

occupational injuries and illnesses, that result in days away from work, including MSDs, to assist in the understanding and prevention of these disabling cases. The system is not currently designed to gather separate statistics on the incidence rates of specific injuries or illnesses.

Nothing in the record demonstrates that BLS should treat MSDs differently from other injuries and illnesses by publishing separate statistics on all recordable cases of these disorders. OSHA does not believe that MSDs are fundamentally different, for statistical purposes, from bruises, cuts, lacerations, burns and other common injuries which may or may not result in days away from work depending on severity. As discussed above, the national statistics present a detailed picture of the MSD problem on a variety of levels. These data are both accurate and useful. Accordingly, OSHA concludes that there is no justification for the MSD column on the Log.

Consultation With NACE

While the Agency concludes that the MSD column on the Log would not produce significantly more accurate or useful statistics, it is committed to exploring other means of improving the information available on MSDs and effectively utilizing this information to reduce ergonomic-related injuries and illnesses in the workplace. As part of the comprehensive approach for addressing MSD hazards, the Department has created the National Advisory Committee on Ergonomics (NACE) to advise the Assistant Secretary of Labor for Occupational Safety and Health on ergonomic guidelines, research, and outreach assistance. The Agency has indicated that it will seek advice from NACE in the following areas: (1) The development of various industry or task-specific guidelines; (2) identification of gaps in the existing research base related to applying ergonomic principles to the workplace; (3) current and projected research needs and efforts, including information provided by NIOSH; (4) methods of providing outreach and assistance that will communicate the value of ergonomics to employers and employees, and (5) ways to increase communication among stakeholders on the issue of ergonomics. As part of this effort, the Agency intends to seek input from NACE on how to characterize the variety of ergonomic-related injuries in the workplace in ways that will be most useful in helping employers and others to solve ergonomic problems. NACE's expertise will also be useful in advising the Agency on ways in which statistics

on these injuries can be used effectively in developing guidelines and in providing outreach and assistance on ergonomics to employers, employees and stakeholders.

C. Deletion of 29 CFR 1904.12 and Related Provisions

Having concluded that an MSD column on the Log is unnecessary, OSHA believes that section 1904.12 should be deleted. The sole purpose of that section was to establish the requirement for employers to check the MSD column for cases meeting the definition of MSD. In view of this determination, it is not necessary to consider whether the definition of MSD in § 1904.12 would be appropriate if a column were needed, or whether alternative definitions would be appropriate. The deletion of § 1904.12 relieves employers from the legal requirement to check the column; however, it has no effect on their obligation to record all cases meeting the requirements of §§ 1904.4–1904.7. In a related matter, some of the privacy provisions of Part 1904 relied upon the MSD definition from § 1904.12. Specifically, paragraph 1904.29(b)(7)(vi) of the rule states that employers must consider an illness case to be a privacy concern case, and withhold the employee's name from the forms, if the employee independently and voluntarily requests that his or her name not be entered on the Log. The second sentence of the paragraph states “[m]usculoskeletal disorders (MSDs) are not considered privacy concern cases.” Because § 1904.12 is being deleted, there is no basis to implement the requirement in § 1904.29(b)(7)(vi). Moreover, there was no explanation for the special privacy treatment accorded MSDs in the preamble to the 2001 rule. Accordingly, OSHA is deleting the MSD requirement in section 1904.29(b)(7)(vi) stating that MSD injuries and illnesses are not to be considered privacy concern cases. These cases are covered by the general rule on privacy cases. Therefore, when the employer has categorized the case as an occupational illness, and the employee independently and voluntarily requests that his or her name not be entered on the OSHA 300 Log, the case will be considered a privacy concern case.

Paperwork Reduction Act

This final rule deletes requirements contained in OSHA's January 19, 2001 final recordkeeping rule but never implemented. Therefore, this rule continues OSHA's current policies on recording of MSDs, and protecting employee privacy, resulting in no

change in actual paperwork burden compared with current practice. While this final rule results in a minor saving in burden that would have been imposed, OSHA has not attempted to estimate the saving because the January 2001 rule contained no separate estimate of the burden associated with §§ 1904.12 and 1904.29(b)(7)(vi).

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601), the Assistant Secretary certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The rule deletes requirements that have not become effective, and adds no new requirements. The rule will impose no costs on the regulated public.

State Plans

The 26 States and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable regulation within six months of the publication date of this final regulation. These states and territories are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, New Jersey, and New York have OSHA approved State Plans that apply to state and local government employees only.

Executive Order

This document has been deemed significant under Executive Order 12866 and has been reviewed by OMB.

Authority

This document was prepared under the direction of John Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under Section 8 of the Occupational Safety and Health Act (29 U.S.C. 657) and 5 U.S.C. 553.

Signed at Washington, DC this 25 day of June, 2003.

John L. Henshaw,
Assistant Secretary of Labor.

■ For the reasons stated in the preamble, OSHA hereby amends 29 CFR part 1904 as set forth below:

PART 1904—[AMENDED]

■ 1. The authority citation for part 1904 continues to read as follows:

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 3–2000 (65 FR 50017), and 5 U.S.C. 533.