PART 1904-RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

(§§ 1904.37 to 1904.39) - English version typeset from the official eCFR XML (version of October 16, 2026)

§ 1904.37 State recordkeeping regulations.

(a) Basic requirement. Some States operate their own OSHA programs, under the authority of a State plan as approved by OSHA. States operating OSHA-approved State plans must have occupational injury and illness recording and reporting requirements that are substantially identical to the requirements in this part (see 29 CFR 1902.3(j), 29 CFR 1902.7, and 29 CFR 1956.10(i)).

(b) Implementation. (1) State-Plan States must have the same requirements as Federal OSHA for determining which injuries and illnesses are recordable and how they are recorded.

(2) For other part 1904 provisions (for example, industry exemptions, reporting of fatalities and hospitalizations, record retention, or employee involvement), State-Plan State requirements may be more stringent than or supplemental to the Federal requirements, but because of the unique nature of the national recordkeeping program, States must consult with and obtain approval of any such requirements.

(3) Although State and local government employees are not covered Federally, all State-Plan States must provide coverage, and must develop injury and illness statistics, for these workers. State Plan recording and reporting requirements for State and local government entities may differ from those for the private sector but must meet the requirements of paragraphs 1904.37(b)(1) and (b)(2).

(4) A State-Plan State may not issue a variance to a private sector employer and must recognize all variances issued by Federal OSHA.

(5) A State Plan State may only grant an injury and illness recording and reporting variance to a State or local government employer within the State after obtaining approval to grant the variance from Federal OSHA.

[66 FR 6122, Jan. 19, 2001, as amended at 80 FR 49904, Aug. 18, 2015]

§ 1904.38 Variances from the recordkeeping rule.

(a) Basic requirement. If you wish to keep records in a different manner from the manner prescribed by the part 1904 regulations, you may submit a variance petition to the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210. You can obtain a variance only if you can show that your alternative recordkeeping system:

(1) Collects the same information as this part requires;

(2) Meets the purposes of the Act; and

(3) Does not interfere with the administration of the Act.

(b) Implementation-(1) What do I need to include in my variance petition? You must include the following items in your petition:

(i) Your name and address;

(ii) A list of the State(s) where the variance would be used;

(iii) The address(es) of the business establishment(s) involved;

(iv) A description of why you are seeking a variance;

(v) A description of the different recordkeeping procedures you propose to use;

(vi) A description of how your proposed procedures will collect the same information as would be collected by this part and achieve the purpose of the Act; and

(vii) A statement that you have informed your employees of the petition by giving them or their authorized representative a copy of the petition and by posting a statement summarizing the petition in the same way as notices are posted under § 1903.2(a).

(2) How will the Assistant Secretary handle my variance petition? The Assistant Secretary will take the following steps to process your variance petition.

(i) The Assistant Secretary will offer your employees and their authorized representatives an opportunity to submit written data, views, and arguments about your variance petition.

(ii) The Assistant Secretary may allow the public to comment on your variance petition by publishing the petition in the Federal Register. If the petition is published, the notice will establish a public comment period and may include a schedule for a public meeting on the petition.

(iii) After reviewing your variance petition and any comments from your employees and the public, the Assistant Secretary will decide whether or not your proposed recordkeeping procedures will meet the purposes of the Act, will not otherwise interfere with the Act, and will provide the same information as the part 1904 regulations provide. If your procedures meet these criteria, the Assistant Secretary may grant the variance subject to such conditions as he or she finds appropriate.

(iv) If the Assistant Secretary grants your variance petition, OSHA will publish a notice in the Federal Register to announce the variance. The notice will include the practices the variance allows you to use, any conditions that apply, and the reasons for allowing the variance.

(3) If I apply for a variance, may I use my proposed recordkeeping procedures while the Assistant Secretary is processing the variance petition? No, alternative recordkeeping practices are only allowed after the variance is approved. You must comply with the part 1904 regulations while the Assistant Secretary is reviewing your variance petition.

(4) If I have already been cited by OSHA for not following the part 1904 regulations, will my variance petition have any effect on the citation and penalty? No, in addition, the Assistant Secretary may elect not to review your variance petition if it includes an element for which you have been cited and the citation is still under review by a court, an Administrative Law Judge (ALJ), or the OSH Review Commission.

(5) If I receive a variance, may the Assistant Secretary revoke the variance at a later date? Yes, the Assistant Secretary may revoke your variance if he or she has good cause. The procedures revoking a variance will follow the same process as OSHA uses for reviewing variance petitions, as outlined in paragraph 1904.38(b)(2). Except in cases of willfulness or where necessary for public safety, the Assistant Secretary will:

(i) Notify you in writing of the facts or conduct that may warrant revocation of your variance; and

(ii) Provide you, your employees, and authorized employee representatives with an opportunity to participate in the revocation procedures.

Subpart E-Reporting Fatality, Injury and Illness Information to the Government

Authority:29 U.S.C. 657, 673, 5 U.S.C. 553, and Secretary of Labor's Order No. 08-2020 (85 FR 58393, Sept. 18, 2020) or 1-2012 (77 FR 3912, Jan. 25, 2012), as applicable.

§ 1904.39 Reporting fatalities, hospitalizations, amputations, and losses of an eye as a result of work-related incidents to OSHA.

(a) Basic requirement. (1) Within eight (8) hours after the death of any employee as a result of a work-related incident, you must report the fatality to the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

(2) Within twenty-four (24) hours after the in-patient hospitalization of one or more employees or an employee's amputation or an employee's loss of an eye, as a result of a work-related incident, you must report the in-patient hospitalization, amputation, or loss of an eye to OSHA.

(3) You must report the fatality, in-patient hospitalization, amputation, or loss of an eye using one of the following methods:

(i) By telephone or in person to the OSHA Area Office that is nearest to the site of the incident.

(ii) By telephone to the OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).

(iii) By electronic submission using the reporting application located on OSHA's public Web site at www.osha.gov.

(b) Implementation-(1) If the Area Office is closed, may I report the fatality, in-patient hospitalization, amputation, or loss of an eye by leaving a message on OSHA's answering machine, faxing the Area Office, or sending an email? No, if the Area Office is closed, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye using either the 800 number or the reporting application located on OSHA's public Web site at www.osha.gov.

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

(i) The establishment name;

(ii) The location of the work-related incident;

(iii) The time of the work-related incident;

(iv) The type of reportable event (i.e., fatality, in-patient hospitalization, amputation, or loss of an eye);

(v) The number of employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;

(vi) The names of the employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;

(vii) Your contact person and his or her phone number; and

(viii) A brief description of the work-related incident.

(3) Do I have to report the fatality, in-patient hospitalization, amputation, or loss of an eye if it resulted from a motor vehicle accident on a public street or highway? If the motor vehicle accident occurred in

a construction work zone, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye. If the motor vehicle accident occurred on a public street or highway, but not in a construction work zone, you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(4) Do I have to report the fatality, in-patient hospitalization, amputation, or loss of an eye if it occurred on a commercial or public transportation system? No, you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA if it occurred on a commercial or public transportation system (e.g., airplane, train, subway, or bus). However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(5) Do I have to report a work-related fatality or in-patient hospitalization caused by a heart attack? Yes, your local OSHA Area Office director will decide whether to investigate the event, depending on the circumstances of the heart attack.

(6) What if the fatality, in-patient hospitalization, amputation, or loss of an eye does not occur during or right after the work-related incident? You must only report a fatality to OSHA if the fatality occurs within thirty (30) days of the work-related incident. For an in-patient hospitalization, amputation, or loss of an eye, you must only report the event to OSHA if it occurs within twenty-four (24) hours of the work-related incident. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(7) What if I don't learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye right away? If you do not learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye at the time it takes place, you must make the report to OSHA within the following time period after the fatality, in-patient hospitalization, amputation, or loss of an eye is reported to you or to any of your agent(s): Eight (8) hours for a fatality, and twenty-four (24) hours for an in-patient hospitalization, an amputation, or a loss of an eye.

(8) What if I don't learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident? If you do not learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident, you must make the report to OSHA within the following time period after you or any of your agent(s) learn that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident: Eight (8) hours for a fatality, and twenty-four (24) hours for an in-patient hospitalization, an amputation, or a loss of an eye.

(9) How does OSHA define "in-patient hospitalization"? OSHA defines in-patient hospitalization as a formal admission to the in-patient service of a hospital or clinic for care or treatment.

(10) Do I have to report an in-patient hospitalization that involves only observation or diagnostic testing? No, you do not have to report an in-patient hospitalization that involves only observation or diagnostic testing. You must only report to OSHA each in-patient hospitalization that involves care or treatment.

(11) How does OSHA define "amputation"? An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. Amputations do not include avulsions, enucleations, deglovings, scalpings, severed ears, or broken or chipped teeth.

[79 FR 56187, Sept. 18, 2014]