



September 27, 2011

OSHA Docket Office
Docket No. OSHA-2010-0019
U.S. Department of Labor
Room N-2625
200 Constitution Avenue, NW
Washington, DC 20210

Re: *Federal Register* Proposed Rule, April 22, 2011
Occupational Injury and Illness Recording and Reporting Requirements –
NAICS Update and Reporting Revisions
Docket No. OSHA-2010-0019; RIN 1218-AC50

Gentlemen:

The American Trucking Associations (ATA), 950 N. Glebe Road, Arlington, Virginia 22203, is pleased to submit the following comments in response to the above-referenced April 22, 2011, *Federal Register* Proposed Rule. This Proposed Rule has several aspects that concern us, and our comments on the Proposed Reporting Requirements for Death, Inpatient Hospitalizations and Amputation, in addition to the Burden on Employers are provided below.

Introduction

ATA, established in 1933, is the national trade association of the trucking industry. In cooperation with affiliated State trucking associations and affiliated national trucking conferences, ATA advances the interests of its members and the large and diverse U.S. trucking industry.

Directly and indirectly, the U.S. trucking industry employs almost 7.3 million people including more than 3.4 million commercial drivers. More importantly, the trucking industry is solely responsible for delivering freight to 80 percent of American communities.

This industry plays a critical role in our nation's economic viability and that of North America. In 2009, the U.S. trucking industry represented approximately 5 percent of our nation's gross

domestic product, collecting \$660 billion in gross freight revenues and representing 83.1¹ percent of the nation's freight bill.

Background

OSHA's Section 1904.2 partially exempts certain lower-hazard industries classified in Standard Industrial Classification (SIC) Codes 52 through 99 from injury and illness recordkeeping requirements. Lower hazard industries are those industries with an average Days Away, Restricted, or Transferred (DART) rate at or below 75 percent of the national average DART rate. The DART rate represents the total nonfatal injuries and illnesses resulting in days away from work, restricted work activity and/or job transfer per full-time employees for a given period of time (usually 1 year).

OSHA wants to revise the list of partially exempt industries included in the proposed rule using the North American Industry Classification System (NAICS). OSHA also proposes revising Section 1904.39, which currently requires an employer to report to OSHA -- within eight hours - - all work-related fatalities and in-patient hospitalizations of three or more employees. The proposed rule would require an employer to report to OSHA, within eight hours, all work-related fatalities and all work-related in-patient hospitalizations; with all work-related amputations to be reported within 24 hours.

The agency estimates the regulation will cost approximately \$8.5 million annually. The agency believes the annual benefits, while not quantified, are significantly in excess of the annual costs.

Although the OSHA Act gives OSHA the authority to require all employers covered by the Act to keep records of employee injuries and illnesses, major classes of employers are partially exempted from Part 1904. Per Section 1904.1, employers with 10 or fewer employees are partially exempt from keeping OSHA injury and illness records. Per Section 1904.2, establishments in certain lower-hazard industry classifications are also partially exempt, and this has been part of the recordkeeping regulations since 1982. A number of service, finance, and retail industries have been exempted from the requirement to maintain the OSHA log and Incident Report.

On January 19, 2001, OSHA published a final Rule, which comprehensively revised Part 1904 recordkeeping regulations. As part of the revision, OSHA updated the list of lower-hazard industries that are partially exempted from the recordkeeping requirements. SIC Codes were converted to NAICS codes in 2001, but several statistical agencies did not convert, including the Bureau of Labor Statistics (BLS), until 2004. NAICS is now the standard system used by Federal statistical agencies in classifying business establishments. The list of partially exempted industries would be converted from one based on SIC codes to one based on NAICS codes. DART rates used to determine which NAICS codes industries qualify for the lower-hazard partial exemption would be based on more recent BLS data.

¹ All industry statistics contained herein from *American Trucking Trends 2009-2010*, published by ATA.

Issues of Concern to ATA

Burden on Employers

ATA believes, based on feedback from our members, that the Agency underestimated the time burden on employers to comply with the new Proposed Rule. Based on member experience, we believe that by using a multiplier of 0.25, OSHA has grossly underestimated the time needed by employers to fulfill the requirements to report inpatient hospitalizations and amputations. The multiplier should, according to our members, be 0.50 instead of 0.25, to accurately reflect current time spent on this task.

Taking into consideration the sophisticated internal systems that larger motor carriers may use to report inpatient hospitalization and amputations, we believe that using eight hours as the mandated reporting time would be insufficient for many of these larger companies, where reporting of an incident may need to pass through many layers of management. In order to change the already-established patterns of reporting in these companies to comply with OSHA's eight-hour requirement, ATA estimates – again, based on member experience -- that an additional 150-175 hours may be required per employer, something that is not reflected in the Agency's cost estimate.

Reporting Requirements – Death, Inpatient Hospitalizations, and Amputations

OSHA wants to revise the list of partially exempt industries contained in Appendix A to Subpart B of the Proposed Rule. ATA concurs with the Agency on this issue.

In contrast, ATA believes it is not necessary to change the current reporting rules regarding amputations and enucleations. And in addition, the definition of an “amputation” should require “loss of bone.”

At time, employers need flexibility in the method of reporting (i.e., phone calls, emails, faxes, and web based systems) should be options that could be used for reporting. Using email or a web based system would allow 24/7 reporting, automatically providing a time stamped record of the submission of the report.

Unaware of Injuries

The Proposed Rule would not require employers to report injuries of which they are not aware. However, there is no provision for the Agency to NOT impute knowledge of an injury to an employer – i.e., “should have been aware” -- as in other OSHA rules. Companies may find themselves in a position of being expected to know about an employee's private medical information or a hospitalization outside of the purview of the employer. The current requirement to report three or more injuries is practical and acceptable and eliminates the possibility of this kind of penalty.

Benefits to Employers

While the Agency has estimated the gross cost to industry to comply with the requirements of the Proposed Rule, it has made no attempt to quantify the so-called “cost benefits” mentioned in the rule. Rather, that issue has been left to vague promises of unquantified cost savings to employers. It would benefit the Agency employers and the rulemaking process if OSHA would be more specific about this issue.

Conclusion

- ATA makes the following points on the proposed rule:
- Conversion from SIC to NAICS is necessary
- The multiplier use for time estimates should be 0.50. not 0.25
- Reporting three fatalities under Section 1904.39 is more acceptable than current requirements
- Definition of “amputation” should include “loss of bone”
- Need a 24/7 reporting system to include email and web-based
- Agency must add a section to prevent imputation of knowledge
- Cost benefits to industry must be quantified

Thank you for the opportunity to comment on these important issues. ATA looks forward to working with you further on them.

Sincerely,



Margaret Irwin
Director
Occupational Safety and Health