



## **DEPARTMENT OF LABOR**

### **Occupational Safety and Health Administration**

#### **29 CFR Part 1904**

**[Docket No. OSHA-2009-0044]**

**RIN 1218-AC45**

### **Occupational Injury and Illness Recording and Reporting Requirements;**

#### **Withdrawal**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Withdrawal of proposed rule; termination of rulemaking.

**SUMMARY:** OSHA is withdrawing the proposal to amend the OSHA 300 Log by adding a column that employers would use to record work-related musculoskeletal disorders. Withdrawal of the proposal does not change any employer's obligation to complete and retain occupational injury and illness records under OSHA's regulations. Withdrawal of the proposal also does not change the recording criteria or definitions used for these records.

**DATES:** This withdrawal is effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

#### **FOR FURTHER INFORMATION CONTACT:**

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#### **Citation Method**

In the docket for this rulemaking found at <http://www.regulations.gov>, every submission was assigned a document identification (ID) number that consists of the docket number (OSHA-2009-0044) followed by an additional four-digit number. For example, the document ID number for the proposed rule is OSHA-2009-0044-0001. Some document ID numbers include one or more attachments, such as one of the submissions by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) (e.g., Document ID OSHA-2009-0044-0074).

When citing exhibits in the docket in this preamble, OSHA includes the term “Document ID” followed by the last four digits of the document number, and an attachment identifier, if applicable. In a citation that contains two or more document ID numbers, the document ID numbers are separated by semi-colons.

The exhibits in the docket, including public comments, supporting materials, meeting transcripts, and other documents, are listed on <http://www.regulations.gov>. All exhibits are listed in the docket index on <http://www.regulations.gov>, but some exhibits (e.g., copyrighted material) are not available to read or download from that website. All materials in the docket are available for inspection through the OSHA Docket Office; telephone (202) 693-2350.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

#### **A. Overview of OSHA’s Recordkeeping Rule and the BLS Survey of Occupational Injuries and Illnesses**

OSHA’s regulations at 29 CFR part 1904 require covered employers to record work-related injuries and illnesses that involve death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, loss of consciousness, or a significant injury or illness diagnosed by a physician or other licensed health care professional (29 CFR 1904.7).

Employers covered by these regulations must record each recordable employee injury and illness using three forms:

- OSHA Form 300, the “Log of Work-Related Injuries and Illnesses,” or equivalent, which provides basic information about injuries and illnesses;
- OSHA Form 301, the supplemental “Injury and Illness Incident Report,” or equivalent, that provides additional details about each case recorded on the 300 Log; and
- OSHA Form 300A, the “Summary of Work-Related Injuries and Illnesses” prepared at the end of each calendar year, which indicates the total number of injuries and illnesses during the year.

These occupational injury and illness records provide information for employers and employees on the injuries and illnesses occurring in the workplace and the hazards that cause or contribute to them. The information assists employers in identifying and correcting hazardous workplace conditions. The records also inform employees about the hazards they face.

Occupational injury and illness records also provide information for OSHA. During the initial stages of an inspection, an OSHA representative typically reviews the injury and illness data for the establishment as an aid to focusing the inspection effort on the safety and health hazards suggested by the injury and illness records. The recordkeeping regulations also require establishments with 250 or more employees that are currently required to keep OSHA injury and illness records, and establishments with 20-249 employees in certain designated industries, to submit information electronically from the 300A Summary to OSHA or OSHA’s designee on an annual basis (29 CFR 1904.41). OSHA uses this information to help target enforcement efforts, and to help the agency identify the scope of occupational safety and health problems and decide whether regulatory intervention, compliance assistance, or other measures are warranted.

In addition, records of work-related injuries and illnesses are the source of information for the national statistics on workplace injuries and illnesses. The Bureau of Labor Statistics (BLS) has conducted an annual Survey of Occupational Injuries and Illnesses (SOII) since 1972. Each year BLS sends the SOII to approximately 230,000 establishments that represent a statistical sample of employers in most industries and across all size classes in the country. OSHA's recordkeeping regulations require employers who receive the SOII to complete and submit it to BLS (29 CFR 1904.42). The SOII is used to obtain information from employers' 301 Incident Reports and 300A Summaries. The data BLS collects from the selected establishments are the primary source of occupational injury and illness statistics for the nation, including injury and illness incidences and rates for a variety of case and worker characteristics.

Using the information from the SOII, BLS produces information on two basic categories of nonfatal occupational injuries and illnesses: (1) counts and rates by detailed industry and case type, and (2) counts and rates of case circumstances and worker demographics for cases that result in days away from work (DAFW). Beginning with 2011 data, BLS began a pilot study for a new data series, which included the details of case circumstances and worker characteristics on days of job transfer or work restriction (DJTR) cases (<https://www.bls.gov/iif/days-of-job-transfer-or-restriction.htm>). DJTR cases are OSHA-recordable cases which result only in job transfer or restricted work activity, without any days away from work. This includes instances in which the injured or ill worker is transferred to another job or assignment, works less than full time, or is unable to perform all of their routine job duties. The pilot study includes data for rotating sets of six selected industry subsectors. BLS publishes occupational injury and illness data on the BLS webpage at <http://www.bls.gov>, and makes the aggregate and detailed results available for both research and public information. BLS pledges confidentiality to each employer selected to complete the SOII (as it does on all BLS

surveys); therefore, BLS does not publish or share the establishment-specific injury and illness data with the public or government agencies, including OSHA.

For all occupational injuries and illnesses combined, BLS publishes aggregate and industry totals for the number and rates of injuries and illnesses by industry and type of case. For occupational illnesses (skin diseases or disorders, respiratory conditions, poisonings, hearing loss, and all other illnesses), BLS also publishes the totals from the illness columns on the 300A Summary.

For DAFW and for DJTR cases in selected industry subsectors, BLS publishes more detailed estimates of case circumstances and worker characteristics. These are derived from information employers provide from 301 Incident Reports or equivalent forms, or otherwise requested as part of the SOII, about the specific characteristics of cases. Case circumstances and worker characteristics include the employee's age, race, sex, occupation, and length of service; the employer's industry classification; the part of the body affected; the nature of the injury or illness; the source of injury or illness (e.g., bodily motion or position, machinery, fire); and the causal event or exposure leading to the injury or illness (e.g., overexertion, repetitive motion, fall).

BLS uses the case circumstances and worker characteristics information from the 301 Incident Reports to develop and publish information on DAFW and DJTR musculoskeletal disorders (MSDs). Since 2011, BLS identifies MSD cases as those cases where the nature of the injury or illness is pinched nerve; herniated disc; meniscus tear; sprains, strains, tears; hernia (traumatic and nontraumatic); pain, swelling, and numbness; carpal or tarsal tunnel syndrome; Raynaud's syndrome or phenomenon; musculoskeletal system and connective tissue diseases and disorders, when the event or exposure leading to the injury or illness is overexertion and bodily reaction, unspecified; overexertion involving outside sources; repetitive motion involving microtasks; other and multiple

exertions or bodily reactions; and rubbed, abraded, or jarred by vibration

(<http://www.bls.gov/iif/oshdef.htm>).

## **B. Regulatory History of the MSD Column Rulemaking**

OSHA's regulations on recording and reporting occupational injuries and illnesses (29 CFR part 1904) were first issued in 1971 (36 FR 12612 (July 2, 1971)).

These regulations require employers with more than 10 employees in most industries to keep records of occupational injuries and illnesses at their establishments.

In 2001, OSHA issued a final rule amending these regulations, along with the forms employers use to record injuries and illnesses (66 FR 5916 (January 19, 2001)). Section 1904.12(a) of that rule, which never became effective, would have created an MSD column on the 300 Log and required an employer to check that column if an employee experienced a work-related musculoskeletal disorder meeting the MSD definition contained in the regulation.

After delaying the effective date of 29 CFR 1904.12 (66 FR 52031 (October 12, 2001); 67 FR 77165 (December 17, 2002)) and requesting additional comment on issues related to the MSD column and definition (67 FR 44124 (July 1, 2002)), OSHA subsequently issued a final rule deleting § 1904.12 after determining that the need for an MSD column was not supported by the record (68 FR 38601 (June 30, 2003)).

Specifically, OSHA found that the MSD column would not significantly improve the BLS national statistics on MSDs, would not materially assist OSHA in enforcement efforts, and would not provide the type of information that would be useful in addressing MSDs at the establishment level. The agency concluded that existing MSD data BLS publishes were adequate to provide information for OSHA and the public (68 FR 38603-38606).

In 2010, OSHA again proposed to create an MSD column on the 300 Log (75 FR 4728 (January 29, 2010)). OSHA provided a 45-day period for public comment on the

proposal, and extended the comment period to 60 days in response to stakeholder requests (75 FR 10738 (March 9, 2010)). The agency received comments on the proposal from individuals, employers, trade associations, labor organizations, public health groups, and government agencies (e.g., Document ID 0046; 0057; 0059; 0068; 0074; 0084). OSHA also held a public meeting on the proposal on March 9, 2010. Interested stakeholders made oral presentations and had an opportunity to ask OSHA questions about the proposal. OSHA also asked questions of those individuals making oral presentations. A transcript of the meeting is included in the docket for the rulemaking (Document ID 0056).

OSHA partnered with the Small Business Administration's Office of Advocacy to hold three teleconferences with representatives of small businesses on April 11-12, 2011. OSHA received information from the small business community about current recordkeeping practices, including their experiences recording work-related MSDs, and the impact they believe the proposed rule would have on them. A summary of comments from the teleconferences was added to the docket for the rulemaking (Document ID 0139). OSHA reopened the docket for 30 days to allow stakeholders to comment on the summary and the issues covered in the teleconferences (76 FR 28383 (May 17, 2011)).

## **II. Legal Authority**

OSHA's authority to promulgate an MSD column rule stems from sections 8 and 24 of the OSH Act, which empower the Secretary to issue regulations necessary or appropriate to carry out his responsibilities to ensure that employers keep and preserve accurate records of occupational injuries and illnesses (75 FR 4731). The proposed rule explains that in promulgating a regulation rather than an occupational safety and health standard, the agency need only establish that the rule is reasonably related to the enabling legislation. *Id.* OSHA preliminarily found that the MSD column requirement was reasonably related to sections 8 and 24 of the OSH Act because the column would

improve the completeness and quality of the national injury and illness statistics, ensure that OSHA has more complete information to target enforcement and guidance efforts to address MSDs, and provide useful data at the establishment level for employers and employees. Id.

### **III. Rationale for Terminating the Rulemaking**

The agency's regulatory history on the subject of an MSD column requirement is of central significance to the disposition of this rulemaking. In 2003, OSHA determined after review of the extensive record that adding the MSD column to the 300 Log was not necessary to improve national statistics, assist OSHA in the enforcement of the Act, or provide useful data to employers and employees at the establishment level (68 FR 38603-38606). In 2010, OSHA believed that an updated rulemaking record would demonstrate the value and usefulness of the data the MSD column would produce. The 2010 proposal sought a new round of comment on whether an MSD column is needed to improve the national statistics, assist OSHA in enforcement, and provide useful establishment-specific data (75 FR 4731-4732).

After careful review, OSHA concludes that the updated record provides no basis for reconsideration of the agency's 2003 determination that the MSD column is not necessary. The new round of comment in response to the proposed rule does not demonstrate that OSHA's prior assessment of the need for the MSD column was flawed, or that new or changed circumstances since 2003 now support the column requirement. Indeed, the comments to the proposed rule, both pro and con, largely track the comments pro and con submitted in support of the 2001 rule and in response to the 2002 request for additional comment. As discussed in more detail below, the updated record contains nothing new or significant on the three central issues resolved in 2003; i.e., whether the MSD column is needed to improve the national statistics, assist OSHA in enforcement, or provide useful establishment-specific data. OSHA has therefore concluded, based on the



evidence in the record, that an MSD column rule would not be reasonably related to sections 8 and 24 of the OSH Act and the proposed rule should be withdrawn.

**A. The Record Does Not Demonstrate that an MSD Column Would Significantly Improve the National Injury and Illness Statistics**

As discussed in section I. Background, the BLS national injury and illness statistics include detailed information on MSDs that result in days away from work (DAFW). This information includes the specific body part affected and the activity associated with the disorder; data that enable OSHA, employers, employees, and researchers to have some understanding of the nature and significance of the case.

If the MSD column were implemented, employers participating in the BLS survey could report annually the total number of cases for which there was a check in the MSD column. This information could enable BLS to report the total number and incidence rate of MSDs of all types, and would provide a basis for estimating the number of MSDs that do not result in days away from work (see 68 FR 38605). In 2003, OSHA found that these additional data would add only marginally to the information currently available. OSHA found that a new statistic on total MSD cases would be difficult to interpret because it would include a wide variety of physical symptoms with different causes and outcomes (see 68 FR 38605). OSHA determined that an MSD column requirement would produce only an aggregate total of cases that could not be further analyzed for significance, and that “[n]o such statistic would be useful without a means of understanding and interpreting it” (68 FR 38605).

Commenters supporting the addition of the MSD column to the 300 Log failed to provide new evidence contradicting OSHA’s prior finding. While some asserted that the column would make conducting analyses easier (e.g., Document ID 0056, p. 40-41; 0074; 0088; 0102; 0112; 0174; 0188) and would allow various entities, including employers, OSHA, BLS, labor unions, and researchers, to better analyze the patterns and causes of

MSDs, as well as target and evaluate interventions (e.g., Document ID 0057; 0059; 0074; 0075; 0083; 0088; 0108; 0112; 0130; 0139; 0149; 0157; 0159; 0164; 0165; 0177; 0187), they apparently assumed that the new statistic would be meaningful. These commenters failed to address OSHA's concern that the addition of an aggregate statistic for all MSDs would not be useful without a means of understanding and interpreting it. In particular, commenters supporting the column did not explain how the statistic would be useful in the absence of the detailed case-characteristic data generated for DAFW cases.

The BLS survey elicits descriptive information only on injuries and illnesses resulting in DAFW and, for selected industry subsectors for DJTR.<sup>1</sup> Accordingly, without similar descriptive information for the other incidents where the MSD column is checked, BLS cannot analyze the characteristics of those injuries and illnesses as it can DAFW and DJTR cases. Thus, adding an MSD column to the 300 Log would not result in any additional descriptive data on MSD cases beyond what is currently collected by BLS.<sup>2</sup> As a result, for MSDs not already analyzed by BLS, there would be no way to distinguish among different types of disorders, determine possible causal factors, evaluate demographics, or perform other analyses.

Many commenters pointed to the limited utility of this information as a significant reason not to add the MSD column to the 300 Log (e.g., Document ID 0067; 0073; 0094; 0097; 0113; 0122; 0125; 0136; 0161). For example, the Independent Electrical Contractors stated that “[b]ecause OSHA is not proposing to change the BLS survey system in its 2010 proposed amendments, there would be no value added to the usefulness of national injury and illness statistics by the addition of an MSD column . . .

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<sup>1</sup> Like DAFW cases, this DJTR data includes the specific body part affected and the activity associated with the disorder, giving interested parties some understanding of the nature and significance of the case.

<sup>2</sup> The BLS's DJTR pilot program and its resulting data was not available when OSHA requested comment on the proposed rule, and OSHA did not rely on it in any way in determining that an MSD column would not significantly improve the existing national injury and illness statistics. However, OSHA notes that this supplemental information would not alter that conclusion. If anything, it would appear to lend further support. To the extent that BLS is already able to collect and analyze more MSD information under current practices without the addition of the MSD column, there would be less need for the MSD column.

.” (Document ID 0106, p. 4). The Ad Hoc Coalition of Small Business Refiners further elaborated that “a ‘count’ of MSDs will [not] benefit the industry without the ability to analyze the case characteristics of these injuries. . . . The total number of cases will not advise employers, OSHA, or other interested parties about the possible causes and prevention of ergonomic hazards. Simply knowing that a certain number of MSD cases have occurred does not determine which jobs or working conditions pose ergonomic hazards and how they may be abated” (Document ID 0161, p. 2).

Some commenters indicated that an MSD column would provide data comparable to that generated from the other illness columns (i.e., skin disorders, respiratory conditions, poisonings, and hearing loss) already present on the 300 Log (e.g., Document ID 0069; 0108). However, given the wide variety of MSD injuries and their potential sources, and thus the limited information that would be conveyed through an MSD column alone, other commenters argued that an MSD column would not be as useful as the other illness columns already present on the 300 Log (e.g., Document ID 0118; 0125; 0185). For example, the Society of the Plastics Industry, Inc. explained “Hearing loss, skin disorders, respiratory conditions and poisonings do not have the same broad set of affected body parts and etiology compared to MSDs. Correspondingly, the range of possible workplace solutions to address MSDs is significantly broader, rendering a single number in a column of little value when trying to use the information in a meaningful way to address workplace injuries and illnesses of this nature by OSHA, employers or employees” (Document ID 0125, p. 9). In a similar vein, the U.S. Chamber of Commerce and 18 other industry associations indicated “MSDs are not comparable to skin disorders or respiratory illnesses. One generally avoids respiratory illnesses by implementing measures that avoid inhalation of toxic materials and avoids skin disorders by avoiding dermal contact with toxic materials. In the workplace, these causative agents can be identified. Because the etiology of MSDs is far more complex and the causative

agents so poorly identified, there are few if any changes that reliably can be adopted by employers to mitigate the complaints that the new regulation would require employers to record” (Document ID 0118, p. 28).

Other commenters raised similar concerns that adding the MSD column to the 300 Log would not produce useful or more accurate information (e.g., Document ID 0067; 0073; 0091; 0094; 0095; 0097; 0098; 0099; 0104; 0105; 0106; 0110; 0114; 0115; 0117; 0118; 0122; 0125; 0127; 0129; 0151; 0156; 0161; 0167; 0172; 0175; 0181). Commenters also suggested that the proposed definition of an MSD does not include conditions with sufficient commonalities to provide much, if any, utility (e.g., Document ID 0064; 0073; 0094; 0097; 0106; 0113; 0114; 0118; 0122; 0161) and that, as a result, checking a box would provide very little practical information for either employers or OSHA about the cause or possible abatement of hazards in the workplace (e.g., Document ID 0064; 0067; 0073; 0094; 0097; 0113; 0122; 0125; 0136; 0161).

Accordingly, the record does not alter OSHA’s previous conclusion about the usefulness of a MSD column for compiling national statistics on MSDs. It continues to show that a new statistic indicating the total number of MSDs would be of limited use without information on the specific characteristics of these cases. As a result, OSHA continues to believe that the MSD column would not materially improve the information currently available from national statistics on MSDs (see 68 FR 38604).

Some commenters also argued that the lack of an MSD column results in an underreporting of MSDs. First, some of these commenters claim that the current BLS statistics on MSDs may mask a problem that employers are deliberately keeping employees with MSDs at work on light-duty or treating them with prescription drugs to avoid having to record these MSDs as DAFW cases (e.g., Document ID 0074; 0183).<sup>3</sup>

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<sup>3</sup> Note, however, that employers would be violating OSHA’s existing recordkeeping rules to the extent that they fail to record recordable injuries as DAFW when a physician or other licensed health care professional

Although OSHA noted in the proposal a potential issue concerning the underreporting of DAFW MSDs, the updated record does not demonstrate that such a problem actually exists. Specifically, the record does not support the notion that employers' medical management practices for MSDs are influenced by the manner in which MSDs are reflected in the national statistics.<sup>4</sup> Moreover, to the extent that employers' medical management practices for MSDs are alleged to violate the recordkeeping rule or other OSHA regulation or standard, adequate enforcement mechanisms are already available.

In the absence of other evidence of employer intent to manipulate national statistics, these commenters assert that having a statistic on the aggregate number of MSDs of all types would be useful in illuminating this alleged problem of employer manipulation because it would provide a basis for estimating the total number of non-DAFW MSDs and comparing the rates of DAFW and non-DAFW MSDs over time (see also 75 FR 4733). But even to the extent that such a comparison could be facilitated through an MSD column,<sup>5</sup> it would not be logical to attribute employer motivation based on a correlation between DAFW and non-DAFW MSDs.

Second, some commenters argued that MSD injuries are collectively underreported because of lack of employer knowledge or other reasons, and that the addition of an MSD column would help raise employer awareness so that otherwise unreported injuries would be reported (e.g., Document ID 0003; 0005; 0069; 0075; 0093; 0102; 0103; 0128). Others, however, questioned whether there is actually any underreporting of these injuries (e.g., Document ID 0067; 0118). In any event, the record

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recommends that the worker stay at home, even if the worker then returns to work on light duty (29 CFR 1904.7(b)(3)(ii)).

<sup>4</sup> OSHA does not disagree that BLS DAFW injuries represent only a portion of all MSD injuries, but the limitation on BLS data does not evidence employer animus. The commenters appear to assume the employers' motive based entirely on perceived incentives and a purported correlation between the number of DAFW and transfers to "light duty" in industries that they claim have a high number of MSD injuries.

<sup>5</sup> The report by the Majority staff of the House Committee on Education and Labor noted that "a major cause of underreporting, according to experts, is OSHA's reliance on self-reporting by employers." (Document 003, p. 2). It is unclear how an additional column to be self-reported by employers could be relied on to provide evidence of their own intent to obfuscate reporting.

does not show that the addition of an MSD column would address this type of underreporting.

Employers have an existing obligation under OSHA's regulations to complete and retain occupational injury and illness records for injuries recordable as MSDs, even if they are not required to label such injuries as an "MSD." For example, if a worker suffers a back injury that meets the existing recording criteria, the employer is already required to record that back injury on the 301 Incident Report and the 300 Log. The employer might label the injury as a "strained back" on the 301 Report and 300 Log. The addition of an MSD column would not change this legal obligation or the recording criteria or definitions used for these records. Accordingly, as some commenters noted, to the extent employers are simply not recording MSD injuries at all, the addition of an MSD column would not be likely to change this underreporting behavior (e.g., Document ID 0067; 0115; 0118). Indeed, under the proposed rule, the MSD column would not be a factor in the decision-making process at all unless the employer had first recorded the case on the 300 Log and entered the case characteristic data on the 301 Report. Simply adding the column would not improve the quality of the national injury and illness statistics.

For these reasons, OSHA concludes that, based on the record, adding an MSD column is not necessary to improve the national injury and illness statistics.

#### **B. The Record Does Not Demonstrate that an MSD Column is Necessary to Assist OSHA in Enforcement or Outreach**

The record also does not demonstrate that the addition of an MSD column would meaningfully assist in targeting the agency's inspection, outreach, guidance, and enforcement efforts. In 2003, OSHA found that the column would not be useful in targeting the agency's resources because the single aggregate statistic it would produce would add nothing of significance to the case description data already available on the

OSHA 300 Logs and 301 Incident Reports (68 FR 38604). Although several commenters generally asserted that information gained from the addition of an MSD column would enable OSHA to more effectively target inspection and compliance assistance activities (e.g., Document ID 0149; 0157; 0159; 0164; 0165; 0187; 0188), the record does not support this assertion. MSDs include health conditions ranging from back injuries to carpal tunnel syndrome, and those conditions can result from a myriad of causes. Because the MSD column would only show the total number of MSDs that occurred in an establishment and nothing about the nature or cause of these disorders, it would be of little practical value in identifying hazards in the workplace. A figure indicating the total number of cases aggregates conditions that may have little in common. Further, the total number of cases provides no basis for identifying the causes of these disorders, and thus no basis for identifying potential hazards and measures that can be taken to address those hazards.

Commenters also identified concerns that this aggregate number of MSDs would be misleading and adversely affect policymaking, enforcement decisions, and resource allocation (e.g., Document ID 0097; 0105; 0114; 0118; 0122; 0161; 0167; 0181). While Dow Chemical generally supported OSHA's desire to have information about MSDs, they cautioned that it was inappropriate "to use the data from the new column on the log to target inspections and enforcement . . . because the data will not be sufficiently robust for those purposes" (Document ID 0064, Attachment 2, "Comments from The Dow Chemical Company," p. 9). OSHA agrees. The detailed information on case characteristics available from BLS for the MSD cases involving days away from work, along with information from the submission of 300A Summaries to OSHA, provides the agency with adequate information for targeting inspection, outreach, guidance, and enforcement efforts. The case description data in the 300 Log and 301 Incident Reports is available when more comprehensive information is needed to assist OSHA in the

inspection activities for particular establishments. Therefore, the record does not indicate that the MSD column would significantly assist the agency in enforcement and outreach efforts.

**C. The Record Does Not Demonstrate that an MSD Column Would Provide Useful Information to Employers and Employees at the Establishment Level**

For similar reasons, the record does not demonstrate that addition of an MSD column would provide information that will be useful to employers and employees at the establishment level (e.g., Document ID 0074; 0102; 0130; 0177; 0188). In the 2003 rule deleting the MSD column, OSHA found that the column would not provide useful establishment-specific data for two reasons. First, because the column would show only the total number of MSDs and nothing about the nature or cause of the disorders, it would be of little practical value in addressing these disorders. Second, to the extent that knowing the total number of MSDs that have been recorded at a facility is relevant as a starting point for further analysis, the number is easily obtainable without the column requirement (68 FR 38603). Some commenters agreed that the MSD column would provide very little practical information beyond what is already gathered (e.g., Document ID 0094; 0097; 0122; 0125; 0139; 0156). Even those arguing for an MSD column did not indicate that employers or others could not get the same information through other means.

In fact, several businesses noted that they already have more robust information than the MSD column would generate (e.g., Document ID 0041; 0054; 0058; 0064; 0122). For example, one large chemical company explained “Dow utilizes an electronic database which enables analysis of incident events including all injuries and illnesses (MSD events included). The data are global, not limited to US specific events. Our database also has the capability of permitting trend analysis. Metrics are summarized and used to identify target prevention strategies. Since 2001, the company’s incidence of



MSDs has consistently decreased. . . . Dow also performs a root cause investigation into each recordable injury, in an effort to find measures that will prevent recurrence. If the findings have broad applicability, we communicate broadly within the company in order to leverage the learnings” (Document ID 0064, Attachment 1, “Letter regarding comments from Seiler, Don; The Dow Chemical Company”). A different company noted that it already tracks MSDs in its own database “Domtar maintains a data base of all OSHA reported incidents so that we can assess and focus on leading injury types within our facilities. Typically, a statistical analysis, such as a Pareto chart, is used to determine the comparative rates of certain type incidents, which allows the company and individual facilities to develop improvement or corrective plans to address high frequency injury types. MSD type injuries are included in our analysis. In fact, we assess MSD injuries to specific body parts, such as back or knee incidents, as an example” (Document ID 0054). A third company concluded that an MSD column would be unnecessarily duplicative of its existing practices “LTC facilities use their quality assurance teams and accident/incident reports to record employee injuries, which would include MSDs, regardless of whether the cases result in days away from work. Employers can effectively track and analyze MSDs with those reports. Therefore, adding an MSD column to the OSHA 300 log is unnecessary for the LTC profession, and would increase operational costs” (Document ID 0058).

Information gathered during the small business teleconferences also suggested that an MSD column would provide very little practical information for a number of reasons “Most participants . . . said they do not use the OSHA 301 Report and 300 Log as management tools. They said they use the OSHA recordkeeping forms strictly to ensure regulatory compliance. Those participants that said they use injury and illness records as management tools use workers’ compensation forms or tools that the business has developed that provide more extensive information than the OSHA forms. Therefore,

most participants did not believe the MSD column data would be helpful specifically to them” (Document ID 0139, p. 6).

OSHA was explicit in the 2010 preamble that the proposed rule would not have required any new action on the part of employers beyond checking the MSD column when appropriate, so employers would not be required to conduct an analysis of their own establishments. Because the MSD column determinations would have been drawn from the employer’s own 300 Log and 301 Incident Reports, OSHA concludes that employers, employees, and their representatives wishing to conduct establishment-based analysis already have sufficient access to the information to do so. The absence of a mandatory regulatory requirement to check a column does not preclude those employers or employee representatives from tracking this information in whatever manner they choose.

Some commenters claimed that employers, employees, and their representatives face difficulties when gathering and analyzing information about MSDs in their workplaces from BLS data (e.g., Document ID 0056, p. 125, 129-132; 0076; 0102; 0128, Attachment 1, “Comments submitted by Frumin, E[r]ic on behalf of the Workers United”; 0174; 0188). However, they did not indicate how a mandatory MSD column, which is based on information already accessible to them, would improve establishment-based analysis. For example, the AFL-CIO argued that an MSD column would facilitate retrospective analysis “In the absence of an MSD column, employers and workers currently have to search and review each entry on the 300 Log on a case-by-case basis to determine if a case is an MSD. It is [a] time consuming effort to conduct a case-by-case analysis after the cases have already been entered on the Log. Analysis under this approach can occur long after the case has been entered when facts and circumstances about the cases may not be readily ascertainable which heightens the likelihood that an MSD case will be missed. Unions have had a difficult time sorting out and identifying the

MSD cases when done retrospectively after entry. It would be far simpler, easier, less time consuming, and more accurate to identify, at the time of entry, those cases that are MSDs and to check the column if the case meets the definition of an MSD. By making the identification and checking the MSD column at the time the case is entered on the Log, employers and unions can quickly and easily see whether or not a problem exists in their workplace” (Document ID 0074, Attachment 1, “Comments and documentary submissions of the AFL-CIO,” p. 4). OSHA is unpersuaded that an MSD column will materially facilitate retrospective analysis. As it found in 2003, MSD cases can be determined based on the description-of-injury information in the 300 Log and 301 Incident Reports (see 68 FR 38604). Indeed, to ensure the reliability of the analysis, a researcher would generally want to do this comparison his or herself rather than rely on the employer’s characterization of the injury through the MSD column. Moreover, although the AFL-CIO points out that “[a]nalysis under this approach can occur long after the case has been entered,” they do not explain why this would necessarily be the case, or how it makes identification of MSD injuries difficult.

In fact, many comments also included examples of analysis that was able to be completed using existing information from 300 Logs and 301 Incident Reports. Specifically, the United Food and Commercial Workers (UFCW) presented their analysis of thousands of OSHA 300 Log entries that were reviewed as part of the organization’s development of a database on injuries and illnesses in the meatpacking and poultry industries. Based on the available data from 300 Logs, even without an MSD column, UFCW was able to develop industry-specific and sufficiently detailed information to understand the nature of particular MSDs and develop prevention strategies relevant to those specific injuries (as opposed to all MSDs generally) (Document ID 0174, p. 2-5).

MSD injuries are somewhat unique because of the breadth of their conditions and causes, and thus aggregate data about these injuries will typically be harder to apply than

with respect to other types of injuries and illnesses. Ultimately, to understand and address MSDs that are occurring in workplaces, employers and others must be able to link specific types of injuries to job characteristics or working conditions. This requires evaluation of each individual case to determine the part of the body affected, the nature of the job performed by the injured employee, and other relevant data. Such information is currently available in the case-description section of the 300 Log and in the 301 Incident Report. OSHA recognizes that such an evaluation requires time and effort, but the MSD column would not provide a substitute for a review of the detailed information on the 300 Log and the 301 Incident Report. OSHA acknowledges that many employers may find their time and effort better spent on examining the detailed information that they already produce than attempting to determine whether to place a check mark in a summary column that in the end would not prove a substitute for analysis of the underlying data.

For these reasons, OSHA is withdrawing the proposal to add an MSD column on the 300 Log. Withdrawal of the proposal does not change any employer's obligation to complete and retain injury and illness records under 29 CFR 1904. Withdrawal of the proposal also does not change the recording criteria or definitions used for these records.

#### **IV. Legal Determinations**

##### **A. Paperwork Reduction Act**

This final action withdraws OSHA's proposal to add an MSD column on the 300 Log. Therefore this rule continues OSHA's current practices unaltered, resulting in no changes in actual paperwork burden compared with current practice. As a result, it is not necessary to estimate changes in OSHA's paperwork burden because this rule leaves the paperwork burden unaffected.

##### **B. Economic Analysis**

In the 2010 proposal, OSHA estimated that 1,542,000 establishments were currently required to keep a recordkeeping log and thus would be affected by the

proposed rule. OSHA also estimated that they would need, in any given year, to record 1,566,000 MSDs. Also in the 2010 proposal, OSHA estimated there would be two kinds of costs if the proposal was finalized: familiarization costs derived from the time required to learn what the rule required; and the costs of actually determining what injuries and illnesses would be MSDs and making the appropriate marking in the MSD column. Some commenters point to other possible kinds of costs such as expansion of the number of cases recorded (e.g., Document ID 0095; 0100; 0116; 0118) and cost for modifying software (e.g., Document ID 0037; 0063; 0067; 0082; 0094; 0100; 0115; 0121; 0122; 0154; 0161; 0176; 0181; 0185; 0190). All of these sources of costs disappear with the withdrawal of the proposed rule.

Based on an estimate that familiarization would require 5 minutes per establishment, OSHA at that time estimated that this would be a one-time cost incurred in the first year and would total annualized costs of \$735,000 per year. These familiarization cost estimates did not appear to account for the time necessary to download new forms. OSHA estimated that recording and checking the MSD column would require 1 minute per MSD plus 1 minute for additional injuries and illnesses, that, though not MSDs, would need to be examined. OSHA estimated that this would result in annualized costs of approximately \$1 million per year.

These unit cost estimates, and the resulting total cost estimates, received significant comment. Some agreed broadly with OSHA's estimates (e.g., Document ID 0157; 0159; 0160; 0165; 0166; 0171; 0173; 0174; 0177). However, others argued OSHA's costs were far too low (e.g., Document ID 0084; 0091; 0092; 0096; 0097; 0099; 0107; 0109; 0110; 0111; 0114; 0115; 0121; 0124; 0125; 0133; 0148; 0151; 0172). OSHA notes that since the proposed rule was issued, the estimated number of establishments required to keep a recordkeeping log has declined (84 FR 405 (January 25, 2019)), and the number of recordable injuries and illnesses has also declined

([https://www.bls.gov/news.release/archives/osh\\_11082018.pdf](https://www.bls.gov/news.release/archives/osh_11082018.pdf)). Since these cost estimates are made irrelevant by the withdrawal of the proposed rule, there is no need to resolve the issue of the best cost estimate. OSHA notes only that the withdrawal of the proposed rule results in avoided costs that were estimated to be \$1,735,000 per year in 2010, at the time the proposal was issued, and is estimated to be \$2,424,100 in 2024 dollars.

### **C. Regulatory Flexibility Certification**

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601), the Acting Assistant Secretary certifies that this final action will not have a significant economic impact on a substantial number of small entities. This final action withdraws a proposal that would have added requirements on small businesses. The removal of those requirement will impose no costs on small businesses.

### **Authority and Signature**

Amanda Laihow, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 et seq.) and Secretary of Labor's Order No. 8-2020 (85 FR 58393).

Dated: June 20, 2025.

**Amanda Laihow,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

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