



DATE: July 24, 2023
TO: Phylmar Regulatory Roundtable (PRR), OSH Forum
FROM: Helen Cleary
RE: **FedOSHA Final Rule: Improve Tracking of Workplace Injuries and Illnesses (Electronic Recordkeeping Rule) & OSHA's Briefing**

On July 17, 2023, the U.S. Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA/FedOSHA) announced the [publication of its Final Rule: Improve Tracking of Workplace Injuries and Illnesses](#) and held a briefing for stakeholders. On July 21, 2023, the final rule was published in the Federal Register. This rule amends the current recordkeeping requirements ([§1904.41](#)) and was originally noticed for rulemaking in March 2022.

Thank you to the PRR members on our Recordkeeping Task Force who contributed to the extensive written comments submitted in June 2022. PRR's comments were referenced over 35 times in the final rule.

Overview of the Final Rule

The final rule is nearly identical to what was proposed in March 2022. However, the Agency decided to maintain the requirement for all establishments with 250 or more employees in industries required to keep OSHA injury and illness records to continue electronically submitting Form 300A. (The Agency proposed rescinding this requirement in the Notice of Proposed Rulemaking NPRM).

The final rule becomes effective January 1, 2024.

Submission Requirements

The following **amendments have been made** to OSHA's electronic recordkeeping rule:

- Establishments with **100 or more employees in designated industries ([Appendix B](#))** will be required to electronically submit their OSHA Forms 300, 301, in addition to the 300A, annually.
 - Included NAICS codes which may impact PRR members includes:
 - [2213](#) – Water, sewage, and other systems
 - [3162](#) – Footwear manufacturing
 - [3314](#) – Nonferrous metal production and processing
 - [4921](#) - Couriers and Express Delivery Services

- Six NAICS codes were added to the list that was proposed in March 2022. (i.e., Logging, Hunting and Trapping, Other Furniture Related Product Manufacturing, Misc. Durable Goods Merchant Wholesalers, Taxi and Limousine Service, Other Support A).
- Information that can reasonably identify individuals will not be collected (i.e., names, addresses, healthcare providers)
- Establishments will be required to **include their company name** with all electronic submissions.
- [Appendix A](#) has been updated to conform with the 2017 version of the NAICS; industries were not added or removed.

The following **requirements remain** in the electronic recordkeeping rule:

- Establishments with 20-249 employees in industries on Appendix A will need to electronically submit Form 300A, annually.
- Establishments with 250+ that are required to keep records under §1904 will need to electronically submit Form 300A, annually.

Online Publication of Submitted Data

OSHA intends to **post some of the submitted data on a public website** and the **online database will be searchable**. OSHA states that information that can reasonably identify an individual will not be collected and/or removed by the Agency.

Form 300 (the Log)

- All information in fields collected will be made available on OSHA's website. Names will not be collected.

Form 301 (Incident Report)

- Fields 10 – 18 on the right-hand side of the form will be made available online.
- Fields 1 (name), 2 (address), 6 (healthcare provider), and 7 (treatment facility) will not be collected.
- OSHA will not publish collected information from the left-hand side of the form.

Type of Data to be Published

OSHA intends to publish text-based and coded data. Coded data will follow the Occupational Injury and Illness Classification System (OIICS) Manual.

OSHA provided the following examples in the preamble:

Text-based data: From Field F (Describe injury, illness, parts of body affected...)

"Second degree burns on right forearm from acetylene torch."

Coded data: Using OIICS Manual

- *"Nature of Injury:* 1,520 (heat (thermal) burns, unspecified)
- *Part of body affected:* 423 (forearm)
- *Source of injury or illness:* 7,261 (welding, cutting, and blow torches)
- *Event or exposure:* 533 (contact with hot objects or substances)"

OSHA will use automated de-identification technology with some manual review to identify and remove information that could be reasonably used to identify an individual in text-based data.

Only un-coded data will be published until the system is tested and in place. However, coded data will not be reviewed because it does not include identifying information.

The Agency has determined that the collection and publication of the expanded data sets will improve worker safety and health because OSHA, employers, employees, researchers, safety consultants, and the general public will have access and be able to use it "in ways that will ultimately result in the reduction of occupational injuries and illnesses."

California's Division of Occupational Safety and Health (**CalOSHA**) submitted comments that supported publication of the collected data. In addition to the following statement CalOSHA is referenced multiple times in the preamble.

"Complete and accurate surveillance of occupational injury and illness is essential and holds significant value for informed policy decisions and for effective intervention and prevention programs. The policy of requiring submission of detailed information from larger employers specifically helps identify and abate workplace hazards by improving the surveillance of occupational injury and illness." - *CalOSHA*

FedOSHA acknowledges that the data collected will be used to target establishments for enforcement or compliance assistance intervention and sees this as a benefit of the final rule.

Background

In 2016, OSHA amended the regulation on recording and reporting occupational injuries and illnesses requiring employers with 250 or more employees that are routinely required to keep records, to annually submit, electronically, their OSHA Forms 300 (Log), 300A (Annual Summary), and 301 (Incident Report). In addition, establishments with 20-249 employees in certain industries would need to electronically submit Form 300A.

In 2018, OSHA, under the Trump Administration, proposed rescinding the requirement to electronically collect Forms 300 and 301. PRR submitted comments supporting this proposal. Due to an extension and timeline of the 2018 proposal, OSHA did not receive submissions of Forms 300 and 301.

In 2019, OSHA issued a final rule that removed the requirement to submit Forms 300 and 301 and added a requirement for employers to submit their Employer Identification Number (EIN). The requirement to submit Form 300A was maintained.

In March 2022, OSHA issued a notice of proposed rulemaking (NPRM) to reinstate the 2016 requirements to electronically submit Forms 300 and 301. PRR submitted extensive written comments in June 2022 opposing the expansion of the data collection highlighting privacy as the primary concern. Our comments also provided technical information to help the Agency understand and improve the current process and potential challenges.

OSHA Briefing on the Final Rule

On July 17, 2023, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) held a meeting to brief stakeholders on OSHA's final rule and amendments to the electronic recordkeeping requirements. PRR Staff attended and below are highlights from the briefing. Speakers included Doug Parker, Assistant Secretary of Labor, and Lee Ann Jillings, Director, Directorate of Technical Support and Emergency Management.

Doug Parker's Overview

Today, OSHA announced there will be a forthcoming final rule that will require certain employers in high hazard industries to electronically submit injury and illness information. Prior to this rule, the information is already being gathered by the employers, but they are not currently required to submit.

The rule supports OSHA's statutory mandate under the OSH Act to gather information to better understand safety and health problems of this country. It re-imposes a requirement that was put into place in 2016 for rulemaking but was rescinded, in part, in 2019.

Currently, employers are required to submit a summary of work-related injuries and illnesses. The new rule requires employers with 100+ employees in high-hazard industries to submit additional information about injuries and illnesses on an annual basis.

Impact

Mr. Parker stated OSHA has taken steps to both simplify the process for employers and protect employee information. The data will not include information that could directly identify individuals. With this new information, OSHA anticipates receiving injury specific data from 52,000 establishments that will cover approximately 766,000 injury and illness cases and 22,000,000 workers. This will affect less than 1% of establishments but will collect information on 30% of recordable injuries and illnesses.

Cost

OSHA expects the annual cost per affected establishment to be \$136.

Ms. Jillings Overview

Ms. Jillings stated all establishments currently required to electronically submit information will need to include their company's legal name. The final rule retains the current requirements for electronic submissions of information from Form 300A from establishments with 20 - 249 employees in certain high-hazard industries as well as from establishments with 250+ employees in industries which routinely keep OSHA injury and illness records.

When discussing the amendments, Ms. Jillings shared the following three points:

1. OSHA chose the scope of 100+ employees in order to focus on larger establishments;
2. Lessen the burden on smaller companies; and
3. Help protect worker privacy.

Appendix B:

The rule covers 104 four-digit NAICS industries that are considered high-hazard. The determined industries are based on overall injury and illness rates as well as high rates of more serious injuries. Specific criteria includes,

- Days away from work
- Total case rate
- Job Restrictions
- Job Transfers
- Fatality rate

These businesses have been required to submit summary information annually using the 300A Form since 2017. These businesses are now required to submit case-specific information from Form 300 Log and Form 301.

Benefits

The rule also requires the submission of the company name to make more data available and to track activities at the company level. The collected information will assist OSHA with:

- Inspection targeting
- Compliance
- Assistance
- Research
- Outreach

Publication of Data

OSHA is currently modifying its ITA (Injury tracking Application) to collect Forms 300 and 301. The Agency estimates submission requirements for this information will impact approximately 52,092 establishments (less than 1% of establishments in the US).

OSHA will not collect worker name, address, and birthday but will require age. Information on age, gender, date hired, and whether worker was treated in an emergency room or admitted to a hospital will not be published.

OSHA will have data available on a searchable online database including establishment information, job title, date and time of onset of injury, time of event, location of event, description of injury and activities leading to event.

OSHA believes that providing public access to this data, will reduce occupational injury and illnesses.

Timeline:

The timeline for the rule:

- Published in Federal Register July 21, 2023
- Rule will take effect January 1, 2024
- Employers can begin to submit 2023 information on January 2, 2024
- Employers must submit 2023 information by March 2, 2024