Councils or Agencies, Tribal Government.

ETA Form 671

Total Respondents: 238,929.
Frequency: 1-time basis.
Total Responses: 238,929.

Average Time per Response: See Chart.

Estimated Total Burden Hours: 47,556.

SUMMARY OF BURDEN FOR 29 CFR PART 29

Sec.	Total respondents	Frequency	Total responses	Average time per responses	Burden hours
29.3 ...	127,421	1-time basis	127,421	¼ hr./app.	31,855
29.6 ...	108,124	1-time basis	108,124	1/12 hr./app.	9,010
29.5 ...	1,674	1-time basis	1,674	2 hrs./spon.	3,348
	1,640	1-time basis	1,640	2 hrs./SAC	3,280
29.7 ...	40	1-time basis	40	1/12 hr./spon.	3
29.12	(30)	1-time basis	(30)	0	0
29.12	(accomplished in 1977; no new state agency expected in 2002)				
29.12	30	1-time basis	30	2 hrs. SAC	60
29.13	0	0	0	0	0
Totals	238,929		238,929		47,556

Totals Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for office of Management and Budge approval of the information collection request; they will also become a matter of public record.

Dated: December 20, 2001.

Anthony Swoope,

Administrator, Office of Apprenticeship Training, Employer and Labor Services.

[FR Doc. 01–31777 Filed 12–26–01; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Settlement Agreement: Occupational Injury and Illness Recording and Reporting

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

ACTION: Notice of settlement agreement.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has entered into a settlement agreement with the National Association of Manufacturers (NAM) to resolve NAM's legal challenge to OSHA's revised regulations in 29 CFR part 1904, Recording and Reporting Occupational Injuries and Illnesses. As part of the agreement, OSHA agreed to publish a copy of the OSHA–NAM settlement agreement in the **Federal Register** within 30 days.

DATES: The settlement agreement was completed on November 16, 2001.

FOR FURTHER INFORMATION CONTACT: Jim Maddux, Occupational Safety and Health Administration, U.S. Department of Labor, Directorate of Safety Standards Programs, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 2001, (66 FR 5916), OSHA published a final rule, revising its Occupational Injury and Illness Recording and Reporting Requirements in 29 CFR Part 1904. The Agency subsequently published an amendment to the final rule on October 12, 2001 (66 FR 35113). After the final rule was published in January, NAM filed a legal challenge to the final rule in the United States District Court for the District of Columbia. On November 16, 2001, OSHA and NAM entered into a settlement agreement to resolve NAM's legal challenge. The parties entered into a revised settlement agreement on November 29, 2001. As part of this revised agreement, OSHA agreed to publish a copy of the revised settlement agreement in the **Federal Register** within 30 days.

Accordingly, the following section of this notice contains the text of the OSHA–NAM revised settlement agreement:

Settlement Agreement

United States District Court for the District of Columbia

National Association of Manufacturers, Plaintiff, v. Elaine L. Chao, Secretary, U.S. Department of Labor, and John Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, Defendants.

[Case No: 1:01CV00575 (GK)]

Revised Settlement Agreement

The Federal Defendants and the National Association of Manufacturers, by and through counsel, hereby agree as follows:

1. On January 19, 2001, the Occupational Safety and Health Administration issued a Final Rule on Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR parts 1904 and 1952 (the Final Rule). 66 FR 5916–6135 (January 19, 2001). On March 23, 2001, the National Association of Manufacturers filed a First Amended Complaint in this Court challenging portions of the Final Rule. The Federal Defendants and the National Association of Manufacturers have settled their differences as provided herein.

2. Secretary of Labor will include the following language in the initial Compliance Directive to be issued on the Final Rule.

A. During the initial period the new recordkeeping rule is in effect, OSHA compliance officers conducting inspections will focus on assisting employers to comply with the new rule rather than on enforcement. OSHA will not issue citations for violations of the recordkeeping rule during the first 120 days after January 1, 2002, provided the employer is attempting in good faith to meet its recordkeeping obligation and agrees to make corrections necessary to bring the records into compliance.

B. Section 1904.5(a) states that ''[the employer] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to resulting condition or significantly aggravated a pre-existing condition. Work-relatedness is presumed for injuries and

illnesses resulting from events or exposures occurring in the work environment * * *'' Under this language, a case is presumed work-related if, and only if, an event or exposure in the work environment is a discernable cause of the injury or illness or of a significant aggravation to pre-existing condition. The work event or exposure need only be one of the discernable causes; it need not be the sole or predominant cause.

Section 1904.5(b)(2) states that a case is not recordable if it ''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.'' This language is intended as a restatement of the principle expressed in 1904.5(a), described above. Regardless of where signs or symptoms surface, a case is recordable only if a work event or exposure is a discernable cause of the injury or illness or of a significant aggravation to a pre-existing condition.

Section 1904.5(b)(3) states that if it is not obvious whether the precipitating event or exposure occurred in the work environment or elsewhere, the employer ''must evaluate the employee's work duties and environment to decide whether or not one or more events or exposures in the work environment caused or contributed to the resulting condition or significantly aggravated a pre-existing condition.'' This means that the employer must make a determination whether it is more likely than not that work events or exposures were a cause of the injury or illness, or a significant aggravation to a pre-existing condition. If the employer decides the case is not work-related, and OSHA subsequently issues a citation for failure to record, the Government would have the burden of proving that the injury or illness was work-related.

C. A case is not recordable under 1904.7(b)(4) as a restricted work case if the employee experiences minor musculoskeletal discomfort, a health care professional determines that the employee is fully able to perform all of his or her routine job functions, and the employer assigns a work restriction to that employee for the purpose of preventing a more serious condition from developing.

D. *Question.* Is the employer subject to a citation for violating section 1904.7(b)(4)(viii) if an employee fails to follow a recommended work restriction?

Answer: Section 1904.7(b)(4)(viii) deals with the recordability of cases in which a physician or other health care professional has recommended a work restriction. The section also states that the employer ''should ensure that the employee complies with [the recommended] restriction.'' This language is purely advisory and does not impose an enforceable duty upon employers to ensure that employees comply with the recommended restriction. [**Note:** in the absence of conflicting opinions from two or more health care professionals, the employer ordinarily must record the case if a health professional recommends a work restriction involving the employee's routine job functions].

E. *Question.* Does an employee report of an injury or illness establish the existence of the injury or illness for recordkeeping purposes?

Answer: No. In determining whether a case is recordable, the employer must first decide whether an injury or illness, as defined by the rule, has occurred. If the employer is uncertain about whether an injury or illness has occurred, the employer may refer the employee to a physician or other health care professional for evaluation and may consider the health care professional's opinion in determining whether an injury or illness exists. [**Note:** if a physician or other licensed health care professional diagnoses a significant injury or illness within the meaning of section 1904.7(b)(7) and the employer determines that the case is work-related, the case must be recorded.]

F. *Question.* If an employee is exposed to chlorine or some other substance at work and oxygen is administered as a purely precautionary measure, is the case recordable?

Answer: If oxygen is administered as a purely precautionary measure to an employee who does not exhibit any symptoms of an injury or illness, the case is not recordable. If an employee exposed to a substance at work exhibits symptoms of an injury or illness, the administration of oxygen makes the case recordable.

3. Within 3 business days following issuance of the Compliance Directive containing the language in Paragraph 2 of this agreement, the National Association of Manufacturers (NAM) will file a notice of dismissal of its lawsuit under Fed. R. Civ. P. 41(a)(1)(ii). The notice of dismissal shall state that dismissal is with prejudice, except only that NAM may re-file its complaint if a court of competent jurisdiction determines that any of the provisions of this agreement or of the Department of Labor's October 12, 2001 **Federal Register** Notice (66 FF 52031) are invalid or if any of the provisions of this agreement are withdrawn or revised in a manner inconsistent with the language in this agreement. The Federal Defendants shall not object to the timeliness of such a complaint by NAM on statute of limitations, laches, or other grounds, provided that the complaint is filed within 90 days of the occurrence of an event listed in the preceding sentence. Nothing contained herein shall be construed as affecting Federal Defendants' right to modify or interpret its regulations in the future.

4. The Federal Defendants and the National Association of Manufacturers agree to bear their own fees and expenses incurred at any stage in this litigation.

5. The Federal Defendants agree to publish a copy of this revised settlement agreement, in lieu of the settlement agreement signed on November 16, in the **Federal Register** within thirty days of its effective date.

6. This revised settlement agreement is effective on November 29, 2001.

Respectfully submitted,
Of Counsel:
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General Counsel,
Quentin Riegel,
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Mark E. Nagle,
D.C. Bar. No. 416364, Assistant United States Attorney.
Brian J. Sonfield,
D.C. Bar No. 449098, Assistant United States Attorney, Judiciary Center Bldg. Civil Division, 555 Fourth Street, NW., Washington, D.C. 20001, (202) 514–7143. Counsel for Defendants Elaine L. Chao and John Henshaw.

Authority

This document was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657).

Signed at Washington, D.C., this 20th day of December, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 01–31808 Filed 12–26–01; 8:45 am]

BILLING CODE 4510–26–M