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October 27, 2015

The Honorable David Michaels
Assistant Secretary
Occupational Safety and Health Administration
OSHA Docket Office
U.S. Department of Labor
Room N-2625
200 Constitution Avenue, NW
Washington, DC 20210

By <http://www.regulations.gov>

RE: ASSE Comments on OSHA Notice of
Proposed Rule *Clarification of Employer's
Continuing Obligation to Make and Maintain
an Accurate Record of Each Recordable Injury
and Illness* [Docket No: OSHA-2015-0006]

Dear Assistant Secretary Michaels:

As you well know, the more than 37,000 member safety, health and environmental (SH&E) professionals of the American Society of Safety Engineers (ASSE) intimately know the details of collecting workplace injury and illness data, recording that data for employers, and the careful work needed to report that data to the Occupational Safety and Health Administration (OSHA). Perhaps more than any stakeholders, our members understand the value of this data in managing workplace safety and health risks as well as its appropriate use by OSHA in developing better means to focus the agency's resources on the most difficult risks facing American workers. Our members use injury and illness data to help them protect workers. They expect no less of an effective OSHA.

That being said, ASSE cannot support the requirement that employers have a duty to record an injury or illness continues for the full duration of the record-retention-and-access period – five years after the end of the calendar year in which the injury or illness became recordable – that OSHA proposes in its July 29, 2015 Notice of Proposed Rulemaking

(NPR) *Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness* [Docket No: OSHA-2015-0006]. ASSE respectfully opposes the adoption of a Final Rule as proposed in this rulemaking for the reasons that follow.

Nature of Violations

ASSE members do not look at the issues raised in this rulemaking with the same viewpoint of the occupational safety and health bar that, no doubt, will provide substantive legal arguments against the case OSHA makes for addressing the Volks II decision through this rulemaking. Rather, our members' view is a practical one that comes from years of experience on the job as the professionals charged with meeting OSHA's recordkeeping requirements.

Our members know the inadvertent mistakes they themselves can make in recordkeeping and reporting. They also know what they typically find when they are hired by a company to help improve workplace safety and health. As they assess the workplace's risks and past safety performance to help them develop safety and health management plans, the reporting mistakes our members typically find are not very often the worst cases that, unfortunately, seem to be creating this rulemaking. The errors in reporting they see are, by far, minor, isolated, and, if continuing, it is only in the sense that a typo can be repeated day after day.

They also see mistakes that come from a widespread lack of understanding of OSHA's detailed reporting requirements. When seasoned safety and health professionals consistently use ASSE's educational conferences, our social media, and opportunities to meet with OSHA staff through the ASSE-OSHA Alliance to get the best and latest information about OSHA recordkeeping requirements, we know that, even for them, the task of meeting those requirements can be too often confusing. Given that the vast majority of employers report to OSHA without the help of a safety and health professional, it is not difficult to see that the significant increase in records retention that OSHA is attempting to require of employers here will not succeed in a significant impact on safety and health among American workers.

Unintended Consequences

No reporting error is excusable. But a company's errors to which OSHA is determined to have access to for a period that can be up to six years through this rulemaking will not very often correlate to the risks facing workers, especially the risks a safety and health professional is trying to address for the company in the present. The statements OSHA makes about the value of data collected through current injury and illness recordkeeping are merely conclusory and are counter to our members' experience.

Measured against our members' belief that the additional data will provide little help to them or OSHA, they are particularly concerned that this rulemaking can only succeed in driving more employers towards greater expectations that safety and health professionals will focus energy and resources on collecting and reporting the lagging indicators that

OSHA requires, taking them away from risk assessment and management tasks and their efforts to move their employers towards performance measurements based on leading indicators that we know can better measure a company's safety and health performance.

Many of our members, especially those who work in or for mid-sized and small companies, face a difficult uphill climb in selling their employers risk management and moving from lagging to leading indicators. We know OSHA values these approaches also. But when OSHA uses its limited resources to focus on measures that do not reflect cutting-edge safety principles and push our members' efforts backwards, OSHA is making their job more difficult. Our members value OSHA but want an OSHA that works with them to advance the best ideas for advancing workplace safety and health. Requiring this data to be available for OSHA's use for nearly six years does not meet our members' hope for an effective OSHA.

Direct Burden

ASSE is also concerned that the OSHA's estimates of the direct burden this rulemaking will place on employers are inadequate. The economic analysis states that there will not be a new cost burden. This was based on a 2001 analysis that it takes 0.38 hour to record an injury or illness, with a total cost per case of \$17.75. From an informal survey of involved ASSE members, a more realistic estimate is that an hour is needed for each case over the five-year period, taking into account the variety of tasks involved, including determining if there was medical treatment beyond first aid, verifying lost and restricted day counts, and adjusting for changes in the status of a case. An updated economic analysis is needed, which we urge OSHA to conduct before a Final Rule is proposed.

A Measure of the Problem

Related to our members' concern over the rulemaking's direct burdens on employers is OSHA's failure to discuss in the NPR why OSHA faces such difficulty in obtaining adequate data from employers. No doubt, employers are responsible for meeting OSHA's reporting requirements. Our members suspect that OSHA's reporting rules and deadlines are not effective and cost employers unnecessarily.

Before requiring more extensive reporting, it would be helpful both to OSHA and the safety and health community to know more about why employers do not report. How many employers blatantly disregard the requirements and how many are simply making errors? What do employers and their workers not understand about the requirements? What training or level of expertise would help fill the gaps in reporting that OSHA believes exist? We urge OSHA to examine these issues as an extension of its economic analysis. With more knowledge, there may be better ways to address recordkeeping that can support better employer reporting.

Conclusion

As we say above, our members want a strong and effective OSHA. But their view of an effective OSHA is an OSHA that can embrace the best our members already understand

about how to achieve safe and healthy workplaces. An OSHA injury and illness prevention plan standard that is truly risk-based would help make OSHA more effective. Greater reliance on control banding to achieve better protection limits, as we have recently suggested to OSHA, would. Establishing professional competencies to define “competent person” in OSHA standards would. Finding a better way to update consensus standards in OSHA’s standards would. Rethinking OSHA’s reporting requirements to help move employers towards leading indicators and more advanced ways to measure safety performance certainly would. The areas where OSHA and our members agree on making OSHA more effective are many. Adding lengthier reporting burdens that will do little to help OSHA, employers or occupational safety and health professionals better manage workplace safety and health will not.

As always, ASSE is more than willing to discuss these concerns further. Thank you for listening to our members’ views.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Belcher". The signature is fluid and cursive, with the first name "Mike" and last name "Belcher" clearly distinguishable.

Michael Belcher, CSP
President