

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****29 CFR Part 1904**

[Docket No. OSHA–2021–0006]

RIN 1218–AD40

**Improve Tracking of Workplace Injuries and Illnesses****AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Proposed rule; request for comments.

**SUMMARY:** OSHA is proposing to amend its occupational injury and illness recordkeeping regulation to require certain employers to electronically submit injury and illness information to OSHA that employers are already required to keep under the recordkeeping regulation. Specifically, OSHA proposes to amend its regulation to require establishments with 100 or more employees in certain designated industries to electronically submit information from their OSHA Forms 300, 301, and 300A to OSHA once a year. Establishments with 20 or more employees in certain industries would continue to be required to electronically submit information from their OSHA Form 300A annual summary to OSHA once a year. OSHA also proposes to update the classification system used to determine the list of industries covered by the electronic submission requirement. In addition, the proposed rule would remove the current requirement for establishments with 250 or more employees, not in a designated industry, to electronically submit information from their Form 300A to OSHA on an annual basis. OSHA intends to post the data from the proposed annual electronic submission requirement on a public website after identifying and removing information that reasonably identifies individuals directly, such as individuals' names and contact information. Finally, OSHA is proposing to require establishments to include their company name when making electronic submissions to OSHA.

**DATES:** Comments must be submitted by May 31, 2022.**ADDRESSES:**

*Comments:* Comments, along with any submissions and attachments, should be submitted electronically at <https://www.regulations.gov>, which is the Federal e-Rulemaking Portal. Follow the instructions online for making electronic submissions. After accessing

“all documents and comments” in the docket (Docket No. OSHA–2021–0006), check the “proposed rule” box in the column headed “Document Type,” find the document posted on the date of publication of this document, and click the “Comment Now” link. When uploading multiple attachments to [www.regulations.gov](http://www.regulations.gov), please number all of your attachments, because [www.regulations.gov](http://www.regulations.gov) will not automatically number the attachments. This will be very useful in identifying all attachments in the preamble. For example, Attachment 1—title of your document, Attachment 2—title of your document, Attachment 3—title of your document. For assistance with commenting and uploading documents, please see the Frequently Asked Questions on [regulations.gov](http://www.regulations.gov).

*Instructions:* All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2021–0006). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

*Docket:* To read or download comments and other materials submitted in the docket, go to Docket No. OSHA–2021–0006 at <https://www.regulations.gov>. All comments and submissions are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office.<sup>1</sup> Contact the OSHA Docket Office at (202) 693–2350, (TTY) (877) 889–5627 for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at <https://www.regulations.gov>. This document, as well as news releases and

<sup>1</sup> Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code. OSHA is identifying supporting information in this document by author name, publication year, and the last four digits of the Document ID.

other relevant information, is available at OSHA's website at <https://www.osha.gov>.

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## I. Background

### A. Introduction

OSHA's regulation at 29 CFR part 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 the regulation 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. The OSHA Form 300 includes information about the employee's name, job title, date of the injury or illness, where the injury or illness occurred, description of the injury or illness (*e.g.*, body part affected), and the outcome of the injury or illness (*e.g.*, death, days away from work, restricted work activity). 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 OSHA Form 300. The OSHA Form 301 includes information about the employee's name and address, date of birth, date hired, gender, the name and address of the health care professional that treated the employee, as well as more detailed information about where and how the injury or illness occurred. 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. The OSHA Form 300A does not contain information about individual employees, but does include general information about an employer's workplace, such as the average number of employees and total number of hours worked by all employees during the calendar year.

Section 1904.41 of the current recordkeeping regulation also requires certain employers to electronically submit injury and illness data to OSHA. Section 1904.41(a)(1) requires establishments with 250 or more employees in industries that are required to routinely keep OSHA injury and illness records to electronically submit information from the Form 300A summary to OSHA once a year. Section 1904.41(a)(2) requires establishments with 20–249 employees in certain designated industries to electronically submit information from their Form 300A summary to OSHA once a year. Also, § 1904.41(a)(3) provides that, upon notification, employers must electronically submit requested information from their part 1904 records to OSHA. Lastly, § 1904.41(a)(4) requires each establishment that must electronically submit injury and illness information to OSHA to also provide their Employer Identification Number (EIN) in their submittal.

Under this proposed rule, establishments with 20 or more employees in certain designated industries (listed in appendix A to subpart E) would continue to electronically submit information from their Form 300A annual summary to OSHA once a year. However, the proposed rule would eliminate the requirement for all establishments with 250 or more employees in industries that are required to routinely keep OSHA injury and illness records to electronically submit information from the Form 300A to OSHA. Instead, establishments with 100 or more employees in certain designated industries (listed in appendix B to subpart E) would be required to electronically submit information from their OSHA Forms 300, 301, and 300A to OSHA once a year. OSHA also proposes to update the industry classification system used for the proposed list of designated industries in appendix A and B to subpart E. In addition, OSHA is proposing to require establishments to include their company name when making electronic submissions to OSHA.

The proposed requirement for establishments with 20 or more employees in certain designated industries to electronically submit information from their Form 300A to OSHA once a year is essentially the same as the current regulation. For establishments with 100 or more employees in certain designated industries, the proposed requirement to electronically submit information from their Forms 300 and 301 to OSHA on an annual basis represents a change from

the current regulation. The proposed requirement would provide systematic access for OSHA to the establishment-specific, case-specific injury and illness information that these establishments are already required to collect.

Additionally, OSHA intends to post the collected establishment-specific, case-specific injury and illness information online. As discussed in more detail below, the agency will seek to minimize the possibility that worker information, such as name and contact information, will be released, through multiple efforts, including limiting the worker information collected, designing the collection system to provide extra protections for some of the information that employers would be required to submit under the proposal, withholding certain fields from public disclosure, and using automated software to identify and remove information that reasonably identifies individuals directly. OSHA does not intend to include information that reasonably identifies individuals directly, such as employee name, contact information, and name of physician or health care professional, in the published information. The expanded public access to establishment-specific, case-specific injury and illness data would allow employers, employees, potential employees, employee representatives, customers, potential customers, researchers, and the general public to make informed decisions about the workplace safety and health at a given establishment, and this accessibility will ultimately result in the reduction of occupational injuries and illnesses.

OSHA estimates that this proposed rule would have economic costs of \$4.3 million per year, including \$3.9 million per year to the private sector, with costs of \$81 per year for affected establishments with 100 or more employees in designated industries. The agency believes that the annual benefits, while unquantified, would significantly exceed the annual costs.

OSHA seeks comment on this proposal.

### B. Regulatory History

OSHA's regulations on recording and reporting occupational injuries and illnesses (29 CFR part 1904) were first issued in 1971 (36 FR 12612 (July 2, 1971)). These regulations require the recording of work-related injuries and illnesses that involve death, loss of consciousness, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or diagnosis of a significant injury or illness by a physician or other licensed

health care professional (29 CFR 1904.7).

On July 29, 1977, OSHA amended these regulations to partially exempt businesses having ten or fewer employees during the previous calendar year from the requirement to record occupational injuries and illnesses (42 FR 38568). Then, on December 28, 1982, OSHA amended the regulations again to partially exempt establishments in certain lower-hazard industries from the requirement to record occupational injuries and illnesses (47 FR 57699).<sup>2</sup> OSHA also amended the recordkeeping regulations in 1994 (Reporting of Fatality or Multiple Hospitalization Incidents, 59 FR 15594) and 1997 (Reporting Occupational Injury and Illness Data to OSHA, 62 FR 6434). Under the version of § 1904.41 added by the 1997 final rule, OSHA began requiring certain employers to submit their 300A data to OSHA annually through the OSHA Data Initiative (ODI). Through the ODI, OSHA collected data on injuries and acute illnesses attributable to work-related activities in the private sector from approximately 80,000 establishments in selected high-hazard industries. The agency used these data to calculate establishment-specific injury and illness rates, and, in combination with other data sources, to target enforcement and compliance assistance activities.

On January 19, 2001, OSHA issued a final rule amending its requirements for the recording and reporting of occupational injuries and illnesses (29 CFR parts 1904 and 1952), along with the forms employers use to record those injuries and illnesses (66 FR 5916). The final rule also updated the list of industries that are partially exempt from recording occupational injuries and illnesses.

On September 18, 2014, OSHA again amended the regulations to require employers to report work-related fatalities and severe injuries—in-patient hospitalizations, amputations, and losses of an eye—to OSHA and to allow electronic reporting of these events (79

FR 56130). The final rule also revised the list of industries that are partially exempt from recording occupational injuries and illnesses.

On May 12, 2016, OSHA amended the regulations on recording and reporting occupational injuries and illnesses to require employers, on an annual basis, to submit electronically to OSHA injury and illness information that employers are already required to keep under part 1904 (81 FR 29624). Under the 2016 revisions, establishments with 250 or more employees that are routinely required to keep records were required to electronically submit information from their OSHA Forms 300, 300A, and 301 to OSHA or OSHA's designee once a year, and establishments with 20 to 249 employees in certain designated industries were required to electronically submit information from their OSHA annual summary (Form 300A) to OSHA or OSHA's designee once a year. In addition, that final rule required employers, upon notification, to electronically submit information from part 1904 recordkeeping forms to OSHA or OSHA's designee. These provisions became effective on January 1, 2017, with an initial submission deadline of July 1, 2017, for 2016 Form 300A data. That submission deadline was subsequently extended to December 15, 2017 (82 FR 55761). The deadline for electronic submission of information from OSHA Forms 300 and 301 was July 1, 2018. Because of a subsequent rulemaking, OSHA never received the data submissions from Forms 300 and 301 that the 2016 final rule anticipated.

On January 25, 2019, OSHA issued a final rule that amended the recordkeeping regulations to remove the requirement for establishments with 250 or more employees that are routinely required to keep records to electronically submit information from their OSHA Forms 300 and 301 to OSHA or OSHA's designee once a year. These establishments are currently required to electronically submit only information from the OSHA 300A annual summary. The final rule also added a requirement for covered employers to submit their Employer Identification Number (EIN) electronically along with their injury and illness data submission (83 FR 36494, 84 FR 380–406).

#### *C. Litigation Resulting From Previous Rulemakings*

Both the 2016 and 2019 OSHA final rules that addressed the electronic submission of injury and illness data were challenged in court. In *Texo ABC/ABG et al. v. Acosta* (N.D. Tex.), and *NAHB et al. v. Acosta* (W.D. Okla.),

industry groups challenged OSHA's 2016 final rule that required establishments with 250 or more employees to electronically submit data from their OSHA Forms 300 and 301 to OSHA (as well as other requirements not relevant to this rulemaking). The complaints alleged that the publication of establishment-specific injury and illness data would lead to misuse of confidential and proprietary information by the public and special interest groups. The complaints also alleged that publication of the data exceeds OSHA's authority under the Occupational Safety and Health Act (the "OSH Act" or "Act") and is unconstitutional under the First Amendment to the U.S. Constitution. After OSHA published a notice of proposed rulemaking on July 30, 2018 (83 FR 36494), proposing to rescind the 300 and 301 data submission requirement, the *Texo* case was administratively closed, and the plaintiffs in the *NAHB* case dropped their claims relating to the 300 and 301 data submission requirement after the 2019 final rule was published (and moved forward with their other claims, which are still pending in the Western District of Oklahoma).

In *Public Citizen Health Research Group et al. v. Pizella* (No. 1:19-cv-00166) and *State of New Jersey et al. v. Pizella* (No. 1:19-cv-00621), a group of public health organizations and a group of states filed separate lawsuits challenging OSHA's 2019 final rule rescinding the requirement for certain employers to submit the data from OSHA Forms 300 and 301 to OSHA electronically each year. The District Court for the District of Columbia resolved the two cases in a consolidated opinion and held that rescinding the provision was within the agency's discretion. The court concluded the record supported OSHA's determination that costly manual review of collected 300 and 301 data would be needed to avoid a meaningful risk of exposing sensitive worker information to public disclosure. The court also determined that OSHA provided adequate notice of the estimated costs of manually reviewing the data for sensitive information, and that the final rule was a logical outgrowth of the rulemaking. Finally, the court upheld OSHA's conclusion that the uncertain benefits of collecting the 300 and 301 data did not justify diverting OSHA's resources from other efforts, and the court rejected the plaintiffs' assertion that OSHA's reasons for the 2019 final rule were internally inconsistent.

Additionally, since 2020, the Department of Labor (DOL) has received

<sup>2</sup> All employers covered by the Occupational Safety and Health Act (the "OSH Act" or "Act") are covered by OSHA's recordkeeping regulation. However, most employers do not have to keep OSHA injury and illness records unless OSHA or the Bureau of Labor Statistics (BLS) informs them in writing that they must keep records. For example, employers with ten or fewer employees, as well as businesses with establishments in certain industries, are partially exempt from keeping OSHA injury and illness records. In addition, all employers covered by the OSH Act, including those that are partially exempt from keeping injury and illness records, are still required to report work-related fatalities, in-patient hospitalizations, amputations, and losses of an eye to OSHA within specified timeframes under 29 CFR 1904.39.

several adverse decisions regarding the release of electronically submitted 300A data under the Freedom of Information Act (FOIA). In each of the cases, OSHA argued that electronically submitted 300A injury and illness data was covered under the confidentiality exemption in FOIA Exemption 4. Two courts, one in the U.S. District Court for the Northern District of California and another in the U.S. District Court for the District of Columbia, disagreed with OSHA's position. See, *Center for Investigative Reporting, et al., v. Department of Labor*, No. 4:18-cv-02414-DMR, 2020 WL 2995209 (N.D. Cal. June 4, 2020); *Public Citizen Foundation v. United States Department of Labor, et al.*, No. 1:18-cv-00117 (D.D.C. June 23, 2020). In addition, on July 6, 2020, the Department received an adverse ruling from a magistrate judge in the Northern District of California in a FOIA case involving Amazon fulfillment centers. In that case, plaintiffs sought the release of individual 300A forms, which consisted of summaries of Amazon's work-related injuries and illnesses and which were provided to OSHA compliance officers during specific OSHA inspections of Amazon fulfillment centers in Ohio and Illinois. See, *Center for Investigative Reporting, et al., v. Department of Labor*, No. 3:19-cv-05603-SK, 2020 WL 3639646 (N.D. Cal. July 6, 2020).

In holding that FOIA Exemption 4 was inapplicable, the courts rejected OSHA's position that electronically submitted 300A injury and illness data is covered under the confidentiality exemption in FOIA Exemption 4. The decisions noted that the 300A form is posted in the workplace for three months and that there is no expectation that the employer must keep these data confidential or private. As a result, OSHA provided the requested 300A data to the plaintiffs, and initiated a policy to post collected 300A data on its public website. The data are available at <https://www.osha.gov/Establishment-Specific-Injury-and-Illness-Data> and include the submissions for calendar years 2016, 2017, 2018, 2019, and 2020.

#### D. Injury and Illness Data Collection

Currently, two U.S. Department of Labor data collections request and compile information from the OSHA injury and illness records certain employers are required to keep under 29 CFR part 1904: The annual collection conducted by OSHA under 29 CFR 1904.41 (Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records), and the annual Survey of Occupational Injuries and Illnesses (SOII) conducted by BLS

under 29 CFR 1904.42. This proposed rule would amend the current regulation at § 1904.41. It would not change the SOII or the authority for the SOII set forth in § 1904.42.

The primary purpose of the SOII is to provide nationally-representative annual estimates of the rates and numbers of work-related non-fatal injuries and illnesses in the United States, and on how these statistics vary by incident, industry, geography, occupation, and other characteristics. Title 44 U.S.C. 3572 prohibits BLS from releasing establishment-specific and case-specific data to the general public or to OSHA. OSHA only has access to the publicly-available aggregate information from the injury and illness records collected through the BLS SOII.

The BLS has modified their collection to allow respondents that have already provided their Form 300A data to OSHA to provide their OSHA identification number (OSHA ID) to import to BLS the data that they have submitted to the OSHA ITA in that same year. Under this data-sharing feature, if BLS can successfully match establishment information with information reported to OSHA, data reported by the respondent to the OSHA ITA are automatically imported into the BLS SOII internet Data Collection Facility (IDCF). Imported data are taken from the OSHA 300A annual summary. Additional information may need to be entered manually to complete the SOII submission. In the 2021 collection for the BLS SOII, roughly 31,000 establishments had an opportunity to use this data-sharing feature for their OSHA Form 300A data, *i.e.*, they were submitting to both the OSHA ITA and the BLS SOII. Of these roughly 31,000 establishments, 9,479 establishments provided their OSHA ID to the BLS SOII collection for BLS to try to match for the data-sharing feature. Of these 9,479 establishments, 4,716 establishments that passed BLS's data quality checks had their OSHA-submitted data automatically imported into the BLS SOII IDCF via the data-sharing feature. The Department is continuing to evaluate opportunities to further reduce duplicative reporting. To this end, BLS will evaluate the feasibility of using this same model for the additional information that would be required by this proposed rule.

Authority for the SOII comes from 29 CFR 1904.42, Requests from the Bureau of Labor Statistics for data. Each year, BLS collects data from Forms 300, 301, and 300A from a scientifically-selected probability sample of about 230,000 establishments, covering nearly all private-sector industries, as well as state

and local government. Employers may submit their data on paper forms or electronically. BLS releases the aggregated data in November of the year following the data year (*e.g.*, November 2020 for 2019 data).

As discussed above, the OSHA recordkeeping regulation has required certain employers to submit injury and illness information to OSHA since 1997. Currently, § 1904.41, Electronic submission of Employer Identification Number (EIN) and injury and illness records to OSHA, requires two groups of establishments to annually submit information from the OSHA Form 300A Annual Summary: Establishments with 20–249 employees in industries included in appendix A to subpart E of part 1904, and establishments with 250 or more employees in industries that are routinely required to keep part 1904 injury and illness records. For purposes of § 1904.41, the number of employees at a given establishment is based on the number of individuals employed at the establishment at any time during the previous calendar year, including full-time, part-time, seasonal, and temporary workers. In addition, data submissions under § 1904.41 are typically limited to establishments in industries with high injury and illness rates. For example, while current § 1904.41(a)(1) covers establishments with 20–249 employees, only establishments in certain designated industries are required to electronically submit information from their Form 300A under this provision.

The primary purpose of the electronic submission requirements in § 1904.41 is to enable OSHA to focus its enforcement and compliance assistance efforts on individual workplaces with ongoing serious safety and health problems, as identified by the occupational injury and illness rates at those workplaces. An establishment's submission of information from its OSHA Form 300A Annual Summary provides summary information about injuries and illnesses at that specific establishment, but not about specific cases of injury or illness at that establishment. In contrast, the OSHA Form 300 Log of Work-Related Injuries and Illnesses and Form 301 Injury and Illness Incident Report provide information about specific cases of injury or illness.

#### E. Publication of Electronic Data

OSHA intends to make much of the data it collects public. As discussed below, the publication of specific data elements will in part be restricted by applicable federal law, including provisions under the Freedom of Information Act (FOIA), as well as specific provisions within part 1904.

OSHA will make the following data from the OSHA Form 300 and 301 available in a searchable online database:

**Form 300 (the Log)**—All collected data fields on the 300 Log will generally be made available on OSHA's website. OSHA is proposing to collect all of the fields *except* employee name (column B). OSHA currently collects these data during inspections and maintains them as part of the enforcement case file. However, the agency does not currently conduct a systematic collection of the information on the 300 Log. OSHA generally releases copies of the 300 Logs maintained in inspection files in response to FOIA requests after redacting employee names (column B).

OSHA's regulations require employers to provide employees, former employees, their representatives, and their authorized employee representatives with access to the 300 Log (29 CFR 1904.32(b)(2)). Specifically, when an employee, former employee, personal representative, or authorized employee representative asks an employer for copies of that employer's current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, the employer must give the requester a copy of the relevant OSHA 300 Log(s) by the end of the next business day (29 CFR 1904.32(b)(2)(ii)). Once the copy is accessed, OSHA's recordkeeping regulation does not place any limitations on the use or release of the information by employees and employee representatives. Moreover, as explained in OSHA's 2001 final rule amending its requirements for the recording and reporting of occupational injuries and illnesses, while agency policy is that employees and their representatives with access to records should treat the information contained therein as confidential except as necessary to further the purposes of the Act, the Secretary lacks statutory authority to enforce such a policy against employees and representatives (see 66 FR 6056–57 (citing *e.g.*, 29 U.S.C. 658, 659) (Act's enforcement mechanisms directed solely at employers)). In other words, as OSHA explained in its 2016 recordkeeping final rule, employees and their representatives can make the data they have accessed public if they wish to do so (see 81 FR 29684). However, there are some restrictions on what employers may do with these data. Under § 1904.29(b)(10), if employers choose to voluntarily disclose the Forms to persons other than government representatives, employees, former employees, or authorized

representatives (as required by §§ 1904.35 and 1904.40), the employer must remove or hide the employees' names and other personally identifying information, with certain exceptions as spelled out in OSHA's regulations.

**Form 301 (Incident Report)**—All collected data fields on the right-hand side of the form (Fields 10 through 18) will generally be made available. The agency currently occasionally collects the form for enforcement case files. Section 1904.35(b)(2)(v)(B) prohibits employers from releasing the information in Fields 1 through 9 (the left-hand side of the form) to individuals other than the employee or former employee who suffered the injury or illness and his or her personal representatives. Similarly, OSHA will not publish establishment-specific data from the left side of Form 301. OSHA does not release data from Fields 1 through 9 in response to FOIA requests. The agency does not currently conduct a systematic collection of the information on the Form 301. However, the agency does review the entire Form 301 during some workplace inspections and occasionally collects the form for inclusion in the enforcement case file. Note that OSHA is proposing not to collect (and therefore could not publish) Field 1 (employee name), Field 2 (employee address), Field 6 (name of treating physician or health care provider), or Field 7 (name and address of non-workplace treating facility). As above, under § 1904.35(a)(3), employers must provide access to injury and illness records for their employees and employees' representatives, as described in § 1904.35(b)(2). Also, as above, the OSHA recordkeeping regulation does not place limitations on the use or release of the information obtained by employees and employee representatives.

#### *F. Differences Between the BLS SOII and Proposed OSHA Data Collections*

The BLS SOII is an establishment-based survey used to estimate nationally-representative incidence rates and counts of workplace injuries and illnesses. It also provides detailed case and demographic data for cases that involve one or more days away from work (DAFW) and for days of job transfer and restriction (DJTR).

SOII estimates the number and frequency (incidence rates) of workplace injuries and illnesses based on recordkeeping logs kept by employers during the year. These records reflect not only the year's injury and illness experience, but also the employer's understanding of which cases are work-related under recordkeeping rules

promulgated by OSHA. Although SOII uses OSHA's recordkeeping rules to facilitate convenient collection of data, it is not administered by OSHA. In addition, the scope of SOII encompasses industries not required by OSHA to routinely keep injury and illness records (*i.e.*, industries listed in appendix A to subpart B of part 1904). Information collected through the program is used for purely statistical purposes, cannot be viewed by OSHA, and cannot be used for any regulatory purpose. Besides injury and illness counts, survey respondents also are asked to provide additional information for the subset of nonfatal cases that involved at least 1 day away from work or job transfer or restriction. Employers answer several questions about these cases, including the demographics of the worker, the nature of the disabling condition, the event and source producing that condition, and the part of body affected. A few of the data elements are optional for employers, most notably race and ethnicity; this resulted in 40 percent of the cases involving days away from work for which race and ethnicity were not reported in the 2016 SOII.<sup>3</sup>

The presentation of SOII data is released in the fall and contains two data components. One, sometimes referred to as the summary, provides estimates of numbers and incidence rates of employer-reported nonfatal injuries and illnesses at the industry level for all types of cases. A second, sometimes referred to as the case and demographics data, details case circumstances and worker characteristics for the subset of the cases that involved days away from work.<sup>4</sup> Prepared tables containing the data can be found for industry data at <https://www.bls.gov/iif/oshsum.htm> and for case and demographics at <https://www.bls.gov/iif/oshcdnew.htm>. A schedule of releases from the Injuries, Illnesses, and Fatalities program, which includes SOII, can be found at [https://www.bls.gov/iif/osh\\_nrwl.htm](https://www.bls.gov/iif/osh_nrwl.htm).

In contrast, under the current data collection, OSHA annually collects information from the OSHA Form 300A Annual Summary from two groups of establishments:

1. Under § 1904.41(a)(1), from establishments with 20 or more

<sup>3</sup> U.S. Bureau of Labor Statistics, Handbook of Methods, Survey of Occupational Injuries and Illnesses, p. 12 (last modified date October 30, 2020); <https://www.bls.gov/opub/hom/soii/pdf/soii.pdf>.

<sup>4</sup> BLS started collecting nationally representative job transfer and restriction cases in January 2022. BLS will begin publishing biennial case and demographic estimates using these data in November 2023. BLS will continue to publish summary industry estimates annually.

employees in industries included in appendix A to subpart E of part 1904, and

2. under § 1904.41(a)2), from establishments with 250 or more employees in all industries that are routinely required to keep OSHA injury and illness records.

OSHA publishes this information on its website at <https://www.osha.gov/Establishment-Specific-Injury-and-Illness-Data>. OSHA is proposing to revise this data collection to include information from the OSHA Form 300 Log and Form 301 Incident Report from establishments with 100 or more employees in certain industries.

### *G. Benefits of Establishment-Specific, Case-Specific Data Collection and Publication*

As discussed in more detail below, the proposed rule would amend § 1904.41 to require establishments with 100 or more employees in certain designated industries to electronically submit injury and illness information from all three recordkeeping forms to OSHA once a year (see proposed § 1904.41(a)(2)). All of the establishments that would be subject to this proposed section are already required to annually submit information from their Form 300A, but these establishments would be newly required to also annually submit certain information from their Forms 300 and 301.

The proposed requirement for the electronic submission of establishment-specific, case-specific information from the Forms 300 and 301, and the subsequent publication of certain establishment-specific, case-specific data elements would have numerous benefits.

The main purpose of the proposed rule is to prevent worker injuries and illnesses through the collection and use of timely, establishment-specific injury and illness data. With the information obtained through this proposed rule, employers, employees, employee representatives, the government, and researchers would be better able to identify and mitigate workplace hazards and thereby prevent worker injuries and illnesses.

The proposed rule would support OSHA's statutory directive to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources" (29 U.S.C. 651(b)) "by providing for appropriate reporting procedures with respect to occupational safety and health which procedures 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 importance of this rule in preventing worker injuries and illnesses can be understood in the context of workplace safety and health in the United States today. The number of workers injured or made ill on the job remains unacceptably high. According to the SOII, each year employees experience 3 million serious (requiring more than first aid) injuries and illnesses at work, and this number is widely recognized to be an undercount of the actual number of occupational injuries and illnesses that occur annually. OSHA currently has limited information about the injury/illness risks facing workers in specific establishments, and the proposed rule would increase the agency's ability to focus resources on those workplaces where workers are at high risk.

However, even with improved targeting, OSHA Compliance Safety and Health Officers can inspect only a small proportion of the nation's workplaces each year, and it would take many decades to inspect each covered workplace in the nation even once. As a result, to reduce worker injuries and illnesses, it is of great importance for OSHA to increase its impact on the many thousands of establishments where workers are being injured or made ill but which OSHA does not have the resources to inspect. Public access to the collected establishment-specific, case-specific information may encourage employers to abate hazards and thereby prevent injuries and illnesses, so that the employer's establishment can be seen by members of the public, including investors and job seekers, as one in which the risk to workers' safety and health is low.

A requirement for the electronic submission of establishment-specific, case-specific recordkeeping data would help OSHA encourage employers to prevent worker injuries and illnesses by greatly expanding OSHA's access to the establishment-specific, case-specific information employers are already required to record under part 1904. As described in the previous section, OSHA currently does not have systematic access to this information. OSHA has limited access to case-specific, establishment-specific injury and illness information in a particular year. Typically, OSHA only has access if the establishment was inspected.

The proposed rule's provisions requiring regular electronic submission of case-specific injury and illness data would allow OSHA to obtain a much larger data set of establishment-specific, case-specific information about injuries

and illnesses in the workplace. This information would help OSHA use its enforcement and compliance assistance resources more effectively by enabling OSHA to identify the workplaces where workers are at high risk.

For example, OSHA could send hazard-specific educational materials to employers who report high rates of injuries or illnesses related to those hazards. In addition, OSHA would be able to use the information to identify emerging hazards, support an agency response, and reach out to employers whose workplaces might include those hazards. The data collection would also enable the agency to focus its Emphasis Program inspections on establishments with specific hazards, such as trench and excavation collapses (see CPL 02-00-161, October 1, 2018). OSHA would be better able to refer employers who report certain types of injuries/illnesses to OSHA's free on-site consultation program. OSHA would also be able to add specific hazards or types of injury or illness to the Site Specific Targeting (SST) program, which currently is based on establishments' overall injury/illness rates.

The new collection would provide establishment-specific, case-specific injury and illness data for analyses that are not currently possible. For example, OSHA could analyze the data collected under this system to assess changes in types and rates of particular injuries or illnesses in a particular industry over time. It would also enable OSHA to conduct rigorous evaluations of different types of programs, initiatives, and interventions in different industries and geographic areas, enabling the agency to become more effective and efficient.

In addition, publication of establishment-specific, case-specific injury and illness data would benefit the majority of employers who want to prevent injuries and illnesses among their employees, through several mechanisms. First, the information would enable interested parties to gauge the full range of injury and illness case types at the establishment. Second, employers could compare case-specific injury and illness information at their establishments to those at comparable establishments, and set workplace safety/health goals benchmarked to the establishments they consider most comparable. Third, online availability of case-specific, establishment-specific injury and illness information would allow employees to compare their own workplaces to the safest workplaces in their industries. In addition, if employees were able to preferentially choose employment at the safest

workplaces in their industries, then employers might take steps to improve workplace safety and health (preventing injuries and illnesses from occurring) in order to attract and retain employees.

Fourth, access to these data could improve the workings of the labor market by providing more complete information to job seekers and, as a result, encourage employers to abate hazards in order to attract more in-demand employees. Using data newly accessible under this proposed rule, potential employees could examine the case-specific information at establishments where they are interested in working, to help them make a more informed decision about a future place of employment. This could also encourage employers with more hazardous workplaces in a given industry to make improvements in workplace safety and health, because potential employees, especially the ones whose skills are most in demand, might be reluctant to work at more hazardous establishments. In addition, this would help address a problem of information asymmetry in the labor market, where the businesses with the greatest problems have the lowest incentive to self-disclose.

Disclosure of and access to case-specific injury and illness data have the potential to improve research on the distribution and determinants of workplace injuries and illnesses, and therefore to prevent workplace injuries and illnesses from occurring. Using data collected under the proposed rule, researchers might identify previously unrecognized patterns of injuries and illnesses across establishments where workers are exposed to similar hazards. Such research would be especially useful in identifying hazards that result in a small number of injuries or illnesses in each establishment but a large number overall, due to a wide distribution of those hazards in a particular area, industry, or establishment type. Case-specific data made available under this proposed rule could also allow researchers to identify patterns of injuries or illnesses that are masked by the aggregated, establishment-level data currently available.

The availability of establishment-specific injury and illness data would also be of great use to county, state and territorial Departments of Health and other public institutions charged with injury and illness surveillance. In particular, aggregation of case-specific injury and illness data from similar establishments could facilitate identification of newly-emerging hazards. Public health surveillance

programs must currently primarily rely on reporting of cases seen by medical practitioners, any one of whom would rarely see enough cases to identify an occupational etiology.

Workplace safety and health professionals might use the case-specific data to identify establishments whose injury/illness records suggest that the establishments would benefit from their services. In general, online access to this large database of case-specific injury and illness information could support the development of innovative ideas for improving workplace safety and health, and would allow everyone with a stake in workplace safety and health to participate in improving occupational safety and health.

Furthermore, because the case-specific data would be publicly available, industries, trade associations, unions, and other groups representing employers and workers would be able to evaluate the effectiveness of privately-initiated injury and illness prevention initiatives that affect groups of establishments. In addition, linking these data with data residing in other administrative data sets would enable researchers to conduct rigorous studies that would increase our understanding of injury causation, prevention, and consequences. For example, by combining these data with data collected in the Annual Survey of Manufactures (conducted by the United States Census Bureau), it would be possible to examine the impact of a range of management practices on specific injury and illness types, and in turn the impact of those injury and illness types on the financial status of employers.

And finally, public access to these data would also enable software developers to develop tools that facilitate use of these data by employers, workers, researchers, consumers and others.

## II. Legal Authority

OSHA is issuing this proposed rule pursuant to authority expressly granted by several provisions of the OSH Act that address the recording and reporting of occupational injuries and illnesses. Section 2(b)(12) of the OSH Act states that one of the purposes of the OSH Act is to “assure so far as possible . . . safe and healthful working conditions . . . by providing for appropriate reporting procedures . . . which will help achieve the objective of th[e] Act and accurately describe the nature of the occupational safety and health problem.” 29 U.S.C. 651(b)(12). Section 8(c)(1) requires each employer to “make, keep and preserve, and make available

to the Secretary [of Labor] or the Secretary of Health and Human Services, such records regarding his activities relating to this Act as the Secretary . . . may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses” (29 U.S.C. 657(c)(1)). Section 8(c)(2) directs the Secretary to prescribe regulations “requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses 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. 657(c)(2)).

Section 8(g)(1) authorizes the Secretary “to compile, analyze, and publish, whether in summary or detailed form, all reports or information obtained under this section.” Section 8(g)(2) of the Act broadly empowers the Secretary “to prescribe such rules and regulations as he may deem necessary to carry out his responsibilities under th[e] Act.” 29 U.S.C. 657(g)(2).

Section 24 of the OSH Act (29 U.S.C. 673) contains a similar grant of authority. This section 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 . . .” (29 U.S.C. 673(a)). Section 24 also requires employers to “file such reports with the Secretary as he shall prescribe by regulation” (29 U.S.C. 673(e)). These reports are to be based on “the records made and kept pursuant to § 8(c) of this Act” (29 U.S.C. 673(e)).

Section 20 of the Act, 29 U.S.C. 669, contains additional implicit authority for collecting and disseminating data on occupational injuries and illnesses. Section 20(a) empowers the Secretaries of Labor and Health and Human Services to consult on research concerning occupational safety and health problems, and provides for the use of such research, “and other information available,” in developing criteria on toxic materials and harmful physical agents. Section 20(d) states that “[i]nformation obtained by the Secretary . . . under this section shall be disseminated by the Secretary to employers and employees and organizations thereof.”



Further support for the Secretary's authority to require employers to keep and submit records of work-related illnesses and injuries can be found in the Congressional Findings and Purpose at the beginning of the OSH Act (29 U.S.C. 651). In this section, Congress declares the overarching purpose of the Act to be "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions" (29 U.S.C. 651(b)). One of the ways in which the Act is meant to achieve this goal is "by providing for 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 of Labor to issue two types of occupational safety and health rules: Standards and regulations. Standards, which are authorized by section 6 of the Act, aim to correct particular identified workplace hazards, while regulations further the general enforcement and detection purposes of the OSH Act (see *Workplace Health & Safety Council v. Reich*, 56 F.3d 1465, 1468 (D.C. Cir. 1995) (citing *La. Chem. Ass'n v. Bingham*, 657 F.2d 777, 781–82 (5th Cir. 1981)); *United Steelworkers of Am. v. Auchter*, 763 F.2d 728, 735 (3d Cir. 1985)). Recordkeeping requirements promulgated under the Act are characterized as regulations (see 29 U.S.C. 657 (using the term "regulations" to describe recordkeeping requirements); see also *Workplace Health & Safety Council v. Reich*, 56 F.3d 1465, 1468 (D.C. Cir. 1995) (citing *La. Chem. Ass'n v. Bingham*, 657 F.2d 777, 781–82 (5th Cir. 1981); *United Steelworkers of Am. v. Auchter*, 763 F.2d 728, 735 (3d Cir. 1985)).

This proposed rule does not infringe on employers' Fourth Amendment rights. The Fourth Amendment protects against searches and seizures of private property by the government, but only when a person has a "legitimate expectation of privacy" in the object of the search or seizure (*Rakas v. Illinois*, 439 U.S. 128, 143–47 (1978)). There is little or no expectation of privacy in records that are required by the government to be kept and made available (*Free Speech Coalition v. Holder*, 729 F. Supp. 2d 691, 747, 750–51 (E.D. Pa. 2010) (citing cases); *United States v. Miller*, 425 U.S. 435, 442–43 (1976); cf. *Shapiro v. United States*, 335 U.S. 1, 33 (1948) (no Fifth Amendment interest in required records)). Accordingly, the Fourth Circuit held, in *McLaughlin v. A.B. Chance*, that an employer has little expectation of

privacy in the records of occupational injuries and illnesses kept pursuant to OSHA regulations, and must disclose them to the agency on request (842 F.2d 724, 727–28 (4th Cir. 1988)).

Even if there were an expectation of privacy, the Fourth Amendment prohibits only unreasonable intrusions by the government (*Kentucky v. King*, 131 S. Ct. 1849, 1856 (2011)). The information submission requirement in this proposed rule is reasonable. The proposed requirement serves a substantial government interest in the health and safety of workers, has a strong statutory basis, and rests on reasonable, objective criteria for determining which employers must report information to OSHA (see *New York v. Burger*, 482 U.S. 691, 702–703 (1987)).

OSHA notes that two courts have held, contrary to *A.B. Chance*, that the Fourth Amendment requires prior judicial review of the reasonableness of an OSHA field inspector's demand for access to injury and illness logs before the agency could issue a citation for denial of access (*McLaughlin v. Kings Island*, 849 F.2d 990 (6th Cir. 1988); *Brock v. Emerson Electric Co.*, 834 F.2d 994 (11th Cir. 1987)). Those decisions are inapposite here. The courts based their rulings on a concern that field enforcement staff had unbridled discretion to choose the employers they would inspect and the circumstances in which they would demand access to employer records. The *Emerson Electric* court specifically noted that in situations where "businesses or individuals are required to report particular information to the government on a regular basis[,] a uniform statutory or regulatory reporting requirement [would] satisf[y] the Fourth Amendment concern regarding the potential for arbitrary invasions of privacy" (834 F.2d at 997, n.2). This proposed rule, like that hypothetical, establishes general reporting requirements based on objective criteria and does not vest field staff with any discretion. The employers that are required to report data, the information they must report, and the time when they must report it are clearly identified in the text of the rule and in supplemental notices that will be published pursuant to the Paperwork Reduction Act.

Additionally, with regard to publication of collected data, FOIA generally supports OSHA's intention to publish information on a publicly available website. FOIA provides that certain Federal agency records must be routinely made "available for public inspection and copying" in agency

reading rooms. See, 5 U.S.C. 552(a)(2) (2000). These reading rooms contain basic agency materials such as agency manuals, specific agency policy statements, and opinions developed in the adjudication of cases. Subsection (a)(2) provides that agencies must include any records processed and disclosed in response to a FOIA request that "the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records."

Based on its experience, OSHA believes that the recordkeeping information from the Forms 300, 301, and 300A required to be submitted under this proposed rule will likely be the subject of multiple FOIA requests in the future. As such, the agency plans to place the recordkeeping information that will be posted on the public OSHA website in its Electronic FOIA Library. Since agencies may "withhold" (*i.e.*, not make available) a record (or portion of such a record) if it falls within a FOIA exemption, just as they can do in response to FOIA requests, OSHA will place the published information in its FOIA Library consistent with all FOIA exemptions.

### III. Summary and Explanation of the Proposed Rule

#### A. Description of Proposed Revisions

##### 1. Section 1904.41(a)(1)—Annual Electronic Submission of Information From OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 20 or More Employees in Designated Industries

Under proposed § 1904.41(a)(1), establishments that had 20 or more employees at any time during the previous calendar year, and are classified in an industry listed in appendix A to subpart E, would be required to electronically submit information from their OSHA Form 300A to OSHA or OSHA's designee once a year. The current recordkeeping regulation requires two categories of establishments to electronically submit information from their Form 300A to OSHA on an annual basis. First, current § 1904.41(a)(1) requires establishments with 250 or more employees at any time during the previous calendar year, in all industries that are routinely required to keep OSHA injury and illness records, to electronically submit information from their 300A to OSHA once a year. Second, current § 1904.41(a)(2) requires establishments with 20–249 employees at any time during the previous calendar year, in industries listed in appendix A to subpart E of part 1904, to electronically submit information from



their OSHA 300A to OSHA or OSHA's designee once a year.

The proposed rule would not impose any new requirements on establishments to electronically submit information from their Form 300A to OSHA. All establishments that would be required to electronically submit Form 300A information to OSHA on an annual basis under the proposed rule are already subject to that requirement under the current regulation. This includes all of the establishments with 250 or more employees that would be required to electronically submit information to OSHA under proposed § 1904.41(a)(2), which are already required to submit this information under the current regulation at § 1904.41(a)(1).

As discussed in more detail below, proposed § 1904.41(a) would remove the electronic submission requirement for certain establishments with 250 or more employees. Currently, all establishments of this size in industries routinely required to keep injury and illness records are required to electronically submit information from their Form 300A to OSHA once a year. The proposal requires this submission only for the establishments in industries listed in appendix A. OSHA believes that only a small number of establishments would be excluded by the proposal. In calendar year 2020, 2,665 establishments with 250 or more employees, in an industry not in current appendix A to subpart E, submitted

information from their 2019 Form 300A to OSHA. Under proposed § 1904.41(a), these establishments would no longer be required to electronically submit Form 300A data to OSHA.<sup>5</sup> The agency has preliminarily determined that collecting Form 300A data from this relatively small number of large establishments in lower-hazard industries is not a priority for OSHA inspection targeting or compliance assistance activities.<sup>6</sup>

Additionally, OSHA proposes to revise appendix A to subpart E to update the list of designated industries to conform with the 2017 version of the North American Industry Classification System (NAICS). The Office of Management and Budget, through its Economic Classification Policy Committee (ECPC), reviews and considers revisions for NAICS, a statistical classification system, every five years. In 2016, when OSHA revised § 1904.41, the agency used the 2012 version of NAICS to designate the industries in which establishments with 20–249 employees were required to electronically submit Form 300A data to OSHA. (See current appendix A to subpart E of part 1904). The Office of Management and Budget has since issued two updates to the NAICS codes: 2017 NAICS codes and 2022 NAICS codes. The update from 2012 NAICS to 2017 NAICS would have the benefit of using more current NAICS codes, as well as ensuring that both proposed appendix A and proposed appendix B (referenced in proposed § 1904.41) use

the same version of NAICS. As explained below, the industries in proposed appendix B are a subset of the industries in appendix A. Also, the 2017 version of NAICS is the version currently used by BLS for the SOII data that OSHA is using for this rulemaking, and employers are likely more familiar with the 2017 industry codes.

This proposed revision would not impact which industries are covered and therefore required to provide their data.<sup>7</sup> It would merely reflect the updated 2017 NAICS codes. For appendix A, OSHA is limiting the scope of this rulemaking to the proposed update from the 2012 version of NAICS to the 2017 version of NAICS. Other changes to appendix A are not within the scope of this rulemaking.

For proposed (*i.e.*, updated) appendix A, the change from the 2012 NAICS to the 2017 NAICS would affect only a few industry groups at the 4-digit NAICS level. Specifically, the 2012 NAICS industry group 4521 (Department Stores) is split between the 2017 NAICS industry groups 4522 (Department Stores) and 4523 (General Merchandise Stores, including Warehouse Clubs and Supercenters). Also, the 2012 NAICS industry group 4529 (Other General Merchandise Stores) is included in 2017 NAICS industry group 4523 (General Merchandise Stores, including Warehouse Clubs and Supercenters).

The proposed revised appendix A is as follows:

PROPOSED APPENDIX A

2017 NAICS code	2017 NAICS title
11 .....	Agriculture, forestry, fishing and hunting.
22 .....	Utilities.
23 .....	Construction.
31–33 .....	Manufacturing.
42 .....	Wholesale trade.
4413 .....	Automotive Parts, Accessories, and Tire Stores.
4421 .....	Furniture Stores.
4422 .....	Home Furnishings Stores.
4441 .....	Building Material and Supplies Dealers.
4442 .....	Lawn and Garden Equipment and Supplies Stores.
4451 .....	Grocery Stores.
4452 .....	Specialty Food Stores.
4522 .....	Department Stores.
4523 .....	General Merchandise Stores, including Warehouse Clubs and Supercenters.
4533 .....	Used Merchandise Stores.
4542 .....	Vending Machine Operators.
4543 .....	Direct Selling Establishments.
4811 .....	Scheduled Air Transportation.
4841 .....	General Freight Trucking.

<sup>5</sup> See docket exhibit OSHA–2021–006–0003 for the list of industries in which establishments with 250 or more employees would no longer be required to electronically submit Form 300A data to OSHA.

<sup>6</sup> In 2016, OSHA established the list of industries in current appendix A to subpart E based on a 2011–2013 three-year-average Days Away,

Restriction, and Job Transfer (DART) rate greater than 2.0 in the BLS Survey of Occupational Injuries and Illnesses.

<sup>7</sup> Note that the proposed rule would remove NAICS 7213, Rooming and Boarding Houses, from proposed appendix A to subpart E. That specific NAICS industry group, which is listed in the part

1904 Non-Mandatory appendix A to subpart B—Partially Exempt Industries, is not routinely required to keep OSHA injury and illness records. However, that NAICS industry group was mistakenly included in appendix A to subpart E when OSHA published the 2016 final rule.

## PROPOSED APPENDIX A—Continued

2017 NAICS code	2017 NAICS title
4842 .....	Specialized Freight Trucking.
4851 .....	Urban Transit Systems.
4852 .....	Interurban and Rural Bus Transportation.
4853 .....	Taxi and Limousine Service.
4854 .....	School and Employee Bus Transportation.
4855 .....	Charter Bus Industry.
4859 .....	Other Transit and Ground Passenger Transportation.
4871 .....	Scenic and Sightseeing Transportation, Land.
4881 .....	Support Activities for Air Transportation.
4882 .....	Support Activities for Rail Transportation.
4883 .....	Support Activities for Water Transportation.
4884 .....	Support Activities for Road Transportation.
4889 .....	Other Support Activities for Transportation.
4911 .....	Postal Service.
4921 .....	Couriers and Express Delivery Services.
4922 .....	Local Messengers and Local Delivery.
4931 .....	Warehousing and Storage.
5152 .....	Cable and Other Subscription Programming.
5311 .....	Lessors of Real Estate.
5321 .....	Automotive Equipment Rental and Leasing.
5322 .....	Consumer Goods Rental.
5323 .....	General Rental Centers.
5617 .....	Services to Buildings and Dwellings.
5621 .....	Waste Collection.
5622 .....	Waste Treatment and Disposal.
5629 .....	Remediation and Other Waste Management Services.
6219 .....	Other Ambulatory Health Care Services.
6221 .....	General Medical and Surgical Hospitals.
6222 .....	Psychiatric and Substance Abuse Hospitals.
6223 .....	Specialty (except Psychiatric and Substance Abuse) Hospitals.
6231 .....	Nursing Care Facilities (Skilled Nursing Facilities).
6232 .....	Residential Intellectual and Developmental Disability, Mental Health, and Substance Abuse Facilities.
6233 .....	Continuing Care Retirement Communities and Assisted Living Facilities for the Elderly.
6239 .....	Other Residential Care Facilities.
6242 .....	Community Food and Housing, and Emergency and Other Relief Services.
6243 .....	Vocational Rehabilitation Services.
7111 .....	Performing Arts Companies.
7112 .....	Spectator Sports.
7121 .....	Museums, Historical Sites, and Similar Institutions.
7131 .....	Amusement Parks and Arcades.
7132 .....	Gambling Industries.
7211 .....	Traveler Accommodation.
7212 .....	RV (Recreational Vehicle) Parks and Recreational Camps.
7223 .....	Special Food Services.
8113 .....	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.
8123 .....	Drycleaning and Laundry Services.

OSHA welcomes public comment on the proposed changes to § 1904.41(a)(1).

2. Section 1904.41(a)(2)—Annual Electronic Submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses, OSHA Form 300 Log of Work-Related Injuries and Illnesses, and OSHA Form 301 Injury and Illness Incident Report by Establishments With 100 or More Employees in Designated Industries

Section 1904.41(a)(2) of the proposed rule would add a requirement for establishments that had 100 or more employees at any time during the previous calendar year, and that are in an industry listed in proposed appendix B to subpart E, to electronically submit to OSHA or OSHA's designee once a

year, certain information from the OSHA Forms 300, 301, and 300A.

The requirement in proposed § 1904.41(a)(2) for the submission of 300A data by establishments with 100 or more employees in industries listed in proposed appendix B to subpart E would not be new. All of the establishments with 100 or more employees in industries listed in proposed appendix B to subpart E are already required to electronically submit 300A data to OSHA once a year under current 29 CFR 1904.41.

However, the proposed requirement for the electronic submission of data from the 300 and 301 forms would be new.

As discussed above in the Regulatory History section of this preamble, in 2016, OSHA issued a final rule that

revised the recordkeeping regulation at 29 CFR 1904.41 to require establishments with 250 or more employees that are routinely required to keep injury and illness records to electronically submit information from their 300 and 301 forms to OSHA once a year. The 300 and 301 data submission requirement from the 2016 rulemaking was never fully implemented, and OSHA never collected 300 and 301 data electronically from employers covered by the requirements in the 2016 final rule.

In 2019, OSHA issued a final rule that removed the requirement for the annual electronic submission of 300 and 301 data to OSHA. In the preamble to the 2019 final rule, OSHA explained that the 300/301 submission requirement

was being removed because the collection of such data would expose sensitive worker information to a meaningful risk of disclosure, and that “OSHA cannot justify that risk given its resource allocation concerns and the uncertain incremental benefits to OSHA of collecting the data” (84 FR 387). In addition, “OSHA . . . determined that the best use of its resources [was] to focus on data it already receives—including a large set of data from Form 300A, as well as discrete data about urgent issues from severe injury reports—and has found useful in its past experience” (84 FR 387).

OSHA has preliminarily determined that the reasons given in the preamble to the 2019 final rule for the removal of the 300 and 301 data submission requirement are no longer compelling. As discussed in more detail below, recent advancements in technology have reduced the risk that information that reasonably identifies individuals directly, such as name and contact information, will be disclosed to the public. The improved technology used to protect sensitive employee data will reduce costs and resource-allocation issues for OSHA by eliminating the need to manually identify and remove information that reasonably identifies individuals directly from submitted data. In addition, the improved technology has decreased the resources required to analyze the data. Moreover, because of these improvements, OSHA is now better able to collect, analyze, and publish data from the 300 and 301 forms, so the anticipated benefits of collecting the data are more certain. The collection of case-specific data will allow the agency to focus its enforcement and compliance assistance resources based on hazard-specific information and trends, and to increase its ability to identify emerging hazards, at the establishment level. Accordingly, at this point, the significant benefits of collecting establishment-specific, case-specific data from the 300 and 301 forms outweigh the slight risk to employee privacy.

To this point in time, OSHA has successfully collected reference year 2016 through 2020 Form 300A data through the OSHA Injury Tracking Application. Approximately 300,000 records have been submitted to the agency each year. OSHA has successfully analyzed these data to identify establishments with elevated injury and illness rates and has focused both its enforcement and outreach resources towards these establishments. This experience demonstrates OSHA’s ability to collect, analyze, and use large volumes of data to interact with

establishments where workers are being injured or becoming ill. However, this same experience has demonstrated the limits of the data currently collected. For example, OSHA is currently developing a National Emphasis Program to address the hazards associated with environmental heat. Without case-specific injury and illness data, the agency is unable to identify specific establishments where workers are suffering work-related heat disorders. The Summary data from Form 300A do not provide the level of detail required to address specific occupational hazards.

Based on the agency’s experience with collecting and using the Form 300A data and the development of a system to auto-code case-specific data, OSHA is now better able to collect, analyze, and publish data from the 300 and 301 forms, so the anticipated benefits of collecting the data are more certain.

#### a. The Data Collection Will Adequately Protect Information That Reasonably Identifies Individuals Directly

As explained in the 2019 final rule, OSHA Forms 300 and 301 contain information that reasonably identifies individuals directly, such as name, contact information, date of birth, and physician name, for the workers who experienced a recordable injury or illness. The OSHA Forms 300 and 301 also contain fields that are not direct identifiers but that could act as indirect identifiers if released and combined with other information, such as job title on the Form 300, time employee began work on the Form 301, and date of death on the Form 301.

In this rulemaking, OSHA has preliminarily determined that the proposed data collection would adequately protect information that reasonably identifies individuals directly, such as name and address, with multiple layers of protection, including by limiting the amount of information submitted by employers; reminding employers not to submit information that reasonably identifies individuals directly; withholding certain fields from disclosure; and using automated information technology to detect and remove information that reasonably identifies individuals directly. In particular, advances in neural networks and machine learning have strengthened OSHA’s ability to protect information that reasonably identifies individuals directly.

First, the proposed rule would protect information that reasonably identifies individuals directly by limiting the amount of information submitted by

employers. Under proposed § 1904.41(b)(9), for the 300 Log, OSHA does not intend to collect employees’ names (column B). For the 301 Incident Report, OSHA will not collect the following information: Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), and facility name and address if treatment was given away from the worksite (field 7). Since these fields would not be collected, there would be no risk of public disclosure of the data in these fields.

In addition, OSHA plans to limit the information that reasonably identifies individuals directly collected in the system by posting reminders to employers to omit information that reasonably identifies individuals directly, such as names, addresses, or Social Security numbers, from the text fields they submit. OSHA routinely uses these types of instructions, such as when it requests comments from stakeholders in rulemakings such as this one (see “*Instructions*” on submitting comments above), and has found these reminders to be an effective manner of preventing the unintentional submission and collection of personal information that reasonably identifies individuals directly. Again, if this information is not submitted in the first place, there will be no risk of its disclosure to the public.

Second, OSHA plans to design the collection system to provide extra protections for some of the personal information that employers would be required to submit under the proposal. Specifically, the proposal would require employers to submit the employee’s date of birth from OSHA Form 301 (Field 3 on OSHA Form 301). However, the agency plans to design the collection system so that it will immediately calculate the employee’s age based on the date of birth entered and then store only the employee’s age, not their date of birth.

Third, as described in more detail below, OSHA would seek to protect information that reasonably identifies individuals directly and certain other elements of personal information submitted under the proposed rule by withholding certain fields from public disclosure. The OSHA Form 301, Fields 1 through 9 (the left side of the 301), includes personal information about the injured or ill employee as well as the physician or other health care professional. Under the provisions about access to employees and employee representatives in OSHA’s recordkeeping regulation, § 1904.35(b)(2)(v)(A) and (B) prohibit the release of information in fields 1

through 9 to individuals other than the employee or former employee who suffered the injury or illness and his or her personal representatives. As noted above, OSHA's proposal would not require employers to submit some of those items (fields 1, employee full name; 2, employee address; 6, name of physician or other health care professional; and 7, treatment location). In addition, consistent with § 1904.35(b)(2)(v)(A) and (B), OSHA proposes to collect but would not release the information from the remaining fields that are likely to contain private worker information: Age (calculated from date of birth in field 3), date hired (field 4), gender (field 5), whether the employee was treated in the emergency room (field 8), and whether the employee was hospitalized overnight as an in-patient (field 9). Thus, there would be little risk of public disclosure of this information.

Fourth, as explained above, consistent with FOIA, OSHA does not intend to release or post information that reasonably identifies individuals directly collected through proposed § 1904.41(a)(2) and, via the use of the protective measures described above and the scrubbing technology described below, the agency preliminarily finds that it can effectively remove such information that reasonably identifies individuals directly before releasing or posting the data. Moreover, OSHA notes that the 2019 rulemaking took an expansive view of the term "PII." For example, in that rule, OSHA regarded information such as descriptions of workers' injuries and the body parts affected (Field F on Form 300, Field 16 on Form 301), as "quite sensitive," and stated that public disclosure of this information under FOIA or through the OSHA Injury Tracking Application (ITA) would pose a risk to worker privacy. As further justification for deciding to rescind the requirement to submit information from Forms 300 and 301, the agency stated that "although OSHA believes data from Forms 300 and 301 would be exempt from disclosure under FOIA exemptions, OSHA is concerned that it still could be required by a court to release the data" (84 FR 383).

After further consideration, OSHA has preliminarily determined that the 2019 rule's position on such information is at odds with the agency's usual practice of releasing such data. OSHA currently collects these forms from employers during inspections and, when the agency receives a FOIA request to which these records are responsive, the only field on OSHA Form 300 that is always withheld from disclosure under the

FOIA is employee name (column B). Similarly, OSHA has often released the fields on the right-hand side of the OSHA Form 301 (fields 10 through 18) in response to FOIA requests. And the agency has regularly released similar information contained in the OSHA Information System (OIS) database in response to FOIA requests. For example, OSHA regularly releases data in the Hazard Description and Location field in closed cases in OIS, which often contains specific information about injuries. This practice of producing such case-specific information is long-standing, and the agency has not been notified of issues regarding employee identification or re-identification, despite that some of the released fields could act as indirect identifiers if combined with additional information or data external to the agency release or already in the requestor's possession.

In addition, OSHA uses FOIA Exemption 7(c) to withhold from disclosure information that reasonably identifies individuals directly, such as Social Security numbers or telephone numbers, included anywhere on the three OSHA recordkeeping forms. In addition, FOIA Exemption 6 protects information about individuals in "personnel and medical and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." [5 U.S.C. 552(b)(6)]. Thus, for example, although OSHA sometimes releases information in Field 15 of the 301 incident report ("Tell us how the injury occurred") in response to a FOIA request, it redacts information that reasonably identifies individuals directly, such as a name or Social Security number, by applying either Exemption 6, which permits the withholding of information contained in personnel and medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, or Exemption 7(C), which protects information found in law enforcement files where disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Finally, OSHA preliminarily finds that existing privacy scrubbing technology is capable of de-identifying certain information that reasonably identifies individuals directly (such as name, phone number, email address, etc.) that may be submitted by employers to the system. As explained in the 2019 rulemaking, in order for OSHA to avoid publishing information that reasonably identifies individuals directly that may be contained within

text fields in the employer-submitted 300 and 301 data, information that reasonably identifies individuals directly that has been submitted must be identified and removed. The large volume of information from text fields submitted under the proposed requirement would preclude human review and redaction of information that reasonably identifies individuals directly without great expenditure of resources. However, there are recent advances in automated computer programs that can detect information that reasonably identifies individuals directly, and which can be customized to also replace submitted text strings with placeholder characters or anonymized descriptive phrasing that indicate what type of information was replaced. This replacement process anonymizes and improves readability of the text entry. For example, a telephone number would be replaced with the word "[number]" or "[telephone number]," formatted to indicate a replacement has occurred.

In general, the tasks of detecting and categorizing information that reasonably identifies individuals directly can be accomplished either by automated systems using rules-based methods, machine-learning methods, deep learning, or hybrid approaches using Natural Language Processing (NLP). NLP refers to computer algorithms that both recognize and categorize text strings according to tested business rules. Machine learning methods typically refer to trained automated de-identification using labeled test datasets to develop relationships within the wording of, in this case, text fields in the Forms 300 and 301. With this approach, the statistical likelihood of phrases and wording being information that reasonably identifies individuals directly can be calculated based on evaluating the word or phrase as well as wording around a phrase and throughout the passage. Detection and anonymization rules developed with test datasets can be examined for accuracy, and revised as needed, by applying de-identification protocols to a separate set of test records or review by an independent expert prior to use.

Deep learning systems apply detection algorithms in a fashion that mimics the non-linear processing of human neural networks. "Deep" refers to the number of layers through which the data are examined to extract higher level relationships in the input data. The statistical methods used for this approach are specific to the type of domain and type of information being processed (e.g., text or photographic images). Deep learning solutions to

classification of text, and the subcategory of de-identification, can yield results superior to classical machine-based learning in that they can capture contextual information in the passage. OSHA is committed to protecting information that reasonably identifies individuals directly such as name and address in published data, and the agency intends to test multiple applications for identifying and removing this information using a test database of the four free text fields, and then analyzing the results (including manual review) to identify the best product.

AI or machine learning—the technology used to detect, redact, and remove information that reasonably identifies individuals directly from structured and unstructured data fields—has advanced rapidly in recent years. Many vendors, including large commercial vendors, provide solutions for securing information that reasonably identifies individuals directly, including Cloud-based solutions and packages for detecting and redacting or removing information that reasonably identifies individuals directly from unstructured text like the OSHA 300 and 301 data fields. For example, Vendor A has a natural-language processing (NLP) service that uses machine learning to identify key words and phrases in unstructured text to detect and redact information that reasonably identifies individuals directly by replacing the term of interest with a character. Vendor A's service automatically identifies personal (*e.g.*, name, address, and age), financial (*e.g.*, bank account and routing numbers and PINs), technical security (*e.g.*, passwords, usernames, and IP addresses), and national (*e.g.*, SSN and driver's license numbers) identifying information. Vendor A also has a HIPAA-eligible NLP for extracting health data from unstructured text/data fields, thus protecting patient information. The initial release date for Vendor A's product was November 29, 2017. Similarly, Vendor B offers a service to detect, categorize, and remove personal identifying information (PII) and personal health information (PHI) in unstructured text across several pre-defined categories (*e.g.*, name, job types, email, address, phone); the initial release date for Vendor B's product was March 1, 2018. Vendor C provides an open-source package for identification, anonymization, and redaction of certain PII in structured and unstructured text; the initial release date for Vendor C's product was March 21, 2018. Vendor D provides a similar product that de-

identifies sensitive data in text by replacing it with a token, symbol, or key thereby hiding the sensitive data. The hidden data can only be restored with a specific key or token that was used to de-identify the data. The initial release date for Vendor D's product was March 2, 2021. Each of these commercially available services is customizable and could be modified to identify and remove information that reasonably identifies individuals directly such as name and address from the 300 and 301 data collected.

OSHA intends to test multiple AI or machine learning methods, including commercial services, and analyze the results carefully to select the best option to secure and protect information that reasonably identifies individuals directly, such as name and address. No option, including a manual review, is 100% effective. Therefore, OSHA could consider a combination of the selected scrubbing application supplemented by some manual review of the data to protect information that reasonably identifies individuals directly.

In summary, OSHA preliminarily finds that the agency would be able to adequately protect workers' information that reasonably identifies individuals directly (such as name and address) using the safeguards in the proposed rule and OSHA's planned data collection system, in combination with warnings to employers and available automated information technology. In addition, the use of the automated informational technology would significantly decrease the need for the type of resource-intensive manual reviews that OSHA was concerned about in the 2019 rulemaking. Moreover, even if some of these data were ultimately used to identify employees, OSHA preliminarily finds that the benefits of collecting and publishing the data for improving safety and health outweigh potential privacy problems. As discussed below, the proposed data collection will further OSHA's statutory mission to assure safe and healthful working conditions for working people by providing data information for OSHA's targeting and compliance assistance efforts.

OSHA expects a Privacy Impact Assessment to be completed before issuing the final rule. OSHA welcomes public comment on the issue of collecting data that includes PII and protecting information that reasonably identifies individuals directly such as name and address from disclosure.

b. Recent Technological Developments Have Significantly Decreased the Resources Needed for OSHA To Collect, Analyze, Use, and Publish Establishment-Specific, Case-Specific Data

In addition to the worker privacy concerns, OSHA's decisions in the 2019 final rule relied in part on resource concerns. The agency preliminarily finds that these concerns are no longer compelling, in part, because recent technological developments in automated data coding for text-based fields have made it easier and more cost effective for OSHA to efficiently use electronically-submitted, establishment-specific, case-specific injury and illness data to improve OSHA's ability to identify, target, and remove workplace safety and health hazards, resulting in the prevention of work-related fatalities, injuries, and illnesses. The specific estimated cost burden on OSHA and employers for data collection is discussed in the Preliminary Economic Analysis section, below.

The primary information technology improvement relates to the coding of data. Specifically, in order to enable OSHA and stakeholders to undertake statistical analyses of information in text fields in the Forms 300 and 301, which include details regarding the circumstances and causes of workplace injuries and illnesses, OSHA intends to use automated systems to assign standardized codes based on the information contained in the text fields (*e.g.*, type of accident is "fall"). Automated, standardized coding of information in text fields would allow OSHA to easily identify individual establishments that have experienced injuries and illnesses of a focused interest (such as falls from heights), assess the effectiveness of employers' health and safety programs, and evaluate OSHA's assistance programs.

Standardized coding of information from text fields in Forms 300 and 301 is already being done by BLS. Each year, BLS collects SOII data from sampled OSHA Forms 300 and 301, with approximately 300,000 written descriptions of work-related injuries and illnesses collected by the survey. BLS uses the information provided on these OSHA forms to generate detailed statistics on the case characteristics of work-related injuries or illnesses. In order to generate statistics, the text entries in the OSHA forms must be converted to standard BLS codes.

SOII data are coded according to the BLS Occupational Injury and Illness Classification System (OIICS) (Version 2.01). Specific codes are assigned to the

narrative to classify case characteristics such as the nature of the injury/illness, the part of the body affected, the event or exposure, and the source of the injury or illness. Prior to 2014, BLS assigned OIICS codes to the case narratives manually, which was both time consuming and subject to error. In 2014, BLS began using machine learning to code a subset of cases, first by selecting a learning algorithm, then by training it on large quantities of previously coded SOII narratives. During this training process, the algorithm calculated how strongly various features, such as words, pairs of words, and other items, were associated with the codes that could be assigned. After the training process, the algorithm was used to estimate the best codes for each uncoded narrative and assigned the codes if the model's confidence exceeded a predetermined threshold.

When codes were assigned manually, overall accuracy was around 71%. Accuracy with neural network autocoding was around 82%.

Autocoding could be used for all the information collected but performance was worse on rarer codes. BLS decided to use a combination of autocoding and manual coding. From 2014 to 2017, the percent of codes automatically assigned rose to around 67%, but autocoding had reached a point of diminishing returns.

With the old autocoder previously coded narratives were broken up into smaller pieces, typically individual words and short word sequences, and used to estimate how strongly each piece was associated with each possible code. New narratives were then coded by identifying their individual pieces and aggregating the previously learned associations to choose the most closely associated code. Some of the problems with the old autocoder included only identifying words in a phrase without thought to context, *i.e.*, “worker fell on car” was the same as “car fell on worker”; too many two- and three-word sequences; and separate autocoder models for each type of information, *i.e.*, separate models for occupation, nature, part, event, and source.

However, in 2018, BLS switched to deep neural networks. Like the older autocoder, neural networks rely on training data to learn and improve their accuracy over time. 2017 research found that the neural network autocoder outperformed the alternatives across all coding tasks and made an average of 24% fewer errors than the logistic regression autocoders, and an estimated 39% fewer errors than the manual coding process. On each task the neural network's accuracy was statistically greater than the next best alternative at

a p-value of 0.001 or less.<sup>8</sup> By 2019, automatic coding had been expanded to include all six primary coding tasks (occupation, nature, part, source, secondary source, and event) with the model assigning approximately 85% of these codes.<sup>9</sup>

The BLS system is already collecting data using OSHA Forms 300 and 301, so OSHA should be able to mirror the BLS system to code the OSHA data fairly easily. OSHA could use the BLS source code to create a pilot system where the autocoding of realistic OSHA data could be tested and compared to manual coding of the same data. Upon successful testing and adoption of the BLS system, OSHA plans to consult and work with BLS for the long-term system maintenance to continuously update the neural network code and refine automation of the data.

Once the data were coded, OSHA would be able to use the data similarly to how the agency currently uses coded data from the Severe Injury Reporting (SIR) program. The SIR Program collects data on all severe work-related injuries and illnesses, defined as an amputation, in-patient hospitalization, or loss of an eye. Under OSHA's recordkeeping regulation at 29 CFR 1904.39, employers must report certain information about these severe injuries/illnesses to OSHA within 24 hours of occurrence. On a monthly basis, OSHA reviews the SIR data and trained analysts assign OIICS codes (nature, part, event, and source) for each SIR narrative, thus making the data searchable/query-able and more useful for agency programs. See Docket exhibit OSHA–2021–006–0005 for an example of a search interface for the data that would be collected under this proposal. OSHA could also combine the coded data with other data sources (*e.g.*, inspection data or ITA data) to increase the utility of the data.

In making these preliminary findings for this rulemaking, OSHA notes that some autocoding information technology was available during the 2019 rulemaking. In fact, in the 2018 NPRM, OSHA specifically requested comment on other agencies or organizations that use automated coding systems for text data in data collections (83 FR 36494, 36500). Commenters on this issue urged OSHA to consult with other agencies that collect this type of data, including the National Institute for Occupational Safety & Health (NIOSH), the Mine Safety and Health

<sup>8</sup> See “Deep neural networks for worker injury autocoding”, Alexander Measure, U.S. Bureau of Labor Statistics, draft as of 9/18/2017: <https://www.bls.gov/iif/deep-neural-networks.pdf>.

<sup>9</sup> See <https://www.bls.gov/iif/autocoding.htm>.

Administration (MSHA), BLS, the Federal Railroad Administration (FRA), and the Federal Aviation Administration (FAA), to learn about database design and best practices for collecting this kind of data (84 FR 389). In its own comments, NIOSH noted that it had already developed autocoding methods for categorizing occupation and industry based on free text data and had successfully utilized similar free text data collected from workers' compensation claims (84 FR 389). NIOSH also generously offered to help OSHA with data analysis (84 FR 389).

After reviewing these comments to the 2018 NPRM, OSHA determined that “NIOSH's ability to analyze data collected from Forms 300 and 301 does not reduce the burden on OSHA to collect the data. Even if NIOSH could make the data useful for OSHA's enforcement targeting and outreach efforts, which NIOSH itself has suggested would present analytical challenges due to the volume of the data, OSHA and employers would be left covering the expense of collection, not to mention additional expense associated with the need to process and otherwise manually review data from the forms—costs that would detract from OSHA's priorities of enforcement and compliance assistance to reduce workforce hazards” (84 FR 389). Ultimately, OSHA determined that any benefits of electronically collecting the Form 300 and 301 data were outweighed by the cost of developing a system to manage that volume of data, particularly when making use of the data would divert resources away from OSHA's then-current priority of fully utilizing Form 300A and severe injury data for targeting and outreach (84 FR 389).

In this proposal, OSHA has specific information from BLS regarding its technology. Following conversations with BLS since the 2019 rulemaking, OSHA is confident that it would be able to utilize similar technology in a cost-effective manner to code the data from OSHA Forms 300 and 301, avoiding many of the resource concerns specified in the 2019 rulemaking. Moreover, as discussed in more detail below, OSHA has preliminarily determined that benefits to worker safety and health far outweigh the potential costs of the systems necessary to collect these data, make them useful for analysis, analyze them, and publish them for stakeholder use.

In summary, available technology, including recent improvements in autocoding information technology, would enable OSHA to efficiently autocode the data from electronically-



submitted OSHA Forms 300 and 301. The agency would not need to rely primarily on manual review or analysis. Consequently, OSHA has preliminarily determined that the agency's 2019 resource-related concerns are no longer compelling. The agency welcomes public comment on the issue of automated coding of text-field data and other available technology that would enable OSHA to automatically code these data.

#### c. The Collection, Analysis, and Publishing of These Data Would Improve Worker Safety and Health

The value of the new de-identification and autocoding information technology discussed is significant. Most importantly, the new autocoding technology will allow OSHA to more effectively focus its enforcement and compliance assistance resources on specific establishments experiencing safety and health problems. Access to case-specific injury and illness data will also allow OSHA to better identify safety and health hazards. For example, unlike 300A data, which include heat illnesses in the category "all other illnesses" (Field M6), 300 and 301 data would allow OSHA to identify establishments with heat illnesses and allow the agency to focus its enforcement and compliance assistance resources on specific industries or types of workplaces with that specific hazard. Similarly, 300A data group all injuries into the single category "injuries" (Field M1), but 300 and 301 data would allow OSHA to identify establishments whose delivery workers experience different types of injuries, such as traffic violence injuries or lifting injuries.

In addition, reliance on only 300A data limits OSHA's ability to analyze and address existing workplace hazards. For example, the collection of 300A data provides OSHA with access to general information about certain illnesses, such as recorded cases involving work-related respiratory illness. However, the collection of 300A data does not provide OSHA with information about specific respiratory illnesses, such as cases involving work-related COVID-19. On the other hand, the collection and analysis of case-specific data would allow OSHA to identify specific establishments that have experienced recorded cases of work-related COVID-19, which could result in OSHA enforcement efforts and compliance assistance at that facility.

Similarly, together with the other protections proposed for the data collection, the new de-identification technology will allow OSHA to make the establishment-specific, case-specific,

data publicly available in both coded and uncoded form, increasing workplace safety and health while providing protection against release of PII. Employers, employees, employee representatives, potential employees, customers and potential customers, workplace safety consultants, and members of the general public will all benefit from access to this information in a timely manner. For example, potential employees and potential customers will be able to review case-specific injury and illness data to make informed decisions on whether to seek employment at, or whether to do business with, a specific establishment. In turn, with heightened public awareness of injuries and illnesses at a given establishment, individual employers will be encouraged to increase their focus on enhancing workplace safety and health at their facility.

In addition, researchers will have access to a detailed, case-specific, establishment-specific dataset of work-related recordable injuries and illnesses, improving their ability to conduct occupational-health studies, as well as identify increasing or emerging hazards. For example, access to case-specific information could be extremely useful to individuals and public health agencies conducting research on the causes and prevention of work-related COVID-19.

In summary, OSHA preliminarily finds that the benefits for worker safety and health of collecting, analyzing, and publishing data from Forms 300 and 301 outweigh the cost of the actual collection, analysis, and publication of those data, which have been reduced since the 2019 rule. The agency invites comment on this preliminary determination.

#### d. Data Tools Will Enable Stakeholders To Efficiently Use OSHA-Published Establishment-Specific, Case-Specific Data

Once OSHA has removed PII and coded the case-specific injury and illness data submitted by employers, the agency plans to make the data available and able to be queried via a web-based tool. Stakeholders (including employers, employees, job-seekers, customers, researchers, workplace safety consultants, and the general public) who are interested in learning about occupational injuries and illnesses will have access to information on when injuries and illnesses occur, where they occur, and how they occur. Stakeholders could also use such a tool to analyze injury and illness data and identify patterns that are masked by the

aggregation of injury/illness data in existing data sources.

Tool functionality could include:

- The ability to compare rates with other establishments by industry sector, occupation, size, region, and other variables.
  - The ability to track trends and emerging hazards over time.
  - Easy searches by common variables such as OIICS category (*e.g.*, event), industry sector, occupation, geography, etc.
  - Provision of related data including workplace-specific violations, and demographic and economic data for reporting industries, to help contextualize the injury and illness data.
  - Links to resources useful in increasing workplace safety such as best practices for the industry, injury reduction interventions, and other current health and safety information.
  - Options for data visualization of the submitted data (*e.g.*, data visualizations of trends, data table displays, reports with summary counts and statistics).
  - Flexibility for accommodating the different needs of different types of users (for example, an employee might only want to access information on one establishment, while a researcher may want to analyze data across an entire industry sector).
  - Application programming interfaces (APIs) that allow other web-based tools to retrieve, process, and publish publicly-accessible OSHA data.
- In developing a publicly-accessible tool for injury and illness data, OSHA would review how other federal agencies, such as the Environmental Protection Agency (EPA), have made their data publicly available via online tools that support some analyses. Examples of EPA tools include:
- Toxics Release Inventory Program Pollution Prevention (P2) Tool (<https://enviro.epa.gov/facts/tri/p2.html>) provides information that allows users to explore and compare facility and parent company environmental performance with respect to the management of toxic chemical waste, including facilities' waste management practices and trends.
  - Enforcement and Compliance History Online (ECHO, <https://echo.epa.gov/>) contains enforcement and compliance information for EPA-regulated facilities and allows for analysis in trends of compliance and enforcement and creation of enforcement-related maps.
  - Envirofacts (<https://enviro.epa.gov/>) provides access to several EPA databases containing information about environmental activities that affect air,

water, and land resources in the United States. The data are in a searchable, downloadable format.

- **Enviomapper** (<https://enviro.epa.gov/enviro/em4ef.home>) allows Envirofacts users to generate maps that contain the environmental information contained in Envirofacts.

- **Discharge Monitoring Report (DMR) Pollutant Loading Tool** (<https://echo.epa.gov/trends/loading-tool/water-pollution-search/>) allows users to determine what pollutants are being discharged into waterways and by which companies. The output from this tool is in the form of interactive charts and graphs.

- **Facility Level Information on Greenhouse Gases Tool (FLIGHT)**, <https://ghgdata.epa.gov/ghgp/main.do> provides information about greenhouse gas (GHG) emissions from large facilities in the U.S. and offers mapping, charting, comparing, and other analysis of facility-reported data.

Thus, OSHA preliminarily finds that available tools could enable stakeholders to use OSHA-published data from Forms 300 and 301 to improve worker safety and health. OSHA welcomes public comment on the utility of these data for researchers, employers, and other stakeholders, as well as on available data tools that would enable these stakeholders to efficiently use OSHA-published establishment-specific, case-specific data to improve worker safety and health.

#### e. The Covered Industries

In proposed § 1904.41(a)(2), for establishments with 100 or more employees, OSHA is seeking to balance the utility of the information collection for enforcement, outreach, and research, on the one hand, and the burden on employers to provide the information to OSHA, on the other hand. The 2016 final rule, which was subsequently rescinded, required submission of information from the OSHA Form 300, 301, and 300A from all establishments with 250 or more employees in industries routinely required to keep part 1904 injury and illness records. In the 2016 final rule, OSHA estimated

that establishments with 250 or more employees covered by that section of the submission requirement would report 713,397 injury and illness cases per year.

For this rulemaking, to identify the appropriate balance of utility versus burden, OSHA analyzed five years of injury and illness summary data collected through OSHA's Injury Tracking Application (ITA). OSHA examined combinations of establishment size and industry hazardousness that, like the 2016 final rule, would provide the agency with information on roughly 750,000 cases of injuries and illnesses per year. Based on this analysis, OSHA is proposing a reporting requirement for establishments with 100 or more employees in 4-digit NAICS (2017) industries that:

1. Had a 3-year-average rate of total recordable cases (Total Case Rate, or TCR) in the BLS SOII for 2017, 2018, and 2019, of at least 3.5 cases per 100 full-time-equivalent employees, and
2. are included in proposed appendix A to subpart E. (All of the industries in proposed appendix B are also in appendix A.)

OSHA proposes to list the designated industries required to submit data from all three recordkeeping forms under proposed § 1904.41(a)(2) in proposed appendix B to subpart E.

OSHA is proposing one exception to these criteria, for the United States Postal Service (USPS), which is the only employer in NAICS 4911 Postal Service. BLS does not include USPS in the SOII. However, under the Postal Employees Safety Enhancement Act (Pub. L. 105–241), OSHA treats the USPS as a private sector employer for purposes of occupational safety and health, and establishments in NAICS 4911 (*i.e.*, USPS establishments) with 20 or more employees are currently required to electronically submit Form 300A information to OSHA. Using the 2017, 2018, and 2019 data submitted by USPS, OSHA calculated a TCR of 7.5 for NAICS 4911. Because this TCR is greater than the proposed 3.5 criterion for designated industries in proposed appendix B, OSHA is including NAICS

4911 in proposed appendix B to subpart E. OSHA notes that NAICS 4911 is also included in both current and proposed appendix A to subpart E.

In the 2016 final rule that revised § 1904.41, OSHA used the rate of cases with days away from work, job restriction, or transfer (DART) from the BLS SOII to determine the industries included in appendix A to subpart E of part 1904. However, proposed appendix B to subpart E is based on the TCR, which includes both cases resulting in days away from work, job restriction, or transfer, as well as other recordable cases such as those resulting in medical treatment beyond first aid. OSHA believes that TCR is the appropriate rate to use for determining the list of industries in proposed appendix B to subpart E because covered establishments will be required to electronically submit information to OSHA on all of their recordable cases, not just cases that resulted in days away from work, job restriction, or transfer. In 2020, OSHA received submissions of 2019 Form 300A data from 46,911 establishments that had 100 or more employees and were in one of the industries listed in proposed appendix B to subpart E, accounting for 680,930 total recordable cases and a TCR of 3.6. OSHA requests comment on whether TCR is the appropriate method for determining the list of industries in proposed appendix B to subpart E.

Additionally, OSHA anticipates that, by the time that the department expects to issue the final rule in this rulemaking, more current industry-level injury and illness data from BLS, as well as more establishment-specific injury and illness information from the ITA, will be available. When developing the final rule, OSHA may rely on the most current data available, as appropriate, for determining the list of industries in appendix B to subpart E. OSHA seeks comment from the public on whether the agency should use the most current data when developing the final rule.

The designated industries, which would be published as appendix B to subpart E of part 1904, are proposed to be as follows:

#### PROPOSED APPENDIX B

2017 NAICS code	2017 NAICS title
1111 .....	Oilseed and grain farming.
1112 .....	Vegetable and melon farming.
1113 .....	Fruit and tree nut farming.
1114 .....	Greenhouse, nursery, and floriculture production.
1119 .....	Other crop farming.
1121 .....	Cattle ranching and farming.
1122 .....	Hog and pig farming.

## PROPOSED APPENDIX B—Continued

2017 NAICS code	2017 NAICS title
1123 .....	Poultry and egg production.
1129 .....	Other animal production.
1141 .....	Fishing.
1151 .....	Support activities for crop production.
1152 .....	Support activities for animal production.
1153 .....	Support activities for forestry.
2213 .....	Water, sewage and other systems.
2381 .....	Foundation, structure, and building exterior contractors.
3111 .....	Animal food manufacturing.
3113 .....	Sugar and confectionery product manufacturing.
3114 .....	Fruit and vegetable preserving and specialty food manufacturing.
3115 .....	Dairy product manufacturing.
3116 .....	Animal slaughtering and processing.
3117 .....	Seafood product preparation and packaging.
3118 .....	Bakeries and tortilla manufacturing.
3119 .....	Other food manufacturing.
3121 .....	Beverage manufacturing.
3161 .....	Leather and hide tanning and finishing.
3162 .....	Footwear manufacturing.
3211 .....	Sawmills and wood preservation.
3212 .....	Veneer, plywood, and engineered wood product manufacturing.
3219 .....	Other wood product manufacturing.
3261 .....	Plastics product manufacturing.
3262 .....	Rubber product manufacturing.
3271 .....	Clay product and refractory manufacturing.
3272 .....	Glass and glass product manufacturing.
3273 .....	Cement and concrete product manufacturing.
3279 .....	Other nonmetallic mineral product manufacturing.
3312 .....	Steel product manufacturing from purchased steel.
3314 .....	Nonferrous metal production and processing.
3315 .....	Foundries.
3321 .....	Forging and stamping.
3323 .....	Architectural and structural metals manufacturing.
3324 .....	Boiler, tank, and shipping container manufacturing.
3325 .....	Hardware manufacturing.
3326 .....	Spring and wire product manufacturing.
3327 .....	Machine shops; turned product; and screw, nut, and bolt manufacturing.
3328 .....	Coating, engraving, heat treating, and allied activities.
3331 .....	Agriculture, construction, and mining machinery manufacturing.
3335 .....	Metalworking machinery manufacturing.
3361 .....	Motor vehicle manufacturing.
3362 .....	Motor vehicle body and trailer manufacturing.
3363 .....	Motor vehicle parts manufacturing.
3366 .....	Ship and boat building.
3371 .....	Household and institutional furniture and kitchen cabinet manufacturing.
3372 .....	Office furniture manufacturing.
4231 .....	Motor vehicle and motor vehicle parts and supplies merchant wholesalers.
4233 .....	Lumber and other construction materials merchant wholesalers.
4235 .....	Metal and mineral merchant wholesalers.
4244 .....	Grocery and related product merchant wholesalers.
4248 .....	Beer, wine, and distilled alcoholic beverage merchant wholesalers.
4413 .....	Automotive parts, accessories, and tire stores.
4422 .....	Home furnishings stores.
4441 .....	Building material and supplies dealers.
4442 .....	Lawn and garden equipment and supplies stores.
4451 .....	Grocery stores.
4522 .....	Department stores.
4523 .....	General merchandise stores, including warehouse clubs and supercenters.
4533 .....	Used merchandise stores.
4543 .....	Direct selling establishments.
4811 .....	Scheduled air transportation.
4841 .....	General freight trucking.
4842 .....	Specialized freight trucking.
4851 .....	Urban transit systems.
4852 .....	Interurban and rural bus transportation.
4854 .....	School and employee bus transportation.
4859 .....	Other transit and ground passenger transportation.
4871 .....	Scenic and sightseeing transportation, land.
4881 .....	Support activities for air transportation.
4883 .....	Support activities for water transportation.
4911 .....	Postal Service.

## PROPOSED APPENDIX B—Continued

2017 NAICS code	2017 NAICS title
4921 .....	Couriers and express delivery services.
4931 .....	Warehousing and storage.
5322 .....	Consumer goods rental.
5621 .....	Waste collection.
5622 .....	Waste treatment and disposal.
6219 .....	Other ambulatory health care services.
6221 .....	General medical and surgical hospitals.
6222 .....	Psychiatric and substance abuse hospitals.
6223 .....	Specialty hospitals.
6231 .....	Nursing care facilities.
6232 .....	Residential intellectual and developmental disability, mental health, and substance abuse facilities.
6233 .....	Continuing care retirement communities and assisted living facilities for the elderly.
6239 .....	Other residential care facilities.
6243 .....	Vocational rehabilitation services.
7111 .....	Performing arts companies.
7112 .....	Spectator sports.
7131 .....	Amusement parks and arcades.
7211 .....	Traveler accommodation.
7212 .....	RV parks and recreational camps.
7223 .....	Special food services.
6239 .....	Other residential care facilities.
6243 .....	Vocational rehabilitation services.
7111 .....	Performing arts companies.
7112 .....	Spectator sports.
7131 .....	Amusement parks and arcades.
7211 .....	Traveler accommodation.
7212 .....	RV parks and recreational camps.
7223 .....	Special food services.

OSHA welcomes public comment on all aspects of proposed appendix B, including the specific issues noted above.

### 3. Section 1904.41(b)(1)(i) and (ii)

Proposed § 1904.41(b)(1) would provide employers with further clarity on which employers and establishments need to submit data under proposed § 1904.41(a)(1) and (2) and how the requirements of those provisions interact with each other. These proposed provisions, like many of the provisions within part 1904 are written in question-and-answer format to help employers easily identify the information they seek.

Proposed § 1904.41(b)(1)(i) focuses on the issue of who must submit their information to OSHA. Specifically, it would reiterate the question posed in current § 1904.41(b) (which asks whether every employer has to routinely make an annual electronic submission of information from part 1904 injury and illness recordkeeping forms to OSHA), but update the answer to be consistent with proposed § 1904.41(a)(1) and (2).

Proposed § 1904.41(b)(1)(ii) would similarly clarify that an establishment that has 100 or more employees, and is in an industry included in both appendix A and appendix B, need only make one submission of the OSHA

Form 300A in order to fulfill the requirements of both proposed § 1904.41(a)(1) and (2). Proposed appendix B is a subset of appendix A; *i.e.*, all industries included in proposed appendix B are also included in proposed appendix A, but there are some industries included in proposed appendix A that are not included in proposed appendix B.<sup>10</sup>

OSHA welcomes public comment on proposed § 1904.41(b)(1)(i) and (ii), including whether these proposed provisions appropriately clarify the proposed requirements for employers.

### 4. Section 1904.41(b)(9)

Proposed § 1904.41(b)(9) would pose and answer a question regarding which information would be required to be submitted under proposed § 1904.41(a).

<sup>10</sup> The differences between current appendix A and proposed appendix A are (1) current appendix A has 2012 NAICS industry group 4521 (Department Stores), whereas proposed appendix A has 2017 NAICS industry groups 4522 (Department Stores) and 4523 (General Merchandise Stores, including Warehouse Clubs and Supercenters); (2) current appendix A has 2012 NAICS industry group 4529 (Other General Merchandise Stores), whereas in proposed appendix A, that industry group is included in 2017 NAICS industry group 4523 (General Merchandise Stores, including Warehouse Clubs and Supercenters); (3) proposed appendix A does not include NAICS 7213, Rooming and Boarding Houses, which is exempt from the requirement to routinely keep injury and illness records and was included in current appendix A in error.

Specifically, proposed § 1904.41(b)(9) would ask the following question: If I have to submit information under paragraph (a)(2) of this section, do I have to submit all of the information from the recordkeeping forms?

The proposed answer would clarify that OSHA will not require employers to submit the following case-specific information from the OSHA Form 300 and Form 301:

- Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).

- Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

Collecting data from these fields would not add to OSHA's ability to identify establishments with specific hazards or elevated injury and illness rates. Therefore, OSHA proposes to exclude these fields from the submittal requirements to minimize any potential release or unauthorized access to any PII contained in the fields. Because the data collection will not collect the information from these fields, there will be no risk of public disclosure of the information from these fields through the data collection.

OSHA welcomes public comment on § 1904.41(b)(9), including whether the specified fields should be excluded from data that would be collected, and whether other data should be similarly excluded to protect employee privacy or for other reasons. Any comments suggesting exclusion of other fields or data from the proposed submission requirements should also address whether the exclusion of that particular field or data from collection would hinder OSHA's ability to use the collection to protect employee safety and health.

#### 5. Section 1904.41(b)(10)

Proposed § 1904.41(b)(10) would address an issue related to how establishments identify themselves in their electronic recordkeeping submissions. As noted above, OSHA's recordkeeping regulation requires employers to maintain and report their injury and illness data at the establishment level. An establishment is defined as a single physical location where business is conducted or where services or industrial operations are performed (see 29 CFR 1904.46). Part 1904 injury and illness records must be specific for each individual establishment.

Under the current requirements at 29 CFR 1904.41, a firm with more than one establishment must submit establishment-specific 300A data for each establishment that meets the size and industry reporting criteria. OSHA's current data submission portal, the Injury Tracking Application (ITA), contains two text fields used to identify an establishment, Company Name and Establishment Name. The Establishment Name field is a mandatory field; the user must make an entry in that field. In addition, a user submitting information for more than one establishment must provide a unique Establishment Name for each establishment. In contrast, the Company Name field is an optional field; the user is not required to make an entry in that field.

OSHA's review of five years of data electronically submitted under part 1904.41 shows that many large firms with multiple establishments use codes for the Establishment Name field in their submission. A subset of these firms use codes for the Establishment Name field and do not provide a company name in the Company Name field. For example, in the 2020 submissions of 2019 Form 300A data, users submitted data for more than 18,000 establishments with a code in the Establishment Name field and no information in the Company Name field.

Unfortunately, the data are considerably less useful and more difficult to work with when establishments have a code in the Establishment Name field and no information in the Company Name field. For example, it is not possible for a data user to search for data from that company. In addition, OSHA is unable to determine whether or not a particular establishment in that company met the reporting requirements. Further, since OSHA now makes these data publicly available, the use of codes and the lack of information in the Company Name field may hamper stakeholders' and researchers' ability to use the information.

To date, OSHA has made an effort to identify and assign company names to these establishments. For example, sometimes OSHA is able to use the EIN or the user's email address to identify the company associated with the establishment. However, OSHA is not always able to identify the company. In addition, the effort requires substantial review for verification.

To address this problem, OSHA proposes to require employers who use codes for the Establishment Name to include a legal name in the Company Name field. This requirement would be spelled out in question-and-answer format in proposed § 1904.41(b)(10). The proposed provision would provide: My company uses numbers or codes to identify our establishments. May I use numbers or codes as the establishment name in my submission? Yes, you may use numbers or codes as the establishment name. However, the submission must include the legal company name, either as part of the establishment name or separately as the company name.

OSHA welcomes public comment on the proposed requirement to submit the company name, including any comments on the utility of such a requirement and how the company name should be included in an establishment's submission.

#### 6. Section 1904.41(c) Reporting Dates

Proposed § 1904.41(c) would simplify the regulatory language in current § 1904.41(c)(1)–(2) concerning the dates by which establishments must make their annual submissions. Current § 1904.41(c)(1) included information for establishments on what to submit to OSHA during the phase-in period of the 2016 final rule and the deadline for submission. That information is no longer relevant and, thus, OSHA proposes to remove it to streamline the section.

The substantive information already contained in current § 1904.41(c)(1) would then be consolidated into proposed § 1904.41(c). Like current § 1904.41(c)(1), proposed § 1904.41(c) would require all covered establishments to make their electronic submissions by March 2 of the year after the calendar year covered by the form(s). Proposed § 1904.41(c) would also provide an updated example of that requirement, *i.e.*, it explains that the forms covering calendar year 2021 would be due by March 2, 2022.

OSHA welcomes public comment on these proposed revisions to § 1904.41(c).

#### B. Questions

OSHA welcomes comments and data from the public regarding any aspect of the proposed amendments to § 1904.41 Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records to OSHA. OSHA is particularly interested in any comments on these specific questions:

1. Is Total Case Rate (TCR) the most appropriate incidence rate to use for proposed appendix B to subpart E, or would the Days Away Restricted or Transferred (DART) rate be more appropriate?
2. Is 100 or more employees the appropriate size criterion for the proposed requirement to electronically submit data from the OSHA Form 300, 301, and 300A? Would a different size criterion be more appropriate?
3. Is it appropriate for OSHA to remove the requirement for establishments with 250 or more employees, in industries not included in appendix A, to submit the information from their OSHA Form 300A?
4. Are there electronic interface features that would help users electronically submit part 1904 data, particularly for case data from the OSHA Form 300 and Form 301 and for establishments that submit using batch files? For example, would it be helpful for OSHA to provide a forms package or software application that exports the required files into a submission-ready format?
5. What features could OSHA provide to help establishments determine which submission requirements apply to their establishment?
6. What additional guidance could OSHA add to the instructions for electronic submission to remind employers not to include information that reasonably identifies individuals directly in the information they submit from the text-based fields on the OSHA Form 300 or Form 301?
7. What other agencies and organizations use automated de-

identification systems to remove information that reasonably identifies individuals directly from text data before making the data available to the general public? What levels of sensitivity for the automated system for the identification and removal of information that reasonably identifies individuals directly from text data do these agencies use?

8. What other open-source and/or proprietary software is available to remove information that reasonably identifies individuals directly from text data?

9. What methods or systems exist to identify and remove information that reasonably identifies individuals directly from text data before the data are submitted?

10. What criteria should OSHA use to determine whether the sensitivity of automated systems to identify and remove information that reasonably identifies individuals directly is sufficient for OSHA to make the data available to the general public?

11. What processes could OSHA establish to remove inadvertently-published information that reasonably identifies individuals directly as soon as OSHA became aware of the information that reasonably identifies individuals directly?

12. OSHA is proposing not to collect employee names under proposed § 1904.41(a)(2) and (b)(9), consistent with worker privacy concerns expressed in public comments during previous rulemakings. However, BLS uses the “employee name” field on the Form 300 and Form 301 in their data collection for the SOII. Beginning in 2021, a data-sharing feature has allowed some establishments that are required to submit Form 300A information to both OSHA and BLS, under the current regulation, to use their data submission to the OSHA ITA in their submission to the BLS SOII. BLS anticipates an inability to use this data-sharing feature for establishments required to submit under proposed § 1904.41(a)(2), unless OSHA requires these establishments to submit the “employee name” field on the Form 300 and 301. Without the data-sharing feature, establishments that submit data to OSHA under proposed § 1904.41(a)(2), and that also submit data to the BLS SOII, would not be able to use their OSHA data submission of case-specific data to prefill their BLS SOII submission. What would be the advantages and disadvantages, in terms of employer burden and worker privacy concerns or otherwise, of requiring all establishments subject to proposed § 1904.41(a)(2) to submit employee names, to support this data-sharing

feature for Form 300 and 301 submissions? (Please note that OSHA would not intend to publish employee names.)

13. NAICS codes are reviewed and revised every five years to keep the classification system current with changes in economic activities. The 2022 NAICS became effective on January 1, 2022. Going forward, OSHA intends to use the 2022 NAICS in the ITA for establishments that are newly creating accounts. However, for establishments that already have accounts in the ITA, the version of NAICS used is the 2012 NAICS. BLS anticipates that establishments that already have accounts in the ITA, are also subject to the SOII, and have 2022 NAICS codes that are different from their 2012 NAICS codes, would be unable to use the data-sharing feature (also discussed in question 13) to prefill their BLS SOII submission with data already submitted through the OSHA ITA, unless these establishments updated their accounts to revise their industry classification from the 2012 NAICS to the 2022 NAICS. What are the advantages and disadvantages of requiring establishments that already have accounts in the ITA to update their accounts to the 2022 NAICS? How much time would an establishment require to determine whether their 2022 NAICS is different from their 2012 NAICS? How much time would an establishment require to edit their NAICS code in the ITA to reflect any changes?

14. In addition to the automated methods for coding text-based data discussed above, what additional automated methods exist to code text-based data?

15. What are some ways that employers could use the collected data to improve the safety and health of their workplaces?

16. What are some ways that employees could use the collected data to improve the safety and health of their workplaces?

17. What are some ways that federal and state agencies could use the collected data to improve workplace safety and health?

18. What are some ways that researchers could use the collected data to improve workplace safety and health?

19. What are some ways that workplace safety consultants could use the collected data to improve workplace safety and health?

20. What are some ways that members of the public and other stakeholders, such as job-seekers, could use the collected data to improve workplace safety and health?

21. Are there potential negative consequences to the collection of this data that OSHA has not considered here?

22. The proposed regulatory text is structured as follows: § 1904.41(a)(1) Annual electronic submission of information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees in designated industries; § 1904.41(a)(2) Annual electronic submission of information from OSHA Form 300 Log of Work-Related Injuries and Illnesses, OSHA Form 301 Injury and Illness Incident Report, and OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 100 or more employees in designated industries. This is the structure used by the 2016 and 2019 rulemakings. An alternative structure would be as follows: § 1904.41(a)(1) Annual electronic submission of information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees in designated industries; § 1904.41(a)(2) Annual electronic submission of information from OSHA Form 300 Log of Work-Related Injuries and Illnesses and OSHA Form 301 Injury and Illness Incident Report by establishments with 100 or more employees in designated industries. Which structure would result in better understanding of the requirements by employers?

#### **IV. Preliminary Economic Analysis and Regulatory Flexibility Certification**

##### *A. Introduction*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of the intended regulation and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not an economically significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Information and Regulatory Affairs in the Office of Management and Budget, as required by executive order.

OSHA estimates that this rule will have economic costs of \$4.3 million per year, including \$3.9 million per year to the private sector, with average costs of \$81 per year for affected establishments



with 100 or more employees, annualized over 10 years with a discount rate of seven percent. The agency believes that the annual benefits, while unquantified, significantly exceed the annual costs.

The proposed rule is not an economically significant regulatory action under Executive Order 12866 or the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)), and it is not a “major rule” under the Congressional Review Act (5 U.S.C. 801 *et seq.*). The agency estimates that the rulemaking imposes far less than \$100 million in annual economic costs. In addition, it does not meet any of the other criteria specified by UMRA or the Congressional Review Act for an economically significant regulatory action or major rule. This Preliminary Economic Analysis (PEA) addresses the costs, benefits, and economic impacts of the proposed rule.

OSHA is proposing to amend its recordkeeping regulations to revise the requirements for the electronic submission of information from part 1904 injury and illness recordkeeping forms (§ 1904.41—*Electronic submission of injury and illness records to OSHA*).

First, OSHA will require all establishments that have 20 or more employees and are in certain designated industries to electronically submit information from the OSHA Form 300A Annual Summary to OSHA or OSHA’s designee once a year (*proposed § 1904.41(a)(1) Annual electronic submission of information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees in designated industries*).

The current requirement (§ 1904.41(a)(2) *Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees but fewer than 250 employees in designated industries*.) applies only to establishments with fewer than 250 employees in industries designated by appendix A to subpart E of part 1904. However, establishments with 250 or more employees in these industries are also currently required to submit this information under current § 1904.41(a)(1) *Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 250 or more employees*. Note that OSHA is proposing to revise appendix A to update the list of industries from the 2012 to the 2017 NAICS.

Second, OSHA will require all establishments that have 100 or more employees and are in certain designated

industries to electronically submit information from the OSHA Forms 300, 301, and 300A to OSHA or OSHA’s designee (*proposed § 1904.41(a)(2) Annual electronic submission of information from OSHA Form 300 Log of Work-Related Injuries and Illnesses, OSHA Form 301 Injury and Illness Incident Report, and OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 100 or more employees in designated industries*). The industries are designated by proposed appendix B to subpart E of part 1904.

As discussed above, the current § 1904.41(a)(1) *Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 250 or more employees* requires submission of the Form 300A from all establishments that have 250 or more employees and that are in industries routinely required to keep part 1904 records. Under the proposed revisions, establishments that have 250 or more employees would only have to routinely make electronic submissions of part 1904 information if they are in an industry in appendix A to subpart E (proposed § 1904.41(a)(1)) or in appendix B to subpart E (proposed § 1904.41(a)(2)), which is a subset of appendix A. The proposed rule will remove the requirement for routine electronic submission of Form 300A information from establishments with 250 or more employees in all other industries (*i.e.*, industries that are not included in appendix A or proposed appendix B).

Under proposed § 1904.41(b)(9), OSHA will not collect the following case-specific information from the Form 300 and Form 301 submitted by establishments with 100 or more employees in designated industries under proposed § 1904.41(a)(2):

(i) Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).

(ii) Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

The OSHA Form 300A does not have any case-specific information.

In addition, under proposed § 1904.41(b)(10), OSHA will require establishments that are required to electronically report information from their injury and illness records to OSHA under part 1904, to include their company name as part of the submission.

Finally, OSHA proposes language in proposed § 1904.41(b)(1)(i) and (ii) to further clarify the requirements spelled out in proposed § 1904.41(a)(1) and (2) and current § 1904.41(a)(3), and, in proposed § 1904.41(c), OSHA proposes updates to the reporting deadlines.

#### B. Costs

1. Section 1904.41(a)(1) *Annual Electronic Submission of Information From OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 20 or More Employees in Designated Industries*

Currently, two groups of establishments are required to submit information from the Form 300A annual summary, under two separate requirements: § 1904.41(a)(1) For all establishments with 250 or more employees in all industries where establishments must routinely keep part 1904 injury and illness records, and § 1904.41(a)(2) for establishments with 20 or more employees in the industries designated in appendix A to subpart E.

In contrast, under the proposed revisions, only establishments with 20 or more employees in the industries designated in appendix A to subpart E would be required to submit information from the Form 300A annual summary. (As noted above, although proposed § 1904.41(a)(2) also requires employers in the industries designated in appendix B to submit information from their Form 300A annual summary, those industries are a subset of the industries listed in appendix A, so no new submission would be required (see proposed § 1904.41(b)(1)). Thus, the net effect of this section is to reduce the number of establishments that are required to submit information from the Form 300A annual summary. This section calculates the cost savings resulting from the reduction in number of establishments that are required to submit information from the Form 300A annual summary.

For this part of the proposed rule, OSHA obtained the estimated cost of electronic hour (in dollars) of the person expected to perform the task of electronic submission by multiplying the estimated total compensation per hour (in dollars) of the person expected to perform the task of electronic submission by the time required for the electronic data submission. OSHA estimated occupation-specific wage rates from BLS 2020 Occupational Employment and Wage Statistics data (BLS, May 2020), reporting a mean hourly wage of \$37.55 for Occupational Health and Safety Specialists (19–5011 in the 2018 Standard Occupational

Classification System (SOC); formerly 29–9011 in the 2010 SOC System).<sup>11</sup> Note that this is the same occupational classification that OSHA used in the Final Economic Analysis (FEA) in the 2016 final rule, based on public comments, as well as in the 2018 notice of proposed rulemaking and 2019 final rule.

Next, OSHA used June 2021 data from the BLS National Compensation Survey, reporting a mean fringe benefit factor of 1.45 for civilian workers in general.<sup>12</sup> OSHA then multiplied the mean hourly wage (\$37.55) by the mean fringe benefit factor (1.45) to obtain an estimated total compensation (wages and benefits) for Occupational Health and Safety

Specialists of \$54.58 per hour ( $[\$37.55 \text{ per hour}] \times 1.45$ ). OSHA next applied a 17% overhead rate to the base wage ( $[\$37.55 \text{ per hour}] \times [0.17]$ ), totaling \$6.38.<sup>13</sup> The \$6.38 was added to the total compensation (\$54.58) yielding a fully loaded wage rate of \$60.96  $[\$54.58 + \$6.38]$ .<sup>14</sup>

TABLE X.Y—LOADED WAGE USED IN ANALYSIS, INCLUDING OVERHEAD COST<sup>1</sup>

Occupation description	Occupational code	Loaded wage rate
Occupational Health and Safety Specialists .....	<sup>2</sup> 19–5011	\$60.96

<sup>1</sup> Source: OSHA, based on BLS (May 2020) and BLS (June 17, 2021).

<sup>2</sup> OMB issued revised SOC codes in 2017, changing SOC 29–9011 to SOC 19–5011. The 2010 SOC to the 2018 SOC crosswalk can be downloaded here (accessed July 2021): [https://www.bls.gov/soc/2018/crosswalks\\_used\\_by\\_agencies.htm](https://www.bls.gov/soc/2018/crosswalks_used_by_agencies.htm).

For time required for the data submission, OSHA used the time estimate of 10 minutes per establishment for the OSHA Form 300A from the current information collection for Recordkeeping and Reporting Occupational Injuries and Illnesses (29 CFR part 1904) (OMB Control Number 1218–0176). OSHA then multiplied this time by the total compensation of \$60.96 per hour to obtain an estimated submission cost per establishment of \$10.16  $[(\$60.96/\text{hour}) \times (1 \text{ hour}/60 \text{ minutes}) \times (10 \text{ minutes})]$ .

Then OSHA multiplied this submission cost per establishment by the estimated number of establishments that would no longer be required to submit data, to obtain the total estimated cost savings of this part of the proposed rule. In the 2020 data collection, there were 2,665 establishments with 250 or more employees, in an industry not in appendix A, which submitted information from the 2019 OSHA Form 300A to OSHA.

Thus, OSHA estimates the total annual cost savings of this part of the proposed rule as \$27,077  $[(2,665 \text{ establishments no longer required to electronically submit Form 300A information}) \times (\$10.16 \text{ per establishment for electronic submission of Form 300A information per year})]$ .

OSHA welcomes public comment on this estimate.

2. Section 1904.41(a)(2)—Annual Electronic Submission of Information From OSHA Form 300 Log of Work-Related Injuries and Illnesses, OSHA Form 301 Injury and Illness Incident Report, and OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 100 or More Employees in Designated Industries

This proposed section would require establishments that have 100 or more employees and that are in the industries included in proposed appendix B to submit the information from the OSHA Form 300 Log, OSHA Form 301 incident report, and OSHA Form 300A annual summary. Note that all of the establishments affected by this requirement are already currently required to submit the information from their OSHA Form 300A. Consequently, this section calculates only the additional costs for these establishments of submitting the information from the OSHA Form 300 and 301.

Based in part on OSHA’s previous experience, the agency estimates that establishments will first need to take 10 minutes, on average, to familiarize themselves with changes to the existing recordkeeping requirements within this proposed rule.<sup>15</sup> Thus, the agency calculates a one-time cost for familiarization of \$497,033  $[(48,919 \text{ establishments}) \times (\text{ten minutes}/\text{establishment}) \times (1 \text{ hour}/60 \text{ minutes}) \times (\$60.96/\text{hour})]$ .

Annualizing this rate over 10 years with a seven percent discount rate produces an annual cost of \$70,782 to the private sector.

In the 2020 data collection of 2019 OSHA Form 300A data, establishments with 100 or more employees, in appendix B industries, reported 718,316 cases to OSHA. For time required for data submission of the OSHA Form 300 and 301, OSHA estimates 10 minutes per case, based on the current Information Collection Request (ICR). Note that this may overestimate costs, because while OSHA’s estimates reflect manual entry of the data for each case, in the agency’s experience, roughly half of the covered establishments submit data to the ITA by uploading a batch file. In general, OSHA expects companies with many establishments/many cases to have computer systems that can export their part 1904 injury and illness recordkeeping data into an easily-uploaded file format. OSHA seeks comment on this point.

OSHA estimates that half of the establishments submitting reports (24,460) will submit 359,193 cases total (half of the overall total number of 718,386 cases) via batch file—one batch file per establishment.<sup>16</sup> This yields an estimated cost of \$248,517  $[(24,460 \text{ establishments}) \times (10 \text{ minutes}/\text{establishment}) \times (1 \text{ hour}/60 \text{ minutes}) \times (\$60.96/\text{hour})]$ . The average cost per establishment would be \$10.16 per establishment.

<sup>11</sup> OMB issued revised SOC codes in 2017, changing SOC 29–9011 to SOC 19–5011. The 2010 SOC to the 2018 SOC crosswalk can be downloaded here (accessed July 2021): [https://www.bls.gov/soc/2018/crosswalks\\_used\\_by\\_agencies.htm](https://www.bls.gov/soc/2018/crosswalks_used_by_agencies.htm).

<sup>12</sup> Fringe benefit factor calculated as  $[1/(1-0.312)]$ , where 0.312 is the percent of the average total benefits of civilian workers in all industries, as reported on Table 2 of the BLS’s ECEC report, June 2021: <https://www.bls.gov/news.release/ecec.t02.htm>.

<sup>13</sup> 17 percent is OSHA’s standard estimate for the overhead cost incurred by the average employer.

<sup>14</sup> See docket exhibit OSHA–2021–006–0002 for a spreadsheet with the full calculations.

<sup>15</sup> For example, OSHA added an estimate of 10 minutes of familiarization time to its 2016 Recordkeeping regulation (81 FR 29680), in response to public comments.

<sup>16</sup> Review of the 2019 Form 300A data submitted through the ITA in 2020 shows that 44% of

establishments with 100 or more employees in proposed appendix B submitted their data by uploading a batch file. OSHA expects that this percentage would increase to 50% or more for two reasons. First, the increase in the amount of data required from these establishments would make the batch-file upload a more efficient method of submission for more establishments. Second, OSHA plans to make it easier for users to submit a batch file by providing a set of forms that allow users to create the export file for batch-file submission.

OSHA estimates that the other half of the establishments (24,460) will manually submit each case individually. The mean number of cases per establishment is 14.7 (718,386 total cases divided by 48,919 total establishments). For manual submission, OSHA estimates a time of 10 minutes per case, or 147 minutes per establishment for the mean number of cases. This produces a total cost for manual submission of \$3,649,520 [(48,919 establishments) times (10 minutes/case) times (14.7 cases) times (1 hour/60 minutes) times (\$60.96/hour)], or \$149 per establishment [(14.7 cases) times (1 hour/60 minutes) times (\$60.96/hour)].

Summing the estimated batch-file (\$248,517) and manual submission (\$3,649,520) costs results in an estimated total cost of \$3,898,037 to submit the 718,316 records. Combined with the annualized cost of \$70,782 per year for familiarization estimated above (at seven percent), the estimated total annual private-sector cost of this part of the proposed rule is \$3,968,819. To obtain the estimated average cost of submission per establishment of \$81.13, OSHA divided the total estimated cost of submission (\$3,968,819) by the estimated number of establishments that would be required to submit data (48,919 establishments).

For reference, as explained above, 48,919 establishments with 100 or more employees, in proposed appendix B, submitted CY 2019 Form 300A information about 718,386 cases to OSHA in 2020. The mean number of cases per establishment is 14.7, and the median number of cases per establishment is seven. However, some establishments will have no recordable injuries in a given year, and their time burden will be zero minutes. In contrast, establishments with many recordable injuries and illnesses could have a time burden of multiple hours if they enter the data manually. OSHA preliminarily believes that the establishments that

submit a single batch file are more likely to be among the establishments with many cases, while the establishments that submit cases manually are more likely to be among the establishments with only a few cases. Thus, OSHA's estimate of half of establishments submitting half of cases manually may result in an overestimate of the total and per-establishment costs of this part of the proposed rule.

OSHA welcomes public comment on these estimates, including on time necessary to prepare and submit a batch file and on establishments' considerations for deciding to submit via batch file versus manual submission.

3. Section 1904.41(b)(10)

This proposed section would require establishments to provide their company name as part of their submission, either included in the establishment name or separately as the company. For this part of the proposed rule, based on submissions of information from the 2019 Form 300A to the ITA in 2020, OSHA estimates that 18,182 establishments do not include the company name. The time necessary to include the company name is included in the PEA estimate of 10 minutes per submission per establishment. OSHA has also preliminarily determined that this requirement will result in a small, unquantified benefit/cost-savings for the government, due to no longer needing to spend time trying to assign company names to establishments with coded names.

OSHA welcomes public comment on these preliminary determinations.<sup>17</sup>

4. Budget Costs to the Government for the Creation of the Reporting System, Helpdesk Assistance, and Administration of the Electronic Submission Program

In this preliminary economic analysis, OSHA is including an estimate of the costs of the proposed new requirement,

because these costs represent a significant fraction of the total costs of the new requirement. OSHA received estimates for the costs from the US Department of Labor Office of the Chief Information Officer (DOL OCIO).

Based on the DOL OCIO estimates shown in the table below, OSHA is estimating that modification of the reporting system hardware and software infrastructure to accept submissions of Form 300 and 301 data will have an initial one-time cost of \$1.2 million.

TABLE V-1—ESTIMATES OF THE COST OF SOFTWARE DESIGN AND DEVELOPMENT

	Lower cost range	Upper cost range
Development .....	\$516,417.00	\$866,250.00
Cyber/ATO .....	150,000.00	200,000.00
Cloud .....	20,000.00	20,000.00
Migration ...	100,000.00	150,000.00
<b>Total .....</b>	<b>786,417.00</b>	<b>1,236,250.00</b>

Annualized over 10 years at a seven percent discount rate, \$1.2 million is \$170,853 per year, or \$140,677 annualized over 10 years at three percent. OSHA also estimates \$201,128 as the annual cost of additional transactions (\$0.28 per case times 718,316 cases). Finally, OSHA estimates that annual help desk support costs will increase by \$25,000. This estimate is based on the annual help desk support costs under the current provisions.

5. Total Costs of the Rule

As shown in the table below, the total costs of the proposed rule would be an estimated \$4.3 million per year.

TABLE V-2—TOTAL COSTS OF THE PROPOSED RULE<sup>18</sup>

Cost element	Annual costs	One-time costs <sup>1</sup>
Annual electronic submission of OSHA Form 300A annual summary by establishments with 20 or more employees in designated industries .....	(\$27,077)	
Annual electronic submission of OSHA Form 300 Log and OSHA Form 301 Incident Report by establishments with 100 or more employees in designated industries .....	3,968,819	
Submission cost .....	3,898,037	
Cost of rule familiarization .....	<sup>2</sup> 70,782	\$497,033
<b>Total Private Sector Costs .....</b>	<b>3,941,741</b>	
<b>Total Government Costs .....</b>	<b>397,001</b>	

<sup>17</sup> OSHA does not anticipate that the proposed revisions to § 1904.41(b)(1)(i), (b)(1)(ii), or (c) would have any substantial costs associated with them.

<sup>18</sup> See docket exhibit OSHA-2021-006-0002 for the full calculations.

TABLE V-2—TOTAL COSTS OF THE PROPOSED RULE<sup>18</sup>—Continued

Cost element	Annual costs	One-time costs <sup>1</sup>
Processing of annual submission of cases .....	201,148	
Increased help desk support .....	25,000	
Software design/development .....	<sup>3</sup> 170,853	1,200,000
<b>Total .....</b>	<b>44,338,742</b>	<b>1,697,033</b>

<sup>1</sup> The annualized one-time costs appear in the Annual Costs column. The one-time costs are not additional costs.

<sup>2</sup> If annualized over 10 years at 7%. \$58,313 if annualized at 3%.

<sup>3</sup> If annualized over 10 years at 7%. \$140,677 if annualized at 3%.

<sup>4</sup> Includes the one-time costs for rule familiarization and software design and development, annualized over 10 years at 7%.

OSHA welcomes public comment on this analysis.

### C. Benefits

The main purpose of the proposed rule is to prevent worker injuries and illnesses through the collection and use of timely, establishment-specific and case-specific injury and illness data. With the information obtained through this proposed rule, employers, employees, employee representatives, the government, and researchers will be better able to identify and mitigate workplace hazards and thereby prevent worker injuries and illnesses.

The proposed rule would support OSHA's statutory directive to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources" (29 U.S.C. 651(b)) "by providing for appropriate reporting procedures with respect to occupational safety and health which procedures 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 importance of the proposed rule in preventing worker injuries and illnesses can be understood in the context of workplace safety and health in the United States today. The number of workers injured or made ill on the job remains unacceptably high. According to the SOII, each year employees experience 2.7 million recordable non-fatal injuries and illnesses at work,<sup>19</sup> and this number is widely recognized to be an undercount of the actual number of occupational injuries and illnesses that occur annually.<sup>20</sup> As described

<sup>19</sup> See "EMPLOYER-REPORTED WORKPLACE INJURIES AND ILLNESSES—2020", news release from the Bureau of Labor Statistics/U.S. Department of Labor, 10:00 a.m. (ET) Wednesday, November 3, 2021.

<sup>20</sup> See e.g., Leigh JP, Du J, McCurdy SA. An estimate of the U.S. government's undercount of nonfatal occupational injuries and illnesses in agriculture. *Ann Epidemiol.* 2014 Apr;24(4):254–9. doi: 10.1016/j.annepidem.2014.01.006. Epub 2014 Jan 22. PMID: 24507952; PMCID: PMC6597012; Spieler EA, Wagner GR. Counting matters:

above, the proposed rule would increase the agency's ability to focus resources on those workplaces where workers are at greatest risk. However, even with improved targeting, OSHA Compliance Safety and Health Officers can inspect only a small proportion of the nation's workplaces each year, and it would take many decades to inspect each covered workplace in the nation even once. As a result, to reduce worker injuries and illnesses, it is of great importance for OSHA to leverage its resources for workplace safety at the many thousands of establishments in which workers are being injured or made ill but which OSHA does not have the resources to inspect.

The proposed requirement would help OSHA encourage employers to prevent worker injuries and illnesses by greatly expanding OSHA's access to the establishment-specific, case-specific information employers are already required to record under part 1904. The proposed provisions requiring regular electronic submission of case-specific injury and illness data would allow OSHA to obtain a much larger data set of more timely, establishment-specific information about injuries and illnesses in the workplace. This information would help OSHA use its enforcement and compliance assistance resources more effectively by enabling OSHA to identify the workplaces where workers are at greatest risk. For example, OSHA could send hazard-specific educational materials to employers who reported cases related to those hazards. In addition, as discussed above, OSHA would be able to use the information to identify emerging hazards, support an agency response, and reach out to employers whose workplaces might include those hazards.

The proposed collection would provide establishment-specific, case-specific injury and illness data for

Implications of undercounting in the BLS survey of occupational injuries and illnesses. *Am J Ind Med.* 2014 Oct;57(10):1077–84. doi: 10.1002/ajim.22382. PMID: 25223513.

analyses that are not currently possible. For example, OSHA could analyze the case-specific data collected under this system to answer the following questions:

1. Within a given industry, what are the characteristics of recorded injuries or illnesses related to specific hazards (for example, fall from ladder or heat)?

2. Within a given industry, what are the relationships between an establishment's hazard-specific/case-specific injury and illness data and data from other agencies or departments, such as the Wage and Hour Division, the Environmental Protection Agency, or the Equal Employment Opportunities Commission?

3. What are the changes in hazard-specific injuries or illnesses in a particular industry over time?

Furthermore, access to establishment-specific, case-specific injury and illness data will enable OSHA to improve its evaluations of the effectiveness of its enforcement and compliance assistance activities. Having these data will enable OSHA to conduct rigorous evaluations of different types of programs, initiatives, and interventions in different industries and geographic areas, enabling the agency to become more effective and efficient. For example, OSHA would be able to compare the incidence and characteristics of heat-related illnesses before and after promulgation of a regulation on heat injury and illness prevention in outdoor and indoor work settings, thereby allowing the agency to evaluate the implementation and effectiveness of the regulation.

OSHA's collection and publication of establishment-specific, case-specific injury and illness data would also encourage employers with 100 or more employees to prevent injuries and illnesses among their employees, because

- Employers would prefer to support their reputations as good places to work at or do business with;
- Employers in a given high-hazard industry would be able to compare their

workplace's experience with a particular hazard with the experiences at other workplaces, allowing them to set hazard-abatement goals benchmarked to comparable establishments in their industry.

- Employees in establishments with 100 or more employees would be able to access the case-specific injury and illness information without having to request the information from their employers; this, in turn, would allow the employees in these establishments to better identify hazards within their own workplace and to take actions to have the hazards abated.

- Prospective employees would have access to data about specific hazards of particular concern, such as lead or trench collapses, allowing them to make a more informed decision about a future place of employment; this, in turn, would encourage employers to abate these hazards because potential employees, especially the ones whose skills are most in demand, might be reluctant to work at establishments that did not abate these hazards.

- Potential investors and the public would also have access to information about an establishment's experience with specific hazards, allowing them to preferentially invest in or patronize businesses that have successfully abated the hazards common in a given industry; this, in turn, would encourage employers to abate the hazards in order to attract investors and/or customers.

Finally, disclosure of and access to establishment-specific, case-specific injury and illness data have the potential to improve research on the distribution and determinants of workplace hazards, and therefore to prevent workplace injuries and illnesses from occurring by abating those hazards. Using data collected under the proposed rule, researchers might identify previously unrecognized patterns of injuries and illnesses across establishments where workers are exposed to similar hazards. Such research would be especially useful in identifying hazards that result in a small number of injuries or illnesses in each establishment but a large number overall, due to a wide distribution of those hazards in a particular area, industry, or establishment type. Data made available under this proposed rule could also allow researchers to identify patterns of hazard-specific injuries or illnesses that are masked by the aggregation of injury/illness data in the SOII.

The availability of case-specific, establishment-specific injury and illness data would also be of great use to county, state and territorial health

departments and other public institutions charged with injury and illness surveillance. In particular, aggregation of case-specific, establishment-specific injury and illness reports and rates from similar establishments would facilitate identification of newly-emerging hazards that would not easily be identified without linkage to specific industries or occupations. There are currently no comparable data sets available, and these public health surveillance programs must primarily rely on reporting of cases seen by medical practitioners, any one of whom would rarely see enough cases to identify an occupational etiology.

Workplace safety and health professionals might use data published under this proposed rule to identify establishments whose injury/illness records suggest that the establishments would benefit from their services to abate particular hazards or sets of hazards. In general, online access to this large database of establishment-specific, case-specific injury and illness information would support the development of innovative ideas for improving workplace safety and health, and would better the ability of everyone with a stake in workplace safety and health to participate in improving occupational safety and health.

Furthermore, because the data would be publicly available, industries, trade associations, unions, and other groups representing employers and workers would be able to evaluate the effectiveness of privately-initiated hazard-abatement initiatives that affect groups of establishments. In addition, linking these data with data residing in other administrative data sets would enable researchers to conduct rigorous studies that will increase our understanding of injury/illness causation, prevention, and consequences.

Public access to these data would enable developers of software applications to develop tools that facilitate use of these data by employers, workers, researchers, consumers and others. Examples of this in other areas include apps for finding and comparing nursing homes, creating thematic maps of data from the American Community Survey, and obtaining real-time information on stream levels or bus/subway arrivals.

The database resulting from this proposed rule would enable the collection and publication of case-specific, establishment-specific data without having to work under the restrictions imposed by the Confidential Information Protection and Statistical

Efficiency Act (CIPSEA) to protect information acquired for statistical purposes under a pledge of confidentiality. It would also provide data on injuries and illnesses that are not currently available from any source, including the BLS SOII. Specifically, under this collection, there would be case-specific data for injuries and illnesses that do not involve days away from work. The BLS case and demographic data is limited to cases involving days away from work or cases involving job transfer or restricted work activity.

#### *D. Economic Feasibility*

OSHA preliminarily concludes that the proposed rule will be economically feasible. For establishments with 100 or more employees in the industries designated in proposed appendix B, the average additional cost of submitting information from the OSHA Form 300 and 301 will be \$81 per year. These costs will not affect the economic viability of these establishments.

#### *E. Alternatives*

1. Appendix A (industries where establishments with 20 or more employees are required to submit information from the OSHA Form 300A) is based on 2011–2013 injury rates from the SOII. OSHA could update appendix A to reflect the 2017–2019 injury rates from the SOII. This would result in the addition of one industry (NAICS 4831 (Deep sea, coastal, and great lakes water transportation)) and the removal of 13 industries, as follows:

- 4421 Furniture Stores
- 4452 Specialty Food Stores
- 4853 Taxi and Limousine Service
- 4855 Charter Bus Industry
- 5152 Cable and Other Subscription Programming
- 5311 Lessors of Real Estate
- 5321 Automotive Equipment Rental and Leasing
- 5323 General Rental Centers
- 6242 Community Food and Housing, and Emergency and Other Relief Services
- 7132 Gambling Industries
- 7212 RV (Recreational Vehicle) Parks and Recreational Camps
- 7223 Special Food Services
- 8113 Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.

OSHA is proposing not to modify appendix A because it took several years for the regulated community to understand which industries were and were not required to submit information. Misunderstandings result

in both underreporting and overreporting. OSHA preliminarily believes that changing the requirements now would result in confusion for the regulated community. However, OSHA welcomes public comment on this alternative.

2. OSHA could regularly update the list of designated industries in proposed appendix B (industries where establishments with 100 or more employees must submit information from the Form 300 and 301 as well as the 300A)—for example, every 6 years, to align with the PRA approval periods. In the 2016 final rule, OSHA agreed with the commenters who stated that the list of designated industries [appendix A, in this case] should not be updated each year. OSHA believed that moving industries in and out of the appendix each year would be confusing. OSHA also believed that keeping the same industries in the appendix each year would increase the stability of the system and reduce uncertainty for employers. Accordingly, OSHA did not, as part of that rulemaking, include a requirement to annually or periodically adjust the list of designated industries to reflect more recent BLS injury and illness data. OSHA committed that any such revision to the list of industries in the future would require additional notice and comment rulemaking. However, OSHA again welcomes public comment on this alternative for this rulemaking.

#### F. Regulatory Flexibility Certification

The part of the proposed rule requiring submission of Form 300 and 301 information from establishments with 100 or more employees in designated industries will affect some small entities, according to the definition of small entity used by the Small Business Administration (SBA). In some sectors, such as construction, where SBA's definition only allows relatively smaller firms, there are unlikely to be many firms with 100 or more employees that meet SBA small-business definitions. In other sectors, such as manufacturing, many SBA-defined small businesses will be subject to this rule. Thus, this part of the proposed rule will affect a small percentage of all small entities.

However, because some small firms will be affected, especially in manufacturing, OSHA has examined the impacts on small businesses of the costs of this rule. OSHA's procedures for assessing the significance of proposed rules on small businesses suggest that if costs are greater than 1 percent of revenues or 5 percent of profits for the average firm, then OSHA conducts an

additional assessment. To meet this level of significance at an estimated annual average cost of \$81.13 per affected establishment per year, annual revenues for an establishment with 100 or more employees would have to be less than \$8,113, and annual profits would have to be less than \$1,623. According to the 2017 Economic Census,<sup>21</sup> there are no impacted industries that have revenues less than \$8,113. Furthermore, based on the 2013 Corporation Source Book,<sup>22</sup> there are no impacted industries earning less than \$1,623.

As a result of these considerations, per section 605 of the Regulatory Flexibility Act, OSHA certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Thus, OSHA has not prepared an initial regulatory flexibility analysis. OSHA is interested in comments on this certification.

### V. OMB Review Under the Paperwork Reduction Act of 1995

#### A. Overview

OSHA is proposing to amend its occupational injury and illness recordkeeping regulation, 29 CFR 1904.41, which contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, and OMB regulations at 5 CFR part 1320. The agency is not revising the existing ICR, 1218–0176, but rather requesting a new number for provisions being added or modified. The PRA defines “collection of information” to mean “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). Under the PRA, a Federal agency cannot conduct or sponsor a

<sup>21</sup> The revenue numbers used to determine cost-to-revenue ratios were obtained from the 2017 Economic Census. This is the most current information available from this source, which OSHA considers to be the best available source of revenue data for U.S. businesses. OSHA adjusted these figures to 2019 dollars using the Bureau of Economic Analysis's GDP deflator, which is OSHA's standard source for inflation and deflation analysis.

<sup>22</sup> The profit screening test for feasibility (*i.e.*, the cost-to-profit ratio) was calculated as ETS costs divided by profits. Profits were calculated as profit rates multiplied by revenues. The before-tax profit rates that OSHA used were estimated using corporate balance sheet data from the 2013 Corporation Source Book (Internal Revenue Service, 2013). The IRS discontinued the publication of these data after 2013, and therefore the most current years available are 2000–2013. The most recent version of the Source Book represents the best available evidence for these data on profit rates.

collection of information unless OMB approves it and the agency displays a currently valid OMB control number. 44 U.S.C. 3507. Also, notwithstanding any other provision of law, no employer shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. 44 U.S.C. 3512.

#### B. Solicitation of Comments

OSHA prepared and submitted an ICR to OMB proposing to revise certain information collection requirements currently contained in the paperwork package in accordance with 44 U.S.C. 3507(d). The agency solicits comments on the revision to the information collection requirements and the reduction in estimated burden hours associated with these requirements, including comments on the following items:

- Whether the collection of information are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the collection of information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the compliance burden on employers, for example, by using automated or other technological techniques for collecting and transmitting information.

#### C. Proposed Information Collection Requirements

As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2), the following paragraphs provide information about this ICR.

1. *Title:* Improve Tracking Workplace Injury and Illness.

2. *Description of the ICR:* This proposed rule would revise the currently approved Recordkeeping and Reporting Occupational Injuries and Illnesses Information Collection and change the existing information collection requirements currently approved by OMB.

3. *Brief Summary of the Information Collection Requirements.* Under “Information Requirements on Recordkeeping and Reporting Occupational Injuries and Illnesses,” OMB Control Number 1218–0176, OSHA currently has OMB approval to conduct an information collection that requires employers to maintain information on work-related fatalities, injuries, and illnesses, and to report this



information to OSHA. The proposed rule would make three changes to § 1904.41.

First, OSHA will no longer require electronic submission of Form 300A information from establishments with 250 or more employees in industries that are routinely required to keep part 1904 injury and illness records but are not in appendix A.

Second, OSHA will newly require all establishments that have 100 or more employees and are in certain designated industries to electronically submit information from the OSHA Form 300 and 301 to OSHA or OSHA's designee. This is in addition to the current requirement for these establishments to electronically submit information from the OSHA Form 300A. Each establishment subject to this provision will require time to familiarize themselves with the reporting website.

Third, OSHA will require establishments that are required to electronically report information from their injury and illness records to OSHA under part 1904, to include their company name as part of the submission. No additional paperwork burden is associated with the provision.

In addition, Docket exhibit OSHA-2021-006-0004 shows an example of an expanded interface to collect case-specific data. Screen shots of this interface can also be viewed on OSHA's website at [http://www.osha.gov/recordkeeping/proposed\\_data\\_form.html](http://www.osha.gov/recordkeeping/proposed_data_form.html). OSHA invites public comment on these user interfaces, including suggestions on any interface features that would minimize the burden of reporting the required data.

4. *OMB Control Number*: 1218-ONEW.

5. *Affected Public*: Business or other for-profit.

6. *Number of Respondents*: 48,919.

7. *Frequency of Responses*: Annually.

8. *Number of Responses*: 429,876.

9. *Average Time per Response*: Time per response varies.

10. *Estimated total burden hours*: 71,646.

11. *Estimated costs (capital-operation and maintenance)*: \$0.

#### D. Submitting Comments

Members of the public may comment on the paperwork requirements in this proposed regulation by sending their comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, OSHA Regulation Identifier Number (RIN) (1218-AD40), by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Please limit the comments to only the proposed

changed provisions of the recordkeeping rule (*i.e.*, proposed § 1904.41).

OSHA encourages commenters also to submit their comments on these paperwork requirements to the rulemaking docket (OSHA-2021-0006), along with their comments on other parts of the proposed regulation. For instructions on submitting these comments to the docket, see the sections of this **Federal Register** document titled **DATES** and **ADDRESSES**. Comments submitted in response to this document are public records; therefore, OSHA cautions commenters about submitting personal information, such as Social Security numbers and dates of birth.

#### E. Docket and Inquiries

To access the docket to read or download comments and other materials related to this paperwork determination, including the complete Information Collection Request (ICR), use the procedures described under the section of this document titled **ADDRESSES**. You may obtain an electronic copy of the complete ICR by going to the website at <https://www.reginfo.gov/public/do/PRAMain>, then select "Department of Labor" under "Currently Under Review", then click on "submit". This will show all of the Department's ICRs currently under review, including the ICRs submitted for proposed rulemakings. To make inquiries, or to request other information, contact Ms. Seleda Perryman, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693-4131; email [perryman.seleda.m@dol.gov](mailto:perryman.seleda.m@dol.gov).

#### VI. Unfunded Mandates

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 13132 (64 FR 43255 (Aug. 4, 1999)), this proposed rule does not include any Federal mandate that may result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than \$100 million.

#### VII. Federalism

OSHA reviewed this proposed rule in accordance with Executive Order 13132 (64 FR 43255 (Aug. 4, 1999)), regarding federalism. Because this rulemaking involves 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), the rule will not preempt state law (see 29 U.S.C. 667(a)). The effect of the proposed rule

on states is discussed in section VIII. State Plans.

#### VIII. State Plans

For the purposes of section 18 of the OSH Act (29 U.S.C. 667) and the requirements of 29 CFR 1904.37, 1902.3(j), 1902.7, and 1956.10(i), within 6 months after publication of the final OSHA rule, State Plans must promulgate occupational injury and illness recording and reporting requirements that are substantially identical to those in 29 CFR part 1904 "Recording and Reporting Occupational Injuries and Illnesses." State Plans must have the same requirements as Federal OSHA for determining which injuries and illnesses are recordable and how they are recorded (29 CFR 1904.37(b)(1)). All other part 1904 injury and illness recording and reporting requirements (for example, industry exemptions, reporting of fatalities and hospitalizations, record retention, or employee involvement) that are promulgated by State Plans may be more stringent than, or supplemental to, the Federal requirements, but, because of the unique nature of the national recordkeeping program, states must consult with OSHA and obtain approval of such additional or more stringent reporting and recording requirements to ensure that they will not interfere with uniform reporting objectives (29 CFR 1904.37(b)(2)).

There are 28 State Plans. The states and territories that cover private sector employers are Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Connecticut, Illinois, Maine, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to state and local government employees only.

#### IX. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this proposed rule in accordance with Executive Order 13175 (65 FR 67249) and determined that it would not have "tribal implications" as defined in that order. The proposed rule would 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.

## X. Public Participation

Because this rulemaking involves a regulation rather than a standard, it is governed by the notice and comment requirements in the Administrative Procedure Act (APA) (5 U.S.C. 553) rather than section 6 of the OSH Act (29 U.S.C. 655) and 29 CFR part 1911 (both of which only apply to “promulgating, modifying or revoking occupational safety or health standards” (29 CFR 1911.1)). Therefore, the OSH Act requirement to hold an informal public hearing (29 U.S.C. 655(b)(3)) on a proposed rule, when requested, does not apply to this rulemaking.

Section 553(b)(1) of the APA requires the agency to issue a “statement of the time, place, and nature of public rulemaking proceedings” (5 U.S.C. 553(b)(1)). The APA does not specify a minimum period for submitting comments.

OSHA invites comment on all aspects of the proposed rule. OSHA specifically encourages comment on the questions raised in the issues and questions subsection. Interested persons must submit comments by May 31, 2022. The agency will carefully review and evaluate all comments, information, and data, as well as all other information in the rulemaking record, to determine how to proceed. When submitting comments, persons must follow the procedures specified above in the sections titled **DATES** and **ADDRESSES**.

### Authority and Signature

This document was prepared under the direction of Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. It is issued under sections 8 and 24 of the Occupational Safety and Health Act (29 U.S.C. 657, 673), section 553 of the Administrative Procedure Act (5 U.S.C. 553), and Secretary of Labor’s Order No. 08–2020 (85 FR 58393, Sept. 18, 2020).

### List of Subjects in 29 CFR Part 1904

Health statistics, Occupational safety and health, Reporting and recordkeeping requirements.

Signed at Washington, DC, on March 23, 2022.

**Douglas L. Parker,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

### Amendments to Standards

For the reasons stated in the preamble, OSHA proposes to amend part 1904 of chapter XVII of title 29 as follows:

## PART 1904—[AMENDED]

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

- 1. Revise the authority citation for part 1904, subpart E, to read as follows:

**Authority:** 29 U.S.C. 657, 673, 5 U.S.C. 553, and Secretary of Labor’s Order No. 08–2020 (85 FR 58393, Sept. 18, 2020) or 1–2012 (77 FR 3912, Jan. 25, 2012), as applicable.

- 2. Amend § 1904.41 as follows:
  - a. Revise paragraphs (a)(1) and (2) and (b)(1);
  - b. Add paragraphs (b)(9) and (10); and
  - c. Revise paragraph (c).

The revisions and additions read as follows:

#### § 1904.41 Electronic submission of Employer Identification Number (EIN) and injury and illness records to OSHA.

\* \* \* \* \*

(a) \* \* \*

(1) *Annual electronic submission of information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees in designated industries.* If your establishment had 20 or more employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to subpart E of this part, then you must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA’s designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form.

(2) *Annual electronic submission of information from OSHA Form 300 Log of Work-Related Injuries and Illnesses, OSHA Form 301 Injury and Illness Incident Report, and OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 100 or more employees in designated industries.* If your establishment had 100 or more employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix B to subpart E of this part, then you must electronically submit information from OSHA Forms 300, 301, and 300A to OSHA or OSHA’s designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the forms.

\* \* \* \* \*

(b) \* \* \*

(1) *Annual electronic submission of information from part 1904 injury and*

*illness recordkeeping forms to OSHA—*  
(i) *Does every employer have to routinely make an annual electronic submission of information from part 1904 injury and illness recordkeeping forms to OSHA?* No, only two categories of employers must routinely submit this information. The first category is establishments that had 20 or more employees at any time during the previous calendar year, and are classified in an industry listed in appendix A to this subpart; establishments in this category must submit the required information from Form 300A to OSHA once a year. The second category is establishments that had 100 or more employees at any time during the previous calendar year, and are classified in an industry listed in appendix B to this subpart; establishments in this category must submit the required information from Forms 300, 301, and 300A to OSHA once a year. Employers in these two categories must submit the required information by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form (for example, 2022 for the 2021 form(s)). If your establishment is not in either of these two categories, then you must submit the information to OSHA only if OSHA notifies you to do so for an individual data collection.

(ii) *My establishment had 100 or more employees last year and is in an industry that is listed in both appendix A and appendix B. Do I have to submit the information from the Form 300A twice?* No, you only have to submit the information from the Form 300A once.

\* \* \* \* \*

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

(i) Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).

(ii) Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

(10) *My company uses numbers or codes to identify our establishments. May I use numbers or codes as the establishment name in my submission?* Yes, you may use numbers or codes as the establishment name. However, the submission must include the company name, either as part of the establishment

name or separately as the company name.

(c) *Reporting dates.* Establishments that are required to submit under paragraph (a)(1) or (2) of this section must submit all of the required information by March 2 of the year after the calendar year covered by the form(s)

(for example, by March 2, 2022, for the forms covering 2021).

■ 3. Revise appendix A to subpart E to read as follows:

**Appendix A to Subpart E of Part 1904—  
Designated Industries for  
§ 1904.41(a)(1) Annual Electronic  
Submission of Information From OSHA  
Form 300A Summary of Work-Related  
Injuries and Illnesses by Establishments  
With 20 or More Employees in  
Designated Industries**

NAICS	Industry
11 .....	Agriculture, forestry, fishing and hunting.
22 .....	Utilities.
23 .....	Construction.
31–33 .....	Manufacturing.
42 .....	Wholesale trade.
4413 .....	Automotive Parts, Accessories, and Tire Stores.
4421 .....	Furniture Stores.
4422 .....	Home Furnishings Stores.
4441 .....	Building Material and Supplies Dealers.
4442 .....	Lawn and Garden Equipment and Supplies Stores.
4451 .....	Grocery Stores.
4452 .....	Specialty Food Stores.
4522 .....	Department Stores.
4523 .....	General Merchandise Stores, including Warehouse Clubs and Supercenters.
4533 .....	Used Merchandise Stores.
4542 .....	Vending Machine Operators.
4543 .....	Direct Selling Establishments.
4811 .....	Scheduled Air Transportation.
4841 .....	General Freight Trucking.
4842 .....	Specialized Freight Trucking.
4851 .....	Urban Transit Systems.
4852 .....	Interurban and Rural Bus Transportation.
4853 .....	Taxi and Limousine Service.
4854 .....	School and Employee Bus Transportation.
4855 .....	Charter Bus Industry.
4859 .....	Other Transit and Ground Passenger Transportation.
4871 .....	Scenic and Sightseeing Transportation, Land.
4881 .....	Support Activities for Air Transportation.
4882 .....	Support Activities for Rail Transportation.
4883 .....	Support Activities for Water Transportation.
4884 .....	Support Activities for Road Transportation.
4889 .....	Other Support Activities for Transportation.
4911 .....	Postal Service.
4921 .....	Couriers and Express Delivery Services.
4922 .....	Local Messengers and Local Delivery.
4931 .....	Warehousing and Storage.
5152 .....	Cable and Other Subscription Programming.
5311 .....	Lessors of Real Estate.
5321 .....	Automotive Equipment Rental and Leasing.
5322 .....	Consumer Goods Rental.
5323 .....	General Rental Centers.
5617 .....	Services to Buildings and Dwellings.
5621 .....	Waste Collection.
5622 .....	Waste Treatment and Disposal.
5629 .....	Remediation and Other Waste Management Services.
6219 .....	Other Ambulatory Health Care Services.
6221 .....	General Medical and Surgical Hospitals.
6222 .....	Psychiatric and Substance Abuse Hospitals.
6223 .....	Specialty (except Psychiatric and Substance Abuse) Hospitals.
6231 .....	Nursing Care Facilities (Skilled Nursing Facilities).
6232 .....	Residential Intellectual and Developmental Disability, Mental Health, and Substance Abuse Facilities.
6233 .....	Continuing Care Retirement Communities and Assisted Living Facilities for the Elderly.
6239 .....	Other Residential Care Facilities.
6242 .....	Community Food and Housing, and Emergency and Other Relief Services.
6243 .....	Vocational Rehabilitation Services.
7111 .....	Performing Arts Companies.
7112 .....	Spectator Sports.
7121 .....	Museums, Historical Sites, and Similar Institutions.
7131 .....	Amusement Parks and Arcades.
7132 .....	Gambling Industries.
7211 .....	Traveler Accommodation.
7212 .....	RV (Recreational Vehicle) Parks and Recreational Camps.
7223 .....	Special Food Services.
8113 .....	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.

NAICS	Industry
8123 .....	Drycleaning and Laundry Services.

■ 4. Add appendix B to subpart E to read as follows:

**Appendix B to Subpart E of Part 1904—  
Designated Industries for  
§ 1904.41(a)(2) Annual Electronic  
Submission of Information From OSHA  
Form 300 Log of Work-Related Injuries  
and Illnesses, OSHA Form 301 Injury  
and Illness Incident Report, and OSHA  
Form 300A Summary of Work-Related  
Injuries and Illnesses by Establishments  
With 100 or More Employees in  
Designated Industries**

NAICS	Industry
1111 .....	Oilseed and grain farming.
1112 .....	Vegetable and melon farming.
1113 .....	Fruit and tree nut farming.
1114 .....	Greenhouse, nursery, and floriculture production.
1119 .....	Other crop farming.
1121 .....	Cattle ranching and farming.
1122 .....	Hog and pig farming.
1123 .....	Poultry and egg production.
1129 .....	Other animal production.
1141 .....	Fishing.
1151 .....	Support activities for crop production.
1152 .....	Support activities for animal production.
1153 .....	Support activities for forestry.
2213 .....	Water, sewage and other systems.
2381 .....	Foundation, structure, and building exterior contractors.
3111 .....	Animal food manufacturing.
3113 .....	Sugar and confectionery product manufacturing.
3114 .....	Fruit and vegetable preserving and specialty food manufacturing.
3115 .....	Dairy product manufacturing.
3116 .....	Animal slaughtering and processing.
3117 .....	Seafood product preparation and packaging.
3118 .....	Bakeries and tortilla manufacturing.
3119 .....	Other food manufacturing.
3121 .....	Beverage manufacturing.
3161 .....	Leather and hide tanning and finishing.
3162 .....	Footwear manufacturing.
3211 .....	Sawmills and wood preservation.
3212 .....	Veneer, plywood, and engineered wood product manufacturing.
3219 .....	Other wood product manufacturing.
3261 .....	Plastics product manufacturing.
3262 .....	Rubber product manufacturing.
3271 .....	Clay product and refractory manufacturing.
3272 .....	Glass and glass product manufacturing.
3273 .....	Cement and concrete product manufacturing.
3279 .....	Other nonmetallic mineral product manufacturing.
3312 .....	Steel product manufacturing from purchased steel.
3314 .....	Nonferrous metal production and processing.
3315 .....	Foundries.
3321 .....	Forging and stamping.
3323 .....	Architectural and structural metals manufacturing.
3324 .....	Boiler, tank, and shipping container manufacturing.
3325 .....	Hardware manufacturing.
3326 .....	Spring and wire product manufacturing.
3327 .....	Machine shops; turned product; and screw, nut, and bolt manufacturing.
3328 .....	Coating, engraving, heat treating, and allied activities.
3331 .....	Agriculture, construction, and mining machinery manufacturing.
3335 .....	Metalworking machinery manufacturing.
3361 .....	Motor vehicle manufacturing.
3362 .....	Motor vehicle body and trailer manufacturing.
3363 .....	Motor vehicle parts manufacturing.
3366 .....	Ship and boat building.
3371 .....	Household and institutional furniture and kitchen cabinet manufacturing.
3372 .....	Office furniture manufacturing.
4231 .....	Motor vehicle and motor vehicle parts and supplies merchant wholesalers.
4233 .....	Lumber and other construction materials merchant wholesalers.

NAICS	Industry
4235 .....	Metal and mineral merchant wholesalers.
4244 .....	Grocery and related product merchant wholesalers.
4248 .....	Beer, wine, and distilled alcoholic beverage merchant wholesalers.
4413 .....	Automotive parts, accessories, and tire stores.
4422 .....	Home furnishings stores.
4441 .....	Building material and supplies dealers.
4442 .....	Lawn and garden equipment and supplies stores.
4451 .....	Grocery stores.
4522 .....	Department stores.
4523 .....	General merchandise stores, including warehouse clubs and supercenters.
4533 .....	Used merchandise stores.
4543 .....	Direct selling establishments.
4811 .....	Scheduled air transportation.
4841 .....	General freight trucking.
4842 .....	Specialized freight trucking.
4851 .....	Urban transit systems.
4852 .....	Interurban and rural bus transportation.
4854 .....	School and employee bus transportation.
4859 .....	Other transit and ground passenger transportation.
4871 .....	Scenic and sightseeing transportation, land.
4881 .....	Support activities for air transportation.
4883 .....	Support activities for water transportation.
4911 .....	Postal Service.
4921 .....	Couriers and express delivery services.
4931 .....	Warehousing and storage.
5322 .....	Consumer goods rental.
5621 .....	Waste collection.
5622 .....	Waste treatment and disposal.
6219 .....	Other ambulatory health care services.
6221 .....	General medical and surgical hospitals.
6222 .....	Psychiatric and substance abuse hospitals.
6223 .....	Specialty hospitals.
6231 .....	Nursing care facilities.
6232 .....	Residential intellectual and developmental disability, mental health, and substance abuse facilities.
6233 .....	Continuing care retirement communities and assisted living facilities for the elderly.
6239 .....	Other residential care facilities.
6243 .....	Vocational rehabilitation services.
7111 .....	Performing arts companies.
7112 .....	Spectator sports.
7131 .....	Amusement parks and arcades.
7211 .....	Traveler accommodation.
7212 .....	RV parks and recreational camps.
7223 .....	Special food services.