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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Labor and Industry/Safety and Health Codes Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	16 VAC25-85-1904.41
<b>Regulation title(s)</b>	Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records to OSHA
<b>Action title</b>	Final Rule for Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records to OSHA
<b>Final agency action date</b>	March 19, 2019
<b>Date this document prepared</b>	March 20, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

To protect worker privacy, the Occupational Safety and Health Administration (OSHA) is amending the recordkeeping regulation by rescinding the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300 and 301. These establishments will continue to be required to maintain those records on-site, and OSHA and VOSH will continue to obtain them as needed through inspections and enforcement actions.

In addition to reporting required after severe injuries, establishments will continue to submit information from their Form 300A. Such submissions provide OSHA with ample data that it will continue

seeking to fully utilize.

OSHA is also amending the recordkeeping regulation to require covered employers to submit their Employer Identification Number (EIN) electronically with their injury and illness data, which will facilitate use of the data and may help reduce duplicative employer reporting.

Nothing in the final rule revokes an employer's duty to maintain OSHA Forms 300 and 301 for OSHA inspection. These actions together will allow OSHA to improve enforcement targeting and compliance assistance, decrease burden on employers, and protect worker privacy and safety.

### 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 March 19, 2019, the Safety and Health Codes Board adopted federal OSHA's Final Rule for Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records to OSHA with an effective date of May 15, 2019.

To access the Code of Federal Regulations (CFR) federal OSHA's Final Rule for Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records to OSHA, please click on the link below:

<https://www.govinfo.gov/content/pkg/FR-2019-01-25/pdf/2019-00101.pdf>

**Electronic Submission of Employer Identification Number (EIN)  
and Injury and Illness Records to OSHA; Final Rule**

As Adopted by the  
Safety and Health Codes Board

Date: March 19, 2019



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: May 15, 2019

16VAC25-85-1904.41, Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records to OSHA

When the regulations, as set forth in the Final Rule for the Clarification of Employer’s Continuing Obligation To Make and Maintain an Accurate Record of Each Recordable Injury and Illness, 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

January 25, 2019

May 15, 2019

**PART 1904—[AMENDED]**

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

■ 1. The authority citation for subpart E of 29 CFR part 1904 continues to read as follows:

**Authority:** 29 U.S.C. 657, 673, 5 U.S.C. 553, and Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

■ 2. In § 1904.41, revise the section heading and paragraph (a)(1), add paragraph (a)(4), and revise paragraph (b) to read as follows:

**§ 1904.41 Electronic submission of Employer Identification Number (EIN) and injury and illness records to OSHA.**

(a) \* \* \*  
(1) *Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 250 or more employees.* If your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form (for example, 2019 for the 2018 form).

(4) *Electronic submission of the Employer Identification Number (EIN).* For each establishment that is subject to these reporting requirements, you must provide the EIN used by the establishment.

(b) *Implementation—(1) Does every employer have to routinely submit this information to OSHA?* No, only two categories of employers must routinely submit this information. First, if your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must submit the required information to OSHA once a year. Second, if your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to this subpart, then you must submit the required information to OSHA once a year. Employers in these two categories must submit the required information by the date listed in paragraph (c) of this section of the year after the calendar

year covered by the form (for example, 2019 for the 2018 form). If you are not in either of these two categories, then you must submit the information to OSHA only if OSHA notifies you to do so for an individual data collection.

(2) *Do part-time, seasonal, or temporary workers count as employees in the criteria for a number of employees in paragraph (a) of this section?* Yes, each individual employed in the establishment at any time during the calendar year counts as one employee, including full-time, part-time, seasonal, and temporary workers.

(3) *How will OSHA notify me that I must submit information as part of an individual data collection under paragraph (a)(3) of this section?* OSHA will notify you by mail if you will have to submit information as part of an individual data collection under paragraph (a)(3). OSHA will also announce individual data collections through publication in the **Federal Register** and the OSHA newsletter, and announcements on the OSHA website. If you are an employer who must routinely submit the information, then OSHA will not notify you about your routine submittal.

(4) *When do I have to submit the information?* If you are required to submit information under paragraph (a)(1) or (2) of this section, then you must submit the information once a year, by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form (for example, 2019 for the 2018 form). If you are submitting information because OSHA notified you to submit information as part of an individual data collection under paragraph (a)(3) of this section, then you must submit the information as specified in the notification.

(5) *How do I submit the information?* You must submit the information electronically. OSHA will provide a secure website for the electronic submission of information. For individual data collections under paragraph (a)(3) of this section, OSHA will include the website's location in the notification for the data collection.

(6) *Do I have to submit information if my establishment is partially exempt from keeping OSHA injury and illness records?* If you are partially exempt from keeping injury and illness records under §§ 1904.1 and/or 1904.2, then you do not have to routinely submit information under paragraphs (a)(1) and (2) of this section. You will have to submit information under paragraph (a)(3) of this section if OSHA informs you in writing that it will collect injury and illness information from you. If you

receive such a notification, then you must keep the injury and illness records required by this part and submit information as directed.

(7) *Do I have to submit information if I am located in a State Plan State?* Yes, the requirements apply to employers located in State Plan States.

(8) *May an enterprise or corporate office electronically submit information for its establishment(s)?* Yes, if your enterprise or corporate office had ownership of or control over one or more establishments required to submit information under paragraph (a) of this

section, then the enterprise or corporate office may collect and electronically submit the information for the establishment(s).

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