



Louisiana Farm Bureau Federation, Inc.

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March 7, 2014

David Michaels, PhD
Assistant Secretary of Labor
OSHA Docket Office
U.S. Dept. of Labor
Room N-2625
200 Constitution Avenue N.W.,
Washington, DC 20210

RE: *Improve Tracking of Workplace Injuries and Illnesses – Proposed Rule*
OSHA Docket Number: 2013-0023
RIN 1218-AC49

Dear Assistant Secretary Michaels,

The Louisiana Farm Bureau Federation, Inc. (LFBF) is the largest agricultural organization in Louisiana with 147,000 members and we serve as the representative organization for the majority of farmers and ranchers in our State. We appreciate the opportunity provided by the Department of Labor – Occupational Safety and Health Administration to comment on the OSHA proposed rule published November 8, 2013 in the Federal Register Vol. 78, Number 217 on “Improve Tracking of Workplace Injuries and Illnesses”. We have read the proposed OSHA rulemaking and find that the proposed rules will impact the majority of farmers and agricultural businesses. We submit the following comments for your consideration and we would appreciate your consideration of our comments on this proposed rule.

OSHA Data Collection and Statistics

Section 24 of the OSH Act (29 U.S.C. 673) requires the Secretary of Labor to “develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics” and “compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses. Section 24 also requires employers to “file such reports with the Secretary as he shall prescribe by regulation”. We understand these Sections and OSHA’s authority and do not oppose OSHA’s collection of data for establishing workplace safety statistics. However, this proposed rulemaking goes far beyond data collection and statistics and will cause more harm to workers and employers than any benefit derived from this rulemaking. The public disclosure of this OSHA Illness and Injury information opens the door to targeting of employers.

Worker’s Privacy

Workers do not want their illness and injury data disseminated into the public domain readily available through an electronically downloadable format. Despite the fact that

Worker's Privacy (cont.)

worker's identity will not be published, if the employer, location and injury-specific data are made public, it will be easy to determine a worker's identity at a business, especially in smaller businesses and especially in rural areas. This public access of data with employer, location and injury specific data of a worker's injury will backfire and hurt the very workers OSHA states it is trying to protect. Let's face it, this information will not only be available to worker advocates, it will be available to other employers, other workers and the general public which may hurt workers looking for employment since specific injuries at a business will now be made public. Furthermore, we find that having employer, location and specific injury data available to the public violates workers' privacy rights under HIPPA. Our worker's health conditions are private under HIPPA but anyone will be able to track backward into the data from the employer, location and specific injury data to identify a worker and this will violate the worker's HIPPA privacy rights regarding their health conditions or injuries.

No Identifiers on Worker Injuries

Making worker illness and injury information public by employer will invite advocacy groups, litigation attorneys and unions to target employers without any proof that workplace safety at a business had any bearing on a worker injury. For instance, many in our industry and others see that many injuries are often caused by workers' engaged in horseplay at a business, not due to any worker safety deficiency at a business.

The worker injury data provided to the public will not denote when a worker was a fault when an injury occurs, which can provide a false picture of the worker safety standards at a business. The biggest problem in recent years is that many worker injuries have been due to distractions, namely cell phones being used while working, which account for a significant percentage of injuries at a workplace. This is despite the fact that farm employers have rules that prohibit use of cell phones while working.

Public Disclosure of Home Addresses Endanger Farm Families

We are very concerned about acts of aggression by advocacy groups, unions and litigation attorneys against farm families. Since many farm businesses are housed at a farmer's home, therefore public disclosure of an employer address and telephone number is actually disclosing the farm employer's name, home address and home telephone number to the public. Disclosing an employer's home address can expose farm families to acts of aggression from worker advocates and is compounded by the fact that law enforcement protection is many times miles away in rural farming areas.

In reading the proposed rule, we strongly disagree that there is no expectation to privacy when providing OSHA injury and illness reports. We strongly feel that when a farm employer's address and a farm family reside at the same address, a family's safety must also be considered. There is absolutely an expectation of privacy when reporting illness and injury to OSHA when an employer's name, home address and home telephone number is available to anyone on the internet!

Only Electronic Submission of OSHA Reports Eliminates A Portion of Agriculture

Restricting OSHA injury and illness reports to only electronic submissions eliminates a portion of agriculture that does not have an operating computer or an internet connection. While many of farmers are very technologically adept, we know of several farmers that do not use a computer as part of their operation and do not have an internet connection. One of the reasons is that in rural areas, there are many areas that are miles from the nearest city and those regions do not have access to DSL or Cable Broadband. With only slow dial-up internet service available, many farmers in these areas simply do not use the internet. Also, in the farming community, there is a portion of our farmers who are older and simply do not use computers.

True Cost of OSHA Recordkeeping to Farmers

Farms with under 10 employees have been mostly exempt from OSHA reporting. The proposed rule may force additional recordkeeping on small farm operations where there is no bookkeeper, and the only office personnel is the farmer who is in the field every day. The cost of recordkeeping estimate does not account for the monetary value of the rule when it causes a farmer to miss a critical time in the field when they need to be planting, cultivating or harvesting and they miss a critical production window because they are at their desk compiling and submitting an OSHA illness and injury report requested by the Agency.

No Fault Reporting and Data Used Solely for Computing Statistics

We feel that OSHA would have better participation and collect better data if OSHA would maintain a no fault approach to recordkeeping and submission of OSHA illness and injury reporting data. The better approach to utilizing the OSHA data would be if OSHA would only use submitted OSHA data for compiling injury and illness statistics for an industry and an area instead of using the data to target an employer.

Employer's Information Should Be Private

The proposed rule states that the company's executive's signature, title, telephone number, the establishment's name and street address, industry description, SIC or NAICS code and employment information including annual average number of employees, total hours worked by all employees will all be non-protected information that is readily available to the public via the OSHA data portal and downloadable to anyone. This invites targeting of employers that may have no basis on actual workplace safety. We strongly feel that an employer's information identified with OSHA reporting should be kept private, the same as the privacy afforded workers under the proposed OSHA rule.

Negative Effect of the Proposed Rule

The OSHA illness and injury experience for a business combined with all information on company ownership, location, contact information, total employment makes private business details public for competing businesses and will be a catalyst for litigation. The reality is that this OSHA illness and injury information made public will be used and abused by litigation attorneys, unions and advocacy groups against U.S. businesses. The net result will be a negative impact to U.S. businesses and the U.S. economy.

Louisiana Farm Bureau Federation Requests that OSHA Withdraw Illness and Injury Reporting Rule as Proposed

The proposed OSHA rule has so many potential problems for U.S. agriculture and U.S. businesses that the Louisiana Farm Bureau Federation foresees far more problems than any potential benefit from this OSHA proposed rule.

Therefore, we respectfully request that the Agency withdraw this proposed rule.

The Louisiana Farm Bureau Federation appreciates the opportunity to comment and we would appreciate the Agency's favorable consideration of our request.

Sincerely,

*Brian Breaux
Associate Commodity Director / Public Policy Coordinator*