



June 14, 2011

OSHA Docket Office
Docket No. OSHA-2009-0044
Room N-2625
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: Occupational Injury and Illness Recording and Reporting Requirements (Docket No. OSHA-2009-0044)

Dear Sir/ Dear Madam:

The National Turkey Federation, the National Chicken Council, and the U. S. Poultry & Egg Association, are non-profit trade associations representing the producers and processors of chickens, turkeys, other poultry, eggs and affiliated industry suppliers. Our associations are committed to providing a safe work environment for our employees and appreciate the opportunity to comment on OSHA's efforts to modify occupational injury and illness recording and reporting requirements. The letter reaffirms and updates our position outlined in our March 29, 2010 comment letter.

Existing recordkeeping rules are adequate

We believe the existing recordkeeping rule is adequate and existing information is sufficient to allow employers to identify and address risks within the workplace. The reduction in recordable illnesses for all private industry is evidence that employers have made significant progress in controlling Musculoskeletal Disorders (MSDs).

Poultry processing injury and illness rates dropped from 22.7 per 100 employees in 1994 to 5.5 per 100 employees in 2009. Illness rates (including MSDs) dropped from 9.5 to 1.0 in this same time frame. It did not require an MSD column on the OSHA 300 log for our industry to recognize that our workers are subject to Musculoskeletal Disorders. Therefore, we believe it is important to call attention to some of the events that led to this drop in incident rates, none of which would have been enhanced by adding another administrative burden to the recordkeeping process.

In the mid-1980s consumer preferences began to shift to deboned and further processed poultry requiring more repetitive, upper extremity intensive tasks which resulted in a corresponding

increase in MSDs. The industry did not wait to see blocks checked on an OSHA recordkeeping form to understand that MSDs needed to be addressed. Increasing employee complaints of discomfort, analysis of accident investigation reports, higher workers compensation expenses, increased employee turnover and reduced productivity were all indicators that this workplace hazard must be addressed. In response, a poultry industry task force of safety and medical professionals developed a strategy incorporating medical intervention, ergonomics and training as key common denominators for successful preventative measures. These concepts were published in the “Medical-Ergonomics-Training Program: A Guide for the Poultry Industry” (1986). The stated goals of early medical intervention were to minimize employee pain and suffering, maintain employee morale, maintain efficiency and production and minimize dollar losses.

Additional industry specific educational and training programs were implemented as new or refined ergonomic solutions were developed. In 2004 the Georgia Tech Research Institute (GTRI), with funding from an OSHA Susan Harwood grant and the U.S. Poultry & Egg Association, developed the “Ergonomics Course for the Poultry Industry”, a comprehensive training program for employees and supervisors. GTRI provided train-the-trainer courses based on this curriculum which allowed dissemination of the information throughout the industry. The program increased awareness of ergonomic risk factors and offered both engineering and administrative controls to reduce MSDs in the workplace. Engineering controls included improved workplace design, automation, improved tool design and material handling equipment and administrative controls included job rotation, job enlargement and work hardening programs for new employees. These and similar initiatives have resulted in the outstanding reduction in workplace MSDs incurred by the poultry industry over the past 25 years.

Several OSHA publications have been helpful to the industry on addressing ergonomics. The document “**Guidelines for Poultry Processing Ergonomics for the Prevention of Musculoskeletal Disorders**” (2004) (<http://www.osha.gov/ergonomics/guidelines/poultryprocessing/poultryprocessing.html>) continues to be used by the industry. In addition the **Poultry Processing Industry eTool** (<http://www.osha.gov/SLTC/etools/poultry/index.html>) has been an effective program which has helped reduce the number of recordable injuries.

For these reasons, we believe the existing recordkeeping rules are adequate and adding the MSD column is unnecessary.

Definition of MSD

We propose that the definition be expanded to include (*):

1904.12:

(b) *Implementation*—(1) *What is a “musculoskeletal disorder” or MSD?* 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. Such cases are not recordable. (*Occupational MSDs DO NOT include minor discomfort experienced by an employee during work hardening following

new hire or transfer if the level of discomfort does not prevent the employee from being fully able to perform all of his or her routine job functions. If the healthcare provider determines that the employee is fully able to perform all of his or her job functions, the employer may assign a work restriction to that employee for the purpose of preventing a more serious condition from developing during the work hardening process). 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.

Recordkeeping Compliance Directive restricted work case exemption

The notice of proposed rulemaking states that OSHA intends to remove the restricted work case exemption language in the Recordkeeping Compliance Directive which currently states "minor musculoskeletal discomfort *is not recordable* under 1909.7(b)(4) as a restricted work case if a health care professional determines the employee is fully able to perform all of his or her routine job functions, and the employer moves them for the purpose of preventing a more serious injury" (emphasis added).

In the work hardening process, many employers in the poultry industry frequently follow guidance from the health care provider and temporarily transfer new employees to other tasks until the employee develops the physical conditioning required to perform new job functions. As outlined in the current Compliance Directive, these job transfers are not recorded as injuries or illnesses.

OSHA's comments on pages 4735-4736 of the Federal Register proposed rule notice suggest that any condition requiring treatment that is first aid only does not meet the definition of a recordable injury and therefore assigning the employee to another task (i.e., during work hardening while only first aid measures are being taken) is not recordable. The Federal Register notice references the preamble of the 2001 rule and states:

"The agency rejected suggestions to add an exception to recordability for voluntary or preventive job transfers. The agency explained that this concept is not relevant to the recordkeeping rule:

Transfers or restrictions taken *before* the employee has experienced an injury or illness do not meet the first recording requirement of the recordkeeping rule, i.e. that a work-related injury or illness must have occurred for recording to be considered at all."

However, beginning at the bottom of page 4734 OSHA states:

"you must record a case as an MSD if (1) The employee experiences "pain, tingling, burning, numbness or any other subjective symptom of an MSD;" (2) the symptoms are work-related; (3) new; and (4) meet the general recording criteria in the Recordkeeping regulation (e.g., *restricted work, job transfer*, days away from work, medical treatment beyond first aid)" (emphasis added).

This language appears to be in direct conflict with the position OSHA plans to use to support removing the current language in the Compliance Directive. It appears that the employer would be required to record cases involving job transfer associated with a work hardening program if the transfer or restriction extends beyond the day the illness began, even if the healthcare provider had made the determination that the employee could have fully performed all of his or her routine job functions.

Work hardening programs allow employees to adjust to new physical demands which may be expected to initially cause some level of discomfort, allow the employee to maintain good morale and a positive attitude toward a new job responsibility and reduce the potential for subsequent, severe injury. We strongly urge OSHA to continue to allow employers to make these temporary job transfers and restrictions as part of the work hardening process. Recording such events as workplace illnesses will unnecessarily inflate the illness rates and do absolutely nothing to improve workplace safety. If anything, it may discourage some employers from taking proactive actions such as work hardening programs, ultimately resulting in more severe injuries and illnesses in the work force.

Days away from work cases

OSHA expresses concerns that employers are recording fewer and fewer cases as days away from work cases and references anecdotal reports “that employers are increasingly using restricted work, job transfers and medical treatment or surgeries without lost time to bring employees back to work more quickly and to avoid recording MSDs as cases with days away from work” (emphasis added).

Workers compensation statutes require that full duty or modified duty return to work be subject to the treating physician’s orders so the decision on how quickly an injured employee may return to work is not the employer’s decision but the doctor’s. Most employers and most workers compensation professionals agree that early return to work is important and beneficial to the injured employee. The Texas Department of Insurance Division of Workers’ Compensation outlines the following benefits of full duty or modified duty return to work for employees in its brochure “*Making Return to Work-Work for Your Business and Your Employees*”:

- Recovery time is shortened;
- Concerns about continued employment are eliminated;
- Loss of physical fitness due to inactivity is averted;
- Full or partial wages are earned bringing the injured employee’s income closer to pre-injury wages;
- Retain job skills;
- Less likely to experience secondary complications such as depression that may delay or complicate recovery;
- Permanent disability associated with the injury is reduced;
- Maintain company benefits and seniority;
- Require less medical care and medication;
- Family and social lifestyles maintained; and

The financial impact on the employee when away from work should not be underestimated. All state workers compensation statutes have waiting periods of between 3-7 days before lost wage benefits commence and then lost wage benefits are generally limited to 2/3 of the employee's pre-injury average weekly wage. Even with workers compensation insurance, days away from work result in lower paychecks for the employee so wherever applicable, aggressive return to work policies are beneficial to the employee. To suggest that employees are brought back to work more quickly "to avoid recording MSDs as cases with days away from work" is simply inaccurate. Further, also inaccurate is the belief that employer practices regarding return to work policies may particularly affect MSD data. Return to work policies typically do not differentiate between MSDs and other types of injuries or illnesses because each return to work decision is made by the treating physician based on the facts of that case.

Thank you for the opportunity to comment. If you have any questions or require additional information concerning our comments please do not hesitate to contact Paul Pressley of the U.S. Poultry & Egg Association at 770-493-9401, Stephen Pretanik of the National Chicken Council at 202-296-2622, or Andrew Bailey of the National Turkey Federation at 202-898-0100.

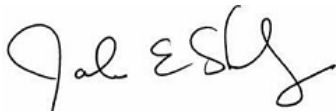
Sincerely,



Joel Brandenberger
President
National Turkey Federation



Mike Brown
President
National Chicken Council



John Starkey
President
U.S. Poultry & Egg Association