

**COMMENTS OF THE  
AMERICAN FEDERATION OF LABOR  
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS  
ON  
OSHA'S PROPOSED RULE ON OCCUPATIONAL INJURY AND ILLNESS  
RECORDING AND REPORTING REQUIREMENTS  
DOCKET No. OSHA-2009-0044  
March 30, 2010**

The AFL-CIO is pleased to provide comments on the January 29, 2010 proposal by the Occupational Safety and Health Administration (OSHA) to revise its workplace injury and illness recordkeeping regulation (29 CFR Part 1904) to restore a column on the OSHA 300 Log to identify cases that are work-related musculoskeletal disorders (MSDs). We strongly support this rulemaking effort by the agency and urge that the proposed rule be finalized expeditiously to require the identification of work-related MSDs on the 300 Log commencing with the beginning of calendar year 2011.

Adding the MSD column will provide an extremely useful tool to help identify and address musculoskeletal disorders in the workplace. The column will also provide more complete national information about the extent of musculoskeletal disorders in the United States and across different industries.

At the end of the Clinton Administration, on January 19, 2001, OSHA issued a final rule that comprehensively revised its injury and illness recordkeeping requirements (66 FR 5916-6135). The new rule included Section 1904.12 that covered the recording criteria for cases of work-related musculoskeletal disorders. This requirement provided that employers record cases of work-related MSDs on the OSHA 300 Log by checking a "musculoskeletal disorder" column on the Log. To assist employers in identifying MSD cases, the rule included a definition of an MSD and gave examples of MSDs that were to be recorded.

The benefits of including an MSD column on the 300 Log were expected to be enormous. For the first time, the Bureau of Labor Statistics would be able to gather and publish nationwide and industry statistics on MSDs occurring in United States workplaces and highlight the extent of the problem. At the workplace, the column was likewise expected to greatly assist employers and workers in identifying the occurrence of MSDs that could then be used to initiate protective measures.

However, as part of its assault on ergonomics, the Bush Administration proposed to delay the implementation of MSD recordkeeping provisions in Section 1904.12. Without actually proposing to do so, the agency instead decided, on June 30, 2003, to delete altogether the employer requirement to check the MSD column on the 300 Log and the definition of an MSD (68 FR 38601). As a result, Section 1904.12 was eliminated in its entirety from the injury and illness recordkeeping rule.

The AFL-CIO vigorously opposed the proposal by OSHA to delay implementation of the MSD column and submitted extensive comments to the record detailing the evidence and rationale that established that there was no basis for the delay and the value at the national and workplace levels for retaining the requirement (Docket R-02B, Exhibit 2-24-1). The evidence and arguments the AFL-CIO submitted in its comments to Docket R-02B are substantively relevant to the issues raised in the current proposed rule so we are submitting them to this rulemaking record for the agency to consider in issuing a final rule on this proposal.

### **The MSD Column Is Needed**

The AFL-CIO believes that in order for the OSHA recordkeeping system to achieve the purposes set forth in the Occupational Safety and Health Act, an MSD column should be included on the OSHA 300 Log. The column will be extremely useful in providing employers, workers, unions and the government additional information about MSDs in workplaces as well as at the national level.

This proposed rule is focused exclusively on requiring employers to identify whether cases of recordable injuries and illnesses on the OSHA 300 Log are a musculoskeletal disorder and if so, to check the MSD column on the Log. This rule is not an ergonomics standard. The proposed rule does nothing to require employers to address or control ergonomic hazards in the workplace. This rule only requires employers to identify cases on the Log to determine if they are an MSD and to check the MSD column if they are so identified.

The occurrence of musculoskeletal disorders among workers in the United States remains one of the biggest workplace safety and health problems facing our nation. In the most recent data provided by the Bureau of Labor Statistics (BLS) for 2008, 317,440 cases of musculoskeletal disorders involving days away from work occurred which accounted for 29.4% of all days away from work cases in the nation. At the present time, BLS provides information only on MSDs cases involving days away from work. However, if the proportion of days away from work cases attributable to MSDs is assumed to occur across other types of injury and illness categories captured and reported by BLS, an additional 241,844 MSD cases involving job transfer or restriction are estimated to have occurred in 2008, with total MSD cases of all types numbering 1,086,653 for the year. This data confirms that MSD cases represent the biggest single source of work-related injuries and illnesses affecting workers.

What the proposed rule would require is quite simple. It restores a column to the OSHA 300 Log that employers would check when otherwise recording a work-related musculoskeletal disorder on the Log. It merely identifies which recordable injuries and illnesses are MSDs. The proposal does not alter the general recording criteria or the

work relatedness determination for injuries and illnesses that are required to be recorded. In fact, employers are now required to record work-related MSDs that meet the general recording criteria in the recordkeeping rule. This proposed rule only requires that a case of recordable MSD also include a check in the MSD column that would be added to the Log. The proposed rule's definition of an MSD will assist employers in identifying recordable cases that are MSDs.

Including a column on the 300 Log to identify MSD cases is not a new requirement or concept. Prior to the promulgation of the 2001 revised recordkeeping rule, the OSHA 200 Log required employers to identify recordable illnesses that were "disorders associated with repeated trauma". This column category (7(f)) captured some illnesses like carpal tunnel syndrome, a musculoskeletal disorder, but also included occupational hearing loss and failed to capture injuries involving back cases. For decades, BLS published the number and incidence rate of repeated trauma disorders by industry for the nation based on the data from the OSHA 200 Log. Even though the repeated trauma column provided useful information on some MSDs that could be used at the workplace and by BLS for national statistical purposes, the column did not provide complete or specific information on MSDs.

With the 2001 revision to the recordkeeping requirements, OSHA retained in the new 300 Log the columns from the old 200 Log involving skin disorders, respiratory illnesses, and poisoning while modifying the column for repeated trauma to make it more specific, broader, and accurate. The agency made it more specific by creating a separate column devoted exclusively to occupational hearing loss. The agency then created a column exclusively focused on MSDs and broadened the recordable cases to include both illnesses and injuries such as carpal tunnel syndrome, tendonitis, and back injuries.

But this MSD recordkeeping requirement never took effect and was repealed by the Bush Administration in 2003. With the removal of this requirement from the employer's injury and illness recordkeeping requirements, we were left with far less information on MSDs that we had under the previous recordkeeping rule that collected information on repeated trauma.

At the present time, the national and industry/occupation data and information on MSDs collected by the BLS is limited to annual case and demographic characteristics of nonfatal occupational injuries and illnesses requiring days away from work (DAW). There is no national or industry data and information on the extent of total recordable work-related MSDs (number and rate) or MSD cases involving job transfer or restriction. The data on MSDs involving days away from work only captures a partial picture of the extent of work-related MSDs that workers are experiencing in the United States. Moreover, at the workplace, in the absence of an MSD column, there is currently no easy way to identify MSD cases on the 300 Log.

## **An MSD Column Is Useful For Employers and Workers At The Workplace**

The inclusion of an MSD column on the 300 Log will be of great use to employers, unions and workers in their efforts to identify which injuries and illnesses on the Log are MSDs. The column will assist in workplace efforts to identify and correct problems that are causing or contributing to MSDs. A review of the OSHA 300 Log for MSD cases is the first step in many employer ergonomic programs and OSHA guidelines to address MSDs. Employer programs routinely review the log of injuries and illnesses to identify MSDs and jobs with possible hazards.

The record of OSHA's 2000 Ergonomics standard (Docket S-777) includes many example of employer programs that utilize injury and illness logs to identify MSDs. These include exhibits from Boeing (Ex. 500-71-74), Hewlett Packard (Ex. 500-71-81), General Motors/Ford/Daimler-Chrysler (Ex. 32-185), the five employers evaluated by the GAO (Ex. 26-5), VF Corporation (Ex. 32-198), Johns Hopkins University (Ex. 32-339-1-4), an auto parts manufacturer (Ex. 500-71-57), Varian (Ex. 32-339-1-8), Department of Defense (Ex. 32-339-1-16), Intel Corporation (Ex. 32-339-1-27), Library of Congress (Ex. 32-339-1-33), a foam products plant (Ex. 32-339-1-62), the City of San Jose (Ex. 32-339-1-66) a printed circuit board assembly facility (Ex. 32-339-1-76), and the U.S. Army (Ex. 32-339-1-81) and exhibits in Docket S-777A including recommendations from the Accredited Standards Committee Z365 (National Safety Council, 2000, Ex. 2-162-20) and U.S. EPA (Environmental Protection Agency, 2001, Ex. 2-162-10). Additionally, on its web site, OSHA specifically lists analyzing injury records as a way to determine if there is an ergonomic problem in a workplace ([http://www.osha.gov/SLTC/ergonomics/review\\_of\\_records.html](http://www.osha.gov/SLTC/ergonomics/review_of_records.html)).

An MSD column will permit both employers and workers to quickly and easily identify MSDs, determine where and how they are occurring and assess the effectiveness of programs that are designed to reduce MSDs in the workplace.

In the absence of an MSD column, employers and workers currently have to search and review each entry on the 300 Log on a case-by-case basis to determine if a case is an MSD. It is time consuming effort to conduct a case-by-case analysis after the cases have already been entered on the Log. Analysis under this approach can occur long after the case has been entered when facts and circumstances about the cases may not be readily ascertainable which heightens the likelihood that an MSD case will be missed. Unions have had a difficult time sorting out and identifying the MSD cases when done retrospectively after entry. It would be far simpler, easier, less time consuming, and more accurate to identify, at the time of entry, those cases that are MSDs and to check the column if the case meets the definition of an MSD. By making the identification and checking the MSD column at the time the case is entered on the Log, employers and unions can quickly and easily see whether or not a problem exists in their workplace.

A specific column identifying which injuries and illnesses are MSDs is a critically important tool in addressing workplace ergonomic hazards. It also allows employers to easily track progress in the occurrence of MSDs. With an MSD column, rates of MSDs can be easily calculated and experience from year to year evaluated and compared. With a column, this evaluation can be done directly and easily from the log. Workers, unions and employers will be working off the same information, bringing consistency to ergonomics programs within workplaces and across workplaces, and enhancing the effectiveness of prevention efforts.

Most importantly, a column has great potential to identify cases of MSDs as early as possible before they get worse and develop into cases involving days away from work, which is the most severe outcome of an MSD. Identifying MSDs on the column at the earliest possible point, especially before workers lose days away from work or experience job transfer or restriction, will allow a more preventive approach to be implemented by employers, unions and workers to intervene before MSDs increase in outcome severity.

If the MSD column is not required, employers and workers will lose a critical tool. There will be no simple, direct way to identify which injuries and illnesses are MSDs, the jobs where there is potential exposure to ergonomic risk factors or the trends in musculoskeletal disorders in the workplace. This will hamper the ability of employers and workers to address the pervasive hazard.

### **An MSD Column Will Provide Significantly Improved National and Industry Data On The Nature And Extent Of MSDs In The United States**

When Congress enacted the Occupational Safety and Health Act in 1970, it directed the Secretary of Labor to "compile accurate statistics on work injuries and illnesses." (29 USC 673). The Act's legislative history underscored that full and accurate recordkeeping and statistics were a prerequisite to achieving the law's purposes and goals. (Legislative History of the Occupational Safety and Health Act of 1970 (S. 2193, P.L. 91-596) Prepared by the Subcommittee on Labor of the Committee on Labor and Public Welfare, United States Senate, June 1971, 92<sup>nd</sup> Congress, 1<sup>st</sup> session, pp. 156-157).

Current data collection methods are failing to provide complete and accurate statistics on the extent of work-related musculoskeletal disorders in this country. At the present time, BLS only collects and reports numbers and incidence rates for MSDs involving days away from work (DAW) cases as part of the annual case and demographic characteristics for nonfatal occupational injuries and illnesses. Limiting data to these particular cases only describes a small part of the problem with MSDs occurring in U.S. workplaces. Overall, days away from work cases account for only 28% of all reported work-related injuries and illnesses in the United States based on 2008

BLS data. Clearly, musculoskeletal disorders do not occur exclusively among injuries and illnesses involving only those cases with days away from work. The BLS data on days away from work is limited and woefully insufficient by failing to capture large numbers of cases involving job transfers or restrictions and those MSD cases that are otherwise recordable.

The data that is available from BLS shows that there are many industries with significant MSD problems that have low days away from work case rates, but higher than average total recordable and/or restricted injury and illness case rates. For example, poultry processing is widely recognized for having a substantial problem with MSDs. In 2008, for poultry processing (NAICS code 311615), BLS reported a days away from work case rate of 0.8 per 100 workers, a total recordable case rate of 6.1, and an incidence rate of 3.2 for cases with job transfer or restriction. The days away from work (DAW) cases for poultry represent only 13% of the total recordable injuries and illnesses in this industry. Moreover, there are four times as many restricted day cases as days away from work cases. One of the reasons that the days away from work cases constitute such a small percentage of the total of all injuries and illnesses reflects employer's medical management decisions. By keeping workers on the job through job transfers to "light duty" or restricting the normal duties of a workers job rather than having a worker spend time away from work while they recover from their injury or illness, it lowers the incidence rate of days away from work cases.

The experience is similar in other industries that have significant problems with musculoskeletal disorders. In 2008, BLS reported that motor vehicle manufacturing (NAICS code 3361) experienced a total recordable case incidence rate of 7.5, with a days away from work rate of 1.3 and a job transfer or restriction rate of 2.1 (representing only 28% of the incidence rate for total recordable cases.) Nursing and residential care facilities (NAICS code 623) had a total recordable injury and illness incidence rate of 8.4 with at days away from work rate of 2.5 and a job transfer or restriction rate of 2.5 (representing only 30% of the incidence rate for total injuries and illnesses). For grocery stores (NAICS code 4451) in 2008, BLS reported an incidence rate for total injuries and illnesses of 6.0 while the days away from work rate was 1.7 and the job transfer or restriction rate of 1.7 as well (representing only 28% of the total injury and illnesses). Table 1 includes examples of industries with significant MSD problems that have low days away from work case rates but higher than average total recordable and/or restricted injury and illness case rates.

It is clear that days away from work cases only capture a small part of the problem of MSDs that workers are experiencing. This problem was recognized by the National Academy of Sciences committee that issued its 2001 report on work-related musculoskeletal disorders, *Musculoskeletal Disorders and the Workplace: Low Back and Upper Extremities* (see pages 61 and 366). The committee acknowledged these limitations and urged the collection of information on cases other than days away from work.

While the proposed rule to reinstate the MSD column will not address full data needs, it will certainly provide information on the broad total scope of the problem, both nationally as well as by industry. Having this broad set of information on MSDs will greatly help to better define the problem we are facing and to assist employers, workers and unions in identifying the interventions that are needed to prevent these injuries and illnesses. Two attachments from BLS are submitted with these comments that sort, by industry (at 3 digit NAICS level), the incidence rate or total number of cases of MSDs involving days away from work.

As OSHA recognized in adopting the 2001 recordkeeping rule, the inclusion of an MSD column on the log is a direct and straightforward way to collect this important information. In the preamble to the final recordkeeping rule the agency stated:

After a thorough review of the record, and extensive consultation with NIOSH and the BLS to establish the need for such statistics, OSHA has concluded that including a separate column on the final OSHA 300 Log for MSD cases is essential to obtain an accurate picture of the MSD problem in the United States. In 1997, more than 600,000 MSDs resulting in days away from work were reported to BLS by employers, although determining the number has required close cooperation between OSHA and the BLS and several "special runs" by the BLS (i.e. computer analyses performed especially for OSHA). OSHA believes that such a column on the OSHA 300 Log will not only permit more complete and accurate reporting of these disorders and provide information on the overall incidence of MSDs in the workplace, it will provide a useful analytical tool at the establishment level. (66 FR 6030)

The AFL-CIO fully agrees with OSHA's rationale stated above to include an MSD column on the 300 Log and strongly supports this proposed rulemaking to reinstate the MSD column.

#### **Proposed Definition Of MSD Is Sound And Should Be Adopted**

The definition of an MSD proposed by the agency, identical to that included in the 2001 final recordkeeping rule, defines them as "disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs." The definition also indicates that MSDs "do not include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents." Additionally, the proposal includes examples of various MSDs to assist in identifying disorders that may be recordable.

The AFL-CIO strongly supports OSHA's definition of an MSD and urges that it be adopted as proposed. We believe this is a sound and workable definition that has been used by the agency for decades in its meatpacking and other guidelines as well as its settlement agreements. The definition also is similar to that used by the Bureau of Labor Statistics (BLS), the National Academy of Sciences (NAS), the National Institute for

Occupational Safety and Health (NIOSH), and other authoritative agencies and organizations. (See the Appendix for a comprehensive listing of MSD definitions adopted by various agencies and organizations).

To be effective in capturing work-related musculoskeletal disorders both at the workplace and for national statistical purposes, an MSD definition must be broad enough and accurate to capture the full range of disorders associated with the musculoskeletal system. The AFL-CIO believes the agency's proposed definition accomplishes this objective. Furthermore, by excluding disorders caused by certain instantaneous or acute events, such as slips, trips and falls, from the definition of an MSD, OSHA has added substantial clarity as to what disorders are not to be checked in the MSD column of a 300 Log. Alternatively, providing examples of MSDs also enhances the clarity of the disorders that must be included among those disorders checked in the proposed column.

The definition that OSHA is proposing of an MSD is appropriately written to serve as an identification tool for employers to use to determine whether or not a case entered on the 300 Log should have a check in the proposed MSD column. The definition serves to assist employers in identifying work-related cases on the Log as an MSD for those cases that are "disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs" that are not caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. Cases meeting the definition of an MSD must then have a check in the MSD column on the 300 Log. Importantly, the definition is not a specific diagnosis nor is it a criteria for determining a diagnosis that is to be used by employers. Instead, the agency's definition of an MSD clarifies, for recordkeeping purposes, when a case on a 300 Log meets the definition of an MSD and if it does, a check will be required in the MSD column.

The OSHA proposed definition in this rulemaking is fully consistent with definitions the agency has used over many years. As far back as the 1990 Meatpacking Guidelines developed by OSHA, which then used the term cumulative trauma disorder (CTD) rather than MSD, the agency defined CTD as:

"CTDs is the term used in these guidelines for health disorders arising from repeated biomechanical stress due to ergonomic hazards. Other terms that have been used for such disorders include "repetitive motion injury," "occupational overuse syndrome," and "repetitive strain injury." "CTDs are a class of musculoskeletal disorders involving damage to the tendons, tendon sheaths, synovial lubrication of the tendon sheaths, and related bones, muscles, and nerves of the hands, wrists, elbows, shoulders, neck and back. The more frequently occurring occupationally induced disorders in this class include carpal tunnel syndrome, epicondylitis (tennis elbow), tendonitis, tenosynovitis, synovitis, stenosing tenosynovitis of the finger, DeQuervain's Disease, and low back pain."

More recent definitions developed by OSHA, such as that incorporated into the Poultry Processing industry guidelines for "Ergonomics for the Prevention of Musculoskeletal Disorders" (OSHA 3213-09N, 2004) are similar to that proposed in this rulemaking where they define MSDs as:

"MSDs include injury to the nerves, tendons, muscles, and supporting structures of the hands, wrists, elbows, shoulders, neck, and low back. In these guidelines, we use the term MSD to refer to a variety of injuries and illnesses that occur from repeated use or overexertion including: Carpal tunnel syndrome; Tendinitis; Rotator cuff injuries (a shoulder problem); Epicondylitis (an elbow problem); Trigger finger; and Muscle strains and low back injuries."

The agency has also used similar and consistent definitions of an MSD in its corporate wide settlement agreements on recordkeeping and ergonomics covering a variety of industries. For example, the definition of musculoskeletal disorder (then called cumulative trauma disorder or CTD) in the 1991 OSHA agreement between Delta Catfish Processors, Inc. and United Food and Commercial Workers Union Local 1529 read as follows:

"The term CTD shall include the following conditions: Cumulative trauma disorders (CTD) of the upper extremities and the lower back are chronic soft tissue problems of the musculoskeletal and peripheral nerve system. Examples of specific diagnoses within this class of disorders include tendinitis, tenosynovitis, synovitis, carpal tunnel syndrome, stenosing tenosynovitis of the fingers (trigger finger), epicondylitis, and low back strain."

The definition of an MSD proposed by OSHA is totally consistent with the definition of a work-related musculoskeletal disorder set forth in the January 2001 National Academy of Sciences report *Musculoskeletal Disorders and the Workplace: Low Back and Upper Extremities*, National Research Council and Institute of Medicine (2001):

"1. What are the conditions affecting humans that are considered to be work-related musculoskeletal disorders?"

The disorders of particular interest to the panel, in light of its charge, focus on the low back and upper extremities. With regard to the upper extremities, these include rotator cuff injuries (lateral and medial), epicondylitis, carpal tunnel syndrome, tendinitis, tenosynovitis of the hand and wrist (including DeQuervains' stenosing tenosynovitis, trigger finger, and others) and a variety of nonspecific wrist complaints, syndromes, and regional discomforts lacking clinical specificity. With regard to the low back, there are many disabling syndromes that occur in the absence of defined radiographic abnormalities or commonly occur in the presence of unrelated radiographic abnormalities. Thus, the most common syndrome is nonspecific backache. Other disorders of interest include back pain and sciatica due to displacement and degeneration of lumbar intervertebral discs

with radiculopathy, spondylolysis, and spondylolisthesis, and spinal stenosis (ICD 9 categories 353-357, 722-724, and 726-729)."

Likewise, OSHA's proposed definition of an MSD is quite similar to that used by the Bureau of Labor Statistics, U.S. Department of Labor, Occupational Safety and Health Definitions used in the BLS survey of injuries and illnesses (as of November 18, 2008):

"Musculoskeletal Disorders (MSDs) include cases where the nature of the injury or illness is sprains, strains, tears; back pain, hurt back; soreness, pain, hurt, except the back; carpal tunnel syndrome; hernia; or musculoskeletal system and connective tissue diseases and disorders, when the event or exposure leading to the injury or illness is bodily reaction/bending, climbing, crawling, reaching, twisting; overexertion; or repetition. Cases of Raynaud's phenomenon, tarsal tunnel syndrome, and herniated spinal discs are not included. Although they may be considered MSDs, the survey classifies these injuries and illnesses in categories that also include non-MSD cases."

Many other government agencies and organizations have defined musculoskeletal disorders that mirror the definition proposed by OSHA. For example, NIOSH has defined an MSD as "disorders of the muscles, nerves, tendons, ligaments, joints, cartilage, or spinal discs" (NIOSH Publication No. 97-117, Elements of Ergonomics Programs: A Primer on Evaluations of Musculoskeletal Disorders). The American National Standard A10.40, 2007, Reduction of Musculoskeletal Problems in Construction defines a musculoskeletal problem as "Musculoskeletal problems include injuries to the muscle, tendon, sheath, nerve, bursa, blood vessel, bone, joint, or ligament and musculoskeletal pain or swelling, and also where there may not be any obvious evidence of injury, and where occupational exposure is clearly identified." The ANSI standard also provides a list of specific MSDs that are included in its definition.

As we have demonstrated, the proposed OSHA definition of an MSD follows closely other MSD definitions used by the OSHA as well as other government agencies and organizations. The Appendix to our comments includes examples of those MSD definitions. As a result, the definition is easy to understand and will be very effective for recordkeeping purposes. The AFL-CIO urges OSHA to adopt its proposed MSD definition in the final rule.

OSHA has requested comments on whether the MSD definition should include language on exposure or causal risk factors. We do not believe that such language is necessary in the rule itself. However, information on risk factors and exposures associated with MSDs (e.g. repetition, awkward postures, heavy lifting) should be provided in guidance, educational and outreach materials. This information will help employers and health care providers identify which MSDs are work-related and recordable on the OSHA log. It will also assist employers, workers, unions and others to identify the workplace hazards and exposures that are contributing to MSDs and initiate efforts to address them.

## **MSD Cases Should Not Be Considered Privacy Cases**

When the original 2001 recordkeeping rule was issued, it clarified that MSDs were not considered privacy concern cases at 1904.29(b)(7)(vi). However, with the Bush Administration's withdrawal of the MSD recordkeeping requirements on June 30, 2003, it removed the provision of the rule that explicitly stated that MSDs were not considered privacy cases.(68 FR 38606). These cases were to be treated in the same manner as other injury and illness cases. With the present rulemaking OSHA is requesting comments on whether there has been difficulty with MSD cases being entered as privacy concern cases and whether the rule should include specific language on the privacy issue.

The AFL-CIO strongly believes that MSD cases are not privacy concern cases and should not be treated as such under the recordkeeping rule. However, from testimony delivered by Lawrence Halprin on behalf of the Chamber of Commerce at OSHA's March 9, 2010 public meeting, it appears that at least some employers believe MSD cases should be considered privacy cases and have identifying information withheld from the OSHA Log.

Therefore, it is the view of the AFL-CIO that OSHA needs to make it absolutely clear that MSD cases are not privacy concern cases, either with language in the rule itself or in the preamble. By making it absolutely clear that MSDs are not privacy concern cases, OSHA will avoid any confusion about this matter when the final rule goes into effect.

## **Musculoskeletal Disorder Symptoms and Recordability On The OSHA 300 Log**

In the proposed rule to add the MSD column to the OSHA 300 Log, the agency proposes to remove the language from the recordkeeping Compliance Directive (CPL 02-00-135) that states that "minor musculoskeletal discomfort" is not recordable under 1904.7(b)(4) as a restricted work case "if a health care professional determines that the employee is fully able to perform all of his or her routine functions, and the employer assigns a work restriction for the purpose of preventing a more serious injury" (75 FR 4735). This language was included in the Compliance Directive as a result of the settlement agreement between OSHA and the National Association of Manufacturers (NAM).

We agree with OSHA that this language is confusing and may result in the failure to record cases of MSDs on the OSHA log and should be removed from the Compliance Directive. Moreover, this language seems to be in conflict with provisions of the 2001 recordkeeping rule.

The 2001 recordkeeping rule requires that musculoskeletal disorders be recorded in the same manner as other injury and illnesses. The injury or illness must be work-related, and result in either medical treatment beyond first aid, restricted work or transfer to another job, or days away from work.

The rule defines an injury or illness to be "an abnormal condition or disorder." (1904.46).

With respect to restricted work cases, section 1904.7(b) (4)(i) sets forth the following criteria:

Restricted work occurs when, as the result of a work-related injury or illness:

- (A) You keep the employee from performing one or more of the routine functions of his or her job, or from working the full workday that he or she would otherwise have been scheduled to work; or
- (B) A physician or other licensed healthcare professional recommends that the employee not perform one or more of the routine functions of his or her job, or not work the full workday that he or she would otherwise have been scheduled to work."

In our view, the 2001 recordkeeping rule requires that whenever an employee has a work-related abnormal condition or disorder and the employer keeps the employee from performing his or her job functions as a result of that condition, or a physician or health care professional recommends restrictions because of the condition, the case should be recorded on the OSHA 300 Log. It is our view that if a case rises to the level that the employer or health care professional imposes or recommends work-restrictions it is more than a "minor" injury and meets the criteria for injury recording set forth in section 8 (c)(2) of the OSH Act.

In addition, the preamble to the 2001 OSHA recordkeeping rule was quite clear that work-related injuries or illnesses resulting in work-restrictions or transfers that are for the purpose of preventing a more serious injury are recordable.

[T]ransfers or restrictions whose purpose is to allow an employee to recover from an injury or illness as well as to keep the injury or illness from becoming worse are recordable because they involve restriction or work transfer caused by the injury or illness. All restricted work cases and job transfer cases that result from an injury or illness that is work-related are recordable on the employers Log. (66 FR 5981)

[I]f an employee has a work-related injury or illness, and that employee's work is restricted by the employer to prevent exacerbation of, or to allow recuperation from, that injury or illness, the case is recordable as a restricted work case because the restriction was necessitated by the work-related injury or illness. (66 FR 5981)

The provisions of the 2001 recordkeeping rule on musculoskeletal disorders that OSHA is now proposing to reinstate made clear that under the recordkeeping rule work-related MSD cases involving subjective symptoms were recordable if they met the following criteria:

- (i) An employee has pain, tingling, burning, numbness or any other subjective symptom of an MSD;
- (ii) The symptoms are work-related;
- (iii) The MSD is a new case; and
- (iv) The case meets one or more of the general recording criteria.

As OSHA has noted, the deletion of the MSD provisions of the recordkeeping rule was not intended to change the recording criteria for these conditions. (75 FR 4735). However, the deletion of these provisions, coupled with language on "minor musculoskeletal discomfort" in OSHA's original Recordkeeping Compliance Directive that stemmed from the settlement agreement between OSHA and the NAM, greatly confused which MSDs were required to be recorded.

With the present proposal, which is intended to help identify which cases are MSDs, OSHA should be very clear about which MSDs must be recorded under the recordkeeping rule. The final rule should include the language proposed in 1904.12(b)(3) and the preamble should restate OSHA's findings in the original rule that any work-related injury or illness, including subjective symptoms that results in restricted work, even if for the purpose of preventing the injury or illness from becoming more serious, is required to be recorded.

The revised compliance directive should delete the language on "minor musculoskeletal discomfort." The directive should explain in clear terms the requirements for recording MSDs, and include examples of the kind of cases that should be recorded. This could be done through a series of questions and answers similar to those in the current directive.

### **Education, Outreach and Enforcement on Revised Recordkeeping Rule**

To assist employers, workers, healthcare professionals and others, the AFL-CIO urges OSHA to develop training materials and initiatives on the requirements under the revised rule. This will not only help employers understand their obligations, it will also help ensure more complete and accurate reporting and recording of MSDs.

The issuance and implementation of this revision in the recordkeeping rule also provides OSHA an opportunity to focus on the larger issue of injury and illness recording. Any educational and outreach initiatives on this revised rule should address the requirements of the overall injury and illness recordkeeping rule, and provide employers a "refresher" on their overall recordkeeping obligations.

In addition, we urge OSHA to utilize the current National Emphasis Program on recordkeeping to include a special focus on the recording of MSDs, similar to the kind of recordkeeping enforcement that was conducted in the poultry, auto and other industries in the 1980's and 1990's. These earlier initiatives greatly enhanced recordkeeping practices on MSDs, as well as other injuries and illnesses.

**Table 1**  
**Incidence Rates\* of Nonfatal Occupational Injuries And Illnesses**  
**In Selected Industries By Case Types, 2008**

| Industry<br>(NAICS<br>Code)                    | Average<br>Annual<br>Employment | Incident Rate                |                                   |  |
|--|---------------------------------|------------------------------|-----------------------------------|--|
|  |                                 | Total<br>Recordable<br>Cases | Cases With Days<br>Away From Work | Cases With Job<br>Transfer or<br>Restriction |
| Animal slaughtering and processing (3116)      | 508,400                         | 7.5                          | 1.1                               | 3.9  |
| Animal (except poultry) slaughtering (311611)  | 148,000                         | 10.3                         | 1.3                               | 5.7  |
| Poultry Processing (311615)                    | 239,400                         | 6.1                          | 0.8                               | 3.2  |
| Foundries (3315)                               | 152,000                         | 10.6                         | 2.4                               | 3.3  |
| Motor vehicle Manufacturing (3361)             | 207,900                         | 7.5                          | 1.3                               | 2.6  |
| Home Centers (44411)                           | 664,000                         | 7.0                          | 1.6                               | 3.0  |
| General warehousing and storage (49311)        | 575,500                         | 6.8                          | 1.8                               | 3.0  |
| Nursing and residential care facilities (6223) | 2,992,900                       | 8.4                          | 2.5                               | 2.5  |
| Grocery stores (4451)                          | 2,539,000                       | 6.0                          | 1.7                               | 1.7  |
| Hotels and motels (72111)                      | 1,521,800                       | 6.0                          | 1.6                               | 1.3  |

Source - Bureau of Labor Statistics

\*Incidence rate of injuries and illnesses per 100 workers

## **Appendix**

### **Definitions of Musculoskeletal Disorder and Cumulative Trauma Disorder utilized by the Department of Labor, government agencies, employers, scientific and medical experts and others.**

#### **Definition of Musculoskeletal Disorder or MSD from OSHA January 29, 2010 Proposed Rule on Occupational Injury and Illness Recording and Reporting Requirements (Docket No. OSHA-2009-0044)**

MSDs are disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs. MSDs DO NOT include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. Examples of MSDs include: Carpal tunnel syndrome, Rotator cuff syndrome, De Quervain's disease, Trigger finger, Tarsal tunnel syndrome, Sciatica, Epicondylitis, Tendinitis, Raynaud's phenomenon, Carpet layers knee, Herniated spinal disc, and Low back pain.

#### **Definition of Musculoskeletal Disorder from OSHA January 19, 2001 Part 1904 - Recording and Reporting Occupational Injuries and Illnesses**

Musculoskeletal disorders (MSDs) are disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs. MSDs do not include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. Examples of MSDs include: Carpal tunnel syndrome, Rotator cuff syndrome, De Quervain's disease, Trigger finger, Tarsal tunnel syndrome, Sciatica, Epicondylitis, Tendinitis, Raynaud's phenomenon, Carpet layers knee, Herniated spinal disc, and Low back pain.

#### **Definition of Musculoskeletal Disorder From OSHA Industry Guidelines for "Ergonomics for the Prevention of Musculoskeletal Disorders":**

##### **Poultry Processing (OSHA 3213-09N, 2004)**

MSDs include injury to the nerves, tendons, muscles, and supporting structures of the hands, wrists, elbows, shoulders, neck, and low back.

In these guidelines, we use the term MSD to refer to a variety of injuries and illnesses that occur from repeated use or overexertion including: Carpal tunnel syndrome; Tendinitis; Rotator cuff injuries (a shoulder problem); Epicondylitis (an elbow problem); Trigger finger; and Muscle strains and low back injuries.

##### **Retail Grocery Stores (OSHA 3192-05N, 2004)**

In these guidelines, OSHA uses the term musculoskeletal disorders (MSD) to refer to a variety of injuries and illnesses, including: Muscle strains and back injuries that occur from repeated use or overexertion; Tendinitis; Carpal tunnel syndrome; Rotator cuff injuries (a shoulder problem); Epicondylitis (an elbow problem); and Trigger finger that occurs from repeated use of a single finger.

**Nursing Homes (OSHA 3182, 2003)**

MDSs include conditions such as low back pain, sciatica, rotator cuff injuries, epicondylitis, and carpal tunnel syndrome.

**Definition of Cumulative Trauma Disorders (CTDs) from OSHA "Ergonomics Program Management Guidelines for Meatpacking Plants, 1990, (1993 reprinted p. 20)"** CTD is the term used in these guidelines for health disorders arising from repeated biomechanical stress due to ergonomic hazards. Other terms that have been used for such disorders include "repetitive motion injury," "occupational overuse syndrome," and "repetitive strain injury."

"CTDs are a class of musculoskeletal disorders involving damage to the tendons, tendon sheaths, synovial lubrication of the tendon sheaths, and related bones, muscles, and nerves of the hands, wrists, elbows, shoulders, neck and back. The more frequently occurring occupationally induced disorders in this class include carpal tunnel syndrome, epicondylitis (tennis elbow), tendonitis, tenosynovitis, synovitis, stenosing tenosynovitis of the finger, DeQuervain's Disease, and low back pain.

**Definition of Cumulative Trauma Disorder from OSHA Corporate Wide Settlement Agreements:**

**Company: Hillshire Farm Co./Sara Lee Corporation  
08/30/1989**

"The term CTD shall include the following conditions:

Cumulative trauma disorders (CTD) of the upper extremities are chronic soft tissue problems of the musculoskeletal and peripheral nerve system. Examples of specific diagnoses within this class of disorders include tendonitis, tenosynovitis, synovitis, carpal tunnel syndrome, stenosing tenosynovitis of the fingers (trigger finger), and epicondylitis (tennis elbow or golfer's elbow)."

**Company: Chrysler Motors Corporation  
11/02/1989**

"The term CTD shall include, but is not limited to, the following conditions: chronic soft tissue problems of the musculoskeletal and peripheral nerve system. Examples of specific diagnoses within this class of disorders include tendonitis, tenosynovitis, synovitis, carpal tunnel syndrome, stenosing tenosynovitis of the fingers (trigger finger), and epicondylitis (tennis elbow or golfer's elbow)."

**Company: John Morrell & Co., Sioux Falls Plant  
03/21/1990**

(b) The term "cumulative trauma disorders" ("CTD") is defined in Attachment B appended to this Agreement and includes those medical disorders of the upper extremities defined by specific criteria and associated with certain work activities

(such as repetitive motion). Examples of these types of disorders include tenosynovitis, carpal tunnel syndrome, cubital tunnel syndrome, stenosing tenosynovitis of the fingers, and epicondylitis."

The agreement references the 1986 BLS Recordkeeping Guidelines in its section on Recordkeeping.

**Company: General Motors Corporation**

**02/05/1991**

"The term CTD shall include but is not limited to the following conditions: CTDs are chronic soft tissue problems of the musculoskeletal and peripheral nerve system. Examples of specific diagnoses within this class of disorders includes tendonitis, tenosynovitis, synovitis, carpal tunnel syndrome, stenosing tenosynovitis of the fingers (trigger finger), epicondylitis (tennis elbow or golfer's elbow), and low back strain."

**Delta Catfish Processors, Inc. and United Food and Commercial Workers Union Local 1529**

**06/05/1991**

"The term CTD shall include the following conditions: Cumulative trauma disorders (CTD) of the upper extremities and the lower back are chronic soft tissue problems of the musculoskeletal and peripheral nerve system. Examples of specific diagnoses within this class of disorders include tendinitis, tenosynovitis, synovitis, carpal tunnel syndrome, stenosing tenosynovitis of the fingers (trigger finger), epicondylitis, and low back strain."

**Company: Cargill, Inc.**

**Ergonomic and Recordkeeping Agreement**

**09/04/1991**

"The term CTD shall include the following conditions: Cumulative trauma disorders of the upper extremities are chronic soft tissue problems of the musculoskeletal and peripheral nerve system. Examples of specific diagnoses within this class of disorders include tendinitis, tenosynovitis, synovitis, carpal tunnel syndrome, stenosing tenosynovitis of the fingers (trigger finger), epicondylitis (tennis elbow or golfer's elbow), and lower back pain syndrome."

The agreement references the 1986 BLS Recordkeeping Guidelines in section XV on Recordkeeping.

**Company: ConAgra Poultry Company**

**Ergonomic and Recordkeeping Agreement**

**01/29/1992**

"The term CTD shall include the following conditions:

Cumulative trauma disorders (CTDs) of the upper extremities and the lower back are chronic soft tissue problems of the musculoskeletal and peripheral nerve system. Examples of specific diagnoses within this class of disorders include tendonitis, tenosynovitis, synovitis, carpal tunnel syndrome, stenosing tenosynovitis of the fingers (trigger finger), and epicondylitis (tennis elbow or golfer's elbow) and low back pain syndrome."

The agreement references the 1986 BLS Recordkeeping Guidelines in its section on Recordkeeping.

**Definition of Ergonomic Disorder from August 3, 1992 Advanced Notice of Proposed Rulemaking, Ergonomic Safety and Health Management, 57 FR 34192**  
OSHA is defining ergonomic disorders as disorders of the musculoskeletal and nervous system occurring in either the upper or lower extremities, including backs. These may be caused or aggravated by repetitive motions, forceful exertions, vibration, sustained or awkward positioning or mechanical compression of the hand wrist, arm, back, neck, shoulder, and leg over extended periods or from other ergonomic stressors. For the purpose of this ANPR ergonomic disorders include, among others, carpal tunnel syndrome, various tendon disorders, and lower back injuries.

**Definition of Musculoskeletal Disorder from November 14, 2000 Ergonomics Program Final Rule, 1910.900(z)**

Musculoskeletal disorder (MSD) is a disorder of the muscles, nerves, tendons, ligaments, joints, cartilage, blood vessels, or spinal discs. For purposes of this standard, this definition only includes MSDs in the following areas of the body that have been associated with exposure to risk factors: neck, shoulder, elbow, forearm, wrist, hand, abdomen (hernia only), back, knee, ankle, and foot. MSDs may include muscle strains and tears, ligament sprains, joint and tendon inflammation, pinched nerves, and spinal disc degeneration. MSDs include such medical conditions as: low back pain, tension neck syndrome, carpal tunnel syndrome, rotator cuff syndrome, DeQuervain's syndrome, trigger finger, tarsal tunnel syndrome, sciatica, epicondylitis, tendinitis, Raynaud's phenomenon, hand-arm vibration syndrome (HAVS), carpet layer's knee, and herniated spinal disc. Injuries arising from slips, trips, falls, motor vehicle accidents, or similar accidents are not considered MSDs for the purposes of this standard.

**Definition of Musculoskeletal Disorder from Bureau of Labor Statistics, U.S. Department of Labor, Occupational Safety and Health Definitions used in BLS Surveys of Injuries and Illnesses, as of November 18, 2008.**

Musculoskeletal Disorders (MSDs) include cases where the nature of the injury or illness is sprains, strains, tears; back pain, hurt back; soreness, pain, hurt, except the back; carpal tunnel syndrome; hernia; or musculoskeletal system and connective tissue diseases and disorders, when the event or exposure leading to the injury or illness is bodily reaction/bending, climbing, crawling, reaching, twisting; overexertion; or

repetition. Cases of Raynaud's phenomenon, tarsal tunnel syndrome, and herniated spinal discs are not included. Although they may be considered MSDs, the survey classifies these injuries and illnesses in categories that also include non-MSD cases.

**Definition of Musculoskeletal Disorder from *Musculoskeletal Disorders and the Workplace: Low Back and Upper Extremities*, National Research Council and Institute of Medicine (2001)**

**1. What are the conditions affecting humans that are considered to be work-related musculoskeletal disorders?**

The disorders of particular interest to the panel, in light of its charge, focus on the low back and upper extremities. With regard to the upper extremities, these include rotator cuff injuries (lateral and medial), epicondylitis, carpal tunnel syndrome, tendinitis, tenosynovitis of the hand and wrist (including DeQuervains' stenosing tenosynovitis, trigger finger, and others) and a variety of nonspecific wrist complaints, syndromes, and regional discomforts lacking clinical specificity. With regard to the low back, there are many disabling syndromes that occur in the absence of defined radiographic abnormalities or commonly occur in the presence of unrelated radiographic abnormalities. Thus, the most common syndrome is nonspecific backache. Other disorders of interest include back pain and sciatica due to displacement and degeneration of lumbar intervertebral discs with radiculopathy, spondylolysis, and spondylolisthesis, and spinal stenosis (ICD 9 categories 353-357, 722-724, and 726-729).

**Definition of Work-related Musculoskeletal Disorders from the National Academy of Sciences *Work-Related Musculoskeletal Disorders. Report, Workshop Summary and Workshop Papers*, National Research Council, 1998**

**Question 1: What are the conditions affecting humans that are considered to be work-related musculoskeletal disorders?**

The musculoskeletal conditions that may be caused by (non-accidental) physical work activities include disorders of inflammation, degeneration, and physiological disruption of muscles, tendons, ligaments, nerves, synovia, and cartilage involving limbs and trunk. These entities are included in categories 353-355, 722-724, and 726-729 of the *International Classification of Diseases* (commonly referred to as ICD-9) (World Health Organization, 1977). Not every disorder in these categories may be caused by mechanical stressors, but all the major musculoskeletal disorders of interest are included in these groups. Common examples are low back strain, tenosynovitis, and carpal tunnel syndrome.

**Definition of Musculoskeletal Disorders from the National Institute for Occupational Safety and Health (NIOSH)**

Musculoskeletal disorders include a group of conditions that involve the nerves, tendons, muscles, and supporting structures such as intervertebral discs. They represent a wide range of disorders, which can differ in severity from mild periodic symptoms to severe chronic and debilitating conditions. Examples include carpal tunnel syndrome, tenosynovitis, tension neck syndrome, and low back pain.

**Definition of Musculoskeletal Problems from ANSI A10.40-2007, Reduction of Musculoskeletal Problems in Construction. American National Standard. Construction and Demolition Operations.**

Musculoskeletal problems include injuries to the muscle, tendon, sheath, nerve, bursa, blood vessel, bone, joint, or ligament and musculoskeletal pain or swelling, and also where there may not be any obvious evidence of injury, and where occupational exposure is clearly identified. The injuries include, but are not limited to: Muscular; Carpal Tunnel Syndrome; Thoracic Outlet; Tenosynovitis; Myalgia; Double Crush Syndrome; Reynaud's; DeQuervains; Strains; Cubital Tunnel Syndrome; Connective Tissue; Bursitis; Spasms; Sciatica; Disc Damage; Neurological; Vascular; Tendonitis; Back.

**Definition of Work-Related Musculoskeletal Disorders from Washington State**

Work-related musculoskeletal disorders include both sudden and gradual onset conditions affecting the bones, muscles, tendons, nerves and supporting structures. A subset of these disorders includes non-traumatic soft tissue musculoskeletal disorders. Work-related risk factors for these disorders include forceful, repetitive exertions, awkward or sustained postures, vibration, contact stress and cold temperatures and are often found in jobs characterized by repetitive work or manual materials handling. The most common areas for these non-traumatic soft tissue disorders include the neck, upper extremity (shoulder, elbow, hand/wrist) and the lower back.

**Definition of Work-Related Musculoskeletal Disorder from the U.S. Department of Defense**

Work-Related Musculoskeletal Disorder (Ergonomic). An injury or an illness of the muscles, tendons, ligaments, peripheral nerves, joints, cartilage (including intervertebral discs), bones and/or supporting blood vessels in either the upper or lower extremities, back, or neck, that is associated with workplace musculoskeletal risk factors and include but are not limited to: cumulative trauma disorders, repetitive strain injuries or illnesses, repetitive motion injuries or illnesses, and repetitive stress injuries or illnesses. Refers collectively to signs, or persistent symptoms, or clinically-diagnosed work-related musculoskeletal disorders when they are caused or aggravated by exposure to workplace risk factors.

**Definition of Musculoskeletal Injury (MSI) from the Ergonomics (MSI) Requirements of the Occupational Health and Safety Regulation of Workers' Compensation Board of British Columbia**

"Musculoskeletal injury" or "MSI" means an injury or disorder of the muscles, tendons, ligaments, joints, nerves, blood vessels or related soft tissue including a sprain, strain and inflammation, that may be caused or aggravated by work.