



July 13, 2017

OSHA Docket Office
Docket No. OSHA 2013-0023
Room N-3653
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, DC 20210

VIA ELECTRONIC SUBMISSION: <http://www.regulations.gov>

Re: OSHA Docket No. OSHA-2013-0023; Proposed Rule to Delay Compliance Date for Reporting Requirement under Final Improve Tracking of Workplace Injuries and Illnesses Regulation (82 Fed. Reg. 29261, June 28, 2017)

To the Docket:

The Coalition for Workplace Safety (CWS) is comprised of associations and employers who believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability. The CWS believes that workplace safety is everyone's concern and improving safety can only happen when all parties—employers, employees, and OSHA—have a strong working relationship.

The undersigned members of the Coalition welcome OSHA's proposal to delay the reporting requirement under the final regulation titled, "Improve Tracking of Workplace Injuries and Illnesses" issued May 12, 2016 ("final reg," "underlying reg") as a necessary first step to a more substantial revision or rescission of that regulation. Although the proposed delay in the reporting requirement from July 1, 2017 to December 1, 2017 is a positive action, the CWS believes the more appropriate action would be to stay this reporting requirement indefinitely pending the results of OSHA's announced further rulemaking (82 Fed. Reg. 29261).

If OSHA merely delays this reporting requirement, but then has it go into effect before eventually eliminating it through the more comprehensive rulemaking, employers will have had to go through the expense and uncertainty of developing their compliance regimes for naught. Even if OSHA ultimately leaves the reporting requirement in place, there is no harm to suspending it until the comprehensive rulemaking to review the full regulation is complete.

More importantly, in the final regulation preamble, OSHA makes clear that any reports, even the annual summaries (Form 300A) that are the subject of this proposed delay, will be *The CWS is comprised of associations and employers who believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability.*

posted online, and subject to Freedom of Information Act requests thus assuring that confidential business information (CBI) contained in the summaries will be publicly available against the interests and wishes of employers (81 Fed. Reg. 29650, 29658). The Form 300A, while only a summary of recordable injuries, still contains sensitive confidential business information in the form of average number of employees and total hours worked. This data can be used by competitors to calculate production rates and efficiencies. Employers typically make significant efforts to protect this data. Even OSHA has historically recognized the sensitive nature of this data and sought to protect this information from being released under Freedom of Information Act requests. Unfortunately, OSHA makes clear in the preamble to the final regulation that the policy since 2004 is to not protect this information from FOIA requests, and that accordingly the agency intends to post this information online along with all other information collected on the Form 300A (*Id.*).

As detailed in our comments, the CWS strongly opposed this regulation when it was proposed in November 2013, and when the supplemental was proposed in August 2014 (see attached comments). OSHA made no attempt to cure the problems the CWS raised in our comments to both of these proposals. Accordingly, our opposition to the underlying regulation has not changed and we continue to believe it should be rescinded. Among our criticisms is that OSHA provided no evidentiary support for their assertion of benefits flowing from the regulation and the reporting requirement. Coupled with OSHA's commitment to posting company information online, the CWS had legitimate and serious concerns about protecting company data.

In addition to our belief that OSHA should stay the reporting requirement indefinitely, OSHA's proposal for a delay is flawed for practical reasons. OSHA states the online portal will be available by August 1 so that employers may become familiar with it (82 Fed. Reg. 29261). However, OSHA never indicates how, or whether, it will be compatible with various digital recordkeeping systems currently in use. OSHA makes no claim to having field tested the online portal, or beta testing it, only that employers will have four months with which to learn it. While digital recordkeeping is certainly a widespread practice, and may be preferred, how digital records get transferred to OSHA's portal is not explained. If the systems are incompatible there may actually be manual data entry required which would defeat the point of OSHA specifying only digital submission. There may also be significant effort required to coordinate and compile records from throughout a company for submission purposes. None of these possible, perhaps likely, steps are accounted for in the economic analysis accompanying this regulation, nor the underlying final regulation.

Furthermore, notwithstanding the advantages of digital recordkeeping, OSHA's requirement of digital-only submission is inappropriate considering this will be a legal requirement. For comparison, the Internal Revenue Service still permits paper filing of tax returns. Employers must be given options across the technology spectrum if they will be required to comply. Specifying only one option, even if it is preferred, shows a lack of willingness to accommodate all employers.

The CWS welcomes OSHA's determination to review the underlying regulation, but for the above reasons strongly urges OSHA to stay the reporting requirement until the comprehensive rulemaking is complete.