

OSHA

UP TO DATE®

Fall 2020 regulatory agenda: OSHA infectious diseases standard still ‘long-term action’



Agency	Agency Stage of Progress	Title	Date
DOLETA	Proposed Rule Stage	Temporary Employment of U-2B Foreign Visitors in Certain Essential Occupations in the United States	12/23/2020
DOLETA	Proposed Rule Stage	Modification of Temporary Food for Hunting and Range Livestock Applications Under the FWS Program	12/23/2020
DOLETA	Proposed Rule Stage	Performance Incentives and Opportunity Act, Job Role for United and Connected State Firms	09/25/2020
DOLETA	Final Rule Stage	Temporary Additional Employment of U.S. Technicians in the United States, Uniform Effort Stage	12/23/2020
DOLETA	Final Rule Stage	Northwest National U.S. Workforce Act of 2018	12/23/2020
DOLETA	Final Rule Stage	Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Jobs in the United States	12/23/2020
DOLETA	Proposed Rule Stage	Revisions to Streamline Reporting on the Form 990 ("Maintaining the Form 990")	12/23/2020
DOLETA	Final Rule Stage	Personnel Service Statements/Laborer Income Reallocation	12/23/2020
DOLETA	Final Rule Stage	Adoption of Approved and Pending Voluntary Industry Certification Program	12/23/2020
DOLETA	Final Rule Stage	Occupational Group Health Plans and Group-Terminated Group Health Insurance Coverage	12/18/2020
DOLETA	Final Rule Stage	Priority Rules Regarding Priority Voting and Investment Rights	12/18/2020
DOLETA	Final Rule Stage	Financial Penalties for Selecting Plan Investments	12/18/2020
DOLETA	Final Rule Stage	Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency	12/18/2020
DOLETA	Final Rule Stage	Emergency Response	12/18/2020
DOLETA	Final Rule Stage	Occupational Safety and Health Act	12/18/2020
DOLETA	Final Rule Stage	Prevention of Workplace Violence in Health Care and Social Assistance	12/18/2020
DOLETA	Final Rule Stage	Small Lead Level for Medical Products	12/18/2020
DOLETA	Final Rule Stage	Amendments to the Criteria and Limits in Construction Standard	12/18/2020
DOLETA	Final Rule Stage	Communication Tower Safety	12/18/2020
DOLETA	Final Rule Stage	Update to the Hazard Communication Standard	12/18/2020
DOLETA	Final Rule Stage	Powered Industrial Trucks	12/18/2020
DOLETA	Final Rule Stage	Lock-Out/Tag-Out Update	12/18/2020
DOLETA	Final Rule Stage	Tree Care Standards	12/18/2020
DOLETA	Final Rule Stage	Occupational Exposure to Crystalline Silica, Revision to Table 1 in the Standard for Construction	12/18/2020
DOLETA	Final Rule Stage	Welding in Confinement and Enclosed Spaces	12/18/2020
DOLETA	Final Rule Stage	Drug Testing Program and Safety Sensitive Rule	12/18/2020
DOLETA	Final Rule Stage	Powered Industrial Trucks Design Standard Update	12/18/2020
DOLETA	Final Rule Stage	Walking Working Surfaces	12/18/2020
DOLETA	Final Rule Stage	Occupational Exposure to Crystalline Silica, Revision to Table 1 in the Standard for General Industry	12/18/2020
DOLETA	Final Rule Stage	Mechanical Power Presses 28 CFR 1910.212	12/18/2020
DOLETA	Final Rule Stage	Procedures for the Handling of Penetration Complaints Under the Temporary Final Act	12/18/2020
DOLETA	Final Rule Stage	Procedures for Handling of Penetration Complaints Under the Whistleblower Protection Statutes	12/18/2020
DOLETA	Final Rule Stage	Discrimination Against Employees Reporting Violations Under the Whistleblower Protection Statutes and Health Act of 1970	12/18/2020
DOLETA	Final Rule Stage	Support of Underground Miners in Steel Industry	12/18/2020
DOLETA	Final Rule Stage	Nonparticulate Matter in Air	12/18/2020
DOLETA	Final Rule Stage	Amendments to Penalties for Reporting, Non-Participation, Sanctioning, Enforcement	12/18/2020

A potential infectious diseases standard from OSHA remains on the list of long-term actions in the Department of Labor's regulatory agenda for Fall 2020 – the last under the Trump administration.

Released Nov. 9, the 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. Listings marked “long term” aren't expected to be worked on for at least six months.

That could change, however, if President-elect Joe Biden – after taking

office Jan. 20 – directs OSHA to issue an emergency temporary standard on infectious diseases related to the COVID-19 pandemic. Such a directive would require the agency to develop a permanent standard within six months.

Much of the rest of the agenda remains largely unchanged since the previous agenda was released July 1, although five OSHA regulations were finalized:

- Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records
- Cranes and Derricks in Construction: Exemption Expansion for Railroad Roadway Work
- Revisions to the beryllium standards for construction and shipyard industries
- Revisions to the beryllium standard for general industry
- A final rule that changed the Maritime Advisory Committee on Occupational Safety and Health from discretionary to non-discretionary and added MACOSH to advisory committee regulations

– article continues on p. 4

President-elect Joe Biden taps former OSHA head for COVID-19 advisory board

Former OSHA administrator David Michaels is among three new members named to President-elect Joe Biden's Transition COVID-19 Advisory Board, Biden's transition team announced Nov. 28.

Michaels, an epidemiologist and George Washington University professor, was OSHA's most recently confirmed and longest-serving (from December 2009 to January 2017) assistant labor secretary. He also served as assistant environment, safety and health secretary from 1998 through January 2001.

"There is much to do to get the country healthy and the economy working for everyone," Michaels wrote on his Twitter account Nov. 28. "I am honored and proud to join the Biden-Harris Transition COVID-19 Advisory Board."

In a statement issued the same day, the National Safety Council applauded Michaels' appointment, saying it ensures workplace safety has a voice on the task force. "NSC called for this critical appointment on Nov. 17, because with 157 million people in the workforce, employers

play a pivotal role in curbing the spread of the virus," the statement reads. "Notably, employers can lead on important measures such as screening, testing and contact tracing. Dr. Michaels brings a deep understanding of the safety challenges facing both workers and their employers."

The two other additions to the board are Jane Hopkins, a registered nurse who specializes in mental health, and Jill Jim, a member of the Navajo Nation and the executive director of the Navajo Nation Department of Health.

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

Regional Hispanic Contractors Association

Date of alliance: Oct. 21, 2020

Through the alliance, OSHA and the Regional Hispanic Contractors Association will use relevant injury, illness and hazard exposure data when appropriate to help identify areas of emphasis for alliance awareness, outreach and communication activities. The alliance also will explore and implement selected options, including but not limited to member surveys, to evaluate the alliance and measure the impact on improving workplace safety and health.

To that end, OSHA and RHCA hereby renew the alliance signed April 28, 2014, and renewed on May 31, 2018, with a continued emphasis on providing the participant's members and others with information, guidance and access to training resources that will help them protect the health and safety of workers, particularly by reducing and preventing exposure to worker falls and struck-by hazards, and understand the rights of workers and the responsibilities of

employers under the Occupational Safety and Health Act.

Raising awareness:

Outreach and communication

- To share information on OSHA's national/regional/local emphasis programs, the regulatory agenda and opportunities to participate in the rulemaking process.
- To encourage worker participation in workplace safety and health by providing training and outreach opportunities with minority-owned businesses.

Training and education:

- To deliver or arrange for the delivery of workplace safety and health awareness courses.

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 the regionalhca.org websites) to employers and workers in the construction industry.

- To share information among OSHA personnel and construction industry safety and health professionals regarding RHCA member best worker safety practices or effective approaches through training programs, workshops, seminars and lectures (or any other applicable forum) developed by the participants.
- To work with other alliance participants on specific issues and projects on construction-focused written safety and health programs that are addressed and developed through the alliance program.

Excerpted from *sb-m.ag/3nASknE*.

In Other News...

OSHA requests nominees for construction advisory committee

OSHA is accepting nominations for its Advisory Committee on Construction Safety and Health.

ACCSH advises the Department of Labor and OSHA on upcoming standards affecting the construction industry and “the administration of safety and health provisions” in the Construction Safety Act of 1969. ACCSH consists of 15 members who are appointed by the labor secretary. All but one of the current members’ terms are set to expire May 13, according to OSHA. G. Scott Earnest, deputy director and program coordinator for the NIOSH Office of Construction Safety and Health, has an indefinite term.

At press time, the deadline for nominations was Jan. 8. Learn more at [sb-m.ag/3abVSZG](#).

OSHA to include MACOSH in advisory committee regs

OSHA is adding the Maritime Advisory Committee for Occupational Safety and Health to its regulations on advisory committees. According to a final rule published in the Nov. 18 *Federal Register*, MACOSH started as a discretionary committee in 1995 to advise OSHA on standards development, injury and illness prevention, and enforcement initiatives, but the National Defense Authorization Act for Fiscal Year 2020 made it permanent.

OSHA added MACOSH to 1912.1(a), which already included the Advisory Committee on Construction Safety and Health. The agency also added 1912.13 to set the number of committee members at 15 – all serving two-year terms – and to require the renewal of two-year charters for the committee, among other rules.

At press time, the rule was set to go into effect Dec. 18.

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.

Use of ZipStitch and Clozex to close a wound is medical treatment beyond first aid

Standard: 1904.7(b)(5)(ii)

Date of response: Oct. 9, 2019

Scenario: In your letter, you state that OSHA’s recordkeeping regulation at Section 1904.7(b)(5)(ii)(D) provides that Steri-Strips and butterfly bandages are considered first aid for recordkeeping purposes, while sutures and staples are considered medical treatment. You note that wound care technologies have advanced since OSHA revised its recordkeeping regulation in 2001. Some of the more recent wound closure devices, which are not specifically addressed in the current regulation, are noninvasive and easier to use than Steri-Strips or butterfly bandages. Also, you state the Clozex device is marketed as a surgical skin closure and the ZipStitch device is marketed for home use with surgical quality. Both devices are available over the counter and do not require specialized training to apply.

Question: *Is the use of Clozex or ZipStitch to treat minor lacerations considered first aid or medical treatment for recordkeeping purposes?*

Response: OSHA’s recordkeeping regulation at Section 1904.7(b)(5)(ii)(D) defines first aid, in part, as “Using wound coverings such as bandages, Band-Aids, gauze pads, etc.; or using butterfly bandages or Steri-Strips (other wound closing devices such as sutures, stitches, etc., are considered medical treatment).”

Steri-Strips are a product of the 3M Company, which advertises them as a comfortable adhesive strip used to secure, close and support small cuts, wounds, and surgical incisions. “Butterfly bandage” is a generic term used for similar adhesive strips designed for small wounds. In response to commenters’ suggestions, both Steri-Strips and butterfly bandages were added to the first aid list during the 2001 rulemaking that revised OSHA’s recordkeeping regulation. In the preamble to the final rule, OSHA stated: “Steri-Strips and butterfly bandages are relatively simple and require little or no training to apply, and thus are appropriately considered first aid.”

OSHA also stated in the 2001 final rule preamble that other wound closing devices such as sutures, stitches, staples, tapes and glues are medical treatment. Performing these procedures requires substantial medical training, and they are used only for more serious wounds and are generally considered to go beyond first aid. Id.

The list of first aid treatments in Section 1904.5(b)(ii) is comprehensive (i.e., any treatment not included on the list is not considered first aid for purposes of OSHA recordkeeping.) See, 66 Fed. Reg. 5984. Section 1904.5(b)(5)(ii)(D) specifically states that wound closing devices are considered medical treatment. The regulation also provides that only two wound closing devices, Steri-Strips and butterfly bandages, are considered first aid treatments. Accordingly, since ZipStitch and Clozex are wound closing devices and are not included on the first aid list, they are considered medical treatment for OSHA recordkeeping.

Lee Anne Jillings, Acting Director

Directorate of Technical Support and Emergency Management

Excerpted from [osha.gov/laws-regs/standardinterpretations/2019-10-09](#).

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VOL. 50, NO. 1 | JANUARY 2021

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OSHA Up To Date (ISSN 09941-0000) is published monthly by the National Safety Council, 1121 Spring Lake Drive, Itasca, IL 60143, and is printed in the United States. © 2021 by the National Safety Council.

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On July 10, MSHA announced no changes were made to the agency's training requirements for refuge alternatives in underground coal mines, removing its only final rule from the agenda.

MSHA has one addition to the agenda: a proposed update and clarification to 30 CFR 50 – its rules on “notification, investigation, reports and records of accidents, injuries, employment and coal production in mines.”

The agency is seeking to revise the definition of “occupational injury/illness” to include “work-related.” It also seeks to review incidents that need to be reported within 15 minutes, noting in the agenda item that “the current list includes 12 types of accidents, and may be overly broad.” Also planned by MSHA is an accommodation of electronic reporting and recordkeeping, as well as a proposed attempt to “reduce recordkeeping and reporting burdens, to the extent feasible.”

OSHA's standard on tree care operations has moved from the pre-rule stage to the proposed rule stage, and a notice of proposed rulemaking could be published in October. Another new item on the agenda is the proposed removal of

1910.217(g) from OSHA's standard on mechanical power presses, which requires the reporting of injuries resulting from mechanical power presses and the reporting criteria therein.

The agenda item states that “there is a lack of evidence that OSHA uses this specific data,” which the agency notes is already required under its Injury and Illness Recordkeeping Requirement Standard.

A new final rule listed would change the interpretation of the anti-retaliation provision of the Occupational Safety and Health Act, based on the Supreme Court's opinion in *University of Texas Southwestern Medical Center v. Nassar* issued in 2013. In the case, the court held that defendants must prove in anti-retaliation cases that retaliation was the sole motivating factor for an adverse action such as a firing, instead of one of multiple motivating factors.

OSHA's potential rule on workplace violence in health care and social assistance remains in the pre-rule stage, but a Small Business Advocacy Review panel is expected to convene in the near future, one of the next steps in the regulatory process.

For the full agenda, go to reginfo.gov/public/doleAgendaMain.