

October 28, 2011

RIN 1218-AC50; Docket No. OSHA-2010-0019

The Honorable David Michaels, PhD, MPH
Assistant Secretary of Labor for Occupational Safety and Health
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: OSHA's Proposed Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions Rule

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer the following comments for consideration on the proposed rule for updating Occupational Injury and Illness Recording and Reporting Requirements—NAICS Update and Reporting Revisions.

ARTBA's membership includes public agencies, private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs.

The Occupational Safety and Health Administration's (OSHA's) proposed rule would revise the classification of employers required to maintain an OSHA 300 Log of Work-Related Injuries and Illnesses by expanding the list of work-related injuries and illnesses that must be reported directly to OSHA. Additionally, the proposed rule would convert for reporting purposes the classification of industries from the old Standard Industrial Classification (SIC) codes to the newer North American Industry Classification System (NAICS), revise the list of industries that must maintain OSHA 300 Logs, and require all employers to report directly to OSHA any work-related fatality or in-patient hospitalization of any employee within eight hours, or any work-related amputation within 24 hours.

Several of these proposed revisions are troubling to ARTBA and its members. In general, ARTBA questions the propriety of OSHA increasing the regulatory reporting burden on America's work force at a time when overall death and injury rates are falling. We also question whether OSHA is prepared to receive the additional information stream that will be generated by the proposed changes. ARTBA believes the increase in data—particularly for newly regulated sectors with low injury rates—will in fact dilute OSHA's ability to quickly target trouble spots.



Finally, ARTBA is concerned about this requirement particularly in light of the Administration's call upon federal regulatory agencies to minimize the cost and cumulative impact of regulations and to give special consideration to small business concerns. (Executive Order 13563, *Improving Regulation and Regulatory Review*, and associated memoranda issued by President Obama in January, 2011.)

Hospitalization Reporting: ARTBA believes that requiring employers to notify OSHA when any single employee is hospitalized (in-patient) within eight hours is unrealistic as it may be difficult to quickly ascertain the root cause of the injury. Moreover, a single injury or illness often does not indicate an unsafe workplace. Furthermore, ARTBA believes the current requirement to notify OSHA directly if three or more employees are hospitalized should be left in place because multiple injuries or illnesses are more likely to result from a common, unsafe condition. Requiring notification of single hospitalizations may dilute identification of unsafe workplaces by overwhelming OSHA with too much data.

ARTBA members have provided "real world" examples that support our position. In one case, a roofing contractor applying a polymer roofing substance on an office building was working adjacent to some of our member's employees. Several complained of a foul smell. The ARTBA member asked the roofing contractor to stop work and return on the weekend. However, during this period an employee with severe asthma complained of shortness of breath and difficulty breathing. She was taken to the local occupational health clinic, and then admitted to the hospital for this workplace aggravation of her pre-existing condition. No other employees sought medical treatment.

Under the proposed scenario this would be reportable to OSHA, though the cause of the hospitalization was due primarily to the employee's medical condition rather than a work place hazard. In another instance, an employee was stung by a bee while working, and again due to a unique condition he was hospitalized. In many injury and illness cases which only involve one employee being hospitalized, a pre-existing condition or other personal health matter can be the primary cause for hospitalization while another person would receive out-patient care.

The proposed reduced time period requiring the employer to report all work-related in-patient hospitalizations to OSHA within eight hours (amputations reported within 24 hours) would also result in an additional burden to employers and may be counter-productive to workplace safety. In an emergency, the employer should have a primary focus on the safety and well being of its employees. That immediate focus should be on seeking medical care and eliminating hazardous situations. OSHA notification and intervention after-the-fact will not change a situation that has already occurred. Rather, reducing the reporting period for all in-hospital patient stays will only create a likely cause for a violation because the employer will not necessarily be thinking about government reporting immediately after a serious incident. Moreover, earlier reporting has little if any impact on workplace safety.

In a cost benefit analysis, where there are finite resources, ARTBA believes it is best to focus on activities that improve safety. We do not see how cutting the reporting time period accomplishes that goal.

Exempt Industries: Another proposed change involves Appendix A of the recordkeeping rule, which lists industries partially exempt from the requirements to maintain work-related injury or illness logs based on historically low injury and illness rates. Industries, such as construction planning and design firms, which have had declining injury and illness rates over many years will in fact be penalized with new recordkeeping and reporting burdens. This new burden is being imposed despite the fact their injury and illness rates have declined, but, perhaps, not as fast as other industries (even though they are still low). This results from OSHA's use of an arbitrary threshold of the bottom twenty-five percent of average DART rates to determine who is required to maintain OSHA 300 Logs.

As noted previously, since overall injury and illness rates have been steadily declining across industries, and the Administration has charged federal agencies to reduce unneeded regulatory burdens, OSHA should consider reducing the number of employers required to maintain OSHA 300 Logs, not increase them. OSHA's own analysis shows the number of employers who would be required to maintain OSHA 300 Logs under the proposed rule would increase by approximately 40,000 firms and 80,000 establishments covering nearly 1.4 million employees. Again, ARTBA questions whether the proposed change is a good use of OSHA resources and whether this rule will actually hamper OSHA's efforts to identify the truly hazardous work environments. Not only is the increased data a distraction for OSHA, the change would divert employer safety resources for those firms that currently maintain an effective safety program.

In summary, while ARTBA supports OSHA's initiative to update industry classification codes from the SIC system to NAICS, we question the propriety of making the other proposed changes because we do not see how such policies would actually lead to improved workplace safety and health. We are concerned that the increase in the amount of data received by OSHA will actually diminish the Agency's ability to identify problem industries and employers. We believe the additional resources that will be allocated to increased reporting requirements will be diverted from other employer safety programs that actually improve safety and health. Finally, we believe some of the changes increase an employer's exposure to fines without improving workplace safety.

Thank you for considering our views on these important safety matters.

Sincerely,



T. Peter Ruane
President & C.E.O