

OSHA

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Four standards back on OSHA's radar in spring regulatory agenda

Despite the Trump administration's focus on deregulation, OSHA is set to move ahead on four standards previously relegated to "long-term action" status, according to the agency's Spring 2018 regulatory agenda, released May 9.

OSHA's Emergency Response and Preparedness, Prevention of Workplace Violence in Health Care and Social Assistance, and Tree Care standards have moved to the pre-rule stage. The agency's attempt to update the Hazard Communication Standard to the seventh edition of the Globally Harmonized System of Classification and Labeling of Chemicals (it currently operates on the third edition) now is listed in the proposed rule stage.

The opportunity to work on the new regulations comes months after the administration revealed plans for OSHA and other agencies to "finalize three deregulatory actions for every new regulatory action in 2018" in the Fall 2017 regulatory agenda.

Less than two weeks after his inauguration, President Donald Trump signed an Executive Order requiring federal agencies to cut two regulations for

Agency	Agency Stage of Rulemaking	Title	RIN
DOL/ETA	Proposed Rule Stage	Trade Adjustment Assistance for Workers	1205-AB38
DOL/ETA	Proposed Rule Stage	Drug Testing by States for Purposes of Determining Unemployment Compensation Eligibility	1205-AB81
DOL/ETA	Proposed Rule Stage	Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations	1205-AB89
DOL/ETA	Proposed Rule Stage	Wagner-Peyser Act	1205-AB87
DOL/ETA	Final Rule Stage	Senior Community Service Employment Program (SCSEP): Performance Accountability	1205-AB73
DOL/EBSA	Final Rule Stage	Amendment of Abandoned Plan Program	1210-AB47
DOL/EBSA	Final Rule Stage	Electronic Filing of Apprenticeship & Training Notices, and Top Hat Plan Statements	1210-AB62
DOL/EBSA	Final Rule Stage	Adoption of Amended and Related Voluntary Fiduciary Correction Program	1210-AB04
DOL/EBSA	Final Rule Stage	Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act	1210-AB83

every new one proposed. The White House published a guidance memo three days later clarifying that the Executive Order would apply only to regulations with a proposed cost of \$100 million or more.

Jordan Barab, former OSHA deputy assistant secretary, wrote in a May 10 post on his "Confined Space" blog that he has

yet to see the Executive Order invoked. He added that because of the complications involved with the "2-for-1" plan, "None of these new standards are likely to see the light of day during this Presidential term. But any forward movement is always welcome."

— article continues on p. 4

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OSHA issues proposed rule to clarify crane operator requirements

OSHA is moving to finalize changes to its crane operator certification requirements, according to a proposed rule published in the May 21 *Federal Register*.

The attempts at crane operator certification requirements began in 2010 with OSHA's Cranes and Derricks in Construction Standard, which mandated that crane operators become certified for both the type of crane used and the lifting capacity. OSHA later was notified that two of the four accredited testing services were issuing certifications for "type" of crane rather than "type and capacity." Stakeholders also expressed concerns about the rule's language – that "certification" didn't mean an operator had the necessary skills.



With this newly proposed rule, OSHA is seeking to drop the capacity requirement that never went into effect. The agency stated that the new regulation would "expand the type of certification programs for crane operators."

In a May 21 press release, the National Commission for the Certification of Crane Operators states that the decision to remove the crane capacity certification is

"supported by the overwhelming majority of industry stakeholders at meetings hosted by OSHA and others since the rule was first published in 2010."

OSHA also is addressing stakeholders' other concern by reinstating an employer's duty to ensure a crane operator is qualified to control the machinery safely.

In November, the agency issued a final rule delaying the crane operator requirements for one year. Those requirements initially were slated to take effect in November 2014, but were delayed for an additional three years.

Comments on the proposed rule were due June 20 at press time. To do so, go to regulations.gov and search "OSHA-2007-0066-0675." Read the proposed rule at sb-m.ag/2IXtJrU.

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 osha.gov/dcsp/alliances/index.html.

National Grain and Feed Association

Date of alliance: Sept. 13, 2017

Through the Alliance, OSHA and NGFA will work together to provide members and others with information, guidance and access to resources that help to protect the safety of workers – specifically, by further reducing and preventing exposure to safety and health hazards associated with grain bin entry, machine guarding, respiratory protection, falls, heat, combustible dust, struck-by and lockout/tagout in the grain handling industry – and understand the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act. The goals of the Alliance include:



Raising awareness of OSHA's rule-making and enforcement initiatives:

- To share information on occupational safety and health laws, standards and guidance resources, including the rights and responsibilities of workers and employers.

Outreach and communication:

- Gather and share OSHA- and NGFA-recommended practices or effective approaches on the recognition and prevention of grain-handling hazards among OSHA personnel, industry safety and health professionals, and

others through workshops, seminars, lectures and websites (or other comparable communication methods).

- To speak, exhibit or appear at OSHA or NGFA conferences, local meetings or other events – such as the Grain Industry Stand-Up focusing on grain engulfment prevention – and NGFA events, including regional regulatory compliance seminars.
- To encourage NGFA's state and regional affiliates to build relationships with OSHA's regional and area offices to address health and safety issues, including grain handling safety.

Excerpted from osha.gov/dcsp/alliances/ngfa/ngfa.html.

In Other News...

OSHA issues enforcement guidance on silica standard for general industry, maritime

OSHA has released initial enforcement guidelines for the Respirable Crystalline Silica Standard for general industry and maritime a couple of weeks before many of the rule's provisions are scheduled to go into effect.

"During the first 30 days of enforcement, OSHA will offer compliance assistance for employers who make good faith efforts to comply with the new standard," the agency states in a June 8 press release, adding that a compliance directive on the standard is forthcoming. The standard was slated to begin June 23 at press time.

The final rule lowers the permissible exposure limit to 50 micrograms per cubic meter of air over an 8-hour period. OSHA released a fact sheet on the regulation in February.

The fact sheet highlights steps employers are required to take to protect employees, including assessing workplace exposures, establishing written exposure control plans and providing worker training. To download it, go to sb-m.ag/2Motjd8.

Crystalline silica is a carcinogen found in sand, stone and artificial stone. It can cause silicosis, a chronic disease that involves scarring of the lungs. OSHA estimates that 2.3 million workers are exposed to silica dust each year.

OSHA's silica standard for construction went into effect Oct. 23.

The guidelines are available to read at sb-m.ag/2HILoyT.



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OSHA STANDARD INTERPRETATIONS

OSHA requirements are set by statutes, 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.

Listing and disclosing benzene as a human carcinogen on the label and SDS

Standard: 1910.1200(f); 1910.1200(f)(1); 1910.1200(g); 1910.1200(g)(1); and 1910.1200 Apps A, C and D

Date of response: July 24, 2017

Question: *For chemical solvents that contain benzene as a known trace contaminant, what are the requirements for listing and disclosing benzene as a human carcinogen on the product's label and Safety Data Sheets?*

Response: The Hazard Communications Standard requires manufacturers or importers of hazardous chemicals to ensure that each container of hazardous chemical leaving the workplace is labeled, tagged or marked in accordance with 29 CFR 1910.1200(f)(1). In addition, each hazardous chemical must have an SDS as required by 29 CFR 1910.1200(g)(1). Manufacturers, importers and distributors are responsible for classifying hazardous chemicals. To determine if a mixture containing benzene is classified as a carcinogen, please refer to Appendix A.6.3 of the HCS, Classification Criteria for Mixtures. A mixture is classified as a carcinogen when at least one ingredient in the mixture is a Category 1 or Category 2 carcinogen and is present in the mixture at a concentration of greater than or equal to 0.1 percent. Because benzene is a Category 1 carcinogen (i.e., a known or presumed human carcinogen), a mixture containing benzene at a concentration greater than or equal to 0.1 percent would be classified as a Category 1 carcinogen and require appropriate hazard information on the product's label and SDS. In addition, if benzene is present in the mixture at a concentration below 0.1 percent, but there is evidence that it presents a health hazard at that lower concentration, the mixture shall be assumed to present the same hazard, and have the appropriate label and SDS.

The requirements for labels on shipped containers of hazardous chemicals are found in 29 CFR 1910.1200(f)(1). Labels must include the product identifier; signal word; hazard statement(s); pictogram(s); precautionary statement(s); and the name, address and telephone number of the chemical manufacturer, importer or other responsible party. Please consult 29 CFR 1910.1200 Appendix C.4.9, Carcinogenicity, to learn the appropriate hazard category, signal word, hazard statement, precautionary statements and pictogram for mixtures classified as carcinogens. The pictogram for carcinogens is the "health hazard" pictogram depicting a human head and shoulders, not the skull and crossbones.

Benzene must be disclosed on the SDS as a carcinogenic ingredient if it meets the aforementioned criteria. See 29 CFR 1910.1200 Appendix D for information about the different sections of an SDS and what is required in each section. The sections of the SDS that would include information on benzene are Section 2 – Hazard(s) identification, Section 3 – Composition/information on ingredients, Section 7 – Handling and storage, Section 8 – Exposure controls/personal protection, Section 9 – Physical and chemical properties, Section 10 – Stability and reactivity, and Section 11 – Toxicological information.

Sincerely,
Amanda Edens, acting director
Directorate of Enforcement Programs

Excerpted from osha.gov/laws-regs/standardinterpretations/2017-07-24.

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Publisher

Suzanne Powills, suzanne.powills@nsc.org

Assistant Publisher

Deborah Meyer, deborah.meyer@nsc.org

Editor

Melissa J. Ruminski, melissa.ruminski@nsc.org

Managing Editor

Jennifer Yario, jennifer.yario@nsc.org

Copy Editor

Paul Wleklinski, paul.wleklinski@nsc.org

Assistant Editor

Tracy Haas Depa, tracy.haas@nsc.org

Associate Editors

Joe Bush, joe.bush@nsc.org
Kevin Druley, kevin.druley@nsc.org
Alan Ferguson, alan.ferguson@nsc.org

Senior Graphic Designer

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Production Coordinator

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Subscriptions/Circulation

subscriptions@nsc.org

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OSHA moved its beryllium standard, formerly in the final rule stage, back to the proposed rule stage because of forthcoming changes stemming from an Appeals Court settlement with four petitioners on April 24. The agency also has moved back the Crane Operator Qualification in Construction standard to the proposed rule stage after indicating that a revised standard was on the horizon in its fiscal year 2019 congressional budget justification. (OSHA issued a proposed rule on May 21. For more, see story on p. 2.)

Along with the four standards that have moved from long-term actions, the Communication Tower Safety standard

was slated for a Small Business Regulatory Enforcement Fairness Act review in June. That typically is one of the intermediate steps in the regulatory process.

The Mine Safety and Health Administration, meanwhile, added a power haulage standard to the pre-rule stage. MSHA Administrator David Zatezalo said in a Feb. 6 hearing before the House Workforce Protections Subcommittee that power haulage safety is one of the points of emphasis for the agency this year. He noted that 12 of the 28 mining deaths in 2017 were linked to power haulage.

To download the latest regulatory agenda, go to sb-m.ag/2IGRmWA.

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