



## THE OHIO AUTOMOBILE DEALERS ASSOCIATION

October 28, 2011

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

Re: Occupational Injury and Illness Recording and Reporting Requirements-NAICS  
Update and Reporting Revisions; 29 CFR Part 1904; Doc. No. OSHA-2010-0019

Dear Dr. Michaels:

The Ohio Automobile Dealers Association (OADA) represents over 800 franchised car, truck and motorcycle dealers representing thirteen percent of Ohio's retail sales. Franchised dealers in Ohio employ over 38,000 Ohioans. As one of the largest employers in the state of Ohio, our members understand and value the critical role their employees play in the success of their businesses.

OADA is filing these comments in response to the Occupational Safety and Health Administration's (OSHA) recent request for comments on a proposed rule. The Association appreciates this opportunity to submit comments on the proposed rule on occupational injury and illness recording and reporting requirements, NAICS updates and reporting revisions published in the Federal Register on June 22, 2011.

In the above-referenced proposed rule, OSHA is proposing to revise the current list of partially exempt industries from OSHA recordkeeping requirements using the North American Industry Classification System (NAICS). In the proposed rule as published in the Federal Register under Table 3-1, OSHA identifies those industries that are partially exempt but would include establishments that would be newly required to keep OSHA records if the proposed rule is adopted by OSHA. One of those industries is NAICS code 4411, "Automobile Dealers." Obviously this will dramatically impact the members of the Association.

For the reasons set forth below, OADA disagrees with OSHA's proposal to eliminate the automobile dealers exemption from the OSHA recordkeeping standard reporting requirements and to now require all automobile dealers to maintain the OSHA 300 logs, the 300A summaries and supporting documentation.

The loss of the partial exemption for automobile dealers unfairly penalizes an industry sector with a recordkeeping and reporting burden when our industry has had declining injury and illness

rates for almost thirty years. Automobile dealers remain a low hazard industry with a DART rate that has fallen almost 50% since 1980. While the industry average DART rate has fallen at a somewhat faster rate, automobile dealers continue to improve but now are experiencing a decreasing rate of decline. The DART rate for automobile dealers has improved so much, we are at the limit for rapid improvement. The private employer average started out much higher than automobile dealers and therefore had the opportunity to fall rapidly due to the increased scrutiny of OSHA and the move in the United States from high hazard industry to a more service oriented economy.

OADA believes that automobile dealers should continue to be exempt in any revision of OSHA's rulemaking standard. Automobile dealers around the country have demonstrated a strong commitment to safety and health of their employees. Also, the fact that OSHA has exempted the automobile dealers from recordkeeping documentation requirements for nearly thirty (30) years demonstrates that OSHA recognizes that automobile dealers have a good safety record and that the work performed by automobile dealers is of low-hazard status.

In addition, OADA believes that OSHA in its economic feasibility analysis has significantly underestimated the cost to employers on these proposals, particularly the cost associated with the new industries being brought into the non-exempt classification. Specifically, OSHA in its proposed rule has indicated that this is not a "significant regulatory action" within the context of Executive Order 12866 or the Unfunded Mandate Reform Act (UMRA) (2 U.S.C. §1532(a)) or a "major rule" under the Congressional Review Act (5 U.S.C. 801 *et seq.*). OSHA states in the proposed rule that this rulemaking has a net cost of \$8.5 million and a cost of between \$50-100 per affected establishment. OADA strongly disagrees with this analysis.

OADA believes that OSHA has significantly underestimated the cost to new entities based on clear evidence. In the proposed rulemaking published in the Federal Register on June 22, 2011, OSHA indicates in Table 3-1 that there will be 23,351 automobile dealership establishments affected by being newly required to provide records. OSHA estimates the total number of all establishments affected being now required to keep OSHA recordkeeping records at 198,763. Each one of these newly-covered establishments will now have to train at least one person at each establishment on all OSHA recordkeeping requirements. A review of the training offered by nationally known safety training organizations demonstrates that the cost will be significant. A review of the National Safety Council's website revealed that the National Safety Council provides a one-day OSHA recordkeeping training course, the cost of which is \$230 per member or \$300 for non-members. Assuming that most of those establishments identified by OSHA are not members of the National Safety Council, just the seminar course cost for those establishments would be almost \$60 million for one day. Also factoring the cost of having one employee from each of the 198,763 establishments attending the one-day (assuming eight hours) training session and their average wage per hour being \$20 per hour, the total cost on lost wages for all establishments would be approximately \$32 million. Therefore, just based on the initial training cost and not including any other cost associated with actually maintaining the records, the cost is approximately \$92 million. Based on these assumptions, it is reasonable that the total costs associated with training and maintaining the records even for one year would exceed the \$100 million, thus making it a "significant regulatory action."

In summary, OADA believes that there is going to be a significant cost to our members based on the proposed changes outlined in the June 22, 2011 Federal Register announcement. For nearly thirty years automobile dealers have been exempt from maintaining the OSHA 300 Logs and we have seen a steady decline in the industry's DART rate. The loss of the partial exemption for automobile dealers unfairly penalizes an industry sector with a recordkeeping and reporting burden as well as significantly underestimated costs when our industry continues to experience declining injury and illness rates.

Thank you for this opportunity to comment on the proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Doran", with a stylized flourish at the end.

Tim Doran  
President