



March 10, 2014

Department of Labor
Occupational Health and Safety Administration
RE: Proposed Rule to Improve Tracking of Workplace Injuries and Illnesses
Docket No. OSHA-2013-0023

Via Electronic Submission

IPC – Association Connecting Electronics Industries appreciates the opportunity to comment on OSHA’s proposed rule to *Improve Tracking of Workplace Injuries and Illnesses* Docket No. OSHA-2013-0023 (hereafter referred to as “proposed rule”). IPC is concerned that the proposed rule will have unintended consequences and fail to improve workplace safety. IPC believes the pure dissemination of injury and illness information will not improve workplace safety. The public disclosure of injury and illness data could also lead to employers recalibrating their decisions on whether to record injuries. Injury and illness data can very easily be mischaracterized and misused if provided without explanation. The proposed rule also represents a fundamental reversal in OSHA’s long standing “no-fault” approach to recordkeeping. IPC is also concerned that OSHA does not have adequate resources to review all the injury and illness data and remove proprietary information prior to publically publishing.

As an alternative to quarterly reporting of all injury and illness data, as proposed, IPC encourages OSHA to require, and make publically available, 300A log data. The summary data will provide stakeholders with useful information. Requiring employers to provide 300A log data will also alleviate OSHA of the responsibility for removing proprietary information.

About IPC

IPC, a global trade association, represents all facets of the electronic interconnection industry, including design, printed board manufacturing, electronics assembly, and suppliers to this industry. Printed boards and electronic assemblies are used in a variety of electronic devices that include computers, cell phones, pacemakers, and sophisticated missile defense systems. IPC has over 3,500 member companies, 2,000 of which are located in the U.S. As a member-driven organization and leading source for industry standards, training, market research and public policy advocacy, IPC supports programs to meet the needs of an estimated \$1.7 trillion global electronics industry.

The Proposed Rule Will Not Improve Workplace Safety

The proposed rule is unlikely to improve workplace safety. OSHA makes unsubstantiated claims regarding the benign nature of posting injury and illness data on a public website. For example, OSHA states, “Online availability of establishment specific injury and illness information will also encourage employees to contribute to improvements in workplace safety/health.” This is not supported by any stated mechanism linking injury data availability to injury reduction or employee contributions. This

assumption also does not consider the involvement of employees already taking place in incident analysis by many employers. If the statement above is to be assumed, then OSHA must recognize that the continued decrease of private sector recordable injuries is an indication that employers have been utilizing employees in their incident analysis and corrective action processes.

IPC believes companies have put effective safety and health programs in place that have been successful in preventing many reportable injuries and illnesses. According to 2013 Bureau of Labor Statistics (BLS) data, overall reports of injuries and illnesses have decreased since 2012. A November 2013 BLS press release¹ on 2012 injury and illness data shows that the private sector injury rate continues a decade long decline. As stated in the press release, "The rate reported for 2012 continues the pattern of statistically significant declines that, with the exception of 2011, occurred annually for the last decade." The 2012 rate of 3.4 per 100 workers was down from 3.5 in 2011. Further key findings included:

- o All private industry sectors experienced a decrease or remained constant in their rate of injuries and illnesses in 2012.
- o The incidence rate of injuries among private industry workers declined to 3.2 cases per 100 full-time workers in 2012, which is down from 3.3 cases in 2011.
- o The rate of injuries and illnesses among state and local government workers of 5.6 cases per 100 full-time workers in 2012 was statistically unchanged from 2011, but was still significantly higher than the private industry rate.

Furthermore, company participation in voluntary programs has led to success in preventing injuries and illnesses. The proposed rule, as currently written, will not improve workplace safety.

The Proposed Rule Could Cause Unintended Consequences

IPC believes that requiring injury and illness data to be reported and made public will likely result in unintended consequences. Making injury and illness data available to the public without context or explanation could lead to the mischaracterization and misuse of the data. The proposed rule, if published as written, could encourage employers to vaguely report, underreport, or in the worst case, misreport injuries and illness for fear they will be taken out of context and used against them.

Mischaracterization of Injury and Illness Data

We believe the injury and illness data proposed to be reported can easily be mischaracterized and taken out of context by the public. The injury and illness records OSHA will require employers to submit will be devoid of context and will not give a complete picture of a company's efforts to maintain a safe workplace. There is a presumption that all injuries and illnesses reported are preventable. Injury and illness records made public without proper context are not a reliable indicator of an employer's safety program. Providing raw data to those who do not know what a recordable injury or illness actually is, or how to interpret it without putting such data in context will lead to improper conclusions and/or assumptions.

Furthermore, OSHA's intention to post location and incident specific injury data is likely to lead to misuse and abuse by those trying to mischaracterize employer safety efforts. Because OSHA's basic

¹ Bureau of Labor Statistics U.S. Department of Labor. November 7, 2013 News Release. *Employer-Reported Workplace Injuries and Illnesses – 2012*. <http://www.bls.gov/news.release/pdf/osh.pdf>.

recordkeeping requirement is to presume that injury or illness incidents are work-related², many questionable incidents are recorded and give stakeholders, who are not aware of OSHA's recordkeeping requirement, the impression that all recorded injury or illness incidents are work-related. Examples of such questionable cases involve the following:

- Injury from participating in an activity, such as basketball, while on a break;
- Injury caused by employee misconduct, for example not wearing the required personal protective equipment (PPE) or not following established procedure;
- Parking lot injuries such as falls or particles in the eyes during a wind gust;
- Pain claims ("My (back, wrist, elbow, shoulder, etc.) hurts.") where the employee cannot identify a causal activity or source; or
- Claims made on a Monday morning that often are due to non-work related activity that likely occurred over the weekend.

Potential Disclosure of Confidential Information

Some of the injury and illness data collected is considered proprietary information. For example, the number of employees and hours worked are often viewed as confidential within our industry. Although OSHA has stated that they will protect employee sensitive information, the proposed rule does not provide a description of how this will happen. IPC suggests that the injury and illness information requested should only be made available to OSHA employees at the federal level.

Given the glaring recent security breaches of federal government databases, IPC is concerned about the security of the injury and illness data reported to OSHA. IPC asks OSHA to specify the security measures that will be used to protect sensitive information.

OSHA should provide specific examples of what records it proposes to collect from employers. The descriptive text in the proposed rule does not provide clear guidance on supplemental records given that most employers do not use the OSHA form 301, but utilize acceptable alternatives.

Should OSHA ultimately decide to move forward with the proposed rule as currently written, the information being requested should only be made available to federal OSHA employees. Any other non-OSHA entity should be prohibited from accessing this data. This approach is consistent with the notice on the OSHA form 301 which states:

"Attention: This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes."

Making this information available to the public will risk releasing extremely sensitive, confidential information and contradict OSHA's existing policies. OSHA's proposal to require all data on the OSHA form 300 except column B (Employee's Name) will cause the unintended consequence of identifying the employee since the Job Title (column C) and/or Where the Event Occurred (column E) would be available to the public. In addition, the requirement in column F to describe the "object/ substance that directly injured or made person ill" creates a mechanism that could lead to disclosure of intellectual property to competitors, both foreign and domestic, especially in research and development facilities.

² CFR 1904.5(a). Pg. 29.

For these and other reasons, IPC does not see the need for OSHA to make public any information included on the form 300. Data from the 300A summary submitted on an annual basis should suffice any data need, including conducting injury rates analyses that OSHA may have.

If OSHA publishes the proposed rule as currently written the 300A summary logs would be duplicative and no longer essential. Therefore, OSHA should rescind the 300A reporting requirements in a final rule that requires quarterly reporting of injury and illness data.

Underreporting of Injury and Illness Information

IPC is concerned that companies may underreport injuries and illnesses for fear of how they will be perceived by the public, their competitors, potential employees, and the advocacy community. One of the potential consequences of this proposed rule is that it may discourage employers from recording injuries. Currently, employers are likely to err on the side of recording a questionable work-related incident because there is virtually no consequence to over recording. However, making such information publicly available will upend this calculation and is likely to result in employers not recording an incident where the work-relatedness is in question, leading to less injuries being recorded, not more. Alternatively, employers who do not want to risk enforcement action for not recording a qualified injury or illness incident may opt to enter very generic information on the form 300, knowing that competitors and the public will be able to access the data.

The Proposed Regulation Reverses “No-Fault” Recordkeeping

This proposed rule upends the “no-fault recordkeeping system” OSHA adopted in 2001³. The no-fault system was the foundation of the revisions to the recordkeeping requirements in 2001. At that time, OSHA implemented a “geographic” presumption—that if an injury or illness happened at the workplace it would be deemed work-related as the most comprehensive way to achieve Congress’ objective for determining work-related injuries and illness. The disadvantage of this broad scope is that the “geographic” presumption did not necessarily correlate to an employer’s behavior and therefore injuries and illness that were beyond an employer’s control would be recorded.

OSHA stated in the 2001 final rule, that “it is not necessary that the injury or illness result from conditions, activities, or hazards that are uniquely occupational in nature. Accordingly, the presumption encompasses cases in which injury or illness results from an event at work that are outside the employer’s control, such as a lightning strike, or involves activities that occur at work but that are not directly productive, such as horseplay.”² It is clear that when OSHA relied on the geographic presumption it recognized that many circumstances that led to a recordable work-related injury or illness are “beyond the employer’s control”.² The result was that in exchange for capturing the broadest possible array of work-related injuries, OSHA accepted that a certain portion of these injuries would not be relevant to assessing an employer’s safety and health program. Because employers were only required to submit these records to OSHA upon request or as part of a survey, there would be “no fault” attached to these injuries being recorded.

A few real life examples of injuries recorded that illustrate the geographic presumption described above include:

- Employees who have sneezed and hurt their back;

³ Federal Register Vol. 66 No. 13. January 19, 2001.

- Employees who have tripped while walking on a smooth dry surface;
- Turbulence in an airplane bathroom causing a laceration that required stitches;
- Employees chasing a feral cat (that came off a truck) around a warehouse until captured bare-handed and the cat bit the employee;
- Bee stings, spider bites (spider came out of package sent by another company);
- Employee sprains ankle playing basketball while on a break;
- Employee who allegedly caught a cold from air conditioned work places; or
- Vehicle accidents resulting in injury or fatality where another driver was at fault.

The proposed rule implies OSHA intends to abandon the concept of recordkeeping being a no-fault system without notice and comment. Instead, the proposed regulation is based on the presumption that all recorded injury and illnesses are preventable.

OSHA Does Not Have the Necessary Resources to Receive and Analyze the Information They are Requesting

IPC is concerned that OSHA does not have adequate resources to analyze the data received in an accurate and timely manner. Further, we believe OSHA does not have the appropriate resources to ensure all proprietary information is removed from the submitted data prior to it being made publically available.

The Bureau of Labor Statistics (BLS) November 2013 press release⁴ estimated that 3 million workplace injuries occurred in 2012. Assuming that 80 percent occurred at facilities with 250 or more employees, this equates to a minimum of 600,000 records each quarter. We believe OSHA does not have the IT infrastructure, nor the staff to receive and analyze such a volume of records. Furthermore, the forms being requested have narratives that would need to be read and analyzed on an individual basis and scrubbed of any sensitive, confidential information. This is a huge undertaking and likely to prevent OSHA from releasing information in a reasonable timeframe.

We suggest in lieu of requiring all injury and illness data to be reported on a quarterly basis, OSHA should require the submittal of summary 300A log data on an annual basis. The summary data will provide stakeholders with adequate information without challenging OSHA's ability to analyze and keep confidential the data in a timely manner.

The Proposed Rule Should Require State and Local Governments to Submit Injury and Illness Data

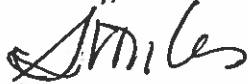
Based on actual BLS reported data, OSHA's proposed rule illogically targets private employers when the state and local government injury rate is 75 percent higher than private industry. Although OSHA may not have statutory authority to regulate state and local government, OSHA should collect annual injury data from state and local governments on a trial basis to ascertain whether such data collection lowers injury rates, as claimed by OSHA in the proposed rule.

Conclusion

⁴ Bureau of Labor Statistics U.S. Department of Labor. November 7, 2013 News Release. *Employer-Reported Workplace Injuries and Illnesses – 2012*. <http://www.bls.gov/news.release/pdf/osh.pdf>.

In conclusion, this proposed rule will force employers to reveal sensitive, and in many cases proprietary information, that will then become publically available. This is likely to result in employers' safety records being mischaracterized and subjecting employers to illegitimate attacks. The proposed regulation reverses a long standing "no-fault" approach to recordkeeping and will cause employers to report the most generic information and reconsider whether to record injuries that may not need to be recorded. IPC encourages OSHA to require the annual submittal of summary 300A log information in lieu of quarterly reporting of all injury and illness data.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Voyles", written over a faint horizontal line.

Stephanie Voyles,
Manager, Public Policy