



March 4, 2014

Docket No. OSHA-2013-0023
OSHA Docket Office
Room N-2625, OSHA
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Docket No. OSHA–2013–0023; RIN 1218–AC49 – Improve Tracking of Workplace Injuries and Illnesses; Proposed Rule; 78 *Fed. Reg.* 67254 (Nov. 8, 2013).

Dear Assistant Secretary Michaels:

The American Meat Institute (AMI) submits this letter in response to the Occupational Safety and Health Administration’s (OSHA or the agency) request for comments regarding the above-referenced proposed rule. AMI is the nation’s oldest and largest meat packing and processing industry trade association representing packers and processors of beef, pork, lamb, veal, turkey, and processed meat products. AMI member companies account for more than 90 percent of U.S. output of these products. Nearly all AMI member companies will be affected by OSHA’s proposed record keeping rule.

The proposed rule would require employers to electronically submit injury and illness information currently in the 300A, 300, 301 Forms to OSHA. Each establishment with 250 or more employees would have to report quarterly and establishments with 20 or more employees in certain designated industries would have to report annually. The agency also would have discretion under the proposal to require any employer to submit more detailed information about specific injuries and illnesses. Moreover, OSHA would provide public online access to the injury and illness records purportedly to allow “the public, including employees and potential employees, researchers, employers, and workplace safety consultants, to use and benefit from the data.”¹

¹ 78 *Fed. Reg.* 67276.

Meat packing and meat processing workplaces are relatively labor intensive and require that work/jobs be designed and performed for optimal worker safety. AMI member companies have decades of experience with OSHA's record keeping rules and the various revisions that have been made over the years. Accordingly, AMI trusts that the following comments will assist the agency in this rulemaking process.

In the preamble to the proposed rule OSHA states that:

“The main purpose of this rulemaking is to improve workplace safety and health through the collection of useful, accessible, establishment-specific injury and illness data to which OSHA currently does not have direct, timely, and systematic access. With the information acquired through this proposed rule, employers, employees, employee representatives, the government, and researchers will be better able to identify and abate workplace hazards. OSHA is proposing to amend its recordkeeping regulations to add requirements for the electronic submission of injury and illness information employers are already required to keep under OSHA's regulations for recording and reporting occupational injuries and illnesses. The proposed rule amends the regulation on the annual OSHA injury and illness survey of ten or more employers to add three new electronic reporting requirements. The proposed rule does not add to or change any employer's obligation to complete and retain injury and illness records under OSHA's regulations for recording and reporting occupational injuries and illnesses. The proposed rule also does not add to or change the recording criteria or definitions for these records. The proposed rule only modifies employers' obligations to transmit information from these records to OSHA or OSHA's designee.”²

Ironically, this summary identifies several reasons why this proposal should not be finalized. More specifically, the agency's summary highlights the following infirmities with the proposal.

1. The rule will not improve workplace safety and health and no group or individual will be better able to identify and abate workplace hazards as a result of this change. Indeed, the proposed rule could adversely affect worker safety because quarterly submission does not provide a sufficient sample size or time duration to provide meaningful data.
2. On the other hand requiring quarterly submission of injury and illness data will increase the amount of work (and cost) required to comply.

² 78 *Fed. Reg.* 67258.

3. Making this data a matter of public record will violate company and employee privacy rights, resulting in negative consequences.

The Proposal Will not Improve Workplace Safety and Health

More frequent submission of data will do nothing to enhance workplace safety and health. Operations personnel in manufacturing facilities are well aware of injury and illness incidents on an ongoing basis and areas or jobs where such incidents occur are targeted for safety review and improvement.

Superficially, it may seem logical that access to data more often would lead to safety improvements. The reality, however, is that the proposed change would not lead to safety improvements. Annual reporting has a (nearly) four decade history; breaking the data into quarterly “bites” will produce numbers with no comparative value. Making data available more often will not provide a more meaningful basis for targeting locations with safety issues than the process OSHA has used for many years. In fact, it is more likely to generate misleading, incorrect information because injury and illness incidents typically occur on a much more random basis than is reflected in what would amount to three-month “snapshots.” Moreover, the amount of data that would be submitted quarterly under this proposal is massive. The agency does not have the resources to analyze and consider the amount of raw data this proposal would generate. To divert agency resources to address this problem could adversely affect other program areas.

Also striking is the fact that the agency’s assertions regarding the benefits of the proposed rule are, in essence naked. The agency claims that several groups will be better able to “identify and abate workplace hazards.”³ But nowhere in the preamble discussion, including the Executive Order 12866 analysis, does OSHA cite any authority to support its conclusion that the proposal will yield the benefits proffered. Nor does the agency provide any rationale for its benefits’ conclusions. The agency simply asserts that the benefits must be so. Such an empty attempt to justify the proposal runs afoul of the arbitrary and capricious standard embedded in the Administrative Procedure Act.

In short, requiring quarterly recording and reporting will add to the administrative work load and it will increase the cost of compliance but it will do nothing to enhance safety. There is simply no value to be added by generating raw information at a fourfold increase in frequency and the agency offers nothing to suggest it will improve workplace safety and health.

³ *Id.*

The Proposal Would Create Unnecessary Work and Add Unnecessary Cost.

The agency grossly underestimates the cost and amount of time that would be required to comply with this proposal. OSHA estimated 440,000 establishments would be required to submit data. Done quarterly, there would be 1.76 million submissions (*i.e.* just OSHA 300 logs) annually.

Quarterly reporting would require numbers of incidents and total hours to provide rates. Many, if not all, plants do not aggregate hours on a quarterly basis for any other purpose; thus, a new reporting structure would have to be developed just for this rule. Such a change likely would require a significant investment of time and resources with respect to how the data is kept and represents far more than the 10 minutes the agency estimates. Moreover, submitting this data four times per year will take considerably more work than companies currently incur. An employee will have to assemble the raw data four times more often and prior to submission, the data would be subject to a second review to ensure accuracy. This quality assurance is necessary because submitting information to OSHA requires accuracy and assurance.

A process for corrections and adjustments would be required because many injuries and illnesses are dynamic in nature and change over time. There also is an open question regarding how to handle reporting number of days (*i.e.* for lost workday cases), a number that often changes as an injury resolves. Thus, quarterly reporting will generate additional costs to accommodate corrections and to ensure correct data is provided.

The current process of reporting annually allows many of these matters to be sorted and resolved over time, resulting in more accurate information and a better understanding of the safety and health circumstances at any location. The proposal, on the other hand, lessens the value of information provided for any purpose.

Public Release of Data Creates Privacy and Other Problems.

Public release of reported data presents several problems, many of which may also add to the cost component. As referenced above, quarterly reporting would yield approximately 1.76 million submissions just for OSHA 300 logs annually. Moreover, data submitted quarterly likely will be meaningless because three month periods are too brief to illustrate trends or, for that matter, problems at any facility. As a result, making this data public is simply facilitating assessment and evaluation using incomplete data.

Indeed, publicly disseminating questionable data can only lead to invalid conclusions being drawn.

In addition, many companies consider the number of employees and hours worked at a given establishment to be proprietary because it can reveal sensitive information about business processes, security and overall operations. OSHA ignores several court rulings that have found employers to possess a privacy interest in such data, and fails to consider the implications of publishing it. Public disclosure of the data not only provides a company's competitors with confidential business information, but it also jeopardizes security, putting workers and the public in danger. For example, OSHA intends on publishing the addresses of certain businesses that produce, store, or maintain highly sensitive, hazardous or valuable products or commodities. Depending on the nature of the business, publicizing locations and number of employees could leave a business vulnerable to criminals or worse.

Of perhaps more significant concern is the proposed rule's threat to employee privacy. OSHA has committed to protecting the identity of employees but has failed to provide satisfactory answers regarding how it will accomplish this objective, especially considering there will be hundreds of thousands of records that would need to be scrubbed of employee details. For example, the agency's contention that an employee's name field would not be included in the OSHA 300 information does not preclude the ability to identify a worker. In many cases facilities are located in relatively small communities. Given date and injury type, the name of an injured person could easily be determined. This invasion of privacy is problematic and likely would cause additional problems – for both workers and companies – while doing nothing to advance safety and health at these facilities. In fact, resolving such problems would require the deployment of resources that would be better expended working on operational safety improvements.

Moreover, privacy concerns, which do not currently exist with OSHA records, could discourage employees from reporting incidents. A perceived lack of privacy could cause employees to withhold information about injury or illness incidents, which would subsequently impair safety improvement. In brief, employee privacy is extremely important. Implementing a reporting system that could result in public identification of injured workers will clearly be counterproductive to workplace safety.

Summary

The meat industry will continue to work toward improving the design and implementation of safe workplaces and AMI members will continue to provide safe workplaces for their employees. The industry is extremely

diligent regarding compliance with OSHA record keeping requirements and uses this information as part of a process to evaluate and make safety improvements at facilities. For the above-discussed reasons, however, we oppose OSHA's proposed rule.

AMI appreciates the opportunity to voice industry concerns in this forum and requests that this document be included in the official comment record. If you have any questions about these comments or would like to discuss any aspect of them, please contact us.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Dan McCausland". The signature is written in a cursive style with a long horizontal stroke at the end.

J. Dan McCausland
Senior Director
Worker Safety and Human Resources

Cc: Mark Dopp
Jim Hodges