



OSHA



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- **Standard Number:** 1904.3

OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>

February 10, 2015

John Pertgen
 International Association of Drilling Contractors
 10370 Richmond Ave.,
 Suite 760
 Houston, Texas 77042

Dear Mr. Pertgen:

Thank you for your recent letter to the Occupational Safety and Health Administration (OSHA) regarding the recordkeeping requirements contained in 29 CFR Part 1904 - Recording and Reporting Occupational Injuries and Illnesses. Specifically your letter requests clarification regarding the recordkeeping obligations for inspected vessels on the Outer Continental Shelf (OTS) based on the jurisdictional authority between OSHA and the U.S. Coast Guard.

Scenario:

The 1983 Memorandum of Understanding (MOU) between OSHA and the United States Coast Guard addresses the jurisdictional authority with regard to vessels inspected and certificated by the Coast Guard. That MOU states that both agencies would "continue to discuss the extent of their respective jurisdictions to require owners of inspected vessels to keep records concerning occupational injuries and illnesses." Since this MOU had not resolved any issues concerning recordkeeping obligations, IADC is seeking clarification, which we believe should be agreed upon by both agencies, as to the recordkeeping and reporting issues as they pertain to inspected vessels on the U.S. OCS.

Response:

The Occupational Safety and Health Act of 1970, and therefore the 29 CFR 1904 recordkeeping regulation, apply only within the jurisdictional boundaries of the United States and certain locations listed in Section 4(a), 29 USC §653(a) of the Act. Section 4(a) provides that the OSH Act applies to employment performed in any state, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf Lands, Johnston Island, and the Canal Zone. For recordkeeping purposes, OSHA authority extends to vessels when they are operating within the limits of state territorial waters. For coastal states, these limits extend three nautical miles seaward from the coastline, except for the Gulf Coast of Florida, Texas, and Puerto Rico, where the territorial waters extend for three maritime leagues (approximately nine nautical miles).

Section 4(b)(1) of the OSH Act states "Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health." Because of the extensive regulations of the Coast Guard and the BOE (formerly, the Minerals Management Service) OSHA is extensively precluded from issuing citations there because of section 4(b)(1). However, Under the 9th Circuit decision in Tidewater Pacific, OSHA recordkeeping and reporting requirements are determined not to be a "working condition" and therefore are not subject to section 4(b)(1). The Coast Guard reporting requirements for the OCS do not pre-empt OSHA's reporting regulation.

Section 1904.3 states "If you create records to comply with another government agency's injury and illness recordkeeping requirements, OSHA will consider those records as meeting OSHA's Part 1904 recordkeeping requirements if OSHA accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information as this Part 1904 requires you to record." As you note in your letter, the MOU between OSHA and the Coast Guard does not specify OSHA's acceptance of the Coast Guard records in lieu of the records required under Part 1904. Because the Coast Guard records do not contain the same information as the Part 1904 records, vessels operating within OSHA jurisdiction must maintain OSHA Forms 300, 301, and 300A.

Employers are only required to maintain OSHA injury and illness records if they are within the geographic coverage of the OSH Act. In other words, employers are only required to record occupational injuries and illnesses when they occur aboard vessels within the jurisdiction of OSHA (territorial waters of the United States). Conversely, employers are not required to record injuries and illnesses that take place outside the jurisdictional boundaries of the OSHA Act.

We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in responses to new information. To keep appraised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

Sincerely,

Francis Yebesi, Acting Director
Directorate of Evaluation and Analysis

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U.S. Department of Labor | Occupational Safety & Health Administration | 200 Constitution Ave., NW, Washington, DC 20210

Telephone: 800-321-OSHA (6742) | TTY

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