OSHA has issued a final rule that will require all establishments with 250 or more employees in industries covered by the current recordkeeping regulation to electronically submit to OSHA injury and illness information from OSHA Forms 300, 300A, and 301. Establishments with 20-249 employees in certain industries must electronically submit information from OSHA Form 300A only. This includes the LBM sector, identified by the North American Industry Classification System (NAICS) code 4441, Building material and supplies dealers. These reporting requirements are annual reporting requirements, with phased-in deadlines highlighted below.

Within six months after publication of this final rule, State Plan states will have to adopt requirements that are substantially identical to the requirements in this final rule. Some states may choose to allow employers in their state to use the federal OSHA data collection website to meet the new reporting obligations. Other states may provide their own data collection sites. OSHA will provide further information and guidance as the States decide how to implement these new reporting requirements.

OSHA has posted online Frequently Asked Questions as well as a Fact Sheet that provide more information. These and other materials are available on OSHA's webpage on the final rule.

The new annual electronic reporting requirements are effective January 1, 2017, with a phased-in schedule based on the size of the establishment. For the calendar year 2017, establishments with 250 or more employees and those with 20-249 employees must submit Form 300A by July 1, 2017. For calendar year 2018 and thereafter, establishments with 250 or more employees must submit Forms 300A, 300 and 301 by July 1, 2018. Establishments with 20-249 employees are only required to file Form 300A electronically. Beginning with calendar year 2019, the reporting deadlines will be moved from July 1 to March 2.

OSHA intends to post the data from these submissions on a publicly accessible website. OSHA does not intend to post any information on the website that could be used to identify individual employees. The new rule also addresses how employers must inform employees of their rights to report work-related injuries and illnesses.

What must be reported electronically?

The new rule amends OSHA's recordkeeping regulations to add requirements for the electronic submission of injury and illness information that employers are already required to keep under current regulations. First, the final rule requires establishments with 250 or more employees (including the LBM sector) to electronically submit information from Forms 300, 300A, and 301 to OSHA on an annual basis. Second, the final rule requires establishments with 20 or more employees, but fewer than 250 employees, in certain designated industries (including the LBM sector), to electronically submit information from Form 300A only, to OSHA, on an annual basis. Third, the final rule requires, upon notification, employers to electronically submit information from any of the recordkeeping forms to
OSHA emphasizes that the electronic submission requirements in the final rule do not add to or change any employer’s obligation to complete and retain injury and illness records under current regulations for recording and reporting occupational injuries and illnesses. The final rule also does not add to or change the recording criteria or definitions for these records.

**How will employers submit this information electronically?**

OSHA will provide a secure website for the electronic submission of information. The website will include web forms for direct data entry and instructions for other means of submission (such as file uploads). OSHA does not provide additional detail about the website at this time, other than to indicate that employers subject to these requirements will be required to create an account and learn to navigate the collection system.

Establishments must submit the information electronically and may not submit the information on paper. OSHA suggests that employers who do not have the necessary equipment or internet connection may submit their data from a public facility, such as a library. OSHA also intends to provide an interface for entering data from a mobile device.

Following are OSHA estimates of the time it will take to submit the required information electronically -

For establishments with 20-249 employees that are required to report, OSHA estimates that it will take a typical employer about 10 minutes to create an account and another 10 minutes to enter the required information from the Summary of Work-Related Injuries and Illnesses (Form 300A). For establishments with 250 or more employees, OSHA estimates that it will take a typical employer about 10 minutes to create an account, 10 minutes to enter the required information from the Summary of Work-Related Injuries and Illnesses (Form 300A), and 12 minutes to enter the required information for each injury or illness recorded on their Log and Injury and Illness Incident Report forms (Forms 300 and 301).

**What information will OSHA publish online?**

OSHA intends to post the establishment-specific injury and illness data it collects electronically on its public website to be found at [www.osha.gov](http://www.osha.gov). According to the final rule, the publication of specific data fields will be in part restricted by applicable federal law, including the Freedom of Information Act (FOIA), as well as specific provisions of the current regulation. OSHA does not intend to post any information on the website that could be used to identify individual employees. Nor does OSHA intend to release personally identifiable information that is included on Forms 300, 300A, and 301.

OSHA will make the following data from the various forms available in a searchable online database -

1. **Form 300A (Annual Summary Form)** - All collected data fields will be made available. In the past, OSHA has collected these data under the [OSHA Data Initiative (ODI)](http://data.oshadi.gov) and during OSHA workplace inspections and released them in response to FOIA requests. The annual summary form is also required to be posted at workplaces between January and April. OSHA currently publishes establishment-specific injury and illness rates calculated from the data collected through the ODI on [OSHA’s public website](http://www.osha.gov/). The 300A annual summary does not contain any personally-identifiable information.
2. **Form 300 (the Log)** - All collected data fields on the 300 Log will generally be made available on the website. Employee names will not be collected. OSHA occasionally collects these data during inspections as part of the enforcement case file. OSHA generally releases these data in response to FOIA requests. Also, current regulations prohibit release of employees’ names and personal identifiers contained in the forms to individuals other than the government, employees, former employees, and authorized representatives. OSHA does not currently conduct a systematic collection of the information on the 300 Log.

3. **Form 301 (Incident Report)** - All collected data fields on the right-hand side of the form (Fields 10 through 18) will generally be made available. OSHA currently occasionally collects the form for enforcement case files. OSHA generally releases these data in response to FOIA requests. The current regulations prohibit employers from releasing the information in Fields 1 through 9 (the left-hand side of the form) to individuals other than the employee or former employee who suffered the injury or illness and his or her personal representatives. Similarly, OSHA will not publish establishment-specific data from the left side of Form 301. OSHA does not release data from Fields 1 through 9 in response to FOIA requests. The Agency does not currently conduct a systematic collection of the information on the Form 301. However, the Agency does review the entire Form 301 during some workplace inspections and occasionally collects the form for inclusion in the enforcement case file. Note that OSHA will not collect or publish Field 1 (employee name), Field 2 (employee address), Field 6(name of treating physician or health care provider), or Field 7 (name and address of non-workplace treating facility).

**What must employers tell or make available to employees?**

The final rule also amends OSHA’s recordkeeping regulation to update requirements on how employers inform employees to report work-related injuries and illnesses. According to OSHA, one way for employers to meet this requirement is by posting the OSHA "It’s The Law" worker rights poster from April 2015 or later.

The final rule requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation; clarifies the existing implicit requirement that an employer's procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and incorporates the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses. The final rule also amends OSHA’s existing recordkeeping regulation to clarify the rights of employees and their representatives to access the injury and illness records. These new provisions will be effective August 10, 2016.

**How will OSHA enforce this new rule?**

According to OSHA, the new rule provides the agency with additional enforcement tools to promote the accuracy and integrity of the injury and illness records employers are required to keep. Under the existing regulations OSHA may not act against an employer unless an employee files a complaint. Under the new rule, OSHA will be able to cite an employer for taking adverse action against an employee for reporting an injury or illness, even if the employee did not file a complaint. Citations can result in orders requiring employers to abate violations.

As a reminder, OSHA’s existing regulations require employers with more than 10 employees in most industries to keep records of occupational injuries and illnesses at their establishments. Employers
covered by these rules must record each recordable employee injury and illness on an OSHA Form 300, which is the "Log of Work-Related Injuries and Illnesses," or equivalent. Employers must also prepare a supplementary OSHA Form 301 "Injury and Illness Incident Report" or equivalent that provides additional details about each case recorded on the OSHA Form 300. Finally, at the end of each year, employers are required to prepare a summary report of all injuries and illnesses on the OSHA Form 300A, which is the "Summary of Work-Related Injuries and Illnesses," and post the form in a visible location in the workplace.

Although the OSH Act gives OSHA the authority to require all employers covered by the Act to keep records of employee injuries and illnesses, two classes of employers are partially-exempted from the recordkeeping requirements. First, employers with 10 or fewer employees at all times during the previous calendar year are partially exempt from keeping OSHA injury and illness records. Second, establishments in certain lower-hazard industries are also partially exempt. Partially-exempt employers are not required to maintain OSHA injury and illness records unless required to do so by OSHA or by the Bureau of Labor Statistics.

Questions? Contact Frank Moore, NLBMDA's Regulatory Counsel at frank@dealer.org.

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The National Lumber and Building Material Dealers Association (NLBMDA) represents its members in the national public policy arena, with emphasis on efforts to 1) promote the industry and educate legislators and public policy personnel; and 2) assist legislative, regulatory, standard-setting and other government or private bodies in the development of laws, regulations and policies affecting lumber and building material dealers, its customers and suppliers. Founded in 1917, the association represents over 6,000 member locations operating single or multiple lumber yards and component plants serving homebuilders, subcontractors, general contractors, and consumers in the new construction, repair and remodeling of residential and light commercial. www.dealer.org.