

September 28, 2018

Docket No. OSHA-2013-0023  
Assistant Secretary of Labor  
Occupational Safety and Health Administration  
U.S. Department of Labor  
Room N-2625  
200 Constitution Ave., NW  
Washington, DC 20210

**Re: Comments on NPRM “Tracking of Workplace Injuries and Illnesses” (Docket No. OSHA-2013-0023)**

On behalf of the more than 8,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the Occupational Safety and Health Administration’s (OSHA) proposed rule on “Tracking of Workplace Injuries and Illnesses.”

ARTBA’s membership includes private and public-sector members that are involved in the planning, designing, construction and maintenance of the nation’s roadways, bridges, ports, airports and transit systems. Our industry generates more than \$380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs. The health and welfare of our workers is paramount and ARTBA has received numerous OSHA grants to develop training programs that are designed to improve workplace safety in the transportation construction industry. ARTBA has developed a diverse number of training materials including hazard communication, struck-by, fall protection, trenching and health hazards.

These comments are in response to the notice of proposed rulemaking on July 30, 2018, in 83 FR 146. Through that notice, OSHA is seeking comments on rescinding the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300 (Log of Work-Related Injuries and Illnesses) and 301 (Injury and Illness Incident Report).

ARTBA supports the agency’s decision to remove this requirement. We agree that the risk of disclosure of this information does not outweigh the benefit to OSHA in obtaining it. This was ARTBA’s position in comments we offered in 2014, both individually and as part of the Coalition for Workplace Safety (CWS). In our comments, CWS stated, “[we] are concerned with the release of confidential business information and employee personally identifiable information . . . Many CWS members treat employee hours worked as confidential business information. Should OSHA finalize this regulation, it would have a duty to ensure that such information collected is protected to avoid competitive harm and prohibit such information from being disclosed because it is protected from release under the [Freedom of Information Act] FOIA.” CWS has also submitted comments on this rulemaking. ARTBA supports and incorporates those comments by reference.

ARTBA agrees that this proposal maintains safety and health protections for workers while also reducing the burden to our members of complying with the current rule. We believe the proposed change will allow employers to maintain control over sensitive information and enable them to secure the privacy of information their employees anticipate they should. We are concerned, however, that the rule continues to require submission of 300A data. The confidential information contained in that report requires as much protection as that in the 300 and 301 forms. We believe OSHA should reinstate its long-standing policy of not collecting this information, so it would not be subject to disclosure under FOIA.

With regards to OSHA's proposal to require covered employers to submit their Employer Identification Number (EIN) electronically along with their injury and illness data submission, ARTBA is always concerned with the disclosure of corporate data, especially information tied to corporate taxes and other business filings. Misuse of this information could lead to serious data breaches if obtained by people with fraudulent intent. OSHA would have to secure this information that may also be vulnerable through FOIA requests. ARTBA would need to better understand the protections that would be maintained by the agency before supporting this provision. We therefore believe it would be better not to require disclosure of this sensitive information to OSHA. The policy simply creates one more opportunity for data breaches.

While we understand the value of the EIN to OSHA to facilitate tracking employer firms and obtaining sound data from which the agency can make better informed decisions, we again must weigh the risk of disclosure against the value to OSHA. We are not convinced that the risk factors are properly protected without further information and assurances.

If OSHA proceeds with the portion of this proposal to require covered employers to submit their EIN electronically along with their injury and data submission from their Form 300A (Summary of Work-Related Injuries and Illnesses), OSHA must explain how, and provide assurances to protect, this sensitive information from illicit use.

ARTBA commends OSHA for its efforts to improve the reporting and prevention of workplace injuries. We think the provisions rescinding the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300 and 301 strikes a balance in protecting sensitive worker information against the potential disclosure under FOIA. ARTBA would like to see the rule go further by also recusing employers from submitting form 300A data.

ARTBA looks forward to continuing this dialogue with OSHA and achieving a reporting system which balances employee protections with employer rights.

Sincerely,



T. Peter Ruane  
President & C.E.O