



March 7, 2014

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

RE: Improve Tracking of Workplace Injuries and Illnesses - Proposed Rule (Docket No. OSHA-2013-0023)

Dear Sir/Dear Madam:

The National Chicken Council, the U. S. Poultry & Egg Association, and the National Turkey Federation, are non-profit trade associations representing the producers and processors of chickens, turkeys, other poultry, eggs and affiliated industry suppliers. Combined, our organizations represent companies that produce 95 percent of the nation's poultry products and employ more than 350,000 workers. We are committed to providing a safe and healthy work environment for our employees. We appreciate the opportunity to submit these comments to OSHA on its proposed regulation, *Improve Tracking of Workplace Injuries and Illnesses* (78 Fed. Reg. 67254, November 8, 2013). While we understand OSHA's desire to improve its data collection processes and procedures, we respectfully suggest that this proposed rule is misguided.

At the outset, we believe the existing recordkeeping system is sufficient to allow employers to identify and address risks in their work environments. In addition, we are very concerned that the proposed rule improperly and in a negative way changes the traditional no-fault recordkeeping system. This change will force employers to commit energy and resources toward lagging indicators, as opposed to more effective leading indicators. It will also have the effect of limiting the amount of useful information currently included in recordkeeping forms, out of concern that the information will be made public. We also question why OSHA did not make Federal agency injury and illness information public in a similar rulemaking completed just a few months ago. Finally, our members have significant privacy concerns with making the information public and also believe that OSHA has significantly understated the costs of the rule.

For these and other reasons, we request that OSHA withdraw the proposed regulation.

**A. The existing recording and reporting rules are adequate.**

The existing recordkeeping rule is adequate and the information gathered sufficient to allow employers to identify and address risks within the workplace and to allow OSHA to identify high hazard industries to help direct their consultation and enforcement activities.

Poultry processing injury and illness rates dropped from 22.7 per 100 employees in 1994 to 4.9 per 100 employees in 2012, a 78 percent reduction in recordable incidents. In the entire Manufacturing sector, injury and illness rates dropped from 12.2 per 100 employees in 1994 to 4.3 per 100 employees in 2012. This steady rate of improvement across industry sectors is evidence that the existing recording and reporting rules are working and these proposed changes are not needed.

In the preamble to the proposed rule, OSHA cites to several reasons for the rule and the benefits that will occur once the rule becomes final. These include “increased workplace safety as a result of making timely, establishment injury/illness information public” and (1) easily available to employers, (2) easily available to employees, employee representatives, and potential employees, (3) easily available to customers and potential customers, and (4) easily available to researchers.

For several reasons set forth below, we do not believe that making the information publicly available will improve safety. In fact, we believe it will have other negative consequences on the safety and health efforts of companies. However, we are also struck by the fact that OSHA’s statements are supported by no underlying data or support. It appears to be nothing more than conjecture by the Agency to support the supposed benefits of the proposal. When discussing how OSHA projects the benefits of the rule exceeding the costs, the Agency makes no affirmative claim of the benefits. Instead, OSHA simply states that in order for the benefits to outweigh the costs, it would only need to prevent 1.5 fatalities or .025 percent of injuries a year. Nowhere does OSHA actually state that the rule will prevent injuries or fatalities or provide data supporting such a claim. OSHA also does not analyze how the negative aspects of the proposal could serve to hurt safety and health efforts, leading to more fatalities and injuries.

**B. The proposed rule fundamentally changes OSHA’s no-fault recordkeeping system.**

In January 2001, OSHA revised its rule addressing recordkeeping requirements for employers, including forms employers use to record such information. 66 Fed. Reg. 5916. As part of these revisions, OSHA made clear that the purpose of recording an injury or an illness did “not mean that the employer or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers’ compensation or other benefits.” 29 C.F.R. 1904.0. Rather, OSHA intended to encourage employers to record injuries and illnesses and employees to report them to employers.

During the revisions to those recordkeeping requirements, OSHA also recognized that “it is not necessary that the injury or illness result from conditions, activities, or hazards that are uniquely occupational in nature. Accordingly, the geographical presumption for work-relatedness encompasses cases in which injury or illness results from an event at work that are outside the employer’s control, such as a lightning strike, or involves activities that occur at work but that are not directly productive, such as horseplay.” 66 Fed. Reg. at 5929. There is no denying that when OSHA relied on the geographic presumption it recognized that *many* circumstances that lead to a recordable work-related injury or illness are “beyond the employer’s control” Id. at 5934.

OSHA’s alleged benefits from this proposed regulation are directly at odds with this “no-fault system.” OSHA suggests, with no supporting evidence as described above, that such information will “enable[e] the Agency to identify the workplaces where workers are at greatest risk, in general and/or from specific hazards and to target its compliance assistance and enforcement efforts accordingly.” 78 Fed. Reg. 67254. Furthermore, OSHA suggests that by making this information public, employees and businesses will be able to learn about the safety and health practices of employers and make decisions – employment or otherwise – based upon this data set.

Implicit in OSHA’s view is that high injury and illness rates mean non-compliance with OSHA standards, which is completely at odds with the stated purpose of Part 1904, as set forth above. Even the disclaimer listed on the web mock-up for public searches of injury/illness information for specific establishments is at odds with what the Agency asserts are the benefits of this proposed regulation. On the web mock-up is a disclaimer in an explanatory note that states:

OSHA does not believe the data for the establishments with the highest rates on this file are accurate in absolute terms. It would be a mistake to say establishments with the highest rates on this file are the “most dangerous” or “worst” establishments in the Nation.

It is unclear how the Agency can assert that the establishments with high rates are not the “most dangerous” but yet encourage employees and others to make decisions about an employer’s safety and health efforts based on the data.

Providing raw data, out of context, to those who do not know how to interpret it will also create significant issues. Assessing an employer’s safety and health efforts or programs is a complicated challenge. Injury rates are just one metric and often are not indicative of the strength of a safety and health program. Despite this, OSHA is encouraging the public to make judgments about a safety and health program based on this limited data. This is simply wrong and we believe will be counterproductive to workplace safety and health.

For example, OSHA has stated that often injury and illness rates at facilities go up after introduction of an ergonomics program. Musculoskeletal disorders are a significant challenge in the poultry processing environment. Often this initial spike in injury and illness rates is an indicator that the

program is working effectively, not that the facility is ignoring safety and health issues. Yet, without context, publication of injury rates that are spiking up may be misinterpreted by the public to mean that a particular facility is unsafe.

This effort will also simply push employers to spend greater time, energy, and resources toward lagging indicators, as opposed to more effective leading indicators. Despite what OSHA may believe, because employers will know that their information will be made available worldwide, and – as OSHA believes – presumably people will make business decisions based on injuries and injury rates, they will focus greater attention to these issues at the expense of focusing on leading metrics of safety.

OSHA has attempted to encourage employers to get away from lagging indicators and focus on leading indicators in their safety and health management systems. But perhaps this is just rhetorical. In this proposal, OSHA is myopically focusing on injuries and injury rates and suggesting that employers, employees, researchers, collective bargaining agents, and customers base decisions on these lagging indicators as opposed to holistically examining the safety and health efforts of a company. OSHA needs to be a leader in safety, and this proposal does not reflect that role.

Furthermore, we are very concerned that employers will start including fewer details about injuries and illnesses in their recordkeeping forms, knowing that the information will be made publicly available on the internet. This is due in part to privacy concerns, which are discussed below. It is also due to the fact that employers will be reluctant to provide details of their operations or incidents when they know that such information could be misconstrued by members of the general public who have no understanding of their operations.

The recordkeeping system currently allows employees and employee representatives to review the OSHA 300 Logs and forms. This is, of course, a good idea and consistent with the underlying purposes of the rule. These individuals are familiar with the operations, the hazards, and the employers' efforts to address same. They can suggest alternative approaches to protecting employees because they understand this context.

Simply publishing information on the internet without context is of limited value and can be easily misconstrued. Employers will also be very careful about what information is included in the forms, erring on the side of less information in order to avoid the problems just discussed. This does not advance worker safety.

**C. OSHA is treating the Federal government differently than the private sector.**

Pursuant to Section 19(a) of the Occupational Safety and Health Act (“OSH Act”), Federal agencies are required to keep adequate records for occupational injuries and illnesses. 29 U.S.C. 668. To effectuate this statutory mandate, OSHA has final rules contained in 29 C.F.R 1960 related to recordkeeping requirements.

In August 2013, OSHA issued a final rule, adding section 1960.72 and requiring Federal agencies, beginning May 1, 2014, to submit their previous calendar year occupational injury and illness recordkeeping data to OSHA on an annual basis. 78 Fed. Reg. 47180.

Specifically 29 C.F.R. § 1960.72 states,

**Reporting Federal Agency Injury and Illness Information.**

- (a) Each agency must submit to the Secretary by May 1 of each year all information included on the agency's previous calendar year's occupational injury and illness recordkeeping forms. The information submitted must include all data entered on the OSHA Form 300, Log of Work-Related Injuries and Illness (or equivalent); OSHA Form 301, Injury and Illness Incident Report (or equivalent); and OSHA Form 300A, Summary of Work-Related Injuries and Illnesses (or equivalent).

This final regulation for Federal agencies to annually submit to OSHA their injury and illness information is very similar to the proposed regulation for the private sector. But, there are two noticeably different requirements between the final regulation for Federal agencies and the proposed regulation for the private sector. First, Federal agencies are only required to submit their injury and illness data to OSHA on an annual basis; no requirement exists for quarterly submission. Second, there is no requirement to make the data submitted to OSHA from Federal agencies public and searchable on a website. Clearly OSHA was aware of these differences, since the final rule for Federal agencies was issued in August 2013 and the proposed rule for the private sector was issued in November 2013.

Why these differences exist is unclear. The same benefits that OSHA claims will result from making such information publically available equally apply to the Federal government. Shouldn't prospective government employees have access to such injury and illness information so they can make a more informed decision about which Federal agencies they wish to work for, and shouldn't government employees have access to this information so that they can compare their workplaces to the best government workplaces for safety and health? Shouldn't the Federal government be a role model to the private sector and take the lead in making such information available to the public? If so, why did the final rule requiring Federal agencies to submit their injury and illness data to OSHA fail to address the publication of this information?

**D. The proposed rule does not consider the use of equivalent OSHA 301 Forms.**

The proposed rule will require reporting of all information currently on the OSHA 300 Log and 301 Form. The preliminary mock-up of the reporting system shows an online OSHA 300 and 301 that can be used for reporting.

OSHA does not appear to realize that many employers do not actually use the OSHA 301 Form. Instead, they use an equivalent form, often for workers compensation purposes. Presumably, OSHA would require employers to translate the information into the "301 Form" on

the internet. This may not be as straightforward as OSHA makes it seem and certainly it may be more costly than OSHA anticipates. It also not only increases the risks of errors occurring in the translation but eliminates the usefulness of equivalent forms. Employers who now use an equivalent form will have to sort through the information to extract and enter only the required information on the electronic 301form. If this translation from one form to another becomes too burdensome, employers will likely discontinue using equivalent forms – in effect, OSHA is writing the option of using equivalent forms out of the current rule.

**E. The proposed rule raises significant privacy concerns.**

Many commenters have raised the issue of the privacy interests that are impacted by the proposed rule. We will not repeat these privacy issues here. However, we would emphasize that many of our members operate establishments in small, rural locations. People know one another. Publishing this information and data will significantly impact employee privacy. And simply redacting the names of the persons affected will not prevent people – particularly in small towns – from knowing exactly who was injured and the extent of the injury. Further, employers are best suited to redact personally identifiable information, not OSHA. However, either way, the potential for even inadvertent public disclosure of personal information outweighs any alleged benefits from making an employer's injury and illness records publically available.

While some injuries and illnesses may not cause significant privacy concerns for employees, some may, particularly those dealing with infectious disease. OSHA is seemingly dismissive of these concerns. Once a piece of information is put on the internet it is available for all to see. Employees can be identified and their medical conditions known. Companies can take the data and try to match it with other data sets to market products to employees or others in the community. Rather than focusing on the safety and health of employees, OSHA's proposal seemingly makes employee injuries and illnesses nothing more than a research tool, with some of that research not at all related to the benefit of the injured worker.

**F. OSHA's cost estimates are unfounded and understated.**

OSHA's estimates of the economic costs of complying with the new regulations (\$189 per year for facilities with more than 250 employees and \$9 per year for facilities with less than 250 employees) are unfounded and, in our view, significantly understated. The costs do not even cover the actual manual entry of the data into the secure website. It does not factor costs associated with employers having to translate data from equivalent forms. It does not consider additional training of staff that might be required, such as training on the variety of state and federal privacy laws that could be impacted by employers now knowing that the information they submit will necessarily be made available worldwide. And, it does not consider that some employers utilize proprietary electronic recordkeeping systems that would require program changes, possibly at a significant cost, so that the information could be electronically submitted to OSHA. As a minimum, OSHA should conduct a pilot program (preferably on federal government agencies) to determine the actual cost of compliance.

OSHA-2013-0023

March 7, 2014

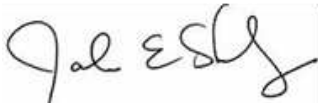
Page 7

Thank you for the opportunity to comment. If you have any questions or require additional information concerning our comments please do not hesitate to contact Paul Pressley of the U.S. Poultry & Egg Association at 678.514.1972, Ashley Peterson, Ph.D., of the National Chicken Council at 202.443.4122, or Lisa Picard of the National Turkey Federation at 202.898.0100.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Brown", written over a light gray rectangular background.

Mike Brown  
President, National Chicken Council

A handwritten signature in black ink, appearing to read "John Starkey", written over a light gray rectangular background.

John Starkey  
President, U.S. Poultry & Egg Association

A handwritten signature in black ink, appearing to read "Joel Brandenberger", written over a light gray rectangular background.

Joel Brandenberger  
President, National Turkey Federation