



July 13, 2017

OSHA Docket Office  
Docket No. OSHA 2013-0023  
Room N-3653  
U.S. Department of Labor  
200 Constitution Ave., N.W.  
Washington, DC 20210

**VIA ELECTRONIC SUBMISSION:** <http://www.regulations.gov>

**Re: OSHA Docket No. OSHA-2013-0023; Proposed Rule to Delay Compliance Date for Reporting Requirement under Final Improve Tracking of Workplace Injuries and Illnesses Regulation (82 Fed. Reg. 29261, June 28, 2017)**

To the Docket:

The Coalition for Workplace Safety (CWS) is comprised of associations and employers who believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability. The CWS believes that workplace safety is everyone's concern and improving safety can only happen when all parties—employers, employees, and OSHA—have a strong working relationship.

The undersigned members of the Coalition welcome OSHA's proposal to delay the reporting requirement under the final regulation titled, "Improve Tracking of Workplace Injuries and Illnesses" issued May 12, 2016 ("final reg," "underlying reg") as a necessary first step to a more substantial revision or rescission of that regulation. Although the proposed delay in the reporting requirement from July 1, 2017 to December 1, 2017 is a positive action, the CWS believes the more appropriate action would be to stay this reporting requirement indefinitely pending the results of OSHA's announced further rulemaking (82 Fed. Reg. 29261).

If OSHA merely delays this reporting requirement, but then has it go into effect before eventually eliminating it through the more comprehensive rulemaking, employers will have had to go through the expense and uncertainty of developing their compliance regimes for naught. Even if OSHA ultimately leaves the reporting requirement in place, there is no harm to suspending it until the comprehensive rulemaking to review the full regulation is complete.

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More importantly, in the final regulation preamble, OSHA makes clear that any reports, even the annual summaries (Form 300A) that are the subject of this proposed delay, will be posted online, and subject to Freedom of Information Act requests thus assuring that confidential business information (CBI) contained in the summaries will be publicly available against the interests and wishes of employers (81 Fed. Reg. 29650, 29658). The Form 300A, while only a summary of recordable injuries, still contains sensitive confidential business information in the form of average number of employees and total hours worked. This data can be used by competitors to calculate production rates and efficiencies. Employers typically make significant efforts to protect this data. Even OSHA has historically recognized the sensitive nature of this data and sought to protect this information from being released under Freedom of Information Act requests. Unfortunately, OSHA makes clear in the preamble to the final regulation that the policy since 2004 is to not protect this information from FOIA requests, and that accordingly the agency intends to post this information online along with all other information collected on the Form 300A (*Id.*).

As detailed in our comments, the CWS strongly opposed this regulation when it was proposed in November 2013, and when the supplemental was proposed in August 2014 (see attached comments). OSHA made no attempt to cure the problems the CWS raised in our comments to both of these proposals. Accordingly, our opposition to the underlying regulation has not changed and we continue to believe it should be rescinded. Among our criticisms is that OSHA provided no evidentiary support for their assertion of benefits flowing from the regulation and the reporting requirement. Coupled with OSHA's commitment to posting company information online, the CWS had legitimate and serious concerns about protecting company data.

In addition to our belief that OSHA should stay the reporting requirement indefinitely, OSHA's proposal for a delay is flawed for practical reasons. OSHA states the online portal will be available by August 1 so that employers may become familiar with it (82 Fed. Reg. 29261). However, OSHA never indicates how, or whether, it will be compatible with various digital recordkeeping systems currently in use. OSHA makes no claim to having field tested the online portal, or beta testing it, only that employers will have four months with which to learn it. While digital recordkeeping is certainly a widespread practice, and may be preferred, how digital records get transferred to OSHA's portal is not explained. If the systems are incompatible there may actually be manual data entry required which would defeat the point of OSHA specifying only digital submission. There may also be significant effort required to coordinate and compile records from throughout a company for submission purposes. None of these possible, perhaps likely, steps are accounted for in the economic analysis accompanying this regulation, nor the underlying final regulation.

Furthermore, notwithstanding the advantages of digital recordkeeping, OSHA's requirement of digital-only submission is inappropriate considering this will be a legal requirement. For comparison, the Internal Revenue Service still permits paper filing of tax returns. Employers must be given options across the technology spectrum if they will be required to comply. Specifying only one option, even if it is preferred, shows a lack of willingness to accommodate all employers.

The CWS welcomes OSHA's determination to review the underlying regulation, but for the above reasons strongly urges OSHA to stay the reporting requirement until the comprehensive rulemaking is complete.

Sincerely,

Airlines for America  
American Bakers Association  
American Coke and Coal Chemicals Institute  
American Composites Manufacturers Association  
American Feed Industry Association  
American Forest & Paper Association  
American Foundry Society  
American Iron and Steel Institute  
American Pipeline Contractors Association  
American Road & Transportation Builders Association  
American Staffing Association  
American Subcontractors Association, Inc.  
American Supply Association  
American Trucking Associations  
Associated Builders and Contractors  
Associated General Contractors of America  
Associated Wire Rope Fabricators  
Corn Refiners Association  
Distribution Contractors Association  
Flexible Packaging Association  
Forging Industry Association  
Global Cold Chain Alliance  
Healthcare Distribution Alliance  
Independent Electrical Contractors  
Industrial Fasteners Institute  
Institute of Makers of Explosives  
International Association of Amusement Parks and Attractions  
International Foodservice Distributors Association  
International Liquid Terminals Association  
IPC- Association Connecting Electronics Industries  
LeadingAge  
Mechanical Contractors Association of America  
Motor & Equipment Manufacturers Association  
National Association of Chemical Distributors  
National Association of Home Builders  
National Association of Manufacturers  
National Association of Wholesaler-Distributors  
National Automobile Dealers Association  
National Cotton Ginners Association  
National Demolition Association  
National Federation of Independent Business

National Grain and Feed Association  
National Restaurant Association  
National Retail Federation  
National Roofing Contractors Association  
National School Transportation Association  
National Tooling and Machining Association  
National Utility Contractors Association  
Non-Ferrous Founders' Society  
North American Die Casting Association  
North American Meat Institute  
Power and Communication Contractors Association  
Precision Machined Products Association  
Precision Metalforming Association  
Printing Industries of America  
Retail Industry Leaders Association  
Sheet Metal and Air Conditioning Contractors' National Association  
Steel Manufacturers Association  
Texas Cotton Ginners' Association  
Tree Care Industry Association  
U.S. Chamber of Commerce

Attachments

- Attachment 1: CWS Comments on OSHA Injury and Illness Electronic Reporting Rule
- Attachment 2: CWS Written Comments on Supplemental NPRM