

## Authority and Signature

This document was prepared under the direction of David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Sections 8 and 24 of the Occupational Safety and Health Act (29 U.S.C. 657, 673), Section 553 of the Administrative Procedure Act (5 U.S.C. 553), and Secretary of Labor's Order No. 41–2012 (77 FR 3912 (Jan. 25, 2012)).

Signed at Washington, DC on April 29, 2016.

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**David Michaels,**  
Assistant Secretary of Labor for Occupational Safety and Health.

## Final Rule

For the reasons stated in the preamble, OSHA amends parts 1904 and 1902 of chapter XVII of title 29 as follows:

### **PART 1904—[AMENDED]**

1. The authority citation for part 1904 continues to read as follows:

**Authority:** 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012).

2. Revise § 1904.35 to read as follows:

#### **§ 1904.35 Employee involvement.**

(a) Basic requirement. Your employees and their representatives must be involved in the recordkeeping system in several ways.

(1) You must inform each employee of how he or she is to report a work-related injury or illness to you.

(2) You must provide employees with the information described in paragraph (b)(1)(iii) of this section.

(3) You must provide access to your injury and illness records for your employees and their representatives as described in paragraph (b)(2) of this section.

(b) Implementation--(1) What must I do to make sure that employees report work-related injuries

and illnesses to me? (i) You must establish a reasonable procedure for employees to report work-related injuries and illnesses promptly and accurately. A procedure is not reasonable if it would deter or discourage a reasonable employee from accurately reporting a workplace injury or illness;

(ii) You must inform each employee of your procedure for reporting work-related injuries and illnesses;

(iii) You must inform each employee that:

(A) Employees have the right to report work-related injuries and illnesses; and

(B) Employers are prohibited from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses; and

(iv) You must not discharge or in any manner discriminate against any employee for reporting a work-related injury or illness.

(2) [Reserved]

3. Revise § 1904.36 to read as follows:

**§ 1904.36 Prohibition against discrimination.**

In addition to § 1904.35, section 11(c) of the OSH Act also prohibits you from discriminating against an employee for reporting a work-related fatality, injury, or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to the part 1904 records, or otherwise exercises any rights afforded by the OSH Act.

### **Subpart E—Reporting Fatality, Injury and Illness Information to the Government**

4. Add an authority citation to subpart E of 29 CFR part 1904 to read as follows:

**Authority:** 29 U.S.C. 657, 673, 5 U.S.C. 553, and Secretary of Labor’s Order 1–2012 (77 FR 3912, Jan. 25, 2012).

5. Revise § 1904.41 to read as follows:

#### **§ 1904.41 Electronic submission of injury and illness records to OSHA.**

(a) Basic requirements—(1) Annual electronic submission of part 1904 records by establishments with 250 or more employees. If your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must electronically submit information from the three recordkeeping forms that you keep under this part (OSHA Form 300A Summary of Work-Related Injuries and Illnesses, OSHA Form 300 Log of Work-Related Injuries and Illnesses, and OSHA Form 301 Injury and Illness Incident Report) to OSHA or OSHA’s designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the forms.

(2) Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees but fewer than 250 employees in designated industries. If your establishment had 20 or more employees but fewer than 250

employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to subpart E of this part, then you must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form.

(3) Electronic submission of part 1904 records upon notification. Upon notification, you must electronically submit the requested information from your part 1904 records to OSHA or OSHA's designee.

(b) Implementation--(1) Does every employer have to routinely submit information from the injury and illness records to OSHA? No, only two categories of employers must routinely submit information from their injury and illness records. First, if your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must submit the required Form 300A, 300, and 301 information to OSHA once a year. Second, if your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to subpart E of this part, then you must submit the required Form 300A information to OSHA once a year. Employers in these two categories must submit the required information by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form or forms (for example, 2017 for the 2016 forms). If you are not in either of these two categories, then you must submit information from the injury and illness records to OSHA only if OSHA notifies you to do so for an individual data collection.

(2) If I have to submit information under paragraph (a)(1) of this section, do I have to submit all of the information from the recordkeeping form? No, you are required to submit all of the information from the form except the following:

- (i) Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).
- (ii) Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

(3) Do part-time, seasonal, or temporary workers count as employees in the criteria for number of employees in paragraph (a) of this section? Yes, each individual employed in the establishment at any time during the calendar year counts as one employee, including full-time, part-time, seasonal, and temporary workers.

(4) How will OSHA notify me that I must submit information from the injury and illness records as part of an individual data collection under paragraph (a)(3) of this section? OSHA will notify you by mail if you will have to submit information as part of an individual data collection under paragraph (a)(3). OSHA will also announce individual data collections through publication in the **Federal Register** and the OSHA newsletter, and announcements on the OSHA Web site. If you are an employer who must routinely submit the information, then OSHA will not notify you about your routine submittal.

(5) How often do I have to submit the information from the injury and illness records? If you are required to submit information under paragraph (a)(1) or (2) of this section, then you must submit the information once a year, by the date listed in paragraph (c) of this section of the year

after the calendar year covered by the form or forms. If you are submitting information because OSHA notified you to submit information as part of an individual data collection under paragraph (a)(3) of this section, then you must submit the information as often as specified in the notification.

(6) How do I submit the information? You must submit the information electronically. OSHA will provide a secure Web site for the electronic submission of information. For individual data collections under paragraph (a)(3) of this section, OSHA will include the Web site's location in the notification for the data collection.

(7) Do I have to submit information if my establishment is partially exempt from keeping OSHA injury and illness records? If you are partially exempt from keeping injury and illness records under §§ 1904.1 and/or 1904.2, then you do not have to routinely submit part 1904 information under paragraphs (a)(1) and (2) of this section. You will have to submit information under paragraph (a)(3) of this section if OSHA informs you in writing that it will collect injury and illness information from you. If you receive such a notification, then you must keep the injury and illness records required by this part and submit information as directed.

(8) Do I have to submit information if I am located in a State Plan State? Yes, the requirements apply to employers located in State Plan States.

(9) May an enterprise or corporate office electronically submit part 1904 records for its establishment(s)? Yes, if your enterprise or corporate office had ownership of or control over one or more establishments required to submit information under paragraph (a)(1) or (2) of this section, then the enterprise or corporate office may collect and electronically submit the information for the establishment(s).

(c) Reporting dates. (1) In 2017 and 2018, establishments required to submit under paragraph (a)(1) or (2) of this section must submit the required information according to the table in this paragraph (c)(1):

Submission year	Establishments submitting under paragraph (a)(1) of this section must submit the required information from this form/these forms:	Establishments submitting under paragraph (a)(2) of this section must submit the required information from this form:	Submission deadline
2017	300A	300A	July 1, 2017
2018	300A, 300, 301	300A	July 1, 2018

(2) Beginning in 2019, establishments that are required to submit under paragraph (a)(1) or (2) of this section will have to submit all of the required information by March 2 of the year after the calendar year covered by the form or forms (for example, by March 2, 2019, for the forms covering 2018).

6. Add appendix A to subpart E of part 1904 to read as follows:

**Appendix A to Subpart E of Part 1904—Designated Industries for § 1904.41(a)(2) Annual Electronic Submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 20 or More Employees but Fewer Than 250 Employees in Designated Industries**

NAICS	Industry
11	Agriculture, forestry, fishing and hunting
22	Utilities
23	Construction
31-33	Manufacturing
42	Wholesale trade
4413	Automotive parts, accessories, and tire stores
4421	Furniture stores
4422	Home furnishings stores
4441	Building material and supplies dealers

4442	Lawn and garden equipment and supplies stores
4451	Grocery stores
4452	Specialty food stores
4521	Department stores
4529	Other general merchandise stores
4533	Used merchandise stores
4542	Vending machine operators
4543	Direct selling establishments
4811	Scheduled air transportation
4841	General freight trucking
4842	Specialized freight trucking
4851	Urban transit systems
4852	Interurban and rural bus transportation
4853	Taxi and limousine service
4854	School and employee bus transportation
4855	Charter bus industry
4859	Other transit and ground passenger transportation
4871	Scenic and sightseeing transportation, land
4881	Support activities for air transportation
4882	Support activities for rail transportation
4883	Support activities for water transportation
4884	Support activities for road transportation
4889	Other support activities for transportation
4911	Postal service
4921	Couriers and express delivery services
4922	Local messengers and local delivery
4931	Warehousing and storage
5152	Cable and other subscription programming
5311	Lessors of real estate
5321	Automotive equipment rental and leasing
5322	Consumer goods rental
5323	General rental centers
5617	Services to buildings and dwellings
5621	Waste collection
5622	Waste treatment and disposal
5629	Remediation and other waste management services
6219	Other ambulatory health care services
6221	General medical and surgical hospitals
6222	Psychiatric and substance abuse hospitals
6223	Specialty (except psychiatric and substance abuse) hospitals
6231	Nursing care facilities

6232	Residential mental retardation, mental health and substance abuse facilities
6233	Community care facilities for the elderly
6239	Other residential care facilities
6242	Community food and housing, and emergency and other relief services
6243	Vocational rehabilitation services
7111	Performing arts companies
7112	Spectator sports
7121	Museums, historical sites, and similar institutions
7131	Amusement parks and arcades
7132	Gambling industries
7211	Traveler accommodation
7212	RV (recreational vehicle) parks and recreational camps
7213	Rooming and boarding houses
7223	Special food services
8113	Commercial and industrial machinery and equipment (except automotive and electronic) repair and maintenance
8123	Dry-cleaning and laundry services

**PART 1902— STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS**

7. The authority citation for part 1902 is revised to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012).

8. In § 1902.7, revise paragraph (d) to read as follows:

**§1902.7 Injury and illness recording and reporting requirements.**

\* \* \* \* \*

(d) As provided in section 18(c)(7) of the Act, State Plan States must adopt requirements identical to those in 29 CFR 1904.41 in their recordkeeping and reporting regulations as enforceable State requirements. The data collected by OSHA as authorized by §1904.41 will be

made available to the State Plan States. Nothing in any State plan shall affect the duties of employers to comply with §1904.41.

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