



March 31, 2025

Nicole Bouchet
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Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: OMB Control Number: 1218–0176, Agency Information Collection Activities; Submission for OMB Review; Comment Request; Recordkeeping and Reporting Occupational Injuries and Illnesses

Dear Ms. Bouchet:

The Coalition for Workplace Safety (“CWS”) submits these comments in response to the above-referenced information collection request published in the Federal Register on Feb. 27, 2025, at 90 Fed. Reg. at 10831, seeking comment on Recordkeeping and Reporting Occupational Injuries and Illnesses.

The CWS is comprised of associations and employers that believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability. The CWS believes that workplace safety is everyone’s concern. Improving safety can only happen when all parties—employers, employees, and OSHA—have a strong working relationship.

On June 20, 2022, CWS submitted comments¹ in opposition to the Occupational Safety and Health Administration’s (“OSHA”) proposed rule, Improve Tracking of Workplace Injuries and Illnesses.² CWS also opposed OSHA’s rulemaking in 2014.³

In the 2022 comment letter, CWS expressed its serious concerns with the proposed rule, which reprised OSHA’s 2014 rulemaking to require the submission of all three required injury records and OSHA’s expressed intent to post them on its website. The comments specifically addressed (1) concerns with duplicative recordkeeping and reporting requirements; (2) concerns regarding OSHA’s ability to appropriately manage this increased data collection; (3) continued concerns regarding confidentiality and

¹ See CWS’ 2022 comments at https://workingforsafety.com/wp-content/uploads/CWS-Comments-on-OSHA-Recordkeeping-Rule_June-2022-1.pdf.

² 87 Fed. Reg. at 18528.

³ See CWS’ 2014 comments at https://workingforsafety.com/wp-content/uploads/CWS_March-2014-Comments_OSHA-Reporting-NPRM-3.pdf.

protection of sensitive employer data; and (4) uncertainties in compliance resulting from OSHA's ever-changing recordkeeping requirements.⁴

CWS' 2022 comments on OSHA's proposed rule⁵ are relevant to this information request, and the coalition incorporates them into our responses to the below four questions from the information collection request.⁶

(1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.

Requiring the submission of information from OSHA forms 300, 301 and 300A and posting them on OSHA's website is not necessary for the proper performance of OSHA's duties and does not serve to prevent employee injuries or illnesses in the workplace.⁷ Instead, electronic submission and public posting of this data serves only to put employers at risk for improper disclosure, mischaracterization of the data and release of sensitive employer as well as employee information. Smaller entities are particularly vulnerable to release of such information, where mischaracterization of data can irreparably harm their business and individual employee information may be easier to ascertain.

Further, Forms 300 and 301 provide no valuable enforcement data to OSHA. The electronic submission of the 300 Log and 301 Form occurs well after the recording of a work-related injury or illness, making the data stale by the time OSHA receives it. More importantly, information contained on the 300 Log or 301 Form is not necessarily indicative of potential hazards in a workplace or of potential violations of existing OSHA regulations.⁸

The 300 Log and 301 Form may be valuable to the employer of the establishment who can process the data to determine trends and distinguish entries resulting from occupational exposure that can be prevented or reduced, versus those outside the

⁴ See CWS' 2022 comments at https://workingforsafety.com/wp-content/uploads/CWS-Comments-on-OSHA-Recordkeeping-Rule_June-2022-1.pdf.

⁵ 87 Fed. Reg. at 18528.

⁶ See CWS' 2022 comments at https://workingforsafety.com/wp-content/uploads/CWS-Comments-on-OSHA-Recordkeeping-Rule_June-2022-1.pdf.

⁷ During the 2022 rulemaking, OSHA stated its proposal "will ultimately result in the reduction of occupational injuries and illnesses" but provided no data in support of this claim. Moreover, OSHA offered no evidence to show that its previous collection and disclosure of summary injury and illness data resulted in the "reduction of occupational injuries and illnesses," which it predicted the current rulemaking would achieve. 87 Fed. Reg. at 18529. OSHA also failed to provide any data supporting this claim in the final rule. 88 Fed. Reg. at 47254.

⁸ *U.S. v. Mar-Jac Poultry, Inc.*, Civil Action No. 2:16-CB-192-WCO-JC (N.D. Ga. November 2, 2016) (holding "[t]he fact that an injury or illness is recordable does not show that it was the result of a violation of an OSHA standard. Not all hazards are the result of a violation.").

employer's control. In contrast, OSHA is unable to make such distinctions using the raw data.

There are many injuries recorded on an employer's 300 Log based solely on a geographic presumption (*i.e.*, they occurred at the workplace) that in no way indicate whether an employer's workplace is unsafe or out of compliance with OSHA standards.

Therefore, to use these data to establish enforcement measures is misguided and contrary to the original intent of the no-fault recordkeeping system. In keeping with the agency's original intent of the recordkeeping provisions, an employer's 300 Log and 301 Form should not be used to trigger enforcement.

(2) The accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used.

During the 2022 rulemaking, OSHA went so far as to predict that "the annual benefits [of the proposal], while unquantified, would significantly exceed the annual costs." However, this was based on the unfounded premise that public disclosure of information would increase employers' attention to employee safety and health.⁹ OSHA reasserted this claim in the final rule.¹⁰

The agency failed to take into consideration:

- Duplicate reporting requirements for employers
- Creating dual recordkeeping requirements for employers
- The time needed for employers to scrub the required data
- The amount of time required for employers to collect and submit the data

OSHA's frequent changes and reversals to its recordkeeping policies, including requirements surrounding electronic submission of injury and illness data, has resulted in significant confusion among employers, particularly small employers, regarding what requirements apply to their business.

(3) Ways to enhance the quality, utility and clarity of the information collection.

Forms 300 and 301 contain private employee information and other sensitive medical information that should not be made publicly available. The OSHA 300 Log contains employee names, job titles, descriptions of injuries and body parts affected (as well as the extent of the injury suffered by the employee) and whether the injury resulted in days away from work or restricted duty.

Similarly, Form 301 contains comparable content as well as personal identifiers, including an employee's home address, date of birth, and physician information for each

⁹ See 87 Fed. Reg. at 18529.

¹⁰ See 88 Fed. Reg. at 47254.

recorded injury. It also contains detailed information about the injury, such as whether it resulted in hospitalization, how the incident occurred and what body parts are affected.

For many employees, the information contained in the 300 Log and 301 Form is sensitive private and personal medical information that the government must protect from disclosure to the public, as it has historically done.

For instance, OSHA has stated that it will not require employers to provide information that can be used to directly identify individuals. OSHA offers no proof of its ability to protect this information when it is mistakenly provided by an employer, which will inevitably occur.¹¹ In addition, OSHA has acknowledged that the information it collects and publishes can still be used to identify individuals indirectly by combining it with other publicly available information.¹² OSHA also relies heavily on automated information technology to remove information that can directly identify individuals. This technology is not 100% accurate, so there will still be information made publicly available that can be used to directly identify individuals. All of this is incredibly problematic and concerning.

Further, OSHA asserts that this information will be protected from public disclosure through FOIA exemptions. This position is not convincing in light of recent judicial decisions.¹³ Although OSHA suggests that various FOIA exemptions will protect this private employee information from disclosure, the agency concedes that numerous courts have repeatedly rejected its argument that FOIA exemptions protect similar information in Forms 300 and 301 from disclosure.

OSHA goes to great length to describe the measures it will take and the technology available for preventing the public release of employee identifying information.¹⁴ And even then, OSHA concedes that the risk will not be zero: “the agency will *seek to minimize the possibility* that worker information, such as name and contact information, will be released....”¹⁵ OSHA then cavalierly asserts “that the benefits of collecting and publishing the data for improving safety and health outweigh potential privacy problems.”¹⁶

Unfortunately, the same concern for employer sensitive data is nowhere to be found. As comments in the previous rulemakings related to the collection and posting of the 300A

¹¹ During the 2022 rulemaking, OSHA indicated, “there would be little risk of public disclosure of this information,” but acknowledges in some circumstances this information still “may be submitted by employers into the system.” 87 Fed. Reg. at 18539.

¹² See 87 Fed. Reg. at 18538.

¹³ During the 2022 rulemaking, the agency admits that information collected from Forms 300 and 301 “will likely be the subject of multiple FOIA requests in the future.” 87 Fed. Reg. at 18535.

¹⁴ See, “The Data Collection Will Adequately Protect Information That Reasonably Identifies Individuals Directly” at 87 Fed. Reg. 18538-18540.

¹⁵ 87 Fed. Reg. at 18529 (emphasis added).

¹⁶ 87 Fed. Reg. at 18540.

annual summaries pointed out, those forms contain specific data on the number of employees and number of hours worked—two subjects that employers protect zealously as competitors can use these data to gain insights into efficiencies and productivity rates.

Furthermore, the establishment-specific nature of the data from the 300 and 301 Forms will mean that adversaries and parties wishing to mischaracterize an employer's safety record will have no trouble doing so with great specificity. Merely because an injury or illness is recorded does not mean that employer has a weak safety program, or any OSHA violations. However, those wishing to attack these employers will rely on these data to create the impression that the workplace is unsafe regardless of the nature of the incidents recorded. This happened before OSHA posted this data, but OSHA's posting of this data has only exacerbated this practice.

The only way to ensure this information is truly protected is not to collect it at all.

(4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

As stated previously, the only way to ensure this information is truly protected is not to collect it at all, or at a minimum, discontinue making it publicly available. Below are recommendations on how to minimize the burden of collection from CWS' 2022 comments:

OSHA must establish clear procedures for employers to make corrections to already-submitted data, and improve internal processes to ensure those corrections are reflected in the publicly posted data. Sometimes an employer's investigation into whether an injury or illness requires reporting can take months or even years. Information discovered through an investigation may require a change in how or whether an injury is recorded. Currently, upon notice from an employer of a required correction, it takes months for OSHA to make these corrections online.

Because employers are required to scrub the forms of sensitive employee data prior to submitting them, OSHA essentially requires employers to maintain two separate sets of records—one complete set to maintain on file and a separate set reflecting the "scrubbed" submission to OSHA. OSHA must take responsibility for its data collection requirements, instead of placing this burden on employers.

Employers who submit data to OSHA should not be required to separately submit the same data to BLS. These duplicative reporting requirements are unacceptable. BLS's retrieval of information already submitted to OSHA should be automatic and should require no additional action by an employer.

Conclusion

For the reasons indicated above, CWS continues to have serious concerns about the electronic submission and public posting of data from Forms 300, 301 and 300A. The only way to ensure this information is truly protected is not to collect it at all, or at a minimum, discontinue making it publicly available.

Sincerely,

The Coalition for Workplace Safety