



October 14, 2014

OSHA Docket Office
Docket No. OSHA-2013-0023
Room N-2625
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: Improve Tracking of Workplace Injuries and Illnesses – Supplemental Notice of Proposed Rulemaking (Docket No. OSHA-2013-0023)

Dear Sir/Dear Madam:

The National Chicken Council, the U. S. Poultry & Egg Association, and the National Turkey Federation, are non-profit trade associations representing the producers and processors of chickens, turkeys, other poultry, eggs and affiliated industry suppliers. Combined, our organizations represent companies that produce 95 percent of the nation's poultry products and employ more than 350,000 workers. We are committed to providing a safe and healthy work environment for our employees. We appreciate the opportunity to submit these comments to OSHA as requested in its supplemental notice of proposed rulemaking, *Improve Tracking of Workplace Injuries and Illnesses* (79 Fed. Reg. 47605, August 14, 2014). While we understand OSHA's desire to improve its data collection processes and procedures, we respectfully suggest that this proposed rule and the supplemental information being sought is misguided.

In our March 7, 2014 comment letter we outlined major concerns with the entirety of the proposed rule which will increase the reporting burden on employers, lead to misunderstanding and misuse of the data provided and raise serious privacy concerns for employees all without any demonstrable improvement in workplace safety. These concerns, more fully explained in our March 7 letter, included the following:

- a. The existing recording and reporting rules are adequate.
- b. The proposed rule fundamentally changes OSHA's no-fault recordkeeping system.
- c. OSHA is treating the Federal government differently than the private sector.
- d. The proposed rule does not consider the use of equivalent OSHA 301 Forms.
- e. The proposed rule raises significant privacy concerns.
- f. OSHA's cost estimates are unfounded and understated.

In the August 14, 2014 Supplemental Notice of Proposed Rulemaking we see that OSHA is considering adding provisions that will make it a violation for an employer to discourage employee reporting of workplace injuries or illnesses. OSHA is seeking comments on employer practices that may discourage employee reporting and comments on possible, suitable penalties against such employer action.

Once again this proposal is misguided and appears to be unneeded. First, as the supplemental notice points out, under **I. Legal Authority**, Section 11(c) of the Act clearly prohibits any person from discharging or discriminating against any employee because that employee has exercised any right under the Act. This clearly and adequately addresses the type of employer conduct that seems to be of concern, gives OSHA substantial authority to address such employer behavior and validates that additional regulations are not needed.

We are also concerned about several of the employer practices that OSHA seems to be identifying as practices that may discourage employee reporting of injuries or illnesses.

First and foremost is OSHA's concern with post-accident drug testing, which is an important part of many Drug Free Workplace programs. To further strengthen drug free workplaces, many, if not most, of our member companies offer Employee Assistance Programs which allow employees to come forward prior to an accident and receive help for a drug or alcohol problem without repercussions. However, employees who may have a drug or alcohol problem, who do not voluntarily seek assistance and are then involved in a workplace accident have put themselves and, more importantly, their coworkers at risk and that is the behavior that cannot be tolerated in the workplace. When implemented consistently for all similarly situated incidents, i.e., all doctors case injuries or all recordable injuries or illnesses, post-accident drug testing should be viewed as a valuable part of an effective safety & health program.

To suggest that post-accident drug testing may discourage an employee from reporting an injury misses the much bigger concern of innocent employees being exposed to potential injury. As you are aware, the Federal Motor Carrier Safety Administration requires post-accident drug and alcohol testing for all commercial drivers involved in crashes that meet specific criteria. The DOT recognizes that public safety concerns trump the concerns of the driver. Likewise, we expect OSHA to recognize the co-employee safety concerns and to take no action to limit the employer's rights to a drug free workplace.

We are also concerned with the implication that enrolling employees in an "Accident Repeater Program" may discourage employees from reporting an injury or illness. Additional counseling or training for employees who fail to understand and follow established safety procedures and suffer repeated workplace injuries is certainly in order and important to the success of the safety program and for the protection of the employee and co-workers from future injury. Again, the concerns about discouraging employees from reporting are far less important than implementing effective programs to train and change the behavior of those employees who, through repeated injuries, may demonstrate some lack of understanding of safe work practices and procedures.

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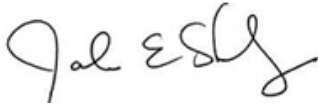
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Thank you for the opportunity to comment. If you have any questions or require additional information concerning our comments please do not hesitate to contact Paul Pressley of the U.S. Poultry & Egg Association at 678.514.1972, Ashley Peterson, Ph.D., of the National Chicken Council at 202.443.4122, or Lisa Picard of the National Turkey Federation at 202.898.0100.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Brown", written over a light gray rectangular background.

Mike Brown
President, National Chicken Council

A handwritten signature in black ink, appearing to read "John Starkey", written over a light gray rectangular background.

John Starkey
President, U.S. Poultry & Egg Association

A handwritten signature in black ink, appearing to read "Joel Brandenberger", written over a light gray rectangular background.

Joel Brandenberger
President, National Turkey Federation