

OCT 31 2011

October 28, 2011

The Honorable David Michaels  
Assistant Secretary Labor for Occupational Safety and Health (OSHA)  
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:

Please note that on behalf of Holman Automotive Group, Inc., I had attempted to submit the attached comments on October 28, 2011 at approximately 11:55 PM through <http://regulations.gov>; however, I was unable to do so. I did submit a request to the technical assistance department on that site immediately, but wanted to ensure these comments were received. Therefore, I am faxing a copy to the number referenced in the proposed rule - (202) 693-1648.

Sincerely,



William Abate, CSP, CHMM  
Risk and Safety Manager



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200 Constitution Avenue, NW  
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**Re: Occupational Injury and Illness Recording and Reporting Requirements-NAICS  
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Dear Dr. Michaels:

Holman Automotive Group, Inc. consists of over 25 operating companies which include automotive dealerships in New Jersey and Florida, two small leasing and auto retail finance companies, an auto parts distributorship, two truck up-fitting businesses, and the largest privately-owned fleet leasing and management company in the country. Holman currently has approximately 3,200 employees.

Holman is filing these comments in response to the Occupational Safety and Health Administration's (OSHA) recent request for public comments on the proposed rule referenced above. Holman 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.

The revised list largely results from OSHA's decision to transition from classifying industries using Standard Industrial Classification (SIC) codes to the North American Industry Classification System (NAICS). 29 CFR Part 1904, Subpart B, Appendix A; 76 Fed. Reg. 36436. The notice also seeks comment on a proposal to revise the requirement that employers notify OSHA upon the occurrence of a workplace death or certain serious reportable injuries.

For the reasons set forth below, Holman disagrees with OSHA's proposal to eliminate the "Automobile Dealers" (NAICS code 4411) exemption from the OSHA recordkeeping standard reporting requirements and to now require all automobile dealers (new and used) to maintain the OSHA 300 logs, the 300A summaries and supporting documentation.

The current proposal looks at 2007, 2008, and 2009 BLS Survey Data. However, instead of examining three digit SICs, OSHA is proposing to evaluate potentially exempt industries at the four-digit NAICs level. This appears appropriate given that NAICS is the

industrial classification system currently used by the BLS and other federal statistical agencies to classify business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. In addition, going to a four-digit level NAICS code should adequately provide for a sufficient level of detail without going overboard.

The proposed universe of industry sectors potentially eligible for the Partially Exempt Industries List (PEIL) includes two-digit NAICS 44-89. Similar to what was done in 1982 and 2001, OSHA is proposing to evaluate the average DART rates of potentially exempt four digit NAICS industry sectors against a cutoff of 75% of the private employer overall average. By shifting to four-digit NAICS codes, the proposed PEIL includes a larger number of industry subgroups than the 2001 three-digit SIC code-based PEIL. NAICS 4411 (Automobile Dealers) is virtually identical in scope to SIC 551 (Motor Vehicle Dealers) however; unlike in 1982 and again in 2001, Automobile Dealers are not being proposed for inclusion in the PEIL.

### **The Final Rule Should Continue to Include Automobile Dealers in the PEIL**

The average DART rate for all private employers based on BLS survey Data for 2007, 2008, and 2009 was 2.0, resulting in proposed 75% cutoff of 1.5. Again looking at 2007, 2008, and 2009, the average DART rate for Automobile Dealers was 1.6, just the slimmest of margins above the 1.5 cutoff. Notably, earlier this month, the BLS released data for 2010. Looking at 2008, 2009, and 2010 data, the average DART rate for all private employers appears to be 1.9, resulting in a 75% cutoff of 1.4. However, based on 2008, 2009, and 2010 data, Automobile Dealers would have an average DART rate of 1.5, again missing the cutoff by an extremely small margin. Notwithstanding this result, Holman continues to urge OSHA to always use the most current annual BLS survey data available to it as it moves forward with finalizing this and any other PEIL rule. Of course enacting this approach may necessitate the issuance of a Supplemental Notice of Proposed Rulemaking to accommodate substantive differences from what was set out in the June 2011 proposal.

The rule as currently proposed would impose significant recordkeeping costs and burdens on Automobile Dealers with no offsetting benefits. At the very least, imposing annual injury and illness recordkeeping burdens on Automobile Dealerships would conflict with constraints imposed by the Occupational Safety and Health Act and the Paperwork Reduction Act. 29 USC 657(d) and 44 USC 3501. OSHA should not overlook the fact that the Automobile Dealership sector has had almost 30 years of continuously declining DART rates and remains a low hazard industry with a DART rate that has fallen close to 50% since 1980. Based on 2010 data, the industry has achieved an all-time-low average DART rate of 1.4.

Adequate injury and illness data has been, and will continue to be, collected for the sector, as needed through the BLS annual Survey of Occupational Injuries and Illnesses. Moreover, Automobile Dealers have and will continue to keep injury and illness records as a condition of workers compensation insurance.

## **Costs to Employers of Annual OSHA Form 300 Recordkeeping**

In Holman's opinion, OSHA has significantly underestimated the cost Automobile Dealers were they to be required to comply with annual Form 300 Recordkeeping as indicated in the proposed rule. In particular, the proposal indicates that it will cost all newly regulated establishments some \$8.5 million based on establishment cost of between \$50-100 and a per dealership cost of \$84/year.

Using 2006 Census data, the proposal indicates that 23,351 Automobile Dealers will be impacted with each one having to train at least one person on the Form 300 injury and illness recordkeeping requirements. A review of the training offered by nationally known safety training organizations suggests that the cost will be much more than OSHA estimates. For example, the National Safety Council (NSC) provides a one-day OSHA recordkeeping training course, the cost of which is \$300 for non-members. This figure does not include travel, lost income, and other related expenses that could easily exceed the \$300 fee. This training estimate doesn't include the level of knowledge necessary to access and understand letters of interpretation offered by OSHA for complex recordkeeping cases. Thus, Automobile Dealers alone easily may be expected to incur up to \$15 million in initial training costs. Using OSHA's 20% turnover rate, Automobile Dealers would incur ongoing training and related costs of \$3 million. In addition, OSHA should expect that it will require an employee earning \$30/hour some 3-5 hours/per year for all other compliance responsibilities associated with monitoring for workplace related injuries and illnesses and with completing, summarizing, certifying, and posting the log.

## **Proposed Revisions to 29 CFR Section 1904.39**

The proposal would amend the current requirement that establishments, including Automobile Dealerships, orally report to OSHA within eight hours of the work-related death of an employee or the in-patient hospitalization of three or more employees to instead require the oral reporting to OSHA within eight hours of the work-related death of an employee or *any* in-patient employee hospitalization. It would also require the oral reporting within 24 hours of any work-related amputation.

Holman supports the proposed fatality and amputation reporting requirements but suggests that the existing standard for the reporting of in-patient hospitalizations adequately serves to meet the legitimate need to allow OSHA the ability to respond to or learn from serious workplace incidents. Requiring the reporting of any and all employee in-patient hospitalizations would unnecessarily burden both employers and OSHA with a large number of reports, many of which reflect nothing more than precautionary hospitalizations directed at concerns that may or may not be work-related in many cases.

On behalf of Holman Automotive Group, Inc., I thank OSHA for the opportunity to comment on this matter.

Sincerely,



William Abate, CSP, CHMM  
Risk and Safety Manager