

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Parts 1904 and 1952**

[Docket No. R-02]

Occupational Injury and Illness Recording and Reporting Requirements

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

ACTION: Notice of Proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise Title 29 of the Code of Federal Regulations Part 1904, Recording and Reporting Occupational Injuries and Illnesses, the supplemental recordkeeping instructions, and replace the recordkeeping forms. This revision is expected to result in: a greatly simplified injury and illness recordkeeping system for employers, improved information concerning occupational injuries and illnesses, increased utility of the injury and illness records at the establishment/site level, increased use of modern technology, including computers and telecommunications equipment, and improved employee awareness and involvement.

This rulemaking is part of the overall effort to simplify and revise Part 1904. One section, Reporting of Fatality or Multiple Hospitalization Incidents, was revised in a separate rulemaking. The text of the revised § 1904.8, which became effective May 2, 1994, is included in this proposal as section 1904.12 due to reorganization of the various sections of Part 1904. However, § 1904.12 in this proposal includes three additional changes which are intended to further clarify the earlier revision.

Also included in this rulemaking is the revision of 29 CFR 1952.4. § 1952.4 establishes the recordkeeping and reporting requirements for States that have their own occupational safety and health programs and have been approved by OSHA to enforce safety and health regulations in their State. The revision of this section is a clarification of the requirements based on the existing interpretation of the current § 1952.4.

DATES: 1. Written comments on the proposed regulation must be postmarked on or before May 2, 1996.
2. A public meeting will be held in Washington, D.C. in the U.S. Department of Labor auditorium at 200 Constitution Avenue NW beginning at

8:30 am on March 26, 1996 and extending through March 28th, if necessary.

ADDRESSES: Comments are to be submitted in writing in quadruplicate, or 1 original (hard copy) and 1 disk (5¼" or 3½") in WP 5.0, 5.1, 5.2, 6.0 or ASCII. Note: Any information not contained on disk; e.g., studies, articles, etc. must be submitted in quadruplicate. All comments shall be submitted to: Docket Officer, Docket No. R-02, Occupational Safety and Health Administration, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 219-7894. Comments of 10 pages or less may be transmitted by facsimile to (202) 219-5046 provided the original and 4 copies of the comment are sent to the Docket Officer thereafter. Notice of intention to appear at the meeting is to be sent to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. R-02, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Cyr, OSHA, U.S. Department of Labor, Office of Information and Consumer Affairs, Room N-3647, 200 Constitution Ave., NW., Washington DC 20210. Telephone (202) 219-8148.

SUPPLEMENTARY INFORMATION**I. Background***Administrative History*

Following the passage of the Occupational Safety and Health (OSH) Act of 1970, the Occupational Safety and Health Administration (OSHA) was formed to promulgate and enforce safety and health regulations and standards. In 1971, OSHA published the occupational injury and illness recording and reporting regulation, 29 CFR Part 1904. During that same year, the Secretary of Labor delegated responsibility for the occupational injury and illness statistical program to the Bureau of Labor Statistics (BLS).

Since 1971, OSHA and BLS have operated the injury and illness recordkeeping system as a cooperative effort. OSHA promulgated and enforced the recordkeeping regulations while BLS prepared survey forms, published recordkeeping forms and supplemental instructions, provided outreach, and conducted the Annual Survey Of Occupational Injuries And Illnesses. In 1990 the agencies decided to reorganize these duties, and the Department of Labor announced that the recordkeeping function was being transferred to OSHA. Pursuant to a memorandum of

understanding (MOU), BLS retained responsibility for conducting the Annual Survey Of Occupational Injuries And Illnesses, while responsibility for administering the recordkeeping system was transferred to OSHA (ex. 6). OSHA's responsibility includes developing, publishing, and providing outreach for recordkeeping regulations and instructions. In 1991, OSHA created the Office of Statistics to assume these responsibilities and to meet the data needs of the agency.

Purpose of the Records

The injury and illness records are intended to have multiple purposes. One purpose is to provide information for employers and employees, raising their awareness of the kinds of injuries and illnesses occurring in the workplace and their related hazards. Increased employer awareness should result in the identification and voluntary correction of hazardous workplace conditions. In this role, the records serve as a "management tool" for the administration of company safety and health programs. Likewise, employees who are provided information on injuries and illnesses will be more aware of hazards in the work environment, and therefore more likely to follow safe work practices, and report workplace hazards. This would generally raise the overall level of safety and health in the workplace.

Another purpose for keeping these records is to provide OSHA compliance staff with information which can facilitate safety and health inspections. During the initial stages of an inspection, the inspector reviews the injury and illness data for the establishment and subsequently focuses his or her inspection efforts on the safety and health hazards revealed by the injury and illness records.

Another use of the injury and illness records is to produce statistical data on the incidence of workplace injuries and illnesses, thereby measuring the magnitude of the injury and illness problem across the country. BLS and participating States make the survey data available at an aggregate level by industry group for research purposes and for public information. OSHA also will use employer specific information to help focus its intervention efforts on the most dangerous worksites and the worst safety and health hazards.

Regulatory/Interpretation History

When Part 1904 was first implemented, industry safety experts were concerned that the regulations and the instructions on the forms did not provide adequate guidance for

employers. They requested that the Department of Labor provide additional instructions on employer recordkeeping obligations to clarify several recordkeeping issues. The Bureau of Labor Statistics responded in 1972 by publishing supplemental instructions to the recordkeeping forms, *BLS Report 412, What Every Employer Needs To Know About OSHA Recordkeeping* (ex. 1). These supplemental instructions were designed to meet the needs of employers by providing detailed information on when and how to record injury and illness cases on the recordkeeping forms.

A major concept established in the supplemental instructions was the definition of work relationship. Although the Act and regulations required "occupational" or "work-related" injuries and illnesses to be recorded, neither provided a detailed definition of the terms. The 412 booklet defined work relationship as follows: 1) cases that occurred at the employer's establishment (on premises) were considered work-related; and 2) cases that occurred off the employer's premises were considered work-related if the employee was engaged in a work activity or was present as a condition of employment.

The BLS 412 booklet was updated in 1973 and 1975. In 1978, the booklet was again updated to reflect changes in the regulations exempting small employers from the recordkeeping requirements, and to allow employers to computerize their records. The updated versions of the instructions included lists of first aid and medical treatments, flow charts to describe the recordkeeping decision-making process, and answers to many of the questions most frequently asked by employers.

In response to requests from labor and industry, and after publication in the Federal Register and a formal comment period, the BLS 412 report series was replaced in April of 1986 by the *Recordkeeping Guidelines For Occupational Injuries And Illnesses* (ex. 2). The revised version of the supplemental instructions contained an expanded question and answer format similar to the BLS 412 report, but provided additional information on the legal basis of the requirements for recordkeeping under Part 1904. The Guidelines provided clearer definitions of the types of cases to be recorded, discussed employer recordkeeping obligations in greater detail, introduced exceptions to the on-premises presumption of work relationship for instances where the application of the general rule was considered inappropriate or overly burdensome,

updated the medical treatment/first aid lists, and addressed new recordkeeping issues. A short version of the Guidelines, *A Brief Guide to Recordkeeping Requirements for Occupational Injuries and Illnesses* (ex. 7), was also produced.

While the 1986 guidelines clarified the existing requirements, concerns still persisted about the quality and utility of the injury and illness data. Some employers believed that the guidelines were too long and that some of the recordkeeping concepts were too complex and difficult to understand.

These continued concerns about the injury and illness records and the related statistics led to the 1987 Keystone National Policy Dialogue on Work-related Illness and Injury Recordkeeping (described in the Reports Section below). The Keystone dialogue group identified many problems with the recordkeeping system and provided numerous suggestions for improving the recordkeeping definitions.

Under a Memorandum of Understanding (MOU) dated July 11, 1990 (ex. 6), the responsibility for administering the national injury and illness recordkeeping system was transferred from the Bureau of Labor Statistics to OSHA. As a result, OSHA developed and is now proposing this revision of the regulations, forms, and supplemental instructions.

Compliance Activities

In 1981 OSHA changed its use of employers' injury and illness records in its programmed inspection activity. At the beginning of a planned programmed inspection, the compliance safety and health officer would do a "records-only check" to determine the lost workday injury incidence rate for the establishment. If the establishment had a rate below the national average, the compliance officer would end the inspection.

Beginning in 1986, OSHA discovered numerous instances of significant underreporting of injuries and illnesses. The Agency began issuing large penalties for recordkeeping violations. These highly publicized recordkeeping cases resulted in an even greater awareness of, and sensitivity to, the injury and illness recordkeeping requirements among the safety and health community. In 1989, OSHA discontinued its "records-only check" policy of terminating inspections because of concerns that this policy might have been an incentive to underrecord injuries and illnesses.

Other Criticisms

OSHA enforcement policies of the 1980s led to increased awareness of recordkeeping requirements which resulted in renewed criticisms of the existing recordkeeping system. One persistent objection has been that the current injury and illness recordkeeping guidelines are too lengthy and complex. Another objection is that the current definition of work relationship captures some cases which employers believe should not be considered work-related. Examples include employees injured while participating in voluntary wellness programs, cases related to the consumption of food and drink, and cases involving workers performing personal tasks at the workplace during non-work hours.

Reports

Since the middle 1980s, several studies have evaluated the utility of the current OSHA injury and illness recordkeeping system. The National Research Council (NRC), the Keystone Center, and the General Accounting Office (GAO) each published reports which evaluated the recordkeeping system and generated proposals for improvement.

NRC Report: In 1984, because of concern over the possible underreporting of occupational injuries and illnesses and other issues related to the accuracy of the national data collected by the Bureau of Labor Statistics (BLS), Congress appropriated funds for BLS to conduct a quality assurance study of its Annual Survey on Occupational Injuries and Illnesses. BLS requested the National Research Council to convene an expert panel to address the issue of the validity of employer records and the BLS annual survey, problems related to determining and reporting occupational diseases, and other issues related to the collection and use of data on health and safety in the workplace.

In 1987, the National Research Council issued a report, *Counting Injuries and Illnesses in the Workplace: Proposals for a Better System* (ex. 4), which contains the panel's recommendations. Twenty-four specific recommendations were made (see Ch. 8 of ex. 4), which generally were intended to accomplish the following: (1) modify the BLS Annual Survey to provide increased information about the injuries and illnesses recorded; (2) discontinue the supplementary data system and replace it with a grant program for States and individual researchers and include criteria for the detail and quality of data collected; (3) conduct an

ongoing quality assurance program to identify underreporting on the BLS Annual Survey by comparing the information on employers' logs with independent sources; (4) implement occupational disease surveillance, including collection of exposure data; (5) improve the collection of national occupational fatality data; (6) implement an administrative data system which would allow OSHA to be able to obtain individual establishment data to conduct an "effective program for the prevention of workplace injuries and illnesses * * *" (p.10); and (7) implement a thorough evaluation of recordkeeping practices in individual establishments, using additional resources requested from Congress for that purpose so as to avoid reducing the number of OSHA inspections of workplace hazards.

Keystone: In 1987, The Keystone Center, an independent non-profit organization that facilitates national policy consensus-building dialogues, convened 46 representatives from labor unions, corporations, health professions, government agencies, Congressional staff and academia for a year-long dialogue to discuss occupational injury and illness recordkeeping.

In 1989, Keystone issued its final report, *Keystone National Policy Dialogue on Work-related Illness and Injury Recordkeeping, 1989* (ex.5). The report focused on four major topics: (1) recordkeeping criteria; (2) OSHA enforcement procedures; (3) injury and illness data systems; and (4) occupational illnesses. The report detailed issues within each topic and made specific recommendations. By topic and in summary, the Keystone report recommended: (1) revision of various aspects of the recording criteria; (2) use of injury and illness data by OSHA for targeting enforcement and revision of the guidelines to make them easily and uniformly understood; (3) development of a national system for the collection and dissemination of occupational injury and illness information; and (4) broadening the type of information collected concerning occupational illness and making the information available to employees and government agencies for appropriate purposes such as research and study.

In 1995, Keystone reassembled a group of business, labor, and government representatives to discuss draft proposed changes to the recordkeeping system. OSHA shared its draft proposed revision with the participants. The draft was also reprinted in several national safety and health publications. OSHA received

feedback on the draft. This document reflects many of the issues and concerns raised. Written comments generated by the on-going dialogue have been entered in the docket (ex. 12).

GAO: An August 1990 report by the United States General Accounting Office, *Options for Improving Safety and Health in the Workplace* (ex. 3), discussed the importance of the employer injury and illness records, including: (1) for many entities, the general descriptive value to better understand the nature and extent of occupational safety and health problems; (2) identification by employers and employees of safety and health problems in the workplace which will enable them to correct the problems; (3) use by OSHA to conduct research, evaluate programs, allocate resources, and set and enforce standards. The report focused on the use of the records in OSHA enforcement, particularly in targeting industries and worksites for inspections and determining the scope of inspections.

The GAO report found "possibly significant injury and illness underreporting" (p.3). Reasons for inaccurate recordkeeping include: (1) intentional underreporting in response to OSHA inspection policies or employer safety competitions; (2) unintentional underreporting because of a lack of understanding of the recording and reporting system; and (3) inaccurate recordkeeping because of the lack of priority placed on recordkeeping by employers which results in lack of appropriate supervision of recordkeepers. The GAO noted that OSHA's revised enforcement procedures, which included increasing the size of the fines for recordkeeping violations and modifying its records-review procedures, should help improve the accuracy of recordkeeping. The GAO recommended that the Department of Labor conduct studies to assess the accuracy of the records using independent data sources, evaluate how well employers understand the revised guidelines [revisions could be tested pre-publication], and utilize a recordkeeping audit program in selected enforcement activities.

Advisory Committee on Construction Safety and Health (ACCSH): OSHA provided the Advisory Committee on Construction Safety and Health (ACCSH) with a written briefing on the draft proposal to revise 29 CFR Part 1904 and made an oral presentation to the Committee on October 13, 1994. During its meeting on December 9, 1994, the Committee presented its recommendations to Assistant Secretary

Joseph Dear. The Committee recommended that OSHA "immediately publish the NPRM on recordkeeping for public comment." The Committee reiterated its recommendation in its May, 1995 meeting. In addition, the ACCSH presented OSHA with specific recommendations on particular provisions of the revision which are of significance to the construction industry. OSHA has given the ACCSH recommendations careful consideration and modified the proposal in several areas.

The ACCSH recommendations, OSHA's written briefing, and the relevant portions of the transcripts of the October and December 1994 ACCSH meetings, are part of the public record (ex. 10).

OSHA would like to have the benefit of public comment on the ACCSH recommendations, as well as the specific issues for comment and the provisions of the proposed rule.

Outline

The following is an outline of the remainder of this preamble. The regulatory text and appendices follow the preamble.

II. Summary and Explanation

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 - b. employee
 - c. establishment
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 - e. health care provider
 - f. medical treatment
 - g. responsible company official
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3. Recording criteria—(Proposed § 1904.4)
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5. 7 days to complete—(Proposed § 1904.4)
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- III. Specific Issues for Comment
 - Issue 1—Exemptions—(Proposed § 1904.2)
 - Issue 2—Work relationship/severity—(Mandatory Appendix A)
 - Issue 3—First aid/medical treatment—(Proposed § 1904.3)
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- IV. Forms

- OSHA 300
- OSHA 301
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- XIII. List of Subjects
- XIV. Authority

II. Summary and Explanation of the Proposed Rule, Supplemental Instructions

The changes to the recordkeeping system are being proposed as regulatory

changes in Part 1904. This proposed rule would make 18 significant changes in the requirements of Part 1904:

1. Reorganize the sections within the rule to place the purpose, coverage and definitions for the rule at the beginning, in keeping with the commonly accepted regulatory format. The change would also improve the logical placement of the various sections, provide more meaningful titles for the sections, and combine sections where appropriate. The following table summarizes the proposed reorganization of the rule:

REDESIGNATION TABLE

| New section | Old section |
|---|--|
| 1904.1 Purpose | 1904.1 Purpose and scope. |
| 1904.2 Coverage and exemptions | 1904.15 Small employers and 1904.16 Establishments classified in Standard Industrial Classification codes (SIC) 52–89, (except 52–54, 70, 75, 76, 79, and 80). |
| 1904.3 Definitions | 1904.12 Definitions. |
| 1904.4 OSHA Injury and Illness Log and Summary (OSHA Form 300 or equivalent). | 1904.2 Log and summary of occupational injuries and illnesses. |
| 1904.5 OSHA Injury and Illness Incident Record (OSHA Form 301 or equivalent). | 1904.4 Supplementary record. |
| 1904.6 Preparation, certification and posting of the year-end summary | 1904.5 Annual summary. |
| 1904.7 Location of records | 1904.14 Employees not in fixed establishments. |
| 1904.8 Period covered | 1904.3 Period covered. |
| 1904.9 Retention and updating of occupational injury and illness records. | 1904.6 Retention of records. |
| 1904.10 Change of ownership | 1904.11 Change of ownership. |
| 1904.11 Access to records | 1904.7 Access to records. |
| 1904.12 Reporting of fatality or multiple hospitalization incidents | 1904.8 Reporting of fatality or multiple hospitalization incidents. |
| 1904.13 Reports by Employers | 1904.20 Description of statistical program, 1904.21 Duties of employers and 1904.22 Effect of State plans. |
| 1904.14 Recordkeeping under approved State plans | 1904.10 Recordkeeping under approved State plans. |
| 1904.15 Petitions for recordkeeping exceptions | 1904.13 Petitions for recordkeeping exceptions. |
| 1904.16 Falsification of, or failure to keep records or reports | 1904.9 Falsification, or failure to keep records or reports. |
| 1904.17 Subcontractor records for major construction projects. | New Section. |
| Mandatory Appendix A. Work-relatedness | New appendix. |
| Mandatory Appendix B. Recording of specific conditions | New appendix. |
| Appendix C. Decision tree for recording occupational injuries and illnesses. | New appendix. |

2. Changes in recordkeeping definitions. The recordkeeping system is very dependent on the definitions used to determine the recording of specific cases. Some specific modifications included in the proposed § 1904.3 are to redefine “restricted work activity”, “establishment”, and “medical treatment”; and provide new definitions for an “employee”, “subcontractor employees”, “health care provider”, and “work environment”. The following addresses each proposed change to the definitions:

a. Eliminate the term “lost workdays”, by replacing it with a definition of “days away from work”. The OSHA recordkeeping system has historically defined lost workdays as involving both days away from work and days of

restricted work activity. The proposal would change the system to eliminate the counting of days of restricted work activity altogether and only count the number of days away from work. OSHA has found no evidence that the current restricted work activity day counts are being used in safety and health program evaluation. It therefore sees no purpose in continuing the restricted work activity day count requirement.

Employers will not be required to count days away from work that extend beyond 180 days (six months). OSHA believes day counts greater than 180 days add negligible information for injury and illness case analysis while entailing significant burden when updating the OSHA records. OSHA solicits comment on the appropriateness

of the 180 day criteria. Should the days away from work count be capped? Is 180 days too short or long of a period? If so, should the count be capped at 60 days? 90 days? 365 days? or some other time period?

Although not in the proposed rule, OSHA is considering a modification to the concept of days away from work to include days the employee would normally not have worked (e.g. weekends, holidays, etc.). OSHA believes this change to calendar days would greatly simplify the method of counting days away by eliminating the need to keep track of, and subtract out, scheduled days off from the total time between the employee’s first day away and the time the employee was able to return to full duty. OSHA asks for

comment on whether the reduction of burden associated with this approach justifies the change in the type of information that will be collected.

Another potential benefit of changing to calendar days would be that the day count would more accurately reflect the severity of the injury or illness. The day count would capture all the days the employee would not have been able to work at full capacity regardless of work schedules. For example, if an employee, who normally does not work weekends, is injured on a Friday and is unable to work until the following Tuesday, the "days away from work" would be three (3), using calendar days, rather than one (1) day, using work days. If the same injury occurred on a Monday, the day count would be three (3) using either calendar or workdays. Changing the day count to calendar days would eliminate discrepancies based upon work schedules. Thus, the day counts would be easier to calculate and potentially more meaningful.

One of the potential problems with this change would be that economic information on lost work time as a measure of the impact of job related injuries and illnesses on work life would no longer be available. Employers could, however, estimate work time lost by applying a work day/calendar day factor to the recorded day counts. OSHA solicits comment on the idea of counting calendar days rather than work days, in particular, what potential do these methods have for overstating (i.e., counting calendar days) or understating (i.e., counting work days) the severity of injuries and illnesses?

b. Clarify "employee". "Employee" is defined in Section 3(6) of the Act. A regulatory note is included within the definition to clarify that for OSHA recordkeeping purposes "employees" include those workers whom the employer supervises on a day-to-day basis. These workers may include workers provided by a temporary help service, a contractor, or a personnel leasing service. This is consistent with case law and the interpretation currently used by OSHA.

c. Redefine "establishment". The definition of an establishment describes the location the records cover. To be most useful the records must be specific to a particular location. "Establishment" means a single physical location that is in operation for 60 calendar days or longer where business is conducted or where services or industrial operations are performed. This definition is a minor modification of the definition of establishment found in the Standard Industrial Classification Manual, 1987. The definition was modified by

introducing the 60 day provision. The current injury and illness recordkeeping system defines an establishment as a single physical location that is in operation for 1 year or longer. OSHA believes the proposed shorter time period (60 days) will facilitate the use of information at more transient workplaces, such as construction sites. OSHA requests comment on the costs and benefits of this change.

The proposed definition of establishment includes the primary work facility and other areas such as recreational and storage facilities, restrooms, hallways, etc. The current system excludes both parking lots and recreational facilities from the definition of establishment. OSHA is proposing that the current practice of excluding the company parking lot from the establishment be continued, but is including recreational facilities in the definition (see section below for discussion of exemptions to work-relatedness). OSHA believes that, by including related geographic areas, such as recreational facilities, the recordkeeping system will be simplified. OSHA requests comment on this change.

The concept of separate establishments for separate activities found in the current supplemental instructions will be incorporated into the regulations. When distinct and separate economic activities are performed at a single physical location, each activity may represent a separate establishment. For example, contract construction activities conducted at the same physical location as a lumber yard may be treated as separate establishments. Each distinct and separate activity should be considered an establishment when (1) no one industry description (Standard Industrial Classification, 1987) includes such combined activities, and (2) the employment in each such economic activity is significant, and (3) separate reports can be prepared on the number of employees, their wages and salaries, sales or receipts, or other types of establishment information. This approach is based on the definition of an establishment found in the Standard Industrial Classification Manual, 1987.

d. Redefine "first aid". The definition of first aid has been modified to consist of a comprehensive list of treatments considered first aid. OSHA has attempted to include those treatments that are, in and of themselves, associated with only minor cases. Any treatment or care other than those found on the first aid list would be considered medical treatment for recordkeeping purposes. OSHA believes injuries and

illnesses requiring only the treatments listed as first aid would be minor in nature and the recording of them would not be consistent with the intent of the Act. OSHA also believes a finite list will reduce confusion, lead to consistent recordkeeping decisions and greatly simplify the decision-making process.

A treatment may be considered preventive only when there is no work-related injury or illness prior to its use. A treatment may not be defined as preventive when given to stop an existing work-related condition from becoming worse. The only exception to this rule is tetanus/diphtheria shots/boosters. Tetanus/diphtheria shots/boosters will continue to be included as first aid treatment. OSHA seeks comment on whether this approach to recording tetanus/diphtheria shots is appropriate, or whether they should be considered medical treatment.

For further discussion of first aid and medical treatment, see Issue 3 in the Issues for Comment section of this preamble.

e. Define "health care provider". This is a person operating within the scope of his or her health care license, registration or certification. OSHA recognizes that this definition differs from definitions of health care provider found in other government regulations and requests comment on its appropriateness for OSHA injury and illness recordkeeping purposes. OSHA is considering qualifying this definition, for example by limiting it to personnel with specific training. OSHA requests comment on this limitation.

f. Redefine "medical treatment". Medical treatment is defined to include any treatment other than first aid treatment. The definition focuses on the nature of the treatment given and not on the person administering the treatment (e.g. physician, registered health professional, etc.). Any treatment not included in the definition of first aid is considered medical treatment, making the two groups mutually exclusive. This approach provides clear guidance for employers and thus eliminates any "grey areas" that must be interpreted by employers. For further discussion of first aid and medical treatment, see Issue 3 in the Issues for Comment section of this preamble.

g. Define "Responsible Company Official". The definition of responsible company official is central to directing the accountability for the accuracy and completeness of the OSHA records for an establishment to the upper management level of the firm. The proposed definition will place the responsibility to certify the accuracy and completeness of the Log and

Summary with an owner of the company, an officer of the corporation, the highest ranking company official at the establishment or his or her supervisor.

OSHA believes that by requiring a higher level employee of the firm to certify the Log, companies will have a greater incentive to take appropriate measures to assure the accuracy and completeness of the information.

h. Define "Restricted Work Activity". The definition of restricted work activity will be modified to include injuries and illnesses where the worker is not capable of performing at full capacity for a full shift (1) the task he or she was engaged in at the time of injury or onset of illness; (2) any activity that he or she performed or was expected to perform on the day of injury or onset of illness. OSHA believes this definition will focus on the hazardous tasks that lead to serious injuries and illnesses and lead to greater consistency in the recording of these more severe cases. For further discussion of restricted work activity, see Issue 4 in the Issues for Comment section of this preamble.

i. Define "site controlling employer". A site controlling employer is an employer in the construction industry (SIC codes 15, 16 and 17) with contractual, legal and/or practical control over the performance, timing, or coordination of other employers' work on the construction project. An employer (such as a general contractor) that retains another employer to work on the project is presumed to have sufficient control over the subcontractor's performance to be considered a site controlling employer. In addition, an employer (such as a construction manager) is a site controlling employer if it has managerial or supervisory authority with respect to employers engaged on the project, regardless of whether it has a contractual relationship with those employers. For further discussion of subcontractor records, see number 15 of this section.

j. Define "subcontractor employees". This proposal requires site controlling employers in the construction industry, for construction projects with an initial total contract value of \$1 million or more, to maintain separate injury and illness records for certain on-site employees other than their own, as described in number 15 of this section. Separate records must be kept for those "subcontractor employees" who are present at a construction project in connection with their construction job, and are not employees of the site

controlling employer at that construction project.

k. Define "work environment". The definition of work environment is central to determining work-relatedness. The proposed definition is compatible with the definition traditionally used in the supplemental instructions. The work environment is defined as the employer's establishment and other locations where employees are engaged in work-related activities or are present as a condition of their employment.

l. Define "work-related". Although employers are required to record occupational, or work-related injuries and illnesses, the current regulations do not provide a definition of work-related. This proposal includes "work-related" in the definition section of the regulatory text and further clarifies the concept in Mandatory Appendix A. The proposed definition is based on the definition in the current supplemental instructions, but is modified to create several new exceptions to the presumption of work-relatedness, which are explained below. Additionally, for injury and illness recordkeeping purposes, if an event in the work environment either caused or contributed to the case or aggravated a pre-existing condition, then it is considered work-related.

It has also been suggested that work-relationship should be limited to where it is demonstrated that the work environment contributed substantially (fifty percent or more) to the condition. OSHA requests input on the proper level of work-relationship that should be used. OSHA requests input on how work contribution can be objectively measured for such a purpose.

For OSHA injury and illness recordkeeping purposes, the concept of "work-related" has traditionally been based on a geographic concept of the work environment. The presumption has been made that if injuries or illnesses occur at the employer's establishment, then the case is work-related. This includes cases occurring while the employee is on break, in the rest room or in storage areas when located on the employer's premises. Many employers have criticized this policy, citing cases that occur at the establishment that they believe have a limited workplace relationship. As a result, the 1986 guidelines provided for several exceptions to this rule: removing employee parking lots and recreational facilities from the definition of the premises under certain conditions; excluding those cases where symptoms arise at work, but are caused by accidents or exposures away from work; excluding cases where the employee

was at the establishment as a member of the general public rather than as an employee; and excluding cases arising solely from pre-existing conditions.

As recommended in the Keystone report, the proposed revision continues to use the geography based presumption of work-relatedness. Parking lots will continue to be excluded from the proposed definition of establishment. Company access roads will be added to the exclusion. By excluding parking lots and access roads, some injuries and illnesses will be excluded while employees are arriving to or leaving from work. OSHA seeks input on whether the exception for parking lots should be continued, and/or whether OSHA should continue to exclude injuries and illnesses that occur while employees are commuting to and from work.

While recreational facilities are being included in the definition of establishment, injuries or illnesses occurring on company recreational facilities may still be excluded by the proposed "voluntary participation in wellness programs" exception explained below. The exception will be based on the activity the employee was engaged in rather than the physical location itself to preserve and simplify the geography based presumption of work-relatedness.

Several new and/or revised activity-based exceptions to the presumption of work-relatedness are being proposed. OSHA requests comment on any and all of the following proposed exceptions:

- Cases resulting solely from voluntary participation in wellness programs, fitness activities, recreational activities, and medical programs. This would include cases occurring during exercise activities, blood donations, physicals, flu vaccination programs, etc. unless the employee was participating as a condition of employment.

- Cases involving eating, drinking, or preparing one's own food when unrelated to occupational factors. This exception would eliminate the recording of cases such as an employee who cuts a finger opening a can of food for lunch or is burned while drinking coffee.

- Cases that are solely the result of employees doing personal tasks (totally unrelated to their job) at the establishment outside of normal working hours. This would exclude those cases where the employee is injured because the employer was allowing the worker to use employer equipment at the establishment for personal uses outside of normal working hours. OSHA requests comment on the appropriateness of this approach,

especially on the limitation that these events occur "outside of normal work hours".

- Cases resulting solely from acts of violence committed by family members, a former spouse, or self-inflicted when unrelated to the employee's work situation. This exemption is based on the Keystone's recommendation that injuries and illnesses involving an intentional act of violence in the work environment should be considered work-related unless it can be clearly established that the act was not related to the employee's work situation. The intent of the Keystone group was to exclude those cases that are clearly related to a domestic dispute that leads to subsequent violence in the workplace, such as a worker who is assaulted by a spouse or ex-spouse.

For situations involving violence committed by individuals other than family members or a former spouse, OSHA believes it would be difficult, if not impossible, to determine if the case was related to work or to a domestic situation. For this reason, the exemption to work-relatedness has been limited to violence committed by family members or former spouses. Personal acts of violence perpetrated by employees, co-workers, customers, or others would not be excluded. OSHA requests comment on whether this exemption should be expanded to other kinds of personal relationships. If so, how should it be defined? Also, should the definition of family be limited or defined? If so, how?

- Cases involving workers who were never engaged in any duty at work that could have placed stress on the affected body part. This would exclude those cases where symptoms arise at work, but are caused by accidents or exposures away from work.

- Cases involving workers who were never exposed to any chemical or physical agent at work that would be associated with the observed injury or illness. This would also exclude those cases where symptoms arise at work, but are caused by accidents or exposures away from work.

- Cases resulting solely from activity in voluntary community or civic projects away from the employer's establishment. This reflects and clarifies the work-relationship criteria of injuries and illnesses occurring away from the employer's establishment. Cases occurring away from the employer's establishment are considered work-related if the employee is engaged in a work activity or is there as a condition of employment.

- Cases that result solely from normal body movements, including walking unencumbered, talking, tying a shoe,

sneezing, or coughing, provided the activity does not involve a job-related motion and the work environment does not contribute to the injury or illness. The Keystone report recommended this exemption. The report suggested that injuries and illnesses related to a pre-existing condition should not be recorded if they are not related to an identifiable work activity. The exclusion would not apply if it involved repetitive motion or if the work environment either caused or contributed to the injury/illness.

- A mental illness will not be considered work related, except mental illnesses associated with post-traumatic stress. OSHA seeks input on the following questions:

(A) How should OSHA define mental health conditions for recordkeeping purposes, and when and how should the conditions be entered into the injury and illness records?

(B) How should employers determine the work-relatedness of mental health conditions?

(C) How would employers gain knowledge of mental health conditions, given the issue of patient/doctor confidentiality?

For injury and illness recordkeeping purposes, OSHA has historically evaluated injuries and illnesses experienced by employees working in their homes as cases occurring off the employer's premises. Because alternative work place policies (allowing employees to work out of their homes) are becoming more commonplace, OSHA is incorporating a section within Mandatory Appendix A to address the issue of "work-relatedness" for employees who work at home. An injury or illness will be considered work-related if it occurs while the employee is performing work for pay or compensation in the home, if the injury or illness is directly related to the performance of work rather than the general home environment or setting. OSHA is considering whether this policy should be maintained, or whether work-relatedness should be presumed for injuries and illnesses of these employees. OSHA solicits comment on this issue.

For further discussion of work relatedness, see Issue 2 in the Issues for Comment section of this preamble.

3. Modify the meaning of "recordable occupational injury or illness" (see proposed section 1904.4 in the regulatory text). At the present time certain injuries are to be recorded, namely those which result in death, and injuries other than minor injuries requiring only first aid and which do not involve loss of consciousness,

restriction of work or motion, medical treatment, or transfer to another job. Currently, all diagnosed (recognized) occupational illnesses are to be recorded, regardless of severity. The distinction between illnesses and injuries is currently based on the nature of the precipitating event or exposure. Cases which result from instantaneous events are considered injuries, and cases which result from non-instantaneous events are considered illnesses. This current distinction between injuries and illnesses often results in confusion and arbitrary and counter-intuitive decisions on how to record a case. For example, a small cut resulting in an infection would be recorded as an injury, even though infection is commonly considered an illness.

The proposed change would eliminate the need for employers to make a distinction between injuries and illnesses. One set of criteria would be used to evaluate all cases thereby minimizing confusion and inconsistent recording. This proposal represents a major simplification of the recordkeeping system, which would result in more accurate injury and illness data, and reduce the recordkeeping burden for employers who are required to maintain records.

Currently, detailed data for coding cases is collected by BLS only for injuries and illnesses that involve days away from work. If recordkeeping changes are made and no changes are made to the current BLS survey methodology, separate information for injuries and illnesses will no longer be published by BLS for cases that do not result in days away from work. Published information would continue to be available for combined injuries and illnesses, combined injuries and illnesses resulting in days away from work and combined injuries and illnesses without days away from work. In addition, if the survey methodology were modified to collect and code a sample of case characteristics for cases which do not involve days away from work, separate injury and illness information could be published for all cases.

The proposed criteria for recordable occupational injuries and illnesses would require employers to record any case where (1) an injury or illness exists; and (2) is work-related; and (3) meets one or more of the following criteria: (a) involves medical treatment; OR (b) involves death, loss of consciousness, or in-patient hospitalization for treatment; OR (c) involves a day(s) away from work, restricted work activity, or job transfer; OR (d) includes any condition as listed in Mandatory Appendix B.

4. Provide clear guidance for determining when an injury or illness case is resolved. Determination of case resolution is particularly important because employers may be dealing with a reinjury or recurrence of a previous case and must decide whether the recurrence is a "new case" or a continuation of the original case. Historically, the supplemental instructions to the recordkeeping regulations required employers to evaluate previously recorded injuries and illnesses as new cases if they were aggravated by additional work-related events or exposures. OSHA developed and included new guidance for evaluating cumulative trauma disorders as new cases in the *Ergonomics Program Management Guidelines For Meatpacking Plants* (ex. 11) which were published in 1990. The "Meatpacking Guidelines" provide: If and when an employee who has experienced a recordable CTD becomes symptom free (including both subjective symptoms and physical findings), any recurrence of symptoms establishes a new case. Furthermore, if the worker fails to return for medical care within 30 days, the case is presumed to be resolved. Any visit to a health care provider for similar complaints after the 30-day interval "implies reinjury or reexposure to a workplace hazard and would represent a new case."

OSHA is now proposing to expand the use of the criteria found in the "Meatpacking Guidelines" to all cases (including injuries and illnesses of the back and lower extremities), while increasing the number of days to 45. A recurrence of a previous work-related injury or illness will be presumed to be a new case when it either (1) results from a new work accident, or (2) 45 days have elapsed since medical treatment, restricted work activity and days away were discontinued and the last signs or symptoms were experienced. This presumption is rebuttable by medical evidence indicating that the prior case had not been resolved. In doing so, OSHA believes it will simplify the decision-making process for determination of a "new case" and result in more complete and consistent data. This method of defining case resolution/duration should provide better data on the incidence of illness cases that frequently last only 2-3 weeks (e.g. dermatitis, some CTDs, etc.) and recur on a regular basis.

OSHA solicits comment on the appropriateness of the 45-day interval. Is 45 days too short or long of a period? If so, should the period be 30 days? 60 days? 90 days? or some other time

period? Should different conditions (e.g., back cases, asthma cases, etc.) have different time intervals for evaluating new cases?

OSHA is also seeking input for an improved way to evaluate new cases. Should a new category of cases be created to capture information on recurring injuries and illnesses? One option is to add an additional "check box" column to the proposed OSHA Form 300 for identifying those cases that are recurrences of previously recorded injuries and illnesses. This would allow employers, employees and OSHA inspectors to differentiate between one time cases and those that are recurrent, chronic conditions. This approach may help to remove some of the stigma of recording these types of disorders and lead to more complete records. OSHA solicits input on this approach. Will a recurrence column reduce the stigma of recording these types of cases? Should recurrences be included in the annual summaries? Should a time limit be used to limit the use of a recurrence column?

5. The proposal will also require that the proposed forms (OSHA 300 and 301) be completed within 7 calendar days, rather than the currently required 6 workdays. OSHA believes this will simplify the requirements by replacing a varying amount of time (depending on the establishment's work schedule) with a standard week.

6. Enhance the ability to computerize/centralize the OSHA 300 Log in proposed § 1904.4. The current regulations and instructions provide for computerization of the OSHA 200 Log, providing that the employer has available at the establishment a paper copy of the Log current within 45 calendar days. This proposal would allow employers to keep their OSHA Log on computer, provided that the employer is able to produce a copy of the Log within 4 hours of a request by an authorized government representative who is permitted access to the Log under proposed § 1904.11. This proposal will reduce the employer's cost of recordkeeping and allows for maximum flexibility when employers choose to computerize their records, without decreasing the access to those records by authorized personnel.

7. Allow for the computerization of Incident Records in proposed § 1904.5. At the present time, the regulations provide for the computerization of the OSHA 200 Log, but not for the computerization of the supplementary record, the OSHA 101. This proposal would allow employers to computerize both of the forms, which may result in

less paperwork burden for employers without compromising the quality of those records. The provisions for computerization parallel the proposed changes for computerization of the OSHA 300 Log found in proposed § 1904.4.

8. Modify the proposed § 1904.6 (formerly 1904.5) to provide a new title, require annual average number of employees and total hours worked by all employees to be included in the year-end summary, and require a responsible company official to certify the accuracy and completeness of the records. The section would be titled "Preparation, Certification and Posting of the Year-End Summary". The proposal to require an estimate of the employees' total hours worked to be listed on the year-end summary would facilitate hazard analysis and incidence rate calculation. An injury and illness incidence rate is the number of injuries and/or illnesses related to a common exposure base of 100 full-time workers. The common exposure base enables meaningful comparisons of the data regardless of industry, firm size and time period. Information on annual average employment and total hours worked can be obtained from payroll or other company records, and is often available from other reports required by the government, such as unemployment insurance or workers' compensation reports. For some employers, the added burden will be negligible because of their participation in the BLS Annual Survey of Occupational Injuries and Illnesses which already requires a compilation of this information. Approximately 10 percent of employers who regularly are required to keep records are selected each year to participate in the BLS survey. OSHA requests comment on the costs and benefits associated with this requirement and suggestions for alternative methods for collecting the information necessary to calculate these incidence rates.

The proposal will require the employer to post the year-end summary for the entire year, from February 1 to January 31 of the following year. Because the records are kept on a calendar year basis, OSHA believes one month (January) is a reasonable time period for completing the summary section of the form. The year long posting requirement will impose no additional burden on the employer while presenting employees with the opportunity to examine the totals throughout the year. This requirement will also allow employees hired during any time of the year to gain knowledge

about the safety and health environment of the workplace.

9. Modify the location requirements to provide for enhanced centralization of records. This proposal would combine the current § 1904.14, Employees not in fixed establishments, and some of the provisions for centralization of records found in the current § 1904.2, Log and summary of occupational injury and illness, into the proposed § 1904.7, Location of records. The new section contains criteria for records pertaining to employees who either work at an establishment, or who report to an establishment but work elsewhere, or who are engaged in physically dispersed work activities. Under the current system; (1) records pertaining to employees that report to an establishment must be kept at the establishment, (2) for employees that report to an establishment but work elsewhere, the records must be kept at the establishment where they report, and (3) when employees do not report to a fixed establishment on a regular basis, the records must be kept in a central location with telephone access.

The location requirements will be modified to allow for the maintenance of records at an alternate, centralized location. The current regulations do not provide for centralization of the supplementary records, but do allow centralization of the OSHA 200 Log, providing that the employer has available at the establishment a paper copy of the Log current within 45 calendar days. This proposal would eliminate the need for a current copy of the required records at the establishment, provided the employer is able to produce copies of the records within 4 hours of a request by an authorized government representative who is permitted access to the records under the proposed § 1904.11. The employer can either transmit a copy of the records to the worksite or to the government representative's office. This proposal allows for greater flexibility when employers choose to centralize and/or computerize their records without decreasing the access to those records by authorized individuals and provides for recent and future technological developments. OSHA requests comment on situations where the 4 hour requirement may be infeasible. Should the requirement be restricted to business hours, and if so, to the business hours of the establishment to which the records pertain or the establishment where the records are maintained?

The current system requires a separate set of records for each single physical location of a multi-establishment firm,

regardless of employment size of the location. The proposal modifies this requirement by allowing an employer to consolidate its records for all establishments with less than 20 employees as long as the establishment location is specified in the Department column on the proposed OSHA Form 300.

10. Modify the retention of records section (§ 1904.6) by renumbering and retitling it to § 1904.9 Retention and updating of work-related injury and illness records, reducing the retention period from five to three years, and requiring employers to update the injury and illness records during the three year retention period to include newly discovered injuries and illnesses. The employer will be required to revise the Log to reflect changes which occur in previously recorded injuries and illnesses, including changes in the count of days away from work. Employers must also update totals or summaries at least quarterly. OSHA asks whether the summary update should be more or less frequent? Employers will not be required to update the OSHA Form 301 to reflect changes in previously recorded cases.

The current § 1904.2 states that employers shall maintain a Log and summary of injuries and illnesses, which has been interpreted to require the updating of the Log, but not the updating of supplementary records or annual summary, to reflect newly discovered cases or to reflect newly discovered information concerning a case.

The proposed change would clarify the employers' obligations to update these records during the three year retention period, if and when they receive additional or updated information concerning a case.

11. Modify the access to records section, currently § 1904.7 and proposed § 1904.11, to require employers to provide copies of records to government representatives. The current section states that "Each employer shall provide, upon request, records provided for in §§ 1904.2, 1904.4 and 1904.5 for inspection and copying * * *". In some instances, instead of providing copies of the records, some employers have attempted to provide OSHA compliance personnel only with access to the records, with the copying to be done by hand. The proposed change would clearly require employers to provide copies of the records to government personnel authorized to access injury and illness records.

The section, compatible with section 1910.20 Access to Employee Exposure and Medical Records, will also be

modified to clarify that the request for access by authorized government representatives can be made in person or in writing. This, in conjunction with proposed § 1904.13, will allow for collection of the records through the mail.

Currently, only government representatives are authorized access to the injury and illness supplementary forms (OSHA No. 101). This proposal will expand the access authorization to employees, former employees, and their designated representatives. OSHA believes this will increase employee and/or labor groups' ability to perform meaningful safety and health program analysis.

The section will also be modified to require employers to provide copies of the OSHA Log to authorized individuals at no cost. This will remove existing barriers to easy access to the forms by employees, former employees and their designated representatives.

The proposal will specify time limits the employer must meet in providing the injury and illness records once a request of access is made. Employers must provide: 1) copies of the OSHA Forms 300 and 301 within 4 hours of a request made in person by an authorized government representative; 2) access to the OSHA Forms 300 and 301 for review by the close of business on the next scheduled workday when a request is made by an employee, former employee or their designated representative(s); 3) copies of the OSHA Forms 300 and 301 within seven calendar days when a request is made by an employee, former employee or their designated representative(s); or 4) within 21 calendar days of a written request received from an authorized government agency. OSHA solicits input on these time limitations. Are they reasonable? Should they be shortened or extended?

12. Clarify the requirements of reporting fatalities and multiple hospitalization incidents, currently § 1904.8 and proposed § 1904.12. As can be seen in Section III. of the preamble to the April 1, 1994 final rule of the reporting requirements (FR Vol. 59, No. 63, 15599), it was OSHA's intent to require employers to make their reports in a manner which allows OSHA immediate access to the information. However, because the regulatory text reads, "shall orally report", there is the possibility that some employers may leave a message on an answering machine during non business hours to satisfy the requirement. Therefore, for clarification purposes, the regulatory text will be changed to read "* * * shall, report the fatality/multiple

hospitalization by telephone or in person to the Area Office of the Occupational Safety and Health Administration (OSHA), U. S. Department of Labor, that is nearest to the site of the incident during regular business hours, or by using the OSHA emergency toll-free central telephone number (1-800-321-OSHA [6742]) during non business hours.”

OSHA will also clarify the requirement to report three or more in-patient hospitalizations which occur at a single site. The site controlling employer or designee will be responsible for making the report if no more than two employees of a single employer were hospitalized but, collectively, three or more workers were hospitalized as in-patients.

The OSHA toll-free telephone number will also be added to the regulatory text for clarification purposes.

13. Clarify an employer's responsibility to report injury and illness information to the Secretary of Labor and the Secretary of Health and Human Services. The proposed § 1904.13 consolidates current §§ 1904.20, 1904.21, and 1904.22 and reflects the transfer of some responsibilities from the BLS to OSHA. Injury and illness data required to be maintained by employers may be collected periodically by mail or other means. Data could be collected for a variety of purposes, including but not limited to, injury/illness surveillance; development of information for promulgating or revising safety and health standards; evaluating the effectiveness of OSHA's enforcement, training and voluntary programs; public information; and for directing OSHA's program activities, including workplace inspections.

14. Change the procedure for petitioning recordkeeping exceptions. The current variance section will be deleted. Instead, all requests for recording exceptions or variances will be made pursuant to the procedures in 29 CFR 1905. This change eliminates duplicate sets of rules/procedures found in Title 29 of the Code of Federal Regulations. The ability to request an exception or variance to the requirements under Part 1904 will continue using the procedures outlined under Part 1905.

Under the current recordkeeping requirements, one variance has been granted to AT&T, and subsequently expanded to the Bell companies. The variance allows AT&T to keep records of its "field force" by division, rather than by establishment. The centralization of records provision contained in this proposal will eliminate the continued

need for this variance. All exemptions granted prior to the publication date of the final rule of revised Part 1904 will be null and void.

15. Require comprehensive records for "subcontractor employees" in the construction industry in proposed § 1904.17. The Keystone report originally proposed the use of "site logs" or comprehensive injury and illness records for major construction activities. The report noted that construction sites are normally composed of multiple contractors and subcontractors, each of which may be present at the site for a relatively short period of time. Under the current regulations there are no records readily available to represent the injury and illness experience for the entire site.

Accordingly, the proposal would require site-controlling employers (or their designees) in the construction industry to maintain a separate record reflecting the injury and illness experience of employees working for construction firms other than their own, working at the construction site when the initial construction contract value exceeds \$1,000,000. In addition to the normal OSHA Log entry and Incident Record (OSHA Forms 300 and 301) which must be completed for all injuries and illnesses involving the site controlling employer's own "employees", a separate, additional record requiring an abbreviated entry shall be completed for injuries and illnesses of "Subcontractor employees". ("Subcontractor employees" are defined as employees of construction firms (in SICs 15, 16, and 17) who are present at a construction project in connection with their job(s) who are not employees of the site controlling employer at that construction project.) The site controlling employer would only have to record injuries and illnesses of "subcontractor employees" who are employed by construction employers with 11 or more employees at any time during the previous calendar year. The site-controlling employer would only be required to enter the name of the injured "subcontractor employee", his or her company, date, and a brief description of the injury or illness. The site controlling employer has the option of using a separate OSHA Form 300, an equivalent form, or a collection of records obtained from the subcontractor employers (e.g. photocopies of subcontractors' Logs) to satisfy this requirement. The increase in burden for employers is offset for those employers who already maintain information on these cases for liability and other purposes. OSHA invites comment on limiting the requirement to injuries and

illnesses experienced by "subcontractor employees" whose employers, because of their size, are covered by the OSHA injury and illness recordkeeping requirements. Should this requirement be expanded to record the injuries and illnesses experienced by all "subcontractor employees" on site, regardless of the employer's status under the recordkeeping requirements coverage?

The site-controlling employer would not be responsible for updating the records or entering counts of days away from work or restricted workdays for these "subcontractor employees". The "actual" employer of the worker (if not otherwise exempt from OSHA recordkeeping requirements) would be responsible for completing in detail any entries on their own OSHA records. Employers covered by the standard for the Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents, 29 CFR 1910.119, are currently required to keep similar records.

The injuries and illnesses recorded for "subcontractor employees" under this requirement would not be included in the national statistics generated by the BLS Annual Survey. Records for "subcontractor employees" will be kept separately from the OSHA 300 Log; therefore, while site controlling employers and subcontractors with 11 or more employees will both maintain the injury and illness records, there will be no double counting of injuries and illness in the statistical system.

An alternative to this section has been suggested: Each contractor with 11 or more employees in an individual project, shall yearly or upon completion of their work on the project, provide the project owner, or agent for the owner, with a copy of their project specific OSHA 300 Log. The project owner would have the responsibility to collect the data and send it to OSHA, as required. OSHA invites public comment on this alternative.

16. Provide special guidance in a mandatory appendix for the recording of specific types of injuries and illnesses (see proposed Mandatory Appendix B). OSHA believes all of these conditions are recordable under the current recordkeeping requirements. However, in order to capture significant non-fatal cases that may not meet the other general criteria contained in this proposal, OSHA has developed a listing of specific conditions and corresponding recording criteria for each condition, and has incorporated the listing into the proposed regulations as a mandatory appendix. The application of this list will assist in

collecting more timely and complete data on non-minor occupational illnesses and injuries which are serious, significant or disabling but otherwise would not be captured consistently by the other recording criteria discussed in change number 3 above. The application of the list will also provide clear direction that is needed by employers to determine the proper recording of these conditions, and will incorporate the recordkeeping guidance that OSHA has developed in various guidelines, directives and letters of interpretation.

The current recordkeeping system requires "all" occupational illnesses to be recorded. An occupational illness is currently defined as "any abnormal condition or disorder" arising from a non-instantaneous work-related event or exposure. This definition is intended to collect comprehensive information on occupational illnesses as soon as they are detected or recognized. Detection or recognition can result from a clinical diagnosis, or through lab tests, x-rays, or other diagnostic techniques. The language of the current general illness recording criteria is so broad and inclusive that, in theory, it should encompass all illnesses, regardless of severity or duration. However, because there is no specific guidance for individual conditions, employers are often unsure of which diagnostic results constitute detection or recognition of an illness that should be entered into the records.

OSHA believes that by providing specific guidance for specific conditions, even though that guidance may be less inclusive than the general definitions currently in use, employers will be more likely to understand and comply with the recordkeeping requirements and the data will be improved.

In many instances, OSHA standards require employers to conduct certain tests or medical evaluations. In most cases, the lowest test results or medical criteria used as action thresholds within the standards are being proposed as the recording criteria for injury and illness recordkeeping purposes. OSHA does not believe that the recordkeeping criteria are restricted by these action thresholds prescribed in specific standards, but believes that using the same criteria for different standards and regulations improves the simplicity of the overall regulatory system. For example, the lowest biological and other monitoring test results used as threshold levels in the lead and cadmium standards will be used as the recording criteria. Under such circumstances, employers are required to use a single set of criteria to meet the obligations of both rules. The

burden on employers may be reduced when parallel requirements exist.

OSHA believes that early recognition and recording of injuries and illnesses promote more timely resolution of the hazardous conditions causing them. The recording of injuries and illnesses in their early stages provides information that would allow the employer to correct hazardous conditions before they result in material impairment or do more serious damage to the employee. For this reason, the proposed criteria for recordable conditions are not limited to clinical diagnosis of an illness or injury by a physician. Recording of conditions listed in the Mandatory Appendix B when the applicable criteria are met will enhance the utility of the log as an information source and management tool.

OSHA selected the conditions listed in Appendix B using multiple criteria, as follows: 1) The condition would not be recorded, or would not be recorded accurately or consistently, using the general criteria, 2) The condition occurs commonly and large numbers of employers need specific guidance, and/or 3) The condition has a history of controversy that warrants specific guidance. If any of these conditions were met, OSHA also considered 1) existing standards covering the condition or hazard, 2) existing interpretations covering the proper recording of the condition, and/or 3) threshold recording criteria that could be developed using objective methods for determining the proper recording of an injury or illness. OSHA asks for input on whether these criteria are appropriate, or whether other criteria should be used for determining which conditions are listed in Appendix B. OSHA also asks for input on the specific criteria that have been chosen for each condition, including the effects of adopting these criteria, possible alternatives, and the potential benefits and costs associated with various alternatives.

The listed conditions must be recorded and entered into the injury and illness records when the proposed criteria are met. Some of these conditions are:

(a.) Elevated blood lead levels. The current recordkeeping system requires employers to record cases where an employee's blood lead level is in excess of 50 micrograms (μg) per 100 grams of whole blood. This has been the criteria in the recordkeeping guidelines since 1986. OSHA is proposing to revise this criteria to 40 micrograms (μg) per 100 grams of whole blood to match the lowest biological monitoring test result used as an action threshold within the

lead standard (29 CFR 1910.1025(j)(2)(B)). Employers would record cases where an employee's blood lead level is in excess of 40 micrograms (μg) per 100 grams of whole blood.

OSHA asks for input on what level should be used and any other criteria which could be used to record lead related illnesses.

(b.) Cadmium. Employers would record cases where an employee's cadmium levels are as follows: level of cadmium in urine (CdU) exceeding 3 micrograms per gram of creatinine ($\mu\text{g/g Cr}$); level beta-2 microglobulin in urine ($\beta_2\text{-M}$) exceeding 300 micrograms per gram of creatinine ($\mu\text{g/g Cr}$); or level of cadmium in blood (CdB) exceeding 5 micrograms per liter of whole blood ($\mu\text{g/lwb}$). These criteria are based upon the surveillance levels found in the Cadmium Standard, 1910.1027.

(c.) Hearing loss. Employers would record any work-related case resulting in an average shift of 15 decibels or more at 2000, 3000 and 4000 hertz in one or both ears as measured from the employee's original baseline established under 29 CFR Part 1910.95 Occupational Noise Exposure. The hearing test may be adjusted for aging and the recorded case may be removed if a retest performed within 30 days does not confirm the original shift. A presumption of work-relatedness is used for hearing loss occurring to employees covered by the Occupational Noise Exposure standard, i.e. those who are exposed to noise levels in excess of an 85 dB 8 hour time weighted average.

The lowest action level in the noise standard is an average shift of 10 decibels or more at 2000, 3000 and 4000 hertz. OSHA is proposing the 15 decibel criteria for recordkeeping purposes to account for variations in the reliability of individual audiometric testing results.

OSHA asks for input on which level of a shift in hearing should be used as a recording criteria; 10 decibels? 20 decibels? 25 decibels? For each level, what baseline should be used? Preemployment (original) baseline? Audiometric zero? Is adjusting for presbycusis appropriate?

(d.) Skin disorders. Employers would record skin disorders lasting beyond 48 hours, including, but not limited to, allergic or irritant dermatitis. OSHA asks if there are significant skin disorders, such as urticaria, which may not be captured by this criterion coupled with the general recording criteria (i.e. medical treatment, restricted work activity, days away from work, etc.)?

(e.) Asthma and other obstructive airway disease. Employers would record

an initial episode of work-related asthma diagnosed by a health care professional. Employers would also record subsequent work-related episodes that result in the administration of prescription drugs and/or diagnosis by a health care provider. There are an estimated 200,000 cases of occupational asthma every year according to the National Institutes of Health. There are over 250 identified agents found in a diverse range of materials and industrial processes that can cause occupational asthma. OSHA believes it is essential to collect information on episodes of work-related asthma in order to identify and abate workplace conditions which lead to this illness. OSHA is, however, concerned that its proposed policy may result in the over-recording of occupational asthma when employees have chronic, recurrent cases of the disease. OSHA asks for input on possible ways to reduce or eliminate over-recording that will not result in the loss of significant asthma cases. OSHA also requests information on how to differentiate between episodes of asthma that are induced by the work environment and those which are not.

(f.) Asbestos-related disorders. Employers would record any case resulting in a diagnosis by a health care provider of asbestosis or mesothelioma, or the recognition of any other parenchymal or pleural abnormality (e.g. radiograph profusion category of 1/1 or greater by the ILO classification system, pleural plaques and/or pleural thickening). These criteria are based on information found in Appendix D of the asbestos standard (29 CFR Part 1010.1001) which discusses the signs and symptoms of exposure-related disease.

(g.) Bloodborne pathogens diseases (AIDS, HIV infection, Hepatitis B., etc.). OSHA is proposing to require employers to record exposure incidents which result in disease (e.g., HIV, hepatitis B, hepatitis C). Furthermore, OSHA is proposing that employers be required to record lacerations or puncture wounds involving contact with another person's blood or other potentially infectious materials since these are clearly non-minor "injuries". OSHA believes that these criteria meet the Agency's mandate to collect information related to the death, illness, and injury of workers. OSHA requests comment on whether it is appropriate to record these small puncture wounds and lacerations if they do not lead to disease.

The above criteria limit the number of "exposure incidents", as defined in the Bloodborne Pathogens standard, which are to be recorded. Incidents which

result in exposures to blood or other potentially infectious materials to the eyes, mouth, other mucous membrane, or non-intact skin would not be OSHA recordable.

OSHA is aware that some health care facilities already collect data on all bloodborne pathogens exposure incidents because these events are believed to be of serious magnitude. For example, many employers collect information about needle punctures, blood splashes to the eyes, and exposures on non-intact skin. In light of this, OSHA is considering other options for the recordability criteria of bloodborne pathogens diseases. One option would require employers to record all "exposure incidents". An "exposure incident", as defined in the Bloodborne Pathogens standard, paragraph (b) of 29 CFR 1910.1030, means "a specific eye, mouth, other mucous membrane, non-intact skin, or parenteral contact with blood or other potentially infectious materials that results from the performance of an employee's duties". Using this same definition for the recordability criteria may simplify the task of identifying what events need to be recorded for OSHA recordkeeping.

OSHA believes that the collection of information about "exposure incidents" is useful to employers in the control of bloodborne pathogens hazards. OSHA recognizes, however, that this second option requires the recording of "exposures" rather than strictly illnesses or injuries.

OSHA is seeking comments on this issue. What data is useful to collect? Are there other criteria for the recording of bloodborne infectious diseases which should be considered? What experience do employers have in data collection systems for this hazard?

In an attempt to address the concerns of personal privacy OSHA is additionally proposing that the exposure incidents described above be recorded simply as the type of bloodborne pathogen exposure incident, regardless of the outcome of the incident. In other words, employers shall record occupationally acquired bloodborne pathogen disease, such as Hepatitis B or C, simply as the initial bloodborne exposure incident and note the type of exposure (e.g. needlestick). The seroconversion status and specific type of bloodborne disease need not be entered. This strategy would enable employers to consider data about needle punctures or lacerations (or other bloodborne pathogens exposure incidents) while protecting the privacy of individual employee's medical information. (Please refer to the Issues

for Comment section regarding confidentiality for further discussion of the employee privacy concerns.) These recording criteria apply to all employees covered by the Act and are not limited to those covered by the Bloodborne Pathogens Standard.

(h.) Tuberculosis infection or disease. OSHA is proposing that newly detected tuberculosis infections and cases of active tuberculosis in workers with occupational exposure be recorded. The criteria proposed is consistent with that published by previous OSHA directives to the field (Memorandum from Leo Carey to Regional Administrators, February 26, 1993).

Work-relatedness is presumed in work sites where the Centers for Disease Control and Prevention (CDC) has published reports of epidemics among workers resulting from workplace exposures, i.e., correctional facilities; health care facilities; homeless shelters; long-term care facilities for the elderly; and drug treatment centers. The employer can rebut this presumption of work relationship by providing evidence that the employee is known to have had a non-work exposure to active TB. Examples include situations in which (1) an employee is living in a household with a person diagnosed with active TB or (2) the Public Health Department lists the employee as a contact to a case of active TB.

All other industries would record tuberculosis infections or disease only if the employee was exposed to tuberculosis in the worksite. For example, in industries where tuberculosis is not a recognized hazard resulting from work duties, tuberculosis infections or disease would not routinely be recorded. However, if a worker with infectious tuberculosis disease infected their co-workers, the co-workers' infection/disease would be recordable.

OSHA is seeking to learn if there are other industries, aside from those listed in the proposal, where reasonably anticipated occupational exposure to tuberculosis is occurring. Are there other types of worksites where the presumption of work-relatedness should be applied?

(i.) In addition to these conditions, Mandatory Appendix B provides guidance for cases resulting in carbon monoxide poisoning, mercury poisoning, benzene poisoning, UV burning of the eye, lacerations, hepatitis A, mesothelioma, byssinosis, hypersensitivity pneumonitis, toxic inhalation injuries, pneumoconiosis, eye injuries, musculoskeletal disorders, fractures of bones or teeth, and burns.

OSHA asks for input on possible additions, deletions, and revisions to the list, different or additional criteria (e.g. diagnostic test results) or any other information that might be used for establishing the existence of, and lead to the accurate, consistent recording of injuries and illnesses.

III. Specific Issues for Comment

OSHA invites comment on the proposed changes in the regulations, forms and supplemental instructions. OSHA has identified the following nine issues. For some issues, the agency is considering using alternative regulatory text which is included in this "Specific Issues for Comment" section. OSHA would like to receive specific comment on these issues, including any cost and benefit estimates on the various options discussed below:

Issue 1. Exemptions from OSHA injury and illness recordkeeping requirements. The current regulations include exemptions from most of the recordkeeping requirements for small employers (no more than 10 employees) and establishments in specific services and retail standard industrial classifications (SICs 52-89). Industries traditionally targeted for OSHA enforcement, which are those in SICs 01 through 51, are not exempted. (Note the "exemption" is really a partial one because "exempt" employers must still comply with the provisions of the current § 1904.8, Reporting of fatality and multiple hospitalization accidents (proposed § 1904.12) and § 1904.21, Duties of employers (proposed § 1904.13). Because the exemption is a partial one, affected employers are referred to as "partially exempt").

SIC Exemption. In 1983, the industries selected for the partial exemption were chosen from major industry groups within SICs 52-89, at the two 2-digit level, whose average lost workday case injury rate for 1978-80 was at or below 75% of the private sector average. Industries traditionally targeted for OSHA enforcement, which are those in SICs 01 through 51, are not exempted. Application of this formula resulted in the current list of partially exempted industries:

| SIC | Industry |
|-----|--|
| 55 | Automotive dealers and gasoline service stations. |
| 56 | Apparel and accessory stores. |
| 57 | Furniture, home furnishings, and equipment stores. |
| 58 | Eating and drinking places. |
| 59 | Miscellaneous retail. |
| 60 | Depository institutions. |
| 61 | Nondepository institutions. |
| 62 | Security and commodity brokers. |

| SIC | Industry |
|-----|---|
| 63 | Insurance carriers. |
| 64 | Insurance agents, brokers and service. |
| 65 | Real estate. |
| 67 | Holdings and other investment offices. |
| 72 | Personal services. |
| 73 | Business services. |
| 78 | Motion pictures. |
| 81 | Legal services. |
| 82 | Educational services. |
| 83 | Social services. |
| 84 | Museums, art galleries and botanical & zoological gardens. |
| 86 | Membership organizations. |
| 87 | Engineering, accounting, research, management and related services. |
| 88 | Private Households. |
| 89 | Miscellaneous services not elsewhere classified. |

Since the partial recordkeeping exemption based on SIC codes was implemented, the injury and illness rates of the major industry groups have changed. If the same formula were applied to the 1990-92 lost workday injury rate statistics for SICs 52-89, at the 2-digit level, no additional industries would be added to the partial exemption. Two industries would lose their partial exemption and be required to keep records: eating and drinking places (SIC 58), and museums, art galleries and botanical & zoological gardens (SIC 84).

Within certain major industry groups (2-digit SICs), there exist high hazard industries and industry groups (4 and 3-digit SICs) (ex.8). To address this "nesting" problem, OSHA applied the 1983 evaluation criteria to the 1990 through 1992 BLS lost workday injury data at the 3-digit SIC level. Where no information was available at the 3-digit level, OSHA used information at the 2-digit level.

The proposed text in this NPRM modifies the partial exemption for industries in Standard Industrial Classifications (SICs) 52 through 89 to reflect this refinement to address the "nesting" problem. Current partially exempt industries which would have to comply are:

| | |
|---------|--|
| SIC 553 | Auto and Home Supply Stores, |
| SIC 555 | Boat Dealers, |
| SIC 571 | Home Furniture and Furnishings Stores, |
| SIC 581 | Eating Places, |
| SIC 582 | Drinking Places, |
| SIC 596 | Nonstore Retailers, |
| SIC 598 | Fuel Dealers, |
| SIC 651 | Real Estate Operators and Lessors, |
| SIC 655 | Land Subdividers and Developers, |

| | |
|---------|--|
| SIC 721 | Laundry, Cleaning, and Garment Services, |
| SIC 734 | Services to Dwellings and Other Buildings, |
| SIC 735 | Miscellaneous Equipment Rental and Leasing, |
| SIC 736 | Personnel Supply Services, |
| SIC 833 | Job Training and Vocational Rehabilitation Services, |
| SIC 836 | Residential Care, |
| SIC 842 | Arboreta and Botanical or Zoological Gardens, and |
| SIC 869 | Membership Organizations Not Elsewhere Classified. |

The following industries, currently required to comply with the injury and illness recordkeeping regulation, will be partially exempt:

| | |
|---------|---|
| SIC 525 | Hardware Stores, |
| SIC 752 | Automobile Parking, |
| SIC 764 | Reupholstery and Furniture Repair, |
| SIC 793 | Bowling Centers, |
| SIC 801 | Offices and Clinics of Doctors of Medicine, |
| SIC 807 | Medical and Dental Laboratories, and |
| SIC 809 | Miscellaneous Health and Allied Services, Not Elsewhere Classified. |

If the same analysis, using data at the 3-digit level where available, were applied to those industries in SICs 01 through 51 (industries not historically exempted from OSHA recordkeeping), the following industries would have lost workday case rates less than 75% of the private sector average:

| | |
|---------|---|
| SIC 074 | Veterinary Services, |
| SIC 131 | Crude Petroleum and Natural Gas, |
| SIC 211 | Cigarettes, |
| SIC 233 | Women's and Misses' Outerwear, |
| SIC 234 | Women's and Children's Undergarments, |
| SIC 272 | Periodicals, |
| SIC 273 | Books, |
| SIC 274 | Miscellaneous Publishing, |
| SIC 281 | Industrial Inorganic Chemicals, |
| SIC 282 | Plastics Materials and Synthetics, |
| SIC 283 | Drugs, |
| SIC 286 | Industrial Organic Chemicals, |
| SIC 291 | Petroleum Refining, |
| SIC 319 | Leather Goods, NEC, |
| SIC 357 | Computer and Office Equipment, |
| SIC 366 | Communications Equipment, |
| SIC 367 | Electronic Components and Accessories, |
| SIC 376 | Guided Missiles, Space Vehicles, Parts, |
| SIC 381 | Search and Navigation Equipment, |
| SIC 382 | Measuring and Controlling Devices, |

SIC 384 Medical Instruments and Supplies,
 SIC 385 Ophthalmic Goods,
 SIC 386 Photographic Equipment and Supplies,
 SIC 387 Watches, Clocks, Watchcases and Parts,
 SIC 391 Jewelry, Silverware, and Plated Ware,
 SIC 448 Water Transportation of Passengers,
 SIC 461 Pipelines, Except Natural Gas,
 SIC 472 Passenger Transportation Arrangement,
 SIC 481 Telephone Communications,
 SIC 483 Radio and Television Broadcasting,
 SIC 489 Communications Services, NEC,
 SIC 491 Electric Services,
 SIC 504 Professional and Commercial Equipment,
 SIC 506 Electrical Goods,
 SIC 507 Hardware, Plumbing and Heating Equipment,
 SIC 513 Apparel, Piece Goods, and Notions, and
 SIC 516 Chemicals and Allied Products.

OSHA solicits comment on the appropriateness of its exemption procedure, expanding it to SICs 01 through 51, or alternative approaches that would reduce employer paperwork burden while retaining needed injury and illness information. Specifically OSHA requests comment on whether to expand the partial exemption to some, all, or none of these industries as classified by SIC code. Please include any estimates of costs and benefits associated with these exemptions.

Small Employer Exemption. The proposed text in this NPRM also modifies the partial exemption for small employers. Employers in the construction industry with 10 or fewer employees, and non-construction employers with 19 or fewer employees will now be exempted from all requirements except the Reporting of Fatality and Multiple Hospitalization Incidents (proposed § 1904.12) and Duties of Employers (proposed § 1904.13). The BLS Annual Survey data show that small employers generally experience much lower patterns of injuries and illnesses than medium and larger size firms. However, the BLS Annual Survey also shows that small employers in the construction industry account for a significant percentage of recordable injuries and illnesses. In 1991, over 66,000 recordable cases occurred in construction firms with 11 to 19 employees. These cases accounted for 13% of the total recordable cases in the construction industry. In contrast, in

the manufacturing industry, only 2.4% of the recordable cases were found in firms with 11 to 19 employees. OSHA believes, given these numbers and the transient nature of the construction industry, that employers in the construction industry with 11 or more employees should be required to keep OSHA injury and illness records.

Discussion. The modification of both the small employer and SIC partial exemptions is designed to ensure that OSHA's recordkeeping requirements cover those employers with the highest rates of occupational injuries and illnesses. These changes shift the recordkeeping responsibilities from historically low hazard employers to employers experiencing higher rates of injuries and illnesses. The net effect of these changes in scope will be the recording of more injuries and illnesses, but fewer establishments will be covered by the regulation.

Employers in the proposed partially exempt industries and small employers will be required to maintain the OSHA Injury and Illness Log and Summary (proposed Form 300) when they are notified that they have been selected for the BLS Survey of Occupational Injuries and Illnesses for a given year. Partially exempt employers may also be required to provide reports related to occupational safety and health, as required by the proposed § 1904.13. Additionally, these employers will be required to comply with reporting requirements for Fatality and Multiple Hospitalization Incidents (proposed § 1904.12).

OSHA asks for specific input on the following items:

(1) Should the list of partially exempt industries based on SIC codes remain the same, be eliminated, or be expanded?

(2) How often should the SIC exemption be updated using current data?

(3) What are other options for addressing the SIC exemption issues?

(4) Should the small employer partial exemption remain the same, be eliminated, or be expanded?

(5) What would the cost be (time and money) for keeping the records to employers currently exempt from the recordkeeping requirements but proposed to be covered? and

(6) What benefits would accrue from the proposed changes (monetize or quantify where feasible)?

Issue 2. Case recordability criteria— injury/illness severity and work-relationship. Section 8(c)(2) of the Act, which deals with injury and illness recordkeeping, mandates the maintenance of accurate records of

“work-related deaths, illnesses and injuries 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.” Section 24(a), which deals with statistics, mandates the collection of statistics on “work injuries and illnesses which shall include all disabling, serious or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.”

The current recordkeeping system, and the system that is being proposed, consider conditions work-related if the work environment either caused or contributed to the conditions or aggravated a pre-existing condition to the extent that it becomes recordable. This proposal, however, includes the exemption of certain activities to avoid recording cases which OSHA believes add no useful information to the records for surveillance purposes. Appendix A. of this proposal describes these exemptions. For example, employers will consider a case non work-related if “the case results solely from normal body movements, i.e. walking unencumbered, talking, tying a shoe, sneezing, or coughing, provided the activity does not involve a job-related motion and the work environment does not contribute to the injury or illness.”

The proposed system requires the recording of all injuries and illnesses with the exclusion of minor injuries and illnesses. OSHA believes that potentially debilitating illnesses should be recorded as early in their development as possible, to promote the early recognition and resolution of problems that could halt the progression of the illnesses. OSHA believes that the records should capture most injuries and illnesses, in order to provide an effective surveillance system for occupational safety and health program development, but exclude minor injuries and illnesses.

Within the occupational safety and health community, there is a variety of views concerning the interpretation of these Sections of the Act and the types of cases the records should capture. The discussion revolves around two questions: (1) What constitutes work-relationship? (2) What is the level of injury/illness seriousness that should be used to determine the proper recording of a case? OSHA has identified the following three alternative views on both work-relatedness and seriousness

that differ from the positions OSHA proposes in this document:

Work-Relatedness

This issue is especially relevant when dealing with conditions where the specific event or exposure that caused the injury or illness cannot be easily identified, or the condition is the result of both work-related and non work-related causes (such as off-the-job activities, aging, prior medical history or work aggravation of off-the-job injuries). Common examples include lower back pain, hearing loss, and asthma.

Alternative 1: Exclude Cases With Any Non-Work Linkage

Those holding this view believe that the work environment should be the sole, obvious cause of the injury or illness before it is recorded. They believe that cases should only be considered work-related if there is concrete evidence that the causal event or exposure occurred while the employee was engaged in work activities. They believe that if there is any evidence of non work-related factors, the case should be excluded.

Alternative 2: Limit to Predominant Workplace Linkage

Those holding this view believe that the work environment should be a major contributor to the injury or illness for the injury or illness to be considered work-related. They believe that OSHA's position is too harsh a test, amounting to zero tolerance for conditions where work is a minor contributor and non-

work factors are the predominant cause of the injury or illness. Those holding this view believe that OSHA's current and proposed criteria for work-relationship cause companies to over-record cases, artificially inflate and overstate workplace injuries and illnesses, undermine the credibility of the system, and have led to general resistance to the recordkeeping system. Those holding this view believe the criteria should be modified so that a case would be considered work-related only if work activity(s) or exposure(s) causes or is the predominate contributor to the condition.

Some of those holding this view have proposed an alternative that would allow a documented determination by a health care provider to decide work-relationship for the following types of cases: hernias, cardiovascular disorders, respiratory conditions, hearing loss, skin disorders or musculoskeletal disorders such as back pain, tendinitis and carpal tunnel syndrome. For this purpose, a check list has been suggested, as follows. (note: In the absence of evaluation by a health care provider, the case would be considered work-related if the work environment caused, contributed to or aggravated the condition in any way.)

- 1. Injury/illness type
 - Hernia
 - Musculoskeletal disorder
 - back pain
 - tendinitis
 - other _____
 - Respiratory condition

- Skin disorder
- Non-occupational disease
- 2. How was injury/illness discovered
 - During occupational medical visit
 - Routine physical examination
 - Non-occupational medical visit
 - Other: _____
- 3. Applicable medical history
 - _____
 - _____
 - _____
- 4. Off-the-job activities which may have contributed
 - _____
 - _____
 - _____
- 5. Work relationship evaluation
 - a. Injury/illness characteristics
 - Degenerative condition due to aging or non-occupational disease
 - Congenital condition
 - Aggravation of on-the-job injury or illness
 - b. Possible work contribution
 - Workplace event or exposure? yes no
 - Workplace aggravation? yes no
 - Condition consistent with workplace event or exposure? yes no
 - Condition would have occurred without regard to workplace duties or exposures? yes no
 - c. Exposure factors for this type of injury/illness

| On-the-job | Com-ments | Off-the-job | Com-ments |
|---|-----------|---|-----------|
| <input type="checkbox"/> High | | <input type="checkbox"/> High | |
| <input type="checkbox"/> Medium | | <input type="checkbox"/> Medium | |
| <input type="checkbox"/> Low | | <input type="checkbox"/> Low | |
| <input type="checkbox"/> Not sure | | <input type="checkbox"/> Not sure | |

- 6. Work relationship determination
 - Work-related. On-the-job exposure factors more predominant than off-the-job exposure factors.
 - Not work-related. Off-the-job factors more predominant than on-the-job exposure factors.
 - Not sure. Assume work-relationship.

Alternative 3: Include Cases With Any Workplace Linkage

Those holding this view believe that injuries and illnesses should be recorded if the worker ever experienced a workplace event or exposure that had any possibility of playing a role in the case. For example, a cancer case, where the worker had at some time in his or

her career worked with a carcinogenic substance, would be considered work-related, even though there is no positive link between the case and a workplace exposure.

Seriousness

The concept of seriousness is particularly relevant when dealing with conditions where the worker is not obviously impaired, but is experiencing some subjective symptom (pain, dizziness, etc.) or has an abnormal health test result. For example, a blood test may indicate that a worker has a relatively high level of cadmium in his or her system, but the worker is not experiencing any symptoms that adversely affect either work or lifestyle.

The worker has an abnormality, but should it be considered an injury or illness?

Alternative 1: Days Away From Work or Death

Proponents of this view believe that employers should record only those cases that result in days away from work or death. They believe that this will result in the most meaningful and accurate information (because fatalities and days-away-from-work cases are hard to "cover up" and they are unquestionably serious). They also believe that this approach will minimize the burden on employers and focus safety and health efforts on the cases

with the greatest impact on both employers and workers.

Alternative 2: Days Away From Work, Impairment, or Death

Proponents of this view agree with across-the-board application of the basic criteria mentioned in Section 8 of the Act, (days away, medical treatment beyond first aid, etc.) but believe the purpose of proposed Mandatory Appendix B should be limited to capturing "serious" cases which may be "missed" because they do not meet the basic criteria. Such cases would include disorders where no lost time occurs, or where medical treatment is not provided at the time the case is diagnosed or discovered because medical treatment would not help, but the case is serious nonetheless. Examples include the current criteria for recording hearing loss (25dB), asbestosis, mesothelioma, silicosis, byssinosis and other similarly serious work-related diseases.

Potential guiding language for recording cases missed by the basic criteria would be "any work-related condition that results in, or is likely to result in, a physical or mental impairment that substantially limits a major life activity." In addition to stating such guiding language in, and as a basis for a Mandatory Appendix, clarifying examples of specific known to be serious conditions such as, but not limited to, those mentioned in the paragraph above could be listed.

Those who support this approach believe it meets the "disabling, serious, or significant" criteria prescribed in Section 24(a) of the Act and that these criteria must be considered carefully, especially if OSHA intends to collect OSHA Logs and use the data for inspection targeting and intervention purposes. Supporters of this approach also believe it will provide the most meaningful data to employers for improving workplace safety and health efforts by helping to allocate resources for preventing injuries and illnesses which are truly serious.

Alternative 3: No Limitations on Seriousness

Proponents of this view believe that all work-related injuries and illnesses should be recorded. They interpret the Act to require the recording of all work-related illnesses, no matter how minor or how short lived they may be, and the recording of all non-minor injuries. They believe the recording criteria should be expanded to include all signs and symptoms experienced by workers, and perhaps even potentially hazardous exposure incidents and near misses.

They believe that this alternative provides the employer and the workers at the worksite with the most effective surveillance tool that will lead to the most complete injury and illness prevention efforts. Proponents of this view have provided alternative language for recording cases where "signs, symptoms, and/or laboratory abnormalities last longer than 48 hours (either persistently or intermittently)" excluding minor injuries (minor injuries are minor scratches, abrasions, bruises and first degree burns)."

Implications

The issues of work-relationship and case severity have major implications for all of the parties that use the injury and illness records, including employers, workers and the government. If the criteria are too inclusive, they may appear to overstate the injury and illness experience, undermine the credibility of the system, and fail to focus safety and health efforts on the most serious workplace hazards. If they are too exclusive, they may appear to understate the injury and illness experience, undermine the credibility of the system, and fail to reflect hazardous conditions that require attention. OSHA believes that the OSHA proposal in the NPRM is compatible with the language and intent of the Act, and provides the best way to resolve these issues. OSHA welcomes comment, ideas, and alternative suggestions from the public concerning these issues and the alternatives presented above.

Specifically, OSHA requests input on A) The level of severity and criteria for establishing work-relationship and determining which cases are entered into the records; B) How "significant/serious/disabling" should be defined to result in consistent recording practices and data; C) How work contribution can be objectively measured for such a purpose; D) Does the checklist shown above meet these objectives? F) Should work-relationship be established only where work is the predominant causal factor? G) Should work-relationship be established if work was something less than the predominant cause? or H) If work contributed more than 50% to the injury or illness? 25%? 10%? J) How could any of these percentages be measured/determined?

Issue 3. The definitions of first aid and medical treatment. The distinction between first aid and medical treatment is a critical component in determining whether to record a work-related injury or illness. One criterion in the proposed regulatory text requires any work-related injury or illness involving medical treatment beyond first aid to be

recorded. A case which involves first aid only (and does not meet any of the other recording criteria) is not recordable. The intent of this distinction is to capture information on injuries and illnesses which are significant and would provide valuable information for safety and health analysis while excluding minor cases which would not provide necessary or useful information for analysis.

The current recordkeeping system defines first aid as any one-time treatment, and any follow-up visit for the purpose of observation, of minor scratches, cuts, burns, and splinters, and so forth which do not ordinarily require medical care. Medical treatment is defined to include any treatment other than first aid treatment administered to injured employees. The definition focuses on the type of treatment given and not on the person administering the treatment (e.g. physician, registered health professional, etc.). These definitions are further clarified within the *Recordkeeping Guidelines for Occupational Injuries and Illnesses* by lists of examples of treatments which are considered either medical treatment or first aid. These lists are not comprehensive and confusion exists concerning the classification of unlisted treatments.

This proposal attempts to clarify the distinction between first aid and medical treatment by defining the terms in a way that will make them mutually exclusive. The proposed regulatory text defines first aid with a finite list of treatments. Medical treatment is defined as any treatment other than those listed in the first aid definition.

"First aid" means the following treatments for work-related injuries and illnesses:

1. Visit(s) to a health care provider limited to observation
2. Diagnostic procedures, including the use of prescription medications solely for diagnostic purposes
3. Use of nonprescription medications, including antiseptics
4. Simple administration of oxygen
5. Administration of tetanus/diphtheria shot(s) or booster(s)
6. Cleaning, flushing or soaking wounds on skin surface
7. Use of wound coverings such as bandages, gauze pads, etc.
8. Use of any hot/cold therapy (e.g. compresses, soaking, whirlpools non-prescription skin creams/lotions for local relief, etc.) except for musculoskeletal disorders (See Mandatory Appendix B)
9. Use of any totally non-rigid, non-immobilizing means of support (e.g. elastic bandages)

10. Drilling of a nail to relieve pressure for subungual hematoma
11. Use of eye patches
12. Removal of foreign bodies not embedded in the eye if only irrigation or removal with a cotton swab is required
13. Removal of splinters or foreign material from areas other than the eyes by irrigation, tweezers, cotton swabs or other simple means

OSHA asks for comment on the following issues:

(A) Should any treatments on the proposed first aid list be excluded and should any treatments be added?

(B) Should a list of medical treatments also be provided? Which treatments?

(C) Should simple administration of oxygen be defined to exclude more severe procedures such as Intermittent Positive Pressure Breathing (IPPB)? If so, how?

Issue 4. The definition of restricted work. The Keystone Report stated that the recording of restricted work is perhaps the least understood and least accepted concept in the recordkeeping system. Recording cases involving restricted work activity is important because injured or ill employees are unable either to perform all of their normal duties or perform a full day's work. The concept of restricted work activity was included in the Act due to concern that some employers might try to conceal significant injuries and illnesses by temporarily assigning injured or ill workers to other jobs with reduced requirements. This concern still exists today.

The difficulty in determining restricted work lies in the need to determine the employee's "normal duties". In the past, OSHA has broadly defined the employee's normal duties to include any work activity included in the employee's job description, even if the activity is performed infrequently. According to the Keystone Report, this definition is problematic because "(1) few in industry understand the scope of this interpretation; (2) many who do understand it disagree with it; and (3) to maximize productivity, workers are increasingly assigned a wider range of tasks, making it increasingly difficult to measure and/or verify the performance of these greatly divergent and infrequent duties." (ex. 5, p. 17)

The Keystone Report recommended that restricted work activity should be recorded if the employee is 1) unable to perform the task he/she was engaged in at the time of injury or onset of illness or 2) unable to perform any activity that he/she would have performed during the week. OSHA believes that the first

criterion will focus on the hazardous tasks that lead to serious injuries and illnesses. OSHA believes, however, that the second criterion is not easily defined and could lead to the recording of inconsistent data. This criterion has been narrowed in the proposed text of the regulation to include activities the employee performed or was expected to perform on the day of injury or onset of illness. OSHA believes these activities will be well known and understood and use of this criterion will lead to greater consistency in the recording of these more severe work-related injuries and illnesses.

This proposal also eliminates the requirement for employers to count the days of restricted work activity. The employer will be required to place a check in the restricted work column if the case involved restricted work activity but not days away from work.

OSHA asks for input on whether the proposed language is too limiting or too broad, on alternative ways to define restricted work activity and/or the usual duties of an employee, along with suggested ways to improve employers' understanding and acceptance of the concept of restricted work activity. OSHA's goal is to have employers consistently record cases that involve restricted work by providing a concept which is widely accepted and easy to interpret.

OSHA asks for input on the following questions: (A) Will the elimination of the restricted work activity day count provide an incentive for employers to temporarily assign injured or ill workers to jobs with little or no productive value to avoid recording a case as one involving days away from work? (B) Will the inclusion of question 13 on the proposed OSHA Form 301, "If the case involved days away from work or restricted work activity, enter the date the employee returned to work at full capacity", help to reduce such an incentive?

Issue 5. The proper recording of musculoskeletal disorders (MSDs). Over the last 10 years, there has been an increased awareness of work-related disorders associated with ergonomic hazards, i.e. hazards associated with lifting, repeated motion, and repetitive strain and stress on the musculoskeletal systems of workers. OSHA labels these injuries and illnesses, which result from ergonomic hazards, "musculoskeletal disorders" (MSDs). MSDs do not include broken bones, chipped teeth, contusions or sprains/strains resulting from falls or being struck.

Although MSDs have always been recordable, OSHA and BLS had not published any specific guidance on how

to record them until 1986. The 1986 Recordkeeping Guidelines provided some limited specific guidance by requiring all back cases to be evaluated as injuries using the general injury criteria, and to record carpal tunnel syndrome as an illness. The 1986 Guidelines did not provide specific directions on which criteria to use for recording other types of musculoskeletal disorders.

Historically, for recording purposes, disorders caused by repeated or cumulative trauma were covered by the general illness criteria because these disorders are caused by prolonged exposure to various risk factors, rather than being caused by a single instantaneous event. The existing definition of occupational illness (in place since 1971) is very inclusive: "Any work related abnormal condition or disorder (other than an occupational injury)". (1986 Recordkeeping Guidelines, P 39) Thus, the current criteria for recording illnesses requires the employer to record each and every occupational illness, including MSDs.

Theoretically, all musculoskeletal disorders, even the less severe cases which do not meet the recording criteria for injuries, would be recordable as a result of applying the general illness recording criteria. Despite their recordability, OSHA observed that very few, if any, of these disorders were being recorded on employers' OSHA Logs. As a result, OSHA developed an enforcement policy limiting the issuance of citations and penalties for unrecorded MSDs to those cases which involve:

- a clinical diagnosis by a health care provider; or
- at least one physical finding, (i.e., an objective symptom such as redness or swelling); or
- * a subjective symptom, such as pain or numbness, coupled with either medical treatment or lost workdays, (i.e., days away from work and/or days of restricted work activity).

In 1990, OSHA published specific criteria for the proper recording of MSDs in the *Ergonomics Program Management Guidelines For Meatpacking Plants* (Meatpacking Guideline). These criteria have been the basis for all of OSHA's interpretations involving the proper recording of musculoskeletal disorders to the upper extremities (shoulder, arms, wrist and hands) since that time.

Even though the specific criteria in the Meatpacking Guidelines defined fewer recordable cases than the general illness criteria, the number of recorded cases has increased dramatically. While OSHA believes that these types of

disorders are increasing in number, OSHA believes that the increase in recorded MSD cases is also the result of OSHA providing employers with specific guidance on the subject, in conjunction with enforcement of the requirements. Compliance with the recordkeeping requirements improved substantially and the resulting data and statistics have reflected that improvement.

One purpose of this proposed revision of 29 CFR Part 1904 is to consolidate in the regulation various criteria, guidelines and interpretations policies which are currently found in a number of different documents. Another purpose is to simplify the recordkeeping requirements, in order to make the system more "user friendly" and to encourage more accurate and consistent recording of injuries and illnesses. Consistent with these purposes, OSHA is proposing to incorporate the criteria for recording MSDs found in the Meatpacking Guidelines in mandatory Appendix B of the proposed regulation, and to simplify the system by applying those criteria equally to cases involving the upper extremities, the back and the lower extremities.

The criteria in proposed Mandatory Appendix B require employers to record new, work-related musculoskeletal disorders: (1) whenever they are diagnosed by a health care provider, or (2) if the employee has objective findings (redness indicative of inflammation, deformity, swelling, etc.). When either of these criteria, or when any of the general criteria for recording illnesses and injuries in § 1904.4(b) (i.e. death, loss of consciousness, days away from work, restricted work activity, job transfer, or medical treatment beyond first aid) is met, the case is required to be recorded on the OSHA Form 300. OSHA's proposal represents a continuation of the current recording policy, and is intended to ensure the early recognition and recording of musculoskeletal disorders so appropriate actions may be taken.

The current recording of these cases is also dependent on the definitions of first aid, medical treatment and restricted work. Because OSHA is proposing to change those definitions, the recording of musculoskeletal disorders will be affected. OSHA recognizes that hot and cold treatments for most injury and illness conditions should be considered first aid treatments, as indicated in the proposed definition of first aid. However, NIOSH (NIOSH, Cumulative trauma disorders: A manual for musculoskeletal diseases of the upper limbs, Taylor and Francis, 1988, p. 125) and other recognized

authorities (Hales & Bertsche, "Management of Upper Extremity Cumulative Trauma Disorders", AAOHN Journal, March, 1992, Vol. 40, No. 3; Nanneman, D., "Thermal modalities: Heat and cold: Review of physiological effects with clinical applications", AAOHN Journal, 1991, Vol. 39, No. 2) recognize hot and cold treatments as therapeutic modalities in the conservative, early treatment of MSDs. Because these treatments may cause negative effects if not properly administered, OSHA is proposing that two or more hot and cold treatments be considered medical treatment for MSDs only when directed by a health care professional.

There is a concern that the proposed criteria will result in a situation where workers could be working with significant pain for an extended period of time, without their case being entered into the records. OSHA has been asked to consider an additional recording criterion for these cases: record when the employee reports symptoms (pain, tingling, numbness, etc.) persisting for at least 7 calendar days from the date of onset. OSHA asks for input on this criterion.

OSHA recognizes that its proposed recording policy does not provide a mechanism for excluding cases that involve short term job transfers for minor soreness that commonly occurs to newly hired employees or employees on rehabilitation assignments during a "break in" stage. OSHA asks for input on whether a method for excluding these cases should be developed? If so, what method should be used?

Issue 6. The reluctance of some employers to enter cases into the records. For a variety of reasons, some employers have historically shown a reluctance to enter injuries and illnesses into the OSHA records.

Some employers mistakenly believe that recording a case implies fault on the part of the employer. Some fail to recognize that the requirements of OSHA recordkeeping have nothing to do with workers' compensation insurance or any other system outside of the OSHA requirements. While many OSHA recordable injuries and illnesses may be compensable under an insurance program, others are not. Furthermore, many employers use a workers' compensation or insurance form in lieu of the OSHA supplementary record. However, some employers who use these forms in lieu of the OSHA supplementary record mistakenly believe that completing the forms for OSHA recordkeeping purposes automatically makes the case compensable. While reducing the

paperwork burden on employers, perhaps this equivalency option perpetuates this misunderstanding and should be eliminated.

Many companies use the information from the OSHA records to establish "accountability systems" for management as well as their safety and health professionals. Often these systems are linked to performance evaluations of the affected individuals. These performance evaluations may be used to help determine bonuses, promotions, or compensation levels. Affected employees may be discouraged from fully and accurately recording injuries and illnesses in the OSHA records when they may be, or may perceive to be, personally penalized for complying with the OSHA recordkeeping requirements.

The OSHA recordkeeping proposal includes several items intended to reduce the effects of these potential problems on the accuracy of the records. Certification of the accuracy and completeness of the OSHA Log by a responsible company official and disclaimers of a relationship between OSHA injury and illness recordkeeping and implications of fault for insurance systems are included in the regulatory text and on the proposed forms. The "employer use column" can be utilized by companies to indicate those cases that the firm does not wish to include in their internal safety statistics.

OSHA asks for input on (A) ways to encourage accurate injury and illness records, (B) how the confusion between OSHA recordkeeping and workers' compensation/insurance requirements can be minimized, and (C) how the adverse effect of accountability systems on the OSHA records can be reduced.

Issue 7. Improving employee involvement. The Keystone report stated that overall workplace safety and health would benefit if the information in the injury and illness records were more widely known. The report noted that employee involvement and awareness are minimal for three reasons: (1) Lack of knowledge that access is permitted, (2) fear of employer reprisal, and (3) employee apathy. The Keystone report concluded that employee notification could improve employee involvement in recordkeeping and enhance the quality of the data, increase employees' knowledge of hazards, promote better cooperation between employers and employees in reducing hazards, and contribute to safer, more healthful workplaces.

OSHA asks for input on (A) whether employees should be notified that their individual injuries and illnesses have been entered into the records, (B) the

possible mechanisms employers could use to meet such a requirement and the degree of flexibility employers should be given, (C) any other ideas on methods for improving employee involvement in the injury and illness recordkeeping system, and (D) cost (including burden) and benefit information on each alternative.

Issue 8. Access to the OSHA forms and the privacy of injured or ill employees. The current regulation and the proposed regulatory text both require that employees, former employees, and their designated representatives have access to the entire OSHA injury and illness log, which includes personal identifiers. Furthermore, the current regulation does not provide employees or their designated representatives access to the OSHA injury and illness supplementary forms while the proposed regulatory text provides employees or representatives designated by employees access to all OSHA injury and illness supplementary records (proposed OSHA Form 301, Incident Record) of the establishment.

OSHA's historical practice of allowing employee access to all of the information on the log permits employees and their designated representatives to be totally informed about the employer's recordkeeping practices, and the occupational injuries and illnesses recorded in the workplace. However, this total accessibility may infringe on an individual employee's privacy interest. At the same time, the need to access individuals' Incident Records to adequately evaluate the safety and health environment of the establishment has been expressed.

These two interests—the privacy interests of the individual employee versus the interest in access to health and safety information concerning one's own workplace—are potentially at odds with one another. For injury and illness recordkeeping purposes, OSHA has taken the position that an employee's interest in access to health and safety information on the OSHA forms concerning one's own workplace carries greater weight than an individual's right to privacy. More complete access to the detailed injury and illness records has the potential for increasing employee involvement in workplace safety and health programs and therefore has the potential for improving working conditions. Analysis of injury and illness data provides a wealth of information for injury and illness prevention programs. Analyses by workers, in addition to analyses by the employer, lead to the potential of developing methods to diminish

workplace hazards through additional or different perspectives.

OSHA is considering alternatives to the existing and proposed regulatory text to address the conflict between the privacy interests of the individual and the interest in total access to health and safety information concerning one's own workplace. One alternative to the regulatory text would be to require the removal of personal identifiers for only certain types of cases that might have higher privacy concerns than others.

The alternative described above raises additional questions to which the public is invited to respond. What other pieces of information, if any, on the currently proposed forms (proposed Forms 300 and 301—see section IV of this preamble) ought to be considered personal identifiers and included on the side of the form which is not disclosed once it is folded over? If only certain types of cases should be shielded, which types of cases ought to be considered "confidential" and subject to having the personal identifiers removed? Should a coding system be used for these cases to enable some people, but not others, to have access to the entry information, and if so, what type of system? Who should have access to the personal identifier information? Should the right to access an individual's Incident Record be limited to that individual?

It is OSHA's intention to make the forms readily accessible to employees and employee representatives who can use the information to affect safety and health conditions at the workplace. OSHA does not intend to provide access to the general public. OSHA asks for input on possible methodologies for providing easy access to workers while restricting access to the general public. OSHA also asks for input on the possible benefits and costs of making the information accessible, and any negative results that could occur from such access. Specifically, for employers who use State workers compensation, insurance, or other forms as equivalents to the OSHA form, are there data elements contained on those forms which could not be released to employees or their designated representatives? If so, what are those data elements? How would this affect the employer's ability to use equivalent forms?

OSHA invites the public to suggest other options or alternative regulatory language which would address this issue of confidentiality and access to information. Please include any information on costs and benefits that will result from these alternatives,

including any ideas on how to quantify those costs and benefits.

Issue 9. The development of computer software to assist employers in the task of recordkeeping. To make injury and illness recordkeeping easier for employers, OSHA is considering the development of recordkeeping computer software. Once developed, the program could have the following minimum features:

(a) employ a decision-making logic for determining if an injury or illness is recordable, and if so the proper classification, and include questions to elicit the necessary information to complete and generate the OSHA required records;

(b) automatic form(s) generation;

(c) the ability to assist the employer in evaluating the entered data through several preset analytical tools (e.g. tables, charts, etc.);

(d) contain a tutorial section to assist employers in training employees in proper recordkeeping procedures;

(e) be in the public domain and/or be available at cost to the public.

OSHA is requesting comments on all facets of this approach toward development of software. In addition, OSHA would like to know what percentage of employers have computers to assist them in their business? What percentage of employers currently use computers for tracking employee-related information (payroll, timekeeping, etc.)? Should the distribution be through the Government, public domain shareware distribution, or other channels? Should OSHA develop the software or only provide specifications of its requirements?

IV. Proposed OSHA Forms

In conjunction with this proposed rulemaking, the OSHA recordkeeping forms are also being modified. OSHA is continuing to try to reduce the employer's paperwork burden through these modifications and reducing the number of duplicate questions on the forms. At this point, some duplicate questions remain and are needed for each form to "stand alone". OSHA believes if the duplication were reduced further, employers would be required to refer frequently to both forms at the same time, which would add additional burden. OSHA requests comment on any of these modifications, the remaining duplications, or any other related issues to the proposed forms.

The forms are being included in this preamble for informational purposes.

The OSHA 200 Log will be replaced with the OSHA 300 Log which includes reformatted columns and an additional column for the employer's use. The

proposed elimination of the requirement that employers distinguish between injuries and illnesses in order to record a case would eliminate the need for separate groups of columns for injuries and illnesses on the Log. The proposed elimination of the requirement to count days of restricted work activity also eliminates the need for the restricted day count columns found on the OSHA 200 Log. The result is a simplified form that fits on standard size paper which can easily be copied and kept on a personal computer. This also results in space to create an employer use column which can be utilized by employers to tailor the Log to meet the needs of their particular safety and health program. For example, this column could be used by employers to enter causation, or injury and illness codes, or other information useful to the company. This employer use column may provide employers with additional flexibility, reducing their need to maintain multiple sets of records for various purposes.

Cases that end in permanent work restrictions, job transfer, or termination of employment will be noted by placing an asterisk next to the employee's name. This information could provide employers, employees, inspectors and researchers with another measure of severity for injuries and illnesses. A statement will be included on the summary portion informing employees, former employees, and their designated representatives of their right to access the entire Log.

A disclaimer will be included on the Log which states "Cases listed below are

not necessarily eligible for Workers' Compensation or other insurance.

Listing a case below does not necessarily mean that the employer or worker was at fault or that an OSHA standard was violated". The intent of this disclaimer is to dispel the mistaken belief that recording a case on the Log affects workers' compensation or establishes a finding of fault.

Some stakeholders have expressed the need for a column containing information on cases involving musculoskeletal disorders such as low back pain, tendinitis, and carpal tunnel syndrome. OSHA solicits comment on the inclusion of an MSD column on the form.

The Supplementary Record of Occupational Injuries and Illnesses (OSHA No.101) will be replaced with the OSHA Injury and Illness Incident Record (OSHA Form 301) in order to collect more useful information. Additional questions will be added to gather data on the events leading up to the injury or illness; on the equipment, material, or substance involved; and on the activity taking place when the injury or illness occurred. An employer use section will be added to provide the employer with space to record any additional information that is desired. A statement will be included on the form notifying employees, former employees, and their designated representatives of their right to access all OSHA injury and illness records of the establishment.

While the new OSHA 300 Log presents information on injuries and illnesses in a condensed format, an Incident Record provides more detailed

information about the affected worker, the injury or illness, workplace factors associated with the accident, and a brief description of how the injury or illness occurred.

Currently, many employers use their insurance or State workers' compensation forms in place of the supplementary record. This reduces the burden on employers by allowing them to fill out a single form for multiple purposes. Several States have notified OSHA that they intend to modify their forms to qualify as equivalents to the OSHA form. OSHA anticipates that many other States will also modify their forms to qualify as equivalents to the OSHA form so employers may continue to have the benefit of interchangeable forms. OSHA is currently working with the International Association of Industrial Accident Boards and Commissions (IAIABC) to standardize the recording forms for occupational injuries and illnesses.

OSHA also requests comment on the concept of a single form which would meet all of the informational needs of the recordkeeping system. What items would be included? What format would be used? How would the use of a single form, as opposed to two forms, affect the employers ability to use State Workers—Compensation forms as equivalents to the OSHA form?

Information concerning the establishment name and address and the employee's social security number, regular job title, and the department in which the injured person is regularly employed will no longer be requested.

BILLING CODE 4510-26-P



U.S. Department of Labor
Occupational Safety and Health Administration
Form approved O.M.B. No. 1218-0000
See O.M.B. disclosure statement on back.

OSHA Injury and Illness Log and Summary

Public Law 91-596 and 29 CFR 1904 require you to:
-Enter all recordable occupational injuries and illnesses. (See instructions on back.)
-Update and retain completed form for three years.
Failure to complete, update and post can result in the issuance of citations and penalties.

Establishment Name
Establishment Address
Mailing Address if different
Industry description and Standard Industrial Classification (SIC) if known (e.g. Manufacture of motor truck trailers, SIC 3715)

For calendar year ___ of ___
Page ___ of ___

This form is not an insurance form. Cases listed below are not necessarily eligible for Workers' Compensation or other insurance. Listing a case below does not necessarily mean that the employer or worker was at fault or that an OSHA Standard was violated.

Table with columns: A. Employee's Name, B. Case Number, C. Date of injury or illness, D. Department and location where event occurred, E. Regular job title, F. Description of injury or illness, G. Death, H. Involving Days Away, I. Without Days Away, J. Employer Use, and OTHER. Includes checkboxes for restricted work activity and other categories.

YEAR END SUMMARY
Complete the year end portion of this form, even if there were no cases during the year. Fold along line to the right and post this form from February 1 to January 31 where

Employees, former employees, and their representatives have the right to review all OSHA Injury and Illness Records, in their entirety, for this establishment.

I have examined this Log and Summary and certify its accuracy and completeness X (Responsible Company Official)

Year end totals
Annual average number of employees
Total hours worked by all employees

Title
Phone
Date

Knowingly falsifying this document can result in fine, imprisonment, or both. Draft OSHA Form 300 (10/95)

General Instructions OSHA Form 300

The OSHA regulation, Recording and Reporting Occupational Injuries and Illnesses (29 CFR Part 1904) provides comprehensive instructions and definitions necessary to find out if you need to keep these records, for completing the forms, as well as other detailed recording and reporting requirements. The instructions on this form are intended to supplement the instructions in the regulation. To obtain the regulation and related guidance, contact your local OSHA office.

The Occupational Safety and Health Act of 1970 requires most employers to maintain injury and illness records. One part of the requirements is to keep an OSHA Injury and Illness Log and Summary. In order to fulfill this requirement, the employer may use this form or an equivalent form.

Work Relationship

A case is considered work related if an event in the work environment either causes or contributes to an injury or illness or aggravates a preexisting condition.

Recordable Cases

Work related injuries or illnesses are to be recorded on this form within seven calendar days of receiving information that a recordable injury or illness has occurred. An injury or illness is recordable if it results in death, days away from work, restricted work activity, job transfer, loss of consciousness, medical treatment beyond first aid, or is a condition listed in Mandatory Appendix B of 29 CFR Part 1904.

Restricted work activity means the employee is not capable of performing at full capacity for a full shift: (1) The task he or she was engaged in at the time of injury or onset of illness (the task includes all facets of the assignment the employee was performing); OR (2) His or her daily work activity (daily work activity includes all assignments the employee was expected to perform on the day of injury or onset of illness).

Medical treatment includes any medical care or treatment beyond first aid that is provided, or should have been provided. The distinction between medical treatment and first aid is based solely on the treatment involved, not the person providing the treatment. Health care professionals may provide first aid while non-professionals may provide medical treatment. First aid is defined as the following treatments:

1. Visit(s) to a health care provider limited to observation
2. Diagnostic procedures, including the use of prescription medications solely for diagnostic purposes (e.g. eye drops to dilate pupils)
3. Use of nonprescription medications, including antiseptics
4. Simple administration of oxygen
5. Administration of tetanus or diphtheria shot(s) or booster(s)
6. Cleaning, flushing or soaking wounds on skin surface
7. Use of wound coverings such as bandages, gauze pads, etc.
8. Use of any hot/cold therapy (e.g. compresses, soaking, whirlpools, non-prescription skin creams/lotions for local relief, etc.) except for musculoskeletal disorders (See Mandatory Appendix B)
9. Use of any totally non-rigid, non-immobilizing means of support (e.g. elastic bandages)

10. Drilling of a nail to relieve pressure for subungual hematoma

11. Use of eye patches

12. Removal of foreign bodies not embedded in the eye if only irrigation or removal with a cotton swab is required

13. Removal of splinters or foreign material from areas other than the eyes by irrigation, tweezers, cotton swabs or other simple means

Any treatment not on this list is considered medical treatment.

See Mandatory Appendix B of 29 CFR Part 1904 for a complete listing of additional recordable conditions.

Specific Instructions

Employer Identification

Industry Description: Enter a brief description of the establishment's primary activity, determined by the principal product manufactured or sold, or service rendered. For example, wholesale trade of enamel paints or automotive body shop. Also enter the Standard Industrial Classification (SIC) number if known. For example, SIC 7532.

Employee Identification

A. Enter the employee's last name, first name and middle initial.

Case Identification

B. Enter unique numbers. For example: 1991-1, 1991-2, ... or 1, 2, ... This number must also be entered on the corresponding Incident Record (OSHA Form 301).

C. For injuries, enter the date (month/day) the employee was injured. For illnesses, enter the date the illness was recognized. If there is no definite date of recognition, enter the date the illness was clinically diagnosed.

D. Enter the department and location where the event occurred. For example: maintenance tool room. If the event did not occur at the employer's establishment, enter the specific address or location. For example: client's office at 452 Monroe Street, Washington, DC.

E. Enter the employee's regular job title, not the specific task he/she was performing at the time of the injury or illness.

Case Description

F. Enter a detailed description of the injury or illness, indicating the part(s) of the body affected and the object/substance which directly injured or made the employee ill. For example: cut left index finger with hack saw or carpal tunnel syndrome of the left wrist from using price scanning equipment.

Case Classification Each recordable case must only have one entry in either column G, H, or I.

G. Enter a check if the case resulted in death.

H. Enter a check if the case did result in days away from work. Enter the total number of such days. Enter only whole numbers. Do not count the day the employee was injured or the day the employee became ill.

I. Enter a check in the appropriate box if the case resulted in restricted work activity or met the other recording criteria but did not involve days away from work.

NOTE: If a case ends in a permanent work restriction/job transfer, or the employee is terminated after the injury or illness occurred, an asterisk must be entered next to the case number in column B. If the description or outcome of a case changes, remove the original entry, and enter the new information to reflect the more severe consequence. For example: if a case is originally recorded without days away and later results in days away from work, remove or line out the entry in column I, and enter the information in column H.

Other

J. This column is optional and reserved for employer use. The employer may enter additional information, such as whether the case was compensable under Workers' Compensation, etc.

Year End Totals

To prepare the summary, total the number of checks and the number of days for columns G, H, and I for the calendar year. These totals are entered in the "Year-end totals" line of this section. If there were no recordable injuries or illnesses, enter zeroes in the spaces provided.

Annual average number of employees: Enter the average number of employees (full and part-time) who worked during the calendar year. Annual average employment should be computed by summing the employment from all pay periods during the year and then dividing that sum by the total number of pay periods, including periods with no employment.

Total hours worked by all employees: Enter the total number of hours actually worked by all employees during the calendar year. If hours worked are not separately maintained, please enter an estimate based upon total number of employees and average hours worked.

Certified by: An owner of the company, an officer of the corporation, the highest ranking company official working at the establishment, or his or her supervisor must sign and enter title, phone number and the date of completion.

OMB Disclosure Statement

Public reporting burden for this collection of information is estimated to vary from 4 minutes to 30 minutes per line entry with an average of 10 minutes per line entry including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. It is estimated the average firm will require 1 hour and 56 minutes to complete the entire form. If you have any comments regarding this estimate or any other aspect of this collection of information, including suggestions for reducing this burden, please send them to the OSHA Office of Statistics and/or the Office of IRM Policy, Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Do not send the completed form to either of these offices.



U.S. Department of Labor
Occupational Safety and Health Administration
Form approved O.M.B. No. 1218-0000
See O.M.B. disclosure statement on back.

Case number from OSHA Form 30 _____

OSHA Injury and Illness Incident Record

Public Law 91-596 and 29 CFR 1904 require you to update and retain completed form for three years.

Failure to complete this form can result in the issuance of citations and penalties. Employees, former employees, and their representatives have the right to review all OSHA Injury and Illness Records, in their entirety, for this establishment.

This form is not an insurance form. Cases listed below are not necessarily eligible for Workers' Compensation or other insurance. Listing a case below does not necessarily mean that the employer or worker was at fault or that an OSHA Standard was violated.

Employee

1. Last name _____ First name _____ MI _____

2. Male Female 3. Date of birth / /

4. Home address _____

5. Date hired / /

Health Care Provider

6. Name of health care provider _____

7. If treatment off-site, facility name and address _____

8. Hospitalized overnight as in-patient? (if emergency room only, mark "no")
yes no

Employer Use (Optional)

Illness or Injury

9. Specific injury or illness (e.g. Second degree burn or Toxic hepatitis)

10. Body part(s) affected (e.g. Lower right forearm)

11. Date of injury or illness: / / 12. If employee died, date of death / /

13. If the case involved days away from work or restricted work activity, enter the date the employee returned to work at full capacity: / /

14. Time of event: _____ 15. Time employee began work: _____ (Specify a.m. or p.m.)

(Specify a.m. or p.m.)

16. All equipment, materials, or chemicals employee was using when the event occurred. (e.g. Acetylene cutting torch, metal plate)

17. Specify activity the employee was engaged in when the event occurred (e.g. Cutting metal plate for flooring) indicate if activity was part of normal job duties.

18. How injury or illness occurred. Describe the sequence of events and include any objects or substances that directly injured or made the employee ill. (e.g. Worker stepped back to inspect work and slipped on some scrap metal. As she fell, worker brushed against the hot metal)

Completed by

Name _____

Title _____

Phone () _____

Date _____

General Instructions OSHA Form 301

The OSHA regulation, Recording and Reporting Occupational Injuries and Illnesses (29 CFR Part 1904) provides comprehensive instructions and definitions necessary to find out if you need to keep these records, for completing the forms, as well as other detailed recording and reporting requirements. The instructions on this form are intended to supplement the instructions in the regulation. To obtain the regulation and related guidance, contact your local OSHA office.

Establishments which must maintain the OSHA Injury and Illness Log and Summary (OSHA Form 300) must also complete this form for each case required to be recorded on the OSHA Form 300. This form must be completed within seven calendar days of receiving information that a recordable injury or illness has occurred. Some state workers' compensation, insurance or other reports may be acceptable substitutes. Any substitute form must contain all of the information requested on this form, with questions 16 through 18 being identical in content and order presented to be considered an equivalent. If the alternate form does not contain all of the required information, you must attach an OSHA Form 301 to it and provide all missing information.

The records must be kept for three years following the end of the calendar year to which they relate. For example, a 1990 incident record must be saved until January, 1994.

Specific Instructions

Case Number
Enter the corresponding case number from the OSHA Form 300.

Employee
5 Enter the date the employee was hired by the employer.

Health Care Provider
6 Enter name of primary health care provider (e.g. physician, nurse, etc.) who rendered medical treatment.

7 If the employee received medical treatment off-site,

indicate: Health care facility name and address.

8 If employee was treated at a hospital, check whether he/she was admitted as an in-patient. Check no if the employee received emergency room treatment only.

Employer Use (Optional)

This section is optional. The employer may enter additional information, such as whether the case was compensable under Workers' Compensation, etc.

Injury or Illness

Each data element in this section should provide specific information about the event which resulted in the injury or illness and the subsequent outcome. Include as much detail as possible.

9 Describe the injury or illness. Be specific, for example: two inch laceration, carpal tunnel syndrome, or 15 dB shift in hearing threshold.

10 Enter the body part(s) affected. Be specific, for example: right index finger, left wrist, right ear.

11 Date of injury or illness (month/day/year): For injuries, enter the date the employee was injured. For illnesses, enter the date the illness was recognized. If there is no definite date of recognition, enter the date of the clinical diagnosis.

12 If the employee died, enter the date of death (month/day/year).

13 If the case involved one or more days away from work beyond the day of injury or the diagnosis of an illness, or restricted work activity, enter the date the employee returned to work at full capacity.

14 Enter the time of the event which resulted in the injury or illness. Indicate a.m. or p.m. Enter "NA" if no specific time can be determined.

15 Enter the time the employee arrived at his/her initial worksite. Indicate a.m. or p.m.

16 List all of the equipment, materials and chemicals the employee was using, applying, handling or operating when the injury or illness occurred. Be specific, for example: decorator's scaffolding, electric

sander, paintbrush, and paint. Enter "NA" for not applicable if no equipment, materials or chemicals were being used. NOTE: The items listed do not have to be directly involved in the employee's injury or illness.

17 Describe the specific activity the employee was engaged in when the event occurred, such as, sanding ceiling woodwork in preparation for painting.

18 Describe how the injury or illness occurred. Include the sequence of events and name any objects or substances that directly injured the employee or made the employee ill. For example: Worker stepped to the edge of the scaffolding to inspect work, lost balance and fell six feet to the floor. The worker's right wrist was broken in the fall.

Completed By

Enter the name of the person who completed the form; title; phone number; and date of completion.

OMB Disclosure Statement

Public reporting burden for this collection of information is estimated to average 17 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this estimate or any other aspect of this collection of information, including suggestions for reducing this burden, please send them to the OSHA Office of Statistics and/or the Office of IRM Policy, Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Do not send the completed form to either of these offices.

V. Legal Authority

The primary purpose of the Occupational Safety and Health Act (the Act), 29 U.S.C. 651 et seq., is to assure so far as possible, safe and healthful working conditions for every American worker over the period of his or her working lifetime. The Secretary's responsibilities under the Act are defined largely by its enumerated purposes, which include:

Encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions. [29 U.S.C. 651(b)(1)]

Building upon advances already made through employer and employee initiative for providing safe and healthful working conditions. [29 U.S.C. 651(b)(4)]

Providing for research in the field of occupational safety and health * * * developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems. [29 U.S.C. 651(b)(5)]

Exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems * * * [29 U.S.C. 651(b)(6)]

Providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his [or her] work experience. [29 U.S.C. 651(b)(7)]

Providing for appropriate reporting procedures with respect to occupational safety and health which will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problems. [29 U.S.C. 651(b)(12)]

Encouraging joint labor-management efforts to reduce injuries and disease arising out of employment. [29 U.S.C. 651(b)(13)]

Several sections of the Act provide legal authority for promulgation and enforcement of this regulation. A summary of relevant sections is provided below:

Section 8(c)(1) of the Act, 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, in cooperation with the Secretary of Health

and Human Services, 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." Section 8(c)(2) further provides that the "Secretary, in cooperation with the Secretary of Health and Human Services, shall 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 consciousness, restriction of work or motion, or transfer to another job." Section 8(c)(3) empowers the Secretary to require employers to make, keep, and preserve records regarding activities related to the Act. In particular, section 8(c)(3) gives the Secretary authority to require employers to "maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under Section 6." [29 U.S.C. 657(c)]

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

Section 9 empowers the Secretary to issue a citation to an employer who the Secretary believes "has violated a requirement * * * of any regulations prescribed pursuant to this Act" and may, pursuant to Section 10, assess a penalty under Section 17. [29 U.S.C. 658 and 659]

Section 20 empowers the Secretary of Labor and the Secretary of Health and Human Services to consult on research and related activities, "including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems." The Secretary of HHS, on the basis of such research, "* * * and other information available to him, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience." Also, the Secretary of HHS shall

conduct research "to explore new problems, including those created by new technology in occupational safety and health, which may require ameliorative action beyond that which is otherwise provided for in the operating provisions of this Act." Section 20 empowers the Secretary of Labor to disseminate information obtained by the Secretaries of Labor and HHS under this section to employers, employees, and organizations thereof. [29 U.S.C. 669]

Section 24 requires the Secretary to "develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics * * * The Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job." Section 24 also empowers the Secretary to "promote, encourage, or directly engage in programs of studies, information and communication concerning occupational safety and health statistics." Finally, Section 24 requires employers to "file such reports with the Secretary as he shall prescribe by regulation, as necessary to carry out his functions under this chapter." [29 U.S.C. 673]

VI. State Plans

The 25 States and territories with their own OSHA approved occupational safety and health plans must adopt a comparable rule. These 25 States 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, Virgin Islands, Washington, and Wyoming; and Connecticut and New York (for State and local Government employees only). The current 29 CFR 1952.4 requires that such States with approved State plans under section 18 of the OSH Act (29 U.S.C. 667), must adopt recordkeeping and reporting regulations which are "substantially identical" to those set forth in 29 CFR Part 1904. Therefore, the definitions used must be identical to ensure the uniformity of collected information. In addition, § 1952.4 provides that employer variances or exceptions to State recordkeeping or reporting requirements in a State plan State must be approved by the Bureau

of Labor Statistics. Similarly, a State is permitted to require supplemental reporting or recordkeeping data, but that State must obtain approval from the Bureau of Labor Statistics to insure that the additional data will not interfere with "the primary uniform reporting objectives." The proposed revision of 29 CFR 1952.4 keeps the same substantive requirements for the State Plan States, but reflects the organizational shift of some responsibilities of the Bureau of Labor Statistics to OSHA. See also the memorandum of understanding between OSHA and BLS effective January 1, 1991 (ex. 6).

VII. Regulatory Impact Assessment

The average establishment affected by the proposed changes to the recordkeeping requirements would incur a net reduction in recordkeeping costs. Thus the proposed rule will not impose adverse economic impacts on firms in the regulated community. The proposed exemption from the regulation of all non-construction establishments with fewer than 20 employees will mean that most small entities will experience an even larger cost savings. Nor is any significant international effect expected.

VIII. Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Assistant Secretary certifies that the proposed rule will not have a significant adverse impact on a substantial number of small entities. The proposed rule exempts construction employers with less than eleven employees and non-construction employers with less than twenty employees from most of the requirements, and would not have a differential impact on small businesses.

IX. Environmental Impact Assessment

In accordance with the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), Council on Environmental Quality NEPA regulations (40 CFR Part 1500 et seq.), and the Department of Labor's NEPA regulations (29 CFR Part 11), the

Assistant Secretary has determined that this proposed rule will not have a significant impact on the external environment.

X. Federalism

This proposed rule has been reviewed in accordance with Executive Order 12612 (52 FR 41685), regarding Federalism. Because this rulemaking action involves a "regulation" issued under section 8 of the OSH Act, and not a "standard" issued under section 6 of the Act, the rule does not preempt State law, see 29 U.S.C. § 667 (a). The effect of the proposed rule on States is discussed above in Section VI, *State Plans*.

XI. Public Participation

Interested persons are requested to submit written comments on the issues raised in this proposal. Responses to the questions raised in the proposal are also encouraged. Whenever possible, solutions should be included where the comments are of a critical nature. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken on each issue.

These comments must be postmarked by May 2, 1996. Comments are to be submitted in writing in quadruplicate, or 1 original (hard copy) and 1 disk (5 1/4 or 3 1/2) in WP 5.0, 5.1, 5.2, 6.0 or ascii. Note: Any information not contained on disk; e.g., studies, articles, etc. must be submitted in quadruplicate. Comments of 10 pages or less may be transmitted by facsimile to (202) 219-5046 provided the original and 4 copies of the comment are sent to the Docket Officer thereafter. All comments shall be submitted to: Docket Officer, Docket No. R-02, Occupational Safety and Health Administration, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219-7894.

All written comments received within the specified comment period will be made a part of the record and will be available for inspection and copying at the above Docket Office address.

A public meeting will be held in Washington, D.C. in the U.S.

Department of Labor auditorium at 200 Constitution Avenue, N.W. beginning at 8:30 AM on March 26, 1996 and extending through March 28th, if necessary. The purpose of the meeting is to give the public an opportunity to provide information to OSHA concerning the proposed rule. Notices of intention to appear at the public meeting should identify person and organization, the amount of time requested for presenting views, the subject matter, and a brief summary of the intended presentation. The amount of time available for each presenter may be limited by OSHA, if necessary. Notices to appear must be postmarked on or before March 5, 1996. Notice of intention to appear at the meeting is to be sent to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. R-02, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C., 20210.

XII. Paperwork Reduction Act of 1995

The proposed regulation contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, summary, description of need, respondent description and estimated reporting and recordkeeping burden are shown below. Included in the estimate of burden is the time and effort for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and financial resources expended for developing, acquiring, installing, and utilizing technology and systems to meet the information collection requirements.

Title: Recording and Reporting Occupational Injuries and Illnesses.

Summary: OSHA is revising 29 CFR 1904 and the associated Forms (OSHA No. 200 and OSHA No. 101), and in addition to providing numerous clarifications and minor modifications, this revision makes several major changes as follows:

| Concept | Change/requirement |
|--|---|
| Exemptions Injury and Illness Records for construction sub-contractors. | Expand the Small Employer exemption and modify the Low Hazard Industry (SIC) exemption. Require site controlling employers in the construction industry to maintain additional records on workers other than their own employees. |
| Computerization | Allow employers to maintain their OSHA injury and illness records on computer file without corresponding hard copies. |
| Injury vs Illness | Eliminate the employer responsibility to distinguish between injuries and illnesses. |
| Recordable condition | Redefine the criteria outlining what is a recordable occupational injury or illness. |
| Forms | The forms will be requesting modified information and will be renumbered as the OSHA Form 300 (OSHA Injury and Illness Log and Summary) and the OSHA Form 301 (OSHA Injury and Illness Incident Record). |

Description of need: The OSHA Form 300, Log and Summary; the OSHA Form 301, Incident Record; and the recordkeeping regulations will provide employers with the means and specific instructions needed to maintain records of work-related injuries and illnesses.

Accurate records are necessary for the optimal prioritization of OSHA's scarce resources. For example, inspection priorities are largely based on estimates of occupational injury and illness data collected from employers. The data also play an important part in the administrative procedures mandated by

the Supreme Court that allow OSHA to obtain search warrants to conduct safety and health inspections. Others using the data include State and local government agencies, academia, employers, trade associations, labor, and the general public.

Efforts to fulfill the Congressional mandate that the Federal government protect employees from safety and health dangers on the job would be severely hampered by incomplete, inconsistent, and inaccurate data. The revision of the recordkeeping requirements is an attempt to improve

the accuracy, completeness and consistency of these records, while reducing the paperwork burden to the regulated community.

Respondent description: Approximately 620,000 private sector employer establishments will be required to maintain the OSHA Injury and Illness Log and Summary and Incident Records, though a small number of them will not have a recordable case in any given year and will only have to post the summary part of the OSHA Form 300.

Estimated Burden:

EMPLOYERS' BURDEN FOR THE PROPOSED REVISED REQUIREMENTS

| Actions | Number of cases | Unit hours per case | Total burden hours |
|--|---------------------------------|-------------------------|--------------------|
| Complete OSHA 301 (Includes research of instructions and case details to complete the form). | 508,895 Forms | .28 (17 min/60 min) ... | 142,490 |
| Complete OSHA 300 (Includes research of instructions and case details to complete the form). | 5,088,948 Line entries | .166 (10 min/60 min) . | 844,765 |
| Injury and illness records for construction subcontract workers | 74,822 Line entries | .166 (10 min/60 min) . | 12,420 |
| Fixed burden (Set-up, Summary, and Posting of OSHA 300) | 620,879 Establishments | .30 (18 min/60 min) ... | 186,264 |
| Learning System—Turnover | 124,176 Establishments | .42 (25 min/60 min) ... | 52,153 |
| Disclosure burden * | 444,222 employee requests | .016 (1 min/60 min) ... | 7,107 |
| | 40,000 Inspections | .033 (2 min/60 min) ... | 1,320 |
| Total Annual Burden Hours | | | 1,246,519 |
| Learning New System Implementation year only | 458,518 Establishments | .25 (15 min/60 min) ... | 114,629 |
| | 162,361 Establishments | .42 (25 min/60 min) ... | 68,192 |
| Total Burden Hours for Implementation Year Only | | | 1,429,340 |

*Based on estimates of OSHA compliance inspections conducted during 1993.

This is an annual decrease in burden of 246,191 hours from the estimate of the current injury and illness recordkeeping requirements, after a smaller decrease of 63,370 hours in the initial year of implementation due to time required to learn the new system. The decrease in hours is primarily due to the simplification of definitions and the reduction of information required on the OSHA Log and supplementary forms.

The agency has submitted a copy of the proposed rule to OMB in accordance with 44 U.S.C. § 3507(d) of the Paperwork Reduction Act for its review of these information collections. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including (1) an evaluation of whether the proposed collection of information ensures that the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) an evaluation of the accuracy of the agency's estimate of burden of the proposed collection of

information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) how to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses. In addition, OSHA requests comment on the nature and extent of any cost burdens, (i.e., monetary costs) that employers would incur due to changes in paperwork requirements that would be necessitated by this proposal. Comments should be sent to OSHA Office of Statistics, 200 Constitution Avenue, N.W., Washington, DC 20210 and to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503, Attn. Desk Officer for OSHA. Comments on the issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days of publication of the Notice of Proposed Rulemaking,

and no later than within 60 days of publication.

List of Subjects

29 CFR Part 1904

Recording and reporting of occupational injuries and illnesses, statistical surveys of occupational injuries and illnesses, occupational safety and health, State plans.

29 CFR Part 1952

Recording and reporting of occupational injuries and illnesses, variances to State recording and reporting requirements, injury and illness statistics, State plans.

XIII. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 8(c), 8(g), 20 and 24 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 673), Secretary of Labor's Order No. 1-90 (55 FR 9033), and 5 U.S.C. 553, it

is proposed to revise 29 CFR Part 1904 and to amend part 1952 as set forth below.

Signed in Washington, DC., this 26 day of January, 1996.
Joseph A. Dear,
Assistant Secretary of Labor.

PART 1904—[AMENDED]

1. 29 CFR Part 1904 would be revised to read as follows:

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

- Sec.
- 1904.1 Purpose.
- 1904.2 Coverage and exemptions.
- 1904.3 Definitions.
- 1904.4 OSHA Injury and Illness Log and Summary (OSHA Form 300 or Equivalent).
- 1904.5 OSHA Injury and Illness Incident Record (OSHA Form 301 or Equivalent).
- 1904.6 Preparation, certification and posting of the year-end summary.
- 1904.7 Location of records.
- 1904.8 Period covered.
- 1904.9 Retention and updating of occupational injury and illness records.
- 1904.10 Change of ownership.
- 1904.11 Access to records.
- 1904.12 Reporting of fatality or multiple hospitalization incidents.
- 1904.13 Reports by employers.
- 1904.14 Recordkeeping under approved State plans.
- 1904.15 Petitions for recordkeeping exceptions.
- 1904.16 Falsification of, or failure to keep records or provide reports.
- 1904.17 Subcontractor records for major construction projects.
- Appendix A to Part 1904—Work-Relatedness.
- Appendix B to Part 1904—Recording of Specific Conditions.
- Appendix C to Part 1904—Decision Tree for Recording Occupational Injuries and Illnesses.

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 1-90 (55 FR 9033), and 5 U.S.C. 553.

§ 1904.1 Purpose.

(a) The purpose of this Part is to require employers to record and report work-related injuries, illnesses and

fatalities. The records: assist employers and employees in their efforts to discover, evaluate and address workplace hazards; assist occupational safety and health officials in carrying out enforcement and consultation programs; aid in the development and evaluation of safety and health standards; are used to develop information and conduct research regarding the causes and prevention of occupational injuries and illnesses; and accurately describe the nature of occupational safety and health problems for the Nation, State or establishment.

(b) The records required in this Part provide descriptive information concerning the incidence of occupational injuries and illnesses, regardless of fault or preventability. Recording an injury or illness does not necessarily mean that the employer or employee was at fault, that an OSHA standard was violated, or that the employee is eligible for workers' compensation or other insurance benefits. Recordable workplace injuries and illnesses result from a variety of workplace events or exposures, including but not limited to: accidents, exposure to toxic materials or harmful physical agents, intentional acts of violence, or naturally occurring events such as a tornado or earthquake.

(c) The regulations in this Part were promulgated in consultation with the Secretary of Health and Human Services.

§ 1904.2 Coverage and exemptions.

Coverage and exemptions are summarized below and specified in the following table. See table to determine coverage and exemptions.

(a) Coverage. (1) All employers covered by the Act, regardless of size or Standard Industrial Classification (SIC), are required to:

(i) Comply with the reporting requirements of § 1904.12 of this Part, concerning fatalities or multiple hospitalizations; and

(ii) Upon being notified in writing by an authorized government agency, maintain an OSHA Injury and Illness

Log and Summary and make reports under § 1904.13 of this Part.

(2) Additionally, employers in specific industries listed in columns A and B on the following table are required to comply with other regulations in this Part 1904, except as provided in paragraph (b) of this section.

(b) Exemptions. Exemptions from coverage are based upon size and the Standard Industrial Classification (SIC) of the employer:

(1) Size. (i) Construction employers with 10 or fewer employees for the entire previous calendar year are exempt from the regulations of this Part 1904, except as noted in paragraph (a)(1) of this section. See column D of the Coverage and Exemption Table in paragraph (b)(2) of this section.

(ii) Employers in industries other than construction with 19 or fewer employees for the entire previous calendar year are exempt from the regulations of this Part 1904, except as noted in paragraph (a)(1) of this section. See column D of the Coverage and Exemption Table in paragraph (b)(2) of this section.

(2) Standard Industrial Classification (SIC) code. Within the covered industries (column B), certain specific industries (at the 3-digit SIC level) are exempt from the regulations of this Part 1904, except as noted in paragraph (a)(1) of this section. See column C for the list of exempt SICs.

Note to paragraph (b)(2): Standard Industrial Classification (SIC) shall be determined using the Standard Industrial Classification Manual, Executive Office of the President, Office of Management and Budget. All size thresholds or exemptions are based on the number of employees of the entire firm or corporation, not the number of employees in an individual establishment.

Coverage and Exemption Table

Note 1 to Coverage and Exemption Table: All employers covered by the OSH Act, regardless of size or SIC code are required to comply with §§ 1904.12 and 1904.13. The following table refers to coverage and exemptions to the other requirements of Part 1904.

| Covered employers | | Exemptions to employers listed in column B | |
|-----------------------------|--|--|--|
| (A) Industry division | (B) Specific industry | (C) By SIC | (D) By size |
| Construction | All Industries (SIC 15-17) | | 10 or fewer employees for the entire previous calendar year. |
| Mining | All Industries not covered by MSHA | | 19 or fewer employees for the entire previous calendar year. |
| Agriculture | All Industries (SIC 01-09) | | |
| Manufacturing | All Industries (SIC 20-39) | | |
| Transportation & Utilities. | All Industries (SIC 40-49) | | |
| Wholesale | All Industries (SIC 50-51) | | |

| Covered employers | | Exemptions to employers listed in column B | |
|---|--|---|-------------|
| (A) Industry division | (B) Specific industry | (C) By SIC | (D) By size |
| Retail | SIC 52 Building Materials, Hardware Garden Supply and Mobile Home Dealers,. SIC 53 General Merchandise Stores, SIC 54 Food Stores, SIC 553 Auto and Home Supply Stores, SIC 555 Boat Dealers, SIC 571 Home Furniture and Furnishings Stores, SIC 58 Eating and Drinking Places, SIC 596 Nonstore Retailers, SIC 598 Fuel Dealers. | SIC 525 Hardware Stores. | |
| Finance, Insurance & Real Estate. Services | SIC 651 Real Estate Operators and Lessors and SIC 655 Land Subdividers and Developers. SIC 70 Hotels, Rooming Houses, Camps and Other Lodging Places;. SIC 721 Laundry, Cleaning, and Garment Services;. SIC 734 Services to Dwellings and Other Buildings;. SIC 735 Miscellaneous Equipment Rental and Leasing;. SIC 736 Personnel Supply Services; SIC 75 Automotive Repair, Services, and Parking; SIC 76 Miscellaneous Repair Services; SIC 79 Amusement and Recreation Services; SIC 80 Health Services; SIC 833 Job Training and Vocational Rehabilitation Services; SIC 836 Residential Care; SIC 842 Arboreta and Botanical or Zoological Gardens; and SIC 869 Membership Organizations Not Elsewhere Classified. | SIC 752 Automobile Parking; SIC 764 Reupholstery and Furniture Repair; SIC 793 Bowling Centers; SIC 801 Offices and Clinics of Doctors of Medicine; SIC 807 Medical and Dental Laboratories; and SIC 809 Miscellaneous Health and Allied Services, Not Elsewhere Classified. | |

Note 2 to Coverage and Exemption Table: Some States with their own occupational safety and health programs do not recognize the Federal recordkeeping exemptions. Contact your nearest OSHA office or State agency to find out if State requirements differ.

Note 3 to Coverage and Exemption Table: SICs are from the Standard Industrial Classification Manual, 1987: U.S. Office of Management and Budget. Contact your nearest OSHA office or State agency for help in determining your SIC.

Note 4 to Coverage and Exemption Table: The size exemption is based on the employment of the entire firm, not of an individual establishment. Employees include part-time workers and corporate officers.

Note 5 to Coverage and Exemption Table: Employers normally exempt from the recordkeeping requirements must still comply with the following:

- (1) Report any occupational fatality or event resulting in the hospitalization of 3 or more employees as required by Section 1904.12; and
- (2) Maintain an OSHA Injury and Illness log and Summary and submit reports if directed in writing to do so by an authorized government agency as required by Section 1904.13.

Note 6 to Coverage and Exemption Table: Example of how to read the Coverage and Exemption Table: Employers in SIC 52 (Building Materials, Hardware Garden Supply and Mobile Home Dealers) are covered by the regulation except for employers with 19 or fewer employees in the previous calendar year and Hardware Stores (SIC 525) of any size.

§ 1904.3 Definitions.

The following definitions apply to employer recording and reporting of occupational fatalities, injuries and illnesses.

Act means the Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S. 651 et seq.). The definitions contained in section (3) of the Act and related interpretations shall be applicable to such terms when used in this Part 1904.

Days away from work means the number of days the employee would have worked but could not because of an occupational injury or illness. Days away from work do not include the day the employee was injured or became ill

and days on which the employee would not have worked even though able to work (e.g. weekends, holidays, pre-scheduled vacation days, etc.). The count of days away from work ceases with the termination of employment if the termination is completely unrelated to the employee's injury or illness. If the termination is related to the employee's injury or illness, the employer must enter an estimate of the number of days that would have been missed had the employee not been terminated. For extended cases that result in 180 or more days away from work, an entry of "180" or "180+" in the days away from work column shall be considered an accurate count.

Employee as defined in section 3 of the Act, means an employee of an employer who is employed in a business of his or her employer which affects commerce.

Note to definition of "Employee": There are a variety of circumstances which result in an employee/employer relationship for OSHA recordkeeping purposes. The following is meant to be illustrative only, and not meant to be an exhaustive list. Employees include corporate officers as well as full-time, part-time, temporary and limited service workers who receive any form of compensation for their services. Employees include persons who may be labeled "independent contractors", or migrant workers, and persons who are provided by a temporary help service or personnel leasing agent when they are supervised on a day-to-

day basis by the employer utilizing their services. Day-to-day supervision occurs when, in addition to specifying the output, product or result to be accomplished by the person's work, the employer supervises the details, means, methods and processes by which the work is to be accomplished. Employees do not include sole proprietors, partners, family members of farm employers or domestic household workers when employed in the home (baby sitters, housekeepers, gardeners, etc.).

Establishment means:

(1) A single physical location that is in operation for 60 calendar days or longer where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, grocery store, construction site, hotel, farm, ranch, hospital, central administrative office, or warehouse.) The establishment includes the primary work facility and other areas such as recreational and storage facilities, restrooms, hallways, etc. The establishment does not include company parking lots.

(2) When distinct and separate economic activities are performed at a single physical location, each activity may represent a separate establishment. For example, contract construction activities conducted at the same physical location as a lumber yard may be treated as separate establishments. According to the Standard Industrial Classification (SIC) Manual, Executive Office of the President, Office of Management and Budget, (1987) each distinct and separate activity should be considered an establishment when no one industry description from the SIC manual includes such combined activities, and the employment in each such economic activity is significant, and separate reports can be prepared on the number of employees, their wages and salaries, sales or receipts, or other types of establishment information.

First aid means the following treatments for work-related injuries and illnesses. This list is a comprehensive list of all treatments considered first aid for recordkeeping purposes. These treatments are considered "first aid", regardless of the provider, thus they may be provided by a physician, nurse, or other health care provider and are still considered first aid.

- (1) Visit(s) to a health care provider limited to observation
- (2) Diagnostic procedures, including the use of prescription medications solely for diagnostic purposes (e.g. eye drops to dilate pupils)
- (3) Use of nonprescription medications, including antiseptics
- (4) Simple administration of oxygen
- (5) Administration of tetanus or diphtheria shot(s) or booster(s)

(6) Cleaning, flushing or soaking wounds on skin surface

(7) Use of wound coverings such as bandages, gauze pads, etc.

(8) Use of any hot/cold therapy (e.g. compresses, soaking, whirlpools, non-prescription skin creams/lotions for local relief, etc.) except for musculoskeletal disorders (See Mandatory Appendix B)

(9) Use of any totally non-rigid, non-immobilizing means of support (e.g. elastic bandages)

(10) Drilling of a nail to relieve pressure for subungual hematoma

(11) Use of eye patches

(12) Removal of foreign bodies not embedded in the eye if only irrigation or removal with a cotton swab is required

(13) Removal of splinters or foreign material from areas other than the eyes by irrigation, tweezers, cotton swabs or other simple means

Health care provider is a person operating within the scope of his or her license, registration or certification in health care.

Injury or illness is any sign, symptom, or laboratory abnormality which indicates an adverse change in an employee's anatomical, biochemical, physiological, functional, or psychological condition.

Medical treatment includes any medical care or treatment beyond "first aid".

Responsible Company Official is the person accountable for certifying the accuracy and completeness of the entries on the OSHA Injury and Illness Log and Summary. This person must be either an owner of the company, an officer of the corporation, the highest ranking company official working at the establishment, or the immediate supervisor of the highest ranking company official working at the establishment.

Restricted work activity means the employee is not capable of performing at full capacity for a full shift:

(1) The task he or she was engaged in at the time of injury or onset of illness (the task includes all facets of the assignment the employee was performing); OR

(2) His or her daily work activity (daily work activity includes all assignments the employee was expected to perform on the day of injury or onset of illness).

Site controlling employer is an employer in the construction industry (SIC codes 15, 16 and 17) with contractual, legal and/or practical control over the performance, timing, or coordination of other employers' work on a construction project with an initial

total contract value of one million dollars (\$1,000,000) or more. An employer (such as a general contractor) that retains another employer to work on the project is presumed to have sufficient control over the subcontractor's performance to be considered a site controlling employer. In addition, an employer (such as a construction manager) is a site controlling employer if it has managerial or supervisory authority with respect to employers engaged on the project, regardless of whether it has a contractual relationship with those employers.

Subcontractor employees are employees of construction firms (in SICs 15, 16, and 17) who are present at a construction project in connection with their job(s) who are not employees of the site controlling employer at that construction project.

Work environment means the establishment and other locations where employees are engaged in work or are present as a condition of their employment.

Work-related. An injury or illness is work-related if an event or exposure in the work environment either caused or contributed to the resulting condition, or aggravated a pre-existing condition. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring at the employer's establishment. Work-relatedness is not presumed for injuries and illnesses resulting from events or exposures away from the employer's establishment; they are considered work-related only if the worker is engaged in a work activity or is present as a condition of employment. See Mandatory Appendix A to part 1904 for a discussion of work-relatedness and criteria for rebutting the presumption of work-relatedness.

§ 1904.4 OSHA Injury and Illness Log and Summary (OSHA Form 300 or Equivalent).

(a) Each employer shall maintain for each establishment an OSHA Injury and Illness Log and Summary [OSHA Form 300 (formerly OSHA No. 200)] or equivalent form for recordable injuries and illnesses experienced by his or her employees. Employers with multiple establishments may maintain a consolidated log for establishments employing no more than 20 employees. Employers who exercise this option must enter the address of the affected employee's establishment in the department column for each recorded injury or illness.

(b) Each employer shall enter every recordable injury and illness within 7 calendar days of receiving information

that a recordable injury or illness has occurred. A recordable injury or illness is one which meets all of the following four criteria:

(1) An injury or illness exists (see the definition of injury or illness for additional information); *and*

(2) The injury or illness is work-related (see the definition of work-related and Appendix A to part 1904 for additional information); *and*

(3) The injury or illness is new. A new injury or illness does not result from the recurrence of a pre-existing condition if no new or additional workplace incident or exposure occurs. A recurrence of a previous work related injury or illness is presumed to be a new case when it either (1) results from a new work event or exposure, or (2) 45 days have elapsed since medical treatment, restricted work or days away from work were discontinued and the last signs or symptoms were experienced;

(Note: This presumption is rebuttable by medical evidence indicating that the prior case had not been resolved.)

and

(4) The injury or illness meets one or more of the following:

(i) results in death or loss of consciousness,

(ii) results in day(s) away from work, restricted work activity or job transfer, (iii) requires medical treatment beyond first aid, or

(iv) is a recordable condition listed in the Mandatory Appendix B to part 1904.

(5) See Appendix C to part 1904 for a decision tree for recording occupational injuries and illnesses.

(c) Any employer may maintain the OSHA Injury and Illness Log and Summary (OSHA Form 300) on an equivalent form, by means of data processing equipment, or both, when all of the following conditions are met:

(1) The equivalent form or computer printout is as readable and understandable as the OSHA Form 300 to a person familiar with the OSHA Form 300.

(2) The equivalent form or computer printout must contain, at a minimum, the same information as found on the OSHA Form 300.

§ 1904.5 OSHA Injury and Illness Incident Record (OSHA Form 301 or Equivalent).

(a) In addition to the OSHA Injury and Illness Log and Summary (OSHA Form 300) provided for under Section § 1904.4(a) of this Part, each employer, shall complete an OSHA Injury and Illness Incident Record [OSHA Form 301 (formerly OSHA Form 101)] for each recordable injury or illness

experienced by employees of that establishment, within 7 calendar days of receiving information that a recordable injury or illness has occurred. Each OSHA Form 301 must contain the unique case or file number relating it to the corresponding case entry on the OSHA Form 300.

(b) An employer may maintain the OSHA Form(s) 301 on an equivalent form(s), by means of data processing equipment, or both, when all of the following conditions are met:

(1) The equivalent form or computer printout is as readable and understandable as the OSHA Form 301 to a person familiar with the OSHA Form 301.

(2) The equivalent form or computer printout must contain, all of the information found on the OSHA Form 301, or must be supplemented by an OSHA Form 301 containing the missing information. The detailed information concerning the injury or illness (questions 16, 17 and 18) must be asked in the same order and using identical language from the Form 301. All other questions may be asked in any manner and in any order.

§ 1904.6 Preparation, certification and posting of the year-end summary.

(a) Each employer shall post a year-end summary of occupational injuries and illnesses for each establishment. This summary shall consist of the year's injury and illness totals from the OSHA Form 300 or equivalent, calendar year covered, company name, establishment name, establishment address, annual average number of employees, the total hours worked by all employees, and the employee access and employer penalty statements as found on the OSHA Form 300. If no injuries or illnesses occurred during the year: Zeroes must be entered on the totals line; annual average number of employees and total hours worked by all employees must be entered; and the form shall be posted. Note: The OSHA 300 Log may be used for the summary. The posting requirement may be met by simply copying and posting the portion of the 300 Log to the right of column A.

(b) A responsible company official (see the definition of responsible company official for further information) shall sign the summary of occupational injuries and illnesses to certify that he or she has examined the OSHA Injury and Illness Log and Summary and that the entries on the form and the year-end summary are true, accurate and complete.

(c)(1) Each employer shall post a copy of the establishment's year-end summary in each establishment in the

same manner that notices are required to be posted under 29 CFR 1903.2(a)(1). The summary shall be completed and posted no later than February 1 of the year following the calendar year covered by the summarized records, and shall remain in place until January 31 of the following year.

(2) For employees who do not primarily report to or work at a single establishment, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary to each employee who is on the payroll at any time during the month of January following the calendar year covered by the year-end summary.

(3) For employers who maintain a consolidated log of small establishments under § 1904.4(a), employers shall satisfy this posting requirement by posting a year-end summary based on the consolidated log in each establishment.

(4) Multi-establishment employers do not have to post year-end summaries for establishments that have permanently closed during the calendar year.

§ 1904.7 Location of records.

(a) The records required by §§ 1904.4, 1904.5, 1904.6 and 1904.17 for employees and "subcontractor employees" who report to or work at a single establishment, such as a factory, construction site, grocery store, hospital, warehouse, central administrative office, etc. shall be kept at the establishment.

(b) Records for employees who report to a particular establishment but work elsewhere shall be kept at the establishment where the employees report each day.

(c) For employees who normally report to one establishment but are injured or become ill at another establishment within the same company, a recordable injury or illness shall be entered on the Log of the establishment in which they were injured or became ill.

(d) Records for employees who do not report to any establishment on a regular basis may be kept at the transient work site(s) for each operation or group of operations or they may be kept at an established central location by:

(1) Having the address and telephone number of the central location available at each worksite; and

(2) Having personnel available at the central location during normal business hours to provide information from the records kept there.

(e) Any employer may keep the OSHA Form 300 or OSHA Form(s) 301 at a location other than the establishment, as long as the information is retrievable in

accordance with the provisions defined in § 1904.11, Access to records.

§ 1904.8 Period covered.

Records shall be kept on a calendar year basis.

§ 1904.9 Retention and updating of work-related injury and illness records.

(a) *Retention.* OSHA Forms 300 and 301 or equivalents, year-end summaries, and injury and illness records for "subcontractor employees" as required under § 1904.17 of this Part shall be retained for 3 years following the end of the year to which they relate.

(b) *Updating.* During the retention period, employers must revise the OSHA Form 300 or equivalent to include newly discovered recordable injuries or illnesses. Employers must revise the OSHA Form 300 to reflect changes which occur in previously recorded injuries and illnesses. If the description or outcome of a case changes, remove the original entry and enter the new information to reflect the more severe consequence. Employers must revise the year-end summary at least quarterly if such changes have occurred.

Note to § 1904.9: Employers are not required to update OSHA Form 301 to reflect changes in previously recorded cases.

§ 1904.10 Change of ownership.

Where an establishment has changed ownership, each employer shall be responsible for recording and reporting occupational injuries and illnesses only for that period of the year during which he or she owned such establishment, but the new owner shall retain all records of the establishment kept by the prior owner, as required by § 1904.9(a) of this Part.

§ 1904.11 Access to records.

(a) *Government Representatives.* Each employer shall provide, upon a request made in person or in writing, copies of the OSHA Forms 300 and 301 or equivalents, and year-end summaries for their own employees, and injury and illness records for "subcontractor employees" as required under this Part to any authorized representative of the Secretary of Labor or Secretary of Health and Human Services or to any authorized representative of a State accorded jurisdiction for occupational safety and health for the purposes of carrying out the Act.

(1) When the request is made in person, the information must be provided in hard copy (paper printout) within 4 hours. If the information is being transmitted to the establishment from some other location, using telefax

or other electronic transmission, the employer may provide a copy to the government representative present at the establishment or to the government representative's office.

(2) When the request is made in writing, the information must be provided within 21 days of receipt of the written request, unless the Secretary requests otherwise.

(b) *Employee(s), former employee(s) and/or their designated representative(s).* (1) Upon request, the employer shall make the OSHA Form 300 or equivalent available for viewing by an employee(s), former employee(s), and/or their designated representative(s) by the close of business on the next scheduled work day. The employee, former employee, and/or their designated representative(s) shall have access to the entire OSHA Form 300 (Log), including personal identifiers, for any establishment in which the employee is or has been employed. This includes access to the current Log and all Logs retained and maintained pursuant to § 1904.9.

(2) Upon request, the employer shall make available to an employee(s) or former employee(s) for viewing his or her OSHA Form(s) 301 or equivalent for his or her own recordable injury or illness by the close of business on the next scheduled workday.

(3) The employer shall also make copies available within 7 calendar days whenever an individual who has a right to view a record(s) listed in paragraphs (b) (1) and (2) of this section requests a copy, either in person or in writing. The employer shall not, in writing or otherwise, attempt to restrict the employees' use of such copies. The employer shall assure that either:

(i) A copy of the record(s) is provided without cost to the individual;

(ii) The necessary copying facilities (e.g., photocopying) are made available without cost to the individual for copying the record(s); or

(iii) The record(s) is loaned to the individual for a reasonable time to enable a copy to be made.

(4) Whenever a record has been previously provided without cost to an employee(s), former employee(s) and/or their designated representative(s), the employer may charge reasonable, non-discriminatory administrative costs (i.e. search and copying expenses but not including overhead expenses) for a request by the same person for additional copies of the record, except that an employer shall not charge for an initial request of a copy of an updated or corrected record.

(5) Upon request, the employer shall make available to an employee(s),

former employee(s) or his or her designated representative access to all OSHA Form(s) 301 or equivalent. Access shall be provided in a reasonable time. The employer may charge a reasonable fee for searching and copying expenses.

(c) Nothing in this section shall be deemed to preclude employees and their designated representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

(d) In the case of a deceased or legally incapacitated employee, the employee's legal representative(s) may directly exercise all the employee's rights under this section.

§ 1904.12 Reporting of fatality or multiple hospitalization incidents.

(a) Within 8 hours after the death of any employee from a work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related incident, the employer(s) of each employee so affected shall, report the fatality/multiple hospitalization by telephone or in person to the Area Office of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, that is nearest to the site of the incident during regular business hours, or by using the OSHA emergency toll-free central telephone number (1-800-321-OSHA [6742]) during non business hours. Note: The site controlling employer or designee will be responsible for making the report if no more than two employees of a single employer were hospitalized but, collectively, three or more workers were hospitalized as in-patients.

(b) This requirement applies to each such fatality or hospitalization of three or more employees which occurs within thirty (30) days of an incident.

(c) *Exception:* If the employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under paragraphs (a) and (b) of this section, the employer shall make the report within 8 hours of the time the incident is reported to any agent or employee of the employer.

(d) Each report required by this section shall relate the following information: establishment name, location of incident, time of the incident, number of fatalities or hospitalized employees, contact person, phone number, and a brief description of the incident.

§ 1904.13 Reports by employers.

(a) Section 24 of the Act, 29 U.S.C. 673, directs the Secretary of Labor, in consultation with the Secretary of Health and Human Services, to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. Section 24 also requires employers to file reports with the Secretary on "the basis of records made and kept pursuant to Section 8(c) of this Act." Section 8(c), 29 U.S.C. 657(c), requires each employer to "make, keep and preserve, and make available to the Secretary or the Secretary of Health and Human Services, such records regarding his activities relating to this Act" as prescribed by regulation for enforcement of the Act or "for developing information regarding the causes and prevention of occupational accidents and illnesses." Section 8(c) also directs the Secretary of Labor, in cooperation with the Secretary of Health and Human Services, to prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on work-related deaths, injuries, and illnesses.

(b) Pursuant to the statutory authority described above, the Secretary of Labor and Secretary of Health and Human Services may request reports from employers regarding the employers' activities relating to the Act. These requests for reports shall be in writing, shall describe what information must be reported, and may include a request for copies of records kept pursuant to 29 CFR Part 1904, information that the employer is required to maintain by regulations or standards promulgated pursuant to the Act, information required to participate in periodic surveys of occupational injuries and illnesses, and/or information necessary to determine rates of injury, illness or exposure, such as employment and hours of work. Note: Employers who are otherwise exempted under § 1904.2 of this Part, shall upon notification by the Secretary of Labor or Secretary of Health and Human Services, maintain the OSHA Log and Summary on Injuries and Illnesses for any year in which they are notified that they have been selected for participation in a data collection program of occupational injuries and illnesses.

(c) The employer shall file the requested reports with the Secretary within 21 calendar days of receipt of the request, unless the Secretary requests otherwise.

(d) Nothing in any State plan approved under section 18(c) of the Act shall affect the duties of employers to submit required reports.

§ 1904.14 Recordkeeping under approved State plans.

(a) Recordkeeping and reporting requirements promulgated by State plans are required to be substantially identical to this Part (see 29 CFR 1902.3(k) and 29 CFR 1952.4). State plans shall promulgate recordkeeping and reporting requirements that are identical to the Federal requirements for determining the types of injuries and illnesses that will be entered into the records and the manner in which they are entered. All other recordkeeping and reporting requirements that are promulgated by State plans shall be at least as effective as the Federal requirements.

(b) Records maintained by an employer and reports submitted, pursuant to and in accordance with the requirements of an approved State plan under section 18 of the Act, shall be regarded as compliance with this Part.

(c) State and local government agencies are exempt from Federal OSHA recordkeeping in States under the jurisdiction of Federal OSHA. However, in States with their own OSHA approved safety and health programs, State and local government agencies must keep injury and illness records in accordance with State law and 29 CFR 1952.4.

§ 1904.15 Petitions for recordkeeping exceptions.

All requests or variances for recordkeeping exceptions shall be made in accordance with the procedures set forth in 29 CFR 1905. Any exception granted prior to [Effective date of final rule] is null and void.

§ 1904.16 Falsification of, or failure to keep records or provide reports.

(a) Section 17(g) of the Act provides that "Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment, for not more than 6 months or both."

(b) Failure to maintain records or file reports as required by Part 1904, or as required by the forms and instructions issued under Part 1904, may result in the issuance of citations and assessment of penalties as provided for in sections 9, 10, and 17 of the Act.

(c) An employee who is subject to retaliatory discrimination by his or her employer for filing a report of a work-related injury or illness is protected by Section 11(c) of the OSH Act and 29 CFR 1977 Discrimination Against

Employees Exercising Rights Under the Williams-Steiger Occupational Safety and Health Act of 1970. An employer who violates section 11(c) may be required to reinstate or rehire a fired employee with back pay.

§ 1904.17 Subcontractor records for major construction projects.

(a) Any site controlling employer in the construction industry (SICs 15, 16 and 17), for construction projects with an initial total contract value of one million dollars (\$1,000,000) or more, shall maintain a separate occupational injury and illness record (subcontractor record) for recordable injuries and illnesses sustained by "subcontractor employees" (not considered employees of the site controlling employer) while working at the construction project. On the subcontractor record, the site controlling employer is only required to record occupational injuries and illnesses of "subcontractor employees" who are employed by a construction firm who had eleven (11) or more full and/or part-time employees at any one time during the calendar year immediately preceding the current calendar year. (Note: The size threshold is based on the number of employees of the entire firm or corporation, not of an individual establishment.)

(b) The site controlling employer shall comply with the requirements of § 1904.4(b) in determining which injuries and illnesses are recordable on the subcontractor record, and when to record them. The injury and illness information for each recordable case occurring to "subcontractor employees" shall include the person's name, company, date of the event which resulted in the injury or illness, and a brief description of the injury or illness. The site controlling employer shall also include the location of the site and the period of time covered on the record. The site controlling employer shall maintain all subcontractor records pertaining to one construction site in a consolidated file by calendar year. The site controlling employer has the option of using a separate OSHA Form 300, an equivalent form, or a collection of records to satisfy this requirement. Note: The employer of the "subcontractor employee" is not relieved of the responsibility of completing the OSHA Form 300 or equivalent as required by § 1904.4(a).

(c) For those construction projects where there is more than one site controlling employer, those employers may agree to assign the responsibility for maintaining the subcontractor records to one of the site controlling employers by means of a written

agreement. When such a written agreement exists, the other site controlling employers on the project are not required to maintain the subcontractor record regardless of whether they may be deemed to be site controlling employers.

(d) The site controlling employer is not required to complete an OSHA Form 301 for injuries or illnesses experienced by "subcontractor employees". Note: The employer of the "subcontractor employee" is not relieved of the responsibility of completing the OSHA Form 301 or equivalent as required by § 1904.5(a).

(e) The site controlling employer is not required to prepare a year-end summary for injuries and illnesses experienced by "subcontractor employees". Note: The employer of the "subcontractor employee" is not relieved of the responsibility of completing the year-end summary as required by § 1904.6(a).

(f) The site controlling employer is not required to update the injury and illness records for "subcontractor employees". Note: The employer of the "subcontractor employee" is not relieved of the responsibilities to update the injury and illness records as required by § 1904.9(a).

Appendix A to Part 1904—Work-Relatedness (Mandatory)

If an event or exposure in the work environment either caused or contributed to an injury or illness, or aggravated a pre-existing condition, then the case is considered work-related. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring at the employer's establishment. Injuries or illnesses occurring away from the establishment are considered work-related only if the worker is engaged in a work activity or is present as a condition of his or her employment.

A. Work-Related Injuries and Illnesses—Special Situations: Injuries or illnesses are considered to be work-related if they occur in the following situations:

1. While the employee is engaged in work activity or apprenticeship/vocational training required by the employer.

2. While the employee is on break, in the rest room or in storage areas when located on the employer's premises.

3. While the employee is performing work for pay or compensation at home, if the injury or illness is directly related to the performance of work rather than the general home environment or setting.

4. While the employee is traveling on business, including to and from customer contacts.

5. While the employee is engaged in work activity where a vehicle is considered the work environment (e.g. truck, taxi, etc.).

B. Non Work-Related Injuries and Illnesses. The following injuries and illnesses are not considered work-related. Only the following may be used to rebut the presumption of work-relatedness that applies to injuries and illnesses occurring at the employers' establishment:

1. Injuries or illnesses will not be considered work-related if they occur to individuals present at their employer's establishment as a member of the general public rather than as a worker.

2. Injuries or illnesses will not be considered work-related if they involve symptoms that surface at work but solely result from a non-work-related event or exposure outside of the work environment.

3. Injuries or illnesses will not be considered work-related if they result solely from voluntary participation in wellness programs, medical, fitness and recreational activities (e.g. exercise classes, blood donations, physicals, flu shots, racquetball, baseball, etc.).

4. Injuries or illnesses will not be considered work-related if they solely result from a worker eating, drinking or preparing his or her own food when unrelated to occupational factors.

5. Injuries or illnesses will not be considered work-related if they are solely the result of workers doing personal tasks (unrelated to their employment) at the establishment outside of normal working hours.

6. Cases will not be considered work-related if they result solely from acts of violence committed by one's family or spouse when unrelated to the worker's employment, including intentionally self-inflicted injuries.

7. Injuries or illnesses will not be considered work-related if they occur on company parking lots and access roads while employees are arriving at or leaving work.

8. An injury or illness will not be considered work-related if the worker was never engaged in any duty at work that could have placed stress on the affected body part or was never exposed to any chemical or physical agent at work that could be associated with the observed injury or illness.

9. An injury or illness will not be considered work-related if the case results solely from activity in voluntary community or civic projects away from the employer's establishment.

10. An injury or illness will not be considered work-related if the case results solely from normal body movements, i.e. walking unencumbered, talking, tying a shoe, sneezing, coughing, provided the activity does not involve a job-related motion and the work environment does not contribute to the injury or illness.

11. Mental illness will not be considered work-related, except mental illnesses associated with post-traumatic stress.

C. Travel Status.

1. Employees in travel status (i.e. traveling on company business) should be considered engaged in work-related activities during all of their time spent in the "interest of their company". This includes, but is not limited

to, travel to and from customer contacts, conducting job tasks, and entertaining or being entertained for the purpose of transacting, discussing, or promoting business.

2. When traveling employees check into a hotel, motel or other lodging, they establish a "home away from home". Thereafter, their activities are evaluated in the same manner as for non-traveling employees. For example, injuries sustained when commuting from a hotel to a temporary work site are not work-related, just as injuries sustained during an employee's normal commute from a permanent residence to an office would not be considered work-related.

3. While an employee is in travel status, the following situations are not considered work-related:

i. Normal commuting between the employee's temporary residence and his or her job; and

ii. Situations where the employee departs from a reasonably direct route of work-related travel for personal reasons (e.g., a side trip for a vacation).

D. Employees who work in their own home. An injury or illness will be considered work-related if it occurs while the employee is performing work for pay or compensation in the home, if the injury or illness is directly related to the performance of work rather than the general home environment or setting.

E. Employees who live at the employer's establishment.

1. Some workplaces provide living quarters for employees. Off-shore oil rigs, ships and construction sites at remote locations commonly provide their employees with living accommodations.

2. In these workplaces, injuries or illnesses are presumed to be work-related if the employee is on-duty or engaged in a work activity. The injury or illness is also considered work-related if the employee was harmed as a result of a serious workplace accident such as a chemical release, fire, explosion, shipwreck, steam release, or building collapse.

3. All other injuries and illnesses occurring during off-duty hours are considered non-work-related.

Appendix B to Part 1904—Recording of Specific Conditions (Mandatory)

The purpose of this appendix is to provide information for the recording of specific conditions which may not be captured by the other recordability criteria. For purposes of OSHA-mandated recordkeeping, the conditions listed in this appendix are considered Recordable Injuries and Illnesses when the condition listed is work-related. The employer shall evaluate, for OSHA injury and illness recordkeeping purposes, all information received as a result of medical surveillance required by an OSHA standard.

Conditions not included in this Appendix that otherwise meet the criteria in the § 1904.4.(c) must be recorded.

TABLE OF SPECIFIC CONDITIONS

| System | Condition | Recording criteria |
|-------------------------------|---|--|
| Multi-system | Carbon monoxide poisoning. | Elevated carboxyhemoglobin levels and/or diagnosis by a health care provider. |
| | Mercury | 15 micrograms or greater per liter ($\mu\text{g/L}$) of whole blood or 35 micrograms or greater per gram ($\mu\text{g/g}$) creatinine in urine and/or diagnosis of mercury poisoning by a health care provider. |
| | Lead | 40 micrograms or greater per 100 grams ($\mu\text{g}/100\text{g}$) of whole blood and/or diagnosis of lead poisoning by a health care provider. |
| | Cadmium | —3 micrograms or greater per gram ($\mu\text{g/g}$) creatinine in urine; or —B2-microglobulin 300 micrograms or greater per gram ($\mu\text{g/g}$) creatinine in urine; or —5 micrograms of cadmium or greater per liter ($\mu\text{g/L}$) of whole blood. |
| | Benzene | Phenol level of 75 milligrams or greater per liter (mg/L) of urine or abnormal blood counts. |
| Musculo-skeletal system | Fractures of the bones or teeth. | Positive X-ray and/or diagnosis by a health care provider. |
| | Musculoskeletal disorders. | Diagnosis by a health care provider and/or objective finding(s) (e.g. positive Tinell's, Phalen's or Finkelstein's test; or swelling, redness indicative of inflammation, deformity, loss of motion, etc.) Musculoskeletal disorders may occur in the neck, back, shoulder, arm, hand, fingers, leg and/or foot. Examples of musculoskeletal disorders include but are not limited to carpal tunnel syndrome, tendinitis, epicondylitis, synovitis, thoracic root lesions, Raynaud's syndrome, and tarsal tunnel syndrome. For musculoskeletal disorders only, medical treatment shall include two or more applications of hot/cold therapy as directed by a health care provider. |
| Sensory organs | UV burning of the cornea or retina. | Recognition/diagnosis of welder's flash or flashburn. |
| | Hearing loss | An average shift of 15 decibels (dB) or more at 2000, 3000, and 4000 hertz in one or both ears. The change in hearing may be adjusted for presbycusis (age related hearing loss). The record of the injury or illness may be deleted if a retest performed with 30 days disproves the original shift. Once a 15 dB shift has occurred, the baseline (for recordkeeping purposes) should be adjusted to reflect this result. A subsequent test revealing an additional 15 dB shift from this new or revised baseline value is a new injury or illness. Work-relationship is presumed if an employee is exposed to an 8 hour time weighted average sound level of noise equaling or exceeding 85 dB(A). |
| Skin | Burns (heat, chemical and radiation burns). | Third degree burns (and first and second degree burns requiring medical treatment beyond first aid, restricted work activity, days away from work, loss of consciousness or death). |
| | Skin disorders | Lasting beyond 48 hours, including but not limited to allergic or irritant contact dermatitis. |
| | Lacerations | Requiring closure including but not limited to the use of sutures, adhesive closures and staples. |
| Respiratory system | Asthma and other obstructive airway diseases. | —Initial episode, regardless of duration, diagnosed by a health care provider. Or —Any recurrent episode, regardless of duration, that results in the administration of prescription drugs and/or diagnosis by a health care provider. Note: Obstructive airway diseases include but are not limited to reactive airways dysfunction syndrome (RADS), chronic obstructive pulmonary disease (COPD), and chronic obstructive bronchitis. |
| | Pneumoconiosis (e.g. asbestosis, silicosis, coal worker's pneumoconiosis, beryllium disease, etc.). | Diagnosis by a health care provider, radiography profusion category of 1/1 or greater by the International Labor Organization (ILO) classification system. |
| | Mesothelioma | Diagnosis by a health care provider, pleural plaques and/or pleural thickening. |
| | Byssinosis | Diminished pulmonary function (an FEV1 of less than 80% of the predicted value) and/or diagnosis by a health care provider when worker has been exposed to dust from cotton or flax which has not undergone wet treatments. |
| | Tuberculosis infection or disease. | First positive tuberculin skin test reaction indicative of new infection, except pre-placement; Or Diagnosis of active tuberculosis by a health care provider. A case of tuberculosis disease or tuberculosis infection is presumed to be work-related in the following industries: correctional facilities; health care facilities; homeless shelters; long-term care facilities for the elderly; and drug treatment centers. The employer may rebut this presumption of work relationship by providing evidence that the employee is known to have had a non-work exposure to active TB. Examples include situations in which (1) An employee is living in a household with a person diagnosed with active TB or (2) the Public Health Department lists the employee as a contact to a case of active TB. For all other industries a case would be considered work-related under the following circumstance: An employee tests positive for tuberculosis infection after being exposed to a person within the work environment known to have tuberculosis disease. The case of the person with TB disease, however, would not be presumed work-related if there was no known exposure within the work environment. |

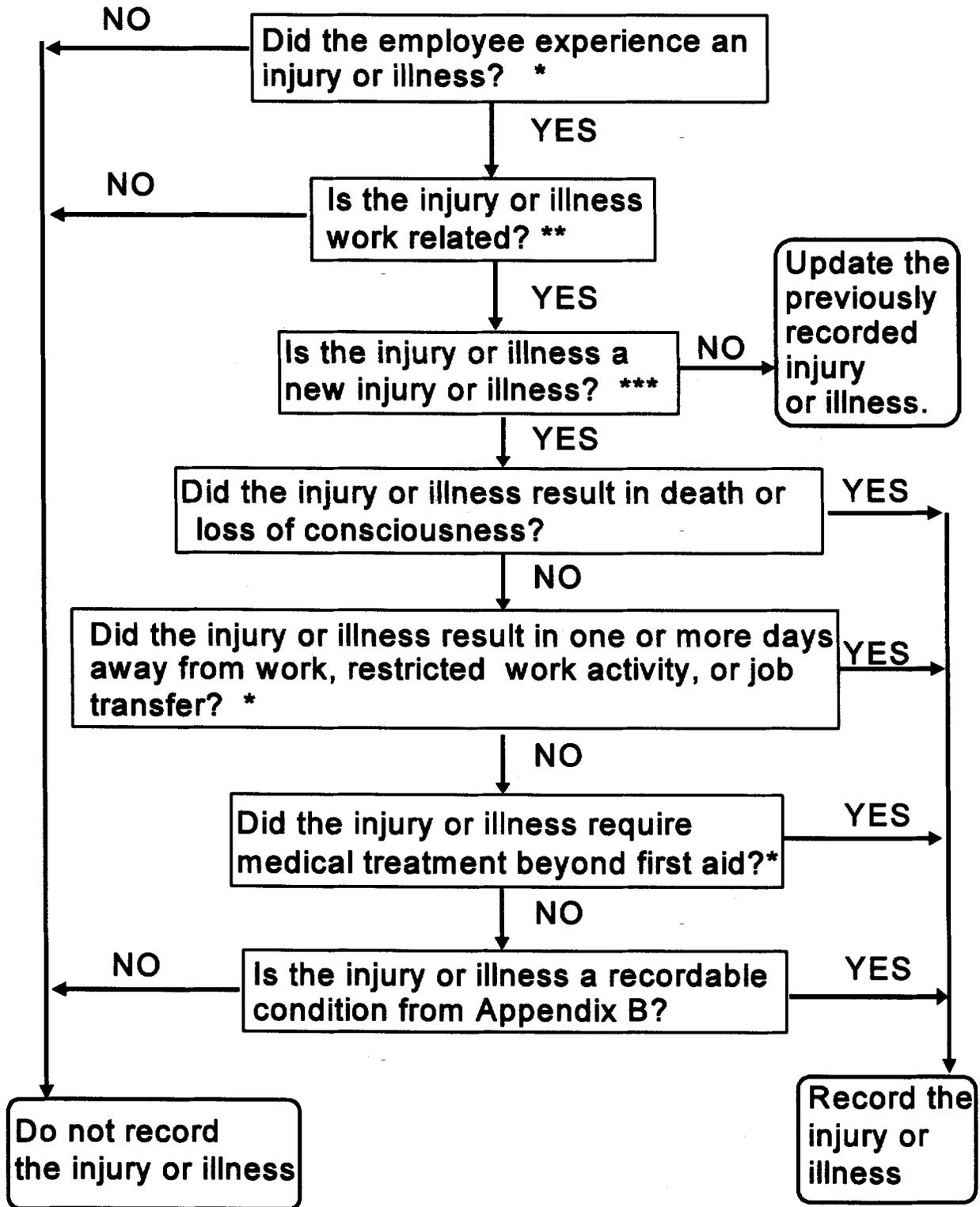
TABLE OF SPECIFIC CONDITIONS—Continued

| System | Condition | Recording criteria |
|--------------------------|--|--|
| Respiratory system | <p>Hypersensitivity pneumonitis (non-asthmatic allergic breathing disorders caused by organic dust and other antigenic aerosols).</p> <p>Toxic inhalation injury—breathing disorders (such as Metal Fume Fever) due to inhaling chemicals.</p> | <p>Diagnosis by a health care provider of woodworker's lung, farmer's lung, malt worker's lung, mushroom worker's lung, cheese washer's lung, miller's lung, etc. when the worker has been exposed to the relevant substance.</p> <p>Diagnosis by a health care provider and/or respiratory distress requiring overnight hospitalization.</p> |
| Miscellaneous | <p>Bloodborne pathogen diseases.</p> <p>Hepatitis (toxic or infectious).</p> | <p>Any workplace bloodborne pathogen exposure incident (as defined in 1910.1030(b)) that results in a positive blood test or diagnosis by a health care provider indicating AIDS, HIV seroconversion, hepatitis B or hepatitis C; Or</p> <p>Any laceration or puncture wound that involves contact with another person's blood or other potentially infectious materials.</p> <p>Note: to protect employee confidentiality, employers shall record occupationally acquired bloodborne pathogen diseases, such as hepatitis B, simply as the initial bloodborne exposure incident and note the exposure type (e.g. needlestick). Seroconversion and specific type of bloodborne disease shall not be recorded.</p> <p>Positive blood test and/or diagnosis by a health care provider.</p> |

Work-related injuries and illnesses are recorded if they result in death, loss of consciousness, days away from work, restricted work activity, medical treatment beyond first aid, or the criteria in this table.

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Appendix C to Part 1904—Decision Tree for Recording Occupational Injuries and Illnesses



* See Definitions

** See Definitions and Appendix A

*** See 1904.4(c)

PART 1952—[AMENDED]

2. The authority citation for Part 1952 continues to read as follows:

Authority: 29 U.S.C. 667; 29 CFR Part 1902, Secretary of Labor's Order No. 1-90 (55 FR 9033).

3. Section 1952.4 would be revised to read as follows:

§ 1952.4 Injury and illness recordkeeping and reporting requirements.

(a) Injury and illness recordkeeping and reporting requirements promulgated by State plans are required to be substantially identical to 29 CFR Part 1904. State plans shall promulgate recordkeeping and reporting

requirements that are identical to the Federal requirements for determining the types of injuries and illnesses that will be entered into the records and the manner in which they are entered. All other recordkeeping and reporting requirements that are promulgated by State plans shall be at least as effective as the Federal requirements.

(b) A State is not prohibited from requiring supplementary reporting or recordkeeping data, but such additional data must be approved by the Occupational Safety and Health Administration to insure that there will be no interference with the uniform reporting objectives.

(c) Variances to State injury and illness recordkeeping and reporting requirements under an approved plan must be obtained from the Occupational Safety and Health Administration of the U.S. Department of Labor. Therefore, a State may not grant a variance to recordkeeping and reporting requirements under their own procedures.

(d) In order to insure the uniformity of the injury and illness statistics, a State must recognize all variances granted by the Occupational Safety and Health Administration.

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