

May 13, 2016

**Question:** Will the revision to Title 29 Code of Federal Regulations Part 1904 (29 C.F.R. 1904), published in the Federal Register on May 12, 2016, apply to DOE contractors?

**Answer:**

The recent revision to 29 C.F.R. Part 1904, *Recording and Reporting Occupational Injuries and Illnesses*, cite statutory provisions included in Sections 8 and 24 of the Occupational Safety and Health Act (OSH 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)).

As stated in Section 24 of the OSH Act (P.L. 91-596), as amended, codified at 29 U.S.C. § 673, "all employments whether or not subject to any other provisions of the Act" may be covered by the requirements under the Department of Labor's (including the Occupational Safety and Health Administration's (OSHA's)) "program of collection, compilation, and analysis of occupational safety and health statistics" except for employments excluded from the OSH Act pursuant to § 4 of the Act (29 U.S.C. § 653). Section 4 of the OSH Act specifically excludes from the OSHA's authority to regulate where another Federal agency, or State agency acting under the authority of section 274 of the Atomic Energy Act of 1954, exercises statutory regulatory authority affecting working conditions of employees. Under the Atomic Energy Act of 1954, as amended, and Energy Reorganization Act, DOE exercises its statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health for most of its sites, facilities and activities. Therefore, the revision to 29 C.F.R. Part 1904 would not apply to DOE contractors (including subcontractors at any tier) at sites where DOE exercises its authority to regulate worker safety and health matters unless, in the future, DOE chooses to change its requirements consistent with OSHA's amended regulation.

The Department's worker safety and health expectations are implemented through rules, directives and standards. DOE O 231.1B, *Environment, Safety and Health Reporting* and requirements established in 10 C.F.R. Part 851, *Worker Safety and Health Program*, include criteria for occupational injury and illness recordkeeping and reporting. Through DOE O 231.1B and 10 C.F.R. Part 851, DOE invokes select sections of 29 C.F.R. Part 1904 and delineates DOE recording and reporting requirements.

The May 12, 2016, revision to 29 C.F.R. Part 1904<sup>1</sup> added Appendix A to Subpart E, and modified the following sections:

- 1904.35 – Employee involvement;
- 1904.36 – Prohibition against discrimination; and
- 1904.41 –Electronic submission of injury and illness records to OSHA.

Although these sections of 29 C.F.R. Part 1904 are not invoked in DOE O 231.1B or 10 C.F.R. Part 851, employee involvement in recordkeeping and prohibition of discrimination against employees who report work-related injuries, illnesses or fatalities are addressed in DOE's requirements.

DOE O 231.1B is being reviewed to determine if any changes related to the recent changes in 29 C.F.R. Part 1904 should be made to the Order. The Office of Environmental Safety & Health Reporting and Analysis (AU-23) is the office of primary interest for this directive and will initiate implementation of changes if appropriate.

<sup>1</sup> OSHA's final rule also made modifications to 10 C.F.R. Part 1902, *State Plans for the Development and Enforcement of Standards* that are not relevant to this issue.