The Honorable David Michaels  
Assistant Secretary  
Occupational Safety and Health Administration  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

VIA ELECTRONIC SUBMISSION: http://www.regulations.gov


Dear Dr. Michaels:

On behalf of the North American Die Casting Association (“NADCA” or “Association”), please accept these comments on OSHA’s “Improve Tracking of Workplace Injuries and Illnesses, Supplemental Notice of Proposed Rulemaking” (79 Fed. Reg. 47605, August 14, 2014). NADCA is the sole trade and technical association of the die casting industry, representing members from over 350 companies located in every geographic region of the United States. Die casters manufacture a wide range of non-ferrous castings, from automobile engine and transmission parts to intricate components for computers and medical devices. In the U.S., die casters contribute over $7 billion to the economy annually and provide over 50,000 jobs directly and indirectly.

Earlier this year, NADCA joined in comments opposing OSHA’s initial Proposed Rulemaking, and manufacturers have increased concern over this proposed Supplemental action. The underlying proposal will do little to increase workplace safety and can deter employees from reporting injuries and illnesses. Compounding this, the Supplemental as written amounts to a significant reversal in long-standing OSHA policies and positions. Therefore, NADCA believes OSHA should withdraw both the Supplemental Notice, as well as the initial Proposed Rulemaking.

Flawed Reasoning for Rulemaking
To NADCA members, their most valuable assets are employees, and their health and safety is a top priority. Unfortunately, the underlying Rulemaking, nor Supplemental, will make the workplace safer or encourage employees to report injuries and illnesses. As previously stated, making these reports public will discourage workers from coming forward.
OSHA is proposing to “require employers to inform their employees that the employees have a right to report injuries or illnesses, and that it is unlawful for an employer to take adverse action against an employee for reporting an injury or illness” (79 Fed. Reg. 47607). This is in clear contradiction to the Occupational, Safety, and Health Act of 1970 (OSH Act), which states that employees have the responsibility and duty to report incidents, not a “right” to come forward. If OSHA is in fact proposing to change the standard, then this is a significant action that requires proper review and compliance under the Regulatory Flexibility Act and Administrative Procedure Act.

Under current practice, employees have a duty to report an injury or illness. Should this proposed rule take effect, OSHA would undermine the statutory intent requiring employees to report. Furthermore, while removing the burden from an employee reporting, the Supplemental maintains the penalty and reporting requirements on the employer. Business already have in place a mechanism for employees to report an incident and closely monitor the workplace. However, the Supplemental will create confusion among employees and allow them to under report, or not report at all. Currently, employees are aware of their duty to report, but the Supplemental creates an opening for them to exercise their “right” to report, by, not reporting.

NADCA believes OSHA’s underlying logic behind many of their actions the past few years is flawed – it is often the employee, not the employer who chooses to not report an incident despite their duty to report. For the Agency to interpret an employer offering a “days without an incident pizza party” as an incentive for not reporting is based on this flawed premise. Despite OSHA’s National Emphasis Program on employee incentives, the Agency has yet to reveal any data to support its conclusion that such team building and morale activities in any way serve as an incentive for an employee to not report an incident.

**Vague Rulemaking, Lack of Sound Science and Supporting Data**

In both the Rulemaking and Supplemental, the Agency has not presented sufficient science or facts to support its proposed rulemaking. Particularly in the Supplemental, OSHA asks a series of questions of the public, rather than present its findings.

NADCA employers already make employees aware of their right and duty to report incidents, and all businesses post Form 300A in compliance with federal law, which further reinforces to employees that they have the right to report. OSHA did not present in the Supplemental evidence, data or facts to support the need for new rulemaking to combat intimidation, discrimination, or retaliation.

Under current law, agencies must issue rules with clear and measurable direction. OSHA’s Supplemental states that, “a provision requiring that any injury and illness reporting requirements established by the employer be reasonable and not unduly burdensome.” However, OSHA fails to provide the precise text it believes would meet the standard or “reasonable or unduly burdensome.” Instead OSHA relies on its misguided interpretation of comments made during the January 2014 public hearings, on which, in part, it is basing the Supplemental. At no point during the two-day sessions were facts presented to support OSHA’s claim of employer intimidation or retaliation specifically related to incident reporting. In neither the Supplemental nor the underlying Rulemaking has OSHA presented data to support this unsubstantiated claim, which is the basis for this regulatory action.

Not only does OSHA provide vague direction to employers, it has yet to reveal comprehensive regulatory language for its proposal. Simply stating that regulatory text is forthcoming is insufficient and does not allow the public to properly comment without knowing OSHA’s final requirements. Throughout this rulemaking process dating to 2013, OSHA has disregarded rulemaking procedure and requirements stipulated in statute and designed by Congress to prevent this type of vague and baseless rulemaking.
Conclusion
At a time when manufacturing is the driving force behind the economic recovery, this proposed Rulemaking will only serve to hurt the image of the industry and discourage individuals from seeking careers in manufacturing. In a recent survey, 88% of NADCA members report they have job openings in their facilities and OSHA’s actions making these reports public will create a false image of the industry as dangerous. Employees are also sensitive to the perception of the industry and of their employer. The posting of incident information, especially without proper context or explanation, could serve as a disincentive for workers to come forward.

In this Supplemental, as in the underlying Rulemaking, OSHA has failed to present data to support its actions in violation of Executive Order 13563 which states that agencies must base regulations “on the best available science.” In both cases, OSHA does not meet this threshold and has yet to release specific data on which this Supplemental is founded. Based on the questions raised by OSHA itself, the Agency should at the very least suspend its actions as it collects sufficient information to substantiate its claims.

Government officials from President Obama to local representatives recognize that manufacturing is the engine driving the country out from the Great Recession. At a time when businesses are already struggling to recruit employees and compete globally, OSHA should not continue to erect additional barriers to job growth and drive a wedge between employer and employee.

For these and concerns raised above, we ask that OSHA withdraw the underlying Rulemaking and the Supplemental Notice. Thank you for your consideration of these comments and we look forward to working with you to strengthen manufacturing in America.

Sincerely

[Signature]
Daniel Twarog
President
North American Die Casting Association