



September 6, 2018

Amanda Edens
Director
Directorate of Technical Support and Emergency Management
Occupational Safety and Health Administration
United States Department of Labor

AIHA Comments on the Proposed Rule for the Tracking of Workplace Injuries and Illnesses

Docket Number: OSHA-2013-0023 / RIN: 1218-AD17

Dear Ms. Edens:

The American Industrial Hygiene Association® (AIHA) appreciates the opportunity to comment upon OSHA's proposed rule concerning the tracking of workplace injuries and illnesses. As you review our comments and contemplate how we might be of service, please keep in mind that AIHA and our members have a reach that extends to millions of people, with solid credibility that is built from 79 years of service to the occupational and environmental health and safety community. Specifically, AIHA has 8,500 members who represent a cross-section of industry, private business, labor, government, and academia. We maintain 68 active US Local Sections, more than 50 volunteer groups, and have partnership agreements with governmental and nongovernmental organizations representing the full spectrum of worker health and safety vocations. Finally, we have several award-winning publications, a strong social media presence, and host conferences where thought leaders from a variety of industries gather to share new information and answer practical questions on specialized health and safety topics.

Recommendation 1: Do not rescind the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300 and 301. Instead, AIHA encourages OSHA to identify other means of protecting workers' personally identifiable information (PII).

AIHA is a professional society with thousands of members throughout the US, as such, we understand the need and support efforts to protect PII. As you might imagine, the Association goes to considerable lengths to guard the privacy of our members and those who do business with us. It is from this vantagepoint, and as an organization dedicated to protecting worker health and safety, that we approach the challenging issue of collecting worker injury and illness data and protecting privacy.

OSHA states in its [brochure](#) that it was created by Congress and President Richard Nixon in 1970 as “a national public health agency dedicated to the basic proposition that no worker should have to choose between their life and their job.” Said another way, the overriding and core purpose of OSHA is worker health and safety. Thus, while other factors might come into play, worker health and safety must remain at the heart of everything OSHA does. However, in seeking to promulgate this rule, OSHA appears to rest its argument upon uncertainty and issues other than worker health and safety.

The Administration states in its proposed rule that the potential for worker PII being disclosed under a Freedom of Information Act (FOIA) request outweighs any potential benefits from Forms 300 and 301. OSHA takes this to the extreme, arguing that the risk of disclosure “remains so long as there is a non-trivial chance that any court in any of the nation's 94 federal judicial districts might issue a final disclosure order after the exhaustion of all available appeals.” Thus, OSHA concludes that the mere spectral presence of any risk – however small or remote – is too great. Such reasoning runs counter to the core tenants of industrial hygiene, which mirror OSHA’s own mission and include an emphasis on the assessment, control, and mitigation of risk. Risks must be weighed with potential benefits, and creative solutions sought to maximize healthy and safe work environments. OSHA may have had a stronger argument if it had evidence that the information contained in Forms 300 and 301 is not useful. However, as noted below, OSHA has not conducted such an assessment, and is thus hampered in its ability to accurately weigh costs and benefits. In the absence of such evidence, OSHA gives clear favor to the protection of privacy from risks of FOIA disclosure, discounting potential benefits from Forms 300 and 301. If finalized, such a move would cause OSHA to deviate from its central role of protecting worker health and safety.

OSHA argues in the proposed rule that it “has no prior experience with using the case-specific Form 300 and 301 data to identify and target establishments”, and “is unsure as to how much benefit such data would have for targeting, or how much effort would be required to realize those benefits.” OSHA further states that to gain enforcement value from such data the Administration would need to divert resources from other priorities. While perhaps understandable, such arguments are somewhat misleading. Data are not made less valuable simply because a person may not fully use them; rather, to gain the full potential benefit, a greater application of effort is needed. A similar argument holds for insights that may be gained from data contained in Forms 300 and 301.

OSHA correctly notes that choices must be made, however it sets up the false choice that the Administration must decide to either spend more time analyzing data (under a status quo scenario), or it can spend more resources targeting remedial measures – which it says it could do if the proposed rule is finalized into statute. Yet, this need not be the case, other, creative options are available. For instance, rather than reduce the accuracy of remedial measures by collecting still less data, OSHA could instead seek more funds from Congress to further expand its ability to analyze data and enhance outreach efforts to establishments. Such a data-driven approach may result in improved worker health and safety. Many other such options undoubtedly exist.

Recommendation 2: Temporarily suspend further action on this rulemaking until a study is conducted on the benefits of information collected from Forms 300 and 301.

As another alternative, OSHA could elect to temporarily suspend further action on this rulemaking, collect information from Forms 300 and 301, study the potential benefits of information from those forms, and then proceed with the rulemaking if necessary. Such a move would strengthen OSHA in all respects. For instance, if the recommendations from the study are that Form 300 and 301 information provides scant added value, then its arguments for not requiring such information to be submitted would be bolstered. In like fashion, if the study finds that Form 300 and 301 do indeed impart new insights into worker health and safety, then a potential pitfall of the present rulemaking would be avoided, benefitting workers throughout the nation. In either event, by conducting such a study OSHA would be provided with additional data from which it bases its actions – data that it admits it presently lacks.

Conclusion

AIHA thanks you for the opportunity to comment upon the proposed rule on the tracking of workplace injuries and illnesses. Looking at the continuing trends in the rates of worker injuries, illnesses, and deaths, it is clear that creative, data-driven approaches are needed. AIHA is committed to the protection of all workers, and is thus aligned with the core mission of OSHA. We look forward to working with you to help achieve our common goals and overcome challenging obstacles. Please feel free to contact me at mames@aiha.org or (703) 846-0730.

Respectfully,



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AIHA