

Issue 3. If OSHA decides to include a separate column for MSD injuries and illnesses, what definition of MSD should be used? * * *

(67 FR 44126–44127)

On December 17, 2002, OSHA issued a final rule delaying until January 1, 2004 the effective date of the MSD and hearing loss column requirements in §§ 1904.12 and 1904.10, and the statement in § 1904.29(b)(7)(vi) that MSDs are not considered privacy concern cases. (67 FR 77165) OSHA reached no final decision on the need for an MSD column in the December 17 rule, and stated that it would issue a final rule in 2003 resolving the issue. OSHA has now decided to delete the column and associated definition from the Recordkeeping rule.

II. Discussion

A. Public Comments on the Need for an MSD Column on the Log

Most parties responding to the July 1, 2002 request for comments opposed the MSD column on the Log. Several commenters argued that the column would not produce useful information. For example, the Society of the Plastics Industry (SPI), asserted that:

As currently used, the term MSD refers to a broad spectrum of physical conditions which may affect any tissue of the musculoskeletal system. The specific diagnosis which this term encompasses can have vastly different characteristics, can be caused by significantly different types of exposures, and can require substantially different prevention measures and treatments. If all cases falling within the multitude of conditions collectively referred to as 'MSDs' are grouped into a single column, and this data is collected through the annual BLS survey, the result is likely to be the projection by BLS of a relatively large and unreliable set of numbers allegedly representing recordable MSDs. The numbers would be meaningless in the sense that they fail to provide OSHA or other interested parties with the information needed to determine the frequency, incident rate, causation or means of preventing any particular condition—e.g., carpal tunnel syndrome, epicondylitis (Ex. 2–29 at 6).

The Synthetic Organic Chemical Manufacturers Association (SOCMA) echoed this concern, stating that “add[ing] a column on the 300 Form will not generate true causal information useful for accident prevention. Knowing that 20%–35% of accidents have a check in the MSD column on the OSHA 300 form is not information useful to companies wishing to improve safety.” Ex. 2–9 at 2.

Other participants argued that § 1904.12 should be deleted because:

- An MSD column was unnecessary, e.g., Exs. 2–7, 2–9, 2–14, 2–21, 2–23, 2–27, 2–30, 3–5, 3–12, 3–16;

- OSHA’s comprehensive ergonomics plan found that no single definition of MSD was appropriate, e.g., Exs. 2–3, 2–12, 2–13, 2–16, 2–28, 2–29, 2–32, 2–35;

- The § 1904.12 MSD definition was inappropriate, e.g., Exs. 2–3, 2–6, 2–7, 2–8, 2–9, 2–12, 2–13, 2–16, 2–23, 2–27, 2–28, 2–29, 2–30, 2–31, 2–32, 2–35, 3–3, 3–14, 3–16;

- The controversy and lack of consensus in the scientific and medical communities on the MSD issue made it premature for OSHA to include a regulatory definition, e.g., Exs. 2–8, 2–12, 2–13, 2–14, 2–31, 2–32, 2–35, 3–17; and

- The MSD column imposes an unnecessary paperwork burden, e.g., Exs. 2–2, 2–5, 2–9, 2–12, 2–21, 2–23.

OSHA also received comments supporting the MSD column on the Log, (See, e.g., Exs. 2–10, 2–11, 2–18, 2–19, 2–20, 2–22, 2–24, 2–25, 2–26, 2–34, 2–35, 2–36, 2–37, 2–39, 3–2, 3–7, 3–9, 3–15). These commenters argued:

- That an MSD column can be used to identify injuries and develop prevention strategies, (See, e.g., Ex. 2–10, 2–11, 2–18, 2–19, 2–20, 2–22, 2–24, 2–25, 2–34, 2–35, 2–36, 2–39, 3–9, 3–15);

- That an MSD column is needed to develop more complete and consistent statistics by BLS, (See, e.g., Ex. 2–11, 2–18, 2–20, 2–24, 2–25, 2–26, 2–35, 2–36, 3–7);

- That an MSD column helps OSHA and NIOSH during workplace interventions, (See, e.g., Ex. 2–20, 2–24, 2–25, 2–26); and

- That the lack of an MSD column may lead to under-recording of MSD injuries, (See, e.g., Ex. 2–25).

According to the AFL–CIO, the MSD column is needed for two reasons; to assist employers, workers and OSHA in identifying and addressing ergonomic hazards in individual workplaces, and to improve the national statistics on MSDs (Ex. 2–24–1). The AFL–CIO argued that the MSD column would serve as a useful tool at the establishment level by providing a “simple, direct way” for employers and OSHA inspectors to identify MSDs, and potentially hazardous jobs, and calculate MSD rates and trends (Ex. 2–24–1, p. 12). The AFL–CIO claimed that the column was needed at the national level to correct what it asserted was a distorted picture of the MSD problem portrayed by current BLS statistics. The AFL–CIO argued that since BLS only collects data on individual injuries and illnesses resulting in days away from work, BLS’s published reports showing

a decline in MSD incidence rates since 1992 understate the seriousness of the problem posed by these disorders (Ex. 2–24–1, p. 13).

B. OSHA’s Determination That an MSD Column Is Unnecessary

OSHA has carefully reviewed the determination made in the January 19, 2001 rule and the record supporting that determination, as well as the evidence submitted by the participants in the ergonomics forums and the parties responding to the July 2002 request for comment on the need for an MSD column. The Agency has determined that this record does not support the column requirement. The principal justifications advanced for the column are that it would be a useful tool in analyzing and addressing ergonomic hazards in individual workplaces and that it would yield more accurate national statistics on ergonomic injuries. As discussed below, neither of these justifications is persuasive.

The MSD column would not be a useful tool in addressing MSDs at the establishment level for two reasons. First, because the column would show only the total number of MSDs that occurred in an establishment and nothing about the nature or cause of these disorders, it would be of very little practical use in devising abatement methods for ergonomic hazards. Second, to the extent that employers and workers believe that the total count of MSD cases is relevant in an establishment, the number is easily obtainable without the column requirement.

The January 2001 preamble states that the MSD column would be useful because it would enable employers and others to determine at a glance the total number of these disorders that had occurred. However, the total number, standing alone, tells nothing about the specific types of disorders that may be involved. The MSD definition in § 1904.12 encompasses a broad range of health conditions from back injuries to carpal tunnel syndrome. Thus, the total MSD count in an establishment could include a number of disparate disorders that have little in common. More importantly, the total number of cases tells nothing about the possible causes and prevention of ergonomic hazards. Simply knowing that a certain number of MSD cases have occurred does not permit one to determine which jobs or working conditions pose ergonomic hazards and how they may be abated.

To effectively analyze and address ergonomic injuries that are occurring in workplaces, employers and others must be able to link specific types of injuries