



September 19, 2011

OSHA Docket Office
Docket Number OSHA-2010-0019
U.S. Department of Labor
Room N-2625
200 Constitution Avenue NW
Washington, DC 20210

RE: FedEx Corporation Comments to Proposed Updates of Occupational Injury and Illness Reporting Requirements – NAICS Update and Reporting Revisions, Docket No. OSHA-2010-0019

Dear Sir or Madam:

FedEx Corporation is pleased to submit the following comments in response to the Occupational Safety and Health Administration's ("OSHA") Notice of Proposed Rulemaking on of Occupational Injury and Illness Reporting Requirements – NAICS Update and Reporting Revisions (Federal Register Volume 76, Number 120, June 22, 2011), Docket No. OSHA-2010-0019 (the "Proposed Rule").

FedEx Corporation ("FedEx") provides a broad portfolio of transportation, e-commerce and business services with companies that operate independently and compete collectively under the respected FedEx brand. The following FedEx operating companies have serious concerns with the Proposed Rule and have contributed to these comments:

- FedEx Express (Express) is the world's largest express transportation company, providing fast and reliable delivery to every U.S. address and to more than 220 countries and territories. FedEx Express uses a global air-and-ground network to speed delivery of time-sensitive shipments, usually in one to two business days with the delivery time guaranteed.
- FedEx Ground is a leading small package pickup and delivery company serving business and residential customers in North America. On average, FedEx Ground coordinates the movement of 4.7 million packages over 6 million driven miles per day. The packages are moved by independent businesses who operate 29,092 vehicles across the United States and Canada.¹

¹ FedEx Ground contracts with independent businesses to provide linehaul and small package pickup and delivery services throughout the United States under FedEx Ground's U.S. Department of Transportation ("DOT") motor carrier operating authority. These businesses are separate and distinct from FedEx Ground and are free to provide transportation services to other customers under separate DOT motor carrier operating authority. These independent businesses own or lease their vehicles and are responsible for the operation and maintenance of these vehicles. In addition, they may own and operate more than one vehicle, and hire their own employees to perform linehaul and/or pick-up and delivery services.

- FedEx Freight (Freight) is a leading provider of less-than-truckload (LTL) transportation services throughout North America. FedEx Freight provides FedEx Freight® Priority service, a fast-transit choice for reliable, time-sensitive LTL freight delivery and FedEx Freight® Economy service designed to meet the reliable shipping and budget needs of today's LTL shippers. FedEx Freight also provides international and off-shore service to and from Alaska, Hawaii, Puerto Rico, the Caribbean, Central and South America, and Europe, as well as inbound service from Asia.
- FedEx Custom Critical ("Custom Critical") provides exclusive-use, door-to-door transportation service throughout the U.S., Canada and Mexico- 24 hours a day, 365 days a year- for same-day shipping or overnight delivery of critical freight.
- FedEx Trade Networks ("Trade Networks") helps simplify international shipping for customers of all sizes by providing flexible end-to-end services that include customs brokerage, global cargo distribution and trade facilitation solutions.
- FedEx Supply Chain ("Supply Chain") is an integrated logistics provider executing solutions that leverage the FedEx transportation and information networks in commercial markets around the world. The company provides integrated FedEx services for customers with high-value products or complex supply chain requirements.
- FedEx Office ("Office") operates business services and technical support centers which provide printing, packaging and shipping services and help transform ideas from digital to physical by enabling customers to print and ship what, when and where they want with the peace of mind expected of FedEx.

Executive Summary

FedEx does not object to the revision of the list of partially exempt industries in Appendix A to Subpart B of the Proposed Rule. FedEx does not believe it is necessary to change the current rules regarding amputations and enucleations. However, FedEx believes that the definition of amputation should require a loss of bone, and that definition should be included in the rule itself, as opposed to only in the Federal Register.

FedEx objects to the revision of 29 CFR Section 1904.39 on the basis that the costs associated with the Proposed Rule are several orders of magnitude greater than OSHA's estimate and that any benefits are of limited utility.

Whatever form the final rule takes, FedEx requests that OSHA allow reports by email, fax and/or a web-based system in addition to telephone. An email or web-based system of reporting in particular would allow reporting at all hours and would automatically create a time-stamped record of the submission of the report.

Proposed Reporting Requirements for Death, Inpatient Hospitalizations and Amputations

The Proposed Rule requires reporting to OSHA within eight hours of work-related accidents that result in the death of an employee or the inpatient hospitalization of a single employee. Work-related amputations require reporting to OSHA within 24 hours. OSHA cites the need for prompt investigation and the absence of an unreasonable burden on employers as justification for its proposed enhanced reporting requirements. FedEx does not object to the 8-hour reporting requirement for work-related accidents resulting in the death of an employee.

In the Proposed Rule, OSHA rightly indicates that “the hospitalization of a worker due to a work-related incident is a serious and significant event” and speculates that requiring the reporting of every inpatient hospitalization will provide OSHA with more information. There is no question that the implementation of the Proposed Rule will result in OSHA having more information, but FedEx expects that it may be excessive, incorrect and unnecessary information. Further, gathering the requested information during the reduced window for compliance will unduly burden employers without improving safety.

The current rule requires an employer to report to OSHA only when three or more employees are injured. This requirement is well-reasoned, eliminating the reporting of injuries that provide no basis for investigation and offer no opportunity for hazard mitigation. The Proposed Rule requires employers to report on injuries affecting single employees that are purely accidental and are beyond the purview of OSHA.

If OSHA nevertheless determines that all hospitalizations and amputations should be reported, it should allow more time for reporting. Eight hours for reporting inpatient hospitalizations and 24 hours for reporting amputations are very small windows of time. In an effort to submit all reports within the eight- or 24-hour requirements, employers will inevitably report injuries that should not be reported and they will make mistakes in reporting that would be eliminated with more time to investigate before submitting a report to OSHA. In order to avoid such improper or incorrect reporting, OSHA should increase the time period for reporting inpatient hospitalizations and amputations to 72 hours, as is currently required in some states. Seventy-two hours would give an employer adequate time to gather and verify the information necessary to make an accurate report to OSHA, and it is soon enough after an accident for OSHA to make a meaningful investigation.

Burden on Employers

OSHA used 0.25 hours as a multiplier to estimate the costs of complying with the enhanced reporting requirements regarding inpatient hospitalizations and amputations. FedEx estimates that a more accurate multiplier is 0.5 hours, as it will take a minimum of 0.5 hours to report each inpatient hospitalization or amputation. Each FedEx operating company has its own reporting mechanism, but generally, the initial internal report is entered into a system in the field within 48 hours of an injury, and then is subsequently reviewed by management. Management takes additional time to verify the facts and then makes the report to OSHA with a telephone call, if required. An eight-hour reporting mandate for inpatient hospitalizations and a 24-hour reporting mandate for amputations would require FedEx to implement a 24-hour per day reporting protocol. Such a protocol would necessarily increase the amount of administrative time required to track injuries and illnesses and notify OSHA within the proposed time frame, both in the field and at Corporate Safety. It would also require FedEx to revise current policies and provide additional training at all company locations. FedEx estimates that each operating company would be forced to devote an additional 150-175 hours per year to comply with the proposed eight-hour reporting requirement for in-patient hospitalizations and the proposed 24-hour reporting requirement for amputations. FedEx expects that implementation of the Proposed Rule will necessarily result in increased notifications to OSHA, and that the increase in reported injuries will result in more OSHA on-site visits, investigations and/or requests for information, all of which will increase the amount of time FedEx personnel in operations, safety and legal spend working on OSHA-related reporting.

The Proposed Rule also advises that employers generally will not be required to report injuries of which they are not aware. However, the proposed rule does not preclude imputing such knowledge to the employer, as OSHA does under other of its rules. This leaves open the possibility that OSHA might determine that the employer should have known of an injury through reasonable due diligence and then penalize that employer for not reporting the injury. FedEx is concerned that its lack of control over its employee's private medical information combined with the Proposed Rule's low threshold for the types of injuries that must be reported will result in FedEx being penalized for not reporting hospitalizations that it has no knowledge of but that OSHA determines must be reported under the new rule. Again, the present requirement that limits reporting of injuries to three or more employees is well-reasoned and eliminates the possibility of this kind of penalty.

FedEx appreciates the opportunity to comment on this Proposed Rule.

Respectfully submitted,

A handwritten signature in blue ink, reading "James H. Ferguson", is written over a horizontal line.

James H. Ferguson
Corporate Vice President, Customer/Business Transactions
FedEx Corporation