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Document No. 5013

**DEPARTMENT OF LABOR, LICENSING AND REGULATION**

**OFFICE OF OCCUPATIONAL SAFETY AND HEALTH**

CHAPTER71

Statutory Authority: 1976 Code Section 41‑15‑220

71‑301. Partial exemption for employers with 10 or fewer employees.

71‑310. Recording criteria for cases involving occupational hearing loss.

71‑332. Annual summary.

71‑335. Employee involvement.

71‑337. State recordkeeping regulations.

71‑341. Electronic submission of Employer Identification Number (EIN) and injury and illness records to

 OSHA.

71‑346. Definitions.

**Synopsis:**

 The South Carolina Department of Labor, Licensing and Regulation – Division of Occupational Safety and Health (SC OSHA) proposes to amend sections of Chapter 71, Article 1, Subarticle 3, Occupational Injury and Illness Recording and Reporting Regulation.

 Specifically, the Department proposes to amend Section 71‑310 to clarify that employers must comply with the provisions of 71‑305 when making a determination as to whether a worker’s hearing loss is work‑related. The Department also intends to add a period after the word designee in R.71‑341(a)(3) and to add R.71‑341(a)(4) regarding the electronic submission of the Employer Identification Number (EIN) used by the establishment which was inadvertently omitted from a prior update to this section.

 The Department further intends to correct scriveners’ errors and cross‑references in the following sections: R.71‑301(a)(1) relating to the requirements of 71‑339; R.71‑332(b)(2)(iii) relating to the reference for R.71‑329(b)(4); R.71‑335(b)(2)(iii) to change “for” to “of” relating to current or stored OSHA 300 logs; R.71‑337 to correct a capitalization error and remove a hyphen in the word, “Cross Reference”; R.71‑341(b)(5) to add an apostrophe and an “s” to the word “website”; R.71‑341(c) to reformat and divide into two subparagraphs; R.71‑341(c)(1) Table to correct formatting from five columns and five rows to four columns and four rows; and R.71‑346(1)(iii) relating to the replacement of the SIC Code with the NAICS code.

 A Notice of Drafting was published in the *State Register* on August 28, 2020.

**Instructions:**

 Replace regulation as shown below. All other items and sections remain unchanged.

**Text:**

71‑301. Partial exemption for employers with 10 or fewer employees.

 (a) Basic requirement

 (1) If your company had ten (10) or fewer employees at all times during the last calendar year, you do not need to keep OSHA injury and illness records unless OSHA or the BLS informs you in writing that you must keep records under 71‑341 or 71‑342. However, as required by 71‑339, all employers covered by the OSH Act must report to OSHA any work‑related incident that results in a fatality, the inpatient hospitalization of one or more employees, an employee amputation, or an employee loss of an eye.

 (2) If your company had more than ten (10) employees at any time during the last calendar year, you must keep OSHA injury and illness records unless your establishment is classified as a partially exempt industry under 71‑302.

 (b) Implementation.

 (1) Is the partial exemption for size based on the size of my entire company or on the size of an individual business establishment? The partial exemption for size is based on the number of employees in the entire company.

 (2) How do I determine the size of my company to find out if I qualify for the partial exemption for size? To determine if you are exempt because of size, you need to determine your company’s peak employment during the last calendar year. If you had no more than ten (10) employees at any time in the last calendar year, your company qualifies for the partial exemption for size.

 (3) Does the partial exemption for size apply to public sector employers [State of South Carolina and any political subdivision thereof]? No, the above exemption of not more than ten (10) employees does not apply to employers in the public sector.

(Cross Reference: 1904.1)

71‑310. Recording criteria for cases involving occupational hearing loss.

 (a) Basic requirement.

 If an employee’s hearing test (audiogram) reveals that the employee has experienced a work‑related Standard Threshold Shift (STS) in hearing in one or both ears, and the employee’s total hearing level is 25 decibels (dB) or more above audiometric zero (averaged at 2000, 3000, and 4000 Hz) in the same ear(s) as the STS, you must record the case on the OSHA 300 Log.

 (b) Implementation.

 (1) What is a Standard Threshold Shift? A Standard Threshold Shift, or STS, is defined in the occupational noise exposure standard at 29 CFR 1910.95(g)(10)(i) as a change in hearing threshold, relative to the baseline audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000, and 4000 hertz (Hz) in one or both ears.

 (2) How do I evaluate the current audiogram to determine whether an employee has an STS and a 25‑dB hearing level?

 (i) STS. If the employee has never previously experienced a recordable hearing loss, you must compare the employee’s current audiogram with that employee’s baseline audiogram. If the employee has previously experienced a recordable hearing loss, you must compare the employee’s current audiogram with the employee’s revised baseline audiogram (the audiogram reflecting the employee’s previous recordable hearing loss case).

 (ii) 25‑dB loss. Audiometric test results reflect the employee’s overall hearing ability in comparison to audiometric zero. Therefore, using the employee’s current audiogram, you must use the average hearing level at 2000, 3000, and 4000 Hz to determine whether or not the employee’s total hearing level is 25 dB or more.

 (3) May I adjust the current audiogram to reflect the effects of aging on hearing? Yes. When you are determining whether an STS has occurred, you may age adjust the employee’s current audiogram results by using Tables F‑1 or F‑2, as appropriate, in Appendix F of 29 CFR 1910.95. You may not use an age adjustment when determining whether the employee’s total hearing level is 25 dB or more above audiometric zero.

 (4) Do I have to record the hearing loss if I am going to retest the employee’s hearing? No, if you retest the employee’s hearing within 30 days of the first test, and the retest does not confirm the recordable STS, you are not required to record the hearing loss case on the OSHA 300 Log. If the retest confirms the recordable STS, you must record the hearing loss illness within seven (7) calendar days of the retest. If subsequent audiometric testing performed under the testing requirements of the 1910.95 noise standard indicates that an STS is not persistent, you may erase or line‑out the recorded entry.

 (5) Are there any special rules for determining whether a hearing loss case is work‑related? No. You must use the rules in 71‑305 to determine if the hearing loss is work‑related. If an event or exposure in the work environment either caused or contributed to the hearing loss, or significantly aggravated a pre‑existing hearing loss, you must consider the case to be work related.

 (6) If a physician or other licensed health care professional determines the hearing loss is not work‑related, do I still need to record the case? If a physician or other licensed health care professional determines, following the rules set out in Section 71‑305, that the hearing loss is not work‑related or that occupational noise exposure did not significantly aggravate the hearing loss, you do not have to consider the case work‑related or to record the case on the OSHA 300 Log.

 (7) How do I complete the 300 Log for a hearing loss case? When you enter a recordable hearing loss case on the OSHA 300 Log, you must check the column for hearing loss. (Note: S.C. Code of Regulations Section 71‑310(b)(7) is effective beginning January 1, 2004.)

(Cross Reference: 1904.10)

71‑332. Annual summary.

 (a) Basic requirement. At the end of each calendar year, you must:

 (1) Review the OSHA 300 Log to verify that the entries are complete and accurate, and correct any deficiencies identified;

 (2) Create an annual summary of injuries and illnesses recorded on the OSHA 300 Log;

 (3) Certify the summary; and

 (4) Post the annual summary.

 (b) Implementation.

 (1) How extensively do I have to review the OSHA 300 Log entries at the end of the year? You must review the entries as extensively as necessary to make sure that they are complete and correct.

 (2) How do I complete the annual summary? You must:

 (i) Total the columns on the OSHA 300 Log (if you had no recordable cases, enter zeros for each column total); and

 (ii) Enter the calendar year covered, the company’s name, establishment name, establishment address, annual average number of employees covered by the OSHA 300 Log, and the total hours worked by all employees covered by the OSHA 300 Log.

 (iii) If you are using an equivalent form other than the OSHA 300‑A summary form, as permitted under 71‑329(b)(4), the summary you use must also include the employee access and employer penalty statements found on the OSHA 300‑A Summary form.

 (3) How do I certify the annual summary? A company executive must certify that he or she has examined the OSHA 300 Log and that he or she reasonably believes, based on his or her knowledge of the process by which the information was recorded that the annual summary is correct and complete.

 (4) Who is considered a company executive? The company executive who certifies the log must be one of the following persons:

 (i) An owner of the company (only if the company is a sole proprietorship or partnership);

 (ii) An officer of the corporation;

 (iii) The highest ranking company official working at the establishment; or

 (iv) The immediate supervisor of the highest ranking company official working at the establishment;

 (5) How do I post the annual summary? You must post a copy of the annual summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. You must ensure that the posted annual summary is not altered, defaced or covered by other material.

 (6) When do I have to post the annual summary? You must post the summary no later than February 1 of the year following the year covered by the records and keep the posting in place until April 30.

(Cross Reference: 1904.32)

71‑335. 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 section.

 (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 section.

 (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:

 (A) Employees have the right to report work‑related injuries and illnesses; and

 (B) 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 OSHA injury and illness records? Yes, your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the OSHA 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:

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

 (B) 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 71‑329(b)(6) through 71‑329(b)(9).

 (v) If an employee or representative asks for access to the OSHA 301 Incident Report, when do I have to provide it?

 (A) 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.

 (B) 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.

(Cross Reference: 1904.35)

71‑337. State recordkeeping regulations.

 (a) Basic requirement. Some States operate their own OSHA programs, under the authority of a State plan as approved by OSHA. States operating OSHA‑approved State plans must have occupational injury and illness recording and reporting requirements that are substantially identical to the requirements in this part (see 29 CFR 1902.3(j), 29 CFR 1902.7, and 29 CFR 1956.10(i)).

 (b) Implementation.

 (1) State‑Plan States must have the same requirements as Federal OSHA for determining which injuries and illnesses are recordable and how they are recorded.

 (2) For other Subarticle 3 provisions (for example, industry exemptions, reporting of fatalities and hospitalizations, record retention, or employee involvement), State‑Plan State requirements may be more stringent than or supplemental to the Federal requirements, but because of the unique nature of the national recordkeeping program, States must consult with and obtain approval of any such requirements.

 (3) Although State and local government employees are not covered Federally, all State‑Plan States must provide coverage, and must develop injury and illness statistics, for these workers. State Plan recording and reporting requirements for State and local government entities may differ from those for the private sector but must meet the requirements of paragraphs 71‑337(b)(1) and (b)(2).

 (4) A State Plan State may not issue a variance to a private sector employer and must recognize all variances issued by Federal OSHA.

 (5) A State Plan State may only grant an injury and illness recording and reporting variance to a state or local government employer within the State after obtaining approval to grant the variance from Federal OSHA.

(Cross‑Reference: 1904.37)

71‑341. Electronic submission of Employer Identification Number (EIN) and injury and illness records to OSHA.

 (a) Basic requirements

 (1) Annual electronic submission of OSHA Form 300A Summary of Work‑Related Injuries and Illnesses 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 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 (c) of this section of the year after the calendar year covered by the form (for example, 2019 for the 2018 form).

 (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 subpart E 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 (c) of this section of the year after the calendar year covered by the form.

 (3) Electronic submission of part 1904 records upon notification. Upon notification, you must electronically submit the requested information from your part 1904 records to OSHA or OSHA’s designee.

 (4) Electronic submission of the Employer Identification Number (EIN). For each establishment that is subject to these reporting requirements, you must provide the EIN used by the establishment.

 (b) Implementation

 (1) Does every employer have to routinely submit this information to OSHA? No, only two categories of employers must routinely submit this 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 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 this subpart, then you must submit the required information to OSHA once a year. Employers in these two categories must submit the required information by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form (for example, 2019 for the 2018 form). If you are not in either of these two categories, then you must submit the information to OSHA only if OSHA notifies you to do so for an individual data collection.

 (2) Do part‑time, seasonal, or temporary workers count as employees in the criteria for number of employees in paragraph (a) of this section? 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.

 (3) How will OSHA notify me that I must submit information as part of an individual data collection under paragraph (a)(3) of this section? OSHA will notify you by mail if you will have to submit information as part of an individual data collection under paragraph (a)(3). OSHA will also announce individual data collections through publication in the Federal Register and the OSHA newsletter, and announcements on the OSHA website. If you are an employer who must routinely submit the information, then OSHA will not notify you about your routine submittal.

 (4) When do I have to submit the information? If you are required to submit information under paragraph (a)(1) or (2) of this section, then you must submit the information once a year, by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form (for example, 2019 for the 2018 form). If you are submitting information because OSHA notified you to submit information as part of an individual data collection under paragraph (a)(3) of this section, then you must submit the information as often as specified in the notification.

 (5) How do I submit the information? You must submit the information electronically. OSHA will provide a secure website for the electronic submission of information. For individual data collections under paragraph (a)(3) of this section, OSHA will include the website’s location in the notification for the data collection.

 (6) 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 Sections 71‑301 and/or 71‑302, then you do not have to routinely submit information under paragraphs (a)(1) and (2) of this section. You will have to submit information under paragraph (a)(3) of this section 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.

 (7) 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.

 (8) May an enterprise or corporate office electronically submit information 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 (a) of this section, 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 (a)(1) or (2) of this section must submit the required information according to the table in this paragraph (c)(1):

|  |  |  |  |
| --- | --- | --- | --- |
| Submission year | Establishments submitting under paragraph (a)(1) of this section must submit the required information from this form/these forms: | Establishments submitting under paragraph (a)(2) of this section must submit the required information from this form: | Submission deadline |
| 2017 | 300A | 300A | December 15, 2017 |
| 2018 | 300A, 300, 301 | 300A | July 1, 2018 |

 (2) Beginning in 2019, establishments that are required to submit under paragraph (a)(1) or (2) of this section 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).

(Cross Reference: 1904.41)

*Subpart G*

*Definitions*

71‑346. Definitions.

 The Act. The Act means the Occupational Safety and Health Act of Section 41‑15‑210 et. seq., Code of Laws of South Carolina, 1976. The definitions contained in Regulations Chapter 71, Article 1, Code of Laws of South Carolina and related interpretations apply to such terms when used in this Subarticle 3.

 Establishment. An establishment is a single physical location where business is conducted or where services or industrial operations are performed. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas and sanitary services; and similar operations, the establishment is represented by main or branch offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel carry out these activities.

 (1) Can one business location include two or more establishments? Normally, one business location has only one establishment. Under limited conditions, the employer may consider two or more separate businesses that share a single location to be separate establishments. An employer may divide one location into two or more establishments only when:

 (i) Each of the establishments represents a distinctly separate business;

 (ii) Each business is engaged in a different economic activity;

 (iii) No one industry description in the North American Industry Classification System (2007) codes applies to the joint activities of the establishments; and

 (iv) Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information. For example, if an employer operates a construction company at the same location as a lumber yard, the employer may consider each business to be a separate establishment.

 (2) Can an establishment include more than one physical location? Yes, but only under certain conditions. An employer may combine two or more physical locations into a single establishment only when:

 (i) The employer operates the locations as a single business operation under common management;

 (ii) The locations are all located in close proximity to each other; and

 (iii) The employer keeps one set of business records for the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

 (3) If an employee telecommutes from home, is his or her home considered a separated establishment? No, for employees who telecommute from home, the employee’s home is not a business establishment and a separate 300 Log is not required. Employees who telecommute must be linked to one of your establishments under 71‑330(b)(3).

 (4) Is the definition of establishment any different for the State of South Carolina and any political subdivision thereof [public sector]? Yes, for public sector only, an establishment is either (a) a single location where a specific governmental function is performed; or (b) that location which is the lowest level where attendance or payroll records are kept for a group of employees who perform the same governmental functions or who are in the same specific organizational unit, even though the activities are carried on at more than a single physical location.

Injury or illness. An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. (Note: Injuries and illness are recordable only if they are new, work‑related cases that meet one or more of the Subarticle 3 recording criteria.)

Physician or other licensed health care professional. A physician or other licensed health care professional is an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows him or her to independently perform, or be delegated the responsibility to perform, the activities described by this regulation.

You. “You” means an employer as defined in Regulations Chapter 71, Article 1, Code of Laws of South Carolina, 1976.

(Cross‑reference: 1904.46)

**Fiscal Impact Statement:**

 There will be no cost incurred by the State or any of its political subdivisions for these regulations.

**Statement of Rationale:**

 The proposed regulations will: amend Section 71‑310 to clarify that employers must comply with the provisions of 71‑305 when making a determination as to whether a worker’s hearing loss is work‑related; add a period after the word “designee” in R.71‑341(a)(3) and add R.71‑341(a)(4) regarding the electronic submission of the Employer Identification Number (EIN) used by the establishment which was inadvertently omitted from a prior update to this section; and will correct scriveners’ errors and cross‑references in R.71‑301(a)(1) relating to the requirements of 71‑339, R.71‑332(b)(2)(iii) relating to the reference for R.71‑329(b)(4), R.71‑335(b)(2)(iii) to change “for” to “of” relating to current or stored OSHA 300 logs, R.71‑337 to correct a capitalization error and remove a hyphen in the word, “Cross Reference”, R.71‑341(b)(5) to add an apostrophe and an “s” to the word “website”, R.71‑341(c) to reformat and divide into two subparagraphs, R.71‑341(c)(1) Table to correct formatting from five columns and five rows to four columns and four rows, and R.71‑346(1)(iii) relating to the replacement of the SIC Code with the NAICS code.