HIOSH DIRECTIVE

DIRECTIVE NO: CPL 02-00-135	EFFECTIVE DATE: May 1, 2016
SUBJECT: Recordkeeping Policies and Procedures Manual	

The Federal directive, CPL 02-00-135, dated December 30, 2004 is adopted in its entirety with minor changes for differences in state and program structure.

OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR — Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 02-00-135 **EFFECTIVE DATE:** December 30, 2004

SUBJECT: Recordkeeping Policies and Procedures Manual

ABSTRACT

Purpose: This Instruction transmits enforcement information and provides changes and additions to CPL 02-00-131/CPL 2-0.131 of January 1, 2002, Chapter 1; Paragraph V; Federal Program Changes and Chapter 5, Frequently Asked Questions on OSHA's recordkeeping regulations.

Scope: OSHA-wide

Cancellations: Paragraph C.2.n.(2)(b), and Paragraphs C.2.n.(3), (4), and (5)(a) in Chapter IV of OSHA Instruction CPL 2.103, Field Inspection Reference Manual (FIRM), September 26, 1994; Paragraph L.5. of OSHA Instruction CPL 2.106, Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis, February 9, 1996; OSHA Instruction CPL 2.103, Field Inspection Reference Manual (FIRM), September 26, 1994; Paragraph E.6. of OSHA Instruction STD3-1.1, Clarification of Citation Policy, June 22, 1987; and OSHA Instruction STP 2-1.173, Final Rule on Reporting of Fatality or Multiple Hospitalization Incidents, June 7, 1994.
OSHA Instruction CPL 02-00-131 of January 1, 2002.

References: All 29 CFR Part 1904 SAVES of OSHA Instruction CPL 2.35, CH-1 and CH-5, Regulatory and General Industry SAVEs, September 1, 1979; OSHA Instruction CPL 2.80, Handling of Cases to be Proposed for Violation-by-Violation Penalties, October 21, 1990; OSHA Instruction CPL 2.103, Field Inspection Reference Manual (FRIM), September 26, 1994; OSHA Instruction CPL 2.111, Citation Policy for Paperwork and Written Program Requirement Violations, November 27, 1995; and OSHA Instruction CPL2-2.33, 29 CFR 1913.10, Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records- Procedures Governing Enforcement Activities, February 8, 1982.

State Impact: State adoption is required in part. See Chapter 1, Paragraph V.

Action Offices: National, Regional, Area Office, and State Plan States

Enforcement Date: See Chapter 1, Paragraph IX

Originating Office: Directorate of Evaluation and Analysis

Contact: Office of Statistical Analysis, Recordkeeping Division
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By and Under the Authority of

John L. Henshaw
Assistant Secretary

Executive Summary

Recordkeeping Policies and Procedures Manual (RKM) was published as OSHA Instruction CPL 2-0.131 on January 1, 2002. It was issued for the new recordkeeping rule that was published in the **Federal Register** on January 19, 2001. This manual is divided into five chapters: Chapter 1 - Background; Chapter 2 - Enforcement Policies and Procedures; Chapter 3 - Standard Alleged Violation Elements (SAVEs); Chapter 4 - Comparison of Old and New rule; Chapter 5 - Frequently Asked Questions.

This Instruction revises the manual introducing changes to Chapter 1; Paragraph V; Federal Program Changes, amends Frequently Asked Question (FAQ) 7-10 and adding additional FAQ's to the existing Chapter 5 of CPL 02-00-131/CPL 2-0.131.

Significant Changes

This Instruction reintroduces the recordkeeping manual (published as OSHA Instruction CPL 02-00-131/CPL 2-0.131 on January 1, 2002) for the recordkeeping rule that assembles recordkeeping compliance policies and procedures from several existing OSHA Instructions.

- State Plan States are required to adopt interpretations.

- A Compliance Officer Checklist has been added.

This Instruction updates the recordkeeping manual in the following manner:

- Change in the Originating Office: Directorate of Evaluation and Analysis

- Change in Chapter 1; Paragraph V; Federal Program Changes

- A number of new Frequently Asked Questions (FAQ's) have been added to the existing FAQ's in Chapter 5.

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Chapter 1.

BACKGROUND

I. Purpose. This instruction gives enforcement guidance for the Occupational Safety and Health Administration's (OSHA's) new recordkeeping regulation, 29 Code of Federal Regulations Part 1904.

II. Scope. This instruction applies OSHA-wide.

III. Cancellations.
   A. Paragraph C.2.n.(2)(b), and Paragraphs C.2.n.(3), (4), and (5)(a) in Chapter IV of OSHA Instruction CPL 2.103, Field Inspection Reference Manual (FIRM), September 26, 1994.
   B. Paragraph L.5. of OSHA Instruction CPL 2.106, Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis, February 9, 1996.
   C. Paragraph X of OSHA Instruction CPL 2-2.44D, Enforcement Procedures for the Occupational Exposure to Bloodborne Pathogens, November 5, 1999.
   D. Paragraph E.6. of OSHA Instruction STD 3-1.1, Clarification of Citation Policy, June 22, 1987.
   E. OSHA Instruction STP 2-1.173, Final Rule on Reporting of Fatality or Multiple Hospitalization Incidents, June 7, 1994.

F. OSHA Instruction CPL 02-00-131 of January 1, 2002.

IV. References.

A. All 29 CFR Part 1904 SAVEs of OSHA Instruction CPL 2.35, CH-1 and CH-5, Regulatory and General Industry SAVEs, September 1, 1979.

B. OSHA Instruction CPL 2.80, Handling of Cases to be Proposed for Violation-By-Violation Penalties, October 21, 1990.

C. OSHA Instruction CPL 2.103, Field Inspection Reference Manual (FIRM), September 26, 1994.

D. OSHA Instruction CPL 2.111, Citation Policy for Paperwork and Written Program Requirement Violations, November 27, 1995.

E. OSHA Instruction CPL 2-2.33, 29 CFR 1913.10, Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records - Procedures Governing Enforcement Activities, February 8, 1982.

F. OSHA Instruction CPL 2-2.46, 29 CFR §1913.10(b)(6), Authorization and Procedures for Reviewing Medical Records, January 5, 1989.

G. OSHA Instruction STP 2.12B, State Program Requirements for Statistical Information on the Incidence of Occupational Injuries and Illnesses by Industry; on the Injured or Ill Worker; and on the Circumstances of the Injuries or Illnesses, May 4, 1992.

H. OSHA Instruction STP 2-1.12, State Statistical and Recordkeeping Program Under 18(b) Plans, October 30, 1978.

I. Memorandum to All Regional Administrators from Michael G. Connors, Deputy Assistant Secretary, FIRM Change: Mandatory Collection of OSHA 200 and Lost Workday Injury and Illness (LWDII) Data During Inspections, dated June 21, 1996.

J. **Federal Register**, Vol. 61, page 4030, February 2, 1996, Occupational Injury and Illness Recording and Reporting Requirements, Notice of Proposed Rulemaking.

K. **Federal Register**, Vol. 61, page 7758, February 29, 1996, Occupational Injury and Illness Recording and Reporting Requirements, Addendum to the Proposed Rule.

L. **Federal Register**, Vol. 66, page 5916, January 19, 2001, Occupational Injury and Illness Recording and Reporting Requirements, Final Rule.

M. **Federal Register**, Vol. 66, page 35113, July 3, 2001, Occupational Injury and Illness Recording and Reporting Requirements, Proposed delay of effective date; request for comments.

N. **Federal Register**, Vol. 66, page 52031, October 12, 2001, Occupational Injury and Illness Recording and Reporting Requirements, Final Rule.

V. Federal Program Changes. This instruction describes a Federal program change which requires State action.

A. Recordkeeping Regulations. The revised recordkeeping rule at 29 CFR §1904.37 and §1952.4 requires that States adopt occupational injury and illness recording and reporting requirements that are substantially identical to the requirements in the Federal revision of 29 CFR Part 1904, by January 1, 2002. The requirements for determining which injuries and illnesses are recordable and how they are recorded must be identical to those in Part 1904, so that national statistics are uniform. For other provisions in Part 1904 (for example, industry exemptions, reporting of fatalities and hospitalizations, record retention, or employee involvement), State requirements may be more stringent than or supplemental to the Federal requirements, but any different requirements must be approved by OSHA. The States were expected to adopt a regulation equivalent to 29 CFR 1904 by January 1, 2002.

B. The requirement that States participate in the BLS survey of work-related injuries and illnesses or provide equivalent data under an alternative system approved by OSHA and BLS are set out in OSHA Instruction STP 2.12B and OSHA Instruction STP 2-1.12.

C. Recording and Reporting Requirements. In order to ensure uniform national statistics, States must adopt the interpretations in this Instruction which relate to the determination of which injuries and illnesses are recordable and how they are recorded. (States must also adhere to any additional formal Federal interpretations regarding the recording and reporting of injuries and illnesses issued through formal letter or memorandum and/or posted on OSHA's website.) For interpretations, including FAQs, regarding other recordkeeping issues, States may adopt interpretations which are at least as effective as the Federal interpretations but must submit those interpretations, with an explanation of how the differences are at least as effective, for OSHA approval.

Because the new recordkeeping rules are already in effect, States must implement these interpretations as soon as possible, but no later than six months from the date of issuance of this Instruction or any revisions thereto, and submit the cover page of the State's implementing guidance to the Regional Administrator.

D. Compliance Procedures. Adoption of the enforcement policies and procedures described in this instruction is not required; however, States are expected to have enforcement policies and procedures which are at least as effective as those of Federal OSHA.

VI. Significant Changes. This Instruction creates a recordkeeping manual for the new rule that assembles recordkeeping compliance policies and procedures from several existing OSHA Instructions. The manual is divided into five chapters: Chapter 1 - Background: Chapter 2 - Enforcement Policies and Procedures; Chapter 3 - Standard Alleged Violation Elements (SAVEs); Chapter 4 - Comparison of Old and New Rule; Chapter 5 - Frequently Asked Questions. State Plan States are required to adopt interpretations, and a Compliance Officer Checklist has been added.

VII. Action Information.

A. Responsible Office. Directorate of Information Technology (DIT).

B. Action Offices. Regional Offices, Area Offices, State Plan States.

C. Information Offices. Informational copies of this Instruction are provided to: Consultation Project Managers, Compliance Assistance Coordinator and Compliance Assistant Specialists.

VIII. Action. Regional Administrators and Area Directors in Federal enforcement states and State Designees in State Plan States will ensure that the policies and procedures established in this instruction, or their equivalent in State Plan States, are transmitted to and implemented in all field offices.

IX. Enforcement Date. During the initial period the new recordkeeping rule is in effect OSHA compliance officers conducting inspections will focus on assisting employers to comply with the new rule rather than on enforcement. OSHA will not issue citations for violations of the recordkeeping rule during the first 120 days after January 1, 2002, provided the employer is attempting in good faith to meet its recordkeeping obligation and agrees to make corrections necessary to bring the records into compliance.

X. Background. On February 2, 1996 OSHA first published in the **Federal Register** the proposed rule for Occupational Injury and Illness Recording and Reporting Requirements; on February 29, 1996 OSHA published an addendum to the proposed rule: the executive summary of the Preliminary Economic Analysis. On January 19, 2001 the final rule was published in the **Federal Register** with an effective date of January 1, 2002.

The new rule maintains the basic structure and recordkeeping practices of the old system, but it employs new forms and somewhat different requirements for recording, maintaining, posting, retaining and reporting occupational injury and illness information. Information collection and reporting under the new rule will continue to be done on a calendar year basis.

On July 3, 2001 OSHA issued a notice in the **Federal Register** announcing it was proceeding with implementation of the new Recordkeeping Rule effective January 1, 2002, with two exceptions. OSHA proposed delaying for one year implementing the criteria covering work-related hearing loss, and the definition of musculoskeletal disorders (MSDs), including the requirement to check the Hearing Loss and MSD columns on the OSHA 300 Log. Public comments were accepted on this proposal through September 4.

On October 12, 2001 OSHA issued a notice in the **Federal Register** delaying the effective date of three provisions of the final new rule published January 19, 2001, They are:

Sections 1904.10(a) and (b), which specify recording criteria for cases involving occupational hearing loss and requires employers to check the hearing loss column;

Section 1904.12, which defines "musculoskeletal disorder (MSD)" and requires employers to check the MSD column on the OSHA Log if an employee experiences a work-related musculoskeletal disorder; and

Section 1904.29(b)(7)(vi), which states that MSDs are not considered privacy concern cases.

The effective date of these provisions is delayed until January 1, 2003.

OSHA added a new paragraph (c) to §1904.10 establishing criteria for recording cases of work-related hearing loss during calendar year 2002. This section codified the enforcement policy in effect since 1991, under which employers must record work-related shifts in hearing of an average 25dB or more at 2000, 3000 and 4000 hertz in either ear. See Figure 1-1 at the end of this Chapter for the changes to the rule.

Page 5921 of the January 19, 2001 Federal Register notice states that the following Bureau of Labor Statistics (BLS)/OSHA publications are withdrawn as of January 1, 2002: **Recordkeeping Guidelines for Occupational Injuries and Illnesses**, 1986; and **A Brief Guide to Recordkeeping Requirements for Occupational Injuries and Illnesses**, 1986. In addition, the notice states that all letters of interpretation regarding the old rule's injury and illness recordkeeping requirements are to be withdrawn and removed from the OSHA CD-ROM and the OSHA Internet site.

XI. Transition from the Old Rule. The transition from the old rule to the new rule includes training and outreach to familiarize employers and employees about the new forms and requirements, as well as informing employers in newly covered industries that they are now required to keep OSHA Part 1904 records. An additional transition issue for employers, who kept records under the old system and will also keep records under the new system, is how to handle the data collected under the old system during the transition year.

Sections 1904.43 and 1904.44 of the new rule address what employers must do to keep the required OSHA records during the first five years that the new system is in effect. This five-year period is called the transition period. The majority of the transition requirements apply only to the first year, when the data from the previous year (collected under the old rule) must be summarized and posted during the month of February. For the remainder of the transition period, the employer is required to retain the records created under the old rule for five years and provide access to those records for the government, the employer's employees, and employee representatives.

The new rule maintains the basic structure and recordkeeping practices of the old system, but uses new forms and somewhat different requirements for recording, maintaining, posting, retaining and reporting occupational injury and illness information. Information collection and reporting under the new rule will continue to be done on a calendar year basis.

In the transition from the old rule to the new rule, OSHA intends employers to make a clean break with the old system. On January 1, 2002 the new rule will replace the old rule, and OSHA will discontinue the use of all previous forms, interpretations and guidance. The following timetable shows the sequence of events and postings that will occur:

During 2001	Employers keep injury and illness information on the OSHA 200
January 1, 2002	Employers begin keeping data on the OSHA 300
February 1, 2002	Employers post the 2001 data on the OSHA 200
March 1, 2002	Employers may remove the 2001 posting
February 1, 2003	Employers post the 2002 data on the OSHA 300A
May 1, 2003	Employers may remove the 2002 posting

A. OSHA 200 Summary. The new rule's requirements for certification by a company executive and a three-month posting period will not apply to the posting of the OSHA 200 Log and Summary for the year 2001.

B. Retention and Updating Old Forms. Employers still must retain the OSHA records from 2001 and previous years for five years from the end of the year to which they refer. The employer must provide copies of the retained records to authorized government representatives, and to his or her employees and employee representatives, as required by the new rule.

OSHA will not require employers to update their old OSHA 200 and OSHA 101 forms for years before 2002.

Figure 1-1

Changes to New Rule in October 12, 2001 Federal Register Notice (66 FR 52031)

Section 1904.10 was amended by adding a note to the section, and by adding a new paragraph (c), as follows:

(c) Recording criteria for calendar year 2002. From January 1, 2002 until December 31, 2002, you are required to record a work-related hearing loss

averaging 25dB or more at 2000, 3000, and 4000 hertz in either ear on the OSHA 300 Log. You must use the employee's original baseline audiogram for comparison. You may make a correction for presbycusis (aging) by using the tables in appendix F of 29 CFR 1910.95. The requirement of §1904.37(b)(1) that States with OSHA-approved state plans must have the same requirements for determining which injuries and illnesses are recordable and how they are recorded shall not preclude the states from retaining their existing criteria with regard to this section during calendar year 2002.

Note to §1904.10: Paragraphs (a) and (b) of this section are effective on January 1, 2003. Paragraph (c) of this section applies from January 1, 2002 until December 31, 2002.

Section 1904.12 was amended by adding a note to the section as follows:

Note to §1904.12: This section is effective January 1, 2003. From January 1, 2002 until December 31, 2002, you are required to record work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs in accordance with the requirements applicable to any injury or illness under §1904.5, §1904.6, §1904.7, and §1904.29. For entry (M) on the OSHA 300 Log, you must check either the entry for "injury" or "all other illnesses."

Section 1904.29(b)(7)(vi) was revised to read as follows:

(vi) Other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the log. Musculoskeletal disorders (MSDs) are not considered privacy concern cases. (Note: The first sentence of this §1904.29(b)(7)(vi) is effective on January 1, 2002. The second sentence is effective beginning on January 1, 2003.

Chapter 2.

ENFORCEMENT POLICIES AND PROCEDURES

I. Summary of the New Rule. The central requirements in OSHA's recordkeeping rule, 29 CFR 1904, are summarized below.

A. Coverage. The rule requires employers to keep records of occupational deaths, injuries and illnesses, and to make certain reports to OSHA and the Bureau of Labor Statistics. Smaller employers (with 10 or fewer workers) and employers who have establishments in certain retail, service, finance, real estate or insurance industries are not required to keep these records. However, they must report any

occupational fatalities or catastrophes that occur in their establishments to OSHA, and they must participate in government surveys if they are asked to do so.

B. Forms. Employers who operate establishments that are required by the rule to keep injury and illness records are required to complete three forms: the OSHA 300 Log of Work-Related Injuries and Illnesses, the annual OSHA 300A Summary of Work-Related Injuries and Illnesses, and the OSHA 301 Injury and Illness Incident Report. Employers are required to keep separate 300 Logs for each establishment that they operate that is expected to be in operation for one year or longer. The Log must include injuries and illnesses to employees on the employer's payroll as well as injuries and illnesses of other employees the employer supervises on a day-to-day basis, such as temporary workers or contractor employees who are subject to daily supervision by the employer. Within seven calendar days of the time the fatality, injury, or illness occurred, the employer must enter any case that is work-related, is a new case, and meets one or more of the recording criteria in the rule on the Log and Form 301.

C. Work-Relationship. Section 1904.5(a) states that "[the employer] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment...." Under this language, a case is presumed work-related if, and only if, an event or exposure in the work environment is a discernable cause of the injury or illness or of a significant aggravation to a pre-existing condition. The work event or exposure need only be one of the discernable causes; it need not be the sole or predominant cause.

Section 1904.5(b)(2)(ii) states that a case is not recordable if it "involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside of the work environment." This language is intended as a restatement of the principle expressed in section 1904.5(a), described above. Regardless of where signs or symptoms surface, a case is recordable only if a work event or exposure is a discernable cause of the injury or illness or of a significant aggravation to a pre-existing condition.

Section 1904.5(b)(3) states that if it is not obvious whether the precipitating event or exposure occurred in the work environment or elsewhere, the employer "must evaluate the employee's work duties and environment to decide whether or not one or more events or exposures in the work environment caused or contributed to the resulting condition or significantly aggravated a pre-existing condition." This means that the employer must make a determination whether it is more likely than not that work events or exposures were a cause of the injury or illness, or of a significant aggravation to a pre-existing condition. If the employer decides the case is not work-related, and OSHA subsequently issues a citation for failure to record,

the Government would have the burden of proving that the injury or illness was work-related.

D. New Case. Only new cases are recordable. Work-related injuries and illnesses are considered to be new cases when the employee has never reported similar signs or symptoms before, or when the employee has recovered completely from a previous injury or illness and workplace events or exposures have caused the signs or symptoms to reappear.

E. General Recording Criteria. Employers must record new work-related injuries and illnesses that meet one or more of the general recording criteria or meet the recording criteria for specific types of conditions. Recordable work-related injuries and illnesses are those that result in one or more of the following:

Death,
Days away from work,
Restricted work,
Transfer to another job,
Medical treatment beyond first aid,
Loss of consciousness, or
Diagnosis of a significant injury or illness.

Employers must classify each case on the 300 Log in accordance with the most serious outcome associated with the case. The outcomes listed on the form are: death, days away, restricted work/transfer, and "other recordable." For cases resulting in days away or in a work restriction or transfer of the employee, the employer must count the number of calendar days involved and enter that total on the form. The employer may stop counting when the total number of days away, restricted or transferred reaches 180.

F. Restricted Work. An employee's work is considered restricted when, as a result of a work-related injury or illness, (A) the employer keeps the employee from performing one or more of the routine functions of his or her job (job functions that the employee regularly performs at least once per week), or from working the full workday that he or she would otherwise have been scheduled to work, or (B) a physician or other licensed health care professional recommends that the employee not perform one or more of the routine functions of his or her job, or not work the full workday that he or she would otherwise have been scheduled to worked. The new rule continues the policy established under the old rule that a case is not recordable under section 1904.7(b)(4) as a restricted work case if the employee experiences minor musculoskeletal discomfort, a health care professional determines that the employee is fully able to perform all of his or her routine job functions, and the employer assigns a work restriction to that employee for the purpose of preventing a more serious condition from developing

G. Medical Treatment. Medical treatment means any treatment not contained in the list of first aid treatments. Medical treatment does not

include visits to a healthcare professional for observation and counseling or diagnostic procedures. First aid means only those treatments specifically listed in 1904.7. Examples of first aid include: the use of non-prescription medications at non-prescription strength, the application of hot or cold therapy, eye patches or finger guards, and others.

H. Diagnosis of a Significant Injury or Illness. A work-related cancer, chronic irreversible disease such as silicosis or byssinosis, punctured eardrum, or fractured or cracked bone is a significant injury or illness that must be recorded when diagnosed by a physician or a licensed health care professional.

I. Recording Injuries and Illnesses to Soft Tissues. Work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs are recordable under the same requirements applicable to any other type of injury or illness. There are no special rules for recording these cases: if the case is work-related and involves medical treatment, days away, job transfer or restricted work, it is recordable.

J. Employee Privacy. The employer must protect the privacy of injured or ill employees when recording cases. In certain types of cases, such as those involving mental illness or sexual assault, the employer may not enter the injured or ill employee's name on the Log. Instead, the employer simply enters "privacy case," and keeps a separate, confidential list containing the identifying information. If the employer provides the OSHA records to anyone who is not entitled to access to the records under the rule, the names of all injured and ill employees generally must be removed before the records are turned over.

K. Certification, Summarization and Posting. After the end of the year, employers must review the Log to verify its accuracy, summarize the 300 Log information on the 300A summary form, and certify the summary (a company executive must sign the certification). This information must then be posted for three months, from February 1 to April 30. The employer must keep the records for five years following the calendar year covered by them, and if the employer sells the business, he or she must transfer the records to the new owner.

L. Employee Involvement. Each employer must set up a way for employees to report work-related injuries and illnesses, and each employee must be informed about how he or she is to report an injury or illness. Employees, former employees, and employee representatives also have a right to access the records, and an employer must provide copies of certain records upon request.

M. Reporting. The employer must orally report within 8 hours work-related fatalities and incidents involving the hospitalization of three or more employees to the nearest OSHA office, or the OSHA Hotline at 1-800-321-OSHA. There is an exception for certain motor vehicle or public transportation accidents. An employer also must participate in

an OSHA or BLS injury and illness survey if he or she receives a survey form from OSHA or the BLS.

II. Inspection and Citation Procedures.

A. Review Records and Collect Data. All CSHOs on all inspections must review and record the establishment's injury and illness records for the three prior calendar years in accordance with the Deputy Assistant Secretary's Memorandum to Regional Administrators dated June 21, 1996 regarding FIRM Change: Mandatory Collection of OSHA 200 and Lost Workday Injury and Illness (LWDII) Data During Inspections. Following a records review, the CSHO may expand the inspection as described in Chapter II, paragraph A.1.b. of the FIRM (CPL 2.103).

At the end of this chapter are some tools to assist the compliance officer: Figure 2-1 has a Compliance Officer Checklist; Figure 2-2 has a blank Optional Violation Documentation Worksheet; Figure 2-3 has a completed sample Optional Violation Documentation Worksheet; and Figure 2-4 has the Health Care Practitioners' Abbreviations.

For all inspections, except for construction, as part of the CSHO's case preparation, the CSHO must obtain any OSHA Data Initiative (ODI) survey information available on the establishment from www.ergweb3.com:8087 (site will require user name and password). During the inspection the CSHO will compare this data with the OSHA 200 or OSHA 300 logs for the three prior calendar years at the establishment. Note: The first ODI for construction establishments will collect the 2001 injury and illness data in 2002; the data will be available in 2003.

B. Citations and Penalties for Violation of Part 1904 Requirements. The following incorporates paragraph G.2. of OSHA Instruction CPL 2.111, and supersedes and replaces Paragraph C.2.n.(2)(b), and Paragraphs C.2.n.(3), (4), and (5)(a) in Chapter IV of the FIRM (CPL 2.103).

1. OSHA 300 and OSHA 301 Forms. The employer must record cases on the OSHA 300 Log of Work-Related Injuries and Illnesses, and on the OSHA 301 Incident Report, (or equivalent form), as prescribed in Subpart C of §1904. Where no records are kept **and** there have been injuries or illnesses which meet the requirements for recordability, as determined by other records or by employee interviews, a citation for failure to keep records will normally be issued.

When the required records are kept **but** no entry is made for a specific injury or illness which meets the requirements for recordability, a citation for failure to record the case will normally be issued.

Where no records are kept **and** there have been no injuries or illnesses, as determined by employee interviews, a citation will

not be issued. See II B.2. regarding OSHA 300A, Annual Summary.

When the required records are kept **but** have not been completed with the detail required by the regulation, or the records contain minor inaccuracies, the records will be reviewed to determine if there are deficiencies that materially impair the understandability of the nature of hazards, injuries and illnesses in the workplace.

If the defects in the records materially impair the understandability of the nature of the hazards, injuries and/or illnesses at the workplace, an other-than-serious citation will normally be issued.

Incompletely Recorded Cases on the OSHA 300 or 301. If the deficiencies do not materially impair the understandability of the information, normally no citation will be issued. For example, an employer should not be cited solely for misclassifying an injury as an illness or vice versa. The employer will be provided information on keeping the records for the employer's analysis of workplace injury trends and on the means to keep the records accurately. The employer's promised actions to correct the deficiencies will be recorded and no citation will be issued.

One Citation Item Per Form. Except for violation-by-violation citations pursuant to OSHA Instruction CPL 2.80, recordkeeping citations for improper recording of a case will be limited to a maximum of one citation item per form per year. This applies to both the OSHA 300 and the OSHA 301. Where the conditions for citation are met, an employer's failure to accurately complete the OSHA 300 Log for a given year would normally result in one citation item. Similarly, an employer's failure to accurately complete the OSHA 301, or equivalent, would normally result in one citation item. Multiple cases which are unrecorded or inaccurately recorded on the OSHA 300 or 301s during a particular year will normally be reflected as instances of the violation under that citation item.

For example: A single citation item for an OSHA 300 violation would result from a case where the employer did not properly count the days away, checked the wrong column, and did not adequately describe the injury or illness, or where the employer in several cases checked the wrong columns and/or did not adequately describe the injury or illness, and these errors materially impair the understandability of the nature of the hazards, injuries and/or illnesses at the workplace. Note: As stated above, an employer should not be cited solely for misclassifying injuries as illnesses or vice versa.

For example: A single citation item for an OSHA 301 violation would result where OSHA 301s had not been completed, or where so little information had been put on the 301s for multiple cases as to make the 301s materially deficient.

Penalties. When a penalty is appropriate, there will be an unadjusted penalty of $1,000 for each year the OSHA 300 was not properly kept; an unadjusted penalty of $1,000 for each OSHA 301 that was not filled out at all (up to a maximum of $7,000); and an unadjusted penalty of $1,000 for each OSHA 301 that was not accurately completed (up to a maximum of $3,000).

Where citations are issued, penalties will be proposed only in the following cases:

Where OSHA can document that the employer was previously informed of the requirements to keep records; **or**,

Where the employer's deliberate decision to deviate from the recordkeeping requirements, or the employer's plain indifference to the requirements, can be documented.

2. Posting Annual Summary Requirements. An other-than-serious citation will normally be issued, if an employer fails to post the OSHA 300A Summary by February as required by §1904.32(a)(1); and/or fails to certify the Summary as required by §1904.32(b)(3); and/or fails to keep it posted for three months, until May 1, as required by §1904.32(b)(6). The unadjusted penalty for this violation will be $1,000.

   A citation will not be issued if the Summary that is not posted or certified reflects no injuries or illnesses, and no injuries or illnesses actually occurred. The CSHO will verify that there were no recordable injuries or illnesses by interviews, or by review of workers' compensation or other records, including medical records.

3. Reporting. In accordance with §1904.39, an employer is required to report to OSHA within 8 hours of the time the employer learns of the death of any employee or the inpatient hospitalization of three or more employees, from a work-related incident. This includes fatalities at work caused by work-related heart attacks. There is an exception for certain work-related motor vehicle accidents or public transportation accidents.

   The employer must orally report the fatality or multiple hospitalization by telephone or in person to the OSHA Area Office (or State Plan office) that is nearest to the site of the incident. OSHA's toll-free telephone number may be used: 1-800-321-OSHA (1-800-321-6742).

An other-than-serious citation will normally be issued for failure to report such an occurrence. The unadjusted penalty will be $5,000.

If the Area Director determines that it is appropriate to achieve the necessary deterrent effect, the unadjusted penalty may be $7,000.

If the Area Director becomes aware of an incident required to be reported under §1904.39 through some means other than an employer report, prior to the elapse of the 8-hour reporting period and an inspection of the incident is made, a citation for failure to report will normally not be issued.

4. Access to Records for Employees. If the employer fails upon request to provide copies of records required in §1904.29(a) to any employee, former employee, personal representative, or authorized employee representative by the end of the next business day, a citation for violation of §1904.35(b)(2) will normally be issued. The unadjusted penalty will be $1,000 for each form not made available.

   For example: If the OSHA 300 or the OSHA 300A for the current year and the three preceding years is not made available, the unadjusted penalty will be $4,000.

   If the employer does not make available the OSHA 301s, the unadjusted penalty will be $1,000 for each OSHA 301 not provided, up to a maximum of $7,000.

   If the employer is to be cited for failure to keep records (OSHA 300, OSHA 300A, or OSHA 301) under §1904.4, no citation for failure to give access under §1904.35(b)(2) will be issued.

C. Willful, Significant, and Egregious Cases. When a CSHO determines that there may be significant recordkeeping deficiencies, it may be appropriate to make a referral for a recordkeeping inspection, or to contact the Region's Recordkeeping Coordinator for guidance and assistance.

   1. Willful and Significant Cases. All willful recordkeeping cases and all significant cases with major recordkeeping violations will be initially reviewed by the Region's Recordkeeping Coordinator.

   2. Egregious Cases. When willful violations are apparent, violation-by-violation citations and penalties may be proposed in accordance with OSHA's egregious policy as stated in OSHA Instruction CPL 2.80.

D. Enforcement Procedures for Occupational Exposure to Bloodborne Pathogens. Compliance guidance given in paragraph X of OSHA Instruction CPL 2-2.44D is superseded by 29 CFR 1904.8 (Recording

Criteria for Needlestick and Sharps Injuries) of the new Recordkeeping rule.

In addition, the term "contaminated" under 29 CFR 1904.8, Recording Criteria for Needlestick and Sharps Injuries, incorporates the definition of "contaminated" from the Bloodborne Pathogens Standard at 29 CFR 1910.1030(b) ("Definitions"). Thus, contaminated" means the presence or the reasonably anticipated presence of blood or other potentially infectious materials on an item or surface.

Employers may use the OSHA 300 and 301 forms to meet the sharps injury log requirement of §1910.1030(h)(5), if the employer enters the type and brand of the device causing the sharps injury on the Log, and maintains the records in a way that segregates sharps injuries from other types of work-related injuries and illnesses, or allows sharps injuries to be easily separated.

E. Enforcement Procedures for Occupational Exposure to Tuberculosis. Compliance guidance given in paragraph L.5. of OSHA Instruction CPL 2.106 is superseded by 29 CFR 1904.11 (Recording Criteria for Work-Related Tuberculosis Cases) of the new Recordkeeping rule.

F. Clarification of Recordkeeping Citation Policy in the Construction Industry. Compliance guidance given in paragraph E.6. of OSHA Instruction STD 3-1.1 is superseded by CFR 1904.30 (Multiple Business Establishments) and 1904.31 (Covered Employees) of the new Recordkeeping rule.

G. Recording Criteria for Cases Involving Medical Removal. Section 1904.9 requires the employer to record the case on the OSHA 300 Log if an employee is medically removed under the medical surveillance requirements of an OSHA standard. Currently the medical surveillance requirements of the following standards have medical removal requirements:

1. Benzene. General industry standard (§1910.1028(i)); Shipyard standard (§1915.1028); and Construction standard (§1926.1128)

2. Cadmium. General industry standard (§1910.1027(l)); Shipyard standard (§1915.1027); and Construction standard (§1926.1127)

3. Formaldehyde. General industry standard (§1910.1048(l)); Shipyard standard (§1915.1048); and Construction standard (§1926.1148)

4. Lead. General industry standard (§1910.1025); Shipyard standard (§1915.1025); and Construction standard (§1926.62)

5. Methylenedianiline. General industry standard (§1910.1050(m)); Shipyard standard (§1915.1050); and Construction standard (§1926.60(n))

6. Methylene Chloride. General industry standard (§1910.1052(j)); Shipyard standard (§1915.1052); Construction standard (§1926.1152)

7. Vinyl Chloride. General industry standard (§1910.1017(k)); Shipyard standard (§1915.1517); and Construction standard (§1926.1117)

H. Privacy Concern Cases. The new rule at §1904.29(b)(6) through (10) requires the employer to protect the privacy of the injured or ill employee. The employer must not enter an employee's name on the OSHA 300 Log when recording a privacy case. The employer must keep a separate, confidential list of the case numbers and employee names, and provide it to the government upon request. If the work-related injury involves any of the following, it is to be treated as a privacy case:

1. An injury or illness to an intimate body part or the reproductive system;

2. An injury or illness resulting from a sexual assault;

3. A mental illness;

4. HIV infection, Hepatitis, or Tuberculosis;

5. Needlestick and sharps injuries that are contaminated with another person's blood or other potentially infectious material as defined by §1910.1030; or

6. Other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the OSHA 300 Log (This does not apply to injuries. See the definition of "Injury and Illness" in §1904.46.) Note: This is a complete list.

III. Physician or Other Licensed Health Care Provider's Opinion. In cases where two or more physicians or other licensed health care providers make conflicting or differing recommendations, the employer must make a decision as to which recommendation is the most authoritative (best documented, best reasoned, or most persuasive), and record based on that recommendation.

IV. Employers Exempt and Partially Exempt.

A. Federal Agencies. Except for the United States Postal Service, federal agencies do not have to maintain OSHA injury and illness records under Part 1904. Federal Agencies have separate recordkeeping requirements under 29 CFR Part 1960.

B. OSHA and BLS Surveys. All employers who receive the OSHA annual survey form, or the BLS Survey of Occupational Injuries and Illnesses Form, are required to complete and return the survey forms in accordance with §§1904.41 and 1904.42. This requirement also applies to those establishments under the small establishment exemption and the low hazard industry exemption.

C. Small Employer Exemption. Since 1977 the regulations have exempted employers with ten or fewer employees at all times during the last calendar year from the regular recordkeeping requirements. The new rule at §1904.1 continues this small employer exemption.

D. Low-Hazard Industry Exemption. Since 1982, OSHA has exempted some low-hazard industries from maintaining injury and illness records on a regular basis. The new rule updates the old rule's listing of partially exempted low-hazard industries, which are those Standard Industrial Classification (SIC) code industries within SICs 52-89 that have an average Days Away, Restricted, or Transferred (DART) rate at or below 75% of the national average DART rate. The new rule at §1904.2 continues this low-hazard industry exemption.

See Figure 2-5 at the end of the Chapter for the list of Partially Exempt Industries. Note: In the new rule, the description of some industry groups is abridged in the chart in Appendix A. Industries that are not listed, such as Music Stores in SIC 573, are nevertheless intended to be included in the list. Consult the **Standard Industrial Classification Manual 1987** for a complete description of each industry included in each industry group. See also Figure 2-6 for a list of Newly Covered Industries, and Figure 2-7 for a list of Newly Partially Exempted Industries.

V. References to Old Forms and to the LWDI/LWDII. Beginning January 1, 2002, references in any OSHA directive, memorandum, or other publication to the recordkeeping forms will be considered as references to the OSHA 300, 301 and 300A, unless it is clear that the reference is to the forms used before January 1, 2002. Also, all references to the Lost Workday Injury (LWDI) rate or the Lost Workday Injury and Illness (LWDII) rate shall be considered to be a reference to the Days Away, Restricted, or Transferred (DART) rate, unless it is clear that the reference is to the rate in use prior to January 1, 2002.

VI. Prohibition Against Discrimination. Section 1904.36 is informational only and is not a citable provision of the regulation. Any discrimination cases related to this rule are to be handled using the normal process under Section 11(c) of the OSH Act.

VII. Definitions.

A. **Days Away, Restricted, or Transferred (DART) Rate:** This includes cases involving days away from work, restricted work activity, and transfers to another job and is calculated based on (N/EH) x (200,000) where N is the number of **cases** involving days away and/or job transfer or restriction, EH is the total number of hours worked by

all employees during the calendar year, and 200,000 is the base for 100 full-time equivalent employees. For example:

Employees of an establishment (XYZ Company), including temporary and leased workers, worked 645,089 hours at XYZ company. There were 22 injury and illness cases involving days away and/or restricted work activity and/or job transfer from the OSHA 300 Log (total of column H plus column I). The DART rate would be (22/645,089) x (200,000) = 6.8.

Note: The DART rate will replace the Lost Workday Injury and Illness (LWDII) rate. See Figure 2-8 at the end of this Chapter for an optional Incidence Rate Worksheet.

B. **Establishment:** An establishment is a single physical location where business is conducted or where services or industrial operations are performed. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas and sanitary services; and similar operations, the establishment is represented by main or branch offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel carry out these activities.

1. Normally, one business location has only one establishment. Under limited conditions, the employer may consider two or more separate businesses that share a single location to be separate establishments. An employer may divide one location into two or more establishments when:

   - Each of the establishments represents a distinctly separate business;

   - Each business is engaged in a different economic activity;

   - No one industry description in the Standard Industrial Classification Manual (1987) applies to the joint activities of the establishments; and

   - Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information.

   For example: If an employer operates a construction company at the same location as a lumber yard, the employer may consider each business to be a separate establishment.

2. An establishment can include more than one physical location, but only under certain conditions. An employer may combine two or more physical locations into a single establishment only when:

- The employer operates the locations as a single business operation under common management;

- The locations are all located in close proximity to each other; and

- The employer keeps one set of business records for the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information.

For example: One manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

For employees who telecommute from home, the employee's home is not a business establishment and a separate 300 Log is not required. Employees who telecommute shall be linked to one of the employer's establishments under §1904.30(b)(3).

3. Construction work sites that are:
   a. Scheduled to continue for a year or more:

      (1) A separate OSHA 300 Log must be maintained for each establishment.

      (2) The log may be maintained either

      At the construction site, or

      At an established central location provided the employer can:

      -- Transmit information about the injuries and illnesses from the establishment to the central location within seven (7) calendar days of receiving information that a recordable injury or illness has occurred, and

      -- Produce and send records from the central location to the establishment within four business hours when the employer is required to provide to a government representative or by the end of the next business day when providing records to an employee, former employee or employee representative.

   b. Scheduled to continue for less than a year:

      (1) A Separate OSHA 300 Log need not be maintained for each establishment.

      (2) One OSHA 300 Log may be maintained to cover:

All such short-term establishments or

All Such short-term establishments within company divisions or geographic regions.

(3) The Log may be maintained at the establishment or at a central location under the given in 3.a.(2), above.

C. **First Aid:** As stated in §1904.7(b)(5)(ii), **first aid** means only the following treatments (any treatment not included in this list is not considered **first aid** for recordkeeping purposes): (a) Using a nonprescription medication at nonprescription strength; (b) Administering tetanus immunizations; (c) Cleaning, flushing or soaking wounds on the surface of the skin; (d) Using wound coverings such as bandages, Band-Aids?, gauze pads, etc.;or using butterfly bandages or Steri-Strips?; (e) Using hot or cold therapy; (f) Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc.; (g) Using temporary immobilization devices while transporting an accident victim; (h) Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister; (i) Using eye patches; (j) Removing foreign bodies from the eye using only irrigation or a cotton swab; (k) Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means; (l) Using finger guards; (m) Using massages; or (n) Drinking fluids for relief of heat stress.

D. **Injuries and Illnesses:** An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. (Note: Injuries and illnesses are recordable only if they are new, work-related cases that meet one or more of the Part 1904 recording criteria.)

Note: The distinction between **injury** and **illness** is no longer a factor for determining which cases are recordable.

E. **Medical Treatment:** Medical treatment means the management and care of a patient to combat disease or disorder. For recordkeeping purposes, it does not include (a) visits to a physician or other licensed health care professional solely for observation or counseling; (b) diagnostic procedures such as x-rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes (e.g., eyedrops to dilate pupils); or (c) any treatment contained on the list of first-aid treatments.

F. **Other Potentially Infectious Material (OPIM):** For purposes of 29 CFR Part 1904, this term has the same meaning as in OSHA's bloodborne pathogens standard at 29 CFR §1910.1030, which defines OPIM as: (1) The following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any

body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids; (2) Any unfixed tissue or organ (other than intact skin) from a human (living or dead); and (3) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions; and blood, organ, or other tissues from experimental animals infected with HIV or HBV.

G. **Physician or Other Licensed Health Care Professional:** A physician or other licensed health care professional is an individual whose legally permitted scope of practice (i.e., license registration, or certification) allows him or her to independently perform, or be delegated the responsibility to perform, the activities described by this regulation.

Figure 2-1

Compliance Officer Checklist

This checklist provides guidance for a records evaluation for inspections that do not follow a specific records evaluation protocol of another directive, such as in the Site Specific Targeting Inspection program or the ODI Audit and Verification program.

PRE-INSPECTION PREP:

Check ODI data for establishment.

Obtain any OSHA Data Initiative (ODI) survey information available from www.ergweb3.com:8087 (site will require user name and password). If assistance is needed, contact the OSHA Regional Recordkeeping Coordinator for assistance. During the inspection compare the establishment's ODI data with the OSHA 200 or OSHA 300 logs for the five prior years or for as many years as there is ODI data. Note: For non-construction you can use data from 1996 forward. For construction establishments the first ODI will collect the 2001 injury and illness data, which will not be available until 2003.

Obtaining Administrative Subpoena/Medical Access Orders.

If it is anticipated after review of the history of the establishment that a subpoena or medical access orders will be needed, review the following directives for guidance.

- OSHA Instruction ADM 4.4, Administrative Subpoenas, August 19, 1991

- OSHA Instruction CPL 2-2.30 - 29 CFR 1913.10(b)(6), Authorization of Review of Medical Opinions, November 14, 1980

- OSHA Instruction CPL 2-2.32 - 29 CFR 1913.10(b)(6), Authorization of Review of Specific Medical Information, January 19, 1981

- OSHA Instruction CPL 2-2.33 - 29 CFR 1913.10, Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records - Procedures Covering Enforcement Activities, February 8, 1982

- OSHA Instruction CPL 2-2.46 - 29 CFR 1913.10(b)(6), Authorization and Procedures for Reviewing Medical Records, January 5, 1989

ON-SITE:

Verify SIC Code.

Verify the accuracy of the establishment's SIC code and enter the correct SIC code on OSHA 1.

Ask for the following Information.

Ask for the OSHA logs, the total hours worked, and the number of employees worked for each year, and for a roster of current employees.

If you have questions regarding a specific case on the log, request the OSHA 301s or equivalent form for that case.

Check if the establishment has an on-site medical facility, where the nearest emergency room is located where employees may be treated.

Ask your Regional Recordkeeping Coordinator for Assistance.

If significant recordkeeping deficiencies are suspected, you and your Area Director may request assistance from the Regional Recordkeeping Coordinator.

In some situations the CSHO may need to make a referral for a recordkeeping inspection.

Procedures for a Recordkeeping Inspection.

For recorded cases, initially do a random review of the OSHA 301s and medical records that pertain to the current employees.

Randomly select employees from the office roster, i.e., every tenth employee.

For those randomly selected employees, obtain the name and address of the medical provider(s).

If random sample shows sufficient deficiencies, then can expand the review.

If the review will be expanded, contact early on Regional Recordkeeping Coordinator for guidance and/or assistance. Early contact should be within the first month.

To see Figure 2-2 click here

To see Figure 2-3 click here

To see Figure 2-4 click here

To see Figure 2-5 click here

To see Figure 2-6 click here

To see Figure 2-7 click here

To see Figure 2-8 click here

Chapter 3.

STANDARD ALLEGED VIOLATION ELEMENTS

I. Introduction. This chapter will contain the Standard Alleged Violation Elements (SAVEs) that are to be used to issue citations under the new recordkeeping rule. The SAVEs for 29 CFR Part 1904 (old rule) in OSHA Instruction CPL 2.35, CH-1 and CH-5, will **not** be used for the new rule.

Chapter 4.

COMPARISON OF OLD AND NEW RULE

I. Introduction. Some of the specific changes in the new rule include (a) changes in coverage; (b) the OSHA Forms; (c) the Recording Criteria in determination of work-relationship, elimination of different recording criteria for injuries and illnesses, days away and job restriction/ transfer, definition of medical treatment and first aid, recording of needlestick and sharps injuries, and recording of tuberculosis; (d) change in ownership; (e) employee involvement; (f) privacy protections; and (g) computerized and centralized records.

This listing is not comprehensive of an employer's obligations under OSHA's recordkeeping rule. Please reference 29 CFR Part 1904 and other parts of this Instruction for all details pertaining to all recordkeeping obligations.

Old Rule	**New Rule**
Forms §1904.29	
OSHA 200 - Log and Summary OSHA 101 - Supplemental Record	OSHA 300 - Log OSHA 300A - Summary OSHA 301 - Incident Report
Work-Related §1904.5	
Any aggravation of a pre-existing	**Significant** aggravation of a pre-existing

condition by a workplace event or exposure makes the case work-related	condition by a workplace event or exposure makes the case work-related
Exceptions to presumption of work relationship: 1) Member of the general public 2) Symptoms arising on premises totally due to outside factors 3) Parking lot/Recreational facility	Exceptions to presumption of work relationship: 1) Member of the general public 2) Symptoms arising on premises totally due to outside factors 3) Voluntary participation in wellness program 4) Eating, drinking and preparing one's own food 5) Personal tasks outside working hours 6) Personal grooming, self-medication, self infliction 7) Motor vehicle accident in parking lot/access road during commute 8) Cold or flu 9) Mental illness unless employee voluntarily presents a medical opinion stating that the employee has a metal illness that is work-related.
New Case §1904.6	
New event or exposure, new case	Aggravation of a case where signs or symptoms have not resolved is a continuation of the original case
30 day rule for CTDs	No such criteria
General Recording Criteria §1904.7	
All work-related illnesses are recordable	Work-related illnesses are recordable if they meet the general recording criteria
Restricted work activity occurs if the employee: 1) Cannot work a full shift 2) Cannot perform all of his or her normal job duties, defined as any duty he or she would be expected to do throughout the calendar year.	Restricted work activity occurs if the employee: 1) Cannot work a full shift 2) Cannot perform all of his or her routine job functions, defined as any duty he or she regularly performs at least once a week
Restricted work activity limited to the day of injury makes case recordable	Restricted work activity limited to the day of injury does not make case recordable
Day counts: Count workdays No cap on count	Day Counts: Count Calendar days 180 day cap on count
Medical treatment does not include: 1) Visits to MD for observation only 2) Diagnostic procedures 3) First aid	Medical treatment does not include: 1) Visits to MD for observation and counseling only 2) Diagnostic procedures (including

	administration of prescription medication for diagnostic purposes) 3) First aid
First Aid list in Bluebook was a list of examples and not comprehensive	First Aid list in regulation is comprehensive. Any other procedure is medical treatment.
2 doses prescription med - Medical Treatment (MT) Any dosage of OTC med - First Aid (FA) 2 or more hot/cold treatments - MT Drilling a nail - MT Butterfly bandage/Steri-Strip - MT	1 dose prescription med - MT OTC med at prescription strength - MT Any number of hot/cold treatments - FA Drilling a nail - FA Butterfly bandage/Steri-Strip - FA
Non-minor injuries recordable: 1) fractures 2) 2nd and 3rd degree burns	Significant diagnosed injury or illness recordable: 1) fracture 2) punctured ear drum 3) cancer 4) chronic irreversible disease
Specific disorders	
Hearing loss - Federal enforcement for 25dB shift in hearing from original baseline	Hearing loss - From 1/1/02 until 12/31/02 record shift in hearing averaging 25dB or more from the employee's original baseline
Needlesticks and 'sharps injuries' - Record only if case results in med treatment, days away, days restricted or sero-conversion	Needlesticks and 'sharps injuries' - Record all needlesticks and injuries that result from sharps potentially contaminated with another persons blood or other potentially infectious material
Medical removal under provisions of other OSHA standards - all medical removal cases recordable	Medical removal under provisions of other OSHA standards - all medical removal cases recordable
TB - Positive skin test recordable when known workplace exposure to active TB disease. Presumption of work relationship in 5 industries	TB - Positive skin test recordable when known workplace exposure to active TB disease. No presumption of work relationship in any industry
Other issues	
Must enter the employees name on all cases	Must enter 'Privacy Cases' rather than the employee's name, and keep a separate list of the case number and corresponding names
Access - employee access to entire log, including names; No access to supplementary form (OSHA 101)	Access - employee and authorized representative access to entire log, including names; Employee access to individual's Incident Report (OSHA 301); Authorized Representative access to portion of all OSHA 301s
Fatality reporting - Report all work-	Fatality reporting - do not need to report

related fatalities to OSHA	fatalities resulting from motor vehicle accident on public street or highway that do not occur in construction zone
Certification - the employer, or the employee who supervised the preparation of the Log and Summary, can certify the annual summary	Certification - company executive must certify annual summary
Posting - post annual summary during month of February	Posting - Post annual summary from Feb 1 to April 30
No such requirement	You must inform each employee how he or she is to report an injury or illness

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Chapter 5.

FREQUENTLY ASKED QUESTIONS

The following Questions and Answers have been prepared to address enforcement issues concerning the new Recordkeeping Rule.

I. General Guidance.

Question 1. Why is OSHA changing the 1904 regulation?

OSHA is revising the rule to collect better information about the incidence of occupational injuries and illnesses, improve employee awareness and involvement in the recording and reporting of job-related injuries and illnesses, simplify the injury and illness recordkeeping system for employers, and permit increased use of computers and telecommunications technology.

Question 2. What recordkeeping actions will take place on January 1, 2002?

A number of actions will take place on January 1, 2002, including:

The revised 29 CFR Part 1904, entitled Recording and Reporting Occupational Injuries and Illnesses, will be in effect.

Three new recordkeeping forms will come into use:
- OSHA Form 300, Log of Work-Related Injuries and Illnesses
- OSHA Form 300A, Summary of Work-Related Injuries and Illnesses
(The 300 and 300A forms will replace the former OSHA Form 200, Log and Summary of Occupational Injuries and Illnesses)
- OSHA Form 301, Injury and Illness Incident Report
(The 301 form will replace the former OSHA Form 101, Supplementary Record of Occupational Injuries and Illnesses)

The Bureau of Labor Statistics (BLS)/OSHA publications: **Recordkeeping Guidelines for Occupational Injuries and Illnesses, 1986** and **A Brief Guide to Recordkeeping Requirements for Occupational Injuries and Illnesses, 1986** will be withdrawn.

All letters of interpretation regarding the former rule's injury and illness recordkeeping requirements will be withdrawn and removed from the OSHA CD-ROM and put into the OSHA Archive Set.

Question 3. How can I get copies of the new forms?

Copies of the forms can be obtained on OSHA's web site at http://www.osha.gov or from the OSHA publications office at (202) 693-1888.

Question 4. Can I start using a 300 Log prior to January 1, 2002?

No. You must continue to keep a 200 Log for the remainder of 2001. Employers may not start using a 300 Log until January 1, 2002, because this is the effective date of the new regulation.

Question 5. Can I compare injury and illness rates generated from my OSHA form 300, and the new regulation, to injury and illness rates generated from my OSHA 200 Log under the old rule (i.e., compare 2001 data with 2002 data)?

The new recordkeeping rule changes some of the criteria used to determine which injuries and illnesses will be entered into the records and how they will be entered. Therefore, employers should use reasonable caution when comparing data produced under the old 1904 regulation with data produced under the new rule.

Question 6. Are the recordkeeping requirements the same in all of the States?

The States operating OSHA-approved State Plans must adopt occupational injury and illness recording and reporting requirements that are substantially identical to the requirements in Part 1904 and which should also be in effect on January 1, 2002. For more information, see the discussion under "States Requirements," §1904.37.

II. Section 1904.0 -- Purpose.

Question 0-1. Why are employers required to keep records of work-related injuries and illnesses?

The OSH Act of 1970 requires the Secretary of Labor to produce regulations that require employers to keep records of occupational deaths, injuries, and illnesses. The records are used for several purposes.

Injury and illness statistics are used by OSHA. OSHA collects data through the OSHA Data Initiative (ODI) to help direct its programs and measure its own performance. Inspectors also use the data during inspections to help direct their efforts to the hazards that are hurting workers.

The records are also used by employers and employees to implement safety and health programs at individual workplaces. Analysis of the data is a widely recognized method for discovering workplace safety and health problems and for tracking progress in solving those problems.

The records provide the base data for the BLS Annual Survey of Occupational Injuries and Illnesses, the Nation's primary source of occupational injury and illness data.

Question 0-2. What is the effect of workers' compensation reports on the OSHA records?

The purpose section of the rule includes a note to make it clear that recording an injury or illness neither affects a person's entitlement to workers' compensation nor proves a violation of an OSHA rule. The rules for compensability under workers' compensation differ from state to state and do not have any effect on whether or not a case needs to be recorded on the OSHA 300 Log. Many cases will be OSHA recordable and compensable under workers' compensation. However, some cases will be compensable but not OSHA recordable, and some cases will be OSHA recordable but not compensable under workers' compensation.

III. Section 1904.2 -- Partial Exemption for Establishments in Certain Industries.

Question 2-1. How can I get help to find my SIC Code and determine if I'm partially exempt from the recordkeeping rule.

You can access the statistics section of OSHA's internet home page, at http://www.osha.gov/oshstats/. Go to the website and choose SIC Manual and follow the directions. If you still cannot determine your SIC code, you can call an OSHA area office, or, if you are in a state with an OSHA-approved state plan, call your State Plan office. OSHA Office Directory

Question 2-2. Do States with OSHA-approved State plans have the same industry exemptions as Federal OSHA?

States with OSHA-approved plans may require employers to keep records for the State, even though those employers are within an industry exempted by the Federal rule.

Question 2-3. Do professional sports teams qualify for the partial industry exemption in section 1904.2?

No. Only those industry classifications listed in Appendix A to Subpart B qualify for the partial industry exemption in section 1904.2. Professional

sports teams are classified under Standard Industrial Classification (SIC) code 794, which is not one of the listed exempt classifications.

IV. Section 1904.4 -- Recording Criteria.

Question 4-1. Does an employee report of an injury or illness establish the existence of the injury or illness for recordkeeping purposes?

No. In determining whether a case is recordable, the employer must first decide whether an injury or illness, as defined by the rule, has occurred. If the employer is uncertain about whether an injury or illness has occurred, the employer may refer the employee to a physician or other health care professional for evaluation and may consider the health care professional's opinion in determining whether an injury or illness exists. [Note: If a physician or other licensed health care professional diagnoses a significant injury or illness within the meaning of §1904.7(b)(7) and the employer determines that the case is work-related, the case must be recorded.]

V. Section 1904.5 -- Determination of Work-Relatedness.

Question 5-1. If a maintenance employee is cleaning the parking lot or an access road and is injured as a result, is the case work-related?

Yes, the case is work-related because the employee is injured as a result of conducting company business in the work environment. If the injury meets the general recording criteria of Section 1904.7 (death, days away, etc.), the case must be recorded.

Question 5-2. Are cases of workplace violence considered work-related under the new Recordkeeping rule?

The Recordkeeping rule contains no general exception, for purposes of determining work-relationship, for cases involving acts of violence in the work environment. However, some cases involving violent acts might be included within one of the exceptions listed in section 1904.5(b)(2). For example, if an employee arrives at work early to use a company conference room for a civic club meeting and is injured by some violent act, the case would not be work-related under the exception in section 1904.5(b)(2)(v).

Question 5-3. What activities are considered "personal grooming" for purposes of the exception to the geographic presumption of work-relatedness in section 1904.5(b)(2)(vi)?

Personal grooming activities are activities directly related to personal hygiene, such as combing and drying hair, brushing teeth, clipping fingernails and the like. Bathing or showering at the workplace when necessary because of an exposure to a substance at work is not within the personal grooming exception in section 1904.5(b)(2)(vi). Thus, if an employee slips and falls while showering at work to remove a contaminant to which he has been

exposed at work, and sustains an injury that meets one of the general recording criteria listed in section 1904.7(b)(1), the case is recordable.

Question 5-4. What are "assigned working hours" for purposes of the exception to the geographic presumption in section 1904.5(b)(2)(v)?

"Assigned working hours," for purposes of section 1904.5(b)(2)(v), means those hours the employee is actually expected to work, including overtime.

Question 5-5. What are "personal tasks" for purposes of the exception to the geographic presumption in section 1904.5(b)(2)(v)?

"Personal tasks" for purposes of section 1904.5(b)(2)(v) are tasks that are unrelated to the employee's job. For example, if an employee uses a company break area to work on his child's science project, he is engaged in a personal task.

Question 5-6. If an employee stays at work after normal work hours to prepare for the next day's tasks and is injured, is the case work-related? For example, if an employee stays after work to prepare air-sampling pumps and is injured, is the case work-related?

A case is work-related any time an event or exposure in the work environment either causes or contributes to an injury or illness or significantly aggravates a pre-existing injury or illness, unless one of the exceptions in section 1904.5(b)(2) applies. The work environment includes the establishment and other locations where one or more employees are working or are present as a condition of their employment. The case in question would be work-related if the employee was injured as a result of an event or exposure at work, regardless of whether the injury occurred after normal work hours.

Question 5-7. If an employee voluntarily takes work home and is injured while working at home, is the case recordable?

No. Injuries and illnesses occurring in the home environment are only considered work-related if the employee is being paid or compensated for working at home and the injury or illness is directly related to the performance of the work rather than to the general home environment.

Question 5-8. If an employee's pre-existing medical condition causes an incident which results in a subsequent injury, is the case work-related? For example, if an employee suffers an epileptic seizure, falls, and breaks his arm, is the case covered by the exception in section 1904.5(b)(2)(ii)?

Neither the seizures nor the broken arm are recordable. Injuries and illnesses that result solely from non-work-related events or exposures are not recordable under the exception in section 1904.5(b)(2)(ii). Epileptic seizures are a symptom of a disease of non-occupational origin, and the fact that they occur at work does not make them work-related. Because epileptic seizures

are not work-related, injuries resulting solely from the seizures, such as the broken arm in the case in question, are not recordable.

Question 5-9. This question involves the following sequence of events: Employee A drives to work, parks her car in the company parking lot and is walking across the lot when she is struck by a car driven by employee B, who is commuting to work. Both employees are seriously injured in the accident. Is either case work-related?

Neither employee's injuries are recordable. While the employee parking lot is part of the work environment under section 1904.5, injuries occurring there are not work-related if they meet the exception in section 1904.5(b)(2)(vii). Section 1904.5(b)(2)(vii) excepts injuries caused by motor vehicle accidents occurring on the company parking lot while the employee is commuting to and from work. In the case in question, both employees' injuries resulted from a motor vehicle accident in the company parking lot while the employees were commuting. Accordingly, the exception applies.

Question 5-10. How does OSHA define a "company parking lot" for purposes of Recordkeeping?

Company parking lots are part of the employer's premises and therefore part of the establishment. These areas are under the control of the employer, i.e. those parking areas where the employer can limit access (such as parking lots limited to the employer's employees and visitors). On the other hand, a parking area where the employer does not have control (such as a parking lot outside of a building shared by different employers, or a public parking area like those found at a mall or beneath a multi-employer office building) would not be considered part of the employers establishment (except for the owner of the building or mall), and therefore not a company parking lot for purposes of OSHA recordkeeping.

Question 5-11. An employee experienced an injury or illness in the work environment before they had "clocked in" for the day. Is the case considered work related even if that employee was not officially "on the clock" for pay purposes?

Yes. For purposes of OSHA recordkeeping injuries and illnesses occurring in the work environment are considered work-related. Punching in and out with a time clock (or signing in and out) does not affect the outcome for determining work-relatedness. If the employee experienced a work-related injury or illness, and it meets one or more of the general recording criteria under section 1904.7, it must be entered on the employer's OSHA 300 log.

Question 5-12. Is work-related stress recordable as a mental illness case?

Mental illnesses, such as depression or anxiety disorder, that have work-related stress as a contributing factor, are recordable if the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that

the employee has a mental illness that is work-related, and the case meets one or more of the general recording criteria. See sections 1904.5(b)(2)(ix) and 1904.7.

Question 5-13. If an employee dies or is injured or infected as a result of terrorist attacks, should it be recorded on the OSHA Injury and Illness Log? Should it be reported to OSHA?

Yes, injuries and illnesses that result from a terrorist event or exposure in the work environment are considered work-related for OSHA recordkeeping purposes. OSHA does not provide an exclusion for violence-related injury and illness cases, including injuries and illnesses resulting from terrorist attacks.

Within eight (8) hours after the death of any employee from a work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related incident, an employer must orally report the fatality/multiple hospitalization by telephone or in person to the OSHA Area that is nearest to the site of the incident. An employer may also use the OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).

VI. Section 1904.6 -- Determination of New Cases.

Question 6-1. How is an employer to determine whether an employee has "recovered completely" from a previous injury or illness such that a later injury or illness of the same type affecting the same part of the body resulting from an event or exposure at work is a "new case" under section 1904.6(a)(2)? If an employee's signs and symptoms disappear for a day and then resurface the next day, should the employer conclude that the later signs and symptoms represent a new case?

An employee has "recovered completely" from a previous injury or illness, for purposes of section 1904.6(a)(2), when he or she is fully healed or cured. The employer must use his best judgment based on factors such as the passage of time since the symptoms last occurred and the physical appearance of the affected part of the body. If the signs and symptoms of a previous injury disappear for a day only to reappear the following day, that is strong evidence the injury has not properly healed. The employer may, but is not required to, consult a physician or other licensed health care provider (PLHCP). Where the employer does consult a PLHCP to determine whether an employee has recovered completely from a prior injury or illness, it must follow the PLHCP's recommendation. In the event the employer receives recommendations from two or more PLHCPs, the employer may decide which recommendation is the most authoritative and record the case based on that recommendation.

VII. Section 1904.7 -- General Recording Criteria.

Question 7-1. The old rule required the recording of all occupational illnesses, regardless of severity. For example, a work-related skin rash was recorded even if it didn't result in medical treatment. Does the rule still capture these minor illness cases?

No. Under the new rule, injuries and illnesses are recorded using the same criteria. As a result, some minor illness cases are no longer recordable. For example, a case of work-related skin rash is now recorded only if it results in days away from work, restricted work, transfer to another job, or medical treatment beyond first aid.

Question 7-2. Does the size or degree of a burn determine recordability?

No, the size or degree of a work-related burn does not determine recordability. If a work-related first, second, or third degree burn results in one or more of the outcomes in section 1904.7 (days away, work restrictions, medical treatment, etc.), the case must be recorded.

Question 7-3. If an employee dies during surgery made necessary by a work-related injury or illness, is the case recordable? What if the surgery occurs weeks or months after the date of the injury or illness?

If an employee dies as a result of surgery or other complications following a work-related injury or illness, the case is recordable. If the underlying injury or illness was recorded prior to the employee's death, the employer must update the Log by lining out information on less severe outcomes, e.g., days away from work or restricted work, and checking the column indicating death.

Question 7-4. An employee hurts his or her left arm and is told by the doctor not to use the left arm for one week. The employee is able to perform all of his or her routine job functions using only the right arm (though at a slower pace and the employee is never required to use both arms to perform his or her job functions). Would this be considered restricted work?

No. If the employee is able to perform all of his or her routine job functions (activities the employee regularly performs at least once per week), the case does not involve restricted work. Loss of productivity is not considered restricted work.

Question 7-5. Are surgical glues used to treat lacerations considered "first aid?"

No, surgical glue is a wound closing device. All wound closing devices except for butterfly and steri strips are by definition "medical treatment," because they are not included on the first aid list.

Question 7-6. Item N on the first aid list is "drinking fluids for relief of heat stress." Does this include administering intravenous (IV) fluids?

No. Intravenous administration of fluids to treat work-related heat stress is medical treatment.

Question 7-7. Is the use of a rigid finger guard considered first aid?

Yes, the use of finger guards is always first aid.

Question 7-8. For medications such as Ibuprofen that are available in both prescription and non-prescription form, what is considered to be prescription strength? How is an employer to determine whether a non-prescription medication has been recommended at prescription strength for purposes of section 1904.7(b)(5)(i)(C)(ii)(A)?

The prescription strength of such medications is determined by the measured quantity of the theraputic agent to be taken at one time, i.e., a single dose. The single dosages that are considered prescription strength for four common over-the-counter drugs are:

Ibuprofen (such as Advil™) - Greater than 467 mg
Diphenhydramine (such as Benadryl™) - Greater than 50 mg

Naproxen Sodium (such as Aleve™) - Greater than 220 mg
Ketoprofen (such as Orudus KT™) - Greater than 25mg

To determine the prescription-strength dosages for other drugs that are available in prescription and non-prescription formulations, the employer should contact OSHA, the United States Food and Drug Administration, their local pharmacist or their physician.

Question 7-9. If an employee who sustains a work-related injury requiring days away from work is terminated for drug use based on the results of a post-accident drug test, how is the case recorded? May the employer stop the day count upon termination of the employee for drug use under section 1904.7(b)(3) (vii)?

Under section 1904.7(b)(3)(vii), the employer may stop counting days away from work if an employee who is away from work because of an injury or illness leaves the company for some reason unrelated to the injury or illness, such as retirement or a plant closing. However, when the employer conducts a drug test based on the occurrence of an accident resulting in an injury at work and subsequently terminates the injured employee, the termination is related to the injury. Therefore, the employer must estimate the number of days that the employee would have been away from work due to the injury and enter that number on the 300 Log.

Question 7-10. Once an employer has recorded a case involving days away from work, restricted work or medical treatment and the employee has returned to his regular work or has received the course of recommended medical treatment, is it permissible for the employer to delete the Log entry based on a physician's recommendation, made during a year-end review of the Log, that the days away from work, work restriction or medical treatment were not necessary?

The employer must make an initial decision about the need for days away from work, a work restriction, or medical treatment based on the information available, including any recommendation by a physician or other licensed

health care professional. Where the employer receives contemporaneous recommendations from two or more physicians or other licensed health care professionals about the need for days away, a work restriction, or medical treatment, the employer may decide which recommendation is the most authoritative and record the case based on that recommendation. Once the days away from work or work restriction have occurred or medical treatment has been given, however, the employer may not delete the Log entry because of a physician's recommendation, based on a year-end review of the Log, that the days away, restriction or treatment were unnecessary.

Question 7-10a. If a physician or other licensed health care professional recommends medical treatment, days away from work or restricted work activity as a result of a work-related injury or illness can the employer decline to record the case based on a contemporaneous second provider's opinion that the recommended medical treatment, days away from work or work restriction are unnecessary, if the employer believes the second opinion is more authoritative?

Yes. However, once medical treatment is provided for a work-related injury or illness, or days away from work or work restriction have occurred, the case is recordable. If there are conflicting contemporaneous recommendations regarding medical treatment, or the need for days away from work or restricted work activity, but the medical treatment is not actually provided and no days away from work or days of work restriction have occurred, the employer may determine which recommendation is the most authoritative and record on that basis. In the case of prescription medications, OSHA considers that medical treatment is provided once a prescription is issued

Question 7-11. Section 1904.7(b)(5)(ii) of the rule defines first aid, in part, as "removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means." What are "other simple means" of removing splinters that are considered first aid?

"Other simple means" of removing splinters, for purposes of the first-aid definition, means methods that are reasonably comparable to the listed methods. Using needles, pins or small tools to extract splinters would generally be included.

Question 7-12. How long must a modification to a job last before it can be considered a permanent modification under section 1904.7(b)(4)(xi)?

Section 1904.7(b)(4)(xi) of the rule allows an employer to stop counting days of restricted work or transfer to another job if the restriction or transfer is made permanent. A permanent restriction or transfer is one that is expected to last for the remainder of the employee's career. Where the restriction or transfer is determined to be permanent at the time it is ordered, the employer must count at least one day of the restriction or transfer on the Log. If the employee whose work is restricted or who is transferred to another job

is expected to return to his or her former job duties at a later date, the restriction or transfer is considered temporary rather than permanent.

Question 7-13. If an employee loses his arm in a work-related accident and can never return to his job, how is the case recorded? Is the day count capped at 180 days?

If an employee never returns to work following a work-related injury, the employer must check the "days away from work" column, and enter an estimate of the number of days the employee would have required to recuperate from the injury, up to 180 days.

Question 7-14. If an employee who routinely works ten hours a day is restricted from working more than eight hours following a work-related injury, is the case recordable?

Generally, the employer must record any case in which an employee's work is restricted because of a work-related injury. A work restriction, as defined in section 1904.7(b)(4)(i)(A), occurs when the employer keeps the employee from performing one or more routine functions of the job, or from working the full workday the employee would otherwise have been scheduled to work. The case in question is recordable if the employee would have worked 10 hours had he or she not been injured.

Question 7-15. If an employee is exposed to chlorine or some other substance at work and oxygen is administered as a precautionary measure, is the case recordable?

If oxygen is administered as a purely precautionary measure to an employee who does not exhibit any symptoms of an injury or illness, the case is not recordable. If the employee exposed to a substance exhibits symptoms of an injury or illness, the administration of oxygen makes the case recordable.

Question 7-16. Is the employer subject to a citation for violating section 1904.7(b)(4)(viii) if an employee fails to follow a recommended work restriction?

Section 1904.7(b)(4)(viii) deals with the recordablility of cases in which a physician or other health care professional has recommended a work restriction. The section also states that the employer "should ensure that the employee complies with the [recommended] restriction." This language is purely advisory and does not impose an enforceable duty upon employers to ensure that employees comply with the recommended restriction. [Note: In the absence of conflicting opinions from two or more health care professionals, the employer ordinarily must record the case if a health care professional recommends a work restriction involving the employee's routine job functions.]

Question 7-17. Are work-related cases involving chipped or broken teeth recordable?

Yes, under section 1904.7(b)(7), these cases are considered a significant injury or illness when diagnosed by a physician or other health care professional. As discussed in the preamble of the final rule, work-related fractures of bones or teeth are recognized as constituting significant diagnoses and, if the condition is work-related, are appropriately recorded at the time of initial diagnosis even if the case does not involve any of the other general recording criteria.

Question 7-18. How would the employer record the change on the OSHA 300 Log for an injury or illness after the injured worker reached the cap of 180 days for restricted work and then was assigned to "days away from work"?

The employer must check the box that reflects the most severe outcome associated with a given injury or illness. The severity of any case decreases on the log from column G (Death) to column J (Other recordable case). Since days away from work is a more severe outcome than restricted work the employer is required to remove the check initially placed in the box for job transfer or restriction and enter a check in the box for days away from work (column H). Employers are allowed to cap the number of days away and/or restricted work/job transfer when a case involves 180 calendar days. For purposes of recordability, the employer would enter 180 days in the "Job transfer or restriction" column and may also enter 1 day in the "Days away from work" column to prevent confusion or computer related problems.

Question 7-19. Does the employer have to record a work-related injury and illness, if an employee experiences minor musculoskeletal discomfort, the health care professional determines that the employee is fully able to perform all of his or her routine job functions, but the employer assigns a work restriction to the injured employee?

As set out in Chapter 2, I., F. of the Recordkeeping Policies and Procedures Manual (CPL 2-0.131) a case would not be recorded under section 1904.7(b)(4) if 1) the employee experiences minor musculoskeletal discomfort, and 2) a health care professional determines that the employee is fully able to perform all of his or her routine job functions, and 3) the employer assigns a work restriction to that employee for the purpose of preventing a more serious condition from developing. If a case is or becomes recordable under any other general recording criteria contained in section 1904.7, such as medical treatment beyond first aid, a case involving minor musculoskeletal discomfort would be recordable.

Question 7-20. Are injuries and illnesses recordable if they occurred during employment, but were not discovered until after the injured or ill employee was terminated or retired?

These cases are recordable throughout the five year record retention and updating period contained in section 1904.33. The cases would be recorded on either the log of the year in which the injury or illness occurred or the last date of employment.

Question 7-21. If an employee leaves the company after experiencing a work-related injury or illness that results in days away from work and/or days of restricted work/job transfer how would an employer record the case?

If the employee leaves the company for some reason(s) unrelated to the injury or illness, section 1904.7(b)(3)(viii) of the rule allows the employer to stop counting days away from work or days of restriction/job transfer. In order to stop a count the employer must first have a count to stop. Thus, the employer must count at least one day away from work or day of restriction/job transfer on the OSHA 300 Log. If the employee leaves the company for some reason(s) related to the injury or illness, section 1904.7(b)(3)(viii) of the rule directs the employer to make an estimate of the count of days away from work or days of restriction/job transfer expected for the particular type of case.

Question 7-22. If an employee has an adverse reaction to a smallpox vaccination; is it recordable under OSHA's recordkeeping rule?

If an employee has an adverse reaction to a smallpox vaccination, the reaction is recordable if it is work related (see 29 CFR 1904.5) and meets the general recording criteria contained in 29 CFR 1904.7. A reaction caused by a smallpox vaccination is work related if the vaccination was necessary to enable the employee to perform his or her work duties. Such a reaction is work-related even though the employee was not required to receive it, if the vaccine was provided by the employer to protect the employee against exposure to smallpox in the work environment. For example, if a health care employer establishes a program to vaccinate employees who may be involved in treating people suffering from the effects of a smallpox outbreak, reactions to the vaccine would be work related. The same principle applies to adverse reactions among emergency response workers whose duties may cause them to be exposed to smallpox. The vaccinations in this circumstance are analogous to inoculations given to employees to immunize them from diseases to which they may be exposed to in the course of work-related overseas travel.

Question 7-23. An employee has a work-related shoulder injury resulting in days of restricted work activity. While working on restricted duty, the employee sustains a foot injury which results in a different work restriction. How would the employer record these cases?

For purposes of OSHA recordkeeping the employer would stop the count of the days of restricted work activity due to the first case, the shoulder injury, and enter the foot injury as a new case and record the number of restricted work days. If the restriction related to the second case, the foot injury, is lifted and the employee is still subject to the restriction related to their shoulder injury, the employer must resume the count of days of restricted work activity for that case.

Question 7-24. An employee is provided antibiotics for anthrax, although the employee does not test positive for exposure/infection. Is this a recordable event on the OSHA log?

No. A case must involve a death, injury, or illness to be recordable. A case involving an employee who does not test positive for exposure/infection would not be recordable because the employee is not injured or ill.

Question 7-25. An employee tests positive for anthrax exposure/infection and is provided antibiotics. Is this a recordable event on the OSHA log?

Yes. Under the most recent Recordkeeping requirements, which will be effective in January 2002, a work-related anthrax exposure/infection coupled with administration of antibiotics or other medical treatment must be recorded on the log. Until the new Recordkeeping requirements become effective, an employer is required to record a work-related illness, regardless of whether medical care is provided in connection with the illness.

VIII. Section 1904.8 -- Recording Criteria for Needlestick and Sharps Injuries.

Question 8-1. Can you clarify the relationship between the OSHA recordkeeping requirements and the requirements in the Bloodborne Pathogens standard to maintain a sharps injury log?

The OSHA Bloodborne Pathogens Standard states: "The requirement to establish and maintain a sharps injury log shall apply to any employer who is required to maintain a log of occupational injuries and illnesses under 29 CFR 1904." Therefore, if an employer is exempted from the OSHA recordkeeping rule, the employer does not have to maintain a sharps log. For example, dentists' offices and doctors' offices are not required to keep a sharps log after January 1, 2002.

Question 8-2. Can I use the OSHA 300 Log to meet the Bloodborne Pathogen Standard's requirement for a sharps injury log?

Yes. You may use the 300 Log to meet the requirements of the sharps injury log provided you enter the type and brand of the device causing the sharps injury on the Log and you maintain your records in a way that segregates sharps injuries from other types of work-related injuries and illnesses, or allows sharps injuries to be easily separated.

IX. Section 1904.10 Recording criteria for cases involving occupational hearing loss.

Question 10-1. If an employee suffers a Standard Threshold Shift (STS) in only one ear, may the employer revise the baselines for both ears?

No. A Standard Threshold Shift, or STS, is defined in the occupational noise exposure standard at 29 CFR 1910.95(g)(10)(i) as a change in hearing threshold, relative to the baseline audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000, and 4000 hertz (Hz) in one or both ears. The employer is permitted only to revise the baseline in the ear where the employee suffered an STS change in hearing threshold.

Question 10-2. Which baseline is used to determine if a recordable Standard Threshold Shift (STS) has occurred this year?

Employers should use the same baseline that they would use to comply with OSHA's Noise Standard, Part 1910.95. If the employer chose to revise an employee's baseline due to a previous STS, then the employer would use the same revised baseline when determining recordability under section 1904.10 of the recordkeeping regulation.

Question 10-3. If an employee experienced a recordable hearing loss case, where would the employer record the case on the OSHA 300 Log?

Prior to 2004, employers should record work-related hearing loss cases according to the instructions included with the Recordkeeping Forms. If the loss is associated with an event, such as acoustic trauma (e.g., an explosion), it would be recorded as an injury with a check mark in column (M)(1). If the loss is not an injury, it would be recorded as an illness, with a check mark in the all other illness column. Beginning in January 2004, employers must record all hearing loss cases in the separate hearing loss column (M)(5).

Question 10-4 ***(This question was added to the directive on 1/12/2012).*** **What rules must an employer ensure that a physician or other licensed health care professional use to make a determination that a hearing loss case is not work-related under section 1904.10(b)(6)?**

Physician or other licensed health care professional (PLHCP) must follow the rules set out in 1904.5 to determine if the hearing loss is work-related. If an event or exposure in the work environment either **caused or contributed to** the hearing loss, or significantly aggravated a pre-existing hearing loss, the physician or licensed health care professional must consider the case to be work related. It is not necessary for work to be the sole cause, or the predominant cause, or even a substantial cause of the hearing loss; any contribution from work makes the case work-related. The employer is responsible for ensuring that the PLHCP applies the analysis in Section 1904.5 when evaluating work-related hearing loss, if the employer chooses to rely on the PLHCP's opinion in determining recordability.

X. Section 1904.29 -- Forms.

Question 29-1. How do I determine whether or not a case is an occupational injury or one of the occupational illness categories in Section M of the OSHA 300 Log?

The instructions that accompany the OSHA 300 Log contain examples of occupational injuries and the various types of occupational illnesses listed on the Log. If the case you are dealing with is on one of those lists, then check that injury or illness category. If the case you are dealing with is not listed, then you may check the injury or illness category that you believe best fits the circumstances of the case.

Question 29-2. Does the employer decide if an injury or illness is a privacy concern case?

Yes. The employer must decide if a case is a privacy concern case, using 1904.29(b)(7), which lists the six types of injuries and illnesses the employer must consider privacy concern cases. If the case meets any of these criteria, the employer must consider it a privacy concern case. This is a complete list of all injury and illnesses considered privacy concern cases.

Question 29-3. Under paragraph 1904.29(b)(9), the employer may use some discretion in describing a privacy concern case on the log so the employee cannot be identified. Can the employer also leave off the job title, date, or where the event occurred?

Yes. OSHA believes that this would be an unusual circumstance and that leaving this information off the log will rarely be needed. However, if the employer has reason to believe that the employee's name can be identified through this information, these fields can be left blank.

Question 29-4. May employers attach missing information to their accident investigation or workers' compensation forms to make them an acceptable substitute form for the OSHA 301 for recordkeeping purposes?

Yes, the employer may use a workers' compensation form or other form that does not contain all the required information, provided the form is supplemented to contain the missing information and the supplemented form is as readable and understandable as the OSHA 301 form and is completed using the same instructions as the OSHA 301 form.

Question 29-5. If an employee reports an injury or illness and receives medical treatment this year, but states that the symptoms first arose at some unspecified date last year, on which year's log do I record the case?

Ordinarily, the case should be recorded on the Log for the year in which the injury or illness occurred. Where the date of injury or illness cannot be determined, the date the employee reported the symptoms or received treatment must be used. In the case in question, the injury or illness would be recorded on this year's Log because the employee cannot specify the date when the symptoms occurred.

Question 29-6. Since the new system proposes to do away with the distinction between injuries and illnesses, is there guidance on how to classify cases to complete column M on the OSHA 300 Log?

An injury or illness is an abnormal condition or disorder. Employers should look at the examples of injuries and illnesses in the "Classifying Injuries and Classifying Illnesses" section of the Recordkeeping Forms Package for guidance. If still unsure about the classification, employers could use the longstanding distinction between injuries that result from instantaneous

events or those from exposures in the work environment. Cases resulting from anything other than an instantaneous event or exposure are considered illnesses.

XI. Section 1904.31 -- Covered Employees.

Question 31-1. How is the term"supervised" in section 1904.31 defined for the purpose of determining whether the host employer must record the work-related injuries and illnesses of employees obtained from a temporary help service?

The host employer must record the recordable injuries and illnesses of employees not on its payroll if it supervises them on a day-to-day basis. Day-to-day supervision occurs when "in addition to specifying the output, product or result to be accomplished by the person's work, the employer supervises the details, means, methods and processes by which the work is to be accomplished."

Question 31-2. If a temporary personnel agency sends its employees to work in an establishment that is not required to keep OSHA records, does the agency have to record the recordable injuries and illnesses of these employees?

A temporary personnel agency need not record injuries and illnesses of those employees that are supervised on a day-to-day basis by another employer. The temporary personnel agency must record the recordable injuries and illnesses of those employees it supervises on a day to day basis, even if these employees perform work for an employer who is not covered by the recordkeeping rule.

XII. Section 1904.32 -- Annual Summary.

Question 32-1. How do I calculate the "total hours worked" on my annual summary when I have both hourly and temporary workers?

To calculate the total hours worked by all employees, include the hours worked by salaried, hourly, part-time and seasonal workers, as well as hours worked by other workers you supervise (e.g., workers supplied by a temporary help service). Do not include vacation, sick leave, holidays, or any other non-work time even if employees were paid for it. If your establishment keeps records of only the hours paid or if you have employees who are not paid by the hour, you must estimate the hours that the employees actually worked.

Question 32-2. If an employer has no recordable cases for the year, is an OSHA 300-A, Annual Summary, still required to be completed, certified and posted?

Yes. After the end of the year, employers must review the Log to verify its accuracy, summarize the 300 Log information on the 300A summary form, and certify the summary (a company executive must sign the certification).

This information must then be posted for three months, from February 1 to April 30.

Question 32-3. If employers electronically post the OSHA 300-A Summary of Work-related Injuries and Illnesses, are they in compliance with the posting requirements of 1904.32 (b) (5)?

No. The recordkeeping rule allows all forms to be kept on computer equipment or at an alternate location, as long as the employer can produce the data when needed. Section 1904.32 (b) (5), requires employers to post a copy of the Annual Summary in each establishment, where notices are normally posted [see 1903.2(a)], no later than February 1 of the year following the year covered by the records and kept in place until April 30. Only the OSHA 300-A Summary form should be posted.

XIII. Section 1904.35 -- Employee Involvement.

Question 35-1. How does an employer inform each employee on how he or she is to report an injury or illness?

Employers are required to let employees know how and when to report work-related injuries and illnesses. This means that the employer must set up a way for the employees to report work-related injuries and illnesses and tell its employees how to use it. The Recordkeeping rule does not specify how the employer must accomplish these objectives, so employers have flexibility to set up systems that are appropriate to their workplace. The size of the workforce, employee's language proficiency and literacy levels, the workplace culture, and other factors will determine what will be effective for any particular workplace.

Question 35-2. Do I have to give my employees and their representative's access to the OSHA injury and illness records?

Yes, your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the OSHA 300 Log Form and the OSHA 300-A Summary Form. The employer must give the requester a copy of the OSHA 300 Form and the OSHA 300-A Form by the end of the next business day. In addition, employees and their representatives have the right to access the OSHA 301 Incident Form with some limitations, in section 1904.35(b)(2)(v)(B) of the recordkeeping regulation.

XIV. Section 1904.37 -- State Recordkeeping Regulations.

Question 37-1. Do I have to follow these rules if my State has an OSHA-approved State Plan?

If your workplace is located in a State that operates an OSHA-approved State Plan, you must follow the regulations of the State. However, these States must adopt occupational injury and illness recording and reporting requirements that are substantially identical to the requirements in Part 1904.

State Plan States must have the same requirements as Federal OSHA for determining which injuries and illnesses are recordable and how they are recorded.

Question 37-2. How may state regulations differ from the Federal requirements?

For Part 1904 provisions other than recording and reporting, State requirements may be more stringent than or supplemental to the Federal requirements. For example, a State Plan could require employers to keep records for the State, even though those employers have 10 or fewer employees (1904.1) or are within an industry exempted by the Federal rule. A State Plan could also require employers to keep additional supplementary injury and illness information, require employers to report fatality and multiple hospitalization incidents within a shorter time frame than Federal OSHA does (1904.39), require other types of incidents to be reported as they occur, require hearing loss to be recorded at a lower threshold level during CY 2002 (1904.10(c)), or impose other requirements.

Question 37-3. Are State and local government employers covered by this rule?

No, but they are covered under the equivalent State rule in States that operate OSHA-approved State Plans. State rules must cover these workplaces and require the recording and reporting of work-related injuries and illnesses.

Question 37-4. How can I find out if my State has an OSHA-approved plan?

The following States have OSHA-approved plans: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, New Jersey, and New York have plans that cover State and local government employees only.

XV. Section 1904.39 -- Reporting Fatalities & Multiple Hospitalization Incidents to OSHA.

Question 39-1. When a work-related heart attack occurs in the workplace and the employee dies one or more days later, how should the case be reported to OSHA?

The employer must orally report a work-related fatality by telephone or in person to the OSHA Area Office nearest to the site of the incident. The employer must report the fatality within eight hours of the employee's death in cases where the death occurs within 30 days of the incident. The employer need not report a death occurring more than 30 days after a work-related incident.

<u>Question 39-2</u>. What is considered a "construction work zone" for purposes of section 1904.39(b)(3)?

A "construction work zone" for purposes of §1904.39(b)(3) is an area of a street or highway where construction activities are taking place, and is typically marked by signs, channeling devices, barriers, pavement markings and/or work vehicles. The work zone extend from the first warning sign or rotating/strobe lights on a vehicle to the "END ROAD WORK" sign or the last temporary traffic control device.

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