



## TAUC Quick Reference Guide: OSHA Spring 2011 Regulatory Agenda

On July 7, 2011, OSHA released its [Spring 2011 semi-annual regulatory agenda](#), an overview of what the agency plans to accomplish in the coming months. The agenda includes updated information on a number of major rulemakings that will have a direct impact on the construction industry. Below is a quick summary of the agenda items that we feel are most important to TAUC members and union construction in general – however, we encourage you to take the time to read through the entire agenda, as there may be other items of interest to particular companies. Click on the RIN (regulation identifier number) next to each entry for more information – the hyperlinks take you directly to [Reginfo.gov](#). If you have comments or questions about any of the agenda items, we encourage you to reach out directly to the OSHA contact person listed at the bottom of each hyperlinked page.

### PRE-RULE STAGE

**Occupational Exposure to Beryllium (RIN: 1218-AB76).** Beryllium is found in coal and copper slag, which is sometimes used as a substitute for sand in abrasive blasting operations. OSHA is developing a risk assessment on the relationship between exposure to beryllium and the development of adverse health effects, including lung cancer and a condition known as chronic beryllium disease, or CBD.

*Next Step:* OSHA has been working on this issue since 2002, and it is still in the pre-rule stage. A peer review of the health effects was completed in November 2010. OSHA said an economic peer review of its draft risk assessment was scheduled to be completed in June 2011. No indication of the next step in the process was included in the agenda.

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**Injury and Illness Prevention Program (RIN: 1218-AC48).** OSHA is developing a rule requiring employers to implement an Injury and Illness Prevention Program. It involves planning, implementing, evaluating, and improving processes and activities that protect employee safety and health. The rule would build on the agency's voluntary Safety and Health

Program Management Guidelines published in 1989, as well as lessons learned from other successful approaches and best practices.

**Next Step:** This action is still in the pre-rule stage. OSHA held stakeholder meetings last June. A plan to solicit input from small businesses that will be affected by the rule was scheduled to launch in June 2011; this step is required by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996. No further information was provided in the agenda.

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**Reinforced Concrete in Construction ([RIN: 1218-AC51](#)).** OSHA is considering creating a new rule to more properly address worker hazards related to reinforcing steel and post-tensioning activities. “The use of reinforced steel and post-tensioned poured in place concrete in commercial and industrial construction is expected to rise,” OSHA noted. “Without adequate standards, the rate of accidents will likely rise as well. Currently, workers performing steel reinforcing suffer injuries caused by unsafe material handling, structural collapse, and impalement by protruding reinforcing steel dowels, among others. Employees involved in post-tensioning activities are at risk for accidents caused by the misuse of post-tensioning equipment and improper training.”

**Next Step:** An advance notice of proposed rulemaking (ANPRM) was scheduled to be released in March 2011. In this most recent Spring 2011 agenda, that date was pushed back to June; however, as of this writing, OSHA has still not published the ANPRM in the *Federal Register*. When it does release the ANPRM, OSHA will seek comment from professionals in the post-tensioning and reinforcing steel field. The agency says it “will consider rulemaking to prevent worker deaths and injuries related to these operations. By requesting information from professionals who work in the reinforcing steel and post-tensioning fields and other members of the public, OSHA hopes to determine whether a new rule is necessary, and, if so, what hazards need to be addressed.”

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**Preventing Backover Injuries and Fatalities ([RIN: 1218-AC52](#)).** OSHA is getting the ball rolling on new regulations covering the backup operation of construction equipment – that is, when the equipment is moving in reverse. “NIOSH reports that half of the fatalities involving construction equipment occur while the equipment is backing,” OSHA notes. “Backing accidents cause 500 deaths and 15,000 injuries per year. Emerging technologies in the field of backing operations include after market devices, such as camera, radar, and sonar, to help monitor the presence of workers on foot in blind areas, and new monitoring technology, such as tag-based warning systems that use radio frequency (RFID) and magnetic field generators on equipment to detect electronic tags worn by workers...OSHA believes that regulatory action is necessary to address risks associated with backup operations.”

**Next Step:** In its previous agenda, OSHA said it would start the rulemaking process by issuing a preliminary request for information (RFI) in May 2011; however, in this most recent agenda, OSHA has pushed back the RFI date to August 2011.

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**Combustible Dust ([RIN: 1218-AC41](#)).** In 2009 OSHA started a rulemaking process to develop a combustible dust standard for the industry. “The U.S. Chemical Safety Board (CSB) completed a study of combustible dust hazards in late 2006, which identified 281 combustible dust incidents between 1980 and 2005 that killed 119 workers and injured another 718,” OSHA reported. “Based on these findings, the CSB recommended the Agency pursue a rulemaking on this issue.”

An advance notice of proposed rulemaking (ANPRM) was issued in 2009, followed by stakeholder meetings in 2009 and 2010. An expert forum on the subject was scheduled to be held in May 2011.

**Next Step:** In its previous agenda, OSHA said it would initiate the next step in the rulemaking process in April 2011 by soliciting input from small businesses that will be affected by the rule, an action required by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996. However, in this most recent agenda, OSHA has pushed back the SBREFA action until December 2011.

## **PROPOSED RULE STAGE**

**Occupational Exposure to Crystalline Silica ([RIN: 1218-AB70](#)).** OSHA is in the process of updating current exposure limits for crystalline silica, classified as a human carcinogen. Construction workers are exposed to silica dust in a number of different ways. Long-term exposure to high levels of the substance can cause silicosis, which is fatal. “Exposure to crystalline silica has also been associated with an increased risk of developing tuberculosis and other nonmalignant respiratory diseases, as well as renal and autoimmune diseases,” OSHA said. “Exposure studies and OSHA enforcement data indicate that some workers continue to be exposed to levels of crystalline silica far in excess of current exposure limits... There is a particular need for the agency to modernize its exposure limits for construction and shipyard workers, and to address some specific issues that will need to be resolved to propose a comprehensive standard.”

**Next Step:** OSHA began its rulemaking in 2003. The next step is to issue a Notice of Proposed Rulemaking (NPRM). In the last agenda, OSHA set a due date of April 2011; in this most recent agenda, the date has been pushed back to June 2011, but as of this writing, the NPRM has still not yet been released. Also in this agenda, OSHA set a date of October 2011 for hearings on the silica issue.

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**Walking Working Surfaces and Personal Fall Protection Systems (Slips, Trips, and Fall Prevention) (RIN: 1218-AB80).** In 1990, OSHA first proposed a rule addressing hazards on walking surfaces (including slips and trips) as well as requirements for personal fall protection systems. After reopening the comment period in 2003, the agency realized the original rule was out-of-date and published a second notice of proposed rulemaking in May 2010. Public hearings on the revised rulemaking were held January 18-21, 2011.

**Next Step:** The next action listed in this most recent agenda is an analysis of the comments received, with a targeted date of August 2011.

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**Musculoskeletal Disorders (MSD) Column (RIN: 1218-AC45).** In 2003 the agency issued a rule removing a column used to record work-related musculoskeletal disorders (WMSD) from the OSHA 300 form. Since then, “OSHA has reconsidered the need for a 300 Log column for WMSD, and for defining ‘musculoskeletal disorders’ for checking the column,” OSHA said. “The Agency believes that having aggregate data on WMSDs may help employers and workers track these injuries at individual workplaces, and that the Nation’s occupational injury and illness information may benefit from improved statistics on WMSD. Improved WMSD information might also assist the Agency in its day-to-day activities and overall safety and health policymaking.”

A notice of proposed rulemaking (NPRM) was issued in January 2010, and final action on the subject was originally scheduled for February 2011. However, in late January 2011, OSHA temporarily withdrew the proposed rule from the Office of Management and Budget so that the agency could gather more information from stakeholders in the small business community.

In conjunction with the U.S. Small Business Administration Office of Advocacy, OSHA scheduled two stakeholder meetings on April 11-12, 2011, to gather input from small businesses on the subject.

**Next Step:** On May 17, 2011, OSHA was scheduled to issue a Notice of Limited Reopening of Rulemaking Record; however, as of this writing, it has not yet been released.

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**Modernizing OSHA’s Reporting System (RIN: 1218-AC49).** OSHA is in the process of making changes to its reporting system for occupational injuries and illnesses so that it can collect data in a more timely and efficient manner. According to OSHA, the goal is to electronically collect occupational injury and illness data that is already compiled and maintained by employers. OSHA stresses that this effort will not add to or change any employer’s obligation to complete and retain the injury and illness records or change the recording criteria or

definitions for these records; it will only modify employers' obligations to transmit information from their records to OSHA.

*Next Step:* Stakeholder meetings were held last year; the next step is for OSHA to release a Notice of Proposed Rulemaking outlining the details of its modernization plan in September 2011.

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**NAICS Update and Reporting Provisions ([RIN: 1218-AC50](#)).** OSHA is proposing changes to two aspects of its recordkeeping and reporting requirements, the second of which is of the most interest to the construction industry: "OSHA is proposing to revise the reporting requirements regarding the obligations of employers to report to OSHA the occurrence of fatalities and certain injuries," the agency explained. "The existing regulations require employers to report to OSHA within 8 hours any work-related incident resulting in the death of an employee or the in-patient hospitalization of three or more employees." At this point the exact nature of the intended revisions is unclear.

*Next Step:* In the previous agenda, OSHA said it planned to release a notice of proposed rulemaking (NPRM) in March 2011; in this most recent agenda, the date was pushed back to June 2011. As of this writing, however, the NPRM has not yet been released.

## **FINAL RULE STAGE**

**Confined Spaces in Construction ([RIN: 1218-AB47](#)).** "In January 1993, OSHA issued a general industry rule to protect employees who enter confined spaces," the agency explained. "This standard does not apply to the construction industry because of differences in the nature of the worksite in the construction industry. In discussions with the United Steel Workers of America on a settlement agreement for the general industry standard, OSHA agreed to issue a proposed rule to extend confined-space protection to construction workers appropriate to their work environment."

*Next Step:* A final action is expected in November 2011.

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**Electric Power Transmission and Distribution; Electrical Protective Equipment ([RIN: 1218-AB67](#)).** OSHA is in the process of revising a 35-year-old standard covering the safety of construction workers during the construction of electric power transmission and distribution lines that it says will prevent fatalities and add flexibility to the standard. "OSHA also intends to amend the corresponding standard for general industry so that requirements for work performed during the maintenance of electric power transmission and distribution installations are the same

as those for similar work in construction,” the agency noted. “In addition, OSHA will be revising a few miscellaneous general industry requirements primarily affecting electric transmission and distribution work, including provisions on electrical protective equipment and foot protection. This rulemaking also addresses fall protection in aerial lifts for work on power generation, transmission, and distribution installations.”

*Next Step:* In the previous agenda, OSHA said it expected to release a final rule in May 2011; in this most recent agenda, the release date of the final rule has been pushed back to September 2011.

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**Hazard Communication ([RIN: 1218-AC20](#)).** OSHA is in the process of adopting the Globally Harmonized System of Classification and Labeling of Chemicals (GHS), which has already been adopted by the United Nations and is in the process of being implemented in the European Union. The goal is to move to a single standard and eliminate the use of multiple sets of requirements for labels and safety data sheets for hazardous chemicals. The numerous requirements “present a compliance burden for U.S. manufacturers, distributors and transports involved in international trade,” OSHA said.

*Next Step:* Final action is scheduled for September 2011.

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**Cooperative Agreements ([RIN: 1218-AC32](#)).** OSHA is proposing to revise its regulations for the federally funded On-site Consultation Program to: a) Clarify the ability of the Assistant Secretary to define sites which would receive inspections regardless of Safety and Health Achievement Recognition Program (SHARP) exemption status; b) allow Compliance Safety and Health Officers to proceed with enforcement visits resulting from referrals at sites undergoing Consultation visits and at sites that have been awarded SHARP status; and c) limit the deletion period from OSHA's programmed inspection schedule for those employers participating in the SHARP program.

A notice of proposed rulemaking was issued in September 2010 and ended in November 2010.

*Next Step:* Final action is scheduled for September 2011.

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**Revising the Underground Construction and Demolition Standards To Make the Cranes and Derricks in Construction Rule Applicable to those Activities ([RIN: 1218-AC61](#)).** OSHA is planning to release a direct final rule will clarify and simplify the agency's standards applicable to cranes and derricks in construction by establishing a single set of standards for all

construction activities involving cranes and derricks. OSHA's August 2010 final rule for cranes and derricks (75 FR 47096) was originally intended to apply to all crane and derrick use in construction. However, two subsectors of construction work, demolition and underground construction, were exempted from coverage under the new standard, in an effort to ensure that employers involved in those types of work were given sufficient notice to comply with the new rule. These subsectors currently remain covered under the previous rule governing crane and derrick use in construction. This direct final rule will, therefore, apply the new cranes and derricks rule to both demolition and underground construction work.

A proposed rule will accompany the direct final rule. Should OSHA receive significant adverse comment on this direct final rule, it will withdraw the direct final rule and proceed with the accompanying proposed rule.

*Next Step:* The direct final rule and proposed rule are scheduled to be issued in August 2011.

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**Updating OSHA Standards Based on National Consensus Standards -- Acetylene ([RIN: 1218-AC64](#)).** OSHA is in the process of updating the national consensus standards found in the OSH Act, since the organizations responsible for promulgating these standards have issued new and revised versions since the Act first went into effect 40 years ago. As part of this process, OSHA plans to issue a direct final rule incorporating the new edition of the acetylene standard published by the Compressed Gas Association in June 2009.

*Next Step:* A direct final rule is scheduled to be issued in August 2011.

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**Updating OSHA Standards Based on National Consensus Standards--Personal Protection Equipment ([RIN: 1218-AC65](#)).** OSHA is in the process of updating the national consensus standards found in the OSH Act, since the organizations responsible for promulgating these standards have issued new and revised versions since the Act first went into effect 40 years ago. As part of this process, OSHA plans to issue a direct final rule incorporating the latest PPE consensus standards for the general, construction, and maritime industries, including ANSI's 2009 edition of the Head Protection (ANSI Z-89.1) standard.

*Next Step:* A direct final rule is scheduled to be issued in October 2011.

## **COMPLETED ACTIONS**

**Standards Improvement Project (SIP III) ([RIN: 1218-AC19](#)).** This action represents the third stage of OSHA's continuing efforts "to remove or revise duplicative, unnecessary, and inconsistent safety and health standards." According to a [July 2, 2010 notice of proposed](#)

[rulemaking](#) (NPRM) issued by OSHA, SIP III will amend a number of OSHA standards, some of which will impact the construction industry either directly or indirectly. We recommend that TAUC members read the entire NPRM. Some of the areas covered in the NPRM include proposed changes to certain training certification records, including the elimination of a recordkeeping requirement for training in Cadmium standards; several minor revisions to the existing Respiratory Protection Standard; and amendments to standards regulating slings that would replace outdated tables specifying safe working loads, among other changes.

**Final action:** The final rule was published in June 2011 and went into effect on July 8, 2011.

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## Calendar Summary of Upcoming OSHA Actions

### MAY 2011

*Musculoskeletal Disorders (MSD) Column* (RIN: 1218-AC45): Notice of Limited Reopening of Rulemaking scheduled to be released.

### JUNE 2011

*Occupational Exposure to Beryllium* (RIN: 1218-AB76): Economic peer review of draft risk assessment scheduled to be completed.

*Injury Illness and Prevention Program* (RIN: 1218-AC48): Solicit input from small businesses per SBREFA requirements.

*Reinforced Concrete in Construction* (RIN: 1218-AC51): Advance notice of proposed rulemaking scheduled to be released.

*NAICS Update and Reporting Provisions* (RIN: 1218-AC50): Notice of proposed rulemaking scheduled to be released.

### AUGUST 2011

*Preventing Backover Injuries and Fatalities* (RIN: 1218-AC52): Preliminary request for information solicitation scheduled to be issued.

*Walking Working Surfaces and Personal Fall Protection Systems (Slips, Trips and Fall Prevention)* (RIN: 1218-AB80): Comment analysis scheduled to begin.

*Revising the Underground Construction and Demolition Standards To Make the Cranes and Derricks in Construction Rule Applicable to those Activities (RIN: 1218-AC61).* Direct final rule and proposed rule scheduled to be released.

*Updating OSHA Standards Based on National Consensus Standards -- Acetylene (RIN: 1218-AC64).* Direct final rule scheduled to be released.

### **SEPTEMBER 2011**

*Hazard Communication (RIN: 1218-AC20).* Final rule scheduled to be released.

*Modernizing OSHA's Reporting System (RIN: 1218-AC49):* Notice of Proposed Rulemaking due.

*Electric Power Transmission and Distribution; Electrical Protective Equipment (RIN: 1218-AB67):* Final rule expected.

*Cooperative Agreements (RIN: 1218-AC32):* Final action scheduled.

### **OCTOBER 2011**

*Occupational Exposure to Crystalline Silica (RIN: 1218-AB70).* Hearings scheduled.

*Hazard Communication (RIN: 1218-AC20):* Final action due.

*Updating OSHA Standards Based on National Consensus Standards--Personal Protection Equipment (RIN: 1218-AC65).* Direct final rule scheduled to be released.

### **NOVEMBER 2011**

*Confined Spaces in Construction (RIN: 1218-AB47):* Final action due.