



Douglas Parker
Assistant Secretary
Occupational Safety and Health Administration
200 Constitution Ave, NW
Washington, DC 20210

Dear Assistant Secretary Parker:

On behalf of the National Council for Occupational Safety and Health (National COSH), representing 26 coalitions across the country of workers and labor educators and advocates we are pleased to submit these comments in strong support of the Occupational Safety and Health Administration's (OSHA) proposed rule amending its occupational injury and illness recordkeeping regulations to require certain employers to electronically submit injury and illness information to OSHA that employers are already required to keep under the recordkeeping regulation (OSHA Docket: OSHA-2021-0006; RIN 1218-AD40).

In specific this proposed rule will newly require establishments with 100 or more employees in certain designated industries to electronically submit information from their OSHA Forms 300 and 301 to OSHA once a year (this is in addition to the current requirement for these establishments to electronically submit information from their OSHA Form 300A, annual summary, to OSHA once a year). We support this new proposed rule to OSHA's existing recordkeeping standard with the following suggested changes. This proposed rule will prevent dangerous employers from hiding workplace injuries and will aid OSHA's efforts, as well as the efforts of state agencies, the public health community, workers, unions, community organizations and employers to identify and prevent workplace injuries.

National COSH represents low wage, immigrant and workers of color who often work in the most dangerous jobs. Latino and Black workers continue to be at greater risk of dying on the job than all other workers. This OSHA proposed rule is critical to improving worker safety and health, especially for workers at elevated risk of injury, illness and death. According to the most recent BLS statistics, 4,764 workers were killed on the job in 2020 and employers self-reported over 3.2 million work related injuries and illnesses that required more than first aid. Immigrants, contingent workers and other workers of color are disproportionately represented among those injured and killed.

This proposal does not contain any new recordkeeping requirements, it simply requires employers to electronically send information they already keep to OSHA. It is hard to believe that the agency in charge of workplace safety and health does not already receive this information. Unlike almost any other government agency in charge of protecting public safety, such as the Mine Safety and Health Administration, OSHA hasn't received the workplace injury and illness information they need to work effectively.

The proposed rules' new provisions -- requiring regular electronic submission of injury and illness data from the forms 300 and 301 from certain establishments with over 100 employees --

will help OSHA use its limited resources, including enforcement and compliance assistance resources, more effectively. For example, these case-specific data will help the agency identify the hazard-specific materials and other compliance assistance resources they could direct to employers who report high rates of injuries or illnesses related to those hazards, as well as to workers in those industries. These data are also important to help OSHA establish priorities. It will aid the agency in identifying emerging hazards, support an agency response, and focus outreach to employers whose workplaces might include those hazards.

We support the agencies decision to require the additional information from the OSHA 300 and 301 forms for establishments with more than 100 employees.

Making these data publicly available, as the standard provides, will assure that researchers and other agencies, like the National Institute for Occupational Safety and Health, NIOSH, can use the data for surveillance, evaluation and research purposes. State and community public health agencies can use the data to better understand the hazards in high risk establishments, target these establishments for assistance and also provide opportunities to reach out to employers regarding best practices. The data will better allow organizations like ours and other community and worker based organizations to identify patterns of injuries and hazardous conditions in workplaces and advance worker safety and health. Making the data publicly available will also increase the accuracy of these records. Studies have continued to show that there is significant underreporting by employers of injuries and illnesses on these logs.

Making the case specific data publicly available as proposed in the standard will also increase worker safety for the employees in the establishments with 100 or more employees. Workers are too often scared of retaliation if they request this information, even though employers are required to provide access to the full 300 logs to employees upon request. This information will allow employees in these establishments access to this data without fear of retribution and it will help them better identify patterns of injuries and hazards and to take actions to have the hazards abated.

Further posting case specific information is not new to the Department of Labor. MSHA posts establishment specific, incident specific data on its website.

We also support the proposed rules provisions to use the Total Case Rate (TCR) over a three year period to determine the covered industries (4 digit NAICS) subject to the new reporting requirements for establishments with 100 or more employees (Appendix B to subpart E). However, the choice of a cut off TCR of a three year average at 3.5 or above is potentially too restrictive. We urge OSHA to consider adding more industries by lowering the cut off to the national average for private industry. For instance, according to recent BLS Annual Surveys (2018-2020), motor vehicle parts manufacturing and industrial laundries, report three year average TCR levels below 3.5 but above the national average. These are potentially dangerous workplaces and can present serious hazards that will be revealed in the individual case data. OSHA and other researchers can use this data for surveillance, to spot emerging hazards, for compliance assistance and other injury and illness prevention activities.

Further, we oppose OSHA's proposed elimination of the current requirement for all establishments with 250 or more employees in industries that are required to routinely keep OSHA injury and illness records to electronically submit information from the Form 300A to OSHA. By maintaining this requirement, OSHA will assure that large establishments in industries with known hazards that are not included in Appendix A, such as the temporary service industry or the home health care industry, continue to provide data to OSHA that will also then be available to the public.

We further urge OSHA to not only keep the current requirement that these large workplaces continue to submit information from the Form 300 A, but to also expand the current requirement and require these establishments to also submit the full OSHA 300 log. OSHA has estimated that this would only apply to a few thousand establishments, so this is clearly feasible for both the establishments and OSHA. By continuing this requirement, and adding a requirement to also submit the full OSHA 300 log, OSHA, researchers and other government agencies, will have access to data to spot emerging hazards as well as for injury prevention purposes.

There is clear evidence that this new proposed rule would reap substantial benefits to the government, researchers, employers, workers and their representatives in preventing work related injuries, illnesses and fatalities.

Thank you in advance for your consideration.

Sincerely,

Handwritten signatures of Marcy Goldstein-Gelb and Jessica Martinez. The signature for Marcy Goldstein-Gelb is on the left, and the signature for Jessica Martinez is on the right.

Marcy Goldstein-Gelb and Jessica Martinez
Co-executive directors
National COSH