



**June 30, 2022**

Doug Parker  
Assistant Secretary  
Occupational Safety and Health Administration  
U.S. Department of Labor  
200 Constitution Ave, NW  
Washington, DC 20210

**Re: Notice of Proposed Rulemaking on Improving the Tracking of Workplace Injuries and Illnesses,  
Docket No. OSHA 2021-0006, RIN 1218-AD40**

Dear Assistant Secretary Parker:

On behalf of the National Lumber and Building Material Dealers Association (NLBMDA), we respectfully submit the following comments regarding the Occupational Safety and Health Administration's (OSHA) Notice of Proposed Rulemaking (NPRM) on Improving the Tracking of Workplace Injuries and Illnesses published in the Federal Register on March 30, 2022.

NLBMDA with its state and regional association partners represent over 6,000 building material retail locations nationwide who operate single and multiple lumber yards and component plants serving homebuilders, subcontractors, general contractors, and consumers in the new construction, repair and remodeling of residential and light commercial structures. The majority of NLBMDA members are small, family-owned lumber and building material (LBM) operations, in many instances providing lumber products and building material in the same communities for generations.

According to information published by OSHA in the Federal Register<sup>1</sup>, OSHA is proposing to amend its occupational injury and illness recordkeeping regulation to require certain employers to electronically submit injury and illness information to OSHA that employers are already required to keep under the recordkeeping regulation. Specifically, OSHA proposes to amend its regulation to require establishments with 100 or more employees in certain designated industries - including LBM dealers - to electronically submit information from their OSHA Forms 300, 301, and 300A to OSHA once a year. LBM dealers with 20 or more employees would continue to be required to electronically submit information from their OSHA Form 300A annual summary to OSHA once a year. OSHA is also proposing to require establishments to include their company name when making electronic submissions to OSHA.

The health and safety of employees continues to be of utmost importance for NLBMDA members. The industry has taken numerous steps over the last several years to improve health and safety measures at their facilities to protect employees. NLBMDA supports workplace safety regulations that effectively enhance health and safety and do not impose undue costs or recordkeeping requirements on LBM dealers. The recordkeeping requirements mandated by OSHA and other

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<sup>1</sup> 87 FR 18528

agencies can pose significant cost burdens on employers. NLBMDA believes federal mandates must be carefully reviewed to ensure new regulations balance the need to promote safety with the time and cost burden of compliance.

While NLBMDA shares OSHA's commitment to protecting the health and safety of employees, we believe this proposed rule will do very little to accomplish OSHA's stated mission of reducing injury and illnesses in the workplace. NLBMDA is concerned that OSHA's proposed rule will only threaten the privacy of employees and impose unnecessary and costly administrative requirements on employers. Please find NLBMDA's comments on the NPRM below.

**1. The NPRM provides no demonstrable benefits to employee safety in the workplace and may provide potentially inaccurate, outdated information.**

All LBM establishments consisting of 20 or more employees are already required by OSHA to submit their Form 300A to the agency on an annual basis. This form contains the summary of work-related injuries and illnesses which includes the number of recordable cases, the number of days away from work, and the injury and illness types.

NLBMDA believes that the information contained in Form 300A is already sufficient to provide the agency with meaningful data on injuries and illnesses in the workplace. In the NPRM, OSHA fails to adequately justify or provide evidence on how the submission of sensitive employer and employee data contained on Form 300 and Form 301 will markedly improve the health and safety of employees. The information included on Forms 300 or 301 is not necessarily emblematic of potential hazards in a workplace or of potential violations of existing OSHA regulations.

Further, it is important to note that the information contained on Form 301 is collected at the time of the incident and may become outdated or irrelevant as new facts emerge over the course of the incident investigation. On occasion, an employer's investigation into whether an injury or illness requires reporting can take several months or years. New information discovered through an investigation may require modifications in how or whether an injury is recorded. This would make any data submitted to OSHA potentially inaccurate and less useful.

To this end, the proposed rule's requirements to submit two new recordkeeping forms to OSHA would impose an additional administrative and financial burden on employers with little to no benefit to the health and safety of employees. These new requirements would be particularly burdensome for employers who have multiple establishments and limited staff resources to comply with the new paperwork. These resources would be better directed toward proactive safety measures to protect employees, rather than duplicative and gratuitous recordkeeping rules that will do little to prevent injuries and illnesses in the workplace.

OSHA must also consider the impact that the agency's repeated changes and reversals to its recordkeeping policies has had on employers, especially smaller employers. This year's proposed rule is now the third such rulemaking by OSHA on injury and illness recordkeeping since 2014. The frequent changes to recordkeeping regulations has resulted in significant confusion among employers regarding what requirements apply to their business.

## **2. The NPRM risks the confidentiality and protection of sensitive employer and employee information.**

As detailed above, OSHA is proposing to require employers to electronically submit information from their OSHA Forms 300 and 301 once per year. The OSHA 300 Log requires employers to record all reportable injuries and illnesses that occur in the workplace, where and when they occur, the nature of the case, the name and job title of the employee injured or made sick, and the number of days away from work or on restricted or light duty, if any.

The OSHA Form 301 includes similar content and other personal descriptors including an employee's home address, date of birth, and doctor information for each recorded injury. The Form 301 also contains detailed information about the injury or illness, such as whether it resulted in hospitalization, how the incident occurred and the body parts affected. The proposed rule will also require establishments to include their company name when making electronic submissions to OSHA.

NLBMDA has serious concerns regarding how OSHA will protect the sensitive private and personal medical information contained in the Form 300 Log and Form 301. NLBMDA believes the electronic submission of this data is a stark departure from prior OSHA positions on protecting sensitive information. Historically, OSHA has acknowledged the privacy concerns involving the sensitive employee medical information contained in both of these forms. In its 2018 rulemaking on injury and illness recordkeeping, OSHA admitted that collecting sensitive private employee information from Forms 300 and 301 "adds uncertain enforcement benefits, while significantly increasing the risk to worker privacy, considering that those forms, if collected by OSHA, could be found disclosable under the Freedom of Information Act (FOIA)."<sup>2</sup>

While OSHA has stated that it will implement measures to ensure any published injury and illness data does not reveal sensitive employer or employee information, the agency has not sufficiently demonstrated how it will protect this information. The agency acknowledges that it did not conduct a Privacy Impact Assessment of its data collection and handling before issuing this proposed rule.<sup>3</sup> This raises questions on how OSHA will protect this sensitive information from cybersecurity threats and internal data leaks. Further, the agency cannot provide any guarantee that this sensitive business data will be protected in potential FOIA requests in the judicial system.

### **Conclusion**

NLBMDA has significant concerns with OSHA's proposed rule and urges the agency to withdraw it before promulgating a final rule. If OSHA decides to move forward with a final rule, the agency should make no substantial changes to the existing recordkeeping and reporting regulations that were issued in 2019.

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<sup>2</sup> 83 FR 36494, 36496

<sup>3</sup> 87 FR 18540

Thank you for the opportunity to provide comment on this issue. For any questions, please contact NLBMDA's Director of Government Affairs Jacob Carter at [jacob@dealer.org](mailto:jacob@dealer.org).

Sincerely,

A handwritten signature in black ink that reads "Jonathan Paine". The signature is written in a cursive style with a large initial "J" and a long, sweeping tail on the "P".

Jonathan M. Paine, CAE  
President & CEO