PLASTICS
INDUSTRY ASSOCIATION

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Via www.regulations.gov

Ms. Lee Anne Jillings
Director, Directorate of Technical Support
and Emergency Management
OSHA
U.S. Department of Labor

Via OIRA_submission@omb.eop.gov

Office of Information and Regulatory Affairs
Attn: OMB Desk Officer, Department of Labor
Docket No. OSHA-2021-0006; RIN 1218-AD40

Re: Improve Tracking of Workplace Injuries and Illnesses; Proposed Rule
87 FR 18528 (March 30, 2022)
Docket No. OSHA-2021-0006; RIN 1218-AD40

Dear Ms. Jillings:

The Plastics Industry Association (PLASTICS) appreciates the opportunity to comment on OSHA's notice of proposed rulemaking (NPRM)[1] to amend OSHA's Injury and Illness Recordkeeping Rule, codified at 29 CFR 1904. PLASTICS is the only organization that supports the entire plastics supply chain—including material suppliers, processors, converters and machinery and equipment manufacturers—representing nearly one million workers in the $395 billion U.S. industry. The plastics industry includes manufacturing facilities that have longstanding experience with § 1904, have been submitting OSHA Form 300A Annual Summary information through the OSHA Injury Tracking Application (ITA) portal on an annual basis, and would be subject to the proposed requirements to submit OSHA Form 300 Log and OSHA Form 301 Incident Report information through that portal on an annual basis.

Based on a careful review of the proposed rule and the stated purposes for its adoption, we respectfully recommend that it be withdrawn, or formally modified to eliminate the plan to make the data publicly available.

I. Overview

The proposed rule would require employers to submit to OSHA, and allow OSHA to release to the public, detailed information regarding specific workplace injuries and illnesses, including the company, location, and incident-specific data. In the proposal, OSHA states that the rule would provide employees, potential employees, consumers, labor organizations and businesses and other members of the public with information "to make informed decisions" about the effectiveness of

[1] 87 FR 18528 (March 30, 2022)

each reporting company's workplace safety and health program and, implicitly, its commitment to workplace safety and health. However, the information collected through the OSHA 300 system, as a no-fault system, is not a reliable measure of an employer's safety record or its efforts to promote a safe work environment, and there is no feasible mechanism for converting it into a form that would reliably provide that measurement. A substantial majority of the reported incidents have not been investigated by OSHA, and although the employer may bear no responsibility or fault for the incidents, they would be publicized in a way that places the employer in an adverse light without any meaningful context or appropriate disclaimers.

Many factors contribute to recordable injuries that have no bearing on an employer's safety program, and neither OSHA nor any reviewer would have a reliable way of knowing about or confirming the presence of these factors. OSHA would be publishing information that has not been verified through appropriate quality controls and that may unintentionally contain personal identifiers or personally identifiable information, which could result in the disclosure of personal medical information. Such publication would conflict with the goals of the OSH Act, the requirements of the Data Quality Act, and the requirements of the applicable privacy laws.

PLASTICS objects to the proposed rule on a number of grounds that remain unchanged from our comments on OSHA's 2013 proposal:[2]

- We believe OSHA does not have the authority to issue the regulation for at least some of its stated purposes.
- The rule does not comply with Section 8(d) of the OSH Act, which provides that "[a]ny information obtained by the Secretary ... under this Act shall be obtained with a minimum burden upon employers, especially those operating small businesses." As proposed, the compliance burden and any negative impacts from the mischaracterization or misuse of the disclosed information cannot be assumed to be minimal.
- A failure by OSHA to exclude or reliably redact all personal identifiers and personally identifiable medical information would violate the Federal Privacy Act and other privacy laws.
- OSHA has not provided evidence that this proposal is necessary or will improve workplace safety and health. The affected employees and their representatives at any particular site currently have the ability to access a more detailed and useful version of the information that would be published. OSHA should not publish information that could discourage employees from reporting injuries or illnesses out of concern for their privacy, which would also reduce the quality and utility of the OSHA 300 system.

II. Public Disclosure of the Data Contemplated by This NPRM Is Not Authorized by the OSH Act and, as Proposed, Is Barred by Applicable Privacy Laws

Section 8(g)(1) of the OSH Act provides: "The Secretary and Secretary of Health and Human

[2] 78 Fed. Reg. 67254. November 8, 2013. Improve Tracking of Workplace Injuries and Illnesses; Proposed Rule.

Services are authorized to *compile, analyze, and publish,* either in summary or detailed form, all reports or information obtained under this section [8]." (emphasis added). Based on privacy considerations, the Section 8(d) obligation to minimize the burden of data collection on small employers, and longstanding OSHA policy, we believe that clearly cannot and does not authorize the publication of site- and case-specific data, especially when it would include personal identifiers or personally identifiable information. That approach would effectively result in the unlawful compelled disclosure of personal medical information protected by the Fourth Amendment to the U.S. Constitution and applicable privacy laws.

As proposed, OSHA would collect all the information from Form 300 except the employee's name, and all information from Form 301 except the employee's name (field 1), the employee's home address (field 2), the name of physician or other health care professional (field 6), and the medical facility name and address if treatment was given away from the worksite (field 7). OSHA's authority to require employers to submit records of work-related injuries and illnesses to OSHA does not include legal authority to support a requirement to make such records publicly available. OSHA does note in the preamble that "Under the provisions about access to employees and employee representatives in OSHA's recordkeeping regulation, § 1904.35(b)(2)(v)(A) and (B) prohibit the release of information in fields 1 through 9 to individuals other than the employee or former employee who suffered the injury or illness and his or her personal representatives." OSHA is legally obligated to protect personally identifiable records of work-related injuries and illnesses from disclosure under the Federal Privacy Act and the Freedom of Information Act (FOIA). However, the proposal does not reflect a rigorous analysis of precisely what information is prohibited from disclosure under those acts or any other federal or state law.

The Federal Privacy Act, 5 U.S.C. § 552a(b), provides:

> No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains [subject to 12 exceptions].

One exception is "for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D)." Subsection (e)(4)(D) requires *Federal Register* publication of "each routine use of the records contained in the system, including the categories of users and the purpose of such use." Subsection (a)(7) defines "routine use" to mean, "with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected." Disclosure of injury and illness data to publicly shame employers for, by implication, what might be viewed as unsatisfactory workplace safety and health programs, is not compatible with the collection and disclosure of data that does not account for

whether the employer was in any way responsible for the reported incident(s).

III. The OSH Act Does Not Authorize the Use of Public Shaming Independent of an OSHA Enforcement Action

Section 8 of the OSH Act establishes the exclusive procedures to be followed by OSHA in investigating the status of an employer's efforts to comply with the OSH Act. Sections 9, 10, and 13 establish the exclusive procedures to be followed by OSHA in bringing an enforcement action against an employer. Section 17 establishes the exclusive set of penalties that OSHA is authorized to impose on employers, subject to any alternative penalties that an employer may agree to in a settlement agreement. The OSH Act does not authorize OSHA to bypass the enforcement process through public shaming, which could impose a significantly greater burden on the employer than the authorized OSHA fine.

Furthermore, the § 1904 recordkeeping 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. Aside from instances of employee misconduct, including the consequences of substance abuse (in many states, injuries are not covered by workers compensation if substance abuse is identified during the investigation of the case), there are things that just seem to happen to people—an employee at work bends down to pick up a pencil or plug in an appliance cord and throws out their back; wind blows a particle into the employee's eye while they are walking in from the parking lot; an employee with a partially torn ACL steps wrong while walking onsite and tears the ACL completely, etc.

Consider the example of a small business with a 20-employee site, 40,000 estimated annual hours worked, and one recorded case with days away from work or days of restriction/transfer (DART) that was determined to be completely outside the employer's control. The resulting DART rate would be 5. How should the public view this company, alone or compared to others? Without context, the business might be unfairly labeled as "unsafe." There is insufficient context to draw conclusions about the employer's safety program or practices, but that is not the message that would be conveyed if this rule were implemented as proposed.

One member company's experience illustrates the shortcomings of promoting this use of the OSHA 300 data. The company's corporate purchasing department declined to approve a site's request to renew a contract with a contractor because the contractor's form reported a "high" TIIR. The contractor was a high-performing, safe, and small contractor with expertise critical to the company. The company's site manager contacted the president of the contractor to explain the situation and inquire about the high TIIR. The site manager learned the high TIIR was because three of the contractor's employees were traveling together and injured in a single motor vehicle accident due to a third party's negligence. Meanwhile, relationships can be

strained when a contract is on hold, and finances can be strained if contracts are needlessly lost due to OSHA 300 data without sufficient context.

IV. The Proposed Public Disclosure of Injury and Illness Data is Contrary to Longstanding OSHA Policy

OSHA's proposed public disclosure of case-specific § 1904 information contradicts OSHA policy on balancing the interests of privacy with access to such information to advance workplace safety and health from the time the OSH Act was adopted. In the 2001 revisions to the recordkeeping requirements, OSHA broadened access of injury and illness records to employees and their representatives.[3] However, "[i]n the proposal, OSHA noted that the access requirements were intended as a tool for employees and their representatives to affect safety and health conditions at the workplace, *not as a mechanism for broad public disclosure of injury and illness information."* (emphasis added).

In addressing commenters' concerns about the public release of such information, OSHA stated in the preamble to the final rule:

> OSHA agrees that confidentiality of injury and illness records should be maintained except for those persons with a legitimate need to know the information. This is a logical extension of the agency's position that a balancing test is appropriate in determining the scope of access to be granted employees and their representatives. Under this test, the fact that protected information must be disclosed to a party who has a need for it * * * does not strip the information of its protections against disclosure to those who have no similar need. *Fraternal Order of Police,* 812 F2d at 118.[4]

We believe this reversal in policy has not been explained by OSHA.

V. The Rule is Expected to Have a Negative Impact on the Accuracy of Recordkeeping

As many commenters noted when this idea was proposed under the Obama Administration, this proposed rule is anticipated to have a chilling effect on injury and illness reporting. Currently, employers are likely to record a questionable work-related incident even if there is an apparently justified claim that the incident is not work-related, as there is no consequence to over-reporting (except that it may trigger Site-Specific Targeting). However, making the information publicly available may result in employers not recording a questionable work-related incident, leading to fewer injuries and illnesses being reported. Moreover, ***employees*** who are concerned about the public perception of their employer, their own reputation (e.g., injuries due to horseplay) or their own private medical information, may be less likely to report injuries they know will be made

[3] See Section 1904.35 in 66 Fed. Reg. 5916 (January 19, 2001)
[4] 66 Fed. Reg. 6057

public.

VI. The Rule Will Not Assist Employers in Managing Workplace Safety

The rule will not assist employers in managing workplace safety as it does not provide information that is not already available to them and their employees. When companies publish incident reports internal to all employees, all personal information is removed, and no medical information is provided. Furthermore, many companies recognize that focusing on lagging indicators such as incident rates does not make an effective safety program; they focus instead on leading indicators of safety performance, such as tracking safety training, employee involvement in the safety program and worksite hazard reporting and control. Companies track different types of information and some already benchmark with others. OSHA's website provides information and resources for employers on safety and health programs, and OSHA leadership last spoke with our members on the topic two years ago. We believe OSHA's objectives could be better met through the allocation of greater resources towards collaborative initiatives and compliance assistance.

VII. The Proposed Rule Conflicts with the Underlying Principle of OSHA's No-Fault Recordkeeping System

OSHA adopted the current recordkeeping requirements in 2001. The foundation of those revisions was adoption of what OSHA deemed a "no-fault" system that, as a matter of administrative convenience, greatly simplified the work-related determination by incorporating what is known as the "geographic presumption." OSHA explicitly recognized that the "geographic presumption" did not necessarily correlate to an employer's behavior and that employers would be required to record injuries and illness that were beyond an employer's control:

> OSHA has decided not to limit the recording of occupational injuries and illnesses to those cases that are preventable, fall within the employer's control, or are covered by the employer's safety and health program.[5]

Under the proposed rule, OSHA would inappropriately use this no-fault system to target employers for public shaming. It would promote the use of the incomplete and misleading raw information from this data as a "tool" to be used by other parties and members of the public to make decisions about which companies to do business with, whether to apply for a position or remain with a company, and whether to buy a company's products. This proposed use of the data fundamentally upends the no-fault system that OSHA adopted in 2001, and that was promoted and fully supported by the AFL-CIO. In its comments submitted in response to the proposed rule, the AFL-CIO stated:

[5] 66 Fed. Reg. 5961

> ...the Agency must encourage employers to adopt a "no-fault system" philosophy in the workplace and remove barriers which discourage the reporting of injuries and illnesses by employees. This philosophy will not only encourage workers to report injuries and illnesses, but also encourage those individuals (e.g., supervisors, safety personnel) responsible for recording this data to report all recordable incidents. (Ex. 15:418).[6]

VIII. The Proposed Rule Imposes Substantial Additional Burdens on Employers

Beyond the unknown consequences of public shaming and misuse of the information, the proposed rule would place substantial additional burdens on employers. One can estimate the burden hours to investigate and analyze an incident and complete any required recordkeeping under the assumption that it will be done efficiently and accurately the first time, and that no quality assurance measures will be needed, but that is not a realistic estimate of the true burden, especially where non-compliance is subject to a government sanction and the submission apparently requires a certification of accuracy by the responsible corporate official.

Given the significance that is attached to accurate § 1904 recordkeeping, records required to be submitted to OSHA under the annual data collection initiative are not submitted until after they have been reviewed and audited. To estimate compliance costs realistically and fairly, the cost of quality assurance procedures necessary to ensure compliance with a proposed rule must be treated as a component of the burden hours required by the rule. The audit is, in effect, not a voluntary measure, but one that needs to be incurred to ensure compliance and avoid over-reporting.

In addition, many establishments do not use the OSHA 301, but use an equivalent state workers compensation form or an incident reporting database form in which the content and numerical identifiers of the fields differ from the OSHA 301. This means the sites that use the workers compensation forms or other incident reporting database forms will have to either fill out the OSHA Form 301 for each case, or establish a separate set of instructions identifying the fields from the workers compensation form or database report to be included (and possibly combined) in the OSHA data submission and the fields in which they must be entered (transferred).

IX. Discussion of Particular Provisions and Possible Implementation

Based on the foregoing, we believe OSHA should either withdraw this proposal or eliminate the idea of making the information publicly available. Should OSHA proceed with some form of this proposal, we offer the following comments on particular provisions and potential implementation.

[6] 66 Fed. Reg. 5916, 5934, col. 1-2 (January 19, 2001)

A. OSHA Must Exclude the Job Title, Department and Gender from the OSHA 300 Information Collected Under this Program to Avoid Identification of the Individual Covered by the Case

As an example of a job title, the OSHA 300 lists "(e.g., Welder)." In many facilities, there may be only one or a very small number of welders. That means any suppliers of goods or services related to welding are likely to be able to link the case with the affected individual. Many employees have established accounts in social networks, such as LinkedIn, that list their name, job location and position with their employer. Someone with access to that network will be more easily able to link the case with the affected employee. As OSHA stated in the preamble to the January 19, 2001 rewrite of Section 1904 with respect to privacy concern cases:

> For example, if knowing the department in which the employee works would inadvertently divulge the person's identity, or recording the gender of the injured employee would identifying that person (because, for example, only one woman works at the plant), the employer has discretion to mask or withhold this information both on the Log and Incident Report.

OSHA would not give that discretion to the employer with respect to non-privacy concern cases and no automated software, regardless of its level of sophistication, would have the information or ability to determine when these seemingly generic pieces of information would, in effect, be personal identifiers. We believe OSHA has an obligation to protect the privacy of employees from the potential invasion of and recognized hazards to their privacy by eliminating the plan for public disclosure of the collected information or, in the alternative, eliminating the collection of information that could, in effect, be a personal identifier depending on the nature of the staffing at the affected establishments.

B. OSHA Must Exclude a Number of Additional Items From the OSHA 300A Information Collected Under this Program to Avoid Disclosing the Identity and Contact Information for the Person Certifying the Form

The OSHA 300A is not treated as a publicly available form by employers. It is not posted in a lobby or reception area, but in an area where access is limited to employees, for three months, as mandated by OSHA. Furthermore, the employer has a reasonable expectation that employees will recognize that the information in the OSHA 300A is proprietary to the extent that OSHA does not make it public information. The company and the company executive that signs the form and enters their phone number have a reasonable expectation of privacy in the executive's identity and phone number, and do not expect that executive to be subjected to inquiries from anyone who takes an interest in the content of that Form 300A.

C. OSHA Must Exclude a Number of Additional Items from the OSHA 301 Information Collected Under this Program to Avoid Disclosing Either the Identity

of the Individual Covered by the Case or the Identity and Contact Information for the Person Completing the Form

As noted above, many employees have established social network accounts that list their name and position with their employer. Those profiles typically include the month and year the employee began working for the employer, a potentially reliable personal identifier that corresponds to the date of hire listed in field 4. Some unknown number of those profiles include birth dates, a potentially reliable personal identifier that corresponds to field 3. Therefore, OSHA needs to either exclude birth date and hiring date data from the collected information or reliably establish certain fields of collected information that are available only to OSHA and not the general public.[7] In the event of a work-related fatality, which could be caused by an unexpected exposure to COVID-19, for example, field 18 would require the date of death. Many states have closed record systems that do not permit public access to death records for 25 years, but we do not know whether all states have such a rule. If not, a person with no blood or legal relationship to a decedent could identify them through county or state death records. Even in states with closed record systems, it appears there is a possibility that the autopsy report would be immediately available to the public although the death certificate would not.[8] In short, OSHA would need to remove this field from the data available to the public or confirm there is no state that has an open records policy with respect to death certificates or autopsy reports.

Finally, again, we believe the employer and the person completing and signing the OSHA Form 301 have a reasonable expectation in the privacy of that individual's name and telephone number. That means OSHA needs to block this field from public access or not collect this information. In short, we believe OSHA needs to prioritize this rule to either identify and collect the information it needs to perform its work while reliably blocking some of that data from public access or reassessing the idea of using a single data collection for multiple purposes.

D. Before Requiring Compliance with the Contemplated Data Submission Requirements for the OSHA Form 301, OSHA Needs to Have a Qualified, Independent Body Test and Validate that the Software, as Integrated into the OSHA ITA, Will Reliably Remove Any Personal Identifiers

The OSHA instructions for completing fields 14 to 17 state: "Please do not include any personally identifiable information (PII) pertaining to worker(s) involved in the incident (e.g., no names, phone numbers, or Social Security numbers)." If followed, this means that the OSHA 301 cannot also serve as the employer's internal incident report because it will often lack critical information where the event involves the activities of at least one person in addition to the

[7] Noting that OSHA states in the preamble: "In addition, consistent with § 1904.35(b)(2)(v)(A) and (B), OSHA proposes to collect but would not release the information from the remaining fields that are likely to contain private worker information: Age (calculated from date of birth in field 3), date hired (field 4), gender (field 5), whether the employee was treated in the emergency room (field 8), and whether the employee was hospitalized overnight as an in-patient (field 9)." See: 87 FR 18539.

[8] See: https://www2.texasattorneygeneral.gov/opinions/openrecords/49cornyn/orl/2002/htm/or200200868.htm

injured employee. OSHA previously recognized that some meaningful portion of employers would not follow the direction for completing fields 14 to 17, and that posed too great a risk to the personal privacy of employees to justify collecting the data. OSHA now suggests that automated software has sufficiently improved such that OSHA can now reliably remove any personal identifiers included in fields 14 through 17.

This raises two concerns. First, we are concerned that OSHA is referring to technically feasible automated software that could identify unique personal identifiers, but it is unclear whether it currently exists. Second, as the foregoing discussion from the January 19, 2001 preamble makes clear, there are likely to be many cases in which disclosure of a generic identifier or data point becomes a personal identifier in the context of those with knowledge of the site (e.g., "only one woman works at the plant"), a situation that we believe is beyond the shield that could be provided by any automated software.

If OSHA had identified automated software capable of scrubbing unique personal identifiers, we would have expected OSHA to have provided an appropriate certification from a qualified testing organization that the software, after integration into the OSHA ITA, will accurately perform that function – possibly with some acceptable, minimal error rate. However, the following questions OSHA posed in the preamble suggest the necessary software is not yet available or, if it is, OSHA has not yet identified it and verified it would be adequate and within the agency's budget:

> 7. What other agencies and organizations use automated identification systems to remove information that reasonably identifies individuals directly from text data before making the data available to the general public? What levels of sensitivity for the automated system for the identification and removal of information that reasonably identifies individuals directly from text data do these agencies use?
> 8. What other open-source and/or proprietary software is available to remove information that reasonably identifies individuals directly from text data?
> 9. What methods or systems exist to identify and remove information that reasonably identifies individuals directly from text data before the data are submitted?
> 10. What criteria should OSHA use to determine whether the sensitivity of automated systems to identify and remove information that reasonably identifies individuals directly is sufficient for OSHA to make the data available to the general public?

The following questions from the preamble also leave it unclear whether more emphasis would be placed on the uncontrollable human element and after-the-fact corrections if the software is not adequately reliable for this purpose:

> 6. What additional guidance could OSHA add to the instructions for electronic submission to remind employers not to include information that reasonably identifies individuals directly in the information they submit from the text-based fields on the OSHA Form 300 or Form 301?
> 11. What processes could OSHA establish to remove inadvertently published information that reasonably identifies individuals directly as soon as OSHA became aware of the information that reasonably identifies individuals directly?

We do not believe this is an acceptable remedy for inadequate software. If OSHA were to proceed in this way, in response to Question 6, OSHA should include the warning about not including personal identifiers in an online screen and require the submitter to click a confirmation that it has not included any personal identifiers before allowing the submitter to proceed to the data entry step. After the data entry is completed, the system should provide the employer with an opportunity to review the complete data submission, view how it would be presented to the public, and correct any inaccurate data or inadvertently included personal identifiers. After completing that step, the submitter should have to click through a second screen that repeats the warning about not including personal identifiers and confirming that none were submitted before allowing the submitter to click on the final submit button. And in response to Question 11, if the employer later discovers that it submitted a personal identifier, it should be permitted to amend the submission to remove the personal identifier or, in the alternative, submit a notification to OSHA that it inadvertently submitted a personal identifier and flag that information, at which point the system would automatically lock the file from public access until OSHA resolves the issue.

Before requiring compliance with the contemplated data submission requirements for the OSHA Form 300 or Form 301 data, OSHA needs to have a qualified, independent body test and validate that the software, as integrated into the OSHA ITA, will reliably accept the data after removing any personal identifiers, and advise the submitter as to the data that was removed. Depending on what data is removed, it is possible that the remainder of the information may be unclear or misleading. It may be necessary to reject the submission of a case from which data was scrubbed or to provide the submitter with an opportunity to amend the submission.

We recall the glitches that arose in implementing the online collection of the OSHA 300A data when there was no concern about submission of personal information and using automated software to screen submissions and scrub personal identifiers. In light of the challenges of implementing the contemplated software and data submissions, we believe it would be appropriate to have a qualified, independent body test, validate and certify the functionality of the complete software package, and the suitability of the instructions for use, after that software has been fully integrated into the OSHA ITA. OSHA should delay any additional compliance

obligations under a revised rule until at least three months after OSHA publishes the results of that testing and certification.

E. The Principle of the No-Fault Recordkeeping System Must be Appropriately Highlighted

As stated earlier, our understanding is that, for policy reasons, OSHA established the OSHA injury and illness recordkeeping system as a no-fault system – meaning the recorded event is not necessarily due to a shortcoming on the part of the employer or employee, and not necessarily evidence of a violation of the OSH Act. Under this system, with some very limited exceptions, any injury or illness to an employee that occurs at his/her/their employer's worksite is deemed to be "work-related," if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness.

The adoption of a no-fault system provides certain advantages. First, it provides for administrative convenience in contrast to one where cases would be recorded only if due entirely or primarily to a shortcoming on the part of the employer. The problem with a fault-based approach is that every case determination would turn, at least initially, on the application by the employer, of concepts of fault, contributory negligence, the employee misconduct defense and/or an "act of God" defense, none of which is particularly clear cut. Second, under that approach, OSHA might never learn of cases that were not properly analyzed by the employer and should have been recorded.

That said, it is also clear that many work-related cases occur through no fault of the employer, and that OSHA recognizes this reality. The second page of the instructions titled *OSHA Forms for Recording Work-Related Injuries and Illnesses* includes the following:

> Cases listed on the *Log of Work-Related Injuries and Illnesses* are not necessarily eligible for workers' compensation or other insurance benefits. Listing a case on the *Log* does not mean that the employer or worker was at fault or that an OSHA standard was violated.[9]

No similar statement is made with respect to the Form 300A or Form 301. We believe the quoted paragraph should be modified to say:

> The OSHA Injury and Illness Recordkeeping system is a no-fault system, similar to the workers compensation system. However, cases listed on or captured by and/or extracted from the *Log of Work-Related Injuries and Illnesses* (OSHA 300), the *Injury and Illness Incident Report* (OSHA 301) and the *Summary of Work-Related Injuries and Illnesses* (OSHA 300A), are not necessarily eligible for workers' compensation or other insurance

[9] Available at: https://www.osha.gov/sites/default/files/OSHA-RK-Forms-Package.pdf. Last accessed May 10, 2022.

benefits. The inclusion of a case in these forms does not mean that the employer or worker was at fault or that an OSHA standard was violated.

Furthermore, to ensure this critical point is effectively communicated to anyone who may access this data, we believe it is essential that any revised rule include this statement and ensure it is displayed in a locked format in a prominent, easily read font and in a prominent location on every page of online injury and illness data on the DOL/OSHA website and in any printout or download of that online data.

X. X. Conclusion

Based on the foregoing analysis, PLASTICS respectfully requests that OSHA withdraw the proposal or proceed without making the data publicly available. We believe OSHA's objectives could be better met through the allocation of greater resources towards collaborative initiatives and compliance assistance.

Respectfully submitted,

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