



AMERICAN SOCIETY OF SAFETY ENGINEERS

1800 East Oakton Street
Des Plaines, Illinois 60018-2187
847.699.2929
FAX 847.296.3769
www.asse.org

March 7, 2014

The Honorable David Michaels
Assistant Secretary
Occupational Safety and Health Administration
U. S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

By <http://www.regulations.gov>

RE: ASSE Comment on OSHA Proposed Rule
Improve Tracking of Workplace Injuries and
Illnesses (OSHA Docket 2013-0023; RIN
1218-AC49)

Dear Assistant Secretary Michaels:

The American Society of Safety Engineers (ASSE) is pleased to submit the following comments concerning the Occupational Safety and Health Administration's (OSHA) Proposed Rule, *Improve Tracking of Workplace Injuries and Illnesses*, published in the November 8, 2013 Federal Register (78 Fed. Reg. 67254).

As you know, ASSE is the oldest and largest society of safety professionals in the world. Founded in 1911, ASSE represents over 35,000 dedicated safety, health, and environmental professionals. Our members are experts in managing workplace safety and health in every industry, in every state, and across the globe. They belong to one or more of ASSE's twenty practice

specialties. ASSE is also the Secretariat for various voluntary consensus standards related to best practices in occupational safety and health.

The proposed rule would require establishments with 250 or more employees to submit electronically their injury and illness records (Forms 300 and 301) to OSHA on a quarterly basis and summary data (Form 300A) annually; establishments with 20 or more employees to submit electronically the annual summary form (Form 300A); and certain employers to submit electronically any other information from Part 1904 records on notification from OSHA.

How does the rule improve workplace safety?

ASSE was pleased to participate in the public meeting on this proposal that OSHA conducted on January 9 and 10, 2014. As James Thornton, Chair of ASSE's Government Affairs Committee, stated at that meeting, ASSE does not believe that OSHA has provided an adequate explanation for this proposed collection of information or explained how collecting this information will lead to improved worker safety and health. The agency also needs to consider the potential unintended, adverse consequences that could flow from the new requirements.

At the public meeting, an OSHA representative stated that the purpose of the rulemaking is to "improve workplace safety and health by collecting, using and making available establishment-specific injury and illness information to identify hazards in locations where intervention is needed." The problem is that OSHA has not explained how it believes collecting and posting this information will improve workplace safety. Does OSHA need this information to target inspections better than it now does? For what other surveillance and data collection uses, in addition to targeting enforcement, does OSHA need such data from so many employers. How does OSHA foresee using it to identify locations and hazards needing "intervention?" Does OSHA intend to share the data with the National Institute for Occupational Safety and Health (NIOSH) to improve occupational safety and health research?

ASSE is well aware of the argument that publishing employer's injury and illness information will itself encourage greater safety by establishments with relatively higher injuries – what has been referred to as "shaming." Companies who are already committed to safety already understand how to avoid public scrutiny by having in place effective safety management systems that protect workers. For companies whose commitment to safety needs improvement, most safety and health professionals do not see this approach as an effective way to motivate them. Instead, from our members' front line experience dealing with such companies, this effort has the very real potential of creating a powerful incentive to hide problems, thus making safety and health professionals' work in convincing, selling, and motivating such employers more difficult.

ASSE's concern about the lack of explanation for how the collected data will improve OSHA's efforts to promote and protect workers is compounded by the inconsistent explanations that OSHA has given on the rule's impact. For example, OSHA has tried to minimize the impact of the rule by saying that it is the same information collection and publishing as has been done for

the past several years under the OSHA Data Initiative (ODI) except that it would cover more establishments. However, as OSHA acknowledged at the public meeting in January, it is not just the number of establishments that would be increased, but also additional detailed information that is collected and would be published on each individual establishment. OSHA's failure to acknowledge the differences between the ODI and the collection of information under the proposed rule does not give assurance that the impacts of the proposed rule have been thoroughly considered.

Similarly, ASSE is concerned that OSHA has not adequately considered or accurately assessed the cost of the rule, both for employers and for OSHA. Regarding the latter, OSHA has acknowledged that it must review each injury and illness record in order to "scrub" any personally-identifying information. That will clearly take resources away from other programs and activities. What "lesser priority" programs does OSHA intend to cut in order to implement this collection and publishing of information? If ASSE were assured that this information collection will actually lead to better workplace safety outcomes, it might be a justifiable use of OSHA's limited resources. But ASSE does not believe that OSHA has made the case.

How does the rule support safety and health professionals' efforts to improve workplace safety and health?

ASSE consistently has supported OSHA regulatory proposals, programs and initiatives that, based on our members' approach to managing workplace risk, can result in improvements in workplace safety and health. Applying that test, ASSE is not convinced that OSHA has shown that the proposal will benefit workers. Instead, it will make our members' efforts to protect workers in many of the most difficult workplaces more difficult, for the following reasons:

- Public release of numbers and rates of injuries by establishment will cause many employers to use their resources to address "trailing," not "leading" indicators. ASSE and other leading safety and health organizations have put considerable work into developing resources and encouraging companies to move away from "trailing" and towards "leading" indicators for evaluating workplace safety. As OSHA itself knows, "trailing" indicators focus an organization on safety after the fact of an injury or fatality. "Leading" indicators better focus an organization on the best practices that prevent injuries and fatalities. ASSE is concerned that this proposal, and the additional attention that a national database of injury rates and numbers will attract, works against the professions' years of effort in moving workplace safety towards "leading" indicators. While safety and health professionals will continue their effort no matter where OSHA asks companies to focus, this proposal only hinders their efforts.

- The emphasis on injury numbers and rates would “enshrine” in regulation a highly visible need among employers to take a numbers-centered approach to safety and health that will drain organizational resources away from true accident prevention efforts.
- The OSHA proposal will create misguided pressure on safety and health professionals in far too many organizations to focus simply on getting injury numbers down, no matter how. Very often injury rates do not tell a complete story about a workplace’s safety and health. In fact, when a safety and health professional has convinced a company to focus on a particular risk, the resulting increased attention to that risk often results in increased numbers of reported incidents. Efforts to address ergonomics often result in increased reporting, for example. This proposal will make the job of selling such efforts to employers that much more difficult for our members. Similarly, companies with very good safety programs have often found that when they purchase a new operation or plant that has had less emphasis on safety, the numbers may go up temporarily. They should not be penalized when their purchase will, in time, improve the protections for employees.
- Increased focus on injury reports will put even greater emphasis on whether “close cases” need to be recorded or can be kept off the books. Instead of focusing on hazards, valuable resources must be spent analyzing whether the case is recordable under Part 1904. It is difficult for ASSE to see how such an outcome will encourage employers voluntarily to address safety concerns when "good actors" who honestly report data could look worse than "bad actors" who manipulate their data in the eyes of the public. This will hold true especially for contractors whose customers and general contractors will refer to this database as part of contractor prequalification under safety and health management programs. (See, e.g., ANSI Z10 and ANSI A10.33.)

Conclusion

In summary, ASSE does not believe that OSHA has explained adequately how the collection of the information will actually improve workplace safety or how OSHA will manage the information that it would collect. ASSE also believes that publication of the information will make more difficult the efforts of safety professionals to focus companies on prevention of hazards rather than just reporting of injuries. For these reasons, ASSE requests that OSHA withdraw the proposed rule until the agency can develop clearer objectives and a stronger rationale for this initiative.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy". The signature is fluid and cursive, with a long, sweeping horizontal stroke extending to the right.

Kathy A. Seabrook CSP, CMIOSH, EurOSHM
President