



## VIA ELECTRONIC SUBMISSION

March 30, 2010

OSHA Docket Office  
Docket ID: OSHA-2009-0044  
Occupational Safety and Health Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW, Room N-2625  
Washington, DC 20210

**RE: Docket No. OSHA-2009-0044, 29 CFR 19**

To the Docket Office:

On behalf of the International Franchise Association (IFA), I write to comment on the Occupational Safety and Health Administration's (OSHA) Notice of Proposed Rulemaking (Proposed Rule) on the Occupational Injury and Illness Recording and Reporting Requirements, published in the *Federal Register* on January 29, 2010.

IFA is the largest and oldest franchising trade group, representing more than 85 industries, including more than 11,000 franchisee, 1,200 franchisor and 500 supplier members nationwide. IFA protects, enhances and promotes franchising by advancing the values of integrity, respect, trust, commitment to excellence and diversity. According to a 2008 study conducted by PricewaterhouseCoopers, there are more than 900,000 franchised establishments in the U.S. that are responsible for creating 21 million American jobs and generating \$2.3 trillion in economic output. Franchising operates in industries including automotive, commercial and residential services, restaurants, lodging, real estate and business and personal services.

On behalf of our members, I respectfully submit these comments and I appreciate the opportunity to share our views on the proposed regulation. Members of the IFA strongly support the spirit and intent of the Occupational Safety and Health Act of 1970. For more than 40 years, franchised businesses and their employees have worked together to promote a safe and healthy work environment. However, we have significant concerns related to the proposed changes to the OSHA Form 300 Log for conditions referred to as musculoskeletal disorders (MSDs) as well as the proposed definitions for MSDs. We also strongly support the comments submitted by a collection of business trade associations including the IFA, the U.S. Chamber of Commerce, the National Retail Federation and the National Restaurant Association. These substantial comments address in great detail every aspect of the Proposed Rule from the experience of employers.

OSHA is required to adopt reasonably clear injury and illness recordkeeping rules that will result in the creation of accurate records of significant work-related injuries and illnesses, which are demonstrated to be necessary to assist OSHA, employers and employees in furthering the objectives of

the OSH Act with a minimum burden upon employers. The stated purpose of the Proposed Rule is to add a separate column on the OSHA Form 300 Log for MSDs, and a new Section 1904.12 that would define the term MSD and provide further guidance in using the MSD column. The term “MSD” is a broadly and vaguely defined term used to describe a generally unrelated collection of conditions, many of which are based entirely on subjective symptoms that are not subject to objective verification. Despite many years of study and research, the scientific community remains unable to reliably define, diagnose or determine the cause of MSDs, or identify appropriate remedial measures with any degree of precision.

In proposing to broadly define the term MSD to include any disorder of any tissue in the musculoskeletal system, OSHA would disregard these fundamental scientific shortcomings and impose an insurmountable and counterproductive recordkeeping burden on employers. Contrary to the provisions and objectives of Sections 8 and 24 of the OSH Act, the result would be the burdensome collection of inaccurate and misleading data that would undermine the current recordkeeping system, produce meaningless statistical data sets and trigger a misallocation of resources by OSHA and employers. The Proposed Rule would ultimately fail to advance workplace safety and health.

The Proposed Rule would also make two other material changes to the OSHA Recordkeeping Rule. It would change the currently applicable criteria for recording cases involving a restricted duty or transfer by revoking the exemption for “preventive restrictions.” If implemented, that change would cause employers to record insignificant conditions and discourage employers from taking proactive preventive measures by penalizing them for taking those measures. It would also subject the real world managers of businesses, focused on efficiently running their operations, to the enormous and distracting burden of determining, on an ongoing basis, when any subjective deviation from a worker’s normal sense of wellness might potentially rise to the level of an abnormal condition that would constitute an “injury or illness,” and trying to ensure they discover that condition before the worker begins to work.

Second, having previously determined, after an extensive analysis of the issue that all MSDs are injuries, the Proposed Rule would without any analysis or discussion of the issue, arbitrarily reclassify all MSDs as illnesses. The distinction between illnesses generally covered by OSHA health standards and injuries generally covered by OSHA safety standards has potentially enormous consequences. No rationale is offered for this apparent about-face in OSHA’s characterization of these conditions. It is unclear whether OSHA even considered this issue or whether it was simply trying to ensure the collection of specific data. Given the lack of any discussion of this issue, and the short comment period provided, it is clear that this rulemaking is not the appropriate forum to address this issue.

The Proposed Rule asserts to simply require an employer to review the cases that have been recorded on the OSHA Form 300 Log, make a determination as to whether they are MSDs and, if so, place a check in the MSD column. Such an assertion is based on the erroneous premise that the current level of scientific knowledge is adequate to identify, diagnose and determine the cause of conditions known as MSDs. Furthermore, the Proposed Rule assumes that employers can make such determinations that go beyond their abilities and the abilities of many medical professionals. It would also place employers in the untenable position of either recording conditions as MSDs or undertaking an extensive inquiry into an employee’s private medical history and personal life to enable the

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employer to make the necessary determinations (whether an injury, work-related, preexisting etc.)

Due to these factors, the IFA believes that the incorporation of the MSD provisions into the OSHA recordkeeping system will produce inaccurate and misleading "injury and illness" records of disparate and unrelated conditions that will result in a misallocation of OSHA's resources. OSHA has materially understated the costs of compliance with the Proposed Rule and has no factual basis for certifying that the Proposed Rule would not have a significant economic impact on a substantial number of small businesses and thus avoiding compliance with the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act. From a procedural standpoint, this proposed rulemaking is misleading in that OSHA omitted material information and mischaracterized the nature and scope of this proposal by erroneously stating that the Proposed Rule would not change the currently applicable criteria for recordability.

For these reasons, the IFA believes it would be inappropriate for OSHA to proceed with the Proposed Rule and that it should be withdrawn. In light of the obvious inability to define, diagnose or determine the cause of MSDs with any degree of precision, OSHA must therefore acknowledge the limitations it faces in drafting a workable MSD provision. The attempt to establish an MSD column fails to further the important purpose of OSHA and would lead to an inappropriate misallocation of resources on the part of small employers and the agency that would detract from efforts to advance workplace safety and health in the United States. The IFA urges OSHA to abandon this ill-conceived attempt to classify that which is impossible to verify objectively or categorize.

Thank you for your consideration in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David French", written in a cursive style.

David French  
Vice President, Government Relations