**DATE:** May 26, 2022

**TO:** Phylmar Regulatory Roundtable (PRR), OSH Forum

**FROM:** Helen Cleary

**RE:** Update:FedOSHA NPRM: Improve Tracking of Workplace Injuries and Illnesses (Electronic Recordkeeping Rule)

On May 25, 2022, the U.S. Department of Labor’s (DOL) Occupational Safety and Health Administration (OSHA/FedOSHA) published an [extension](https://www.govinfo.gov/content/pkg/FR-2022-05-25/pdf/2022-11213.pdf) on the comment period for the Notice of Proposed Rulemaking ([NPRM](https://www.federalregister.gov/documents/2022/03/30/2022-06546/improve-tracking-of-workplace-injuries-and-illnesses)) to update its electronic recordkeeping regulation: [§1904.41](https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.41).

The original public comment deadline was May 31, 2022; **the comment period is now extended until June 30, 2022.**

**Impact of Proposed Requirements to PRR Members**

Some PRR members will be directly impacted by this NPRM because their NAICS codes are identified in Appendix B. Other PRR members’ NAICS codes are only on proposed Appendix A. (See below for details.)

However, the NPRM states:

**"When developing the final rule, OSHA may rely on the most current data available, as appropriate, for determining the list of industries in Appendix B..."**

This statement, the anticipation that labor groups will strongly recommend OSHA expand Appendix B to include additional subsets of industries identified in Appendix A, and the direct impact this rule will have on all State Plan States necessitates PRR submitting comments.

***If OSHA determines that additional industries should be included in Appendix B when the final rule is issued, PRR members identified in Appendix A may be required by the final rule to electronically submit OSHA Forms 300, 301, 300A.***

This comment period will be the only opportunity to provide OSHA with feedback on the proposed expansion of electronic recordkeeping requirements. PRR encourages ***all member organizations* with NAICS codes on OSHA’s proposed Appendix A *and* B to participate and provide feedback on the NPRM.**

**Proposed Requirements**

* Companies with **100 or more employees** whose NAICS code is identified in OSHA’s [Proposed Appendix B](https://www.federalregister.gov/documents/2022/03/30/2022-06546/improve-tracking-of-workplace-injuries-and-illnesses#p-196) will be **required to electronically submit OSHA Forms 300, 300A, and 301, annually**. This includes NAICS:
  + 2213 – Water, sewage, and other systems
  + 3162 – Footwear manufacturing
  + 3314 – Nonferrous metal production and processing
* Companies with **20 or more employees** on OSHA’s [Proposed Appendix A](https://www.federalregister.gov/documents/2022/03/30/2022-06546/improve-tracking-of-workplace-injuries-and-illnesses#p-125) will be **required to electronically submit OSHA Form 300A**, annually. This includes NAICS:
  + 22 – Utilities
  + 31-33 – Manufacturing
  + 42 – Wholesale Trade
  + 5152 – Cable and Other Subscription Programming
  + 5311 – Lessors of Real Estate

*Establishments that would be required to electronically submit Form 300A under this proposed rule are already required to submit under the current rule.*

*OSHA has provided a list of industries in which establishments with 250 or more employees would no longer be required to electronically submit Form 300A on the Docket* [*OSHA-2021-0006*](https://www.regulations.gov/document/OSHA-2021-0006-0003)*. Based on PRR Staff’s assessment, there are no PRR member industries identified.*

* Proposed: OSHA intends to post the collected data on a public website that has a searchable online database.

*Current:* *OSHA posts submitted data on its* [*website*](https://www.osha.gov/Establishment-Specific-Injury-and-Illness-Data) *but access to the information requires downloading a large csv file with ALL submitted data for the year; it is not a searchable online database.*

* Proposed: Establishments will be required to include their company name with submission.

*Current: OSHA asks for “Company Name” and “Establishment Name;” Establishment Name must be unique, and Company Name is not a required field.*

**Significant Information to Note**

* State Plan State recordkeeping requirements need to be “substantially identical” to Federal requirements. However, some provisions (e.g., industry exemptions) may be more stringent.
  + Once the Federal rule is promulgated, **State Plan States (e.g., California, Washington, Oregon) will be required to adopt the Federal recordkeeping requirements or make them more stringent (where allowed).**

Information regarding the proposed Appendices:

* All of the industries in proposed Appendix B are included in proposed Appendix A; Appendix B includes subsets of industries in Appendix A.
* Industries in Appendix A were determined by OSHA using the rate of cases with days away from work, job restriction, or transfer (DART) from the BLS Survey of Occupational Injuries and Illnesses (SOII).
* Industries in Appendix B were determined by the Total Case Rate (TCR).
  + TCR includes cases away from work, job restriction, or transfer AND other recordable cases such as those resulting in medical treatment beyond first aid.
  + OSHA took a 3-year average of TCR in the BLS SOII for 2017, 2018, and 2019, of at least 3.5 cases per 100 full-time equivalent employees.
* OSHA analyzed five years of injury and illness summary data collected through OSHA’s Injury Tracking Application (ITA) when identifying “the appropriate balance of utility versus burden” in this rulemaking.

**Next Steps**

We will schedule a **Recordkeeping Task Force** meeting next month to discuss our recommendations and comments to FedOSHA. **Please contact Helen Cleary ASAP if you or a member of your team familiar with the recordkeeping process would like to participate.**