



# INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS

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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

Re: Docket No. OSHA-2013-0023

Proposed Rule to Improve Tracking of Workplace Injuries and Illnesses

Dear Assistant Secretary Michaels:

The International Association of Drilling Contractors (IADC) strongly urges OSHA to withdraw rulemaking in the above referenced matter. Policymakers are rightly saying that the U.S. needs to preserve and create more American jobs, however this proposed rule overshoots the mark, does little to improve safety, imposes unnecessary regulatory burdens and ultimately, it would result in Americans being put out of work. OSHA has a choice---it can regulate in a way that protects both jobs and safety, or it can regulate in a way that sacrifices jobs.

By way of background, IADC is a trade association representing the interests of drilling contractors, onshore and offshore, operating worldwide. Our membership includes United States land drilling contractors representing approximately eighty percent of the drilling rigs that operate in the United States. Our member companies place the safety of their employees as their top priority.

This letter responds to the Occupational Safety and Health Administration's Federal Register of November 8, 2013 at 78 Federal Register 67254, which requests comment on the proposed electronic reporting of occupational injuries and illnesses.

IADC supports accurate reporting of incidents, but IADC has concerns regarding the requirements in the proposed electronic reporting requirements as proposed. IADC believes that there are sufficient regulations on US businesses and new regulations that are difficult to enforce or comply with, will not improve worker safety significantly. IADC suggests that OSHA dedicate more resources to the highly successful "Compliance

Assistance” program which assists employers in complying with current regulations and thus improving worker safety.

The proposed rule would require employers to electronically submit injury and illness information currently in the 300A, 300, 301 Forms to OSHA. Each establishment with 250 or more employees would have to report on a quarterly basis and establishments with 20 or more employees in certain designated industries would have to report annually. The agency also would have discretion under the proposal to require any employer including those not classified as high risk or do not have 250 employees or more to submit more detailed information about specific injuries and illnesses. OSHA intends to provide public online access to the injury and illness records. (78 Fed. Reg. p. 67276).

The proposed rule raises many concerns for our organization and its members and we strongly urge OSHA to withdraw it. Our specific concerns are set forth below.

As currently proposed, the rule would allow OSHA to obtain and release to the public detailed information regarding specific workplace injuries and illnesses, including the company, location, and incident-specific data. OSHA states in its preamble to the NPRM that the rule would provide employees, potential employees, consumers, labor organizations and businesses and other members of the public with important information about companies’ workplace safety records. OSHA would be providing the data without any meaningful context, however. As a result, the information is not a reliable measure of an employer’s safety record or its efforts to promote a safe work environment. Many factors outside of an employer’s control contribute to workplace accidents, and many injuries that have no bearing on an employer’s safety program must be recorded. Data about a specific incident is meaningless without information about the employer’s injuries and illness rates over time as compared to similarly sized companies in the same industry facing the same challenges (even similar companies in the same industry may face substantially different challenges with respect to workplace safety based on climate, topography, population density, workforce demographics, proximity and quality of medical care, etc.).

Providing raw data to those who do not know how to interpret it or without putting such data in context invites improper conclusions or assumptions about the employer, which could lead to unnecessary damage to a company’s reputation, related loss of business and jobs and misallocation of resources by the public, government and industry.

Furthermore, by making such information publicly accessible, OSHA invites those targeting companies to purposefully mischaracterize and misuse the information for reasons wholly unrelated to safety. For example, plaintiff’s attorneys, labor unions, competitors and special interest groups will unquestionably attempt to use such information, selectively or otherwise, as leverage against companies during legal disputes, union organizing drives, contract negotiations or as part of an effort to prevent a company from entering a specific market.

The posting of sensitive information by employer, location, and injury specific data raises business confidentiality and employee privacy concerns. Note the following from the current 300 log:

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.

Yet the proposed rule would require employers to submit confidential details about the company and information about its employees. OSHA ignores several court rulings that have found employers to possess a privacy interest in such data, and fails to consider the implications of publishing it. Public disclosure of the data not only provides a company's competitors with confidential business information, but it also jeopardizes security, putting workers and the public in danger.

Employee privacy is also a concern. While OSHA has committed to protecting the identity of employees, the agency has failed to provide satisfactory answers regarding how it intends to fulfill this mission, especially considering there will be hundreds of thousands of records that would need to be scrubbed of employee details. This is made even more problematic because the proposal would require the submission and publication of data that could nonetheless identify individuals. By requiring date of injury, injured body part, treatment and job title, the identity of the employee could be easily determined by an outside entity. For example, in small or rural communities, information concerning an employer is likely to be discernible even if the name of the worker is redacted. Unlike some of the commenters at hearings, employers are liable for protecting employee's personal protection. The 301 form has very detailed personal information that should not be required to be submitted to OSHA. If the 300 log is to be submitted, columns "A" and "B" should not be included.

In 2001, OSHA adopted the no-fault recordkeeping system as the foundation of the revisions to recordkeeping requirements. This proposed rule change abandons OSHA's "No Fault" recordkeeping without justification or analysis. The agency implemented a "geographic" presumption, claiming an injury or illness that occurred at the workplace would be deemed a work-related injury regardless of circumstances surrounding the incident. The presumption came with the disclosure 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, an employee who sneezes and pulls a rib muscle, or involves activities that occur at work but that are not directly productive, such as horseplay" (66 Fed. Reg. p. 5929). OSHA made clear "no fault" would be attributed to injuries or illnesses submitted.

Yet, under the proposal, OSHA intends to use the information reported for targeting purposes and to release the data without context or restraints. Thus, the presumption under the NPRM is that all injuries or illnesses are preventable, suggesting all incidents are the fault of the employer. The proposal essentially turns the “no fault” reporting system into one where employers will be blamed for idiosyncratic events arising as a result of forces beyond their control or actions by workers in direct contravention of workplace rules. This is a clear abandonment of the “no-fault” system in favor of OSHA’s controversial and counterproductive “regulation by shaming” enforcement doctrine. Surprisingly, OSHA fails to even acknowledge its reversal, or provide any justification or an analysis for this significant change.

The proposed change may discourage reporting. Under its existing rules, OSHA encourages employers to record all possible qualifying incidents, counseling that those which turn out to be outside the reporting requirements can later be stricken. With quarterly reporting, employers are unlikely to record close cases because, in many instances, striking them later may be impossible as the information has already been reported and posted publicly by OSHA. Rather than assume such an additional burden, employers will likely err on the side of not recording those incidents where in doubt. The result is less insight into workplace injuries for OSHA, the opposite outcome the recordkeeping initiative was intended to achieve.

The proposed rule, OSHA would require all records be submitted electronically. The agency has assumed that most employers are keeping their records in such a manner. While OSHA acknowledges a small portion of businesses do not have immediate access to computers or the internet, the agency has not put the rule before a small business review panel as required under the Small Business Regulatory Enforcement Fairness Act of 1996 to fully assess the impact disallowing paper submissions will have on small businesses. OSHA claims that all businesses affected by the rule have internet access, but has not provided the necessary supporting evidence. Should OSHA move forward with the rule, the agency must give consideration to allowing paper submissions. Because submission of these records will be mandatory, failing to do so will create a hardship on small businesses and increase the cost burden of the rule for employers.

OSHA estimates it will cost each employer with establishments of 250 or more employees only \$183 per year and only \$9 per year for establishments with 20 or more employees in specified industries. The agency fails to account for many costs associated with the rule, including but not limited to the possible cost of adopting a new system to accommodate OSHA’s filing system, training for a new system, and implementation of electronic systems for businesses only using paper format, as mentioned above.

OSHA estimates the electronic submission process would take each establishment only 10 minutes for each OSHA 301 submission and 10 minutes for the submission of both the OSHA 300 and 300A. IADC members contend that these numbers are

underestimated and could easily be double or triple the estimated time. The estimate fails to accurately account for the time it will take employees to familiarize themselves with the process and review of the reports to ensure compliance with all regulations. Furthermore, if employers become responsible for removing all employee identifiers from the records, considerably more time and resources will be needed for compliance. Although IADC has about one hundred and seventy member companies (enterprises), each member may have numerous establishments. Some larger member companies have one hundred sixty establishments (rigs). OSHA would need to multiply the time needed for an enterprise to collate all establishment (rig) data into one 300 log for an enterprise report. This could result in duplicate reporting if the establishment data is reported as an establishment and enterprise. Many member companies have establishments (rigs) operating in multiple zip codes. Grouping them together in one enterprise report would not allow for data separation into various states.

The benefits OSHA attributes to the rule are entirely speculative. The agency claims the rule's benefits will "significantly exceed the annual costs." The only benefits calculation done by the agency relates to costs of fatalities prevented, yet the bulk of the data will concern injuries, not fatalities. OSHA also claims "the data submission requirements of the proposed rule will improve quality of the information and lead employers to increase workplace safety," even though no data, surveys, studies, or anecdotal comments are offered as evidence. (78 Fed. Reg. p. 67276).

Moreover, OSHA does not take into account any consequential costs imposed on the employer due to the submission of records. Such costs include future inspections by the agency in response to the records submitted, or business or job loss as a result of misuse and mischaracterization of the data. While these may be indirect costs, the probability of such a result is higher than that of the possible benefits OSHA claims.

Regarding OSHA's questions on the reporting timetable, IADC believes that the data should be submitted annually just as the current requirement for posting the 300 report.

## Conclusion

OSHA's NPRM does nothing to achieve its stated goal of reducing injuries, illnesses and fatalities, yet as proposed, it will consume large amounts of agency and employer resources that could be put to better use. The proposal will force employers to disclose sensitive information to the public that can easily be manipulated, mischaracterized, and misused for reasons wholly unrelated to safety, and subject employers to illegitimate attacks and employees to violations of their privacy. In addition, the proposal will reverse the long-standing, "no-fault" approach to recordkeeping, and reduce employers' incentive to record questionable injuries. Finally, OSHA failed to account for the total costs its rulemaking will impose on businesses, while citing vast benefits without proper support for such claims.

For all these reasons, International Association of Drilling Contractors urges OSHA to withdraw the rulemaking. IADC appreciates the opportunity to comment on the

proposed rulemaking and requests that our comments be given due consideration. If you have any questions about these comments or recommendations, please contact me by phone at (713) 292-1945, ext. 224.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph R. Hurt", with a long horizontal flourish extending to the right.

Joseph R Hurt  
Vice President Onshore Division