



The International Brotherhood of Teamsters

Comments On

Improve Tracking of Workplace Injuries and Illnesses

**[Docket No. OSHA-2013-0023]
[RIN 1218-AC49]**

**Occupational Safety and Health Administration (OSHA)
U.S. Department of Labor**

March 10, 2014

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Introduction

The International Brotherhood of Teamsters (IBT) welcomes the opportunity to comment on the Occupational Safety and Health Administration (OSHA) Department of Labor's (DOL) Proposed Rulemaking and Request for Information and Comment on 'Improve Tracking of Workplace Injuries and Illnesses.' OSHA is proposing to update and modernize its reporting system for occupational injuries and illnesses to allow "a more efficient and timely collection of data" and "improve the accuracy and availability of the relevant records and statistics."ⁱ

We are very concerned about the health and safety of our membership, and believe that OSHA's proposals, if implemented, would empower our members, and our local union affiliates in promoting workplace health and safety, and will assist our employers as well to better understand the causes and prevention of hazards, injuries and illness. Consequently, we strongly urge OSHA to move forward quickly to issue a final rule in 2014.

The Teamsters Union represents approximately 1.4 million workers in the United States, Canada and Puerto Rico, in 21 industrial sectors, from airline to warehouse industries.ⁱⁱ Although, we cannot characterize in detail the number of establishments that we represent that would be covered by OSHA's proposed provisions, our large and diverse membership would ensure that a considerable number would be included.

The IBT is commenting on issues specifically relevant to the unique nature of our membership in various industries. We also fully support the comments provided by AFL-CIO and affiliated unions and those of Change to Win (CTW)ⁱⁱⁱ and its affiliates.

For our purposes in this rulemaking, most of our 21 industrial sectors would be covered by its proposed provisions, with a few exceptions such as public employees in the Federal Plans and the rail sector that is subject to the Federal Railroad Administration (FRA) rules, and those industries that are not required to keep OSHA injury and illness records partially exempted in Part 1904.

Access to Injury and Illness Records and Data

As noted in the proposed rule, "OSHA currently does not acquire establishment-specific injury and illness information from an establishment in a particular year unless the establishment was inspected, was part of the ODI [OSHA Data Initiative], and/or reported a fatality or multiple-hospitalization event.... each year, OSHA inspects only a small percentage of all establishments under OSHA jurisdiction [1% in 2010]....The ODI collects only summary data, it does not enable OSHA to identify specific hazards or problems in establishments in the ODI.... OSHA also acquires aggregate information from the injury and illness records collected through the BLS SOII However...the SOII data available to OSHA do not identify the specific establishments where the injuries and illnesses occurred."

We endorse the proposed rule because, as OSHA states^{iv}, once implemented, it would:

- Allow OSHA to acquire a much larger database of timely, establishment-specific information about injuries and illnesses in the workplace;
- Allow OSHA to use its resources more effectively by identifying the workplaces where workers are at greatest risk, through a variety of measures; and
- Provide establishment-specific injury and illness data – including case-specific information (OSHA Form 301) that is now only rarely collected by OSHA even in enforcement cases -- for analyses that are not currently possible with the data sets OSHA currently uses, and to answer a variety of questions, that could be useful to OSHA and all stakeholders.

It is important to note that OSHA has provided public access to the ODI data set since 2004, when it was “established to collect data on injuries and acute illnesses attributable to work-related activities in private-sector industries from approximately 80,000 establishments in selected high-hazard industries. The Agency uses these data to calculate establishment-specific injury/illness rates, and in combination with other data sources, to target enforcement and compliance assistance activities.”^v

We have had a mixed experience with obtaining the OSHA Log from employers that employ our members. On occasion, we have received a requested OSHA 300 Form in a timely fashion, as prescribed by the regulation, and at other times it has taken longer to receive it and it has arrived in paper form, but typewritten.

For national collective bargaining purposes, we have asked companies for company-wide information, including injury/illness records (see attached ‘Sample Teamsters National Negotiating Committee Information Request’). In one instance, for example, we requested the OSHA 300As (for the past 5 years in database or spreadsheet format); Lost Workday Injury and Illness rates (LWDII) (for each facility and company-wide); and total hours worked for all employees (for each facility and company-wide). We received the 300A summaries in an Excel spreadsheet. In other instances, some data has come back as PDFs (of the 300s).

We caution OSHA, however, that this experience occurred in the context of national negotiations where a company was bound by federal regulations to bargain in good faith. It is not one to extrapolate from to smaller employers or those employers not bound by a national contract. It certainly would not conform to the experience of employees who are not represented by labor unions or other advocates.

A few years ago, we requested the OSHA Logs for various establishments of one of our large corporate employers; we received the Logs in boxes, rather than in electronic form. Up to two of our industrial hygiene staff spent weeks entering the records into a database for further analysis. The purpose of the request was to enable us to better understand safety and health conditions our

members experienced so we could prioritize where to direct our limited resources and to effectively represent them in the collective bargaining process.

We have been informed by a union safety official at one location of an air carrier that although he receives copies of the OSHA 300 log only for that station/location, other union safety representatives in the system do not get a copy for their stations. He said that the station managers have cited privacy requirements as the reason for not providing a copy or allowing them review the 300 report. Moreover, as the carrier transitions to an all-electronic system where computer stations are available, rank and file union members do not have access to the reporting system and cannot view injury reports or OSHA 300 logs. The Union representatives also do not have access to the injury reporting system database.

Here is an excerpt from the official above:

“Employee requests copy of 300 log from Management (Supervisor or Manager); 99.9% of the time Management would (will) say no. Reason – privacy laws, employee does not have a right to see.

If an employee requested a copy of or review of an OSHA 300 or injury report at their station (Airport or Base) or from another station via request through their supervisor, my experience is that supervisors would not know how to obtain that info. Additionally, the supervisor would inform the employee that he/she is not authorized or entitled to view the 300 log or injury report due to privacy requirements and/or the HIPAA law.

Currently, the IBT Safety Committee representatives do not get copies of the 300. Some have asked and been refused by station manager who cited privacy laws.

In one base, I do get copies of the 300 log. Why, because I used our collective bargaining language that states the company will provide.

At another location, the IBT Business agent did demand from the then Station Manager to provide copies of injury/illness reports to the IBT Safety. We got the reports by going up the company chain of command and pressure from the IBT Business Agent at that station. That location now has a new Station Manager who has a different opinion on this. At that location, the IBT is no longer getting copies of injury/illness reports.”

The information below was provided by one of our Teamster organizers for consideration in this rulemaking:

“In November of 2012, Teamsters Local 396 was conducting an organizing campaign at a waste and recycling facility in Los Angeles. The company is called American Reclamation and they employ around 60 workers. Health and Safety issues were one of the main concerns for these workers. After helping workers file a formal complaint with Cal -OSHA a worker asked the employer for the OSHA 300 logs and has yet to receive them. Since then Cal-OSHA has issued 26 citations to the company.”^{vi}

We are providing to the docket several decisions by the National Labor Relations Board (NLRB) dealing with an employer's refusal to provide copies of or access to injury and illness records to the union representing its employees. Under the National Labor Relations Act (NLRA), an employer is obligated to provide the union representing its employees with various sorts of information pertaining to employee's working conditions. The NLRB has long held that this requirement applies to safety records and information, including records mandated by OSHA. The cases are provided as an illustration of the fact that employers frequently deny union representatives access to this information, forcing the union to pursue charges with the NLRB. These cases involve other unions, not the Teamsters.

- The Union made a request for OSHA information on November 4, 2001, in connection with negotiations and formulation of health and safety proposals. The employer did not furnish the OSHA information until June of 2012. The NLRB held that the employer violated Section 8(a) (5) of the NLRA by failing to supply the union with the requested information absent unusual circumstances.^{vii}
- The Union requested OSHA logs on October 19, 2007 for the following years: 2005, 2006, and 2007. The employer furnished the 2007 log on April 1, 2008. The Union reiterated its request for the 2005 and 2006 years on April 9, 2008. The employer provided the 2006 and 2006 years on May 28, 2008. The NLRB held that all OSHA logs for 2005, 2006, and 2007 were untimely delayed and the employer violated section 8(a) (5).^{viii}
- The employer eventually provided the union with copies of the requested logs, but a violation was still found because the Company waited a long time before finally providing the logs. The Administrative Law Judge (ALJ) found the delay to be unreasonable.^{ix}
- The employer initially refused to provide the logs, but eventually turned them over, but was found to have unreasonably delayed.^x
- In another case applying these same principles and involving the OSHA logs, the Board found that an employer was required to turn the logs over upon the Union's request.^{xi}
- The employer furnished OSHA logs with non-unit employees names redacted. The NLRB ruled that employers cannot redact names when they provide OSHA logs, and found the employer in violation.^{xii}

Aside from the NLRB case described above, many labor unions have reported on the issue of employers' illegally redacting names when providing copies of the Logs to union requesters, in direct violation of the OSHA recordkeeping access rules, 1904.35 (b) (2) (iii). Whether it happens in error or by intent, by establishment or corporate management, by a smaller or highly sophisticated larger employer, the chance of a non-union worker ever receiving information to which they are legally entitled from their employers' would be rather slim. This is not to mention the additional threat of retaliation and OSHA's obvious limitations in its ability to effectively defend such workers when they exercise their rights directly in the workplace. It is vital that

OSHA use the modern tools of information technology to sidestep these obstacles and threats and provide the information to workers directly.

The IBT does not have examples to offer OSHA where a company has voluntarily provided to us any safety and health studies and analysis of work-related injuries and illnesses even in the context of a records request for collective bargaining or an OSHA proceeding. This issue is also noted in the letter sent to the docket by Teamsters Local Union 804 that “Despite numerous requests to see the Company’s analysis of injury trends, the Company has denied us access.”

As OSHA explains in the proposed rule, the general public and researchers currently have “access only to aggregate injury/illness data in the SOII, summary data from establishments in the ODI, and fatality/multiple hospitalization event reports.” The availability of this wide variety of data, even at the detailed level of case-specific Form 301 data, will greatly expand the potential utility of both the raw data as well as the subsequent analysis. We address the utility of the data to these groups in the next section.

As OSHA is well-aware, although still useful, there are many inconsistencies in the coding of injuries and illnesses on the OSHA Log. These include “missing data for cases, data entry errors by employers and state/federal employees, and coding errors/inconsistencies.”^{xiii} We believe that

the implementation of the proposed rule would improve these problems both because employers would be more inclined to assure the quality of data that would be public and because they would be subject to immediate OSHA, and public, scrutiny.

Utility of Electronic Data

The IBT strongly supports the proposed rule’s assertion that “The rule's provisions requiring regular electronic submission of injury and illness data will allow OSHA to acquire a much larger database of timely, establishment-specific information about injuries and illnesses in the workplace. This information will help OSHA use its resources more effectively by enabling OSHA to identify the workplaces where workers are at greatest risk.”

Overall, we support OSHA’s position in the proposed rule:

“That the rule will encourage employers to improve and/or maintain workplace safety/health to support their reputations as good places to work or do business with....Many corporations now voluntarily report their workplace injury and illness rates in annual “Sustainability Reports”, in order to show investors, stakeholders, and the public that they are committed to positive social values, including workplace safety.”

We are submitting to the docket two examples of such sustainability reports (Sims Metal Management and Waste Management) where injury and illness rates are cited.

We believe OSHA is also correct to state, in the proposed rule, that “Using data collected under the proposed rule, employers could compare injury rates and hazards at their establishments to those at comparable establishments and set workplace safety/health goals benchmarked to the establishments they consider most comparable...and to compare their own workplaces to the safest workplaces in their industries.”^{xiv}

These factors would be equally useful to the IBT and its affiliates, including joint labor-management safety and health committees, in evaluating conditions at various establishments of the same employer, and among employers in an industry sector, in order to better participate in efforts aimed at reducing injuries and illnesses with those employers.

One of our local union safety representatives, who is employed by a large employer, reported to us that he has to sift through a paper copy of all the names to find the employees who has a particular title of interest attached to their job function at that facility. This is the case in spite of the fact that the same employer makes a huge effort to code these data.

This is an obvious example of how an electronic data format that would provide a simple sorting function that could be done in a spreadsheet rather than having to visually scan a long list for a specific job title, would facilitate any user who wishes to review the data to understand better the patterns of injuries within a specific job title. An electronic version would allow a simple sorting by job title, part of body, department/location, etc.

We firmly believe that the additional data, and analytical tools, available once the proposed rule is implemented, would assist “Workplace safety and health professionals,” which the IBT and some Teamster local unions employ, “to identify establishments whose injury/illness records suggest that the establishments would benefit from their services” and “will support the development of innovative ideas for improving workplace safety and will allow everybody with a stake in workplace safety to participate in improving occupational safety and health.”^{xv}

OSHA correctly states in the proposed rule that access to “Data made available under the proposed rule may also allow researchers to identify patterns of injuries or illnesses that are masked by the aggregation of injury/illness data in the SOII.” This would include academic researchers and the national Institute for Occupational Safety and Health (NIOSH), with both of whom we have worked on many occasions. As OSHA notes, these researchers, along with the general public, currently have “access only to aggregate injury/illness data in the SOII, summary data from establishments in the ODI, and fatality/multiple hospitalization event reports.”^{xvi} The BLS will also allow researchers and other agencies to see its confidential “microdata” (individual establishment responses to the SOII) under strict controls. That is not, however, an adequate substitute for the broad and public dissemination of virtually the same information that is now possible with modern systems for information reporting and compilation.

It is important to note that the BLS SOII, admittedly, undercounts “the number of injury and illness incidents in the workplace...Some have argued that the gold standard for producing estimates of the total burden of workplace injuries and illnesses is a multiple data source system.”^{xvii} The BLS article, “Examining evidence on whether BLS undercounts workplace

injuries and illnesses,” submitted to the docket, explicates the multitude of reasons that might explain this undercounting.

We would like to provide here a recent example of where the OSHA Data Initiative (ODI) data was used by the IBT. This example was described at the January 10, 2014 by Eric Frumin, CTW Health and Safety Director, at the OSHA hearings on this rulemaking.^{xviii} One of the ways which we have used it is to look at the patterns of rates in companies which have come to our attention (based, for example, on a member’s inquiry) or to OSHA’s attention, in one location, but where we would be concerned about the occurrence of similar problems at other locations we represent. Such a case occurred at Exel Corporation, “America’s leader in contract logistics and supply chain management,”^{xix} where we represent several bargaining units, where several hundred Teamsters are employed as warehousemen, material handlers, loaders/unloaders, drivers (among others). Exel is a multibillion dollar, multinational subsidiary of DHL, which is the third largest logistics company after FedEx and UPS.

Exel was contracted by the Hershey Candy Company to operate a packaging operation in Hershey, Pennsylvania. They worked with a staffing agency and a company that was licensed by the State Department to bring in a large number of foreign students that summer; this resulted in an extraordinarily high level of abuse of those workers, not only for safety and health issues, but also for blatant wage theft. Those workers went on strike; OSHA Region 3 intervened and ultimately cited Exel for multiple willful egregious recordkeeping violations with a several hundred thousand dollar penalty. Upon hearing about this case, we reviewed the existing information about Exel on the ODI in the hope of identifying other locations which might be unionized where we could encourage the workers to help the company fix its problems. We found several locations, one of which had a DART rate of over eight, which is considerably high. Because we did not represent workers at the site, we were not in a position to easily participate in the process of addressing the deficiencies at that location. However, Exel later entered into a corporate-wide settlement with OSHA which included substantial improvements to its recordkeeping system.^{xx}

The fact that Exel agreed to such extraordinary remedies, on an issue of fundamental importance as basic injury/illness recordkeeping, speaks loudly to the value of greater public access to such information. If workers at Exel operations had easy access to these data, it is certainly conceivable that gross errors in the company’s policies and practices would come to light without awaiting the level of abuses which triggered the Hershey, PA inspection and subsequent corporate-wide settlement.

On the whole, we strongly believe that “making timely, establishment-specific injury/illness information public” to OSHA, employers, employees, employee representatives, and potential employees, researchers, and the public at large will help achieve increased workplace safety at a relatively small burden in terms of cost.

Underreporting and Prohibition against Discrimination

We are seriously concerned that the new recordkeeping requirements proposed by OSHA may further suppress injury/illness reporting. The problem of underreporting is widely known and

has been documented by studies and government reports; we are submitting a few of these to the docket. Employees may feel fear and pressure to not report accidents, injuries, near misses or other incidents so as to keep the employer's "safety record" favorable upon public release, to receive rewards/recognition and/or avoid punishment or discriminatory treatment in response to reporting.

The underreporting of injuries/illnesses is a problem because underreporting: (1) places the financial burden of dealing with an occupational injury on the worker (copays, lost time for doctor's visits, sick days, medical history of pre-existing conditions that could affect insurance rates post-employment); (2) does not allow for targeted inspection of problem areas by S&H committees due to the lack of truly inclusive injury/illness report records; (3) validates the use of behavior based safety (BBS) programs by facilitating the misconception that improper employee behavior is the sole or primary contributor to workplace injuries/illnesses -- and that by providing incentives/disincentives employers can control employee behavior and encourage them to "work safer"; (4) violates OSHA regulations and Safety Management System (SMS) Guidelines by fostering superficial employee involvement in H&S program development/implementation/evaluation; this superficial involvement is an unfortunate consequence of harmful employer propaganda and a misguided safety culture based on BBS program ideals instead of true root cause analysis; and (5) undermines the union's internal cohesion by causing conflict between members over receiving or *not* receiving perceived "safety incentives, monetary benefits, etc." that, by their very nature, are nothing more than bribes for non-reporting.

As OSHA notes in the proposed rule, "employers are already required to examine and certify the information they collect, under penalty of perjury."

The IBT is, however, is aware of and has evidence about policies and practices that may discourage our members, individually or as a group, from reporting their workplace injuries and illnesses and contribute to the gross underreporting of injuries/illnesses. Examples of these are submitted to the docket along with these comments. These policies and practices, although somewhat alleviated by the March 12, 2012 'Fairfax Memo'^{xxi}, on "Employer Safety Incentive and Disincentive Policies and Practices" remain widespread.

Warning and suspension letters are issued to employees who report occupational injuries and/or illnesses; the letters often state vague assertions that an employee "sustained an injury due to a failure to follow safe work methods and procedures." The letters threaten further disciplinary action leading to termination if the employee again fails to follow company safe work practices, methods, and procedures.

Part 1904.36 states "Section 11(c) of the Act prohibits you from discriminating against an employee for reporting a work-related fatality, injury or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to the Part 1904 records, or otherwise exercises any rights afforded by the OSH Act." At present, under the 'Fairfax Memo,' incentive programs that suppress reporting are as a violation of workers' rights under Section 11(c).

In one instance, at an air carrier establishment, a safety and health representative has informed us of the following:

“Between 2007 and 2011, some of our members did receive warning letters regarding their injury that included a record of any past injuries. We have informed Management that they are in violation of the Fairfax Letter. Since mid-2011 the company; as far as I’m aware of, has stopped this practice.”

“Management had informed the Union representative in a meeting that they might look at disciplining an employee for violation of a safety rule, but the Union made it clear if they did that, there would be consequences to their action(calling OSHA, grievances, etc.)”; management decided against using discipline.

At a “Maintenance Base, I’ve had to implement (use) the Fairfax letter twice in the last 2 years. In both case the injured employees were given a letter of “concern” regarding their “unsafe work habits”. The supervisor reviewed the employee entire work history related to past injures (and recorded info on form). The employee had to sign form and a copy was placed into the employee personnel file. I stopped that practice and had the letters removed. I believe at another City/Maintenance Operations location, this also happened a few times.”

At the same establishment, “in some work areas, if the shop does not have a lost time injury (LTI) for 6 months or 1 year, they may sponsor a BBQ or provide pizza. In the past (pre-year 2000), shops that did not have an LTI or recordable were given an award (certificate)...I do know that our Union Safety reps have in the past had some problems with certain management people at various stations when it involved workplace injuries on all 4 of the Fairfax points.”

“There are no incentives to encourage reporting. They only thing is management informs employees that it’s a requirement under company policy and workers’ comp.”

“Between 2003 and 2009, the company had an “active” BBS program based on the DuPont BBS program. The company no longer uses that program. They have changed it somewhat due to the Aviation requirements for SMS. The new program is call: “TEM” (Threat and Error Management). It’ primarily used for compliance investigations and audits related to aircraft maintenance and airport operations. The program is BBS style. The company has also implemented LOSA (Line Operations Safety Audit). It’s has some elements of BBS. The IBT is currently not partnering with the Company on LOSA. Management does continue to use BBS type terms in the injury and accident investigations and findings. Terms like: Compliancy, employee distracted, careless, lack of awareness and not paying attention. Also under TEM, the term “perform a self-check” is used.”

In the case of another employer, a safety bingo is offered at its various facilities. Using a “bingo game” format, this is a system of rewards and recognition for individuals within a group that does not report having accidents and injuries. A safety survey conducted by the local union for the same employer discovered that the vast majority of employees thought that the employer discourages workers from filing workers compensation claims. It would not be implausible that this employer would also discourage reporting OSHA-recordable injuries and illnesses.

The Brotherhood of Maintenance of Way Employees Division of the Teamster Rail Conference (BMWED) is the recognized collective bargaining representative for 35,000 railroad maintenance of way employees who inspect, install, construct, repair and maintain railroad track, roadbed and related right-of-way infrastructure on all Class I railroads, and several commuter and short line railroads throughout the United States. This Division reported that the rail industry is currently increasing its utilization of behavior-based safety (BBS) programs. These programs focus almost exclusively on the behavior or acts of employees and do little to address the identification and mitigation of hazards. Such behavioral observations are of very limited value and ~~that~~ we believe these programs should be refocused primarily on hazard identification and risk mitigation. Management performance reviews often include favorable consideration for “bad observations” collected and “corrected,” as well as the number of injuries suffered on a particular territory. Thus, the BBS programs are by and large a “numbers game” where there are management incentives for “bad observations” but little or no attention paid to hazard recognition and mitigation. Additionally, management performance reviews often include the number of reportable injuries that have occurred on a particular manager’s territory, thereby providing a financial and promotional incentive to “manage” the number of injuries reported under their watch.

Additionally, management performance reviews often include the number of reportable injuries that have occurred on a particular manager’s territory, thereby providing a financial and promotional incentive to “manage” the number of injuries reported under their watch. We have reports that managers at one of our large employers have told employees who may have experienced an OSHA-recordable injury/illness to take the day or a few hours off.

The use of disciplinary investigations for on-the-job injuries in the rail industry is also widespread. In these disciplinary proceedings, railroad management serves as judge, prosecutor, and jury; the employee and his/her union has no right to discovery of evidence to be presented at the hearing and is faced with a “trial by ambush” without due process. In virtually 100% of these disciplinary investigations, the employee is found guilty and is issued discipline up to and including discharge. This, in itself, has a chilling effect on the reporting of injuries as it sends a strong message to other employees that “if you report an injury, you will be fired.” In another variation of this process, railroads will at times offer the injured employee a “waiver” from the disciplinary investigation, provided that the employee admits “guilt” and accepts a proposed “lesser” punishment than would otherwise be levied against the employee when found “guilty” in the formal investigation process. Therefore, in order to protect his or her livelihood, the employee is forced to “lie” in accepting guilt in exchange for a lesser penalty. Should the employee report another on-job injury, the previous admission of “guilt” will be entered into the record and used against the employee through the imposition of harsh discipline or dismissal as a “repeat offender.” OSHA should be mindful of these practices, the lack of due process in these

investigation proceedings, and the chilling effect they have on the reporting of injuries in the rail industry.

“Many responsible employers want their employees to feel free to come forward and speak out about job hazards. Workers are often the most knowledgeable about safety and health conditions on the job, as they work in these conditions day in and day out. Workers often have practical and cost-effective suggestions for how to address hazards. Unfortunately, not all employers are as open to their employees' involvement. Some employers actively discourage reporting by harassing or retaliating against workers who blow the whistle on job hazards or report injuries. All too often after a workplace tragedy we learn that workers were aware of job hazards but were afraid to come forward and speak out for fear of losing their jobs, or that their complaints were ignored. Unfortunately, the OSH Act is very weak in protecting their rights.

There are three fundamental shortcomings in the OSH Act's anti-retaliation provisions. Workers would be far better protected if the statute of limitations under the OSH Act was lengthened to bring it in line with other anti-retaliation laws, if workers had the right to litigate their own retaliation cases instead of being solely reliant on the Secretary of Labor, and if the law provided for preliminary reinstatement while retaliation cases were pending.”^{xxii}

The above excerpt highlights the challenges faced by the majority of workers in this country who do not have representation through organized labor. Given the difficulties that both union and non-union workers face, and OSHA's inability to fully enforce the 1904 rules, the public release of the data is actually necessitated since it would allow workers to have a subsidiary role in “enforcing” those requirements.

All workers would benefit from strong language in 1904 that would cite and financially penalize a company for any form of injury/illness reporting discrimination. Therefore, we ask OSHA, in the strongest manner possible, to include language in the proposed rule to both prohibit the use of incentive programs which discourage the reporting of injuries or illnesses and forbid any adverse action against an employee who reports an injury or illness based on the reporting of the injury or illness itself. These provisions should be enforceable through penalties and citations along with and in the same manner as the other provisions of the rule.

Significantly, OSHA should consider the fact that those workers who are not governed by collective bargaining agreements and union representation would be at a severe disadvantage in terms of protections available to them individually or as a group.

Specifically, we recommend that OSHA add a new section after Section 1904.5 which reads as follows:

“1904.6(a) an employer shall not institute any program, policy or practice which has the effect of discouraging the reporting of work-related injuries or illnesses.

(b) An employer shall not discriminate or retaliate against any employee who reports a work-related injury or illness to the employer, representative of the employer or health care provider.”^{xxiii}

Questions and Comments

Below is IBT's response to select questions and request for information by OSHA:

Submission of Reports

The proposal requires annual reporting for smaller employers (20 or more) for summary data, Form 300A, and quarterly reporting for larger employers (250 or more) for injury logs, Form 300, and incident reports (Form 301).

OSHA has requested comment on alternatives – monthly submission or annual submission of OSHA 300 and 301s for larger employers.

We support the proposal and oppose any less frequent reporting of the Forms 300 and 301 by the 250+ employee establishments. Quarterly submissions will help identify emerging trends or serious incidents within a much more rapid timeframe than annual reporting, and allow for rapid intervention to stop such trends or respond to such incidents before they continue.

Scope of coverage

The proposal requires reporting by all establishments of 250 or more employees (not tied to injury rate criteria). For establishments of 20 or more employees, reporting is required of establishments in high-rate 4-digit NAICS Codes and/or high-rate industry groups (2-digit industry groups).

For larger establishments, OSHA has requested comments on whether the threshold for detailed reporting should be lowered to establishments of 100 or more employees or increased to establishments of 500 or more employees.

We support the size cut-off proposed by OSHA, but 250 employees should be the maximum. OSHA may want to consider lowering the number to establishments of 200 workers or more; this may capture a significantly greater number of establishments.

Note: Current proposal covers 440,000 smaller establishments (20 or more), annual reporting of 300As, and 38,000 larger establishments (250 or more employees) for more detailed reporting requirements.

VII. Alternative G – Three-step Process of Implementing the Reporting Requirements under Proposed § 1904.41(A) (1) AND (2)

OSHA has asked for comment on an alternative three-step process of implementing the reporting requirements under the proposed § 1904.41(a) (1) and (2).

In the first step of this three-step implementation process, reporting would be required only from the establishments in proposed § 1904.41(a)(1) and (2) that are in high-hazard industry groups (four-digit NAICS with a DART rate greater than or equal to 2.0). As a next step in the process, OSHA would assess the results to see if the criteria should be changed, and as a third step would

be to adjust criteria to the proposed criteria (add in establishments in high-hazard industry groups (2-digit NAICS Code that aren't already covered).

We support the proposed approach rather than this confusing 3-step alternative. The current approach is a better means for capturing higher hazard industries and establishments. The rule already has different requirements for different size employers. OSHA should keep this rule as simple as possible. Changing criteria through phase in would only complicate the implementation of the rule.

VIII. Alternative H - Narrow the Scope of the Reporting Requirements Under Proposed § 1904.41(A) (1) AND (2)

OSHA has asked for comments on narrowing the proposal to apply to 4-digit NAICS codes that have a DART rate of greater than 2.0/100 or a DART rate of 3.0/100. The current proposal requires reporting by all establishments of 250. This would reduce the number of larger establishments covered from 38,000 to 22,000 (2.0 rate) or 10,000 (3.0 rate).

We support the proposed approach rather than the alternative. The current approach is a better means for capturing higher hazard industries and establishments. Lowering the threshold to industries with a DART rate of greater than/equal to 2.0 would reduce the number of smaller establishments covered by about 100,000 and the number of larger establishments covered by 16,000.

OSHA seeks information on the occupation or occupations that would best describe the people who would perform recordkeeping tasks at the enterprise level.

Below are two examples of the OSHA recordkeeping mechanism at Teamster employers in two industry sectors with multiple establishments:

Shipping/Logistics

- Electronic Reporting: “Safety and Health Risk Management Information System” (developed by Aon -Risk Solutions Company);
- There is a dedicated team of 50 people who code injuries and illnesses. They receive annual training;
- Center Management inputs initial Injury/illness data and extensive training is provided to managers who input data.

Air Carrier

- A data and information team, part of corporate safety at the company's headquarters, codes injuries and illnesses into a database, which uses electronic reporting, i.e., the occupational injury system, that collects, records, and tracks all occupational injuries/illnesses recordable under OSHA;

- The data team performs weekly injury/illness data audits to ensure OSHA recording codes are correctly assigned to each injury/illness;
- The data team publishes weekly, monthly, quarterly and annual injury reports;
- The air carrier's workers' compensation administrator inputs injury/illness data into one of the injury databases.

How hard is it for a multi-establishment enterprise to identify all of the establishments under its ownership or control?

Simply put, any parent company should be able to identify all of its corporate subsidiaries and business locations, even those where ownership is less than majority or where locations are franchised. They have to know where all their locations and employers are for insurance and liability reasons alone.

This is particularly true for large or public companies. One can usually find the subsidiary level info in their SEC filings (10-K) and other public documents. That said, the 10-K reports may not have a listing available of all locations available to the public.

We use both public and proprietary databases that often provide significant information about an employer or its affiliated companies by location although one must do significant research to determine corporate structure and relationships.

As noted earlier in 'Access to Injury and Illness Records and Data', at the IBT, we also ask companies for information on the establishment level for collective bargaining purposes and we do receive it. A document, 'Sample Teamsters National Negotiating Committee Information Request,' submitted to the docket, provides an example of information that IBT may request from companies. The request may pertain to 'labor force,' 'operations,' 'safety and health,' 'other operations and employee data,' and 'benefits.' Providing this information to the IBT in aggregate form would signify that the company has thorough knowledge of various facets at, as OSHA puts it here, "all of the establishments under its ownership and control."

Teamster-represented enterprises also report various required data to the government. A recent Senate Health, Education, Labor, and Pension's Committee (HELP) report^{xxiv} on labor law violators, however, reveals and discusses identification problems associated with such data:

Neither the WHD [Wage and Hour Division] nor OSHA enforcement data provide information that allowed Committee staff to identify the corporate structure of the entity listed in the data. In particular, the data does not establish whether or not the listed entity is a parent company, or a subsidiary or affiliate of a parent company. In order to accurately cross reference the name of the entity responsible for the misconduct with USA Spending, and to get a complete understanding of the corporate structure of the company named in the WHD and OSHA data, Committee staff sought to identify further information about the companies named in the database....

Correctly identifying the parent company of the firms listed in the data is difficult for a number of reasons. While in some cases, the entity listed is a parent company without subsidiaries, in general the entity in the data is not a parent company. For example, the

company identified as responsible for the violation may be a parent company with subsidiaries, a subsidiary of a parent company, or a brand name under which a parent company, or subsidiary of a parent company, operates. Additionally, in some cases, the entity identified in the WHD or OSHA data may no longer exist as a result of a bankruptcy, may have legally change its name, or may have been purchased following the time in which the listed violation occurred....

Given these challenges, Committee staff separately researched the corporate structure of entities that received large violations or assessments....

The above explanation illustrates the challenges in using existing tools to clearly answer the question of what federal contractors have broken federal labor laws.

At least how many establishments should an enterprise have in order to be subject or enterprise-wide submission of establishment-specific data?

We agree with OSHA's suggestion for the requirement to apply to enterprises with 5 or more establishments.

As described in Alternative I, the rule would require that employers with 5 or more establishments submit the 300A's for all establishments that are required to keep records. This appears to us to be a reasonable requirement, and one which is appropriate for enterprises with multiple locations.

Should the requirement include a minimum establishment size? For example, the requirement could apply to enterprises with 5 or more establishments, but only if each establishment has 10 or more employees?

We believe 10 is a good minimum number for establishment size in enterprise-wide reporting.

It covers more establishments than required under the current proposal (i.e. 20+ employees), but less than would be required for "enterprises" if there were no minimum number of employees/establishments. As currently required, the overall 1904 rule requires recording onto Logs even at establishments with <10 employees as long as the "employer" - in this case the "enterprise" - has at least 10 employees.

Should the requirement include a minimum enterprise-wide employment size? For example, the requirement could apply only if total employment for the whole enterprise, including all of the establishments belonging to the enterprise, is 50 employees or more.

In light of the 10 and more employee limit endorsed above, then 50 employees or more makes sense.

To what extent do enterprises already collect establishment-specific injury/illness data from all of their establishments?

As noted earlier, one of the air carriers, at which we represent members working as aircraft maintenance technicians (AMT's), ground equipment mechanics and facilities maintenance workers, does use an electronic occupational injury reporting system to track and manage all work-related injuries and illnesses from all of its "establishments," i.e. locations (cities, airports, bases, stations, etc.).

The occupational injury reporting system consists of two separate databases. The first database is owned and maintained by the company's workers compensation administrator, who manages all injuries/illnesses from a worker's compensation perspective. The second database, which allows for the coding of injuries/illnesses to the OSHA guidelines, also generates reports, and creates OSHA 300 and 300A Logs.

All injury/illness information/events are sent to the corporate level, i.e., a supervisor either phones the company's workers compensation administration or goes online (electronic) to report an injury. The workers comp administrator enters information into their database and it to corporate headquarters for review by corporate safety, coding, etc. into the second database. The employer is able to review detailed information on injuries & illnesses in the workers compensation administrator's and occupational injury systems databases.

At one location, base safety reviews injury data, but all coding takes place at the corporate level. Under the current system (to change in 2015), corporate safety sends out copies of OSHA 300s to each station. The station manager reviews and keeps copies. At one base, the base safety team receives OSHA 300s and sends them to managing directors at the various departments.

We also stated, in response to an earlier question on how hard it is for a multi-establishment enterprise to identify all of the establishments under its ownership or control, that for national collective bargaining purposes, we have asked, and received from, companies for company-wide information, including injury/illness records (see attached 'Sample Teamsters National Negotiating Committee Information Request'). In one instance, for example, we requested and received the OSHA Log Summaries (for the past 5 years in database or spreadsheet format); Lost Workday Injury and Illness rates (LWDII) (for each facility and company-wide); and total hours worked for all employees (for each facility and company-wide).

To what extent do enterprises already collect other establishment-specific data from all of their establishments for the purpose of reporting the data to the government?

Each year, a number of enterprises opt to submit, at the corporate level, summary data for each of their establishments selected to participate in the ODI collection for a given year. The table below, provided to us by OSHA's Office of Statistical Analysis, presents the number of enterprises that chose this option and the corresponding number of establishments for which they submitted data.^{xxv} The fluctuation of establishment numbers is primarily due to the industry coverage of a given year's ODI.

Calendar Year (of data)	Enterprises	Establishments
2011	58	1642
2010	57	4622
2009	52	2601
2008	51	4649
2007	42	3147
2006	43	3601
2005	39	3005
2004	34	2148
2003	30	3244
2002	27	1637

As stated in an earlier section, however, regarding a HELP Committee report, data available to various government agencies through reporting or enforcement, does not “provide information that allowed Committee staff to identify the corporate structure of the entity listed in the data.”^{xxvi}

The Bureau of Labor Statistics (BLS) also conducts the Survey of Occupational Injuries and Illnesses (SOII), which is employer-reported data from which estimates of nonfatal workplace injuries and illnesses are published annually. According to correspondence from the BLS,

“While the SOII began as an entirely mail-based survey, the majority of employers currently utilize electronic options for reporting data for the SOII. Collection methods for the SOII have evolved significantly in recent years in response to BLS goals to collect data more efficiently and to provide more timely and accurate data to its users. Use of new technology—namely the Internet and other electronic resources as alternative means for responding to the SOII—has reduced data collection and processing times. The result has been more timely publication of SOII estimates. Options that are available to employers to meet their requirement to respond to the SOII include the Internet, an automated/electronic fillable form, fax, telephone, and mail.”

Regarding electronic submission of Part 1904 injury and illness records, OSHA solicits comments and data from the public regarding any aspect of the proposed requirement:

What are the implications of requiring all data to be submitted electronically? This proposed rule would be among the first in the federal government without a paper submission option.

We applaud OSHA for this pioneering initiative. As OSHA describes, in this proposed rule, however, this is not the first such a practice at OSHA, nor in the federal government.

OSHA has provided public access to the ODI data set since 2004, and according to the OSHA Office of Statistical Analysis, about 70 percent of the participants in the ODI initiative do so electronically, even though the paper option is available.

During the public hearing, Dave Schmidt, OSHA, stated that since 2004, when the data became readily available, he had only received one complaint about the ODI being posted. That one complaint was not about the rate being posted but about the accuracy of the establishment's injury and illness incidence rate.

As OSHA also explains in the proposed rule, the Mine Safety and Health Administration (MSHA) and the Federal Railroad Administration (FRA) require and receive reports pertaining to each accident, injury or illness for decades.

The FRA provides the option for RRs to submit data electronically:

- FRA's software application AIRG allows data entry, update, maintenance, and electronic upload of reporting data to the FRA. [Click here for AIRG Request Form](#), or
- Railroads can submit year-to-date data electronically, following the data file layout specifications in the Companion Guide: [Guidelines for Submitting Accident/Incident Reports by Alternative Methods Published in May 2011](#).^{xxvii}

State government agencies have also embarked on electronic data submission. For example, the Florida Department of Business and Professional Regulation offer both web-based and batch upload (ftp) reporting.^{xxviii}

In addition, the Bureau of Labor Statistics (BLS) conducts the Survey of Occupational Injuries and Illnesses (SOII), which is employer-reported data from which estimates of nonfatal workplace injuries and illnesses are published annually. According to correspondence from the BLS,

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“Use of electronic reporting grew quickly and by the 2009 survey year, around 70 percent of total responses to the SOII were submitted electronically using IDCF this includes some

respondents who report for multiple establishments). Electronic collection has remained around this level through collection of the 2012 SOII.”

As OSHA states in the proposed rule, however,

“The data base resulting from this proposed rule would provide for the use of establishment-specific data without having to work under the restrictions imposed by BLS for the use of confidential data. It would also provide data on injury and illness classifications that are not currently available from any source, including the BLS SOII. Specifically, under this collection, there would be case-specific data for injuries and illnesses that do not involve days away from work. The BLS case and demographic data is limited to cases involving days away from work and a small subset of cases involving restricted work activity.”

Due to our large membership in road transportation, we are familiar with a program utilized by the Federal Motor Carrier Safety Administration (FMCSA) called the Carrier Safety Measurement System (SMS).^{xxx} SMS is a component of the agency’s Compliance, Safety, Accountability program, which was launched in 2010 to identify and prioritize motor carriers that pose the highest threat to public safety for enforcement interventions (i.e., actions used by FMCSA to encourage or enforce safe motor carrier practices^{xxxii}). The SMS relies on roadside inspection data and FMCSA-reportable crash data and is updated monthly. Actions taken include warning letters, onsite/offsite investigation, outreach, and fines.

The system allows both motor carriers and the public to download various kinds of files (MS Excel and/or XML files, and ‘flat’ data files).^{xxxiii}

A new study^{xxxiii} recently confirmed that the SMS has been more effective at identifying commercial bus and truck companies of all sizes for targeted enforcement than the system it replaced. “Results show that the companies the SMS would have identified for interventions, such as roadside inspections, warning letters and on-site investigations,” and the majority of carriers “that SMS would have ranked as high risk in at least one of the seven safety categories it monitors” would have had higher crash rates.^{xxxiv}

Despite the differences in data presented (i.e., injuries/illnesses, accidents crashes, inspections), as well as the source of the data (i.e., government agencies as compared to employers themselves), the overall point we are making here is the same: Regulatory agencies can make good use of large data sets to set intelligent priorities for enforcement and even rulemaking.

Regarding the implication of electronic submission of records for employers, as we noted in the discussion on access to records, we have received, upon request, an electronic copy of the OSHA 300 and 300 A from an employer, but we have received paper copies of these in the past, typewritten. As explained elsewhere, however, the same employer has a dedicated team that codes injuries and illnesses into an electronic system.

Earlier in these comments, we offered an example of an air carrier that is transitioning to a fully electronic system, although not providing access to union representatives and members on it so far. Three reporting systems are still in place:

- Phone call notification
- Online computer reporting system
- Word document form and send via e-mail

More current BLS injury and illness data will be available at the time of the final rulemaking. Use of newer data may result in changes to the proposed industry coverage. Should OSHA use the most current data available in determining coverage for its final rule? Would this leave affected entities without proper notice and the opportunity to provide substantive comment?

We recommend that OSHA uses the latest BLS data. The results of the Survey of Occupational Injuries and Illnesses (SOII) are one year behind, but they may point to emerging or immediate hazards.

“An emerging risk is a recently discovered actual or potential hazard to people and property. The hazard is typically recognized by empirical means including engineering analyses, accident or injury investigations, toxicological studies, and epidemiological studies. Newly synthesized materials for which empirical studies are lacking may be identified as emerging issues because of the nature and physical characteristics of the materials.”^{xxxv}

Should the electronic submission requirement be phased in, with a paper submission option available for a certain period of time at the beginning for some or all of the establishments subject to the proposed rule, or should the electronic submission requirement take effect immediately?

Large employers (those greater than 250) should be able to meet the requirement for mandatory electronic reporting once OSHA provides the appropriate software/web portal. However, it makes sense to phase in the requirement for larger employers (greater than 250) to submit 301s to allow time for OSHA to come up with a system/approach to scrub data to ensure worker confidentiality. But the summary data and Logs should be able to be submitted without any significant delay. It may be reasonable to allow some phase-in for mandatory electronic reporting by the smaller employers in the 20 or more range, possibly up to 2 years.

What are the implications of a phased-in electronic submission requirement versus an immediate electronic submission requirement for establishments subject to proposed § 1904.41(a) (1) *Quarterly electronic submission of Part 1904 records by establishments with 250 or more employees?*

We oppose a phase-in for the 250+ employee category. In our experience, these companies are certainly large enough to handle that responsibility, and will receive the analytic benefits such a reporting system provides.

How should the electronic data submission system be designed? How can OSHA create a system that is easy to use and compatible with other electronic systems that track and report establishment-specific injury and illness data?

The system should allow for employers to report data that is currently recorded electronically by them (i.e., upload existing files, or directly into a web-formatted form).

To further assist OSHA in this task, and if OSHA would be interested, we could attempt to connect OSHA with a few of our employers in various sizes to determine their existing systems, prerequisites, and potential needs.

We also recommend that OSHA review existing data submission systems (such as FMCSA's SMS, MSHA and FRA) and adopt/incorporate the best of these systems into OSHA's system.

According to correspondence we received from the BLS,

“The BLS Internet Data Collection Facility (IDCF) is the centralized data collection facility used by the SOII and other BLS programs as a platform for Internet data collection. This facility provides a uniform, manageable, and secure environment for BLS survey collection via the Internet. BLS first used the IDCF for the 2002 survey year. The IDCF survey instrument is a web-based tool that provides sampled employers the ability to respond to the SOII via the Internet. Employers can enter their injury and illness data, along with employment and hours worked, using an Internet-based system that is designed to resemble as closely as possible the hard copy survey forms that employers traditionally received and responded to by mail. Use of electronic reporting grew quickly and by the 2009 survey year, around 70 percent of total responses to the SOII were submitted electronically using IDCF. Electronic collection has remained around this level through collection of the 2012 SOII. In addition to the IDCF, employers have the option to request, receive, and respond electronically to the SOII using an automated fillable survey form. Approximately 5 percent of SOII respondents utilize this method. Other alternative methods for satisfying the requirement to respond to the SOII include a standardized fax form, telephone, and mail. Regardless of which option an employer chooses for responding to the SOII, each form has been designed to resemble employer OSHA recordkeeping forms to allow for easy transcription.”

The FMCSA's SMS provides various file formats, depending on the users of the systems, to make SMS results and supporting information available to all carriers with an active U.S. DOT Number.^{xxxvi}

“For public users, a series of comma delimited 'flat' data files are available at: <http://ai.fmcsa.dot.gov/SMS/Data/Downloads.aspx>. One contains summary carrier registration information and the other contains inspection and SMS summary results for each of the five publically available Behavior Analysis and Safety Improvement Categories (BASICS).

Motor carriers that are logged in to the SMS Website can download MS Excel and/or XML files containing all inspection and crash data that are used in the calculation of their current SMS results. This data can be downloaded for a single BASIC or for all BASICS in a single download. Motor carriers can log in via the [FMCSA Portal](#) or the [SMS Website](#).”^{xxxvii}

Should the electronic data submission system be designed to include updates? § 1904.33(b) requires employers to update OSHA Logs to include newly-discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously-recorded injuries and illnesses.

We do not believe there should be a requirement for employers to update their submissions; it would create complications that are not likely to justify the additional benefit. Employers are always free to inform anyone requesting their records that the numbers have changed since submitted. But the number of updates for the reasons suggested is small.

We do not, however, oppose, OSHA’s allowing a provision for a record to be updated, if OSHA determines the need. OSHA may already be aware of circumstances (e.g., from the ODI) concerning the quality of data on the Log and other forms where such action would be warranted.

The FMCSA’s DataQs system allows “a motor carrier or owner/operator...to file concerns about inspection and crash data available from FMCSA or other information displayed on your records” and “to request and track a review of Federal and State data issued by FMCSA that you feel may be incomplete or incorrect. The system automatically forwards your Request for Data Review (RDR) to the appropriate office for resolution and collects updates and responses for current Requests.”^{xxxviii}

What additional steps, if any, should the Agency take to protect employee privacy interests?

OSHA addresses the issue of privacy in the ‘Publication of Electronic Data’ section states that “the publication of specific data elements will in part be restricted by provisions under the Freedom of Information Act (FOIA) and the Privacy Act, as well as specific provisions within Part 1904.”

In this section, OSHA also discusses the practices of agencies like MSHA, FRA, and FAA, where personally-identifiable information appears in their publicly available electronic data and reports.

“OSHA is charged with regulating health and safety in the workplace, and is considered a public health authority and a health oversight agency under HIPAA. The agency sometimes has to use and disclose protected health information to conduct investigations, litigate cases, and engage in other activities. Although OSHA is not a “covered entity” under HIPAA and is not bound by the use and disclosure requirements included in the privacy regulation, it complies with applicable laws and regulations protecting privacy, such as the Privacy Act, 5 U.S.C. § 552a.”^{xxxix}

We are satisfied with OSHA’s statements about the information pertaining to employee privacy concerns that would be included and excluded from the forms (300A, 300, and 301) covered by this proposed rule. With these provisions in place, we are not concerned and do not anticipate any concerns by our members about their privacy.

Regardless, this issue needs to be handled properly. OSHA should phase in the reporting of data from the 301s (e.g., 2-3 years) to have a system and measures in place for scrubbing data.

What analytical tools could be developed and provided to employers to increase their ability to effectively use the injury and illness data they submit electronically?

We have noted earlier how two of our employers use injury/illness tracking systems to collect and record all OSHA-recordable occupational injuries/illnesses. We would encourage OSHA to provide tools that would bolster and enhance employer efforts aimed at preventing injuries and illnesses. These tools could be useful to our membership as well, especially at establishments that have joint labor- management health and safety committees. These are required by some of our master contracts with a single employer or within an industry and in individual collective bargaining agreements with single employers.

As noted earlier, to further assist OSHA in devising tools that would increase the utility of their data, if OSHA would be interested, we could attempt to connect OSHA with a few of our employers in various sizes to determine their existing systems, prerequisites, and potential needs.

Should this data collection be limited to the records required under Part 1904? Are there other required OSHA records that could be collected and made available to the public in order to improve workplace safety and health?

This rule should be limited to the 1904 data. However, OSHA should consider making this rule flexible enough to allow it to require reporting the other kinds of information in the future, particularly specific records (such as employee exposure data) that are already required by various OSHA standards. This would provide a better measure/indication of health risks faced

by workers. In addition, OSHA may also wish to require employers to report other records currently mandated under other existing OSHA standards, such as employer reports of incidents investigated under the Process Safety Management (PSM) standard. The system should be designed to accommodate such expansions in the future.

Such reporting could also be required by new standards. For instance, OSHA is currently considering important revisions to the standards on PSM and Silica. Either of those rulemakings could benefit from knowing that OSHA has in place a mechanism to easily require employers to report standardized data to OSHA in the future. Such reporting is now a foundation of MSHA's regulatory and enforcement programs, and it should be part of OSHA's going forward as well.

For the proposed § 1904.41(a) (1) (*Quarterly electronic submission of Part 1904 records by establishments with 250 or more employees*), what would be the advantages and disadvantages of making submission annual, rather than quarterly?

We oppose an annual, rather than quarterly, submission of the data from *establishments with 250 or more employees*, just as we oppose a monthly submission, both because we agree with OSHA's argument in favor of timely data, balanced by the number of times required to log in to the data collection system and, also, because we do not believe for this size employer, it would create an excessive burden.

As expressed in the proposed rule,

“First, cases from the beginning of the year would not be reported until the end of the year. Second, receiving, cleaning, and analyzing the submission of a year's worth of data all at once, rather than at regular intervals during the year, would affect OSHA's ability to make the data available to the public in a timely fashion.”

We reassert that 250 employees should be the maximum size for an establishment that OSHA adopts since many establishments would be lost even at this level.

Should the designated industries for proposed §1904.41(a)(2) (*Annual electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 or more employees in designated industries*) remain the same each year, or should the list be adjusted each year to reflect the most current BLS injury and illness data?

We recommend that OSHA updates its criteria/list every 3 years. An annual adjustment would be unnecessary and confusing.

How should OSHA design an effective quality assurance program for the electronic submission of injury and illness records?

We favor an effective quality assurance and audit program; OSHA may discuss this with other government agencies that may have such programs. They would include FMCSA (SMS), MSHA and FRA, but could include other government agencies that receive electronic records as well.

FMCSA's "Data Quality module identifies FMCSA resources for evaluating, monitoring, and improving the quality of data submitted by States to the Motor Carrier Management Information System (MCMIS)" "and provides for The State Safety Data Quality (SSDQ) program that assists State partners in measuring and improving their crash and inspection data and the 'DataQs' system for identifying and correcting data reported to FMCSA."^{xi}

ⁱ <http://www.regulations.gov/#!documentDetail;D=OSHA-2013-0023-0001>

ⁱⁱ <http://teamster.org/divisions>

ⁱⁱⁱ Change to Win consists of IBT, SEIU, and UFW. <http://www.changetowin.org/about>

^{iv} <http://www.regulations.gov/#!documentDetail;D=OSHA-2013-0023-0001>

^v <https://www.osha.gov/recordkeeping/odi-background.html>

^{vi} <http://www.dir.ca.gov/DIRNews/2012/IR2012-21.html>

^{vii} *Rosodev Hospitality*, 2013 WL 3294090

^{viii} *Castle Hill Health Care Center*, 355 NLRB No. 196

^{ix} *Bristol Manor Health Care Ctr.*, S: 22-CA-28153, 2010 WL 587338 (N.L.R.B. Div. of Judges Feb. 18, 2010)

^x *The Finley Hospital*, 359 NLRB No. 9 (Sept. 28, 2012)

^{xi} *Honda of Hayward*, 314 N.L.R.B. 443 (1994)

^{xii} *Hyatt Hotels Corp.*, et al. 36 NLRB AMR 64, March 07, 2014

^{xiii} <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2078472/>

^{xiv} <http://www.regulations.gov/#!documentDetail;D=OSHA-2013-0023-0001>

^{xv} <http://www.regulations.gov/#!documentDetail;D=OSHA-2013-0023-0001>

^{xvi} <http://www.regulations.gov/#!documentDetail;D=OSHA-2013-0023-0001>

^{xvii} <http://www.bls.gov/opub/mlr/2008/08/art2full.pdf>

^{xviii} <https://www.osha.gov/recordkeeping/DOLMeeting-ITWII01-10-2014.pdf>

^{xix} http://www.exel.com/exel/exel_who_we_are.jsp

^{xx} https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=CWSA&p_id=2200

^{xxi} <https://www.osha.gov/as/opa/whistleblowermemo.html>

^{xxii} Lynn Rhinehart, *Workers at Risk: The Unfulfilled Promise of the Occupational Safety and Health Act*, West Virginia Law Review, Volume 111, Number 1, Fall 2008, 117.

^{xxiii} Excerpt, AFL-CIO Comments on OSHA recordkeeping proposal, 1996.

^{xxiv} See Appendix 1, pp. iii – vi, available at:

<http://www.harkin.senate.gov/documents/pdf/52a876b0e4d63.pdf>

^{xxv} Office of Statistical Analysis, OSHA.

^{xxvi} <http://www.harkin.senate.gov/documents/pdf/52a876b0e4d63.pdf>

^{xxvii} <https://safetydata.fra.dot.gov/OfficeofSafety/publicsite/NewRegulation.aspx>

^{xxviii} [http://www.myfloridalicense.com/dbpr/abt/eds/;](http://www.myfloridalicense.com/dbpr/abt/eds/)

<http://www.dec.ny.gov/chemical/62440.html>

^{xxix} <http://www.bls.gov/respondents/iif/forms.htm>

^{xxx} <http://ai.fmcsa.dot.gov/sms/>

^{xxxi} http://csa.fmcsa.dot.gov/Documents/CSMS_Effectiveness_Test_Final_Report.pdf

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- ^{xxxii} <https://csa.fmcsa.dot.gov/FAQs.aspx>
- ^{xxxiii} http://csa.fmcsa.dot.gov/Documents/CSMS_Effectiveness_Test_Final_Report.pdf
- ^{xxxiv} <http://www.fmcsa.dot.gov/about/news/news-releases/2014/digest-14-02-05.aspx>
- ^{xxxv} Occupational Emerging Risks, NIOSH, <http://www.cdc.gov/niosh/docs/2010-148/pdfs/2010-148.pdf>
- ^{xxxvi} <https://csa.fmcsa.dot.gov/SMSPreview/Tools/Downloads.aspx>
- ^{xxxvii} <https://csa.fmcsa.dot.gov/SMSPreview/Tools/Downloads.aspx>
- ^{xxxviii} <https://dataqs.fmcsa.dot.gov/>
- ^{xxxix} <https://www.osha.gov/Publications/OSHA-factsheet-HIPPA-whistle.pdf>
- ^{xl} <https://dataqs.fmcsa.dot.gov/>