American Road & Transportation Builders Association

March 10, 2014

Docket No. OSHA-2013-0023
The Honorable David Michaels
Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor
Room N-2625
200 Constitution Ave., NW
Washington, DC 20210

Re: Comments on NPRM to "Improve Tracking of Workplace Injuries and Illnesses" (Docket No. OSHA-2013-0023

On behalf of the more than 6,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the Occupational Safety and Health Administration's (OSHA) proposed rule to "Improve Tracking of Workplace Injuries and Illnesses."

ARTBA's membership includes private and public sector members that are involved in the planning, designing, construction and maintenance of the nation's roadways, bridges, ports, airports and transit systems. Our industry generates more than $380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs. The health and welfare of our workers is paramount and ARTBA has received numerous OSHA grants to develop training programs that are designed to improve workplace safety in the transportation construction industry. A diverse number of training materials have been developed including hazard communication, struck-by, fall protection, trenching and health hazards.

In general ARTBA supports OSHA's efforts to capture more information to enable the agency to carry out its statutory mission of ensuring a safe and healthful work environment for all workers in the United States. ARTBA also applauds OSHA's approach to capture more information using forms which most employers are already required to maintain, thereby reducing the regulatory burden that might otherwise be required.

There are, however, some aspects of the rule that we find troublesome, as explained below. As we understand, the rule has three primary components:

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1. The proposed rule obligates establishments that are currently required to keep injury and illness records (under Part 1904), and employ 250 or more workers in the previous calendar year, to electronically submit information from those records quarterly.

2. The regulation would require employers falling under the recordkeeping rule that employed 20 or more employees in the previous calendar year— in certain designated industries—to electronically submit the information from the OSHA annual summary form (Form 300A) on an annual basis.

3. Lastly, the proposed rule would require all employers who receive notification from OSHA (regardless of the size or industry classification) to electronically submit specified information from their Part 1904 injury and illness records.

Issue #1. While the proposed rule does not require employers to gather any more information than they do under existing regulations, it would significantly change the scope and quantity of data collected by the agency. Whereas in the past, employers only submitted information if requested on an annual basis, now all establishments above the threshold set by OSHA would be required to provide information to the agency on a quarterly basis and small employers would be forced to submit similar information annually. When one couples this new rule with the regulation proposed in 2011 *(Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions Rule)* which increased the scope of industries required to complete a 300 log and shortened the reporting time for certain injuries and incidents, we see the agency taking incremental steps toward significantly increasing the regulatory recordkeeping and reporting burden placed on employers.

Issue #2. We appreciate OSHA's desire to have better data regarding injuries and illnesses in the work place. Nevertheless, we are troubled the agency is proposing to allow immediate access to sensitive employer data to the general public. In the past, most data of this type is aggregated and made available to the public in a broad sense. Now the agency proposes to make employer-specific information available to anyone around the world.

ARTBA is suspect of OSHA's claim the proposal is intended to highlight the successes of those establishments with the "lowest injury/illness rates." We are concerned the proposal is an attempt to highlight perceived "bad actors," as has been the case with many employer-specific press releases issued by OSHA in recent years. We understand information on worker incidents that involve reportable injuries can be beneficial to the agency for obtaining detailed information regarding the circumstances leading up to the event. Unfortunately, that situational information is not contained on the logs. As such, releasing this information out of context could open employers up to scrutiny and inflammatory prima facie evidence that may not be a result of poor management.

The backlash to such unexplained information can be significant, with implications for stock value, litigation, contract awards, etc. OSHA's cost burden analysis does not include these costs to employers who will be required to spend significant amounts of money in litigation and public relations when, in fact, they may be a model employer. Again, we do not take issue when OSHA exposes recklessness or negligence of employers who put their workers at risk for death and injury. We are gravely concerned about the possibility of the agency publishing data that implies problems when there are none.

OSHA recordkeeping forms contain an employee's name, home address, date of birth, health care professional information, and treatment information. OSHA has not provided any explanation for how the agency plans to encrypt and protect sensitive data in its custody, or what recourse an individual may have in the event of a data breach.

We do not take significant issue with OSHA collecting this information, but we believe such raw data should **not** be made available to the general public.

Issue #3. Under current regulations, most employers are required to maintain the *OSHA 300 Log.* While employers must maintain the log, they are not required to submit information from the log to OSHA or any other agency at years end unless specifically directed to by OSHA or another government agency, such as the Bureau of Labor Statistics. Under this proposed rule, OSHA is attempting to expand its scope in allowing the public to view an even larger pool of employee information by requesting OSHA 300 summaries from employers.

We continue to look forward to working with OSHA to achieve a healthier workforce. Through mutual respect and understanding, we believe we can continue to protect the health and safety of workers in the transportation construction industry, while meeting our nation's infrastructure needs.

Sincerely,

T. Peter Ruane
President and C.E.O.