**DATE:** June 21, 2022

**TO:** NPRM Recordkeeping June 14, 2022, Meeting Roster

**FROM:** Helen Cleary

**RE:** NPRM Recordkeeping Meeting Summary – June 14, 2022

On June 14, 2022, nine members of the Phylmar Regulatory Roundtable met to discuss PRR’s position and comments on the U.S. Department of Labor’s (DOL) Occupational Safety and Health Administration (OSHA/FedOSHA) Notice of Proposed Rulemaking ([NPRM](https://www.federalregister.gov/documents/2022/03/30/2022-06546/improve-tracking-of-workplace-injuries-and-illnesses)) to update its electronic recordkeeping regulation: [§1904.41](https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.41). **Comments are due by June 30, 2022.**

The PRR members most likely to be impacted by the proposed changes as well as those who expressed interest in this issue were invited to attend the call. The recording of the call can be found [here](https://prr2021-my.sharepoint.com/:v:/r/personal/hcleary_prr2021_onmicrosoft_com/Documents/Recordings/Microsoft%20Teams%20Meeting-20220614_100027-Meeting%20Recording.mp4?csf=1&web=1&e=WTR58b).

*Thank you to all who attended and participated in our discussion. Your input and perspective are very valuable and will drive PRR’s written comments.*

**Review of Proposed Requirements**

PRR Staff explained that in 2016 Fed/OSHA proposed a similar rule that would require employers to submit all three OSHA forms (Form 300, 300A, 301) but the Trump Administration wanted to roll back regulation and asked Agencies to re-evaluate the need for more. In 2018, Fed/OSHA proposed a reduced version of the original proposal (the submission of Form 300A only) and asked for public comment. PRR submitted extensive comments at that time supporting this position primarily for privacy purposes.

Currently, the Biden Administration/FedOSHA is again proposing a rule similar to the 2016 proposal. Fed/OSHA is proposing that companies with 100 or more employees whose NAICS code is identified in OSHA’s Proposed Appendix B will be required to electronically submit OSHA Forms 300, 300A, and 301, annually. The following NAICS codes are included:

2213– Water, sewage, and other systems

3162– Footwear manufacturing

3314– Nonferrous metal production and processing

Companies with 20 or more employees on OSHA’s Proposed Appendix A will be required to electronically submit OSHA Form 300A, annually. This includes the following NAICS codes:

22– Utilities

31-33 – Manufacturing

42– Wholesale Trade

5152– Cable and Other Subscription Programming

5311– Lessors of Real Estate

Appendix B was determined from Appendix A therefore, everyone in Appendix B is a subcategory of Appendix A.

In the preamble of the NPRM, Fed/OSHA included the following language, “When developing the final rule, OSHA may rely on the most current data available, as appropriate, for determining the list of industries in Appendix B.” In summary, when the final rule comes out, Appendix B may not be the same as it is currently, which is the main concern of PRR. If OSHA determines that additional industries should be included in Appendix B when the final rule is issued, PRR members identified in Appendix A may be required by the final rule to electronically submit OSHA Forms 300, 301, 300A.

OSHA is also intending to post the information from these forms onto a searchable public website. Currently, anyone can download an excel spreadsheet, via OSHA’s website, that includes current data from electronic submissions of Form 300A. However, it is one excel spreadsheet and contains an enormous amount of information; it is not easily searchable or manageable. The major difference with the NPRM is that OSHA is proposing posting on a searchable website. While we do not know what that looks like, a “searchable website” will be more user friendly/ manageable and easily searchable than what is currently in place; data extraction should be easier and digestible. Included will be a required field for company name.

Currently, industries in Appendix B are determined by Total Case Rate and the results of five years’ worth of analysis of injury and illness summary data collected through the Injury Tracking Application. OSHA is requesting comments on the appropriate way to determine the industries on the list.

Highlights from the Meeting Discussion

One member asked why Fed/OSHA feels this is necessary. Fed OSHA stated the following:

* Benefits include improvement to worker health and safety
* Allows employers and workers to identify and mitigate the risks
* Aids in problem solving

PRR Staff asked the group if they feel the benefits of the rule outweigh the risks. Staff stated that currently companies do have the ability to compare their data with other companies and have expressed that company comparisons is not a needed function of OSHA. One member stated that they have industry information, and they benchmark with their competitors. She also stated that their customers request information on the well-being of the workers as well as their humanitarian policies which is the market demand. She made the point that they are doing better than what is required when it comes to compliance and feels that this is information OSHA should have.

Another member mentioned privacy issues and asked if there will be a release from the employee before posting the information. Fed/OSHA claims they will have software available that will remove all personal information that could expose the identify of an employee. PRR Staff indicated that on Form 300A, questions 1 thru 7 would not be collected, and information containing personal information in questions 10 through 18 should be removed *by the employer.* One of the concerns is that even though specific employee information (i.e., name, birthdate, phone number) has been redacted or not collected, given the other information and data points provided, the person’s identity and information could be figured out by linking the information.

One member shared that during the time of the 2016 NPRM, OSHA officials shared that the goal of collecting and posting all of this information was to improve worker health and safety through transparency.

Other members expressed concern over the level of detail that would be collected and how this approach is contrary to more recent EHS theories and consideration of specific illness and injury data as leading indicators.

Another PRR member expressed concern that the Form 301 is used as an employer level investigation which are supposed to remain private. This Form will expose the employer to the investigations being open, losing the privacy issue.

PRR Staff asked if companies have had employee concern over the release and sharing of this information. One company mentioned that she received emails from employees on occasion inquiring as to the privacy policy.

PRR Staff brought up potential technical issues of uploading Form 300A. Only one member company commented that they did not experience any technical issues, mainly due to the size of their company.

One member mentioned that most of their injuries are caused by repetitive motion, long-term employment, and normal wear and tear. She questioned how the new data will aid OSHA in implementing new procedures.

One member asked about incidence descriptions. PRR Staff confirmed that when the data is uploaded, it is up to the employer to redact all employee information that could identify them. OSHA claims they will also scan the information to remove any sensitive information.

**Next Steps**

PRR is drafting comments on the NPRM, focusing on potential privacy violations; comments are due by June 30, 2022. PRR members interested in providing specific input and examples detailing their concerns with this proposal should submit to Helen Cleary ASAP. PRR Staff will circulate a draft of our comments prior to submission and request member feedback.

**Adjournment:** 11:05 am