



OSHA Docket Office  
Occupational Safety and Health Administration  
U.S. Department of Labor  
Room N-2625  
200 Constitution Avenue NW  
Washington, DC 20210

Via electronic submission: [www.regulations.gov](http://www.regulations.gov)

**Docket Number: OSHA-2013-0023**

Re: INGAA's Comments to OSHA's Notice of Proposed Rulemaking regarding Improved Tracking of Workplace Injuries and Illnesses

To whom this may concern:

The Interstate Natural Gas Association of America (INGAA) is a not-for-profit trade association representing virtually all interstate natural gas transmission pipeline companies operating in the United States. INGAA's U.S. members operate over 200,000 miles of pipeline and related facilities and account for over 90 percent of all natural gas transported and sold in interstate commerce.

To ensure the safe operation of our nation's natural gas pipeline system, INGAA's members are committed to providing a safe and compliant work environment for all pipeline operators and employees. In this regard, INGAA recognizes the importance of injury and illness recordkeeping and supports transparency in the recordkeeping process.

INGAA respectfully believes that OSHA's Notice of Proposed Rulemaking regarding Improved Tracking of Workplace Injuries and Illnesses (Proposed Rulemaking) has unintended consequences and is problematic in several respects. OSHA also poses several alternatives and questions in the Federal Register that raise serious concerns. INGAA is submitting brief comments focusing on the issues affecting our members.

In the Federal Register, OSHA states that the purpose of its Proposed Rulemaking is to allow OSHA greater access to employers' recordkeeping data. OSHA, however, fails to disclose how it intends to utilize the data. From a policy perspective, the Proposed Rulemaking is not consistent with other aspects of OSHA's agenda. The entire focus of OSHA's recordkeeping program is on lagging indicators. Nevertheless, OSHA has acknowledged that lagging indicators are limited and may be deceptive in that they do not necessarily reflect the health and safety record of an employer. OSHA has emphasized on numerous occasions that an employer should focus on leading indicators for the purpose of strengthening its health and safety program. To that end, OSHA has indicated that it intends to publish its I2P2 Proposed Rule in 2014. INGAA therefore questions why OSHA is seeking greater access to lagging indicators of an employer's performance, particularly since OSHA has not revealed what it plans to do with this data. As set

forth in these comments, INGAA believes that the electronic submissions of 300-A Summaries, together with the submissions of 300 Logs and 301 Reports that OSHA will receive in response to Annual Surveys, will provide OSHA with comprehensive data it requires to assess injuries and illnesses in the workplace.

OSHA also raises several alternatives and questions in the Federal Register requesting feedback on the viability of enterprise-wide data submission. INGAA opposes the submission of recordkeeping data on an enterprise-wide basis. OSHA's recordkeeping regime is specifically based on the principle that each non-exempt *establishment* is required to maintain injury and illness records. It is well understood that separate establishments, even separate establishments that operate as part of a single larger enterprise, do not all operate the same: each establishment has different personnel, procedures, processes and protocols. Because OSHA's recordkeeping rule focuses entirely on *establishments* rather than enterprises, any submission requirements must also be premised on *establishments* rather than enterprises. Any other method of submission would be neither practical nor feasible.

### **The Current Regulations**

OSHA's recordkeeping requirements are set forth in Part 1904 of OSHA's regulations. Under sections 1904.29 and 1904.32, employers are required to complete three separate recordkeeping forms:

- 1) **OSHA 300 Log.** This form is divided into Columns A through M. The information that employers are required to input onto the 300 Log for each calendar year includes: the name of each employee who sustained a recordable injury or illness, job title, date of the injury, specific location of the injury, specific description of the injury, among other things. This form contains private and confidential employee information. Even if OSHA were to redact the name of each listed employee, the form contains such specific information that each employee can still be identified.
- 2) **OSHA 301 Injury and Illness Incident Report.** This form is divided into 18 sections. The information that employers are required to input onto each 301 Report includes: name of each injured employee, address, date of birth, date of hire, gender, name of the treating physician, name and address of the medical facility, whether the employee was treated in the ER, whether the employee stayed overnight in the hospital, the case number reflected on the 300 Log, date of the injury, time the employee began working on the date of injury, time of the injury, specific description of what the employee was doing before the event, specific description of how the injury happened, specific description of the injury, identification of the object that caused the injury, and, if the injury resulted in death, the date of death. This form contains private and confidential employee information. It is impossible to redact information on this form and maintain employee privacy.
- 3) **OSHA 300-A Annual Summary.** This form contains data reflecting all of the injuries and illnesses that occurred at each establishment during the calendar year. The information the employers are required to input onto each 300-A Summary includes: the number of cases, the number of days, types of injuries and illnesses, establishment information, employment information, and a certification that the form

is true, accurate and complete. This form does not contain any private or confidential employee information. Nothing on this form needs to be redacted.

OSHA has the right to review an establishment's 300 Logs, 301 Reports and 300-A Summaries as part of an inspection. OSHA is also entitled to obtain this information from selected employers that receive the Annual Survey pursuant to section 1904.41.

### **The Proposed Rulemaking is Unreasonable**

OSHA proposes to expand the submission requirements in section 1904.41. OSHA specifically seeks to require employers to submit injury and illness data, in a new electronic format, under three circumstances.

- 1) **Establishments with at least 250 employees.** Each establishment must submit its 300 Logs and 301 Reports on a quarterly basis, and its 300-A Summaries on an annual basis. OSHA claims it will redact employee information and post it on its website.
- 2) **Establishments with at least 20 employees that fall within certain designated NAICS codes.** Each establishment must submit its 300-A Summaries on an annual basis. OSHA will post it on its website.
- 3) **Employers that receive an Annual Survey.** This sub-part of the Proposed Rulemaking is essentially the same as the current survey requirements.

The Proposed Rulemaking is problematic in numerous respects:

- The 300 Logs and 301 Reports contain private and highly confidential employee information, including medical information. Despite OSHA's representation that it will redact private employee information, it is not possible to redact such information on the forms so that the privacy of the employees would be protected in any meaningful way.
- For purposes of data collection, the 300 Logs and 301 Reports are unnecessary. In fact, once private employee information is redacted from the 300 Logs and 301 Reports, those forms will contain significantly less information than is contained in the 300-A Summaries. The 300-A Summaries contain specific injury and illness data and statistics for each establishment.
- It is not practical for employers to submit accurate 300 Logs and 301 Reports on a periodic basis (i.e., monthly, quarterly or semi-annually). Comprehensive injury/illness investigations are not initiated with a specific timeframe for completion in mind. The objective is to produce a robust and accurate investigation that leads to identifying root causes, corrective actions and lessons learned, regardless of the time this might take. As part of the recordkeeping process, employers typically input questionable cases onto the 300 Logs, and then remove those cases, if appropriate, after the investigation is completed and case recordability has been accurately determined.
- Quarterly submissions would result in an administrative hardship to employers and would provide very little, if any, tangible benefit to OSHA.

- The size of an establishment is not relevant for purposes of data collection. The threshold of 250 employees is an arbitrary figure that provides no benefit to OSHA. In many cases, establishments with at least 250 employees are corporate offices with low incident rates.
- Under NAICS, each establishment is required to self-determine its code based on an establishment's primary business function. This self-determination is subject to multiple interpretations. By relying on the NAICS system to determine which employers are required to submit 300-A Summaries, certain employers may essentially "opt out" by using a different code. The method for determination of NAICS codes is discretionary, which may result in compliance issues.
- OSHA should not post a company's injury and illness data on its website. The number of recordable injuries does not necessarily reflect the establishment's compliance record with health and safety standards. An establishment may have a very low number of recordable injuries but may have a poor compliance record; likewise, an establishment may have a high number of recordable injuries and may have an excellent compliance record. Posting this information on OSHA's website amounts to an unfair public humiliation of an employer that has not been found in violation of an OSHA standard.
- The entire scheme for the electronic submission of recordkeeping data is unnecessarily complex. The thresholds by which certain employers fall within and other employers fall outside of the submission requirements are arbitrary. Establishments should not have to count employees and should not be required to rely on the discretionary NAICS method to determine if they fall within the scope of the submission rule.
- OSHA seeks greater access to recordkeeping data, which has limited value and does not necessarily reflect the health and safety record of an establishment. OSHA should state publicly how it intends to utilize this data.

### **Proposed Solution**

The Proposed Rulemaking can be easily remedied. **First**, the requirement for quarterly submissions of 300 Logs and 301 Reports should be eliminated. For all the reasons stated, employers should not be required to submit 300 Logs and 301 Reports because they contain highly confidential information and cannot be redacted. Quarterly submissions are also unduly burdensome and will not provide a tangible benefit to OSHA. Most importantly, OSHA will still be entitled to obtain this information from selected employers through its inspection process and the Annual Surveys. **Second**, INGAA does not oppose the submission of 300-A Summaries, as the information contained in 300-A Summaries are not private or confidential. However, the data contained in 300-A Summaries may be taken out of context. OSHA should also clarify the standard an employer should use to determine its NAICS code. **Third**, the Annual Survey requirement should remain in effect. The 300 Logs and 301 Reports that OSHA will receive from the selected employers that receive the survey will supplement the 300-A Summaries that OSHA will receive from all non-exempt employers. **Finally**, OSHA should not publish information obtained from employers on its website, unless the identity of the employers is not disclosed.

## **INGAA's Responses to the Alternatives Raised by OSHA in the Federal Register**

**Alternative A** – Monthly Submission Under Proposed Section 1904.41(a)(1).

**Response:** INGAA opposes monthly submissions of 300 Logs and 301 Reports.

**Alternative B** – Annual Submission Under Proposed Section 1904.41(a)(1).

**Response:** For the reasons stated, INGAA supports annual submissions of 300-A Summaries, but opposes annual submissions of 300 Logs and 301 Reports.

**Alternative C** – One-Year Phase-in of Electronic Reporting Under Proposed Section 1904.41(a)(1).

**Response:** Regarding the electronic submission of 300-A Summaries, INGAA supports a phase-in. INGAA opposes the submission of 300 Logs and 301 Reports.

**Alternative D** – Three-Year Phase-in of Electronic Reporting Under Proposed Section 1904.41(a)(2).

**Response:** Regarding the electronic submission of 300-A Summaries, INGAA supports a phase-in. INGAA opposes the submission of 300 Logs and 301 Reports.

**Alternative E** – Widen the Scope of Establishments Required To Report Under Proposed Section 1904.41(a)(1).

**Response:** For the reasons stated, INGAA believes that OSHA should eliminate the requirement for quarterly submissions of 300 Logs and 301 Reports.

**Alternative F** – Narrow the Scope of Establishments Required To Report Under Proposed Section 1904.41(a)(1).

**Response:** For the reasons stated, INGAA believes that OSHA should eliminate the requirement for quarterly submissions of 300 Logs and 301 Reports.

**Alternative G** – Three-Step Process of implementing the Reporting Requirements Under Proposed Sections 1904.41(a)(1) and (2).

**Response:** For the reasons stated, INGAA believes that OSHA should eliminate the requirement for quarterly submissions of 300 Logs and 301 Reports. As reflected, INGAA is not opposed to the annual submission of 300-A Summaries.

**Alternative H** – Narrow the Scope of the Reporting Requirements Under Proposed Sections 1904.41(a)(1) and (2).

**Response:** For the reasons stated, INGAA believes that OSHA should eliminate the requirement for quarterly submissions of 300 Logs and 301 Reports. As reflected, INGAA is not opposed to the annual submission of 300-A Summaries.

### **Alternative I – Enterprise-Wide Submission**

**Response:** INGAA opposes enterprise-wide submissions. The current recordkeeping scheme set forth in Part 1904 is premised on establishment-based recordkeeping. If OSHA were to require enterprise-wide submission, OSHA would have to amend all of Part 1904, not just section 1904.41.

### **INGAA's Responses to the Questions Raised by OSHA in the Federal Register**

**Q. 1** How hard is it for a multi-establishment enterprise to identify all of the establishments under its ownership or control?

**Response:** INGAA respectfully believes that this inquiry is misplaced. OSHA's entire recordkeeping scheme set forth in Part 1904 is based on the fact that each non-exempt establishment must maintain records. The purpose of OSHA's establishment-based system is well known and understood. If OSHA intends to expand any aspect of its recordkeeping requirements beyond an establishment-based system, then OSHA will have to propose an entirely new rule.

**Q. 2** Are there types of multi-establishment firms or multi-level firms for which this would represent a greater burden than for others?

**Response:** Yes.

**Q. 3** Would the burden on multi-establishment enterprises to collect and submit their OSHA data be more, less, or the same as the burden to collect and submit data from their establishments to the EEOC?

**Response:** INGAA respectfully believes that any inquiry regarding enterprises is misplaced. Furthermore, the consequences and nature of the data are different regarding OSHA and EEOC. The burden would be greater.

**Q. 4** Which occupation or occupations would describe the employee(s) likely to perform the task of identifying all of the establishments under its ownership or control?

**Response:** INGAA respectfully believes that any inquiry regarding enterprises is misplaced.

**Q. 5** How probable is it that the employee(s) likely to perform this task for OSHA's requirements would be performing the same task for the EEOC's requirements?

**Response:** INGAA respectfully believes that any inquiry regarding enterprises is misplaced. Furthermore, it is unlikely.

- Q. 6** Which occupation or occupations would describe the employee(s) likely to perform the task of collecting, compiling, and submitting the establishment-specific annual summary data from each establishment under the enterprise’s ownership or control?  
**Response:** INGAA respectfully believes that any inquiry regarding enterprises is misplaced.
- Q. 7** How should OSHA define “ownership or control”?  
**Response:** INGAA respectfully believes that any inquiry regarding enterprises is misplaced. Furthermore, ownership/control is a complex legal issue that should not be intertwined with OSHA’s recordkeeping requirements. The purpose of recordkeeping should be to promote simplicity and accuracy.
- Q. 8** At least how many establishments should an enterprise have in order to be subject to a requirement for enterprise-wide submission of establishment-specific data?  
**Response:** INGAA respectfully believes that any inquiry regarding enterprises is misplaced.
- Q. 9** Would the burden of enterprise-wide collection increase as the number of establishments per enterprise increases, and if so, how?  
**Response:** INGAA respectfully believes that any inquiry regarding enterprises is misplaced. The burden clearly increases based on numerous factors.
- Q. 10** Should the requirement include a minimum enterprise-wide employment size? For example, the requirement could apply to enterprises with 5 or more establishments, but only if each establishment has 10 or more employees.  
**Response:** INGAA respectfully believes that any inquiry regarding enterprises is misplaced.
- Q. 11** Should the requirement include a minimum enterprise-wide employment size? For example, the requirement could apply only if total employment for the whole enterprise, including all of the establishments belonging to the enterprise, is 50 employees or more.  
**Response:** INGAA respectfully believes that any inquiry regarding enterprises is misplaced.
- Q. 12** To what extent do enterprises already collect establishment-specific injury/illness data from all of their establishments?  
**Response:** INGAA respectfully believes that any inquiry regarding enterprises is misplaced. Every enterprise is different based on corporate structure, the nature and scope of operations, regional issues, etc. It is not possible to generalize.

**Q. 13** To what extent do enterprises already collect other establishment-specific data from all of their establishments for the purpose of reporting the data to the government?

**Response:** INGAA respectfully believes that any inquiry regarding enterprises is misplaced. Every enterprise is different based on corporate structure, the nature and scope of operations, regional issues, etc. It is not possible to generalize.

**Q. 14** Do enterprises generally know their corporate linkage identifiers (i.e., their Universal DUNS number)? How much additional burden would it be for the enterprise to provide this information?

**Response:** INGAA respectfully believes that any inquiry regarding enterprises is misplaced.

**Q. 15** What special circumstances apply to organizations such as holding companies and private equity firms? Do these organizations play a role in the occupational safety and health of the companies they control?

**Response:** INGAA respectfully believes that any inquiry regarding enterprises is misplaced. Furthermore, this is a complex legal issue that should not be intertwined with OSHA's recordkeeping requirements. The purpose of recordkeeping should be to promote simplicity and accuracy.

**Q. 16** What other identifiers do enterprises currently use, or could enterprises use, for submitting data to the government?

**Response:** INGAA respectfully believes that any inquiry regarding enterprises is misplaced.

**Q. 17** What are the implications of requiring all data to be submitted electronically? This proposed rule would be among the first in the federal government without a paper submission option.

**Response:** INGAA does not believe it would be burdensome to submit 300-A Summaries electronically, but there should be a reasonable phase-in. INGAA, however, believes that it would be highly burdensome and unreasonable to submit 300 Logs and 301 Reports given confidentiality concerns. These documents cannot be redacted in a manner to provide protection to employees in a meaningful way.

**Q. 18** More current BLS injury and illness data will be available at the time of the final rulemaking. Use of newer data may result in changes to the proposed industry coverage.

**Response:** This inquiry by OSHA highlights why the proposed rule is unnecessarily complex.

**Q. 19** Should OSHA use the most current data available in determining coverage for its final rule? Would this leave affected entities without proper notice and the opportunity to provide substantive comment?

**Response:** This would leave affected entities without proper notice and the opportunity to provide substantive comment.

**Q. 20** Should the electronic submission requirement be phased in, with a paper submission option available for a certain period of time at the beginning for some or all of the establishments subject to the proposed rule, or should the electronic submission requirement take effect immediately?

**Response:** Yes, INGAA supports a phase-in for the electronic submission of 300-A Summaries. INGAA opposes the submission of 300 Logs and 301 Reports.

**Q. 21** What are the implications of a phased-in electronic submission requirement versus an immediate electronic submission requirement for establishments subject to proposed Section 1904.41(a)(1) Quarterly electronic submission of Part 1904 records by establishments with 250 or more employees?

**Response:** INGAA does not believe electronic submission of 300-A Summaries will pose a problem, but supports a reasonable phase-in. INGAA opposes the submission of 300 Logs and 301 Reports.

**Q. 22** What are the implications of a phased-in electronic submission requirement versus an immediate electronic submission requirement for establishments subject to proposed Section 1904.41(a)(2) annual electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 or more employees in designated industries?

**Response:** INGAA does not believe electronic submission of 300-A Summaries will pose a problem, but supports a reasonable phase-in. INGAA believes that OSHA's reliance on NAICS should be clarified.

**Q. 23** How should the electronic data submission system be designed? How can OSHA create a system that is easy to use and compatible with other electronic systems that track and report establishment-specific injury and illness data?

**Response:** INGAA does not believe it would be burdensome to submit 300-A Summaries electronically, so long as there is a reasonable phase-in. However, INGAA believes that it would be highly burdensome and unreasonable to submit 300 Logs and 301 Reports given confidentiality concerns. These documents cannot be redacted in a manner to provide protection to employees in a meaningful way.

- Q. 24** Should the electronic data submission system be designed to include updates? Sec. 1904.33(b) requires employers to update OSHA Logs to include newly-discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously-recorded injuries and illnesses.
- Response:** INGAA does not believe it would be burdensome to submit 300-A Summaries electronically, so long as there is a reasonable phase-in. However, INGAA believes that it would be highly burdensome and unreasonable to submit 300 Logs and 301 Reports given confidentiality concerns. These documents cannot be redacted in a manner to provide protection to employees in a meaningful way.
- Q. 25** How can OSHA use the electronic submission requirement to improve the accuracy of injury and illness records by encouraging careful reporting and recording of work-related injuries and illnesses?
- Response:** Electronic submission of data bears no reasonable relationship to accuracy of recordkeeping.
- Q. 26** How should OSHA design an effective quality assurance program for the electronic submission of injury and illness records?
- Response:** INGAA does not believe it would be burdensome to submit 300-A Summaries electronically, so long as there is a reasonable phase-in. However, INGAA believes that it would be highly burdensome and unreasonable to submit 300 Logs and 301 Reports given confidentiality concerns. These documents cannot be redacted in a manner to provide protection to employees in a meaningful way.
- Q. 27** What additional steps, if any, should the Agency take to protect employee privacy interests?
- Response:** INGAA believes that it would be highly burdensome and unreasonable to submit 300 Logs and 301 Reports given confidentiality concerns. These documents cannot be redacted in a manner to provide protection to employees in a meaningful way.
- Q. 28** Are there views on the issue of OSHA recordkeeping forms and confidential commercial information?
- Response:** N/A.
- Q. 29** Which categories of information, from which OSHA-required form, would it be useful to publish?
- Response:** Injury and illness data contained in 300-A Summaries is the only information that may be useful, but this information is limited. Employers should not be identified on the website.

- Q. 30** What analytical tools could be developed and provided to employers to increase their ability to effectively use the injury and illness data they submit electronically?  
**Response:** N/A.
- Q. 31** How can OSHA help employers, especially small-business employers, to comply with the requirements of electronic data submission of their injury and illness records? Would training help, and if so, what kind?  
**Response:** N/A.
- Q. 32** Should this data collection be limited to the records required under Part 1904? Are there other required OSHA records that could be collected and made available to the public in order to improve workplace safety and health?  
**Response:** This inquiry extends far beyond the scope of the Proposed Rulemaking.
- Q. 33** For the proposed Section 1904.41(a)(1) (Quarterly electronic submission of Part 1904 records by establishments with 250 or more employees), what would be the advantages and disadvantages of making submissions monthly, rather than quarterly?  
**Response:** For all the reasons stated, INGAA opposes any submission of 300 Logs and 301 Reports.
- Q. 35** For the proposed Section 1904(a)(1) (Quarterly electronic submission of Part 1904 records by establishments with 250 or more employees), is 250 or more employees the appropriate size criterion/ How much burden would this impose on establishments with 250-500 employees? If the size criterion were lowered to 100 or more employees, how much burden would this impose on establishments with 100-250 employees?  
**Response:** For all the reasons stated, INGAA opposes any submission of 300 Logs and 301 Reports.
- Q. 36** Should the designated industries for proposed Section 1904.41(a)(2) (Annual electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 or more employees in designated industries) remain the same each year, or should the list be adjusted each year to reflect the most current BLS injury and illness data? If so, how could OSHA best inform affected establishments about the adjustments?  
**Response** This inquiry by OSHA highlights why the proposed rule is unnecessarily complex.
- Q. 37** How can OSHA help employees and potential employees use the data collected under this proposed rule?  
**Response:** Post the results of the submissions of the 300-A Summaries on OSHA's website, without identifying the employers. The overall data may be useful.

## Conclusion

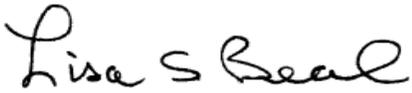
While transparency in recordkeeping serves a valuable purpose, the Proposed Rulemaking is unreasonable and unnecessarily complicated. OSHA should specify how it will utilize any data it collects. OSHA should also abandon any consideration of enterprise-wide submissions.

For the reasons stated, INGAA respectfully suggests that OSHA modify the Proposed Rulemaking as follows:

- 1) Eliminate the requirement for submissions of 300 Logs and 301 Reports,
- 2) Maintain the proposed requirement that establishments with at least 20 employees and fall within a designated NAICS code be required to submit 300-A Summaries annually, but clarify the NAICS requirements,
- 3) Maintain Annual Surveys of selected employers, which would allow OSHA to obtain supplemental data from specific industry sectors, and
- 4) Agree to post the results of the submissions of the 300-A Summaries on OSHA's website, *without* identifying the employers.

INGAA appreciates the opportunity to comment on OSHA's proposed rule regarding the tracking of injuries and illnesses. Should you have any questions, please feel free to contact me at (202) 216-5935.

Sincerely,



Lisa S. Beal  
Vice-President, Environment and Construction Policy

CC: INGAA H&S Task Team