clearly not going to make an investigation. When a worker is killed or injured in a motor vehicle accident on a public highway or street, OSHA is only likely to investigate the incident if it occurred in a highway construction zone. Likewise, when a worker is killed or injured in an airplane crash, a train wreck, or a subway accident, OSHA does not investigate, and there is thus no need for the employer to report the incident to OSHA. The text of paragraphs 1904.39(b)(3) and (4) of the final rule clarifies that an employer is not required to report these incidents to OSHA. These incidents are normally investigated by other agencies, including local transit authorities, local or State police, State transportation officials, and the U.S. Department of Transportation.

However, although there is no need to *report* these incidents to OSHA under the 8-hour reporting requirement, any fatalities and hospitalizations caused by motor vehicle accidents, as well as commercial or public transportation accidents, are *recordable* if they meet OSHA's recordability criteria. These cases should be captured by the Nation's occupational fatality and injury statistics and be included on the employer's injury and illness forms. The statistics need to be complete, so that OSHA, BLS, and the public can see where and how employees are being made ill, injured and killed. Accordingly, the final rule includes a sentence clarifying that employers are still required to record work-related fatalities and injuries that occur as a result of public transportation accidents and injuries.

Although commenters are correct that OSHA only rarely investigates motor vehicle accidents, the Agency does investigate motor vehicle accidents that occur at street or highway construction sites. Such accidents are of concern to the Agency, and OSHA seeks to learn new ways to prevent these accidents and protect employees who are exposed to them. For example, OSHA is currently participating in a Local Emphasis Program in the State of New Jersey that is designed to protect highway construction workers who are exposed to traffic hazards while performing construction work. Therefore, the final rule provides provisions that require an employer to report a fatality or multiple hospitalization incident that occurs in a construction zone on a public highway or street.

Other issues related to the reporting of fatalities and multiple hospitalization incidents. Commenters also raised several issues not addressed in the proposed rule. The National Pest Control Association (NPCA) (Ex. 15: 229) asked OSHA to allow for a longer reporting time in those rare cases where the owner of a small business was himself or herself incapacitated in the accident, suggesting that:

> [l]anguage be included in the rule revisions to provide for additional time to report fatalities and multiple hospitalizations if the employer is hospitalized or otherwise incapacitated. * * * Typically, pest control companies are very small operations. Many employ five or less employees. Often times the business owner is out in the field as much as the employees. So, let's say an employer is hospitalized during a work-related incident that also claimed the life of an employee, who happened to be the lone employee. Can the employer really be expected to report the fatality within eight hours? In most instances the eight hour requirement is rather reasonable, however, in this circumstance it is not. NPCA asks that the agency consider adding language allowing small employers who are hospitalized additional time to report a multiple hospitalization or fatality.

OSHA has decided that there is no need to include language to address this very rare occurrence. If such an unfortunate event were to occur, OSHA would certainly allow a certain amount of leeway for the employer or a representative to report the case. The OSHA inspector can, for good cause, provide the employer with reasonable relief from citation and penalty for failing to report the incident within 8 hours, especially if the employer reports it as soon as possible.

Bell Atlantic (Ex. 15: 218) and the Dow Chemical Company (Ex. 15: 335) recommended that OSHA include additional provisions for employees who are admitted to the hospital for observation only. Bell Atlantic's comments were: ''Bell Atlantic also recommends that the hospitalization requirement [for reporting multiple hospitalizations] be limited to those workers that are hospitalized overnight for treatment. The current proposal does not address hospitalization for observation, only that they are non-recordable.''

OSHA disagrees with these comments, as it did when similar comments were submitted to the record in the 1994 rulemaking on this provision [59 FR 15596–15597]. If three or more workers are hospitalized overnight, whether for treatment or observation, the accident is clearly of a catastrophic nature, and OSHA needs to learn about it promptly. Additionally, the inpatient distinction provides an easy-to-understand trigger for reporting. In many instances, a patient who is admitted for observation as an inpatient later receives treatment after the true nature and extent of the injury becomes known. At the time of the incident, when reporting is most useful, the employer is unlikely to know the details about the treatment that the worker is receiving (*e.g.*, observation only or medical treatment). However, the employer will probably know that the employee has been admitted to the hospital as an inpatient.

The United Parcel Service (UPS) (Ex. 15: 424) suggested that the 8-hour time period for reporting apply only when a higher ranking official of the company learns of the fatality or catastrophe, stating:

> [U]PS supports this proposal, with one modification: the provision that the eight-hour limit begins to run on notice to an employee or agent is over broad. It may happen that workers who learn of the death or hospitalization of a co-worker do not notify the employer in sufficient time to enable the manager in charge of contacting OSHA to meet the deadline. The better rule, therefore, is to require OSHA modification within eight hours of the incident's being reported to a supervisor, manager, or company official. This allowance is particularly necessary for incidents occurring away from the work site.

The issue of who within the company must learn of the incident before the reporting deadline was also discussed in the 1994 rulemaking [59 FR 15597]. As in the former rule, the final rule requires reporting within 8 hours of the time any agent or employee of the employer becomes aware of the incident. It is the employer's responsibility to ensure that appropriate instructions and procedures are in place so that corporate officers, managers, supervisors, medical/health personnel, safety officers, receptionists, switchboard personnel, and other employees or agents of the company who learn of employee deaths or multiple hospitalizations know that the company must make a timely report to OSHA.

Section 1904.40 Providing Records to Government Representatives

Under the final rule, employers must provide a complete copy of any records required by Part 1904 to an authorized government representative, including the Form 300 (Log), the Form 300A(Summary), the confidential listing of privacy concern cases along with the names of the injured or ill privacy case workers, and the Form 301 (Incident Report), when the representative asks for the records during a workplace safety and health inspection. This requirement is unchanged from the corresponding requirement in OSHA's former recordkeeping rule. However, the

former rule combined the requirements governing both government inspectors' and employers' rights of access to the records into a single section, section 1904.7 ''Access to Records.'' The final rule separates the two. It places the requirements governing access to the records by government inspectors in Subpart E, along with other provisions requiring employers to submit their occupational injury and illness records to the government or to provide government personnel access to them. Provisions for employee access to records are now in section 1904.35, Employee Involvement, in Subpart D of this final rule.

The final regulatory text of paragraph (a) of section 1904.40 requires an employer to provide an authorized government representative with records kept under Part 1904 within four business hours. As stated in paragraph 1904.40(b)(1), the authorized government representatives who have a right to obtain the Part 1904 records are a representative of the Secretary of Labor conducting an inspection or investigation under the Act, a representative of the Secretary of Health and Human Services (including the National Institute for Occupational Safety and Health (NIOSH) conducting an investigation under Section 20(b) of the Act, or a representative of a State agency responsible for administering a State plan approved under section 18 of the Act. The government's right to ask for such records is limited by the jurisdiction of that Agency. For example, a representative of an OSHA approved State plan could only ask for the records when visiting an establishment within that state.

The final rule allows the employer to take into account difficulties that may be encountered if the records are kept at a location in a different time zone from the establishment where the government representative has asked for the records. If the employer maintains the records at a location in a different time zone, OSHA will use the business hours of the establishment at which the records are located when calculating the deadline, as permitted by paragraph 1904.40(b)(2).

The former rule. Paragraph 1904.7(a) of the former OSHA recordkeeping rule required employers to provide authorized government representatives with access to the complete Form 200, without the removal of any information (unredacted). That paragraph read as follows:

> Each employer shall provide, upon request, records provided for in §§ 1904.2, 1904.4, and 1904.5, for inspection and copying by any representative of the Secretary of Labor for the purpose of carrying out the provisions of the Act, and by representatives of the Secretary of Health, Education, and Welfare during any investigation under section 20(b) of the Act, or by any representative of a State accorded jurisdiction for occupational safety and health inspections or for statistical compilation under sections 18 and 24 of the Act.

The proposal. The proposed regulation was consistent with OSHA's former recordkeeping regulation in that it continued to require employers to provide government representatives with access to the entire OSHA injury and illness Log and Summary (Forms 300 and 300A) and OSHA Incident Record (Form 301). Proposed paragraph 1904.11(a), ''Access to Records,'' read as follows:

> *Government Representatives.* Each employer shall provide, upon a request made in person or in writing, copies of the OSHA Forms 300 and 301 or equivalents, and year-end summaries for their own employees, and injury and illness records for ''subcontractor employees'' as required under this Part to any authorized representative of the Secretary of Labor or Secretary of Health and Human Services or to any authorized representative of a State accorded jurisdiction for occupational safety and health for the purposes of carrying out the Act.
>
> (1) When the request is made in person, the information must be provided in hard copy (paper printout) within 4 hours. If the information is being transmitted to the establishment from some other location, using telefax or other electronic transmission, the employer may provide a copy to the government representative present at the establishment or to the government representative's office.
>
> (2) When the request is made in writing, the information must be provided within 21 days of receipt of the written request, unless the Secretary requests otherwise.

The proposal thus would have continued to combine the records access provisions for government personnel with the access provisions for employees, former employees and employee representatives. The proposed rule would have modified the former rule in several ways, however (61 FR 4038). First, it would have required the employer to provide copies of the forms, while the former rule simply required the employer to provide records for inspection and copying. Second, the proposal would have required the employer to produce the records within 4 hours, while the former rule did not specify any time period. Third, the proposed rule would have allowed an employer either to provide the records at the inspection location, or to fax the records to the government inspector's home office. This would allow employers to keep their records at a centralized location as long as the government inspector could obtain the information promptly. Fourth, the proposed rule would have required the employer to send Part 1904 information to OSHA within 21 days of the date on which a written request was received from the Agency. This time limit for mailed survey forms was established in section 1904.17 of the former rule and is carried forward in this final rule at section 1904.40.

The proposal also requested comment on situations where the 4-hour requirement might be infeasible and posed several questions for the public to consider:

> OSHA solicits input on these time limitations. Are they reasonable? Should they be shortened or extended? Should the requirement be restricted to business hours, and if so, to the business hours of the establishment to which the records pertain or the establishment where the records are maintained?

Many commenters agreed with OSHA that government representatives should have access to the records themselves (see, *e.g.*, Exs. 15: 78, 163, 218, 359, 369, 405). For example, Alliant Techsystems remarked ''[c]opies of this data should be given to OSHA personnel'' (Ex. 15: 78). A number of commenters agreed that OSHA personnel should have access to the OSHA 301 records, even though they did not think that employees and their representatives should have access to the Form 301 (see, *e.g.*, Exs. 33, 15: 1, 39, 76, 82, 83, 159, 183, 185, 193, 226, 330, 335, 338, 359, 373, 383, 385, 389, 399, 409, 423). For example, the American Meat Institute (AMI) (Ex. 15: 330) ''[b]elieves that it is imperative that personal identifiers be explicitly excluded from information that would be readily available to anyone, with the single exception of an interested government regulator.'' The Texas Chemical Council (Ex. 15: 159) argued: ''[L]ogs with employees'' names should only be accessed by selected individuals (i.e., OSHA inspectors, medical personnel, etc.). Posting or viewing of OSHA 300 log or 301 reports without names should be the avenue for employees to access information.''

Other commenters disagreed with one or more of the proposed access provisions (see, *e.g.*, Exs. 25, 27, 15: 13, 22, 39, 60, 82, 100, 102, 105, 111, 117, 119, 124, 139, 142, 154, 170, 174, 181, 182, 183, 193, 215, 239, 258, 277, 294, 297, 305, 313, 315, 317, 318, 346, 347, 352, 353, 359, 375, 378, 390, 392. 393, 395, 397, 399, 409, 425, 430, 440.) These commenters raised a wide range of issues. These included the right of OSHA inspectors to access the records; employers' Fourth Amendment rights; the way the government handles

information in its possession; employee privacy concerns; and the proposed requirement to produce the records within 4 hours. On the right of OSHA inspectors to access the records, for example, the Douglas Battery Manufacturing Company (Ex. 15: 82) stated:

> [n]one of these records should be * * * used to conduct an OSHA compliance inspection. Such action would be in direct conflict with the purpose of the OSHA log which is to track injury and illness trends so corrective action can be taken by the employer.

OSHA does not agree with this view, because government inspectors conducting workplace safety and health inspections need these records to carry out the purposes of the Act, i.e., to identify hazards that may harm the employees working there. The Part 1904 records provide information about how workers are injured or made ill at work and help guide the inspector to the hazards in the workplace that are causing injury and illness. Although these records may not cover all hazards that exist in a particular workplace, they help the inspector to identify hazards more completely during an inspection.

Fourth amendment issues. A number of commenters argued that the regulatory requirement to provide records to a government inspector violated Fourth Amendment guarantees against unreasonable searches and the right to demand a warrant or subpoena before the government can search a citizen's property (see, *e.g.*, Exs. 25, 27, 15: 124, 139, 154, 174, 193, 215, 258, 305, 315, 318, 346, 375, 390, 392 395, 397). For example, the Workplace Safety and Health Council (Ex. 15: 313) stated:

> [t]his provision would require employers to give OSHA a copy of a Form 300 and 301. This proposal flies in the face of court decisions holding that employers may not be penalized for declining to provide current Form 101 upon request and that, to gain access to them, OSHA must proceed by subpoena or inspection warrant. Secretary v. Taft Broadcasting Co., 849 F.2d 990 (6th Cir. 1988); *Brock* v. *Emerson Electric Co.,* 834 F.2d 994 (11th Cir. 1987). These decisions are based on an employer's constitutional rights and they are not subject to change by OSHA regulation.

These commenters appear to be arguing that including a subpoena or warrant enforcement mechanism in the text of the rule is necessary to adequately protect their Fourth Amendment right to privacy. This is not the case, however. The Fourth Amendment protects against ''unreasonable'' intrusions by the government into private places and things. Reporting rules that do not depend on subpoena or warrant powers are not ''unreasonable'' per se. *See e.g., California Bankers Ass'n* v. *Shultz,* 416 U.S. 21, 67 (1974) (upholding reporting regulation issued under the Bank Secrecy Act of 1970 that did not provide for subpoenas or warrants where the ''information was sufficiently described and limited in nature and sufficiently related to a tenable Congressional determination'' that the information would have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings).

In any event, the text of the rule is silent as to the enforcement mechanism OSHA will use in what OSHA hopes will be the rare case in which an employer does not provide a copy of the records on request. OSHA may proceed by applying for a warrant, or by administrative subpoena, or by citation where doing so is consistent with the Fourth Amendment. OSHA notes that employers have a Fourth Amendment right to require a warrant before an OSHA representative may physically enter a business establishment for an inspection.

The totality of circumstances surrounding a warrantless or ''subpoena-less'' administrative investigation or investigation program determines its reasonableness. For example, in *McLaughlin* v. *A.B. Chance,* 842 F.2d at 727 (4th Cir. 1988), the Fourth Circuit upheld a records access citation against an employer who refused an OSHA inspector access to its OSHA Logs and forms on the ground that it had a right to insist on a warrant or subpoena; the Court held that the inspector had such a right because a summary of the information was posted annually on the employee bulletin board and the inspector was lawfully on the premises to investigate a safety complaint. In *New York* v. *Burger,* 482 U.S. 691, 702–703 (1987), the Supreme Court noted that agencies may gather information without a warrant, subpoena, or consent if the information would serve a substantial governmental interest, a warrantless (or subpoena-less) inspection is necessary to further the regulatory scheme, and the agency acts pursuant to an inspection program that is limited in time, place, and scope. The *Burger* court upheld a warrantless inspection of records during an administrative inspection of business premises. See also *Kings Island* (noting that under *Burger* a warrantless or subpoena-less inspection of records might be reasonable, but concluding that the facts of the case did not satisfy *Burger* analysis); *Emerson Electric* (noting that under *California Bankers* an agency may gain access to information without a subpoena or warrant but concluding that the facts of that case were not comparable to those reviewed in *California Bankers*).

Given that some warrantless and subpoena-less searches during an OSHA inspection may be reasonable while others may not, depending on the circumstances of the individual inspection, OSHA has decided not to include a subpoena or warrant enforcement mechanism in the text of the rule. However, OSHA will continue to enforce the rule within the parameters of applicable court decisions.

Privacy of medical records. A number of commenters questioned the right of the government to access information in the records because of privacy concerns about medical records (see, *e.g.*, Exs. 27, 15: 13, 22, 39, 60, 82, 117, 119, 142, 183, 359, 378, 392, 399.) The National Association of Manufacturers (NAM) (Ex. 15: 142) stated that ''[t]he privacy interference as proposed that opens up medical records to most anyone is inconceivable, and should be eliminated.'' The National Oilseed Processors Association (Ex. 15: 119) recommended:

> [t]he issue of privacy is an important one that should be handled carefully and with sensitivity to individual rights. We believe that the release of medical records of a specific employee should only be done after the employee whose records may be released has provided written permission to the employer to do so.

This section of the final rule does not give unfettered access to the records by the public, but simply allows a government inspector to use the records during the course of a safety and health inspection. As discussed above in the section covering access to the records for employees, former employees, and employee representatives (Section 1904.35), OSHA does not consider the Forms 300 and 301 to be medical records, for the following reasons. First, they do not have to be completed by a physician or other licensed health care professional. Second, they do not contain the detailed diagnostic and treatment information usually found in medical records. Finally, the injuries and illnesses found in the records are usually widely known among other employees at the workplace where the injured or ill worker works; in fact, these co-workers may even have witnessed the accident that gave rise to the injury or illness.

OSHA does not agree that its inspectors should be required to obtain permission from all injured or ill employees before accessing the full records. Gaining this permission would make it essentially impossible to obtain

full access to the records, which is needed to perform a meaningful workplace investigation. For example, an inspector would not be able to obtain the names of employees who were no longer working for the company to perform follow-up interviews about the specifics of their injuries and illnesses. The names of the injured or ill workers are needed to allow the government inspector to interview the injured and ill workers and determine the hazardous circumstances that led to their injury or illness. The government inspector may also need the employee's names to access personnel and medical records if needed (medical records can only be accessed after the inspector obtains a medical access order). Additionally, refusing the inspector access to the names of the injured and ill workers would effectively prohibit any audit of the Part 1904 records by the government, a practice necessary to verify the accuracy of employer recordkeeping in general and to identify problems that employers may be having in keeping records under OSHA's recordkeeping rules. Adopting the inefficient access method suggested by these commenters would also place a substantial administrative burden on the employer, the employees, and the government. Further, since OSHA inspectors do not allow others to see the medical records they have accessed, the privacy of employees is not compromised by CSHO access to the records.

Time for response to requests for records. Paragraphs 1904.40(a) and (b) of the final rule require records to be made available to a government inspector within 4 business hours of an oral request for the records, using the business hours of the establishment at which the records are located.

A number of commenters opposed the proposed 4-hour records production requirement as being unreasonable and burdensome (see, *e.g.*, Exs. 15: 89, 182, 185, 204, 213, 226, 260, 262, 265, 277, 294, 297, 317, 324, 348, 392, 401, 409, 425). Several of these commenters recommended longer intervals, ranging from 8 hours (see, *e.g.*, Exs. 15: 9, 133, 204, 271, 294, 343), the ''next business day,'' or 24 hours (see, *e.g.*, Exs. 15: 200, 225, 277, 394, 425), 72 hours (see, *e.g.*, Exs. 15: 65, 154), 6 days (Ex. 15: 226), and 21 days (Ex. 15: 317). On the other hand, some commenters were concerned that access not be unduly delayed (see, *e.g.*, Exs. 15: 350, 369, 418, 429). Two commenters (Exs. 15: 418, 429) recommended that the 4-hour requirement be reduced to two hours, except when the request would extend the reply period beyond regular business hours, when 4 hours would be acceptable.

OSHA has concluded that 4 hours is a reasonable and workable length of time for employers to respond to governmental requests for records. The 4-hour time period for providing records from a centralized source strikes a balance between the practical limitations inherent in record maintenance and the government official's need to obtain these records and use the information to conduct a workplace inspection.

Some commenters noted that temporary computer or fax failures could interfere with an employer's ability to comply with the 4-hour requirement (see, *e.g.*, Exs. 15: 203, 254, 423). One commenter felt that additional time should be given to employers if equipment failure prevented the retrieval of the records within four hours (Ex. 15: 423). The American Society of Safety Engineers (ASSE) questioned whether four hours is a reasonable time frame for employers who use independent third parties to maintain their records (Ex. 15: 182).

Several commenters raised concerns that other difficulties might make it difficult to produce the records in the allotted time. Some noted that the 4-hour time limit might not be adequate for large facilities with voluminous records (see, *e.g.*, Exs. 15: 181, 297, 425). For example, the American Automobile Manufacturers Association (AAMA) (Ex. 15: 409) stated:

> [m]any of our members' locations have only one medical person working, and to disrupt the normal medical care of injured or ill employees to produce records within a four hour period is not in the best interests of the health and safety of all concerned. Many additional factors must be taken into account in terms of the production of records such as locating the files, copying the files, having appropriate staffing to do the copying, and if the records are on a computer, the computer must not be on down time.

OSHA believes that it is essential for employers to have systems and procedures that can produce the records within the 4-hour time. However, the Agency realizes that there may be unusual or unique circumstances where the employer cannot comply. For example, if the records are kept by a health care professional and that person is providing emergency care to an injured worker, the employer may need to delay production of the records. In such a situation, the OSHA inspector may allow the employer additional time.

If a government representative requests records of an establishment, but those records are kept at another location, the 4-hour period can be measured in accordance with the normal business hours at the location where the records are being kept. Some commenters observed that personnel at the centralized location might not be available to respond to requests if the 4-hour period extended outside the regular business hours of that location (see, *e.g.*, Exs. 15: 105, 111, 159, 170, 225, 239, 272, 294, 303, 332, 336, 343, 356, 359, 389, 393, 430). This problem could arise under two different scenarios. First, if the centralized location were in a different time zone than the site whose records are requested, the business hours of the respective locations may differ by three or even more hours. Second, the business hours of a manufacturing plant or a construction site might differ from the business hours of the company's central offices, even if the operations are in the same time zone. Under the final rule, the employer has 4 regular business hours at the location at which the records are kept in which to comply with the request of a government representative.

OSHA has designed the final rule to give each employer considerable flexibility in maintaining records. It permits an employer to centralize its records, to use computer and facsimile technologies, and to hire a third party to keep its records. However, an employer who chooses these options must also ensure that they are sufficiently reliable to comply with this rule. In other words, the flexibility provided to employers for recordkeeping must not impede the Agency's ability to obtain and use the records.

Provide copies. Several commenters objected to the proposed requirement that employers provide copies of the records to government personnel without charging the government to do so (see, *e.g.*, Exs. 15: 69, 86, 100, 179, 347, 389, 397, 409). Most of these commenters cited the paperwork burden on employers as the primary reason for objecting. Several suggested that the employer be allowed to charge for copies, or that the government representative make their own copies (see, *e.g.*, Exs. 15: 179, 347, 389, 409). This view was expressed in a comment from the Ford Motor Company (Ex. 15: 347):

> [a]n undue burden may be placed on the establishment should a compliance officer ask for an inordinate amount of records or records which will not be utilized. Authorized government representatives should make their own copies and therefore will be diligent in asking only for those materials they will be utilizing.

OSHA's experience has been that the vast majority of employers willingly provide copies to government representatives during safety and health inspections. Making copies is a routine office function in almost every modern workplace. With the widespread availability of copying technology, most workplaces have copy machines on-site or readily available. The cost of providing copies is minimal, usually less than five cents per copy. In addition, the government representative needs to obtain copes of records promptly, so that he or she can analyze the data and identify workplace hazards. Therefore, in this final rule, OSHA requires the employer to provide copies of the records requested to authorized government representatives.

Other Section 1904.40 issues. Commenters raised additional issues about providing occupational illness and injury information to OSHA during an inspection. The American Ambulance Association (Ex. 15: 226) recommended that OSHA ''[p]lace greater emphasis on the fact that employers do not have to provide Forms 300 and 301 unless OSHA specifically asks for their submission.'' OSHA believes that the final rule is clear on this point, because it states that the employer must provide the records only when asked by an authorized government representative to do so.

Several commenters stated that all requests for occupational safety and health information should be made in writing (see, *e.g.*, Exs. 15: 69, 317, 397). OSHA believes that it is neither appropriate nor necessary to require a government representative to request the information in writing. Government officials who are conducting workplace inspections may ask for any number of materials or ask verbally for information about various matters during the course of an inspection. Putting these requests in writing would impede workplace inspections and delay efforts to address workplace hazards.

Section 1904.41 Annual OSHA Injury and Illness Survey of Ten or More Employers

Section 1904.41 of this final rule replaces section 1904.17, ''Annual OSHA Injury and Illness Survey of Ten or More Employers,'' of the former rule issued on February 11, 1997. The final rule does not change the contents or policies of the corresponding section of the former rule in any way. Instead, the final rule simply rephrases the language of the former rule in the plain language question-and-answer format used in the rest of this rule. The following table shows the text of Section 1904.17 of the former rule, followed by the text of Section 1904.41 of this final rule.

Former sections 1904.17	New section 1904.41
''Annual OSHA Injury and Illness Survey of Ten or More Employers''	''Annual OSHA Injury and Illness Survey of Ten or more Employers''
1904.17(a) Each employer shall, upon receipt of OSHA's Annual Survey Form, report to OSHA or OSHA's designee the number of workers it employed and number of hours worked by its employees for periods designated in the Survey Form and such information as OSHA may request from records required to be created and maintained pursuant to 29 CFR Part 1904.	1904.41(a) Basic Requirement. If you receive OSHA's annual survey from, you must fill it out and send it to OSHA or OSHA's designee, as stated on the survey form. You must report the following information for the year described on the form: (1) the number of workers you employed; (2) the number of hours worked by your employees; and (3) the requested information from the records that you keep under Part 1904.
No comparable provision	1904.41(b)(1) Does every employer have to send data to OSHA?
	No. Each year, OSHA sends injury and illness survey forms to employers in certain industries. In any year, some employers will receive an OSHA survey form and others will not. You do not have to send injury and illness data to OSHA unless you receive a survey form.
1904.17(b) Survey reports shall be transmitted to OSHA by mail or other remote transmission authorized by the Survey Form within the time period specified in the Survey Form, or 30 calendar days, whichever is longer..	1904.41(b)(2) How quickly do I need to respond to an OSHA survey form?
	You must send the survey reports to OSHA, or OSHA's designee, by mail or other means described in the survey form, within 30 calendar days, or by the date stated in the survey form, whichever is later.
1904.17(c) Employers exempted from keeping injury and illness records under §§ 1904.15 and 1904.16 shall maintain injury and illness records required by §§ 1904.2 and 1904.4, and make Survey Reports pursuant to this Section, upon being notified in writing by OSHA, in advance of the year for which injury and illness records will be required, that the employer has been selected to participate in an information collection.''.	1904.41(b)(3) Do I have to respond to an OSHA survey form if I am normally exempt from keeping OSHA injury and illness records?
	Yes. Even if you are exempt from keeping injury and illness records under § 1904.1 to § 1904.3, OSHA may inform you in writing that it will be collecting injury and illness information from you in the following year. If you receive such a survey form, you must keep the injury and illness records required by § 1904.5 to § 1904.15 and make survey reports for the year covered by the survey.
1904.17(d) Nothing in any State plan approved under Section 18 of the Act shall affect the duties of employers to comply with this section..	1904.41(b)(4) Do I have to answer the OSHA survey form if I am located in a State-Plan State?
	Yes. All employers who receive survey forms must respond to the survey, even those in State-Plan States
1904.17(e) Nothing in this section shall affect OSHA's exercise of its statutory authorities to investigate conditions related to occupational safety and health.	1904.41(b)(5) Does this section affect OSHA's authority to inspect my workplace?
	No. Nothing in this section affects OSHA's statutory authority to investigate conditions related to occupational safety and health.

Thus, section 1904.41 of the final rule merely restates, in a plain language question-and-answer format, the requirements of former rule section 1904.17, with one minor change. The final rule adds paragraph 1904.41(b)(1), which contains no requirements or prohibitions but simply informs the employer that there is no need to send in the Part 1904 injury and illness data until the government asks for it.

Section 1904.42 Requests From the Bureau of Labor Statistics for Data

Section 1904.42 of the final rule derives from the subpart of the former rule titled ''Statistical Reporting of Occupational Injuries and Illnesses.'' The former rule described the Bureau of Labor Statistics annual survey of occupational injuries and illnesses, discussed the duty of employers to answer the survey, and explained the effect of the BLS survey on the States operating their own State plans.

Both OSHA and the BLS collect occupational injury and illness information, each for separate purposes. The BLS collects data from a statistical sample of employers in all industries and across all size classes, using the data to compile the occupational injury and illness statistics for the Nation. The Bureau gives each respondent a pledge of confidentiality (as it does on all BLS surveys), and the establishment-specific injury and illness data are not shared with the public, other government agencies, or OSHA. The BLS's sole purpose is to create statistical data.

OSHA collects data from employers from specific size and industry classes, but collects from each and every employer within those parameters. The establishment-specific data collected by OSHA are used to administer OSHA's various programs and to measure the performance of those programs at individual workplaces.

OSHA proposed to replace sections 1904.20, .21, and .22 of the former rule with a single reporting provision that would combine the requirements for BLS and OSHA survey reports into a single section (61 FR 4039). However, since the time of the proposal, OSHA has determined that the BLS and OSHA information collections warrant separate coverage because they occur at different times and collect data for different purposes. When OSHA published final Section 1904.17, Annual OSHA Injury and Illness Surveys (62 FR 6434, Feb. 11, 1997), the Agency made clear that its surveys are separate from any collections of injury and illness data by the BLS. Accordingly, the final rule includes two separate sections: section 1904.41, which is devoted entirely to the collection of employer-generated injury and illness data by OSHA, and section 1904.42, which is devoted to the collection of such data by the Bureau of Labor Statistics.

Many commenters discussed the need for accurate government statistics about occupational death, injury and illness; however, very few of the comments specifically addressed the proposed provisions relating to employer participation in the BLS survey. The comments OSHA did receive on this point addressed the burden imposed by requests for employer records and the potential duplication between the data collections of OSHA and the BLS (see, *e.g.*, Exs. 15: 9, 163, 184, 390, 402). The comments of the U.S. West Company (Ex. 15: 184) are typical:

> [U]S WEST acknowledges the need for the Secretary of Labor to periodically request reports, including recordkeeping data, from employers. However, US WEST does ask that OSHA carefully consider the need for such reports and work to streamline the process and reduce redundancies. Specifically, US WEST requests that OSHA move to implement systems that will allow employers to electronically provide data, such as the data requested in the BLS Survey of Occupational Injuries and Illnesses. Such a method will be more effective, in terms of receiving consistently formatted data, and will be more cost efficient for both employers and the Department of Labor.
>
> In addition, the DOL should work to avoid duplicate internal efforts that are costly and time-consuming for the government and employers. By way of example, US WEST has in the past received requests from BLS to complete the Survey and from OSHA to complete the Occupational Injury and Illness Report (Form 196B) for the same facility. Both surveys collect similar information.

OSHA and the BLS have worked together for many years to reduce the number of establishments that receive both surveys. These efforts have largely been successful. However, OSHA and BLS use different databases to select employers for their surveys. This makes it difficult to eliminate the overlap completely. We are continuing to work on methods to reduce further the numbers of employers who receive both BLS and OSHA survey requests.

OSHA and BLS are also pursuing ways to allow employers to submit occupational injury and illness data electronically. In 1998, the OSHA survey allowed employers for the first time to submit their data electronically, and this practice will continue in future OSHA surveys. The BLS has not yet allowed electronic submission of these data due to security concerns, but continues to search for appropriate methods of electronic submission, and hopes to allow it in the near future.

In this final rule, OSHA has replaced former sections 1904.20 to 1904.22 with a new section 1904.42, which is stated in the form of a basic requirement and four implementing questions and answers about the BLS survey. Former section 1904.20 ''Description of statistical program,'' is not carried forward in the final rule because it merely described BLS's general legal authority and sampling methodology and contained no regulatory requirements.

Section 1904.21 of the former rule, titled ''Duties of employers,'' required an employer to respond to the BLS annual survey: ''Upon receipt of an Occupational Injuries and Illnesses Survey Form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions.''

Paragraphs 1904.42(a), (b)(1) and (b)(2) of the final rule being published today replace former section 1904.21. Paragraph 1904.42(a) states the general obligation of employers to report data to the BLS or a BLS designee. Paragraph 1904.42(b)(1) states that some employers will receive a BLS survey form and others will not, and that the employer should not send data unless asked to do so. Paragraph 1904.42(b)(2) directs the employer to follow the instructions on the survey form when completing the information and return it promptly.

Paragraph 1904.42(b)(3) of this final rule notes that the BLS is authorized to collect data from all employers, even those who would otherwise be exempt, under section 1904.1 to section 1904.3, from keeping OSHA injury and illness records. This enables the BLS to produce comprehensive injury and illness statistics for the entire private sector. Paragraph 1904.42(b)(3) combines the requirements of former rule paragraphs 1904.15(b) and 1904.16(b) into this paragraph of the final rule.

In response to the question ''Am I required to respond to a BLS survey form if I am normally exempt from keeping OSHA injury and illness records?,'' the final rule states ''Yes. Even if you are exempt from keeping injury and illness records under § 1904.1 to § 1904.3, the BLS may inform you in writing that it will be collecting injury and illness information from you in the coming year. If you receive such a survey form, you must keep the injury and illness records required by § 1904.4 to § 1904.12 and make survey reports for the year covered by the survey.''

Paragraph 1904.42(b)(4) of this final rule replaces section 1904.22 of the former rule. It provides that employers in the State-plan States are also required to fill out and submit survey forms if the BLS requests that they do so. The final rule thus specifies that the BLS has the authority to collect information on occupational fatalities, injuries and illnesses from: (1) employers who are required to keep records at all times; (2) employers who are normally exempt from keeping records; and (3) employers under both Federal and State plan jurisdiction. The information collected in the annual survey enables BLS to generate consistent statistics on occupational death, injury and illness for the entire Nation.

Subpart F. Transition From the Former Rule to the New Rule

The transition interval from the former rule to the new rule involves several issues, including training and outreach to familiarize employers and employees about the now forms and

requirements, and informing employers in newly covered industries that they are now required to keep OSHA Part 1904 records. OSHA intends to make a major outreach effort, including the development of an expert software system, a forms package, and a compliance assistance guide, to assist employers and recordkeepers with the transition to the new rule. An additional transition issue for employers who kept records under the former system and will also keep records under the new system is how to handle the data collected under the former system during the transition year. Subpart F of the final rule addresses some of these transition issues.

Subpart F of the new rule (sections 1904.43 and 1904.44), addresses what employers must do to keep the required OSHA records during the first five years the new system required by this final rule is in effect. This five-year period is called the transition period in this subpart. The majority of the transition requirements apply only to the first year, when the data from the previous year (collected under the former rule) must be summarized and posted during the month of February. For the remainder of the transition period, the employer is simply required to retain the records created under the former rule for five years and provide access to those records for the government, the employer's employees, and employee representatives, as required by the final rule at sections 1904.43 and 44.

The proposal did not spell out the procedures that the employer would have to follow in the transition from the former recordkeeping rule to the new rule. OSHA realizes that employers will have questions about how they are required to handle the data collected under the former system during this transition interval. The final rule maintains the basic structure and recordkeeping practices of the former 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 final rule will continue to be done on a calendar year basis. The effective date for the new rule is January 1, 2001. OSHA agrees with the commenter who stated that beginning the new recordkeeping system on ''Any other date [but January 1] would create an insurmountable number of problems * * *'' (Ex. 27). Accordingly, employers must begin to use the new OSHA 300 and 301 forms and to comply with the requirements of this final rule on January 1, 2002.

Some commenters stressed the need for an orderly transition from the former system to the new system, and pointed out that adequate lead time is needed to understand and assimilate the changes, make adjustments in their data management systems, and train personnel who have recordkeeping responsibilities (see, *e.g.*, Exs. 15: 9, 36, 119, 347, 409).

The transition also raises questions about what should be done in the year 2002 with respect to posting, updating, and retaining the records employers compiled in 2001 and previous years. In the transition from the former rule to the present rule, OSHA intends employers to make a clean break with the former system. The new rule will replace the old rule on the effective date of the new rule, and OSHA will discontinue the use of all previous forms, interpretations and guidance on that date (see, *e.g.*, Exs. 21, 22, 15: 184, 423). Employers will be required to prepare a summary of the OSHA Form 200 for the year 2001 and to certify and post it in the same manner and for the same time (one month) as they have in the past. The following time table shows the sequence of events and postings that will occur:

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

The final rule's new requirements for dual certification and a 3-month posting period will not apply to the Year 2000 Log and summary. 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.

However, OSHA will no longer require employers to update the OSHA Log and summary forms for years before the year 2002. The former rule required employers to correct errors to the data on the OSHA 200 Logs during the five-year retention period and to add new information about recorded cases. The former rule also required the employer to adjust the totals on the Logs if changes were made to cases on them (Ex. 2, p. 23). OSHA believes it would be confusing and burdensome for employers to update and adjust previous years' Logs and Summaries under the former system at the same time as they are learning to use the new OSHA occupational injury and illness recordkeeping system.

Subpart G. Definitions

The Definitions section of the final rule contains definitions for five terms: ''the Act,'' ''establishment,'' ''health care professional,'' ''injury and illness,'' and ''you.'' To reduce the need for readers to move back and forth from the regulatory text to the Definitions section of this preamble, all other definitions used in the final rule are defined in the regulatory text as the term is used. OSHA defines the five terms in this section here because they are used in several places in the regulatory text.

The Act

The Occupational Safety and Health Act of 1970 (the ''OSH Act'') is defined because the term is used in many places in the regulatory text. The final rule's definition is essentially identical to the definition in the proposal. OSHA received no comments on this definition. The definition of ''the Act'' follows:

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

Employee

The proposed rule defined ''employee'' as that term is defined in section 3 of the Act and added a Note describing the various types of employees covered by this

recordkeeping rule (*e.g.*, ''leased employees,'' ''seasonal employees''). In the final rule, OSHA has decided that it is not necessary to define ''employee'' because the term is defined in section 3 of the Act and is used in this rule in accordance with that definition.

Employer

The proposed rule included a definition of ''employer'' that was taken from section 3 of the Act's definition of that term. Because the final rule uses the term ''employer'' just as it is defined in the Act, no separate definition is included in the final rule.

Establishment

The final rule defines an establishment as 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.

The final rule also addresses whether one business location can include two or more establishments. Normally, one business location has only one establishment. However, under limited conditions, the employer may consider two or more separate businesses that share a single location to be separate establishments for recordkeeping purposes. An employer may divide one location into two or more establishments only when: each of the proposed 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 proposed 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.

The final rule also deals with the opposite situation, and explains when an establishment includes more than one physical location. 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 serving the plant a block away, and an administrative services building across the street. The final rule also makes it clear that when an employee telecommutes from home, the employee's home is not a business establishment for recordkeeping purposes, and a separate OSHA 300 Log is not required.

The definition of ''establishment'' is important in OSHA's recordkeeping system for many reasons. First, the establishment is the basic unit for which records are maintained and summarized. The employer must keep a separate injury and illness Log (the OSHA Form 300), and prepare a single summary (Form 300A), for each establishment. Establishment-specific records are a key component of the recordkeeping system because each separate record represents the injury and illness experience of a given location, and therefore reflects the particular circumstances and hazards that led to the injuries and illnesses at that location. The establishment-specific summary, which totals the establishment's injury and illness experience for the preceding year, is posted for employees at that establishment and may also be collected by the government for statistical or administrative purposes.

Second, the definition of establishment is important because injuries and illnesses are presumed to be work-related if they result from events or exposures occurring in the work environment, which includes the employer's establishment. The presumption that injuries and illnesses occurring in the work environment are by definition work-related may be rebutted under certain circumstances, which are listed in the final rule and discussed in the section of this preamble devoted to section 1904.5, Determination of work-relatedness. Third, the establishment is the unit that determines whether the partial exemption from recordkeeping requirements permitted by the final rule for establishments of certain sizes or in certain industry sectors applies (see Subpart B of the final rule). Under the final rule's partial exemption, establishments classified in certain Standard Industrial Classification codes (SIC codes) are not required to keep injury and illness records except when asked by the government to do so. Because a given employer may operate establishments that are classified in different SIC codes, some employers may be required to keep OSHA injury and illness records for some establishments but not for others, *e.g.* if one or more of the employer's establishments falls under the final rule's partial exemption but others do not.

Fourth, the definition of establishment is used to determine which records an employee, former employee, or authorized employee representative may access. According to the final rule, employees may ask for, and must be given, injury and illness records for the establishment they currently work in, or one they have worked in, during their employment.

The proposed rule defined an establishment as:

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

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

The final rule modifies this definition in several ways: it deletes the ''60 days in operation'' threshold, adds language to the definition to address the concerns of employers who operate geographically dispersed establishments, describes in greater detail what OSHA means by separate establishments at one location, and defines which locations must be considered part of the establishment, and which employee activities must be considered work-related, for

recordkeeping purposes. Each of these topics is discussed below.

Subpart G of the final rule defines ''establishment'' as ''a single physical location where business is conducted or where services or industrial operations are performed. For activities such as construction; transportation; communications, electric and gas utility, and sanitary services; and similar operations, the establishment is represented for recordkeeping purposes by main or branch offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel carry out these activities.'' This part of the definition of ''establishment'' provides flexibility for employers whose employees (such as repairmen, meter readers, and construction superintendents) do not work at the same workplace but instead move between many different workplaces, often in the course of a single day.

How the definition of ''establishment'' must be used by employers for recordkeeping purposes is set forth in the answers to the questions posed in this paragraph of Subpart G:

(1) Can one business location include two or more establishments?

(2) Can an establishment include more than one physical location?

(3) If an employee telecommutes from home, is his or her home considered a separate establishment?

The employer may consider two or more economic activities at a single location to be separate establishments (and thus keep separate OSHA Form 300s and Form 301s for each activity) only when: (1) Each such economic activity represents a separate business, (2) no one industry description in the Standard Industrial Classification Manual (1987) applies to the activities carried out at the separate locations; and (3) separate reports are routinely prepared on the number of employees, their wages and salaries, sales or receipts, and other business information. This part of the definition of ''establishment'' allows for separate establishments when an employer uses a common facility to house two or more separate businesses, but does not allow different departments or divisions of a single business to be considered separate establishments. However, even if the establishment meets the three criteria above, the employer may, if it chooses, consider the physical location to be one establishment.

The definition also permits an employer to combine two or more physical locations into a single establishment for recordkeeping purposes (and thus to keep only one Form 300 and Form 301 for all of the locations) only when (1) the locations are all geographically close to each other, (2) the employer operates the locations as a single business operation under common management, and (3) 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 business information. However, even for locations meeting these three criteria, the employer may, if it chooses, consider the separate physical locations to be separate establishments. This part of the definition allows an employer to consider a single business operation to be a single establishment even when some of his or her business operations are carried out on separate properties, but does not allow for separate businesses to be joined together. For example, an employer operating a manufacturing business would not be allowed to consider a nearby storage facility to be a separate establishment, while an employer who operates two separate retail outlets would be required to consider each to be a separate establishment.

OSHA received many comments on the proposed definition of ''establishment.'' These are organized by topic and discussed below.

How long must an establishment exist to have a separate OSHA Log. The proposed rule would have required an establishment to be in operation for 60 days to be considered an ''establishment'' for recordkeeping purposes. Under the proposed definition, employers with establishments in operation for a lesser period would not have been required to keep a log for that operation. The proposed 60-day threshold would have changed the definition of ''establishment'' used in OSHA's former recordkeeping rule, because that rule included a one-year-in-operation threshold for defining establishments required to keep a separate OSHA log (Ex. 2, p. 21). The effect of the proposed change in the threshold would have been to increase the number of short-duration operations required to maintain separate injury and illnesses records. In particular, the proposed change would have affected construction employers and utility companies.

The majority of the comments OSHA received on this issue opposed the decrease in the duration of the threshold from one year to 60 calendar days. A few commenters, however, supported the proposed 60-day rule (see, *e.g.*, Exs. 15: 9, 133, 310, 369, 425), and some urged OSHA to adopt an even shorter time-in-operation threshold (see, *e.g.*, Exs. 15: 369, 418, 429). Typical of the comments favoring an even shorter period was one from the International Brotherhood of Teamsters (IBT):

> [t]he International Brotherhood of Teamsters is encouraged by OSHA's modification to the definition of an establishment, especially reducing the requirement for an operation in a particular location from one year to sixty days. The IBT would strongly support reducing the requirement to thirty days to cover many low level housing construction sites, and transient operations, similar to mobile amusement parks (Ex. 15: 369).

The AFL–CIO agreed: ''* * * [t]he 60-day time period is still too long. We believe that to truly capture a majority of these transient worksites, a 30-day time period would be more realistic. A 30-day time period as the trigger would capture construction activities such as trenching, roofing, and painting projects which will continue to be missed if a 60-day time period is used'' (Ex. 15: 418).

Those commenters objecting to the proposed 60-day threshold usually did so on grounds that requiring temporary facilities to maintain records would be burdensome and costly and would not increase the utility of the records (see, *e.g.*, Exs. 21, 15: 21, 43, 78, 116, 122, 123, 145, 170, 199, 213, 225, 254, 272, 288, 303, 304, 305, 308, 338, 346, 349, 350, 356, 358, 359, 363, 364, 375, 389, 392, 404, 412, 413, 423, 424, 433, 437, 443, 475). For example, the Associated Builders and Contractors, Inc. (ABC) remarked:

> ABC agrees with OSHA's sentiment of making injury and illness records useful, but disagrees that sites in existence for as little as 60 days need separate injury and illness records. The redefinition of ''establishment'' will cause enormous problems for subcontractors in a variety of construction industries. Even employers with small workforces could be on the site of several projects at any one time, and in the course of the year could have sent crews to hundreds of sites. Though they may be on such sites for only brief periods of time, they will be required under this proposal to create separate logs for each site, increasing greatly their paperwork requirements without increasing the amount of information available to their employees. Projects which last less than 90 days do not need separate logs. Requiring separate logs for short-term projects only increases inefficiency and costs, while doing nothing for safety (Ex. 15: 412).

Many of these commenters argued that a 60-day threshold would be especially burdensome if it captured small work sites where posting of the annual summary or mailing the summary to employees would make little sense because so few cases would

be captured on each Log. The majority of these commenters suggested that OSHA retain the former one-year duration threshold in the definition of establishment (see, *e.g.*, Exs. 15: 78, 123, 225, 254, 305, 356, 389, 404).

Other commenters expressed concern that the proposed 60-day threshold would create an unreasonable burden on employers in service industries like telecommunications and other utilities, whose employees typically report to a fixed location but perform tasks at transient locations that remain in existence for more than 60 days and would thus be classified as new ''establishments'' for OSHA recordkeeping purposes (see, *e.g.*, Exs. 15: 65, 170, 199, 213, 218, 332, 336, 409, 424).

OSHA has reviewed all of the comments on this issue and has responded by deleting any reference to a time-in-operation threshold in the definition of establishment but specifying a one-year threshold in section 1904.30 of the final rule. In response to comments, OSHA has thus continued the former one-year threshold rather than adopting the 60-day threshold proposed. Under the final rule, employers will be required to maintain establishment-specific records for any workplace that is, or is expected to be, in operation for one year or longer. Employers may group injuries and illnesses occurring to workers who are employed at shorter term establishments onto one or more consolidated logs. These logs may cover the entire company; geographic regions such as a county, state or multi-state area; or individual divisions of the company. For example, a construction company with multi-state operations might have separate logs for each state to show the injuries and illnesses of short-term projects, as well as separate logs for each construction project expected to last for more than one year.

OSHA finds, based on the record evidence, that the one-year threshold will create useful records for stable establishments without imposing an unnecessary burden on the many establishments that remain in existence for only a few months. OSHA concludes that the one-year threshold and permitting employers to keep one Log for geographically dispersed or short-term facilities will also provide more useful injury and illness records for workers employed in transient establishments. This will be the case because the records will capture more cases, which enhances the informational value of the data and permits analysis of trends.

Geographically Dispersed Workplaces. A number of commenters raised issues of particular importance to the construction and utility industries (see, *e.g.*, Exs. 15: 43, 116, 122, 123, 145, 170, 199, 213, 225, 272, 288, 303, 305, 350, 359, 364, 392, 412, 433, 443). In addition to objections about the 60-days-in-operation threshold in the definition of establishment, these commenters raised concerns about the difficulty of keeping records for a mobile and dispersed workforce. Representative of these comments is the statement by Con Edison (Ex. 15: 213):

> Con Edison believes that OSHA's proposal to tie its redefinition of a permanent establishment to a 60-day time frame, as opposed to the present one-year limit, would be costly, overly burdensome and in some cases unworkable. On many occasions work must be performed on city streets or in out of the way areas during the erection of overhead transmission and distribution lines. These projects may carry on for periods greater than the 60-day period specified above for designation as an establishment. No permanent structures are erected at these sites and to require maintenance of records there is impractical. Con Edison believes that the definition of establishment as set forth in the 1987 Standard Industrial Classification Manual (see below) should apply.
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> ''For activities such as * * * electric * * * and similar physically dispersed operations, establishments are represented by those relatively permanent main or branch offices, terminals, stations, etc. that are (2) the base from which personnel operate to carry out these activities. Hence, the individual sites, projects, fields, networks, lines, or system of such dispersed activities are not ordinarily considered to be establishments.'' (SIC Manual, 1987, p. 265).

OSHA agrees that the recordkeeping system must recognize the needs of operations of this type and has adopted language in the final rule to provide some flexibility for employers in the construction, transportation, communications, electric and gas utility, and sanitary services industries, as well as other employers with geographically dispersed operations. The final rule specifies, in Subpart G, that employers may consider main or branch offices, terminals, stations, etc. that are either (1) responsible for supervising such activities, or (2) the base from which personnel operate to carry out these activities, as individual establishments for recordkeeping purposes. This addition to the final rule's definition of establishment allows an employer to keep records for geographically dispersed operations using the existing management structure of the company as the recording unit. Use of this option will also mean that each Log will capture more cases, which will, as discussed above, improve the chances of discovering patterns of occupational injury and illness that can be used to make safety and health improvements. At the same time, by requiring records to be kept for any individual construction project that is expected to last for one year or longer, the final rule ensures that useful records are generated for more permanent facilities.

More than one establishment at a single location. OSHA's former rule recognized, for recordkeeping purposes, that more than one establishment can exist at a single location, although most workplaces consist of a single establishment at a single location. The final rule also recognizes that, in some narrowly defined situations, a business may have side-by-side operations at a single location that are operated as separate businesses because they are engaged in different lines of business. In these situations, the Standard Industrial Classification Manual (OMB 1987) allows a single business location to be classified as two separate establishments, each with its own SIC code. Like all government agencies, OSHA follows the OMB classification method and makes allowances for such circumstances.

The proposal stated that distinct, separate economic activities performed at a single physical location may each be classified, for recordkeeping purposes, as a separate establishment. The proposed definition stated that each distinct and separate economic activity may be considered an establishment when (1) no one industry description from the Standard Industrial Classification (SIC) manual includes such combined activities, (2) the employment in each economic activity is significant, and (3) separate reports can be prepared on the number of employees, their wages and salaries, sales or receipts, or other types of establishment information. The final rule is essentially unchanged from the proposal on this point, but the language has been modified to make it clear that the employer may employ this option only in the enumerated circumstances.

Several commenters were in favor of OSHA's proposed definition of separate establishments as places engaged in separate economic activities (see, *e.g.*, Exs. 15: 185, 297, 375) and agreed that when distinct and separate economic activities are performed at a single physical location, each activity should be considered a separate establishment.

Others, however, disagreed with the proposed definition of multiple establishments at a single location (see, *e.g.*, Exs. 15: 194, 305, 322, 346, 347, 348, 389, 409, 424, 431). The comments

of the Ford Motor Company (Ex. 15: 347) and the American Automobile Manufacturing Association (AAMA) (Ex. 15: 409) are representative:

> [a]ll economic activities performed at a single location should be allowed to be placed on a single log. Many of these locations have only one medical department, payroll, or management. At many of these locations, separate reports cannot be prepared on the number of employees per establishment, and at times many of the employees will work at separate sites within the same single physical location. To break down the economic activities to record injuries and illness on different logs is confusing, difficult, and overly burdensome.

United Parcel Service (UPS) (Ex. 15: 424) added:

> [t]he proposal should be amended to make clear that treatment of a different activity as a separate establishment is optional, not mandatory—the proposal currently results in unnecessary ambiguity by saying first that separate activities ''may'' be separate establishments, and then describing situations in which they ''should be'' considered an establishment. A requirement that such vaguely defined ''economic activities'' be treated as separate ''establishments'' would be mistaken: employers would be left to guess what is an ''economic activity'' and when it is ''separate'' from another. Moreover, such mandatory separate recordkeeping would unnecessarily burden employers with determining when separate records are required, and with maintaining such separate records.

These commenters understood the proposed language as requiring employers to keep separate logs if separate economic activities were being conducted at a single establishment; what OSHA intended, and the final rule makes clear in Subpart G, is that an employer whose activities meet the final rule's definition may keep separate logs if he or she chooses to do so. Thus the final rule includes a provision that allows an employer to define a single business location as two separate establishments only under specific, narrow conditions. The final rule allows the employer to keep separate records only when the location is shared by completely separate business operations involved in different business activities (Standard Industrial Classifications) for which separate business records are available. By providing specific, narrow criteria, the final rule reduces ambiguity and confusion about what is required and sets out the conditions that must be met in order for employers to deviate from the one place-one establishment concept.

OSHA expects that the overwhelming majority of workplaces will continue to be classified as one establishment for recordkeeping purposes, and will keep just one Log. However, allowing some flexibility for the rare cases that meet the specified criteria is appropriate. The employer is responsible for determining whether a given workplace meets the criteria; OSHA will consider an employer meeting these criteria to be in compliance with the final rule if he or she keeps one set of records per facility. This policy allows an employer to keep one set of records for a given location and avoid the additional burden or inconvenience associated with keeping separate records.

The McDonnell Douglas Corporation (Ex. 15: 297) and the American Textile Manufacturers Institute (ATMI) (Ex. 15: 156) commented on a different scenario, one in which a single establishment could encompass more than one physical location. ATMI remarked that:

> [O]SHA's definition of establishment as ''a single physical location'' is too restrictive. We believe that OSHA should be more flexible since many industries have primary facilities with secondary work facilities that have the same local management. For example, in the textile industry, a plant may use a warehouse that is not physically attached but the plant manager is responsible for the both facilities. We suggest that the text of the rule be modified to read: ''A single physical location or multiple physical locations under the same management * * *.''

OSHA agrees that there are situations where a single establishment that has a satellite operation in close physical proximity to the primary operation may together constitute a single business operation and thus be a single establishment. For example, a business may have a storage facility in a nearby building that is simply an adjunct to the business operation and is not a separate business location.

OSHA believes that there are situations where establishments in separate physical locations constitute a single establishment. However, under the final rule, employers will only be allowed to combine separated physical locations into a single establishment when they operate the combined locations as a single business operation under common management and keep a single set of business records for the combined locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other types of business information.

How OSHA defines an establishment also has implications for the way company parking lots and recreation facilities, such as company-provided gymnasiums, ball fields, and the like are treated for recordkeeping purposes. The 1986 *Guidelines* excluded these areas from the definition of establishment and thus did not require injuries and illnesses occurring to employees at these locations to be recorded unless the employee was actually performing work in those areas (Ex. 2, p. 33). The final rule includes these areas in the definition of establishment but does not require employers to record cases occurring to employees engaged in certain activities at these locations. For example, injuries and illnesses occurring at the establishment while the employee is voluntarily engaged in recreation activities or resulting from a motor vehicle accident while the employee is commuting to or from work would not have to be recorded (see section 1904.5). The following paragraphs discuss OSHA's reasons for taking this approach to the recording of injuries and illnesses occurring in these locations.

Company Parking Lots and Access Roads. Because the former rule excluded company parking lots and access roads from the definition of establishment, injuries and illnesses that occurred to their employees while on such parking lots and access roads were not considered work-related and did not have to be recorded on the Log; the proposed rule would have continued this practice. Many commenters urged OSHA not to consider injuries and illnesses occurring in these locations work-related, principally because, in the view of these commenters, employers have little control over safety and health conditions in their parking lots (see, *e.g.*, Exs. 15: 9, 65, 78, 95, 105, 107, 111, 119, 136, 137, 141, 154, 159, 194, 203, 204, 218, 224, 225, 260, 262, 265, 266, 277, 278, 288, 304, 337, 389, 401). The comments of the American Gas Association (AGA) are representative: ''AGA agrees with OSHA that parking lots and access roads should be excluded from the definition of establishment and therefore injuries occurring there are not work-related. Likewise, injuries and illnesses that occur during commuting must also continue to be excluded'' (Ex. 15: 225). The Texas Chemical Council (TCC) agreed with this position: ''[T]CC supports continuing these exceptions. Employers have limited to no control over variables that contribute to incidents occurring in parking lots or during commutes to and from work'' (Ex. 15: 159).

Other commenters, however, argued that cases occurring on company parking lots and access roads should be included in the establishment's Log (see, *e.g.*, Exs. 15: 61, 157, 310, 407, 432). The Laborer's Health and Safety

Fund of North America pointed to the difficulty of separating cases occurring on the parking lot from those occurring at other locations within the establishment:

[w]e do not believe that company parking lots should be excluded from the definition of establishment. The parking lot exclusion seems to be based on the assumption that parking lots are separate from loading dock and other work areas. On road construction sites, ''parking lots'' are sometimes right in the middle of the work zones where heavy equipment is operating. Pedestrian employees being hit by traffic and moving machinery are responsible for about 41.5% of the yearly fatalities in road construction and maintenance work. We believe that excluding parking lots from the definition of establishment would open the door to under reporting of workplace fatalities on construction sites, and discourage construction employers from establishing safe parking areas for their employees (Ex. 15: 310).

The National Institute for Occupational Safety and Health (NIOSH) presented statistical data demonstrating the importance of safety and health measures in employer-owned parking lots:

[N]IOSH does not support continuing the exemption of employer-owned parking lots from the definition of an establishment. NIOSH recommends that OSHA require employers to record cases meeting the work relationship criteria that occur in employer-owned parking areas. Employers have extensive control over the environmental conditions in their own parking areas. Environmental conditions that are under employer control include snow and ice accumulation in walk areas, vicinity lighting around parked cars and entrance ways, and security provisions in parking areas. In 1993, parking lots and garages were identified in a study of violence in the workplace as the location where 211 fatal injuries occurred [Toscano and Weber 1995]. Eighty-two of these deaths were homicides. Parking lots and garages accounted for 3.4% of fatal injuries and 7.8% of homicides. Data on the total number of injuries and illnesses occurring in parking lots and garages is unknown. However, in 1992 the category ''parking lots'' was listed as the source of injury or illness for 10,000 cases involving days away from work [U.S. Department of Labor l995a]. The proportion of parking lots and garages owned by the employer where fatal and nonfatal injuries occurred is not known (Ex. 15: 407).

OSHA agrees with NIOSH that company parking lots can be highly hazardous and that employers have considerable control over conditions in such lots. In addition, OSHA believes that having data on the kinds of injuries and illnesses occurring on company parking lots and access roads will permit employers to address the causes of these injuries and illnesses and thus to provide their employees with better protection. Accordingly, for recordkeeping purposes, the final rule includes company parking lots and access roads in the definition of establishment. However, the final rule recognizes that some injuries and illnesses occurring on company parking lots and access roads are not work-related and delineates those that are work-related from those that are not work-related on the basis of the activity the employee was performing at the time the injury or illness occurred. For example, when an employee is injured in a motor vehicle accident that occurs during that employee's commute to or from work, the injury is not considered work-related. Thus, the final rule allows the employer to exclude from the Log injuries and illnesses occurring on company parking lots and access roads while employees are commuting to or from work or running personal errands in their motor vehicles (see section 1904.5). However, other injuries and illnesses occurring in parking lots and on access roads (such as accidents at loading docks, while removing snow, falls on ice, assaults, etc.) are considered work-related and must be recorded on the establishment's Log if they meet the other recording criteria of the final rule (*e.g.*, if they involve medical treatment, lost time, etc.).

OSHA concludes that the activity-based approach taken in the final rule will be simpler for employers to use than the former rule's location-based approach and will result in the collection of better data. First, the activity-based approach eliminates the need for employers to determine where a parking lot begins and ends, i.e., what specific areas constitute the parking lot, which can be difficult in the case of combined, interspersed, or poorly defined parking areas. Second, it ensures the recording of those injuries and illnesses that are work-related but simply happen to occur in these areas. If parking lots and access roads are totally excluded from the definition of establishment, employers would not record *any* injury or illness occurring in such locations. For example, employers could fail to record an injury occurring to an employee performing work, such as building an attendant's booth or demarcating parking spaces, from the Log.

Recreation facilities. Although the proposed rule would have included recreational facilities in the definition of establishment, it would have excluded, for recordkeeping purposes, injuries and illnesses occurring to employees who were voluntarily participating in wellness activities at fitness or recreational facilities maintained by the employer. As discussed above, OSHA believes that including in the final rule a list of activities that employers can use to rebut the presumption of work-relatedness for recordkeeping purposes will greatly simplify the system for employers and result in the collection of more meaningful data. Including a list of such activities in the final rule was supported by many commenters (see, *e.g.*, Exs. 15: 65, 151, 152, 170, 179, 180, 204, 246, 350, 392). The comments of the Tosco Corporation are representative: ''[w]e agree that the recreational facilities should not be automatically excluded, but rather that the voluntary use of the facilities govern the work relatedness as OSHA has indicated. This will make the OSHA regulation consistent with workers compensation rulings'' (Ex. 15: 246).

An even larger number of commenters disagreed with OSHA's proposed approach, however, arguing that a location-based, rather than activity-based, exclusion was more appropriate for recordkeeping purposes (see, *e.g.*, Exs. 15: 9, 95, 111, 119, 136, 137, 141, 154, 156, 184, 194, 203, 213, 218, 224, 232, 266, 271, 277, 278, 288, 304, 317, 345, 347, 389, 409, 414, 423, 428, 431). For example, the law firm of Constangy, Brooks & Smith, LLC, argued that excluding facilities is simpler than excluding activities: ''* * * [t]he current requirements allow a more simplified analysis of the recreational facility issue and this analysis should be retained in place of the more complicated analysis that would be imposed under the Proposed Recordkeeping Rule'' (Ex. 15: 345).

Other employers stressed the concept that changing the exclusion for recreational facilities would reduce the incentive for employers to provide such facilities for their employees' use (see, *e.g.*, Exs. 15: 136, 137, 141, 213, 224, 266, 278). The remarks of the Society for Human Resource Management (SHRM) are typical: ''[t]o presume that the employee's usage of weight room facilities is involuntary may be unrealistic and would likely result in the closure of employer provided weight rooms, golf courses, and other facilities which benefit the employees * * *'' (Ex. 15: 431).

In the final rule, OSHA has decided to include recreational areas in the definition of establishment but to include voluntary fitness and recreational activities, and other wellness activities, on the list of excepted activities employers may use to rebut the presumption of work-relatedness in paragraph 1904.5(b)(2). OSHA finds that this approach is

simpler and will provide better injury and illness data because recreational facilities are often multi-use areas that are sometimes used as work zones and sometimes as recreational areas. Several of the interpretations OSHA has provided over the years address this problem. For example, the loading dock or warehouse at some establishments has an area with a basketball hoop that is used for impromptu ball games during breaks, while at other establishments employees may use a grassy area to play softball, an empty meeting room for aerobics classes, or the perimeter of the property as a jogging or bicycling track. Providing an exception based on activity will make it easier for employers to evaluate injuries and illnesses that occur in mixed-use areas of the facility.

This approach is also consistent with OSHA's overall approach in the final rule of using specific activity-based exemptions to allow the employer to rebut the presumption of work relationship rather than providing exemptions by modifying the definition of establishment. OSHA also does not believe that this approach will provide an incentive for employers to eliminate recreational and fitness opportunities for their employees. Both approaches exempt the same injuries from recording, but the final rule's approach provides employers with a more straightforward mechanism for rebutting the presumption of work relationship.

OSHA believes that injuries and illnesses occurring to employees who are present in recreational areas as part of their assigned work duties should be recorded on the Log; the final rule thus only permits employers to exclude recreational activities that are being performed by the employee voluntarily from their Logs. For example, an injury to an exercise instructor hired by the company to conduct classes and demonstrate exercises would be considered work related, as would an injury or illness sustained by an employee who is required to exercise to maintain specific fitness levels, such as a security guard.

Private homes as an establishment. Two commenters raised the issue of whether or not private homes could constitute an establishment (see, *e.g.*, Exs. 21, 15: 304, 358). The National Federation of Independent Business (NFIB) stated: ''[N]FIB believes that the definition of establishment as applied to extremely small work sites, including private homes, needs to be reexamined'' (Ex. 15: 304). The Organization Resource Counselors (ORC) added: ''[d]efinition of establishment as applied to extremely small work sites including private homes needs to be reexamined. The sixty day rule by itself does not seem unreasonable except that it captures these small work sites where the requirements for posting or mailing summaries make little sense'' (Ex. 21).

In the final rule, OSHA has not excluded private homes from the definition of establishment because many private homes contain home offices or other home-based worksites, and injuries and illnesses occurring to employees during work activities performed there on behalf of their employer are recordable if the employer is required to keep a Log. However, the final rule makes clear that, in the case of an employee who telecommutes from his or her home, the home is not considered an establishment for OSHA recordkeeping purposes and the employer is not required to keep a separate Log for the home office. For these workers, the worker's establishment is the office to which they report, receive direction or supervision, collect pay, and otherwise stay in contact with their employer, and it is at this establishment that the Log is kept. For workers who are simply working at home instead of at the company's office, i.e., for employees who are telecommuting, OSHA does not consider the worker's home to be an establishment for recordkeeping purposes, and the definition of establishment makes this fact clear. OSHA has recently issued a compliance directive clarifying that OSHA does not and will not inspect home offices in the employee's home and would inspect a home-based worksite other than a home office only if the Agency received a complaint or referral. A fuller discussion concerning the determination of the work-relatedness of injuries and illnesses that occur when employees are working in their homes can be found in the discussion of § 1904.5 Determination of work-relatedness.

Miscellaneous issues. Two commenters recommended that OSHA consider excluding injuries and illnesses occurring to employees while they were present in other areas as well (Exs. 15: 203, 389). The International Dairy Foods Association (IDFA) suggested:

> [i]n addition, facilities such as cafeterias/lunch/break/rest/locker rooms should be exempted except for the employees who work in those areas. While it is true that other workers may occasionally be injured in these areas, the inclusion of all injury/illness information that occurs in these areas only distorts the data. OSHA should be concerned with the accuracy of any information it requires and/or collects and should eliminate any non-relevant or extraneous information. We believe that this anomaly is easily correctable, and the result will be a more accurate assessment of hazards associated with a specific workplace (Ex. 15: 203).

OSHA does not agree with this commenter that injuries and illnesses occurring in such areas are not work-related. For example, many injuries occurring in lunch rooms involve slippery floors, which the employer can address by establishing a system for immediate spill cleanup. However, the final rule does contain an exception from recordability of cases where the employee, for example, chokes on his or her food, is burned by spilling hot coffee, etc. (see paragraph 1904.5(b)).

The United Parcel Service (UPS) recommended that OSHA craft its rule to coincide with the company's personnel records system, stating ''[t]he unit for which an employer maintains personnel records is presumptively appropriate and efficient; accordingly, OSHA should not mandate a rule that conflicts with a company's current personnel units policy'' (Ex. 15: 424). OSHA recognizes that employers would prefer OSHA to allow companies to keep records in any way they choose. However, OSHA believes that allowing each company to decide how and in what format to keep injury and illness records would erode the value of the injury and illness records in describing the safety and health experience of individual workplaces and across different workplaces and industries. OSHA has therefore decided not to adopt this approach in the final rule.

Two commenters raised the issue of centralized recordkeeping as it related to the proposed definition of establishment. The General Electric Company (GE) stated:

> [G]E does not support the redefinition of establishment to mean a single physical location that is in operation for 60 calendar days or longer. GE field staff frequently establish such establishments and the illness and injury recording and reporting for these sites has been done at central locations. The required data therefore is already collected but the new definition would substantially increase the administrative burden for employers, without providing any additional value. Currently, field employees can report an injury to one well-trained individual who is able to properly administer the program and keep all required documentation. Under this new rule, the employer would need to train a significantly greater number of employees on the proper method for recording injuries and illnesses, keeping documentation, and ensuring the submission of this information to the central office for long-term retention. Further, turnover in the field service operations necessitates an ongoing training program. GE would prefer to train field service employees on GE's

expectations for safe performance and how to perform their jobs safely, rather then training field service employees on OSHA recordkeeping regulations (Ex. 15: 349).

OSHA will continue to allow employers to keep their records centrally and on computer equipment, and nothing in the final rule would preclude such electronic centralization. OSHA believes that the definition of establishment in the final rule will have no impact on the ability of the employer to keep records centrally; however, the final rule does continue to require employers to summarize and post the records for each establishment at the end of the year.

The North Carolina Department of Labor (Ex. 15: 186) suggested that OSHA add a note cross-referencing the rule's exceptions for work relationship in parking lots, to assist readers in locating them. OSHA has not added a note to the definition but believes that the list of exceptions to the presumption of work-relationship will achieve the objective this commenter intended. In addition, OSHA has included a table showing changes from the former system to the new system in the compliance assistance and training materials it is distributing to employers and employees.

Health Care Professional

The final rule defines health care professional (HCP) as ''a physician or other state licensed health care professional whose legally permitted scope of practice (i.e. license, registration or certification) allows the professional independently to provide or be delegated the responsibility to provide some or all of the health care services described by this regulation.''

The proposed rule used the term ''health care provider,'' defined as a person operating within the scope of his or her health care license, registration or certification. The final rule uses the term ''health care professional'' to be consistent with definitions used in the medical surveillance provisions of other OSHA standards (see, *e.g.*, the methylene chloride final rule (29 CFR 1910.1052).

OSHA recognizes that injured employees may be treated by a broad range of health care practitioners, especially if the establishment is located in a rural area or if the worker is employed by a small company that does not have the means to provide on-site access to an occupational nurse or a physician. Although the rule does not specify what medical specialty or training is necessary to provide care for injured or ill employees, the rule's use of the term health care professional is intended to ensure that those professionals providing treatment and making determinations about the recordability of certain complex cases are operating within the scope of their license, as defined by the appropriate state licensing agency.

The rulemaking record reflects a wide diversity of views on this topic. Many commenters thought the proposed definition was much too broad, leaving ''[t]he door open for unqualified individuals to make medical diagnoses'' (see, *e.g.*, Exs. 15: 342, 201). Many commenters also argued that the proposed definition could be misinterpreted (see, *e.g.*, Exs. 31, 15: 131, 342, 397). Specifically, many employers thought the definition could be interpreted to permit untrained or unlicensed individuals to treat employees or to make medical diagnoses that would determine the recordability of certain an injuries or illnesses (see, *e.g.*, Exs. 15: 304, 355, 433). Additionally, some commenters interpreted the proposed definition to mean that any time an individual who was certified or trained in cardiopulmonary resuscitation (CPR) or first aid administered treatment, the case would automatically be recordable (see, *e.g.*, Exs. 15: 116, 132, 323, 341, 356). For example, the National Federation of Independent Business noted:

[u]nlike licensed practitioners, those who are registered or certified are not consistently judged against stringent objective criteria. Oftentimes registration is obtained by paying a fee and certification usually entails attending training courses on how to administer first aid. In any given place of employment it is common to find at least one employee who is trained and certified in first aid care. Simple actions on the part of such an employee could become recordable instances under this proposal. This would only serve to erroneously inflate statistics thus making the work site log an inaccurate reflection of occupational injuries and illnesses (Ex. 15: 304).

Consequently, many commenters advocated qualifying the proposed definition by limiting it to providers with specific types of training, such as licensed physicians (see, *e.g.*, Exs. 15: 42, 105) or other providers, such as dentists, psychiatrists, or clinical psychologists (see, *e.g.*, Exs. 15: 126, 312, 342, 410, 433, 443) and/or practitioners operating under their direction, such as physician assistants and nurses (see, *e.g.*, Exs. 15: 116, 131, 334, 344, 441).

Some commenters proposed eliminating the words ''registration'' and ''certification'' from the definition because these terms have different meanings in different states, and in some states, some providers can pay to be certified or registered even though their credentials are inadequate (see, *e.g.*, Exs. 15: 199, 272, 303, 375). A few commenters also noted that some registrations and certifications are given by professional associations rather than state agencies. For example, according to the American Academy of Physician Assistants:

[w]hile many health care providers receive professional certification through a private certifying body (*e.g.* board certification in cardiology for a doctor), this ''certificate'' is not automatically tied to any state recognized credential or scope of practice permitting the provision of health care services. PAs, for example, are certified by the National Commission on Certification of Physician Assistants. This certification is not synonymous with a state certificate or license. As the proposed rule is currently worded, an NCCPA-certified PA or a physician who is board certified in cardiology would qualify as a ''health care provider.'' However, OSHA would not be assured that the PA or physician was practicing medicine with a license and in compliance with their state scope of practice. Further, it would be illegal in all states for a PA or a physician to provide health care services based solely on their professional certification (Ex. 15: 81).

Still others feared that registered or certified ''alternative medicine'' providers, such as acupuncturists and massage therapists, might influence an employer's recordkeeping decision (see, *e.g.*, Exs. 15: 184, 317, 430).

The proposed definition was, however, supported by several unions, large and small employers, and professional associations representing those health care personnel who might be excluded by a more restrictive definition (see, *e.g.*, Exs. 15: 9, 72, 137, 170, 204, 278). These commenters generally advocated a broader definition because such a definition would recognize the various types of health care personnel who may be called on to attend an injured employee (see, *e.g.*, Exs. 15: 181, 350, 376, 392, 417). Typical of these comments was one from The Fertilizer Institute:

[O]SHA should not qualify and limit this definition to personnel with specific training due to the wide variation in health care support and training available throughout the country. Because not all facilities are located in large metropolitan areas where a wide variety of medical training is available, it may be difficult, if not impossible to satisfy Administration-specified minimal training (Ex. 15: 154).

These commenters did agree, however, that to ensure the availability of quality health care to employees, health care professionals must be licensed or

certified by the state(s) in which they practice and must operate within the scope of that license or certification (see, *e.g.*, Exs. 24, 15: 81, 181, 350, 417). In particular, several commenters stressed the need to define the term ''health care professional'' as one practicing ''in accordance with the laws of the applicable jurisdiction'' (Ex. 15: 409; see also Exs. 15: 308, 349).

Additionally, the AFL–CIO cautioned that using a broad definition of the term ''health care provider'' in this recordkeeping rule should not supersede or in any way affect the provisions of many OSHA health standards that specifically require a physician to perform medical surveillance of occupationally exposed employees:

[a]ll of OSHA's 6(b) health standards, except for Bloodborne Pathogens, require that the medical examinations required by the rules be carried out by a physician or under the supervision of a licensed physician. Many of these standards further require that a physician evaluate the results of the exam and provide a diagnosis and opinion as to whether any adverse medical condition has been detected. Some standards such as lead, benzene, and formaldehyde also require the physician to determine whether or not an employee should be removed from his or her job due to occupational exposures.

[In contrast], the proposed recordkeeping rule would allow diagnoses for conditions covered by these standards (*e.g.*, lead poisoning, asbestosis, byssinosis) to be made by any health care provider operating within the scope of their license. We are concerned that this discrepancy and inconsistency may lead to confusion about the requirements for medical surveillance under OSHA's health standards (Ex. 15: 418).

Therefore, the AFL–CIO recommended that OSHA insert a provision in the proposed recordkeeping rule that would ensure that it is not interpreted as superseding the requirements of those standards. OSHA shares this concern and does not intend the use of the term ''health care professional'' in this rule to modify or supersede any requirement of any other OSHA regulation or standard.

On the basis of the record, OSHA finds that there is a broad consensus among commenters that only qualified health care professionals should make diagnoses and treat injured employees, and that state licensing agencies are best suited to determine who may practice and the legal scope of that practice (see, *e.g.*, Exs. 15: 31, 65, 95, 154, 184, 201, 288, 308, 335, 349, 409, 425). The definition in the final rule ensures that, although decisions about the recordability of a particular case may be made by a wide range of health care professionals, the professionals making those decisions must be operating within the scope of their license or certification when they make such decisions.

Injury or Illness

The final rule's definition of injury or illness is based on the definitions of injury and illness used under the former recordkeeping regulation, except that it combines both definitions into a single term ''injury or illness.'' Under the final rule, 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 systemic poisoning. The definition also includes a note to inform employers that some injuries and illnesses are recordable and others are not, and that injuries and illnesses are recordable only if they are new, work-related cases that meet one or more of the final rule's recording criteria.

Former rule's definition. The former rule also defined these terms broadly, as did the proposal. The text of the former recordkeeping rule did not include a definition of injury or illness; instead, the definitions for these terms were found on the back of the OSHA 200 Log and in the former *Recordkeeping Guidelines* (Ex. 2, p. 37). The definition of occupational injury found in the *Guidelines* was:

Occupational injury is any injury such as a cut, fracture, sprain, amputation, etc., which results from a work accident or from an exposure involving a single incident in the work environment.

Note: Conditions resulting from animal bites, such as insect or snake bites, or from one-time exposure to chemicals are considered to be injuries.

An occupational illness was defined as:

[a]ny abnormal condition or disorder, other than one resulting from an occupational injury, caused by exposure to environmental factors associated with employment. It includes acute and chronic illnesses or diseases which may be caused by inhalation, absorption, ingestion, or direct contact.

The former rule's definitions of injury and illness captured a very broad range of injuries, including minor injuries such as scratches, bruises and so forth, which the employer then tested for work-relatedness and their relationship to the recording criteria. The former rule's definition of illness was even broader, including virtually any abnormal occupational condition or disorder that was not an occupational injury. However, the recording of illnesses under the former rule was more inclusive than is the case for the final rule being published today because the former rule required employers to record every occupational illness, regardless of severity. The final rule applies the same recording criteria to occupational illnesses as to occupational injuries, and thus rules out minor illnesses (see the Legal Authority section and the preamble discussion accompanying section1904.4).

The former rule's broad definition of illness was upheld in a 1989 Occupational Safety and Health Review Commission decision concerning the recording of elevated levels of lead in the blood of workers employed at a battery plant operated by the Johnson Controls Company. In that decision (OSHRC 89–2614), the Occupational Safety and Health Review Commission found that:

[a]s the Secretary states in his brief on review ''The broad applicability of the term ''illness'' adopted in the BLS Guidelines serves this purpose [to set explicit and comprehensive recording requirements designed to obtain accurate and beneficial statistics regarding the causes of occupational disease] by including health related conditions which may not look like, or may not yet be, treatable illnesses.'' Accordingly, for the purposes of the Secretary's recordkeeping regulations promulgated pursuant to sections 8(c)(1) and (2) of the Act, we accept the Secretary's interpretation of ''illness'' that includes blood lead levels at or above 50 ug/100g.

Proposed rule's definition. OSHA proposed a new, broad definition that encompassed both occupational injury and occupational illness. This approach was consistent with one of the goals of the proposal, to eliminate the distinction between injury and illness entirely for recordkeeping purposes. OSHA's proposed definition of an injury or illness was:

''Injury or illness'' is any sign, symptom, or laboratory abnormality which indicates an adverse change in an employee's anatomical, biochemical, physiological, functional, or psychological condition (61 FR 4058).

Comments on the proposed definition. Many commenters remarked that the proposed definition of injury and illness was too broad and all encompassing (see, *e.g.*, Exs. 25, 33, 15: 95, 120, 156, 174, 176, 199, 201, 213, 231, 273, 282, 301, 305, 318, 331, 346, 348, 375, 383, 386, 395, 420, 424, 425, 430). The views of the National Association of Manufacturers (NAM) are representative of this view:

[a] second option is to re-examine the scope of the proposed definition of the term ''injury or illness,'' which appears to go well beyond the normal understanding of the medical profession. That definition is so broad it includes virtually any change in the status of the employee. In contrast, Dorland's

Illustrated Medical Dictionary defines the term ''illness'' as a condition marked by ''pronounced deviation from the normal healthy state.'' Accordingly, the NAM believes the proposed definition of the term ''injury or illness'' would be far more accurate and credible if it were modified to read substantially as follows ''Any sign, symptom, or laboratory abnormality which evidences a significant adverse change in an employee's anatomical, biochemical, physiological, functional, or psychological condition, and which evidences a state of ill-health or a reasonable probability that ill-health will result (Exs. 25, 15: 305).

The American Iron and Steel Instute (AISI) also objected to the definition, stating that:

OSHA also fails to provide any guidance as to what constitutes a ''change'' in an employee's condition. If a person is tired at the end of the day, does that constitute a change in his physical condition? If a person is grumpy at the end of a long shift, has he undergone a change in his psychological condition? If a person gains weight, has his ''anatomical'' condition ''changed''? OSHA's proposed definition would force employers to address these questions but provides none of the answers. * * * Finally, in addition to inviting gross intrusions into employees' lives, the concept of an ''adverse'' psychological change is so vague and burdened with value judgments that it simply is beyond definition.

Several other commenters urged OSHA to add the word ''significant'' and the phrase ''and which evidences a state of ill-health or a reasonable probability that ill-health will result'' to the final rule's definition of injury or illness (see, *e.g.*, Exs. 15: 169, 174, 199, 282, 305, 318, 346, 348, 375, 386, 420, 425).

A number of commenters stated that they did not understand the word ''functional'' in the definition, and particularly how its meaning differs from that of the word ''physiological'' in the definition (see, *e.g.*, Exs. 15: 313, 352, 353, 424). Several commenters also suggested the deletion from the definition of an occupational injury or illness any reference to signs, symptoms or laboratory abnormalities (see, *e.g.*, Exs. 33, 15: 176, 231, 273, 301). The Pacific Maritime Association (Ex. 15: 95) suggested that OSHA delete the proposed definition of injury or illness and replace it with the following: ''[an injury or illness] is any condition diagnosed by a health care provider.'' Two commenters suggested excluding psychological conditions from the definition of injury or illness (Exs. 15: 395, 424). A discussion of mental conditions and OSHA's reasons for including them in the definition is included in the preamble discussion of work-relationship at section 1904.5, Determination of work relatedness. OSHA has decided to continue to include psychological conditions in the final rule's definition of injury and illness because many such conditions are caused, contributed to, or significantly aggravated by events or exposures in the work environment, and the Agency would be remiss if it did not collect injury and illness information about conditions of these types that meet one or more of the final rule's recording criteria.

In the final rule, OSHA has relied primarily on the former rule's concept of an abnormal condition or disorder. Although injury and illness are broadly defined, they capture only those changes that reflect an adverse change in the employee's condition that is of some significance i.e. that reach the level of an abnormal condition or disorder. For example, a mere change in mood or experiencing normal end-of-the-day tiredness would not be considered an abnormal condition or disorder. Similarly, a cut or obvious wound, breathing problems, skin rashes, blood tests with abnormal results, and the like are clearly abnormal conditions and disorders. Pain and other symptoms that are wholly subjective are also considered an abnormal condition or disorder. There is no need for the abnormal condition to include objective signs to be considered an injury or illness. However, it is important for employers to remember that identifying a workplace incident as an occupational injury or illness is only the first step in the determination an employer makes about the recordability of a given case.

OSHA finds that this definition provides an appropriate starting point for decision-making about recordability, and that the requirements for determining which cases are work-related and which are not (section 1904.5), for determining which work-related cases reflect new injuries or illnesses rather than recurrences (section 1904.6), and for determining which new, work-related cases meet one or more of the general recording criteria or the additional criteria (sections 1904.7 to 1904.12) together constitute a system that ensures that those cases that should be recorded are captured and that minor injuries and illnesses are excluded. In response to the desire of many commenters for greater clarity, OSHA has added language to the definition of injury and illness to make it clear that many injuries and illnesses are not recordable, either because they are not work-related or because they do not meet any of the final rule's recording criteria.

In general, all of those commenters who opposed the proposed definition wished OSHA to revise the definition so that it would provide an initial screening mechanism for excluding minor injuries and illnesses, even before the status of the case vis-a-vis the geographic presumption or recording criteria was assessed. OSHA recognizes that the proposed language referring to any adverse change was too broad, and has returned to the former language requiring that the change reach the ''abnormal condition'' level. OSHA recognizes that this is still a broad definition—deliberately so. After reviewing this issue thoroughly, OSHA finds that a system that initially defines injury and illness broadly and then applies a series of screening mechanisms to narrow the number of recordable incidents to those meeting OSHA and statutory criteria has several advantages. First, by being inclusive, this system avoids the problem associated with any ''narrow gate'' approach: that some cases that should be evaluated are lost even before the evaluation process begins. Second, this approach is consistent with the broad definitions of these terms that OSHA has used for more than 20 years, which means that the approach is already familiar to employers and their recordkeepers. Third, adding terminology like ''significant'' and ''reasonable probability that ill-health will result,'' as commenters suggested, would unnecessarily complicate the first step in the evaluation process.

Accordingly, the definition of injury and illness in the final rule differs from the former definition only in minor respects. The definition is based on the former rule's definitions, simply combining the separate definitions of injury and illness into a single category, to be consistent with the elimination of separate recording thresholds for occupational injuries and occupational illnesses. As discussed above, OSHA has elected to continue to use a broad definition of illness or injury. The definition in the final rule also makes it clear that each injury and illness must be evaluated for work-relatedness, to decide if it a new case, and to determine if it is recordable before a covered employer must enter the case in the OSHA recordkeeping system.

''You''

The last definition in the final rule, of the pronoun ''you,'' has been added because the final rule uses the ''you'' form of the question-and-answer plain-language format recommended in Federal plain-language guidance. ''You,'' as used in this rule, mean the employer, as that term is defined in the Act. This definition makes it clear that employers are responsible for implementing the requirements of this

final rule, as mandated by the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*)

VIII. Forms

This section of the preamble includes a copy of the final forms package. For a discussion of the contents, the old forms, the proposed forms, and comments to the proposed forms, refer to the preamble discussion of Subpart C. 1904.6 Forms. The forms fit on 11″ by 14″ legal sized paper. The forms do not appear in the **Federal Register** due to printing considerations. To obtain a copy contact OSHA's Publications Office at (202) 693–1888, order the forms from the OSHA Internet home page *(http://www.osha.gov)* or download the forms from the OSHA home page.

IX. State Plans

The 25 States and territories with their own OSHA approved occupational safety and health plans must adopt a rule comparable to the 29 CFR part 1904 recordkeeping and reporting occupational injuries and illnesses regulation being published today, with the exception of the requirements of § 1904.41 Annual OSHA Injury and Illness Survey of Ten or More Employers. These 25 States are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming; and Connecticut and New York (for State and local Government employees only).

The former 29 CFR 1952.4 regulation required that States with approved State-Plans under section 18 of the OSH Act (29 U.S.C. 667) must adopt occupational injury and illness recording and reporting regulations which were ''substantially identical'' to those set forth in 29 CFR part 1904 because the definitions used by the Federal and State governments for recordkeeping purposes must be identical to ensure the uniformity of the collected information. In addition, former § 1952.4 provided that employer variances or exceptions to State recordkeeping or reporting requirements in a State-Plan State would be approved by the Bureau of Labor Statistics. Similarly, a State was permitted to require supplemental reporting or recordkeeping data, but that State was required to obtain approval from the Bureau of Labor Statistics to ensure that the additional data would not interfere with ''the primary uniform reporting objectives.''

The proposed revision of 29 CFR 1952.4 would have retained the same substantive requirements for the State-Plan States, but reflected the organizational shift of some recordkeeping responsibilities from the Bureau of Labor Statistics to OSHA in 1990. See also the memorandum of understanding between OSHA and BLS effective July, 1990 (Ex. 6).

OSHA received no comments directed specifically to proposed section 1952.4. Section 1952.4 of the final rule parallels the provisions of § 1904.37, State Recordkeeping Regulations, the section of the final rule implementing the requirements proposed as § 1904.14, Recordkeeping Under Approved State Plans. The discussion of the comments and OSHA's decisions on the few issues associated with this section can be found in the preamble discussion for § 1904.37, State Recordkeeping Regulations. Section 1952.4 of the final regulation differs from that of the former regulation in that (1) the final rule requires the States to consult with and obtain approval from OSHA rather than BLS when promulgating supplementary fatality, injury or illness recording and reporting requirements; (2) the final rule allows the State to grant variances from the fatality, injury and illness reporting and recording requirements for State and local governments with Federal approval; and (3) Federal OSHA rather than the BLS is responsible for issuing all private sector and federal variances from the 29 CFR part 1904 requirements.

OSHA Data Initiative Surveys

In 1997, OSHA issued a final rule at § 1904.17, OSHA Surveys of 10 or More Employers that required employers to submit occupational injury and illness data to OSHA when sent a survey form. The 1904.17 rule enabled the Agency to conduct a mandatory survey of the 1904 data, which has been named the OSHA Data Initiative. Section 1904.41 of the final rule, Annual OSHA Injury and Illness Survey of Ten or More Employers, simply carries forward the employer reporting requirements of the former § 1904.17, with only minor editorial changes.

When OSHA issued the 1997 rule, the Agency determined that the States were not required to adopt a rule comparable to the federal § 1904.17 rule (62 FR 6441). Paragraph 1952.4(d) has been added to the final rule to continue to provide the States with the flexibility to participate in the OSHA Data Initiative under the Federal requirements or the State's own regulation. At its outset, Federal OSHA conducted the OSHA data collection in all of the states, including those which administer approved State-Plans. However, in recent years, Federal OSHA has collected data only in the State-Plan States that wish to participate. For example, in 2000, the states of Oregon, South Carolina, Washington, and Wyoming elected not to participate in the annual OSHA survey and employers in those States were not surveyed. OSHA plans to continue to allow the individual States to decide, on an annual basis, whether or not they will participate in the OSHA data collection.

If a State elects to participate, the State may either adopt and enforce the requirements of section 1904.41 as an identical or more stringent State regulation, or may defer to the Federal regulation and Federal enforcement with regard to the mandatory nature of the survey. If the State defers to the Federal section 1904.41 regulation, OSHA's authority to implement the survey is not affected either by operational agreement with a State-Plan State or by the granting of final State-Plan approval under section 18(e). OSHA's authority under the Act to take appropriate enforcement action if necessary to compel responses to the survey and to ensure the accuracy of the data submitted by employers will be exercised in consultation with the State in State-Plan states.

X. Final Economic Analysis

1. Introduction

A. Background

OSHA is revising its regulation on Recording and Reporting Occupational Injuries and Illnesses, which is codified at 29 CFR part 1904. Executive Order 12866, issued by President Clinton on September 30, 1993, requires OSHA to assess the benefits and costs of regulations, and to design regulations to impose the least burden on society consistent with achieving the Agency's regulatory objective. This economic analysis, therefore, was developed to describe the potential impacts of the final revisions to 29 CFR part 1904.

The final revisions to 29 CFR part 1904 reflect the results of studies of occupational injury and illness reporting and recordkeeping. One study of the accuracy and quality of occupational safety and health statistics was conducted by the National Research Council of the National Academy of Sciences (NAS), under contract to the Bureau of Labor Statistics (BLS).[4] The NAS report focused on changes to the

[4] National Research Council of the National Academy of Sciences, *Counting Injuries and Illnesses in the Workplace: Proposal for a Better System,* 1987.

overall strategy for occupational health and safety statistics and reporting, rather than on specific methods for improving the existing recordkeeping system. Reform of the occupational health and safety recordkeeping system was also the topic of a conference convened by the Keystone Center, an independent, non-profit organization that specializes in mediating multi-party disputes in the areas of science, technology, environmental, and health concerns. The Keystone Conference brought together 46 representatives from labor unions, corporations, the health professions, government agencies, Congressional staff, and academia to engage in a year-long dialogue. The Conference's final report[5] was an important source of ideas for some of the changes being made in OSHA's final recordkeeping rule.

In 1990, the Department of Labor transferred from the Bureau of Labor Statistics (BLS) to OSHA the responsibility for developing recordkeeping regulations and their accompanying guidelines. Although BLS continues to compile occupational injury and illness statistics, OSHA determines what information needs to be recorded by employers.

This economic analysis measures the potential regulatory impacts of the final revisions to 29 CFR part 1904. Much of the data for this analysis derives from a study conducted for OSHA by Meridian Research.[6] The data in the Meridian study, however, have been updated to reflect more recent data on the numbers of establishments affected and on rates of occupational illnesses and injuries, as well as the evidence submitted to the record in the course of this rulemaking.

B. Overview of the Final Regulation

The final regulation revises an existing rule, Recording and Reporting Occupational Injuries and Illnesses (29 CFR part 1904). Specific changes include changes in coverage, editorial and formatting changes, and changes in specific provisions that affect the requirements for recording and reporting. Changes are summarized in Table X–1.

(1) Editing and Format Changes

Language and Structure of the Rule. The final regulation reflects a complete rewriting of 29 CFR part 1904. The new version of the rule is written in plain language, using a question and answer format. This style is designed to make the rule clearer, more accessible, and easier to understand. In addition, the final rule contains many questions that employers frequently ask about recordkeeping, and it provides answers to those questions. By including these questions and answers in the rule itself, OSHA has provided employers with a readily available source of information on how to record particular cases. This means that the quality of the data being recorded will be higher than was the case in the past.

TABLE X–1: CHANGES IN RECORDKEEPING REQUIREMENTS

Section of final rule	Section of former or other source	Rule change
1904.2	1904.16	Cover parts of SICs 55, 57, 59, 65, 72, 73, 83, & 84; Exempt parts of SICs 52, 54, 76, 79, & 80.
1904.5	Guidelines	Include specific exemptions from recording for certain cases, such as common cold or flu.
		Limit parking lot exemption to commuting.
		Require recording of preexisting injury or illness only if workplace exposure "significantly" aggravates the injury or illness.
1904.7	1904.12	Replace term "lost workdays" in recording criteria with "days away" or "days restricted or transferred"; count days as calendar days, rather than scheduled work days; cap count at 180 days; do not record restricted, transferred, or lost time occurring only on day of injury or illness as restricted work, job transfer, or a day away. Define routine duties for restricted work purposes as work activities done at least once per week. Define medical treatment beyond first aid to include all non-prescription drugs given at prescription strength and first and subsequent physical therapy or chiropractic treatment and to exclude use of Steri-Strips™ and hot or cold therapy.
1904.7	(New)	Narrow criteria for recording illnesses by excluding minor illnesses.
1904.8	(New)	Record all needlestick/sharps injury cases involving exposure to blood or other potentially infectious materials.
1904.10	Interpretation	Record all hearing loss cases at 10 dB shift, rather than 25 dB shift.
1904.11	Interpretation	Narrow criteria for recording positive tuberculosis test.
1904.12	1904.12	Make criteria for recording MSD cases the same as those for all other injuries and illnesses.
1904.29	1904.2	Replace old Log form with simplified Form 300.
		Require that cases be recorded within 7 calendar days rather than 6 working days.
1904.29	1904.4	Require more information on new Form 301 than on former Form 101.
1904.29	(New)	Define new category of "privacy concern cases" and require maintenance of separate, confidential list of names for such.
1904.29	(New)	Require employer to protect privacy of injured or ill workers by withholding names, with certain exceptions.
1904.32	1904.5 (New)	Post Annual Summary for 3 months rather than 1 month.
		Review records for accuracy at end of year.
		Require descriptive and statistical totals in Annual Summary.
		Require certification of accuracy of the Log by responsible company official.
1904.34	1904.11	With change of ownership, require seller to turn over OSHA records to buyer.
1904.35	(New)	Inform employees how to report injuries or illnesses to employer.
		Provide union representative access to some, but not all, Form 301 information.
1904.39	1904.8	Delete requirement for common carrier and motor vehicle incidents to be reported.

[5] Keystone Center, *Keystone National Policy Dialogue on Work-Related Illness and Injury Recording*, 1989.

[6] Meridian Research, Inc., Economic Analysis of Proposed Changes to OSHA's Recordkeeping Requirements (29 CFR 1904), 1991.

The rule also has been completely restructured. Its provisions have been put into a logical sequence, with topics addressed as an employer would encounter them when complying with the rule. The numbering of sections within 29 CFR part 1904 has been entirely revised.

The final rule includes considerable detail not found in the former rule. This detail generally reflects interpretations that OSHA has made over time. By including these in the rule itself, OSHA intends to make the rule far clearer. Interpretations and related details are formatted as check lists, for ease of interpretation.

(2) Specific Changes in Regulatory Provisions

(a) Changes in Coverage

Former rule. The former rule exempted all employers with 10 or fewer employees and all employers in specific low-hazard retail and service industry sectors from routinely keeping OSHA records. The industry exemptions were based on injury and illness data at the 2-digit SIC code level.

Final rule. The final rule continues the former rule's exemption of all employers with 10 or fewer employees from routine recordkeeping requirements. The final rule also exempts all employers in specific lower-hazard retail and service industry sectors, as the former rule did, from maintaining OSHA records routinely. The final rule exempts 3-digit SIC industries if their average lost workday injury (LWDI) rate was at or below 75% of the overall private sector LWDI average rate in the most recent BLS occupational injury and illness data.

Change. Updating the list of exempted industry categories by relying on 3-digit, rather than 2-digit, data in the final rule results in 17 formerly exempt industries being covered under the final rule (see Table X–2). Employers in 16 industries that were covered by the former rule are exempted by the final rule (see Table X–3). The exemptions in the final rule are better targeted than those in the former rule, because high-hazard 3-digit industries embedded within lower-hazard 2-digit industries are not exempted, while low-hazard 3-digit industries embedded within higher-hazard 2-digit industries are exempted. Employers in the newly covered industries will experience additional costs and benefits from these new requirements, while newly exempted employers will also experience changes in costs and benefits. These costs and benefits are quantified in this economic analysis.

(b) Changes to the OSHA Forms

Former rule. The former rule required the employer to maintain two forms, the OSHA 200 Log and Summary of Occupational Injuries and Illnesses (one form including both a Log and Summary), and the OSHA 101 Supplementary Record of Occupational Injuries and Illnesses. The employee who supervised the production of the annual summary was required to certify it.

Final rule. The final rule requires the employer to maintain up to four records: the OSHA 300 Log of Work-Related Injuries and Illnesses, the OSHA 300-A Summary of Work-Related Injuries and Illnesses, the OSHA 301 Injury and Illness Incident Report, and, if one or more employees experiences an injury or illness case classified as a ''privacy concern'' case, a confidential list of those employees. (See discussion of privacy provisions below.)

Change. The new OSHA 300 Log is smaller than the Former OSHA 200 Log, fits on legal sized pages (8 ½'' x 14''), has fewer columns and a more logical, user friendly design. Each injury and illness must be recorded within 7 calendar days, rather than the 6 working days allowed under the former rule. Although the 300 Log requires essentially the same information as the former 200 Log, it is easier to complete, which will result in cost savings for employers. These savings are quantified in this economic analysis.

The OSHA 300–A Summary Form replaces the summary portion of the former OSHA 200 Log and Summary Form. Each covered employer must complete the summary at the end of the year and post it for 3 months, while the former rule required posting for one month. The longer posting period will result in only minimal additional costs. The final rule also requires the employer to review the records at year end for accuracy before summarizing them, requires additional certification of accuracy by a company executive, and requires additional data on the average employment and hours worked at the establishment. These changes will result in higher quality data, and will also add costs for employers. These costs are quantified in this economic analysis.

The OSHA 301 Incident Report is only slightly different from the OSHA 101 Form that it replaces. Some data elements have been added to the form. In addition, the form has been redesigned to obtain better responses to the questions and to accommodate employee access to the forms while still protecting privacy (see discussion below). Costs of recording additional data elements are quantified in this economic analysis.

(c) Changes in the Recording Criteria

The final rule includes a number of changes that will affect the number of recorded cases, and thus potentially affect the costs and costs savings associated with the regulation. Some of these changes will result in more cases being recorded, as follows: (1) Changes to the definitions of medical treatment and first aid, (2) change to the criterion for recording cases of hearing loss, and (3) change to the criterion for recording needlestick and sharps injuries.

Other changes will result in fewer cases being recorded, as follows: (1) Exemptions from the requirement to consider certain cases work-related, (2) elimination of different recording criteria for injuries and illnesses, (3) changes to the requirements for recording injuries and illnesses with days away or job restriction/transfer, (4) changes to the criteria for recording cases of tuberculosis, and (5) elimination of separate recording criteria for musculoskeletal disorders.

Because the final rule makes a number of changes, some of which increase the number of recordable injuries and illnesses and some of which decrease the number of recordable cases, it is difficult to estimate the precise impact of each change. OSHA expects that these changes, with two exceptions, will generally have the effect of offsetting each other, with the result that approximately the same number of injury and illness cases will be recorded under the final rule as were recorded under the former rule. The costs and cost savings associated with each small definitional change have not been quantified in this economic analysis. However, the changes made in the recording of hearing loss cases and the recording of needlestick and sharps injury cases will result in quantifiable increases in the number of recorded injuries. The cost effects of these changes are specifically identified in this economic analysis.

OSHA recognizes that individual employers will be affected differently by the changes made in the final rule and that some employers will record more cases under the final rule while others will record fewer. OSHA also finds that the overall effect of the changes made to the final rule is to greatly ease the determination of recordability, and has quantified these cost savings in this economic analysis.

(i) Changes to the Determination of Work-Relationship

Former rule. Under the former rule, work-relationship was established if work either caused or contributed to the injury or illness, or aggravated a pre-existing condition. Injuries and illnesses that occurred on the employer's premises were presumed to be work-related, with three exceptions: cases that occurred in a parking lot or recreational facility, cases that occurred while the employee was present at the workplace as a member of the general public and not as an employee, and cases where injury or illness symptoms arose at work but were the result of a non-work-related injury or illness were not required to be recorded.

Final rule. Work relationship is established if work either caused or contributed to the injury or illness, or significantly aggravated a pre-existing condition. The final rule continues the former rule's geographic presumption of work relationship but adds several additional exceptions to the need to record cases involving: voluntary participation in wellness programs, eating and drinking food or beverages for personal consumption, intentionally self-inflicted wounds, personal grooming, or the common cold or flu. The final rule also contains an exception that limits the recording of mental illness cases.

Change. The final rule changes the requirement to record cases in which any degree of aggravation of a preexisting injury or illness has occurred; now, the work environment must have significantly aggravated a pre-existing injury or illness before the case becomes work-related. The final rule also adds several new exceptions to the geographic presumption of work relationship. Both of these changes will result in fewer cases being recorded under the final rule.

(ii) Elimination of Different Recording Criteria for Injuries and Illnesses

Former rule. Under the former rule, employers were required to record all work-related deaths, all illnesses, and injuries that resulted in days away from work, restricted work, transfer to another job, medical treatment beyond first aid, or loss of consciousness. The employer was required to decide if the case was either an injury or illness; injuries included all back cases and any case caused by an instantaneous event, while illnesses were any abnormal condition or disorder caused by a non-instantaneous event. The employer was required to record every illness case, regardless of severity.

Final rule. Under the final rule, the employer is not required to determine whether a case is an injury or illness to decide whether or not to record the case. A case is recordable if it results in death, days away from work, job restriction or transfer, medical treatment beyond first aid, loss of consciousness, or if the case is a significant injury or illness diagnosed by a physician or other licensed health care professional. Additional criteria are included for cases of hearing loss, tuberculosis, and needlestick injuries and the rule clarifies how to record musculoskeletal disorders and cases involving medical removal or work restriction under OSHA's standards.

Change. The new general recording criteria eliminate the recording of minor illness cases, which will result in fewer cases being recorded by employers, and lower costs. The new criteria for recording hearing loss and needlestick cases will increase the number of cases and the costs associated with recording.

(iii) Days Away and Job Restriction/Transfer

Former rule. Under the former rule, employers were required to record lost workday cases, which were defined as any case that resulted in days away from work and/or days of restricted work or job transfer. Restricted work included any case when because of injury or illness (1) the employee was assigned to another job on a temporary basis, (2) the employee worked at a permanent job less than full time, or (3) the employee worked at his or her permanently assigned job but could not perform his or her routine duties. Routine duties were defined as any activity the employee would be expected to perform even once during the course of the year. The employer was required to record any case that involved restricted work, even if the restriction occurred only on the day the injury or illness occurred.

Employers were also required to count days as the number of scheduled days away or restricted, i.e., to use a counting system that included only scheduled work days and excluded any days off, such as weekends and days the plant was closed.

Final Rule. The final rule continues to require employers to record cases with days away from work, restricted work or transfer to another job. For restricted work/job transfer, the final rule focuses on whether or not the employee is permitted to perform his or her routine job functions, defined as the duties he or she would have performed at least once per week before the injury or illness. If the work restriction is limited to the day of the injury or illness, and none of the other recording criteria are met, the case is not recordable.

The final rule continues to require the employer to count days away from work and days of restricted work/job transfer. However, the days are counted using calendar days, and employers may stop the count at 180 days. The employer also may stop counting restricted days if the employer permanently modifies the employee's job in a way that eliminate the routine functions the employee was restricted from performing.

Change. The final rule shifts the focus of the definition of restricted work to the routine functions of the job and away from the former rule's focus on any activity the injured or ill employee might have performed during the work year, and eliminates the requirement to record cases that involve restrictions only on the day of injury or illness. These changes will result in fewer cases being recorded, and will have the effect of reducing costs for employers.

The final rule's changes to the method of counting days, i.e., relying on calendar days instead of scheduled work days, will simplify the counting requirements and produce more reliable information on injury and illness severity. Both the change to the calendar day counting method and the capping of days away and days restricted or transferred at 180 days will have the effect of reducing costs for employers.

(iv) Changes to the Definitions of Medical Treatment and First Aid

Former rule. The former rule defined medical treatment as any treatment, other than first aid treatment, administered to injured or ill employees. Medical treatment involved the provision of medical or surgical care for injuries through the application of procedures or systematic therapeutic measures.

The former regulation defined first aid as ''any one-time treatment, and any follow up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one-time treatment, and follow up visits for the purpose of observation are considered first aid even though provided by a physician or registered professional personnel.''

The former *Recordkeeping Guidelines* provided two lists of treatments employers could use to determine whether a particular treatment was first aid or medical treatment for recordkeeping purposes. For example, the use of prescription drugs was generally considered medical treatment, except when only a single dose was

prescribed. Physical therapy, hot or cold therapy, or soaking therapy was considered medical treatment if it was used on a second or subsequent visit to medical personnel. Treatment of any third or second degree burn was considered medical treatment. The former rule's lists provided a useful starting point for determining which treatments were first aid or medical treatment, but also caused some confusion because, if a particular treatment was not on either list, the employer was not sure how to classify the treatment.

Final rule. The final rule defines medical treatment as the management and care of a patient to combat disease or disorder. For the purposes of Part 1904, medical treatment does not include: visits to a physician or other licensed health care professional solely for observation or counseling; the conduct of diagnostic procedures, such as x-rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes (*e.g.*, eye drops to dilate pupils); or first aid.

The final rule then defines first aid by listing 14 first aid treatments, such as using non-prescription drugs at non-prescription strength, using bandages or butterfly bandages, using hot or cold therapy, using splints or slings to transport an accident victim, and drinking liquids for relief of heat stress.

Change. The final rule changes the definitions of which treatments are considered first aid and medical treatment. Each change will result in some change in the number of cases that are recorded, as shown in the following table.

Changes from the former rule to the final rule	Impact on number of cases recorded
Medical treatment now includes all non-prescription drugs at prescription strength and any dose of a prescription drug.	More cases
First aid now includes hot or cold therapy, regardless of how often applied.	Fewer cases
Medical treatment now includes any physical therapy/chiropractic treatment.	More cases
First aid now includes use of butterfly bandages and Steri-Strips for any purpose.	Fewer cases
Medical treatment now includes any use of oxygen.	More cases
Second degree burns are now not automatically recordable.	Fewer cases

The overall effect of the changes to the definitions of medical treatment and first aid is difficult to determine. OSHA believes that they generally offset each other, but data to confirm this are not available.

(v) Changes in the Recording of Needlestick and Sharps Injuries

Former rule. Under the former rule, an employer was required to record a needlestick or sharps injury involving human blood or other potentially infectious material if the case resulted in death, days away from work, restricted work, medical treatment beyond first aid, or loss of consciousness, or if the employee seroconverted (contracted HIV or hepatitis infection).

Final rule. Under the final rule, an employer is required to record *all* needlestick or sharps injuries involving human blood or other potentially infectious material. These cases are recorded as privacy concern cases.

Change. The final rule will require the recording of an additional estimated 501,640 needlestick and sharps injury cases. The costs associated with this change have been quantified in this economic analysis. This change will also significantly simplify recording for those employers who recorded 88,925 needlestick and sharps injuries under the former rule, resulting in cost savings for those cases. These cost savings have been quantified in this economic analysis.

(vi) Changes in the Recording of Hearing Loss

Former rule. Under OSHA's interpretations of the former rule, an employer was required to record a hearing loss of 25 decibels in one or both ears, averaged over three frequencies, compared to the employee's baseline audiogram. Work-relatedness was presumed if the employee was exposed to noise at or above an 8-hour time weighted average of 85 decibels.

Final rule. The final rule requires an employer to record any hearing loss that reaches the level of a standard threshold shift (STS), defined by the occupational noise standard as a 10 decibel shift in hearing, averaged over three frequencies, in one or both ears, compared to the employee's baseline audiogram. Work-relatedness is presumed if the employee was exposed to noise at or above an 8-hour time weighted average of 85 decibels.

The employer must check a separate box on the OSHA Log to identify hearing loss cases.

Change. The additional check box will result in improved statistical data on occupational hearing loss. The change to a more sensitive threshold (10 decibel shift rather than 25 decibel shift) for recording occupational hearing loss will result in the recording of additional cases. Based on audiometric data collected from 22 companies in SICs 20 through 29, 33, 34, 35, 39, 49, and 90, OSHA estimated that, with the new threshold, 250,000 more workers in manufacturing and 25,000 more workers elsewhere in general industry would sustain recordable hearing loss annually. The costs associated with this increase have been quantified in this economic analysis.

(vii) Changes in the Recording of Tuberculosis

Former rule. Under OSHA's interpretation of the former rule, an employer was required to record an active case of tuberculosis (TB) or a positive TB skin test. If the employee was employed in one of five high risk industries, as defined by the Centers for Disease Control and Prevention (CDC), the case was presumed to be work related.

Final rule. Under the final rule, a case of tuberculosis is recorded if the employee has active TB or has a positive skin test. The case is considered work-related if the employee has been occupationally exposed at work to another person (client, patient, co-worker) with a known, active case of tuberculosis. The employer may subsequently remove or line out the case if a medical investigation shows that the case was caused by a non-occupational exposure.

Change. The final rule eliminates the ''special industries'' presumption of work-relatedness. OSHA believes that this change will reduce the number of recorded TB cases, and thus reduce costs somewhat. However, data to estimate the cost savings associated with this change are not available.

(viii) Changes in the Recording of Musculoskeletal Disorders (MSD)

Former rule. Under the former rule, MSD cases were recorded differently based on whether they were occupational injuries or occupational illnesses. If the case was an MSD *injury,* it was recorded if it resulted in days away from work, restricted work, job transfer, or medical treatment beyond

first aid. If the case was an MSD *illness,* it was recorded if it resulted in:

(1) Objective findings:

—A diagnosis by a health care provider (carpal tunnel, tendinitis, etc.)

—Positive test results (Tinel's, Finkelstein's, Phalen's, EMG)

—Signs (redness, swelling, loss of motion, deformity)

OR

(2) Symptoms combined with days away from work, restricted work, or medical treatment beyond first aid.

Injury MSD cases were considered to be ''new cases'' if they resulted from new (additional) workplace events or exposures. Illness MSD cases were treated in the same way or were subjected to a ''30 day rule'' whereby if an ill employee did not return to the health care provider for care after 30 days the case was considered resolved. If the same employee reported later with additional MSD problems, the case was evaluated for recordability as a new illness.

Final rule. Under the final rule, MSD cases are recorded using the same criteria as those for other injuries and illnesses. Cases are recorded if they result in days away from work, restricted work/job transfer, or medical treatment beyond first aid. Recurrences are also handled just as other types of injuries and illnesses are.

The employer must check a separate box on the Log for MSD cases to permit separate data on these disorders to be collected.

Change. The final rule simplifies the recording of MSDs and collects improved statistical information on these disorders on the 300 Log. Because the final rule does not require the automatic recording of diagnosed disorders, physical signs, and positive test results, it will generally require employers to record fewer MSD cases, resulting in some cost savings. However, the magnitude of these cost savings is not known.

(d) Change in Ownership

Former rule. Under the former rule an employer who acquired a business establishment was required to retain the OSHA records of the prior owner. Each owner was responsible for the records only for that period of the year that each owned the business.

Final rule. Under the final rule, when a business establishment changes owners, each owner is responsible for the OSHA records only for that period of the year that each owned the business. The prior owner is required to transfer the records to the new owner, and the new owner is responsible for retaining those records.

Change. The final rule differs from the former rule by requiring the prior owner to transfer the records to the new owner. Any new costs imposed by this requirement are extremely small and have not been quantified in this economic analysis.

(e) Employee Involvement

Former rule. The former rule involved employees in the recordkeeping process in two ways: through posting of the annual summary of occupational injuries and illnesses for one month, and by allowing access to the OSHA 200 Log by employees, former employees, and their representatives.

Final rule. The final rule involves employees in the process to a greater extent than formerly: it requires the employer to set up a system for accepting injury and illness reports from employees and requires the employer to tell each employee how to report a work-related injury or illness. The final rule also requires the employer to post the annual summary for three months. Employees, former employees, and their representatives have the right to one free copy of the 300 Log, the injured or ill employee or a personal representative has a right to one free copy of the 301 (Incident Report) for his or her case, and authorized employee representatives have a right to one free copy of a portion of the 301 form for all injuries and illnesses at the establishment he or she represents.

Change. The final rule will improve employee reporting of work-related injuries and illnesses and allow improved access to the information in the records, including one free copy of each record requested. OSHA finds that these provisions will increase costs for employers, and these costs have been quantified in the economic analysis.

(f) Privacy Protections

Former rule. The former rule had no provisions to protect the privacy of injured or ill workers when a coworker or employee representative was allowed access to the OSHA 200 Log. The employer was required to provide the Log with names intact.

Final rule. The final rule protects the privacy of injured or ill workers when a coworker or employee representative accesses the records by prohibiting the employer from entering the employee's name for certain ''privacy concern'' cases. A separate, confidential list of case numbers and employee names must be kept for these cases. An employee representative can access only part of the information from the 301 form, and the employer must withhold the remainder of the information when providing copies. With certain exceptions, if the employer provides the information to anyone other than a government representative, an employee, a former employee, or an employee representative, the names and other personally identifying information must be removed from the forms. In addition, separation of the summary form will eliminate accidental disclosure of employee names during the posting of the summary information.

Change. The final rule protects injured or ill employees' privacy in several ways, *e.g.,* by limiting the distribution of injured or ill employees' names, by not recording the employee's name in privacy concern cases, and by providing employee representatives access to only part of the Form 301. The costs of keeping a separate, confidential list for privacy concern cases have been quantified in the economic analysis.

(g) Computerized and Centralized Records

Former rule. The former rule allowed the employer to keep the OSHA 200 Log on computer equipment or at a location other than the establishment, and required that the employer have available a copy of the Log current to within 45 calendar days. The former rule had no provisions for keeping the OSHA 101 form off site or on computer equipment.

Final rule. The final rule allows all forms to be kept on computer equipment or at an alternate location, providing the employer can produce the data when it is needed to provide access to a government inspector, employee, or an employee representative. There is no need to keep records at the establishment at all times.

Change. The final rule provides the employer with greater flexibility for keeping records on computer equipment and at off-site locations. These costs savings have been quantified in the economic analysis.

Reporting of Fatality and Catastrophe Incidents

Former rule. The former rule required the employer to report any workplace fatality, or any incident involving the hospitalization of 3 or more employees to OSHA within 8 hours.

Final rule. The final rule requires the employer to report any workplace fatality, or any incident involving the hospitalization of 3 or more employees to OSHA within 8 hours. The final rule does not require the employer to report to OSHA fatal or multiple hospitalization incidents that occur on commercial airlines, trains and buses; or fatality/catastrophe incidents from a

motor vehicle accident on a public highway.

Change. The final rule requires employers to report fewer incidents to OSHA, which will result in cost savings. These cost savings have not been quantified in the economic analysis.

(3) Qualitative Overview of Impacts

Forms

The largest impact of the final rule's revised provisions on recordkeeping at the individual establishment will be in the direction of cost savings and will come from the plain language rewriting of the rule itself and the new forms. These changes in language, organization, and format will reduce the burden on employers and recordkeepers in several ways. The clearer language and streamlining will allow the entire rule to be read more quickly and with greater comprehension. It will also be possible to obtain a good understanding of the rule in a single reading (which will be particularly helpful for establishments with very few or no recordable incidents). Finally, the organization and format make it far easier to get quick answers to specific questions, because the answers are part of the final rule itself rather than being included in a separate document, the *Recordkeeping Guidelines for Occupational Injuries and Illnesses* (the ''Blue Book'').

2. Industry Profile

OSHA's former regulation for Recording and Reporting Occupational Injuries and Illnesses, 29 CFR part 1904, covered most industries in the economy. The principal exceptions were the finance, insurance, and real estate sector, some retail trade industries, and some service industries. This chapter describes the changes in coverage, as well as key characteristics of the industries that will be covered under the final rule.

A. Changes in Industries Covered

The former rule (with one exception) covered or exempted industries at the two-digit SIC level. The final rule fine tunes this coverage in the finance, insurance, and real estate, retail trade, and service sectors by extending coverage to some high-hazard three-digit SICs in two-digit SICs that were not covered by the former rule and exempting some low-hazard three-digit SICs in two-digit industries that were covered by the former rule. These changes, by two-digit SICs, are as follows:

Industries covered under the former rule that would continue to be covered under the final rule:[7]

Agriculture (SIC 01–02),
Forestry, and Fishing (SIC 07–09),
Oil & Gas Extraction (SIC 13),
Sulfur Mining (SIC 1479, part),
Construction (SIC 15–17),
Manufacturing (SIC 20–39),
Transportation (SIC 41–42),
United States Postal Service (SIC 43),
Public Utilities (SIC 44–49),
Wholesale Trade (SIC 50–51),
General Merchandise Stores (SIC 53),
Hotels and Other Lodging Places (SIC 70), and
Automotive Repair, Services, and Parking (SIC 75).

Industries exempted under the former rule that would continue to be exempted:

Apparel and Accessory Stores (SIC 56),
Eating and Drinking Places (SIC 58),
Depository Institutions (SIC 60),
Nondepository Institutions (SIC 61),
Security and Commodity Brokers (SIC 62),
Insurance Carriers (SIC 63),
Insurance Agents, Brokers, and Services (SIC 64),
Holding and Other Investment Offices (SIC 67),
Motion Pictures (SIC 78),
Legal Services (SIC 81),
Educational Services (SIC 82),
Membership Organizations (SIC 86),
Engineering, Accounting, Research, Management & Related Services (SIC 87), and
Services, not elsewhere classified (SIC 89).

Two-digit industries that were not covered under the former rule but will have some three-digit industries within them covered under the final rule:

Automobile Dealers (SIC 55),
Furniture Stores (SIC 57),
Miscellaneous Retail Stores (SIC 59),
Real Estate (SIC 65),
Personal Services (SIC 72),
Business Services (SIC 73),
Social Services (SIC 83), and
Museums (SIC 84).

Two-digit industries that were covered under the former rule but will have some or all three-digit industries within them exempted under the final rule:

Building Materials & Garden Supplies (SIC 52),
Food Stores (SIC 54),
Miscellaneous Repair Services (SIC 76),
Amusement and Recreation Services (SIC 79), and
Health Services (SIC 80).

Table X–2 shows the specific three-digit industries that were formerly exempted and to which the final rule will extend coverage. Table X–3 shows the specific three-digit industries that were formerly covered and which the final rule will exempt.

Exempting an industry means that employers with establishments in that industry do not have to keep the OSHA Form 300 (the Log of Occupational Injuries and Illnesses), the Annual Summary (OSHA 300-A), and OSHA Form 301 (the Incident Record) or their equivalents. The final rule does not exempt establishments from the obligation to report fatalities or multiple hospitalization accidents to OSHA, nor does it exempt an employer from the requirement to maintain records if notified by the Bureau of Labor Statistics that it is a participant in the annual Occupational Injuries and Illnesses Survey or by OSHA that it has been selected to report under the OSHA Data Initiative.

B. Characteristics of Covered Establishments

(1) Number of Establishments

Table X–4 shows the estimated number of establishments, by industry, covered by the final regulation. Data for agriculture (SICs 01 and 02) are taken from the 1997 Census of Agriculture. Data for the remaining SICs are taken from a compilation of 1996 data by the U.S. Census Bureau for the Small Business Administration (SBA) to reflect parent company control of establishments. Firms that have 10 or fewer employees,[8] which are exempt from the final regulation because of their size, are excluded from Table X–4.

[7] In addition, state and local government employers will continue to be covered in State Plan states.

[8] The SBA data have size classes of 5–9 employees and 10–19 employees. Establishments with 10 employees were assumed to account for ten percent of the 10–19-employee size class. Since the distribution is skewed by size, rather than being uniform, this assumption slightly overstates the number of establishments covered by the regulation.

TABLE X–2.—FORMERLY EXEMPT INDUSTRIES THAT THE FINAL RECORDKEEPING RULE COVERS

Two-digit industry*	Three-digit industry that OSHA's final rule covers
SIC 55	SIC 553, Auto and Home Supply Stores
	SIC 555, Boat Dealers
	SIC 556, Recreational Vehicle Dealers
SIC 57	SIC 571, Home Furniture and Furnishings Stores
	SIC 572, Household Appliance Stores
SIC 59	SIC 593, Used Merchandise Stores
	SIC 596, Nonstore Retailers
	SIC 598, Fuel Dealers
SIC 65	SIC 651, Real Estate Operators and Lessors
	SIC 655, Subdividers and Developers
SIC 72	SIC 721, Laundry, Cleaning, and Garment Service
SIC 73	SIC 734, Services to Buildings
	SIC 735, Miscellaneous Equipment Rental/Leasing
	SIC 736, Personnel
SIC 83	SIC 833, Job Training and Related Services
	SIC 836, Residential Care
SIC 84	SIC 842, Botanical and Zoological Gardens

* Only the 3-digit SICs shown in the second column are covered by the rule; those within the 2-digit SIC that are not listed are still exempt from the requirement to keep OSHA records routinely.

TABLE X–3.—FORMERLY COVERED INDUSTRIES EXEMPTED BY THE FINAL RULE

Two-digit industry	Three-digit industry that OSHA's final rule exempts
SIC 52	SIC 525, Hardware Stores
SIC 54	SIC 542, Meat and Fish Markets
	SIC 544, Candy, Nut, and Confectionery Stores
	SIC 545, Dairy Product Stores
	SIC 546, Retail Bakeries
	SIC 549, Miscellaneous Food Stores
SIC 76	SIC 764, Reupholstry and Furniture Repair
SIC 79	SIC 791, Dance Studios, Schools, and Halls
	SIC 792, Producers, Orchestras, and Entertainers
	SIC 793, Bowling Centers
SIC 80	SIC 801, Offices and Clinics of Medical Doctors
	SIC 802, Offices and Clinics of Dentists
	SIC 803, Offices of Osteopathic Physicians
	SIC 804, Offices of Other Health Practitioners
	SIC 807, Medical and Dental Laboratories
	SIC 809, Health and Allied Services, nec

TABLE X–4—ESTABLISHMENTS REQUIRED BY THE FINAL RULE ROUTINELY TO KEEP OCCUPATIONAL INJURY/ILLNESS RECORDS

Industry establishments		Estimated number of establishments required to keep records	Estimated number of recordable cases annually in these
Agricultural Production	SIC 01–02	56,367	46,770
Agricultural Svcs, Forestry, Fishing	SIC 07–09	16,271	54,022
Oil and Gas Extraction	SIC 13	5,367	13,851
Construction	SIC 15–17	114,470	415,500
Manufacturing	SIC 20–39	196,643	2,060,900
Transportation, Postal, Utilities	SIC 41–49	157,390	516,653
Wholesale Trade	SIC 50–51	219,678	403,240
Building Materials/Garden Supplies	SIC 52[a]	22,339	56,091
General Merchandise Stores	SIC 53	28,519	180,909
Food Stores	SIC 54[b]	64,443	126,780
Automotive Dealers	SIC 55[c]	23,342	22,662
Furniture Stores	SIC 57[d]	25,580	24,302
Miscellaneous Retail Stores	SIC 59[e]	19,913	23,750
Real Estate	SIC 65[f]	17,925	22,702
Hotels and Other Lodging Places	SIC 70	23,956	103,423
Personal Services	SIC 72[g]	14,768	18,072
Business Services	SIC 73[h]	51,525	58,659
Automotive Repair, Svcs, Parking	SIC 75	41,575	40,359
Miscellaneous Repair Services	SIC 76[i]	12,294	17,686
Amusement and Recreation Services	SIC 79[j]	20,602	79,623

TABLE X–4—ESTABLISHMENTS REQUIRED BY THE FINAL RULE ROUTINELY TO KEEP OCCUPATIONAL INJURY/ILLNESS RECORDS—Continued

Industry establishments		Estimated number of establishments required to keep records	Estimated number of recordable cases annually in these
Health Services	SIC 80[k]	38,996	995,122[l]
Social Services	SIC 83[m]	25,998	25,349
Museums	SIC 84[n]	236	2,408
State and Local Government Employers in State Plan States		167,788	519,646
TOTAL: Final Rule[o]		1,365,985	5,828,477
TOTAL: Former Rule[o]		1,306,418	4,907,081

[a] Consists of Lumber & Other Building Materials (SIC 521); Paint, Glass, & Wallpaper Stores (SIC 523); Retail Nurseries & Garden Stores (SIC 526); and Mobile Home Dealers (SIC 527).
[b] Consists of Grocery Stores (SIC 541) and Fruit and Vegetable Markets (SIC 543).
[c] Consists of Auto and Home Supply Stores (SIC 553); Boat Dealers (SIC 555); and Recreational Vehicle Dealers (SIC 556).
[d] Consists of Furniture & Homefurnishings Stores (SIC 571) and Household Appliance Stores (SIC 572).
[e] Consists of Used Merchandise Stores (SIC 593); Nonstore Retailers (SIC 596); and Fuel Dealers (SIC 598).
[f] Consists of Real Estate Operators and Lessors (SIC 651) and Subdividers and Developers (SIC 655).
[g] Consists of Laundry, Cleaning, and Garment Services (SIC 721).
[h] Consists of Services to Buildings (SIC 734); Miscellaneous Equipment Rental and Leasing (SIC 735); and Personnel Supply Services (SIC 736).
[i] Consists of Electrical Repair Shops (SIC 762); Watch, Clock and Jewelry Repair (SIC 763); and Miscellaneous Repair Shops (SIC 769).
[j] Consists of Commercial Sports (SIC 794) and Miscellaneous Amusement & Recreation Services (SIC 799).
[k] Consists of Nursing and Personal Care Facilities (SIC 805); Hospitals (SIC 806); and Home Health Care Services (SIC 808).
[l] Includes estimated 501,640 needlesticks and sharps not now recordable that are covered by the final rule.
[m] Consists of Job Training and Related Services (SIC 833) and Residential Care (SIC 836).
[n] Consists of Botanical and Zoological Gardens (SIC 842).
[o] Sulfur mining (part of SIC 1479) is excluded because information is not available.
Sources: U.S. Census Bureau compilation of 1996 establishment and employment data by parent firm, performed for the Small Business Administration; Bureau of Labor Statistics 1998 Survey of Occupational Injuries and Illnesses.

The final regulation covers an estimated total of 1,365,985 establishments belonging to 699,712 employers. The number of establishments covered by the rule represents a net increase of 4.6 percent over the 1,306,418 establishments covered by the former regulation. This increase in the number of establishments covered results from the changes made to the scope of the final rule.

(2) Number of Recordable Cases

Table X–4 also shows the number of recordable cases of occupational injury and illness, by industry, covered by the final regulation. These are taken from unpublished data from the 1998 BLS Survey of Occupational Injury and Illness.

The final regulation will annually capture an estimated total of 5,828,477 occupational injury and illness cases. Of these cases, 275,000 represent additional hearing loss cases and 501,640 represent additional needlestick and sharps injuries anticipated to occur in SIC 80. The needlestick and sharps number represents 85 percent of the estimated 590,165 needlestick and sharps injuries occurring in SIC 80 (63 FR 48250, September 9, 1998; Ex. 3–172V, Docket No. H370A), since OSHA estimates that approximately 15 percent of such injuries were being recorded under the former rule. Since not all of SIC 80 is covered by the final rule, this figure is likely to overstate the number of recordable cases to some extent.

Exclusive of the 275,000 additional hearing loss cases and the 501,640 additional needlestick and sharps injuries, the final regulation will capture an estimated 5,051,837 cases annually. This is an increase of 3 percent over the 4,907,081 cases captured by the former rule. This increase in capture reflects changes in the scope of the rule that are designed to target the regulation more precisely to high-risk industries in the retail and service sectors of the economy. This increase in the rule's capture efficiency, or cost-effectiveness, is reflected by the fact that the industries that are newly covered under the final rule average 2.6 times as many cases per covered establishment as the industries the final rule would newly exempt.

3. Costs

A. Overview of the Analysis

(1) Background

This chapter assesses the changes in compliance costs associated with the changes the Occupational Safety and Health Administration (OSHA) is making to 29 CFR part 1904, the Agency's Recording and Reporting Occupational Injuries and Illnesses rule, and its associated forms and instructions. The analysis relies in part on methodology and estimates provided in a study conducted for OSHA by Meridian Research, Inc. The Meridian analysis has been updated to reflect more recent data as well as changes that OSHA has made to the regulation in the interval since the Meridian report was prepared, and to reflect comments on the proposed rule.

The great majority of the establishments covered by the rule are small, i.e., have fewer than 20 employees. On average, a covered establishment records 4 occupational injury and illness cases per year, and the recordkeeping decisions involved in these cases are generally straightforward and easy to make (*e.g.*, the injuries involve lacerations, slips and falls, or fractures). Unlike other OSHA rules, the recordkeeping rule does not require employers to implement engineering controls, change employee work practices, provide protective equipment, or take other costly actions to protect their employees' safety and health. Instead, the costs of this rule are based on the costs associated with the time the recordkeeper and others spend in maintaining the records and overseeing the recordkeeping system. OSHA's estimates of the time necessary to perform each step of the recordkeeping process, including the time to consider and record each case, maintain the Log, and perform other recordkeeping tasks, have been reviewed and commented on

by the public and approved by the Office of Management and Budget in connection with the process required by the Paperwork Reduction Act of 1995. Even if OSHA's estimates of the time involved in making, determining, and overseeing the records involved in the recordkeeping system are low, for example, by a factor of two or so, the costs imposed by the final rule are low in comparison with the benefits of the system and are readily affordable by covered establishments. (See the Impacts section of this economic analysis.)

Because the final regulation makes a number of changes, some of which increase the amount of information employers must maintain and others that simplify recordkeeping and reduce the burden, it is difficult to estimate the precise impact of a given change on establishments in particular industries. Moreover, most individual changes have only a minor impact on burdens, whether positive or negative. Accordingly, the analysis groups together changes to a specific portion of the recordkeeping activities, such as maintaining the Log or filling out the individual report of injury, and (for the most part) assesses the net impact of the group of provisions, rather than the impact of each provision individually.

The analysis reflects the fact that the final regulation is a revision of a former regulation. Thus many of the impacts are changes in the burden of doing something that is already required. Wherever this is the case, the burden under the former and final regulations will be the same if the activities are unchanged. In addition, small changes in burden estimates, both positive and negative, may offset each other.

(2) Analytical Approach

Scope. The costs of the final rule depend in part on the scope of the rule, i.e., on the industries that are covered. As noted in Chapter II, affected industries fall into three groups, depending on their inclusion or exemption under the former and final rules. Impacts differ for each of these three groups:

—For industries covered under the former rule and the final rule, impacts are the costs employers will incur to comply with changes made in a regulatory provision.

—For industries covered by the former rule but exempted under the final rule, impacts consist of cost savings equal to the cost of compliance employers incurred under the former rule.

—For industries exempted under the former rule but covered by the final rule, impacts are the total cost of compliance employers will incur under the final rule.

In examining the costs of this rule, it is critical to remember certain basic characteristics of affected facilities. On average, facilities subject to recordkeeping have about 50 employees and record about four injuries and illnesses a year. Because the size distribution of facilities is somewhat skewed, the majority of establishments record fewer than four injuries and illnesses a year and have fewer than 20 employees. Some commenters appeared to be unaware of the small number of injuries and illnesses recorded by the typical affected establishment when commenting on the proposal. For example, the comment of one commenter that the typical establishment will need to train 2 to 4 recordkeepers (Ex. 15–375) is clearly not reasonable because the typical establishment covered by this rule employs about 50 employees and records a total of four injuries and illnesses a year.

The impacts of changes in specific regulatory provisions are generally related to one of two factors:

• Costs that are essentially fixed costs for an establishment are estimated on a per-establishment basis and multiplied by the number of affected establishments.

• Costs that vary with the number of cases recorded are estimated on a per-case-recorded basis and multiplied by the number of such cases recorded.

Other Parameters. Burdens are estimated as number of minutes (per establishment or per case) to comply with each provision. Most of the costs are based on the assumption that recordkeeping tasks will be conducted by someone with the skill level of a personnel specialist who would be qualified both to obtain and to enter the necessary data. The wage rate for a Personnel Training and Labor Relations Specialist—$19.03, or $26.32 including fringe benefits [9]—is used for this cost. Where the time of a company official is called upon, the estimated labor cost is based on the hourly rate for an Industrial Production Manager—$26.38, or $36.48 including fringe benefits.

Cost estimates for many specific tasks are also influenced by the fact that almost all establishments will also have to gather information on work-related injuries and illnesses for insurance and workers' compensation purposes. In many cases, the data that employers must collect and provide for these purposes are considerably more detailed than those required by OSHA. Even OSHA recordable injuries and illnesses that turn out, in the end, not to be workers' compensation claims are likely to be investigated to determine their status in relation to the workers' compensation system. As a result, much of the basic data gathering necessary to the recording of injuries and illnesses has already been done independent of the OSHA recordkeeping requirements, and, in most cases, making the OSHA record simply involves copying information from other sources to the OSHA form.

(3) Overview of Estimates

The estimated net impact of the revisions to the recordkeeping rule is a cost of $38.6 million per year. Estimated net costs for establishments covered by the former rule that will continue to be covered by the final rule are relatively minor, and the estimated 119,720 establishments that OSHA has exempted from the final rule will incur substantial savings. The chief cost increases will be to the 179,287 establishments brought under the scope of OSHA's recordkeeping rule for the first time.

B. Initial Costs of Learning the Recordkeeping System

(1) Initial Costs to Establishments Already Covered of Becoming Familiar With the Revised Recordkeeping System

Recordkeepers in establishments that were covered by the former regulation and that will continue to be covered under the final regulation will need to become familiar with the changes in the recordkeeping system associated with the final rule even before an injury or illness occurs. OSHA originally estimated that this initial familiarization would require 15 minutes per such establishment. Some commenters objected to this estimate as too low. (See, for example, Exs. 15: 119, 15: 357, 15: 375, 15: 395.) For example, one commenter (Ex. 15: 395) stated that ''No person could give even a superficial reading to this material [the proposed rule] in 15 minutes.'' Another commenter (Ex. 15: 375) stated that this was ''not enough time for one person to even read through the rule and the preamble one time.'' OSHA does not believe that experienced recordkeepers will need to read the entire preamble, or even the entire rule, in order to familiarize themselves with the new recordkeeping changes. For the most part, the new system continues the concepts, practices, and interpretations developed under the former rule and

[9] Benefits and overhead are computed at 38.3 percent of the hourly wage.

thus is well known to recordkeepers. OSHA believes that most recordkeepers will avail themselves of the summaries of the changes in the rule provided by OSHA or by a wide variety of other sources. The recordkeepers' thorough knowledge of the recordkeeping system will suffice to cover most aspects of the rule. Nor does OSHA agree that the typical recordkeeper, who needs to record only 4 injuries and/or illnesses a year, needs to study every change. For example, a recordkeeper relying on OSHA's summary information on the differences between the former and the revised rule only needs to make a mental note to the effect that injuries and illnesses occurring in parking lots are treated differently under the revised rule, but would not have to know the details of the changes until (if ever) the recordkeeper actually has an injury or illness that occurred in a parking lot. Nevertheless, as a result of the comments received on the prior proposed time estimates, OSHA has raised its familiarization estimate to 20 minutes per establishment for facilities with prior OSHA recordkeeping experience. This estimate covers the time needed for an experienced recordkeeper to learn the basics of the new system, but assumes that such a recordkeeper, who records an average of four cases per year, need not learn the details of the system for dealing with unusual cases until, and if, they arise; instead, this recordkeeper is assumed to examine specific issues later and as needed, when issues arise in the course of the recording of actual cases. The time attributed in this analysis to the recording of individual cases (discussed below) includes the time needed to understand the details of the individual case. It is assumed that this subsequent learning will occur as recordkeepers enter the data; that is, the time that OSHA estimates will be initially required to complete both Form 300 and Form 301 entries includes the time that the Agency estimates will be needed for additional familiarization with issues related to the entry being made. The costs for this subsequent recording activity are discussed in Part D of this section of the economic analysis. The initial familiarization cost is a one-time cost that will not recur. Accordingly, this cost was annualized over ten years using a 7 percent discount rate. The net annualized costs of this initial familiarization activity are $1,482,384.[10]

(2) Costs of Learning the Basics of the Recordkeeping System *De Novo*

Establishments required to keep OSHA records will incur the costs associated with learning about the recordkeeping system from scratch whenever a new person takes over the recordkeeping job as a result of staff turnover. OSHA assumes that 20 percent of covered establishments will experience such staff turnover in any given year. Establishments that are newly covered by the regulation will also incur the costs of learning the recordkeeping system *de novo.* Establishments that are newly exempted under the regulation, of course, will save the staff turnover costs formerly associated with recordkeeping.

At the time of the proposal, OSHA estimated that, under the former regulation, new personnel would require a 30-minute orientation to learn the basics of the recordkeeping system and 25 minutes to learn the newer, simpler recordkeeping system. Many commenters believed that these estimates were too low. (See, for example, Exs. 15: 119, 15: 170, 15: 357, 15: 375.) After reviewing the record, OSHA agrees that the estimates in the Preliminary Economic Analysis did not adequately capture the average amount of time required to learn the system for a person without previous knowledge of OSHA recordkeeping. OSHA has revised its average estimate of the time for learning the new recordkeeping system *de novo* to one hour and has revised the average estimate of the time it would have taken a recordkeeper to learn the previous recordkeeping system to 1.5 hours. (In other words, OSHA believes that its prior estimate of the average amount of time required to learn the former recordkeeping system—30 minutes—was too low.)

Although OSHA's revised average estimates are lower than the estimates made by some commenters, OSHA believes that the Agency's estimates appropriately reflect the average amount of time new recordkeepers will need to learn the basics of the system. Again, new recordkeepers are assumed not to learn all the details of the new system up front, such as exactly when an off-site injury is considered work-related or how to classify injuries occurring in lunch rooms, until such a case actually arises in the workplace. Since unusual cases and those falling within the exceptions are relatively rare, recordkeepers will generally choose to obtain detailed case-specific information only when it is needed. New recordkeepers need only to know that such exceptions exist and that further study of the rule will be necessary in the relatively unlikely event that such an injury or illness occurs. OSHA's estimates of the time required to record each case (discussed further below) include the time for the recordkeeper to study the instructions to learn how to address specific issues that may arise when recording specific types of injuries or illnesses (*e.g.*, noise-induced hearing loss or work-related TB cases).

OSHA believes that the new system is much simpler than the old. Many simplifications, *e.g.*, the use of calendar days, capping of days away cases, have been made to the rule to save effort. This additional simplicity, as well as improved outreach materials to explain the new regulation, will, OSHA believes, result in significantly reducing the length of time required to learn the system. OSHA estimates that learning the basics will take, on average, one hour. This will save 30 minutes compared to the learning time that would have been required for the former system.

Continuously Covered Establishments. Establishments that were covered under the former regulation and continue to be covered under the final regulation will save 30 minutes, compared with the time needed under the former rule, whenever staff turnover requires a new recordkeeper. At a 20 percent turnover rate, the net annualized savings for this learning activity under the final rule are $3,123,394.[11]

Newly Exempted Establishments. Establishments that were covered under the former regulation but are exempted under the final regulation will incur a saving of 90 minutes whenever staff turnover would have required a new recordkeeper. At a 20 percent turnover rate, the net annualized savings of eliminating the need for this learning activity are $945,309.[12]

Newly Covered Establishments. Establishments that were exempt under the former regulation but are covered under the final regulation will incur two types of costs: All establishments will incur an initial learning cost of one hour per establishment. Since this is a one-time cost that will not recur, the cost was annualized over ten years using a 7 percent discount rate. In addition, these establishments will incur an ongoing cost of 60 minutes whenever staff turnover requires a new recordkeeper to become familiar with the system. The net annualized costs of this learning activity are $671,856 + $943,756 = $1,615,612.[13]

[10] $1,482,384 = (1,186,698 Establishments) × (20 Minutes/Establishment) × ($26.32/Hr.) × [0.07/(1 − (1/(1.07)^{10}))]

[11] $3,123,394 = (1,186,698 Establishments) × (0.2) × (30 Minutes/Establishment) × ($26.32/Hour)

[12] $945,309 = (119,720 Establishments) × (0.2) × (90 Minutes/Establishment) × ($26.32/Hour)

[13] $1,615,612 = (179,287 Establishments) × (60 Minutes/Establishment) × ($26.32/Hour) × [0.07/(1 − (1/(1.07)^{10}))] + (179,287 Establishments) × (0.2) × (60 Minutes/Establishment) × ($26.32/Hour)

(3) Total Cost Impact

Table X–5 summarizes the total annualized cost impacts of initially learning the recordkeeping system under the final regulation. The total net annualized impact is estimated to be a saving of $970,757.

C. Fixed Costs of Recordkeeping

A number of the cost items associated with the final rule do not vary with the size of the establishment or the number of cases reported. These include the costs of setting up the Log, posting the Summary, certifying the Summary, and providing data from the Log to OSHA inspectors. Impacts in this category are related to the number of establishments covered and the specific changes in recordkeeping requirements.

TABLE X–5—FAMILIARIZATION COSTS ASSOCIATED WITH THE FINAL RULE

Cost element/industry status under the final rule	Estimated number of establishments	Change in level of effort		Total cost
		(Minutes)	Hours	
Shift to the New Recordkeeping System:				
Formerly & Still Covered	1,186,698	20	395,566	[a,b]$1,482,384
Initally Learn the Basics of the Recordkeeping System:				
Newly Covered	179,287	60	179,287	[a,b]671,856
Re-learn the Basics of the Recordkeeping System:				
Formerly & Still Covered	237,340	−30	-118,670	[a] −3,123,394
Newly Exempted	23,944	−90	−35,916	[a] −945,309
Newly Covered	35,857	60	35,857	[a]943,756
Total Annual Cost			[c]456,124	970,757

[a] Based on an hourly cost of $26.32.
[b] One-time cost that is annualized over 10 years at a discount rate of 7 percent.
[c] Includes 574,853 hours that will be required in the first year only.

(1) Setting Up the Log and Posting the Summary

Both the former rule and the final rule require that the Log be set up at the beginning of the year and that the Annual Summary be posted on February 1 of the year following the year to which the data pertain. The final regulation requires that the Summary remain posted for three months, while the former regulation required that it remain posted for only one month.

OSHA estimates that the process of setting up the Log and filling out and posting the Summary under the former regulation required 8 minutes. OSHA has no reason to believe that this burden will change as a result of the final rule. Most of the concern expressed in the comments on the proposed recordkeeping rule related to the burden commenters perceived to be associated with updating the posted Summary form when revisions were made and mailing out the Summary as an alternative to posting (see, *e.g.*, Exs. 15: 288, 303, 395). Updating the posted Summary was never OSHA's intent, and the final rule has dropped the mailing alternative, so that both of these concerns are now moot. Any possible increase in burden due to the longer posting periods for the Summary (posting for 3 months rather than 1 month) should be offset by greater simplicity in keeping the Log using the new forms.

The final rule's changes in posting requirements will have no impact on establishments that were covered under the former rule and will be covered under the final rule. Establishments that are newly exempted by the final rule will have an annual savings of 8 minutes each, however. Establishments that are newly covered will incur an annual cost of 8 minutes each. The total estimated impact of these changes in scope is a net cost of −$420,146 + $629,180 = $209,034.[14]

(2) The Annual Summary

The final rule adds a requirement for employers to record on the Log Summary the average number of employees working in the establishment over the past year and the total hours worked by all employees during that year. OSHA initially estimated that recording these data on the Summary would add 5 minutes of labor per establishment to the cost of maintaining each Log. Many commenters noted that this step might be difficult, and some stated that it might be more time consuming than estimated. (See, *e.g.*, Ex. 15: 170.) One commenter stated that this information was sufficiently valuable for management purposes that firms would benefit from having the data if they did not already compile these data (Ex. 15: 395). The commenters who argued that this requirement would be burdensome were generally large multi-establishment firms (see, *e.g.*, Exs. 15: 218, 15: 423). Since OSHA's estimate of this cost is per establishment, these firms would indeed bear higher costs. OSHA does not believe that this requirement will necessitate modifications to data systems for the vast majority of firms; finding where the data are on existing systems should suffice. OSHA also believes that the final rule has clarified that the average number of employees and hours worked need not be precise and can simply be an estimate, which should reduce the amount of effort required to generate this number. The Agency thus finds that this procedure will be relatively simple for most single-establishment firms that maintain personnel records that already have this information for a variety of other purposes. However, OSHA also recognizes that firms with more than one establishment may keep this information only on a firm, not establishment, basis, and may need to perform calculations to compile or revise the data available from their management systems. To account for this, OSHA has raised its average estimate of the time required for the additional information to 20 minutes.

This burden is estimated to fall on all establishments covered by the rule, but not on newly exempted establishments. The total estimated cost of this additional data requirement is $10,411,297 + $1,572,936 = $11,984,233.[15]

The former rule required the recordkeeper to certify that the entries on the Summary were true, accurate, and complete. The final rule requires a company executive to certify that he or she has examined this document and ''reasonably believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is correct and complete.''

OSHA estimated, at the time of the proposal, that the former requirement that the recordkeeper certify the Summary cost an average of 2 minutes, because all the recordkeeper had to do was sign the form. The final rule drops the requirement for recordkeeper certification.

Having the Summary certified by a company executive was estimated at the time of the proposal to require only 5 minutes.[16] OSHA now estimates that certification by a

[14] $209,034 = (−119,720 + 179,287 Establishments) × (8 Minutes/Establishment) × ($26.32/Hour)

[15] $11,984,233 = (1,186,698 + 179,287 Establishments) × (20 Minutes/Establishment) × ($26.32/Hour)

[16] The proposal would have replaced certification by the recordkeeper with certification by a plant manager. Many commenters stated that this would have required the plant to become personally familiar with the information being certified, and that this would have entailed considerably more time than 5 minutes (see, *e.g.*, Exs. 15–9, 15–355, 15–428, 15–395).

company executive will require 30 minutes, because the Agency believes that the company executive will briefly review the records, perhaps speak with the recordkeeper, and generally take whatever steps are necessary to assure himself/herself that the records are accurate. Although, as noted above, the typical firm covered by the rule only records 4 cases per year and these cases are generally straightforward, OSHA believes that the certifying executive will need this amount of time, on average, to perform this task thoughtfully. Again, this estimate is an average estimate—it will take longer for some very large firms and less time for small firms. Estimated impacts on the different classes of establishments are as follows:

Continuously Covered Establishments. Establishments that were covered by the former rule and will be covered by the final regulation will save the costs for certification by the recordkeeper, but will incur new costs for certification by a responsible company official. This change in requirements results in an estimated total annual cost of $20,604,232.[17]

Newly Exempted Establishments. Establishments that were covered by the former regulation but are exempted from the final regulation will realize a cost saving of 2 minutes of recordkeeper time. The estimated total annual savings will be $105,043.[18]

Newly Covered Establishments. Establishments that were exempt under the former regulation but are covered by the final regulation will incur costs of 30 minutes of company official time. The total annual cost is estimated to be $3,270,213.[19]

The total impact of the final rule's certification requirement is estimated to be $23,769,204.

(3) Provision of Data to OSHA Inspectors

Like the former rule, the final rule requires employers to provide the Log and Incident Reports to an OSHA inspector during a compliance visit. Employers are now required by the final rule to provide a copy of these forms to the inspector on request. OSHA believes that providing copies has in fact been the practice in the past, even though the former rule did not spell this out specifically. OSHA thus does not believe that this small change in the regulation will result in burdens or costs for employers.

(4) Informing Employees How To Report Occupational Injuries and Illnesses

The final regulation requires employers to set up a way for employees to report work-related injuries and illnesses and inform employees about the approach they have chosen. OSHA assumes that it will take a Personnel Training and Labor Relations Specialist (or equivalent) at each establishment an average of twenty minutes to decide on a system and inform employees of it. The ''way'' will usually simply involve directing supervisors to inform their subordinates, as part of their usual communication with them, to report work-related injuries and illnesses to their supervisor. Most, if not all, establishments require employees routinely to report problems of any kind to their supervisors, and reporting injuries and illnesses is simply one of the kinds of things employees report. OSHA believes there will be no additional cost associated with the supervisors' forwarding of these reports to the person in charge of recordkeeping, because this is already part of supervisors' duties. This is a one-time cost, which OSHA has annualized over ten years using a 7 percent discount rate. The net annualized costs of setting up the system are $1,706,285.[20]

(5) Total Cost Impact

Table X–6 summarizes the total annualized cost impacts of fixed, establishment-level costs resulting from the final regulation. The total net annualized costs are estimated to be $37,668,954.

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[17] $20,604,232=(1,186,698 Establishments) × (−2 Minutes/Establishment) × ($26.32/Hour) + (30 Minutes/Establishment) × ($36.48/Hour)

[18] $105,043=(119,720 Establishments) × (2 Minutes/Establishment) × ($26.32/Hour)

[19] $3,270,213=(179,287 Establishments) × (30 Minutes/Establishment) × ($36.28/Hour)

[20] $1,706,285=(1,365,985 Establishment) × (20 Minutes/Establishment) × ($26.32/Hr.) × [0.07/(1 − (1/(1.07)^{10}))]

TABLE X-6
FIXED ANNUAL COSTS TO ESTABLISHMENTS

Cost Element/ Industry Status under Final Rule	Estimated Number of Establishments	Change in Level of Effort (Minutes)	Total Hours	Total Cost
Set Up Log and Post Summary				
Newly Exempted	119,720	- 8	- 15,963	-$ 420,146[a]
Newly Covered	179,287	8	23,905	$ 629,180[a]
Additional Data Requirements on Summary				
Formerly & Still Covered	1,186,698	20	395,566	$10,411,297[a]
Newly Covered	179,287	20	59,762	$ 1,572,936[a]
Certification of Summary				
Formerly & Still Covered	1,186,698	- 2	- 39,557	$ 1,041,140[a]
		30	593,349	$21,645,372[b]
Newly Exempted	119,720	- 2	- 3,991	- $ 105,043[a]
Newly Covered	179,287	30	89,644	$ 3,270,213[b]
Way to Inform Employees	1,365,985	20	455,328	$ 1,706,285 [a,c]
TOTAL ANNUAL COST			1,588,043[d]	$37,668,954

[a] Based on an hourly cost of $26.32.

[b] Based on an hourly cost of $36.48.

[c] One-time cost that is annualized over 10 years at a discount rate of 7 percent.

[d] Includes 227,664 hours that will be required in the first year only.

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D. Costs of Maintaining Records

The costs of maintaining the Log and Incident Reports are related to the number of cases recorded. There are numerous changes to the final rule that result in very small increases or decreases in the number of cases that will need to be recorded. With two exceptions, OSHA concludes that the average establishment keeping records under both the former rule and the final rule will experience an overall decrease in the number of occupational injury and illness cases entered into its OSHA records. These decreases will result from the addition of several exemptions to the presumption of work-relatedness for cases occurring in the work environment and from definitional changes (*e.g.*, medical treatment, first aid, restricted work, aggravation) that will make fewer cases recordable. However, for this analysis, OSHA makes the conservative assumption that these will net out to a zero change. This assumption means that the costs presented in this economic analysis are somewhat overstated.

The two exceptions to the overall decrease in the number of cases recorded are the result of the change to a more sensitive standard threshold shift for recording hearing loss, which will increase the number of cases in all industries except construction, and the new requirement to record needlesticks and sharps injuries, which will result in a relatively large increase in the number of cases recorded in SIC 80.

The costs for SIC 80 are analyzed separately. The analysis uses the following classes of industries:

For industries covered by the former regulation and now covered by the new regulation, except for SIC 80, OSHA assumes that the number of needlestick cases recorded will essentially be unchanged by the final regulation.

For industries (except in SIC 80) covered by the former regulation, but exempted under the final regulation, recorded cases will fall to zero, resulting in commensurate savings.

For industries exempted under the former regulation but covered by the final regulation, the impact will be the full cost of recording such cases.

In SIC 80, recorded cases in three-digit industries that are newly exempted (see Table X–3) will fall to zero, resulting in commensurate savings. The industries that will continue to be covered (SIC 805, Nursing and Personal Care Facilities, SIC 806, Hospitals, and SIC 808, Home Health Care Services) will bear the full cost of recording the expected increase in needlesticks and sharps cases. This increase in cases will be analyzed in the same manner as cases in newly covered industries.

(1) Impacts on Costs of the Final Rule's Changes in Scope

The changes in the scope of the final rule's industry coverage will bring commensurate changes in the costs of the regulation. OSHA estimates that, under the former regulation, it required an average of 15 minutes per recorded case to maintain the Log, plus 20 minutes to fill out a 101 form, for those employers who did not use an equivalent form.

The addition of new elements to Form 301, as will be described shortly, raises OSHA's estimate of the total time required to fill out an individual report of injury or illness to 22 minutes. Based on data collected during approximately 400 recordkeeping audit inspections, OSHA assumes that 82 percent of incidents will be recorded on forms other than the new Form 301, such as workers' compensation forms.

The average for the Log takes into account a wide range of cases. For clearly work-related injuries involving an absence of 10 work days and involving no additional restricted time, for example, essentially all of the necessary information can be obtained from workers' compensation-related files. In such a case, entering the data on the Log will simply require pulling the workers' compensation file and entering the key information on the Log—a three minute task. OSHA assumes that the time required to make an entry will increase when either (1) information is not already kept for other purposes, or (2) making the entry requires the recordkeeper to study the regulation. Examples of situations where the necessary information would not already have been recorded elsewhere are cases that are not recorded as workers' compensation cases, or cases involving restricted work days (which are not recorded in workers' compensation data and may not be part of the affected worker's payroll or personnel files). Examples of situations where it would be necessary to study the regulation are those involving questions about the recordability of the incident or its work-relatedness. Changes in scope will have different impacts on the different classes of industries, as follows:

- Continuously Covered Establishments. By definition, establishments in industries formerly covered and still covered by the final regulation will have no changes in costs related to industry scope.
- Newly Exempted Establishments. Establishments that were covered by the former regulation but are exempt from the final regulation will realize for each currently recorded case a cost saving of 15 minutes for the Log entry plus, for 18% of the cases, a saving of 20 minutes for the 301 form. The estimated total annual savings will be $405,499.[21]
- Newly Covered Establishments. Establishments that were exempt under the former regulation but are covered by the final regulation will incur for each currently recorded case costs of 15 minutes for the Log entry plus, for 18% of the cases, 22 minutes for the 301 form. The total annual cost is estimated to be $1,646,000.[22]
- Additional Hearing Loss Cases. Establishments will incur for each additional hearing loss case costs of 15 minutes for the Log entry plus, for 18% of the cases, 22 minutes for the 301 form, or an estimated total annual cost of $2,287,208.[23]
- SIC 80. Establishments in SIC 80 will incur for each additional needlesticks and sharps case costs of 5 minutes for the Log entry[24] plus, for 18% of the cases, 22 minutes for the 301 form, or an estimated total annual cost of $1,971,664.[25]

(The costs of the ''log of percutaneous injuries from contaminated sharps'' specified in the revision of the Bloodborne Pathogens standard in conformance with the requirements of the Needlestick Safety and Prevention Act have been captured in the analysis of that rule. No offset has been taken in the economic analysis of this rule for costs common to these two rules for recording needlestick injuries.)

The estimated total cost impact related to changes in scope of the recordkeeping rule is $5,499,373.

(2) Maintenance of the Log

Form 300 will replace Form 200 as the Log of injuries and illnesses. The revisions to this form represent the greatest source of cost savings to employers required to record work-related injuries and illnesses. The major modifications that result in time and cost savings are simplifications of Form 300 and changes and simplifications in the criteria for recordable cases.

Simplification of the Log. Compared to the form that it will replace, Form 300 has a more logical progression, makes available considerably more space, and eliminates unnecessary columns. OSHA estimates that this will take an average of one minute off the time required to record cases (except for

[21] $405,499 = ((49,698 Cases) × (15 Minutes/Case) + (8,946 Cases) × (20 Minutes/Case)) × ($26.32/Hours).

[22] $1,646,000 = ((197,904 Cases) × (15 Minutes/Case) + ($35.623 Cases) × (22 Minutes/Case)) × ($26.32/Hours).

[23] $2,287,208 = (275,000 Cases) × (15 Minutes/Case) × ($26.32/Hour) + (49,500 Cases) × (22 Minutes/Case)) × ($26.32/Hour).

[24] Under the simplified criteria of the final rule, needlesticks and sharps cases are among the very easiest cases to document and record.

[25] $1,971,664 = ((501,640 Cases) × (5 Minutes/Case) + (90,295 Cases) × (22 Minutes/Case)) × ($26.32/Hour).

those that involve needlesticks or sharps, which will be analyzed separately in this analysis). This simplification of the Log will produce a saving of $2,177,240.[26]

Simplification of Decisionmaking about Recordability. In estimating the savings in time associated with the simplification of recordability decisionmaking, OSHA focused primarily on the simplification of the steps needed to determine whether an injury or illness is serious enough to be recorded. When a work-related injury or illness results in days away from work or restricted workdays, then it is obvious under both the former and final regulations that the injury or illness must be recorded. Under the former regulation, however, the employer was required to consult several paragraphs of the Recordkeeping Guidelines to determine whether an injury that did not result in lost or restricted workdays would need to be counted. The final regulation will allow the employer to settle the issue quickly by looking at the list of first aid treatments in Section 1904.7(b)(4).

Of the cases in the 1998 BLS Survey of Occupational Injury and Illness that did not involve needlesticks or sharps, 52.34 percent did not involve lost or restricted workdays. In addition to the one minute saved for each case because of the forms simplification discussed on the previous page, OSHA estimates that the simplification of recordability decisionmaking under the final rule will save approximately 2 minutes for each such injury or illness case. Applying this unit cost saving to all industries covered by the final rule produces estimated total savings of $2,279,080.[27]

Under the final rule there will no longer be any need to examine in any detail the recordability of any cases involving needlesticks or sharps, since all such cases will have to be recorded. OSHA estimates that the average time required to record such cases will change from 15 minutes under the former rule to 5 minutes under the final rule. This would save covered establishments in SIC 80 an estimated $388,329.[28]

OSHA has also clarified the requirement to record medical removal cases by stating in the regulatory text that any case involving medical removal required by an OSHA health standard must be recorded as a case involving days away from work or restricted work/job transfer (as appropriate). OSHA had interpreted the former rule to have the same effect, but the former regulatory text did not clearly state the requirement. This clarification makes overall compliance with OSHA's rules simpler, because both the recordkeeping rule and the OSHA standards will rely on the same criteria, such as biological monitoring test results, employers' determinations, and physician's opinions, and the recording requirements are clearly stated in the regulatory text.

Under the final rule, days away from work and days of restricted work will be counted by calendar days rather than according to scheduled work days. One commenter (Ex. 57X, pp. 97–101, 117–118) argued that, in the automobile manufacturing industry alone, this could free up $5,000,000 to $6,000,000 worth of human resources per year for more productive uses of time. However, OSHA has not taken cost savings for this change because no data in the record suggest that the projections for this industry will be typical of other industries.

Privacy Concern Cases. The final rule requires maintenance of a separate, confidential list of case numbers and employee names for ''privacy concern cases,'' so that an employee's name does not appear on the Form 300. Privacy concern cases include injury or illness to an intimate body part or the reproductive system; injury or illness resulting from a sexual assault; mental illness; HIV infection, hepatitis, or tuberculosis; needlesticks and sharps injuries; and other illnesses (except MSD illnesses) that the employee requests be treated as a privacy concern case.

In 1997 BLS estimated that there were 621 days away from work cases involving the reproductive tract, 18 rapes, 5,542 mental disorders, and no hepatitis cases. (Data are available at www.bls.gov.) In 1997, OSHA estimated that there were approximately 34,630 occupational TB infections annually. It appears that TB cases have declined somewhat since then, but OSHA uses this number in this analysis as a conservative estimate.

The time to record HIV infection cases is included in the estimate of the time associated with recording 590,165 needlestick and sharps cases, but each of these cases will also require time for making an entry in the confidential list of case numbers and employee names. OSHA also assumes that employees in 10,000 other illness cases will ask that their names not appear on the Form 300.

OSHA estimates that it will take an average of 3 minutes to record each ''privacy concern case'' on the required separate, confidential list of case numbers and employee names. The estimated annual cost of this provision is thus $843,524.[29]

(3) Maintenance of Individual Reports of Injury and Illness

The final regulation substitutes the new Form 301 for the former Form 101 and provides other options.

New Elements on Individual Reports. The new form requires employers to record such additional items as the injured or ill employee's date of hire, emergency room visits, the starting time of the employee's shift, and time of the accident. OSHA estimates that these additional elements will raise time required to fill out an individual report of injury or illness from 20 minutes for the old Form 101 to 22 minutes for the new Form 301. This change will cost employers in industries formerly covered and still covered by the final regulation an estimated $889,169.[30]

Changes that will reduce burden include:

An option to keep Form 301s off-site; and

An option to keep Form 301s on electronic media.

Keeping Form 301s Off-site. Keeping Form 301s off-site will provide the greatest cost savings to small, isolated establishments that are owned by larger firms that already keep personnel data at headquarters or at another site. For such firms, OSHA estimates that the ability to maintain records off-site could save as much as 5 minutes per record. These savings in time and effort would result from reductions in the amount of time necessary to copy the Form 301 at headquarters, send it to the small establishment, receive it there, and file it. There would also be a saving in postage. Under the final rule, such small establishments would have to go through all of these steps only when an inspection occurred. Even if only 2 percent of the estimated recordable cases in establishments that are covered under the final regulation were affected by this provision (which OSHA believes is likely to be an underestimate), the resulting cost savings would be $294,141.[31]

Storing Form 301s on Electronic Media. The final rule permits employers to store Form 301s on electronic media, provided that they are able to produce the records in hard copy within four

[26] $2,177,240 = (4,963,312 Cases) × (1 Minute/Case) × ($26.32/Hour).

[27] $2,279,080 = (2,597,736 Cases) × (2 Minutes/Case) × ($26.32/Hour).

[28] $388,329 = (88,525 Cases) × (10 Minutes/Case) × ($26.32/Hour).

[29] $843,524 = (640,976 Cases) × (3 Minutes/Case) × ($26.32/Hour).

[30] $889,169 = (1,013,503 Cases) × (2 Minutes/Case) × ($26.32/Hour).

[31] $294,141 = (5,630,573 Cases) × (0.02) × [(5 Minutes/Case) × ($26.32/Hour) + ($0.33/Case)].

hours of a request by a government representative permitted access under the regulation. OSHA estimated that electronic storage would be advantageous for establishments that handle more than 100 cases per year. OSHA used as a proxy variable for this number the number of establishments with 1,000 or more employees. In the 1998 BLS survey, establishments in this size category had a total of 899,700 recordable cases. OSHA estimates that for each case the ability to store case information electronically would save 2 minutes of time, plus $.05, for making a paper copy. The estimated cost savings from this change would amount to approximately $825,027 per year.[32] OSHA believes that this may be an underestimate, because having even as few as 30 to 40 cases a year might be enough incentive to prompt a firm to keep its records electronically. To the extent that these much smaller firms turn to electronic storage, the cost savings associated with this provision could be many times greater than the estimate.

(4) Employee and Employee Representative Access

The final regulation requires employers to provide employees and their representatives access to Form 301s and to pay the cost of one copy. (It also requires them to allow access to the Log, but this is not a change from the former rule.) OSHA assumes that employers would require five minutes to pull, copy (at $0.05), and replace the relevant form. OSHA assumes that (a) at one-tenth of covered establishments, one employee would request access to his or her own Form 301, and (b) at one percent of covered establishments, a union representative would request access to all Form 301s at the establishment. OSHA further assumes that there would be an average of ten Form 301s at such establishments.[33] The estimated total cost of this provision is $612,860.[34]

(5) Access to Other Parties

The final regulation requires that if employers voluntarily disclose Forms 300 or 301 to persons other than government representatives, employees, former employees, of authorized representatives, they must remove or hide the employees' names, with certain exceptions. Since employers may accomplish this by simply covering part of the form before they copy it, OSHA considers this requirement to impose no costs.

(6) Total Cost Impact

Table X–7 summarizes the cost impacts of maintaining records attributable to the final regulation. The net impact is an estimated annual cost of $1,881,080.

E. Summary of Costs

Table X–8 summarizes the total annualized cost impacts of the entire final rule. This summary indicates that:

The largest sources of costs are: New certification requirements ($23.8 million), additional data requirements ($12.0 million), expansion in the scope of the rule ($5.5 million), and transitional costs of the new rule ($1.5 million).

The largest sources of savings are: Simplified maintenance of the Log ($4.8 million), less time required to relearn the recordkeeping system ($3.1 million), simplified maintenance of individual reports ($1.1 million).

The net impact of these changes is an estimated annual cost of about $38.6 million.

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[32] $825,027 = (889,700 Cases × [(2 Minutes/Case) × ($26.32/Hour) + ($0.05/Case)].

[33] This is a conservative estimate. The average number of cases per covered establishment was only about 4 in 1998. Further, some employers already provide copies of Form 301s to union representatives. [Transcript, March 29, 1996, p. 14].

[34] $612,860 = (273,197 Forms × [(5 Minutes × ($26.32/Hour) + $.05/Copy)].

TABLE X-7
ANNUAL COSTS OF MAINTAINING RECORDS

Cost Element/ Industry Status Under the Final Rule	Estimated Number of Recorded Cases	Change in Level of Effort (Minutes)	Total Hours	Total Cost
Changes in Scope				
Effects on Number of Log Entries:				
Newly Exempted	49,698	- 15	- 12,425	- $ 327,013[a]
Newly Covered	197,904	15	49,476	$1,302,208[a]
Additional Hearing Cases	275,000	15	68,750	$1,809,500[a]
Additional Needlestick Cases	501,640	5	41,803	$1,100,255[a]
Effects on Number of 301 Forms:				
Newly Exempted	8,946	- 20	- 2,982	- $ 78,486[a]
Newly Covered	35,623	22	13,062	$ 343,792[a]
Additional Hearing Cases	49,500	22	18,150	$ 477,708[a]
Additional Needlestick Cases	90,295	22	33,108	$ 871,409[a]
Maintenance of the Log				
Covered under Final Rule[b]	4,963,312	- 1	- 82,722	- $2,177,240[a]
Non- Lost Work Day Cases				
Covered under Final Rule[b]	2,597,736	- 2	- 86,591	- $2,279,080[a]
Previous Needlestick Cases	88,525	- 10	- 14,754	- $ 388,329[a]
Privacy Concern Cases				
Covered under Final Rule	640,976	3	32,049	$ 843,524[a]
Maintenance of Individual Reports:				
New Elements on Form 301				
Formerly & Still Covered	1,013,503	2	33,783	$ 889,169[a]
Form 301 Off-Site				
Covered under New Rule	116,569	- 5	- 9,714	- $ 294,141[a]
Electronic Media				
Covered under New Rule	889,700	- 2	- 29,657	- $ 825,057[a]
Employee Access				
Covered under New Rule	273,197	5	22,766	$ 612,860[a]
TOTAL ANNUAL COST			109,138	$1,881,080

[a] Based on an hourly cost of $26.32

[b] Except needlesticks and additional hearing loss cases

TABLE X-8
NET ANNUAL COSTS ASSOCIATED WITH THE FINAL RULE, BY PROVISION

Cost Element	Total Net Hours	Total Net Cost
Initial Familiarization Costs		
Shift to the New Recordkeeping System	395,566[a]	$ 1,482,384
Initially Learn the Recordkeeping System	179,287[a]	$ 671,856
Relearn the Recordkeeping System	- 118,729	- $ 3,124,947
Fixed Recordkeeping Costs		
Set Up Log and Post Summary	7,942	$ 209,034
Additional Data Requirements	455,328	$11,984,233
Certification	639,445	$23,769,402
Way to Inform Employees	455,328	$ 1,706,285
Costs of Maintaining Records		
Changes in Scope	208,943	$ 5,499,373
Maintenance of the Log	- 184,067	- $ 4,844,648
Privacy Concern Cases	32,049	$ 843,524
New Elements on Individual Reports	33,783	$ 889,169
Maintenance of Individual Reports	- 39,371	- $ 1,119,198
Employee Access	22,766	$ 612,860
TOTAL ANNUAL COST	2,088,269[b]	$38,246,377

[a] One-time costs only.

[b] Includes 1,030,181 hours that will be required in the first year only.

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4. Benefits

OSHA's final Recording and Reporting Occupational Injuries and Illnesses rule is designed to provide an information base to assist employers and employees to maintain safe and healthy working conditions that protect workers. The importance of the contribution of accurate recordkeeping to lower injury and illness rates is indicated by experience with OSHA's Voluntary Protection Program (VPP), a program that recognizes employers with exemplary safety and health programs. VPP worksites, which have comprehensive safety and health management programs that include effective injury, illness, and accident recordkeeping, generally have lost-workday case rates ranging from one-fifth to one-third the rates experienced by most worksites in the same industry.[35] These sites also routinely rely on the Logs and other worksite data sources to evaluate their programs and correct deficiencies. This chapter describes the potential benefits associated with the changes OSHA is making to the recordkeeping requirements in 29 CFR 1904.

A. Overview of Benefits

The benefits of improved recordkeeping fall into two groups. Improved recordkeeping enhances the ability of employers and employees to prevent occupational injuries and illnesses. Improved recordkeeping and reporting also increases the utility of injury and illness records for OSHA's purposes.

(1) Enhanced Ability of Employers and Employees to Prevent Injuries and Illnesses

The additional or improved information about events and exposures to be collected on Form 301, including information on the location, the equipment, materials or chemicals being used, and the specific activity being performed, will increase the ability of employers and employees to identify hazardous conditions and to take remedial action to prevent future injuries and illnesses. Identifying the irritating substance that has caused an employee to experience a recordable case of occupational dermatitis, for example, could prompt an employer to re-examine available Material Safety Data Sheets to identify a non-irritating substitute material. On Form 301, details will be recorded in a logical sequence that will help structure the information and focus attention on problem processes and activities. Thus the establishment's records of injuries and illnesses will provide management with an analytical tool that can be used to control or eliminate hazards.

The process of using recorded information to control or eliminate hazards was well illustrated in a comment on the proposed rule.[36] This testimony described a training exercise where trainees used Log data to plot MSD injuries on a floor plan; went into the plant to look for risk factors and interview workers; formulated specific workplace design and work organization changes to eliminate or reduce risk factors; and refined their findings into an action plan.

If this enhanced ability to identify (and thus address) hazards translates into a reduction even as small as 0.5 to 1 percent of the estimated number of recordable cases, it would mean the prevention of 29,147 to 58,285 injuries and illnesses per year.[37]

(2) Increased Utility of Data to OSHA

The final rule's changes will also make injury records more useful to OSHA, as well as to employers and employees. Improvements in the quality and usefulness of the records being kept by employers would enhance OSHA's capacity to:

Focus compliance outreach efforts on the most significant hazards;

Identify types or patterns of injuries and illnesses whose investigation might lead to regulatory changes or other types of prevention efforts, such as enforcement strategies, information and training, or technology development; and

Set priorities among establishments for inspection purposes.

Employers and employees both stand to benefit from the more effective use of OSHA's resources. The enhanced ability of compliance officers to identify patterns of injuries will enable OSHA to focus on more serious problems. Identification of such patterns will also increase the ability of employers to control these hazards and prevent other similar injuries. To the extent that employers take advantage of this information, the burden of OSHA inspections should be reduced in the long run. Employees clearly will also benefit from these reductions in injuries.

B. Specific Benefits of the Final Regulation

(1) Changes in Scope of the Regulation

The changes in the scope of the final regulation in the retail and service sectors represent a refinement in coverage. The scope of the former rule is defined at the two-digit SIC level; the scope of the final rule is defined at the three-digit SIC level. OSHA is expanding the scope to include high-risk three-digit industries that were previously exempt and to reduce the scope to exempt low-risk three-digit industries that were previously covered.

The effect of this change is to make the regulation more cost-effective. This retargeting shifts the burden from industries with relatively few injuries and illnesses per establishment to industries with substantially larger numbers of injuries and illnesses per establishment. Thus the final rule will result in higher hazard identification benefits per dollar of regulatory burden. It is also likely to lead to a small reduction in injuries and illnesses at newly covered establishments that had not been keeping records at all.

The final rule's changes in scope will similarly increase the cost-effectiveness of OSHA's compliance activities. With the same expenditure of resources, OSHA will be better able to detect injury and illness trends and to assist employers to address the causes of these trends. OSHA expects this more efficient use of Agency resources to translate directly into reduced worker injuries and illnesses, reductions in costs to employers, and increased productivity.

(2) Forms Simplification and Definitions

The general reduction in burden associated with changes in the forms and in the data reported was discussed in the previous chapter under cost savings. The simplification of the forms also will have benefits in the form of improved information. The same is true of definitional changes, such as counting lost workdays or restricted work days as calendar days and capping the count at 180 days. Easier recording of data will make records of individual cases more complete and consistent. It is also possible that simplified recording will encourage more complete recording of job-related injuries and illnesses.

This process is illustrated by the change from days away from work to calendar days. This change represents an explicit decision to shift the emphasis from lost productivity to the seriousness of the injury or illness. Calendar days are a more accurate and consistent reflection of seriousness than

[35] **Federal Register,** January 26, 1989, p. 3904.

[36] Nancy Lessin, Testimony on behalf of Massachusetts Coalition for Occupational Safety and Health, May 3, 1996, Transcript, p. 48.

[37] (0.005 to .01) × 5,828,477.

are lost scheduled workdays. They are also directly comparable across establishments and industries, while days away from work are not. Thus, calendar days produce more useful information for the purpose of assessing patterns of injuries and illnesses. This variable is also generally much simpler to determine and record, so that the information is more likely to be complete and accurate. This combination of attributes, OSHA believes, will substantially improve the quality of the information available for analysis and enhance the resulting actions taken to reduce job-related injuries and illness.

(3) Recordable Injuries/Illnesses

The changes in the definition of the injuries and illnesses that are recordable have several different types of benefits. In general, they follow a pattern of simplification and/or more cost-effective targeting of recording requirements, which should produce the types of benefits discussed above. Changes that add to the information recorded have other benefits as well.

Specified Recording Thresholds. One change involves identifying the threshold at which a medical removal condition or restriction is to be recorded, and tying this to the level in a specific OSHA standard (lead, cadmium, ergonomics, etc.). This requirement involves no increase in cost, since the pre-removal or restriction conditions are already required under the specific OSHA standard.

Needlesticks and Sharps Injuries and Hearing Loss Cases. By far the most extensive change in recording is the requirement to report *all* needlesticks and sharps injuries involving exposure to blood or other potentially infectious materials in the covered industries. The benefits of this change are also quite extensive, however, and the costs are less than they might at first seem. In effect, OSHA is changing the emphasis on these injuries from the effects (the injury's medical treatment) to the actual injury caused by the incident (i.e., the needlestick or sharps injury).

Recording all needlesticks and sharps injuries will provide far more useful information for illness prevention purposes. Unlike many other conditions (*e.g.*, blood poisoning and hearing loss) that are progressive, AIDS and hepatitis are either present or they are not. In any given work setting, the risk is probabilistic and bimodally distributed; either one is infected by an injury or one is not. Under these circumstances, it is important to prevent all injuries that might lead to illness. For that prevention strategy to be successful, however, it is necessary to get a complete picture of the overall pattern of all needlesticks and sharps injuries. This requires recording all such injuries, whether or not they result in AIDS, hepatitis, or other bloodborne illness. The final regulation accomplishes this.

Because of their high mortality and disability potentials, AIDS and hepatitis are particularly frightening illnesses. One implication of this fact, however, is that the benefits per case of prevention are large. Another implication is that there are substantial employee morale benefits to a prevention program that is comprehensive and well informed. Recording all risky wounds and then using the data for prevention are actions that are reasonable. These provisions of the final rule are likely also to result in indirect benefits in the form of improved patient care.

Hearing loss cases also result in substantial disability and lead to safety accidents as well. OSHA believes that aligning the recording threshold for such cases with the Standard Threshold Shift criterion in the Agency's occupational Noise Standard will simplify recording for many employers who are already familiar with this criterion. The shift in this recording criterion will also increase the number of hearing loss cases captured by the recordkeeping system and provide more opportunities for employers to intervene to prevent other hearing loss cases.

(4) Procedural Changes and Informational Requirements

The relationship between costs and benefits varies for the final rule's procedural changes and for its requirements for additional information. Some provisions have positive but trivial costs. Others have more significant costs but substantial benefits.

De Minimis Costs. A number of changes have costs that are so low that the benefits of the change are clearly greater. Examples include the provisions discussed below.

Recording incidents within seven calendar days, rather than six working days, will impose costs for more rapid recording on establishments that work only five days a week. The reduced burden resulting from a simpler deadline—one week later—almost certainly outweighs this minuscule cost, however. Moreover, for establishments that operate six or seven days a week, this change does not impose any costs at all.

The requirement, upon change of ownership, for the seller to hand over records to the buyer of the business has extremely small costs. The seller, after all, is already required to maintain those records, and the buyer is required to take them over. The benefits of continuity of information are clearly much greater than this trivial cost.

The cost, if any, for posting (but not revising) the Annual Summary for three months, rather than one month, is extremely small—particularly considering that quite a number of other certificates and information (*e.g.*, elevator certificates, minimum wage information, etc.) must be posted at all times. The ability of employees to refer back to the Annual Summary information, as well as the availability of the information to new employees when they are hired, clearly produces benefits that exceed the costs.

Certification by a Company Executive. The requirement that a company executive certify the Summary will have the effect of increasing the oversight and accountability of higher management in health and safety activities. The certifying official will be responsible for ensuring that systems and processes are in place and for holding the recordkeeper accountable. OSHA believes that this increased awareness of job-related injuries and illnesses, and of their prevention, will translate into fewer accidents and injuries because the certifying executive will have a heightened sense of responsibility for safety and health, although quantifying this benefit is not possible at this time.

Additional Data Requirements for Form 301 and Form 300–A. The final rule will require employers to provide several additional pieces of information, at an estimated cost of two minutes per Form 301 and twenty minutes per Form 300–A.

Additional information related to incidents (on Form 301) includes: Employee's date of hire, emergency room visits, time the employee began work (starting time of the shift), and time of the accident.

Additional establishment information (on the Form 300–A Summary) includes:

Annual average number of employees employed in that year, and Total hours worked by all employees during the year.

Information on the injured employee's date of hire can provide insight into a number of factors that have been shown to relate to injury rates. Such factors may include inadequate training, inexperience on the job, etc. If OSHA were to link its injury data with information on the distribution of job tenure, for example, it could then calculate injury rates by job tenure category for different jobs. That information would help to identify areas

where better training would have the greatest potential to reduce injuries.

Data on starting times of shifts and the time of occurrence of the accident will facilitate research on whether accident rates vary by shift, and whether certain portions of a shift are particularly dangerous. This information will be helpful to OSHA as well as to the employer's own assessment of workplace safety and health. Most importantly, employees will receive the information they need to understand both the absolute and relative incidence of injuries and illnesses in their establishment. Such information is essential both for market-based mechanisms to influence safety and health and for meaningful employee participation in safety and health.

The inclusion of information concerning the average number of employees and total hours worked by all employees during the year will enable OSHA inspectors to calculate incidence rates directly from the posted summary. Employers will also benefit from their ability to obtain incidence information quickly and easily.

At the establishment level, occupational injury and illness records are examined at the beginning of an OSHA inspection and are used by compliance officers to identify safety and health problems that deserve to be focused on. The data on Form 300 and Form 301 will also be used to determine what areas of the site, if any, warrant particular attention during the inspection. Again, access to this improved information will be of direct benefit to employers and employees, who will be able to act on it to control hazards.

Employee Access to Form 301. Providing employees with access to the Form 301, as well as the Form 300, will allow them to monitor the accuracy of the data and to identify possible patterns of injuries and illnesses. Access to Form 301 is important because this form contains enough detailed information about the events surrounding the occurrence to enable workers analyzing it to identify the appropriate protective measures to prevent future accidents.

(5) Summary

Taken together, the changes that OSHA is making to its recording and reporting requirements are designed to achieve the Agency's primary goal of reducing job-related injuries, illnesses, and fatalities. The link between more accurate and better-targeted injury and illness recordkeeping and accident prevention has repeatedly been established and emphasized by the National Academy of Sciences, the Keystone Report, the testimony of safety and health professionals, and the Agency's own experience. The final rule's changes will thus benefit workers, their employers, and the Agency's accident prevention efforts.

5. Economic Feasibility and Small Business Impacts

Introduction

This section assesses the impact on affected firms of the costs of implementing the final recordkeeping rule. It is divided into four parts. The first part analyzes the economic feasibility of the rule for firms in all affected industries. The second part analyzes the economic impacts of the rule on small entities in the affected industries. The third part presents an Unfunded Mandates Analysis, which OSHA has conducted in accordance with the Unfunded Mandates Reform Act. The fourth part examines the potential environmental impacts of the regulation.

Analysis of Economic Feasibility

The final 1904 rule is a regulation promulgated under sections 8 and 24 of the OSH Act, and is not a standard, which would be promulgated under Section 6 of the Act. Nevertheless, OSHA has performed an analysis of the economic feasibility of the rule.

The courts have held that, to demonstrate that a standard is economically feasible, OSHA ''must construct a reasonable estimate of compliance costs and demonstrate a reasonable likelihood that these costs will not threaten the existence or competitive structure of an industry, even if it does portend disaster for some marginal firms'' [*United Steelworkers of America* v. *Marshall,* 647 F.2d 1189, 1272 (D.C. Cir. 1980) (the ''Lead decision'')]. In assessing the economic feasibility of the final recordkeeping rule, OSHA has followed the decisions of the courts in the Lead case and other OSHA cases, and has relied on information and data in the record to determine that the final standard is economically feasible for firms in all affected industries.

OSHA's estimates of the number of covered establishments in each affected industry are presented in Section 2 of this economic analysis, and the results of the Agency's analysis of annualized compliance costs are presented in Section 3. The Agency's analysis is based on comments to the record, supplemented, where needed, by public information sources such as the Census Bureau's *County Business Patterns.*

In this section, for each affected industry, estimates of per-firm annualized compliance costs are compared with (a) per-firm estimates of sales from a compilation of 1996 data performed by the U.S. Census Bureau for the Small Business Administration to reflect parent company control of establishments, and (b) per-firm estimates of profits derived from information in Dun & Bradstreet's ''Industry Norms and Key Business Ratios'' database for 1996 or by applying 1996 profit percentages from Robert Morris Associates to the Agency's per-firm estimates of sales. Based on the results of these comparisons, which identify the magnitude of the potential impacts of the final rule, OSHA then assesses the rule's economic feasibility for establishments in all affected industries.

To estimate the sales and profits of covered firms, OSHA identified the Standard Industrial Classifications (SICs) of every industry under the scope of the rulemaking. For each industry, OSHA then calculated the average sales per firm in the relevant SIC(s). The average rate of return on sales (from Dun and Bradstreet or, if necessary, from Robert Morris Associates) was used to estimate average profit per firm. (Throughout this section, the term ''average'' is used to mean the arithmetic mean.)

The cost estimates compared with estimated sales and profit data for firms in each affected industry ''screen'' for potential impacts. If sizeable impacts were identified by this screening analysis, additional analysis would be necessary.

Table X–9 shows compliance costs as a percentage of before-tax profits and of sales. This table presents the results of the screening analysis, which simply measures costs as a percentage of before-tax profits and sales; the screening analysis is used to determine whether the compliance costs potentially associated with the rule could lead to significant impacts on the affected firms under worst-case scenarios. Whether or not the costs of compliance actually lead to a significant impact on the profit and/or sales of firms in a given industry will depend on the price elasticity of demand for the products or services of firms in that industry.

Price elasticity refers to the relationship between the price charged for a product and the demand for that product: the more elastic the relationship, the less able firms are to pass the costs of compliance through to their customers in the form of a price increase and the more they must absorb the costs of compliance from their

profits. When demand is inelastic, firms can absorb all the costs of compliance simply by raising the prices they charge for that product; under this scenario, profits are untouched. On the other hand, when demand is elastic, firms cannot cover the costs simply by passing the cost increase through in the form of a price increase; instead, they must absorb some of the increase from their profits. In general, ''when an industry is subjected to a higher cost, it does not simply swallow it; it raises its price and reduces its output, and in this way shifts a part of the cost to its consumers and a part to its suppliers,'' in the words of the court in *American Dental Association* v. *Secretary of Labor,* [984 F.2d 823, 829 (Seventh Cir. 1993)] (the ''ADA decision'').

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TABLE X-9

ANNUAL COST OF THE FINAL RULE AS A PERCENT OF SALES AND PROFITS FOR ALL COVERED FIRMS, UNDER TWO WORST-CASE SCENARIOS

SIC	Industry	Average Cost per Firm	Average Sales per Firm	Cost as a Percent of Sales	Average Profit per Firm	Cost as a Percent of Profits
07	Agricultural Services	$ 26.27	$1,643,011	0.0016%	$98,581	0.027%
08	Forestry	$ 34.18	$4,517,500	0.0008%	$140,043	0.024%
09	Fishing, Hunting, & Trapping	$ 28.24	$6,318,183	0.0004%	$315,909	0.009%
13	Oil and Gas Extraction	$ 45.83	$34,757,006	0.0001%	$1,772,607	0.003%
15	Gen. Contractors & Op. Builders	$ 25.16	$8,733,493	0.0003%	$227,071	0.011%
16	Heavy Constr., except Building	$ 24.61	$8,891,657	0.0003%	$337,883	0.007%
17	Special Trade Contractors	$ 24.83	$3,021,903	0.0008%	$114,832	0.022%
20	Food and Kindred Products	$ 39.45	$55,449,039	0.0001%	$1,108,981	0.004%
21	Tobacco Products	$109.19	$611,873,720	*	$23,863,075	**
22	Textile Mill Products	$ 53.53	$27,804,977	0.0002%	$722,929	0.007%
23	Apparel & Other textile Products	$ 37.80	$6,533,106	0.0006%	$163,328	0.023%
24	Lumber and Wood Products	$ 31.92	$8,476,937	0.0004%	$305,170	0.010%
25	Furniture and Fixtures	$ 32.73	$10,819,231	0.0003%	$335,396	0.010%
26	Paper and Allied Products	$ 60.90	$50,060,367	0.0001%	$1,902,294	0.003%
27	Printing and Publishing	$ 41.86	$10,140,518	0.0004%	$415,761	0.010%
28	Chemicals & Allied Products	$ 78.02	$88,199,672	0.0001%	$3,704,386	0.003%
29	Petroleum & Coal Products	$ 96.77	$240,889,238	*	$7,467,566	0.001%
30	Rubber & Misc. Plastics Pdts	$ 40.67	$17,053,410	0.0002%	$613,923	0.007%
31	Leather and Leather Products	$ 38.35	$11,516,441	0.0003%	$207,296	0.018%
32	Stone, Clay, & Glass Products	$ 49.98	$12,963,602	0.0004%	$635,216	0.008%
33	Primary Metal. Industries	$ 33.15	$48,966,680	0.0001%	$2,301,434	0.001%
34	Fabricated Metal Products	$ 32.19	$11,131,190	0.0003%	$478,641	0.007%
35	Industrial Machinery & Equipment	$ 32.47	$13,603,234	0.0002%	$557,733	0.006%

TABLE X-9

ANNUAL COST OF THE FINAL RULE AS A PERCENT OF SALES AND PROFITS FOR ALL COVERED FIRMS, UNDER TWO WORST-CASE SCENARIOS

SIC	Industry	Average Cost per Firm	Average Sales per Firm	Cost as a Percent of Sales	Average Profit per Firm	Cost as a Percent of Profits
36	Electronic & Other Electrical Equip.	$ 49.71	$34,672,510	0.0001%	$1,733,626	0.003%
37	Transportation Equipment	$ (6.32)	$107,210,814	- *	$4,288,433	- **
38	Instruments & Related Products	$ 50.12	$29,545,846	0.0002%	$1,625,022	0.003%
39	Misc. Manufacturing Industries	$ 32.37	$7,712,561	0.0004%	$254,515	0.013%
41	Local & Interurban Pass. Transit	$ 34.78	$2,782,251	0.0012%	$164,153	0.021%
42	Trucking and Warehousing	$ 40.54	$6,828,568	0.0006%	$245,828	0.016%
43	United States Postal Service	$776,159	$60,005,000,00	0.0013%	N/A	N/A
44	Water Transportation	$ 38.83	$16,550,772	0.0002%	$827,539	0.005%
45	Transportation by Air	$ 20.57	$77,701,749	*	$3,185,772	0.001%
46	Pipelines, except Natural Gas	$350.74	$123,685,486	0.0003%	$6,060,589	0.006%
47	Transportation Services	$ 68.59	$4,212,194	0.0016%	$134,790	0.051%
48	Communication	$133.35	$45,842,134	0.0003%	$3,071,423	0.004%
49	Electric, Gas, & Sanitary Svs	$111.93	$112,358,783	0.0001%	$10,112,290	0.001%
50	Wholesale Trade - Durables	$ 51.39	$25,279,114	0.0002%	$606,699	0.008%
51	Wholesale Trade - Nondurables	$ 49.58	$42,689,772	0.0001%	$768,416	0.006%
521	Lumber & Other Bldg Materials	$ 52.26	$15,180,822	0.0003%	$288,436	0.018%
523	Paint, Glass & Wallpaper Stores	$142.20	$5,388,504	0.0026%	$48,497	0.293%
526	Retail Nurseries & Garden Stores	$ 38.87	$2,528,349	0.0015%	$55,624	0.070%
527	Mobile Home Dealers	$ 52.29	$8,631,626	0.0006%	$250,317	0.021%
53	General Merchandise Stores	$301.14	$141,333,177	0.0002%	$3,391,996	0.009%
541	Grocery Stores	$ 76.04	$18,148,027	0.0004%	$217,776	0.035%
543	Fruit & Vegetable Markets	$ 32.32	$3,033,727	0.0011%	$39,438	0.082%

TABLE X-9

ANNUAL COST OF THE FINAL RULE AS A PERCENT OF SALES AND PROFITS FOR ALL COVERED FIRMS, UNDER TWO WORST-CASE SCENARIOS

SIC	Industry	Average Cost per Firm	Average Sales per Firm	Cost as a Percent of Sales	Average Profit per Firm	Cost as a Percent of Profits
553	Auto & Home Supply Stores	$207.49	$6,295,269	0.0033%	$119,610	0.173%
555	Boat Dealers	$ 65.37	$5,020,251	0.0013%	$110,446	0.059%
556	Recreational Vehicle Dealers	$ 72.19	$9,137,789	0.0008%	$155,342	0.046%
571	Furniture & Furnishings Stores	$131.57	$5,126,403	0.0026%	$117,907	0.112%
572	Household Appliance Stores	$ 89.23	$5,087,527	0.0018%	$117,013	0.076%
593	Used Merchandise Stores	$143.80	$2,423,691	0.0059%	$111,490	0.129%
596	Nonstore Retailers	$103.25	$13,330,037	0.0008%	$266,601	0.039%
598	Fuel Dealers	$128.25	$6,046,113	0.0021%	$48,369	0.265%
651	Real Estate Oprs &Lessors	$ 81.54	$5,093,830	0.0016%	$784,450	0.010%
655	Subdividers & Developers	$ 84.66	$5,577,710	0.0015%	$507,572	0.017%
70	Hotels & Other Lodging Places	$ 34.95	$5,334,743	0.0007%	$373,432	0.009%
721	Laundry, Cleaning & Garment Svcs	$ 88.69	$1,661,452	0.0053%	$63,135	0.140%
734	Services to Buildings	$ 58.48	$1,486,505	0.0039%	$55,001	0.106%
735	Misc. Equip. Rental & Leasing	$140.26	$5,665,544	0.0025%	$521,230	0.027%
736	Personal Supply Services	$122.03	$6,371,536	0.0019%	$191,146	0.064%
751	Automotive Rental & Leasing	$122.70	$20,477,609	0.0006%	$1,167,224	0.011%
752	Automobile Parking	$346.96	$7,956,476	0.0044%	$381,911	0.091%
753	Automotive Repair Shops	$ 39.47	$1,712,369	0.0023%	$66,782	0.059%
754	Automotive Svs, except Repair	$ 45.15	$1,218,918	0.0037%	$79,230	0.057%
762	Electrical Repair Shops	$ 52.11	$4,100,382	0.0013%	$106,610	0.049%

TABLE X-9

ANNUAL COST OF THE FINAL RULE AS A PERCENT OF SALES AND PROFITS FOR ALL COVERED FIRMS, UNDER TWO WORST-CASE SCENARIOS

SIC	Industry	Average Cost per Firm	Average Sales per Firm	Cost as a Percent of Sales	Average Profit per Firm	Cost as a Percent of Profits
763	Watch, Clock & Jewelry Repair	$ 83.20	$1,714,533	0.0049%	$58,294	0.143%
769	Miscellaneous Repair Shops	$ 32.68	$2,867,239	0.0011%	$169,167	0.019%
794	Commercial Sports	$ 19.62	$10,882,419	0.0002%	$391,767	0.005%
799	Misc. Amusement & Rec. Svcs	$ 29.18	$3,061,718	0.0010%	$128,592	0.023%
805	Nursing & Personal Care Facilities	$ 86.55	$6,269,041	0.0014%	$269,569	0.032%
806	Hospitals	$256.90	$75,848,928	0.0003%	$3,868,295	0.007%
808	Home Health Care Services	$ 90.38	$4,861,272	0.0019%	$170,145	0.053%
833	Job Training & Related Svcs	$108.09	$2,420,399	0.0045%	$60,510	0.179%
836	Residential Care	$107.87	$2,223,194	0.0049%	$57,803	0.187%
842	Botanical & Zoological Gardens	$166.25	$4,411,468	0.0038%	$269,100	0.062%
All Covered Firms		$ 57.82				

* indicates absolute value is less than .00005%
** indicates absolute value is less than .0005%

Source: Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis

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Specifically, if demand is completely inelastic (i.e., the price elasticity is 0), then the impact of compliance costs that amount to 1 percent of revenues would be a 1 percent increase in the price of the product, with no decline in demand or in profits. Such a situation would be most likely when there are few, if any, substitutes for the product or services offered by the affected firms and the products or services of the affected firms account only for a small portion of the income of their consumers. If demand is perfectly elastic (i.e., the price elasticity is infinitely large), then no increase in price is possible, and before-tax profits would be reduced by an amount equal to the costs of compliance (minus any savings resulting from improved worker health and reduced insurance costs). Under this scenario, if the costs of compliance represent a large percentage of the firm's profits, some firms might be forced to close. This scenario is highly unlikely to occur, however, because it can only arise when there are other goods or services that are, in the eyes of consumers, perfect substitutes for the goods produced by the affected firms.

A common intermediate case would be a price elasticity of one. In this situation, if the costs of compliance amount to 1 percent of revenues, and prices are raised by 1 percent, then production would decline by 1 percent. In this situation, firms would remain in business and maintain the same profit as before, but would produce 1 percent less product. Consumers would effectively absorb the costs through a combination of increased prices and reduced consumption; this, as the court described in the ADA decision, is the more typical case.

As Table X–9 shows, the impacts potentially imposed by the final rule are not sizeable. On average, annual costs per firm are less than $58. (In one industry, Transportation Equipment, characterized by large workplaces, the potential reduction in costs that vary with the number of cases actually outweighs the potential increase in essentially fixed costs associated with the number of establishments, producing an average reduction in costs per firm.) In no industry do average compliance costs per firm amount to more than .006 percent of sales or 0.3 percent of profits. Even if no price increase were possible, a 0.3 percent decline in profits would not threaten the viability of any firm. For example, a firm with before-tax profits of 10 percent of sales would still have profits of 9.97 percent of sales, even under this extreme scenario. Thus, the final rule is clearly economically feasible in all industry groups.

Among the covered SICs, average compliance costs as a percent of sales range from less than .00005% in several industries, such as SIC 29, Petroleum and Coal Products, to .0059% in SIC 593, Used Merchandise Stores. Average compliance costs as a percent of profits ranges from less than .0005% in several industries, such as SIC 37, Transportation Equipment manufacturing, to .293% in SIC 523, Paint, Glass, and Wallpaper Stores.

Potential Economic Impacts of the Rule on Small Firms

As required by the Regulatory Flexibility Act (as amended in 1996), this section measures the potential economic impacts of the final rule on small businesses in the regulated community to determine whether the rule has a significant impact on a substantial number of small firms. It builds on the analysis of economic impacts developed in the Economic Feasibility part of this section. The Agency has analyzed the impact of the final recordkeeping rule on small entities, as defined by the Small Business Administration and in accordance with the Regulatory Flexibility Act.

Data on receipts were provided by the Commerce Department, in a data table specially commissioned by the Small Business Administration. Since the size definitions SBA has established do not precisely match the categories provided in these data, the Agency approximated the nearest data grouping, where necessary. The SBA-commissioned data were broken into size categories of firms defined by numbers of employees (1–4, 5–9, 10–19, 20–99, 100–499, >500). Where these size categories did not match SBA's assigned ''small'' firm definitions, the Agency approximated them to the closest category. For those industries where an ''annual receipts'' SBA definition was used, the Agency projected the analogous employment break by examining the ratio of employment to receipts per firm. For example, in Heavy Construction, SIC 16, the ratio of employment to receipts suggested that a $17 million firm would have approximately 104 employees. The Agency therefore examined firms with fewer than 100 employees. This process is shown in Table X–10.

The results of this analysis are shown in Table X–11. Over the entire range of SICs affected by the final rule, estimated cost per small firm averages only $31.63.

In order to ensure that even the smallest entities would not be significantly impacted, the Agency performed an analysis of impacts on very small firms, i.e., those with fewer than 20 employees. This analysis used the same sources for sales and profit data as Table X–11. The results of this analysis are shown in Table X–12.

Regardless of whether the SBA definitions or the fewer-than-20-employee definition was used, the results were the same—no significant impact. For the purposes of small-business impact assessment, OSHA defines as potentially significant annualized costs of compliance that amount to 1 percent of sales or 5 percent of profits. The impacts of the rule on sales and profits did not exceed 1 percent for firms in any covered industry, whether the analysis used the SBA's definitions or the fewer-than-20-employee size class definition. No small firm in any industry would need to increase its prices by more than 0.0105 percent, even under a full cost pass-through scenario. Alternatively, if a small firm had to pay for the costs of compliance entirely from profits, costs would account for no more than 0.406 percent of profits [38] in any industry. Impacts of this magnitude would not affect the viability of even the smallest firm.

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[38] It should be emphasized that a one percent decrease in profits represents a one percent decrease in profits, not in profit rate.

TABLE X-10

CONVERSION OF SBA SIZE DEFINITIONS TO CONFORM TO AVAILABLE DATA

SIC	Industry	Affected Firm Size Class *	Sales per Employee in 20-99 Employee Group	Estimated Number of Employees at Class Limit	Approximated Class Size Limit
07	Agricultural Services	$5 million	$ 51,635	97	99
08	Forestry	$5 million	$ 79,190	63	99
09	Fishing, Hunting, and Trapping	$3 million	$128,436	23	19
13	Oil and Gas Extraction	500 employees	NA	500	499
15	General Contractors & Operative Builders	$17 million	$246,233	69	99
16	Heavy Construction, except Building	$17 million	$163,694	104	99
17	Special trade Contractors	$ 7 million	$ 95,231	74	99
20	Food and Kindred Products	500 employees	NA	500	499
21	Tobacco Products	500 employees	NA	500	499
22	Textile Mill Products	500 employees	NA	500	499
23	Apparel and Other textile Products	500 employees	NA	500	499
24	Lumber and Wood Products	500 employees	NA	500	499
25	Furniture and Fixtures	500 employees	NA	500	499
26	Paper and Allied Products	500 employees	NA	500	499
27	Printing and Publishing	500 employees	NA	500	499
28	Chemicals and Allied Products	500 employees	NA	500	499
29	Petroleum and Coal Products	500 employees	NA	500	499
30	Rubber and Miscellaneous Plastics Pdts	500 employees	NA	500	499
31	Leather and Leather Products	500 employees	NA	500	499

TABLE X-10

CONVERSION OF SBA SIZE DEFINITIONS TO CONFORM TO AVAILABLE DATA

SIC	Industry	Affected Firm Size Class *	Sales per Employee in 20-99 Employee Group	Estimated Number of Employees at Class Limit	Approxi-mated Class Size Limit
32	Stone, Clay, and Glass products	500 employees	NA	500	499
33	Primary Metal. Industries	500 employees	NA	500	499
34	Fabricated Metal Products	500 employees	NA	500	499
35	Industrial Machinery and Equipment	500 employees	NA	500	499
36	Electronic & Other Electrical Equipment	500 employees	NA	500	499
37	Transportation Equipment	500 employees	NA	500	499
38	Instruments and Related Products	500 employees	NA	500	499
39	Miscellaneous Manufacturing Industries	500 employees	NA	500	499
41	Local and Interurban Passenger Transit	$ 5 million	$ 38,970	128	99
42	Trucking and Warehousing	$18.5 million	$ 93,596	198	99
44	Water Transportation	500 employees	NA	500	499
45	Transportation by Air	1500 employees	NA	1500	499
46	Pipelines, except Natural Gas	1500 employees	NA	1500	499
47	Transportation Services	$ 5 million	$ 73,838	68	99
48	Communication	1500 employees	NA	1500	499
49	Electric, Gas, and Sanitary Services	$ 5 million	$301,546	17	19
50	Wholesale Trade - Durable Goods	100 employees	NA	100	99
51	Wholesale trade - Nondurable Goods	100 employees	NA	100	99
521	Lumber and Other Building Materials	$ 5 million	$225,654	22	19
523	Paint,, Glass, and Wallpaper Stores	$ 5 million	$136,892	37	19
526	Retail Nurseries and Garden Stores	$ 5 million	$ 92,622	54	19

TABLE X-10

CONVERSION OF SBA SIZE DEFINITIONS TO CONFORM TO AVAILABLE DATA

SIC	Industry	Affected Firm Size Class *	Sales per Employee in 20-99 Employee Group	Estimated Number of Employees at Class Limit	Approximated Class Size Limit
527	Mobile Home Dealers	$ 9.5 million	$286,529	33	19
53	General Merchandise Stores	$ 5 million	$138,035	36	19
541	Grocery Stores	$20 million	$118,116	169	99
543	Fruit and Vegetable Markets	$ 5 million	$103,003	49	19
553	Auto and Home Supply Stores	$ 5 million	$137,449	36	19
555	Boat Dealers	$ 5 million	$228,912	22	19
556	Recreational Vehicle Dealers	$ 5 million	$367,035	14	19
571	Furniture and Homefurnishings Stores	$ 5 million	$143,728	35	19
572	Household Appliance Stores	$ 5 million	$188,677	34	19
593	Used Merchandise Stores	$ 5 million	$ 52,924	94	99
596	Nonstore Retailers	$ 5 million	$144,160	35	19
598	Fuel Dealers	$ 5 million	$185,718	27	19
651	Real Estate Operators and Lessors	$ 5 million	$155,042	32	19
655	Subdividers and Developers	$ 5 million	$155,425	32	19
70	Hotels and Other Lodging Places	$ 5 million	$ 44,641	112	99
721	Laundry, Cleaning, and Garment Svcs	$ 5 million	$ 38,848	129	99
734	Services to Buildings	$12 million	$ 23,274	537	499
735	Misc. Equipment Rental & Leasing	$ 5 million	$ 38,848	129	99
736	Personal Supply Services	$ 5 million	$ 32,785	153	99
751	Automotive Rental & Leasing, w/o Drivers	$18.5 million	$172,688	107	99
752	Automobile Parking	$ 5 million	$ 75,807	66	99

TABLE X-10

CONVERSION OF SBA SIZE DEFINITIONS TO CONFORM TO AVAILABLE DATA

SIC	Industry	Affected Firm Size Class *	Sales per Employee in 20-99 Employee Group	Estimated Number of Employees at Class Limit	Approximated Class Size Limit
753	Automotive Repair Shops	$ 5 million	$ 89,691	56	19
754	Automotive Services, except Repair	$ 5 million	$ 33,092	151	99
762	Electrical Repair Shops	$ 5 million	$ 86,830	58	19
763	Watch, Clock, and Jewelry Repair	$ 5 million	NA	NA	19
769	Miscellaneous Repair Shops	$ 5 million	$ 91,007	55	19
794	Commercial Sports	$ 5 million	$176,962	28	19
799	Misc. Amusement & Recreation Svcs	$ 5 million	$ 42,873	117	99
805	Nursing and Personal Care Facilities	$ 5 million	$ 31,102	161	99
806	Hospitals	$ 5 million	$ 50,315	99	99
808	Home Health Care Services	$ 5 million	$ 39,175	128	99
833	Job Training and Related Services	$ 5 million	$ 35,204	142	99
836	Residential Care	$ 5 million	$ 34,361	146	99
842	Botanical and Zoological Gardens	$ 5 million	$ 48,064	104	99

* Dollar figures are for annual receipts.

NA = Not Applicable

Source: Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis

TABLE X-11

ANNUAL COST OF THE FINAL RULE AS A PERCENT OF SALES AND PROFITS FOR COVERED SMALL FIRMS, UNDER WORST CASE SCENARIOS

SIC	Industry	Small Business Definition*	Number of Affected Firms	Average Cost per Firm	Average Sales per Firm	Cost as a Percent of Sales	Average Profit per Firm	Cost as a Percent of Profits
07	Agricultural Services	$5 million	13,670	$24.73	$987,190	0.0025%	$59,231	0.042%
08	Forestry	$5 million	336	$26.21	$2,105,842	0.0012%	$65,281	0.040%
09	Fishing, Hunting, & Trapping	$3 million	161	$27.04	$2,584,497	0.0026%	$129,225	0.052%
13	Oil and Gas Extraction	500 employees	2,710	$31.36	$9,591,457	0.0003%	$489,164	0.006%
15	Gen. Contractors & Op. Builders	$17 million	23,352	$24.77	$5,151,861	0.0005%	$133,948	0.018%
16	Heavy Constr., except Building	$17 million	10,323	$24.56	$4,503,478	0.0005%	$171,132	0.014%
17	Special Trade Contractors	$7 million	69,229	$24.46	$2,124,066	0.0012%	$80,715	0.030%
20	Food and Kindred Products	500 employees	7,458	$29.91	$14,986,974	0.0002%	$299,739	0.010%
21	Tobacco Products	500 employees	34	$35.06	$29,572,735	*	$1,153,337	0.003%
22	Textile Mill Products	500 employees	2,432	$33.25	$8,159,577	0.0004%	$212,149	0.016%
23	Apparel & Other textile Products	500 employees	9,351	$31.31	$3,510,089	0.0009%	$87,752	0.036%
24	Lumber and Wood Products	500 employees	10,560	$27.92	$4,708,398	0.0006%	$169,502	0.016%
25	Furniture and Fixtures	500 employees	4,515	$28.67	$5,096,950	0.0006%	$158,005	0.018%
26	Paper and Allied Products	500 employees	2,724	$33.54	$12,075,394	0.0003%	$458,865	0.007%
27	Printing and Publishing	500 employees	16,857	$31.98	$4,482,306	0.0007%	$183,775	0.017%
28	Chemicals & Allied Products	500 employees	3,668	$37.29	$17,866,821	0.0002%	$750,407	0.005%
29	Petroleum & Coal Products	500 employees	530	$45.57	$28,919,179	0.0002%	$896,495	0.005%
30	Rubber & Misc. Plastics Pdts	500 employees	7,432	$31.24	$7,522,338	0.0004%	$270,804	0.012%
31	Leather and Leather Products	500 employees	695	$30.88	$4,943,160	0.0006%	$88,977	0.035%
32	Stone, Clay, & Glass Products	500 employees	5,293	$36.46	$5,529,515	0.0007%	$270,946	0.013%
33	Primary Metal. Industries	500 employees	2,948	$29.62	$11,867,260	0.0002%	$557,761	0.005%
34	Fabricated Metal Products	500 employees	16,731	$28.41	$5,979,978	0.0005%	$257,139	0.011%

TABLE X-11

ANNUAL COST OF THE FINAL RULE AS A PERCENT OF SALES AND PROFITS FOR COVERED SMALL FIRMS, UNDER WORST CASE SCENARIOS

SIC	Industry	Small Business Definition*	Number of Affected Firms	Average Cost per Firm	Average Sales per Firm	Cost as a Percent of Sales	Average Profit per Firm	Cost as a Percent of Profits
35	Industrial Machinery & Equipment	500 employees	21,451	$28.78	$5,070,462	0.0006%	$207,889	0.014%
36	Electronic and Other Electrical Equipment	500 employees	7,163	$32.43	$8,579,085	0.0004%	$428,954	0.008%
37	Transportation Equipment	500 employees	4,015	$ 26.52	$8,870,271	0.0003%	$354,811	0.007%
38	Instruments & Related Products	500 employees	4,213	$ 32.47	$7,392,197	0.0004%	$406,571	0.008%
39	Misc. Manufacturing Industries	500 employees	5,379	$ 29.47	$4,621,281	0.0006%	$152,502	0.019%
41	Local & Interurban Pass. Transit	$5 million	4,986	$ 27.09	$1,107,785	0.0024%	$65,359	0.041%
42	Trucking and Warehousing	$18.5 million	20,099	$27.34	$2,393,091	0.0011%	$86,151	0.032%
44	Water Transportation	500 employees	1,751	$32.20	$6,533,938	0.0005%	$326,697	0.010%
45	Transportation by Air	1500 employees	1,660	$35.67	$3,558,061	0.0010%	$145,880	0.024%
46	Pipelines, except Natural Gas	1500 employees	21	$101.30	$26,554,857	0.0004%	$1,301,188	0.008%
47	Transportation Services	$5 million	5,506	$36.47	$1,698,837	0.0021%	$54,363	0.067%
48	Communication	1500 employees	6,042	$36.51	$5,716,356	0.0006%	$382,996	0.010%
49	Electric, Gas, & Sanitary Svcs	$5 million	947	$28.00	$2,984,573	0.0009%	$268,612	0.010%
50	Wholesale Trade - Durables	100 employees	62,307	$32.89	$11,930,304	0.0003%	$286,327	0.011%
51	Wholesale Trade - Nondurables	100 employees	34,374	$30.78	$16,844,265	0.0002%	$303,197	0.010%
521	Lumber & Other Bldg Materials	$5 million	2,741	$26.94	$2,603,069	0.0010%	$49,458	0.054%
523	Paint, Glass & Wallpaper Stores	$5 million	577	$31.14	$1,722,688	0.0018%	$15,504	0.201%
526	Retail Nurseries & Garden Stores	$5 million	1,797	$26.58	$1,905,264	0.0020%	$41,916	0.092%
527	Mobile Home Dealers	$9.5 million	557	$28.98	$3,627,901	0.0008%	$105,209	0.027%
53	General Merchandise Stores	$5 million	986	$27.76	$4,174,173	0.0007%	$100,180	0.028%
541	Grocery Stores	$20 million	18,877	$30.99	$2,902,882	0.0011%	$34,835	0.089%
543	Fruit & Vegetable Markets	$5 million	237	$28.46	$2,771,857	0.0010%	$36,034	0.079%
553	Auto & Home Supply Stores	$5 million	3,264	$23.36	$1,453,195	0.0016%	$27,611	0.085%