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Latest OSHA regulatory agenda shows movement on beryllium standard, no change to workplace violence prevention

Agency	Agency Stage of Rule	Title	Date
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OSHA-ETA	Proposed Rule Stage	Apprenticeship Program, Labor Standards for Regulation, Amendment of Regulations	12/15/18
OSHA-ETA	Proposed Rule Stage	Wage and Hour Act	12/15/18
OSHA-ETA	Proposed Rule Stage	Letter Certification Process for Temporary Agricultural Employment in the United States (H-2A workers)	12/15/18
OSHA-ETA	Proposed Rule Stage	Temporary Employment of H-2B Foreign Workers in Certain Seasonal Occupations in the United States	12/15/18
OSHA-ETA	Proposed Rule Stage	Accountability to Foreign Labor Certification Regulations to Surface to Assessments to	12/15/18
OSHA-ETA	Proposed Rule Stage	Procurement Rules and Responsibilities for Job Corps Centers	12/15/18
OSHA-ETA	Final Rule Stage	Drug Testing by States for Purposes of Determining Unemployment Compensation Eligibility	12/15/18
OSHA-ETA	Final Rule Stage	Maintaining Measurement Requirements Under the HSB Program	12/15/18
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OSHA-ETA	Final Rule Stage	Northern Mexico (under 12.6. Workforce Act of 2018)	12/15/18
OSHA-ETA	Final Rule Stage	Exercise of Time-Limited Authority to Waive the Fiscal Year 2019 Statutory Limitation for the HSB Temporary Management System Program	12/15/18
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OSHA-ETA	Proposed Rule Stage	Standardized Group Health Plans and Grandfathered Group Health Insurance Coverage	12/15/18
OSHA-ETA	Proposed Rule Stage	Improving Effectiveness of and Reducing the Cost of Fulfilling Remedial Orders and Directives	12/15/18
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OSHA-ETA	Final Rule Stage	Electronic Filing of Apprenticeship & Training Plan Notices, and Top-Via Plan Statements	12/15/18
OSHA-ETA	Final Rule Stage	Adoption of Amended and Revised Voluntary Industry Contract Program	12/15/18
OSHA-ETA	Final Rule Stage	Health Reimbursement Arrangements and Other Account-Based Group Health Plans	12/15/18
OSHA-ETA	Final Rule Stage	Definition of an "Employee" Under Section 303 of ERISA—Association Retirement Plans and Other Multiple Employer Plans	12/15/18
OSHA-ETA	Final Rule Stage	Communication Tower Safety	12/15/18
OSHA-ETA	Final Rule Stage	Emergency Response	12/15/18
OSHA-ETA	Final Rule Stage	Mechanical Power Presses Update	12/15/18

Changes to provisions in OSHA's beryllium rule for general industry have moved to the final rule stage, according to the Department of Labor's Spring 2019 regulatory agenda.

Released May 22, the agenda is issued by the Office of Information and Regulatory Affairs twice a year. It shows regulations in three stages: pre-rule, proposed rule and final rule. It also provides a timeline – sometimes tentative – for individual rules.

The alterations to OSHA's beryllium rule provisions, listed in the proposed rule

stage in the Fall 2018 regulatory agenda, now join a similar entry concerning beryllium in the construction and shipyard sectors. The latter regulation is a holdover in the final rule stage from the previous agenda. Both rules are slated for publication in December.

An addition to OSHA's list of proposed rules is intended to clarify "any perceived ambiguity" about what constitutes a confined space for welding in construction. A notice of proposed rulemaking is slated for publication in December.

A rule on workplace violence prevention in health care and social assistance remains in the pre-rule stage. A related Small Business Regulatory Enforcement Fairness Act panel is scheduled to convene in October, the agenda states.

The Mine Safety and Health Administration's lone regulation remaining in the final rule stage concerns refuge alternatives for underground coal mines. The agency had movement in other areas, including one rule that is part of its proposed regulatory reform. The first focus of that reform is electronic detonators. The agenda entry states that MSHA is considering a proposed rule or direct final rule on detonators for blasting in metal and nonmetal mines, possibly by October.

MSHA also is exploring potential changes to its regulations on non-permissive surveying equipment in underground coal mines – either in a direct final rule or proposed rule slated for publication in September.

The agency intends to issue in July a Request for Information on respirable

– article continues on p. 4

Scott Mugno withdraws from consideration as OSHA head

Already in its longest period without a permanent administrator, OSHA will have to wait even longer, as Scott Mugno has withdrawn from consideration as the agency's assistant secretary of labor, according to a Bloomberg Law report published May 15.

A LinkedIn page for Scott A. Mugno was changed from "Awaiting Senate Confirmation for the Assistant Secretary of Labor" to "Nominee for the Assistant Secretary of Labor" from October 2017 to May 2019. The White House confirmed Mugno's withdrawal in a May 23 press release. The Trump administration

initially nominated Mugno, a retired FedEx Ground executive, for the agency's top post Nov. 1, 2017. He was re-nominated twice, most recently Jan. 16. The Senate Health, Education, Labor and Pensions Committee approved his nomination for a third time Feb. 27.

The Senate's recent rule change to limit debate time on certain nominees to two hours from 30 hours appeared to give Mugno an improved chance at a long-awaited confirmation. William Beach was confirmed March 13 as commissioner of the Bureau of Labor Statistics, ending his 17-month confirmation process. The Senate also confirmed Cheryl

Stanton as administrator of the Department of Labor's Wage and Hour Division on April 10 to finish her 19-month wait.

With Mugno's withdrawal, Loren Sweatt will continue in her role as acting administrator, which began July 24, 2017, and marks the longest such tenure in OSHA history. The agency has been without a permanent leader since David Michaels stepped down in January 2017.

If it so chooses, the White House will have to put forth another nominee, who would likely have to go before a Senate HELP Committee or subcommittee before any potential confirmation.

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/dcspl/alliances/index.html](https://www.osha.gov/dcspl/alliances/index.html).

Suncoast Utility Contractors Association

Date of alliance: Feb. 21, 2019

OSHA and the Suncoast Utility Contractors Association are committed to providing employers and employees in the construction industry and others with information, guidance and access to training resources that will help them protect the health and safety of workers as well as understand the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act of 1970. Through the alliance, the organizations will continue to address the elimination of hazards during trenching and excavation procedures, confined space entry, and other imminent dangers in the underground utility construction industry.

Raising awareness: Outreach and communication

- To develop information on the recognition and prevention of workplace



hazards, and to develop ways of communicating such information (e.g., print and electronic media, electronic assistance tools, and OSHA's and SUCA's websites) to employers and workers in the industry.

- To speak, exhibit or appear at OSHA's or SUCA's conferences, local meetings, or other outreach events.
- To convene or participate in forums, roundtable discussions or stakeholder meetings on underground utility construction hazards to help forge innovative solutions in the workplace and/or to provide input on safety and health issues.
- To share among OSHA personnel and industry safety and health professionals information regarding SUCA's

best practices or effective approaches through outreach materials developed by OSHA and SUCA, training programs, workshops, seminars, and lectures (or any other applicable forum) developed by the participants.

Training and education

- To develop effective training and education programs for the utility construction industry regarding safe trenching and excavation procedures, confined space entry, and other imminent dangers in the underground utility construction industry, and to communicate such information to constituent employers and workers.
- To deliver or arrange for the delivery of underground utility construction courses.

Excerpted from [osha.gov/dcspl/alliances/regional/reg4/suncoast_renewal2019.html](https://www.osha.gov/dcspl/alliances/regional/reg4/suncoast_renewal2019.html).

In Other News...

Will OSHA update its lockout/tagout standard?

OSHA is seeking input on potential updates to its lockout/tagout standard, specifically concerning control circuit type devices and robotics, according to a Request for Information published in the May 20 *Federal Register*.

When the agency first issued the standard in 1989, control circuit type devices were specifically excluded as an energy isolator during the servicing and/or maintenance of machinery and other equipment. However, the RFI states that technological advances “suggest that, at least in some circumstances, control circuit type devices may be at least as safe as [energy isolating devices].”

OSHA is requesting information, data and comments to help determine under what conditions control circuit type devices could safely be used for the control of hazardous energy.

At press time, comments on the RFI were due Aug. 19.

To submit a comment, go to [regulations.gov/document?D=OSHA-2016-0013-0001](https://www.regulations.gov/document?D=OSHA-2016-0013-0001).

Oil and gas exploration safety: OSHA training institute publishes free video

The OSHA Region 6 Training Institute Education Centers recently released a video on recognizing and controlling common hazards in oil and gas exploration.

The one-hour video features various topics critical to the industry and offers recommendations on how workers can prevent injuries and deaths. Hazard topics include falls, transportation, struck-by/caught-in/caught-between, hydrogen sulfide and heat illness.

Registration is required to access the free video. Go to sb-m.ag/2XeEKZX to do so.

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.

Silica in construction, integrated water delivery system, exposure assessment, medical surveillance, respiratory protection

Standards: 1926.1153(c)(1), 1926.1153(d)(2)(vi) and 1926.1153(h)(1)(i)

Date of response: March 4, 2019

You have a specific question regarding the requirements of OSHA’s respirable crystalline silica standard for the construction industry (29 CFR 1926.1153).

Question: In regard to Table 1 of the RCS standard for construction, what does OSHA mean by an “integrated water delivery system”? Can the system be designed and installed by the employer? If so, what are the requirements for construction of this system? Does the system need to be connected to the tool in some way to be considered integrated? Would an independent pressurized water sprayer operated by a second employee meet the requirements of an “integrated water delivery system”?

Response: Seven of the entries on Table 1 use the term “integrated water delivery system.” (See 29 CFR 1926.1153(c)(1)(i)-(ii), (iv)-(vi), (xii)-(xiii)). As stated in the preamble to the RCS standard, “OSHA is requiring the use of an integrated water delivery system supplied by the equipment manufacturer. ... OSHA is requiring the use of systems that are developed in conjunction with the tool because they are more likely to control dust emissions effectively by applying water at the appropriate dust emission points based on tool configuration and not interfere with other tool components or safety devices.” (81 FR 16719).

Thus, an “integrated water delivery system,” for purposes of Table 1 of the RCS standard for construction, must be designed, developed and supplied by the manufacturer specifically for the tool in use, and must be operated and maintained in accordance with the manufacturer’s instructions related to minimizing dust emissions. The system must also be connected to the tool to be considered integrated. Integrated water delivery systems designed for blade cooling meet the requirements of Table 1, as these systems have been found to effectively suppress respirable dust. (81 FR 16720).

Because the system must be supplied by the tool manufacturer, a water delivery system designed by the employer will not meet the requirements of Table 1, but may be used in accordance with paragraph (d) of the standard. In addition, an independent pressurized water sprayer operated by a second employee does not meet the requirements of an integrated water delivery system. For a description of each Table 1 entry and required water delivery systems, see OSHA’s “Small Entity Compliance Guide for the Respirable Crystalline Standard for Construction” at [osha.gov/Publications/OSHA3902.pdf](https://www.osha.gov/Publications/OSHA3902.pdf).

Patrick J. Kapust, Acting Director
Directorate of Enforcement Programs

Excerpted from [osha.gov/laws-regs/standardinterpretations/2019-03-04](https://www.osha.gov/laws-regs/standardinterpretations/2019-03-04).

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crystalline silica. Additionally, a potential rule concerning exposure to diesel exhaust was moved to long-term actions from the pre-rule stage.

A final rule on OSHA's Standards Improvement Project – Phase IV, which is included in the agenda, was published May 14.

The agency also finalized rules on crane operator certification requirements in construction and its electronic recordkeeping rollback since the previous agenda.

Also listed in OSHA's final rule stage:

- Quantitative Fit Testing Protocol: Amendment to the Final Rule on Respiratory Protection
- Rules and Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records.

- Technical Corrections to 35 OSHA Standards and Regulations

Along with Welding in Construction Confined Spaces, the following are listed in the proposed rule stage for OSHA:

- Amendments to the Cranes and Derricks in Construction Standard
- Update to the Hazard Communication Standard
- Cranes and Derricks in Construction: Exemption Expansions for Railway Roadway Work
- Puerto Rico State Plan

MSHA also has one other proposed rule, concerning "a potential safety program for mobile equipment at surface mines and surface areas of underground mines."

View the agenda at sb-m.ag/2wo1FGb.

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