

The Government also has several uses for injury and illness records. These records are used by OSHA safety and health inspectors during worksite visits to highlight potential problems that require additional scrutiny. The records are the source documents for the Bureau of Labor Statistics Annual Survey of Occupational Injuries and Illnesses, the nation's primary source of information on workplace injury and illness. The resulting statistics on the frequency, rate, and factors contributing to job-related injury and illness are used to measure the performance of the

Nation's safety and health policies, determine regulatory actions, and provide a point of comparison for an individual company's safety and health performance. The statistics are also used by NIOSH, academia, and other safety and health researchers to determine trends, discover emerging occupational conditions, and evaluate occupational safety and health policies.

The records are also the source documents for OSHA's data collection initiative. This program will allow OSHA to use limited resources to focus intervention efforts (e.g., consultation, training, outreach, and enforcement) on worksites with the highest injury and illness rates. The data collection initiative also provides OSHA with a means for measuring its performance in terms of outcomes--changes in workplace injuries and illnesses--rather than activities.

Alternatives:

One alternative to publication of a final rule is to take no action and continue to administer the injury and illness recordkeeping system using the current regulation, forms and guidelines. Another alternative is to revise the current rule without changing the coverage and scope of the rule (i.e., continue the current rule's small employer and Standard Industrial Classification exemptions).

The first alternative is unacceptable because it does not address the recognized problems of the current system. The second alternative is also unacceptable. Evaluation of the most current injury and illness data available shows that modification of the existing coverage (of small employers and employers in certain Standard Industrial Classification Codes) will lead to the collection of more injury and illness information and reduce the paperwork burden on employers with smaller-sized establishments and those operating in less hazardous private industry sectors.

Anticipated Costs and Benefits:

The average establishment affected by the proposed changes to the recordkeeping requirements would incur a net reduction in recordkeeping costs. Thus the proposed rule will not impose adverse economic impacts on firms in the regulated community. The proposed exemption from the regulation of all nonconstruction establishments with fewer than 20 employees will mean that small entities are likely to experience the greatest cost savings.

Risks:

Benefits will include: (a) a system that is more compatible with and easier for government to use; (b) more reliable and useful records; (c) information for entire construction sites; and (d) greater employee involvement.

Timetable:

Action	Date	FR Cite
NPRM	02/02/96	61 FR 4030

Action	Date	FR Cite
NPRM Comment	05/02/96	
Period End		
Final Action	06/00/97	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local

Sectors Affected:

All

Agency Contact:

Stephen A. Newell
 Director, Office of Statistics
 Department of Labor
 Occupational Safety and Health
 Administration
 200 Constitution Avenue NW.
 Room N3507, FP Building
 Washington, DC 20210
 Phone: 202 219-6463

RIN: 1218-AB24

BILLING CODE 4510-23-F