



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation(s)	16VAC25-85-1904.41
Regulation title(s)	Electronic Submission of Injury and Illness Records to OSHA
Action title	Delay of Electronic Filing for Improve Tracking of Workplace Injuries and Illnesses
Final agency action date	February 15, 2018
Date this document prepared	December 6, 2017

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The revised federal 2016 final rule for Recording and Reporting Requirements, approved by the Safety and Health Codes Board at its September 13, 2016 meeting, made several changes to the existing recording and reporting requirements that require a specific timeframe for certain employers to electronically submit the injury and illness information that they are already required to keep under existing OSHA regulations:

- A. Establishments with 250 or more employees that are required to keep OSHA injury and illness records must electronically submit information from OSHA Forms 300 – *Log of Work-Related Injuries and Illnesses*, 300A – *Summary of Work-Related Injuries and Illnesses*, and 301 – *Injury and Illness Incident Report*.
- B. Establishments with 20 to 249 employees that are classified in certain industries with historically high rates of occupational injuries and illnesses must electronically submit annually information from OSHA Form 300A.
- C. Establishments with fewer than 20 employees at all times during the year do not have to routinely submit information electronically to OSHA. OSHA requires all employers who receive notification from OSHA to electronically submit the requested information from their injury and illness records to OSHA or OSHA’s designee.
- D. OSHA intends to post the data from these submissions on its secure, publicly accessible website at www.osha.gov. It will also remove any Personally Identifiable Information (PII) on the website before the data are released to the public.
- E. Other significant final rule changes included the addition of an Appendix A to Subpart E of Part 1904, Designated Industries for §1904.41(a)(2) Annual Electronic Submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 20 or More Employees but Fewer than 250 Employees in Designated Industries.

This action delays the start-up of the electronic submission of Form 300A data for use by federal OSHA and the Virginia Occupational Safety and Health (VOSH) program. The capability for electronic submission of Form 300A data was not made available by federal OSHA until August 2017, which was not in a timely fashion.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On November 30, 2017, the Safety and Health Codes Board adopted federal final Rule for OSHA’s Delay of Electronic Filing for Improve Tracking of Workplace Injuries and Illnesses, §1904.41. To accommodate all required Virginia Administrative Process Act requirements for such action, VOSH’s proposed effective date is February 15, 2018.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action does not appear to have any impact on the institution of the family and family stability.

To access the Delay of Compliance Date for the Final Rule on Improve Tracking of Workplace Injuries and Illnesses, §1904.41, please click on the link below:

<https://www.osha.gov/sites/default/files/laws-regs/federalregister/2017-11-24.pdf>

**Delay to Improve Tracking of Workplace Injuries and Illnesses, § 1904.41;
Final Rule;**

As Adopted by the
Safety and Health Codes Board

Date: November 30, 2017



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: February 15, 2018

**16VAC25-85-1904.41,
Electronic Submission of Injury and Illness Records to OSHA, §1904.41**

When the regulations, as set forth in the Final Rule to Improve Tracking of Workplace Injuries and Illnesses, §1904.41 are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

15 December 2017

15 February 2018



ACTION: Final rule; delay of compliance date.

S **SUMMARY:** This action delays until December 15, 2017, the initial submission deadline for calendar year 2016 data on Form 300A under the rule entitled Improve Tracking of Workplace Injuries and Illnesses. The original electronic submission deadline was July 1, 2017. This delay will allow affected entities sufficient time to familiarize themselves with the electronic reporting system, which was not made available until August 1, 2017.

DATES: This regulation is effective on November 24, 2017. The submission deadline for completed 2016 Form 300A data is delayed to December 15, 2017.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Frank Meilinger, Director, Office of Communications, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-1999; email meilinger.francis2@dol.gov.

For general and technical information: Miriam Schoenbaum, OSHA, Office of Statistical Analysis, Room N-3507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-1841; email: schoenbaum.miriam@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 12, 2016, the Occupational Safety and Health Administration (OSHA) published a final rule (81 FR 29624) with an effective date of January 1, 2017, for the final rule's electronic reporting requirements. Under these requirements, certain employers were required to electronically submit 2016 Form 300A data to OSHA by July 1, 2017.

On June 28, 2017, the Department proposed to delay the initial deadline for electronic submission of 2016 Form 300A data from July 1, 2017, to December 1, 2017, to provide the new administration the opportunity to review the new electronic reporting requirements prior to their implementation and allow affected entities sufficient time to familiarize themselves with the electronic reporting system, which was not made available until August 1, 2017 (82 FR 29261).

On August 14, 2017, the Occupational Safety and Health Administration (OSHA) received an alert from the United States Computer Emergency Readiness Team (US-CERT) in the Department of Homeland Security that indicated a potential compromise of

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. OSHA-2013-0023]

RIN 1218-AD16

Improve Tracking of Workplace Injuries and Illnesses: Delay of Compliance Date

AGENCY: Occupational Safety and Health Administration, Department of Labor.

user information for OSHA's Injury Tracking Application (ITA). The ITA was taken off-line as a precaution. A complete scan was conducted by the National Information Technology Center (NITC). The NITC confirmed that there was no breach of the data in the ITA and that no information in the ITA was compromised. Public access to the ITA was restored on August 25, 2017.

In establishing the effective date of this action, the Agency invokes the good cause exception in 5 U.S.C. 553(d)(3), which allows the action to be immediately effective for "good cause" rather than subject to the requirement in the Administrative Procedure Act (5 U.S.C. 553(d)) that a minimum of 30 days is required before a rule may become effective. The nature of this action, which is to delay the submission deadline for completed 2016 Form 300A data that could not have been complied with as of the submission date in the original rule, makes it unnecessary and impractical to delay the effectiveness of this action by 30 days.

In this preamble, OSHA references comments in Docket No. OSHA-2013-0023, the docket for this rulemaking. References to documents in this rulemaking are given as "Ex." followed by the document number. The docket is available at <http://www.regulations.gov>, the Federal eRulemaking Portal.

II. Summary and Explanation of the Final Rule

A. Comments Received on the Proposed Delay of Compliance Date

The June 28, 2017, Notice of Proposed Rulemaking (NPRM) proposed to delay the initial submission deadline for 2016 Form 300A data to December 1, 2017. In the NPRM, OSHA also announced its intent to issue a separate proposal to reconsider, revise, or remove other provisions of the prior final rule and to seek comment on those provisions in that separate proposal. This final rule only addresses comments specific to the delay of the July 1, 2017, compliance date. In the NPRM, OSHA described its intent to provide employers a four-month window to submit their Form 300A data between the launch of the ITA on August 1 and the proposed due date of December 1. In order to remain consistent with the intent to provide a four-month window, OSHA has added two weeks to the proposed compliance date of December 1, 2017, to compensate for the time employers were unable to access the ITA in August. With the launch of the electronic reporting system on August 1, and the revised deadline of December 15, employers will still have four months

(August, September, October, November, and part of December) to submit their data.

OSHA received 72 substantive comments on its proposal to delay the submission deadline for completed 2016 Form 300A data to December 1, 2017.

Many commenters supported the proposed delay. Several commenters commented that a delay was necessary because employers were not able to meet the July 1, 2017, deadline because OSHA's electronic data collection system was not expected to be operational until August 1, 2017 (Ex. 1842, 1858, 1860, 1864, 1868, 1874, 1876, 1885, 1888, 1889, 1890, 1891, 1894, 1902, 1908). For example, the National Federation of Independent Business (NFIB) commented that "NFIB strongly supports a delay until at least December 1, 2017. Small and independent businesses should not be required to comply with a rule when compliance is impossible" (Ex. 1842). OSHA agrees with these comments. The data collection system was not made available to the public until August 1, 2017. Because the data collection system was not available until after the initial July 1, 2017 deadline, it was impossible for employers to comply with that provision of the regulation.

Other commenters mentioned that a delay would give OSHA more time to assure that the data collection Web site functions smoothly when it does go live. The North American Die Casting Association (NADCA) commented that a delay would give OSHA more time to deal with potential glitches in the Web site (Ex. 1894). Joseph Xavier commented that a delay would also give OSHA more time to make sure that the Web site is easy to use (Ex. 1887). In response, OSHA notes that the Agency originally planned to launch the electronic reporting system at the end of February, which would have given employers four months (March, April, May, June) to submit their data before the original deadline of July 1. The new reporting deadline of December 15, 2017, maintains the four-month window (August, September, October, November, and part of December) for employers to submit the required data.

Several commenters supported the proposed delay on the grounds that it would be helpful to employers for various reasons. Many commenters stated that a delay would give employers more time to familiarize themselves with the electronic reporting system (Ex. 1858, 1876, 1885, 1888, 1889, 1890, 1891, 1892, 1894, 1899, 1902, 1906). For example, the Edison Electric Institute commented that "[e]lectronic submission of OSHA 300A

forms will require time for EEI members to become familiar with the electronic reporting system, determine whether any IT system or other changes will be necessary to submit OSHA 300A forms electronically, and train employees in how to use the system (Ex. 1899). As above, OSHA notes that employers will have the same amount of time between system launch date and deadline (*i.e.*, four months) as they would originally have had under the May 2016 final rule. Other commenters mentioned that a delay would give more time for establishments to be educated about the new requirements (Ex. 1877, 1891). OSHA agrees that delaying the deadline from July 1, 2017, to December 15, 2017, gives more time for establishments to be educated about the requirements of the final rule published in May 2016.

Many commenters also supported the proposed delay as a means to allow OSHA more time to reevaluate the May 2016 final rule (Ex. 1856, 1860, 1872, 1874, 1877, 1885, 1888, 1889, 1890, 1891, 1893, 1894, 1902, 1904, 1906, 1907, 1912). For example, the Precision Machined Products Association (PMPA) commented that a delay until December 1, 2017, would "allow the Administration an opportunity to review the new electronic reporting requirements prior to implementation" (Ex. 1902). Other commenters supported the proposed delay as a first step, but they more strongly supported an even longer delay. Several commenters commented that the proposed five-month delay did not provide OSHA enough time to reconsider the final rule as mentioned in the NPRM (Ex. 1842, 1886, 1898, 1904, 1911, 1912, 1913). For example, Associated Builders and Contractors, Inc. (ABC) commented that "ABC is concerned that the delay will not be sufficient to allow OSHA to complete its reconsideration of the numerous challenged aspects of the rule" (Ex. 1912). This final rule delays the compliance date to submit employers' 2016 Form 300A data because it was infeasible for employers to comply with the July 1, 2017 deadline. As stated in the proposal, OSHA intends to issue a separate proposal to reconsider, revise, or remove other provisions of the prior final rule and to seek comment on those provisions in that separate proposal. The separate rulemaking will afford OSHA the time necessary to give full reconsideration to substantive issues concerning the May 6, 2016, final rule.

Many commenters also indicated that the proposed five-month delay would be more burdensome for establishments than a longer delay. Some commenters commented that a five-month delay

would create confusion among the regulated community, given that the rule could change after the proposed December 1, 2017, submission deadline or potentially be subject to even more delays in implementation (Ex. 1877, 1904, 1912, 1913). Several commenters also stated that a five-month delay could cause establishments to waste resources in an effort to comply with a regulation that could change later (Ex. 1905, 1911, 1912, 1913). For example, the U.S. Chamber of Commerce (USCC) commented that “[m]erely delaying the submission of these reports suggests OSHA will activate the requirement on December 1. Employers will begin preparing to submit their forms months ahead of that date. If OSHA then concludes, through the comprehensive rulemaking, to rescind this requirement, then employers will have spent their resources for no purpose” (Ex. 1911). The USCC and the Coalition for Workplace Safety (CWS) further commented that the four-month period between when the data collection Web site goes live and the proposed submission deadline is not long enough to make sure that the digital recordkeeping systems currently in use would be compatible with OSHA’s Web site (Ex. 1911, 1913). The American Coating Association (ACA) raised an additional concern about enterprises with many establishments, commenting that “corporate headquarters submitting reports on behalf of establishments within its ownership would face difficulty in collecting and electronically submitting forms by the proposed December 1, 2017 deadline” (Ex. 1905).

In response, OSHA agrees with the comment that a longer compliance delay could help to prevent further delays in implementation. OSHA has determined that the additional two-week delay to December 15, 2017 will help the Agency avoid further delays by ensuring that its electronic reporting system functions properly. OSHA disagrees that a more substantial delay is needed. OSHA notes that the collection of 2016 Form 300A is currently underway. As indicated in the May 6, 2016, final rule, OSHA will use the data collected to more efficiently focus its outreach and enforcement resources towards establishments that are experiencing high rates of occupational injuries and illnesses. OSHA intends to issue a separate proposal to reconsider, revise, or remove other provisions of the prior final rule and to seek comment on those provisions in that separate proposal. This final rule only delays the compliance date to submit employers’

2016 Form 300A data. In addition, employers were already required to complete, certify, and post the 2016 OSHA Form 300A by February 1, 2017, so OSHA does not expect employers to face difficulty collecting and electronically submitting the data from the 2016 OSHA Form 300A by December 15, 2017.

There were also many commenters who opposed the proposed delay of the initial submission deadline to December 1, 2017. Several commenters commented that a delay would result in a longer time before various groups (employers, employees, researchers, labor unions, etc.) could use the 2016 Form 300A injury and illness data to prevent future injuries and illnesses in the workplace (Ex. 1846, 1866, 1871, 1873, 1875, 1878, 1879, 1896, 1900, 1901, 1903, 1909, 1910). For example, Change to Win commented that the current final rule should be implemented as rapidly as possible to “aggressively reduce the nation’s unacceptable burden of workplace injury, illness, disability and death” (Ex. 1871). In a related concern, the American College of Occupational and Environmental Medicine commented that the rule should be enacted without delay because the injury and illness data could be used to help develop better health care policies and medical treatments for injured workers (Ex. 1880).

Other commenters commented that a delay would result in a longer time before employers would have incentives to create safer workplaces through the benchmarking of injury and illness rates (Ex. 1866, 1873, 1875, 1878, 1884, 1901). For example, Public Citizen commented that it did not support the proposed delay because the data collected under the final rule would motivate employers “to compare their safety records against other firms in their industry and set goals for improvement” (Ex. 1866).

Many commenters also opposed the proposed delay because it would result in a longer time before OSHA could use establishment-level injury and illness data to identify and target workplace hazards (Ex. 1866, 1871, 1873, 1875, 1878, 1879, 1884, 1896, 1900, 1901, 1903, 1909, 1910). For example, National Nurses United indicated that they were against the delay because “OSHA Form 300A data is vital in the effective targeting of OSHA enforcement and compliance assistance resources. OSHA uses this information to develop injury and illness prevention plans and to efficiently direct OSHA’s scarce resources to worksites that pose the most serious hazards for workers” (Ex.

1900). The Service Employees International Union expressed a related concern in its opposition to the delay, commenting that “workers and employers will not be able to enjoy the benefits of the regulation during the five month delay . . . [including] [i]mprovement in the quality of the information submitted to OSHA” (Ex. 1884). The Council of State and Territorial Epidemiologists and the International Brotherhood of Teamsters provided a similar comment (Ex. 1903, 1909).

In addition to the above concerns related to occupational health and safety, other commenters indicated that the delay was not necessary for employers. Several commenters commented that there was no need for a delay given that the final rule did not impose any new recordkeeping requirements on employers (Ex. 1866, 1869, 1873, 1878, 1879, 1900, 1901, 1910). Some commenters also stated that a delay was not necessary because employers have already known about the requirements of the final rule for an ample amount of time (Ex. 1869, 1879, 1896, 1903).

Other commenters opposed the delay by noting that OSHA has provided no rationale or justification for the delay (Ex. 1873, 1878, 1900, 1901, 1903, 1909). For example, the Utility Workers Union of America commented that “[i]n its proposal, OSHA provides no justification for the proposed delay from July to December of this year” (Ex. 1901). Other commenters also opposed the delay on the ground that the part of the final rule subject to delay is already in effect and must therefore be enforced (Ex. 1879, 1900). The National Employment Law Project further commented that such a “non-enforcement policy would be, in effect, an Administrative Stay of this part of the rule, in violation of the Administrative Procedure Act” (Ex. 1879). National Nurses United provided a similar comment (Ex. 1900).

In response to all of these comments, OSHA notes that compliance with the regulation was impossible, and OSHA must delay the initial submission deadline because the Agency did not make the electronic reporting system available before the July 1, 2017, submission deadline in the May 2016 final rule. OSHA agrees with commenters that the delay in the compliance date will cause an initial delay in the Agency’s ability to use the data for inspection and outreach purposes, but only on a temporary basis during this initial collection year. The Agency will be able to use the submitted

data for inspection and outreach purposes after December 15, 2017.

B. The Final Rule

OSHA concludes the appropriate course of action is to delay the compliance date to December 15, 2017. OSHA agrees with those commenters supporting a delay of the initial submission deadline because OSHA did not make the electronic reporting system available before the July 1, 2017, submission deadline in the May 2016 final rule. OSHA also agrees with commenters that employers will need sufficient time to learn and understand the reporting requirements and electronic reporting system, especially during the initial year of the data collection. OSHA believes the four-month period between the launch of the data collection system on August 1, and a compliance date of December 15, will provide employers sufficient time to provide the required data to OSHA. As noted above, OSHA has delayed by two weeks the proposed compliance date of December 1, 2017, to compensate for the time employers were unable to access the ITA in August. OSHA also has determined that this two-week delay will allow the Agency to avoid future delays by ensuring that the electronic reporting system functions properly.

OSHA does not agree with commenters who called for a substantially longer delay. OSHA reiterates that it intends to issue a separate proposal to reconsider, revise, or remove other provisions of the prior final rule and to seek comment on those provisions in that separate proposal; this final rule only delays the compliance date to submit employers' 2016 Form 300A data. The separate rulemaking will afford OSHA the time necessary to give full reconsideration to substantive issues concerning the May 6, 2016, final rule.

OSHA also notes, as above, that employers will have the same four months' worth of time with the delayed date as they would have had with the original date. In addition, OSHA notes that the original final rule was published in May 2016 and that file specifications for electronic submission have been available on the OSHA Web site since February 2017.

Finally, OSHA notes that employers were already required to complete, certify, and post the 2016 OSHA Form 300A by February 1, 2017, so OSHA does not expect employers to have difficulty collecting and electronically submitting the data from the 2016 OSHA Form 300A by December 15, 2017. On August 1, the first day the system launched, employers created 668

accounts, registered 1,000 establishments, and completed the submission of calendar year 2016 data from 919 OSHA Form 300As. OSHA believes that the four months from the launch date of August 1, 2017, to the new delayed deadline of December 15, 2017, provide ample time for employers to submit their 2016 data and for the agency to conduct additional outreach to employers to inform them of their obligations.

OSHA's August 1, 2017, launch of the electronic reporting system moots the comments calling for an immediate implementation of the reporting requirements because data collection began on that launch date. OSHA agrees with commenters that the delay in the compliance date will cause an initial delay in the Agency's ability to use the data for inspection and outreach purposes, but only on a temporary basis during the initial collection year. The Agency will be able to use the submitted data after December 15, 2017.

III. Final Economic Analysis

Executive Orders 12866 and 13563 require that OSHA estimate the benefits, costs, and net benefits of proposed and final regulations. Executive Orders 12866 and 13563, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act also require OSHA to estimate the costs, assess the benefits, and analyze the impacts of certain rules that the Agency promulgates. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

In the Preliminary Economic Analysis, OSHA proposed to delay the deadline for electronic submission of Form 300A data under the regulation from July 1, 2017, to December 1, 2017.

To calculate the private-sector cost for provisions in the current regulation impacted by the proposed delay of the first year's submission date from July 1, 2017 to December 1, 2017, OSHA subtracted costs not applicable to the proposed delay from the original private-sector cost of the final rule. The subtracted costs include the costs of familiarization and checking by unregulated establishments (both of which would have taken place after the

rule was published in May 2016), the costs of the non-discrimination provision (which became enforceable in 2016), and the costs of submission of case data (the OSHA Log data) (which is not required until 2018). This yields a cost of \$4,845,365 per year. This cost represents the cost of electronically submitting the required 2016 information from the OSHA Form 300A in 2017. The affected employers have already gathered and recorded this information, as required by various provisions of part 1904.

This delay only affects costs for 2017, because the delay does not modify the deadlines for electronic submission in subsequent years. Thus, the only cost savings associated with this change are for delaying the deadline for the electronic submission of previously-recorded data by five-and-one-half months, from July 1, 2017 to December 15, 2017.

The cost savings of the five and one half month delay are estimated based on the interest that can now be earned on the funds involved while the report for the first year is delayed.¹ At a 3-percent discount rate, this results in a one-time cost savings of \$65,201, or \$7,644 per year annualized over 10 years. At a 7-percent discount rate, this results in a one-time cost savings of \$147,950, or \$21,065 per year annualized over 10 years. OSHA requested comments on these cost savings calculations but did not receive any public comments.

The Agency notes that it did not include an overhead labor cost in the Final Economic Analysis (FEA) for this rule, and all costs of this final rule are labor costs. OSHA did not receive any comments on the use of overhead costs in the Preliminary Economic Analysis for this delay. It is important to note that there is not one broadly accepted overhead rate and that the use of overhead to estimate the marginal costs of labor raises a number of issues that should be addressed before applying overhead costs to analyze the costs of any specific regulation. There are several approaches to look at the cost elements that fit the definition of overhead, and there are a range of overhead estimates currently used within the federal government—for example, the Environmental Protection Agency has used 17 percent,² and

¹ The entire derivation is as follows: OSHA begins with a current private sector cost of the original rule of \$4,845,365 times the discount rate value of the delay of $(1+d)^{-t} - ((5.5)/12)$. OSHA then subtracts this value (which is \$4,837,917 at 3 percent) from the full value of \$4,845,365. This results in a difference of \$7,644 in annualized costs.

² Cody Rice, U.S. Environmental Protection Agency, "Wage Rates for Economic Analyses of the Toxics Release Inventory Program," June 10, 2002.

government contractors have been reported to use an average of 77 percent.^{3,4} Some overhead costs, such as advertising and marketing, may be more closely correlated with output than with labor. Other overhead costs vary with the number of new employees. For example, rent or payroll processing costs may change little with the addition of 1 employee in a 500-employee firm, but may change substantially with the addition of 100 employees. If an employer is able to rearrange current employees' duties to implement a rule, then the marginal share of overhead costs such as rent, insurance, and major office equipment (e.g., computers, printers, copiers) would be very difficult to measure with accuracy (e.g., computer use costs associated with two hours for rule familiarization by an existing employee).

If OSHA had included an overhead rate when estimating the marginal cost of labor, without further analyzing an appropriate quantitative adjustment, and adopted for these purposes an overhead rate of 17 percent on base wages, as was done in a sensitivity analysis in the FEA in support of OSHA's 2016 final rule on Occupational Exposure to Respirable Crystalline Silica, the base wages would increase annualized cost savings by approximately \$1,299 per year using a 3-percent discount rate and by \$3,581 a year using a 7-percent discount rate.

As noted below, OSHA has stated that the data submission requirements of the original final rule would lead employers to increase workplace safety and health; although the costs of the safety- and health-improving actions have not been quantified, the savings associated with a delay of such costs would be analogous to those calculated for quantified costs.

Table 1 summarizes the annualized and one-time cost savings.

TABLE 1—ANNUALIZED AND ONE-TIME COST SAVINGS⁵

Cost savings method	Annualized savings	One time cost savings
3-Percent Discount Rate ...	\$7,644	\$65,201
7-Percent Discount Rate ...	21,065	147,950

OSHA did not quantify the benefits of the May 2016 final rule. In the economic analysis of the final rule, OSHA stated that the rule would improve OSHA's

³ Grant Thornton LLP, 2015 Government Contractor Survey. (<https://www.grantthornton.com/-/media/content-page-files/public-sector/pdfs/surveys/2015/Gov-Contractor-Survey.ashx>).

ability to identify, target, and remove safety and health hazards, thereby preventing workplace injuries, illnesses, and deaths. In addition, OSHA stated that the data submission requirements of the final rule would improve the quality of the information submitted and lead employers to increase workplace safety and health. OSHA also projected benefits associated with making the data publicly available. OSHA posits that this relatively brief delay in initial submissions will not have a meaningful effect on these benefits; however, because of the lack of quantification, there is some uncertainty as to what the impact will be. Other aspects of the final rule that OSHA determined would produce benefits, such as the non-discrimination provision and the collection of case characteristic data (OSHA Forms 300, 301) from establishments with 250 or more employees, would not be altered by this proposed action.

As categorized in Section II, above, OSHA received some comments stating there would be a loss of benefits because of the delay. The benefits from the rule will still accrue, but with a delay of, at most, 5 months. In any case, OSHA must delay the initial submission deadline, because OSHA did not make the electronic reporting system available before the July 1, 2017 submission deadline in the May 2016 final rule. Establishments are still required to report their 2016 injury summaries in 2017, and this information will be available to OSHA, just with a short delay.

OSHA concludes that this delay of five months is both economically and technologically feasible. The delay meets both criteria of feasibility because the original rule was economically and technologically feasible without a five-month delay.

OSHA has considered whether this final rule will have a significant economic impact on small firms. As a result of these considerations, in accordance with section 605 of the Regulatory Flexibility Act, OSHA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Thus, OSHA did not prepare an initial regulatory flexibility analysis or conduct a SBREFA Panel.

⁴ For further examples of overhead cost estimates, please see the Employee Benefits Security Administration's guidance at <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost->

IV. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

Consistent with E.O. 13771 (82 FR 9339, February 3, 2017), OSHA has estimated the annualized cost savings over 10 years for this final rule to range from \$7,644 to \$21,065, depending on the discount rate. Therefore, this final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this rule can be found in the rule's economic analysis.

V. Paperwork Reduction Act

This final rule does not change the information collections already approved by OMB under control number 1218-0176.

List of Subjects in 29 CFR Part 1904

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

Signed at Washington, DC, on November 20, 2017.

Loren Sweatt,
Deputy Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Standard

For the reasons stated in SUPPLEMENTARY INFORMATION above, OSHA amends part 1904 of chapter XVII of title 29 as follows:

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

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

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673. Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012).

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

- 2. Revise § 1904.41(c)(1) to read as follows:

§ 1904.41 Electronic submission of injury and illness records to OSHA.

* * * * *

(c) *Reporting dates.* (1) In 2017 and 2018, establishments required to submit under paragraph (a)(1) or (2) of this section must submit the required information according to the table in this paragraph (c)(1):

inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-august-2016.pdf.

⁵ All cost savings are in 2014 dollars. Costs are annualized over ten years.

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Submission year	Establishments submitting under paragraph (a)(1) of this section must submit the required information from this form/these forms:	Establishments submitting under paragraph (a)(2) of this section must submit the required information from this form:	Submission deadline
2017	300A	300A	December 15, 2017.
2018	300A, 300, 301	300A	July 1, 2018.

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