for which Volks was cited ... 'occurred' more than six months before the issuance of the citations." *Id.* This is why:

1. OSHA cited Volks for violating 29 C.F.R. § 1904.29(b)(2) and (b)(3), by failing to record employees' work-related injuries and illnesses on the OSHA 300 log and OSHA 301 incident report forms. *See* Citation at 15–20, 21–29 (Nov. 8, 2006). That regulation requires an employer to "enter each recordable injury or illness on the OSHA 300 Log and 301 Incident Report within seven (7) calendar days of receiving information that a recordable injury or illness has occurred." 29 C.F.R. § 1904.29(b)(3). Volks contends that the seven days are a "grace period," at the end of which the violation "occur[s]" for purposes of the six-month statute of limitations. Pet'r Br. 33–34. Although the Secretary does not dispute that § 1904.29(b)(3) creates a grace period, she maintains that Volks' failures to record "constituted continuing violations beginning with Volks' initial failure to record ... within seven days of learning of each injury or illness," and "then continu[ing] throughout the *five-year record retention period* prescribed by the regulations, which period had not elapsed as of the date of OSHA's inspection." Resp't Br. 16 (emphasis added).

The "five-year record retention period" referred to by the Secretary undermines rather than supports her argument. The regulation that prescribes that period, § 1904.33(a), requires an employer to "*save* the OSHA 300 Log ... and the OSHA 301 Incident Report forms for five (5) years following the end of the calendar year that these records cover." 29 C.F.R. § 1904.33(a) (emphasis added). But the Secretary did not cite Volks for violating § 1904.33(a) by failing to *save* those documents; she cited it for violating § 1904.29(b) by failing to *record* information on them. Indeed, she does not contend that Volks failed to "save" its logs and incident reports for five years or to have them available during that period.

Nor is there anything in the language of § 1904.33(a) that imposes a continuing obligation to update or correct those documents after seven days. To the contrary, the very next subsection of § 1904.33 makes clear that there is no continuous updating requirement applicable to Volks. With respect to the logs, § 1904.33(b) reads as follows:

> Do I have to update the OSHA 300 Log during the five-year storage period? Yes, during the storage period, you must update your stored OSHA 300 Logs to include *newly discovered* recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses.

29 C.F.R. § 1904.33(b)(1) (emphasis added). In other words, the requirement to update a stored log does not obligate an employer to constantly reexamine injuries and illnesses, but rather is expressly limited to recording "newly discovered" information. Hence, because the Secretary does not contend that Volks discovered anything new after the seven-day period, the updating requirement for logs has no application to Volks.[1] The analysis with

1. The Secretary's brief on this point is puzzling. It acknowledges that employers are not "required to constantly re-examine injures and illnesses during the five-year retention period." Resp't Br. 36. "Instead, the examination and assessment of illnesses and injuries should usually take place only once, either within the seven-day grace period found in § 1904.29(b)(3), or at any point thereafter as soon as the employer realizes that it has failed to meet its ongoing recording obligations." *Id.* And yet, there is nothing in the record to suggest that Volks "realized" *after* the passage of the seven-day period that