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Comments on Occupational Injury and Illness Recording and Reporting Requirements, Notice of Proposed Rulemaking, 75 FR 4728, Jan. 29, 2010, Docket No. OSHA-2009-0044

Public Citizen is a non-profit research, lobbying, and litigation public interest organization with 150,000 members and supporters. Based in Washington, D.C., and founded in 1971, Public Citizen accepts no government or corporate funds.

We are pleased to submit comments on the Occupational Safety and Health Administration's (OSHA) proposal to require a separate column for recording work-related musculoskeletal disorders.

Public Citizen strongly supports the adoption of a separate column for recording workplace musculoskeletal disorders (MSDs) on OSHA forms 300 and 300A. Workplace MSDs are currently recorded in the column for "all other illnesses." Listing MSDs in a separate column will provide valuable information about patterns of MSD occurrence to OSHA, the Bureau of Labor Statistics (BLS), labor, industry, and all other interested parties.

Public Citizen also supports OSHA's proposed definition of MSDs as "disorders of the muscles, nerves, tendons, ligaments, joints cartilage and spinal discs, except those caused by slips, trips, falls, motor vehicle accidents, or other similar accidents."[1] This definition covers the full range of work-related MSDs.

Introduction

OSHA issued upgrades to its recordkeeping requirements in 2001, including a requirement that employers log complaints of workplace MSDs in a separate column.[2] The effective date of the MSD column was twice delayed, and ultimately deleted in 2003.[3] This revitalized proposed recordkeeping requirement is long overdue. It does not impose any new

[1] 75 Fed. Reg. 4,729. (Jan. 29, 2010).

[2] 66 Fed. Reg. 5,916. (Jan. 19, 2001).

[3] 68 Fed. Reg. 38,601. (Jun. 30, 2003).

data gathering obligations on employers. It would require employers merely to list MSDs in a separate column, rather than including MSDs in the broad category of "all other illnesses." This would assist BLS and OSHA in identifying patterns of injury, scheduling inspections, and allocating resources appropriately.

I. Improved Data About Workplace MSDs Are Useful and Warranted.

OSHA through the 300 Log and BLS through the annual Survey of Occupational Injuries and Illnesses collect data about workplace injuries and illnesses. Each injury or illness must be placed in one of six categories: (1) Injury; (2) Skin disorder; (3) Respiratory condition; (4) Poisoning; (5) Hearing loss; and (6) All other illnesses.[4] MSDs are recorded under "all other illnesses." This categorization leaves OSHA without any direct source of basic information on MSDs in the workplace.

BLS annually surveys employers about injuries and illnesses that result in days away from work to obtain more detailed information. The BLS survey requires a detailed description of the circumstances of any workplace injury or illness that results in more than one day away from work. BLS then analyzes this information to determine which cases are MSDs. This labor-intensive process unnecessarily delays access to statistics about workplace MSDs and fails to count certain ones. Currently, the most up-to-date estimates of workplace MSDs are from data from 2007.[5]

Moreover, this methodology prevents BLS from discerning workplace MSDs that do not result in days away from work. This provides a significant gap in OSHA's data, which makes it difficult to estimate the prevalence of workplace MSDs. In 2007, BLS found that workplace MSDs accounted for 29 percent of injuries that resulted in days away from work.[6] Even with the source data limitations, we know MSDs make up a very large share of workplace injuries and impose huge burdens on workers.

Research into workplace MSDs has been hampered by a lack of available data. The data collected through this recordkeeping requirement will be useful to many entities including OSHA, BLS, the National Institute of Occupational Safety and Health (NIOSH), epidemiologists, labor, and employers, helping to answer questions about patterns and causes of MSDs. It could also be used to evaluate the effectiveness of voluntary workplace actions to reduce workplace MSDs, helping to establish best practices and further refine or identify needs for additional research or regulation by OSHA or its partners.

Indeed, OSHA cannot carry out its mission effectively without better data on such a large and an important class of workplace injuries. Better information would allow the agency to tailor inspections, research efforts, and safety regulations appropriately. Without it, the agency is

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[4] OSHA Form 300.

[5] Bureau of Labor Statistics. "Musculoskeletal disorders and days away from work in 2007." (2008).

[6] Bureau of Labor Statistics. *Nonfatal Occupational Injuries and Illnesses Requiring Days Away from Work, 2007.* (2008).

cannot identify industries with patterns of incidents, allocate appropriate resources to understand and reduce MSDs, and discern the efficacy of its efforts.

A. The Proposed Recordkeeping Requirement Is Consistent with OSHA's Statutory Responsibilities.

The Occupational Safety and Health Act (OSH Act) requires OSHA to prescribe regulations "requiring employers to maintain accurate records of and to make periodic reports on, work-related deaths, injuries, and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, or transfer to another job."[7] The Act's General Duty Clause charges OSHA to "provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."[8] It also authorizes the Secretary of Labor to promulgate regulations to develop information regarding the causes and prevention of occupational accidents and illnesses.[9]

The proposed recordkeeping requirement is a simple, inexpensive measure that would significantly improve OSHA's fulfillment of its statutory mandate. Workplace MSDs that result in days away from work result in a higher number of median days away from work than any other type of illness and injury. The BLS found that in 2007, MSDs accounted for a median of 20 days away from work in private industry, 19 days in service-providing industry, and 20 days in goods-producing industry. Falls to a lower level, by comparison, resulted in 15 days away from work in private industry, 12 days in service-providing industry, and 22 days in goods-producing industry.[10] As OSHA mentioned in its notice, "all other illnesses" in 2007 accounted for 62% of all occupational illnesses, and in 2000, the last year that the OSHA Log contained a column for "repeated trauma," that category accounted for 67% of all illnesses.[11]

Simply put, OSHA currently lacks a means of identifying instances of what appears to be the most common workplace illness. That deficiency is unacceptable in an agency charged with advancing workplace health and safety. The proposed recordkeeping requirement rightly would fix it.

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[7] 29 U.S.C. § 673.

[8] 29 U.S.C. § 654.

[9] 29 U.S.C. § 657.

[10] *Supra* note 6.

[11] 75 Fed. Reg. 4,732.

B. OSHA's Proposed MSD Definition Is Sound.

OSHA requested comments on its proposed definition of MSDs: "disorders of the muscles, nerves, tendons, ligaments, joints cartilage and spinal discs, except those caused by slips, trips, falls, motor vehicle accidents, or other similar accidents."[12] Public Citizen supports this definition for multiple reasons.

The proposed definition is sufficiently broad to include the range of disorders that constitute MSDs, while providing clarity about which types of events should be excluded. It is neither over-inclusive nor under-inclusive. This is unsurprising, given that the definition is the result of decades of research and collaboration between OSHA, the Department of Health and Human Services (HHS), NIOSH, labor and industry. There is no need for additional research to support the proposed definition or to describe injuries and illnesses that are reported as MSDs.

Moreover, the definition is similar to those used by other government agencies and therefore will provide continuity of data between past and future statistics on MSDs. The proposed definition is nearly identical to the one used by BLS since 1998.[13] In addition, the U.S. Navy uses a comparable definition, including risk factors.[14]

Public Citizen strongly opposes excluding any specific MSDs from the definition. OSHA should include in the reporting requirement MSDs that result from one-time or infrequently performed activities. MSDs result from different types of activities, and may be the result of cumulative trauma accumulated over time, e.g. carpal tunnel syndrome, or the result of a one time injury, e.g. back pain as a result of a single heavy, awkward lift. To be maximally informative, the data provided by the proposed recordkeeping requirement should include all MSDs.

OSHA requested comments on whether the proposed definition should include risk factors for MSDs. Public Citizen supports the inclusion of risk factors in the definition of MSDs or in guidance to employers. Inclusion of risk factors would improve employers' ability to determine whether an injury or illness is a work-related MSD.[15]

Sheila Denman, speaking on behalf of her client employers, objected to the listing of risk factors on the grounds that: "Awkward postures, vibration, repetitive activities, that is what is

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[12] 75 Fed. Reg. 4,733.

[13] The BLS definition is: "The U.S. Department of Labor defines a musculoskeletal disorder (MSD) as an injury or disorder of the muscles, nerves, tendons, joints, cartilage, and spinal discs. MSDs do not include disorders caused by slips, trips, falls, motor vehicle accidents, or similar accidents." *See* Bureau of Labor Statistics, *Lost-Worktime Injuries and Illnesses: Characteristics Resulting in Time Away from Work* (2000).

[14] *See* "Alternative Definitions of MSDs." Docket No. OSHA-2009-0044-0004.

[15] In fact, in response to OSHA's questioning about whether risk factors would be helpful, Karen Harned of the National Federation of Independent Businesses said: "anything that you can provide that is going to help break it down for [employers] in a more easy to understand way, they are going to welcome." Transcript of OSHA Public Meeting, Proposed Rule on Occupational Injury and Illness Reporting and Recording. (Mar. 9, 2010). at 221.

called work, and as the very nature then results in high risk for injury."[16] This claim is outrageous. Public Citizen objects to the notion any risk factors for MSDs be excluded on the grounds that they are activities performed at work. OSHA's mission is to identify hazards related to work. The purpose of collecting information on workplace MSDs is to identify workplace hazards. Thus, work activities that cause or contribute to MSDs must be included in any list of risk factors.

II. Industry Objections to This Recordkeeping Requirement Are Unfounded.

OSHA held a public meeting on Mar. 9, 2010 to discuss the proposed recordkeeping rule. At the meeting, industry representatives highlighted several objections to the proposal. Among them were concern that the proposed recordkeeping would require employers to effectively make medical diagnoses, that it would be unduly burdensome to businesses, that this information would actually harm understanding of workplace MSDs, and that the proposed recordkeeping requirement was a harbinger of a workplace ergonomics standard.

A. OSHA Proposes an Objective and Appropriate Reporting Requirement.

OSHA's proposed guidance change would simplify how employers make determinations about when to record MSDs by moving to a more objective standard.

OSHA proposes to change its Recordkeeping Compliance Directive by deleting the exception that "minor musculoskeletal discomfort" is not recordable as a restricted work case.[17] This exception was inserted as a result of a settlement agreement OSHA entered with the National Association of Manufacturers (NAM) in 2001.[18] The proposed change is preferable because it simplifies the determination an employer must make about when to record an MSD and it makes the reporting requirement consistent with all other injury types.

At the Mar. 9 meeting, a representative for NAM and the U.S. Chamber of Commerce asserted that this recordkeeping change would require employers to consult medical professionals in making determinations about whether an injury or illness is recordable.[19] He said that employers would be required to make determinations about where to draw the line between minor discomfort and pain, and that would require additional intervention of medical personnel at ruinous cost, yet OSHA's proposal would do exactly the opposite, by eliminating employers' responsibility for making judgments about severity and pain.

In comments to the proposed delay of implementing a separate MSD requirement NAM states that "objective standards for MSD diagnosis are essential."[20] But, contrary to this goal,

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[16] *Supra* note 15 at 278.

[17] 75 Fed. Reg. 4,735.

[18] 66 Fed. Reg. 66,493. (Dec. 27, 2001).

[19] *Supra* note 15, at 227-229.

[20] Comments of National Association of Manufacturers to OSHA Docket R02-B. (Aug. 22, 2002) at 5.

NAM's settlement agreement inserted a caveat about minor musculoskeletal discomfort.[21] Now it objects to OSHA's attempt to establish an objective standard for MSD diagnosis.

Contrary to NAM's assertion, the proposed change to the guidance document would not require employers to draw a distinction between minor discomfort and pain. It would only require employers to observe a disruption in work that requires work restriction, temporary transfer to another job task, or medical treatment beyond first aid. The existing guidance requires more intervention from medical personnel than would be required under the proposed change to the guidance.

The reporting requirement under the settlement states that minor musculoskeletal discomfort is not recorded as a restricted work case if "a health care professional determined that the employee is fully able to perform all of his or her routine job functions and the employer assigns a work restriction to that employee for the purpose of preventing a more serious condition from developing."[22] The change in guidance would merely remove this caveat for "minor musculoskeletal discomfort," making the reporting requirements consistent for all workplace injuries and illnesses.[23]

NAM and others asserted that the change in guidance would discourage employers from engaging in work restriction or transfer to prevent a more serious injury or illness.[24] The implication here is that workers would suffer more serious injuries and illnesses as a result of employers choosing not to order work restriction for fear of sanction from recording MSDs. We certainly hope employers would not conceal injuries to avoid sanction. But, in any case, the benefit of using the delineation of work restriction is to understand these injuries and illnesses and how they occur to keep people working. No sanction would attach to enhanced reporting.

Instead of embracing this simplified approach, NAM recommended that maybe it would be preferable for the agency to adopt an algorithm for determining the delineations between minor discomfort, major discomfort and pain.[25] This approach is much more complicated, and would likely require much more intervention from health care professionals, than OSHA's proposed guidance.

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[21] 66 Fed. Reg. 66,944.

[22] Occupational Safety and Health Administration, *Recordkeeping Policies and Procedures Manual.* Directive Number: CPL 02-00-135, (2004).

[23] "An employee's work is considered restricted when, as a result of a work-related injury or illness, (A) the employer keeps 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 health care 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." Occupational Safety and Health Administration, *Supra* note 15 at. Chapter 2 (I) (F).

[24] *Id* at 238.

[25] *Id.* at 253.

NAM referred to its settlement agreement with OSHA and asserted that it was improper for OSHA to propose a change in the guidance that had been in effect for eight years.[26] It explained that the settlement agreement reflected a compromise between employers and OSHA and urged that the guidance not be changed. NAM said the exemption was designed to ensure that employers could recommend preventive work reassignment "*without the penalty* of having to record the case as a restricted duty case."[27] But there is no inherent penalty in recording workplace MSDs.

Nothing in the guidance change would work to prevent or deter employers from failing to provide employees with temporary work reassignment to prevent a more serious injury. On the contrary, OSHA would greatly benefit from knowing when employees were assigned preventive work restriction. The idea that recording an MSD would result in retribution from OSHA is unfounded. Employers' anecdotal anxiety about "being targeted" expressed by representatives at the Mar. 9 meeting has no bearing on OSHA in implementing its regulations.[28] OSHA's guidance on penalties for recordkeeping violations emphasizes the agency's desire to collect accurate information, not to unduly burden and punish employers.[29]

Nothing in the settlement binds the agency from adopting changes to its regulations through notice and comment, and then making conforming changes in its guidance documents to accommodate those changes.[30] OSHA is clearly acting within its discretion to propose changes to its regulations and change the guidance documents to be consistent with changes to the regulation.

NAM argued because the agency did not explain its intent to change the guidance language in its summary or its press release announcing the proposal that the agency did not give proper notice to interested parties of the change. But the change in the guidance language is clearly explained in the proposal under a heading discussing subjective symptoms. The change is intended to answer a concern raised by NAM: that it is unreasonable to expect employers to draw a distinction between minor musculoskeletal discomfort and pain. The agency discusses its rationale for changing the guidance document and invites comment on the proposed change.[31]

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[26] *Supra* note 15. at 227.

[27] *Id.* at 239. (emphasis added)

[28] *Id.* at 226-7.

[29] *See* Occupational Safety and Health Administration, *Citation Policy for Paperwork and Written Program Requirement Violations*. CPL 02-00-111. (1995). "Where citations are issued, penalties shall be proposed only in the following cases: (1) Where OSHA can document that the employer was previously informed of the requirements to keep records; or, (2) Where the employer's deliberate decision to deviate from the recordkeeping requirements, or the employer's plain indifference to the requirements, can be documented."

[30] "Nothing contained herein shall be construed as affecting Federal Defendants' right to modify or interpret its regulations in the future." 66 Fed. Reg. 66,944.

[31] 75 Fed. Reg. 4,735.

The terms of settlement agreement specifically preserve OSHA's discretion to propose changes to its regulations through normal procedures. NAM cannot claim under the terms of the settlement that the agency is bound by a compromise between parties.

B. The Proposed Recordkeeping Requirement Poses No Excessive Burden.

Several speakers at OSHA's meeting expressed disagreement with OSHA's determination of the burden to small businesses in understanding and complying with OSHA's proposed recordkeeping change. Objections were expressed to OSHA's estimation of the burden to understand the new requirements, additional need for medical intervention, and defensive overreporting of MSDs. One speaker even argued that OSHA ought to have held a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) to evaluate the burden to small businesses.[32]

OSHA determined that the proposed requirement would not have a significant impact on small entities. It relied on its regulatory flexibility analysis for the 2001 overhaul of OSHA's injury and illness reporting logs, which concluded that the impact to small entities was not sufficient to trigger a SBREFA panel.[33] The impact to small businesses is further diminished by the fact that only 18 percent of businesses would be required to comply. Businesses with less than 10 employees and or those involved in many retail, financial, and service industries are exempt from this recordkeeping requirement.[34] The proposed change would have an even smaller impact on small businesses than the 2001 rule because it proposes just one change to a form in current use.

The National Federation of Independent Businesses and others objected specifically to OSHA's estimate that it would take employers less than five minutes to read and understand OSHA's proposed changes.[35] Explanations as to why it would take employers more than five minutes were either unsubstantiated or irrelevant to the proposed action. One explanation was that small business owners are frequently personally responsible for understanding regulatory burdens, unlikely larger firms which have legal and technical experts with the specialized knowledge to understand a new requirement.[36]

This is irrelevant for two reasons: (1) the types of businesses without assistance in complying with regulations are for the most part exempt from the proposed requirement; and (2) understanding the change does not require specialized knowledge. A business owner who is not familiar with the OSHA log is not the typical entity that must be considered. OSHA need not

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[32] *Supra* note 15 at 199.

[33] 75 Fed. Reg. 4,736 & 66 Fed. Reg. 6,108.

[34] 66 Fed. Reg. 6,089.

[35] *Supra* note 15 at 196.

[36] *Id.* at 198.

base its estimate of the regulatory burden for an incremental change on the full burden of learning to comply with reporting requirements. [37]

NAM and others tried to raise at the hearing objections that the proposed recordkeeping change would require complex new determinations about injuries and illnesses that would require much more intervention from medical personnel. This is simply not true. As discussed in detail above, the proposed change to the guidance would establish an objective standard for reporting that would reduce the need for medical intervention. An employer or human resources professional that currently maintains OSHA logs would only be required to discern that an MSD interfered with an employee's ability to do his job and record that injury or illness by checking a separate box.

Nothing in OSHA's proposed recordkeeping requirement obliges employers to make medical diagnoses of MSDs. In the event that a work-related MSD requires medical intervention, the cost incurred by employers is separate from the recordkeeping requirement. If an employee suffers a workplace injury or illness, the employer is responsible for that medical treatment regardless of whether the incident is recorded in a box labeled "all other illnesses" or "MSDs."

It is not outside an employer's competence to identify an employee suffering some impairment in completing their work duties. NAM explains that employers cannot discern whether MSDs are work-related without probing an employee's entire medical history, and that the factors from work and out of work activities cannot be separated.[38] But employers must not be reluctant to record injuries and illnesses that occur in the workplace based on unfounded fear of sanctions that do not exist in law.

C. The Proposed Requirement Would Generate Useful Data.

Industry representatives have also suggested that segregating MSD data in a separate column would somehow result in poorer data about MSDs. NAM asserted in its 2002 comments that due to challenges in identifying and making objective determinations about what constitutes an MSD that reporting in a separate column will result in arbitrary data.[39] At the Mar. 9 meeting, NAM expressed concern that the data collected through this recordkeeping requirement would be unreliable.[40] There are three main reasons industry has expressed skepticism of the quality of the data: (1) it questions employers' ability to identify and record MSDs; (2) it asserts that employers will both overreport and underreport MSDs to avoid sanction by OSHA; and (3) MSDs are too broad for a separate category to be useful.[41]

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[37] One example of this perception : "[I]f you haven't heard of an OSHA log or you don't know what an MSD is…it is going to take you a heck of a lot longer than five minutes to figure this thing out." *Supra* note 15 at 87.

[38] *Id.* at 229-231.

[39] *See* Comments of National Association of Manufacturers to OSHA Docket R-02B (2002). at 15.

[40] *Supra* note 15 at 245.

[41] "[T]he preamble to this rule, and the general political environment, and the OSHA Listens Conference, and everything else, suggests that there is going to be an intent to go out after people with MSDs on their logs, and there

OSHA has proposed an objective determination for a workplace MSD. The proposed change to the guidance makes it less likely that employers would incorrectly record an MSD than the current guidance, as discussed in detail above. MSDs are distinct from other categories of injuries and illnesses reported; therefore it is unlikely that an employer would be presented with an MSD and classify it as a skin disorder. Employers need not provide diagnoses of specific disorders, but merely identify MSDs as a category and check the box.

There is no basis to the claim that employers will find themselves encouraged to over- or underreport MSDs to avoid OSHA sanctions. As described above, penalties for inaccurate recordkeeping are aimed at encouraging the most complete and accurate reporting achievable and on OSHA obtaining reliable data. In the event that an employer's reporting contains minor inaccuracies "no citation will be issued."[42]

Industry has also claimed that MSDs are too broad and disparate and have too little in common to be separated out as a category of special interest.[43] But the other categories of illnesses that are recorded in separate columns also describe diverse selections of injuries and illnesses including skin and respiratory disorders and hearing loss. All of these describe illness and injury that can result from many different factors and present themselves in many different ways. All are conditions that for accurate diagnosis may require consultation with a medical professional. The causes and contributing factors of these diseases are diverse and often unrelated to one another. Silicosis and chronic obstructive pulmonary disorder do not share causes, yet both are recorded in a column for respiratory disorders. Grouping these diseases together does not confound or muddle OSHA's data to a point of being useless.

OSHA's purpose in separating out MSDs is to promote accurate tracking of rates and trends of MSDs. MSDs often do not result in days away from work, and therefore the existing granular data about these injuries and illnesses obscures broader rates and trends. The lack of understanding and knowledge about MSDs is hindered by the lack of data. Collecting this data may expose additional detailed information the agency or others may wish to track in the future. But such determinations cannot be made from the currently available data.

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is a [National Emphasis Program] on OSHA recordkeeping." & "[Employers] are going to have to determine that this is an MSD or they could get charged with a recordkeeping violation." *Supra* note 15 at 226 and 212. & at 244: "MSDs are not comparable to skin disorders or respiratory illnesses. The etiology of MSDs is far more diverse." In response to OSHA's questions on this point, Halprin responded "most of them [skin disorders, respiratory diseases and hearing loss] occur in the workplace, and to the extent that they don't they are much more easily identified as the cause." See 258-259.

[42] *Supra* note 21 at Chapter 2 (II) (B).

[43] *Supra* note 15 at 244.

D. The Proposed Recordkeeping Requirement Is Not an Ergonomics Standard.

Stakeholders expressed concern that the proposed recordkeeping requirement telegraphs OSHA's intent to issue a workplace ergonomics rule.[44] OSHA is explicit that its purpose in proposing this data collection is to improve available data, and has indicated that this proposal does not signal intent to issue an ergonomics standard.[45]

The proposed recordkeeping requirement in and of itself is not an ergonomics standard. Employers must comply with this change only by reporting MSDs in a separate box. The recordkeeping change does not generate new sanctions against employers who record these injuries on their logs. Nothing about this recordkeeping requirement requires any action on the part of employers to prevent ergonomic injuries.

Any future decision about an ergonomics rule – including a decision to take no additional measures – should be informed by the best data that can be gathered. The proposed recordkeeping rule may provide data that the agency finds useful in developing and issuing an ergonomics standard, but the fact that new data may provide supporting evidence for further agency action is surely not a valid argument against collecting such data. Indeed, if they believe their arguments, opponents of an ergonomics rule should be as eager for to obtain more robust MSD data as supporters of a rule. And, in the event of a decision not to take action on a new rule, the recordkeeping requirement would still provide essential information for agency action, including to help OSHA identify best practices among voluntary programs.

To be clear, Public Citizen strongly supports a performance-based workplace ergonomics standard that applies to workplaces on a mandatory basis. We believe such a standard is supported by evidence available now, and that was available 10 years ago. We do not believe that any additional data is required to justify issuance of a workplace ergonomics standard – but we do support collecting additional data for the reasons enumerated in these comments.

Conclusion

Public Citizen strongly supports OSHA's effort to improve reporting of workplace MSDs through the inclusion of a separate column for recording these injuries and illnesses on the OSHA 300 Log. The data collected through this recordkeeping requirement will help the agency to allocate resources to indentify patterns of injury and illness, conduct research, schedule inspections, and plan any future rulemaking efforts. The implementation of this requirement is long overdue.

The agency is currently completely disempowered to evaluate the effectiveness of its voluntary guidelines on ergonomics, or to conduct research or allocate resources regarding workplace MSDs. The limited evidence that does exist suggests these incidents comprise a substantial fraction of all workplace injuries and illnesses, and therefore warrant investigation by

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[44] *Supra* note 15 at 200.

[45] 75 Fed. Reg. 4,729.

OSHA. The agency cannot adequately assess the problem without a means of identifying what workplace injuries and illnesses are MSDs.

There is no rational reason to prevent the agency from issuing the proposed recordkeeping change. It does not result in a radical change in policy, but merely provides the agency and others with a means of estimating the total number workplace MSDs that occur each year. The agency's proposed definition was developed under substantial coordination with relevant stakeholders, and similar definitions have been used by other parties for many years.