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June 11, 2017

Docket Office
Occupational Safety and Health Administration
Docket No. OSHA-2013-0023
Room N-3653
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: Comments of the National Employment Law Project to the Occupational Safety and Health Administration, Docket No. OSHA -2013-0023: Proposed delay of compliance date, *"Improve Tracking of Workplace Injuries and Illnesses"*

Dear Docket Officer:

The National Employment Law Project (NELP) hereby submits its comments regarding OSHA's proposal published in the Federal Register on June 28, 2017 to delay for five months the date by which certain employers are required to submit information from their complete 2016 Form 300A to OSHA electronically.

NELP is a national non-profit organization that for over 45 years has combined research and advocacy, public education, technical assistance and direct services to advance the rights and interests of low-income and unemployed workers.

NELP opposes the proposed delay in the reporting requirements for certain employers to submit the information from the completed 2016 Form 300A –the summary of establishment injury and illness data. OSHA gave all employers covered by this regulation over a year to prepare to submit these few lines of serious injury and illness data electronically – and there is no reason to provide a delay. In fact all employers that keep OSHA 300 logs had to post this very data in their workplace during the month of February. Further, for almost two decades a total of approximately 180,000 establishments sent this information (most by paper) to OSHA during the OSHA Data Initiative. OSHA has also been building the website to receive this data for over a year. This data is critical for the agency to use in prioritizing its enforcement and compliance assistance resources. This common sense requirement provides OSHA, workers, employers and the public with important injury and illness information needed to focus prevention efforts where they are most needed. NELP strongly opposes this delay, and urges the agency to implement this requirement as quickly as possible.

Further, the part of this rule subject to the proposed delay is already in effect, and must be enforced. Without going through notice and comment rulemaking, OSHA cannot legally delay the effective date of a rule already in effect. The final rule published on May 12, 2016 set a date of July 1, 2017 for certain employers to submit the summary information from their 2016 Form 300 A. Since this part of the rule is already in effect, OSHA cannot simply

decide not to enforce it, while this rulemaking is ongoing. Such a non-enforcement policy would be, in effect, an Administrative Stay of this part of the rule, in violation of the Administrative Procedure Act. See *Clean Air Council vs EPA*.
[https://www.cadc.uscourts.gov/internet/opinions.nsf/A86B20D79BEB893E85258152005CA1B2/\\$file/17-1145-1682465.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/A86B20D79BEB893E85258152005CA1B2/$file/17-1145-1682465.pdf)

In the federal register notice on the proposed delay, OSHA has also stated that intends to issue a separate proposal to reconsider, revise, or remove other provision of the prior final rule. Other parts of the final rule *Improve Tracking of Injuries and Illnesses* have already been in effect and enforced since December 2016. In fact, provisions including 1904.35 and 1904.36, went into effect last year when the U.S. District Court for the Northern District of Texas declined to issue a preliminary injunction staying these provisions. There is no basis or justification for OSHA to reconsider, remove or revise these or any other provisions of the rule.

OSHA's mission is to assure so far as possible safe and healthful working conditions for working men and women. This rule provides information to the agency and others to target resources to the most dangerous workplaces to prevent worker death and injury. It must come as a surprise to the American public that OSHA doesn't already receive this necessary data. Over 4,800 workers were killed on the job last year and almost 3 million more were seriously injured in the private sector. OSHA must stand up for the workers in this nation and continue to carry out its mission and implement the requirements of this rule immediately.

Sincerely,



Debbie Berkowitz
Senior Fellow, Worker Safety and Health