


APRIL 13, 2023 | OSHA RULEMAKINGS &amp; STANDARDS

# OSHA Delivers Proposed Final (Amended) Electronic Recordkeeping Rule to the White House

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We have an update to share about OSHA's rulemaking to expand its regulation to "Improve Tracking of Workplace Injuries and Illnesses" (known better as the Electronic Recordkeeping or E-Recordkeeping Rule). Late last week, OSHA delivered to the White House's Office of Management and Budget (OMB) a proposed Final (Amended) E-Recordkeeping Rule for review by the Administration's economists and policy experts. [OMB's website](#) reflects that, as of April 7, 2023, OMB:

- Has received a proposed E-Recordkeeping Rule from OSHA; and
- The rule is in the "Final Rule" stage. 

As we indicated a few weeks ago, OSHA's [latest target date to issue the rule](#) is June of this year, and getting the proposed final rule to OMB last week lines up well with that target. The submission of the proposed rule to OMB means OSHA is at the goal line; just one step away from finalizing a rule that more closely resembles the agency's original intent and broad scope of the E-Recordkeeping Rule when it was promulgated in 2016 under the Obama Administration.

The original E-Recordkeeping Rule would have had larger employers submitting to OSHA annually the data from their full panoply of injury and illness recordkeeping forms (the 300 Logs, 301 incident reports, and 300A Annual Summaries), and smaller employers in certain "high hazard industries" submitting only the 300A Annual Summary data. Before ever collecting the more detailed level data from 300 Logs and 301 Incident Reports, former [President Trump's OSHA rolled back the more onerous requirements](#), such that no matter the employer's size, if you were covered by the rule, you submitted only 300A Annual Summary data.

OSHA was sued by organizations representing labor alleging that the rollback of the more onerous E-Recordkeeping requirements was arbitrary and capricious (*State of New Jersey, et al., v. Walsh*). Before that legal challenge could heard, the Biden Administration took the reigns at OSHA and asked the DC District Court to stay the legal challenge on a promise that OSHA was working diligently to rollback the Trump rollbacks on its own initiative. That case has been stayed, but OSHA missed several deadlines it represented to the court to finalize the proposed revisions to the E-Recordkeeping Rule, most recently its commitment to finalize the rule before the March 2023 deadline for employers to submit their 2022 injury data to OSHA. OSHA's delays prompted the pro-labor challengers to ask the federal district court to reactivate the case. OSHA replied to that

motion committing to that June 2023 target date, which it appears it is likely to meet.

In the early days of the Biden Administration, [OSHA published in the Federal Register its intent to amend the E-Recordkeeping Rule](#) and described the changes it was considering. Those changes seek not only to restore the requirement from the original 2016 rule to have larger employers submit the full array of recordkeeping data (i.e., data from 300 Logs, 301 incident reports, and the 300A annual summaries), but also to expand the number of employers that must submit any level of data by lowering the threshold number of employees from 250 to 100 and by expanding the list of covered high-hazard industries. Specifically, under the proposed amendments to the E-Recordkeeping Rule:



- The current requirement for all establishments with more than *250 or more employees in any industry* to electronically submit *only 300A data* would be replaced by a new requirement for establishments with *100 or more employees* only in certain so-called “*high hazard industries*” (as reflected in new [Appendix B](#)) to annually submit to OSHA via an electronic portal the *data from their 300 Logs, 301 Incident Reports, and 300A Annual Summaries*;
- Establishments with *20 or more employees* in a separate list of *high-hazard industries* will still be required to electronically submit information only from their *300A Annual Summaries*, but the list of covered industries in this category is expanded per [new Appendix A](#); and
- All submitting establishments must also now include their proper legal company name (rather than a dba or informal descriptor).

OMB’s Office of Information and Regulatory Affairs (OIRA) will take further stakeholder input through meetings with representatives from OMB and OSHA. Conn Maciel Carey’s “*Employers E-Recordkeeping Coalition*” has been working hard to make sure Industry’s voice has been heard in this rulemaking process as far back as the original rulemaking during the Obama Administration. As a reminder, on behalf of our Coalition, we submitted a comprehensive set of [written comments when President Biden’s OSHA proposed these amendments](#) last year.

One element of the final OMB review process is that OMB’s Office of Information and Regulatory Affairs (OIRA) often takes stakeholder input in some form, pursuant to Executive Order 12866. Most often, that input is in the form of stakeholder meetings with representatives from OMB and the agency promulgating the rule – OSHA for our purposes. Likewise, stakeholders may submit any form of written advocacy, exhibits, data, etc. in connection with their EO 12866 meetings. We intend to continue to advocate for a reasonable E-Recordkeeping Rule by submitting a request for a stakeholder meeting on behalf of the *Employers E-Recordkeeping Coalition*.

In the meantime, if you have any questions about OSHA’s E-Recordkeeping Rule, the status of the rulemaking, or any OSHA issues, please feel free to reach out.