MAY 1, 2025 | MSHA LEADERSHIP, RULEMAKING & STANDARDS

Coalition of Employers and Trade Groups to Modernize OSHA and MSHA Processes and Standards

BY ERIC J. CONN & NICHOLAS W. SCALA

The Trump Administration continues its quest toward easing regulatory burdens and improving efficiency of government functions by seeking input from the public about overly burdensome regulations that should be rescinded or replaced. CMC invites employers who prioritize their workers' safety but get frustrated by OSHA's and MSHA's sometimes antiquated or onerous regulatory framework to join the **Employers OSHA and MSHA Modernization Coalition**.

The Employers OSHA and MSHA Modernization Coalition will allow employers to take advantage of this unprecedented opportunity to recommend improvements to a broad swath of outdated or unduly burdensome workplace safety and health standards, processes, and enforcement policies implemented by the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA).

The Coalition will be conducting separate open OSHA and MSHA **kickoff virtual meetings next week – OSHA on Wednesday, May 7, 2025 and MSHA on Friday, May 9, 2025 –** to discuss the types of reform for which we will be advocating, the process we will follow to present our advocacy to the Administration and to OSHA and MSHA directly, and how companies and trade groups can effectively contribute. For more details, read on or contact Eric Conn, Chair of CMC's OSHA Practice and Nick Scala, the Chair of CMC's MSHA Practice.

What is the White House's Objective?

On April 11, 2025, the White House's Office of Management and Budget (OMB) published a Request for Information (RFI) soliciting stakeholders' feedback on federal regulations that are onerous, outdated, or

unnecessary. The goal, according to OMB, is to rescind or replace regulations that "stifle" the dynamism and creativity of American businesses. For now, written comments in response to the RFI should be submitted by May 12, 2025. We have already filed a request for an extension to the RFI deadline and also understand that the Administration will welcome ideas and comments about this initiative anytime.



CONN MACIEL CAREY

May 1, 2025

Mr. Russell T. Vought
Director of the United States Office of Management and Budget
The Office of Management and Budget
725 17th St NW
Washington, DC 20503

Ms. Kelsi Feltz
Policy Analyst
The Office of Management and Budget
725 17th St NW
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Dear Mr. Vought and Ms. Feltz:

We write today on behalf of a broad consortium of our clients who own and operate substantial business interests in the United States to request a 45-day extension of the deadline to submit comments to the Office of Management and Budget's (OMB) April 11, 2025 Request for Information (RFI). Our clients represent a significant swath of manufacturing, mining, petrochemical, transportation, telecommunications, healthcare, technology, retail, aerospace, and a myriad of other industries. Our representation of these clients focuses on their commitment to the safety and health of their employees.

We are extremely pleased that OMB is giving serious consideration to the burden that select regulations place on American businesses and industry. While we understand that clear and robust regulation is an important aspect of ensuring the protection and safety of the American workforce, we firmly believe that a regulatory construct can be achieved that is not unduly burdensome for American employers and yet accomplishes the common objective of the government and our clients – to keep American workers safe and healthy while allowing businesses to flourish.

This RFI follows on the heels of other deregulate steps taken by the White House. For example, in January, the White House issued a Memorandum (90 FR 8249) directing executive agencies to cease implementing or issuing new federal regulations until political leadership had been installed. It also directed those agencies to rescind ten existing regulations for every new rule promulgated moving forward.

Then in February, the White House issued an Executive Order entitled: *Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative* (E.O. 14219, Feb. 19, 2025). That Executive Order directed agency heads to coordinate with Elon Musk's DOGE Team and OMB to identify regulations that, among other things:

- Raise "serious constitutional difficulties";
- Impose significant costs on private parties;
- Impede innovation and economic development; or
- Impose undue burdens on small businesses.

The April RFI is the Administration's attempt to communicate directly with the public to understand which regulations should be revisited, and what other ideas stakeholders may have to reduce burdens imposed by executive agencies.

What Are the Goals of the Employers OSHA and MSHA Modernization Coalition?

Representing businesses across numerous industries, the Employers OSHA and MSHA Modernization Coalition will harness its members' experience and expertise to recommend changes to OSHA and MSHA regulations and policies that will modernize OSHA's and MSHA's approaches to regulating workplace safety while still ensuring effective protection of our employees from workplace hazards. To be clear, it is not the intention of this Coalition to undermine these safety agencies' missions or to advocate for wholesale repeal of OSHA or MSHA

regulations. Rather, it is our intent to identify discreet, specific regulations, standards, policies or processes in need of modernization or targeted revisions to ensure they are workable for industry and remain protective of workers' safety and health.

CMC has organized similar industry coalitions to address numerous individual proposed regulations, for example employer coalitions to work on OSHA's rulemakings addressing Heat Illness Prevention, Emergency Response, and the slew of emergency and permanent rules related to the COVID-19 pandemic. Our approach has been to advocate for more reasonable and flexible standards, and we have had considerable success driving significant improvement to the standard OSHA has promulgated. We have submitted comprehensive written comments to the rulemaking dockets, testified at rulemaking hearings, and advocated directly to OSHA and the White House (through OMB) in formal and informal stakeholder meetings. Through those prior coalitions, CMC's input has resulted in direct changes to OSHA's approach, its policy directions, and the actual language of its regulations. CMC has also successfully persuaded OSHA to create industry carve-outs and important exemptions on behalf of its clients.

CMC intends to follow this same playbook for advocacy strategy for the Employers OSHA and MSHA Modernization Coalition during this initial RFI phase and in future work streams that follow from this RFI. Joining the Coalition gives companies and trade associations the chance to express their concerns about OSHA's and MSHA's current regulatory approach and specific regulations, while maintaining individual member anonymity.

In support of the written submission we intend to make in response to this OMB RFI, Coalition members can help select which OSHA and/or MSHA processes, policies, and standards we should address, provide insight about the direct and indirect burdens and costs associated with the proposed rescissions or revisions to regulations, provide feedback about draft work product, and help fund the time to be dedicated by the CMC team. After this initial phase of written comments, CMC will continue to advocate for Coalition members' interests by engaging in formal or informal advocacy opportunities with the decisionmakers at OSHA and MSHA or the White House. All the while, CMC will educate the participating members of the Coalition about developments associated with this and any other associated deregulatory push.

What Does the Employers OSHA and MSHA Modernization Coalition Intend to Address?

CMC is using its legal expertise, combined with feedback from clients with stellar reputations for worker safety, to identify the OSHA or MSHA regulations and policies in sore need of reform and describe the recommended improvements. We will discuss a preliminary list that we have brainstormed during the Open Kickoff Meetings on **May 7th** (OSHA-focused) and **May 9th** (MSHA-focused). Coalition members will be encouraged to provide feedback about that working list, recommend additional areas of concern that should be addressed, and provide input about why the status quo is inefficient and ineffective.

Here is a sneak peek at some of the topics we anticipate addressing in our RFI submission:

Specific Standards and Regulations

1. ***OSHA***
    - Lockout/Tagout and Machine Guarding modernization

- Redesigning the proposed Heat Illness Prevention Rule
- Electronic Recordkeeping (301-level detail)
- Open knockouts in electrical cabinets
- Blocked electrical panels

2. ***MSHA***
   - Amending Part 50 – 15 minutes Immediate Reporting for Accidents
   - Further Defining "Accident" for Immediate Reporting
   - Revamping Task Training Standards
   - Redesigning Special Assessments Qualifications

OSHA Policy

- Service of OSHA citations (employers to designate where and how, such as by email)
- Worker Walkaround Representative Designation Process Rule
- Employer participation in OSHA inspection interviews
- Expansion of Contest deadlines
- Timing of enforcement press releases
- Multi-Employer Citation Policy
- "Repeat" classification criteria
- Per-instance Citation Policy and citation "Grouping"
- Severe Violator Enforcement Program (SVEP) designation and removal

MSHA Policy

- Service of MSHA citations
- Overhauling the Petition for Modification Process and Scope
- MSHA's use of Program Policy and Guidance Materials
- Fatality Reports Post-Issuance
- Using Issued Citations/Orders for Enforcement History (rather than Final Orders)
- Clarifying Pattern of Violations Qualification and Removal
- Improving the Informal/Pre-Assessment Conference Process
- Modernizing MSHA / OSHA Memorandum of Understanding on Jurisdiction
- Clarifying Part 45 Contractor Liability Policy

Injury and Illness Recordkeeping

- Criteria for inclusion of injuries on OSHA logs
- Recordability and reportability of COVID-19 and other respiratory illnesses
- Deadline for reporting hospitalizations and fatalities
- Time limits for responding to OSHA requests for 300 logs
- Details required for 301 reports

OSHA and MSHA Litigation

- Applicability of Federal Rules of Evidence to OSHRC and FMSHRC matters
- Employers' eligibility to awards of attorneys' fees under the Equal Access to Justice Act
- Elements of the unforeseeable employee misconduct affirmative defense in OSHA matters
- Address FMSHRC Authority to Approve / Reject Settlements

How Can Employers Join the Coalition?

The Employers OSHA and MSHA Modernization Coalition will be fee-based and will keep the members' identities anonymous. If you are interested in learning more, we recommend you and your colleagues attend the Open Kickoff Meetings we are hosting next week:

- **OSHA Modernization Meeting on Wednesday, May 7th at 1 PM ET**
- **MSHA Modernization Meeting on Friday, May 9th at 1 PM ET**

All current and prospective members are welcome to attend. Click the links above to register or contact Eric Conn, Chair of CMC's OSHA Practice and Nick Scala, the Chair of CMC's MSHA Practice for more information.