September 27, 2018

Ms. Loren E. Sweatt
Deputy Assistant Secretary of Labor for Occupational Safety and Health
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC  20210

Submitted via: Regulations.gov

Subject: Docket #: OSHA-2013-0023
Tracking of Workplace Injuries & Illnesses (83 Federal Register 36494)

Dear Ms. Sweatt:

On behalf of the American Public Health Association, a diverse community of public health professionals that champions the health of all people and communities, I write to provide comments on OSHA’s proposal to amend its regulation for tracking of occupational injuries and illnesses. APHA opposes the proposed changes to revoke requirements for about 37,000 establishments with 250 or more workers to electronically submit information annually from OSHA Forms 300 and 301.

In 2014 when OSHA proposed the regulation “Improve Tracking of Workplace Injuries & Illnesses,” APHA submitted comments in strong support of the proposal (attachment). In addition, APHA member Rosemary Sokas, MD, MOH, testified on behalf of the association in support of the injury reporting rule before the Subcommittee on Workforce Protections of the House Committee on Education and the Workforce (attachment).

Surveillance is a keystone of effective public health. It is essential for identifying injuries, illnesses and deaths and for designing effective intervention strategies to prevent them. Collecting and analyzing workplace-specific injury and illness incident reports is an example of public health surveillance. An effective occupational health and safety surveillance program provides essential data to identify hazards, determine whether hazards are being properly controlled, and develop effective measures to eliminate the hazards in order to prevent injuries, illnesses and deaths. Our comments are grounded in this public health principle. The comments are also informed by several APHA policy statements, including “Support for Workplace Injury
and Illness Prevention Programs” and “Occupational Health and Safety Protections for Immigrant Workers.”

Earlier this year, the National Academies of Sciences, Engineering, and Medicine made a powerful case on the need for a robust work-related injury and illness surveillance system in the U.S. For 18 months, an 11-person committee of experts from academia, industry and labor studied the issue. We note that President Trump’s nominee to head the Occupational Safety and Health Administration, Mr. Scott A. Mugno, was a member of the committee.

Among the topics examined by the NAS committee was the “Tracking of Workplace Injuries & Illnesses” final rule adopted by OSHA in May 2016 (81 Federal Register 29624). They wrote:

“…the information collected and available under the electronic reporting rule holds potential value for employers, workers, public health agencies, researchers, and others. Employers will be able to use the information to compare their experience with others in the industry. Workers will be able to have ready access to an employer’s injury reports prior to seeking employment and while employed to assess the safety record of the employer. Public health agencies will be able to determine if there are types of injuries or illnesses occurring in the workplaces of particular industries. Public health departments will be able to initiate intervention efforts, including educational efforts and adjustments to public health standards in industries such as health care facilities, food establishments, or schools, which are regulated by the states. And researchers will have ready access to a large database of injury information to assist them with better characterizing high risks as well as assessing the effectiveness of interventions.

“The electronic reporting initiative also provides an opportunity to create a new avenue for expanding and targeting outreach to employers, particularly smaller employers, to assist them with hazard identification and prevention efforts. The agency could provide automatic feedback or reports to employers on how their injury rates compare with others in the industry. In addition, the agency would need to provide software and other tools and materials to employers to help them analyze their injury reports. Such feedback might be implemented as part of the Injury Tracking Application that OSHA is designing to collect occupational injury data directly from employers.”

The numerous benefits of a strong occupational health and safety surveillance system will not be realized if the agency rescinds the reporting requirements as it has proposed.

Table 2-1 in the NAS report provides a list of users and uses of occupational health and safety surveillance data. The list includes:

Federal and state health agencies using the data to identify high-risk populations, emerging work-associated problems, and community health needs;

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2 The report has been submitted to Docket #: OSHA-2013-0023 via Regulations.gov.
3 The report has been submitted to Docket #: OSHA-2013-0023 via Regulations.gov.
**Employees and unions** using the data to identify hazards within particular occupations and to establish safety training priorities;

**Employers and trade groups** using the data to identify industry- and occupation-specific hazardous conditions and job exposures, and to focus topics for training programs;

**Clinicians and researchers** using the data to diagnose occupational disease, to characterize physical, chemical, and biological hazards and to assess economic and social impacts of work-related injuries and illnesses; and

**Equipment manufacturers** using the data to identify needed technological changes and prevention opportunities through design options.

The NAS committee concludes the following about the data to be provided pursuant to the final rule adopted by OSHA in May 2016:

“Conclusion: … These data are useful for targeting interventions and prevention efforts that focus on hazardous industries, workplaces, and exposures as well as high-risk groups. The rule also provides new opportunities to conduct outreach and to provide tools and assistance to employers who need to identify and address hazards at individual worksites.”

APHA strongly concurs with the NAS committee’s conclusion. We oppose the changes proposed by OSHA to revoke requirements for establishments with 250 or more workers to electronically submit information annually from the OSHA Forms 300 and 301.

Below we provide responses to questions posed by OSHA in the July 2018 proposed changes to the existing rule:

**What risks to worker privacy are posed by the electronic collection of information from Forms 300 and 301 from establishments with 250 or more workers? How likely are these risks to materialize?**

OSHA indicates that rescinding the requirements is necessary in order to protect worker privacy. The agency’s assertions about this risk are disingenuous and deceptive. In 2016, OSHA thoroughly discussed these concerns and responded to them, as the agency noted in the preamble to the final rule. The agency repeatedly indicated that it would not collect personally identifiable information (PII). For example:

On page 29658, column 3
“Note that under this final rule, OSHA will not collect or publish Field 1 (employee name), Field 2 (employee address), Field 6 (name of treating physician or health care provider), or Field 7 (name and address of non-workplace treating facility).” *(emphasis added)*

On page 29661, column 1:
“Therefore, OSHA has decided in this final rule to exclude from the submittal requirements several fields on the OSHA Forms 300 and 301 to minimize any potential release or unauthorized access to these data. The data elements are: (on the Log of Work-Related Injuries and Illnesses (OSHA Form 300)): Employee name (column B); and (on the Injury and Illness Incident Report (OSHA Form 301)): Employee name (field 1), employee address
(field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7). *(emphasis added)*

On page 29661, column 3

“OSHA will neither collect nor publish the following information: Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B); Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).” *(emphasis added)*

On page 29663, column 3

“…the final rule requires employers at establishments with 250 or more employees to submit information about the employee and the employee’s injury/illness recorded on the 300 and 301 forms, except employee name and address, treating physician name, and treating facility name and address.” *(emphasis added)*

On page 29668, column 1

“The establishments are not required to submit the following information: a. Log of Work-Related Injuries and Illnesses (OSHA Form 300): Employee name (column B). b. Injury and Illness Incident Report (OSHA Form 301): Employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7).” *(emphasis added)*

In addition, OSHA described the systems in place that would further protect PII. On page 29662 of the May 2016 final rule, for example, OSHA stated:

“…the Agency plans to maintain two data repositories in the system: One as OSHA’s data mart (or warehouse) for prescribed data behind a secure firewall, and a separate but similarly secured repository of data that has been verified as scrubbed and available for public access. Both systems will have multi-tiered access controls, and the internal system will specifically be designed to limit access to PII to as few users as possible.

In addition, OSHA will consider the possible need to encrypt sensitive data in the data mart repository as a safeguard, so that data would be scrubbed (and rendered unreadable and useless) in the case of unauthorized access. Also, as discussed above, OSHA will not collect data from certain fields that primarily exist to help people doing incident investigations at the establishment and that would not add to OSHA’s or any other user’s ability to identify establishments with specific hazards or elevated injury and illness rates.”

The agency further explained in the preamble to the final rule, the two ways in which PII can be protected. OSHA indicated it was using both of these methods. They are (1) not collecting certain PII (a decision already made by OSHA, as we note above); and (2) by maintaining the confidentiality of the data it does collect that might be PII. The agency noted:

“…OSHA is strongly committed to maintaining the confidentiality of the information it collects, as well as the security of its computer system. All federal agencies are required to establish appropriate administrative and technical safeguards to ensure that the security of

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4 81 Federal Register 29662.
all media containing confidential information is protected against unauthorized disclosures and anticipated threats or hazards to their security or integrity.

Regardless of the category of information, all Department of Labor agencies must comply with the Privacy and Security Statement posted on DOL’s Web site. As part of its efforts to ensure and maintain the integrity of the information disseminated to the public, DOL’s IT security policy and planning framework is designed to protect information from unauthorized access or revision and to ensure that the information is not compromised through corruption or falsification.”

In this proposed change to the existing rule, OSHA also asserts it will be unable to “protect sensitive worker information from potential disclosure under the Freedom of Information Act (FOIA).” We note, however, the detailed description provided by OSHA in the 2016 final rule on policies and procedures to protect personally identifiable information (PII). The agency explains its current use of one or more FOIA exemption to withhold PII. Specifically:

“OSHA generally uses FOIA Exemption 7(c) to withhold from disclosure any personally identifiable information included anywhere on the three OSHA recordkeeping forms. For example, although information in Field 15 of the 301 incident report (Tell us how the injury occurred) is generally released in response to a FOIA request, if that data field includes any personally-identifiable information, such as a name or Social Security number, OSHA will apply Exemption 6 or 7(c) and not release that information. FOIA Exemption 6 protects information about individuals in “personnel and medical and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” [5 U.S.C. 552(b)(6)].”

In the final rule adopted by OSHA in 2016, the agency described the manner in which PII would be protected. The agency is now making claims it cannot do so, but fails to provide any substantial evidence to demonstrate that the systems, policies, and procedures described above are now inadequate to protect PII.

How likely are these risks to materialize? How could OSHA make them less likely, and what resources would be required?

The risk to worker privacy is very minimal and unlikely to materialize. OSHA provided sufficient information in the preamble to the 2016 final rule on the measures in place to address protection of worker privacy which are described above. To summarize briefly, OSHA: (1) is not collecting particular fields of data from the OSHA Form 300 and 301, such as employee name, employee address, and name of physician; (2) has implemented (or will implement) use of two data repositories; (3) has created (or will create) multi-tiered access controls for the two data repositories; and (4) created (or will create) internal systems of control to limit access to potential PII to as few users as possible.

In addition, we remind OSHA that its sister agency in the Department of Labor, the Mine Safety and Health Administration, has 40 years of experience collecting injury and illness records from mine operators and has been able to effectively protect worker privacy. We note that the

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5 81 Federal Register 29662-63.
6 81 Federal Register 29658.
preamble of OSHA’s proposed rule does not mention MSHA, its regulations at 30 CFR Part 50, the MSHA Form 7000-1, or any other information related MSHA’s systems, policies, practices or experience collecting mine-specific injury and illness data. APHA member inquiries to administration officials suggest that OSHA’s preparation of this proposed rule did not include consultation with MSHA. MSHA’s experience proves that a robust injury and illness surveillance system that protects personal data is achievable. [See appendix for Form 7000-1.]

**What are the benefits of electronically collecting this information?**

As noted above, the NAS issued a report earlier this year on the benefits of establishment-specific injury and illness incident records. The users and uses of the data includes: (a) state health agencies using the data to identify high-risk populations and community health needs; (b) employees and unions using the data to identify hazards for particular occupations and to establish safety training priorities; (c) trade associations using the data to educate their members about industry- and occupation-specific hazardous conditions and to develop hazard awareness safety training programs for their members; (d) clinicians using the data to detect emerging occupational diseases and to characterize existing or emerging hazards; and (e) researchers to analyze injury and illness trends and collaborate with employers, unions, trade groups, equipment manufacturers, and others to develop effective public health interventions.

In the preamble to this proposed rule, OSHA states numerous times that collecting injury-specific data has “uncertain enforcement benefits.” Such statements contradict the information provided by OSHA when it published the agency’s 2016 final rule. At that time, the agency explained, for example, how the OSHA Data Initiative (ODI) allowed it to identify and target individual establishments for inspection that experience high rates of injury and illness. The rule adopted in 2016 was designed to expand the number of establishments required to submit data and to provide data with more specificity. OSHA will analyze the data collected in order to inform enforcement priorities. This will allow OSHA to focus its very limited inspection resources to workplaces where workers face the greatest risk of injury, illnesses or death. In the 2016 final rule, the agency posed a number of critical questions that the rule intended to address:

“(1) Within a given industry, what are the characteristics of establishments with the highest injury or illness rates (for example, size or geographic location)? (2) Within a given industry, what are the relationships between an establishment’s injury and illness data and data from other agencies or departments, such as the Wage and Hour Division, the Environmental Protection Agency, or the Equal Employment Opportunities Commission? (3) Within a given industry, what are the characteristics of establishments with the lowest injury or illness rates? (4) What are the changes in types and rates of injuries and illnesses in a particular industry over time?”

The data currently available to OSHA does not have the specificity necessary to answer such questions. The injury and illness reporting rule adopted by OSHA in 2016 is designed to fill this information gap. It is unwise for the agency to reverse course.

The proposed changes to the existing rule also fail to describe and acknowledge the benefits of the rule for non-enforcement purposes. In the 2016 final rule, OSHA described the ways in which the agency could use the data for compliance assistance purposes. Equally important are...

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7 81 Federal Register 29630.
the public comments provided by public health organizations and researchers that described benefits of the data for injury prevention efforts and evaluation of regulatory and non-regulatory interventions. These include comments by the Council of State and Territorial Epidemiologists, American College of Occupational and Environmental Medicine, California Department of Industrial Relations, the American Industrial Hygiene Association, the New York State Nurses Association and Lancaster Safety Consulting. With its current proposal, OSHA disregards these benefits. The agency ignores the vital role that stakeholders have in occupational health and safety surveillance and dismisses how their contributions would be enhanced by data collected pursuant to the 2016 final rule.

As noted above, OSHA’s proposed changes to the existing rule fail to mention the experience the Department of Labor has with the injury reporting requirements for employers in the mining industry. MSHA requires all of the nation’s mining operations to submit an incident report within 10 working days of all injury, illness and of certain other non-injury events (e.g., unplanned ignition, rock outburst). The requirements are stipulated in 30 CFR Part 50 and also require quarterly reports on mine employment and coal production. The injury, illness and serious incidents are reported on MSHA Form 7000-1; the mine employment and production information data are reported on MSHA Form 7000-2. These requirements for mine operators have been in place for more than 40 years. Currently, about 90 percent of the nation’s 13,000 mining operations electronically submit the MSHA Form 7000-1. The remaining 10 percent of mine operators mail or fax a paper copy to the agency.

There are about 40 items for the mine operator to answer on MSHA Form 7000-1. The fields include the worker’s name, date of birth, job title, years of experience, nature of the injury (e.g., laceration, amputation) severity of the injury (e.g., fatality, lost-time injury, restricted duty) and a description of the incident and equipment involved. If treatment for the injury demands restricted duty or lost-time, the employer is required to submit an updated incident report with a final disposition of the incident (e.g., total number of days lost). OSHA asserts that collecting information, such as “descriptions of their injuries and the body parts affected may be sensitive for workers,” yet MSHA has collected this information for decades from employers in the mining industry. OSHA provides no evidence of data breaches involving this long-standing collection of Department of Labor data. Our research, including first-hand knowledge from APHA members who were employed at MSHA, has not identified any data that reveals that the systems, policies, and procedures in place at MSHA are inadequate to protect PII. MSHA’s experience handling PII collected pursuant to 30 CFR Part 50 injury reporting requirements demonstrates that the Department of Labor can effectively protect worker privacy. This includes MSHA’s experience responding to FOIA requests for MSHA Forms 7000-1 and/or the data contained on the form.

MSHA has a robust system in place to protect personally identifying information (PII) from inappropriate disclosure. We have provided in the appendix MSHA’s Privacy Impact Assessment Questionnaire which describes the agency’s procedures for protecting personally

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8 They are posted in Docket #: OSHA-2013-0023.
10 Personal communication with MSHA staff on August 8, 2018.
11 83 Federal Register 36495.
We recommend that OSHA review the document, but also urge the agency to consult with MSHA officials on the safeguards they have in place to protect PII. With appropriate systems and procedures in place, and redundant safeguards built into the system, the public health benefit of case-specific incident reports far outweigh the negligible risk of disclosure of potential PII.

MSHA’s rationale for collecting detailed mine-specific injury and illness data was articulated in 1977 by the Mining Enforcement and Safety Administration (MESA, the predecessor to MSHA). MESA proposed and finalized a rule to merge the incident reporting requirements for coal mine operators and metal and non-metal mine operators, noting:

“New reporting forms to be used by both coal and metal and nonmetal have been designed with detailed instructions for their completion. Uniformity will facilitate development of data bases respecting mine health and safety, and will enable MESA to identify those aspects of mining which require intensified attention with respect to health and safety regulation.

“[Furthermore] uniformity will facilitate data processing medical research and development of widely applicable health and safety control technology.”

The rationale articulated by MSHA 40 years ago hold true today: a strong injury and illness surveillance system has tremendous value for occupational health and safety research to reduce negative health outcomes, whether in clinical settings, or the disciplines of engineering, industrial hygiene, or human factors. The efficiency of having a uniform electronic reporting platform also remains today, particularly a system that can be used by employers who operate in multiple states, as well as a shared resource for federal OSHA and the OSHA State Plans. That was one of the outcomes anticipated when OSHA adopted the injury reporting rule in May 2016.

MSHA makes data from Form 7000-1 available to the public in two forms: (1) the Mine Data Retrieval System (MDRS) and (2) in self-extracting data files (.exe) posted on the agency’s website. As of September 10, 2018, calendar years 1983 through the 2nd quarter calendar year of 2018 are posted on MSHA’s website. Moreover, the National Institute for Occupational Safety and Health converts the self-extracting files (.exe) into dBase IV and SPSS for added convenience for public users of the data. MSHA provides a link to the NIOSH webpage where

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the data is posted and notes: “We wish to thank NIOSH for their assistance in providing you this information in these formats.”

The Mine Data Retrieval System is the most frequently visited page on MSHA’s website. MDRS queries provide injury incident data that is typically of interest to the public. A query output will include most, but not all of the data contained on the Form 7000-1. For example, a query for the week of July 22, 2018 for incident reports from the Bailey Mine in Greene County, PA resulted in the following output:

| Mine ID: | 36-07230 |
| Operator: | Consol Pennsylvania Coal Company LLC |
| Operation Begin Date: | 11/18/2009 |
| Mine Name: | Bailey Mine |
| Mine Status: | Active |
| Status Date: | 12/1/1981 |
| Mined Material: | Coal (Bituminous) |
| Location: | Greene County, PA |
| Type of Mine: | Underground |
| State: | PA |
| Contractor ID | Accident Date | Degree of Injury | Classification | Occupation -- Activity |
| N/A | 7/26/2018 | Days Away from Work Only | Machinery | Bull Gang Foreman, Labor Foreman, Leadman, Section Foreman, Shift Boss, Rerail Equipment |
| Total Exp. | Mine Exp. | Job Exp. | Description of Incident |
| 10.31 | 10.31 | 6.69 | Employee was struck by an airbag while re-railing a derailed low-boy car. This incident caused a fracture to left leg. |

A screenshot of the result of this query, as well as an additional example are in the appendix.

MSHA’s four decades of experience collecting injury and illness data illustrates the variety of users and uses of the incident specific data. For example:

1. Interested stakeholders have access to the mine-specific injury data collected by MSHA in a downloadable format. A safety trainer who provides services to a trade association may want to examine more deeply the circumstances related to machine guarding injury incidents. The safety trainer may be interested in determining the occupations, age, years of experience of the miners and shift time. Because the data includes details of the incidents, the trainer could look for characteristics related to injuries that specifically involve machine guards that were the wrong size or in the wrong position. The safety trainer would intend to share his analysis with mine operators who are members of the trade association to raise awareness about these specific types of machine guarding injuries in order to prevent them in the future.

2. The robust incident specific data collected by MSHA is used to identify trends in the mining industry. The data can be stratified by specific commodities (e.g., crushed stone, phosphate rock, salt) to assist mine operators in those sectors to understand the most prevalent hazards and

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18 As described above, all of the fields from MSHA Form 7000-1 for non-fatal injuries are available to public users, with the exception of the following: Name of investigator; Name of witness to the incident; Name of injured/ill employee; Sex of employee; Date of birth of employee; Last four digits of employee’s Social Security number; Name, title, and phone number of person who completed the form.
resulting injuries. Employers and employees in the mining industry want safety awareness information that is relevant to their operation. There are hazards that are unique to particular types of mining operations (e.g., dimension stone compared to coal extraction). Injury incident data that makes this distinction will be more effective in efforts to improve hazard awareness. Similarly, the current categories used by BLS to categorize the “event or exposure” are generally too broad for the purpose of designing injury prevention interventions. In contrast, MSHA’s incident-specific injury and illness data is used by the agency as well as stakeholders to conduct multivariate analyses.

(3) MSHA’s assistant secretary and technical staff hold a quarterly stakeholder conference call to present the latest information on non-fatal, fatal, and close-call incidents. During the most recent stakeholder call, which took place in August 2018, one safety topic addressed was machine guarding. The attached appendix shows one of the slides from the stakeholder call that describes trends in machine guarding injuries. You will see the notation that the data is based on reports provided by mine operators on the MSHA Form 7000-1 (as required by 30 CFR Part 50). [see appendix.]

To further illustrate, the data reported by mine operators allows MSHA to communicate the number of non-fatal injuries and injury trends over time caused by inadequate machine guarding. Particularly important for prevention purposes, the data allows MSHA to provide information to the mining industry on the contributing factors for the injuries, (e.g., handling oversized and no-handle guards, inadequately sized or positioned guards, removed guards). Without these kinds of details, mine operators and miners are left with vague hazard information (i.e., “machine guarding” injuries) for safety awareness and prevention. Moreover, any interested stakeholder has access to the data in a downloadable format to address the need to delve more deeply into factors related to the incidents.

(4) MSHA, NIOSH, mining industry researchers and other interested persons can search the data for injury incidents involving specific pieces of equipment, including by manufacturer name. This information is used to alert the mining industry to hazards or defects related to specific pieces of equipment.

(5) All mine operators in the U.S. are required to provide 8-hours of annual safety and health training to their employees, as well as new task training, and specialized safety training for new mine workers. In addition, at many mining operations, mine workers and supervisors will discuss a safety topic at the beginning of their work shift. Data from the 7000-1 Forms are the basis of MSHA’s “Mine Safety and Health Materials” interface. All of the close-call alerts, serious incident reports, and hazard awareness presentations rely on data from the 7000-1 forms. [see appendix.]

(6) The self-extracting files of incident data collected on MSHA Form 7000-1 are of particular value to mining engineers and injury prevention researchers. An annotated bibliography of research papers that used the injury-incident data is in the appendix. The bibliography is not an exhaustive list. It simply is an example of how the data collected by MSHA enhances our understanding of the factors that contribute to injuries to mine workers in the U.S. and the means currently in place to address those hazards.

In conclusion, APHA strongly opposes the proposed changes to revoke requirements for employers with more than 250 workers to electronically submit information annually from the
OSHA Forms 300 and 301. These surveillance data are essential for preventing workplace injuries and fatalities. This proposed change would threaten the ability of employers, workers, researchers, state labor departments and OSHA to protect the health and safety of our nation’s workers.

Sincerely,

Georges C. Benjamin, MD
Executive Director

Attachments