

1201 15th Street NW
Washington, DC 20005

D 202 266 8507
T 800 368 5242 x8507
F 202 266 8056
rmatuga@nahb.org

www.nahb.org



October 28, 2011

OSHA Docket Office
Docket ID—OSHA—2010—0019
U.S. Department of Labor
Room N-2625
200 Constitution Avenue, NW
Washington, DC 20001
www.regulations.gov

RE: Docket ID—OSHA—2010—0019 Proposed Rule: Occupational Injury and Illness Recording and Reporting Requirements—NAICS Update and Reporting Revisions

Dear Docket Clerk:

On behalf of the more than 160,000 members of the National Association of Home Builders (NAHB), I am pleased to submit these comments in response to OSHA's Proposed Rule on "Occupational Injury and Illness Recording and Reporting Requirements—NAICS Update and Reporting Revisions" that was noticed in the Federal Register on June 22, 2011¹. As an interested stakeholder in this regulatory activity, NAHB is concerned that any changes to the OSHA occupational injury and illness recording and reporting requirements may have a substantial impact on regulated employers, including home builders, and will negatively impact the ability of our members to provide affordable housing in the country.

NAHB is a Washington, D.C.-based trade association representing more than 160,000 members involved in home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building products manufacturing, and all other aspects of the residential and light commercial construction industries. Known as "the voice of the housing industry," NAHB is affiliated with more than 800 state and local home builders associations (HBAs) located in all 50 states and Puerto Rico. NAHB's builder members will construct 80 percent of the new housing units projected for 2011. The more than 14,000 firms that belong to NAHB Remodelers comprise about one fifth of all firms that specify remodeling as a primary or secondary business activity. The NAHB Multifamily Council is comprised of more than 1,000 builders, developers, owners, and property managers of all sizes and types of condominiums and rental apartments. Clearly, NAHB's members touch on all aspects of the industry.

NAHB is concerned that OSHA's attempt to collect additional information from employers, through the reporting of all in-patient hospitalizations of employees, would put undue hardship and burden on businesses in the residential construction industry, without any apparent corresponding benefit. For this reason, we are opposed, at this time to OSHA's proposal to require employers to report to OSHA, within eight hours, all work-related in-patient

¹ 76 Fed. Reg. 36414-36438, June 22, 2011.

individual for overnight stay while another hospital may not, thereby skewing any data collected by OSHA.

Additionally, formal admittance to a hospital may be *reportable* under OSHA's proposal but not *recordable* under the current existing regulation. For example, a supervisor experiences chest pains while walking and conducting an inspection of a construction jobsite and is rushed to the hospital. Due to past history and a pre-existing heart condition, the hospital chooses to formally admit the worker for an overnight stay. After a day-long stay in the hospital for observation, the medical condition determined to be connected to the workers personal health history. Under this scenario, this incident would have been *reportable* under OSHA's proposal but not *recordable* under OSHA's current recordkeeping rule. Another example, a worker has an epileptic seizure at work, is rushed to the hospital, and formally admitted for an overnight stay for observation. After observation, it is determine that the seizure is non-occupationally related. Again, with this example, this incident would have been *reportable* under OSHA's proposal but not *recordable*. These examples demonstrate that any new data collected by OSHA under this proposal would not provide any needed information to OSHA about mitigating specific hazards in the workplace.

Finally, OSHA suggests that there are between 68,000 and 210,000 work-related emergency room visits that result in hospitalization each year.⁶ With the goal of OSHA's proposal is prompt investigation of incidents causing serious injury, is does not seem feasible for OSHA staff to investigate each and every in-patient hospitalization given the Agency's limited resources. Additionally, how does investigating potential work-related incidents that could be *reportable* under OSHA's proposal but not *recordable* improve the Agency's mission, especially in light of the examples above?

NAHB believes OSHA's proposal to lower the threshold for reporting of in-patient hospitalizations of three or more employees to one is overreaching and places an undue burden on the regulated community, including the home building industry.

OSHA should continue the partial exemption of recordkeeping requirements for employers with 10 or fewer employees and those in low hazard industries.

OSHA's current recordkeeping rule has partial exemptions for employers which eliminates most of the requirements for keeping injury and illness records; unless OSHA or the Bureau of Labor Statistics (BLS) informs an employer in writing that they must keep records. For example, employers with 10 or fewer employees and businesses in certain low hazard industry classifications are partially exempt from keeping OSHA injury and illness records. However, all employers must report to OSHA any workplace incident that results in a fatality or the hospitalization of three or more employees.

Section 8(d) of the Occupational Safety and Health Act (OSH Act) expresses Congress' intent to minimize, where feasible, the burden of recordkeeping requirements on employers, particularly small businesses and specifically states: "Any information obtained by the Secretary, the Secretary of [HHS], or a State agency under this Act shall be obtained with a *minimum burden upon employers*, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible."⁷ [emphasis added]

In addition, OSHA has looked at the question of size-based exemptions during several rulemakings, including the years 1977, 1996, and 2001. In reaching a final decision on this matter in 2001, OSHA made the determination that one "there is no sound basis for departing from OSHA's prior interpretation that the [OSH] Act permits a carefully crafted exemption for very small employers" and two determined

⁶ 76 Fed. Reg. 36423, June 22, 2011.

⁷ 29 U.S.C. 657(d).

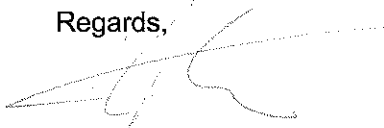
Memorandum on Regulatory Flexibility, Small Business, and Job Creation. Nothing in OSHA's proposal indicates how the rule is intended to streamline regulatory requirements and reduced burdens on industry.

Finally, E.O. 13563 states that "before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking." Although OSHA is not required to convene a Small Business Advocacy Review panel under Small Business Regulatory Enforcement Fairness Act (SBREFA),¹¹ NAHB urges the agency to consider the impacts of this proposal on small businesses and consider conducting additional outreach before moving forward.

In conclusion, NAHB recommends that OSHA retain the current requirement for employers to report to OSHA, within eight hours, all work-related fatalities and in-patient hospitalizations of *three or more employees* because the hospitalization of a single worker does not necessarily signify that a *recordable* work-related occupational injury or illness has occurred, or that a dangerous or unsafe jobsite exists.

Thank you for the opportunity to comment on the OSHA's proposed rule on Occupational Injury and Illness Recording and Reporting Requirements—NAICS Update and Reporting Revisions. Please call me at (202) 266-8507 if you have any questions or require additional information. NAHB would also like to be advised of and included in any hearings and stakeholder meetings concerning future changes to the OSHA's Injury and Illness Recording and Reporting Requirements.

Regards,



Robert Matuga
Assistant Vice President

¹¹ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).