

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1904**

**[Docket No. OSHA-2010-0019]**

**RIN 1218-AC50**

**Occupational Injury and Illness Recording and Reporting Requirements -- NAICS Update  
and Reporting Revisions**

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

**ACTION:** Proposed rule.

**SUMMARY:** OSHA is proposing to update Appendix A to Subpart B of its Injury and Illness Recording and Reporting regulation. Appendix A contains a list of industries that are partially exempt from maintaining records of occupational injuries and illnesses, generally due to their relatively low rates of occupational injury and illness. The current list of industries is based on the Standard Industrial Classification (SIC) system. In 1997, the North American Industry Classification System (NAICS) was introduced to classify establishments by industry. The proposed rule would update Appendix A by replacing it with a list of industries based on NAICS and more recent injury and illness data.

The proposed rule would also require employers to report to OSHA, within eight hours, all work-related fatalities and all work-related in-patient hospitalizations; and within 24 hours, all work-related amputations. The current regulation requires an employer to report to OSHA,

within eight hours, all work-related fatalities and in-patient hospitalizations of three or more employees.

**DATES:** Written comments: Comments must be submitted by [INSERT DATE 90 DAYS AFTER PUBLICATION DATE OF THIS FEDERAL REGISTER]

**ADDRESSES:** Written comments: You may submit comments, identified by docket number OSHA-2010-0019, or regulatory information number (RIN) 1218-AC50, by any of the following methods:

Electronically: You may submit comments electronically at <http://www.regulations.gov>, which is the federal e-rulemaking portal. Follow the instructions on the website for making electronic submissions;

Fax: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA docket office at (202) 693-1648; or

Mail, hand delivery, express mail, messenger, or courier service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket Number OSHA-2010-0019, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2350 (OSHA's TTY number is (877) 889-5627). Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and docket office's normal business hours, 8:15 a.m. – 4:45 p.m.

Instructions for submitting comments: All submissions must include the docket number (Docket No. OSHA-2010-0019) or the RIN (RIN 1218-AC50) for this rulemaking. Because of security-related procedures, submission by regular mail may result in significant delay. Please

contact the OSHA docket office for information about security procedures for making submissions by hand delivery, express delivery, and messenger or courier service.

All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <http://www.regulations.gov>. Therefore, OSHA cautions you about submitting personal information such as social security numbers and birthdates.

Docket: To read or download submissions in response to this **Federal Register** notice, go to docket number OSHA-2010-0019, at <http://regulations.gov>. All submissions are listed in the <http://regulations.gov> index, however, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA docket office.

Electronic copies of this **Federal Register** document are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information, is available at OSHA's website at <http://www.osha.gov>.

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

For general and technical information on the proposed rule: OSHA Office of Statistical Analysis, Room N-3641, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2400.

## **SUPPLEMENTARY INFORMATION:**

OSHA's current regulation at Section 1904.2 partially exempts certain lower-hazard industries classified in Standard Industrial Classification (SIC) codes 52 through 89 from injury and illness recordkeeping requirements. Lower hazard industries are those industries with an average Days Away, Restricted, or Transferred (DART) rate at or below 75 percent of the national average DART rate. The DART rate represents the total non-fatal injuries and illnesses resulting in days away from work, restricted work activity, and/or job transfer per 100 full-time employees for a given period of time (usually 1 year). The current list of partially exempt industries, which is included in Appendix A to Subpart B, is based on injury and illness data compiled by the Bureau of Labor Statistics (BLS) for 1997, 1998 and 1999.

OSHA is proposing to revise the list of partially exempt industries in Appendix A using the North American Industry Classification System (NAICS). The revised list in proposed Appendix A is based on DART rates compiled by BLS for 2007, 2008 and 2009. Industries listed in proposed Appendix A would still be required to keep records if requested to do so by BLS in connection with its Annual Survey (29 CFR 1904.42), or by OSHA in connection with its Data Initiative (29 CFR 1904.41).

OSHA is also proposing to revise Section 1904.39, which currently requires an employer to report to OSHA, within eight hours, all work-related fatalities and in-patient hospitalizations of three or more employees. The proposed rule would require an employer to report to OSHA, within eight hours, all work-related fatalities and all work-related in-patient hospitalizations; and within 24 hours, all work-related amputations.

This regulation was developed in accordance with the principles of Executive Order 12866 and Executive Order 13563. Executive Order 12866 requires that OSHA estimate the benefits, costs, and net benefits of proposed regulations. The Agency estimates the regulation will cost approximately \$8.5 million, on an annualized basis. As discussed elsewhere in this preamble, the Agency believes the annual benefits, while unquantified, are significantly in excess of the annual costs.

## **I. Legal Authority**

OSHA is issuing this proposed revision of the Recordkeeping regulation pursuant to authority expressly granted by sections 8 and 24 of the Occupational Safety and Health Act (the “OSH Act” or “Act”) (29 U.S.C. 657, 673). Section 8(c)(1) requires each employer to “make, keep and preserve, and make available to the Secretary [of Labor] or the Secretary of Health and Human Services, such records regarding his activities relating to this Act as the Secretary, 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) directs the Secretary to prescribe regulations “requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job” (29 U.S.C. 657(c)(2)). Section 8(g)(2) of the OSH Act broadly empowers the Secretary to “prescribe such rules and regulations as [s]he may deem necessary to carry out [her] responsibilities under the Act” (29 U.S.C. 657(g)(2)).

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

In addition, the Secretary's responsibilities under the OSH Act are defined largely by its enumerated purposes, which include "[p]roviding appropriate reporting procedures that will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem" (29 U.S.C. 651(b)(12)).

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

## **II. Summary and Explanation of the Proposed Rule**

### **A. Section 1904.2 – Partial Exemption for Establishments in Certain Industries**

#### **Background**

Although the OSH Act gives OSHA the authority to require all employers covered by the Act to keep records of employee injuries and illnesses, major classes of employers are partially exempted from Part 1904. First, as provided in Section 1904.1, employers with 10 or fewer employees are partially exempt from keeping OSHA injury and illness records. Second, as provided in section 1904.2, establishments in certain lower-hazard industry classifications are also partially exempt.

The partial exemption based on lower-hazard industry classification has been part of the OSHA recordkeeping regulations since 1982. OSHA exempted establishments in a number of service, finance, and retail industries from the duty to regularly maintain the OSHA Log and Incident Report (47 FR 57699). This industry exemption to recordkeeping requirements was intended to "reduce paperwork burden on employers without compromising worker safety and health." See, 47 FR 57700.

The 1982 list of partially exempt industries was established by identifying major industry groups with relatively low rates of occupational injuries and illnesses in the SIC codes encompassing retail trade, finance, insurance and real estate, and the service industries (SICs 52-89). Major industry groups were defined at the 2-digit classification level from the SIC manual published by the U.S. Office of Management and Budget (OMB). Industries in these major industry groups were partially exempted from coverage by Part 1904 if their average lost workday injury (LWDI) rate for 1978-80 was at or below 75 percent of the overall private sector

annual LWDI rate. Industries that involved more serious occupational hazards, comprising the industry divisions of agriculture, construction, manufacturing, utilities, mining, and wholesale trade, remained subject to the full recordkeeping requirements. Although the 1982 Federal Register notice discussed the possibility of revising the exempt industry list on a routine basis, the list remained unchanged until 2001.

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

The 2001 final rule updated the 1982 list of industries by applying the same approach for identifying affected industries. Industries were selected for the list based on two criteria. First, only industries classified in SIC codes 52 through 89 were considered eligible for inclusion on the list. Second, industries were included if they had an average DART rate, based on the most recent three years of available data, at or below 75 percent of the most recent national rate. The 2001 list differed from the 1982 list in two respects: (1) the injury/illness rate data supporting the final rule's industry exemption were based on BLS statistics for 1996, 1997, and 1998, and (2) the industries were defined at the 3-digit rather than 2-digit SIC code level.

The issue of converting from SIC to NAICS codes was addressed in the 2001 rulemaking (66 FR 5916). Although the NAICS had been formally adopted by 2001, several statistical agencies had not converted their systems to the new codes. In fact, BLS did not publish its first occupational injury and illness rates using the NAICS codes until 2004, when it published the rates for calendar year 2003. As a result, OSHA stated in the preamble to the 2001 final rule that



it used the SIC system to determine the list of partially exempted industries. The agency also stated its intention to conduct a future rulemaking to update the list using NAICS codes. (66 FR 5944).

Presently, NAICS is the standard system used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. NAICS was developed under the auspices of OMB, and adopted in 1997 to replace the SIC system. It was developed jointly by the United States, Canada, and Mexico to allow for a high level of compatibility in business statistics among the North American countries.

The official 2007 U.S. NAICS Manual includes definitions for each industry, background information, tables showing changes between 2002 and 2007, and a comprehensive index. The official 2007 NAICS Manual is available in print and CD Rom from the National Technical Information Service (NTIS) at (800) 553-6847, or through the NTIS website at [www.ntis.gov](http://www.ntis.gov).

#### *Description of Proposed Revisions*

OSHA proposes to update Appendix A to Subpart B in two ways. First, the list of partially exempted industries would be converted from one based on SIC codes to one based on NAICS codes. Second, the DART rates used to determine which NAICS code industries qualify for the lower-hazard partial exemption would be based on more recent BLS data.

Consistent with OSHA's longstanding policy, individual industry classifications in major industry sectors generally considered to involve greater occupational hazards, are not included on the proposed partially exempt list. As with the current regulation, industries ineligible for the

partial exemption under the proposed rule include those in the agriculture, utilities, construction, manufacturing, and wholesale trade sectors.

For industries in the remaining sectors, the most recent three years (2007, 2008 and 2009) of available BLS data were used to calculate the average rate of serious injuries and illnesses for each industry, as represented by the DART rate. Industries with an average DART rate equal to or less than 75 percent of the average national DART rate from 2007 through 2009 are included on the list of partially exempt lower-hazard industries in proposed Appendix A, with one exception.

Under the existing regulation, establishments in Personnel Supply Services (SIC 736) are currently required to maintain injury and illness logs; this industry is not included in the existing Appendix A. For many employees working for establishments in this industry, their actual place of work may be in an establishment that is part of another industry. OSHA is proposing that establishments in the corresponding NAICS industry, NAICS 5613 Employment Services, continue to be required to maintain logs for the employees under their supervision as they are currently required to do. Thus, NAICS 5613 Employment Services is not included in the proposed Appendix A.

According to the data published by BLS, the average national private sector DART rate for 2007-2009 was 2.0. Thus, specific industries, as defined by 4-digit NAICS codes, which had an average DART rate for 2007-2009 of 1.5 or less, and which are in the eligible broad industry sectors, were included in the list in proposed Appendix A (except NAICS 5613 Employment Services).

The industries included in proposed Appendix A were identified as follows.

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

5413	Architectural, Engineering, and Related Services
5414	Specialized Design Services
5415	Computer Systems Design and Related Services
5416	Management, Scientific, and Technical Consulting Services
5417	Scientific Research and Development Services
5418	Advertising and Related Services
5511	Management of Companies and Enterprises
5611	Office Administrative Services
5614	Business Support Services
5615	Travel Arrangement and Reservation Services
5616	Investigation and Security Services
6111	Elementary and Secondary Schools
6112	Junior Colleges
6113	Colleges, Universities, and Professional Schools
6114	Business Schools and Computer and Management Training
6115	Technical and Trade Schools
6116	Other Schools and Instruction
6117	Educational Support Services
6211	Offices of Physicians
6212	Offices of Dentists
6213	Offices of Other Health Practitioners
6214	Outpatient Care Centers
6215	Medical and Diagnostic Laboratories
6244	Child Day Care Services
7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures
7115	Independent Artists, Writers, and Performers
7213	Rooming and Boarding Houses
7221	Full-Service Restaurants
7222	Limited-Service Eating Places
7224	Drinking Places (Alcoholic Beverages)
8112	Electronic and Precision Equipment Repair and Maintenance
8114	Personal and Household Goods Repair and Maintenance
8121	Personal Care Services
8122	Death Care Services
8131	Religious Organizations
8132	Grantmaking and Giving Services
8133	Social Advocacy Organizations
8134	Civic and Social Organizations
8139	Business, Professional, Labor, Political, and Similar Organizations

For a more thorough discussion regarding the specific industries which would be newly exempted or newly covered by the proposed rule, please refer to Section III of this preamble.

This rulemaking also fulfills a commitment made by OSHA to the Government Accountability Office (GAO). In October 2009, GAO published a report entitled: “Enhancing OSHA’s Records Audit Process Could Improve the Accuracy of Worker Injury and Illness Data” (GAO-10-10). One of the recommendations made by GAO was to update the list of industries used by OSHA to select worksites for records audits. In its response to GAO, OSHA agreed to conduct a rulemaking that would update the coverage of the relevant recordkeeping requirements from the old SIC-based system to one based on the NAICS codes.

In conjunction with any final rule resulting from this rulemaking that may result in some establishments being newly required to comply with OSHA recordkeeping requirements, OSHA will conduct outreach and training, and offer other types of compliance assistance, to facilitate compliance and help ensure more complete and accurate recording and reporting. OSHA welcomes suggestions from the public regarding the types of outreach, training, and assistance that would be particularly helpful.

### *Issues and Potential Alternatives*

OSHA welcomes comments and data from the public regarding any aspect of the proposed lower-hazard industry partial exemption. More specifically, the following questions and issues are relevant to this rulemaking:

1. Should any additional industries be exempt from any of the recordkeeping requirements in Part 1904?
2. Should OSHA base partial exemptions on more detailed or more aggregated industry classifications, such as two-digit, three-digit, or six-digit NAICS codes?
3. Which industry sectors, if any, should be ineligible for partial exemption?

4. Instead of using an average DART rate of 75 percent of the most recent national DART rate, is there a better way to determine which industries should be included in Appendix A?
5. Should OSHA consider numbers of workers injured or made ill in each industry in addition to industry injury/illness rates in determining eligibility for partial exemption?
6. Are there any other data that should be applied as additional or alternative criteria for purposes of determining eligibility for partial exemption?
7. Should OSHA regularly update the list of lower-hazard exempted industries? If so, how frequently should the list be updated?
8. Are there any specific types of training, education, and compliance assistance OSHA could provide that would be particularly helpful in facilitating compliance with the recordkeeping requirements?

## **B. Section 1904.39 – Reporting Fatality, In-Patient Hospitalization, and Amputation**

### **Incidents to OSHA**

#### **Background**

Virtually since its inception, OSHA has required employers to report certain incidents involving employee fatality or hospitalization. The regulatory requirements adopted in 1971 in 29 CFR 1904.8 required employers to report, within 48 hours after the occurrence, work-related incidents resulting in at least one fatality or the hospitalization of at least five employees.

In 1994, the Agency revised its reporting requirements to require employers to report to OSHA, within eight hours, work-related events or exposures involving fatalities or the in-patient hospitalization of three or more employees (59 FR 15594). OSHA stated in the preamble to the final rule that more prompt reporting enables OSHA to inspect the site of the incident and

interview personnel while their recollections are immediate, fresh and untainted by other events, thus providing more timely and accurate information about possible causes of the incident. See, 59 FR 15595. The requirements from the 1994 rulemaking have remained substantially unchanged since then, and are currently codified at 29 CFR 1904.39.

#### Description of Proposed Revisions

The proposed rule would require employers to report to OSHA, within eight hours, work-related incidents that result in the death of an employee or in the in-patient hospitalization of one or more employees, and within 24 hours, a work-related amputation suffered by an employee. The proposed revision is intended to provide information necessary to help ensure America's workers have safe and healthful workplaces.

Prompt investigation of incidents causing serious injury is a key element in OSHA's ability to enforce existing standards, evaluate the effectiveness of current standards, and identify a need for new standards. OSHA believes that the eight-hour requirement for work-related fatalities, the eight-hour requirement for work-related in-patient hospitalizations, and the 24-hour requirement for amputations will enable the additional potential benefits of reporting to be realized without creating unreasonable burdens on employers.

Making all in-patient hospitalizations and amputations reportable will provide OSHA with additional information on the causes of workplace incidents and lead to greater prevention of injuries. The additional information would be obtained cost-effectively, involve relatively minimal burdens on employers, and would provide OSHA with critical information to facilitate the timely investigation of harmful incidents and quick mitigation of hazards. The information

will also help OSHA target scarce resources to the most dangerous workplaces and to prevent future injuries at these workplaces.

OSHA believes that the value of this additional information easily justifies the relatively minor additional reporting burden estimated to be an average of 15 minutes per reported incident. See Section III of this preamble for a more detailed discussion of the estimated compliance costs.

The hospitalization of a worker due to a work-related incident is a serious and significant event. Requiring the reporting of every in-patient hospitalization would ensure that OSHA will be informed about many more of these serious occurrences. Greater awareness regarding the extent and nature of such cases helps in the development and prioritization of various OSHA enforcement programs and initiatives. It also serves the public interest by enabling OSHA to more effectively and efficiently target occupational safety and health hazards.

Another benefit associated with the expansion of the reporting requirements would be the increased value and utility of the resulting data. Incidents involving an in-patient hospitalization or an amputation often involve serious hazards. The proposed reporting requirements would help establish a comprehensive database that would more accurately reflect hazards that cause hospitalizations and amputations as well as identify the associated industries, processes, and other relevant factors. Such a database could prove especially useful for study and research into the causes and prevention of occupational hazards.

For purposes of OSHA recordkeeping, in-patient hospitalization occurs when a person is “formally admitted” to a hospital or clinic for at least one overnight stay. Out-patient treatment generally refers to patients that are seen by a physician or other licensed health care professional



and leave the hospital the same day. Of course, in order for in-patient hospitalization to be reportable, the injury or illness must be work-related as defined by Section 1904.5.

The proposed reporting requirements would apply only to work-related deaths, in-patient hospitalizations, and amputations occurring within 30 days of a work-related incident. As provided in proposed paragraph (b)(7) of section 1904.39, employers would generally not be required to report fatalities, hospitalizations, or amputations of which they were not aware.

The proposed addition of amputations to the reporting requirements would ensure that these incidents involving serious injury are promptly reported. Amputations include some of the most serious types of injuries and tend to result in a greater number of lost workdays than most other injuries. According to data available from BLS for 2008, the median number of days away from work for all injuries involving days away from work was 8, while the median number of days away from work for amputations was 26. Furthermore, amputations differ from other types of serious injuries because they tend to have long-term or permanent consequences. Although information reported regarding amputations will not necessarily result in an inspection, OSHA can use this information to better target inspections to workplaces with serious hazards in order to prevent any further workplace injuries. Thus, the benefits associated with the reporting of amputations would be comparable to those associated with the reporting of hospitalizations.

For purposes of classifying occupational injuries and illnesses, amputations are defined by the Bureau of Labor Statistics in their Occupational Injury and Illness Classification Manual. An amputation is the traumatic loss of a limb or other external body part, including a fingertip. In order for an injury to be classified as an amputation, bone must be lost. Amputations include loss of a body part due to a traumatic incident, a gunshot wound, and medical amputations due to irreparable traumatic injuries. Amputations exclude traumatic injuries without bone loss and

exclude enucleation (eye removal). A reportable amputation under the proposed rule would include those that occur at the workplace as well as those that occur in a hospital as a result of a work-related event.

The proposed reporting requirements would generally bring OSHA requirements more in line with those of other types of safety and health investigations. Federal regulations require aircraft pilots or operators to notify the National Transportation Safety Board (NTSB) of aviation accidents, certain incidents, and the occurrence of a variety of other conditions or events. The Federal Railroad Administration (FRA) requires railroads to report whenever they learn of the occurrence of anything on a list of types of accidents, incidents, events, or exposures.

In some states that administer their own occupational safety and health regulations, elements similar to this proposed regulation are already being enforced. For example, California requires employers to report any employee death or serious injury or illness. The phrase “serious injury or illness” includes the in-patient hospitalization of an employee, as well as when an employee suffers the loss of any part of the body. Alaska and Washington require notification when at least one employee is fatally injured or requires in-patient hospitalization. Utah requires notification of any disabling, serious, or significant injury, and of any occupational disease incident. In Kentucky, employers are required to report work-related incidents that result in the hospitalization of at least one employee, or in an amputation. In Oregon, incidents resulting in at least one employee needing overnight hospitalization for medical treatment are required to be reported.

### Issues and Potential Alternatives

OSHA requests comments on the potential benefits and burdens associated with the proposed revisions to the reporting requirements in Section 1904.39. As noted above, under current state regulations, many businesses are already required to make reports of work-related incidents resulting in death or serious injury, and many more are already required to report all work-related in-patient hospitalizations and amputations within eight hours.

OSHA welcomes comments and data from the public regarding any aspect of the proposed reporting requirements. More specifically, the following questions and issues are relevant to this rulemaking:

1. What types of incidents and/or injuries and illnesses should be reported to OSHA and why?
2. Are there any injuries, illnesses, or conditions that should be reported to OSHA and are not included among in-patient hospitalizations?
3. Should amputations that do not result in in-patient hospitalizations be reported to OSHA?
4. Should OSHA require the reporting of all amputations?
5. Should OSHA require the reporting of enucleations?
6. Are there additional data or estimates available regarding the number of work-related incidents involving in-patient hospitalizations? Is there information available on how many work-related hospitalizations occur more than 30 days after the report of an injury or illness?
7. Should OSHA allow reports to be made by means other than a telephone, such as by email, fax, or a web-based system?
8. Are the reporting times of eight hours for fatalities, eight hours for in-patient hospitalizations, and 24 hours for amputations generally appropriate time periods for requiring reporting? What advantages or disadvantages would be associated with these or any alternative time periods?

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

This proposed rule is not a “significant regulatory action” within the context of Executive Order 12866 or the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)), or a “major rule” under the Congressional Review Act (5 U.S.C. 801 et seq.). This rulemaking has net costs of \$8.5 million and costs between \$50 and \$100 per affected establishment. Thus, this rulemaking imposes far less than \$100 million in annual costs on the economy, and does not meet any of the other criteria specified for a significant regulatory action or major rule in Executive Order 12866, the UMRA or the Congressional Review Act.

This Preliminary Economic Analysis (PEA) addresses the costs, benefits, and economic impacts of the proposed rule. The proposed rule and the PEA were developed in accordance with the principles of Executive Order 12866 and Executive Order 13563. The proposed rule would make two changes to the existing recording and reporting requirements in Part 1904. It would change which industries are partially exempted from keeping records and would change the requirements for reporting certain work-related injuries. The affected establishments are only partially exempt because BLS may require any establishment to respond to its survey. The costs to those firms required to respond to the BLS survey are covered in the BLS survey paperwork package.

The existing regulation partially exempts all employers with 10 or fewer employees and all establishments in specific lower-hazard industry sectors from routinely keeping OSHA records. The existing industry partial exemptions were determined by identifying industries with relatively low DART rates at the 3-digit SIC code level. This proposed rule would retain the partial exemption for employers with 10 or fewer employees. It also would update the list of

partially exempted industries to reflect the latest data on DART rates and to convert the industry classifications to the NAICS classification system. These changes would lead to new costs for employers who are currently partially exempt from recordkeeping requirements but would be newly required to keep records; there would also be cost savings for employers who would no longer be required to keep records.

The existing rule requires that all work-related fatalities and work-related incidents involving three or more hospitalizations be reported to OSHA within eight hours. The proposed rule would retain the requirement that all fatalities be reported to OSHA within eight hours and would require that all work-related in-patient hospitalizations be reported to OSHA within eight hours and that all work-related amputations be reported to OSHA within 24 hours. The proposed rule would thus increase the number of incidents that are to be reported to OSHA.

The remaining sections of this PEA provide estimates of the establishments that would be newly required to keep records or would be newly partially exempt from keeping records, and estimates of the numbers of reports of in-patient hospitalizations or amputations that would be required (the industrial profile section); the costs and costs savings associated with the proposed requirements; the benefits of the proposed rule; and the economic and small business impacts of the proposed changes.

### Industrial Profile

The purpose of this industrial profile section is to provide information about which industries would be affected by the proposed rule, the number of affected establishments in each affected industry, employment in establishments affected by the proposed rule, and estimates of the numbers of in-patient hospitalizations and amputations that would be required to be reported

by the proposed rule. (There is no need to estimate the number of fatalities to be reported as current regulations already require the reporting of fatalities.)

### Partial Exemption

In regards to the partial exemption for certain lower hazard industries, OSHA identified which establishments would be newly required to keep records, and which establishments would be newly partially exempt from keeping records. This identification was complicated by the fact that the current rule classifies employers by SIC codes, a classification system dating to the 1930s which is no longer used in government statistics. OSHA had to convert employers classified by SIC code to the newer NAICS codes. In many cases, a single SIC code was divided into several NAICS codes, and conversely, a single NAICS code might contain establishments from multiple SIC codes. This analysis was conducted at the six-digit NAICS level. The data resulting from this analysis at the six-digit NAICS level are presented in the Appendix to this Preliminary Economic Analysis.

To identify those employers that would no longer be partially exempt from OSHA recordkeeping requirements under the proposed rule, OSHA examined the 1997 Economic Census: Bridge between SIC and NAICS Tables (<http://www.census.gov/epcd/naics02/S87TON02.HTM>). These tables show, for 1997, the best available data on what percentage of the establishments in each SIC code transferred into each NAICS code. Affected establishments in an SIC code exempted under the existing rule but classified in a non-exempted NAICS code under the proposed rule would be newly subject to the recordkeeping requirements. These establishments, not exempted under the proposed rule, would incur new recordkeeping costs.

Having used the bridge table to identify the portions of the industries by 6-digit NAICS code that would be newly required to keep records, OSHA used 2006 County Business Patterns to determine the corresponding numbers of establishments and employees ([http://www2.census.gov/econ/susb/data/2006/us\\_6digitnaics\\_2006.xls](http://www2.census.gov/econ/susb/data/2006/us_6digitnaics_2006.xls)). This data source provides not only the total number of establishments and employees in an industry, but also a breakdown of employees and establishments by the size of the firm that owns the establishment. These data permit a straightforward calculation of the number of establishments with 10 or more employees. However, both the current and proposed rules cover employers with 11 or more employees. To deduct those employers with exactly 10 employees, OSHA estimated that employers with exactly ten employees represent one tenth of all employers with between 10 and 19 employees. This approach will overestimate the number of covered firms because there tend to be a more than proportional number of firms at smaller size classes.

OSHA then estimated the number of affected establishments and employees in each industry by multiplying the total number of establishments and employees in the industry by the percentage of affected establishments that were identified using the SIC – NAICS bridge tables as described above.

OSHA then estimated the number of newly recordable injuries and illnesses by dividing the number of injuries and illness recorded per industry by BLS in 2006 (BLS <http://www.bls.gov/iif/oshbulletin2006.htm>) by the total employment in the industry, and multiplied the resulting rate by the number of affected employees in the industry as derived using the 1997 SIC-NAICS bridge tables. OSHA used BLS data at the four-digit NAICS level since more detailed injury and illness data were not available for all NAICS codes.

Table III-1 presents data for the industries with establishments that would be newly required to keep records. The table shows the four-digit NAICS code, industry name, the number of affected establishments, the number of affected employees, and an estimate of the number of recordable injuries and illnesses, based on historical data, for newly affected employers. OSHA estimates that as a result of the proposed rule's revision to partial exemptions, 199,000 establishments with 5.3 million employees not previously required to record injuries would need to do so and that those establishments are would record an estimated 173,000 injuries and illnesses per year.

Having used the bridge table to identify the portions of the NAICS code industries that would be newly required to keep records, OSHA used the same methodology and data sources described above to determine the number of establishments, employees, and injuries and illnesses for establishments who would no longer be required to regularly keep records. Table III-2 shows the four-digit NAICS code, industry name, number of affected establishments, number of affected employees, and the estimated number of injuries and illnesses that would no longer be recorded in each affected industry. OSHA estimates that as a result of the revision to the list of partially exempt industries, 119,000 establishments with 4.0 million employees and an estimated 76,000 injuries and illnesses per year would no longer need to keep records regularly.



<b>Table III-1 : Industries That Include Establishments That Would Be Newly Required to Keep Records</b>					
<b>NAICS Code</b>	<b>Title of NAICS Code</b>	<b>Affected Employment</b>	<b>Affected Establishments</b>	<b>Affected Firms</b>	<b>Estimated Injuries and Illnesses</b>
3118	Bakeries and Tortilla Manufacturing	42,294	1,932	1,766	571
4411	Automobile Dealers	1,204,566	23,351	19,156	48,989
4413	Automotive Parts, Accessories, and Tire Stores	5,207	426	84	204
4441	Building Material and Supplies Dealers	260,363	21,310	4,215	18,577
4452	Specialty Food Stores	88,133	7,339	3,044	2,759
4453	Beer, Wine, and Liquor Stores	69,011	6,109	2,878	2,356
4539	Other Miscellaneous Store Retailers	160,152	11,505	4,301	4,611
4543	Direct Selling Establishments	1,569	69	43	67
5313	Activities Related to Real Estate	490,941	19,341	9,881	13,864
5322	Consumer Goods Rental	130,839	14,186	1,158	1,114
5324	Commercial and Industrial Machinery and Equipment Rental and Leasing	13,963	807	295	676
5419	Other Professional, Scientific, and Technical Services	249,160	10,889	3,770	1,853
5612	Facilities Support Services	162,384	3,293	865	8,955
5617	Services to Buildings and Dwellings	2,140	104	50	134
5619	Other Support Services	308,984	6,238	4,152	8,150
6219	Other Ambulatory Health Care Services	105,656	2,688	859	5,734
6241	Individual and Family Services	995,856	30,230	15,915	20,988
6242	Community Food and Housing, and Emergency and Other Relief Services	138,272	7,369	4,258	3,536
7111	Performing Arts Companies	116,043	1,994	1,864	4,483
7113	Promoters of Performing Arts, Sports, and Similar Events	93,738	1,183	973	2,421
7121	Museums, Historical Sites, and Similar Institutions	77,933	1,610	1,352	2,860
7139	Other Amusement and Recreation Industries	73,447	2,912	2,244	1,254
7223	Special Food Services	510,294	22,379	3,802	18,164
8129	Other Personal Services	42,254	1,498	1,117	914
	<b>Total:</b>	<b>5,343,199</b>	<b>198,763</b>	<b>88,040</b>	<b>173,233</b>
	Source: OSHA, Office of Regulatory Analysis.				
	SOURCE: 2006 County Business Patterns: <a href="http://www2.census.gov/econ/susb/data/2006/us_6digitnaics_2006.xls">http://www2.census.gov/econ/susb/data/2006/us_6digitnaics_2006.xls</a> .				
	SOURCE: 2006 Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, in cooperation with participating State agencies. <a href="http://www.bls.gov/iif/oshwc/osh/os/osnr0028.pdf">http://www.bls.gov/iif/oshwc/osh/os/osnr0028.pdf</a> .				

<b>Table III-2: Industries That Include Establishments That Would Be Newly Partially Exempt From Keeping Records</b>					
<b>NAICS Code</b>	<b>Title of NAICS Code</b>	<b>Affected Employment</b>	<b>Affected Establishments</b>	<b>Affected Firms</b>	<b>Estimated Injuries and Illnesses</b>
4412	Other Motor Vehicle Dealers	80,441	3,794	2,594	3,757
4431	Electronics and Appliance Stores	66,902	3,699	1,702	1,538
4461	Health and Personal Care Stores	15,620	1,440	425	244
4471	Gasoline Stations	128,972	12,220	2,575	3,634
4511	Sporting Goods, Hobby, and Musical Instrument Stores	1,271	65	16	37
4532	Office Supplies, Stationery, and Gift Stores	98,855	4,626	873	2,160
4812	Nonscheduled Air Transportation	37,807	763	580	855
4861	Pipeline Transportation of Crude Oil	7,472	352	35	175
4862	Pipeline Transportation of Natural Gas	22,080	1,303	68	510
4869	Other Pipeline Transportation	9,348	881	51	219
4879	Scenic and Sightseeing Transportation, Other	2,155	45	39	80
4885	Freight Transportation Arrangement	166,549	7,126	2,709	3,045
5111	Newspaper, Periodical, Book, and Directory Publishers	654,211	10,912	4,896	16,037
5122	Sound Recording Industries	14,059	426	197	206
5151	Radio and Television Broadcasting	251,523	7,186	2,084	4,931
5172	Wireless Telecommunications Carriers (except Satellite)	236,243	10,087	530	2,274
5173	Telecommunications Resellers	27,652	800	533	499
5179	Other Telecommunications	9,365	204	104	191
5181	Internet Service Providers and Web Search Portals	20,957	210	157	174
5191	Other Information Services	10,406	211	96	164
5221	Depository Credit Intermediation	81,130	5,063	356	640
5239	Other Financial Investment Activities	8,158	115	77	19
5241	Insurance Carriers	8,946	251	55	63
5259	Other Investment Pools and Funds	20,268	924	226	129
5413	Architectural, Engineering, and Related Services	31,953	1,144	1,008	508
5416	Management, Scientific, and Technical Consulting Services	80,566	1,651	927	440
5418	Advertising and Related Services	48,061	1,096	764	691
5511	Management of Companies and Enterprises	1,015,532	14,229	6,983	20,526
5614	Business Support Services	166,454	2,937	2,172	1,868
5615	Travel Arrangement and Reservation Services	167,398	7,106	2,054	1,385
5616	Investigation and Security Services	6,361	386	332	148
6116	Other Schools and Instruction	49,500	2,142	1,961	372
7213	Rooming and Boarding Houses	6,313	350	280	60
8112	Electronic and Precision Equipment Repair and Maintenance	61,789	2,047	1,182	1,179
8114	Personal and Household Goods Repair and Maintenance	42,582	2,131	1,146	1,163
8122	Death Care Services	24,515	1,730	551	606
8134	Civic and Social Organizations	131,301	4,233	3,141	2,473
8139	Business, Professional, Labor, Political, and Similar Organizations	148,056	5,490	4,648	2,788
	<b>Total:</b>	<b>3,960,772</b>	<b>119,374</b>	<b>48,123</b>	<b>75,787</b>
	Source: OSHA, Office of Regulatory Analysis.				
	SOURCE: 2006 County Business Patterns: <a href="http://www2.census.gov/econ/susb/data/2006/us_6digitnaics_2006.xls">http://www2.census.gov/econ/susb/data/2006/us_6digitnaics_2006.xls</a> .				
	SOURCE: 2006 Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, in cooperation with participating State agencies. <a href="http://www.bls.gov/iif/oshwc/osh/os/osnr0028.pdf">http://www.bls.gov/iif/oshwc/osh/os/osnr0028.pdf</a> .				

### Reporting of Fatalities, In-Patient Hospitalizations and Amputations

The proposed rule would require employers to report all work-related in-patient hospitalizations and amputations to OSHA. This requirement would affect all industries, all employers, and all 7.5 million establishments in OSHA's jurisdiction. Because OSHA already requires the reporting of work-related fatalities, this economic analysis focuses on the proposed new requirement for reporting all work-related in-patient hospitalization and amputations. The current regulation also requires the reporting of hospitalizations of three or more workers. The number of such multiple hospitalizations represents a trivial portion of all in-patient hospitalizations (For example, in Fiscal Year 2010, there were a total of 14 such reports. [http://www.osha.gov/dep/fatcat/fatcat\\_regional\\_rpt\\_09252010.html](http://www.osha.gov/dep/fatcat/fatcat_regional_rpt_09252010.html) ). OSHA therefore proceeded to estimate the total number of work-related in-patient hospitalizations without deducting the number of multiple hospitalizations that already must be reported.

It is difficult to estimate the number of in-patient hospitalizations that would need to be reported under the proposed rule. NIOSH has estimated that in 2004, a total of 68,000 work-related Emergency Department visits resulted in hospitalization (MMWR Weekly, April 27 2007 (56(16):393-397—"Nonfatal Occupational Injuries and Illnesses—United States, 2004" <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5616a3.htm> (Note: no author given). By contrast, Dembe et al (Dembe AE, Mastroberti MA, Fox SE, Bigelow C, Banks SM. Inpatient hospital care for work-related injuries and illnesses. Am J Ind Med. 2003 Oct;44(4):331-42.) estimate that from 1997 to 1999 there were 210,000 in-patient hospital admissions per year paid for by workers' compensation insurance. More recent studies in Massachusetts (1996-2001) and

Louisiana (1998-2007) come up with figures ranging from 150,000 to 275,000 per year when extrapolated to the nation as a whole.

One possible reconciliation for these different estimates of work-related hospitalizations is that many workers' compensation-related hospitalizations are not emergencies but are scheduled or planned hospitalizations. This possibility is supported by the fact that musculoskeletal disorders represent only 10 percent of work-related emergency room hospitalizations in the NIOSH emergency department data, but 34 to 45 percent of hospitalizations that are paid for by workers' compensation insurance according to the workers' compensation related studies. If many of these hospitalizations are scheduled hospitalizations, they may not need to be reported as Section 1904.39 does not require reporting of fatalities, hospitalizations or amputations that occur more than 30 days after an incident has occurred. However, the rule would require the reporting of in-patient hospitalizations occurring within 30 days of the original event. Nevertheless, OSHA will use 210,000 hospitalizations per year as a preliminary estimate for purposes of examining the costs of this rule. OSHA solicits comment on the best ways to determine how many in-patient hospitalizations will fall within the scope of the proposed rule.

According to BLS, in 2008 there were 6,230 amputations that involved days away from work (<http://www.bls.gov/iif/oshwc/osh/case/osnr0033.pdf>). The more serious amputation cases will clearly require in-patient hospitalization. Because amputations frequently require hospitalization and because OSHA believes that the estimated 210,000 in-patient hospitalization reports are an overestimate of the reports that would be required by the proposed rule, OSHA believes its estimate of 210,000 reports is adequate to account for reports of both in-patient

hospitalizations and amputations. OSHA solicits comment on this estimate and on potential ways to improve its accuracy.

### *Costs*

This section presents estimates of the costs and cost savings of the proposed rule. The time requirements for the activities associated with the proposed rule have been developed through previous rulemakings and information collection requests that have been subject to extensive notice and comment. For the purposes of the analysis of the costs of this proposed rule, OSHA relied on past estimates of the time requirements for record keeping activities. (The specific past estimate relied on is cited for each time requirement estimate.)

The time requirements for various activities are estimated as follows:

Initial training of recordkeepers: one hour per establishment, applies only to currently exempt establishments that would be newly required to keep records (based on the Final Economic Analysis for the Occupational Injury and Illness Recording and Reporting Requirements, published January 19, 2001, FR 66:5916-6135) .

Training of recordkeepers to account for turnover: one hour per establishment and a turnover rate of 20 percent a year resulting in an average of 0.2 hours per establishment per year. This applies to costs for currently exempt establishments that would be newly required to keep records and to cost savings for establishments that would no longer be required to keep records (based on the Final Economic Analysis for the Occupational Injury and Illness Recording and Reporting Requirements, published January 19, 2001, FR 66:5916-6135).

Completing, posting, and certifying OSHA Form 300A: 0.97 hours per establishment. This applies to costs for currently exempt establishments that would be newly required to keep

records and to cost savings for establishments that would no longer be required to keep records (2008 ICR, SS 1218-0176 (1-17-08)).

Completing entries on all forms for each recordable injury and illness, accounting for privacy concerns, and providing access to records: 0.38 hours per recordable injury or illness. This applies to costs for currently exempt establishments that would be newly required to keep records and to cost savings for establishments that would no longer be required to keep records (2008 ICR, SS 1218-0176 (1-17-08)).

Reporting in-patient hospitalizations or amputations: 0.25 hours per fatality or hospitalization. (2008 ICR, SS 1218-0176 (1-17-08)).

As in OSHA's PEA for the MSD column proposed rule (Federal Register: March 9, 2010 Volume 75, Number 45, pages 10738-10739), OSHA estimated that recordkeeping tasks will most commonly be performed by a Human Resource, Training, and Labor Relations Specialist, not elsewhere classified (Human Resources Specialist). The BLS Occupational Employment Survey (OES) indicated that in May 2008, Human Resources Specialists earned a mean hourly wage of \$28 (BLS OES, 2009), with an annual salary of approximately \$56,000 per year. In June 2009, the BLS National Compensation Survey indicated a mean fringe benefit factor of 1.43 for civilian workers in general. This brings the total hourly compensation (including wages and benefits) to \$40.04 for Human Resources Specialists. OSHA recognizes that there is significant diversity among firms in who is charged with OSHA recordkeeping responsibilities. Smaller firms may have a bookkeeper perform this function while larger firms may use an occupational safety and health specialist. However, OSHA believes that the hourly cost of \$40.04 is a reasonable estimate of the costs for the typical recordkeeper. OSHA welcomes comments on the issue of hourly compensation costs for typical recordkeepers.

Given the unit time requirements, hourly wages, the numbers of establishments and the injury and illness totals presented in Table III-1, Table III-3 shows OSHA's estimates of the costs of the proposed rule for those currently partially exempt employers who would need to keep records as a result of the proposed rule. The expected annualized cost of the rule to those employers is \$13.1 million per year with the most expensive element being the completion, certification, and posting of the Form 300A with costs of \$7.7 million per year. The highest cost single industry is new automobile dealers.

Given the unit time requirements, hourly wages, the number of establishments and the injury and illness totals presented in Table III-2, Table III-4 shows OSHA's estimates of the cost savings of the proposed rule for those employers who would no longer need to keep records as a result of the proposed rule. OSHA estimates that the total cost savings for these employers would be \$6.7 million per year.

<b>Table III-3</b>	<b>Annualized Costs to Industries That Include Establishments That Would Be Newly Required to Keep Records</b>					
<b>NAICS Code</b>	<b>NAICS Industry Description</b>	<b>Learning New Record Keeping System</b>	<b>Relearning Recordkeeping System Due to Turnover</b>	<b>Complete, Certify and Post OSHA Form 300A</b>	<b>Complete Log Entries, Mark Privacy Issues and Provide Employees Access</b>	<b>Total Costs to Industries Newly Required to Keep Records</b>
3118	Bakeries and Tortilla Manufacturing	\$11,014	\$15,471	\$75,037	\$8,683	\$110,205
4411	Automobile Dealers	\$133,116	\$186,991	\$906,905	\$745,372	\$1,972,385
4413	Automotive Parts, Accessories, and Tire Stores	\$2,430	\$3,413	\$16,553	\$3,108	\$25,503
4441	Building Material and Supplies Dealers	\$121,482	\$170,648	\$827,643	\$282,648	\$1,402,421
4452	Specialty Food Stores	\$41,837	\$58,769	\$285,031	\$41,981	\$427,618
4453	Beer, Wine, and Liquor Stores	\$34,824	\$48,918	\$237,251	\$35,842	\$356,834
4539	Other Miscellaneous Store Retailers	\$65,588	\$92,133	\$446,844	\$70,153	\$674,719
4543	Direct Selling Establishments	\$394	\$554	\$2,686	\$1,016	\$4,650
5313	Activities Related to Real Estate	\$110,259	\$154,883	\$751,181	\$210,948	\$1,227,271
5322	Consumer Goods Rental	\$80,874	\$113,604	\$550,982	\$16,955	\$762,414
5324	Commercial and Industrial Machinery and Equipment Rental and Leasing	\$4,601	\$6,463	\$31,344	\$10,283	\$52,690
5419	Other Professional, Scientific, and Technical Services	\$62,076	\$87,200	\$422,919	\$28,193	\$600,388
5612	Facilities Support Services	\$18,773	\$26,371	\$127,900	\$136,245	\$309,289
5617	Services to Buildings and Dwellings	\$595	\$836	\$4,053	\$2,032	\$7,516
5619	Other Support Services	\$35,561	\$49,953	\$242,274	\$124,010	\$451,798
6219	Other Ambulatory Health Care Services	\$15,321	\$21,522	\$104,383	\$87,247	\$228,474
6241	Individual and Family Services	\$172,337	\$242,084	\$1,174,109	\$319,340	\$1,907,869
6242	Community Food and Housing, and Emergency and Other Relief Services	\$42,010	\$59,013	\$286,211	\$53,803	\$441,037
7111	Performing Arts Companies	\$11,367	\$15,967	\$77,441	\$68,206	\$172,981
7113	Promoters of Performing Arts, Sports, and Similar Events	\$6,744	\$9,474	\$45,947	\$36,840	\$99,005
7121	Museums, Historical Sites, and Similar Institutions	\$9,181	\$12,896	\$62,546	\$43,514	\$128,137
7139	Other Amusement and Recreation Industries	\$16,602	\$23,322	\$113,110	\$19,087	\$172,121
7223	Special Food Services	\$127,578	\$179,211	\$869,174	\$276,368	\$1,452,331
8129	Other Personal Services	\$8,540	\$11,996	\$58,182	\$13,905	\$92,623
	<b>Totals:</b>	<b>\$1,133,105</b>	<b>\$1,591,692</b>	<b>\$7,719,704</b>	<b>\$2,635,779</b>	<b>\$13,080,280</b>
	Source: OSHA, Office of Regulatory Analysis.					



<b>Table III-4</b>	<b>Cost Savings to Industries That Include Establishments That Would Be Newly Partially Exempt from Recordkeeping Requirements</b>				
<b>NAICS Code</b>	<b>NAICS Industry Description</b>	<b>Relearning Recordkeeping System Due to Turnover</b>	<b>Complete, Certify and Post OSHA Form 300A</b>	<b>Complete Log Entries, Mark Privacy Issues and Provide Employees Access</b>	<b>Cost Savings to Industries Newly Exempted from Keeping Records</b>
4412	Other Motor Vehicle Dealers	\$30,380	\$147,342	\$57,160	\$234,882
4431	Electronics and Appliance Stores	\$29,625	\$143,679	\$23,399	\$196,703
4461	Health and Personal Care Stores	\$11,533	\$55,936	\$3,719	\$71,188
4471	Gasoline Stations	\$97,861	\$474,627	\$55,292	\$627,780
4511	Sporting Goods, Hobby, and Musical Instrument Stores	\$524	\$2,543	\$565	\$3,632
4532	Office Supplies, Stationery, and Gift Stores	\$37,046	\$179,672	\$32,867	\$249,585
4812	Nonscheduled Air Transportation	\$6,111	\$29,638	\$13,015	\$48,763
4861	Pipeline Transportation of Crude Oil	\$2,817	\$13,663	\$2,658	\$19,138
4862	Pipeline Transportation of Natural Gas	\$10,437	\$50,619	\$7,753	\$68,808
4869	Other Pipeline Transportation	\$7,053	\$34,209	\$3,325	\$44,588
4879	Scenic and Sightseeing Transportation, Other	\$356	\$1,728	\$1,214	\$3,299
4885	Freight Transportation Arrangement	\$57,062	\$276,750	\$46,329	\$380,141
5111	Newspaper, Periodical, Book, and Directory Publishers	\$87,381	\$423,797	\$244,001	\$755,178
5122	Sound Recording Industries	\$3,415	\$16,561	\$3,127	\$23,102
5151	Radio and Television Broadcasting	\$57,541	\$279,076	\$75,027	\$411,645
5172	Wireless Telecommunications Carriers (except Satellite)	\$80,775	\$391,759	\$34,597	\$507,132
5173	Telecommunications Resellers	\$6,406	\$31,067	\$7,590	\$45,062
5179	Other Telecommunications	\$1,631	\$7,911	\$2,912	\$12,455
5181	Internet Service Providers and Web Search Portals	\$1,679	\$8,144	\$2,653	\$12,477
5191	Other Information Services	\$1,690	\$8,195	\$2,493	\$12,378
5221	Depository Credit Intermediation	\$40,543	\$196,635	\$9,740	\$246,919
5239	Other Financial Investment Activities	\$923	\$4,478	\$283	\$5,684
5241	Insurance Carriers	\$2,012	\$9,759	\$959	\$12,729
5259	Other Investment Pools and Funds	\$7,403	\$35,903	\$4,004	\$47,309
5413	Architectural, Engineering, and Related Services	\$9,162	\$44,437	\$19,849	\$73,448
5416	Management, Scientific, and Technical Consulting Services	\$13,221	\$64,121	\$4,190	\$81,532
5418	Advertising and Related Services	\$8,777	\$42,569	\$222,299	\$273,646
5511	Management of Companies and Enterprises	\$113,948	\$552,648	\$10,059	\$676,655
5614	Business Support Services	\$23,517	\$114,058	\$38,913	\$176,488
5615	Travel Arrangement and Reservation Services	\$56,903	\$275,981	\$7,722	\$340,606
5616	Investigation and Security Services	\$3,087	\$14,972	\$17,515	\$35,575
6116	Other Schools and Instruction	\$17,152	\$83,185	\$722	\$101,059
7213	Rooming and Boarding Houses	\$2,802	\$13,590	\$1,707	\$18,099
8112	Electronic and Precision Equipment Repair and Maintenance	\$16,391	\$79,495	\$15,150	\$111,035
8114	Personal and Household Goods Repair and Maintenance	\$17,062	\$82,751	\$26,979	\$126,792
8122	Death Care Services	\$13,856	\$67,199	\$49,346	\$130,401
8134	Civic and Social Organizations	\$33,901	\$164,421	\$39,480	\$237,802
8139	Business, Professional, Labor, Political, and Similar Organizations	\$43,966	\$213,233	\$2,943	\$260,141
	<b>Totals:</b>	<b>\$955,949</b>	<b>\$4,636,351</b>	<b>\$1,091,556</b>	<b>\$6,683,856</b>
	Source: OSHA, Office of Regulatory Analysis.				

To estimate the costs of reporting in-patient hospitalizations and amputations, OSHA multiplied the estimated 210,000 cases per year by 0.25 hours per report and by the \$40.04 per hour compensation costs of a recordkeeper. OSHA estimates that a recordkeeper or someone with equivalent salary would make this report. OSHA welcomes comment on whether such a report would typically be made by someone other than the person who normally keeps records and what the salary or job title of such a person might be. The resulting estimate of the annual cost of this provision is \$2.1 million per year.

Table III-5 shows the total net costs of the proposed rule considering all three elements: costs to currently exempt employers who would be newly required to keep records, cost savings to employers who would no longer be required to keep records, and reporting of all work-related in-patient hospitalizations and amputations. OSHA estimates that the total net costs of this proposed rule would be \$8.5 million per year.

Table III-5: Summary of Annualized Costs and Cost Savings	
Cost or Cost Savings Element	Value
Costs to Employers Newly Required to Keep Records	\$13,080,280
Cost Savings To Employers Newly Exempt from Keeping Records	\$6,683,856
Costs Of Additional Reporting Of Hospitalizations and Amputations	\$2,102,200
Net Costs	\$8,498,624

### **Benefits**

OSHA anticipates that this proposed rule will have several benefits. First, the proposed rule will redirect recordkeeping efforts toward industries with higher DART rates, making the system more effective and efficient. While 119,000 establishments would no longer need to keep records, these establishments have an average injury and illness rate of 1.9 percent. On the

other hand, the revision to the regulation adds 199,000 establishments with an average injury and illness rate of 3.2 percent. Thus, on average, establishments with higher injury and illness rates will keep and post records. As a result, the employer, the employees, and OSHA will have a better idea of the nature of the serious injuries and illnesses occurring in establishments with relatively high injury and illness rates.

The proposed requirements to report all work-related in-patient hospitalizations within eight hours and all work-related amputations within 24 hours ensure that OSHA will be able to better utilize enforcement resources by targeting resources to establishments with the most serious hazards.

The hospitalization of a worker or an amputation due to a work-related incident is a serious and significant event. Requiring the reporting of these events would ensure that OSHA will be informed about many more of these serious occurrences than it is now. Greater awareness regarding the extent and nature of such cases helps in the development and prioritization of various OSHA enforcement programs and initiatives. It also serves the public interest by enabling OSHA to more effectively and efficiently target occupational safety and health hazards.

If such improvements in information and enforcement save even one life every three to four years as a result of this proposed rule, they will more than pay for the costs associated with such notifications.

### **Economic Impacts**

In this section, OSHA will first consider the economic impact on those firms newly required to keep records, and then turn to the economic impacts of requirements to report in-

patient hospitalizations and amputations. No economic impacts are examined for those firms that are no longer required to keep records.

#### *Partial Exemption*

OSHA compared the baseline financial data with the total annualized incremental costs of compliance by computing compliance costs per establishment. Table III-6 shows that the costs per establishment range from just above \$50 per establishment to a maximum of less than \$100 per establishment. OSHA believes that costs of this magnitude cannot possibly affect the viability of a firm, and are thus economically feasible.

<b>Table III-6</b>	<b>Economic Impacts of Industries That Include Establishments That Would Be Newly Required to Keep Records</b>		
<b>NAICS Code</b>	<b>NAICS Industry Description</b>	<b>Affected Establishments</b>	<b>Cost per Affected Establishment</b>
3118	Bakeries and Tortilla Manufacturing	1,932	\$57
4411	Automobile Dealers	23,351	\$84
4413	Automotive Parts, Accessories, and Tire Stores	426	\$60
4441	Building Material and Supplies Dealers	21,310	\$66
4452	Specialty Food Stores	7,339	\$58
4453	Beer, Wine, and Liquor Stores	6,109	\$58
4539	Other Miscellaneous Store Retailers	11,505	\$59
4543	Direct Selling Establishments	69	\$67
5313	Activities Related to Real Estate	19,341	\$63
5322	Consumer Goods Rental	14,186	\$54
5324	Commercial and Industrial Machinery and Equipment Rental and Leasing	807	\$65
5419	Other Professional, Scientific, and Technical Services	10,889	\$55
5612	Facilities Support Services	3,293	\$94
5617	Services to Buildings and Dwellings	104	\$72
5619	Other Support Services	6,238	\$72
6219	Other Ambulatory Health Care Services	2,688	\$85
6241	Individual and Family Services	30,230	\$63
6242	Community Food and Housing, and Emergency and Other Relief Services	7,369	\$60
7111	Performing Arts Companies	1,994	\$87
7113	Promoters of Performing Arts, Sports, and Similar Events	1,183	\$84
7121	Museums, Historical Sites, and Similar Institutions	1,610	\$80
7139	Other Amusement and Recreation Industries	2,912	\$59
7223	Special Food Services	22,379	\$65
8129	Other Personal Services	1,498	\$62
	<b>Totals:</b>	198,763	\$82
	Source: OSHA, Office of Regulatory Analysis.		

### *Reporting of Fatalities, Hospitalizations, and Amputations*

Given OSHA's estimates of total costs of approximately \$2 million per year across all 7.5 million business establishments in OSHA's jurisdiction, the average cost per establishment of this provision is \$0.27 per establishment per year. In a typical year, most establishments will not report a single work-related hospitalization. Even for those that do, the cost will be approximately \$10 per hospitalization or amputation that has to be reported. Costs of this magnitude will not affect the viability of any firm.

### *Regulatory Flexibility Certification*

OSHA would continue to partially exempt employers with fewer than 11 employees from its recordkeeping regulations under this proposed rule. Such very small firms are affected by the revisions to this rule only insofar as they may have to report a fatality, in-patient hospitalization or amputation. This will be extremely rare for most small firms. Even when this occurs, OSHA has estimated the costs as approximately \$10 per report, a sum that will not cause problems for even the smallest firms.

Most of the employers affected by the change in the partial exemption to the recordkeeping rule are small firms. Even when one considers the mix of small and large firms covered by the rule, the average costs per establishment are well under \$100 per year per establishment. OSHA believes that costs of less than \$100 per establishment do not represent a significant economic impact on small firms with 11 employees or more.

As a result of these considerations, in accordance with the RFA, OSHA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

### **Section III Appendix: PEA Data at the Six Digit NAICS Level**

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

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

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

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

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

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

**Table III-1A: Industries That Include Establishments That Would Be Newly Required to Keep Records**

<b>NAICS Code</b>	<b>Title of NAICS Code</b>	<b>Affected Employment</b>	<b>Affected Establishments</b>	<b>Affected Firms</b>	<b>Estimated Injuries and Illnesses</b>
311811	Retail Bakeries	42,294	1,932	1,766	571
441110	New Car Dealers	1,136,905	19,971	16,525	47,972
441120	Used Car Dealers	67,661	3,379	2,631	1,016
441310	Automotive Parts and Accessories Stores	5,207	426	84	204
444130	Hardware Stores	260,363	21,310	4,215	18,577
445210	Meat Markets	20,194	1,250	833	451
445220	Fish and Seafood Markets	908	44	40	20
445291	Baked Goods Stores	22,149	2,133	678	756
445292	Confectionery and Nut Stores	14,587	1,576	332	498
445299	All Other Specialty Food Stores	30,294	2,336	1,161	1,034
445310	Beer, Wine, and Liquor Stores	69,011	6,109	2,878	2,356
453910	Pet and Pet Supplies Stores	76,608	3,691	1,150	2,309
453920	Art Dealers	8,370	622	397	36
453991	Tobacco Stores	15,975	1,841	610	481
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	59,200	5,351	2,144	1,784
454390	Other Direct Selling Establishments	1,569	69	43	67
531311	Residential Property Managers	312,261	11,737	5,378	8,942
531312	Nonresidential Property Managers	114,972	4,724	2,517	3,292
531320	Offices of Real Estate Appraisers	14,273	835	639	365
531390	Other Activities Related to Real Estate	49,435	2,045	1,346	1,264
532220	Formal Wear and Costume Rental	9,339	1,243	184	267
532230	Video Tape and Disc Rental	121,174	12,922	967	837
532299	All Other Consumer Goods Rental	326	21	8	11
532420	Office Machinery and Equipment Rental and Leasing	5,642	343	156	273
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	8,321	464	139	403
541910	Marketing Research and Public Opinion Polling	117,181	2,061	1,197	215
541921	Photography Studios, Portrait	51,450	6,020	642	664
541922	Commercial Photography	6,225	298	239	80
541930	Translation and Interpretation Services	8,935	240	193	317
541990	All Other Professional, Scientific, and Technical Services	65,370	2,271	1,499	576
561210	Facilities Support Services	162,384	3,293	865	8,955
561790	Other Services to Buildings and Dwellings	2,140	104	50	134
561910	Packaging and Labeling Services	54,249	805	694	1,431
561920	Convention and Trade Show Organizers	77,944	1,090	834	2,056
561990	All Other Support Services	176,791	4,343	2,624	4,663



<b>Table III-1A (continued) : Industries That Include Establishments That Would Be Newly Required to Keep Records</b>					
<b>NAICS Code</b>	<b>Title of NAICS Code</b>	<b>Affected Employment</b>	<b>Affected Establishments</b>	<b>Affected Firms</b>	<b>Estimated Injuries and Illnesses</b>
621991	Blood and Organ Banks	61,113	1,082	222	3,317
621999	All Other Miscellaneous Ambulatory Health Care Services	44,543	1,606	638	2,417
624110	Child and Youth Services	146,467	5,443	2,951	3,024
624120	Services for the Elderly and Persons with Disabilities	479,601	10,944	6,653	16,239
624190	Other Individual and Family Services	369,788	13,844	6,312	1,725
624210	Community Food Services	26,674	2,208	848	713
624221	Temporary Shelters	60,422	2,636	1,880	1,565
624229	Other Community Housing Services	31,478	1,649	1,090	815
624230	Emergency and Other Relief Services	19,698	876	439	443
711110	Theater Companies and Dinner Theaters	67,614	1,114	1,013	2,612
711120	Dance Companies	8,038	167	165	311
711130	Musical Groups and Artists	34,372	615	604	1,328
711190	Other Performing Arts Companies	6,019	99	83	232
711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities	76,435	727	579	1,974
711320	Promoters of Performing Arts, Sports, and Similar Events without Facilities	17,303	456	394	447
712110	Museums	70,539	1,377	1,184	2,589
712120	Historical Sites	7,394	234	167	271
713950	Bowling Centers	73,206	2,721	2,052	1,251
713990	All Other Amusement and Recreation Industries	241	192	191	4
722310	Food Service Contractors	403,073	19,247	853	14,347
722320	Caterers	107,221	3,132	2,949	3,817
812921	Photofinishing Laboratories (except One-Hour)	16,977	429	324	560
812922	One-Hour Photofinishing	1,457	172	82	48
812990	All Other Personal Services	23,820	897	712	306
	<b>Total:</b>	5,343,199	198,763	88,040	173,233
	Source: OSHA, Office of Regulatory Analysis.				
	SOURCE: 2006 County Business Patterns: <a href="http://www2.census.gov/econ/susb/data/2006/us_6digitnaics_2006.xls">http://www2.census.gov/econ/susb/data/2006/us_6digitnaics_2006.xls</a> .				
	SOURCE: 2006 Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, in cooperation with participating State agencies. <a href="http://www.bls.gov/iif/oshwc/osh/os/osnr0028.pdf">http://www.bls.gov/iif/oshwc/osh/os/osnr0028.pdf</a> .				

<b>III-2A: Industries That Include Establishments That Would Be Newly Partially Exempt From Keeping Records</b>					
<b>NAICS Code</b>	<b>Title of NAICS Code</b>	<b>Affected Employment</b>	<b>Affected Establishments</b>	<b>Affected Firms</b>	<b>Estimated Injuries and Illnesses</b>
441210	Recreational Vehicle Dealers	36,713	1,287	996	1,722
441221	Motorcycle Dealers	4,344	174	151	202
441222	Boat Dealers	29,649	1,897	1,048	1,379
441229	All Other Motor Vehicle Dealers	9,735	436	398	453
443111	Household Appliance Stores	48,606	2,770	1,490	1,376
443120	Computer and Software Stores	18,296	930	212	162
446120	Cosmetics, Beauty Supplies, and Perfume Stores	2,830	294	21	42
446199	All Other Health and Personal Care Stores	12,790	1,146	404	202
447110	Gasoline Stations with Convenience Stores	128,972	12,220	2,575	3,634
451130	Sewing, Needlework, and Piece Goods Stores	1,271	65	16	37
453210	Office Supplies and Stationery Stores	98,855	4,626	873	2,160
481211	Nonscheduled Chartered Passenger Air Transportation	28,094	524	422	636
481212	Nonscheduled Chartered Freight Air Transportation	5,442	96	70	123
481219	Other Nonscheduled Air Transportation	4,271	144	88	97
486110	Pipeline Transportation of Crude Oil	7,472	352	35	175
486210	Pipeline Transportation of Natural Gas	22,080	1,303	68	510
486910	Pipeline Transportation of Refined Petroleum Products	8,661	827	38	202
486990	All Other Pipeline Transportation	687	54	13	16
487990	Scenic and Sightseeing Transportation, Other	2,155	45	39	80
488510	Freight Transportation Arrangement	166,549	7,126	2,709	3,045
511110	Newspaper Publishers	358,841	4,969	1,945	11,451
511120	Periodical Publishers	148,126	3,515	1,651	2,186
511130	Book Publishers	77,645	1,044	755	957
511140	Directory and Mailing List Publishers	47,569	948	306	958
511191	Greeting Card Publishers	10,756	49	33	236
511199	All Other Publishers	11,275	387	206	248
512210	Record Production	947	33	29	5
512220	Integrated Record Production/Distribution	7,492	142	56	174
512230	Music Publishers	3,181	78	56	15
512290	Other Sound Recording Industries	2,439	173	56	12
515111	Radio Networks	10,868	426	199	729
515112	Radio Stations	106,849	5,003	1,408	1,968
515120	Television Broadcasting	133,807	1,756	477	2,234
517211	Paging	4,020	258	68	39
517212	Cellular and Other Wireless Telecommunications	232,223	9,829	462	2,235
517310	Telecommunications Resellers	27,652	800	533	499
517910	Other Telecommunications	9,365	204	104	191
518112	Web Search Portals	20,957	210	157	174
519190	All Other Information Services	10,406	211	96	164
522120	Savings Institutions	81,130	5,063	356	640
522293	International Trade Financing	4,727	32	8	15
523999	Miscellaneous Financial Investment Activities	8,158	115	77	19
524130	Reinsurance Carriers	8,946	251	55	63
525910	Open-End Investment Funds	3,356	89	44	14
525930	Real Estate Investment Trusts	16,912	835	181	115
541320	Landscape Architectural Services	28,061	1,058	940	446
541360	Geophysical Surveying and Mapping Services	3,891	86	68	62

<b>Table III-2A (continued): Industries That Include Establishments that Would Be Newly Partially Exempt From Keeping Records</b>					
<b>NAICS Code</b>	<b>Title of NAICS Code</b>	<b>Affected Employment</b>	<b>Affected Establishments</b>	<b>Affected Firms</b>	<b>Estimated Injuries and Illnesses</b>
541612	Human Resources and Executive Search Consulting Services	78,223	1,566	878	427
541614	Process, Physical Distribution, and Logistics Consulting Services	1,141	47	16	6
541618	Other Management Consulting Services	1,201	38	33	7
541890	Other Services Related to Advertising	48,061	1,096	764	691
551114	Insurance and Employee Benefit Funds	1,015,532	14,229	6,983	20,526
561421	Pension Funds	32,711	645	501	347
561440	Health and Welfare Funds	133,744	2,291	1,671	1,522
561510	Travel Agencies	100,249	5,621	1,328	373
561520	Tour Operators	22,872	662	500	155
561599	All Other Travel Arrangement and Reservation Services	44,278	823	227	857
561622	Locksmiths	6,361	386	332	148
611620	Sports and Recreation Instruction	49,500	2,142	1,961	372
721310	Rooming and Boarding Houses	6,313	350	280	60
811211	Consumer Electronics Repair and Maintenance	11,779	380	267	225
811212	Computer and Office Machine Repair and Maintenance	4,814	136	74	92
811213	Communication Equipment Repair and Maintenance	13,015	479	313	248
811219	Other Electronic and Precision Equipment Repair and Maintenance	32,181	1,052	528	614
811411	Home and Garden Equipment Repair and Maintenance	2,165	146	111	59
811412	Appliance Repair and Maintenance	22,039	883	375	602
811430	Footwear and Leather Goods Repair	43	5	2	1
811490	Other Personal and Household Goods Repair and Maintenance	18,334	1,096	658	501
812220	Cemeteries and Crematories	24,515	1,730	551	606
813410	Civic and Social Organizations	131,301	4,233	3,141	2,473
813930	Labor Unions and Similar Labor Organizations	137,786	5,145	4,307	2,595
813940	Political Organizations	10,270	345	341	193
	<b>Totals:</b>	<b>3,960,772</b>	<b>119,374</b>	<b>48,123</b>	<b>75,787</b>
	Source: OSHA, Office of Regulatory Analysis.				
1	SOURCE: 2006 County Business Patterns: <a href="http://www2.census.gov/econ/susb/data/2006/us_6digitnaics_2006.xls">http://www2.census.gov/econ/susb/data/2006/us_6digitnaics_2006.xls</a> .				
2	SOURCE: 2006 Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, in cooperation with participating State agencies. <a href="http://www.bls.gov/iif/oshwc/osh/os/osnr0028.pdf">http://www.bls.gov/iif/oshwc/osh/os/osnr0028.pdf</a> .				

<b>Table III-3A</b>	<b>Annualized Costs to Industries That Include Establishments That Would Be Newly Required to Keep Records</b>					
<b>NAICS Code</b>	<b>NAICS Industry Description</b>	<b>Learning New Record Keeping System</b>	<b>Relearning Recordkeeping System Due to Turnover</b>	<b>Complete, Certify and Post OSHA Form 300A</b>	<b>Complete Log Entries, Mark Privacy Issues and Provide Employees Access</b>	<b>Total Costs to Industries Newly Required to Keep Records</b>
311811	Retail Bakeries	\$11,014	\$15,471	\$75,037	\$8,683	\$110,205
441110	New Car Dealers	\$113,852	\$159,930	\$775,661	\$729,910	\$1,779,353
441120	Used Car Dealers	\$19,264	\$27,061	\$131,244	\$15,462	\$193,031
441310	Automotive Parts and Accessories Stores	\$2,430	\$3,413	\$16,553	\$3,108	\$25,503
444130	Hardware Stores	\$121,482	\$170,648	\$827,643	\$282,648	\$1,402,421
445210	Meat Markets	\$7,126	\$10,010	\$48,549	\$6,856	\$72,540
445220	Fish and Seafood Markets	\$252	\$354	\$1,715	\$312	\$2,632
445291	Baked Goods Stores	\$12,159	\$17,080	\$82,839	\$11,504	\$123,583
445292	Confectionery and Nut Stores	\$8,985	\$12,622	\$61,216	\$7,576	\$90,399
445299	All Other Specialty Food Stores	\$13,315	\$18,703	\$90,712	\$15,734	\$138,464
445310	Beer, Wine, and Liquor Stores	\$34,824	\$48,918	\$237,251	\$35,842	\$356,834
453910	Pet and Pet Supplies Stores	\$21,043	\$29,560	\$143,366	\$35,132	\$229,101
453920	Art Dealers	\$3,548	\$4,984	\$24,173	\$547	\$33,252
453991	Tobacco Stores	\$10,493	\$14,740	\$71,487	\$7,326	\$104,045
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	\$30,504	\$42,849	\$207,819	\$27,149	\$308,320
454390	Other Direct Selling Establishments	\$394	\$554	\$2,686	\$1,016	\$4,650
531311	Residential Property Managers	\$66,911	\$93,991	\$455,859	\$136,060	\$752,821
531312	Nonresidential Property Managers	\$26,929	\$37,827	\$183,463	\$50,096	\$298,315
531320	Offices of Real Estate Appraisers	\$4,761	\$6,688	\$32,438	\$5,554	\$49,442
531390	Other Activities Related to Real Estate	\$11,658	\$16,376	\$79,421	\$19,238	\$126,692
532220	Formal Wear and Costume Rental	\$7,088	\$9,957	\$48,292	\$4,060	\$69,397
532230	Video Tape and Disc Rental	\$73,665	\$103,478	\$501,867	\$12,735	\$691,744
532299	All Other Consumer Goods Rental	\$121	\$170	\$822	\$160	\$1,273
532420	Office Machinery and Equipment Rental and Leasing	\$1,953	\$2,744	\$13,307	\$4,155	\$22,158
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	\$2,648	\$3,719	\$18,037	\$6,128	\$30,532
541910	Marketing Research and Public Opinion Polling	\$11,748	\$16,502	\$80,035	\$3,268	\$111,553
541921	Photography Studios, Portrait	\$34,317	\$48,206	\$233,798	\$10,107	\$326,428
541922	Commercial Photography	\$1,699	\$2,386	\$11,574	\$1,223	\$16,881
541930	Translation and Interpretation Services	\$1,368	\$1,921	\$9,317	\$4,824	\$17,430
541990	All Other Professional, Scientific, and Technical Services	\$12,945	\$18,185	\$88,195	\$8,771	\$128,096
561210	Facilities Support Services	\$18,773	\$26,371	\$127,900	\$136,245	\$309,289
561790	Other Services to Buildings and Dwellings	\$595	\$836	\$4,053	\$2,032	\$7,516
561910	Packaging and Labeling Services	\$4,587	\$6,443	\$31,250	\$21,773	\$64,053
561920	Convention and Trade Show Organizers	\$6,216	\$8,731	\$42,346	\$31,283	\$88,575
561990	All Other Support Services	\$24,759	\$34,779	\$168,678	\$70,955	\$299,171

Table III-3A (cont.)	Annualized Costs to Industries That Include Establishments That Would Be Newly Required to Keep Records					
	NAICS Industry Description	Learning New Record Keeping System	Relearning Recordkeeping System Due to Turnover	Complete, Certify and Post OSHA Form 300A	Complete Log Entries, Mark Privacy Issues and Provide Employees Access	Total Costs to Industries Newly Required to Keep Records
621991	Blood and Organ Banks	\$6,165	\$8,661	\$42,004	\$50,465	\$107,295
621999	All Other Miscellaneous Ambulatory Health Care Services	\$9,156	\$12,862	\$62,379	\$36,782	\$121,179
624110	Child and Youth Services	\$31,027	\$43,584	\$211,384	\$46,008	\$332,004
624120	Services for the Elderly and Persons with Disabilities	\$62,391	\$87,641	\$425,060	\$247,081	\$822,172
624190	Other Individual and Family Services	\$78,919	\$110,859	\$537,665	\$26,251	\$753,693
624210	Community Food Services	\$12,587	\$17,682	\$85,756	\$10,843	\$126,869
624221	Temporary Shelters	\$15,027	\$21,108	\$102,375	\$23,817	\$162,327
624229	Other Community Housing Services	\$9,400	\$13,204	\$64,041	\$12,408	\$99,053
624230	Emergency and Other Relief Services	\$4,996	\$7,018	\$34,038	\$6,735	\$52,788
711110	Theater Companies and Dinner Theaters	\$6,350	\$8,920	\$43,263	\$39,742	\$98,274
711120	Dance Companies	\$950	\$1,335	\$6,474	\$4,724	\$13,484
711130	Musical Groups and Artists	\$3,504	\$4,923	\$23,874	\$20,203	\$52,504
711190	Other Performing Arts Companies	\$562	\$790	\$3,830	\$3,537	\$8,719
711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities	\$4,143	\$5,819	\$28,224	\$30,040	\$68,226
711320	Promoters of Performing Arts, Sports, and Similar Events without Facilities	\$2,601	\$3,654	\$17,723	\$6,800	\$30,779
712110	Museums	\$7,847	\$11,023	\$53,462	\$39,386	\$111,718
712120	Historical Sites	\$1,333	\$1,873	\$9,084	\$4,128	\$16,419
713950	Bowling Centers	\$15,511	\$21,788	\$105,673	\$19,028	\$161,999
713990	All Other Amusement and Recreation Industries	\$1,092	\$1,534	\$7,438	\$59	\$10,122
722310	Food Service Contractors	\$109,725	\$154,132	\$747,542	\$218,299	\$1,229,698
722320	Caterers	\$17,853	\$25,079	\$121,631	\$58,070	\$222,633
812921	Photofinishing Laboratories (except One-Hour)	\$2,445	\$3,435	\$16,658	\$8,516	\$31,053
812922	One-Hour Photofinishing	\$979	\$1,376	\$6,673	\$731	\$9,758
812990	All Other Personal Services	\$5,116	\$7,186	\$34,851	\$4,658	\$51,811
	<b>Totals:</b>	\$1,133,105	\$1,591,692	\$7,719,704	\$2,635,779	\$13,080,280
	Sources: OSHA, Office of Regulatory Analysis.					

<b>Table III-4A</b>	<b>Cost Savings to Industries That Include Establishments That Would Be Newly Partially Exempt from Recordkeeping Requirements</b>				
<b>NAICS Code</b>	<b>NAICS Industry Description</b>	<b>Relearning Recordkeeping System Due to Turnover</b>	<b>Complete, Certify and Post OSHA Form 300A</b>	<b>Complete Log Entries, Mark Privacy Issues and Provide Employees Access</b>	<b>Costs Savings to Industries Newly Exempted from Keeping Records</b>
441210	Recreational Vehicle Dealers	\$10,304	\$49,974	\$26,206	\$86,483
441221	Motorcycle Dealers	\$1,396	\$6,773	\$3,075	\$11,244
441222	Boat Dealers	\$15,192	\$73,681	\$20,988	\$109,861
441229	All Other Motor Vehicle Dealers	\$3,487	\$16,914	\$6,891	\$27,293
443111	Household Appliance Stores	\$22,180	\$107,572	\$20,933	\$150,684
443120	Computer and Software Stores	\$7,445	\$36,107	\$2,467	\$46,019
446120	Cosmetics, Beauty Supplies, and Perfume Stores	\$2,353	\$11,412	\$643	\$14,408
446199	All Other Health and Personal Care Stores	\$9,180	\$44,524	\$3,076	\$56,780
447110	Gasoline Stations with Convenience Stores	\$97,861	\$474,627	\$55,292	\$627,780
451130	Sewing, Needlework, and Piece Goods Stores	\$524	\$2,543	\$565	\$3,632
453210	Office Supplies and Stationery Stores	\$37,046	\$179,672	\$32,867	\$249,585
481211	Nonscheduled Chartered Passenger Air Transportation	\$4,192	\$20,332	\$9,671	\$34,195
481212	Nonscheduled Chartered Freight Air Transportation	\$769	\$3,729	\$1,873	\$6,370
481219	Other Nonscheduled Air Transportation	\$1,150	\$5,577	\$1,470	\$8,197
486110	Pipeline Transportation of Crude Oil	\$2,817	\$13,663	\$2,658	\$19,138
486210	Pipeline Transportation of Natural Gas	\$10,437	\$50,619	\$7,753	\$68,808
486910	Pipeline Transportation of Refined Petroleum Products	\$6,622	\$32,116	\$3,081	\$41,818
486990	All Other Pipeline Transportation	\$432	\$2,093	\$244	\$2,769
487990	Scenic and Sightseeing Transportation, Other	\$356	\$1,728	\$1,214	\$3,299
488510	Freight Transportation Arrangement	\$57,062	\$276,750	\$46,329	\$380,141
511110	Newspaper Publishers	\$39,793	\$192,994	\$174,234	\$407,021
511120	Periodical Publishers	\$28,148	\$136,518	\$33,260	\$197,927
511130	Book Publishers	\$8,359	\$40,540	\$14,567	\$63,466
511140	Directory and Mailing List Publishers	\$7,588	\$36,803	\$14,572	\$58,964
511191	Greeting Card Publishers	\$393	\$1,907	\$3,597	\$5,897
511199	All Other Publishers	\$3,100	\$15,034	\$3,770	\$21,905
512210	Record Production	\$267	\$1,293	\$69	\$1,629
512220	Integrated Record Production/Distribution	\$1,140	\$5,531	\$2,651	\$9,322
512230	Music Publishers	\$625	\$3,029	\$230	\$3,884
512290	Other Sound Recording Industries	\$1,383	\$6,707	\$177	\$8,267
515111	Radio Networks	\$3,413	\$16,553	\$11,094	\$31,060
515112	Radio Stations	\$40,066	\$194,322	\$29,948	\$264,336
515120	Television Broadcasting	\$14,062	\$68,201	\$33,985	\$116,248
517211	Paging	\$2,067	\$10,024	\$589	\$12,680
517212	Cellular and Other Wireless Telecommunications	\$78,708	\$381,735	\$34,009	\$494,452
517310	Telecommunications Resellers	\$6,406	\$31,067	\$7,590	\$45,062
517910	Other Telecommunications	\$1,631	\$7,911	\$2,912	\$12,455
518112	Web Search Portals	\$1,679	\$8,144	\$2,653	\$12,477
519190	All Other Information Services	\$1,690	\$8,195	\$2,493	\$12,378
522120	Savings Institutions	\$40,543	\$196,635	\$9,740	\$246,919
523999	Miscellaneous Financial Investment Activities	\$923	\$4,478	\$283	\$5,684

<b>Table III-4A (cont.)</b>	<b>Cost Savings to Industries That Include Establishments That Would Be Newly Partially Exempt from Recordkeeping Requirements</b>				
<b>NAICS Code</b>	<b>NAICS Industry Description</b>	<b>Relearning Recordkeeping System Due to Turnover</b>	<b>Complete, Certify and Post OSHA Form 300A</b>	<b>Complete Log Entries, Mark Privacy Issues and Provide Employees Access</b>	<b>Costs Savings to Industries Newly Exempted from Keeping Records</b>
524130	Reinsurance Carriers	\$2,012	\$9,759	\$959	\$12,729
525910	Open-End Investment Funds	\$714	\$3,464	\$1,100	\$5,278
525930	Real Estate Investment Trusts	\$6,688	\$32,438	\$2,904	\$42,031
541320	Landscape Architectural Services	\$8,472	\$41,088	\$941	\$50,500
541360	Geophysical Surveying and Mapping Services	\$691	\$3,349	\$18,908	\$22,948
541612	Human Resources and Executive Search Consulting Services	\$12,542	\$60,831	\$95	\$73,468
541614	Process, Physical Distribution, and Logistics Consulting Services	\$377	\$1,829	\$100	\$2,306
541618	Other Management Consulting Services	\$301	\$1,461	\$3,995	\$5,757
541890	Other Services Related to Advertising	\$8,777	\$42,569	\$222,299	\$273,646
551114	Corporate, Subsidiary, and Regional Managing Offices	\$113,948	\$552,648	\$10,059	\$676,655
561421	Telephone Answering Services	\$5,168	\$25,063	\$21,557	\$51,787
561440	Collection Agencies	\$18,350	\$88,995	\$17,356	\$124,701
561510	Travel Agencies	\$45,012	\$218,309	\$1,296	\$264,617
561520	Tour Operators	\$5,302	\$25,715	\$4,552	\$35,569
561599	All Other Travel Arrangement and Reservation Services	\$6,589	\$31,956	\$1,874	\$40,419
561622	Locksmiths	\$3,087	\$14,972	\$17,515	\$35,575
611620	Sports and Recreation Instruction	\$17,152	\$83,185	\$722	\$101,059
721310	Rooming and Boarding Houses	\$2,802	\$13,590	\$1,707	\$18,099
811211	Consumer Electronics Repair and Maintenance	\$3,046	\$14,774	\$1,398	\$19,218
811212	Computer and Office Machine Repair and Maintenance	\$1,090	\$5,286	\$3,779	\$10,155
811213	Communication Equipment Repair and Maintenance	\$3,832	\$18,584	\$9,344	\$31,760
811219	Other Electronic and Precision Equipment Repair and Maintenance	\$8,423	\$40,851	\$629	\$49,902
811411	Home and Garden Equipment Repair and Maintenance	\$1,172	\$5,682	\$9,157	\$16,011
811412	Appliance Repair and Maintenance	\$7,073	\$34,306	\$18	\$41,398
811430	Footwear and Leather Goods Repair	\$39	\$191	\$7,618	\$7,849
811490	Other Personal and Household Goods Repair and Maintenance	\$8,778	\$42,571	\$10,186	\$61,535
812220	Cemeteries and Crematories	\$13,856	\$67,199	\$49,346	\$130,401
813410	Civic and Social Organizations	\$33,901	\$164,421	\$39,480	\$237,802
813930	Labor Unions and Similar Labor Organizations	\$41,204	\$199,841	\$2,943	\$243,988
813940	Political Organizations	\$2,761	\$13,392	\$0	\$16,153
	<b>Totals:</b>	\$955,949	\$4,636,351	\$1,091,556	\$6,683,856
	Source: OSHA, Office of Regulatory Analysis.				

<b>Table III-6A</b>	<b>Economic Impacts of Industries That Include Establishments That Would Be Newly Required to Keep Records</b>		
<b>NAICS Code</b>	<b>NAICS Industry Description</b>	<b>Affected Establishments</b>	<b>Cost per Affected Establishment</b>
311811	Retail Bakeries	1,932	\$57.04
441110	New Car Dealers	19,971	\$89.10
441120	Used Car Dealers	3,379	\$57.12
441310	Automotive Parts and Accessories Stores	426	\$59.84
444130	Hardware Stores	21,310	\$65.81
445210	Meat Markets	1,250	\$58.03
445220	Fish and Seafood Markets	44	\$59.61
445291	Baked Goods Stores	2,133	\$57.94
445292	Confectionery and Nut Stores	1,576	\$57.35
445299	All Other Specialty Food Stores	2,336	\$59.28
445310	Beer, Wine, and Liquor Stores	6,109	\$58.42
453910	Pet and Pet Supplies Stores	3,691	\$62.07
453920	Art Dealers	622	\$53.43
453991	Tobacco Stores	1,841	\$56.53
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	5,351	\$57.62
454390	Other Direct Selling Establishments	69	\$67.23
531311	Residential Property Managers	11,737	\$64.14
531312	Nonresidential Property Managers	4,724	\$63.15
531320	Offices of Real Estate Appraisers	835	\$59.20
531390	Other Activities Related to Real Estate	2,045	\$61.96
532220	Formal Wear and Costume Rental	1,243	\$55.81
532230	Video Tape and Disc Rental	12,922	\$53.53
532299	All Other Consumer Goods Rental	21	\$60.12
532420	Office Machinery and Equipment Rental and Leasing	343	\$64.67
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	464	\$65.74
541910	Marketing Research and Public Opinion Polling	2,061	\$54.13
541921	Photography Studios, Portrait	6,020	\$54.23
541922	Commercial Photography	298	\$56.65
541930	Translation and Interpretation Services	240	\$72.65
541990	All Other Professional, Scientific, and Technical Services	2,271	\$56.41
561210	Facilities Support Services	3,293	\$93.92
561790	Other Services to Buildings and Dwellings	104	\$72.02
561910	Packaging and Labeling Services	805	\$79.61
561920	Convention and Trade Show Organizers	1,090	\$81.24
561990	All Other Support Services	4,343	\$68.89
621991	Blood and Organ Banks	1,082	\$99.21
621999	All Other Miscellaneous Ambulatory Health Care Services	1,606	\$75.45
624110	Child and Youth Services	5,443	\$61.00
624120	Services for the Elderly and Persons with Disabilities	10,944	\$75.12
624190	Other Individual and Family Services	13,844	\$54.44
624210	Community Food Services	2,208	\$57.46
624221	Temporary Shelters	2,636	\$61.58
624229	Other Community Housing Services	1,649	\$60.07
624230	Emergency and Other Relief Services	876	\$60.23



<b>III-6A (cont.)</b>	<b>Economic Impacts of Industries That Include Establishments That Would Be Newly Required to Keep Records</b>		
<b>NAICS Code</b>	<b>NAICS Industry Description</b>	<b>Affected Establishments</b>	<b>Cost per Affected Establishment</b>
711110	Theater Companies and Dinner Theaters	1,114	\$88.23
711120	Dance Companies	167	\$80.89
711130	Musical Groups and Artists	615	\$85.41
711190	Other Performing Arts Companies	99	\$88.42
711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities	727	\$93.89
711320	Promoters of Performing Arts, Sports, and Similar Events without Facilities	456	\$67.45
712110	Museums	1,377	\$81.16
712120	Historical Sites	234	\$70.20
713950	Bowling Centers	2,721	\$59.54
713990	All Other Amusement and Recreation Industries	192	\$52.86
722310	Food Service Contractors	19,247	\$63.89
722320	Caterers	3,132	\$71.09
812921	Photofinishing Laboratories (except One-Hour)	429	\$72.40
812922	One-Hour Photofinishing	172	\$56.80
812990	All Other Personal Services	897	\$57.74
	<b>Totals:</b>	198,763	\$81.63
	Source: OSHA, Office of Regulatory Analysis.		

#### **IV. OMB Review Under the Paperwork Reduction Act of 1995**

This proposal would revise an existing collection of information as defined and covered by the Paperwork Reduction Act of 1995 and its implementing regulations. An ongoing information collection approved by OMB under the provisions of the Paperwork Reduction Act currently includes the type of information collected in this proposed regulation, as well as the manner in which employers collect the information. Accordingly, OMB approved the information collections associated with the requirements to maintain information on fatalities, injuries, and illnesses, and to report and submit this information to OSHA, under the Control Number 1218-0176. The current regulation at 29 CFR 1904.39 requires an employer to report to OSHA, within eight hours, all work-related fatalities and in-patient hospitalizations of three or more employees. The proposed rule would require employers to report to OSHA, within eight hours, all work-related fatalities and work-related in-patient hospitalizations (regardless of the number of employees involved), and, within 24 hours, all work-related amputations. The proposal also would update Appendix A to 29 CFR 1904, subpart B, of its injury and illness recording and reporting regulations. Appendix A contains a list of industries that are partially exempt from maintaining records of occupational injuries and illnesses, generally due to their relatively low rates of occupational injury and illness. OSHA based the current list of industries on the Standard Industrial Classification (SIC) system. In 1997, the North American Industry Classification System (NAICS) was introduced to classify establishments by industry. The proposed rule would update Appendix A by replacing it with a list of industries based on NAICS and more recent injury and illness data.

OSHA prepared and submitted a revised Information Collection Request (ICR) for this proposed regulation to OMB for review in accordance with 44 U.S.C. 3507(d). The Agency solicits comments on the proposed revised collection of information requirements and the

estimated burden hours associated with these requirements, including comments on the following items:

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

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

1. Title: 29 CFR Part 1904 Recordkeeping and Reporting Occupational Injuries and Illnesses

2. Number of respondents: OSHA is proposing to revise the list of partially exempt industries in Appendix A of 29 CFR 1904, subpart B, using the North American Industry Classification System (NAICS). OSHA based the revised list in proposed Appendix A on DART rates compiled by the Bureau of Labor Statistics (BLS) for 2007, 2008, and 2009. The Agency still would require industries listed in proposed Appendix A to maintain records if requested to do so by BLS in connection with its Annual Survey (see 29 CFR 1904.42), or by OSHA in connection with its Data Initiative (see 29 CFR 1904.41). OSHA estimates that, as a result of the proposed revisions to the list of industries partially exempt from the regulation, 199,000 establishments with 5.3 million employees not previously required to record the

information would need to do so, and that those establishments would record an estimated 173,000 injuries and illnesses per year. The total number of respondents is 1,665,374.

2. Frequency of responses: Annually; on occasion.

3. Number of responses: 7,449,273.

4. Average time per response: Time per response varies from three minutes for making an entry on a confidential list of privacy-concern cases (see §1904.29(b)(6)), to one hour to learn the requirements of the recordkeeping standard.

5. Estimated total burden hours: 3,355,105 hours.

6. Estimated costs (capital-operation and maintenance): There are no capital costs for the proposed collection of information requirements.

Members of the public may comment on the paperwork requirements in this proposed regulation by sending their written comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, OSHA (Regulation Identifier Number (RIN) 1218–AC50), Office of Management and Budget, Room 10235, Washington, DC 20503; telephone: 202-395-6929; fax: 202-395-6881 (these are not toll-free numbers); e-mail: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). OSHA encourages commenters also to submit their comments on these paperwork requirements to the rulemaking docket along with their comments on other parts of the proposed regulation. For instructions on submitting these comments to the docket, see the sections of this *Federal Register* notice titled “**DATES**” and “**ADDRESSES**.” Comments submitted in response to this notice are public records; therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and dates of birth. To access the docket to read or download comments and other materials related to this paperwork determination, including the complete information collection request (ICR), use the procedures described under the section of this notice titled “**ADDRESSES**.” You may obtain an electronic copy of the complete ICR by visiting the Web site at

<http://www.reginfo.gov/public/do/PRAMain>, then scroll under "Currently Under Review" to "Department of Labor (DOL)" to view all of the DOL's ICRs, including those ICRs submitted for proposed rulemakings. To make inquiries, or to request other information, contact Mr. Todd Owen, Directorate of Standards and Guidance, OSHA, Room N-3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2222. OSHA notes that a federal agency cannot (1) conduct or sponsor a collection of information unless OMB approves it under the PRA and displays a currently valid OMB control number, and (2) require a party to respond to a collection of information unless the collection of information displays a currently valid OMB control number. Also, notwithstanding any other provision of law, no party shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. OSHA will publish a notice of OMB's action when it publishes the final regulation.

## **V. Unfunded Mandates**

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 12875, this proposed rule does not include any federal mandate that may result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than \$100 million.

## **VI. Federalism**

The proposed rule has been reviewed in accordance with Executive Order 13132 (52 FR 41685), regarding federalism. Because this rulemaking involves a "regulation" issued under Sections 8 and 24 of the OSH Act, and is not an "occupational safety and health standard" issued under Section 6 of the OSH Act, the rule will not preempt state law (29 U.S.C. 667(a)). The effect of the proposed rule on states is discussed in section VIII. State Plan States.

## **VII. State Plan States**

Consistent with Section 18 of the OSH Act (29 U.S.C. 667) and the requirements of 29 CFR 1904.37 and 1952.4, within 6 months after publication of the final OSHA rule, state-plan states must promulgate occupational injury and illness recording and reporting requirements that are the same as the federal requirements for determining which injuries and illnesses will be entered into the records and how they are entered. All other injury and illness recording and reporting requirements that are promulgated by state-plan states may be more stringent than, or supplemental to, the federal requirements, but, because of the unique nature of the national recordkeeping program, states must consult with OSHA and obtain approval of such additional or more stringent reporting and recording requirements to ensure that they will not interfere with uniform reporting objectives.

There are 27 state plan states and territories. The states and territories that cover private sector employers are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA approved state plans that apply to state and local government employees only.

## **VIII. Public Participation**

This rulemaking is governed by the notice and comments requirements in the Administrative Procedure Act (APA)(5 U.S.C. 553) rather than section 6 of the OSH Act (29 U.S.C. 655) and 29 CFR Part 1911, which only apply to “promulgating, modifying or revoking occupational safety and health standards” (29 CFR 1911). For example, section 6(b)(3) of the

OSH Act and 29 CFR 1911.11 state that the requirement to hold an informal public hearing on a proposed rule only applies to rulemakings on occupational safety and health standards, not to those dealing with regulations.

Section 553(b)(1) of the APA requires the agency to specify the type of rule involved, the time during which the agency will receive comments on the proposal, and the instructions regarding the procedures for submitting comments. The APA does not specify a minimum period for submitting comments.

### **Public Submissions**

OSHA invites comment on all aspects of the proposed rule. OSHA specifically encourages comment on the questions raised in the issues and potential alternatives sections of this preamble. Interested persons must submit comments by [INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS FEDERAL REGISTER] The Agency will carefully review and evaluate all comments, information, and data, as well as all other information in the rulemaking record, to determine how to proceed.

You may submit comments in response to this document (1) electronically at <http://www.regulations.gov>, which is the federal e-rulemaking portal; (2) by fax; or (3) by hard copy. All submissions must identify the Agency name and the OSHA docket number (Docket No. OSHA-2010-0019) or RIN (RIN No. 1218-AC50) for this rulemaking. You may supplement electronic submissions by uploading document files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA docket office (see ADDRESSES section). The additional materials must clearly identify your electronic comments by name, date, and docket number, so OSHA can attach them to your comments.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA docket office at (202) 693-2350 (TTY (877) 889-5627).

## **Access to Docket**

Comments in response to this *Federal Register* notice are posted at <http://www.regulations.gov>, the federal e-rulemaking portal. Therefore, OSHA cautions individuals about submitting personal information such as social security numbers and birthdates. Although submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All comments and exhibits, including copyrighted material, are available for inspection and copying at the OSHA docket office. Information on using <http://www.regulations.gov> to submit comments and access dockets is available on that website. Contact the OSHA docket office for information about materials not available through the website and for assistance in using the internet to locate docket submissions.

Electronic copies of this *Federal Register* document are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information, also are available at OSHA's webpage at <http://www.osha.gov>. For specific information about OSHA's Recordkeeping rule, go the Recordkeeping page on OSHA's webpage.

## **IX. Authority and Signature**

This document was prepared under the direction of Dr. David Michaels, Assistant Secretary for Occupational Safety and Health. It is issued under Sections 8 and 24 of the



Occupational Safety and Health Act (29 U.S.C. 657, 673), 5 U.S.C. 553, and Secretary of Labor's Order 4-2010 (75 FR 55355, 9/10/2010)

**List of Subjects in 29 CFR Part 1904**

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

Signed at Washington, DC on June 15, 2011.

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**David Michaels, PhD, MPH**

*Assistant Secretary of Labor for Occupational Safety and Health*

**X. Proposed Rule**

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

**PART 1904 -- [AMENDED]**

**1. The authority citation for part 1904 continues to read as follows:**

**Authority:** 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 3-2000 (65 FR 50017), and 5 U.S.C. 533.

**2. Amend §1904.2 as follows:**

- A. Revise paragraph (a)(1).
- B. Remove paragraph (b)(1).
- C. Redesignate paragraphs (b)(2) and (b)(3) as (b)(1) and (b)(2).
- D. Revise newly designated paragraphs (b)(1) and (b)(2).

The revisions read as follows:

**§1904.2- Partial exemption for establishments in certain industries.**

(a) \*\*\*.

(1) If your business establishment is classified in a specific industry subsector listed in Appendix A to this Subpart B, you do not need to keep OSHA injury and illness records unless the government asks you to keep the records under § 1904.41 or § 1904.42. However, all employers must report to OSHA any workplace incident that results in a fatality, an amputation, or the in-patient hospitalization of an employee (see § 1904.39).

\* \* \* \* \*

(b) \* \* \*

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

(2) How do I determine the correct NAICS code for my business? The NAICS was designed and documented in such a way to allow business establishments to self-code. There are a number of tools and references available to help you to determine the most appropriate NAICS code for your business from the U.S. Census Bureau at [www.census.gov](http://www.census.gov). You may contact your nearest OSHA office or state agency for help in determining your NAICS code.

\* \* \* \* \*

3. Revise Appendix A to Subpart B of Part 1904 to read as follows:

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

Employers are not required to keep OSHA injury and illness records for any establishment classified in the following North American Industry Classification System (NAICS) codes, unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a

state agency operating under the authority of OSHA or the BLS. All employers, including those partially exempted by reason of company size or industry classification, must report to OSHA any workplace incident that results in a fatality, in-patient hospitalization, or amputation (see §1904.39).

NAICS Code	Industry
4412	Other Motor Vehicle Dealers
4431	Electronics and Appliance Stores
4461	Health and Personal Care Stores
4471	Gasoline Stations
4481	Clothing Stores
4482	Shoe Stores
4483	Jewelry, Luggage, and Leather Goods Stores
4511	Sporting Goods, Hobby, and Musical Instrument Stores
4512	Book, Periodical, and Music Stores
4531	Florists
4532	Office Supplies, Stationery, and Gift Stores
4812	Nonscheduled Air Transportation
4861	Pipeline Transportation of Crude Oil
4862	Pipeline Transportation of Natural Gas
4869	Other Pipeline Transportation
4879	Scenic and Sightseeing Transportation, Other
4885	Freight Transportation Arrangement
5111	Newspaper, Periodical, Book, and Directory Publishers
5112	Software Publishers
5121	Motion Picture and Video Industries
5122	Sound Recording Industries
5151	Radio and Television Broadcasting
5172	Wireless Telecommunications Carriers (except Satellite)
5173	Telecommunications Resellers
5179	Other Telecommunications
5181	Internet Service Providers and Web Search Portals
5182	Data Processing, Hosting, and Related Services
5191	Other Information Services
5211	Monetary Authorities - Central Bank
5221	Depository Credit Intermediation
5222	Nondepository Credit Intermediation
5223	Activities Related to Credit Intermediation
5231	Securities and Commodity Contracts Intermediation and Brokerage
5232	Securities and Commodity Exchanges
5239	Other Financial Investment Activities
5241	Insurance Carriers
5242	Agencies, Brokerages, and Other Insurance Related Activities
5251	Insurance and Employee Benefit Funds
5259	Other Investment Pools and Funds

5312	Offices of Real Estate Agents and Brokers
5331	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)
5411	Legal Services
5412	Accounting, Tax Preparation, Bookkeeping, and Payroll Services
5413	Architectural, Engineering, and Related Services
5414	Specialized Design Services
5415	Computer Systems Design and Related Services
5416	Management, Scientific, and Technical Consulting Services
5417	Scientific Research and Development Services
5418	Advertising and Related Services
5511	Management of Companies and Enterprises
5611	Office Administrative Services
5614	Business Support Services
5615	Travel Arrangement and Reservation Services
5616	Investigation and Security Services
6111	Elementary and Secondary Schools
6112	Junior Colleges
6113	Colleges, Universities, and Professional Schools
6114	Business Schools and Computer and Management Training
6115	Technical and Trade Schools
6116	Other Schools and Instruction
6117	Educational Support Services
6211	Offices of Physicians
6212	Offices of Dentists
6213	Offices of Other Health Practitioners
6214	Outpatient Care Centers
6215	Medical and Diagnostic Laboratories
6244	Child Day Care Services
7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures
7115	Independent Artists, Writers, and Performers
7213	Rooming and Boarding Houses
7221	Full-Service Restaurants
7222	Limited-Service Eating Places
7224	Drinking Places (Alcoholic Beverages)
8112	Electronic and Precision Equipment Repair and Maintenance
8114	Personal and Household Goods Repair and Maintenance
8121	Personal Care Services
8122	Death Care Services
8131	Religious Organizations
8132	Grantmaking and Giving Services
8133	Social Advocacy Organizations
8134	Civic and Social Organizations
8139	Business, Professional, Labor, Political, and Similar Organizations

\* \* \* \* \*

4. Amend §1904.39 as follows:

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

B. Add paragraph (b)(8).

The revisions and addition should read as follows:

**§1904.39-Reporting fatalities and multiple hospitalization incidents to OSHA.**

(a) *Basic Requirement.* Within eight (8) hours after the death of any employee from a work-related incident, within eight (8) hours after the in-patient hospitalization of any employee as a result of a work-related incident, and within twenty four (24) hours after an amputation suffered by an employee as a result of a work-related incident, you must orally report the incident by telephone or in person to the nearest Area Office of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor. You may also use the OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).

(b) \* \* \*

(1) *If the Area Office is closed, may I report the incident by leaving a message on OSHA's answering machine, faxing the area office, or sending an email?* No, if you can't talk to a person at the Area Office, you must report the fatality, in-patient hospitalization, or amputation incident using the 800 number.

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

- (i) The establishment name;
- (ii) The location of the incident;
- (iii) The time of the incident;
- (iv) The number of fatalities or hospitalized employees or amputations;
- (v) The names of any injured employees;
- (vi) Your contact person and his or her phone number; and
- (vii) A brief description of the incident.

**(3) *Do I have to report every fatality or in-patient hospitalization or amputation incident resulting from a motor vehicle accident?*** No, you do not have to report all of these incidents. If the motor vehicle accident occurs on a public street or highway, and does not occur in a construction work zone, you do not have to report the incident to OSHA. However, these injuries must be recorded on your OSHA injury and illness records, if you are required to keep such records.

**(4) *Do I have to report a fatality or in-patient hospitalization or amputation incident that occurs on a commercial or public transportation system?*** No, you do not have to call OSHA to report a fatality or hospitalization or amputation incident if it involves a commercial airplane, train, subway, or bus accident. However, these injuries must be recorded on your OSHA injury and illness records, if you are required to keep such records.

\* \* \*

**(6) *Do I have to report a fatality or in-patient hospitalization or amputation that occurs long after the incident?*** No, you must only report each fatality or in-patient hospitalization or amputation that occurs within thirty (30) days of an incident.

**(7) *What if I don't learn about an incident right away?*** If you do not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under paragraphs (a) and (b) of this section, you must make the report within eight (8) hours (for a fatality or an in-patient hospitalization) or twenty four (24) hours (for an amputation) of the time the incident is reported to you or to any of your agent(s) or employee(s).

**(8) *What types of injuries are counted as amputations?*** For purposes of classifying occupational injuries and illnesses, amputations are defined by the Bureau of Labor Statistics in their Occupational Injury and Illness Classification Manual. An amputation is the traumatic loss of a limb or other external body part, including a fingertip. In order for an injury to be classified as an amputation, bone must be lost. Amputations include loss of a body part due to a traumatic

incident, a gunshot wound, and medical amputations due to irreparable traumatic injuries.

Amputations exclude traumatic injuries without bone loss and exclude enucleation (eye removal).

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