

# OSHA

## UP TO DATE®

## Spring 2020 regulatory agenda: OSHA infectious diseases standard remains ‘long-term action’

OSHA moved three items off its list of long-term actions in the Department of Labor’s regulatory agenda for Spring 2020, but – as expected – a standard on infectious diseases wasn’t among them.

Acting agency administrator Loren Sweatt indicated during a May 28 hearing convened by the House Workforce Protections Subcommittee that such a standard would remain in limbo. As the phrase indicates, the “long-term action” list is for potential standards that won’t see progress anytime in the near future.

Work on an infectious diseases standard began in May 2010, near the end of the swine flu (H1N1) pandemic. The latest public step was the completion of a review by a Small Business Advocacy Review panel in December 2014. The standard was moved to the long-term portion of the agenda in July 2017.

Sweatt noted during the hearing that OSHA would have to repeal two standards if it issued an infectious disease standard, as required under President Donald Trump’s “2-for-1” deregulatory



Agency	Agency Stage of Rulemaking	Title	FRN
DOLETA	Proposed Rule Stage	Temporary Employment of H-2B Foreign Workers in Certain Nonfarm Occupations in the United States	1209-A8001
DOLETA	Proposed Rule Stage	Amendments to Foreign Labor Certification Regulations to Conform to Amendments to Nonimmigrant Common Rule	1209-A8004
DOLETA	Proposed Rule Stage	Adjustment of Temporary Need for Hiring and Range Livestock Applications Under the H-2A Program	1209-A8009
DOLETA	Final Rule Stage	Trade Adjustment Assistance for Workers	1209-A8078
DOLETA	Final Rule Stage	Labor Certification Process for Temporary Agricultural Employment in the United States (H-2A workers)	1209-A8091
DOLETA	Final Rule Stage	Northern Mariana Islands U.S. Workforce Act of 2016	1209-A8093
DOLETA	Final Rule Stage	Removal of Waivers to Work Regulations	1209-A8096
DOLEBSA	Proposed Rule Stage	Futurity Rule and Prohibited Transaction Exemptions	1210-A8082
DOLEBSA	Proposed Rule Stage	Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage	1210-A8089
DOLEBSA	Proposed Rule Stage	Proxy Voting Update	1210-A8091
DOLEBSA	Proposed Rule Stage	Prohibited Employer Plans Under the SECURE Act	1210-A8093
DOLEBSA	Proposed Rule Stage	Financial Factors in Selecting Plan Investments	1210-A8098
DOLEBSA	Final Rule Stage	Pension Benefit Statements—Disclosure Regarding Lifetime Income, SECURE Act	1210-A8020
DOLEBSA	Final Rule Stage	Adoption of Amended and Rescinded Voluntary Fidelity Correction Program	1210-A8095
DOLEBSA	Final Rule Stage	Transparency in Coverage	1210-A8093
DOLOSHA	Proposed Rule Stage	Emergency Response	1218-AC011
DOLOSHA	Proposed Rule Stage	Mechanical Power Presses Update	1218-AC036
DOLOSHA	Proposed Rule Stage	Tree Care Standard	1218-AC058
DOLOSHA	Proposed Rule Stage	Prevention of Unnecessary Violence in Health Care and Social Assistance	1218-AC059
DOLOSHA	Proposed Rule Stage	Blood Lead Level for Medical Removal	1218-AC059
DOLOSHA	Proposed Rule Stage	Amendments to the Cranes and Derricks in Construction Standard	1218-AC081
DOLOSHA	Proposed Rule Stage	Communication Tower Safety	1218-AC088
DOLOSHA	Proposed Rule Stage	Update to the Hazard Communication Standard	1218-AC091
DOLOSHA	Proposed Rule Stage	Powered Industrial Trucks	1218-AC093
DOLOSHA	Proposed Rule Stage	Lock-Out/Tag-Out Update	1218-AC095
DOLOSHA	Proposed Rule Stage	Occupational Exposure to Crystalline Silica; Revisions to Table 1 in the Standard for Construction	1218-AC018
DOLOSHA	Proposed Rule Stage	Working in Construction Confined Spaces	1218-AC025
DOLOSHA	Proposed Rule Stage	Drug Testing Program and Safety Incentives Rule	1218-AC028

Executive Order issued in January 2017.

Released July 1, the latest agenda – issued by the Office of Information and Regulatory Affairs twice a year – gives the status of and projected dates for all potential regulations listed in three stages: pre-rule, proposed rule and final rule.

The three items moved from the previous agenda’s long-term actions are standards that would permit post-incident drug testing and safety incentive programs, clarify fit requirements for personal protective equipment in construction, and address procedures for

# New OSHA directive details enforcement of silica standards

Seeking “uniformity” in the enforcement of its silica standards, OSHA has published an instructional directive for its compliance safety and health officers.



Dated June 25, the directive outlines inspection procedures for addressing respirable crystalline silica exposures in general industry, maritime and construction. The directive guides OSHA inspectors on the enforcement of the silica standards’ requirements. Those requirements include:

- Methods of compliance
- Exposure assessments
- Table 1 tasks and specified exposure control methods
- Housekeeping
- Communication of hazards
- Respiratory protection
- Regulated areas
- Recordkeeping
- Employee information and training
- Medical surveillance

“The directive also provides clarity on major topics, such as alternative exposure control methods when a construction employer does not fully and properly implement Table 1, variability in sampling, multiemployer situations, and temporary

workers,” a June 26 agency press release states.

The standards call for a permissible exposure limit of 50 micrograms per cubic meter of air over an 8-hour time-weighted average.

As of June 23, general industry and maritime employers must offer medical surveillance to all employees who are exposed to the silica standard’s “action level” of 25 micrograms per cubic meter for 30 or more days a year.

Hydraulic fracturing operations in the oil and gas industry have until June 23, 2021, to comply with OSHA requirements for the standard’s engineering controls.

Download the directive at [sb-m.ag/2VT4In1](https://www.osha-slc.gov/2VT4In1).

## 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/dcsdp/alliances/index.html](https://www.osha.gov/dcsdp/alliances/index.html).*

## Altec Industries Inc.

**Date of alliance: June 9, 2020**

OSHA and Altec Industries Inc. continue to recognize the value of maintaining a collaborative relationship to improve safety and health practices and programs in American workplaces, and commit to continue their work together through an Alliance Program Ambassador relationship.

In recognition of this ongoing commitment, OSHA will continue to foster an active relationship with Altec by:

- Providing routine communication on enforcement, regulatory and outreach initiatives.
- Engaging in information sharing and technical discussions, as appropriate.
- Maintaining Altec’s status as an Alliance Program Ambassador on the agency’s public webpage.



- Sharing invitations to, and offering opportunities to speak at, the OSHA Alliance Program and other agency stakeholder meetings or events.

Altec will continue to foster an active relationship with OSHA by:

- Sharing information with stakeholders on OSHA’s National Initiatives (enforcement, regulatory and outreach) and encouraging their participation in OSHA’s outreach initiatives and rule-making processes.
- Sharing information with stakeholders on occupational safety and health laws

and standards, including the rights and responsibilities of workers and employers.

- Encouraging stakeholders to build relationships with OSHA’s national, regional and area offices to address health and safety issues.
- Sharing information with OSHA personnel and industry safety and health professionals regarding Altec good practices or effective approaches through training programs, workshops, seminars and lectures (or any other applicable forum).
- Offering OSHA opportunities to speak, exhibit or appear at conferences, local meetings or other events.

Excerpted from [osha.gov/alliances/national/altec\\_agreement\\_20200609](https://www.osha.gov/alliances/national/altec_agreement_20200609).

## In Other News...

### Former OSHA administrator Eula Bingham dies at age 90

Former OSHA Assistant Secretary of Labor Eula Bingham died June 13, the University of Cincinnati College of Medicine announced on its Twitter account. She was 90.

Bingham led OSHA during President Jimmy Carter's administration from 1977 to 1981 and directed the agency to publish standards protecting workers against lead, benzene and cotton dust, among other hazards. During her tenure, OSHA allowed workers access to information about exposures to chemical hazards while on the job, also known as the "Right to Know" standard.

Bingham created the forerunner to the Susan Harwood Training Grant Program, called "New Directions," in 1978.

### OSHA moves National Safety Stand-Down to September

OSHA has rescheduled the seventh annual National Safety Stand-Down to Prevent Falls in Construction for Sept. 14-18. The event initially was set for May 4-8, but was postponed March 27 over concerns related to the COVID-19 pandemic. It now will coincide with Construction Safety Week, which also was recently rescheduled for Sept. 14-18.

Speaking during a July 2 webinar hosted by CPWR – The Center for Construction Research and Training, OSHA Directorate of Construction Director Scott Ketchum said the agency and its partners in the stand-down – NIOSH and CPWR – "are going to be working on getting information out to you as stakeholders on how to do a falls stand-down in a COVID environment" that includes physical distancing and other precautionary measures.

Falls are among the leading causes of fatal workplace injuries among construction workers.

## 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.*

### Regarding the applicability of construction standards to certain commercial sign installation activities

**Standards:** 1926.32 and 1926.1427

**Date of response:** Oct. 1, 2019

Thank you for your July 11, 2019, letter to the Occupational Safety and Health Administration regarding the applicability of OSHA's construction standards in 29 CFR Part 1926 to employers engaged in certain commercial sign installation activities. You request guidance about whether those activities are covered by OSHA's construction standards (29 CFR Part 1926) or general industry standards (29 CFR Part 1910).

#### Removal and Replacement of Like-In-Kind Components

In general, more information about the scale and complexity of the project, including the size of the items and the manner in which they are (or will be) attached to other structures, would be needed to make determinations about the following activities:

- Setting or removing a pole and installing or removing signs on the poles
- Installing a sign structure onto a building or removing the structure from the building
- Removing a historic sign for a renovation/restoration, and then reinstalling it
- Replacing a sign face due to a change in occupancy

The initial installation of a sign or pole will generally be a construction activity. However, replacement of existing signs or with in-kind materials may not be construction activity depending on the scale and complexity of the project. For example, the activities you identify typically would not be construction activities if the pole/sign is being replaced (as distinguished from initial installation) with like-in-kind components that would not constitute an improved type of sign or associated materials. However, if the pole replacement could not be completed without demolishing, dismantling or significantly altering the surrounding equipment/structures, that activity would typically be considered construction.

#### New installations

New installations and upgrades are a common type of alteration that would typically be considered construction. One common factor in most of these examples that must be considered is that the employer is building or attaching something new that was not previously part of the structure/equipment:

- Installing an awning/canopy onto a building
- Improving an electrical sign by retrofitting it with a new energy-efficient lighting system
- Using a crane with a remote control [personnel] basket to install a banner
- Installation of a wall sign onto façade of a building while other construction activities occur at the site
- Installation/removal of new stadium scoreboards (post stadium construction)

**Scott C. Ketchum, Acting Director**  
Directorate of Construction

Excerpted from [osha.gov/laws-regs/standardinterpretations/2019-10-01](https://www.osha.gov/laws-regs/standardinterpretations/2019-10-01).

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handling retaliation complaints under the Taxpayer First Act of 2019. The latter item is listed in the final rule stage, with an interim final rule scheduled for November, while the others are in the proposed rule stage.

Another item now in the final rule stage is a standard for handling retaliation complaints under whistleblower protection statutes. So too is a rule that would make the Maritime Advisory Committee for Occupational Safety and Health a nondiscretionary committee instead of a discretionary one, an action required by the National Defense Authorization Act for Fiscal Year 2020.

Moving to the final rule stage from the proposed rule stage are changes to OSHA's beryllium rules for the construction and shipyard industries, with a final rule expected as soon as July.

Three items remained in final rule stage from the Fall 2019 agenda:

- Rules of Agency Practice and Procedures Concerning OSHA Access to Employee Medical Records
- Exposure to Beryllium to Review General Industry Provisions (published in the July 14 *Federal Register*)
- Cranes and Derricks in Construction: Exemption Expansions for Railroad Roadway Work

One new proposed rule involves medical removal protections for OSHA's silica regulations. Three other regulations moved from pre-rule to proposed rule:

- A Lockout/Tagout Update
- Powered Industrial Truck Design Standard Update
- Occupational Exposure to Crystalline Silica; Revisions to Table 1 in the Standard for Construction

Some of the other regulations listed in the proposed rule stage:

- Amendments to the Cranes and Derricks in Construction Standard
- Communication Tower Safety
- Update to the Hazard Communication Standard
- Powered Industrial Trucks

Among the items listed in the pre-rule stage:

- Emergency Response
- Mechanical Power Presses Update
- Tree Care Standard
- Prevention of Workplace Violence in Health Care and Social Assistance
- Blood Lead Level for Medical Removal

The full Spring regulatory agenda is available to view at [reginfo.gov/public/doleAgendaMain](https://reginfo.gov/public/doleAgendaMain).