OSHA is making this document, the Final Rule for Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions, available for informational purposes only. This document has been submitted for publication in the Federal Register. Until the date of publication, the Final Rule can be found at www.osha.gov/recordkeeping2014/NAICSReporting.pdf. After publication, the Final Rule can be accessed from www.osha.gov/recordkeeping2014 or through the Federal Register website at www.federalregister.gov.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. OSHA-2010-0019]

RIN 1218-AC50

Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY:

OSHA is issuing a final rule to update Appendix A to Subpart B of its Injury and Illness Recording and Reporting regulation. Appendix A contains a list of industries that are partially exempt from requirements to keep records of work-related injuries and illnesses due to relatively low occupational injury and illness rates. The updated appendix is based on more recent injury and illness data and lists industry groups classified by the North American Industry Classification System (NAICS). The current appendix lists industries classified by Standard Industrial Classification (SIC).

The final rule also revises the requirements for reporting work-related fatality, injury, and illness information to OSHA. The current regulation requires employers to report work-related fatalities and in-patient hospitalizations of three or more employees within eight hours of the event. The final rule retains the requirement for employers to report work-related fatalities to OSHA within eight hours of the event but amends the regulation to require employers to report all work-related in-patient hospitalizations, as well as amputations and losses of an eye, to OSHA within 24 hours of the event.

DATES: The final rule becomes effective January 1, 2015.

ADDRESSES: In accordance with 28 U.S.C. 2112(a)(2), OSHA designates Ann Rosenthal, Acting Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor, Room S-4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, to receive petitions for review of the final rule.

FOR FURTHER INFORMATION CONTACT: For press inquiries: Frank Meilinger, OSHA, Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202)-693-1999; email: meilinger.frank@dol.gov

For general and technical information: Miriam Schoenbaum, OSHA, Office of Statistical Analysis, Room N-3507, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693-1841; email: schoenbaum.miriam@dol.gov

SUPPLEMENTARY INFORMATION:

1. Background

A. Table of Contents

The following table of contents identifies the major sections of the preamble to the final rule revising OSHA's Occupational Injury and Illness Recording and Reporting Requirements regulation (NAICS update and reporting revisions):

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B. References and Exhibits

In this preamble, OSHA references documents in Docket No. OSHA-2010-0019, the docket for this rulemaking. The docket is available at http://www.regulations.gov, the Federal eRulemaking Portal.

References to documents in this rulemaking docket are given as "Ex." followed by the document number. The document number is the last sequence of numbers in the Document ID Number on http://www.regulations.gov. For example, Ex. 1, the proposed rule, is Document ID Number OSHA-2010-0019-0001.

The exhibits in the docket, including public comments, supporting materials, meeting transcripts, and other documents, are listed on http://www.regulations.gov. All exhibits are listed in the docket index on http://www.regulations.gov. However, some exhibits (e.g., copyrighted material) are not available to read or download from that Webpage. All materials in the docket are available for inspection and copying at the OSHA Docket Office, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693-2350.

C. Introduction

OSHA's regulation at 29 CFR 1904 requires employers with more than 10 employees in most industries to keep records of occupational injuries and illnesses at their establishments. Employers covered by these rules must record each recordable employee injury and illness on an OSHA Form 300, which is the "Log of Work-Related Injuries and Illnesses", or equivalent. Employers must also prepare a supplementary OSHA Form 301 "Injury and Illness Incident Report" or equivalent that provides additional details about each case recorded on the 300 Log. Finally, at the end of each year, employers are required to prepare a summary report of all

injuries and illnesses on the OSHA Form 300A, which is the "Summary of Work-Related Injuries and Illnesses", and post the form in a visible location in the workplace.

OSHA's current regulation at Section 1904.2 partially exempts establishments in certain lower-hazard industry groups from the requirement for keeping injury and illness records. Lower-hazard industries are currently those industries that are classified within SIC major industry groups 52-89 and that have an average Lost Workday Injury and Illness (LWDII) rate at or below 75 percent of the three-year-average national LWDII rate for private industry.

The LWDII rate is an incidence rate that represents the number of non-fatal injuries and illnesses resulting in days away from work or job restriction per 100 full-time-equivalent employees per year. The LWDII data used to compile the current list of partially-exempt industry groups were taken from the Bureau of Labor Statistics (BLS) Survey of Occupational Injuries and Illnesses (SOII) for the years 1996, 1997, and 1998. Establishments in the industry groups listed in Appendix A to Subpart B do not need to keep OSHA injury and illness records unless they are asked to do so in writing by OSHA, BLS, or a state agency operating under the authority of OSHA or BLS.

Today's final rule replaces the list of partially-exempt industry groups in SIC 52-89, based on 1996-1998 injury/illness data, with a list of partially-exempt industry groups in NAICS 44-81, based on 2007-2009 injury/illness data. Because overall injury and illness rates have been declining, the threshold Days Away, Restriction, or Transfer (DART) rate for partial exemption is 1.5 (75% of the 2007-2009 average private industry DART rate of 2.0), down from the previous 2.325 (75% of the 1998 average private industry LWDII rate of 3.1).

Additionally, OSHA's current regulation at 29 CFR 1904.39(a) requires employers to report all work-related fatalities and all in-patient hospitalizations of three or more employees to

OSHA within eight hours. Today's final rule leaves in place the current requirement that employers report all work-related fatalities to OSHA within eight hours. However, the final rule amends the current regulation by requiring employers to report all work-related in-patient hospitalizations that require care or treatment, all amputations, and all losses of an eye to OSHA within 24 hours.

All employers covered by the OSH Act, including employers who are partially exempt from maintaining injury and illness records, are required to comply with OSHA's reporting requirements at 29 CFR 1904.39.

This rulemaking has net annualized costs of $7.7 million, with total annualized new costs of $19.2 million to employers and total annualized cost savings of $11.5 million for employers who no longer have to meet certain recordkeeping requirements. The Agency believes that the rulemaking will improve access to information about workplace safety and health, with potential benefits that could include:

- Allowing OSHA to use its resources more effectively by enabling the Agency to identify the workplaces where workers are at greatest risk, in general and/or from specific hazards, and target its compliance assistance and enforcement efforts accordingly.
- Increasing the ability of employers, employees, and employee representatives to identify and abate hazards that pose serious risks to workers at their workplaces.

D. Regulatory History

OSHA's regulations on recording and reporting occupational injuries and illnesses (29 CFR 1904) were first issued in 1971 (36 FR 12612, July 2, 1971). On December 28, 1982, OSHA amended these regulations to partially exempt establishments in certain lower-hazard

industries from the requirement to record occupational injuries and illnesses (47 FR 57699). In 1994, the Agency issued a final rule revising the requirements for employers to report work-related fatalities and certain work-related hospitalizations to OSHA (59 FR 15594, April 1, 1994). On January 19, 2001, OSHA issued a final rule that comprehensively revised its Part 1904 recordkeeping regulations (66 FR 5915). As part of this revision, OSHA updated the list of industries eligible for partial exemption (Section 1904.2, 66 FR 5939-5945) and amended the requirements for reporting work-related fatalities and certain hospitalizations to OSHA (Section 1904.39, 66 FR 6062-6065).

In this rulemaking, OSHA issued the proposed rule on June 22, 2011 (75 FR 36414). No public hearings were held for this rulemaking. OSHA received 125 comments on the proposed rule. These comments are addressed below.

II. Legal Authority

Section 24 of the OSH Act requires the Secretary to ``develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics" and ``compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job" (29 U.S.C. 673(a)). Section 24 also requires employers to ``file such reports [of work injuries and illnesses] with the Secretary" as the Secretary may prescribe by regulation (29 U.S.C. 673(e)).

In addition, the Secretary's responsibilities under the OSH Act are defined largely by its enumerated purposes, which include ``[p]roviding appropriate reporting procedures that will help

achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem" (29 U.S.C. 651(b)(12)).

The OSH Act authorizes the Secretary to issue two types of occupational safety and health rules; standards and regulations. Standards, which are authorized by section 6 of the OSH Act, specify remedial measures to be taken to prevent and control employee exposure to identified occupational hazards; while regulations are the means to effectuate other statutory purposes, including the collection and dissemination of records of occupational injuries and illnesses. Courts of appeal have held that OSHA recordkeeping rules are regulations and not standards (Louisiana Chemical Ass'n v. Bingham, 657 F.2d 777, 782-785 (5th Cir. 1981); Workplace Health & Safety Council v. Reich, 56 F.3d 1465, 1467-1469 (DC Cir. 1995).

III. Section 1904.2 – Partial Exemption for Certain Industries

A. Background

Although the OSH Act gives OSHA the authority to require all employers covered by the Act to keep records of employee injuries and illnesses, two classes of employers are partially exempted from the recordkeeping requirements in Part 1904. First, as provided in Section 1904.1, employers with 10 or fewer employees at all times during the previous calendar year are partially exempt from keeping OSHA injury and illness records. Second, as provided in Section 1904.2, establishments in certain lower-hazard industries are also partially exempt. Partially-exempt employers are not required to maintain OSHA injury and illness records unless required to do so by OSHA under Section 1904.41 (OSHA Data Initiative) or by BLS under Section 1904.42 (Annual Survey).

The partial exemption based on industry has been part of the OSHA recordkeeping regulation since 1982. OSHA established the 1982 list of partially-exempt industries by

identifying major industry groups with relatively low rates of occupational injuries and illnesses in the divisions for retail trade; finance, insurance and real estate; and the service industries (SICs G, H, and I). Establishments were partially exempted from routinely keeping injury and illness records if the three-year-average lost workday case injury rate (LWCIR) for their major industry group was 75 percent or less of the overall three-year average LWCIR for private industry, using BLS data from 1978, 1979, and 1980. Major industry groups in the divisions for agriculture, forestry and fishing; mining; construction; manufacturing; transportation and utilities; and wholesale trade (SIC Divisions A-F) were not eligible for the industry partial exemption. Although the 1982 Federal Register notice discussed the possibility of revising the list of partially-exempt industries, the list remained unchanged until 2001.

On January 19, 2001, OSHA published a final rule (66 FR 5916) that comprehensively revised the Part 1904 recordkeeping regulations. As part of this revision, OSHA updated the list of industries that are partially exempt from the recordkeeping requirements. The list in the current regulation at Appendix A to Subpart B is the list of industries established in the 2001 final rule.

The 2001 final rule revised the 1982 list by using a similar method for identifying eligible industries. As in 1982, only industries in the major divisions for retail trade; finance, insurance and real estate; and the service industries (SICs G, H, and I) were eligible for inclusion, and the injury/illness rate threshold was 75 percent or less of the three-year-average rate for private industry. However, the 2001 list differed from the 1982 list in two respects. First, OSHA used BLS injury/illness data from 1996, 1997, and 1998, rather than data from 1978, 1979, and 1980. As a result, the threshold injury/illness rate for industries eligible for partial exemption was 2.325

in the 2001 rule, compared to 3.0 in the 1982 rule. Second, the revised list showed industry groups (three-digit SIC), rather than major industry groups (two-digit SIC).

OSHA's current Part 1904 regulation at Appendix A to Subpart B lists the partially-exempt industries as follows:

SIC code	*Industry description*
525	*Hardware Stores*
542	*Meat and Fish Markets*
544	*Candy, Nut, and Confectionery Stores*
545	*Dairy Products Stores*
546	*Retail Bakeries*
549	*Miscellaneous Food Stores*
551	*New and Used Car Dealers*
552	*Used Car Dealers*
554	*Gasoline Service Stations*
557	*Motorcycle Dealers*
56	*Apparel and Accessory Stores*
573	*Radio, Television, & Computer Stores*
58	*Eating and Drinking Places*
591	*Drug Stores and Proprietary Stores*
592	*Liquor Stores*
594	*Miscellaneous Shopping Goods Stores*
599	*Retail Stores, Not Elsewhere Classified*
60	*Depository Institutions (banks & savings institutions)*
61	*Nondepository Credit Institutions*
62	*Security and Commodity Brokers*
63	*Insurance Carriers*
64	*Insurance Agents, Brokers & Services*
653	*Real Estate Agents and Managers*
654	*Title Abstract Offices*
67	*Holding and Other Investment Offices*
722	*Photographic Studios, Portrait*
723	*Beauty Shops*
724	*Barber Shops*
725	*Shoe Repair and Shoeshine Parlors*
726	*Funeral Service and Crematories*
729	*Miscellaneous Personal Services*
731	*Advertising Services*
732	*Credit Reporting and Collection Services*
733	*Mailing, Reproduction, & Stenographic Services*
737	*Computer and Data Processing Services*
738	*Miscellaneous Business Services*
764	*Reupholstery and Furniture Repair*
78	*Motion Picture*
791	*Dance Studios, Schools, and Halls*
792	*Producers, Orchestras, Entertainers*
793	*Bowling Centers*

801 Offices & Clinics Of Medical Doctors
802 Offices and Clinics Of Dentists
803 Offices Of Osteopathic
804 Offices Of Other Health Practitioners
807 Medical and Dental Laboratories
809 Health and Allied Services, Not Elsewhere Classified
81 Legal Services
82 Educational Services (schools, colleges, universities and libraries)
832 Individual and Family Services
835 Child Day Care Services
839 Social Services, Not Elsewhere Classified
841 Museums and Art Galleries
86 Membership Organizations
87 Engineering, Accounting, Research, Management, and Related Services
899 Services, not elsewhere classified

The 2001 rulemaking also addressed the issue of converting from SIC to NAICS (66 FR 5916). Although the first version of NAICS was adopted in 1997, BLS had not yet converted to NAICS for the collection of occupational injury and illness data when the 2001 final rule was issued. OSHA therefore based the partially-exempt industry groups on the SIC system. However, in the preamble to the 2001 final rule, OSHA stated its intention to conduct a future rulemaking to update the industry classifications to NAICS when BLS had published the injury and illness data required for making appropriate industry-by-industry decisions (66 FR 5944).

Updating to NAICS also fulfills a commitment OSHA made to the Government Accountability Office (GAO). In October 2009, GAO published a report entitled ``Enhancing OSHA's Records Audit Process Could Improve the Accuracy of Worker Injury and Illness Data" (GAO-10-10). GAO recommended that OSHA update the list of industries OSHA uses to select worksites for records audits. In its response to GAO, OSHA agreed to pursue rulemaking to update the industry coverage of the recordkeeping rule from SIC to NAICS. This allows the Agency to use current BLS data to redefine the coverage of the recordkeeping rule.

B. The Proposed Rule

OSHA proposed to update Appendix A to Subpart B in two ways. First, industries would be classified by NAICS instead of SIC. Second, the injury/illness threshold would be based on more recent BLS data (2007, 2008, and 2009).

As in the current regulation, the agriculture, forestry, fishing, and hunting; mining; construction; manufacturing; and wholesale trade sectors were ineligible for partial exemption in the proposed rule. The following sectors were eligible: retail trade; transportation and warehousing; information; finance and insurance; real estate and rental and leasing; professional, scientific, and technical services; management of companies and enterprises; administrative and support and waste management and remediation services; educational services; health care and social assistance; arts, entertainment, and recreation; accommodation and food services; and other services (except public administration) (NAICS 44-81). With one exception, industry groups (classified by four-digit NAICS) in these sectors would have been partially exempt from the recordkeeping requirements in Part 1904 if their three-year-average DART rate were 75 percent or less of the overall three-year-average DART rate for private industry, using BLS data from 2007, 2008, and 2009. Since the three-year-average private-sector DART rate for 2007, 2008, and 2009 was 2.0, the threshold for partial exemption for eligible industry groups (classified by four-digit NAICS) would have been a DART rate of 1.5 or less (see 76 FR 3641).

The one exception in eligibility due to three-year-average DART rate would have been for establishments in Employment Services (NAICS 5613). This industry includes employment placement agencies, temporary help services, and professional employer organizations. In the 2001 rulemaking, the corresponding industry group (Personnel Supply Services (SIC 736)) was ineligible for partial exemption based on its three-year-average DART rate (using data from 1996, 1997 and 1998). In the preamble to the proposed rule, OSHA explained that the

Employment Services industry was below the 75 percent threshold, based on 2007, 2008, and 2009 data. However, OSHA nonetheless proposed non-exemption of this industry on grounds that, for many employees in this industry, their actual place of work may be in an establishment that is part of a different, possibly higher-hazard industry. Therefore, NAICS 5613 Employment Services was not included in proposed Appendix A to Subpart B.

In the preamble to the proposed rule, OSHA estimated that 199,000 establishments that had previously been partially exempt would have become non-exempt. These establishments employed 5.3 million employees and accounted for an estimated 173,000 injuries and illnesses per year. In addition, 119,000 establishments that were previously non-exempt would have become partially exempt. These establishments employed 4.0 million employees and accounted for an estimated 76,000 injuries and illnesses per year.

C. Comments on the Proposed Rule

In general, OSHA's decision to convert the listing of partially-exempt employers from SIC to NAICS drew widespread support from commenters on the proposed rule (Exs. 24, 52, 59, 69, 77, 78, 81, 85, 86, 90, 93, 99, 100, 112, 119, 120, 122, 124). OSHA received only one comment expressing concern about the conversion, and stating it would not be possible to compare data between the years covered by SIC and the years covered by NAICS (Ex. 29).

OSHA notes that continued use of the SIC system would make injury and illness data incomparable with other types of contemporary industry data, and would make the use of injury and illness information in coordination with other economic data extremely difficult. Further, OSHA agrees with commenters whose expectation is that switching to NAICS from the seldom-used SIC system will decrease uncertainty in classification, save time, reduce confusion and lower the opportunity for errors in reporting the industry to which an employer belongs (Ex. 24,

59, 85). Moreover, OSHA believes that the change to NAICS will improve the quality of injury and illness data because NAICS represents a more modern industry classification than the SIC system.

OSHA received multiple comments on whether Part 1904 should include a partial exemption for lower-hazard industries. On the side of support for including a partial exemption, the National Association of Home Builders (NAHB) commented that, during the course of multiple rulemakings, OSHA has consistently found that the partial exemption for low-hazard industries (as well as for employer size) is consistent with the OSH Act, OSHA recordkeeping requirements, and national injury and illness statistics (Ex. 113).

On the other hand, several comments generally opposed the partial exemption for lower-hazard industries and recommended that all industries should be subject to recordkeeping requirements (Exs. 69, 74, 77, 81, 85, 86, 112). The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) opposed the exemption of any industries from the Part 1904 requirement on the basis of comparatively low injury and illness rates. The UAW commented that "*no industries whatsoever* should be exempt from any of the recordkeeping requirements in Part 1904," because "[s]o-called 'lower-hazard' industries are not free from serious hazards that can kill or disable workers." As examples, the UAW cited four industries – gasoline stations (NAICS 4471) jewelry, luggage, and leather goods stores (NAICS 4483), investigation and security services (NAICS 5616), and drinking places (NAICS 7224) – that were on the partially-exempt list in the proposed rule but had fatality rates higher than the national average (Ex. 77).

In addition, Dow Chemical commented that "this practice of partial exemption has questionable value, may be counterproductive or even unworkable, and should perhaps be

discontinued." For the partial exemption for low-hazard industries, Dow Chemical stated that "[a]n injury is an injury, regardless of the industry in which it occurs"; even establishments with comparatively low injury/illness rates can benefit from recordkeeping data to guide safety programs; "[m]oving industries into and out of partially exempt status may be unworkable" due to the need for expertise and procedures for correct recordkeeping; and OSHA recordkeeping data are "a useful tool in efforts to reduce injuries" (Ex. 64).

In the final rule, OSHA has maintained its longstanding practice of partially exempting certain lower-hazard industry groups from the recordkeeping requirements in Part 1904. This partial exemption allows OSHA to concentrate recordkeeping requirements in sectors and industry groups that will provide the most useful data. The partial exemption also reduces the paperwork burden for employers in establishments in lower-hazard industries.

OSHA acknowledges that the partial exemption by industry group inevitably means that some high-hazard establishments will be partially exempt from recordkeeping, while other, low-hazard establishments will be required to keep records. However, OSHA notes that the partial exemption only applies to industry groups whose injury/illness rates are 75 percent or less of the private-sector average, as well as only to industry groups in comparatively lower-hazard sectors (NAICS 52-88).

The approach taken in today's final rule regarding partial exemption is consistent with OSHA's current regulation. Although employers in partially-exempt industry groups are not required to routinely keep injury and illness records, they must keep such records if requested to do so by BLS for the BLS Annual Survey of Occupational Injuries and Illnesses (Section 1904.42), or by OSHA for the OSHA Data Initiative (Section 1904.41). Finally, in accordance with Section 1904.39, all employers covered by the OSH Act, regardless of partial exemptions

due to industry group or company size, must report all work-related fatalities, in-patient hospitalizations, amputations, and losses of an eye to OSHA.

The preamble to the proposed rule listed eight questions to the public about the partial-exemption part of this rulemaking. Each question is repeated below, followed by public comments and OSHA's response to the comments.

1. Exemption of additional industries from the recordkeeping requirements in Part 1904

In the preamble to the proposed rule, OSHA asked, "Should any additional industries be exempt from any of the recordkeeping requirements in Part 1904?"

The American Road and Transportation Builders Association (ARTBA) commented that, as a result of the 75 percent threshold, there were previously partially-exempt industries, such as construction and planning design firms, that would now be "penalized with new recordkeeping and reporting burdens" despite declining injury and illness rates. ARTBA stated that these industries should remain exempt (Ex. 114).

OSHA disagrees with this comment for two reasons. First, eligibility should be based on a threshold for partial exemption using timely data. The list in the current regulation is based on data from 1996-1998. The list in the final rule is based on data from 2007-2009, which were the most recent data available at the time of the proposed rule. Second, while OSHA recognizes that injury and illness recordkeeping creates a paperwork burden for employers, OSHA believes that the benefits of keeping such records are substantial. Informed employers can use the injury and illness records to discover and prevent occupational hazards in their workplaces, thereby reducing the numbers of injuries and illnesses. Thus, the purpose of requiring previously partially-exempt industries to keep records is not to "penalize" these industries, but rather to

ensure that OSHA's recordkeeping requirements apply to the industries where the requirements have the greatest potential benefit, according to objective standards and timely data.

2. Detail and aggregation of NAICS codes for partial exemptions

In the preamble to the proposed rule, OSHA asked, "Should OSHA base partial exemptions on more detailed or more aggregated industry classifications, such as two-digit, three-digit, or six-digit NAICS codes?"

Many commenters supported the use of industry classification by four-digit NAICS code (Exs. 29, 62, 68, 69, 70, 74, 75, 81, 86, 112, 119). For example, Safety Compliance Services commented that four-digit NAICS codes represent "the best compromise between data integrity and usefulness" (Ex. 29). Mercer ORC HSE Networks commented that four-digit NAICS codes "provide sufficient granularity" (Ex. 68). The National Council for Occupational Safety and Health (NCOSH) commented that four-digit NAICS codes "allow for more accurate assessment of the degree of hazards in a given industry sector than if broader categories were used" (Ex. 75).

There were also commenters recommending the use of industry classifications by six-digit NAICS code (Exs. 24, 45, 52, 107). For example, Printing Industries of America commented that, because an industry "has multiple segments and levels of operations…partial exemptions should be based on the more detailed industry classifications indicated by the six-digit NAICS codes" (Ex. 45). The Kentucky Labor Cabinet's Department of Workplace Standards commented that six-digit NAICS codes would allow "precise identification of the specific industries to be exempted" (Ex. 52).

The final rule, like the proposed rule, bases partial exemption for industry on industry group (four-digit NAICS code). The Agency finds that classification at this level has three advantages over the industry level (five-digit or six-digit NAICS code), which is more detailed.

First, occupational injury and illness data are available from BLS for most industry groups (four-digit NAICS), while there are many industries (five-digit or six-digit NAICS) for which BLS data are not available. Second, establishments are more likely to remain in the same industry group (four-digit NAICS) over time than in the same industry (six-digit NAICS), reducing the chance that an establishment will go back and forth between non-exempt and partially-exempt status. Third, because industry group (four-digit NAICS) is more general than industry (six-digit NAICS), employers are less likely to encounter confusion when trying to determine whether or not their establishments are partially exempt due to industry.

3. Industry sectors ineligible for partial exemption

In the preamble to the proposed rule, OSHA asked, "Which industry sectors, if any, should be ineligible for partial exemption?"

For specific industry sectors that should be ineligible for partial exemption, the AFL-CIO, NCOSH, the UAW, the USW, and Worksafe supported the continued ineligibility of the agriculture, manufacturing, construction, utilities, and wholesale trade sectors (Exs. 69, 75, 77, 86, 112). The Association of Flight Attendants-CWA, AFL-CIO (AFA) commented that the transportation sector should not be eligible for partial exemption (Ex. 85).

In addition, for specific industry groups or industries, NCOSH recommended that the newspapers, periodical, book, and directory publishers industry group (NAICS 5111) should be ineligible for partial exemption because the newspaper publishing industry (NAICS 51111) had high fatality rates between 2003 and 2008 (Ex. 66). (The overall hours-based fatality rate for private industry, published by the Census of Fatal Occupational Injuries (CFOI) at BLS, ranged from 3.7 to 4.3 deaths per 100,000 full-time equivalent workers during 2006-2008; the rate for

the newspaper publishing industry ranged from 5.1 to 10.0. CFOI did not publish a rate for this industry in 2009.)

UNITE HERE commented that contracted food services (NAICS 72231) and caterers (NAICS 72232) should be ineligible because "injury and illness prevention and hazard reduction ... requires regular maintenance of OSHA logs and OSHA log data by the employer" (Ex. 70).

The UAW commented that gas stations (NAICS 4471), jewelry, luggage, and leather stores (NAICS 4483), investigation and security services (NAICS 5616), and drinking places (NAICS 7224) should be ineligible because of high fatality rates (Ex. 77). According to published data from 2009 from CFOI, the fatality rate for private industry was 3.7 deaths per 100,000 full-time equivalent workers, while the fatality rates for gas stations, investigation and security services, and drinking places were 8.3, 5.1, and 15.5, respectively. CFOI did not publish a fatality rate for jewelry, luggage, and leather stores.

The UFCW commented that clothing stores (NAICS 4481) should be ineligible because the BLS total case rate (TCR) in that industry group increased by 25 percent from 2008 to 2009 (Ex. 81). The TCRs were 2.9 and 3.2, respectively, for 2008 and 2009. The 2010 and 2011 TCRs were both 3.0.

The AFA commented that industries that include one or more occupational classifications at high risk for injuries or illnesses, such as flight attendants in nonscheduled air transportation (NAICS 4812), should be ineligible (Ex. 85).

Consistent with the proposed rule and OSHA's longstanding policy, the final rule designates certain industry sectors as ineligible for partial exemption. Since 1982, it has been OSHA policy not to partially exempt certain industry divisions generally considered to involve greater occupational hazards. In the final rule, as in the proposed rule, agriculture, forestry,

fishing and hunting (NAICS 11); mining, quarrying, and oil and gas extraction (NAICS 12); utilities (NAICS 22); construction (NAICS 23); manufacturing (NAICS 31-33); and wholesale trade (NAICS 42) are ineligible for partial exemption.

In addition, in the final rule, as in the proposed rule, industry groups (by four-digit NAICS) in the transportation sector (NAICS 48) are eligible for partial exemption. This is a change from the current regulation, in which industry groups (by three-digit SIC) in the division that includes transportation (SIC E – Transportation, Communications, Electric, Gas, and Sanitary Services) were ineligible for partial exemption due to industry. The reason for this change is the different structure of NAICS versus the SIC system.

In the final rule, Appendix A lists six partially-exempt industry groups in the transportation sector: non-scheduled air transportation (NAICS 4812); pipeline transportation of crude oil (NAICS 4861); pipeline transportation of natural gas (NAICS 4862); other pipeline transportation (NAICS 4869); scenic and sightseeing transportation, other (NAICS 4879); and freight transportation arrangement (NAICS 4885).

According to 2010 County Business Patterns data from the U.S. Census, there were 208,474 establishments with 4,011,989 employees in the transportation and warehousing sector (NAICS 48-49). The six partially-exempt industry groups in the transportation sector accounted for 26,013 establishments (12%) and 299,165 employees (7%), with freight transportation arrangement (NAICS 4885) as the single biggest industry group. Thus, although the transportation sector (NAICS 48) is eligible for partial exemption under the final rule, most establishments and employees in the transportation and warehousing sector (NAICS 48-49) will not be partially exempt due to industry. In addition, in non-scheduled air transportation (NAICS 4812), 72 percent of establishments had 1-9 employees, suggesting that many employers in this

industry group will be partially exempt anyway due to size, regardless of the transportation sector's eligibility for partial exemption.

Also under the final rule, as in the proposed rule, establishments in the employment services industry group (NAICS 5613) are ineligible for partial exemption due to industry. Under the current regulation, establishments in the corresponding SIC industry group (Personnel Supply Services (SIC 513)) were required to keep OSHA injury and illness records. OSHA has decided to continue this policy on grounds that, for many employees in this industry, their actual place of work may be in an establishment that is part of a different, possibly higher-hazard, industry. No comments were submitted to the docket on this issue.

There were also several comments on OSHA's current partial exemption in Section 1904.1 for employers with 10 or fewer employees. Unions (the AFL-CIO, the UAW, the USW, and Worksafe), a safety professional firm (Safety Compliance Services), and Dow Chemical Company all commented that employers should not be partially exempt on this basis (Exs. 29, 59, 64, 69, 86, 77. 112).

In particular, Dow Chemical commented that "[t]he partial exemption is especially unlikely to work for small employers," who may wrongly conclude that they are completely exempt from all OSHA regulations, rather than partially exempt from OSHA recordkeeping regulations (Ex. 64).

The AFL-CIO commented that employees at small workplaces get injured/ill, as do employees in industries with comparatively low injury/illness rates (Ex. 69), and that the small-employer exclusion especially affects the high-risk construction industry, since 80% of construction employers are partially exempt due to small employment size (Ex. 59). According to the AFL-CIO, "The purpose of recording [injuries and illnesses] is to permit workers and

employers to gather worksite data that will enhance the identification and elimination of hazards that pose serious risks to workers. As a consequence, there is great value in requiring the recording of these incidents" (Ex. 69).

The partial exemption for employers with 10 or fewer employees is beyond the scope of this rulemaking. However, OSHA continues to believe that its longstanding practice of partially exempting employers with 10 or fewer employees is appropriate because it minimizes the paperwork burden on small employers. This is consistent with the direction provided in Section 8(d) of the OSH Act to minimize the burden of information collection upon employers, "especially those operating small businesses."

4. Alternatives to using an average DART rate of 75 percent of the most recent three-year-average national DART rate

In the NPRM, OSHA asked, "Instead of using an average DART rate of 75 percent of the most recent national DART rate, is there a better way to determine which industries should be included in Appendix A?"

Multiple commenters recommended using the total case rate (TCR) as well as the DART rate. The TCR includes all recordable cases, while the DART rate includes only cases that result in days away from work, restriction, or job transfer. Seth Turner proposed a partial exemption for industries with both a TCR and a DART rate at or below 85% of the most recent three-year national averages for private industry (Ex. 23). The UFCW proposed using the TCR and/or total number of cases (Ex. 81). The USW proposed using the TCR as well as the DART rate, because "[a]ll injuries are important to note that a hazard is present" (Ex. 86). Change to Win proposed using the TCR as well as the DART rate in order to "reduce any unintended incentives to

manipulate the treatment of workers after injuries (such as inappropriate assignment to the same tasks) in order to avoid the ‘restricted activity’...” (Ex. 90).

NIOSH commented that the severity of injuries and illnesses should also factor into the method for determining partial exemption. NIOSH stated that severity could be measured by using the number of injury/illness cases involving three or more days away from work, since “three days...is the most common waiting period...necessary for injuries and illnesses to become sufficiently recognized and thus qualify injured workers to file claims which impose costs on private employers...” In addition, NIOSH commented that “OSHA might also consider which industries account for a disproportionate number of work loss days and not just work loss cases" (Ex. 66).

The AFL-CIO commented that, according to 2009 BLS data, 18% of total cases of injuries and illnesses (594,000 cases) and 13% of DART cases (217,000 cases) occurred in industry groups that were partially exempt under the criteria in the proposed rule (Exs. 69, 74). According to the AFL-CIO, “[a]s a consequence, the 75% DART rate threshold exempts far too many injuries and illnesses, as well as industries, from OSHA’s recording requirements.” The AFL-CIO proposed three alternatives:

1. lowering the threshold to 50 percent, using both DART and total case data. This method would reduce the number of partially-exempt industries listed in the proposed rule by one-third, from 82 industries to 55.

2. raising the threshold to 85 percent of the overall average DART rate, and setting an upper limit for number of total cases at 10,000 or fewer. This method would reduce the number of partially-exempt industries listed in the proposed rule by 21 percent, from 82 industries to 65.

3. lowering the threshold to 50 percent, using both DART and total case data, plus setting a limit for number of total cases at 10,000 or fewer. This method would reduce the number of partially-exempt industries listed in the proposed rule by 37 percent, from 82 industries to 52.

The AFL-CIO recommended the third alternative.

The Small Business Administration's Office of Advocacy (SBA-OA) recommended raising the threshold from 75 percent to 80 percent, 85 percent, or 90 percent of the overall average DART rate, as well as making more industry sectors eligible for partial exemption, or increasing the number of employees an employer could have and still be partially exempt under Section 1904.1. The SBA-OA noted that "[s]mall business representatives have complained that industries that have had declining injury and illness rates over many years will essentially be penalized with new recordkeeping...burdens because their injury and illness rates have declined, but not as fast as other industries" (Ex. 94).

OSHA disagrees with this recommendation for two reasons. First, although the Agency recognizes that injury and illness recordkeeping creates a paperwork burden for employers, the Agency does not agree that the requirement to keep records "penalizes" industries. Rather, OSHA agrees with the AFL-CIO's comment that "[t]he purpose of recording [injuries and illnesses] is to permit workers and employers to gather worksite data that will enhance the identification and elimination of hazards that pose serious risks to workers" (Ex. 69).

Second, the purpose of the industry partial exemption is to balance the benefits of injury and illness recordkeeping, on the one hand, and the paperwork burden associated with injury and illness recordkeeping, on the other. OSHA believes that the potential benefits of injury and illness recordkeeping for workplace safety and health are greater in industries that are comparatively more hazardous than in industries that are comparatively less hazardous. Although

it is true that injury and illness rates have been declining since 1992, both overall and in most industry sectors and groups, the rates in some industries have declined faster than the rates in other industries. As a result, some industries that used to have lower rates, relative to other industries and rates overall, now have higher rates, relative to other industries and rates overall. This shifts the balance for these industries towards greater relative benefits from recordkeeping. Conversely, industries that used to have higher relative rates and now have lower relative rates now have relatively fewer benefits from recordkeeping than other industries. OSHA therefore believes that raising the threshold for partial exemption from 75% would not properly balance the benefits and burden of recordkeeping. With a higher threshold, a class of industries that would potentially benefit greatly from recordkeeping would remain partially exempt from recordkeeping – namely, industries whose efforts to lower injury and illness rates have been relatively less successful, compared to other industries where rates have declined more.

The National Federation of Independent Business (NFIB) made a comment similar to the SBA-OA's, noting that some industries had higher injury/illness rates when they qualified for partial exemption under the 2001 final rule than when they were proposed for non-exemption under this rulemaking. As a result, they proposed maintaining the partial exemption for any industry that was partially exempt in the 2001 rulemaking and had declining DART rates. Alternatively, they proposed raising the threshold higher than 75 percent, “to a level that captures only the most dangerous industries” (Ex. 117).

The ARTBA added to this point, commenting that, given the decline in overall injury and illness rates and the Administration’s charge “to federal agencies to reduce unneeded regulatory burden,” the number of partially-exempt establishments should have been higher, rather than lower, under this rulemaking (Ex. 114).

Also noting the decline in overall injury and illness rates, the National Automobile Dealers Association (NADA) proposed that the threshold "should be increased incrementally to compensate" as "the overall average DART rate for private employers continues to trend down." For example, raising the threshold to 80 percent would have put automobile dealers (NAICS 4411) on the list of partially-exempt industry groups. Alternatively, the Agency could raise the threshold to 100 percent, which would still result in a threshold DART rate lower than the rates in the 1982 and 2001 final rules. (Note that a 100 percent threshold, using the 2007-2009 BLS data in the final rule, would be 2.0 cases per 100 full-time workers. The 75 percent thresholds in the 2001 and 1981 rulemakings were 2.2 and 3.1, respectively.) The Agency could also "backstop" the increased threshold by removing the partial exemption for an industry group if an OSHA review of injury/illness data showed that the industry group's DART rate had increased over the most recent three years of data (Ex. 119).

Spurlock & Higgins and Safety Compliance Services proposed a survey of the hazards present in a particular industry, followed by "a risk analysis process utilizing a risk matrix to score various NAICS codes on likelihood and severity of injury from the identified hazards", with industries "scoring below a pre-determined threshold...deemed partially exempt." This method would "largely alleviate the need for periodic updates to the list of partially exempt industries because of fluctuations in injury statistics" (Exs. 24, 29).

Finally, Mercer ORC HSE Networks commented that "applying a three-year average and using the DART rate…make sense. Setting the cut off at or below 75 percent...and limiting eligibility to sectors that have historically experienced lower injury and illness rates also seem reasonable" (Ex. 68).

Finding the appropriate balance between the need for injury and illness information, on the one hand, and the paperwork burden created by recording obligations, on the other, is central to this rulemaking. OSHA believes that the use of the same criteria over the past 30 years of coverage demonstrates that these criteria achieve the desired balance. Therefore, OSHA has decided to use the selection criteria in the proposed rule, which are consistent with the criteria used in the 2001 and 1982 rulemakings. In the final rule, with one exception, industry groups meeting the following two criteria are included in the list of partially-exempt industry groups in Appendix A: a sector classification of NAICS 44-81, and a DART rate of 75 percent or less of the overall three-year-average DART rate for private industry, using the most recent BLS data available at the time of the proposed rule (2007, 2008, and 2009). As noted earlier, the sole exception is for Employment Services (NAICS 5613), which is not partially exempt under the final rule. OSHA acknowledges that injuries and illnesses will also occur in industries that are partially exempt from recordkeeping. However, continuing OSHA's longstanding practice of using a threshold of 75 percent of the DART rate for private industry ensures that only industries with relatively low injury/illness rates will be partially exempt.

5. Using numbers of workers injured or made ill in each industry in addition to industry injury/illness rates

In the NPRM, OSHA asked, "Should OSHA consider numbers of workers injured or made ill in each industry in addition to industry injury/illness rates in determining eligibility for partial exemption?"

NIOSH, the AFL-CIO, the UAW, the UFCW, and the USW answered yes to this question (Exs. 66, 69, 74, 77, 81, 86). NIOSH commented that "[c]onsideration should be given to potential uses for site-specific targets (e.g., silicosis, other pneumoconiosis, dermatitis,

cancers), as well as the potential use of these data by NIOSH...in sentinel case follow-up and evaluation" (Ex. 66). The AFL-CIO commented that BLS data from 2009 show that 594,000 total cases (18% of total) and 217,000 DART cases (13% of total) occurred in industries proposed for partial exemption (Ex. 69). The UAW commented that "OSHA should require recording by employers in all industries in which at least one worker has been injured or made ill" (Ex. 77).

For the final rule, OSHA has decided to use the same selection criteria as in the proposed rule. These criteria are consistent with the criteria used in the 2001 and 1982 rulemakings. This decision balances the need for injury and illness data with the paperwork burden on the regulated community. OSHA believes the incidence rate is the appropriate criterion to use because it shows the relative level of injuries and illnesses among different industries. Incidence rates allow for comparisons of industries that are vastly different in size and demographic make-up. Relying on the numbers of injuries and illnesses would bias the decision towards including industries that are very large but at the time relatively safe. As discussed elsewhere, in the final rule, with one exception, industry groups meeting the following two criteria are included in the list of partially-exempt industry groups in Appendix A: a sector classification of NAICS 44-81, and a DART rate of 75 percent or less of the overall three-year-average DART rate for private industry, using the most recent BLS data available at the time of the proposed rule (2007, 2008, and 2009). The one exception is for employment services (NAICS 5613), which is not partially exempt.

6. Additional or alternative criteria for determining eligibility for partial exemption?

In the preamble to the proposed rule, OSHA asked, "Are there any other data that should be applied as additional or alternative criteria for purposes of determining eligibility for partial exemption?"

Multiple commenters proposed additional criteria not addressed in previous questions. The Marshfield Clinic proposed that establishments with less than a specified number of employees be partially exempt regardless of NAICS (Ex. 15). The Building and Construction Trades Department of the AFL-CIO suggested that OSHA consider fatality rates; they commented that "fatality rates provide useful and, for the construction industry, better criteria because of problems associated with the underreporting of non-fatal injuries" (Ex. 59). (Note that the construction industry is not eligible for partial exemption.)

NIOSH suggested three additional data types. The first was work-related fatalities, because "a sudden increase in the number of fatalities in a particular industry may suggest a growing problem that needs further investigation and/or potential failures in prevention." The second was current labor force estimates for the industry, because "establishments within small industry subsectors have a very low probability of experiencing the necessary number of cases to satisfy BLS statistical reporting guidelines." The third was establishment size, which is "an important factor in aspects of management, health and safety education, prevention, and workers' compensation services" (Ex. 66). (Note that OSHA's regulation at Section 1904.39 requires all employers covered by the OSH Act, regardless of their partial-exemption status under Section 1904.2, to report all fatalities, in-patient hospitalizations, amputations, and losses of an eye to OSHA.)

In the final rule, OSHA has decided to use the selection criteria in the proposed rule, which are consistent with the criteria used in the 2001 and 1982 rulemakings. OSHA reviewed BLS fatality rate data from the Census of Fatal Occupational Injuries. The majority of industries with fatality rates greater than the private industry fatality rate are not exempted under the final rule. As discussed above, all work-related fatalities are required to be reported to OSHA, and

these data are captured in the OSHA Information System (OIS). OSHA concludes that the use of fatality data as a criterion is not warranted because it identifies the same industries as the DART rate distribution and because the site-specific fatality data are captured through the fatality reporting requirements.

OSHA also concludes that labor force estimates are not a necessary criterion. BLS DART rate data were available for all industries because OSHA conducted the analysis at the 4-digit NAICS level.

As noted above, in the final rule, with one exception, industry groups meeting the following two criteria are included in the list of partially-exempt industry groups in Appendix A: a sector classification of NAICS 44-81, and a DART rate of 75 percent or less of the overall three-year-average DART rate for private industry, using the most recent BLS data available at the time of the proposed rule (2007, 2008, and 2009). The sole exception is for employment services (NAICS 5613), which is not partially exempt.

7. Regular updates of the list of lower-hazard exempted industries

In the preamble to the proposed rule, OSHA asked, "Should OSHA regularly update the list of lower-hazard exempted industries? If so, how frequently should the list be updated?"

Multiple commenters supported regular updates of the list of lower-hazard partially-exempt industries. Worksafe recommended that "the Agency [be] required to review BLS injury rate data at least every two years, to re-determine exempt industries" (Ex. 112). The Occupational Health Section of the American Public Health Association (APHA), the AFL-CIO, UNITE HERE, the TWU, the UAW, the UFCW, and the USW recommended updating the list every three years (Exs. 62, 69, 70, 74, 77, 81, 86). Mercer ORC HSE Networks commented that "the list could be renewed every five years or so to maintain its relevance and insure a sense of

fairness" (Ex. 68). NADA commented that "OSHA should initiate a review of the [list of partially-exempt industries] soon after the results of a new economic census become available" (Ex. 119). NCOSH commented that OSHA should update the list "regularly" because "[i]ndustry conditions and work environments change over time and it is important that this list reflect current conditions to the greatest extent possible" (Ex. 75).

In contrast, the Dow Chemical Company commented that "moving industries into and out of partially exempt status may be unworkable", because "considerable expertise is necessary in order to correctly make determinations under OSHA's recordkeeping regulations", "[d]etailed procedures must also be created, taught, and practiced...", and "[p]artially exempt industries must still be able to record injuries accurately if BLS or OSHA make a request" (Ex. 64).

OSHA has decided not to provide for regular updates of the list of lower-hazard partially-exempt industries in the final rule. First, historically, the list of industries meeting the criteria for partial exemption has changed very little from year to year. Second, OSHA agrees with Dow Chemical Company (Ex. 64) that moving industries in and out of partially-exempt status would be confusing. An analysis of NAICS-based BLS injury and illness data shows that exemption status tends to remain relatively constant over time. The analysis grouped the eight years of annual data from 2003 to 2010 into six groups of three-year averages (2003-2005, 2004-2006, 2005-2007, 2006-2008, 2007-2009, 2008-2010). There were 155 industry groups (classified by four-digit NAICS) in the analysis. For 135 of these groups (87%), the exemption status remained constant; partially-exempt industry groups remained partially exempt throughout the period, and non-exempt industry groups remained non-exempt. Of the remaining 20 industry groups, 10 (6%) changed status once, either from non-exempt to partially-exempt or from partially-exempt to non-exempt; seven (5%) changed status twice; and three (2%) changed status three times.

Although this final rule does not include a regularly-scheduled update of the partial exemption list, the Agency is planning a retrospective review of OSHA's recordkeeping regulations.. The Occupational Safety and Health Act itself requires the Secretary to “develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics” and specifies the underlying criteria for defining recordability. After the passage of the Act, OSHA issued Part 1904, Recording and Reporting Occupational Injuries and Illnesses. These regulations included provisions on the industry and size of establishments exempted from the recordkeeping requirements. Part 1904 was modified in 2001, following a national process in which a large group of stakeholder representatives and experts conducted a year-long dialogue on occupational injury and illness recordkeeping. Among the recommendations that came out of this dialogue that were incorporated into Part 1904 in the 2001 rulemaking were the elimination of the requirement to record injuries and illnesses that were viewed as irrelevant for evaluating the safety and health environment of the work-place, and the addition of criteria to capture newly recognized occupational safety and health conditions.

OSHA believes there is value in a new re-examination of the Agency’s recordkeeping regulations. First, there is extensive evidence that many work-related injuries and illnesses are currently not being recorded on the Injury and Illness Logs maintained by employers. It has long been recognized that most work-related illnesses, particularly those chronic diseases which do not appear until years after first exposure, are not recorded on these logs. In recent years, academic researchers have performed numerous studies, comparing work-related injuries recorded on employer-maintained logs with work-related injuries identified through workers’ compensation or hospital records. These studies have demonstrated that a sizable proportion of work-related injuries are not being recorded on employer-maintained logs. Further, changes in

the structure of employment, exemplified by the increased presence of temporary and contractor workers in many establishments, raise important questions about the effectiveness of the current requirements and suggest that new approaches to injury tracking may be warranted. Finally, in recent years there has been little evaluation of the benefits and costs of the rule. With these issues in mind, OSHA plans to undertake a retrospective review of the effectiveness of the Agency's injury and illness recordkeeping regulations.

This retrospective study will be conducted in accordance with the Department of Labor's Plan for Retrospective Analysis of Existing Rules which complies with Executive Order (E.O.) 13563 ''Improving Regulation and Regulatory Review'' (76 FR 3821). E.O. 13563 requires agencies to develop and submit to the Office of Information and Regulatory Affairs a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. [76 FR 3822].

In addition to the retrospective review, OSHA will engage the public to assess the impact of the changes implemented under this rulemaking. The Agency will conduct a stakeholder meeting to discuss the burdens associated with the new coverage and reporting requirements and the utility and use of the new information collected. We anticipate conducting such a meeting after the new requirements have been in place for two years to allow for a sufficient impact to be considered.

8. Training, education, and compliance assistance to facilitate compliance with the recordkeeping requirements

In the NPRM, OSHA asked, "Are there any specific types of training, education, and compliance assistance OSHA could provide that would be particularly helpful in facilitating compliance with the recordkeeping requirements?"

The UAW commented that "OSHA should do more training and dissemination of information about employee rights and employer obligations related to recordkeeping, especially for small employers and their employees" (Ex. 77).

OSHA has recently put two tools on its public website to help employers comply with recordkeeping requirements: a 15-minute on-line tutorial (training module) on completing the recordkeeping forms, and an interactive e-tool (Recordkeeping Advisor) that uses employer responses to questions to help employers determine whether or not (and how) they need to record/report specific injuries and illnesses. Both are available on OSHA's recordkeeping web page at http://www.osha.gov/recordkeeping/index.html. In addition, the recordkeeping forms booklet includes general instructions, instructions for each OSHA recordkeeping form, and contact information for recordkeeping assistance from Regional and State Plan offices.

Other issues raised by comments

The National Association of Real Estate Investment Trusts (NAREIT) "encourage[d] OSHA to recalculate its [Preliminary Economic Analysis (PEA)] of the proposed rule utilizing 2007 NAICS codes, rather than pre-2007 NAICS codes" (Ex. 41).

The PEA in the NPRM was based on the 1997 Economic Census Bridge between SIC and NAICS tables (http://www.census.gov/epcd/naics02/S87TON02.HTM), 2006 data from County Business Patterns (CBP) on number of establishments (http://www2.census.gov/econ/susb/data/2006/us_6digitnaics_2006.xls), and 2006 data from BLS on numbers of injuries and illnesses.

Bridges between SIC and NAICS are available for 1987 SIC-1997 NAICS and 1987 SIC-2002 NAICS. No bridge is available for 1987 SIC-2007 NAICS, although a bridge is available for 2002 NAICS -2007 NAICS.

In the final rule, the Final Economic Analysis (FEA) is based on 2010 data from CBP and 2007-2009 data from BLS. 2010 CBP data were based on the 2007 NAICS. 2007 and 2008 BLS data were based on the 2002 NAICS; 2009 BLS data were based on the 2007 NAICS.

For industry sectors (two-digit NAICS) eligible for partial exemption under both the proposed rule and the final rule, the 2002 NAICS differs from the 2007 NAICS as follows (see http://www.census.gov/eos/www/naics/faqs/faqs.html):

Sector 51, Information - Major changes were made in the Information sector. Telecommunications Resellers and Cable and Other Program Distribution were moved, Internet Service Providers and Web Search Portals industries were restructured, and a new six-digit industry was created in the Other Information Services subsector.

Sector 53, Real Estate and Rental and Leasing - 2002 NAICS code 525390- Real Estate Investment Trusts (REIT), was deleted and portions of it were reclassified as follows: (1) Equity REITs is classified in the Real Estate subsector in NAICS Industry Group 5311- Lessors of Real Estate, under individual national industries based on the content of the portfolio of real estate operated by a particular REIT; and (2) Mortgage REITs is moved to NAICS 525990, Other Financial Vehicles.

Sector 54, Professional, Scientific, and Technical Services - Research and Development in Biotechnology was added as a 6-digit industry.

Sector 56, Administrative & Support and Waste Management & Remediation Services - Establishments that primarily provide executive search consulting services were moved to a new 6-digit industry, Executive Search Services.

OSHA finds that the differences between the 2002 NAICS and the 2007 NAICS are not significant to the rulemaking. This is further discussed in Section V Final Economic Analysis of this preamble.

OSHA also received comments about the estimates in the PEA for recordkeeping costs at establishments in industry groups that are partially exempt under the current regulation but will no longer be partially exempt under today's final rule. The Dow Chemical Company commented that the PEA underestimates the cost of the proposed rule at these establishments for three reasons. First, "decisions on recordability…may involve physicians, industrial hygienists, personnel in the supervisory chain of the injured individual, safety professionals, attorneys, and recordkeeping subject-matter experts, all of whom are salaried, degreed professionals at salaries considerably higher" than the $56,000 annual salary for a human resources specialist that the PEA used to estimate costs. Second, the PEA does not include the cost of "set[ting] up the procedures and systems that are utilized for implementation of [OSHA recordkeeping] regulations." Third, "the process of developing a competent OSHA recordkeeper is far more time-intensive than" the time for training and re-training estimated in the PEA (Ex. 64).

The SBA-OA commented that OSHA should "consider whether its wage rate assumption is valid for many small businesses." The PEA uses the assumption that recordkeeping will be performed by a human resources specialist with a compensation cost of $40.04 per hour, but "many small businesses do not employ such personnel and it is often the small business owner or other senior person who conducts these activities" (Ex. 94).

NADA commented that the PEA "significantly underestimates" the cost to establishments in the automobile dealer industry group (NAICS 4411), which was partially exempt under the 2001 rulemaking but would not have been partially exempt under the proposed rule. (Note that the industry group will also not be partially exempt under the final rule.) According to NADA, each automobile dealer will "hav[e] to train at least one person on Form 300 injury and illness recordkeeping/" For training costs, NADA cites the $300 cost of the National Safety Council's one-day course on OSHA recordkeeping, in addition to "travel, lost income, and other related expenses." There are also ongoing costs due to employee turnover and "compliance responsibilities", including "monitoring for workplace related injuries and illnesses, and completing, certifying, and posting the log" (Ex. 119).

OSHA's response to these comments is in Section V of this supplementary information.

Four commenters (the NAHB, the Associated General Contractors of America, the National Federation of Independent Business (NFIB), and the US Chamber of Commerce) stated that it would have been a good idea for OSHA to convene a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel (Exs. 113, 115, 117, 120). The NFIB also commented that "OSHA did not do enough outreach to the small-business community in developing this rule" (Ex. 120).

OSHA did not convene a SBREFA panel because the Agency determined this rule will not have a significant economic impact on a substantial number of small entities. For a more thorough discussion of this issue, please refer to Section V of this supplementary information.

The NAHB commented that "OSHA's proposal is not consistent with Executive Order 13563, 'Improving Regulation and Regulatory Review'," because "[n]othing in OSHA's proposal indicates how the rule is intended to streamline regulatory requirements and reduced

burdens on industry" and because the Agency "should consider the impacts of this proposal on small businesses and consider conducting additional outreach before moving forward" (Ex. 113). The SBA-OA and the ARTBA made similar comments (Exs. 94, 114). OSHA's response to these comments is in Section V of this supplementary information.

Executive Order 13563 requires regulatory agencies to consider the effect of new regulations on economic growth, competitiveness, and job creation. OSHA notes that, as discussed below in Section V-E, Economic Impacts, the compliance costs for each affected firm are too small to have any significant economic impacts, including impacts on economic growth, competitiveness, and job creation. In addition, OSHA's use of a partial exemption from recordkeeping requirements for specified industries embodies the principle that asks agencies to identify and use the best and least burdensome tools for achieving regulatory ends. The exemption both reduces the impact of regulatory requirements on industry overall and minimizes paperwork burden for many small employers. Also, as noted above, switching from the outdated SIC system to NAICS will reduce uncertainty, confusion, and errors, as well as save time. Therefore, the Agency believes that the approach taken in this rulemaking to update the list of partially-exempt industries is consistent with, and promotes the primary objectives of, Executive Order 13563.

United Support and Memorial for Workplace Fatalities commented that "employers should be required to include on their injury, illness and fatality incident and reports and logs, the BLS standard occupational classification code for the affected worker's job title" (Ex. 93). This is beyond the scope of this rulemaking.

The US Chamber of Commerce commented that OSHA's use of BLS injury and illness data in the criteria for partial exemption for low-hazard industry groups "is at odds with other

OSHA efforts and comments that indicate a lack of faith in the credibility of this data since it is generated by employers self reporting" (Ex. 120). OSHA's response is that, while academic researchers, OSHA, and BLS are studying the comprehensiveness and accuracy of BLS data, the BLS data are still the most comprehensive body of occupational injury and illness data available.

D. The Final Rule

The final rule is the same as the proposed rule. With one exception, industry groups (classified by four-digit NAICS) that meet the following two criteria are partially exempt from the recordkeeping requirements in Part 1904:

1. Sector classification of NAICS 44-81.

2. a DART rate of 75 percent or less of the overall three-year-average DART rate for private industry, using BLS data from 2007, 2008, and 2009. The average national DART rate for private industry for 2007-2009 was 2.0. Thus, the threshold for partial exemption for eligible industry groups (classified by four-digit NAICS) was a DART rate of 1.5 or less.

Like the proposed rule, the one exception is for Employment Services (NAICS 5613), which is not partially exempt. The three-year-average DART rate for the Employment Services industry group, using BLS data from 2007, 2008, and 2009, was 1.1, which is below the 75 percent threshold of 1.5. However, this industry group is nonetheless ineligible for partial exemption on grounds that, for many employees in this industry, their actual place of work may be in an establishment that is in a different, non-partially-exempt industry group or sector, such as manufacturing. Therefore, NAICS 5613 Employment Services is not included in the final Appendix A to Subpart B. OSHA received no comments from the public about this exception.

In the issues section of the preamble to the proposed rule, OSHA asked the public to comment on the appropriateness of the proposed exemption procedure; whether alternative

procedures for determining partial exemption should be used; and whether specific industries should be included or excluded from the list of partially-exempt industries. OSHA notes that the final rule, like the proposed rule, is based on the most recent BLS injury and illness data available at the time of the proposed rule (2007-2009). Because OSHA is using the same criteria and same injury/illness data to establish the list of partially-exempt industry groups, the industry groups in the proposed Appendix A to Subpart B and the final Appendix A to Subpart B are the same.

Under the final rule, employers are not required to keep OSHA injury and illness records for any establishment classified in an industry group listed in Appendix A to Subpart B, unless they are asked in writing to do so by OSHA, BLS, or a state agency operating under the authority of OSHA or BLS. All employers covered by the OSH Act, including employers who are partially exempt from recordkeeping based on size or industry classification, must report all work-related fatalities, in-patient hospitalizations, amputations, or losses of an eye to OSHA, as required by Section 1904.39.

For a more thorough discussion of the specific industry groups that are newly partially exempted or newly covered by the final rule, please refer to Section V of this supplementary information.

Because the final rule will require some establishments that had been partially exempt from OSHA recordkeeping requirements to now comply completely with these requirements, OSHA will offer compliance assistance, including outreach and training, to help these establishments keep complete and accurate records and comply with the recordkeeping regulation.

Appendix A to Subpart B lists the partially-exempt industry groups, as follows:

NAICS Code	Industry
4412	Other Motor Vehicle Dealers
4431	Electronics and Appliance Stores
4461	Health and Personal Care Stores
4471	Gasoline Stations
4481	Clothing Stores
4482	Shoe Stores
4483	Jewelry, Luggage, and Leather Goods Stores
4511	Sporting Goods, Hobby, and Musical Instrument Stores
4512	Book, Periodical, and Music Stores
4531	Florists
4532	Office Supplies, Stationery, and Gift Stores
4812	Nonscheduled Air Transportation
4861	Pipeline Transportation of Crude Oil
4862	Pipeline Transportation of Natural Gas
4869	Other Pipeline Transportation
4879	Scenic and Sightseeing Transportation, Other
4885	Freight Transportation Arrangement
5111	Newspaper, Periodical, Book, and Directory Publishers
5112	Software Publishers
5121	Motion Picture and Video Industries
5122	Sound Recording Industries
5151	Radio and Television Broadcasting
5172	Wireless Telecommunications Carriers (except Satellite)
5173	Telecommunications Resellers
5179	Other Telecommunications
5181	Internet Service Providers and Web Search Portals
5182	Data Processing, Hosting, and Related Services
5191	Other Information Services
5211	Monetary Authorities - Central Bank
5221	Depository Credit Intermediation
5222	Nondepository Credit Intermediation
5223	Activities Related to Credit Intermediation
5231	Securities and Commodity Contracts Intermediation and Brokerage
5232	Securities and Commodity Exchanges
5239	Other Financial Investment Activities
5241	Insurance Carriers
5242	Agencies, Brokerages, and Other Insurance Related Activities
5251	Insurance and Employee Benefit Funds
5259	Other Investment Pools and Funds
5312	Offices of Real Estate Agents and Brokers
5331	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)
5411	Legal Services
5412	Accounting, Tax Preparation, Bookkeeping, and Payroll Services
5413	Architectural, Engineering, and Related Services
5414	Specialized Design Services
5415	Computer Systems Design and Related Services
5416	Management, Scientific, and Technical Consulting Services
5417	Scientific Research and Development Services
5418	Advertising and Related Services

NAICS Code	Industry
5511	Management of Companies and Enterprises
5611	Office Administrative Services
5614	Business Support Services
5615	Travel Arrangement and Reservation Services
5616	Investigation and Security Services
6111	Elementary and Secondary Schools
6112	Junior Colleges
6113	Colleges, Universities, and Professional Schools
6114	Business Schools and Computer and Management Training
6115	Technical and Trade Schools
6116	Other Schools and Instruction
6117	Educational Support Services
6211	Offices of Physicians
6212	Offices of Dentists
6213	Offices of Other Health Practitioners
6214	Outpatient Care Centers
6215	Medical and Diagnostic Laboratories
6244	Child Day Care Services
7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures
7115	Independent Artists, Writers, and Performers
7213	Rooming and Boarding Houses
7221	Full-Service Restaurants
7222	Limited-Service Eating Places
7224	Drinking Places (Alcoholic Beverages)
8112	Electronic and Precision Equipment Repair and Maintenance
8114	Personal and Household Goods Repair and Maintenance
8121	Personal Care Services
8122	Death Care Services
8131	Religious Organizations
8132	Grantmaking and Giving Services
8133	Social Advocacy Organizations
8134	Civic and Social Organizations
8139	Business, Professional, Labor, Political, and Similar Organizations

IV. Section 1904.39 Reporting Requirements for Fatalities, In-Patient Hospitalizations, Amputations, and Losses of an Eye

A. Background

OSHA has required employers to report work-related fatalities and certain work-related hospitalizations since 1971, the year the OSH Act went into effect. The initial regulation in 29

CFR 1904.8 required employers to report, within 48 hours, an employment incident resulting in the fatality of one or more employees or the hospitalization of five or more employees. Employers were required to report by telephone or telegraph to the nearest OSHA Area Office.

In 1994, the Agency revised the regulation to require reporting, within eight hours, of any work-related fatality or hospitalization of three or more employees (59 FR 15594, April 1, 1994). OSHA explained in the preamble to the final rule that "[r]educing the reporting period from 48 hours to 8 hours enables OSHA to inspect the site of the incident and interview personnel while their recollections are more immediate, fresh and untainted by other events, thus providing more timely and accurate information." In addition, OSHA stated that reducing the reporting time increased the chances that the site of the incident would remain undisturbed and also "coincided with a 'standard work shift' for most employers."

The 1994 rulemaking also addressed several other issues. First, OSHA explained that hospitalization meant in-patient admission and excluded admission solely for observation. Second, OSHA added regulatory language stating that if employers did not learn of a reportable incident when it occurred, they were required to report within eight hours of learning of the incident. Third, OSHA specified that employers were required to report any fatality or in-patient hospitalization of three or more people occurring within 30 days of the incident. Fourth, OSHA added the option of reporting via OSHA's centralized toll-free telephone number.

The requirements from the 1994 rulemaking have remained substantially unchanged and are currently codified at 29 CFR 1904.39.

B. The Proposed Rule

The proposed rule would have made two major changes to OSHA's reporting requirements. First, the proposed rule would have required employers to report the work-related

in-patient hospitalization of one or more employees to OSHA. The current regulation requires reporting only if three or more employees are hospitalized. The reporting time would have been eight hours, the same as the current regulation. Second, the proposed rule would have required employers to report all work-related amputations to OSHA, within 24 hours. The current regulation does not specifically require the reporting of amputations.

For the reporting of in-patient hospitalizations of fewer than three employees, OSHA explained that "[t]he hospitalization of a worker due to a work-related incident is a serious and significant event" (76 FR 36419). The preamble to the proposed rule explained that, for OSHA recordkeeping purposes, in-patient hospitalization occurs when a person is "formally admitted" to a hospital or clinic for at least one overnight stay.

For the reporting of amputations, OSHA explained that "[a]mputations include some of the most serious types of injuries and tend to result in a greater number of lost workdays than most other injuries... Furthermore, amputations differ from other types of serious injuries because they have long-term or permanent consequences" (76 FR 36419). The proposed rule defined amputations in proposed Section 1904.39(b)(8) according to the definition in the 2007 release of the Occupational Injury and Illness Classification (OIICS) Manual of the Bureau of Labor Statistics (BLS). This definition of amputations excluded traumatic injuries without bone loss, as well as losses of an eye.

In the NPRM, OSHA explained that the changes in the proposed rule would have made OSHA's reporting requirements more similar to the requirements of other agencies, as well as to the requirements of some states that administer their own occupational safety and health programs.

C. Comments to the Proposed Rule

Many comments supported the reporting requirements included in OSHA's proposed rule. Letitia Davis, ScD, EdM, the Director of the Occupational Health Surveillance Program at the Massachusetts Department of Public Health, noted: "Case reporting of health events is a well-established approach to public health surveillance and intervention. Serious occupational injuries are urgent sentinel health events indicating that prevention efforts have failed and that intervention to remediate hazards may be warranted" (Ex. 84). However, OSHA also received multiple comments that the proposed rule would not prevent injuries and illnesses and is redundant, premature, and not supported by data.

The Steel Manufacturers Association commented that "[d]ata in itself has never prevented any type of occurrence [of injuries]" and that "[t]he information required to be provided…while good at identifying basic information, does not collect any data that will serve in preventing future injuries or illnesses. The only possible preventative action that can be taken is for OSHA to conduct an inspection. The results are citations and press releases that provide little preventative effect beyond the employer involved" (Ex. 36).

Mercer ORC HSE Networks commented that "merely establishing [a 'comprehensive database' of information about the reportable events] may not be the best way, or even a very good way, to better determine how to better focus OSHA's resources on high-hazard workplaces. Put another way, it is not at all clear that employers experiencing the new case categories identified in the rulemaking…pose increased future risk to workers, or are any more likely than other employers to experience future serious cases. OSHA makes that implicit assumption without support. For example, a study conducted by Rand several years ago for the Duke Energy Foundation found that sites experiencing fatalities usually posed less risk to workers for future serious injury, not more" (Ex. 68).

In response, OSHA notes that the OSHA recordkeeping regulation has included requirements for employers to report certain work-related events to OSHA since 1971. These requirements have always been an important part of the Agency's statutory mission to assure safe and healthful working conditions for working men and women. Timely reporting of work-related fatalities, as well as certain other serious work-related events, allows OSHA to assess whether an intervention is necessary and to target hazardous workplaces for inspection.

In addition, OSHA is able to use information gained from the investigations of work-related fatalities and other serious work-related events to identify workplace hazards and prevent similar incidents, both at the inspected workplace and at other workplaces. This information also can also be used to support the issuance of new safety and health standards and regulations, as well as the revision of existing OSHA standards and regulations.

The Tree Care Industry Association commented, "Why would OSHA not work with State Workers Compensation programs and/or the State Plan OSHA's that already collect hospitalization data before it imposes redundant reporting requirements on employers under federal OSHA jurisdiction?" (Ex. 37).

In response, OSHA notes that one of the reasons for the reporting requirement in Section 1904.39 is to allow the Agency to conduct, if necessary, a prompt investigation of the incident leading to the serious occupational injury and illness event. OSHA also notes that six states with OSHA-approved State Plans currently require employers to report the in-patient hospitalization of fewer than three employees. As a result, OSHA concludes that the requirement to report in-patient hospitalizations of fewer than three employees would not be redundant even if OSHA had systematic access to hospitalization data from state workers' compensation programs.

Gruber Hurst Johansen Hail Shank commented, "If amputations and most incidents that require hospitalization are already recordable, then why is there a compelling need for additional reporting?...OSHA is already informed about these instances through recordkeeping" (Ex. 60). Similarly, the Joint Poultry Industry Safety and Health Council commented that "[t]he DART rate, calculated from existing injury and illness data, already identifies those workplaces with frequent, severe injuries. We fail to see why this currently available data is not sufficient to meet the goal of identifying 'the most dangerous workplaces' and why OSHA needs this type of additional injury data" (Ex. 61).

Likewise, Mercer ORC HSE Networks commented that "[a]ll of the cases that would be reported under the new OSHA criteria should already be captured on the OSHA log. To target inspections, OSHA already collects summary data that includes these cases from a census of sites in portions of the private sector that the Agency feels tend to involve higher risk. BLS also captures the same information in more detailed form in a parallel…data collection effort. In addition to its annual survey that produces incidence rates and detailed case characteristics across industry, BLS also conducts a Census of Fatal Occupational Injuries (CFOI) that produces accurate counts and very detailed descriptive data on fatal work related injuries. So data on fatalities and amputations should clearly be accessible from existing data collections. Granted it might be harder to capture data on some in-patient hospitalizations. But some of that information could be obtained from existing OSHA supplementary records. Data that could not be extracted from existing OSHA records could be obtained by less burdensome means than proposed, such as conducting follow-back studies of a small sample of employers" (Ex. 68).

In response, OSHA notes the distinction between the employer's obligation to record an injury or illness and the employer's obligation to report. Since OSHA's founding, the reporting

requirement has been separate from the recording requirement. As a rule, OSHA obtains the detailed, case-specific information recorded by employers under Part 1904 only when OSHA conducts an on-site inspection. And OSHA inspects only a small percentage of all establishments subject to OSHA authority each year. For example, in 2010, OSHA and its state partners inspected approximately 1 percent of establishments subject to OSHA authority (approximately 98,000 inspections, out of 7.5 million total establishments).

On November 8, 2013, OSHA also published a notice of proposed rulemaking (NPRM) on Improve Tracking of Workplace Injuries and Illnesses, which would expand its collection of injury and illness data (FR 78 67254-67283). In that NPRM, OSHA proposed collecting case-specific information from approximately 38,000 establishments with 250 or more employees in industries subject to the recordkeeping requirements in Part 1904. Again, this is only a small percentage of all establishments subject to OSHA authority. OSHA notes the proposed rule on improving tracking of workplace injuries and illnesses would not add to or change any employer's obligation to complete and retain injury and illness records under OSHA's regulations for recording and reporting occupational injuries and illnesses. The proposed rule also would not add to or change the recording criteria or definitions for these records. The proposed rule would only modify employers' obligations to transmit information from these records to OSHA or OSHA's designee.

In addition, although all employers are subject to the requirement to report fatalities and specified non-fatal injury/illness events, many employers are partially exempt from the Part 1904 requirement to record injuries and illnesses. As a result, it is incorrect to assume that all amputations and most hospitalization incidents are captured in employer injury and illness records. As noted by the AFL-CIO, BLS data from 2009 show that 217,000 DART cases (13%

of total) occurred in industries that would have been partially exempt from recordkeeping due to industry classification under the NAICS update part of this proposed rule (Ex. 69). Work-related amputations and hospitalizations suffered by employees of employers with ten or fewer employees are also not required to be recorded.

OSHA further notes that injury and illness summary information collected by OSHA for inspection targeting purposes through the OSHA Data Initiative (ODI) does not enable the Agency to identify specific hazards or problems at individual workplaces. Further, the ODI data are not timely because inspection targeting is based on injury/illness data from the previous year's ODI, which is collected from the prior year. As a result, OSHA's targeting is typically based on injury/illness data that are two or three years old. In addition, the group of 80,000 establishments in each year's ODI is not a statistically-representative sample, either of establishments eligible to be included in the ODI, or of establishments overall.

Finally, for data collected by BLS, OSHA notes that, while the BLS Survey of Occupational Injuries and Illnesses (SOII) provides information about industries with frequent, severe injuries and illnesses, it does not identify specific workplaces with frequent, severe injuries and illnesses. Industries with frequent, severe injuries and illnesses may include workplaces where injuries and illnesses are rare and minor, just as industries with rare, minor injuries and illnesses may include workplaces where injuries and illnesses are frequent and severe. In any event, the Confidential Information Protection and Statistical Efficiency Act of 2002 (Publ. Law 107-347, Dec. 17, 2002) (CIPSEA) prohibits BLS from releasing establishment-specific data to the general public or to OSHA. As a result, for employer-specific, workplace-specific information about fatalities, OSHA relies on its own information, obtained through the current Part 1904 requirement for employers to report fatalities to OSHA.

The American Chemistry Council commented that "[s]everal ongoing OSHA programs, such as the National Emphasis Program on Recordkeeping (NEP-R), target data reporting, including amputations…For example, NEP-R is relatively new (September 10) and was intended to address inaccuracies in recording of occupational illness and injury. The analysis of the results of this program would be useful in assessing whether continuation of NEP-R satisfies the intent of the [proposed rule]" (Ex. 76). They added, "OSHA currently has two programs, the National Emphasis Program on Amputations (NEP-A), and the Severe Violator Enforcement Program (SVEP), which specifically target amputations…The overall intent of both NEP-A and SVEP are identical to that of the [proposed rule]: 'to target scarce resources to the most dangerous workplaces and prevent future injuries at these workplaces' (76 FR 36419). Until a holistic evaluation of these existing amputation-focused programs is conducted, we recommend that OSHA exclude reporting of amputations [in the proposed rule]…"

In response, OSHA notes, as above, the distinction between recording and reporting; the recordkeeping NEP was about recording injuries and illnesses, while today's final rule in Section 1904.39 is about reporting. OSHA also notes that there are multiple OSHA programs, including the amputations NEP and the SVEP, whose intent is to target scarce resources to the most dangerous workplaces and prevent future injuries at these workplaces. (Similarly, OSHA has multiple programs whose purpose is to assure safe and healthful working conditions for working men and women.) Neither the amputations NEP, nor the SVEP, provide the case reporting of sentinel occupational safety and health events that this final rule will provide. As a result, OSHA does not agree that the recordkeeping NEP, the amputations NEP, and/or the SVEP make this rulemaking premature.

Mercer ORC HSE Networks commented that "[w]ith 40 years of rich agency 'fat-cat' investigation experience and data, it would have been reasonable to expect OSHA to have provided some (any) demonstration of how those investigations and the information gleaned from them have resulted in safer workplaces and how, with some specificity, the collection of the proposed substantially increased reports of incidents is expected to improve the agency's effectiveness. As the proposal stands, there is almost no evidence (or data) in the record to support OSHA's 'belief' that collecting this new information will make a positive difference in Agency efficiency or in serious injury reduction" (Ex. 68).

The National Roofing Contractors Association commented that "OSHA offers no evidence, data or research that shows a beneficial effect on workplace safety based on either the arbitrary timeframes it suggests or other timeframes it may have considered or analyzed" (Ex. 118). They added, "The history of reporting requirements…could be valuable for the agency to investigate further to determine the potential effectiveness of its proposed revisions. In 1971, employers were required to report, within 48 hours, any worker fatality or in-patient hospitalization of 5 or more workers. This reporting requirement was revised 23 years later in 1994 to require reporting, within 8 hours, of any workplace fatality or in-patient hospitalization of three or more workers…What methodologies and metrics were employed to assess the impact on worker safety of the regulatory requirements immediately after those two reporting revisions became effective? Analysis of prior history of similar action taken by the agency should provide a better answer as to how this action will enhance worker safety than the cryptic OSHA statement that benefits are not quantified but are 'significantly in excess of annual costs'."

In response, OSHA notes that the Agency did not have metrics and methodologies when these regulations were implemented to allow OSHA to evaluate the effects of the revisions. It

was therefore not possible within the timeframe of this rulemaking to provide an analysis singling out the effect of the 1971 reporting requirement and the 1994 rulemaking from among the enormous number of variables related to the decrease in number and rate of injuries, illnesses, and fatalities since OSHA's founding. Further, OSHA notes that case reporting of health events is a well-established approach to public health surveillance and intervention. Serious occupational injuries and illnesses are urgent sentinel health events indicating that prevention efforts have failed and that intervention to remediate hazards may be warranted. OSHA further discusses the benefits of the rule in the Final Economic Analysis in Section V of this supplementary information.

Specific Questions Asked in the Proposed Rule

The preamble to the proposed rule included eight questions relevant to the reporting part of this rulemaking. Each question is repeated below, followed by public comments and OSHA's response to the comments.

1. Types of incidents and/or injuries and illnesses for required reporting

In the preamble to the proposed rule, OSHA asked, "What types of incidents and/or injuries and illnesses should be reported to OSHA and why?"

Comments responding to this question primarily focused on three main topics:

1. The seriousness and significance of the in-patient hospitalization of a single worker.
2. The definition of in-patient hospitalization.
3. The potential complications resulting from a requirement to report the in-patient hospitalizations of fewer than three employees.

There were many comments about the seriousness and significance of the in-patient hospitalization of a single worker. Many commenters stated that it is not necessarily a serious or

significant event (Exs. 19, 24, 26, 27, 29, 31, 35, 51, 55, 60, 72, 82, 94, 100, 102, 104, 110, 111, 114, 115, 125). Many other commenters stated that it is (Exs. 59, 62, 69, 74, 75, 77, 86, 93, 112).

Spurlock and Higgins commented that "there are numerous circumstances surrounding a decision to hospitalize a single employee…that do not necessarily stem from an employer's failure to identify and/or control a particular hazard" (Ex. 24). Safety Compliance Services commented that "[w]hether a person is hospitalized is not related to whether there are hazards in the workplace or poor employer controls" (Ex. 29). Similarly, the International Fragrance Association North America (IFRA-NA) commented that "the decision to hospitalize a single employee can be influenced by factors that are not connected to work place hazards" (Ex. 51). The Healthcare Distribution Management Association (HDMA) commented that "[a] single [non-fatal] injury does not indicate a major workplace issue" (Ex. 55). Gruber Hurst Johansen Hail Shank commented that "the hospitalization of one employee may or may not be considered significant, depending on the circumstances" (Ex. 60). Ameren commented that "[single in-patient hospitalizations] do not always represent a serious injury or illness" (Ex. 72). Stericycle commented that "single hospitalizations may not be a good indicator of serious hazards in the workplace" and that "…many workplace hospitalizations occur due to non work-related events" (Ex. 82). The Small Business Administration Office of Advocacy (SBA-OA) commented that "…single employee hospitalizations often do not signify an emergency situation…" (Ex. 94). The Pacific Maritime Association commented that "th[e] injury could be purely accidental" or be an "isolated [incident] that may have nothing to do with workplace safety…" (Ex. 100). The Retail Industry Leaders Association (RILA) commented that in-patient hospitalizations "potentially would include a wide variety of situations, ranging from minor incident to a significant workplace accident" (Ex. 102); the Shipbuilders Council of America made a similar

comment (Ex. 104). The National Utility Contractors Association (NUCA) commented that "[e]mployees are commonly hospitalized for evaluation of injuries including chest pain or mild concussions which are often not serious" (Ex. 110). The American Supply Association commented that ""[e]ach and every day, workers have mishaps such as joint dislocations or concussions which may result in a hospitalization, perhaps solely because of the injury or possibly secondary to underlying medical conditions. These injuries may not even be related to workplace conditions but rather to something as simple as a lapse in concentration" (Ex. 111). The American Road and Transportation Builders Association (ARTBA) commented that "a single injury or illness often does not indicate an unsafe workplace" (Ex. 114); the Associated General Contractors of America (AGC) made a similar comment (Ex. 115).

Commenters arguing that the in-patient hospitalization of a single worker is a serious and significant event for occupational safety and health included the Department of Workplace Standards in the Kentucky Labor Cabinet (Kentucky), stating that "Kentucky believes, for several reasons, the hospitalization of <u>any</u> employee or <u>any</u> number of employees due to a work-related injury or illness…are significant events that must be reported. Most importantly, reporting allows for prompt investigation, if needed, to ensure the prevention of additional injury or illness" (Ex. 52). The AFL-CIO commented that "the need to hospitalize a single worker after a workplace incident is a clear indication that it was a serious event" (Ex. 59) and that "[c]ollecting this information…will greatly assist OSHA in developing data and understanding about the causes of injuries and illnesses responsible for the incident, provide the agency with an opportunity to conduct an inspection if it chooses, and help in assessing the adequacy of the standards" (Ex. 69). The Transport Workers Union (TWU) commented that "work-related incidents resulting in in-patient hospitalizations…are extremely serious events resulting in

significant burden, and often subsequent impairment, to employees who suffer them. Understanding the root causes and workplace factors which contributed to these events' occurrence is a prerequisite to eliminating hazards and preventing workers from encountering further illness and injury" (Ex. 74). The National Council for Occupational Safety and Health (NCOSH) commented that "[g]iven that even fairly serious work-related injuries may not result in a hospital admission, OSHA should be notified promptly of all incidents requiring the hospitalization of any worker" (Ex. 75). The United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) commented that the requirement for reporting single in-patient hospitalizations "is an improvement over the current requirement" that will "provid[e] a significant increase in vitally useful information available to OSHA" (Ex. 77); the United Steelworkers (USW) made a similar comment (Ex. 86). Letitia Davis commented that "[c]ase reporting of health events is a well-established approach to public health surveillance and intervention. Serious occupational injuries are urgent sentinel health events indicating that prevention efforts have failed and that intervention to remediate hazards may be warranted" (Ex. 84). United Support and Memorial for Workplace Fatalities (USMWF) commented that "OSHA needs to be informed about every work-related hospitalization to decide whether other workers are at-risk" (Ex. 93).

OSHA agrees with the commenters who stated that the in-patient hospitalization of an employee after a work-related incident is a serious and significant event. The hospitalization indicates that serious hazards may exist in the workplace and that an intervention to abate these hazards and prevent further injury or illness may be warranted. OSHA will develop internal guidance for determining which incidents to inspect and which to handle using other interventions. Even when OSHA determines that an inspection is not warranted, OSHA will

follow up with the employer about the hospitalization event. OSHA may follow up via email, phone, or fax, with regular reminders and deadlines.

In addition, employers' reports the event help OSHA gather information about serious workplaces injuries and illnesses to help focus agency resources and assess the adequacy of its safety and health standards. For example, the reports on amputations will provide the Agency with information it currently does not have to further focus the scope of its Amputation NEP and to evaluate any deficiencies of its machine guarding standards. As a result, like the proposed rule, Section 1904.39(a)(2) of the final rule requires employers to report the work-related in-patient hospitalization of one or more employees.

There were also many comments about the definition of an in-patient hospitalization. The preamble to the proposed rule explained that, for OSHA recordkeeping purposes, an in-patient hospitalization occurs when a person is “formally admitted” to a hospital or clinic for at least one overnight stay. Some commenters recommended excluding hospitalization for observation or diagnostic testing only from the reporting requirement for in-patient hospitalization (Ex. 15, 38). They also asked OSHA to clarify the meanings of “formal admission” and “overnight stay” (Ex. 17, 38, 51, 76, 79, 100, 103, 115, 120). In addition, some commenters recommended excluding scheduled hospitalization admissions for the treatment of chronic conditions (for a discussion of this issue, see Question 6).

In response to these comments, the final rule includes both a definition of in-patient hospitalization and a clarification about hospitalization for observation and diagnostic testing. Sections 1904.39(b)(9) and (b)(10) of the final rule state:

§1904.39(b)(9): How does OSHA define "in-patient hospitalization"? OSHA defines in-patient hospitalization as a formal admission to the in-patient service of a hospital or clinic for care or treatment.

§1904.39 (b)(10) Do I have to report an in-patient hospitalization that involves only observation or diagnostic testing? No, you do not have to report an in-patient hospitalization that involves only observation or diagnostic testing. You must only report to OSHA each in-patient hospitalization that involves care or treatment.

There were also comments about the complications that might result from a requirement to report the in-patient hospitalizations of fewer than three employees. For example, the American Iron and Steel Institute commented that the "requirement to make notification of an isolated case within 8 hours, particularly for these ambiguous cases, will be burdensome to both the employer and OSHA" (Ex. 108); the International Association of Drilling Contractors (IADC) and Stericycle made similar comments (Exs. 39, 82). The HDMA commented that the "vast majority of states do not have this type of requirement, and it would be a significant shift in policy for them to adopt it" (Ex. 55). Verizon commented that the requirement will result in over-reporting of non-work-related hospital admissions by compliant employers, "caus[ing] these employers to incur unnecessary costs and burdens associated with over-reporting" (Ex 78); similarly, Ingalls Shipbuilding warned of the risk that "the data may disproportionately 'point the finger' toward major manufacturers who aggressively implement programs to control safety and health hazards while leading OSHA to bypass smaller entities who demonstrate 'plain indifference to employee safety and health'" (Ex. 103). The Pacific Maritime Association commented that employers may not be able to acquire the necessary information in time: "Has OSHA ever tried to contact a hospital to gather information on an employee?...The reply that we

often receive is that we cannot provide you with any information due to privacy concerns. Despite being entitled to know if an employee has been 'admitted' to the hospital, this does not always occur" (Ex. 100); Stericycle and the RILA made similar comments (Exs. 82, 102).

Other commenters, however, pointed out that requirements similar to the proposed rule already exist, without causing undue burdens or complications. The State of Kentucky commented that their "regulation has served the employers and employees very effectively. The Kentucky OSH program believes its requirements support the prevention of additional injuries or illnesses, effectively direct OSH Program resources, and reduce the state's occupational injury and illness rates. Experience has established that Kentucky's requirements do not exert an increase in the burden of regulatory compliance" (Ex. 52). The AFL-CIO commented that the "existence of similar reporting requirements in state-administered occupational safety and health plans in Alaska, California and Washington demonstrates that the proposed change is feasible to comply with and to administer" (Ex. 59). The UAW made a similar comment, adding that Oregon also requires reporting of hospitalizations of one or two employees, within 24 hours (Ex. 77). The Occupational Health Section of the American Public Health Association (APHA) commented that "[i]n an era of electronic recordkeeping, which in the occupational health arena includes workers compensation reports to and from insurers as well as BLS/OSHA logs, it should be a minor cost to enable broad and prompt reporting across a range of industries" (Ex. 62). Worksafe commented that their experience with reporting requirements in California, as well as "that of other states with similar requirements (as well as those of other countries) is one indication of how feasible they are to implement" (Ex. 112).

OSHA finds that many employers are already subject to the requirement to report in-patient hospitalizations of fewer than three employees. Alaska, California, Kentucky, Oregon,

Utah, and Washington currently require reporting of single in-patient hospitalizations. According to 2009 data from County Business Patterns at the U.S. Census Bureau, these states accounted for over 1.3 million establishments (18 percent of the national total) and 19.4 million paid employees (17 percent of the national total). One of these states, Kentucky, specifically commented that "[e]xperience has established that Kentucky's requirements do not exert an increase in the burden of regulatory compliance" (Ex. 52).

OSHA therefore concludes that the requirement to report in-patient hospitalizations of fewer than three employees is feasible and practicable and will not impose an undue burden on employers.

In addition, as explained elsewhere in this document, today's final rule at Section 1904.39(a)(2) requires employers to report all work-related in-patient hospitalizations to OSHA within 24 hours, rather than within 8 hours, as in the proposed rule. This change gives employers more time to determine whether the employee has been formally admitted for in-patient hospitalization and whether the hospitalization results from a work-related event.

Today's final rule requires employers to report to OSHA, within 24 hours, all work-related in-patient hospitalizations within 24 hours of the incident (§1904.39(a)(2) and (b)(6)).

2. Non-hospitalization injuries, illnesses, or conditions for required reporting

In the preamble to the proposed rule, OSHA asked: "Are there any injuries, illnesses, or conditions that should be reported to OSHA and are not included among in-patient hospitalizations?"

The UAW commented that Legionnaires' disease and hypersensitivity pneumonia "are potentially indicative of serious and correctible hazards in the workplace and should be reported

to OSHA upon physician diagnosis regardless of whether or not they result in inpatient hospitalization" (Ex. 77).

OSHA does not agree that the final rule should include a specific requirement for employers to report work-related cases of Legionnaires' disease and hypersensitivity pneumonitis. The work relationship of Legionnaires' is generally established by a cluster of cases. When clusters do occur, they are reported to state and local public health departments, which conduct investigations of the problem. Severe cases of work-related Legionnaires' disease would result in hospital admission and therefore would trigger the reporting requirement in Section 1904.39.

OSHA believes a specific diagnosis of hypersensitivity pneumonitis does not necessarily indicate work-relatedness or an emergency situation that requires immediate OSHA intervention. Clusters of this condition (captured on the OSHA Log) would indicate intervention is needed, but a single reported case would be considered a sentinel health event. Again, it should be noted that a severe work-related case would likely result in in-patient hospitalization and therefore would trigger the reporting requirement.

3. Non-hospitalization amputations for required reporting

In the preamble to the proposed rule, OSHA asked: "Should amputations that do not result in in-patient hospitalizations be reported to OSHA?"

Some commenters stated that OSHA should not require employers to report amputations that do not involve in-patient hospitalization. The Printing Industries of America (PIA) commented that "it is not known what sort of amputation could be experienced without an in-patient hospitalization. However, if such an amputation would occur and did not require an in-patient hospitalization it would be reasonable to assume that such an incident was not severe

enough to require hospitalization and therefore should not be subject to a reporting requirement" (Ex. 45). The IADC commented that "this only adds burdensome reporting for the employer. It is confusing and will result in employers spending valuable early incident investigation time attempting to determine the reportability of an incident" (Ex 39). The American Chemistry Council commented that "OSHA could avoid ambiguity by eliminating independent reporting of amputations (i.e., separate from in-patient hospitalizations), as severe amputations would be captured in in-patient hospitalization statistics" (Ex. 76). Ameren commented that "[c]ases of amputation…that do not result in hospitalization of the employee would not likely warrant OSHA's examination" (Ex 72). The National Petrochemical and Refiners Association (NPRA) commented that "…reporting all work-related amputations is redundant if the requirement for reporting all hospitalizations is adopted. It is not likely that an amputation would occur that would not result in a hospitalization and if it didn't, it would not be a serious enough injury to warrant a follow-up by OSHA" (Ex. 80). The National Grain and Feed Association (NGFA) commented that '…minor incidents that do not require hospitalization – including loss of the fingertip to the bone – should not be [reportable]. However, we do agree that significant incidents such as loss of a limb, which would require hospitalization, should be reportable" (Ex. 96). The RILA recommended requiring the reporting only of amputations "necessitating in-patient hospital treatment" and not of "incidents in which the injury necessitates minor treatment in an emergency room or out-patient facility" (Ex. 102).

Other commenters, however, supported the requirement to report all amputations, regardless of whether they resulted in in-patient hospitalizations. Most of these commenters provided data showing the prevalence and significance of amputations that did not involve in-patient hospitalization.

NIOSH commented that "[o]f the 2.6 million [emergency department (ED)] visits for work-related injuries and illnesses in 2009 [in the NIOSH-NEISS-Work dataset], approximately 15,000 workers were diagnosed as having sustained an amputation (includes injuries with bone loss, possibly without bone loss, severe avulsions, and near amputations). Of these, 78% were treated and released while 22% were admitted to the hospital or transferred to another facility." NIOSH continued, "…given that over ¾ of ED treated work-related injuries and illnesses were treated and released, collecting the less severe injuries that are simply treated and released may identify areas that need further investigation." NIOSH recommended that employers be required to report all amputations to OSHA (Ex. 66).

The UAW commented that "[n]inety six percent of amputations involve a finger. These amputations may have a permanently disabling impact on their victims' lives, but may, in some cases be treated by outpatient surgery and not lead to inpatient hospitalization. They should nevertheless be reported to OSHA" (Ex. 77). The United Food and Commercial Workers International Union (UFCW) made a similar comment (Ex. 81).

Finally, Letitia Davis cited data collected by the Massachusetts Department of Public Health (MDPH) showing that "there were 696 work-related amputations treated in Massachusetts hospitals during 2007-2008, an average of 348 amputations per year. The majority of these cases were treated in the emergency department only (N=501; 71%); a small number (N=28; 4%) were first treated in emergency departments and hospitalized at a later date; 22% (N=156) were first treated as inpatients. These findings suggest that restricting reporting to amputations treated only an inpatient basis would substantially reduce number of cases identified and miss important opportunities for intervention" (Ex. 84).

OSHA finds that amputations are significant workplace injuries and that the data show that the majority of amputations do not involve in-patient hospitalizations. As a result, like the proposed rule, the final rule will require employers to report all amputations to OSHA, whether or not they involve in-patient hospitalization (see §1904.39(a)(2)). (Note that, for amputations involving in-patient hospitalization, employers will only have to make a single report.)

4. Required reporting of amputations

In the preamble to the proposed rule, OSHA asked: "Should OSHA require the reporting of all amputations?"

Commenters responding to this question primarily focused on two main topics:

1. The seriousness and significance of amputations.
2. The definition of amputations.

On the topic of the seriousness and significance of amputations, many commenters opposed the requirement in the proposed rule to report all amputations. Spurlock and Higgins commented that "the mere occurrence of an amputation can often be attributed to numerous hazards for which OSHA has no standard, or there are few, practical hazard controls at an employer's disposal" (Ex. 24); Safety Compliance Services made a similar comment (Ex. 29). The IADC commented that "[r]eporting amputations, such as the tip of a finger, is overly burdensome and again offers little value in protecting workers from occupational hazards" (Ex. 39). The PIA commented that "in most cases, especially in the printing industry, singular cases [of amputations] are not associated with a significant event or a high gravity situation" (Ex. 45). The American Society of Safety Engineers (ASSE) commented that "[w]hile not underestimating the serious nature of any amputation, it must be noted that an amputation of a part of a finger may, in the reasonable person's mind, is not as serious or traumatic an event as the amputation of

an arm, hand, leg or foot. Further, other injuries like multiple broken bones, crushed vertebra, head injuries can be more serious and life-altering than an amputation. From that viewpoint, singling out amputations makes little sense other than the perception that they are more easily recordable. However, even that is questioned by our members" (Ex. 46); Newport News Shipbuilding made a similar comment (Ex. 125). The American Foundry Society commented that the reporting requirement should be limited to amputations involving at least one joint (Ex. 101). NUCA commented that "[w]ith respect to all amputations as severe injuries,…amputations…do not amount to a fatality or catastrophic event" (Ex. 110).

In addition, the American Chemistry Council commented that rulemaking on the reporting of amputations be postponed "[u]ntil a holistic evaluation of [the National Emphasis Program (NEP) on amputations and the Severe Violator Enforcement Program (SVEP)] is conducted" (Ex. 76). Similarly, the Associated General Contractors of America (AGC) commented that the reporting requirement for amputations is "unnecessary" because "[o]ver the past five years since the effective date of the [amputations NEP] the agency has had an opportunity to collect the necessary data to enforce and evaluate the effectiveness of existing standards" (Ex. 115).

However, many other commenters supported the requirement in the proposed rule to report all work-related amputations (Exs. 34, 112). The Phylmar Regulatory Roundtable (PRR) commented that "an amputation as defined in the proposal [to include loss of bone] indicates a serious traumatic injury and is thus properly included under the reporting regulation" (Ex. 38). NIOSH commented, "Given the high probability that most amputations require some form of medical care through hospitals or emergency departments, OSHA should require the reporting of all amputation cases" (Ex. 66). NCOSH commented that "[a]mputations are serious injuries with

permanent consequences; thus, it is important all of these cases be reported to OSHA" (Ex. 75). The USW commented that "[l]essons can be learned from this amputation while the events leading up to the incident are clear to the witnesses. Amputees don't just happen, there were unsafe condition(s), change in procedure, equipment or a number of other factors. This person's life is changed forever" (Ex. 86).

The AFL-CIO referred to BLS data to support their statement that an "amputation is a serious, severe, and significant event that can result in some permanent impairment." According to BLS data from 2009, the median number of days away from work (DAFW) for an amputation was 21 days, compared to a median of 8 days for all work-related injuries and illnesses. The AFL-CIO added that the number of amputations involving days away from work was 5,930, representing 0.6% of all DAFW injuries/illnesses. The AFL-CIO commented that the proportion of amputations among total injuries/illnesses is "similar to, or less than, 0.6% reported for injuries involving [DAFW] (given that most amputations are likely to involve some number of [days away from work]" and concluded that "[t]hus, it's evident to us that, given the numbers of amputations that occur annually in the U.S., reporting all amputations to OSHA would pose nothing more than a minimal burden on employers" (Ex. 69). In addition, the AFL-CIO stated that "California and Kentucky already require the reporting of amputations as part of their state-administered plans, proving that such a requirement is feasible" (Ex. 59); the UAW made a similar comment (Ex. 77).

Finally, Letitia Davis's comments also included data on amputations, specifically the results of the referral of work-related amputations to OSHA in Massachusetts (Ex. 84). "In July 2010, the Massachusetts Public Health Department initiated a protocol referring work-related amputations with logically consistent body part codes to OSHA for follow-up. In 2010, 22

private employers were referred to one of three OSHA area offices. The 22 referrals resulted in 13 on-site inspections and additional phone/fax initiatives. Among the 13 inspections, OSHA had already been notified about two of the injuries (from city police or fire departments that responded to the site) and had already initiated inspections at the time of the referrals. Nine of the referrals leading to onsite inspections resulted in citations, indicating shortcomings or failures of occupational health and safety programming. These included citations related to lockout/tagout, lack of machine guarding, failure to conduct a hazard assessment and the general duty clause…Notably amputations were verified in nine of the 13 onsite investigations. Four were found to be other injuries. Even when amputations did not occur, OSHA found hazardous conditions that were associated with other serious injuries. These findings indicate that OSHA investigations prompted by case reports of amputations are productive, and well-targeted, leading to identification of serious workplace hazards and concrete steps to eliminate hazards that cause or contribute to injuries. They suggest that direct reporting of amputations to OSHA by employers would be an effective means of targeting limited enforcement resources to high priority problems."

Although these results are limited to the experience of OSHA's area offices in Massachusetts, OSHA believes it is reasonable to expect comparable findings and results in its other area offices across the country. OSHA area offices operate using standardized procedures. Reviews of OSHA inspection data have shown that inspections conducted by area offices under national programs routinely have similar results across the country.

OSHA agrees with commenters who stated that amputations are serious events. OSHA refers to BLS data showing that in 2010, half of fingertip amputations involved 18 or more days away from work. OSHA finds that all amputations are severe and significant workplace injuries,

including amputations of fingertips and fingers as well as amputations of large body parts, such as hands, arms, and feet, and that reports of amputations to OSHA can be an effective way of targeting workplace hazards. In addition, the requirement to report work-related amputations will help OSHA determine the causes of these injuries and develop enforcement strategies and guidance to help prevent them.

In addition, OSHA notes the existing California and Kentucky state requirements to report work-related amputations, which are similar to the requirements under this final rule, show that such requirements are feasible.

Finally, OSHA believes that comments such as those by Spurlock and Higgins (Ex. 24), saying that amputations can often be attributed to numerous hazards for which OSHA has no standard, or there are few, practical hazard controls at an employer's disposal, actually support OSHA's decision to require the reporting of work-related amputations. Section 5(a)(1) of the OSH Act requires employers to "…furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." Section 5(a)(1) does not make exceptions for hazards for which OSHA has no standards or employers have few practical controls. In addition, reports of amputations will provide OSHA with data to identify hazards and support the development of further standards and practical controls. Thus, employer reports of amputations, and OSHA intervention in workplaces where amputations occurred, are both critical for complying with Section 5(a)(1) of the OSH Act and preventing further serious injury or death.

The final rule requires employers to report to OSHA, within 24 hours, all amputations that result from a work-related incident within 24 hours of the incident (see §1904.39(a)(2) and (b)(6)).

On the topic of the definition of an amputation, there were comments on the definition in the proposed rule, as well as requests for clarification. The proposed rule defined amputations according to the 2007 release of the OIICS Manual published by BLS, as follows: "An amputation is the traumatic loss of a limb or other external body part, including a fingertip. In order for an injury to be classified as an amputation, bone must be lost. Amputations include loss of a body part due to a traumatic incident, a gunshot wound, and medical amputations due to irreparable traumatic injuries. Amputations exclude traumatic injuries without bone loss and exclude enucleation (eye removal)."

Nonetheless, several commenters requested a definition of "amputation" (Ex. 14, 17, 60, 101, 108).

There were also comments about both the wording of the definition and the implementation of the definition. Colony Tire Corporation asked about reporting a finger that had been amputated, reattached, and then later removed (Ex. 35). Dow Chemical Company commented that "[t]he proposed wording of Section 1904.39(b)(8) defines 'amputation' in a manner that is extremely unclear" (Ex. 64). The American Chemistry Council recommended that OSHA use the definition of amputations in the 2010 release of the OIICS Manual "and clarify whether avulsions are included, to avoid ambiguity" (Ex. 76). IPC-Association Connecting Electronics Industries (IPC) "encourage[d] OSHA to amend the Field Operations Manual (FOM) to include the definition" in the proposed rule (Ex. 47), and Kentucky "recommend[ed] and respectfully request[ed] that OSHA include a definition of amputation in 29 CFR 1904.46", the definitions subpart of Part 1904 (Ex. 52).

Finally, there were comments about whether the definition of "amputation" should require bone loss. The American Trucking Associations (ATA) commented that "the definition

of an ‘amputation’ should require ‘loss of bone’ (Ex. 65); NPRA made a similar comment (Ex. 80). However, both David Bonauto M.D. M.P.H. (Ex. 56) and Letitia Davis Sc.D. Ed.M.(Ex. 84) provided data to support their comments that the definition of amputations should not require loss of bone because of the difficulties of identifying bone loss.

David Bonauto's data (Ex. 56) consisted of 3,000 claims with suspected amputation injuries in the Washington state fund workers compensation claims data for the period 2006-2008; medical record review validated 1,885 of these claims as amputations. Bonauto is the occupational medicine physician and interim research director with the Safety and Health Research Assessment Program in the Washington State Department of Labor and Industries. He commented that “…about 90% had loss of the protruding body part from the injury. We could determine bone loss in nearly 3 of 4 cases; however, this could only be done retrospectively based on review of the medical records. Determination of the injury resulting in bone loss could not be done based on the initial report of injury. Most lower extremity amputations resulted from surgical treatment of the injury (e.g., surgical removal of a crushed foot) which often occurred after the initial injury event. More than two thirds of the injuries resulting in the loss of a protruding body part were not characterized as an ‘amputation’ on the initial report of accident by the health care provider. These cases were often characterized as contusions, lacerations, and fractures but ultimately resulted in the loss of a protruding body part…From these data, the proposed rule might benefit by defining amputations as ‘any injury resulting in the temporary or permanent loss of a protruding body part’. Due to the poor initial documentation of the injury, a requirement for bone loss in reports will lead to significant underreporting.”

Similarly, Letitia Davis’s comments were based on amputation data collected by the Massachusetts Department of Public Health, with 696 work-related amputations treated in

Massachusetts hospitals in 2007-2008 (Ex. 84). She commented that "[s]some amputations by definition include bone loss, e.g. amputation of finger, foot, hand, but if only the tip of a finger or toe is amputated, involvement of bone loss at time of injury is not necessarily apparent and involves determination by clinical review. Even upon clinical review, bone loss can be ambiguous. In our experience reviewing amputation cases reported by employers on OSHA logs and in workers' compensation claim reports for amputations, bone loss is most often not specified. Thus we advise against bone loss as a criterion for reporting or at least specifying that cases with uncertain bone loss should be reported."

After careful consideration, OSHA finds that using the definition of amputation in the 2010 release (OIICS Version 2.0) of the BLS OIICS Manual will provide the greatest possible clarity and consistency. This change from the proposed rule responds to commenters who recommended that OSHA use the 2010 release of the OIICS manual, as well as to commenters who recommended that the definition not include bone loss. Thus, Section 1904.39(b)(11) of today's final rule defines amputations as: "An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. Amputations do not include avulsions, enucleations, deglovings, scalpings, severed ears, or broken or chipped teeth."

5. Required reporting of enucleations

In the preamble to the proposed rule, OSHA asked: "Should OSHA require the reporting of enucleations?"

Several commenters responded that OSHA should not specifically require the reporting of enucleations (i.e., losses of an eye). The PRR commented that an enucleation "indicates a severe and traumatic injury has occurred to the employee" but that "[t]here is some question whether a severe injury leading to an enucleation would ever not fit under the definition of in-patient hospitalization…and thus it may be unnecessary to explicitly include this procedure" (Ex. 38). The PIA commented that "[PIA] does not feel that the reporting of enucleations would be appropriate…as the cause and circumstances surrounding these types of incidents are vast and may or may not be work related and in most cases within the printing industry would not be the result of a work related" event (Ex. 45). Ameren commented that "Cases of…enucleation that do not result in hospitalization of the employee would not likely warrant OSHA's examination" (Ex. 72).

Other commenters responded that OSHA should specifically require the reporting of enucleations. NIOSH commented that "[a]lthough enucleations of the eye are an infrequent occurrence, reporting would serve as a sentinel event for identifying workplaces at risk for other preventable injuries including intraocular foreign bodies, penetrating eye injuries, and other eye injuries where eye protective equipment may not be used" (Ex. 66). The AFL-CIO commented that "the loss of an eye is an extremely serious injury that can have significant impact on a worker and leave him or her with a substantial impairment…[T]o the extent that an enucleation event does not result in an in-patient hospitalization, we believe OSHA should require employers to report all work-related enucleations to ensure that every enucleation incident is captured" (Ex. 69). The Building and Construction Trades Department (BTCD) of the AFL-CIO (Ex. 59), the UAW (Ex. 77), and the USW (Ex. 86) made similar comments, as did the TWU, which added that "adding enucleations to the events requiring report would likely not result in greater burden

to employers since one would anticipate most of these injuries to require, and be accounted for by requirements related to, in-patient hospitalizations" (Ex. 74).

OSHA finds that the loss of an eye is a severe and significant injury and that a requirement to report such injuries, irrespective of in-patient hospitalization, can help identify workplaces where serious eye hazards are present. Based on comments submitted to the proposed rule, Section 1904.39(a)(2) of today's rule includes a new requirement for employers to report, within 24 hours, all losses of an eye resulting from a work-related incident. Section 1904.39(b)(6) provides that this reporting requirement applies only when the loss of the eye occurs within 24 hours of the work-related incident.

6. Number of work-related incidents involving in-patient hospitalizations, including more than 30 days afterwards

In the preamble to the proposed rule, OSHA asked: "Are there additional data or estimates available regarding the number of work-related incidents involving in-patient hospitalizations? Is there information available on how many work-related hospitalizations occur more than 30 days after the report of an injury or illness?"

Comments on this question addressed three main topics.

1. Work-related incidents involving in-patient hospitalization.
2. Hospitalizations occurring more than 30 days after the report of the injury/illness.
3. Amputations occurring more than 30 days after a work-related incident.

The third issue arises from the requirement in Section 1904.39(b)(6) of the proposed rule for requiring employers to report amputations that occurred up to 30 days after the work-related incident.

On work-related incidents involving in-patient hospitalizations, commenters provided comments, as well as data and suggestions for data sources.

The U.S. Chamber of Commerce commented that even within a thirty-day limit, "the employee may be hospitalized after he or she is no longer employed by the employer which would significantly complicate an employer's ability to know about the hospitalization" (Ex. 120).

Stericycle commented that "[r]ather than use data from OSHA logs or Workers Compensation data to estimate single hospitalization reports, OSHA should have collected data from emergency responders to determine how many emergency calls were to the workplace" (Ex. 82).

NIOSH provided data on the patients with occupational injuries or illnesses who were seen in the ED (Ex.. 66): "The NIOSH NEISS-Work data provide national estimates of the number of patients treated in an ED and released, treated and transferred, treated and admitted, held for observation, and an estimate of patients that left without being seen or left against medical advice…For 2009, it is estimated that approximately 81,500 (3%) patients with occupational injuries or illnesses seen in the ED were either admitted or transferred and another 5,600 (0.2%) were held for observation. It is not known if those held for observation were admitted or released. These data do not include the length of time that passed between the injury or onset of illness and ED treatment."

Letitia Davis provided data on work-related in-patient hospitalizations in Massachusetts in FY 2008 (Ex. 84): "There were 3,448 work-related hospitalizations in Massachusetts during October 2007-September 2008. The largest number was for injuries and poisonings (N=1595; 46%) followed by musculoskeletal disorders (N=1184; 34%). Information about time between

workplace incident and hospitalization was not available but information about admission type is informative. Notably, 59% of work-related hospitalizations were for emergent or urgent care; 1,337 (39%) were for elective procedures, most of which (N-935; 70%) were for musculoskeletal disorders."

On work-related hospitalizations occurring more than 30 days after the report of an injury or illness, David Bonauto provided data on 9,262 claims to the Washington State Fund workers compensation program that resulted in in-patient hospitalization from 2006-2008 (Ex. 56). He commented, "Of these hospitalizations, 36% occurred within one day following the occupational injury or illness event and nearly 50% occurred greater than 31 days following the occupational injury or illness. When differentiating the type of injury or illness using the primary ICD-9 code on the hospital bill, nearly 90% of all inpatient hospitalizations occurring within one day of the injury or illness event were billed with an injury or poisoning diagnosis as opposed to a disease diagnosis. Conversely, nearly 93% of all hospitalizations occurring 31 days after the injury or illness event had a disease diagnosis listed as the primary diagnosis on the bill."

In addition, there were comments about the proposed requirement to report in-patient hospitalizations occurring within 30 days of the incident. The Marshfield Clinic commented that '[t]he proposed changes also give a 30 day period where hospitalization needs to be reported. Since some surgeries require inpatient hospitalization; this will require that surgeries be reported that…are not related to an acute work injury. It would not appear that OSHA is interested in getting notified of every employee that may be hospitalized due to a need for a routine surgery that may be related to a work injury" (Ex. 15). The American Chemistry Council commented that the reporting requirement for in-patient hospitalization should "exclude hospitalization for chronic cases (such as carpal tunnel)" if "OSHA's intent is to obtain information about acute

injuries resulting from serious, incident-specific hazards"; in addition, the final rule "should clarify how in-patient hospitalizations for treatment of acute injuries for which rehabilitation was unsuccessful (for example, a tendon injury in the hand or knee that ultimately requires surgery to repair, or back injuries that require later surgery) will be reported" (Ex. 76). Stericycle commented that "[the 30-day] timeframe may be too long as with strains and sprains, 2-4 weeks of physical therapy or other conservative treatment may be administered before an injured worker may determine surgery is the best option. Then if surgery and hospitalization occurs within the 30 days, the reporting requirement is triggered…After 30 days, OSHA's quick response may be too late and the employer may have already abated the hazard" (Ex. 82).

On the other hand, the UAW commented that "[s]everal states, including Alaska, Oregon, and Washington have established a 30 day reporting period" (Ex. 77).

For the third issue, related to the requirement in the proposed rule for reporting amputations occurring up to 30 days after the work-related incident, the PIA commented that "if amputations are to be included as a reporting requirement, a reasonable scope should only require reporting if the amputation occurs at the time of the incident or at most, at the initial diagnosis of the attending medical provider" (Ex. 45).

Both David Bonauto (Ex. 56) and Letitia Davis (Ex. 84) provided data on this issue. David Bonauto provided data on 1,885 validated amputations among Washington State Fund workers compensation claims with medical record review in 2006-2008 (Ex. 56). He found that 89% of amputations occurred at the time of injury, while 11% of the amputations resulted from surgery after the injury (including on the same day). However, while 92% of the 1,796 amputations to upper extremities occurred at the time of injury, only 38% of the 91 amputations of lower extremities occurred at the time of injury. He commented that "specific provisions

requiring reporting of late amputations will more effectively capture lower extremity amputations."

Letitia Davis provided data on work-related amputations treated in Massachusetts hospitals in 2007-2008 (Ex. 84). She commented that "the great majority (92%) of work-related amputations involving hospital treatment were treated within one day of injury incident. Only 4.1% were treated more than 30 days after the injury incident. Again, OSHA might consider limiting reporting to amputations that occur within 24 hours of the precipitating incidents. These data suggest that in doing so, they would capture the great majority of the cases."

OSHA finds that limiting the reporting requirement to the hospitalizations, amputations, and losses of an eye most likely to require urgent or emergent care best serves OSHA's purposes of surveillance and appropriate timely investigations of these events, while limiting the burden on employers. The final rule requires employers to report work-related in-patient hospitalizations, amputations, and losses of an eye only if the event occurs within twenty-four hours of the work-related incident (see §1904.39(b)(6)).

7. Non-telephone methods of reporting (e-mail, fax, or Web-based system)

In the preamble to the proposed rule, OSHA asked: "Should OSHA allow reports to be made by means other than a telephone, such as by e-mail, fax, or a Web-based system?"

Many commenters supported additional options for reporting. For example, the Marshfield Clinic supported "[a] system that allows computer notification (either e-mail or on-line)" (Ex. 15). Safety Compliance Services commented that "OSHA should allow for computerized reporting of incidents. However this capability needs to be standardized so that systems can report the information directly without requiring additional work or effort on the part of those reporting" (Ex. 29). Justin Barnes supported "means such as email, fax, and a web-

based system" (Ex. 34). The PIA commented that "OSHA should allow and make considerations of all means available with today's technology including telephone, text, e-mail, fax, or through a web-based system" (Ex. 45). The HDMA supported "alternative methods of reporting, such email, fax or Internet" (Ex. 55). Gruber Horst Johansen Hail Shank commented that "it would be a great idea for OSHA to add the ability to report fatalities and applicable incidents through their web site. Any system should include a verification and e-mail confirmation of the report for employers to save and/or print out, so that they can demonstrate compliance. Development of smartphone apps by OSHA…would also assist employers to quickly report fatalities and applicable incidents" (Ex. 60). The ATA commented that "employers need flexibility in the method of reporting (i.e., phone calls, emails, faxes, and web based systems)" (Ex. 65). NIOSH recommended that OSHA "allow reports to be made by means other than telephone, such as by e-mail, fax, or a web-based system" (Ex. 66). Ameren commented that "a web-based system would allow employers to report while at the same time give OSHA an opportunity to capture data for automatic analysis and trending" (Ex. 72). The American Chemistry Council commented that "a mobile application, web or e-mail based reporting system would be appropriate, including the application of formal controls to prevent false reporting" (Ex. 76). The UAW commented that "OSHA should permit reporting by any communication method that exists now or may exist in the future, provided that the content of the report meets all existing OSHA requirements" (Ex. 77). Verizon supported "the addition of electronic means as an option for serious incident notification to OSHA, including e-mail, facsimile and web-based reporting tools" (Ex. 78). NPRA recommended "electronic reporting in addition to phone, fax, and email" (Ex. 80). Letitia Davis commented that "OSHA should allow employers to report by means other than a telephone as long as confidentially of personal identifiable health information can be maintained,

e.g. by confidential fax or secure electronic transmission" (Ex. 84). The Pacific Maritime Association commented that "[i]n addition to the 800 number, an email, website reporting tool or similar application would create a time stamped record that both the employer and OSHA could find of use" (Ex. 100). The RILA suggested that "employers should be allowed flexibility to report whether it is via phone, email or fax" (Ex. 102). Ingalls Shipbuilding "urge[d] OSHA to expand reporting options to permit electronic transmissions, including fax, e-mail or a web-based system" (Ex. 103); Newport News Shipbuilding made a similar comment (Ex. 125). The U.S. Chamber of Commerce commented that "OSHA should allow for reporting via email, interactive web site, texting and faxing to provide maximum flexibility for employers and give them a record they can use to demonstrate compliance" (Ex. 120).

On the other hand, a few commenters opposed additional options for reporting. The AFL-CIO commented that "the current requirement that permits reporting…only by reporting the incident via a telephone or in person should be retained in the final rule…We have concerns that passive approaches such as email, fax or a Web-based system, as opposed to an active oral reporting requirement, would not assure the agency that all of the required information is obtained from an employer and thus would result in incomplete reports" (Ex. 69). The USW "strongly urge[d] OSHA to maintain the requirement that a phone call is necessary to that the information is reported as soon as possible to OSHA" (Ex. 86). USMWF commented that, for hospitalizations for acute, traumatic injuries and illnesses, "notifications should be made by telephone to ensure that OSHA receives all the key pieces of information regarding the incident" (Ex. 93).

OSHA agrees with the comments supporting additional options for reporting. However, OSHA also agrees with the comments on the importance of obtaining all of the required

information from the employer. Therefore, Section 1904.39(a(3) of today's final rule provides flexibility by allowing employers to choose among three options for reporting a work-related fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA.

First, as in the current regulation, an employer may report by telephone or in person to the OSHA Area Office that is nearest to the site of the incident.

Second, as in the current regulation, an employer may report by telephone to the OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).

Third, as a new option, an employer may report by electronic submission using a fatality/injury/illness reporting application that will be located on OSHA's public website at www.osha.gov. The reporting application will include mandatory fields for the required information. If the report does not include the required information in the mandatory fields, the reporting application will not accept the report. The mandatory fields, as specified in Section 1904.39(b)(2), are the establishment name; the location of the work-related incident; the time of the work-related incident; the type of reportable event (i.e., fatality, in-patient hospitalization, amputation, or loss of an eye); the number of injured employees; the names of the injured employees; the employer's contact person and his or her phone number; and a brief description of the work-related incident. The public will be given the opportunity to comment on this new electronic submission option through the Paperwork Reduction Act (PRA) approval process when OSHA applies to reauthorize the information collection.

Section 1904.39(b)(1) makes clear that if the Area Office is closed, the employer must report the work-related event by using either the OSHA toll-free central telephone number or the reporting application on OSHA's public website.

The final rule does not include options for reporting by e-mail, fax, or text, because OSHA would not be able to ensure that employers who reported using these options provided all of the required information.

8. Time periods for required reporting

In the NPRM, OSHA asked: "Are the reporting times of eight hours for fatalities, eight hours for in-patient hospitalizations, and 24 hours for amputations generally appropriate time periods for requiring reporting? What advantages or disadvantages would be associated with these or any alternative time periods?"

Comments primarily focused on four topics:.

1. The circumstances under which OSHA would consider that the employer knew, or should have known, about the reportable event;
2. When the reporting clock would start – with the occurrence of the work-related incident, or with the occurrence of the reportable event;
3. The appropriate reporting time period for in-patient hospitalizations;
4. The appropriate reporting time period for other events employers would be required to report.

For the circumstances under which OSHA would consider that the employer knew, or should have known, about the reportable event, Section 1904.39(b)(7) of the proposed rule provided that if employers did not learn about a fatality, in-patient hospitalization, or amputation right away, they would have been required to report it within the specified time period after the fatality, in-patient hospitalization, or amputation was reported to "[the employer] or to any of [the employer's] agent(s) or employee(s)". Commenters on this topic had two concerns. First,

that OSHA might require employers to report events they did not know about. Second, that OSHA might unfairly penalize employers for not reporting events they did not know about.

Related to an employer being required to report an event the employer did not know about, Morganite Industries commented that "[i]t is not clear that an appropriate member of management would have the information, allowing the required reporting to OSHA, just because any individual employee has that information. For example, the injured employee himself might know that he has been hospitalized, but his knowing it does not mean that anyone with authority or ability to make the report has that information" (Ex. 20). Ingalls Shipbuilding made a similar comment (Ex. 103), as did Dow Chemical (Ex. 64) and the Pacific Maritime Association (Ex. 100). Dow Chemical commented that "the 'clock' [should] start only when the incident, <u>and</u> the fact the worker was hospitalized, have been communicated to the employee's supervisor or to other employees whose responsibilities and position qualify them to recognize the reporting requirement" (Ex. 64). The Pacific Maritime Association commented in addition that "[i]njuries should be reported to a direct supervisor or management. This is the only means in which an employer can be in knowledge of the injury" (Ex. 100).

Related to an employer being penalized for not reporting an event the employer did not know about, the Joint Poultry Industry Safety and Health Council commented, "While we recognize the 8 hour provision is from the time the incident is reported to the employer, its agents or employees, we believe the interpretation of what constitutes **notice**, particularly notice to "<u>any of your agent(s) or employee(s)</u>" will simply generate another cause of litigation if OSHA chooses to cite an employer for failing to meet the 8 hour time requirement" (Ex. 61). The ATA commented that "there is no provision for the Agency to NOT impute knowledge of an injury to an employer – i.e., "should have been aware" – as in other OSHA rules. Companies

may find themselves in a position of being expected to know about an employee's private medical information or a hospitalization outside of the purview of the employer" (Ex. 65); Fed Ex made a similar comment (Ex. 67). The National Association of Manufacturers (NAM) commented, “The employer may never know of the hospitalization until days or weeks later. Would the employer be in violation for not reporting this incident to OSHA when there was no knowledge of when the hospitalization took place? Additionally, a worker could be injured on a weekend or overnight shift and the employer is not notified of the worker’s hospitalization until the next business day. Would that employer be in violation for not reporting the incident within eight hours?” (Ex. 71). The Pacific Maritime Association (Ex. 100) and the Shipbuilders Council of America (Ex. 104) made similar comments. To address this concern, Verallia suggested that the rule be amended to require notification “within [the specified time period] of the employer becoming aware” of the reportable event (Ex. 91).

OSHA acknowledges commenters’ concern about defining employer notification to include reporting to “any of [the employer’s] employee(s)”. Therefore, today’s rule removes this provision. Under Section 1904.39(b)(7) of the final rule, employers are required to report within the specified time period “after the fatality, in-patient hospitalization, amputation, or loss of an eye is reported to you or to any of your agent(s)”.

OSHA does not agree with the comments about employers being unfairly penalized for not reporting hospitalizations that they did not know about.

First, the current regulation, the proposed rule, and the final rule all have a specific provision for employers who do not know about an in-patient hospitalization or other reportable event. The current regulation states at Section 1904.39(b)(7)): “What if I don't learn about an incident right away? If you do not learn of a reportable incident at the time it occurs and the

incident would otherwise be reportable… you must make the report within eight (8) hours of the time the incident is reported to you or to any of your agent(s) or employee(s)”

The proposed rule stated, ""What if I don’t learn about an incident right away? If you do not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable...you must make the report within eight (8) hours (for a fatality or an in-patient hospitalization) or twenty-four (24) hours (for an amputation) of the time the incident is reported to you..." (proposed §1904.39(b)(7))

The final rule includes a similar provision: "(7) **What if I don’t learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye right away?** If you do not learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye at the time it takes place, you must make the report to OSHA within the following time period after the fatality, in-patient hospitalization, amputation, or loss of an eye is reported to you or to any of your agent(s): eight (8) hours for a fatality, and twenty-four (24) hours for an in-patient hospitalization, an amputation, or a loss of an eye.

" (§1904.39(b)(7)).

Second, as discussed above, employers at over 1.3 million establishments in six states are already subject to the requirement to report in-patient hospitalizations of fewer than three employees. If these employers were being penalized for not reporting events they did not know about, it seems likely that at least a few of them, or their industry organizations, would have submitted comments on this issue during this rulemaking. Instead, the only non-hypothetical comment received by OSHA on this issue came from one of these six states, which specifically commented that “[e]xperience has established that Kentucky’s requirements do not exert an increase in the burden of regulatory compliance” (Ex. 52).

OSHA therefore concludes that the requirement in the final rule to report in-patient hospitalizations will not result in an unfair penalty for employers. Under the final rule, as in the current regulation, employers are only required to report work-related events that have been reported to them or their agent(s).

For the issue in the proposed rule of whether the reporting clock would start with the occurrence of the work-related incident or with the occurrence of the reportable event (fatality, in-patient hospitalization, or amputation), the PRR, the IADC, Gruber Hurst Johansen Hail Shank, NAM, and Verizon requested clarification (Exs. 38, 39, 60, 71, and 78). To address this issue, OSHA has revised the text in Section 1904.39(a)(1) and (a)(2) of the final rule to make clear that, consistent with OSHA's current reporting regulation in Section 1904.39, the reporting clock starts with the occurrence of the reportable event. Section 1904.39(b)(7) also provides instruction on when the reporting clock starts to run in situations where the employer or the employer's agent(s) does not learn about the reportable event (fatality, in-patient hospitalization, amputation, or loss of an eye) right away.

For example, if an employee suffers a work-related injury (the work-related incident) at 9:00 am, and dies from that injury at 10:00 am, and the employer or the employer's agent(s) learn of the fatality (the reportable event) at 10:00 am, then the employer would be required to report the fatality (the reportable event) to OSHA within eight hours of the fatality (the reportable event) – i.e., 6:00 pm. Similarly, if an employee is fatally injured as the result of a work-related incident at 8:30 pm on Monday, but the employer or employer's agent(s) do not learn of the fatality (the reportable event) until 9:00 am the next day (Tuesday), then the employer would be required to report the fatality (the reportable event) to OSHA within eight hours of learning of the fatality (the reportable event) – i.e., by 5:00 pm on Tuesday. Also, if an

employee suffers a work-related injury (the work-related incident) at 11:00 am on Thursday and is hospitalized as an in-patient, as a result of that injury, at 3:00 pm, and the employer or the employer's agent(s) learn of the in-patient hospitalization for the injury at 3:00 pm, then the employer would be required to report the in-patient hospitalization (the reportable event) within 24 hours of the in-patient hospitalization (the reportable event) – i.e., by 3:00 pm on Friday.

This would also be the case if the employer needs time to determine whether a specific incident is work-related. For example, if an incident leads to an employee's death at 9:00 am on Monday, but the employer does not have enough information to make a work-relatedness determination until 11:00 am on Monday, then the employer would be required to report the fatality (the reportable event) within 8 hours of learning that the fatality was due to a work-related incident – i.e., by 7:00 pm on Monday). The final rule states, "(8) ***What if I don't learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident?*** If you do not learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident, you must make the report to OSHA within the following time period after you or any of your agent(s) learn that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident: eight (8) hours for a fatality, and twenty-four (24) hours for an in-patient hospitalization, an amputation, or a loss of an eye." (§1904.39(b)(8))

For the issue of the appropriate reporting time period for in-patient hospitalizations, OSHA received many comments that the proposed eight-hour reporting period for in-patient hospitalizations was too short. The Marshfield Clinic commented that "an employer is normally going to know immediately" about a fatality and "probably would also know" about the hospitalization of three or more employees", but that "[t]his is not necessarily the case for the

hospitalization of an individual employee" (Ex. 15). IBM commented that "[i]t would be difficult for us to be compliant with reporting any in-patient hospitalizations within eight hours, especially with the travelling employee, time zone issues, language barriers, communication issues" (Ex. 22). Apogee Enterprises commented that eight hours may not be enough time for an employer to determine work-relatedness, that an employer may not find out about the hospitalization if the employee does not go to the hospital from work, and that the privacy of medical information "can make it very difficult for the employer to find out the cause of a hospitalization, especially in the proposed timeframe" (Ex. 40). The HDMA commented that "…many circumstances will arise where…the full determination of the employee's condition has not been determined within eight hours because the employee was admitted to the hospital for a variety of reasons some of which may or may not be work-related" (Ex. 55). Ameren commented that "[t]he determination of work-relationship for a case involving a single hospitalization may not be immediately obvious and could take more than 8 hours to be resolved" (Ex. 72). Verizon commented that "[i]t is not practical to expect all employers to be able to notify OSHA within eight hours of an employee's admission into a hospital with a work-related condition", especially for employers "whose employees often work alone or with a co-worker at off-site locations and at hours other than normal business hours" (Ex. 78). The Pacific Maritime Association commented that "the employer may not have all of the necessary facts within eight hours…this is too tight a deadline and is a recipe for false or misleading information to OSHA" (Ex. 100). The American Foundry Society commented that "the proposed 8-hour time frame does not offer a realistic time frame," due to" circumstances including patient privacy and communication delays between a patient and employer or medical provider and employer" (Ex. 101). The American Supply Association commented that "the shift to an 8-hour reporting requirement…may interfere

with an employer who is also tending to the employee's injury during this time. The uncertainties placed on the employer, in particular, during a period when they are addressing employee safety is overly burdensome" (Ex. 111); the Sheet Metal and Air Conditioning Contractors National Association (SMACNA) made a similar comment (Ex. 122). The ARTBA commented that "eight hours is unrealistic as it may be difficult to quickly ascertain the root cause of the injury" (Ex. 114).

OSHA also received comments proposing alternate time periods, including 24 hours, 48 hours, 72 hours, and five days. Morganite Industries commented that "it is reasonable to expect that within 24 hours management will be made aware that an in-patient hospitalization has occurred. It is then reasonable to believe that reporting to OSHA is feasible within that same 24 hours" (Ex. 20). Whirlpool Corporation, the IADC, the HDMA, the American Chemistry Council, Verizon, the Pennsylvania Independent Oil and Gas Association (PIOGA), RILA, and Ingalls Shipbuilding made similar comments (Exs. 31, 39, 55, 76, 78, 89, 102, and 103).

NPRA recommended "that OSHA at a minimum increase the reporting time to 48 hours to allow the medical facility time to treat the injured, if necessary, determine the need for hospitalization and advise the employer" (Ex. 80). Kentucky commented that "[e]xperience has proven that the reporting of a hospitalization after eight (8) hours has passed… but before seventy-two (72) hours have elapsed, is not detrimental to ensuring that a prompt investigation is initiated, if needed, to ensure the prevention of additional injury or illness" (Ex. 52). Fed Ex similarly supported a 72-hour time period, commenting that "[s]eventy-two hours would give an employer adequate time to gather and verify the information necessary to make an accurate report to OSHA, and it is soon enough after an accident for OSHA to make a meaningful investigation" (Ex. 67).

Dow Chemical recommended that "**if** the Agency decides to require reporting of every hospitalization, the deadline for reporting should be (preferably) three business days, or (at the very tightest) the following business day after the employer learns both that there was a hospitalization, and that the injury was work-related" (Ex. 64). The Duke University Health System recommended "a reporting period of five days if OSHA is to achieve its goal of this regulation presenting only a 'relatively minor burden' for employers" (Ex. 63).

On the other hand, USMWF commented that "8 hours is far too long a time period. OSHA should change its regulation to require an employer to immediately notify federal or State OSHA of a fatality or serious incidents. The Mine Safety and Health Administration's (MSHA) regulations require employers to notify the agency of serious incidents within 15 minutes. OSHA should adopt equivalent requirements. We believe that California OSHA requires immediate reporting and Utah OSHA has a 1-hour reporting requirement" (Ex. 93).

In addition, multiple commenters recommended requiring the same reporting time period of eight hours for non-fatal reportable events (in-patient hospitalizations, amputations, and losses of an eye) as for fatalities. The Building and Construction Trades Department of the AFL-CIO commented that "[t]he move to a single reporting time frame would also benefit OSHA and employers. In the case of OSHA, the move to 8 hours for all serious incidents would provide the agency with more timely information on which to base decisions. For employers, the use of one reporting timeframe would simplify the reporting process" (Ex. 59). The AFL-CIO, the TWU, the UAW, and the UFCW made similar comments (Exs. 69, 74, 77, and 81).

OSHA acknowledges the commenters' concern about the eight-hour reporting time for in-patient hospitalizations in the proposed rule. Accordingly, Section 1904.39(a)(2) of the final rule requires employers to report in-patient hospitalizations within 24 hours of learning of the in-

patient hospitalization due to a work-related incident. Note that, as discussed below, this will simplify the reporting process by requiring a single reporting period (24 hours) for all of the non-fatal events that employers are required to report. Note also that, because the reporting time period for in-patient hospitalizations does not begin until the employee has been formally admitted to the in-patient service of a hospital or clinic for care or treatment (see §1904.39(b)(8)), the reporting requirement will not interfere with the employer's efforts to provide the proper care for the employee whose eventual in-patient hospitalization the employer will be required to report.

For the appropriate reporting time periods for other events employers would be required to report, many of the same comments about reporting time periods for in-patient hospitalizations applied.

However, OSHA did receive some specific comments as well. For amputations, Dow Chemical commented that "if notification for amputations is ultimately required, the deadline should be the end of the next business day after the injury is classified as an amputation, rather than within 24 hours. This would facilitate compliance, because there would be greater certainty that the expert personnel who understand the reporting requirement would be available. In addition, it would allow for an accurate determination that the injury is, in fact, an amputation" (Ex. 64). The NPRA recommended a reporting time period of 48 hours (Ex. 80).

For amputations and losses of an eye, the USMWF commented that "[t]he reporting should be made by the employer no later than 24 hours after the employer learns that the amputation or eye loss occurred" (Ex. 93).

OSHA finds that a reporting time period of 24 hours for amputations and losses of an eye will simplify the reporting process by requiring a single reporting period (24 hours) for all of the

non-fatal events that employers are required to report. Section 1904.39(a)(2)) of today's rule requires employers to report amputations and losses of an eye to OSHA within 24 hours.

Other Issues Raised by Commenters

OSHA received multiple comments that the Agency does not have enough resources to be able to collect, track, and use the additional data from the new reporting requirements for in-patient hospitalizations of one or two employees, amputations, and losses of an eye. For example, Rexnord Industries commented that "[t]here are concerns with the ongoing budget debates and whether or not OSHA will be able to give the appropriate attention that is needed to the new information to drive the needed results" (Ex. 28). The Tree Care Industry Association commented that "we do not understand how OSHA would handle the additional workload…How would OSHA handle the call volume when it increases from 4,600 to 210,000 calls per year?" (Ex. 37). The National Safety Council commented that "[s]ome members have also expressed concerns regarding OSHA staffing constraints and the ability of the agency to process and utilize the increased number of submissions to the agency…" (Ex. 58). Gruber Hurst Johansen Hail Shank commented that "[t]he proposed rule would require OSHA to spend 52,682.25 hours to simply receive and record the reports…This does not factor in the countless hours that would also be added by the increased amount of inspections OSHA would presumably initiate under the proposed rule" (Ex. 60).

Mercer ORC HSE Networks commented that they have "serious reservations about whether OSHA has the capacity or resources to evaluate and utilize the new collected data on an ongoing basis in a way that would significantly improve the targeting of its resources or, at the end of the day, would result in improved worker safety and health" (Ex. 68). The American Chemistry Council commented that "OSHA has not demonstrated…how the Administration will

utilize these new data with its finite resources to target unsafe workplaces" (Ex. 76). Verizon commented on its concern "that the simple number of notifications will overwhelm OSHA's resources…" (Ex. 78). The National Grain and Feed Association commented that "this will not be a prudent use of OSHA's existing resources since it will add another time-consuming task to OSHA staff and prevent them from dealing with the Agency's three core functions that include: 1) programmed inspections; 2) investigation of fatalities; and 3) responding to employee complaints" (Ex. 96); the Shipbuilders Council of America and the Corn Refiners Association made similar comments (Exs. 104, 109).

The NAHB commented that it "does not seem feasible for OSHA staff to investigate each and every in-patient hospitalization given the Agency's limited resources" (Ex. 113). The ARTBA commented that they "question whether OSHA is prepared to receive the additional information stream that will be generated from the proposed changes" (Ex. 114). The U.S. Chamber of Commerce commented that "there is every reason to believe that the significantly increased level of reporting [the expansion of the hospitalization reporting requirement] will generate will overwhelm OSHA's limited resources…" (Ex. 120).

OSHA agrees that it would overwhelm the resources of Federal OSHA and the State Plan programs if the Agency conducted an inspection of every workplace reporting a serious occupational event under this rule. However, OSHA does not intend to do this. Rather, OSHA will conduct report-related inspections only at workplaces where reports indicate that an Agency inspection to remediate hazards may be warranted. OSHA will conduct other interventions at workplaces where reports indicate that an Agency inspection to remediate hazards is not warranted. In either case, the overall objective is for the reports to trigger activities that lead to hazard abatement. OSHA will develop internal guidance for determining whether to inspect or to

conduct a different kind of intervention after receiving a report of an in-patient hospitalization of one or two workers, an amputation, or a loss of an eye. In either case, OSHA follow-up with the employer is essential. Follow-up may be done via email, phone, or fax, with regular reminders and deadlines. These interventions will require OSHA to reallocate some of its inspection resources. However, OSHA believes that ensuring the abatement of hazards that resulted in serious injury or illness justifies these changes.

This approach is similar to OSHA's current approach for investigating fatalities and hospitalizations of three or more employees, as well as OSHA's approach for targeting inspections to the highest-hazard workplaces. At present, OSHA does not inspect each workplace with a report, per Section 1904.39 of the current regulation, of a fatality or the hospitalization of three or more employees. Rather, OSHA uses the information in the initial report to decide whether or not the Agency should investigate the event. OSHA will continue to use this approach under this final rule.

Similarly, OSHA does not currently try to inspect all 7.5 million establishments in the country. Rather, OSHA has a priority system designed to allocate available OSHA inspection resources as effectively as possible to ensure that the maximum feasible protection is provided to working men and women. Case reports of sentinel safety and health events, such as fatalities and hospitalizations, support OSHA's application of this priority system and will continue to do so under this final rule.

Further, OSHA notes that six states, accounting for over 1.3 million establishments (18% of the national total) and 19.4 million paid employees (17% of the national total), already require employers to report in-patient hospitalizations of fewer than three employees, evidently without overwhelming the resources of their programs or compromising their abilities to conduct targeted

inspections, respond to worker complaints, and investigate fatalities. Indeed, one of these states, Kentucky, specifically commented that "[t]he Kentucky OSH program believes its requirements support the prevention of additional injuries or illnesses, effectively direct OSH program resources, and reduce the state's occupational injury and illness rates" (Ex. 52). In addition, Kentucky also commented that "[i]t is important to note that neither OSHA's present reporting requirements or proposed rule, nor Kentucky's state specific reporting requirements, compel OSHA or Kentucky to investigate every reported hospitalization or amputation…Not all hospitalizations or amputations reported to [Kentucky's] Division of Compliance are investigated" (Ex. 52).

OSHA also received multiple comments about the Preliminary Economic Analysis (PEA).

The SBA-OA commented that OSHA should "consider whether its wage rate assumption is valid for many small businesses." The PEA uses the assumption that reporting will be performed by a human resources specialist with a compensation cost of $40.04 per hour, but "many small businesses do not employ such personnel and it is often the small business owner or other senior person who conducts these activities" (Ex. 94).

The Pacific Maritime Association commented that "private sector workers…already work 40-hour weeks… [Unless] OSHA intends on removing another set of duties imposed by regulations to free time and make it available to perform these new recordkeeping tasks[, w]hen imposing new regulations, OSHA should always estimate that the work performed will have to be completed at the overtime rate of pay (of time and a half)" (Ex. 100).

OSHA's response to these comments is in Section V of this supplementary information.

OSHA received multiple comments about the PEA's estimate of the time required to report single in-patient hospitalizations and amputations. Dow Chemical Company commented that the 15 minutes "may perhaps account for the time spent on the telephone, but it does not include all the people who need to participate in, or be notified of, the incident and the upcoming notification to OSHA" (Ex. 64). The ATA commented that "[t]he [time] multiplier should, according to our members, be 0.5 [hours] instead of 0.25, to accurately reflect current time spent on this task" (Ex. 65); Fed Ex made a similar comment (Ex. 67). Mercer ORC HSE Networks commented that "OSHA focuses strictly on the amount of time it takes an individual to 'pick up a phone' and make the report to OSHA. This is an unduly narrow view of the impact of the proposal on employers" (Ex. 68). NUCA commented that "OSHA has significantly underestimated the economic impact of obtaining injury information on a construction site which does not necessarily have an office. First, field personnel must stop what they are doing to collect information, which must then be transmitted to the company office where it must be reviewed and recorded. Along with the proposed additional requirements to report to OSHA, which could require hours of investigation to prepare for, the total time would easily exceed a mere 15 minutes" (Ex. 110).

In addition, OSHA received several comments that the PEA's time assumption did not include the time required to adjust data systems to the new reporting requirements. For example, the American Trucking Association commented that "[t]aking into consideration the sophisticated internal systems that larger motor carries may use to report inpatient hospitalization and amputations…ATA estimates – again, based on member experience – that an additional 150-175 hours may be required per employer, something that is not reflected in the Agency cost estimate" (Ex. 65). Fed Ex made a similar comment (Ex. 67).

Finally, OSHA received several comments that the PEA's time assumption did not include employer responses to the inspections that might follow the reports. For example, the Tree Care Industry Association commented that "OSHA claims that the additional data-gathering would be restricted to phone interviews, with a relatively minor additional reporting burden estimated to be an average of 15 minutes per reported incident. However, with the proposed rule in place there would be nothing to prevent the Agency from performing on-site investigations of reported accidents…Obviously to superimpose an OSHA on-site investigation on to the post-accident investigations that companies already perform as part of their safety procedure creates a significant additional burden for employers" (Ex. 37); the Dow Chemical Company and Fed Ex made similar comments (Exs. 64, 67).

OSHA's responses to these comments are in Section V of this supplementary information.

The HDMA commented that OSHA should "make allowance for outstanding circumstances – for instance, the proposed rule does not provide any information on what allowances can be made for a disaster type of situation where other issues arise that need to be addressed that would impede the employer's ability to report to OSHA, due to natural disasters such as snow storms, hurricanes, tornadoes, flooding, etc. or manmade such as electrical failures, fires, etc. that the employer must immediately focus on the disaster and its implications for public safety reasons" (Ex. 55).

The Agency notes that previous OSHA rulemakings on reporting of fatalities and in-patient hospitalizations have not explicitly made allowance for emergencies and disasters, but that OSHA has nonetheless taken such circumstances into account when they occurred. OSHA will continue to do so under the final rule.

The NAHB commented that “OSHA’s proposal is not consistent with Executive Order 13563, ‘Improving Regulation and Regulatory Review,’” because “[n]othing in OSHA's proposal indicates how the rule is intended to streamline regulatory requirements and reduced burdens on industry” and because the Agency “should consider the impacts of this proposal on small businesses and consider conducting additional outreach before moving forward” (Ex. 113). The SBA-OA (Ex. 94), RILA (Ex. 102), and the ARTBA (Ex. 114) made similar comments.

Executive Order 13563 requires regulatory agencies to consider the effect of new regulations on economic growth, competitiveness, and job creation. OSHA notes that, as discussed below in Section V-E, Economic Impacts, the compliance costs for each affected firm are too small to have any significant economic impacts, including impacts on economic growth, competitiveness, and job creation. Additionally, the final rule includes a new option for employers to report fatalities and other reportable events through OSHA’s public website, which should make it easier for employers to fulfill their reporting obligations. Also, under the final rule, the time for reporting all non-fatality reportable events (i.e., in-patient hospitalizations, amputations, and losses of an eye) to OSHA is 24 hours. For in-patient hospitalizations, this is a change from the proposed rule, and it should reduce the reporting burden on small employers. Therefore, the Agency believes the reporting requirements in this rulemaking are consistent with Executive Order 13563.

Mercer ORC HSE Networks commented that they "believe that [the proposed rule] is emblematic of a larger problem; that the national system for collecting and compiling data on occupational injuries and illnesses is really a hodge-podge of disparate data requirements developed by different Agencies to meet their own particular needs...Consequently...we have no real handle on the occurrence (or prevalence) of occupational illness in the United States, and

many even question the accuracy of the data we use to track injuries and acute health conditions...The last study of the national injury and illness data system was conducted over two decades ago by the National Academy of Sciences. Although all of the findings were not implemented, the 1987 report, Counting Injuries and Illnesses in the Workplace, served as the basis for a major overhaul of the BLS safety and health statistical programs. Mercer ORC Networks believes that we are overdue for another systems-wide review...The initial cost for such a review might seem high given the current budget climate. However, we are convinced that the investment would be 'drop in the bucket' compared to the potential savings in program efficiencies and improvements in prevention effectiveness" (Ex. 68).

OSHA agrees with Mercer ORC's assessment that improvement can and should be made to the current occupational injury and illness collecting and reporting system. OSHA believes this rulemaking addresses some of the system shortfalls by expanding the data that are collected (e.g., in-patient hospitalizations, amputations, and losses of an eye) and by readjusting the scope of the regulation to cover industries that will benefit from the availability and use of the injury and illness information captured on the recordkeeping forms. In addition to this rulemaking, the Agency has taken other steps to address system shortfalls including increased enforcement and outreach activities. BLS and NIOSH have also taken positive steps to identify and address gaps in collecting and reporting on occupational injury and illness data. Finally, as stated above, OSHA is planning a new re-examination of the Agency's recordkeeping regulations. Improvement of the system is an ongoing effort, and OSHA will consider Mercer ORC's recommendation.

D. The Final Rule

The final rule is similar to the proposed rule in requiring employers to report all work-related fatalities, in-patient hospitalizations, and amputations. However, there are also several differences from the proposed rule. The differences include the time periods for reporting the event, the time periods between the work-related incident and the reportable event, definitions, and reporting options. In addition, the final rule adds work-related losses of an eye to the list of events that employers are required to report to OSHA.

Under the final rule, employers must report the following events:

1. each fatality resulting from a work-related incident, within 8 hours of the death. This requirement applies to all fatalities occurring within 30 days of a work-related incident. See §1904.39(a)(1) and (b)(6). This is the same as the current regulation and the proposed rule.
2. each in-patient hospitalization resulting from a work-related incident, within 24 hours of the hospitalization. This requirement applies to all in-patient hospitalizations occurring within 24 hours of a work-related incident. See §1904.39(a)(2) and (b)(6). Under the proposed rule, employers would have been required to report all in-patient hospitalizations within 8 hours, for hospitalizations occurring within 30 days of a work-related incident. Under the current regulation, employers are required to report, within 8 hours, in-patient hospitalizations of three or more employees, for hospitalizations occurring within 30 days of a work-related incident.
3. each amputation resulting from a work-related incident, within 24 hours of the amputation. This requirement applies to all amputations occurring within 24 hours of a work-related incident. See §1904.39(a)(2) and (b)(6). Under the proposed rule, employers would have been required to report all amputations within 24 hours, for amputations

occurring within 30 days of a work-related incident. Under the current regulation, employers are not required to report amputations.

4. each loss of an eye resulting from a work-related incident, within 24 hours of the loss of an eye. This requirement applies to all losses of an eye occurring within 24 hours of a work-related incident. See §1904.39(a)(2) and (b)(6). The proposed rule would not have required employers to report losses of an eye, and the current regulation also does not require them to do so.

Other major differences between the final rule and the proposed rule include the following:

1. In the final rule, the regulatory text provides an explicit definition of in-patient hospitalization (see §1904.39(b)(9) and (b)(10)). In the proposed rule, the regulatory text did not include a definition. The final rule defines in-patient hospitalization as a formal admission to the in-patient service of a hospital or clinic for care or treatment. Employers do not have to report in-patient hospitalizations that involve only observation and/or diagnostic testing.
2. In the final rule, the definition of amputations comes from the 2010 release (OIICS Version 2.0) of the BLS OIICS Manual (see §1904.39(b)(11)). In the proposed rule, the definition of amputations came from the 2007 release of the BLS OIICS Manual. The final rule defines amputations as the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts

that have since been reattached. Amputations do not include avulsions, enucleations, deglovings, scalpings, severed ears, or broken or chipped teeth.

3. In the final rule, employers have three options for reporting the fatality, in-patient hospitalization, amputation, or loss of an eye (see §1904.39(a)(3) and (b)(1)): (1) by telephone or in person to the OSHA Area Office that is nearest to the site of the incident; (2) by telephone to the OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742); (3) by electronic submission using the fatality/injury/illness reporting application located on OSHA's public website at www.osha.gov. Under both the proposed rule and the current regulation, only the first two options were available. The electronic submission option is new for the final rule.
4. In the final rule, if employers do not learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye when the event happens, they must report to OSHA within a specified time period after the event has been reported to the employer or to any of the employer's agent(s) (see §1904.39(b)(7)). Under both the proposed rule and the current regulation, the specified time period began after a report to the employer or to any of the employer's agent(s) or employee(s).

Overall, the final rule will provide OSHA with more information about serious workplace injuries and illnesses. This information will allow OSHA to carry out timely investigations of these events as appropriate, leading to the mitigation of related hazards and the prevention of further events at the workplaces where the events occurred. This information will also help OSHA establish a comprehensive database that the Agency, researchers, and the public can use to identify hazards related to reportable events and to identify industries and processes where

these hazards are prevalent. Finally, this information will be obtained cost-effectively, with a relatively minimal estimated average burden on employers of 30 minutes per reported incident.

In addition, the final rule will make OSHA's reporting requirements more similar to the requirements of other agencies. For example, the National Transportation Safety Board (NTSB) requires aircraft pilots or operators to report aviation accidents involving death, serious injury, or substantial damage to an aircraft, as well as non-accidents that affect or could affect the safety of operations. The Federal Railroad Administration (FRA) requires railroads to complete reports and records of accidents and incidents. These accidents and incidents include significant injuries to or significant illnesses of railroad employees diagnosed by a physician or other licensed health care professional. They also include collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment and causing reportable damages greater than the reporting threshold for the year ($9,200 in 2010).

Finally, the changes will make OSHA's reporting requirements more similar to the current requirements in some states that administer their own occupational safety and health program, as follows:

- Alaska requires employers to report, within 8 hours, occupational accidents that result in the death or overnight hospitalization of one or more employees (AS 18.60.058). This requirement has been in effect since 1976.
- California requires employers to "report immediately by telephone or telegraph to the nearest District Office of the Division of Occupational Safety and Health any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employment." "Immediately" means "as soon as practically possible but not longer than 8 hours after the employer knows or with diligent inquiry would have

known of the death or serious injury or illness" (Title 8, California Code of Regulations, Section 342(a)). "Serious injury or illness" means "any injury or illness occurring in a place of employment or in connection with any employment which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation or in which an employee suffers a loss of any member of the body or suffers any serious degree of permanent disfigurement" (Title 8, California Code of Regulations, Section 330(h)). This requirement has been in effect since 1979.

- Kentucky requires employers to report workplace fatalities, amputations, and hospitalizations. Employers must report fatalities and hospitalizations of three or more employees within 8 hours, and amputations and hospitalizations of one or two employees within 72 hours (803 KAR 2:180). This requirement has been in effect since 2006.
- Oregon requires employers to report work-related incidents that cause overnight hospitalizations, catastrophes, or fatalities, including heart attacks and motor vehicle accidents. Employers must report fatalities and catastrophes (three or more employees admitted to a hospital) within 8 hours of the incident, and overnight hospitalization of at least one employee for medical treatment within 24 hours of the incident (OAR-437-001-0700). The single-hospitalization requirement has been in effect since 1992.
- Utah requires employers to report, within 8 hours of occurrence, work-related fatalities, disabling, serious, or significant injuries, and occupational disease incidents (Utah Occupational Safety and Health Rule, R614-1-5.C). This requirement has been in effect since 2002.

- Washington requires employers to report, within 8 hours, the death, or probable death, of any employee, or the in-patient hospitalization of any employee (WAC 296-800-32005). This requirement has been in effect since 2009.

Note that, under the final rule, as under the proposed rule and the current regulation, employers are not required to report events resulting from motor vehicle accidents that occurred on a public street or highway, but not in a construction work zone (see Section 1904.39(b)(3)). Employers are required to report events resulting from motor vehicle accidents that occurred anywhere else, including in a construction work zone on a public street or highway, or on other roadways, or off-road.

A summary comparison of the proposed rule and the final rule is below:

	Proposed rule	Final rule
Fatalities	Employers required to report each fatality within 8 hours of the death, for all fatalities occurring within 30 days of the work-related incident.	Employers required to report each fatality within 8 hours of the death, for all fatalities occurring within 30 days of the incident.
Hospitalizations	Employers required to report each in-patient hospitalization within 8 hours of the hospitalization, for all hospitalizations occurring within 30 days of the work-related incident. No definition of in-patient hospitalization.	Employers required to report each in-patient hospitalization within 24 hours of the hospitalization, for all hospitalizations occurring within 24 hours of the work-related incident. In-patient hospitalization defined as a formal admission to the in-patient service of a hospital or clinic for care or treatment.
Amputations	Employers required to report each amputation within 24 hours of the amputation, for all amputations occurring within 30 days of the work-related incident.	Employers required to report each amputation within 24 hours of the amputation, for all amputations occurring within 24 hours of the work-related incident.

	Definition comes from BLS OIICS Manual 2007.	Definition comes from BLS OIICS Manual 2010.
Losses of an eye	No requirement.	Employers required to report each loss of an eye within 24 hours of the loss of an eye, for all losses of an eye occurring within 24 hours of the work-related incident.
Reporting options	Two options: by telephone or in person to OSHA Area Office; or by telephone to 1-800-321-OSHA.	Three options: by telephone or in person to OSHA Area Office; or by telephone to 1-800-321-OSHA; or by electronic submission on OSHA.gov.
Knowledge of event	Employer required to report if event (fatality, in-patient hospitalization, amputation) is reported to employer, employer's agent(s), or employee(s).	Employer required to report if event (fatality, in-patient hospitalization, amputation, loss of an eye) is reported to employer or employer's agent(s).

V. Final Economic Analysis and Regulatory Flexibility Analysis

A. Introduction

OMB has determined that this rule is a "significant regulatory action" within the context of Executive Order (E.O.) 12866. This rulemaking has net annualized costs of $9 million, with total annualized new costs of $20.6 million to employers, total annualized cost savings of $11.5 million for employers who no longer have to meet certain recordkeeping requirements, and average annualized costs of $82 per year for the most-affected firms (those newly required to keep records every year). Thus, this rulemaking imposes far less than $100 million in annual costs on the economy, and does not meet the other criteria specified for an unfunded mandate under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a) or a "major rule" under the Congressional Review Act (5 U.S.C. 801 et seq.). Consequently, OMB

has determined that this rule is not "economically significant" within the meaning of Section 3(f)(1) of E.O. 12866.

This Final Economic Analysis (FEA) addresses the costs, benefits, economic impacts, and feasibility of the final rule as required by the OSH Act as interpreted by the courts. This FEA is also designed to meet the principles of E.O. 12866 and E.O. 13563. The final rule would make two changes to the existing recording and reporting requirements in 29 CFR Part 1904. It would change the industries that are partially exempted from keeping records of occupationally-related injuries and illnesses, and it would change the requirements for reporting certain work-related injury and illness events. The affected establishments are only partially exempt from keeping these records because, while they are exempt from routine OSHA injury and illness recordkeeping requirements, the Bureau of Labor Statistics (BLS) may require any establishment to respond to its Survey of Occupational Injuries and Illnesses (SOII), and OSHA may require any establishment to respond to its annual injury and illness survey. The costs to those firms required to respond to the SOII are covered in the BLS's information collection request for the survey; costs to other establishments that OSHA may require to respond to its annual injury and illness survey are subject to future OSHA information collection requests and their approval by the OMB's Office of Information and Regulatory Affairs (OIRA).

The existing OSHA regulation partially exempts all employers with 10 or fewer employees and all establishments in specific lower-hazard industry sectors from routinely keeping OSHA records. The existing industry partial exemptions were determined by identifying industries with relatively low lost workday injury/illness (LWDII) rates at the 3-digit Standard Industrial Classification (SIC) code level. This final rule would retain the partial exemption for employers with 10 or fewer employees. It also would update the list of partially-exempted

industries to reflect more recent data on days away from work, job restriction, or job transfer (DART) rates and would convert the industry classifications to the North American Industry Classification System (NAICS). These changes would lead to new costs for employers who would be newly required to keep records, but there would also be cost savings for employers who would no longer be required to keep records.

The existing regulation requires employers to report all work-related fatalities and work-related incidents involving three or more hospitalizations to OSHA within eight hours. The final rule would require employers to report any work-related fatality to OSHA within 8 hours and any in-patient hospitalization, amputation, or loss of an eye occurring within 24 hours of a work-related incident to OSHA within 24 hours. The final rule would thus increase the number of events that employers must report to OSHA.

The remaining sections of this FEA are: B) the Industrial Profile; C) Costs of the Final Regulation; D) Benefits; E) Technological Feasibility; F) Economic Feasibility and Impacts; G) Regulatory Flexibility Certification; and H) Appendix.

OSHA received a variety of comments in response to the Preliminary Economic Analysis (PEA). The Agency responds to these comments in detail in the relevant sections; this introduction summarizes the nature of the comments. The SBA Office of Advocacy recommended that OSHA carefully consider any small business comments it receives (Ex. 94). OSHA notes that it has carefully considered all comments. While many commenters expressed views on OSHA's approach to deciding what industries would be partially exempted, none objected to OSHA's methodology for estimating the number of establishments, firms, employees, and injuries or illnesses that would be partially exempted. There were some comments that provide alternative approaches to estimating various elements of the number of

in-patient hospitalizations, amputations, and losses of an eye. These are fully discussed in the industrial profile section.

OSHA received many comments on the Agency's estimated compliance costs. OSHA increased some cost estimates in response to these comments, and responds to these comments in the cost section. However, no commenters suggested that the change in reporting requirements would be economically infeasible. Although one commenter suggested that this rule would be "much more than a minor burden to industry" (Ex. 63), no one suggested that it would impose a significant economic impact on a substantial number of small entities. However, some commenters also said that OSHA would have found it useful to conduct a Small Business Advocacy Review Panel (Exs. 115, 120) pursuant to the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 609). This issue is discussed further in Section V-F Regulatory Flexibility Certification.

One commenter, the National Association of Home Builders (Ex. 113), questioned whether OSHA was complying with E.O. 13563, which requires that regulatory agencies take into consideration the effect of new regulations on economic growth, competitiveness, and job creation. OSHA notes that, as discussed below in Section V-E, Economic Impacts, the compliance costs for each affected firm are too small to have any significant economic impacts, including impacts on economic growth, competitiveness, and job creation. The NAHB (Ex. 113) commented that "OSHA's proposal is not consistent with Executive Order 13563, 'Improving Regulation and Regulatory Review'", because "[n]othing in OSHA's proposal indicates how the rule is intended to streamline regulatory requirements and reduced burdens on industry."

E.O. 13563 does not require that all proposals indicate how the rule is intended to streamline regulatory requirements and reduce burdens on industry. This portion of the E.O. applies only to those proposals that result from analyses chosen for the purpose of retrospective review.

ARTBA argued that OSHA had failed to adequately consider small business burdens as required by E.O. 13563. This issue is further discussed in Section V-F, which discusses OSHA's analysis of small business burdens.

Some commenters questioned whether OSHA had adequately demonstrated the benefits of this regulation. OSHA provides additional discussion of the potential benefits of this rule in its revised benefits discussion.

There were no comments on the discussion of environmental impacts.

B. Industrial Profile

The purposes of this section are to provide information about the industries that would be affected by the recordkeeping provisions of the final rule, including the number of affected establishments and the structure of employment within these industries, as well as to provide estimates of the numbers of additional in-patient hospitalizations, amputations, and losses of an eye that will be reported annually under the reporting provisions of the final rule. Because current regulations already require the reporting of work-related fatalities, OSHA has not estimated the number of reportable fatalities for this FEA.

Partial Exemption

OSHA identified all of the affected establishments in industries that would be newly required to keep records and all of the affected establishments in industries that would be newly partially exempt from keeping records. This identification was complicated by the fact that the current regulation classifies employers by SIC codes, a classification system dating back to the

1930s that is no longer used in government statistics. There is not a simple one-to-one translation for industry classification codes between SIC and its replacement, NAICS. Some SIC industries were divided among several NAICS industries, while other SIC industries were combined to form a single NAICS industry. As a result, OSHA had to determine how employers previously classified by 1987 SIC code would now be classified using the 2007 NAICS codes.

OSHA's decision to convert the listing of partially-exempt employers from SIC codes to NAICS codes drew widespread support from participants in the rulemaking. Winslow Sargeant, Chief Council for the SBA Office of Advocacy, stated that he "applauds OSHA's proposed transition from SIC to NAICS and believes this change will result in improved data for OSHA programs" (Ex. 94). Mr. Sargeant's comments were representative of the overwhelmingly positive comments OSHA received concerning the transition from SIC to NAICS (Exs. 24, 52, 59, 69, 77, 78, 81, 85, 86, 90, 93, 99, 100, 112, 119, 120, 122, 124). Nonetheless, one commenter expressed concern that it would not be possible to compare data between the years covered by SIC and the years covered by NAICS (Ex. 29). However, data comparisons for industries are almost entirely based on SOII data, which are already collected on a NAICS basis. Whether OSHA uses SIC or NAICS codes to define exemptions will have no effect on industry time series data. OSHA's expectation is that switching to NAICS codes from the seldom-used SIC code system will decrease uncertainty in classification, save time, reduce confusion, and lower the opportunity for errors in reporting the industry an employer belongs to, a belief echoed by some commenters (Exs. 24, 59, 85). OSHA believes that the change to NAICS will improve the quality of data, since the NAICS represents a more modern system of industry classification.

In many cases, OSHA's process of converting classification systems meant that a single SIC code was divided into several NAICS codes, and conversely, a single NAICS code might

contain establishments from multiple SIC codes. For maximum accuracy, this analysis was conducted at the six-digit NAICS level. The data resulting from this analysis are presented in the Appendix to this FEA.

Because there were no objections to the methodology used in the PEA for converting SIC codes to NAICS codes, OSHA has continued to use that same methodology. OSHA first examined the 1997 Economic Census: Bridge between SIC and NAICS Tables (Census Bureau, 1997). These tables show, for 1997, the percentages of the establishments in each SIC code that were transferred into each NAICS code. Next OSHA examined the 2002 Economic Census: Bridge between 2002 NAICS and 1997 NAICS Tables (Census Bureau 2002). The bridge tables likewise show, for 2002, the percentages of the establishments in 1997 NAICS codes that were transferred into 2002 NAICS codes. Affected establishments in a SIC code partially exempted under the existing rule but classified in a non-partially-exempted NAICS code under the final rule would be newly subject to the recordkeeping requirements. These establishments, not partially exempted under the final rule, would incur new recordkeeping costs.

After identifying by 6-digit NAICS code (2002) the portions of the industries that would be newly required to keep records, OSHA used 2006 data from the Census Bureau's Statistics of U.S. Businesses (SUSB) to determine the corresponding numbers of establishments and employees (Census Bureau, 2008) in those NAICS industries. The SUSB provides not only the total number of establishments and employees in an industry, but also a breakdown of employees and establishments by the size of the firm that owns the establishment. For this FEA, OSHA is updating the PEA to incorporate the most recent 2010 SUSB data (Census Bureau, 2012). In the interest of using the best available data, OSHA uses the 2007 NAICS codes to be consistent with

the Office of Management and Budget's (OMB) North American Industry Classification System – Revision for 2007 (OMB, 2006).

The National Association of Real Estate Investment Trusts (Ex. 41) recommended that OSHA update their analysis from the 2002 to the 2007 NAICS code system, which the Agency has done for this FEA. As a result of the 2007 NAICS revision, there has been a significant change to NAICS 525930, Real Estate Investment Trusts. The 2007 NAICS update split NAICS 525930 into five different industries: 531110, Lessors of Residential Buildings and Dwellings; 531120, Lessors of Nonresidential Buildings (except Miniwarehouses); 531130, Lessors of Miniwarehouses and Self-Storage Units; 531190, Lessors of Other Real Estate Property; and 525990, Other Financial Vehicles. In the 2001 OSHA rulemaking, Real Estate Investment Trusts were partially exempted from keeping records by virtue of being classified under SIC 67, Holding and Other Investment Offices. However, as indicated in Appendix A, the final rule does not partially exempt NAICS 5311 Lessors of Real Estate, and therefore NAICS industries 531110, 531120, 531130 and 531190 will be newly required to keep injury and illness records. NAICS 525990 Other Financial Vehicles continues to be partially exempt from recordkeeping requirements under the final rule.

The 2007 NAICS revision also reclassified a few industries. To assign these industries to the correct NAICS category, OSHA used the 2002 NAICS to 2007 NAICS Concordance (Census Bureau, 2007). NAICS 517211, Paging, and NAICS 517212, Cellular and Other Wireless Telecommunications – both of which were required to keep records under the 2001 rulemaking but were classified as newly partially exempt from keeping records under the proposed rule – were merged into NAICS 517210, Wireless telecommunications carriers (except satellite), and will continue to be newly partially exempt from keeping records under the final rule. NAICS

518112, Web Search Portals, has become NAICS 519130, Internet Publishing and Broadcasting and Web Search Portals. NAICS 518112 was required to keep records under the 2001 rulemaking, was newly partially exempt from keeping records under the proposed rule, and (as NAICS 519130) will continue to be newly partially exempt from keeping records under the final rule.

Satellite telecommunications was classified as NAICS 517310 in the 2002 NAICS but was classified as NAICS 517911 in the 2007 NAICS. Other Telecommunications was classified as NAICS 517910 in the 2002 NAICS but as NAICS 517919 in the 2007 NAICS. NAICS 517310 and NAICS 517910 were both required to keep records under the 2001 rulemaking; were newly partially exempt from keeping records in the proposed rule, and will continue to be newly partially exempt from keeping records in the final rule.

SUSB data report establishments by employment size classification, with one class being all employers with 10 to 19 employees. However, the current regulation, proposed rule, and final rules cover employers with 11 or more employees. To deduct employers with exactly 10 employees, OSHA estimated that such employers represent one tenth of all employers with 10 to 19 employees. This approach probably overestimates the number of covered firms because there are more firms in the lower end of a given size category.

OSHA then estimated the number of newly-affected establishments and employees in each industry by multiplying the total number of establishments and employees in the industry by the percentage of affected establishments that were identified using the SIC – NAICS bridge tables described above. Then, the Agency calculated the number of newly-recordable injuries and illnesses for 2010 by dividing the total number of injuries and illness reported per industry by the Bureau of Labor Statistics (BLS, 2011a) by total employment in the industry, and

multiplying the resulting rate by the number of affected employees in the industry. OSHA used BLS data at the most detailed NAICS level for which data were available—at the six-digit NAICS level where those data were available and the lowest level data available otherwise.

Table V-1 presents data for the industries with establishments that would be newly required to keep records. The table shows the four-digit NAICS code, industry name, the number of affected establishments, the number of affected employees, and an estimate of the number of recordable injuries and illnesses, based on historical data, for newly-affected employers. Table V-1 shows that OSHA estimates that the final rule will require 220,000 establishments, employing 5.5 million employees and having 153,000 injuries and illnesses per year, that were previously partially exempted from recordkeeping requirements to now keep records.

V-1: Industries That Include Establishments that Would Be Newly Required to Keep Records					
NAICS CODE	Title of NAICS Code	Affected Employment	Affected Establishments	Affected Firms	Estimated Injuries and Illnesses
3118	Bakeries and tortilla manufacturing	38,085	1,786	1,627	499
4411	Automobile dealers	968,624	20,417	16,234	34,602
4413	Automotive parts, accessories, and tire stores	4,984	428	64	157
4441	Building material and supplies dealers	101,704	7,832	3,370	4,568
4452	Specialty food stores	74,224	6,341	2,770	2,386
4453	Beer, wine, and liquor stores	68,837	6,311	2,772	4,072
4539	Other miscellaneous store retailers	146,772	11,052	3,533	4,999
4543	Direct selling establishments	1,461	73	42	26
5311	Lessors of real estate	314,661	29,846	8,545	10,377
5313	Activities related to real estate	479,729	24,668	9,967	11,560
5322	Consumer goods rental	78,311	9,130	579	2,440
5324	Commercial and industrial machinery and equipment rental and leasing	11,948	791	244	211
5419	Other professional, scientific, and technical services	226,964	10,493	3,130	7,476
5612	Facilities support services	229,546	4,351	909	3,859
5617	Services to buildings and dwellings	909	41	32	35
5619	Other support services	221,084	5,612	3,658	2,696
6219	Other ambulatory health care services	123,128	2,785	968	3,633
6241	Individual and family services	1,248,462	33,314	17,895	30,806
6242	Community food and housing, and emergency and other relief services	154,660	7,994	4,714	2,528
7111	Performing arts companies	101,300	1,793	1,673	3,536
7113	Promoters of performing arts, sports, and similar events	112,719	1,379	1,076	1,241
7121	Museums, historical sites, and similar institutions	76,660	1,661	1,415	2,314
7139	Other amusement and recreation industries	68,225	2,592	1,972	748
7223	Special food services	599,466	28,104	3,880	17,515
8129	Other personal services	27,651	1,056	801	439
	Total:	5,480,115	219,848	91,870	152,721
	Sources: OSHA, Office of Regulatory Analysis using Census Bureau and Bureau of Labor Statistics data:				
1	SOURCE: 2011 Census Bureau: http://www2.census.gov/econ/susb/data/2010/us_6digitnaics_2010.xls				
2	SOURCE: 2011 Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, in cooperation with participating State agencies. . http://www.bls.gov/iif/oshwc/osh/os/ostb2427.pdf				

Having used the bridge tables and other data sources described above to identify the segment of the NAICS industries that would be newly required to keep records, OSHA used a similar methodology to determine the number of affected employees and recordable injuries and illnesses for establishments that would no longer be required to regularly keep records. Table V-2 shows, for each affected industry that would no longer be required to keep records, the four-

digit NAICS code, industry name, number of affected establishments, number of affected employees, and estimated number of injuries and illnesses that would no longer be recorded. OSHA estimates that as a result of the revision to the list of partially-exempt industries, 160,000 establishments, with 4.1 million employees and an estimated 56,000 injuries and illnesses per year, would no longer need to keep records routinely.

Based on the ICR estimates (OSHA, 2011), OSHA currently requires 1,563,000 establishments to record injuries and illnesses. This total represents approximately 54 percent of all establishments with more than ten employees and 22 percent of all establishments. The change from SIC to NAICS would increase the number of establishments required to record injuries and illnesses to 1,592,000, a four percent increase in the number of establishments recording, and an increase from 54 to 56 percent of all establishments with more than 10 employees.

V-2: Industries That Include Establishments that Would Be Newly Partially Exempt From Keeping Records

NAICS CODE	NAICS Industry Description	Affected Employment	Affected Establishments	Affected Firms	Estimated Injuries and Illnesses
4412	Other Motor Vehicle Dealers	86,845	4,749	3,346	2,915
4431	Electronics and Appliance Stores	61,119	4,107	1,375	917
4461	Health and Personal Care Stores	16,226	1,725	456	191
4471	Gasoline Stations	534,740	51,637	10,805	12,216
4511	Sporting Goods, Hobby, and Musical Instrument Stores	1,008	51	13	14
4532	Office Supplies, Stationery, and Gift Stores	81,238	4,189	612	2,072
4812	Nonscheduled Air Transportation	28,914	698	533	872
4861	Pipeline Transportation of Crude Oil	7,747	407	41	199
4862	Pipeline Transportation of Natural Gas	29,497	1,835	71	696
4869	Other Pipeline Transportation	9,689	823	47	208
4879	Scenic and Sightseeing Transportation, Other	1,760	54	45	50
4885	Freight Transportation Arrangement	183,189	9,050	3,085	2,864
5111	Newspaper, Periodical, Book, and Directory Publishers	504,159	9,856	4,147	7,329
5122	Sound Recording Industries	14,891	458	210	191
5151	Radio and Television Broadcasting	211,333	6,590	1,864	4,059
5172	Wireless Telecommunications Carriers (except Satellite)	251,048	10,192	304	1,291
5179	Other Telecommunications	43,657	1,268	860	1,613
5191	Other Information Services	90,605	1,840	897	235
5221	Depository Credit Intermediation	61,486	4,242	318	450
5239	Other Financial Investment Activities	12,005	139	79	30
5241	Insurance Carriers	6,664	138	39	51
5259	Other Investment Pools and Funds	9,465	39	27	141
5413	Architectural, Engineering, and Related Services	17,073	785	621	140
5416	Management, Scientific, and Technical Consulting Services	41,411	1,270	426	228
5418	Advertising and Related Services	55,145	1,252	670	563
5511	Management of Companies and Enterprises	1,005,423	15,679	7,671	8,766
5614	Business Support Services	164,877	2,750	1,973	1,214
5615	Travel Arrangement and Reservation Services	148,136	6,438	1,677	1,193
5616	Investigation and Security Services	5,397	357	290	99
6116	Other Schools and Instruction	53,575	2,528	2,167	266
7213	Rooming and Boarding Houses	6,107	366	249	55
8112	Electronic and Precision Equipment Repair and Maintenance	60,860	2,186	1,106	1,802
8114	Personal and Household Goods Repair and Maintenance	25,832	1,442	776	515
8122	Death Care Services	23,768	1,854	564	355
8134	Civic and Social Organizations	87,795	3,544	2,630	702
8139	Business, Professional, Labor, Political, and Similar Organizations	129,924	5,101	4,252	1,039
	Totals:	**4,072,606**	**159,638**	**54,245**	**55,539**

Sources: OSHA, Office of Regulatory Analysis using Census Bureau and Bureau of Labor Statistics data:

1 SOURCE: 2011 Census Bureau: http://www2.census.gov/econ/susb/data/2010/us_6digitnaics_2010.xls

2 SOURCE: 2011 Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, in cooperation with participating State agencies. . http://www.bls.gov/iif/oshwc/osh/os/ostb2427.pdf

Reporting of Fatalities, In-Patient Hospitalizations, Amputations, and Losses of an Eye

The final rule would require that employers report all work-related fatalities, in-patient hospitalizations, amputations, and losses of an eye to OSHA. This requirement would affect all industries, all employers, and all 7.5 million establishments subject to OSHA authority. Because OSHA already requires the reporting of work-related fatalities, this economic analysis focuses on the new requirement for reporting all work-related in-patient hospitalizations, all amputations, and all losses of an eye. The current regulation requires the reporting of work-related hospitalizations of three or more workers. The number of such multiple hospitalizations represents a trivial portion of all work-related in-patient hospitalizations. For example, in Fiscal Year 2010, there were a total of 14 such reports to OSHA (OSHA, 2010). OSHA therefore estimated the total number of work-related in-patient hospitalizations without deducting the very small number of multiple hospitalizations that are already reported.

In the PEA, OSHA noted that it is difficult to estimate the number of in-patient hospitalizations that would need to be reported under the final rule. One commenter asked that OSHA collect information from emergency responders (Ex. 87). OSHA recognizes the value of emergency responder data, but such data do not normally provide the distinctions OSHA needs to determine if the injury or illness is work-related and if the case meets OSHA's definition of an in-patient hospitalization.

In the PEA, OSHA examined a number of existing estimates and approaches to making such estimates. First, OSHA noted that NIOSH estimated that in 2004, a total of 68,000 work-related emergency department (ED) visits resulted in hospitalization (CDC, 2007). In its comments on the PEA, NIOSH estimates that for 2009, approximately 81,500 patients admitted to emergency rooms with occupational injuries or illnesses were either admitted or transferred to

hospitals and another 5,600 patients were held for observation (Ex. 66). This estimate (81,500) may be a high estimate of the number of hospitalizations that will be required to be reported under this rule, as it may include patients admitted only for diagnostic testing or observation, or admitted more than 24 hours after the work-related incident. On the other hand, the estimate may be too low because not all hospital admissions occur through emergency rooms.

In the PEA, OSHA noted that Dembe et al. (Dembe, et al., 2003) estimate that, based on 1997-1999 data from the Nationwide Inpatient Sample (NIS), there were 210,000 in-patient hospital admissions per year (or 630,000 over the three-year period) paid for by Workers' Compensation insurance. OSHA also noted that studies in Massachusetts (1996-2001) and Louisiana (1998-2007) came up with figures ranging from 150,000 to 275,000 workers'-compensation-related hospitalizations per year when state-level data were extrapolated to the nation as a whole. In the PEA, OSHA relied on an estimate of 210,000 hospitalizations but noted this might be an overestimate, as it included elective hospitalizations not covered by the proposed rule.

Statistics compiled by BLS indicate that 20.1 million occupational injuries and illnesses were reported in 1997-1999 in the United States (BLS, 2012). Dembe et al. recognize that there are significant differences in data collection methodologies between the NIS and BLS, and possible under-reporting or misclassification of occupational injuries and illnesses in those databases (Murphy, et al., 1996; Leigh, et al., 2000). The available statistics nevertheless allow for Dembe et al. to infer that about 3 percent of workplace injuries and illnesses result in the hospitalization of the affected worker. In the PEA, OSHA failed to note that Dembe et al. also estimate that 46.8 percent of all workers' compensation hospital admissions are classified as "elective"; therefore the remaining 53.2 percent of all workers compensation hospital admissions

would then be classified as "non-elective". Since the OSHA reporting requirement would only apply to "non-elective" admissions, OSHA estimated for the proposed rule that there would have been 107,000[1] hospitalizations in 2001 based on Dembe and BLS data.

One commenter thought that the hospitalizations estimate derived by Dembe et al. was too low (Ex. 82). OSHA, recognizing the differences between the NIS and BLS, determined that a range of inpatient hospitalizations for non-elective procedures could be derived. Using the NIS estimate of 210,000 in-patient hospital admissions and Dembe et al.'s estimate of the percentage of non-elective workers' compensation-related hospitalizations, OSHA now estimates that there were 112,000 non-elective hospitalizations[2] for 2001. If OSHA instead applies Dembe et al.'s estimate of the percentage of workplace injuries and illnesses that result in hospitalization – 3 percent – and the estimate of "non-elective" procedures – 53.2 percent – to the 4.1 million injuries and illnesses reported by the BLS for 2009, OSHA estimates that there were roughly 66,000[3] inpatient hospitalizations for non-elective procedures, a value that may lie near the low end of the true range.

Using Massachusetts data for FY 2008, Letitia Davis from the Massachusetts Department of Public Health commented that 39 percent of hospitalizations were for elective procedures (Ex. 84). Davis also notes that Massachusetts studied inpatient hospitalizations during 1996-2000 and, using payments by workers' compensation as an indicator of work-relatedness, identified an annual average of 4,091 work-related inpatient hospitalizations (Ex. 84). Using employment data to extrapolate the 4,091 hospitalizations in Massachusetts to the entire United States, OSHA

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[1] 20.1M BLS Injuries and Illnesses between 1997 – 1999 / 3 years = 6.7M.
6.7M Injuries and Illnesses x 3% of workplace injuries and illnesses resulting in hospitalization = 0.2M
0.2M Hospitalizations x 53.2% non-elective hospitalizations = 107,000
[2] Dembe's estimated hospitalizations: 210,000 x 53.2% non-elective hospitalizations = 112,000
[3] 4.1M BLS Injuries and Illnesses for 2009 x 3% of workplace injuries and illnesses resulting in hospitalization = 123,000.
123,000 Hospitalizations x 53.2% non-elective hospitalizations = 65,436

calculates that 157,843[4] work-related hospitalizations would occur annually nationwide. Narrowing the total to non-elective hospitalizations using Davis's alternative methodology and her estimate of the percentage of hospitalizations in Massachusetts that are non-elective (61 percent), OSHA calculates that 96,000 non-elective work-related hospitalizations occur nationwide.

In summary, a variety of methodologies were examined to estimate the number of non-elective hospitalization paid for by workers' compensation. The resulting estimates range from 66,000 (extrapolation of Dembe to 2009) to 96,000 (extrapolation from Massachusetts data) to 112,000 (Dembe estimate for 2001) non-elective, occupationally-related hospitalizations annually.

It is also possible to make an estimate of the number of single in-patient hospitalizations reported in states that currently require reporting of single in-patient hospitalizations. There are six states[5] that currently require employers to report occupationally-related single-patient hospitalizations. Employers in these states report a hospitalization to the relevant State Plan Area Office, which then completes an OSHA Form 36 based on that information. OSHA's Office of Statistical Analysis reports that during 2002 – 2010, a total of 38,000 such forms were completed, for an average of 4,200 forms completed annually. Assuming a consistent rate of occupationally-related single-patient hospitalizations across all fifty states, the number of forms submitted by these six states can be extrapolated to all fifty states in the US. This yields an estimate of 25,000[6] annual, reportable, single-patient hospitalizations. OSHA believes that this

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[4] MA Employment = 2.97M; US Employment = 114.51M; MA Hospitalizations = 4,091
Ratio MA Employment to US Employment = 2.97M / 114.51M = 2.59%
Inflator MA to US = 1 / 2.59% = 38.58
US Hospitalizations extrapolated from MA Hospitalizations = 4,901 x 38.58 = 157,843

[5] Alaska, California, Kentucky, Oregon, Utah and Washington all require the reporting of single-patient hospitalizations.

[6] 6 State Employment = 19,381,966. 50 State Employment = 114,509,626.

low estimate, as compared to those developed above, may be the result of failure by employers to report hospitalizations that should have been reported. The result may be a realistic estimate of how many hospitalizations will actually be reported to OSHA, but the Agency prefers to use, for costing and economic feasibility purposes, an estimate based on what the regulation would require if employers fully complied, such as the estimates above based on non-elective hospitalizations paid for by workers' compensation.

Under the final rule, employers would not have to report hospitalizations that occur more than 24 hours after the work-related incident. Therefore, scheduled or planned hospitalizations would not normally be reportable. As discussed above, Davis (Ex. 84) estimates that 39 percent of all hospitalizations are for elective procedures, while Dembe et al. estimate that 46.8 percent of all hospitalizations are for elective procedures. Whereas Davis is only examining Massachusetts data, Dembe et al. are comparing data across 24 states. OSHA believes that Dembe's sample of 24 states is likely to be more representative of the US than Davis's sample and has therefore elected to use Dembe et al.'s estimate of 46.8 percent to derive the number of work-related hospitalizations that are either scheduled or elective. OSHA has opted to use the upper end of the range of estimated work-related hospitalizations as its estimate of overall reported hospitalizations, with the result that, based on Dembe's estimate of the number of non-elective hospitalization paid for by workers' compensation in 2001, an estimated 112,000 hospitalizations per year will be reported to the Agency as a result of this final rule.

According to BLS, in 2009, there were 5,930 amputations that involved days away from work (BLS, 2010). In its preliminary estimates, OSHA assumed that all amputation and losses of

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Ratio 6 State Employment to total US Employment = 16.93%
6 State inflator to 50 states = 1/16.93% = 5.91
Average 6 State hospitalizations from 2002 – 2010 = 4,222
Average 6 State hospitalizations extrapolated to US = 4,222 x 5.91 = 24,946

an eye would result in hospitalization. The more serious amputation cases will clearly require in-patient hospitalization. Likewise, the loss of an eye usually results in a hospitalization. OSHA estimated this in the proposal, and there were no objections. OSHA continues to estimate that the loss of an eye normally involves a hospitalization. OSHA notes (but, for the basis of the analysis, does not rely on) Moshfeghi's support of this in his 2000 article: A Review of Enucleation (Moshfeghi, et al., 2000). However, in a comment on the proposed rule, Letitia Davis reported that, for FY 2008 in Massachusetts, only 22 percent of all amputations resulted in in-patient hospitalizations and that 4 percent of all amputations resulted in hospitalization more than 24 hours after the injury (Ex. 84). Based on Davis's results for Massachusetts, OSHA has adjusted its preliminary nationwide estimate of in-patient hospitalizations and amputations.

Amputations that result in in-patient hospitalizations (22 percent of all amputations) have been accounted for in the estimate of 112,000 total in-patient hospitalizations above, and therefore affected employers will not incur an additional reporting burden for amputations resulting in in-patient hospitalizations as a result of the requirement to report amputations. Amputations that occur more than 24 hours after the work-related incident that leads to the amputation (4 percent) will not be reportable under the final rule because they occur outside of the required time for amputations to be reported; therefore affected employers will not incur an additional reporting burden. The remaining 4,389 amputations (74 percent of 5,930 BLS-reported amputations) will require additional reporting to OSHA. For this FEA, OSHA has conservatively rounded up this figure to 5,000 amputations and has included that estimate in the total number of events that will need to be reported annually.

To summarize, OSHA estimates that a total of 112,000 single in-patient hospitalizations (including 1,300 amputations that require hospitalization, as well as all losses of an eye) and

5,000 amputations not involving hospitalization will need to be reported to OSHA annually as a result of this final rule. OSHA suspects that the resulting total of 117,000 in-patient hospitalizations and amputations is an overestimate of the actual number of events that would require reporting under the final rule. OSHA could find no evidence to indicate how many occupational injuries result in the loss of an eye in a year and received no comments from stakeholders providing estimates of the number of occupationally-related enucleation. Because the loss of an eye is likely to require hospitalization, the estimated 117,000 single in-patient hospitalizations and amputations should account for cases of losses of an eye. OSHA is confident that an estimate of 117,000 reports accounts for all reportable single in-patient hospitalizations, eye losses, and amputations.

C. Costs of the Final Regulation

Overview

This section presents OSHA's estimate of the costs and cost savings of the final rule. The time requirements for the activities associated with the final rule have been developed through previous rulemakings and information collection requests that have been subject to extensive notice and comment. For the purpose of analyzing the costs of the proposed rule, OSHA relied primarily on past estimates of the time needed to complete recordkeeping activities; these past estimates of unit time requirements have already been subject to multiple opportunities for public comment, as they have been used in ICRs multiple times. OSHA is continuing to rely primarily on these estimates where they seem appropriate in light of the record. Past ICRs provide estimates of the costs of all aspects of recordkeeping for new firms, and these estimates were adopted in the preliminary analysis. Past ICRs also provided estimates of the costs of reporting fatalities. For its preliminary analysis, OSHA assumed that the costs of reporting hospitalizations

and amputations would have the same time requirements as fatalities. (The specific past estimates on which OSHA relied are cited for each time estimate.)

During the comment period of the proposed rule, OSHA received three general comments on the overall costs. One commenter, Marshfield Clinic, argued that being on the list of industries partially exempt from keeping records wasn't a time savings for establishments that have been selected by the Bureau of Labor Statistics (BLS) to keep records for the BLS Survey of Occupational Injuries and Illnesses (SOII) (Ex. 15). Marshfield Clinic asked that OSHA develop a trigger mechanism for determining the ideal number of employers responsible for keeping the records, regardless of their NAICS classification. The concept of an ideal number of employers responsible for maintaining the OSHA injury and illness records would only be valid if OSHA were compiling injury and illness data for statistical purposes and were striving for a representative sample. However, OSHA's data collection efforts serve a different purpose, and therefore developing an ideal number of responsible employers is not in keeping with OSHA's data collection purposes. OSHA asks for injury and illness records to help OSHA, employees, and employers determine an employer's past experience with worker health and safety. BLS selects different businesses to keep records for the SOII each year, so that, for example, reporting this year doesn't require an employer to report in future years. BLS incurs the paperwork burden for their survey requirements. OSHA is aware that some businesses will not realize a full cost savings during the years when they are required to keep records for BLS or other federal agencies. OSHA recognizes that 1) there will be some cost savings in years when they report to BLS, because of differences in the specific reporting requirements (such as the need to certify OSHA but not BLS records), and 2) there will be a cost savings in the years when they are not required to keep records. For this FEA, OSHA has not assessed employer burden for BLS or any

other type of recordkeeping, nor does OSHA believe that such an assessment is necessary in order to demonstrate the feasibility of the final rule. Because OSHA and BLS do not account for any overlap in their requirements, the combined estimated burdens of the two agencies for recording injuries and illnesses almost certainly exceed the actual burdens.

Some commenters (Exs. 64, 65, 67) suggested specific kinds of costs that might have been overlooked in OSHA's preliminary cost estimates. The Dow Chemical Company (Dow) was concerned that "one legal opinion as to whether an injury is recordable could cost far more than [what OSHA has estimated]." (Ex. 64). OSHA's experience is that borderline cases that require a legal opinion on recordability are extremely rare. In the overwhelming majority of recordkeeping cases, the recordability is clear-cut. For those cases where it is not, the already necessary determination of whether the case is compensable under workers' compensation may help to resolve the issue. For the remaining cases, most employers will find it less expensive to record an uncertain case than to seek a legal opinion. Also, as stated elsewhere in this document, OSHA has several resources available free of charge on its website that can help employers determine recordability.

Another rulemaking participant, FedEx Corporation (FedEx), commented that complying with the 8-hour reporting requirement for in-patient hospitalizations would require new protocols and procedures that would necessitate 150 – 175 hours annually (Ex. 67). The American Trucking Association made a very similar comment (Ex. 65). OSHA believes that extending the reporting deadline from 8 hours to 24 hours, and making clear that this deadline is from the time the employer first learns of the reportable event (in-patient hospitalization, amputation, loss of an eye) resulting from a work-related incident, will relieve the need for the elaborate system for tracking potential hospitalizations that these commenters envisioned. The following subsection

presents OSHA's estimate of the time requirements and other unit values associated with the compliance activities expected by OSHA following the effective date of the final rule.

Unit Costs

Initial training of recordkeepers is expected to require one hour per establishment and will apply only to current partially-exempt establishments that would be newly required to keep records (OSHA, 2001). A commenter (Ex. 17) noted that this requirement would signify the need for retraining of both human resource and safety professionals. OSHA, based on its experience inspecting establishments and discussing recordkeeping with stakeholders, believes that the average establishment that employs 25 workers will only assign the task of understanding of the details of recordkeeping to one employee per establishment. This analytical assumption is consistent with OSHA's Supporting Statement to the Information Collection Request (ICR) transmitted to OMB in 2011 (OSHA, 2011). Some commenters argued that much more extensive training would be needed. For example, Holman Automotive Group (Ex. 124) and the National Association of Automobile Dealers argued that training might involve a one-day course at a cost of $300, plus the cost of employee time, travel expenses, etc. OSHA believes this is an overestimate of potential training costs, as the Agency's own website provides training on recordkeeping that can easily be completed in less than one hour. It should be noted that there is a trade-off between time spent on training and time spent on individual records. A recordkeeper at a very large establishment with many injuries and illnesses in the course of a year may find it more efficient to have more extensive initial training in order to spend less time on each individual record. On the other hand, a recordkeeper who records only two or three injuries/illnesses a year will be better off learning about the complexities of the system only if such complexities ever actually arise in their establishment, resulting in lower initial training

costs but more time spent recording each case. OSHA's estimates are designed to represent an average across large and small firms and establishments, taking into account both situations where more extensive initial training is provided as well as situations where little or no initial training is done. OSHA also notes that injury and illness recordkeeping development and training can account for much more than just keeping records of injuries and illnesses under 29 CFR Part 1904; in other words, these types of administrative functions address not just other OSHA requirements but also requirements for other agencies, such as BLS and workers' compensation insurers. The one hour estimate presented in this FEA accounts for only the incremental addition of training needed for OSHA-required recording of injuries and illnesses.

Training of recordkeepers to account for turnover was estimated to take one hour per establishment, and a turnover rate of 20 percent per year was applied in the cost algorithm, resulting in an average of 0.2 hours per establishment per year to train newly-hired recordkeepers. This estimate applies to costs for current partially-exempt establishments that would be newly required to keep records and will contribute to cost savings for establishments that would no longer be required to keep records (OSHA, 2001). As discussed below, in the PEA, OSHA estimated that this task would be performed by a Human Resource Specialist, but for this FEA, OSHA has decided that it would be more accurate to use the higher salary of an Occupational Health and Safety Specialist (OHSS). A person with these higher qualifications will typically be better able than a human resources specialist to carry out the required duties in the estimated times.

The final rule will require the completing, posting, and certifying of the OSHA Form 300A annually. OSHA estimates that 0.47 hours per establishment, as calculated in the ICR, will be needed to complete and post the form, and 0.5 hours will be needed to certify the log entries,

for a total of 0.97 hours per establishment. This estimate applies on a per-establishment basis to costs for current partially-exempt establishments that would be newly required to keep records and to cost savings for establishments that would no longer be required to keep records (OSHA, 2011).

In addition to the per-establishment costs incurred to complete, post, and certify the OSHA Form 300A annually, there are also costs for each injury and illness recorded. These costs include the costs for completing the OSHA Form 301, entering each injury and illness on to the OSHA Form 300, and responding to requests for copies of the OSHA Form 301. OSHA estimated in the ICR that 0.38 hours per recordable injury or illness will be expended to comply with these requirements (OSHA, 2011). This estimate applies to costs for current partially-exempt establishments that would be newly required to keep records and to cost savings for establishments that would no longer be required to keep records (OSHA, 2011).

OSHA received several comments on its time estimate of 15 minutes for reporting in-patient hospitalizations and amputations to OSHA. OSHA estimated that reporting in-patient hospitalizations or amputations is an activity that is expected to require the same time as OSHA estimates for reporting fatalities and multiple hospitalizations: 0.25 hours (15 minutes) of OHSS labor per fatality or hospitalization (OSHA, 2011). Several commenters suggested that reporting to OSHA would take more than 15 minutes (Exs. 46, 64. 65, 67, 68, 83, 110). These commenters provided several different reasons for believing that more than fifteen minutes would be required. Some commenters were concerned that the call itself would require more than 15 minutes. The American Society of Safety Engineers and others claimed that the telephone call to report to OSHA is too complex to complete in 15 minutes. Mercer ORC HSE Networks stated that it could take longer than 15 minutes to make a connection over the telephone with OSHA,

and that such a connection is especially difficult outside of OSHA's normal operating hours (Ex. 68).,

Other commenters were concerned with the possibility that the required information would be difficult to obtain within the required time frame. Some commenters (see Exs. 65 and 67) asserted that elaborate procedures would need to be in place to assure that all hospitalizations were reported within eight hours of admission. OSHA has altered the final rule to require reporting within 24 hours of the hospitalization, and to clarify that the 24 hours starts when the employer learns of the reportable event resulting from a work-related incident.

Other commenters were concerned that pre-call activities had not been included in the time estimate. The Dow Chemical Company stated that the telephone call to report the event would require the attention of several different salaried professionals (Ex. 64). FedEx said that the allotted time should also include the time required to enter the information into their system and to allow for subsequent review by management, and recommended that OSHA use 30 minutes as the estimate for the reporting time (Ex. 67). The American Trucking Association stated the view that 15 minutes is a "gross underestimation" of the time required to report to OSHA and that, in their experience, reporting takes, on average, 30 minutes (Ex. 65). NUCA, a trade association representing utility construction and excavation contractors, expressed a concern that OSHA's PEA "significantly underestimated the economic impact of obtaining injury information on a construction site which does not necessarily have an office." In NUCA's estimation, the entire process of collecting, transmitting, and recording the information would far exceed 15 minutes (Ex. 110). NUCA was also concerned that field operations without offices would have trouble complying with the rule (Ex 110)

In response, OSHA notes that employers are already required to gather all of the information required for reporting the hospitalization in order to record the injury or illness within seven days of the occurrence of the injury or illness. The question is therefore whether the need to report within 24 hours of finding out about the hospitalization or the need to report directly to OSHA, increases the time necessary to obtain the required information. OSHA also notes that employers are routinely in touch with hospitals for work-related incident in order to communicate necessary information related to Workers' Compensation. (The HIPAA Privacy Rule has an exemption for employers involved in the workers' compensation system: http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/workerscomp.html)

OSHA believes that 15 minutes is a reasonable approximation of the time required for the telephone call alone. In response to the comment from Mercer ORC HSE Networks (Ex. 68) about the difficulty of reaching OSHA within 15 minutes, the Agency notes that OSHA has a toll-free number for employers to call that is staffed 24 hours per day to allow immediate reporting at any hour of the day. This final rule also enables 24-hour electronic reporting using a web form that OSHA will develop in conjunction with issuance of the final rule. OSHA acknowledges that there might be times when an employer will have to wait on hold to speak to an OSHA representative, but on the average, even allowing for such delays, the phone call should not exceed 15 minutes.

Many, if not most, employers will need no additional time beyond the time for the telephone call for the task of reporting a fatality, hospitalization, amputation, or loss of an eye, given they are both already required to obtain the information, and will frequently have the necessary information as a result of communications related to Workers' Compensation. However, OSHA recognizes that some firms, particularly larger firms, may require additional

review of reports that are sent directly to OSHA and that may well trigger OSHA enforcement activities. In addition, some firms may need to undertake additional information-gathering efforts, such as calls to hospitals or interviews with other employees, that would not have been necessary in the current seven-day timeframe for recording cases. As a result of these considerations, OSHA has adopted the suggestion of some commenters (Exs. 65 and 67) to expand the total estimate of time required to report a hospitalization from 15 minutes to 30 minutes. .

Dow argued that OSHA should also take into consideration the time spent following up with OSHA inspectors (Ex. 64). Other commenters made similar points and were also concerned about the time spent with follow-up inspections (Exs. 37, 67). In general, the requirements in this final rule will not result in additional OSHA enforcement activities. Instead, the provisions of the final rule should only result in more letters from OSHA to employers. OSHA inspections may increase at some facilities that report hospitalization, but may decrease at other facilities. OSHA does not have the data to determine which industries will be more or less affected, but believes that this will be a shift in the cost of being inspected, as opposed to an increase in net costs. To the extent that inspections targeted on reports of an in-patient hospitalization result in more citations than other inspections, such inspections may result in greater costs than other inspections. However, OSHA lacks the data to make an estimate of such costs at this time. This topic is discussed in more detail in the benefits section.

For the PEA, OSHA estimated that recordkeeping tasks would most likely be performed by a Human Resource, Training, and Labor Relations Specialist, not elsewhere classified (Human Resource Specialist)[7], a labor category defined by BLS's Occupational Employment Statistics (OES) program. Some commenters noted that the people keeping records would be

[7] BLS Occupational Employment Statistics (OES) code 13-1078

likely to earn more than $28.00 per hour, or approximately $56,000 per year, and that the required recordkeeping tasks would more accurately be performed by an individual whose qualifications were similar to those of an Industrial Hygienist (Exs. 64, 117). OSHA agrees with that recommendation and, for this FEA, has assigned the recordkeeping tasks to an Occupational Health and Safety Specialist[8] (OHSS) earning $31.54 per hour on average, or approximately $66,000 per year (BLS, 2011b). OSHA is aware that relatively few employers affected by this rule actually employ an OHSS, but feels that the additional cost per hour more accurately reflects the costs for recordkeepers. The labor hours assigned in OSHA's updated Recordkeeping ICR (OSHA, 2011) reflect this OES occupation category, and OSHA has applied the OHSS wage in this FEA.

In December 2011, BLS reported that employer costs for employee benefits (other than wage and salary) were 30.1 percent of total compensation for management, professional, and related occupations (BLS, 2011c). OSHA calculates a mean fringe benefit factor of 1.43 for management, professional, and related occupations[9]. Multiplying the base wage of $31.54 by the fringe benefit factor of 1.43 yields a total cost to employers for employee compensation of $45.12 in hourly wages for an OHSS.

OSHA has also determined that, while an OHSS or equivalent employee will perform the recordkeeping duties, there is likely to be a more senior employee responsible for certifying the OSHA Form 300A (Annual Summary). In the recordkeeping ICR (OSHA, 2011), OSHA estimated that the person responsible for certifying the log will typically have a wage equivalent to an Industrial Production Manager. OSHA has adopted that estimate for this analysis. An

[8] BLS Occupational Employment Statistics (OES) code 29-9011

[9] The percentage of total wages attributed to employee benefits (0.301) divided by the percent of total wages attributed to base wages (0.699) = the fringe benefit factor (1.43).

Industrial Production Manager[10] (or IPM, a labor category defined by OES), or equivalent employee, is expected to earn an average of $45.99 per hour (BLS, 2011b). Applying the fringe benefit factor of 1.43 to this salary, total hourly compensation is calculated to be $65.79 for an IPM.

The Small Business Administration (SBA) Office of Advocacy urged OSHA to consider "whether its wage rate assumption is valid for many small businesses" (Ex. 94). OSHA agrees that recordkeeping will more likely be performed by an OHSS or equivalent employee, and the Agency's 2011 ICR for Recordkeeping reflects this cost assumption (OSHA, 2011). As noted above, for this FEA, OSHA has applied a higher wage than the wage applied in the PEA. OSHA recognizes that there is significant diversity among firms with respect to the personnel charged with OSHA recordkeeping responsibilities. Smaller firms may have a bookkeeper perform this function, while larger firms will likely use an occupational health and safety specialist. However, OSHA believes that the hourly cost of $45.12, the total compensation of an OHSS, is a reasonable estimate of the costs for the typical recordkeeper, regardless of actual occupation.

Another commenter asked that OSHA always use an overtime wage (Ex. 100). In fact, OSHA's estimate of loaded wages (wages that include compensated benefits) includes an overtime and premium component within the compensated benefits. Therefore, OSHA believes that its estimate of loaded wages captures overtime compensation. OSHA does not believe that the overtime rate would be an appropriate measure for the base rate in all circumstances, because OSHA does not anticipate that all labor resulting from the regulation will occur during overtime.

Total Costs

Combining the unit time requirements, hourly wages, numbers of establishments, and injury and illness totals presented in Table V-1, Table V-3 shows OSHA's estimate of the cost of

[10] BLS Occupational Employment Statistics (OES) code 11-3051

the final rule for the current partially-exempt employers who would need to keep records as a result of the final rule. The expected annualized cost of the rule to those employers is $17.9 million per year, with the most expensive element being the completion, certification, and posting of the OSHA Form 300A ($11.9 million per year). The 4-digit industry projected to bear the highest cost ($2.9 million) is NAICS 6241, Individual and Family Services.

Combining the unit time requirements, hourly wages, number of establishments, and injury and illness totals presented in Table V-2, Table V-4 shows OSHA's annualized estimate of the cost savings of the final rule for employers who would no longer need to routinely keep records as a result of the final rule. OSHA estimates that the total cost savings for these employers would be $11.5 million per year.

Combining estimated costs and estimated savings, the net cost of the changes in the partial exemption part of the final rule is $6.4 million per year.

V-3: Annualized Costs to Industries That Include Establishments that Would Be Newly Required to Keep Records						
NAICS Code	**NAICS Industry Description**	**Learning New Record Keeping System**	**Relearning Recordkeeping System Due to Turnover**	**Complete, Certify and Post OSHA Form 300A**	**Complete Log Entries, Mark Privacy Issues and Provide Employees Access**	**Total Costs to Industries Newly Required to Keep Records**
3118	Bakeries and tortilla manufacturing	$11,471	$16,113	$96,603	$8,558	$132,745
4411	Automobile dealers	$131,160	$184,242	$1,104,583	$593,270	$2,013,254
4413	Automotive parts, accessories, and tire stores	$2,750	$3,863	$23,160	$2,684	$32,457
4441	Building material and supplies dealers	$50,315	$70,678	$423,733	$78,322	$623,048
4452	Specialty food stores	$40,737	$57,224	$343,077	$40,905	$481,943
4453	Beer, wine, and liquor stores	$40,539	$56,946	$341,407	$69,817	$508,709
4539	Other miscellaneous store retailers	$70,997	$99,731	$597,912	$85,713	$854,353
4543	Direct selling establishments	$467	$656	$3,934	$560	$5,617
5311	Lessors of real estate	$191,733	$269,330	$1,614,710	$122,787	$2,198,561
5313	Activities related to real estate	$158,466	$222,600	$1,334,546	$231,835	$1,947,447
5322	Consumer goods rental	$58,651	$82,388	$493,941	$6,334	$641,315
5324	Commercial and industrial machinery and equipment rental and leasing	$5,082	$7,139	$42,802	$6,368	$61,392
5419	Other professional, scientific, and technical services	$67,409	$94,691	$567,699	$113,405	$843,204
5612	Facilities support services	$27,953	$39,266	$235,411	$24,717	$327,348
5617	Services to buildings and dwellings	$261	$367	$2,199	$652	$3,479
5619	Other support services	$36,051	$50,642	$303,612	$125,451	$515,756
6219	Other ambulatory health care services	$17,894	$25,135	$150,694	$25,742	$219,466
6241	Individual and family services	$214,014	$300,629	$1,802,356	$588,047	$2,905,046
6242	Community food and housing, and emergency and other relief services	$51,351	$72,133	$432,460	$64,627	$620,571
7111	Performing arts companies	$11,520	$16,182	$97,015	$29,175	$153,891
7113	Promoters of performing arts, sports, and similar events	$8,860	$12,445	$74,614	$67,460	$163,380
7121	Museums, historical sites, and similar institutions	$10,668	$14,985	$89,841	$42,947	$158,441
7139	Other amusement and recreation industries	$16,648	$23,386	$140,206	$13,303	$193,544
7223	Special food services	$180,542	$253,610	$1,520,460	$274,560	$2,229,172
8129	Other personal services	$6,784	$9,530	$57,135	$13,301	$86,751
	Totals:	$1,412,323	$1,983,913	$11,894,111	$2,630,542	$17,920,888
	Sources: OSHA, Office of Regulatory Analysis.					

V-4: Annualized Cost Savings to Industries Newly Partially Exempt from Recordkeeping Requirements					
NAICS Code	NAICS Industry Description	Relearning Recordkeeping System Due to Turnover	Complete, Certify and Post OSHA Form 300A	Complete Log Entries, Mark Privacy Issues and Provide Employees Access	Costs Savings to Industries Newly Exempted from Keeping Records
4412	Other Motor Vehicle Dealers	$42,852	$253,967	$49,988	$346,807
4431	Electronics and Appliance Stores	$37,061	$219,644	$15,717	$272,422
4461	Health and Personal Care Stores	$15,571	$92,282	$3,280	$111,132
4471	Gasoline Stations	$465,970	$2,761,603	$209,447	$3,437,021
4511	Sporting Goods, Hobby, and Musical Instrument Stores	$463	$2,743	$234	$3,440
4532	Office Supplies, Stationery, and Gift Stores	$37,802	$224,036	$35,519	$297,357
4812	Nonscheduled Air Transportation	$6,302	$37,351	$14,953	$58,606
4861	Pipeline Transportation of Crude Oil	$3,671	$21,756	$3,408	$28,835
4862	Pipeline Transportation of Natural Gas	$16,559	$98,138	$11,930	$126,627
4869	Other Pipeline Transportation	$7,424	$43,999	$3,572	$54,995
4879	Scenic and Sightseeing Transportation, Other	$484	$2,867	$854	$4,204
4885	Freight Transportation Arrangement	$81,664	$483,984	$49,102	$614,750
5111	Newspaper, Periodical, Book, and Directory Publishers	$88,942	$527,121	$125,668	$741,731
5122	Sound Recording Industries	$4,132	$24,489	$3,271	$31,892
5151	Radio and Television Broadcasting	$59,472	$352,463	$69,595	$481,530
5172	Wireless Telecommunications Carriers (except Satellite)	$91,974	$545,092	$22,134	$659,200
5179	Other Telecommunications	$11,442	$67,809	$27,649	$106,900
5191	Other Information Services	$16,603	$98,400	$4,036	$119,039
5221	Depository Credit Intermediation	$38,275	$226,842	$7,714	$272,831
5239	Other Financial Investment Activities	$1,258	$7,455	$521	$9,235
5241	Insurance Carriers	$1,247	$7,392	$870	$9,510
5259	Other Investment Pools and Funds	$352	$2,086	$3,207	$5,645
5413	Architectural, Engineering, and Related Services	$7,083	$41,977	$6,154	$55,214
5416	Management, Scientific, and Technical Consulting Services	$11,459	$67,912	$5,405	$84,775
5418	Advertising and Related Services	$11,296	$66,945	$175,862	$254,103
5511	Management of Companies and Enterprises	$141,485	$838,520	$4,675	$984,680
5614	Business Support Services	$24,819	$147,090	$30,354	$202,263
5615	Travel Arrangement and Reservation Services	$58,097	$344,318	$9,534	$411,949
5616	Investigation and Security Services	$3,217	$19,066	$16,873	$39,156
6116	Other Schools and Instruction	$22,811	$135,190	$520	$158,521
7213	Rooming and Boarding Houses	$3,304	$19,580	$1,583	$24,466
8112	Electronic and Precision Equipment Repair and Maintenance	$19,728	$116,919	$26,224	$162,870
8114	Personal and Household Goods Repair and Maintenance	$13,017	$77,146	$16,557	$106,720
8122	Death Care Services	$16,728	$99,141	$22,456	$138,326
8134	Civic and Social Organizations	$31,978	$189,519	$16,784	$238,281
8139	Business, Professional, Labor, Political, and Similar Organizations	$46,030	$272,797	$558,406	$877,233
	Totals:	$1,440,572	$8,537,639	$1,554,055	$11,532,266
	Sources: OSHA, Office of Regulatory Analysis.				

To estimate the costs of reporting in-patient hospitalizations, amputations, and losses of an eye, OSHA multiplied the estimated number of such events per year (112,000 in-patient hospitalizations plus 5,000 amputations not leading to in-patient hospitalizations), the estimated time per report (0. 5 hours), and the hourly compensation costs of a recordkeeper ($45.12). The resulting estimate of the annual cost of this provision is $2.6 million per year.

Table V-5 shows the total net costs of the final rule considering all three elements: costs incurred by current partially-exempt employers who would be newly required to keep records, cost savings to employers who would no longer be required to routinely keep records, and costs associated with the reporting of all in-patient hospitalizations, amputations, and losses of an eye. OSHA estimates that the total net costs of this final rule would be $9 million per year.

V-5: Annualized Costs and Cost Savings for the Major Elements of the Rule	
Cost or Cost Savings Element	**Value**
Costs to Employers Newly Required to Keep Records	$17,920,888
Cost Savings To Employers Newly Exempt from Keeping Records	($11,532,266)
Costs Of Additional Reporting Of Hospitalizations, Amputations and Losses of an Eye	$2,639,520
Net Costs	$9,028,142

D. Benefits

OSHA believes that the conversion from SIC to NAICS and the revised reporting requirements have substantially different goals and thus different potential benefits. OSHA expects the conversion from SIC to NAICS to result in more useful injury and illness data. The SIC system currently used by OSHA is obsolete and has not been used by many other data collection entities for years. Converting to NAICS will enable both affected employers and OSHA to achieve consistency and comparability with other data collection efforts conducted by both public and private entities. OSHA found little controversy concerning the concept of converting from SIC to NAICS. However, there is no way to convert from SIC to NAICS without changing in some way the number of establishments required to routinely record injuries and illnesses. This result is inevitable because there is no one-for-one mapping from SIC to NAICS for many industries. Some SIC industries were split into several NAICS industries that include other SIC industries, while some NAICS industries represent consolidations of several

SIC industries. OSHA decided that the best way to conduct the conversion was to update the included industries using BLS data on DART rates by NAICS code, and apply the rule used in two previous OSHA rulemakings – that establishments in industries with DART rates of 75 percent or more of the mean overall DART rate should record injuries and illnesses. Based on analysis of the record and data from the Census Bureau provided in the industrial profile section of this analysis, OSHA estimates that 160,000 establishments will now be partially exempt from keeping records. According to 2010 data from BLS, these establishments have an average injury and illness rate of 1.4 cases per 100 full-time workers. On the other hand, the revision to the regulation applies injury and illness recordkeeping requirements to an additional 220,000 establishments that have an average injury and illness rate of 2.8 cases per 100 full-time workers. Though on average, establishments newly required to record have higher injury and illness rates than those newly partially exempted, there will certainly be individual portions of industries that are newly required to record even though their injury and illness rates are quite low, as well as portions of industries that are newly exempt even though their injury and illness rates are quite high. This is the inevitable result of categorizing industries based on similarity of business products or services rather than similarity of risk of occupational injury and illness. However, as the average injury and illness rates for the industries newly required to record and newly partially-exempt from recording show, on the whole the changes that result from the transition from SIC to NAICS will require higher-risk establishments to record while partially-exempting lower-risk establishments.

Some commenters, such as the SBA Office of Advocacy, were concerned that "industries with declining injury and illness rates would now be required to maintain OSHA Logs even though their workplaces have become safer." SBA went on to call the basic criteria OSHA used

“arbitrary.” There was also an implicit concern that although industries had lower injury and illness rates in the aggregate, more industries would be required to routinely record. On the other hand, some commenters argued that OSHA should require all establishments to routinely record work-related injuries and illnesses.

OSHA’s original justification in 1982 for providing a partial exemption to industries with injury and illness rates below 75 percent of the national average injury and illness rate was primarily based on two reasons, 1) that records would be available in establishments more likely to be inspected by OSHA; and 2) that the number of establishments required to keep records that would record no injuries or illnesses would be limited (47 FR 57699-701). At that time, OSHA viewed the primary purpose of injury and illness rate records as something to be made available during an OSHA inspection. Since OSHA continues to do inspections, the decline in injury and illness rates is not relevant to the first reason. As for the second reason, the size of the establishment is at least as relevant as the injury and illness rate. A larger establishment with a lower injury and illness rate may be more likely to have a recordable injury or illness than a smaller establishment with a higher injury and illness rate,

The changes to the partial exemption in this final rule have several benefits, two of which were explicitly recognized in the original 1982 rulemaking. First, because on average, the update in the data used to calculate the average DART rate partially exempts establishments with a lower average DART rate from the recording requirements, and adds establishments with a higher average DART rate to the recording requirements, there will be fewer facilities that will have to keep records even though they will never record an injury or illness. Second, the establishments that OSHA is most likely to inspect, those with 10 or more employees in higher-hazard industries, will have a record of injuries and illnesses available at the time of the

inspection. OSHA is relatively unlikely to inspect partially-exempted industries unless there is a fatality, catastrophe, or complaint, and thus there is less need for a record of injuries and illnesses to help guide the inspection.

In addition, OSHA emphasizes today that recordkeeping is not simply a requirement useful in the event of an OSHA inspection, but that recordkeeping also permits workers and employers to gather worksite data that enhance the identification and elimination of hazards that pose serious risks to workers. This function seems useful whenever and wherever there are preventable injuries and illnesses and is not limited by the level of hazard found. There are several reasons to believe that a requirement to keep records can be a first step toward lowering injury and illness rates. Simply the process of keeping and certifying accurate records will make employers more aware of their safety and health problems and provide them with a basis for benchmarking themselves against others in their industry. Recordkeeping data should also allow them to take steps to prevent injuries and illnesses from occurring in the same manner. Having records available also enables OSHA compliance officers to focus their inspection activities in areas with high numbers of injuries and illnesses. As a result of keeping records, the average employer in an industry with relatively high injury and illness rates, their employees, and OSHA will have a better understanding of the nature of the serious injuries and illnesses occurring in establishments. On the other hand, some employers with relatively low injury and illness rates will now be partially exempt from keeping records and providing them to their employees or OSHA.

The employers newly required to keep records have an average costs of $117 per injury or illness recorded (based on dividing the total cost of recording in Table V-3 by the total number of injuries in Table V-1.) On the other hand, newly partially-exempted establishments

had average costs of $208 per injury and illness recorded (based on dividing the total cost of recording in Table V-4 by the total number of injuries in Table V-2.) This revision is more cost-effective than the original rule in the sense that the revision adds employers with a lower average cost of recording injuries and illnesses and removes employers with a higher average cost, and this serves to lower the average cost of recording injuries and illnesses for the rule as a whole.

Although OSHA lacks the information to determine the exact value of keeping OSHA injury and illness records, it is possible to look at scenarios that justify OSHA's assertion that there is some value to recording injuries and illnesses when the cost of recording is under $200 per case. A meta-analysis of willingness-to-pay estimates (Viscusi, et al., 2003) values a prevented injury at $62,000. Using the cost of a record as $117 per case, there would be recordkeeping costs of $23,400 for two hundred cases. If keeping injury and illness records results in eliminating one injury in two hundred, then there would be benefits for these two hundred injuries and illnesses of $62,000. Compared to costs of $23,400, this results in a net benefit of $38,600 for these two hundred cases. However, some account must be taken of the costs of correcting these hazards. If the costs of eliminating the hazard that lead to the injury or illness are $38,600, then the benefit and costs would be equal ($62,000 in benefit equals $23,400 in recording costs plus $38,600 in control costs.) To the extent that the ratio of illnesses and injuries prevented to illnesses and injuries reported is greater than 1 in 200, or if the control costs necessary to prevent the injury or illness were lower, the benefits of keeping the record would exceed the costs. OSHA believes that there are many such situations. For example, many injuries could be prevented by assuring that already-provided PPE is consistently used – a relatively inexpensive kind of fix. Further, there may be situations in recording injuries and illnesses that may be worthwhile even when the cost of recording exceeds an average of $200 per case. In any

event, investments in preventing injuries and illnesses as a result of recordkeeping are entirely voluntary, and employers are likely to undertake only those investments for which the employer believes the benefits will exceed the costs. If the employer does not find that the benefits will exceed the costs, there may be instances where the rule's reporting requirements will not lead to health and safety benefits.

As noted above, OSHA's criteria for the partial exemption were intended neither to expand nor to contract the number of establishments required to keep records. They were instead intended to minimize the number of establishments required to keep records that have nothing to record, while assuring that the establishments OSHA would be most likely to visit would keep records. Given this approach, there is no reason why the number of establishments covered by the recordkeeping regulation should not rise as aggregate industry rates go down, especially when rates in some of the industries with the highest rates have gone down the fastest. Further, OSHA inspections suggest, and safety and health professionals agree, that injury and illness records can have value to employers and employees even when OSHA does not visit, provided that reasonable numbers of preventable injuries and illnesses remain in the industries required to keep records.

The requirement to report all work-related fatalities, in-patient hospitalizations, amputations, and losses of an eye assures that OSHA will be able to better use inspection and enforcement resources by targeting those resources to establishments with the most serious hazards. OSHA currently requires the reporting only of fatalities and incidents resulting in three or more hospitalizations. In-patient hospitalizations, amputations, and losses of an eye due to work-related incidents are serious and significant events. Requiring the reporting of each of these events will ensure that OSHA is informed of approximately 30 times as many serious events.

There are some incidents leading to hospitalizations that, by their very nature, virtually guarantee that an OSHA standard was violated. OSHA does not intend to conduct an inspection for every reported hospitalization. Instead, the Agency will treat each hospitalization on a case-by-case basis, and depending on the circumstances, determine whether it is necessary to inspect, respond by phone and fax, or provide compliance assistance materials. Greater awareness regarding the extent and nature of such cases helps OSHA develop and prioritize various OSHA enforcement programs and initiatives. It also serves the public interest by enabling OSHA to more effectively and efficiently target occupational safety and health hazards.

There will also be potential benefits as a result of better inspection targeting, to the extent that OSHA's resources are able to lead to the abatement of a greater number of hazards, and these abatements have benefits that exceed the costs. The abatement of additional hazards will also result in additional costs to industry to abate these hazards. OSHA conducts its enforcement and consultation programs based on the belief that, in the aggregate, abatement of more occupational hazards is a reasonable goal for the Agency. This belief is supported by the fact that, in the aggregate, OSHA's estimates of the benefits and costs of regulations since 1980 show that the benefits exceed the costs.

Six commenters (Exs. 68, 102, 108, 111, 113, 118) either argued that the proposed requirement to report hospitalizations and amputations had no benefits or urged OSHA to present a fuller analysis of benefits. The National Association of Home Builders (NAHB) stated that "the burden has no corresponding benefit" (Ex. 113). The American Supply Association commented, "There is no evidence that reporting isolated hospitalizations to OSHA would meaningfully improve safety within the workplace" (Ex. 111). OSHA acknowledges that the PEA did not include a quantified benefits analysis, but argues that the costs of the regulation are such that the

regulation need only have a minute effect in reducing injuries and illnesses for the benefits to exceed the costs. In this final preamble, OSHA has attempted to more carefully indicate why it believes there may be potential benefits associated with such reporting. To assist in this explanation, OSHA has introduced some new studies to the docket, which will be cited where relevant. However, OSHA is not depending on this new information.

Having data on establishments that experience significant events and have higher injury and illness rates will improve inspection targeting. Studies have shown that OSHA inspections can lead to a reduction in the rate of injuries and illnesses, and that the effect is greater where injury and illness rates are higher and where the inspection finds violations that result in a citation. Most studies reviewed showed reductions in injuries and illnesses at a given facility only when the inspection uncovered safety and health violations that resulted in citations. In a working paper funded by the RAND Corporation, Haviland (Haviland, et al., 2008) estimated that firms with between 20 and 250 employees experience a 19 to 24 percent reduction in injury rates per year for two years following an inspection that results in a citation. Haviland went on to review similar prior studies, noting that "Gray and Mendeloff (2005) concluded that the impacts of OSHA penalty inspections [measured as a decline in injuries in the years following an inspection that found penalties] on lost workday manufacturing injuries had declined steadily over three periods – from an average of about 20 percent [decline in injuries in the years following an inspections where violations were found and penalties were levied] in 1979-1985 to about 12 percent in 1987-1991 and to only (a non-significant) 1 percent in 1992-1998." These various studies thus provide a range of a 1 to 24 percent decline in injuries in the years following an inspection that found health and safety violations that resulted in citations. The studies varied as to the size and industry of establishments studied, and varied in examining effects from 2 to 4

years after the inspection, but show strong evidence that there is some positive effect for worker health and safety in the years following an inspection where citations are issued.

These studies show that inspections targeted to establishments with higher injury and illness rates have a greater potential for reducing injuries and illnesses. The revisions that OSHA is making to these provisions in Part 1904 will increase the amount of injury and illness data recorded on employer records and available for review and collection by OSHA. With this improved availability of data, OSHA will be able to better target facilities that are more likely to have violations that result in citations, which will, in turn, have some positive effect on the rates of injuries and illnesses at those facilities. The benefit of such improved targeting will only exceed the cost of improved targeting where the benefits of prevented injuries and illnesses exceed the costs of correcting of the hazards found via the improved targeting. However, OSHA's contribution to the Department of Labor's Strategic Plan is based on the belief that improved targeting that results in reduced injuries and illnesses is a desirable goal. Benefits in improved inspection targeting are the primary source of potential benefits for the requirement to report all in-patient hospitalizations. Data from the states that currently require reporting of single work-related in-patient hospitalizations show that inspections resulting from those hospitalizations result in citations 66.5 percent of the time, while all other inspections result in citations 51.8 percent of time (OSHA 2012 *Integrated Management Information System*, Data Query). Given the finding that citations resulting from inspections help to reduce the rates of workplace injuries and illnesses in the years following the inspections, requiring reporting of single work-related in-patient hospitalizations at an estimated cost of under $23 per report is highly likely to have a positive effect on worker safety and health.

E. Technological Feasibility

Partial Exemption

There are a large number of establishments already recording injuries and illnesses in compliance with the existing Part 1904 regulation. Further, every year, some firms that were partially exempt from routinely keeping records under the existing regulation have had to report injury and illness data to BLS, which demonstrates that such firms are capable of keeping the required records. OSHA does not see any reason why employers in industries no longer partially exempt from recording requirements would experience any feasibility difficulties in complying with this final rule, and no industry that is newly required to keep records has recordkeeping issues that would cause it to be significantly different from industries that are already required to maintain the records.

Reporting of Fatalities, In-Patient Hospitalizations, Amputations, and Losses of an Eye

In six states, an estimated 1.3 million establishments under OSHA jurisdiction are currently required to report single in-patient hospitalizations. There are approximately 7.4 million establishments currently under OSHA's nationwide jurisdiction (Census Bureau, 2009). Nearly 18 percent of all establishments in the U.S. are already required to report single in-patient hospitalizations and are successfully doing so. Therefore, OSHA has no reason to believe that employers newly required to report single in-patient hospitalizations would have difficulty complying with this final rule.

F. Economic Feasibility and Impacts

In this section, OSHA first considers the economic impact on firms newly required to keep records under this final rule, and then turns to the economic impact of requirements to report in-patient hospitalizations, amputations, and losses of an eye. The economic impact for

firms that are no longer required to routinely keep records is a net reduction in costs and is thus obviously economically feasible.

Partial Exemption

OSHA's primary estimate of economic impacts for this analysis is total annualized cost of compliance per establishment, calculated by dividing the total annualized incremental costs of compliance for each industry by the number of affected establishments in each industry. Table V-6 shows the costs per establishment for four-digit NAICS industries, and Table V-6A, in the appendix, shows the costs per establishment for six-digit NAICS industries. Costs per establishment average $82 per year and range from a minimum of $71 per year per establishment to a maximum of just under $150 per year per establishment across six-digit NAICS industries. OSHA believes that costs of this magnitude could not possibly affect the viability of a firm and are thus economically feasible. This finding of economic feasibility would still be valid even if the costs of this provision were considerably greater than OSHA's estimates. After all, employers have had to meet these recordkeeping requirements in many industries for years with no reported impact on the economic viability of those industries.

V-6: Economic Impacts for Establishments Newly Required to Keep Records under the Final OSHA Standard (by NAICS code)			
NAICS Code	**NAICS Industry Description**	**Affected Establishments**	**Cost per Affected Establishment**
3118	Bakeries and tortilla manufacturing	1,786	$74.34
4411	Automobile dealers	20,417	$98.61
4413	Automotive parts, accessories, and tire stores	428	$75.82
4441	Building material and supplies dealers	7,832	$79.55
4452	Specialty food stores	6,341	$76.00
4453	Beer, wine, and liquor stores	6,311	$80.61
4539	Other miscellaneous store retailers	11,052	$77.31
4543	Direct selling establishments	73	$77.25
5311	Lessors of real estate	29,846	$73.66
5313	Activities related to real estate	24,668	$78.95
5322	Consumer goods rental	9,130	$70.24
5324	Commercial and industrial machinery and equipment rental and leasing	791	$77.60
5419	Other professional, scientific, and technical services	10,493	$80.36
5612	Facilities support services	4,351	$75.23
5617	Services to buildings and dwellings	41	$85.60
5619	Other support services	5,612	$91.90
6219	Other ambulatory health care services	2,785	$78.79
6241	Individual and family services	33,314	$87.20
6242	Community food and housing, and emergency and other relief services	7,994	$77.63
7111	Performing arts companies	1,793	$85.82
7113	Promoters of performing arts, sports, and similar events	1,379	$118.46
7121	Museums, historical sites, and similar institutions	1,661	$95.41
7139	Other amusement and recreation industries	2,592	$74.68
7223	Special food services	28,104	$79.32
8129	Other personal services	1,056	$82.14
		Total:	**Average:**
		219,848	$81.51
	Sources: OSHA, Office of Regulatory Analysis.		

Reporting of Fatalities, In-patient Hospitalizations, Amputations, and Losses of an Eye

OSHA received many comments claiming that the provision requiring employers to report fatalities, hospitalizations, and amputations within a specified time period would be overly burdensome to employers and would cost more than OSHA estimated (Exs. 27, 39, 53, 63, 89, 97, 98, 104, 105, 108, 111, 113, 119). However, OSHA received no comments that such costs would be economically infeasible. OSHA notes the estimate of total costs of approximately $2.6 million per year across all 7.4 million business establishments in OSHA's jurisdiction; the average cost per establishment of this provision is $0.32 per establishment per year. In a typical year, most establishments will not report a single work-related in-patient hospitalization, amputation, or loss of an eye. For those establishments that do report such incidents, the costs will be approximately $23 per reported incident. Costs of this magnitude – which represent the costs of 30 minutes of employer time – will not affect the viability of any firm. Even if these costs were significantly higher, they would not affect the viability of any firm and thus could not affect the economic feasibility of this part of the regulation.

G. Regulatory Flexibility Certification

After the final rule becomes effective, OSHA will continue to partially exempt employers with fewer than 11 employees from routinely recording work-related injuries and illnesses. Such very small firms are affected by the revisions to this rule only insofar as they may have to report a fatality, in-patient hospitalization, amputation, or loss of an eye. Such an event will be extremely rare for most small firms, and even when they occur, OSHA has estimated the costs as approximately $23 per report, a sum that will not represent a significant economic impact for even the smallest firms.

Most of the employers affected by the change in the partial exemption to the recordkeeping regulation are small firms. Even when considering the mix of small and large firms covered by this final rule, the average cost per establishment is well under $100 per year per establishment. OSHA believes that average costs of less than $100 per establishment do not represent a significant economic impact on small firms with 11 employees or more. The cost will be lowest for very small firms that do not have any injuries and illnesses to record. However, because the fixed costs of setting up a recordkeeping system are high relative to the marginal costs per injury or illness recorded, the smallest firms with few injuries and illnesses to record will still have the highest costs as percentage of revenues.

The Associated General Contractors of America stated that they believe that a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel would enable the Agency to better assess the impacts of this final rule on small businesses (Ex. 115). The US Chamber of Commerce also commented that OSHA would benefit from a SBREFA panel because of the large number of small businesses that will now have to keep records (Ex. 120). The SBA Office of Advocacy asked OSHA to consider conducting additional public outreach (Ex. 94). In response to these comments, OSHA notes that there are already a substantial number of small businesses currently required to keep records under the previous regulation, and that no evidence was presented in the record to show that small businesses are experiencing significant economic impacts as a result of complying with provisions identical to those required by this final rule. OSHA reiterates that with compliance costs of approximately $23 per report for reporting an incident, and average annual costs of less than $100 for recording injuries and illnesses, these costs do not represent an economic impact on small firms of the magnitude that the Agency believes would compel the need for a SBREFA panel. OSHA has engaged stakeholders

throughout the rulemaking process and received many comments from small businesses that the Agency incorporated into this final rule and FEA. As a result, OSHA considers it unlikely that a SBREFA panel would provide any new information that would alter the estimates of costs or the alternatives considered as a part of this rulemaking.

The Associated General Contractors of America stated that the proposed rule on the MSD column showed that OSHA underestimates small business impact (Ex. 115). OSHA has not made any determination, either affirmative or negative, on the assertion that OSHA underestimated the small business impacts of the MSD column proposed rule.

As a result of these considerations, and in accordance with the Regulatory Flexibility Act, OSHA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

H. Appendix: FEA Data at the Six-Digit NAICS Level

This appendix provides supporting material developed in support of this rule at the six-digit NAICS level.

Table V-1A presents data on industries with establishments that would be newly required to keep records. The table shows the six-digit NAICS code, industry name, number of affected employees, and estimate of the number of recordable injuries and illnesses, based on historical data, for newly affected employers.

Table V-2A presents data on industries with establishments that would be newly partially exempt from recordkeeping. The table shows the six-digit NAICS code, industry name, number of affected establishments per industry, number of employees, and estimated number of injuries and illnesses that would no longer be recorded in each affected industry.

Table V-3A shows OSHA's estimates of the costs of the final rule, at the six-digit NAICS level, for current partially-exempt employers who would need to keep records as a result of the final rule.

Table V-4A shows OSHA's estimates of the cost savings of the final rule, at the six-digit NAICS level, for employers who would no longer need to keep records as a result of the proposed rule.

Table V-6A shows the costs per establishment at the six-digit NAICS level.

V-1A: Industries That Include Establishments that Would Be Newly Required to Keep Records					
NAICS CODE	Title of NAICS Code	Affected Employment	Affected Establishments	Affected Firms	Estimated Injuries and Illnesses
311811	Retail bakeries	38,085	1,786	1,627	499
441110	New car dealers	908,714	17,210	13,882	32,571
441120	Used car dealers	59,910	3,207	2,351	2,031
441310	Automotive parts and accessories stores	4,984	428	64	157
444130	Hardware stores	101,704	7,832	3,370	4,568
445210	Meat markets	21,037	1,311	921	412
445220	Fish and seafood markets	828	44	39	31
445291	Baked goods stores	14,896	1,456	585	553
445292	Confectionery and nut stores	13,007	1,485	342	483
445299	All other specialty food stores	24,456	2,046	884	908
445310	Beer, wine, and liquor stores	68,837	6,311	2,772	4,072
453910	Pet and pet supplies stores	82,851	4,132	962	3,570
453920	Art dealers	6,467	440	282	145
453991	Tobacco stores	14,295	1,906	571	320
453998	All other miscellaneous store retailers (except tobacco stores)	43,159	4,573	1,718	965
454390	Other direct selling establishments	1,461	73	42	26
531110	Lessors of residential buildings and dwellings	179,917	16,715	4,617	6,499
531120	Lessors of nonresidential buildings (except miniwarehouses)	102,410	6,158	3,001	2,913
531130	Lessors of miniwarehouses and self-storage units	17,551	5,431	429	496
531190	Lessors of other real estate property	14,784	1,542	499	469
531311	Residential property managers	318,788	15,782	5,588	7,943
531312	Nonresidential property managers	109,461	6,454	2,796	2,727
531320	Offices of real estate appraisers	11,480	735	507	33
531390	Other activities related to real estate	39,999	1,697	1,076	856
532220	Formal wear and costume rental	6,256	880	127	194
532230	Video tape and disc rental	71,742	8,229	445	2,230
532299	All other consumer goods rental	313	21	8	16
532420	Office machinery and equipment rental and leasing	4,102	306	107	75
532490	Other commercial and industrial machinery and equipment rental and leasing	7,846	486	137	136
541910	Marketing research and public opinion polling	90,679	2,077	1,097	3,794
541921	Photography studios, portrait	53,158	5,623	499	334
541922	Commercial photography	3,666	204	163	23
541930	Translation and interpretation services	15,211	301	223	636
541990	All other professional, scientific, and technical services	64,251	2,288	1,148	2,688
561210	Facilities support services	229,546	4,351	909	3,859
561790	Other services to buildings and dwellings	909	41	32	35
561910	Packaging and labeling services	35,116	783	598	428
561920	Convention and trade show organizers	60,998	1,018	738	744
561990	All other support services	124,970	3,811	2,322	1,524
621991	Blood and organ banks	73,594	1,272	215	2,171
621999	All other miscellaneous ambulatory health care services	49,533	1,513	753	1,461

V-1A: Industries That Include Establishments that Would Be Newly Required to Keep Records

NAICS CODE	Title of NAICS Code	Affected Employment	Affected Establishments	Affected Firms	Estimated Injuries and Illnesses
624110	Child and youth services	146,481	5,433	2,882	4,788
624120	Services for the elderly and persons with disabilities	714,622	13,760	8,530	17,246
624190	Other individual and family services	387,360	14,121	6,483	8,771
624210	Community food services	29,204	2,266	939	488
624221	Temporary shelters	64,246	2,803	1,968	1,142
624229	Other community housing services	40,648	2,201	1,383	722
624230	Emergency and other relief services	20,563	724	423	176
711110	Theater companies and dinner theaters	56,222	1,016	920	1,962
711120	Dance companies	7,578	154	148	265
711130	Musical groups and artists	28,114	552	544	981
711190	Other performing arts companies	9,386	70	61	328
711310	Promoters of performing arts, sports, and similar events with facilities	97,944	997	736	1,079
711320	Promoters of performing arts, sports, and similar events without facilities	14,775	382	341	163
712110	Museums	69,503	1,339	1,204	2,098
712120	Historical sites	7,158	322	211	216
713950	Bowling centers	66,941	2,534	1,922	715
713990	All other amusement and recreation industries	1,284	58	49	33
722310	Food service contractors	492,636	24,699	829	14,394
722320	Caterers	106,830	3,405	3,051	3,121
812921	Photofinishing laboratories (except one-hour)	9,139	195	172	292
812922	One-hour photofinishing	465	56	30	15
812990	All other personal services	18,047	805	600	132
	Total:	5,480,115	219,848	91,870	152,721

Sources: OSHA, Office of Regulatory Analysis using Census Bureau and Bureau of Labor Statistics data:

1 SOURCE: 2011 Census Bureau: http://www2.census.gov/econ/susb/data/2010/us_6digitnaics_2010.xls

2 SOURCE: 2011 Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, in cooperation with participating State agencies. . http://www.bls.gov/iif/oshwc/osh/os/ostb2427.pdf

V-2A: Industries That Include Establishments that Would Be Newly Partially Exempt From Keeping Records					
NAICS CODE	NAICS Industry Description	Affected Employment	Affected Establishments	Affected Firms	Estimated Injuries and Illnesses
441210	Recreational vehicle dealers	22,568	1,029	737	779
441221	Motorcycle, ATV, and personal watercraft dealers	39,958	1,957	1,611	1,328
441222	Boat dealers	17,553	1,357	704	584
441229	All other motor vehicle dealers	6,766	406	295	225
443111	Household appliance stores	43,780	2,733	1,238	816
443120	Computer and software stores	17,339	1,374	137	101
446120	Cosmetics, beauty supplies, and perfume stores	3,100	326	19	23
446199	All other health and personal care stores	13,125	1,399	438	168
447110	Gasoline stations with convenience stores	534,740	51,637	10,805	12,216
451130	Sewing, needlework, and piece goods stores	1,008	51	13	14
453210	Office supplies and stationery stores	81,238	4,189	612	2,072
481211	Nonscheduled chartered passenger air transportation	22,806	491	411	688
481212	Nonscheduled chartered freight air transportation	2,330	54	33	70
481219	Other nonscheduled air transportation	3,778	154	90	114
486110	Pipeline transportation of crude oil	7,747	407	41	199
486210	Pipeline transportation of natural gas	29,497	1,835	71	696
486910	Pipeline transportation of refined petroleum products	8,647	795	38	186
486990	All other pipeline transportation	1,042	28	9	22
487990	Scenic and sightseeing transportation, other	1,760	54	45	50
488510	Freight transportation arrangement	183,189	9,050	3,085	2,864
511110	Newspaper publishers	252,665	4,614	1,699	5,343
511120	Periodical publishers	122,009	3,178	1,402	726
511130	Book publishers	76,420	977	649	656
511140	Directory and mailing list publishers	34,682	872	241	334
511191	Greeting card publishers	10,094	38	23	148
511199	All other publishers	8,289	178	134	122
512210	Record production	575	23	17	7
512220	Integrated record production/distribution	7,687	162	53	98
512230	Music publishers	4,488	123	82	57
512290	Other sound recording industries	2,141	150	58	27
515111	Radio networks	11,653	632	170	89
515112	Radio stations	84,507	4,301	1,273	642
515120	Television broadcasting	115,173	1,658	421	3,328
517210	Wireless telecommunications carriers (except satellite)	251,048	10,192	304	1,291
517911	Telecommunications resellers	18,878	667	401	697
517919	All other telecommunications	24,779	601	460	915
519130	Internet publishing and broadcasting and web search portals	82,415	1,662	812	181
519190	All other information services	8,190	178	86	54
522120	Savings institutions	61,486	4,242	318	450
523999	Miscellaneous financial investment activities	12,005	139	79	30
524130	Reinsurance carriers	6,664	138	39	51
525910	Open-end investment funds	9,465	39	27	141
541320	Landscape architectural services	12,561	699	563	103
541360	Geophysical surveying and mapping services	4,512	86	58	37
541612	Human resources consulting services	39,259	1,207	381	216
541614	Process, physical distribution, and logistics consulting services	1,280	30	15	7

V-2A: Industries That Include Establishments that Would Be Newly Partially Exempt From Keeping Records					
NAICS CODE	**NAICS Industry Description**	**Affected Employment**	**Affected Establishments**	**Affected Firms**	**Estimated Injuries and Illnesses**
541618	Other management consulting services	872	33	30	5
541890	Insurance and Employee Benefit Funds	55,145	1,252	670	563
551114	Pension Funds	1,005,423	15,679	7,671	8,766
561421	Health and Welfare Funds	31,274	577	437	277
561440	Collection agencies	133,603	2,174	1,536	937
561510	Travel agencies	83,619	5,076	1,024	477
561520	Tour operators	18,246	607	454	152
561599	All other travel arrangement and reservation services	46,271	755	199	563
561622	Locksmiths	5,397	357	290	99
611620	Sports and recreation instruction	53,575	2,528	2,167	266
721310	Rooming and boarding houses	6,107	366	249	55
811211	Consumer electronics repair and maintenance	10,329	295	219	306
811212	Computer and office machine repair and maintenance	3,339	104	57	99
811213	Communication equipment repair and maintenance	13,970	423	290	414
811219	Other electronic and precision equipment repair and maintenance	33,222	1,364	540	983
811411	Home and garden equipment repair and maintenance	1,139	88	58	23
811412	Appliance repair and maintenance	12,648	628	251	252
811430	Footwear and leather goods repair	35	4	2	1
811490	Other personal and household goods repair and maintenance	12,009	722	465	239
812220	Cemeteries and crematories	23,768	1,854	564	355
813410	Civic and social organizations	87,795	3,544	2,630	702
813930	Labor unions and similar labor organizations	122,412	4,883	4,037	979
813940	Political organizations	7,511	217	215	60
	Totals:	**4,072,606**	**159,638**	**54,245**	**55,539**
	Sources: OSHA, Office of Regulatory Analysis using Census Bureau and Bureau of Labor Statistics data:				
1	SOURCE: 2011 Census Bureau: http://www2.census.gov/econ/susb/data/2010/us_6digitnaics_2010.xls				
2	SOURCE: 2011 Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, in cooperation with participating State agencies. . http://www.bls.gov/iif/oshwc/osh/os/ostb2427.pdf				

V-3A: Annualized Costs to Industries That Include Establishments that Would Be Newly Required to Keep Records						
NAICS Code	NAICS Industry Description	Learning New Record Keeping System	Relearning Recordkeeping System Due to Turnover	Complete, Certify and Post OSHA Form 300A	Complete Log Entries, Mark Privacy Issues and Provide Employees Access	Total Costs to Industries Newly Required to Keep Records
311811	Retail bakeries	$11,471	$16,113	$96,603	$8,558	$132,745
441110	New car dealers	$110,559	$155,304	$931,091	$558,453	$1,755,406
441120	Used car dealers	$20,601	$28,938	$173,492	$34,817	$257,848
441310	Automotive parts and accessories stores	$2,750	$3,863	$23,160	$2,684	$32,457
444130	Hardware stores	$50,315	$70,678	$423,733	$78,322	$623,048
445210	Meat markets	$8,420	$11,828	$70,914	$7,064	$98,227
445220	Fish and seafood markets	$280	$393	$2,357	$527	$3,557
445291	Baked goods stores	$9,352	$13,136	$78,755	$9,478	$110,721
445292	Confectionery and nut stores	$9,542	$13,404	$80,358	$8,276	$111,580
445299	All other specialty food stores	$13,144	$18,463	$110,691	$15,560	$157,858
445310	Beer, wine, and liquor stores	$40,539	$56,946	$341,407	$69,817	$508,709
453910	Pet and pet supplies stores	$26,547	$37,291	$223,569	$61,215	$348,621
453920	Art dealers	$2,826	$3,970	$23,799	$2,479	$33,073
453991	Tobacco stores	$12,247	$17,203	$103,139	$5,479	$138,068
453998	All other miscellaneous store retailers (except tobacco stores)	$29,377	$41,267	$247,406	$16,541	$334,590
454390	Other direct selling establishments	$467	$656	$3,934	$560	$5,617
531110	Lessors of residential buildings and dwellings	$107,379	$150,837	$904,310	$68,953	$1,231,480
531120	Lessors of nonresidential buildings (except miniwarehouses)	$39,558	$55,568	$333,146	$39,249	$467,520
531130	Lessors of miniwarehouses and self-storage units	$34,890	$49,011	$293,836	$5,429	$383,167
531190	Lessors of other real estate property	$9,905	$13,914	$83,419	$9,156	$116,394
531311	Residential property managers	$101,382	$142,412	$853,801	$155,470	$1,253,065
531312	Nonresidential property managers	$41,460	$58,240	$349,165	$53,035	$501,901
531320	Offices of real estate appraisers	$4,722	$6,633	$39,765	$6,242	$57,361
531390	Other activities related to real estate	$10,902	$15,315	$91,815	$17,088	$135,120
532220	Formal wear and costume rental	$5,650	$7,937	$47,582	$2,672	$63,841
532230	Video tape and disc rental	$52,864	$74,258	$445,200	$3,547	$575,870
532299	All other consumer goods rental	$138	$193	$1,158	$115	$1,604
532420	Office machinery and equipment rental and leasing	$1,963	$2,758	$16,533	$2,186	$23,440
532490	Other commercial and industrial machinery and equipment rental and leasing	$3,119	$4,382	$26,269	$4,182	$37,951
541910	Marketing research and public opinion polling	$13,344	$18,745	$112,379	$77,791	$222,259
541921	Photography studios, portrait	$36,123	$50,743	$304,218	$16,696	$407,779
541922	Commercial photography	$1,310	$1,840	$11,033	$1,087	$15,271
541930	Translation and interpretation services	$1,931	$2,713	$16,263	$10,912	$31,819
541990	All other professional, scientific, and technical services	$14,701	$20,651	$123,806	$6,918	$166,075
561210	Facilities support services	$27,953	$39,266	$235,411	$24,717	$327,348
561790	Other services to buildings and dwellings	$261	$367	$2,199	$652	$3,479
561910	Packaging and labeling services	$5,031	$7,067	$42,367	$25,193	$79,657
561920	Convention and trade show organizers	$6,536	$9,182	$55,048	$17,580	$88,347
561990	All other support services	$24,484	$34,393	$206,197	$82,677	$347,751
621991	Blood and organ banks	$8,172	$11,479	$68,822	$15,386	$103,860
621999	All other miscellaneous ambulatory health care services	$9,722	$13,656	$81,872	$10,356	$115,605
624110	Child and youth services	$34,903	$49,028	$293,938	$30,625	$408,494

V-4A: Annualized Cost Savings to Industries Newly Partially Exempt from Recordkeeping Requirements					
NAICS Code	NAICS Industry Description	Relearning Recordkeeping System Due to Turnover	Complete, Certify and Post OSHA Form 300A	Complete Log Entries, Mark Privacy Issues and Provide Employees Access	Costs Savings to Industries Newly Exempted from Keeping Records
441210	Recreational vehicle dealers	$9,283	$55,016	$13,349	$77,648
441221	Motorcycle, ATV, and personal watercraft dealers	$17,664	$104,684	$22,776	$145,124
441222	Boat dealers	$12,243	$72,558	$10,005	$94,806
441229	All other motor vehicle dealers	$3,663	$21,708	$3,857	$29,228
443111	Household appliance stores	$24,663	$146,170	$13,985	$184,818
443120	Computer and software stores	$12,397	$73,474	$1,732	$87,603
446120	Cosmetics, beauty supplies, and perfume stores	$2,942	$17,436	$394	$20,772
446199	All other health and personal care stores	$12,629	$74,845	$2,886	$90,360
447110	Gasoline stations with convenience stores	$465,970	$2,761,603	$209,447	$3,437,021
451130	Sewing, needlework, and piece goods stores	$463	$2,743	$234	$3,440
453210	Office supplies and stationery stores	$37,802	$224,036	$35,519	$297,357
481211	Nonscheduled chartered passenger air transportation	$4,431	$26,259	$11,794	$42,484
481212	Nonscheduled chartered freight air transportation	$485	$2,877	$1,205	$4,568
481219	Other nonscheduled air transportation	$1,386	$8,215	$1,954	$11,555
486110	Pipeline transportation of crude oil	$3,671	$21,756	$3,408	$28,835
486210	Pipeline transportation of natural gas	$16,559	$98,138	$11,930	$126,627
486910	Pipeline transportation of refined petroleum products	$7,172	$42,507	$3,188	$52,867
486990	All other pipeline transportation	$252	$1,492	$384	$2,128
487990	Scenic and sightseeing transportation, other	$484	$2,867	$854	$4,204
488510	Freight transportation arrangement	$81,664	$483,984	$49,102	$614,750
511110	Newspaper publishers	$41,634	$246,747	$91,604	$379,985
511120	Periodical publishers	$28,676	$169,953	$12,449	$211,078
511130	Book publishers	$8,814	$52,235	$11,252	$72,301
511140	Directory and mailing list publishers	$7,870	$46,640	$5,733	$60,243
511191	Greeting card publishers	$339	$2,011	$2,542	$4,892
511199	All other publishers	$1,609	$9,536	$2,087	$13,232
512210	Record production	$206	$1,219	$126	$1,551
512220	Integrated record production/distribution	$1,458	$8,643	$1,688	$11,789
512230	Music publishers	$1,114	$6,600	$986	$8,699
512290	Other sound recording industries	$1,355	$8,028	$470	$9,852
515111	Radio networks	$5,700	$33,779	$1,519	$40,997
515112	Radio stations	$38,811	$230,018	$11,014	$279,843
515120	Television broadcasting	$14,961	$88,667	$57,062	$160,690
517210	Wireless telecommunications carriers (except satellite)	$91,974	$545,092	$22,134	$659,200
517911	Telecommunications resellers	$6,015	$35,651	$11,956	$53,622
517919	All other telecommunications	$5,426	$32,158	$15,693	$53,278
519130	Internet publishing and broadcasting and web search portals	$14,997	$88,881	$3,109	$106,987
519190	All other information services	$1,606	$9,520	$926	$12,052
522120	Savings institutions	$38,275	$226,842	$7,714	$272,831

V-4A: Annualized Cost Savings to Industries Newly Partially Exempt from Recordkeeping Requirements					
NAICS Code	**NAICS Industry Description**	**Relearning Recordkeeping System Due to Turnover**	**Complete, Certify and Post OSHA Form 300A**	**Complete Log Entries, Mark Privacy Issues and Provide Employees Access**	**Costs Savings to Industries Newly Exempted from Keeping Records**
523999	Miscellaneous financial investment activities	$1,258	$7,455	$521	$9,235
524130	Reinsurance carriers	$1,247	$7,392	$870	$9,510
525910	Open-end investment funds	$352	$2,086	$3,207	$5,645
541320	Landscape architectural services	$6,307	$37,378	$634	$44,319
541360	Geophysical surveying and mapping services	$776	$4,599	$5,520	$10,895
541612	Human resources consulting services	$10,890	$64,540	$121	$75,550
541614	Process, physical distribution, and logistics consulting services	$271	$1,608	$82	$1,962
541618	Other management consulting services	$298	$1,764	$5,202	$7,263
541890	Other services related to advertising	$11,296	$66,945	$175,862	$254,103
551114	Corporate, subsidiary, and regional managing offices	$141,485	$838,520	$4,675	$984,680
561421	Telephone answering services	$5,203	$30,837	$20,299	$56,340
561440	Collection agencies	$19,615	$116,252	$10,055	$145,923
561510	Travel agencies	$45,809	$271,492	$1,786	$319,088
561520	Tour operators	$5,478	$32,468	$6,621	$44,568
561599	All other travel arrangement and reservation services	$6,809	$40,357	$1,126	$48,293
561622	Locksmiths	$3,217	$19,066	$16,873	$39,156
611620	Sports and recreation instruction	$22,811	$135,190	$520	$158,521
721310	Rooming and boarding houses	$3,304	$19,580	$1,583	$24,466
811211	Consumer electronics repair and maintenance	$2,660	$15,766	$1,695	$20,121
811212	Computer and office machine repair and maintenance	$940	$5,571	$7,090	$13,600
811213	Communication equipment repair and maintenance	$3,821	$22,644	$16,861	$43,326
811219	Other electronic and precision equipment repair and maintenance	$12,307	$72,938	$578	$85,823
811411	Home and garden equipment repair and maintenance	$797	$4,722	$4,321	$9,840
811412	Appliance repair and maintenance	$5,663	$33,560	$12	$39,234
811430	Footwear and leather goods repair	$41	$240	$4,103	$4,384
811490	Other personal and household goods repair and maintenance	$6,517	$38,624	$8,120	$53,262
812220	Cemeteries and crematories	$16,728	$99,141	$22,456	$138,326
813410	Civic and social organizations	$31,978	$189,519	$16,784	$238,281
813930	Labor unions and similar labor organizations	$44,068	$261,171	$0	$305,238
813940	Political organizations	$1,962	$11,627	$558,406	$571,995
	Totals:	$1,440,572	$8,537,639	$1,554,055	$11,532,266
	Sources: OSHA, Office of Regulatory Analysis.				

V-6A: Economic Impacts for Establishments Newly Required to Keep Records under the Final OSHA Standard (by NAICS code)			
NAICS Code	NAICS Industry Description	Affected Establishments	Cost per Affected Establishment
311811	Retail bakeries	1,786	$74.34
441110	New car dealers	17,210	$102.00
441120	Used car dealers	3,207	$80.41
441310	Automotive parts and accessories stores	428	$75.82
444130	Hardware stores	7,832	$79.55
445210	Meat markets	1,311	$74.94
445220	Fish and seafood markets	44	$81.65
445291	Baked goods stores	1,456	$76.06
445292	Confectionery and nut stores	1,485	$75.12
445299	All other specialty food stores	2,046	$77.15
445310	Beer, wine, and liquor stores	6,311	$80.61
453910	Pet and pet supplies stores	4,132	$84.36
453920	Art dealers	440	$75.18
453991	Tobacco stores	1,906	$72.42
453998	All other miscellaneous store retailers (except tobacco stores)	4,573	$73.17
454390	Other direct selling establishments	73	$77.25
531110	Lessors of residential buildings and dwellings	16,715	$73.67
531120	Lessors of nonresidential buildings (except miniwarehouses)	6,158	$75.92
531130	Lessors of miniwarehouses and self-storage units	5,431	$70.55
531190	Lessors of other real estate property	1,542	$75.49
531311	Residential property managers	15,782	$79.40
531312	Nonresidential property managers	6,454	$77.77
531320	Offices of real estate appraisers	735	$78.04
531390	Other activities related to real estate	1,697	$79.62
532220	Formal wear and costume rental	880	$72.59
532230	Video tape and disc rental	8,229	$69.98
532299	All other consumer goods rental	21	$74.91
532420	Office machinery and equipment rental and leasing	306	$76.70
532490	Other commercial and industrial machinery and equipment rental and leasing	486	$78.16
541910	Marketing research and public opinion polling	2,077	$107.00
541921	Photography studios, portrait	5,623	$72.52
541922	Commercial photography	204	$74.88
541930	Translation and interpretation services	301	$105.85
541990	All other professional, scientific, and technical services	2,288	$72.57
561210	Facilities support services	4,351	$75.23
561790	Other services to buildings and dwellings	41	$85.60
561910	Packaging and labeling services	783	$101.72
561920	Convention and trade show organizers	1,018	$86.83
561990	All other support services	3,811	$91.24
621991	Blood and organ banks	1,272	$81.64
621999	All other miscellaneous ambulatory health care services	1,513	$76.39
624110	Child and youth services	5,433	$75.19
624120	Services for the elderly and persons with disabilities	13,760	$95.82

V-6A: Economic Impacts for Establishments Newly Required to Keep Records under the Final OSHA Standard (by NAICS code)			
NAICS Code	**NAICS Industry Description**	**Affected Establishments**	**Cost per Affected Establishment**
624190	Other individual and family services	14,121	$83.42
624210	Community food services	2,266	$76.77
624221	Temporary shelters	2,803	$79.03
624229	Other community housing services	2,201	$76.72
624230	Emergency and other relief services	724	$77.69
711110	Theater companies and dinner theaters	1,016	$86.40
711120	Dance companies	154	$84.51
711130	Musical groups and artists	552	$77.01
711190	Other performing arts companies	70	$149.57
711310	Promoters of performing arts, sports, and similar events with facilities	997	$128.32
711320	Promoters of performing arts, sports, and similar events without facilities	382	$92.71
712110	Museums	1,339	$100.61
712120	Historical sites	322	$73.75
713950	Bowling centers	2,534	$74.54
713990	All other amusement and recreation industries	58	$81.04
722310	Food service contractors	24,699	$79.87
722320	Caterers	3,405	$75.29
812921	Photofinishing laboratories (except one-hour)	195	$90.24
812922	One-hour photofinishing	56	$73.71
812990	All other personal services	805	$80.77
		Total:	**Average:**
		219,848	$81.51
	Sources: OSHA, Office of Regulatory Analysis.		

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VI. Environmental Impact Assessment

OSHA has reviewed the provisions of this final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR Parts 1500-1508), and the Department of Labor's NEPA Procedures (29 CFR Part 11). As a result of this review, OSHA has determined that the final rule will have no significant adverse effect on air, water, or soil quality, plant or animal life, use of land, or other aspects of the environment.

VII. Federalism

The final rule has been reviewed in accordance with Executive Order 13132 regarding Federalism (52 FR 41685). The final rule is a "regulation" issued under Sections 8 and 24 of the OSH Act (29 U.S.C. 657, 673) and not an "occupational safety and health standard" issued under Section 6 of the OSH Act (29 U.S.C. 655). Therefore, pursuant to section 667(a) of the OSH Act, the final rule does not preempt State law (29 U.S.C. 667(a)). The effect of the final rule on OSHA-approved State Plan States is discussed in section X.

VIII. Unfunded Mandates

Section 3 of the Occupational Safety and Health Act makes clear that OSHA cannot enforce compliance with its regulations or standards on the U.S. government "or any State or political subdivision of a State." Under voluntary agreement with OSHA, some States enforce compliance with their State standards on public sector entities, and these agreements specify that these State standards must be equivalent to OSHA standards. Thus, although OSHA may include compliance costs for affected public sector entities in its analysis of the expected impacts associated with the final rule, the rule does not involve any unfunded mandates being imposed on any State or local government entity.

Based on the evidence presented in this economic analysis, OSHA concludes that the final rule would not impose a Federal mandate on the private sector in excess of $100 million in expenditures in any one year. Accordingly, OSHA is not required to issue a written statement containing a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate, as required under Section 202(a) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532(a)).

IX. Office of Management and Budget Review Under the Paperwork Reduction Act of 1995

The final rule contains collection of information (paperwork) requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA)(44 U.S.C. 3501 et seq.) and OMB regulations (5 CFR part 1320). The PRA requires that agencies obtain approval from OMB before conducting any collection of information (44 U.S.C. 3507). The PRA defines a "collection of information" as "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format" (44 U.S.C. 3502(3)(A)).

OSHA's existing recordkeeping forms consist of the OSHA 300 Log, the 300A Summary, and the 301 Report. These forms are contained in the Information Collection Request (ICR) (paperwork package) titled 29 CFR Part 1904 Recordkeeping and Reporting Occupational Injuries and Illnesses, which OMB approved under OMB Control Number 1218-0176 (expiration date 07/31/2017).

The final rule affects the ICR estimates in four ways: 1) the number of establishments covered by the recordkeeping regulation increases by 60,210 establishments; 2) the number of injuries and illnesses recorded by covered establishments increases by 97,182 cases; 3) the number of reportable events (fatalities, in-patient hospitalizations, amputations, and losses of an eye) reported by employers increases by 117,000 reports, and 4) the time required to report a fatality or catastrophe to OSHA is increased from 15 minutes per report to 30 minutes per report. In the initial year, the burden hours for the final rule are estimated to be 392,676, and in subsequent years, the total burden hours are estimated to be 172,828. As a result of these changes, the total burden for the Recordkeeping rule as a whole will rise from 2,967,236 per year to 3,359,913 in the first year and to 3,140,065 in subsequent years. There are no capital costs for this collection of information.

The tables below present the various components of the rule that comprise the ICR estimates. Table IX-1 presents the estimated burden of the entire rule for the initial year. Table IX-2 presents the estimated burden for the entire rule in subsequent years. The estimated initial-year burden is greater because all newly-covered establishments must learn the basics of the recordkeeping system upon implementation of the final rule. In subsequent years, only establishments with turnover in the recordkeeper position will incur this burden.

Table IX-1 Estimated Burden Hours – Initial Year

Estimated Burden Hours

	Current OMB Approval			Implementation of the Final Rule		
Actions entailing paperwork burden	Number of cases	Unit hours per case	Total burden hours	Number of cases	Unit hours per case	Total burden hours
1904.4 - Complete OSHA 301 (Includes research of instructions and case details to complete the form)	1,180,529	0.367	433,254	1,219,385	0.367	447,514
1904.4 - Line entry on OSHA Form 300 other than needlesticks (Includes research of instructions and case details to complete the form)	2,613,635	0.233	608,977	2,710,817	0.233	631,620
1904.8 - Line entry on OSHA Form 300 for needlesticks (Includes research of instructions and case details to complete the form)	337,645	0.083	28,025	337,645	0.083	28,025
1904.29(b)(6) - Entry on privacy concern case confidential list	350,800	0.05	17,540	364,753	0.05	18,238
1904.32 - Complete, certify and post OSHA Form 300A (Includes research of instructions)	1,585,374	0.967	1,533,057	1,645,494	0.967	1,591,193

1904.35 - Employee Access to the OSHA Form 300	111,540	0.083	9,258	115,185	0.083	9,560
1904.35 - Employee Access to the OSHA Form 301	287,980	0.083	23,902	304,846	0.083	25,302
1904.39 - Report fatalities/catastrophes	2,028	0.25	507	119,028	0. 5	59,514
Learning Basics of the Recordkeeping System - newly covered and turnover of personnel	312,717	1	312,717	548,947	1	548,947
1904.38 - Request for variance	0	0	0	0	0	0
Total Burden Hours			**2,967,236**			**3,359,913**

Table IX-2 Estimated Burden Hours – Subsequent Years

Estimated Burden Hours

	Current OMB Approval			Implementation of the Final Rule		
Actions entailing paperwork burden	Number of cases	Unit hours per case	Total burden hours	Number of cases	Unit hours per case	Total burden hours
1904.4 - Complete OSHA 301 (Includes research of instructions and case details to complete the form)	1,180,529	0.367	433,254	1,219,385	0.367	447,514
1904.4 - Line entry on OSHA Form 300 other than needlesticks (Includes research of instructions and case details to complete the form)	2,613,635	0.233	608,977	2,710,817	0.233	631,620
1904.8 - Line entry on OSHA Form 300 for needlesticks (Includes research of instructions and case details to complete the form)	337,645	0.083	28,025	337,645	0.083	28,025
1904.29(b)(6) - Entry on privacy concern case confidential list	350,800	0.05	17,540	364,753	0.05	18,238
1904.32 - Complete, certify and post OSHA Form 300A (Includes research of instructions)	1,585,374	0.967	1,533,057	1,645,494	0.967	1,591,193
1904.35 - Employee Access to the OSHA Form 300	111,540	0.083	9,258	115,185	0.083	9,560
1904.35 - Employee Access to the OSHA Form 301	287,980	0.083	23,902	304,846	0.083	25,302
1904.39 - Report fatalities/catastrophes	2,028	0.25	507	119,028	0. 5	59,514
Learning Basics of the Recordkeeping System - turnover of personnel	312,717	1	312,717	329,099	1	329,099
1904.38 - Request for variance	0	0	0	0	0	0
Total Burden Hours			**2,967,236**			**3, 3,140,065**

As a new option, an employer may report to OSHA work-related fatalities, amputations, in-patient hospitalizations, or the loss of an eye by electronic submission using a fatality/injury/illness reporting application that will be located on OSHA's public website at www.osha.gov. The public will be given the opportunity to comment on this new collection option through the Paperwork Reduction Act (PRA) approval process when OSHA applies to reauthorize the information collection.

OSHA received a number of comments pertaining to the estimated time necessary to meet the proposed paperwork requirements.

Initial training of recordkeepers is expected to require one hour per establishment and will apply to current partially-exempt establishments that would be newly required to keep records. A commenter (Ex. 17) noted that this requirement would signify the need for retraining of both human resource and safety professionals. OSHA assumes that the average establishment that employs 25 workers will only assign recordkeeping duties to one employee per establishment.

Dow, the National Automobile Dealers Association (NADA), and a few other commenters argued that it would take longer than an hour to train a competent recordkeeper (Exs. 64, 100, 106, 119,124). NADA stated specifically that the training would entail a one-day course at the cost of $300. OSHA agrees that some establishments with large employee populations that experience large numbers of injuries and illnesses would benefit from an intensive training program. It should be noted that there is a trade-off between time spent on training and time spent on individual records. A recordkeeper at a large establishment with many injuries and illnesses may find it more efficient to have more extensive initial training in order to spend less time on each individual record. A recordkeeper who records only two or three injuries

a year will be better off learning about the complexities of the system only if such complexities ever actually arise in their establishment, resulting in lower initial training costs but more time spent recording each incident. OSHA's estimates are designed to represent an average across large and small firms and establishments, taking into account both situations where more extensive initial training is provided as well as situations where less extensive initial training is sufficient.

The vast majority of establishments in these low-rate industries do not experience large numbers of injuries and illnesses. OSHA believes these establishments will require training on only the fundamentals of the recordkeeping requirements. For establishments that experience few injuries and illnesses, OSHA believes these employers will use a more efficient method of researching the recordability of unique injuries and illnesses on a case by case basis. The associated paperwork burden for these situations is included in the time estimate for recording each individual case. On its public website, OSHA provides a brief tutorial on completing the recordkeeping forms. This tutorial provides employers with a fundamental knowledge of the recordkeeping requirements. The tutorial takes approximately 15 minutes to view. OSHA believes that an estimate of one hour of training is a reasonable middle ground between establishments that require an intensive training and those that only require a fundamental knowledge of the system to meet their recordkeeping obligations.

Dow commented that deciding whether the injury or illness is recordable takes more time and more people than OSHA had estimated (Ex. 64). Dow also commented that reporting events would require the attention of several different people. However, OSHA believes that after initial familiarization with the recordkeeping requirements, the vast majority of companies will assign responsibilities to an experienced professional who they feel is competent to make decisions on

the recordability of an incident, and who will be in close communication with the management team. OSHA also has tools, such as its Recordkeeping Advisor, available on the Agency's recordkeeping homepage, which will make it easier to determine whether an incident is recordable.

OSHA received several comments on its time estimate of 15 minutes for reporting in-patient hospitalizations and amputations to OSHA. OSHA estimated that reporting in-patient hospitalizations, amputations, or losses of an eye is an activity that is expected to require the same time as OSHA estimates for reporting fatalities and multiple hospitalizations: 0.25 hours of OHSS labor per fatality or hospitalization (OSHA, 2011). Several commenters suggested that reporting to OSHA would take more than 15 minutes (Exs. 46, 65, 67, 68, 83,110). The American Society of Safety Engineers and others claimed that the phone call to report to OSHA is too complex to complete in 15 minutes, but provide no reason as to why the call is too complex to complete in that time, given the information that must be provided during such a phone call is quite simple[11] (Exs. 46, 83, 110). The Dow Chemical Company stated that this phone call would require the attention of several different salaried professionals (Ex. 64). FedEx said that the allotted time should also include the time required to enter the information into their system and to allow for subsequent review by management, and recommends that OSHA calculate 30 minutes for the reporting time (Ex. 67). The American Trucking Association voiced the view that 15 minutes is a "gross underestimation" of the time required to report to OSHA and that in their experience reporting takes, on average, 30 minutes (Ex. 65).

In response, OSHA has revised its estimate of time required to complete a hospitalization report to include activities prior the call to OSHA such as information gathering and review and now estimates that the this requirement will require 30 minutes in total.

Mercer ORC HSE Networks stated that it could take longer than 15 minutes to make a connection over the phone with OSHA, and that such a connection is especially difficult outside of OSHA's normal operating hours (Ex. 68). In response to this comment, the Agency notes that OSHA has a toll-free number for employers to call that is staffed 24 hours per day, to allow immediate reporting at any hour of the day. This final rule also enables 24-hour reporting over a web form that OSHA will create in conjunction with issuance of the final rule. OSHA acknowledges that there might be times when an employer will have to wait on hold to speak to an OSHA representative, but OSHA believes that on the average, even allowing for such delays, the report will not exceed 30 minutes.

NUCA, a trade association representing utility construction and excavation contractors, expressed a concern that OSHA's PEA "significantly underestimated the economic impact of obtaining injury information on a construction site which does not necessarily have an office". In NUCA's estimation, the entire process of collecting, transmitting, and recording the information would far exceed 15 minutes (Ex. 110). In response, at this time, there are a wide variety of mechanisms that virtually all managers will have, such as cell phones, that can be used to report to OSHA or a corporate central office.

The PRA specifies that Federal agencies cannot conduct or sponsor a collection of information unless it is approved by OMB and displays a currently valid OMB (44 U.S.C. 3507). Also, notwithstanding any other provision of law, respondents are not required to respond to the information collection requirements until they have been approved and a currently valid control

number is displayed. OSHA will publish a subsequent **Federal Register** document when OMB takes further action on the information collection requirements in the Recordkeeping and Recording Occupational Injuries and Illnesses rule.

X. State Plan Requirements

Notice of intent and adoption required. The States with OSHA-approved State Plans are required to adopt a rule identical to or at least as effective as this final Recordkeeping regulation. State Plans are required to notify OSHA within 60 days whether they intend to adopt the recordkeeping regulation.

States with OSHA-approved State Plans are ordinarily provided six months to adopt a regulation or standard that is either identical to or at least as effective as a new Federal regulation or standard. For certain injury and illness recording provisions, the State Plans' recordkeeping regulations must be identical to the Federal regulations (29 CFR 1904.4 through 1904.11). OSHA regulations (29 CFR 1904.37(b)(1) and 1952.4(a)) explain that States with approved State Plans must have recording and reporting regulations that impose identical requirements for determining which injuries and illnesses are recordable and how they are entered. As noted in the preamble to the 2001 Recordkeeping regulation, these requirements must be the same for employers in all the States, whether under Federal or State Plan jurisdiction, and for state and local government employers covered only through State Plans, to ensure that the occupational injury and illness data for the entire nation are uniform and consistent, so that statistics that allow comparisons between the States and between employers located in different States are created (66 FR 6060-6061).

Per 29 CFR 1953.4(b), if a State Plan adopts or maintains recordkeeping requirements that differ from federal requirements, the State must identify the differences and may either post its policy

on its website and provide the link to OSHA or submit an electronic copy to OSHA with information on how the public may obtain a copy. If a State Plan adopts requirements that are identical to federal requirements, the State Plan must provide the date of adoption to OSHA. State Plan adoption must be accomplished within six months, with posting or submission of documentation within 60 days of adoption. The effective date for changes to 29 CFR 1904.2 must be either January 1, 2015 (encouraged) or January 1, 2016 (required). OSHA will provide summary information on the State Plan response to this instruction on its website at www.osha.gov/dcsp/osp/index.html.

XI. Consultation and Coordination with Indian Tribal Governments

OSHA reviewed this final rule in accordance with Executive Order 13175 (65 FR 67249 (Nov. 9, 2000)) and determined that it does not have "tribal implications" as defined in that order. This final rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

XII. List of Subjects

Health statistics, Occupational safety and health, Recording and reporting of occupational injuries and illnesses, State plans.

XIII. 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 of 1970 (29 U.S.C. 657, 673), 5 U.S.C. 553, and Secretary of Labor's Order No. 4-2010 (75 FR 55355 (9/10/2010)).

Signed at Washington, DC this _____ day of _____, 2014.

_____

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

Final Rule

Part 1904 of Title 29 of the Code of Federal Regulations is hereby amended as follows:

PART 1904 -- [AMENDED]

1. Amend §1904.2 as follows:

A. Revise paragraph (a)(1).

B. Remove paragraph (b)(1).

C. Redesignate paragraph (b)(2) as (b)(1).

D. Redesignate paragraph (b)(3) as (b)(2).

The revisions read as follows:

§1904.2 Partial exemption for establishments in certain industries.

(a) Basic requirement.

(1) If your business establishment is classified in a specific industry group listed in appendix A to this subpart B, you do not need to keep OSHA injury and illness records unless the government asks you to keep the records under §1904.41 or §1904.42. However, all employers

must report to OSHA any workplace incident that results in an employee's fatality, in-patient hospitalization, amputation, or loss of an eye (see **§**1904.39).

* * * * *

(b) Implementation. (1) **Is the partial industry classification exemption based on the industry classification of my entire company or on the classification of individual business establishments operated by my company?** The partial industry classification exemption applies to individual business establishments. If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be partially exempt.

(2) **How do I determine the correct NAICS code for my company or for individual establishments?**

You can determine your NAICS code by using one of three methods:

1. You can use the search feature at the U.S. Census Bureau NAICS main webpage: http://www.census.gov/eos/www/naics/. In the search box for the most recent NAICS, enter a keyword that describes your kind of business. A list of primary business activities containing that keyword and the corresponding NAICS codes will appear. Choose the one that most closely corresponds to your primary business activity, or refine your search to obtain other choices.

2. Rather than searching through a list of primary business activities, you may also view the most recent complete NAICS structure with codes and titles by clicking on the link for the most recent NAICS on the U.S. Census Bureau NAICS main webpage: http://www.census.gov/eos/www/naics/. Then click on the two-digit Sector code to see all the NAICS codes under that Sector. Then choose the six-digit code of your interest to see the corresponding definition, as well as cross-references and index items, when available.

3. If you know your old SIC code, you can also find the appropriate 2002 NAICS code by using the detailed conversion (concordance) between the 1987 SIC and 2002 NAICS available in Excel format for download at the "Concordances" link at the U.S. Census Bureau NAICS main webpage: http://www.census.gov/eos/www/naics/.

You may also contact your nearest OSHA office or State agency for help in determining your NAICS code.

* * * * *

2. Revise §1904 Subpart B Appendix A, to read as follows:

Non-Mandatory Appendix A to Subpart B of Part 1904 – Partially Exempt Industries

Employers are not required to keep OSHA injury and illness records for any establishment classified in the following North American Industry Classification System (NAICS) codes, unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or the BLS. All employers, including those partially exempted by reason of company size or industry classification, must report to OSHA any employee's fatality, in-patient hospitalization, amputation, or loss of an eye (see **§**1904.39).

NAICS Code	Industry
4412	Other Motor Vehicle Dealers
4431	Electronics and Appliance Stores
4461	Health and Personal Care Stores
4471	Gasoline Stations
4481	Clothing Stores
4482	Shoe Stores
4483	Jewelry, Luggage, and Leather Goods Stores
4511	Sporting Goods, Hobby, and Musical Instrument Stores
4512	Book, Periodical, and Music Stores
4531	Florists
4532	Office Supplies, Stationery, and Gift Stores
4812	Nonscheduled Air Transportation
4861	Pipeline Transportation of Crude Oil

NAICS Code	Industry
4862	Pipeline Transportation of Natural Gas
4869	Other Pipeline Transportation
4879	Scenic and Sightseeing Transportation, Other
4885	Freight Transportation Arrangement
5111	Newspaper, Periodical, Book, and Directory Publishers
5112	Software Publishers
5121	Motion Picture and Video Industries
5122	Sound Recording Industries
5151	Radio and Television Broadcasting
5172	Wireless Telecommunications Carriers (except Satellite)
5173	Telecommunications Resellers
5179	Other Telecommunications
5181	Internet Service Providers and Web Search Portals
5182	Data Processing, Hosting, and Related Services
5191	Other Information Services
5211	Monetary Authorities - Central Bank
5221	Depository Credit Intermediation
5222	Nondepository Credit Intermediation
5223	Activities Related to Credit Intermediation
5231	Securities and Commodity Contracts Intermediation and Brokerage
5232	Securities and Commodity Exchanges
5239	Other Financial Investment Activities
5241	Insurance Carriers
5242	Agencies, Brokerages, and Other Insurance Related Activities
5251	Insurance and Employee Benefit Funds
5259	Other Investment Pools and Funds
5312	Offices of Real Estate Agents and Brokers
5331	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)
5411	Legal Services
5412	Accounting, Tax Preparation, Bookkeeping, and Payroll Services
5413	Architectural, Engineering, and Related Services
5414	Specialized Design Services
5415	Computer Systems Design and Related Services
5416	Management, Scientific, and Technical Consulting Services
5417	Scientific Research and Development Services
5418	Advertising and Related Services
5511	Management of Companies and Enterprises
5611	Office Administrative Services
5614	Business Support Services
5615	Travel Arrangement and Reservation Services
5616	Investigation and Security Services
6111	Elementary and Secondary Schools
6112	Junior Colleges
6113	Colleges, Universities, and Professional Schools
6114	Business Schools and Computer and Management Training
6115	Technical and Trade Schools
6116	Other Schools and Instruction

NAICS Code	Industry
6117	Educational Support Services
6211	Offices of Physicians
6212	Offices of Dentists
6213	Offices of Other Health Practitioners
6214	Outpatient Care Centers
6215	Medical and Diagnostic Laboratories
6244	Child Day Care Services
7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures
7115	Independent Artists, Writers, and Performers
7213	Rooming and Boarding Houses
7221	Full-Service Restaurants
7222	Limited-Service Eating Places
7224	Drinking Places (Alcoholic Beverages)
8112	Electronic and Precision Equipment Repair and Maintenance
8114	Personal and Household Goods Repair and Maintenance
8121	Personal Care Services
8122	Death Care Services
8131	Religious Organizations
8132	Grantmaking and Giving Services
8133	Social Advocacy Organizations
8134	Civic and Social Organizations
8139	Business, Professional, Labor, Political, and Similar Organizations

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3. Amend §1904.39 as follows:

A. Revise paragraphs (a), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7).

B. Add paragraphs (b)(8), (b)(9), (b)(10), and b(11).

The revisions and additions should read as follows:

§1904.39-Reporting fatalities, hospitalizations, amputations, and losses of an eye as a result of work-related incidents to OSHA.

(a) Basic Requirement.

(1) Within eight (8) hours after the death of any employee as a result of a work-related incident, you must report the fatality to the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

(2) Within twenty-four (24) hours after the in-patient hospitalization of one or more employees or an employee's amputation or an employee's loss of an eye, as a result of a work-related incident, you must report the in-patient hospitalization, amputation, or loss of an eye to OSHA.

(3) You must report the fatality, in-patient hospitalization, amputation, or loss of an eye using one of the following methods:

(i) By telephone or in person to the OSHA Area Office that is nearest to the site of the incident.

(ii) By telephone to the OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).

(iii) By electronic submission using the reporting application located on OSHA's public website at www.osha.gov.

(b) **Implementation**

(1) **If the Area Office is closed, may I report the fatality, in-patient hospitalization, amputation, or loss of an eye by leaving a message on OSHA's answering machine, faxing the Area Office, or sending an e-mail?** No, if the Area Office is closed, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye using either the 800 number or the reporting application located on OSHA's public website at www.osha.gov.

(2) **What information do I need to give to OSHA about the in-patient hospitalization, amputation, or loss of an eye?** You must give OSHA the following information for each fatality, in-patient hospitalization, amputation, or loss of an eye:

(i) The establishment name;

(ii) The location of the work-related incident;

(iii) The time of the work-related incident;

(iv) The type of reportable event (i.e., fatality, in-patient hospitalization, amputation, or loss of an eye);

(v) The number of employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;

(vi) The names of the employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;

(vii) Your contact person and his or her phone number; and

(viii) A brief description of the work-related incident.

(3) **Do I have to report the fatality, in-patient hospitalization, amputation, or loss of an eye if it resulted from a motor vehicle accident on a public street or highway?** If the motor vehicle accident occurred in a construction work zone, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye. If the motor vehicle accident occurred on a public street or highway, but not in a construction work zone, you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(4) **Do I have to report the fatality, in-patient hospitalization, amputation, or loss of an eye if it occurred on a commercial or public transportation system?** No, you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA if it occurred on a commercial or public transportation system (e.g., airplane, train, subway, or bus). However,

the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(5) **Do I have to report a work-related fatality or in-patient hospitalization caused by a heart attack?** Yes, your local OSHA Area Office director will decide whether to investigate the event, depending on the circumstances of the heart attack.

(6) **What if the fatality, in-patient hospitalization, amputation, or loss of an eye does not occur during or right after the work-related incident?** You must only report a fatality to OSHA if the fatality occurs within thirty (30) days of the work-related incident. For an in-patient hospitalization, amputation, or loss of an eye, you must only report the event to OSHA if it occurs within twenty-four (24) hours of the work-related incident. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(7) **What if I don't learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye right away?** If you do not learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye at the time it takes place, you must make the report to OSHA within the following time period after the fatality, in-patient hospitalization, amputation, or loss of an eye is reported to you or to any of your agent(s): eight (8) hours for a fatality, and twenty-four (24) hours for an in-patient hospitalization, an amputation, or a loss of an eye.

(8) ***What if I don't learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident?*** If you do not learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident, you must make the report to OSHA within the

following time period after you or any of your agent(s) learn that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident: eight (8) hours for a fatality, and twenty-four (24) hours for an in-patient hospitalization, an amputation, or a loss of an eye.

(9) **How does OSHA define "in-patient hospitalization"?** OSHA defines in-patient hospitalization as a formal admission to the in-patient service of a hospital or clinic for care or treatment.

(10) **Do I have to report an in-patient hospitalization that involves only observation or diagnostic testing?** No, you do not have to report an in-patient hospitalization that involves only observation or diagnostic testing. You must only report to OSHA each in-patient hospitalization that involves care or treatment.

(11) **How does OSHA define "amputation"?** An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. Amputations do not include avulsions, enucleations, deglovings, scalpings, severed ears, or broken or chipped teeth.