Certification Page
Regular and Emergency Rules

Revised May 2014

☑ Emergency Rules *(After completing all of Sections 1 and 2, proceed to Section 5 below)* ☐ Regular Rules

1. General Information

a. Agency/Board Name
Department of Workforce Services

b. Agency/Board Address	c. City	d. Zip Code
1510 East Pershing Blvd - West Wing	Cheyenne	82002

e. Name of Contact Person	f. Contact Telephone Number
Kenneth H. Masters	(307) 777-7705

g. Contact Email Address	h. Adoption Date
ken.masters@wyo.gov	

i. Program
State of Wyoming, Department of Workforce Services, OSHA Division

2. Rule Type and Information: For each chapter listed, indicate if the rule is New, Amended, or Repealed.

If "New," provide the Enrolled Act numbers and years enacted:

c. Provide the Chapter Number, Short Title, and Rule Type of Each Chapter being Created/Amended/Repealed
(Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification)

Chapter Number:	Chapter Name:			
4		☑ New	☑ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed

d. ☑ The Statement of Reasons is attached to this certification.

e. If applicable, describe the **emergency** which requires promulgation of these rules without providing notice or an opportunity for a public hearing:

The current emergency rules expired on 2/5/16. The Department is actively working on regular rule making for Chapter 4. Additional time is necessary to investigate if a public hearing is necessary to proceed and to conclude the regular rule making process for Chapter 4.

The Department is proposing to amend Chapter 4 of the current Department of Workforce Services - OSHA Division's Rules - Practice and Procedure. This is to ensure the State of Wyoming is in compliance and consistent with current Federal OSHA rules relating to the Federal Department of Labor, Code of Regulations (Standard-29 CFR), Part 1904, Recording and Reporting Occupational Injuries and Illnesses.

3. State Government Notice of Intended Rulemaking

a. Date on which the Notice of Intent containing all of the information required by W.S. 16-3-103(a) was filed with the **Secretary of State**:

b. Date on which the Notice of Intent and proposed rules in strike and underscore format and a clean copy were provided to the **Legislative Service Office**:

c. Date on which the Notice of Intent and proposed rules in strike and underscore format and a clean copy were provided to the **Attorney General**:

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. ☐ Yes ☐ No ☐ N/A

b. A public hearing was held on the proposed rules. ☐ Yes ☐ No

If "Yes:"	Date:	Time:	City:	Location:

5. Final Filing of Rules

a. Date on which the Certification Page with original signatures and final rules were sent to the **Attorney General's Office for the Governor's signature**:

b. Date on which final rules were sent to the **Legislative Service Office:**

c. Date on which a PDF of the final rules was electronically sent to the **Secretary of State**:

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct.

Signature of Authorized Individual *(Blue ink as per Rules on Rules, Section 7)*	Dennis W Shepard
Printed Name of Signatory	Dennis W. Shepard
Signatory Title	OSHA Commission Chair
Date of Signature	2/11/16

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature	
Date of Signature	

Attorney General: 1. Statement of Reasons; 2. Original Certification Page; 3. Summary of Comments (regular rules); 4. Hard copy of rules: clean and strike/underscore; and 5. Memo to Governor documenting emergency (for emergency rules only).

LSO: 1. Statement of Reasons; 2. Copy of Certification Page; 3. Summary of Comments (regular rules); 4. Hard copy of rules: clean and strike/underscore; 5. Electronic copy of rules (PDFs) emailed to Criss.Carlson@wyoleg.gov: clean and strike/underscore; and 6. Memo to Governor documenting emergency (for emergency rules only).

SOS: 1. PDF of clean copy of rules; and 2. Hard copy of Certification Page as delivered by the AG.

Principal Statement of Reasons

The current emergency rules expired 2/5/16. The Department is actively working on regular rulemaking for Chapter 4. Additional time is necessary to investigate if a public hearing is necessary to proceed and to conclude the regular rulemaking process for Chapter 4.

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The recently amended Federal Rules changed the reporting requirements for employers to require employers to report any incident that resulted in any hospitalization, amputation or loss of an eye to Federal OSHA. These requested rule amendments are primarily needed to bring the Department of Workforce Services-OSHA Division in line with the new Federal reporting requirements.

This amendment will also reduce the Department of Workforce Services- OSHA Division's Rules as a whole by incorporating by reference Federal Department of Labor, Code of Regulations (Standard - 29 CFR), Part 1904, Recording and Reporting Occupational Injuries and Illness.

Most of these changes will affect pagination of chapter 4 only.

DEPARTMENT OF WORKFORCE SERVICES

OSHA DIVISION

CHAPTER 4

Recording, Reporting, and Posting Requirements

"Emergency Rules are No Longer in Effect 120 Days After Filing with the Secretary of State"

Section 1. Incorporation by Reference.

(a) Any code, standard, rule or regulation incorporated by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (b) of this section.

(b) Each rule incorporated by reference is further identified as follows:

(i) Chapter 2 – Department of Labor, Code of Regulations (Standard - 29 CFR), Part 1904, Recording and Reporting Occupational Injuries and Illness, adopted by the Department of Workforce Services OSHA Division and effective on September 1, 2015, found at: https://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1904.

DEPARTMENT OF WORKFORCE SERVICES

OSHA DIVISION

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~~**Section 1. Purpose.**~~

~~(a) The purpose of this rule is to require employers to record and report work-related fatalities, injuries and illnesses.~~

~~**Note:** Recording or reporting a work-related injury, illness, or fatality does not mean that the employer or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers' compensation or other benefits.~~

~~**Section 2. Scope**~~

~~**Note:** All employers covered by the Wyoming Occupational Health and Safety Act (OHS Act) are covered by these regulations. However, most employers do not have to keep OSHA injury and illness records unless OSHA or the Bureau of Labor Statistics (BLS) informs them in writing that they must keep records. For example, employers with 10 or fewer employees and business establishments in certain industry classifications are partially exempt from keeping OSHA injury and illness records.~~

(a) Partial exemption for employers with 10 or fewer employees.

(i) Basic requirement.

(A) If your company had ten (10) or fewer employees at all times during the last calendar year, you do not need to keep OSHA injury and illness records unless OSHA or the BLS informs you in writing that you must keep records under Section 5(c) or (d). However, as required by Section 5(a), all employers covered by the OHS Act must report to the Department any workplace incident that results in a fatality or the hospitalization of three or more employees.

(B) If your company had more than ten (10) employees at any time during the last calendar year, you must keep OSHA injury and illness records unless your establishment is classified as a partially exempt industry under Section 2(b).

(ii) Implementation.

(A) **Is the partial exemption for size based on the size of my entire company or on the size of an individual business establishment?** The partial exemption for size is based on the number of employees in the entire company.

(B) **How do I determine the size of my company to find out if I qualify for the partial exemption for size?** To determine if you are exempt because of size, you need to determine your company's peak employment during the last calendar year. If you had no more than 10 employees at any time in the last calendar year, your company qualifies for the partial exemption for size.

(b) Partial exemption for establishments in certain industries.

(i) Basic requirement.

(A) If your business establishment is classified in a specific low hazard retail, service, finance, insurance or real estate industry listed in Appendix A to this Section 2, you do not need to keep OSHA injury and illness records unless the government asks you to keep the records under the Department or Section 5(c) or (d). However, all employers must report to the Department any workplace incident that results in a fatality or the hospitalization of three or more employees (see Section 5 (a).

(B) If one or more of your company's establishments are classified in a non-exempt industry, you must keep OSHA injury and illness records for all of such establishments unless your company is partially exempted because of size under Section 2(a).

(ii) Implementation.

(A) **Does the partial industry classification exemption apply only to business**

establishments in the retail, services, finance, insurance or real estate industries (SICs 52-89) Yes, business establishments classified in agriculture; mining; construction; manufacturing; transportation; communication, electric, gas and sanitary services; or wholesale trade are not eligible for the partial industry classification exemption.

(B) **Is the partial industry classification exemption based on the industry classification of my entire company or on the classification of individual business establishments operated by my company?** The partial industry classification exemption applies to individual business establishments. If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be exempt.

(C) **How do I determine the Standard Industrial Classification code for my company or for individual establishments?** You determine your Standard Industrial Classification (SIC) code by using the Standard Industrial Classification Manual, Executive Office of the President, Office of Management and Budget. You may contact the Department for help in determining your SIC.

(c) Keeping records for more than one agency. If you create records to comply with another government agency's injury and illness recordkeeping requirements, OSHA and the Department will Consider those records as meeting OSHA's Part 1904 recordkeeping requirements if OSHA accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information as Part 1904 requires you to record. You may contact the Department for help in determining whether your records meet the Departments requirements.

Non-Mandatory Appendix A to Section 2. Partially Exempt Industries

Employers are not required to keep OSHA injury and illness records for any establishment classified in the following Standard Industrial Classification (SIC) codes, unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or the BLS. All employers, including those partially exempted by reason of company size or industry classification, must report to OSHA any workplace incident that results in a fatality or the hospitalization of three or more employees (see Section 5(a)).

SIC Code	Industry description	SIC Code	Industry description
525	Hardware Stores	725	Shoe Repair and Shoeshine Parlors
542	Meat and Fish Markets	726	Funeral Service and Crematories
544	Candy, Nut, and Confectionery Stores	729	Miscellaneous Personal Services
545	Dairy Products Stores	731	Advertising Services
546	Retail Bakeries	732	Credit Reporting and Collection Services
549	Miscellaneous Food Stores	733	Mailing, Reproduction, & Stenographic Services
551	New and Used Car Dealers	737	Computer and Data Processing Services
552	Used Car Dealers	738	Miscellaneous Business Services
554	Gasoline Service Stations	764	Re-upholstery and Furniture Repair

557	Motorcycle Dealers	78	Motion Picture
56	Apparel and Accessory Stores	791	Dance Studios, Schools, and Halls
573	Radio, Television, & Computer Stores	792	Producers, Orchestras, Entertainers
58	Eating and Drinking Places	793	Bowling Centers
591	Drug Stores and Proprietary Stores	801	Offices & Clinics Of Medical Doctors
592	Liquor Stores	802	Offices and Clinics Of Dentists
594	Miscellaneous Shopping Goods Stores	803	Offices Of Osteopathic
599	Retail Stores, Not Elsewhere Classified	804	Offices Of Other Health Practitioners
60	Depository Institutions (banks & savings institutions)	807	Medical and Dental Laboratories
61	Non-depository	809	Health and Allied Services, Not Elsewhere Classified
62	Security and Commodity Brokers	81	Legal Services
63	Insurance Carriers	82	Educational Services (schools, colleges, universities and libraries)
64	Insurance Agents, Brokers & Services	832	Individual and Family Services
653	Real Estate Agents and Managers	835	Child Day Care Services
654	Title Abstract Offices	839	Social Services, Not Elsewhere Classified
67	Holding and Other Investment Offices	841	Museums and Art Galleries
722	Photographic Studios, Portrait	86	Membership Organizations
723	Beauty Shops	87	Engineering, Accounting, Research, Management, and Related Services
724	Barber Shops	899	Services, not elsewhere classified

Section 3. Recordkeeping Form and Recording Criteria

Note: This Section describes the work-related injuries and illnesses that an employer must enter into the OSHA records and explains the OSHA forms that employers must use to record work-related fatalities, injuries, and illnesses.

(a) Recording criteria.

(i) Basic requirement. Each employer required by this Chapter to keep records of fatalities, injuries, and illnesses must record each fatality, injury and illness that:

(A) Is work-related; and

(B) Is a new case; and

(C) Meets one or more of the general recording criteria of Section 3(e) through 3(i).

(ii) Implementation.

(A) **What sections of this rule describe recording criteria for recording work-related injuries and illnesses?** The table below indicates which sections of the rule address each

topic.

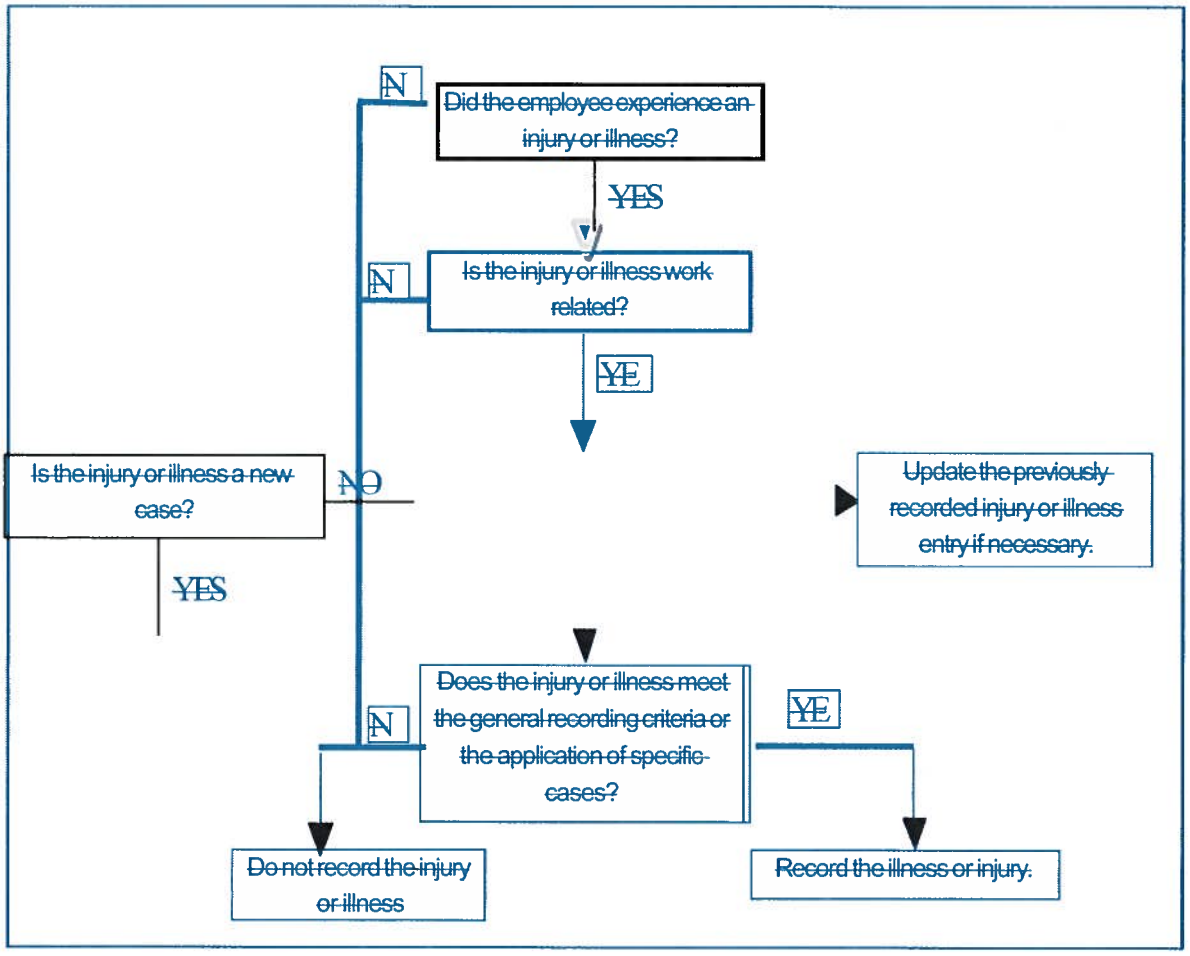
(I) Determination of work-relatedness. See Section 3(b).

(II) Determination of a new case. See Section 3(c).

(III) General recording criteria. See Section 3(d).

(IV) Additional criteria. (Needle stick and sharps injury cases, tuberculosis cases, hearing loss cases, medical removal cases, and musculoskeletal disorder cases). See section 3(e) through Section 3(i).

(B) **How do I decide whether a particular injury or illness is recordable?** The decision tree for recording work-related injuries and illnesses below shows the steps involved in making this determination.



(b) Determination of work-relatedness.

(i) Basic requirement. You must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in Section 3(b)(ii)(B) specifically applies.

(ii) Implementation.

(A) **What is the "work environment"?** OSHA defines the work environment as "the establishment and other locations where one or more employees are working or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of his or her work."

(B) **Are there situations where an injury or illness occurs in the work environment and is not considered work-related?** Yes, an injury or illness occurring in the work environment that falls under one of the following exceptions is not work-related, and therefore is not recordable.

Section 3(b)(ii)(B)	**You are not required to record injuries and illnesses if . . .**
(I)	At the time of the injury or illness, the employee was present in the work environment as a member of the general public rather than as an employee.
(II)	The injury or illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment.
(III)	The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball.
(IV)	The injury or illness is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption (whether bought on the employer's premises or brought in). For example, if the employee is injured by choking on a sandwich while in the employer's establishment, the case would not be considered work-related. **Note:** If the employee is made ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered work-related.

(V) The injury or illness is solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee's assigned working hours.

(VI) The injury or illness is solely the result of personal grooming, self medication for a non- work-related condition, or is intentionally self-inflicted.

(VII) The injury or illness is caused by a motor vehicle accident and occurs on a company parking lot or company access road while the employee is commuting to or from work.

(VIII) The illness is the common cold or flu (Note: contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work).

(IX) The illness is a mental illness.

(C) **How do I handle a case if it is not obvious whether the precipitating event or exposure occurred in the work environment or occurred away from work?** In these situations, you must evaluate the employee's work duties and environment to decide whether or not one or more events or exposures in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition.

(D) **How do I know if an event or exposure in the work environment "significantly aggravated" a preexisting injury or illness?** A preexisting injury or illness has been significantly aggravated, for purposes of OSHA injury and illness recordkeeping, when an event or exposure in the work environment results in any of the following:

(I) Death, provided that the preexisting injury or illness would likely not have resulted in death but for the occupational event or exposure.

(II) Loss of consciousness, provided that the preexisting injury or illness would likely not have resulted in loss of consciousness but for the occupational event or exposure.

(III) One or more days away from work, or days of restricted work, or days of job transfer that otherwise would not have occurred but for the occupational event or exposure.

(IV) Medical treatment in a case where no medical treatment was needed for the injury or illness before the workplace event or exposure, or a change in medical treatment was necessitated by the workplace event or exposure.

(E) **Which injuries and illnesses are considered pre-existing conditions?** An injury or illness is a preexisting condition if it resulted solely from a non-work- related event or exposure that occurred outside the work environment.

(F) **How do I decide whether an injury or illness is work-related if the employee is on travel status at the time the injury or illness occurs?** Injuries and illnesses that occur while an employee is on travel status are work-related if, at the time of the injury or illness, the employee

was engaged in work activities "in the interest of the employer." Examples of such activities include travel to and from customer contacts, conducting job tasks, and entertaining or being entertained to transact, discuss, or promote business (work-related entertainment includes only entertainment activities being engaged in at the direction of the employer). Injuries or illnesses that occur when the employee is on travel status do not have to be recorded if they meet one of the exception listed below.

Section 3(b)(ii)(F)	If the employee has...	You may use the following to determine if an injury or illness is work-related
(I)	checked into a hotel or motel for one or more days.	When a traveling employee checks into a hotel, motel, or into a other temporary residence, he or she establishes a "home away from home." You must evaluate the employee's activities after he or she checks into the hotel, motel, or other temporary residence for their work-relatedness in the same manner as you evaluate the activities of a non-traveling employee. When the employee checks into the temporary residence, he or she is considered to have left the work environment. When the employee begins work each day, he or she re-enters the work environment. If the employee has established a "home away from home" and is reporting to a fixed worksite each day, you also do not consider injuries or illnesses work-related if they occur while the employee is commuting between the temporary residence and the job location.
(II)	taken a detour for personal reasons.	Injuries or illnesses are not considered work-related if they occur while the employee is on a personal detour from a reasonably direct route of travel (e.g. has taken a side trip for personal reasons).

(G) **How do I decide if a case is work-related when the employee is working at home?** Injuries and illnesses that occur while an employee is working at home, including work in a home office, will be considered work-related if the injury or illness occurs while the employee is performing work for pay or compensation in the home, and the injury or illness is directly related to the performance of work rather than to the general home environment or setting. For example, if an employee drops a box of work documents and injures his or her foot, the case is considered work-related. If an employee's fingernail is punctured by a needle from a sewing machine used to perform garment work at home, becomes infected and requires medical treatment, the injury is considered work-related. If an employee is injured because he or she trips on the family dog while rushing to answer a work phone call, the case is not considered work-related. If an employee working at home is electrocuted because of faulty home wiring, the injury is not considered work-related.

(c) Determination of new cases.

(i) Basic requirement. You must consider an injury or illness to be a "new case" if:

(A) The employee has not previously experienced a recorded injury or illness of the same type that affects the same part of the body, or

(B) The employee previously experienced a recorded injury or illness of the same

type that affected the same part of the body but had recovered completely (all signs and symptoms had disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear.

(ii) Implementation.

(A) **When an employee experiences the signs or symptoms of a chronic work-related illness, do I need to consider each recurrence of signs or symptoms to be a new case?** No, for occupational illnesses where the signs or symptoms may recur or continue in the absence of an exposure in the workplace, the case must only be recorded once. Examples may include occupational cancer, asbestosis, byssinosis and silicosis.

(B) **When an employee experiences the signs or symptoms of an injury or illness as a result of an event or exposure in the workplace, such as an episode of occupational asthma, must I treat the episode as a new case?** Yes, because the episode or recurrence was caused by an event or exposure in the workplace, the incident must be treated as a new case.

(C) **May I rely on a physician or other licensed health care professional to determine whether a case is a new case or a recurrence of an old case?** You are not required to seek the advice of a physician or other licensed health care professional. However, if you do seek such advice, you must follow the physician or other licensed health care professional's recommendation about whether the case is a new case or a recurrence. If you receive recommendations from two or more physicians or other licensed health care professionals, you must make a decision as to which recommendation is the most authoritative (best documented, best reasoned, or most authoritative), and record the case based upon that recommendation.

(d) General recording criteria.

(i) Basic requirement. You must consider an injury or illness to meet the general recording criteria, and therefore to be recordable, if it results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. You must also consider a case to meet the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

(ii) Implementation.

(A) **How do I decide if a case meets one or more of the general recording criteria?** A work-related injury or illness must be recorded if it results in one or more of the following:

(I) Death. See Section 3(d)(ii)(B).

(II) Days away from work. See Section 3(d)(ii)(c).

(III) Restricted work or transfer to another job. See Section3(d)

(ii)(D).

(IV) Medical treatment beyond first aid. Section 3(d)(ii)(E)

(V) Loss of consciousness. See Section 3(d)(ii)(F).

(VI) A significant injury or illness diagnosed by a physician or other licensed health care professional. See Section 3(d)(ii)(G).

(B) **How do I record a work-related injury or illness that results in the employee's death?** You must record an injury or illness that results in death by entering a check mark on the OSHA 300 Log in the space for cases resulting in death. You must also report any work-related fatality to OSHA within eight (8) hours, as required by Section 5(a).

(C) **How do I record a work-related injury or illness that results in days away from work?** When an injury or illness involves one or more days away from work, you must record the injury or illness on the OSHA 300 Log with a check mark in the space for cases involving days away

and an entry of the number of calendar days away from work in the number of days column. If the employee is out for an extended period of time, you must enter an estimate of the days that the employee will be away, and update the day count when the actual number of days is known.

(I) **Do I count the day on which the injury occurred or the illness began?** No, you begin counting days away on the day after the injury occurred or the illness began.

(II) **How do I record an injury or illness when a physician or other licensed health care professional recommends that the worker stay at home but the employee comes to work anyway?** You must record these injuries and illnesses on the OSHA 300 Log using the check box for cases with days away from work and enter the number of calendar days away recommended by the physician or other licensed health care professional. If a physician or other licensed health care professional recommends days away, you should encourage your employee to follow that recommendation. However, the days away must be recorded whether the injured or ill employee follows the physician or licensed health care professional's recommendation or not. If you receive recommendations from two or more physicians or other licensed health care professionals, you may make a decision as to which recommendation is the most authoritative, and record the case based upon that recommendation.

(III) **How do I handle a case when a physician or other licensed health care professional recommends that the worker return to work but the employee stays at home anyway?** In this situation, you must end the count of days away from work on the date the physician or other licensed health care professional recommends that the employee return to work.

(IV) **How do I count weekends, holidays, or other days the employee would not have worked anyway?** You must count the number of calendar days the employee was unable to work as a result of the injury or illness, regardless of whether or not the employee was scheduled to work on those day(s). Weekend days, holidays, vacation days or other days off are included in the total number of days recorded if the employee would not have been able to work on those days because of a work-related injury or illness.

(V) **How do I record a case in which a worker is injured or becomes ill on a Friday and reports to work on a Monday, and was not scheduled to work on the weekend?** You need to record this case only if you receive information from a physician or other licensed health care professional indicating that the employee should not have worked, or should have performed only restricted work, during the weekend. If so, you must record the injury or illness as a case with days away from work or restricted work, and enter the day counts, as appropriate.

(VI) **How do I record a case in which a worker is injured or becomes ill on the day before scheduled time off such as a holiday, a planned vacation, or a temporary plant closing?** You need to record a case of this type only if you receive information from a physician or other licensed health care professional indicating that the employee should not have worked, or should have performed only restricted work, during the scheduled time off. If so, you must record the injury or illness as a case with days away from work or restricted work, and enter the day counts, as appropriate.

(VII) **Is there a limit to the number of days away from work I must count?** Yes, you may "cap" the total days away at 180 calendar days. You are not required to keep track of the number of calendar days away from work if the injury or illness resulted in more than 180 calendar days away from work and/or days of job transfer or restriction. In such a case, entering 180 in the total days away column will be considered adequate.

(VIII) **May I stop counting days if an employee who is away from work because of an injury or illness retires or leaves my company?** Yes, if the employee leaves your company for some reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, you may stop counting days away from work or days of restriction/job transfer. If the employee leaves your company because of the injury or illness, you must estimate the total number of days away or days of restriction/job transfer and enter the day count on the 300 Log.

(IX) **If a case occurs in one year but results in days away during the next calendar year, do I record the case in both years?** No, you only record the injury or illness once.

You must enter the number of calendar days away for the injury or illness on the OSHA 300 Log for the year in which the injury or illness occurred. If the employee is still away from work because of the injury or illness when you prepare the annual summary, estimate the total number of calendar days you expect the employee to be away from work, use this number to calculate the total for the annual summary, and then update the initial log entry later when the day count is known or reaches the 180-day cap.

(D) **How do I record a work-related injury or illness that results in restricted work or job transfer?** When an injury or illness involves restricted work or job transfer but does not involve death or days away from work, you must record the injury or illness on the OSHA 300 Log by placing a check mark in the space for job transfer or restriction and an entry of the number of restricted or transferred days in the restricted workdays column.

(I) **How do I decide if the injury or illness resulted in restricted work?** Restricted work occurs when, as the result of a work-related injury or illness:

(1.) You keep the employee from performing one or more of the routine functions of his or her job, or from working the full workday that he or she would otherwise have been scheduled to work; or

(2.) A physician or other licensed health care professional recommends that the employee not perform one or more of the routine functions of his or her job, or not work the full workday that he or she would otherwise have been scheduled to work.

(II) **What is meant by "routine functions"?** For recordkeeping purposes, an employee's routine functions are those work activities the employee regularly performs at least once per week.

(III) **Do I have to record restricted work or job transfer if it applies only to the day on which the injury occurred or the illness began?** No, you do not have to record restricted work or job transfers if you, or the physician or other licensed health care professional, impose the restriction or transfer only for the day on which the injury occurred or the illness began.

(IV) **If you or a physician or other licensed health care professional recommends a work restriction, is the injury or illness automatically recordable as a "restricted work" case?** No, a recommended work restriction is recordable only if it affects one or more of the employee's routine job functions. To determine whether this is the case, you must evaluate the restriction in light of the routine functions of the injured or ill employee's job. If the restriction from you or the physician or other licensed health care professional keeps the employee from performing one or more of his or her routine job functions, or from working the full workday the injured or ill employee would otherwise have worked, the employee's work has been restricted and you must record the case.

(V) **How do I record a case where the worker works only for a partial work shift because of a work-related injury or illness?** A partial day of work is recorded as a day of job transfer or restriction for recordkeeping purposes, except for the day on which the injury occurred or the illness began.

(VI) **If the injured or ill worker produces fewer goods or services than he or she would have produced prior to the injury or illness but otherwise performs all of the routine functions of his or her work, is the case considered a restricted work case?** No, the case is considered restricted work only if the worker does not perform all of the routine functions of his or her job or does not work the full shift that he or she would otherwise have worked.

(VII) **How do I handle vague restrictions from a physician or other licensed health care professional, such as that the employee engage only in "light duty" or" take it easy for a week"?** If you are not clear about the physician or other licensed health care professional's recommendation, you may ask that person whether the employee can do all of his or her routine job functions and work all of his or her normally assigned work shift. If the answer to both of these questions is "Yes," then the case does not involve a work restriction and does not have to be recorded as such. If the answer to one or both of these questions is "No," the case involves restricted work and must be recorded as a restricted work case. If you are unable to obtain this additional information from the physician or other licensed health care professional who recommended the restriction, record the injury or illness as a case involving restricted work.

(VIII) **What do I do if a physician or other licensed health care professional recommends a job restriction meeting OSHA's definition, but the employee does all of his or her routine job functions anyway?** You must record the injury or illness on the OSHA 300 Log as a restricted work case. If a physician or other licensed health care professional recommends a job restriction, you should ensure that the employee complies with that restriction. If you receive recommendations from two or more physicians or other licensed healthcare professionals, you may make a decision as to which recommendation is the most authoritative, and record the case based upon that recommendation.

(IX) **How do I decide if an injury or illness involved a transfer to another job?** If you assign an injured or ill employee to a job other than his or her regular job for part of the day, the case involves transfer to another job. Note: This does not include the day on which the injury or illness occurred.

(X) **Are transfers to another job recorded in the same way as restricted work cases?** Yes, both job transfer and restricted work cases are recorded in the same box on the OSHA 300 Log. For example, if you assign, or a physician or other licensed health care professional recommends that you assign, an injured or ill worker to his or her routine job duties for part of the day and to another job for the rest of the day, the injury or illness involves a job transfer. You must record an injury or illness that involves a job transfer by placing a check in the box for job transfer.

(XI) **How do I count days of job transfer or restriction?** You count days of job transfer or restriction in the same way you count days away from work, using Section 3(d)(ii)(C)(I) to (VIII), above. The only difference is that, if you permanently assign the injured or ill employee to a job that has been modified or permanently changed in a manner that eliminates the routine functions the employee was restricted from performing, you may stop the day count when the modification or change is made permanent. You must count at least one day of restricted work or job transfer for such cases.

(E) **How do I record an injury or illness that involves medical treatment beyond first aid?** If a work-related injury or illness results in medical treatment beyond first aid, you must record it on the OSHA 300 Log. If the injury or illness did not involve death, one or more days away from work, one or more days of restricted work, or one or more days of job transfer, you enter a check mark in the box for cases where the employee received medical treatment but remained at work and was not transferred or restricted.

(I) **What is the definition of medical treatment?** "Medical treatment" means the management and care of a patient to combat disease or disorder. For the purposes of this Chapter, medical treatment does not include:

(1.) Visits to a physician or other licensed health care professional solely for observation or counseling;

(2.) 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

(3.) "First aid" as defined in paragraph (ii)(E)(II) of this section.

(II) **What is "first aid"?** For the purposes of this Chapter, "first aid" means the following:

(1.) Using a non-prescription medication at nonprescription strength (for medications available in both prescription and non-prescription form, a recommendation by a physician or other licensed health care professional to use a non-prescription medication at prescription strength is considered medical treatment for recordkeeping purposes);

(2.) Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment);

(3.) Cleaning, flushing or soaking wounds on the surface of the skin;

(4.) Using wound coverings such as bandages, Band-Aids, gauze

pads, etc.; or using butterfly bandages or Steri-Strips (other wound closing devices such as sutures, staples, etc., are considered medical treatment);

(5.) Using hot or cold therapy;

(6.) Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc. (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for recordkeeping purposes);

(7.) Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, back boards, etc.).

(8.) Drilling of a fingernail or toe nail to relieve pressure, or draining fluid from a blister;

(9.) Using eye patches;

(10.) Removing foreign bodies from the eye using only irrigation or a cotton swab;

(11.) Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means;

(12.) Using finger guards;

(13.) Using massages (physical therapy or chiropractic treatment are considered medical treatment for recordkeeping purposes); or

(14.) Drinking fluids for relief of heat stress.6-12

(III) **Are any other procedures included in first aid?** No, this is a complete list of all treatments considered first aid for these purposes.

(IV) **Does the professional status of the person providing the treatment have any effect on what is considered first aid or medical treatment?** No, OSHA considers the treatments listed in Section 3(d)(ii)

(E)(II) of this Chapter to be first aid regardless of the professional status of the person providing the treatment. Even when these treatments are provided by a physician or other licensed health care professional, they are considered first aid for the purposes of this Chapter. Similarly, OSHA considers treatment beyond first aid to be medical treatment even when it is provided by someone other than a physician or other licensed health care professional.

(V) **What if a physician or other licensed health care professional recommends medical treatment but the employee does not follow the recommendation?** If a physician or other licensed health care professional recommends medical treatment, you should encourage the injured or ill employee to follow that recommendation. However, you must record the case even if the injured or ill employee does not follow the physician or other licensed health care professional's recommendation.

(F) **Is every work-related injury or illness case involving a loss of consciousness recordable?** Yes, you must record a work-related injury or illness if the worker becomes unconscious, regardless of the length of time the employee remains unconscious.

(G) **What is a "significant" diagnosed injury or illness that is recordable under the general criteria even if it does not result in death, days away from or job transfer, medical treatment beyond first aid, or loss of consciousness?** Work-related cases involving cancer,

chronic irreversible disease, a fractured or cracked bone, or a punctured eardrum must always be recorded under the general criteria at the time of diagnosis by a physician or other licensed health care professional.

Note : OSHA believes that most significant injuries and illnesses will result in one of the criteria listed in Section 3(d)(i): death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness. However, there are some significant injuries, such as a punctured eardrum or a fractured toe or rib, for which neither medical treatment nor work restrictions may be recommended. In addition, there are some significant progressive diseases, such as byssinosis, silicosis, and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of diagnosis but are likely to be recommended as the disease progresses. OSHA believes that cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses, and must be recorded at the initial diagnosis even if medical treatment or work restrictions are not recommended, or are postponed, in a particular case.

(e) Recording criteria for needle stick and sharps injuries.

(i) Basic requirement. You must record all work-related needle stick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (as defined by 1910.1030). You must enter the case on the OSHA 300 Log as an injury. To protect the employee's privacy, you may not enter the employee's name on the OSHA 300 Log (see the requirements for privacy cases in paragraphs Section 3(z)(ii)(F) through (I).

(ii) Implementation.

(A) **What does "other potentially infectious material" mean?** The term "other potentially infectious materials" is defined in the OSHA Bloodborne Pathogens standard at 1910.1030(b). These materials include:

(I) Human bodily fluids, tissues and organs, and

(II) Other materials infected with the HIV or hepatitis B (HBV) virus such as laboratory cultures or tissues from experimental animals.

(B) **Does this mean that I must record all cuts, lacerations, punctures, and scratches?** No, you need to record cuts, lacerations, punctures, and scratches only if they are work-related and involve contamination with another person's blood or other potentially infectious material. If the cut, laceration, or scratch involves a clean object, or a contaminant other than blood or other potentially infectious material, you need to record the case only if it meets one or more of the recording criteria in Section 3(d).

(C) **If I record an injury and the employee is later diagnosed with an infectious bloodborne disease, do I need to update the OSHA 300 Log?** Yes, you must update the classification of the case on the OSHA 300 Log if the case results in death, days away from work, restricted work, or job transfer. You must also update the description to identify the infectious disease and change the classification of the case from an injury to an illness.

(D) **What if one of my employees is splashed or exposed to blood or other potentially infectious material without being cut or scratched? Do I need to record this incident?** You need to record such an incident on the OSHA 300 Log as an illness if:

(I) It results in the diagnosis of a bloodborne illness, such as HIV, hepatitis B, or hepatitis C; or

(II) It meets one or more of the recording criteria in Section 3(d).

(f) Recording criteria for cases involving medical removal under OSHA standards.

(i) Basic requirement. If an employee is medically removed under the medical surveillance requirements of an OSHA standard, you must record the case on the OSHA 300 Log.

(ii) Implementation.

(A) **How do I classify medical removal cases on the OSHA 300 Log?** You must enter each medical removal case on the OSHA 300 Log as either a case involving days away from work or a case involving restricted work activity, depending on how you decide to comply with the medical removal requirement. If the medical removal is the result of a chemical exposure, you must enter the case on the OSHA 300 Log by checking the "poisoning" column.

(B) **Do all of OSHA's standards have medical removal provisions?** No, some OSHA standards, such as the standards covering bloodborne pathogens and noise, do not have medical removal provisions. Many OSHA standards that cover specific chemical substances have medical removal provisions. These standards include, but are not limited to, lead, cadmium, methylene chloride, formaldehyde, and benzene.

(C) **Do I have to record a case where I voluntarily removed the employee from exposure before the medical removal criteria in an OSHA standard are met?** No, if the case involves voluntary medical removal before the medical removal levels required by an OSHA standard, you do not need to record the case on the OSHA 300 Log.

(g) Recording criteria for cases involving occupational hearing loss.

(i) Basic requirement. If an employee's hearing test (audiogram) reveals that the employee has experienced a work-related Standard Threshold Shift (STS) in hearing in one or both ears, and the employee's total hearing level is 25 decibels (dB) or more above audiometric zero (averaged at 2,000, 3,000 and 4,000 Hz) in the same ear(s) as the STS, you must record the case on the OSHA 300 Log.

(ii) Implementation.

(A) **What is a Standard Threshold Shift?** A Standard Threshold Shift, or STS, is defined in the occupational noise exposure standard at 29 CFR 1910.95(g)(10)(i) as a change in hearing threshold, relative to the baseline audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000, and 4000 hertz (Hz) in one or both ears.

(B) **How do I evaluate the current audiogram to determine weather an employee has an STS and a 25-dB hearing level?**

(I) STS. If the employee has never previously experienced a recordable hearing loss, you must compare the employee's current audiogram with that employee's baseline audiogram. If the employee has previously experienced a recordable hearing loss, you must compare the employee's current audiogram with the employee's revised baseline audiogram(the audiogram reflecting the employee's previous recordable hearing loss case.

(II) 25-dB loss. Audiometric test results reflect the employee's overall hearing ability in comparison to audiometric zero. Therefore, using the employee's current audiogram, you must use the average hearing level at 2,000, 3,000, and 4,000 Hz to determine whether or not the employee's total hearing level is 25 dB or more.

(C) **May I adjust the current audiogram to reflect the effects of aging on hearing?** Yes. When you are determining whether an STS has occurred, you may age adjust the employee's current audiogram results by using Tables F-1 or F-2, as appropriate, in Appendix F of 29 CFR 1910.95. You may not use an age adjustment when determining whether the employee's total hearing level is 25 dB or more above audiometric zero.

(D) **Do I have to record the hearing loss if I am going to retest the employee's hearing?** No, if you retest the employee's hearing within 30 days of the first test, and the retest does not confirm the STS, you are not required to record the hearing loss case on the OSHA 300 Log. If the retest confirms the recordable STS, you must record the hearing loss illness within seven (7) calendar days of the retest. If subsequent audiometric testing performed under the testing requirements of the §1910.95 noise standard indicates that an STS is not persistent, you may erase or line out the recorded entry.

(E) **Are there any special rules for determining whether a hearing loss case is work-related?** No. You must use the rules in Section 3.(b)of this Chapter to determine if the hearing loss is work-related. If an event or exposure in the work environment either caused or contributed to the hearing loss, or significantly aggravated a pre-existing hearing loss, you must consider the case to be work-related.

(F) **If a physician or other licensed health care professional determines the hearing loss is not work-related, do I still need to record the case?** If a physician or other licensed health care professional determines that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, you are not required to consider the case work-related or to record the case on the OSHA 300 Log.

(G) **How do I complete the 300 Log for hearing loss case?** When you enter a recordable hearing loss case on the OSHA 300 Log, you must check the 300 Log column for hearing loss.

Note: This requirement is effective beginning January 1, 2004.

(h) Recording criteria for work-related tuberculosis cases.

(i) Basic requirement. If any of your employees has been occupationally exposed to anyone with a known case of active tuberculosis (TB), and that employee subsequently develops a tuberculosis infection, as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional, you must record the case on the OSHA 300 Log by checking the "respiratory condition" column.

(ii) Implementation.

(A) **Do I have to record, on the Log, a positive TB skin test result obtained at a pre-employment physical?** No, you do not have to record it because the employee was not occupationally exposed to a known case of active tuberculosis in your workplace.

(B) **May I line-out or erase a recorded TB case if I obtain evidence that the case was not caused by occupational exposure?** Yes, you may line out or erase the case from the Log under the following circumstances:

(I) The worker is living in a household with a person who has been diagnosed with active TB;

(II) The Public Health Department has identified the worker as a contact of an individual with a case of active TB unrelated to the workplace; or

(III) A medical investigation shows that the employee's infection was caused by exposure to TB away from work, or proves that the case was not related to the workplace TB exposure.

(i) [Removed]

(j) through (y) [Reserved]

(z) Forms.

(i) Basic requirement. You must use OSHA 300, 300-A, and 301 forms, or equivalent forms, for recordable injuries and illnesses. The OSHA 300 form is called the Log of Work-Related Injuries and Illnesses, the 300-A is the Summary of Work-Related Injuries and Illnesses, the OSHA 301 form is called the Injury and Illness Incident Report, and the equivalent form is the Workers' Safety and Compensation Report of Injury.

(ii) Implementation.

(A) **What do I need to do to complete the OSHA 300 Log?** You must enter information about your business at the top of the OSHA 300 Log, enter a one or two line description for each recordable injury or illness, and summarize this information on the OSHA 300-A at the end of the year.

(B) **What do I need to do to complete the OSHA 301 Incident Report?** You must complete an OSHA 301 Incident Report form, or an equivalent form, Workers' Safety and Compensation Report of Injury, for each recordable injury or illness entered on the OSHA 300 Log.

(C) **How quickly must each injury or illness be recorded?** You must enter each recordable injury or illness on the OSHA 300 Log and 301 Incident Report or equivalent within seven (7) calendar days of receiving information that a recordable injury or illness has occurred.

(D) **What is an equivalent form?** An equivalent form is one that has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA form it replaces. Many employers use an insurance form instead of the OSHA 301 Incident Report, or supplement an insurance form by adding any additional information required by OSHA.

(E) **May I keep my records on a computer?** Yes, if the computer can produce equivalent forms when they are needed, as described under Section 5(d), you may keep your records using the computer system.

(F) **Are there situations where I do not put the employee's name on the forms for privacy reasons?** Yes, if you have a "privacy concern case," you may not enter the employee's name on the OSHA 300 Log. Instead, enter "privacy case" in the space normally used for the employee's name. This will protect the privacy of the injured or ill employee when another employee, a former employee, or an authorized employee representative is provided access to the OSHA 300 Log under Section 4(f)(ii). You must keep a separate, confidential list of the case numbers and employee names for your privacy concern cases so you can update the cases and provide the information to the government if asked to do so.

(G) **How do I determine if an injury or illness is a privacy concern case?** You must consider the following injuries or illnesses to be privacy concern cases:

(I) An injury or illness to an intimate body part or the reproductive system;

(II) An injury or illness resulting from a sexual assault;

(III) Mental illnesses;

(IV) HIV infection, hepatitis, or tuberculosis;

(V) Needle stick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (see Section 3(e); and

(VI) Other illnesses, if the employee voluntarily requests that his or her name not be entered on the log.

(H) **May I classify any other types of injuries and illnesses as privacy concern cases?** No, this is a complete list of all injuries and illnesses considered privacy concern cases for this Chapter's purposes.

(I) **If I have removed the employee's name, but still believe that the employee may be identified from the information on the forms, is there anything else that I can do to further protect the employee's privacy?** Yes, if you have a reasonable basis to believe that information describing the privacy concern case may be personally identifiable even though the employee's name has been omitted, you may use discretion in describing the injury or illness on both the OSHA 300 and 301 forms. You must enter enough information to identify the cause of the incident and the general severity of the injury or illness, but you do not need to include details of an intimate or private nature. For example, a sexual assault case could be described as "injury from assault," or an injury to a reproductive organ could be described as "lower abdominal injury."

(J) **What must I do to protect employee privacy if I wish to provide access to the OSHA Forms 300 and 301 to persons other than government representatives, employees, former employees or authorized representatives?** If you decide to voluntarily disclose the Forms to persons other than government representatives, employees, former employees or authorized representatives (as required by Section 4(f) and Section 5(b), you must remove or hide the employees' names and other personally identifying information, except for the following cases. You may disclose the Forms with personally identifying information only:

(I) to an auditor or consultant hired by the employer to evaluate the safety and health program;

(II) to the extent necessary for processing a claim for workers' compensation or other insurance benefits; or

(III) to a public health authority or law enforcement agency for uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required under Department of Health and Human Services Standards for Privacy of Individually Identifiable Health Information, 45 CFR 164.512.6-18

Section 4. Other OSHA Injury and Illness Recordkeeping Requirements

(a) Multiple business establishments.

(i) Basic requirement. You must keep a separate OSHA 300 Log for each establishment that is expected to be in operation for one year or longer.

(ii) Implementation.

(A) **Do I need to keep OSHA injury and illness records for short- term establishments (i.e., establishments that will exist for less than a year)?** Yes, however, you do not have to keep a separate OSHA 300 Log for each such establishment. You may keep one OSHA 300 Log that covers all of your short-term establishments. You may also include the short-term establishments' recordable injuries and illnesses on an OSHA 300 Log that covers short-term establishments for individual company divisions or geographic regions.

(B) **May I keep the records for all of my establishments at my headquarters location or at some other central location?** Yes, you may keep the records for an establishment at your headquarters or other central location if you can:

(I) Transmit information about the injuries and illnesses from the establishment to the central location within seven (7) calendar days of receiving information that a

recordable injury or illness has occurred; and

(II) Produce and send the records from the central location to the establishment within the time frames required by Section 4(f) and Section 5(b) when you are required to provide records to a government representative, employees, former employees or employee representatives.

(C) **Some of my employees work at several different locations or do not work at any of my establishments at all. How do I record cases for these employees?** You must link each of your employees with one of your establishments, for recordkeeping purposes. You must record the injury and illness on the OSHA 300 Log of the injured or ill employee's establishment, or on an OSHA 300 Log that covers that employee's short-term establishment.

(D) **How do I record an injury or illness when an employee of one of my establishments is injured or becomes ill while visiting or working at another of my establishments, or while working away from any of my establishments?** If the injury or illness occurs at one of your establishments, you must record the injury or illness on the OSHA 300 Log of the establishment at which the injury or illness occurred. If the employee is injured or becomes ill and is not at one of your establishments, you must record the case on the OSHA 300 Log at the establishment at which the employee normally works.

(b) Covered employees.

(i) Basic requirement. You must record on the OSHA 300 Log the recordable injuries and illnesses of all employees on your payroll, whether they are labor, executive, hourly, salary, part-time, seasonal, or migrant workers. You also must record the recordable injuries and illnesses that occur to employees who are not on your payroll if you supervise these employees on a day-to-day basis. If your business is organized as a sole proprietorship or partnership, the owner or partners are not considered employees for recordkeeping purposes.

(ii) Implementation.

(A) **If a self-employed person is injured or becomes ill while doing work at my business, do I need to record the injury or illness?** No, self-employed individuals are not covered by the OSH Act or this regulation.

(B) **If I obtain employees from a temporary help service, employee leasing service, or personnel supply service, do I have to record an injury or illness occurring to one of those employees?** You must record these injuries and illnesses if you supervise these employees on a day-to-day basis.

(C) **If an employee in my establishment is a contractor's employee, must I record an injury or illness occurring to that employee?** If the contractor's employee is under the day- to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. If you supervise the contractor employee's work on a day-to-day basis, you must record the injury or illness.

(D) **Must the personnel supply service, temporary help service, employee leasing service, or contractor also record the injuries or illnesses occurring to temporary, leased or contract employees that I supervise on a day-to-day basis?** No, you and the temporary help service, employee leasing service, personnel supply service, or contractor should coordinate your efforts to make sure that each injury and illness is recorded only once: either on your OSHA 300 Log (if you provide day-to-day supervision) or on the other employer's OSHA 300 Log (if that company provides day-to-day supervision).

(c) Annual summary.

(i) Basic requirement. At the end of each calendar year, you must:

(A) Review the OSHA 300 Log to verify that the entries are complete and accurate, and correct any deficiencies identified;

(B) Create an annual summary of injuries and illnesses recorded on the OSHA 300 Log;

(C) Certify the summary; and

(D) Post the annual summary.

(ii) Implementation.

(A) **How extensively do I have to review the OSHA 300 Log entries at the end of the year?** You must review the entries as extensively as necessary to make sure that they are complete and correct.

(B) **How do I complete the annual summary?** You must:

(I) Total the columns on the OSHA 300 Log (if you had no recordable cases, enter zeros for each column total); and

(II) Enter the calendar year covered, the company's name, establishment name, establishment address, annual average number of employees covered by the OSHA 300 Log, and the total hours worked by all employees covered by the OSHA 300 Log.

(III) If you are using an equivalent form other than the OSHA 300-A summary form, as permitted under Section 3 (z)(i), the summary you use must also include the employee access and employer penalty statements found on the OSHA 300-A Summary form.

(C) **How do I certify the annual summary?** A company executive must certify that he or she has examined the OSHA 300 Log and that he or she 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.

(D) **Who is considered a company executive?** The company executive who certifies the log must be one of the following persons:

(I) An owner of the company (only if the company is a sole proprietorship or partnership);

(II) An officer of the corporation;

(III) The highest ranking company official working at the establishment; or

(IV) The immediate supervisor of the highest ranking company official working at the establishment.

(E) **How do I post the annual summary?** You must post a copy of the annual summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. You must ensure that the posted annual summary is not altered, defaced or covered by other material.

(F) **When do I have to post the annual summary?** You must post the summary no later than February 1 of the year following the year covered by the records and keep the posting in place until April 30.

(d) Retention and updating.

(i) Basic requirement. You must save the OSHA 300 Log, the privacy case list (if one exists), the annual summary, and the OSHA 301 Incident Report or equivalent forms for five (5) years following the end of the calendar year that these records cover.

Note: Due to the Statue of Limitations as provided in Wyoming Statutes 1-3-105 and 1-3-109, it is recommended that employers maintain these records for ten (10) years.

(ii) Implementation.

(A) **Do I have to update the OSHA 300 Log during the five-year storage period?** Yes, during the storage period, you must update your stored OSHA 300 Logs to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses. If the description or outcome of a case changes, you must remove or line out the original entry and enter the new information.

(B) **Do I have to update the annual summary?** No, you are not required to update the annual summary, but you may do so if you wish.

(C) **Do I have to update the OSHA 301 Incident Reports or equivalent forms?** No, you are not required to update the OSHA 301 Incident Reports or equivalent forms, but you may do so if you wish.

(e) Change in business ownership. If your business changes ownership, you are responsible for recording and reporting work-related injuries and illnesses only for that period of the year during which you owned the establishment. You must transfer the these records to the new owner. The new owner must save all records of the establishment kept by the prior owner, as required by Section 4(d), but need not update or correct the records of the prior owner.

(f) Employee involvement.

(i) Basic requirement. Your employees and their representatives must be involved in the recordkeeping system in several ways.

(A) You must inform each employee of how he or she is to report an injury or illness to you.

(B) You must provide limited access to your injury and illness records for your employees and their representatives.

(ii) Implementation.

(A) **What must I do to make sure that employees report work-related injuries and illnesses to me?**

(I) You must set up a way for employees to report work-related injuries and illnesses promptly; and

(II) You must tell each employee how to report work-related injuries and illnesses to you.

(B) **Do I have to give my employees and their representatives access to the OSHA injury and illness records?** Yes, your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the OSHA injury and illness records, with some limitations, as discussed below.

(I) **Who is an authorized employee representative?** An authorized employee representative is an authorized collective bargaining agent of employees.

(II) **Who is a "personal representative" of an employee or former employee?** A personal representative is:

(1.) Any person that the employee or former employee designates as such, in writing; or

(2.) The legal representative of a deceased or legally incapacitated employee or former employee.

(III) **If an employee or representative asks for access to the OSHA 300 Log, when do I have to provide it?** When an employee, former employee, personal representative, or authorized employee representative asks for copies of your current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant OSHA 300 Log(s) by the end of the next business day.

(IV) **May I remove the names of the employees or any other information from the OSHA 300 Log before I give copies to an employee, former employee, or employee representative?** No, you must leave the names on the 300 Log. However, to protect the privacy of injured and ill employees, you may not record the employee's name on the OSHA 300 Log for certain "privacy concern cases," as specified in paragraphs Section 3(z)(ii)(F) through (I).

(V) **If an employee or representative asks for access to the OSHA 301 Incident Report, when do I have to provide it?**

(1.) When an employee, former employee, or personal representative asks for a copy of the OSHA 301 Incident Report or an equivalent form describing an injury or illness to that employee or former employee, you must give the requester a copy of the OSHA 301 Incident Report or equivalent report containing that information by the end of the next business day.

(2.) When an authorized employee representative asks for a copies of the OSHA 301 Incident Reports for an establishment where the agent represents employees under a collective bargaining agreement, you must give copies of those forms to the authorized employee representative within 7 calendar days. You are only required to give the authorized employee representative

information from the OSHA 301 Incident Report or an equivalent form section titled "Tell us about the case." You must remove all other information from the copy of the OSHA 301 Incident Report or the equivalent substitute form that you give to the authorized employee representative.

(VI) **May I charge for the copies?** No, you may not charge for these copies the first time they are provided. However, if one of the designated persons asks for additional copies, you may assess a reasonable charge for retrieving and copying the records.

(g) Prohibition against discrimination. Wyoming statute 27-11-109(e) of The Occupational Health and Safety Act prohibits you from discriminating against an employee for reporting a work-related fatality, injury or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to the Part 1904 records, or otherwise exercises any rights afforded by the OHS Act.

(h) State recordkeeping regulations.

(i)Basic requirement. Some States operate their own OSHA programs, under the authority of a State Plan 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(k), 29 CFR 1952.4 and 29 CFR 1956.10(i)).

(ii) Implementation.

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

(B) 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.

(C) 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 (ii)(a) and (b)above.

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

(E) 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.

(i) Variances from the recordkeeping rule.

(i) Basic requirement. If you wish to keep records in a different manner from the manner prescribed by these 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:

(A) Collects the same information as this Part requires;

(B) Meets the purposes of the Act; and

(C) Does not interfere with the administration of the Act.6-23

(ii) Implementation.

(A) **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 Section 7.

(B) **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 these 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.

(C) **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 these regulations while the Assistant Secretary is reviewing your variance petition.

(D) **If I have already been cited by the Department for not following these 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 Wyoming Occupational Health and Safety Commission.

(E) **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.

Section 5. Reporting Fatality, Injury and Illness Information to the Government

(a) Reporting fatalities and multiple hospitalization incidents to OSHA.

(i) Basic requirement. Within eight (8) hours after the death of any employee from a work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related incident, you must orally report the fatality/multiple hospitalization by telephone or in person to the Department of Employment, Workers' Safety Division; Cheyenne Business Center, West Wing; Cheyenne, WY 82002; telephone number (307) 777-7786. You may also use the OSHA toll-free central telephone number, 1-800-321-6742 (1-800-321-6742).

(ii) Implementation.

(A) **If the Workers' Safety office is closed, may I report the incident by leaving a message on their answering machine, faxing the area office, or sending an e-mail?** No, if you can't talk to a Workers' Safety person, you must report the fatality or multiple hospitalization incident using the 800 number.

(B) **What information do I need to give to the Department about the incident?** You must give them the following information for each fatality or multiple hospitalization incident:

(I) The establishment name;

(II) The location of the incident;

(III) The time of the incident;

(IV) The number of fatalities or hospitalized employees;

(V) The names of any injured employees;

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

(VII) A brief description of the incident.

(C) **Do I have to report every fatality or multiple hospitalization incident resulting from a motor vehicle accident?** No, you do not have to report all of these incidents. If the motor vehicle accident occurs on a public street or highway, and does not occur in a construction work

zone, you do not have to report the incident to the Department. However, these injuries must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(D) **Do I have to report a fatality or multiple hospitalization incident that occurs on a commercial or public transportation system?** No, you do not have to call the Department to report a fatality or multiple hospitalization incident if it involves a commercial airplane, train, subway or bus accident. However, these injuries must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(E) **Do I have to report a fatality caused by a heart attack at work?** Yes, the Department director will decide whether to investigate the incident, depending on the circumstances of the heart attack.

(F) **Do I have to report a fatality or hospitalization that occurs long after the incident?** No, you must only report each fatality or multiple hospitalization incident that occurs within thirty (30) days of an incident.

(G) **What if I don't learn about an incident right away?** If you do not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under paragraphs (a) and (b) of this section, you must make the report within eight (8) hours of the time the incident is reported to you or to any of your agent(s) or employee(s).

(b) Providing records to the Department representatives.

(i) Basic requirement. When an authorized Department representative asks for the records you keep under this chapter, you must provide copies of the records within four (4) business hours.

(ii) Implementation.

(A) **What Department representatives have the right to get copies of my Injury and Illness records?** The government representatives authorized to receive the records are:

(I) A representative of the Secretary of Labor conducting an inspection or investigation under the Act;

(II) 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

(III) A representative of the Department responsible for administering a State plan approved under section 18 of the Act.

(B) **Do I have to produce the records within four (4) hours if my records are kept at a location in a different time zone?** The Department will consider your response to be timely if you give the records to the government representative within four (4) business hours of the request. If you maintain the records at a location in a different time zone, you may use the business hours of the establishment at which the records are located when calculating the deadline.

(c) Annual OSHA injury and illness survey of ten or more employers.

(i) Basic requirement. If you receive OSHA's annual survey form, 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:

(A) the number of workers you employed;

(B) the number of hours worked by your employees; and

(C) the requested information from the records that you keep under this chapter.

(ii) Implementation.

(A) **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.

(B) **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.

(C) **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 Section 2(a) to (c), 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 letter, you must keep the injury and illness records required by Section 2(e) to(i) and make a survey report for the year covered by the survey.

(D) **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.

(E) **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.

(d) Requests from the Bureau of Labor Statistics for data.

(i) Basic requirement. If you receive a Survey of Occupational Injuries and Illnesses Form from the Bureau of Labor Statistics (BLS), or a BLS designee, you must promptly complete the form and return it following the instructions contained on the survey form.

(ii) Implementation.

(A) **Does every employer have to send data to the BLS?** No, each year, the BLS sends injury and illness survey forms to randomly selected employers and uses the information to create the Nation's occupational injury and illness statistics. In any year, some employers will receive a BLS survey form and others will not. You do not have to send injury and illness data to the BLS unless you receive a survey form.

(B) **If I get a survey form from the BLS, what do I have to do?** If you receive a Survey of Occupational Injuries and Illnesses Form from the Bureau of Labor Statistics (BLS), or a BLS designee, you must promptly complete the form and return it, following the instructions contained on the survey form.

(C) **Do I have to respond to a BLS 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 Section 2(a) to (c), 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 letter, you must keep the injury and illness records required by ? Section 2(e) to (i) and make a survey report for the year covered by the survey.

(D) **Do I have to answer the BLS survey form if I am located in a State Plan State?** Yes, all employers who receive a survey form must respond to the survey, even those in State Plan States.

Section 6. Transition From the Former Rule

(a) Summary and posting of the 2001 data.

(i) Basic requirement. If you were required to keep OSHA 200 Logs in 2001, you must post a 2000 annual summary from the OSHA 200 Log of occupational injuries and illnesses for each establishment.

(b) Implementation.

(i) **What do I have to include in the summary?**

(A) You must include a copy of the totals from the 2001 OSHA 200 Log and the following information from that form:

(I) The calendar year covered;

(II) Your company name;

(III) The name and address of the establishment; and

(IV) The certification signature, title and date.

(1.) If no injuries or illnesses occurred at your establishment in 2001, you must enter zeros on the totals line and post the 2001 summary.

(B) **When am I required to summarize and post the 2001 information?**

(I) You must complete the summary by February 1, 2002; and

(II) You must post a copy of the summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. You must ensure that the summary is not altered, defaced or covered by other material.

(C) You must post the 2001 summary from February 1, 2002 to March 1, 2002.

(c) Retention and updating of old forms. You must save your copies of the OSHA 200 and 101 or the equivalent forms for five years following the year to which they relate and continue to provide access to the data as though these forms were the OSHA 300 and 301 or the equivalent forms. You are not required to update your old 200 and 101 or the equivalent forms.

Section 7. Posting requirements

(a) Each employer shall post and keep posted a notice or notices to include the "Safety and Health Protection on the Job", WOSH Form 902 poster, to be furnished by the Department, informing employees of the protections and obligations provided for in the Act, and that for assistance and information. Including copies of the Act and of specific safety and health standards, employees should contact the employer or the nearest Department. Such notice or notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

Section 8. Definitions

(a) Definitions

"The Act". The Act means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.). The definitions contained in section 3 of the Act (29 U.S.C. 652) and related interpretations apply to such terms when used in this chapter.

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

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

(I) Each of the establishments represents a distinctly separate business;

(II) Each business is engaged in a different economic activity;

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

(IV) 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.

(B) **Can an establishment include more than one physical location?** Yes, but only under certain conditions. An employer may combine two or more physical locations into a single establishment only when:

(I) The employer operates the locations as a single business operation under common management;

(II) The locations are all located in close proximity to each other; and

(III) The employer keeps one set of business records for the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

(C) **If an employee telecommutes from home, is his or her home considered a separate establishment?** No, for employees who telecommute from home, the employee's home is not a business establishment and a separate 300 Log is not required. Employees who telecommute must be linked to one of your establishments under Section 4 (a)(ii)(C).

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

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

You. "You" means an employer as defined in Section 3 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652).