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Division of Publications**

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For Department of State Use Only

Sequence Number: 08-28-16

Rule ID(s): 6291

File Date: 8/26/16

Effective Date: 11/24/16

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Division of Occupational Safety and Health
Contact Person:	Larry Hunt
Address:	220 French Landing Drive
Zip:	37243-1002
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0800-01-03	Occupational Safety and Health Standards Record-Keeping and Reporting
Rule Number	Rule Title
0800-01-03-.04	Other TOSHA Injury and Illness Recordkeeping Requirements

Chapter Number	Chapter Title
0800-01-03	Occupational Safety and Health Standards Record-Keeping and Reporting
Rule Number	Rule Title
0800-01-03-.05	Reporting Fatality, Injury and Illness Information

Chapter 0800-01-03
Occupational Safety and Health Standards Record-Keeping and Reporting

Amendments

Paragraph (6) of Rule 0800-01-03-.04, Other TOSHA Injury and Illness Recordkeeping Requirements is amended by deleting the current text and replacing with the following so as amended the paragraph shall read:

- (6) Employee involvement.
- (a) Basic requirement. Your employees and their representatives must be involved in the recordkeeping system in several ways.
1. You must inform each employee of how he or she is to report a work-related injury or illness to you.
 2. You must provide employees with the information described in paragraph (b)1(iii) of this rule.
 3. You must provide access to your injury and illness records for your employees and their representatives as described in paragraph (b)2 of this rule.
- (b) Implementation.
1. What must I do to make sure that employees report work-related injuries and illnesses to me?
 - (i) You must establish a reasonable procedure for employees to report work-related injuries and illnesses promptly and accurately. A procedure is not reasonable if it would deter or discourage a reasonable employee from accurately reporting a workplace injury or illness;
 - (ii) You must inform each employee of your procedure for reporting work-related injuries and illnesses;
 - (iii) You must inform each employee that:
 - (I) Employees have the right to report work-related injuries and illnesses; and
 - (II) Employers are prohibited from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses; and
 - (iv) You must not discharge or in any manner discriminate against any employee for reporting a work-related injury or illness.
 2. Do I have to give my employees and their representatives access to the TOSHA injury and illness records? Yes, your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the TOSHA 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:
 - (I) Any person that the employee or former employee designates as such, in writing; or

- (II) 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 Rules 0800-01-03-.03(27)(b)6 through Rule 0800-01-03-.03(27)(b)9.
- (v) If an employee or representative asks for access to the OSHA 301 Incident Report, when do I have to provide it?
 - (I) When an employee, former employee, or personal representative asks for a copy of the OSHA 301 Incident Report describing an injury or illness to that employee or former employee, you must give the requester a copy of the OSHA 301 Incident Report containing that information by the end of the next business day.
 - (II) When an authorized employee representative asks for 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 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.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

Paragraph (7) of Rule 0800-01-03-.04, Other TOSHA Injury and Illness Recordkeeping Requirements is amended by deleting the current text and replacing with the following so as amended the paragraph shall read:

- (7) In addition to 0800-01-03-.04(6), T.C.A. §50-3-409 also 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 0800-01-03 records, or otherwise exercises any rights afforded by the TOSH Act.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

Paragraph (3) of Rule 0800-01-03-.05, Reporting Fatality, Injury and Illness Information is amended by deleting the current text and replacing with the following so as amended the paragraph shall read:

(3) Electronic submission of injury and illness records to OSHA.

(a) Basic requirements.

1. Annual electronic submission of 0800-01-03 records by establishments with 250 or more employees. If your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must electronically submit information from the three recordkeeping forms that you keep under this part (OSHA Form 300A Summary of Work-Related Injuries and Illnesses, OSHA Form 300 Log of Work-Related Injuries and Illnesses, and OSHA Form 301 Injury and Illness Incident Report) to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (3)(c) of this rule of the year after the calendar year covered by the forms.
2. Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees but fewer than 250 employees in designated industries. If your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to 0800-01-03-.05 of this part, then you must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (3)(c) of this rule of the year after the calendar year covered by the form.
3. Electronic submission of 0800-01-03 records upon notification. Upon notification, you must electronically submit the requested information from your 0800-01-03 records to OSHA or OSHA's designee.

(b) Implementation.

1. Does every employer have to routinely submit information from the injury and illness records to OSHA? No, only two categories of employers must routinely submit information from their injury and illness records. First, if your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must submit the required Form 300A, 300, and 301 information to OSHA once a year. Second, if your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to 0800-01-03-.05 of this part, then you must submit the required Form 300A information to OSHA once a year. Employers in these two categories must submit the required information by the date listed in paragraph (3)(c) of this rule of the year after the calendar year covered by the form or forms (for example, 2017 for the 2016 forms). If you are not in either of these two categories, then you must submit information from the injury and illness records to OSHA only if OSHA notifies you to do so for an individual data collection.
2. If I have to submit information under paragraph (a)1 of this rule, do I have to submit all of the information from the recordkeeping form? No, you are required to submit all of the information from the form except the following:
 - (i) Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).
 - (ii) Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

3. Do part-time, seasonal, or temporary workers count as employees in the criteria for number of employees in paragraph (3)(a) of this rule? Yes, each individual employed in the establishment at any time during the calendar year counts as one employee, including full-time, part-time, seasonal, and temporary workers.
4. How will OSHA notify me that I must submit information from the injury and illness records as part of an individual data collection under paragraph (3)(a)3 of this rule? OSHA will notify you by mail if you will have to submit information as part of an individual data collection under paragraph (3)(a)3. OSHA will also announce individual data collections through publication in the Federal Register and the OSHA newsletter, and announcements on the OSHA Web site. If you are an employer who must routinely submit the information, then OSHA will not notify you about your routine submittal.
5. How often do I have to submit the information from the injury and illness records? If you are required to submit information under paragraph (3)(a)1 or 2 of this rule, then you must submit the information once a year, by the date listed in paragraph (3)(c) of this rule of the year after the calendar year covered by the form or forms. If you are submitting information because OSHA notified you to submit information as part of an individual data collection under paragraph (3)(a)3 of this rule then you must submit the information as often as specified in the notification.
6. How do I submit the information? You must submit the information electronically. OSHA will provide a secure Web site for the electronic submission of information. For individual data collections under paragraph (3)(a)3 of this rule, OSHA will include the Web site's location in the notification for the data collection.
7. Do I have to submit information if my establishment is partially exempt from keeping OSHA injury and illness records? If you are partially exempt from keeping injury and illness records under 0800-01-03-.02(2) and/or 0800-01-03-.02(3), then you do not have to routinely submit 0800-01-03 information under paragraphs (3)(a)1 and 2 of this rule. You will have to submit information under paragraph (3)(a)3 of this rule if OSHA informs you in writing that it will collect injury and illness information from you. If you receive such a notification, then you must keep the injury and illness records required by this part and submit information as directed.
8. Do I have to submit information if I am located in a State Plan State? Yes, the requirements apply to employers located in State Plan States.
9. May an enterprise or corporate office electronically submit 0800-01-03 records for its establishment(s)? Yes, if your enterprise or corporate office had ownership of or control over one or more establishments required to submit information under paragraph (3)(a)1 or 2 of this rule, then the enterprise or corporate office may collect and electronically submit the information for the establishment(s).

(c) Reporting dates.

1. In 2017 and 2018, establishments required to submit under paragraph (3)(a)1 or 2 of this rule must submit the required information according to the table in this paragraph (3)(c)1:

Submission Year	Establishments submitting under paragraph (3)(a)1 of this rule must submit the required information from this form/these forms	Establishments submitting under paragraph (3)(a)2 of this rule must submit the required information from this form:	Submission deadline
2017	300A	300A	July 1, 2017
2018	300A, 300, 301	300A	July 1, 2018

2. Beginning in 2019, establishments that are required to submit under paragraph (3)(a)1 or 2 of this rule will have to submit all of the required information by March 2 of the year after the calendar year covered by the form or forms (for example, by March 2, 2019, for the forms covering 2018).

Appendix A to 0800-01-03-.05—Designated Industries for 0800-01-03-.05(3)(a)2 Annual Electronic Submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 20 or More Employees but Fewer Than 250 Employees in Designated Industries

NAICS	Industry
11	Agriculture, forestry, fishing and hunting.
22	Utilities.
23	Construction.
31-33	Manufacturing.
42	Wholesale trade.
4413	Automotive parts, accessories, and tire stores.
4421	Furniture stores.
4422	Home furnishings stores.
4441	Building material and supplies dealers.
4442	Lawn and garden equipment and supplies stores.
4451	Grocery stores.
4452	Specialty food stores.
4521	Department stores.
4529	Other general merchandise stores.
4533	Used merchandise stores.
4542	Vending machine operators.
4543	Direct selling establishments.
4811	Scheduled air transportation.
4841	General freight trucking.
4842	Specialized freight trucking.
4851	Urban transit systems.
4852	Interurban and rural bus transportation.
4853	Taxi and limousine service.
4854	School and employee bus transportation.
4855	Charter bus industry.
4859	Other transit and ground passenger transportation.
4871	Scenic and sightseeing transportation, land.
4881	Support activities for air transportation.
4882	Support activities for rail transportation.
4883	Support activities for water transportation.
4884	Support activities for road transportation.
4889	Other support activities for transportation.
4911	Postal service.
4921	Couriers and express delivery services.
4922	Local messengers and local delivery.
4931	Warehousing and storage.
5152	Cable and other subscription programming.

5311	Lessors of real estate.
5321	Automotive equipment rental and leasing.
5322	Consumer goods rental.
5323	General rental centers.
5617	Services to buildings and dwellings.
5621	Waste collection.
5622	Waste treatment and disposal.
5629	Remediation and other waste management services.
6219	Other ambulatory health care services.
6221	General medical and surgical hospitals.
6222	Psychiatric and substance abuse hospitals.
6223	Specialty (except psychiatric and substance abuse) hospitals.
6231	Nursing care facilities.
6232	Residential mental retardation, mental health and substance abuse facilities.
6233	Community care facilities for the elderly.
6239	Other residential care facilities.
6242	Community food and housing, and emergency and other relief services.
6243	Vocational rehabilitation services.
7111	Performing arts companies.
7112	Spectator sports.
7121	Museums, historical sites, and similar institutions.
7131	Amusement parks and arcades.
7132	Gambling industries.
7211	Traveler accommodation.
7212	RV (recreational vehicle) parks and recreational camps.
7213	Rooming and boarding houses.
7223	Special food services.
8113	Commercial and industrial machinery and equipment (except automotive and electronic) repair and maintenance.
8123	Dry-cleaning and laundry services.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

Paragraph (4) of Rule 0800-01-03-.05, Reporting Fatality, Injury and Illness Information is amended by deleting the current text in its entirety.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 6/23/16 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 6/23/16

Signature: Burns Phillips

Name of Officer: Burns Phillips

Title of Officer: Commissioner of Labor and Workforce Development



Subscribed and sworn to before me on: June 23, 2016

Notary Public Signature: Jamie Presson

My commission expires on: March 16, 2019

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slattery III
 Herbert H. Slattery III
 Attorney General and Reporter
8/17/2016
 Date

Department of State Use Only

Filed with the Department of State on: 8/26/16

Effective on: 11/24/16

Tre Hargett
 Tre Hargett
 Secretary of State

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Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

An economic impact statement regarding the amendments in this rule proposal is not required under the provisions of the Regulatory Flexibility Act of 2007. As stated in Section 6 of Public Chapter 464, "This part shall not apply to rules that are adopted on an emergency or public necessity basis under Title 4, Chapter 5, Part 2, that are federally mandated, or that substantially codify existing state or federal law." Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the Tennessee Occupational Safety and Health State Plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. The plan specifies that the state of Tennessee will adopt the federal standards or an equivalent state requirement within six (6) months of the standard's promulgation by federal OSHA. In addition, T.C.A. §50-3-201 authorizes the Commissioner of Labor and Workforce Development to adopt either state or federal occupational safety and health standards.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule does not have a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rules 0800-01-03-.04 and 0800-01-03-.05 are amended in order to adopt and reference the latest occupational record-keeping and reporting standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. When a federal standard is not adopted, it is referenced as an exception in the rules. The statutory authority for promulgation of the rules by the Commissioner of Labor and Workforce Development is T.C.A. § 50-3-201.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All persons subject to T.C.A. §§ 50-3-101 *et seq.* are directly affected by the rules in Chapter 0800-01-03. These rules provide for the effective administration and enforcement of the occupational safety and health standards required by the state plan. Employees and employers including governmental entities in the state must comply with the rules promulgated pursuant to federal and state law. It appears that there are no objections to the proposed amendments to the rules since no inquiries have been made.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There have been no Attorney General opinions or judicial rulings relevant to these rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There are no anticipated increases or decreases in state and local government revenues and expenditures resulting from promulgation of the proposed rules and amendments to the existing rules.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Larry Hunt, Manager, Standards & Procedures, Division of Occupational Safety and Health, is the agency representative most knowledgeable about these rules.

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Department of Labor and Workforce Development
Division of Occupational Safety and Health
220 French Landing Drive
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-03

Rule 0800-01-03-.04 Amended

Paragraph (6) of Rule 0800-01-03-.04 Other TOSHA Injury and Illness Recordkeeping Requirements is amended as follows:

Existing Rule:

- (6) Employee involvement.
 - (a) Basic requirement. Your employees and their representatives must be involved in the recordkeeping system in several ways.
 - 1. You must inform each employee of how he or she is to report an injury or illness to you.
 - ~~2. You must provide limited access to your injury and illness records for your employees and their representatives.~~
 - (b) Implementation.
 - 1. 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.~~
 - 2. Do I have to give my employees and their representatives access to the TOSHA injury and illness records? Yes, your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the TOSHA 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:
 - (I) Any person that the employee or former employee designates as such, in writing; or
 - (II) 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 ~~Rules 0800-1-3-.03(27)(b)6. through Rule 0800-1-3-.03(27)(b)9.~~
- (v) If an employee or representative asks for access to the OSHA 301 Incident Report, when do I have to provide it?
 - (I) When an employee, former employee, or personal representative asks for a copy of the OSHA 301 Incident Report describing an injury or illness to that employee or former employee, you must give the requester a copy of the OSHA 301 Incident Report containing that information by the end of the next business day.
 - (II) When an authorized employee representative asks for 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 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.

Proposed Amended Rule:

- (6) Employee involvement.
 - (a) Basic requirement. Your employees and their representatives must be involved in the recordkeeping system in several ways.
 - 1. You must inform each employee of how he or she is to report a work-related injury or illness to you.
 - 2. You must provide employees with the information described in paragraph (b)(1)(iii) of this rule.

3. You must provide access to your injury and illness records for your employees and their representatives as described in paragraph (b)2 of this rule.

(b) Implementation.

1. What must I do to make sure that employees report work-related injuries and illnesses to me?

(i) You must establish a reasonable procedure for employees to report work-related injuries and illnesses promptly and accurately. A procedure is not reasonable if it would deter or discourage a reasonable employee from accurately reporting a workplace injury or illness;

(ii) You must inform each employee of your procedure for reporting work-related injuries and illnesses;

(iii) You must inform each employee that:

(I) Employees have the right to report work-related injuries and illnesses; and

(II) Employers are prohibited from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses; and

(iv) You must not discharge or in any manner discriminate against any employee for reporting a work-related injury or illness.

2. Do I have to give my employees and their representatives access to the TOSHA injury and illness records? Yes, your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the TOSHA 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:

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

(II) 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 Rules 0800-01-03-.03(27)(b)6 through Rule 0800-01-03-.03(27)(b)9.
- (v) If an employee or representative asks for access to the OSHA 301 Incident Report, when do I have to provide it?
 - (I) When an employee, former employee, or personal representative asks for a copy of the OSHA 301 Incident Report describing an injury or illness to that employee or former employee, you must give the requester a copy of the OSHA 301 Incident Report containing that information by the end of the next business day.
 - (II) When an authorized employee representative asks for 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 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.

Chapter 0800-01-03

Rule 0800-01-03-.04 Amended

Paragraph (6) of Rule 0800-01-03-.04 Other TOSHA Injury and Illness Recordkeeping Requirements is amended as follows:

Existing Rule:

- (7) ~~Prohibition against discrimination. Section 50-3-409 of the 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 or proceeding, asks for access to the injury and illness records, or otherwise exercises any rights afforded by the Act.~~

Proposed Amended Rule:

- (7) In addition to 0800-01-03-.04(6), T.C.A. §50-3-409 also 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 0800-01-03 records, or otherwise exercises any rights afforded by the TOSH Act.

Chapter 0800-01-03

Rule 0800-01-03-.05 Amended

Paragraph (3) of Rule 0800-01-03-.05 Reporting Fatality, Injury and Illness Information is amended as follows:

Existing Rule:

- ~~(3) Annual OSHA injury and illness survey of ten or more employers.~~
- ~~(a) 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:~~
- ~~1. the number of workers you employed;~~
 - ~~2. the number of hours worked by your employees; and~~
 - ~~3. the requested information from the records that you keep under this rule.~~
- ~~(b) Implementation.~~
- ~~1. 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.~~
 - ~~2. 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.~~
 - ~~3. Do I have to respond to an OSHA survey form if I am normally exempt from keeping TOSHA injury and illness records? Yes, even if you are exempt from keeping injury and illness records under Rule 0800-1-3-.02(1) to Rule 0800-1-3-.02(3), 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 Rule 0800-1-3-.03(2) to Rule 0800-1-3-.03(9) and make a survey report for the year covered by the survey.~~
 - ~~4. Does this section affect TOSHA's authority to inspect my workplace? No, nothing in this section affects TOSHA's statutory authority to investigate conditions related to occupational safety and health.~~

Proposed Amended Rule:

- (3) Electronic submission of injury and illness records to OSHA.
- (a) Basic requirements.
1. Annual electronic submission of 0800-01-03 records by establishments with 250 or more employees. If your establishment had 250 or more employees at any time during the previous calendar year, and this part

requires your establishment to keep records, then you must electronically submit information from the three recordkeeping forms that you keep under this part (OSHA Form 300A Summary of Work-Related Injuries and Illnesses, OSHA Form 300 Log of Work-Related Injuries and Illnesses, and OSHA Form 301 Injury and Illness Incident Report) to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (3)(c) of this rule of the year after the calendar year covered by the forms.

2. Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees but fewer than 250 employees in designated industries. If your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to 0800-01-03-.05 of this part, then you must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (3)(c) of this rule of the year after the calendar year covered by the form.
3. Electronic submission of 0800-01-03 records upon notification. Upon notification, you must electronically submit the requested information from your 0800-01-03 records to OSHA or OSHA's designee.

(b) Implementation.

1. Does every employer have to routinely submit information from the injury and illness records to OSHA? No, only two categories of employers must routinely submit information from their injury and illness records. First, if your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must submit the required Form 300A, 300, and 301 information to OSHA once a year. Second, if your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to 0800-01-03-.05 of this part, then you must submit the required Form 300A information to OSHA once a year. Employers in these two categories must submit the required information by the date listed in paragraph (3)(c) of this rule of the year after the calendar year covered by the form or forms (for example, 2017 for the 2016 forms). If you are not in either of these two categories, then you must submit information from the injury and illness records to OSHA only if OSHA notifies you to do so for an individual data collection.
2. If I have to submit information under paragraph (a)1 of this rule, do I have to submit all of the information from the recordkeeping form? No, you are required to submit all of the information from the form except the following:
 - (i) Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B).
 - (ii) Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other

health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).

3. Do part-time, seasonal, or temporary workers count as employees in the criteria for number of employees in paragraph (3)(a) of this rule? Yes, each individual employed in the establishment at any time during the calendar year counts as one employee, including full-time, part-time, seasonal, and temporary workers.
4. How will OSHA notify me that I must submit information from the injury and illness records as part of an individual data collection under paragraph (3)(a)3 of this rule? OSHA will notify you by mail if you will have to submit information as part of an individual data collection under paragraph (3)(a)3. OSHA will also announce individual data collections through publication in the Federal Register and the OSHA newsletter, and announcements on the OSHA Web site. If you are an employer who must routinely submit the information, then OSHA will not notify you about your routine submittal.
5. How often do I have to submit the information from the injury and illness records? If you are required to submit information under paragraph (3)(a)1 or 2 of this rule, then you must submit the information once a year, by the date listed in paragraph (3)(c) of this rule of the year after the calendar year covered by the form or forms. If you are submitting information because OSHA notified you to submit information as part of an individual data collection under paragraph (3)(a)3 of this rule, then you must submit the information as often as specified in the notification.
6. How do I submit the information? You must submit the information electronically. OSHA will provide a secure Web site for the electronic submission of information. For individual data collections under paragraph (3)(a)3 of this rule, OSHA will include the Web site's location in the notification for the data collection.
7. Do I have to submit information if my establishment is partially exempt from keeping OSHA injury and illness records? If you are partially exempt from keeping injury and illness records under 0800-01-03-.02(2) and/or 0800-01-03-.02(3), then you do not have to routinely submit 0800-01-03 information under paragraphs (3)(a)1 and 2 of this rule. You will have to submit information under paragraph (3)(a)3 of this rule if OSHA informs you in writing that it will collect injury and illness information from you. If you receive such a notification, then you must keep the injury and illness records required by this part and submit information as directed.
8. Do I have to submit information if I am located in a State Plan State? Yes, the requirements apply to employers located in State Plan States.
9. May an enterprise or corporate office electronically submit 0800-01-03 records for its establishment(s)? Yes, if your enterprise or corporate office had ownership of or control over one or more establishments required to submit information under paragraph (3)(a)1 or 2 of this rule, then the enterprise or corporate office may collect and electronically submit the information for the establishment(s).

(c) Reporting dates.

1. In 2017 and 2018, establishments required to submit under paragraph (3)(a)1 or 2 of this rule must submit the required information according to the table in this paragraph (3)(c)1:

<u>Submission Year</u>	<u>Establishments submitting under paragraph (3)(a)1 of this rule must submit the required information from this form/these forms</u>	<u>Establishments submitting under paragraph (3)(a)2 of this rule must submit the required information from this form:</u>	<u>Submission deadline</u>
2017	300A	300A	July 1, 2017
2018	300A, 300, 301	300A	July 1, 2018

2. Beginning in 2019, establishments that are required to submit under paragraph (3)(a)1 or 2 of this rule will have to submit all of the required information by March 2 of the year after the calendar year covered by the form or forms (for example, by March 2, 2019, for the forms covering 2018).

Appendix A to 0800-01-03-.05—Designated Industries for 0800-01-03-.05(3)(a)2 Annual Electronic Submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 20 or More Employees but Fewer Than 250 Employees in Designated Industries

<u>NAICS</u>	<u>Industry</u>
11	Agriculture, forestry, fishing and hunting.
22	Utilities.
23	Construction.
31-33	Manufacturing.
42	Wholesale trade.
4413	Automotive parts, accessories, and tire stores.
4421	Furniture stores.
4422	Home furnishings stores.
4441	Building material and supplies dealers.
4442	Lawn and garden equipment and supplies stores.
4451	Grocery stores.
4452	Specialty food stores.
4521	Department stores.
4529	Other general merchandise stores.
4533	Used merchandise stores.
4542	Vending machine operators.
4543	Direct selling establishments.
4811	Scheduled air transportation.
4841	General freight trucking.
4842	Specialized freight trucking.
4851	Urban transit systems.
4852	Interurban and rural bus transportation.
4853	Taxi and limousine service.

4854	School and employee bus transportation.
4855	Charter bus industry.
4859	Other transit and ground passenger transportation.
4871	Scenic and sightseeing transportation, land.
4881	Support activities for air transportation.
4882	Support activities for rail transportation.
4883	Support activities for water transportation.
4884	Support activities for road transportation.
4889	Other support activities for transportation.
4911	Postal service.
4921	Couriers and express delivery services.
4922	Local messengers and local delivery.
4931	Warehousing and storage.
5152	Cable and other subscription programming.
5311	Lessors of real estate.
5321	Automotive equipment rental and leasing.
5322	Consumer goods rental.
5323	General rental centers.
5617	Services to buildings and dwellings.
5621	Waste collection.
5622	Waste treatment and disposal.
5629	Remediation and other waste management services.
6219	Other ambulatory health care services.
6221	General medical and surgical hospitals.
6222	Psychiatric and substance abuse hospitals.
6223	Specialty (except psychiatric and substance abuse) hospitals.
6231	Nursing care facilities.
6232	Residential mental retardation, mental health and substance abuse facilities.
6233	Community care facilities for the elderly.
6239	Other residential care facilities.
6242	Community food and housing, and emergency and other relief services.
6243	Vocational rehabilitation services.
7111	Performing arts companies.
7112	Spectator sports.
7121	Museums, historical sites, and similar institutions.
7131	Amusement parks and arcades.
7132	Gambling industries.
7211	Traveler accommodation.
7212	RV (recreational vehicle) parks and recreational camps.
7213	Rooming and boarding houses.
7223	Special food services.
8113	Commercial and industrial machinery and equipment (except automotive and electronic) repair and maintenance.
8123	Dry-cleaning and laundry services.

Chapter 0800-01-03

Rule 0800-01-03-.05 Amended

Paragraph (4) of Rule 0800-01-03-.05 Reporting Fatality, Injury and Illness Information is deleted in its entirety:

Existing Rule:

- ~~(4) Requests from the Bureau of Labor Statistics for data.~~
- ~~(a) 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.~~
- ~~(b) Implementation.~~
- ~~1. 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.~~
 - ~~2. 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.~~
 - ~~3. Do I have to respond to a BLS survey form if I am normally exempt from keeping TOSHA injury and illness records? Yes, even if you are exempt from keeping injury and illness records under Rule 0800-1-3-.02(1) to Rule 0800-1-3-.02(3), 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 Rule 0800-1-3-.03(2) to Rule 0800-1-3-.03(9) and make a survey report for the year covered by the survey.~~