NATIONAL ASSOCIATION OF
Manufacturers

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

Re: Docket No. OSHA-2010-0019
Occupational Injury and Illness Recording and Reporting Requirements--NAICS Update and Reporting Revisions

Dear Assistant Secretary Michaels:

On behalf of the National Association of Manufacturers (NAM), thank you for the opportunity to submit the following comments, on the Occupational, Safety and Health Administration's (OSHA) Notice of Proposed Rulemaking on "Occupational Injury and Illness Recording and Reporting Requirements."

The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Our mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding among policymakers, the media and the general public about the vital role of manufacturing to America's economic future and living standards. As such, the NAM and our members are committed to working with their employees to improve the safety of their workplaces.

The NAM's comments are based on input from members as well as longstanding experience in working with OSHA to develop regulatory approaches that target significant workplace risks and promote safe and healthful working. We are concerned that OSHA's proposed rule will create unnecessary confusion as to what constitutes a workplace injury and when an incident is to be reported, as well as concern the rule could create additional burdens for employers. Further, we do not believe OSHA has laid out a valid justification as to why it is necessary to amend the current rule.

Lack of Justification for Proposed Rule

The NAM supports all workplaces being safe and healthful. Pursuant to the current rule, which has been in effect since 1994, an employer is required to report, within eight hours, "work-related events or exposures involving fatalities or the in-patient hospitalization of *three or more* employees."[1] (Emphasis added.) The intent behind this requirement is so a "prompt investigation of incidents causing serious injury is a key element in OSHA's ability to enforce

[1] 29 C.F.R. Part 1904

existing standards, evaluate the effectiveness of current standards, and identify a need for new standards."[2]

Under the proposed rule, an employer would be required to report *all* injuries or illnesses within eight hours of "all work-related in-patient hospitalizations." (Emphasis added.) OSHA states that the proposed revision is "intended to provide information necessary to help ensure America's workers have safe and healthful workplaces," which OSHA also states will "lead to greater prevention of injuries."[3] We believe this latter statement of intent is no different than the intent from the 1994 rule and that the intent of what is being proposed departs in any way from the current rule's intent. Therefore, we do not believe there is a necessity to change the rule.

Lack of Clarity on What is Reportable and When it is Reported

The NAM believes that the proposed rule would create confusion as to what injuries and illnesses will need to be reported. Departing from the current threshold of "three or more employees," the proposed rule merely requires that an employee with a work-related injury be hospitalized for "at least one overnight stay" in order to trigger the reporting requirement. The rule does not, however, take into consideration differences in the practice of medicine, which are regulated at the state level and will inevitably lead to one worker in a waiting room, or being treated in an emergency room for a 12-hour period before seeing a doctor, and later released in the evening, while another worker, with the same type of injury from a different workplace in a different state, is admitted as an "in-patient" late in the evening and then released early the next morning. Even though both of these workers had the same type of injury, under the proposed rule, the employer in the first example would not have to report the incident to OSHA, but the employer in the second example would be required to do so, because the employee was admitted and stayed overnight in the hospital. This lack of consideration by the proposed rule could result in confusion among different employers about the inconsistency in what types of injuries are being reported and would also assuredly result in unnecessary over reporting of incidents to OSHA.

Additionally, the current rule establishes a threshold of three or more hospitalized employees, which clearly raises the question for OSHA as to whether or not the workplace is safe or hazardous, which in turn prompts an OSHA investigation. This rule is clear and meets the intent as stated by OSHA. Under the proposed rule, an employer is required to report all in-patient hospitalizations resulting from a workplace injury. We believe that this, however, would create a situation where the more serious injuries incurred by multiple workers could end up going undetected by OSHA. Further, the more serious injuries could get lost among other isolated incidents that may have nothing to do with workplace safety, or confused with a pre-existing conditions that surface.

Equally unclear in OSHA's proposed rule, is when the eight hour requirement would begin to toll. The current rule states that the reporting must occur "within eight hours after the in-patient hospitalization."[4] The question with the proposed rule becomes when the employer would actually need to report every incident. Would the time still begin to toll after the injured worker is admitted to the hospital; or, would it be when the employer first gains knowledge of the incident? It is possible that an injured worker does not tell his/her employer of hospital for several days after the injury. The employer may never know of the hospitalization until days or weeks later. Would the employer be in violation for not reporting this incident to OSHA when there was no knowledge of when the hospitalization took place? Additionally, a worker could be

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[2] Occupational Injury and Illness Recording and Reporting Requirements--NAICS Update and Reporting Revisions 76 FR No. 120 at 36,419 (June 22, 2011).
[3] Id.
[4] 29 C.F.R. Part 1904.39(a)

injured on a weekend or overnight shift and the employer is not notified of the worker's hospitalization until the next business day. Would that employer be in violation for not reporting the incident within eight hours?

The time frame in which to report all incidents at the workplace is likely to create confusion as to when an employer is required to know when every incident at the workplace occurs. While OSHA believes that a short timeframe would preserve information at the worksite and allow witnesses to have a fresh recollection, the short time frame could create an undue burden on employers and employees, especially small business owners in devoting already scarce resources ensuring that the employer is in compliance with all of these requirements.

We believe that OSHA should fully engage small business owners in a dialogue to hear their thoughts, concerns and alternatives prior to issuing any change in the reporting requirement rules.

Conclusion

For these reasons the NAM respectfully submits there is no valid justification for issuing OSHA's proposed rule, there is a lack of clarity to the rule, and OSHA should engage in a dialogue with the business community to gain a better understanding of the burdens this rule would create while gaining insight as to whether there are any viable alternatives to what OSHA has proposed by this change in the rule.

Sincerely,

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