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Updated OSHA Regulatory Agenda

The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor continues to vigorously police the regulated community. Thus, OSHA recently issued its regulatory agenda for 2013, updated from fall 2011. The updated agenda includes ten rules in the Final Rule stage, ten rules in the Proposed Rule stage and five rules in the Pre-Rule stage. OSHA's proposed rules are anticipated to move through the rulemaking process during the next six to twelve months. Below are selected rules included in each category of the three stages and dates they are projected to take effect, if applicable.

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Final Rule Stage

Five of the ten Final Rules being proposed by OSHA address:

- **Confined Spaces in Construction**. The final rule is projected for July 2013. The rule expands the general industry confined space rule to cover construction work in confined spaces.
- **Walking Working Surfaces and Personal Fall Protection Systems (Slips, Trips and Fall Prevention)**. The final rule is projected for August 2013. In our e-alert dated December 3, 2012, we noted three of the top ten OSHA violation categories in 2011 related to working at heights.
- **Occupational Injury and Illness Recording and Reporting Requirements—NAICS Update and Reporting Provisions**. The final rule is projected for May 2013. The rule updates the list of industries partially exempt from the requirement to maintain a log of occupational illnesses and injuries under the North American Industry Classification System (NAICS). It also revises the obligations of employers to report the occurrence of fatalities and certain injuries.
- **Electric Power Transmission and Distribution; Electrical Protective Equipment**. The final rule is projected for March 2013. Both electrical wiring methods and electrical general requirements were among the top ten categories of OSHA violations for the previous year.
- **Procedures for the Handling of Retaliation Complaints Under Section 1558 of the Affordable Care Act of 2010**. The interim final rule is projected for March 2013. This rule establishes a new whistleblower protection scheme.

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Proposed Rule Stage

Four of OSHA's ten Proposed Rules include:

- **Occupational Exposure to Crystalline Silica**. The next action is the Notice of Proposed Rulemaking projected for May 2013. This will provide a comprehensive standard for crystalline silica.
- **Occupational Exposure to Beryllium**. The next action is the Notice of Proposed Rulemaking projected for July 2013.
- **Bloodborne Pathogens**. The next action will be the End Review and Issue Findings projected for May 2013. OSHA will undertake a review of the Bloodborne Pathogen Standard (29 C.F.R. 1910.1030).
- **Improve Tracking of Workplace Injuries and Illness**. The next action will be the Notice of Proposed Rulemaking projected for May 2013. The proposal involves modification to 29 CFR Part 1904.41 and expands OSHA's regulatory authority to collect and make available injury and illness information required under Part 1904.

Pre-Rule Stage

The five OSHA rules included in the Pre-Rule Stage are:

- **Combustible Dust**. OSHA has commenced rulemaking to develop a combustible dust standard for general industry.
- **Infectious Diseases**. This OSHA rule will apply to employees in health care and other high-risk environments where workers face longstanding hazard of possibly contracting a contagious disease.
- **Injury and Illness Prevention Program**. This OSHA rule will require employers to implement an Injury and Illness Prevention Program.
- **Review/Lookback of OSHA Chemical Standards**. OSHA will review permissible exposure limits; the request for information is projected for May 2013.
- **Reinforced Concrete in Construction and Preventing Back Over Injuries and Fatalities**. OSHA is requesting information on employee safety risks in these two areas.

As noted above, OSHA is conducting a futuristic regulatory watch on the employer community. We will continue to update you as significant OSHA-related regulatory developments occur. In the meantime, your Reinhart attorney or members of Reinhart's Labor and Employment Law practice group will be pleased to answer

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your questions and address any concerns that you may have regarding OSHA compliance issues and OSHA's enforcement efforts.

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