

Section 1904.12 did not establish the criteria for determining which MSD cases were recordable. Rather, the section made clear that MSDs were to be treated like any other injury or illness for purposes of applying the recording criteria and entering the necessary descriptive information about the case on the Log. Section 1904.12(b)(2) provided that

There are no special criteria for determining which musculoskeletal disorders to record. An MSD case is recorded using the same process you would use for any other injury or illness. If a musculoskeletal disorder is work-related, and is a new case, and meets one or more of the general recording criteria, you must record the musculoskeletal disorder.

(66 FR 6129) A table in § 1904.12(b)(2) referred employers to other sections containing the recording criteria: § 1904.5 on work-relatedness, § 1904.6 on new cases, and § 1904.7 on the general recording criteria. Thus, the deletion of § 1904.12 in this final rule does not affect the employer's obligation to record all injuries and illnesses meeting the requirements of §§ 1904.5–1904.7, including those meeting the definition of MSD in the rescinded § 1904.12.

Prior to the January 2001 final rule, OSHA's injury and illness forms did not contain a column specifically for MSD cases. The old 200 Log contained a column for "repeated trauma" cases, which included some disorders affecting musculoskeletal tissues, but also included other conditions, such as occupational hearing loss. In the preamble to the 2001 recordkeeping rule, the Agency concluded that adding a column to the new 300 Log for MSDs was "essential to obtain an accurate picture of the MSD problem in the United States." (66 FR 6030) The preamble noted that determining the number of MSD cases in the past has required close cooperation between OSHA and BLS, and the use of special computer analyses. Use of an MSD column would, in the Agency's view, promote more accurate reporting of MSDs and provide needed information on the overall incidence of MSDs in the workplace. (66 FR 6030) OSHA also stated that the column would provide a useful analytical tool at the establishment level. The preamble states, "The total count of cases in the MSD column will allow employers, employees, authorized representatives, and government representatives to determine, at a glance, what the incidence of these disorders in the establishment is." (66 FR 6030 emphasis added).

On July 3, 2001, OSHA proposed to delay the effective date of § 1904.12 until January 1, 2003. OSHA explained that it was reconsidering the MSD column requirement and definition in light of the Secretary of Labor's decision to develop a comprehensive plan to address ergonomic hazards, and to schedule a series of forums to consider key issues relating to the plan, including the approach to defining ergonomic injuries (66 FR 35113–35115).

After considering the views of interested parties, OSHA published a final rule on October 12, 2001 delaying the effective date of 29 CFR 1904.12 until January 1, 2003. OSHA also added a note to 29 CFR 1904.29(b)(7)(vi) explaining that the second sentence of that section, which states that MSDs are not "privacy concern cases," would not become effective until January 1, 2003. OSHA concluded that delaying the effective date of the MSD definition in § 1904.12 was appropriate because the Secretary was considering a related definitional question in the context of her comprehensive ergonomics plan. The Agency found that it would be premature to implement § 1904.12 before considering the views of business, labor and the public health community on the problem of ergonomic hazards. OSHA also found that it would create confusion and uncertainty to require employers to implement the new definition of MSD contained in § 1904.12 while the Secretary was considering how to define an ergonomic injury under the comprehensive plan (66 FR 52031–52034).

On April 5, 2002, OSHA announced a comprehensive plan to address ergonomic injuries through a combination of industry-targeted guidelines, enforcement measures, workplace outreach, research, and dedicated efforts to protect Hispanic and other immigrant workers. The comprehensive plan did not include a single definition of MSD. In the frequently asked questions (FAQs) issued with the plan, OSHA recognized that "MSD" is a term of art in scientific literature that refers collectively to a group of injuries and illnesses that affect the musculoskeletal system and that there is no single diagnosis for these disorders. The FAQs also indicated that different definitions of MSD might be appropriate depending upon the context in which they are to be used.

On July 1, 2002, OSHA published a **Federal Register** document outlining two further regulatory actions regarding § 1904.12. In Part I of the document, OSHA proposed to delay the effective date of § 1904.12 and the second

sentence of § 1904.29(b)(7)(vi) for an additional year until January 1, 2004. (67 FR 44124–44126) In Part III of the document, OSHA requested comment on issues related to the MSD column and definition. (67 FR 44126–44127)

OSHA noted that a number of participants in the ergonomics forums had argued that the § 1904.12 definition of MSD combines too many disparate types of disorders to be useful. They pointed out that there are at least two distinct categories of disorders covered by the definition; disorders caused by a single event, such as a heavy lift, and disorders caused by repetitive or cumulative events, such as repetitive lifting, typing or assembly line work. To produce more relevant statistics, these participants suggested, OSHA should narrow the definition to focus on a group of disorders having common characteristics. Alternatively, some participants suggested that the MSD definition should be limited in its application to employment conditions involving regular or routine exposure to the activity that resulted in the injury. Other forum participants disagreed, claiming that the existing definition is the most relevant because, among other things, it is often difficult to determine if an MSD was caused by a single event or if a single event was merely the last in a series of events that lead to the injury. (67 FR 44125)

The Agency stated that it was considering whether an MSD column was necessary to produce better statistics. It asked for comment on a number of related issues, including whether "the statistics generated by an additional column [would] be superior to those now generated by the BLS." (67 FR 44127) The Agency also indicated that it was considering a range of options, including deleting § 1904.12 if a column requirement was determined to be unnecessary. The request for comment stated, in relevant part, as follows:

III. Issues for Public Comment

OSHA invites comment on the following issues:

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Issue 2. Is an MSD column needed on the OSHA 300 Log? Should the column be reinstated in § 1904.12 or should § 1904.12 be deleted? Would the statistics generated by an additional column be superior to the statistics now generated by the BLS? Are there other ways to produce statistics on MSDs that do not require revision of the forms? If the column is retained, should it include both injuries and illnesses, or should it be limited to MSD illnesses? Are there other problems associated with an MSD column on the 300 Log? Are there other advantages to the column?