

meaning of the Regulatory Flexibility Act, 5 U.S.C. § 605(b).

Unfunded Mandates Reform Act of 1995

The rules will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E-Congressional Review Act)

These rules are not “major rules” as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E-Congressional Review Act, now codified at 5 U.S.C. 804(2). The rules will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, these are rules of agency practice or procedure that do not substantially affect the rights or obligations of non-agency parties, and do not come within the meaning of the term “rule” as used in Section 804(3)(C) now codified at 5 U.S.C. § 804(3) (C). Therefore, the reporting requirement of 5 U.S.C. § 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Proposed Rules

Accordingly, the U.S. Parole Commission proposes to adopt the following amendment to 28 CFR Part 2.

28 CFR PART 2—[AMENDED]

- 1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. § 4203(a)(1) and 4204(a)(6).

- 2. Add paragraph (d) to § 2.66 to read as follows:

§ 2.66 Revocation Decision Without a Hearing.

* * * * *

(d) *Special Procedures for Swift and Short-Term Sanctions for Administrative Violations of supervision:* (1) An alleged violator may, at the time of the probable cause hearing or preliminary interview, waive the right to a revocation hearing and apply in writing for an immediate prison

sanction of no more than 8 months. Notwithstanding the parole guidelines at Section 2.21, the Commission will consider such a sanction if:

- (i) The releasee has not already postponed the initial probable cause hearing/preliminary interview by more than 30 days;
- (ii) The charges alleged by the Commission do not include a violation of the law(*);
- (iii) The releasee has accepted responsibility for the violations ;
- (iv) The releasee has agreed to modify the non-compliant behavior to successfully complete any remaining period of supervision and;
- (v) The releasee has not already been sanctioned pursuant to this paragraph.

(2) A sanction imposed pursuant to paragraph (d)(1) of this section may include any other action authorized by Sections 2.105 or 2.218.

(3) Notwithstanding the general policy at 2.218(e), a decision to revoke a term of supervised release made pursuant to paragraph (d)(1) of this section may include a further term of supervised release that is less than the maximum authorized term.

(4) Any case not approved by the Commission for a revocation sanction pursuant to paragraph (d)(1) of this section shall receive the normal revocation hearing procedures including the application of the guidelines at 28 CFR 2.21.

***Note to paragraph (d):** For purpose of paragraph (d)(1) only, the Commission will consider the sanctioning of the following crimes as administrative violations if they have been charged only as misdemeanors:

1. Public Intoxication
2. Possession of an Open Container of Alcohol
3. Urinating in Public
4. Traffic Violations
5. Disorderly Conduct/Breach of Peace
6. Driving without a License or with a revoked/suspended license
7. Providing False Information to a Police Officer
8. Loitering
9. Failure to Pay court ordered support (i.e. child support/alimony)
10. Solicitation/Prostitution
11. Resisting Arrest
12. Reckless Driving
13. Gambling
14. Failure to Obey a Police Officer
15. Leaving the Scene of an Accident (only if no injury occurred)
16. Hitchhiking
17. Vending without a License
18. Possession of Drug Paraphernalia (indicating purpose of personal use only)
19. Possession of a Controlled Substance (for personal use only)

Dated: July 30, 2014.

Cranston J. Mitchell,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 2014–18421 Filed 8–13–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1904 and 1952

[Docket No. OSHA–2013–0023]

RIN 1218–AC49

Improve Tracking of Workplace Injuries and Illnesses

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

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On November 08, 2013, OSHA published a notice of proposed rulemaking to amend the agency’s regulation on the annual OSHA injury and illness reporting requirements to add three new electronic reporting obligations. At a public meeting on the proposal, many stakeholders expressed concern that the proposal could motivate employers to under-record their employees’ injuries and illnesses. They expressed concern that the proposal could promote an increase in workplace policies and procedures that deter or discourage employees from reporting work related injuries and illnesses. These include adopting unreasonable requirements for reporting injuries and illnesses and retaliating against employees who report injuries and illnesses. In order to protect the integrity of the injury and illness data, OSHA is considering adding provisions that will make it a violation for an employer to discourage employee reporting in these ways. To facilitate further evaluation of this issue, OSHA is extending the comment period for 60 days for public comment on this issue. In promulgating a final rule, OSHA will consider the comments already received as well as the information it receives in response to this notice.

DATES: The comment period for the proposed rule published November 8, 2013 (78 FR 67254) is extended. Comments must be submitted by October 14, 2014.

ADDRESSES:

Electronically: You may submit comments electronically at <http://www.regulations.gov>, which is the federal e-rulemaking portal. Follow the

instructions on the Web site for making electronic submissions;

Fax: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA docket office at (202) 693-1648;

Mail, Hand Delivery, Express Mail, Messenger, or Courier Service: You may submit your comments and attachments to the OSHA Docket Office, Docket Number OSHA-2013-0023, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-2350 (OSHA's TTY number is (877) 889-5627). Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and docket office's normal business hours, 8:15 a.m.-4:45 p.m.

Instructions for Submitting Comments: All submissions must include the docket number (Docket No. OSHA-2013-0023) or the RIN (RIN 1218-AC49) for this rulemaking. Because of security-related procedures, submission by regular mail may result in significant delay. Please contact the OSHA docket office for information about security procedures for making submissions by hand delivery, express delivery, and messenger or courier service.

All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <http://www.regulations.gov>. Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download submissions in response to this **Federal Register** document, go to docket number OSHA-2013-0023, at <http://regulations.gov>. All submissions are listed in the <http://regulations.gov> index. However, some information (e.g., copyrighted material) is not publicly available to read or download through that Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA docket office.

Electronic copies of this **Federal Register** document are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information, is available at OSHA's Web site at <http://www.osha.gov>.

FOR FURTHER INFORMATION, CONTACT: For press inquiries: Frank Meilinger, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-1999; email: meilinger.francis2@dol.gov.

For general and technical information on the proposed rule: Miriam Schoenbaum, OSHA Office of Statistical Analysis, Room N-3507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-1841; email: schoenbaum.miriam@dol.gov.

SUPPLEMENTARY INFORMATION: By notice published November 08, 2013, OSHA proposed to amend its recordkeeping regulations to add requirements for the electronic submission of injury and illness information that employers are already required to keep. (78 FR 67254). The proposal would require certain establishments that are already required to keep injury and illness records under OSHA's regulations for recording and reporting occupational injuries and illnesses to electronically submit information from these records to OSHA. OSHA plans to post the establishment-specific injury and illness data on its Web site.

On January 09-10, 2014, OSHA held a public meeting on the proposal. A prevalent concern expressed by many meeting participants was that the proposal might create motivations for employers to under-record injuries and illnesses, since each covered establishment's injury and illness data would become publically available on OSHA's Web site. Some participants also commented that some employers already discourage employees from making injury and illness reports by disciplining or taking other adverse action against employees who file injury and illness reports. These participants expressed concern that the increased visibility of establishment injury and illness data under the proposal would lead to an increase in the number of employers who adopt practices that have the effect of discouraging employees from reporting recordable injuries and illnesses. OSHA is concerned that the accuracy of the data collected under the new proposal could be compromised if employers adopt these practices. In addition, OSHA wants to ensure that employers, employees, and the public have access to the most accurate data about injuries and illnesses in their workplaces so that they can take the most appropriate steps to protect worker safety and health.

Therefore, the Agency is seeking comment on whether to amend the proposed rule to (1) require that employers inform their employees of their right to report injuries and illnesses; (2) require that any injury and illness reporting requirements established by the employer be reasonable and not unduly burdensome;

and (3) prohibit employers from taking adverse action against employees for reporting injuries and illnesses.

OSHA is particularly interested in the answers to the following questions:

(1) What are the costs and benefits of OSHA using this rulemaking to address the issue of employers who discourage employees from reporting injuries and illnesses?

(2) Are the cost estimates in this document accurate?

(3) What other actions can OSHA take to address the issue of employers who discourage employees from reporting injuries and illnesses?

(4) How should OSHA clarify the requirement that injury and illness reporting requirements established by the employer are reasonable and not unduly burdensome?

I. Legal Authority

OSHA is issuing this proposal pursuant to authority expressly granted by sections 8 and 24 of the Occupational Safety and Health Act (the "OSH Act" or "Act") (29 U.S.C. 657, 673). Section 8(c)(2) of the Act directs the Secretary to prescribe regulations "requiring employers to maintain accurate records of . . . work-related deaths, injuries and illnesses," (29 U.S.C. 657(c)(2)), and section 8(g)(2) broadly empowers the Secretary to "prescribe such rules and regulations as he may deem necessary to carry out [his] responsibilities under this Act" (29 U.S.C. 657(g)(2)). Similarly, section 24 requires the Secretary to "develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics" and to "compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses . . ." (29 U.S.C. 673(a)).

Rules that prohibit employers from discouraging employee reports of injury and illness fit comfortably within these various statutory grants of authority. If employers may not discipline or take adverse action against workers for reporting injuries and illnesses, workers will feel less hesitant to report their injuries and illnesses, and their employers' records and reports will be more "accurate", as required by sections 8 and 24 of the Act. Further, given testimony that some employers already engage in such practices, and the possibility that the proposed rule could provide additional motivation for employers to do so, prohibiting employers from taking adverse actions against their employees for reporting injuries and illnesses in this rulemaking is "necessary to carry out" the

recordkeeping requirements of the Act. (See 29 U.S.C. 657(g)(2).)

Section 11(c) of the Act prohibits any person from discharging or discriminating against any employee because that employee has exercised any right under the Act. (29 U.S.C. 660(c)(1).) Under this provision, an employee who believes he or she has been discriminated against may file a complaint with OSHA, and if, after investigation, the Secretary determines that Section 11(c) has been violated, then the Secretary can file suit against the employer in U.S. District Court seeking “all appropriate relief” including reinstatement and back pay. (29 U.S.C. 660(c)(2).) Taking adverse action against an employee who reports a fatality, injury, or illness is a violation of 11(c), (see 29 CFR 1904.36); therefore, much of the primary conduct that would be prohibited by the new provision is likely already proscribed by 11(c).

The advantage of this provision is that it would provide OSHA with additional enforcement tools to promote the accuracy and integrity of the injury and illness records employers are required to keep under Part 1904. For example, under 11(c), OSHA may not act against an employer unless an employee files a complaint. Under the additions to the proposed rule under consideration, OSHA would 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. Moreover, an abatement order can be a more efficient tool to correct employer policies and practices than the injunctions authorized under 11(c).

The fact that Section 11(c) already provides a remedy for retaliation does not preclude the Secretary from implementing alternative remedies under the OSH Act. Where retaliation threatens to undermine a program that Congress required the Secretary to adopt, the Secretary may proscribe that retaliation through a regulatory provision unrelated to 11(c). For example, under the medical removal protection (MRP) provision of the lead standard, employers are required to pay the salaries of workers who cannot work due to high blood lead levels. 29 CFR 1910.1025(k); see *United Steelworkers, AFL-CIO v. Marshall*, 647 F.2d 1189, 1238 (D.C. Cir. 1980). And it is well established that OSHRC may order employers to pay back pay as abatement for violations of the MRP requirements. See *United Steelworkers, AFL-CIO v. St. Joe Resources*, 916 F.2d 294, 299 (5th Cir. 1990); *Dole v. East Penn Manufacturing Co.*, 894 F.2d 640, 646

(3d Cir. 1990). If the reason that an employer decided not to pay MRP benefits was to retaliate for an employee's exercise of some right under the Act, OSHA can still cite the employer and seek the benefits as abatement, because payment of the benefits is important to vindicate the health interests underlying MRP. The mere fact that the employer might have a retaliatory motive does not require that OSHA treat the matter as an 11(c) case. See *St. Joe Resources*, 916 F.2d at 298 (stating that that 11(c) was not an exclusive remedy, because otherwise the remedial purposes of MRP would be undermined). This would also be the case here. If employers reduce the accuracy of their injury and illness records by retaliating against employees who report an injury or illness, then OSHA may use its authority to collect accurate injury and illness records to proscribe such conduct even if the conduct would also be covered by 11(c).

II. Questions for Comment and Provisions under Consideration

In light of the comments and the testimony at the public meeting, OSHA is concerned that, in at least some workplaces, injury reporting may be inaccurate because employers adopt practices or policies that discourage employees from reporting their injuries. OSHA seeks any information stakeholders might have about such practices and policies, and their effect on injury and illness records, including answers to the following questions:

1. Are you aware of situations where employers have discouraged the reporting of injuries and illnesses? If so, describe any techniques, practices, or procedures used by employers that you are aware of. If such techniques, practices, or procedures are in writing, please provide a copy.

2. Will the fact that employer injury and illness statistics will be publically available on the internet cause some employers to discourage their employees from reporting injuries and illnesses? Why or why not? If so, what practices or policies do you expect such employers to adopt?

3. Are you aware of any studies or reports on practices that discourage injury and illness reporting? If so, please provide them.

Under 29 CFR 1904.35(a)(1) and (b)(1), employers are already required to set up a way for employees to report work-related injuries and illnesses to the employer promptly and to inform each employee how to report work-related injuries and illnesses to the employer. OSHA is considering adding three provisions to this section: (1) A

requirement that employers inform their employees of their right to report injuries and illnesses free from discrimination or retaliation; (2) a provision requiring that any injury and illness reporting requirements established by the employer be reasonable and not unduly burdensome; and (3) a prohibition against disciplining employees for reporting injuries and illnesses. Each of these three provisions under consideration is discussed below. OSHA seeks comment information, data, and studies that shed light on the appropriateness of each provision as a way to improve the accuracy of injury and illness records by prohibiting employers from taking adverse actions against employees for reporting injuries and illnesses. OSHA also seeks comment on ways to improve each of the three possible provisions discussed below, as well as any additional information on employer practices that may discourage employees from reporting injuries or illnesses. *Requiring employers to inform their employees that the employees have a right to report injuries and illnesses.* Several participants at the public meeting described situations where workers did not report injuries or illnesses for fear of retaliation from their employers. (Day 1 Tr. 200, 203; Day 2 Tr. 124–25.) If employees do not know that the OSH Act protects their right to report an injury or illness, they might be less likely to report an injury or illness to their employer. OSHA is therefore considering amending 29 CFR 1904.35 to require employers to inform each employee that employees have a right to report injuries and illnesses, and that it is unlawful for an employer to take adverse action against an employee for reporting an injury or illness. This requirement would have the additional benefit of reminding the employer that such adverse actions are illegal, which should also reduce the incidence of such retaliation. OSHA seeks comment on this provision, including answers to the following questions:

4. Do you or does your employer currently inform employees of their right to report injuries and illnesses? If so, please describe how and when this information is provided.

5. Are there any difficulties or barriers an employer might face in trying to provide such information to its employees? If so, please describe them.

6. How might an employer best provide this information: orally to the employee, through a written notice, posting, or in some other manner?

Requiring the injury and illness reporting procedures established by the employer under 29 CFR 1904.35(a)(1)

and (b)(1) to be reasonable and not unduly burdensome. 29 CFR 1904.35(b)(1) requires employers to provide a way for employees to report injuries and illnesses promptly. However, if employers adopt reporting procedures that are unreasonably burdensome, they may discourage reporting. For example, an employee might be discouraged from reporting an injury or illness if the employer required the employee to report in person at a location distant from the employee's workplace, or if the employer penalized employees for failing to report an injury within a specific time period (e.g., within 24 hours of an incident), even if the employees did not realize that they were injured or made ill until after that time. One participant at the public meeting, for example, said that he knew of health care facilities where employees often did not report incidents of workplace violence, even though those incidents happened routinely, because the reporting procedures were too cumbersome (Day 2 Tr. 91–92.) While OSHA believes that onerous and unreasonable reporting requirements are already in effect prohibited by the regulation (i.e. one has not created a “way to report” injuries if the “way” is too difficult to use), this proposal would add additional text to communicate that point more clearly. OSHA seeks comment on this provision, including answers to the following questions:

7. What procedures do you or does your employer have about the time and manner of reporting injuries and illnesses? How do these procedures assist in the collection and maintenance of accurate records? May an employee be disciplined for failing to observe these procedures? If so, what kind of discipline may be imposed?

8. Are you aware of any examples of reporting requirements that you consider to be unreasonably burdensome and could discourage reporting? What are they?

9. How should OSHA clarify the requirement that reporting requirements are “reasonable and not unduly burdensome”?

Prohibiting employers from disciplining employees for reporting injuries and illnesses. If an employer disciplines or takes adverse action against an employee for reporting an injury or illness, this may discourage employees from reporting injuries and illnesses. These adverse actions could include termination, reduction in pay, reassignment to a less desirable position, or any other action that might dissuade a reasonable employee from reporting an injury. See *Burlington*

Northern & Santa Fe Railway Co. v. White, 548 U.S. 53, 68 (2006). Adverse actions mentioned by participants in the public meeting included requiring employees who reported an injury to wear fluorescent orange vests, disqualifying employees who reported two injuries or illnesses from their current job, requiring an employee who reported an injury to undergo drug testing where there was no reason to suspect drug use, automatically disciplining those who seek medical attention, and enrolling employees who report an injury in an “Accident Repeater Program” that included mandatory counseling on workplace safety and progressively more serious sanctions for additional reports, ending in termination. (See Day 1 Tr. 36, 39–40, 203; Day 2 Tr. 58, 126–27, 142–143.) Likewise, an employer rule to take adverse action against all employees who are injured or made ill, regardless of fault, would discourage reporting and would be prohibited by this rulemaking.

Also falling under this prohibition would be pre-textual disciplinary actions—that is, where an employer disciplines an employee for violating a safety rule, but the real reason for the action is the employee's injury or illness report. This can be the case when the safety rule is only enforced against workers who report, or enforced more severely against those employees. Public meeting participants noted particular situations where employers selectively enforced vague rules, such as maintain “situational awareness” and “work carefully,” only against employees who reported injuries or illnesses (See Day 2 Tr. 143–44, 150–151.)

As noted above, these retaliatory actions would likely be actionable under 11(c), as well as under the provisions that OSHA is considering as amendments to 1904.35. The remedy, however, would be different. Under this provision, OSHA could issue citations to employers under Section 9 of the OSH Act for violating the provision, and the employer could challenge the citations before the Occupational Safety and Health Review Commission. The citations would carry civil penalties in accordance with Section 17 of the OSH Act, as well as a requirement to abate the violation; the abatement could include reinstatement and back pay. See *United Steelworkers of America, AFL–CIO v. St. Joe Resources*, 916 F.2d 294, 299 (5th Cir. 1990) (holding that the Commission has authority to issue an abatement order mandating the payment of back pay required under the lead standard's medical removal protection (MRP) requirement); *Dole v. East Penn Manufacturing Co.*, 894 F.2d 640, 646

(3d Cir. 1990) (ordering employer to abate MRP violation by paying owed overtime pay). A further discussion of the legal interplay between 11(c) and this provision is covered in the Legal Authority section above. OSHA seeks comment on this provision, including responses to the following questions:

10. Are you aware of employer practices or policies to take adverse action against persons who report injuries or illnesses? Please describe them.

11. Are you aware of any particular situations where an employee decided not to report an injury or illness to his or her employer because of a fear that the employer would take adverse action against the employee? If so, please describe the situation, including the nature of the injury or illness and the reasons the employee had for believing he or she would be retaliated against.

12. What kinds of adverse actions might lead an employee to decide not to report an injury or illness? Are there other employer actions that would not dissuade a reasonable employee from reporting an injury or illness?

13. OSHA encourages employers to enforce safety rules as part of a well-functioning workplace safety program. Are there any employer practices that OSHA should explicitly exclude under this provision to ensure that employers are able to run an effective workplace safety program?

14. What other actions can OSHA take to address the issue of employers who discourage employees from reporting injuries and illnesses?

Economic Issues

This reopening is for the purpose of discussing a modification of the recordkeeping rules to provide several clarifications of OSHA's current recordkeeping rules with respect to the rights of employees to report injuries and illnesses without discrimination. These provisions do not require employers to provide any new or additional records not already required in existing standards. (When the existing standards were promulgated, OSHA estimated the costs to employers of the records that would be required.) These provisions add no new rights to employees, but are instead designed to assure that employers recognize the existing right of employees to report work-related injuries and illnesses. OSHA considered that such a reinforcement of the importance of these rights might be valuable because of concerns that providing public access to a wider range of injury and illness information from a greater number of employers might cause some employers

to put greater pressure on employees to not report injuries and illnesses. These provisions represent a clarification of the existing rule, add minor additional expenses, and may generate cost savings. To show this, OSHA will examine the possible additions on a provision by provision basis.

OSHA is considering a potential provision to require employers to inform their employees that the employees have a right to report injuries and illnesses. Under 1905.35(a) employers are already required to inform each employee about how he or she is to report an injury or illness to the employer. For new and future employees, this possible new requirement to inform employees of their right to report injuries and illnesses could be met at no additional cost by informing employees of their rights at the same time that they are informed of how to report. Employers who meet this requirement through annual training, or the posting of procedures, or as part of an employee handbook might incur a small one-time cost to change these materials. If employers use materials that cannot be inexpensively changed or updated, or if employers who meet the existing requirement to provide information on reporting procedures do so solely by informing new employees of their procedures, those employers would need to incur a small one-time cost to inform all existing employees of their rights. This could be done through a sign. OSHA estimates that posting a sign would typically require 3 to 5 minutes of time. OSHA believes that many employers already have in place programs and systems (such as illness and injury prevention programs or IIPPs) for either encouraging or requiring employees to report all workplace injuries and illnesses. OSHA welcomes comment on the possible costs of this potential requirement.

15. Is the fact that retaliation for reporting workplace injuries and illnesses is illegal communicated in your workplace? How? What costs are associated with communicating this information?

OSHA is also considering a potential provision to require that the injury and illness reporting procedures established by the employer under 29 CFR 1904.35(a)(1), and (b)(1), be reasonable and not unduly burdensome. OSHA is concerned both about unusually burdensome methods and also about reporting requirements that may punish employees for failure to report at the exact time and place required by procedures. This provision could be considered a clarification of the existing

requirements in 1904.35 that employers provide a way for employees to report work-related injuries and illnesses promptly and in 1904.36 that employers are prohibited from discriminating against employees for reporting. It is possible that this clarification may cause some employers to incur costs to change their reporting policies and announce the change to their employees. Given that even for remote workers there are many ways of facilitating the reporting of injuries and illnesses that are not burdensome to either the employer or the employee, such as permitting telephonic reporting, the provision could be cost-saving in the aggregate in terms of reduced employee time for reporting injuries and illnesses. Indeed the one strong piece of evidence that a reporting procedure is unreasonable would be that it causes costs to the employee in excess of any cost savings for the employer. For example, a procedure requiring in person rather than telephonic reporting at a location an hour from the employee's typical workplace would save an hour of employee time at no measurable expense to the employer. OSHA welcomes comment on the costs and benefits associated with this provision.

16. What kinds of existing reporting procedures might be prohibited by this requirement? What costs or other detrimental effects might employers incur if they are prevented from requiring these procedures?

Finally, OSHA is considering a potential provision prohibiting employers from disciplining employees for reporting injuries and illnesses. This provision would simply make more explicit the existing requirement in 1904.36 that states that "Section 11(c) 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, asks for access to the Part 1904 records, or otherwise exercises any rights afforded by the OSH Act." There is no new requirement here. The additional explicitness is necessary because many stakeholders were concerned that the new requirements to publicize recordkeeping data might provide employers new motivation for disciplining employees for reporting. This provision may help counter such motivation. This provision would be enforced as the existing 1904 requirements are enforced, which would also allow OSHA and employers a way to resolve these issues without either the lengthy delays or the high costs

associated with enforcement under Section 11(c) of the Act.

17. Do you anticipate any additional costs associated with the enforcement of the prohibition against discrimination through the citation and penalty provisions of the OSH Act that would not be incurred if OSHA instead used its authority under section 11(c) of the Act? If so, please describe them.

OSHA also expects that, because these three potential provisions will only clarify existing requirements, there are also no new economic benefits. The provisions will at most serve to counter the additional motivations for employers to discriminate against employees attempting to report injuries and illnesses.

OSHA believes these potential provisions are technologically feasible because they do not require employers to do anything not already implicitly or explicitly required in existing standards. OSHA also believes that these potential requirements would be economically feasible, since they require no more than posting a sign, and in some cases, reviewing and changing procedures.

18. OSHA welcomes any information you have on the costs, benefits, and feasibility of the three provisions discussed in this supplemental notice. What are the costs and benefits of using this rulemaking to address the issue of employers who discourage employees from reporting injuries and illnesses? Are the cost estimates in this document accurate?

Regulatory Flexibility Analysis

OSHA also examined the regulatory requirements of these potential requirements to determine if they could have a significant economic impact on a substantial number of small entities. As noted above, the maximum indicated costs to any firm of these potential requirements is an additional three to five minutes of time to post a sign. There may be some circumstances where the clarification would make it easier to assess fines, but the costs of any fines can easily be avoided by meeting the relatively low costs of compliance with the record keeping rule.

Environmental Impact Assessment

OSHA has also reviewed these potential requirement in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council on Environmental Quality (40 U.S.C. 1500), and the Department of Labor's NEPA procedures (29 CFR part 11). The Agency finds that the revisions included

in the proposal would have no major negative impact on air, water or soil quality, plant or animal life, the use of land or other aspects of the environment.

Finally, OSHA has reviewed these potential requirements in accordance with E.O. 13132 regarding Federalism. E.O. 13132 requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. Additionally, E.O. 13132 provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the OSH Act, 29 U.S.C. 667, expresses Congress' clear intent to preempt State laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. A state can avoid preemption by obtaining Federal approval of a State plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such State Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The Agency concludes that these potential requirements comply with E.O. 13132. In States without State Plans, Congress has expressly provided for Federal preemption on issues addressed by an occupational safety and health standard. The final rule would preempt State law in the same manner as any OSHA standard. States with State Plans are free to develop their own policy options on the issues addressed by this proposed rule, provided their standards are at least as effective as the final rule. State comments are invited on this proposal and will be fully considered prior to promulgation of a final rule.

Authority and Signature

This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Sections 8 and 24 of the Occupational Safety and Health Act (29 U.S.C. 657, 673), Section 553 of the Administrative Procedure Act (5 U.S.C. 553), and Secretary of Labor's Order No. 41-2012 (77 FR 3912 (Jan. 25, 2012)).

Signed at Washington, DC, on August 6, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014-19083 Filed 8-13-14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-1990-0011; FRL-9915-23-Region 6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Monroe Auto Equipment (Paragould Pit) Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is issuing a Notice of Intent to Delete the Monroe Auto Equipment (Paragould Pit) Superfund Site (Site) located in Paragould, Greene County, Arkansas, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Arkansas, through the Arkansas Department of Environmental Quality have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by September 15, 2014.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1990-0011, by one of the following methods:

- <http://www.regulations.gov>. Follow on-line instructions for submitting comments.
- *Email:* Brian W. Mueller, mueller.brian@epa.gov.
- *Fax:* 214 665-6660.
- *Mail:* Brian W. Mueller; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF-RL); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202-7167.
- *Hand delivery:* U.S. Environmental Protection Agency, Region 6; 1445 Ross

Avenue, Suite 700; Dallas, Texas 75202-2733; Contact: Brian W. Mueller (214) 665-7167. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA-HQ-SFUND-1990-0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at: U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202-2733; hours of operation: Monday through Friday, 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m. Contact: Brian W. Mueller (214) 665-7167.