

OSHA

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Updated regulatory agenda shows fewer changes for OSHA, unveils '3-for-1' deregulation plan

The Department of Labor's updated regulatory agenda for fall 2017, released Dec. 14, contains fewer changes for OSHA than the previous agenda, published in July. The Mine Safety and Health Administration, meanwhile, is seeking input on potential alterations to a rule intended to reduce worker exposure to coal dust.

In addition, the introduction to the fall agenda touts a "3-for-1" plan, in which "agencies plan to finalize three deregulatory actions for every new regulatory action in 2018."

The agenda, typically issued twice a year, details the status and projected dates for all regulations.

Changes for OSHA

The fall agenda shows 16 OSHA regulations in three active stages: pre-rule, proposed rule and final rule – up from 14 in the previous agenda. Two rules were moved from "long-term action" status: amendments to the Cranes and Derricks in Construction Standard

(now in the proposed rule stage), and Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records (final rule stage).

The following regulations moved from the proposed rule stage in the previous agenda to the final rule stage in the new agenda:

- Occupational Exposure to Beryllium
- Crane Operator Qualification in Construction
- Quantitative Fit Testing Protocol: Amendment to the Final Rule on Respiratory Protection
- Technical Corrections to 16 OSHA Standards
- Improve Tracking of Workplace Injuries and Illnesses

The status of Standards Improvement Project IV, the only regulation listed in the final rule stage in July, has not changed.

The push for deregulation

The first regulatory agenda released by President Donald Trump's administration



in July removed 16 of the 30 OSHA regulations listed on the fall 2016 agenda released during the Obama administration.

Overall, a combined 1,036 regulations throughout all federal agencies were withdrawn, made inactive or assigned "long-term action" status. That number was 543 in this latest list, with 299 added to "long-term action" status and 166 withdrawn.

President Trump signed an Executive Order on Jan. 30, 2017, requiring federal agencies to cut two regulations for every new one proposed. The White House published a guidance memo three days later clarifying that the Executive Order

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Scott Mugno’s nomination to head OSHA going back to Senate committee

At press time, President Donald Trump had resubmitted Scott Mugno’s nomination to lead OSHA – a move required because the Senate did not confirm the FedEx executive’s appointment before the legislative body’s term ended in December.

The Senate – now made up of 51 Republicans, 47 Democrats and two independents who caucus with the latter party – opened a new session on Jan. 3.

Mugno’s road to become assistant secretary of labor at the agency again will take him before the Senate’s Health, Education, Labor and Pensions Committee, which on Jan. 11 canceled a scheduled executive session to consider his nomination, among others. The session had not been rescheduled as of press time.

The HELP Committee initially approved Mugno’s nomination along party lines in a closed executive session on Dec. 13 and sent it to the full Senate. He appeared before the committee on Dec. 5 with three other nominees and emphasized teamwork during the two-and-a-half-hour session.

“If confirmed, I will work very hard every day side by side with the best safety professionals at America’s ultimate safety department,” Mugno said in his opening statement before the HELP Committee. “The discussions or debates on how to reach that goal (of safety) can, at times, lead some to believe one side or another doesn’t believe in the goal. Nothing could be further from the truth.”

Mugno is the vice president of safety, sustainability and vehicle maintenance at FedEx Ground, where he has worked since August 1994, joining the company as a senior attorney. From February 2000 to December 2011, he was managing director of corporate safety, health and fire prevention until his promotion to vice president.

Mugno also served as OSHA subcommittee chairman for the U.S. Chamber of Commerce, a noted regulatory opponent.

If confirmed as OSHA administrator, Mugno would take over from Loren Sweatt, who has served as acting assistant secretary of labor since July 24. Sweatt is OSHA’s deputy assistant secretary of labor.

OSHA ALLIANCES

The OSHA Alliance Program fosters collaborative relationships with groups committed to worker safety and health. Alliance partners help OSHA reach targeted audiences and give them better access to workplace safety and health tools and information. For more on OSHA alliances, go to www.osha.gov/dcspp/alliances/index.html.

The Center for Construction Research and Training (CPWR)

Date of alliance: Jan. 11, 2017

Through the OSHA and CPWR Alliance, the organizations are committed to providing construction workers, employers and others, including members of other construction alliances, with information, guidance, and access to safety and health research findings, interventions and related training resources that will help them protect the health and safety of workers, particularly by reducing and preventing exposure to known and emerging construction hazards that are the focus of research efforts, and understand the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act (OSH Act).

The Alliances’ goals include:

Raising awareness of OSHA/EPA rule-making and enforcement activities:

- To convene or participate in forums, roundtable discussions, or stakeholder meetings on known and emerging construction hazards to help forge innovative solutions in the workplace or to provide input on safety and health issues.
- To encourage worker participation in safety by disseminating research findings, solutions, and training programs that address construction hazards.

Outreach and communication

- To develop information on the recognition and prevention of workplace

hazards, and to develop ways of communicating such information to employers and workers in the industry.

- To speak, exhibit or appear at OSHA’s or CPWR’s conferences, local meetings or other events, including OSHA’s Alliance Program Construction Roundtable.
- To share information among OSHA personnel and industry safety and health professionals regarding CPWR research-based good practices or effective approaches through training programs, workshops, seminars and lectures developed by the participants.

Excerpted from www.osha.gov/dcspp/alliances/cpwr/cpwr.html.

In Other News...

Safe + Sound Week to return Aug. 13-19

OSHA, the National Safety Council, the American Industrial Hygiene Association and NIOSH are among the safety organizations that will team up for the second annual Safe + Sound Week, set for Aug. 13-19.

The nationwide endeavor is designed to promote awareness and understanding of workplace safety and health programs. Employers are encouraged to host events promoting the cornerstones of safety and health programs: management leadership, worker participation, and finding and fixing workplace hazards.

OSHA offers reminders for safe snow removal

OSHA is reminding employers and workers to stay mindful of safety during snow removal activities.

Highlighting several wintertime hazards, OSHA points out that falls are the leading cause of worker injuries and fatalities during rooftop snow removal. Power lines and snow removal equipment can present electrical hazards, while exposure to cold and physical exertion pose the potential for illnesses such as hypothermia, cold stress and frostbite.

Employers should provide proper training, personal protective equipment and fall protection equipment for workers who are removing snow. Other tips:

- Workers should wear footwear with proper traction and insulation. While walking, they should take shorter steps and move slowly.
- Snow should be removed without asking workers to climb onto roofs. Use snow rakes or drag lines from the ground.
- Workers should know how to safely use ladders and aerial lifts.
- Workers should use ladders when applying de-icing materials.

OSHA STANDARD INTERPRETATIONS

OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.

Duty to have fall protection

Standard: 1926.501

Date of response: Nov. 9, 2017

Mr. Anthony D. Tilton
Trent Cotney P. A.
Construction Law Group
113 South Monroe Street, 1st Floor
Tallahassee, Florida 32301

Dear Mr. Tilton:

Thank you for your May 26, 2017, letter to OSHA. In it, you reference OSHA compliance directive CPL 02-00-124, the Multi-Employer Citation Policy. You ask OSHA to make enforcement determinations based only on the information you provided or to contact you to obtain additional information so that OSHA can make enforcement determinations. You describe three construction worksite scenarios in which the general contractor observes a subcontractor exposing its employees to fall hazards at the worksite. The general contractor undertakes different actions in each scenario with varying levels of interaction with the subcontractor. You ask OSHA to determine if the general contractor is a "creating, correcting, or controlling employer" based on the facts of each scenario.

In our Aug. 14, 2017, email response and during our Aug. 24, 2017, phone conversation with you, we explained that OSHA conducts fact- and site-specific enforcement evaluations when considering whether to issue citations, so it would be inappropriate for OSHA to provide multi-employer citation determinations based on hypothetical worksite conditions.

Accordingly, OSHA cannot respond specifically to your hypothetical scenarios, but rather recommends that you consider using for your training purposes: examples provided in the relevant compliance directive; court decisions; facts of closed OSHA compliance inspections accessible from the inspection data webpage; and industry-recognized work practices addressing shared safety responsibilities at worksites, including those codified in new or revised construction standards for steel erection, cranes and derricks, power distribution and transmission, and confined spaces.

OSHA's requirements are set by statute, standards, and regulations. Our letters of interpretation do not create new or additional requirements, but rather explain these requirements and how they apply to particular circumstances. This letter constitutes OSHA's interpretation of the requirements discussed. From time to time, letters are affected when the Agency updates a standard, a legal decision impacts a standard, or changes in technology affect the interpretation. To assure that you are using the correct information and guidance, please consult www.osha.gov. If you have further questions, please feel free to contact the Directorate of Construction at (202) 693-2020.

Sincerely,
Dean McKenzie, Director, Directorate of Construction

Excerpted from www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=31529.

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would apply only to those regulations with a proposed cost of \$100 million or more.

The Natural Resources Defense Council, fellow watchdog organization Public Citizen and the Communications Workers of America labor union filed a lawsuit on Feb. 8, 2017, claiming the Executive Order “directs federal agencies to engage in unlawful actions that will harm countless Americans.” Those organizations had their day in the U.S. District Court for the District of Columbia in August and were awaiting a decision at press time.

Neomi Rao, administrator of the Office of Information and Regulatory Affairs, said in a Dec. 14 press briefing that the fall agenda – with its 3-for-1 mandate – contains 448 deregulatory actions and 131 regulatory actions while touting a projected \$10 billion in “present-value cost savings.”

Meanwhile, National Employment Law Project Executive Director Christine Owens issued a statement Dec. 14 saying that, “The regulatory road map ... promises to extend its almost yearlong trail of broken promises to working people. The Labor Department’s Fall Regulatory Agenda is a plan to cut pay for working people, endanger their health and safety in workplaces across numerous industries, and take away vital safeguards that enable consumers to make informed investments to build and protect their retirement savings.”

Changes for MSHA

MSHA had two changes to the regulatory agenda. The agency issued a press release Oct. 23 asking for stakeholder input in identifying regulations that could be repealed, replaced or modified without reducing miners’ safety or health. The regulations could include “existing standards and regulations that could be improved or made more effective or less burdensome by accommodating advances in technology, innovative techniques or less costly methods, including the requirements that could be streamlined or replaced in frequency,” the agenda states.

The agency’s retrospective study of its coal dust rule is listed as part of that. MSHA issued its final rule in 2014 to change the standards for coal dust exposure and establish requirements for sampling with continuous personal dust monitors, among other alterations. That same year, a NIOSH study reported that progressive massive fibrosis among coal workers was at its highest level in 40 years.

MSHA also is seeking recommendations on “alternatives to safety standards, which MSHA typically approves in Petitions for Modification submitted by mine operators.” The agency states that incorporating those alternatives into its current regulations would provide cost savings for mine operators that submit petitions.

Download the regulatory agenda at www.reginfo.gov/public/dole/AgendaMain.