



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. OSHA-2013-0023]

RIN 1218-AD16

Improve Tracking of Workplace Injuries and Illnesses: Proposed Delay of Compliance

Date

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Proposed Rule; delay of compliance date.

SUMMARY: On May 12, 2016, the Occupational Safety and Health Administration (OSHA) published a rule entitled “Improve Tracking of Workplace Injuries and Illnesses” with an effective date of January 1, 2017 for the final rule’s electronic reporting requirements. The final rule sets an initial deadline of July 1, 2017, as the date by which certain employers are required to submit the information from their completed 2016 Form 300A to OSHA electronically. This action proposes to extend the initial submission deadline for 2016 Form 300A data to December 1, 2017, to provide the new administration an opportunity to review the new electronic reporting requirements prior to their implementation and allow affected entities sufficient time to familiarize themselves with the electronic reporting system, which will not be available until August 1. The proposed five-month delay would be effective on the date of publication of a final rule in the **Federal Register**. OSHA also intends to issue a separate proposal to reconsider, revise, or remove other provisions of the prior final rule. OSHA will seek comment on those provisions in that separate proposal. In this proposal, OSHA only seeks comment on the delay of the July 1, 2017 compliance date to December 1, 2017.

DATES: Written comments must be submitted (postmarked, sent, or received) by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION]**.

ADDRESSES:

Written comments. You may submit comments, identified by Docket No. OSHA-2013-0023, by any of the following methods:

Electronically: You may submit comments and attachments electronically at

<http://www.regulations.gov>, which is the Federal e-Rulemaking Portal. Follow the instructions online for making electronic submissions. When uploading multiple attachments into

Regulations.gov, please number all of your attachments because www.Regulations.gov will not automatically number the attachments. This will be very useful in identifying all attachments in the rulemaking docket. For example, Attachment 1—title of your document, Attachment 2—title of your document, Attachment 3—title of your document, etc. Specific instructions on uploading all documents are found in the Facts, Answer, Questions portion and the commenter check list on the *Regulations.gov* Web page.

Fax: If your submissions, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

Mail, hand delivery, express mail, messenger, or courier service: You may submit your comments to the OSHA Docket Office, Docket No. OSHA-2013-0023, Room N-3653, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2350 (TTY (887) 889-5627). OSHA's Docket Office accepts deliveries (hand deliveries, express mail, and messenger/courier service) from 10 a.m. to 3 p.m. e.t., weekdays.

Instructions: All submissions must include the Agency name and the docket number for this rulemaking (Docket No. OSHA-2013-0023). All comments, including any personal information

you provide, are placed in the public docket without change and may be made available online at: <http://www.regulations.gov>. Therefore, OSHA cautions you not to submit personal information such as Social Security numbers and birthdates.

Docket: To read or download comments and materials submitted in response to this Federal Register notice, go to Docket No. OSHA-2013-0023 at <http://www.regulations.gov>, or to the OSHA Docket Office at the address above. All comments and submissions are listed in the <http://www.regulations.gov> index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through that Web site. All comments and submissions are available for inspection at the OSHA Docket Office.

Electronic copies of this Federal Register document are available at <http://www.regulations.gov>. Copies also are available from the OSHA Office of Publications, Room N-3101, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-1888. This document, as well as news releases and other relevant information, is also available at OSHA's Web site at <http://www.osha.gov>.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Frank Meilinger, Director, Office of Communications, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-1999; email meilinger.francis2@dol.gov.

For general and technical information: Miriam Schoenbaum, OSHA, Office of Statistical Analysis, Room N-3507, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693-1841; email: schoenbaum.miriam@dol.gov

SUPPLEMENTARY INFORMATION:

A. Background

On May 12, 2016, the Occupational Safety and Health Administration (OSHA) published a rule entitled “Improve Tracking of Workplace Injuries and Illnesses” with an effective date of January 1, 2017, for the final rule’s electronic reporting requirements (81 FR 29624). Under these requirements, certain employers who were required to complete Form 300A in 2016 must submit the information on the form to OSHA electronically by July 1, 2017.

The Department proposes to delay the initial deadline for electronic submission of 2016 300A data from July 1, 2017, to December 1, 2017. The data collection system was originally intended to launch in February 2017. This would have given employers four months to submit their data in time for the due date of July 1. However, the launch was postponed. OSHA now expects to launch the data collection system by August 1, and the proposed due date of December 1 will allow OSHA to provide employers the same four-month window to electronically submit their 2016 Form 300A data. This delay will also to provide the new administration the opportunity to review the new electronic reporting requirements prior to their implementation and allow affected entities sufficient time to familiarize themselves with the electronic reporting system, which will not be available until August 1. OSHA seeks comment by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION]** on its proposal to extend the submission deadline by five months to December 1, 2017. OSHA also intends to issue a separate proposal to reconsider, revise, or remove other provisions of the prior final rule. OSHA will seek comment on those provisions in that separate proposal. In this proposal, OSHA only seeks comment on the delay of the July 1, 2017 compliance date to December 1, 2017.

B. Preliminary Economic Analysis

OSHA is proposing to delay the implementation of the electronic reporting requirements of the Improve Tracking of Workplace Injuries and Illnesses rule by five months. By July 1,

2017, all establishments were to electronically report their summary data (Form 300A). The proposed new date for reporting is December 1, 2017. The cost savings for this delay are \$59,310, or \$6,953 per year annualized at three percent over the same 10-year period OSHA used in the initial rulemaking. At a 7 percent discount rate, the cost savings of the proposed delay are \$134,689, or \$19,177 per year annualized over 10 years.

These cost savings are calculated as follows. First, OSHA subtracted costs not applicable to the proposed delay from the original private-sector cost of the final rule. The subtracted costs include the costs of familiarization and checking by unregulated establishments (both of which would have taken place after the rule was published in May 2016), the costs of the non-discrimination provision (which became enforceable in 2016), and the costs of submission of case data (the OSHA Log data) (which is not required until 2018). This yields a private-sector cost of \$4,845,365 per year, for the parts of the original rule relevant to the proposed delay of the first year's submission date from July 1, 2017, to December 1, 2017.

This cost represents the cost of electronically submitting the required 2016 information from the OSHA Form 300A in 2017. The affected employers have already gathered and recorded this information, as required by a different section of Part 1904.

This proposed delay will only affect costs for this year (2017); this proposal does not affect the deadlines for electronic submission in subsequent years. Thus, the only cost savings associated with this proposal are for delaying the deadline for the electronic submission of previously-recorded data by five months, from July 1, 2017, to December 1, 2017.

The cost savings of the delay are estimated based on the interest that can now be earned on the funds involved while the report for the first year is delayed.¹ At a 3 percent discount rate, this results in a one-time cost savings of \$59,310, or \$6,953 per year annualized over 10 years. At a 7 percent discount rate, this results in a one-time cost savings of \$134,689, or \$19,177 per year annualized over 10 years.

The Agency notes that it did not include an overhead labor cost in the Final Economic Analysis (FEA) for this rule. It is important to note that there is not one broadly accepted overhead rate and that the use of overhead to estimate the marginal costs of labor raises a number of issues that should be addressed before applying overhead costs to analyze the costs of any specific regulation. There are several approaches to look at the cost elements that fit the definition of overhead, and there are a range of overhead estimates currently used within the federal government—for example, the Environmental Protection Agency has used 17 percent,² and government contractors have been reported to use an average of 77 percent.^{3,4} Some overhead costs, such as advertising and marketing, may be more closely correlated with output than with labor. Other overhead costs vary with the number of new employees. For example, rent or payroll processing costs may change little with the addition of 1 employee in a 500-employee firm, but may change substantially with the addition of 100 employees. If an employer is able to

¹ The entire derivation is as follows: OSHA begins with a current private sector cost of the original rule of \$4,845,365 times the discount rate value of the delay of $(1+d)^{-5/12}$. OSHA then subtracts this value (which is \$4,786,055 at 3 percent) from the full value of \$4,845,365. This results in a difference of \$59,310, which can be annualized at 3 percent as \$6,953.² Cody Rice, U.S. Environmental Protection Agency, “Wage Rates for Economic Analyses of the Toxics Release Inventory Program,” June 10, 2002.

² Cody Rice, U.S. Environmental Protection Agency, “Wage Rates for Economic Analyses of the Toxics Release Inventory Program,” June 10, 2002.

³ Grant Thornton LLP, *2015 Government Contractor Survey*. (<https://www.grantthornton.com/~media/content-page-files/public-sector/pdfs/surveys/2015/Gov-Contractor-Survey.ashx>)

⁴ For further example of overhead cost estimates, please see the Employee Benefits Security Administration’s guidance at <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-august-2016.pdf>.

rearrange current employees' duties to implement a rule, then the marginal share of overhead costs such as rent, insurance, and major office equipment (e.g., computers, printers, copiers) would be very difficult to measure with accuracy (e.g., computer use costs associated with two hours for rule familiarization by an existing employee).

If OSHA had included an overhead rate when estimating the marginal cost of labor, without further analyzing an appropriate quantitative adjustment, and adopted for these purposes an overhead rate of 17 percent on base wages, as was done in a sensitivity analysis in the FEA in support of OSHA's 2016 final rule on Occupational Exposure to Respirable Crystalline Silica, the base wages would increase annualized cost savings by approximately \$1,822 per year using a 3 percent discount rate and by \$3,260 a year using a 7 percent discount rate. (Note that all costs of this proposed rule are labor costs.)

As noted below, OSHA has stated that the data submission requirements of the original final rule would lead employers to increase workplace safety and health; although the costs of the safety- and health-improving actions have not been quantified, the savings associated with a delay of such costs would be analogous to those calculated for quantified costs.

Table 1 summarizes the annualized and one-time cost savings.

Table 1. Annualized and One-Time Cost Savings⁵

Cost Savings Method	Annualized Savings	One Time Cost Savings
3 Percent Discount Rate	\$6,953	\$59,310
7 Percent Discount Rate	\$19,177	\$134,689

⁵ All cost savings are in 2014 dollars. Costs are annualized over ten years.

OSHA did not quantify the benefits of the final rule. In the economic analysis of the final rule, OSHA stated that the rule would improve OSHA's ability to identify, target, and remove safety and health hazards, thereby preventing workplace injuries, illnesses, and deaths. In addition, OSHA stated that the data submission requirements of the final rule would improve the quality of the information submitted and lead employers to increase workplace safety and health. OSHA also projected benefits associated with making the data publicly available. OSHA does not believe this relatively brief delay in initial submissions would have any effect on these benefits; however, because of the lack of quantification, there is some uncertainty as to what the impact will be. Other aspects of the final rule that OSHA determined would produce benefits, such as the non-discrimination provision and the collection of case characteristic data (OSHA Forms 300, 301) from establishments with 250 or more employees, would not be altered by this proposed action.

This delay of five months is both economically and technologically feasible. The delay meets both criteria of feasibility because the original rule was economically and technologically feasible without a five-month delay.

OSHA has considered whether this proposed change will have a significant economic impact on small firms. As a result of these considerations, in accordance with § 605 of the Regulatory Flexibility Act, OSHA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Thus, OSHA did not prepare an initial regulatory flexibility analysis or conduct a SBREFA Panel.

Consistent with EO 13771 (82 FR 9339, February 3, 2017), OSHA has estimated the annualized cost savings over 10 years for this proposed rule to range from \$6,953 to \$19,177,

depending on the discount rate. Therefore, this proposed rule, if finalized, is expected to be an EO 13771 deregulatory action.

C. Paperwork Reduction Act

This Notice of Proposed Rulemaking does not propose changes to the information collections already approved by OMB under control number 1218-0176.

Signed at Washington, DC, on June 22, 2017.

Dorothy Dougherty,
Deputy Assistant Secretary of Labor for Occupational Safety and Health.

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