PETITION FOR RULE-MAKING

Submitted to:
Rulemaking Coordinator
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, NC 27699-1101

Petitioner Name and Address:
Craig Reynolds
1428 Nature Place
Charlotte, NC 28214
(410) 849-9832
trekkie0805@gmail.com

1. Rule Citation to Be Amended:

13 NCAC 07A .0603 – Safety and Health Programs

2. Text of Proposed Amendment:

Amend Subsection (b)(7) submitted as Exhibit 1:

3. Effect of the Proposed Rule on the Department of Labor:

This amendment will require the Department to exercise its existing authority to issue updated compliance guidance and apply enforcement discretion with respect to employer obligations to evaluate, document, and address repetitive or cumulative workplace conditions that may contribute to employee harm. These conditions include, but are not limited to, ergonomic strain, prolonged exposure to environmental hazards, and any workplace organizational factors such that, when applied over time, may contribute to cumulative strain or interfere with an employee's ability to safely perform his or her duties.

Critically, the amendment recognizes that not all workplace injuries are acute or visible. A growing body of occupational health research supports that repeated low-grade exposures or stressors can trigger or aggravate previously asymptomatic medical conditions, such as asthma,

hypertension, anxiety disorders, or musculoskeletal vulnerabilities. These aggravated conditions can result in new onset symptoms, the need for medical treatment, or medically necessary work restrictions or leave, even though the underlying condition existed in a dormant state prior to the triggering workplace exposure.

Operationalizing this rule would not require the creation of new standalone enforcement programs, but would instead integrate cumulative trauma considerations into the Department's existing safety audit, training, and compliance frameworks. The rule would prompt employers to assess and address such risks through their written safety plans and training efforts, as is already required for other hazards listed under 13 NCAC 07A .0603(b)(7).

The amendment will advance the Department's core mission of protecting worker health and safety, reduce long-term costs associated with delayed treatment or misclassified injuries, and bring North Carolina's regulatory framework into closer alignment with national best practices in occupational medicine and workplace risk management. Federal OSHA's own recordkeeping regulations acknowledge that cumulative trauma may constitute a recordable occupational injury. Incorporating these principles into the North Carolina context is a necessary and prudent evolution in response to well-documented patterns of harm.

4. Reasons for the Proposed Amendment:

Many North Carolina workers suffer from medically documented conditions (such as hypertension, anxiety disorders, respiratory disease, or musculoskeletal vulnerabilities) that may remain asymptomatic until triggered by workplace conditions involving cumulative stress, exposure, or trauma. Yet the current safety regulations are silent on these chronic or progressive harms. By explicitly including such conditions in written safety compliance plans, this rule would:

- Encourage proactive mitigation of foreseeable workplace stressors;

- Reflect best practices in occupational medicine and cumulative risk assessment;
- Reduce workplace absences, medical leave, and disability claims;
- Close a regulatory gap that disproportionately impacts vulnerable workers.

5. Cost Impacts and Computation:

Costs to the Department are expected to be minimal, as employers already prepare written compliance plans under 13 NCAC 07A .0603(b)(7). The inclusion of cumulative trauma and aggravation risks would expand the content but not require new reporting or filing burdens. Long-term savings may be realized through reduced workers' compensation claims and litigation risk. The amendment may increase initial employer compliance costs but will likely yield downstream savings in workforce retention and reduced insurance liabilities.

6. Affected Entities:

The amendment would most likely affect:

- Employers in sectors with repetitive tasks or chronic exposure risks (e.g., manufacturing, health care, logistics, food service, education);
- Employees with preexisting but stable conditions at risk of aggravation;
- Safety and compliance officers responsible for annual audits and training.

7. Documents in Support of the Petition:

1. Exhibit 1 - Proposed Rule with Amendments: 13 NCAC 07A .0603(b)(7)
2. Exhibit 2 - US Department of Labor OSHA Part Number 1910 (with highlighted emphasis on 1910.1020(c)(13)
3. Exhibit 3 - Federal Register / Vol. 66, No. 13 - 5916 (Pages 16, 48, 49, 91, 102, 113, and 114)

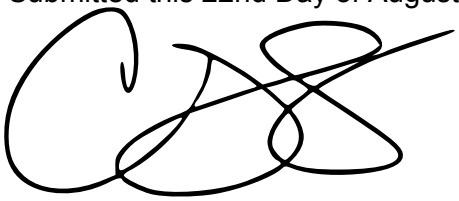
8. Statutory Authority for Rulemaking:

1. N.C.G.S. 95-251(b)(9);
2. N.C.G.S. 95-4(2); and
3. N.C.G.S. 150B-20 (rulemaking petitions).

9. Additional Information:

This proposed language is aligned with existing interpretations of cumulative trauma under OSHA and is consistent with the public interest in modernizing workplace safety frameworks to recognize not just immediate injury but also slow-developing or exposure-based harm. Petitioners request timely adoption in light of persistent gaps in workplace safety enforcement for long-term or progressive harm conditions.

Submitted this 22nd Day of August, 2025.



Craig Reynolds

EXHIBIT 1

13 NCAC 07A .0603 SAFETY AND HEALTH PROGRAMS

(a) All Safety and Health programs established under G.S. 95-251 for both fixed locations and non-fixed locations shall meet or exceed the requirements of G.S. 95-251(b)(1)-(9).

(b) The written program shall also include:

(1) The manner in which managers, supervisors, and employees are responsible for implementing the program and how the continued participation of management will be established, measured, and maintained including specifically what the leadership role of the top employer official at the worksite shall be in regard to the program.

(2) The manner in which the plan will be communicated to all affected employees so that they are informed of work-related hazards and controls.

(3) The manner in which safe work practices and rules will be enforced.

(4) The manner in which workplace accidents will be investigated and corrective action implemented. The employer shall keep a comprehensive record of accident investigations, findings, and corresponding corrective action taken.

(5) The manner in which near-miss incidents will be investigated. Special emphasis will be placed on identifying all contributing factors to any near-miss incident. The employer shall keep a comprehensive record of each such incident and the findings relating to it, and shall keep a record of all corresponding corrective action taken.

(6) The methods used to identify, analyze and control new or existing hazards, conditions and operations, and the manner in which changes will be incorporated into the safety program, safety committee checklist, and communicated to all affected employees.

(7) Written compliance plans as required by either the Mine Safety laws ~~or~~ **NC OSH, OR FEDERAL** OSHA standards, whichever is applicable to the employer. Written compliance plans shall include **BUT NOT BE LIMITED TO**, the following **NC OSH AND FEDERAL** OSHA standards, when applicable: Excavations, Hazard Communication, Occupational Noise Exposure, Control of Hazardous Energy Sources (Lockout/Tagout), Respiratory Protection, Process Safety Management of Highly Hazardous Chemicals, Bloodborne Pathogens, Life Safety Code, Cotton Dust, ~~and~~ Confined Spaces, **CUMULATIVE TRAUMA DISORDERS (CTD), AND REPETITIVE MOTION INJURIES**.

(8) A written checklist of all potential hazards to be inspected during the quarterly inspections required pursuant to G.S. 95-252(c)(4)d, if applicable, including, but not limited to, checking for properly marked doors (including exit doors and doors not leading to an exit); properly working fire extinguishers; unlisted hazardous substances, improperly located hazardous substances, or hazardous substances for which there are no material safety data sheets; doorways or exit pathways that are cluttered; improperly grounded equipment and exposed live wiring and parts; and unguarded machinery. Each item on the aforementioned written checklist shall be checked during the quarterly inspections and a copy of the list shall be retained by the employer for not less than two years. All conditions or items deemed to be out of compliance shall be immediately abated, unless circumstances beyond the control of the employer ~~requires~~ **REQUIRE** a longer period of time.

(9) The employer shall conduct an annual self-audit of all required safety and health programs. Written findings and a statement of remedial actions taken shall be retained for not less than two years. Companies with less than 11 employees that are not required to have safety and health committees shall appoint a company safety officer to conduct the annual self-audit.

(10) The purpose and operation of the Safety and Health Committee where such committee exists.

(11) The methods used to communicate requirements of the program to other employers or subcontractors and their employees who may be present at the same site.

History Note: *Authority G.S. 95-251;*
Eff. August 2, 1993;
Amended Eff. June 1, 1995;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

EXHIBIT 2

Occupational Safety and Health Administration

- **Part Number:** 1910
- **Part Number Title:** Occupational Safety and Health Standards
- **Subpart:** 1910 Subpart Z
- **Subpart Title:** Toxic and Hazardous Substances
- **Standard Number:** 1910.1020
- **Title:** Access to employee exposure and medical records.
- **Appendix:** A, B
- **GPO Source:** e-CFR

1910.1020(a)

Purpose. The purpose of this section is to provide employees and their designated representatives a right of access to relevant exposure and medical records; and to provide representatives of the Assistant Secretary a right of access to these records in order to fulfill responsibilities under the Occupational Safety and Health Act. Access by employees, their representatives, and the Assistant Secretary is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this section, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this section is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

1910.1020(b)

Scope and application.

1910.1020(b)(1)

This section applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

1910.1020(b)(2)

This section applies to all employee exposure and medical records, and analyses thereof, of such employees, whether or not the records are mandated by specific occupational safety and health standards.

1910.1020(b)(3)

This section applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house of contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this section are complied with regardless of the manner in which the records are made or maintained.

1910.1020(c)

Definitions -

1910.1020(c)(1)

Access means the right and opportunity to examine and copy.

1910.1020(c)(2)

Analysis using exposure or medical records means any compilation of data or any statistical study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done

by the person responsible for preparing the analysis.

1910.1020(c)(3)

Designated representative means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purposes of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

1910.1020(c)(4)

Employee means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of a deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

1910.1020(c)(5)

Employee exposure record means a record containing any of the following kinds of information:

1910.1020(c)(5)(i)

Environmental (workplace) monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;

1910.1020(c)(5)(ii)

Biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc) but not including results which assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs;

1910.1020(c)(5)(iii)

Material safety data sheets indicating that the material may pose a hazard to human health; or

1910.1020(c)(5)(iv)

In the absence of the above, a chemcial inventory or any other record which reveals where and when used and the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

1910.1020(c)(6)

1910.1020(c)(6)(i)

Employee medical record means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel or technician, including:

1910.1020(c)(6)(i)(A)

Medical and employment questionnaires or histories (including job description and occupational exposures),

1910.1020(c)(6)(i)(B)

The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including chest and other X-ray examinations taken for the purposes of establishing a base-line or detecting occupational illness, and all biological monitoring not defined as an “employee exposure record”),

1910.1020(c)(6)(i)(C)

Medical opinions, diagnoses, progress notes, and recommendations,

1910.1020(c)(6)(i)(D)

First aid records,

1910.1020(c)(6)(i)(E)

Descriptions of treatments and prescriptions, and

1910.1020(c)(6)(i)(F)
Employee medical complaints.

1910.1020(c)(6)(ii)
"Employee medical record" does not include medical information in the form of:

1910.1020(c)(6)(ii)(A)
Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice; or

1910.1020(c)(6)(ii)(B)
Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

1910.1020(c)(6)(ii)(C)
Records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence; or

1910.1020(c)(6)(ii)(D)
Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

1910.1020(c)(7)
Employer means a current employer, a former employer, or a successor employer.

1910.1020(c)(8)
Exposure* or *exposed means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

1910.1020(c)(9)
Health Professional means a physician, occupational health nurse, industrial hygienist, toxicologist, or epidemiologist, providing medical or other occupational health services to exposed employees.

1910.1020(c)(10)
Record means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing).

1910.1020(c)(11)
Specific chemical identity means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

1910.1020(c)(12)

1910.1020(c)(12)(i)
Specific written consent means a written authorization containing the following:

1910.1020(c)(12)(i)(A)
The name and signature of the employee authorizing the release of medical information,

1910.1020(c)(12)(i)(B)

The date of the written authorization,

1910.1020(c)(12)(i)(C)

The name of the individual or organization that is authorized to release the medical information,

1910.1020(c)(12)(i)(D)

The name of the designated representative (individual or organization) that is authorized to receive the released information,

1910.1020(c)(12)(i)(E)

A general description of the medical information that is authorized to be released,

1910.1020(c)(12)(i)(F)

A general description of the purpose for the release of the medical information, and

1910.1020(c)(12)(i)(G)

A date or condition upon which the written authorization will expire (if less than one year).

1910.1020(c)(12)(ii)

A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless the release of future information is expressly authorized, and does not operate for more than one year from the date of written authorization.

1910.1020(c)(12)(iii)

A written authorization may be revoked in writing prospectively at any time.

1910.1020(c)(13)

Toxic substance or harmful physical agent means any chemical substance, biological agent (bacteria, virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo-or hyperbaric pressure, etc.) which:

1910.1020(c)(13)(i)

Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS), which is incorporated by reference as specified in § 1910.6; or

1910.1020(c)(13)(ii)

Has yielded positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer; or

1910.1020(c)(13)(iii)

Is the subject of a material safety data sheet kept by or known to the employer indicating that the material may pose a hazard to human health.

1910.1020(c)(14)

Trade secret means any confidential formula, pattern, process, device, or information or compilation of information that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

1910.1020(d)

Preservation of records.

1910.1020(d)(1)

Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

1910.1020(d)(1)(i)

Employee medical records. The medical record for each employee shall be preserved and maintained for at least the duration of employment plus thirty (30) years, except that the following types of records need not be retained for any specified period:

1910.1020(d)(1)(i)(A)

Health insurance claims records maintained separately from the employer's medical program and its records,

1910.1020(d)(1)(i)(B)

First aid records (not including medical histories) of one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, and the like which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a non-physician and if maintained separately from the employer's medical program and its records, and

1910.1020(d)(1)(i)(C)

The medical records of employees who have worked for less than (1) year for the employer need not be retained beyond the term of employment if they are provided to the employee upon the termination of employment.

1910.1020(d)(1)(ii)

Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

1910.1020(d)(1)(ii)(A)

Background data to environmental (workplace) monitoring or measuring, such as laboratory reports and worksheets, need only be retained for one (1) year as long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

1910.1020(d)(1)(ii)(B)

Material safety data sheets and paragraph (c)(5)(iv) records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; [1] and

1910.1020(d)(1)(ii)(C)

Biological monitoring results designated as exposure records by specific occupational safety and health standards shall be preserved and maintained as required by the specific standard.

1910.1020(d)(1)(iii)

Analyses using exposure or medical records. Each analysis using exposure or medial records shall be preserved and maintained for at least thirty (30) years.

1910.1020(d)(2)

Nothing in this section is intended to mandate the form, manner, or process by which an employer preserves a record as long as the information contained in the record is preserved and retrievable, except that chest X-ray films shall be preserved in their original state.

1910.1020(e)

Access to records -

1910.1020(e)(1)

General.

1910.1020(e)(1)(i)

Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner. If the employer cannot reasonably provide access to the record within fifteen (15) working days, the employer shall within the fifteen (15) working days apprise the employee or designated

representative requesting the record of the reason for the delay and the earliest date when the record can be made available.

1910.1020(e)(1)(ii)

The employer may require of the requester only such information as should be readily known to the requester and which may be necessary to locate or identify the records being requested (e.g. dates and locations where the employee worked during the time period in question).

1910.1020(e)(1)(iii)

Whenever an employee or designated representative requests a copy of a record, the employer shall assure that either:

1910.1020(e)(1)(iii)(A)

A copy of the record is provided without cost to the employee or representative,

1910.1020(e)(1)(iii)(B)

The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record, or

1910.1020(e)(1)(iii)(C)

The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

1910.1020(e)(1)(iv)

In the case of an original X-ray, the employer may restrict access to on-site examination or make other suitable arrangements for the temporary loan of the X-ray.

1910.1020(e)(1)(v)

Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copying expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that

1910.1020(e)(1)(v)(A)

An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

1910.1020(e)(1)(v)(B)

An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

1910.1020(e)(1)(vi)

Nothing in this section is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this section.

1910.1020(e)(2)

Employee and designated representative access -

1910.1020(e)(2)(i)

Employee exposure records.

1910.1020(e)(2)(i)(A)

Except as limited by paragraph (f) of this section, each employer shall, upon request, assure the access to each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this section, an exposure record relevant to the employee consists of:

1910.1020(e)(2)(i)(A)(1)

A record which measures or monitors the amount of a toxic substance or harmful physical agent to which the employee is or has been exposed;

1910.1020(e)(2)(i)(A)(2)

In the absence of such directly relevant records, such records of other employees with past or present job duties or working conditions related to or similar to those of the employee to the extent necessary to reasonably indicate the amount and nature of the toxic substances or harmful physical agents to which the employee is or has been subjected, and

1910.1020(e)(2)(i)(A)(3)

Exposure records to the extent necessary to reasonably indicate the amount and nature of the toxic substances or harmful physical agents at workplaces or under working conditions to which the employee is being assigned or transferred.

1910.1020(e)(2)(i)(B)

Requests by designated representatives for unconsented access to employee exposure records shall be in writing and shall specify with reasonable particularity:

1910.1020(e)(2)(i)(B)(1)

The records requested to be disclosed; and

1910.1020(e)(2)(i)(B)(2)

The occupational health need for gaining access to these records.

1910.1020(e)(2)(ii)

Employee medical records.

1910.1020(e)(2)(ii)(A)

Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in paragraph (e)(2)(ii)(D) of this section.

1910.1020(e)(2)(ii)(B)

Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. appendix A to this section contains a sample form which may be used to establish specific written consent for access to employee medical records.

1910.1020(e)(2)(ii)(C)

Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

1910.1020(e)(2)(ii)(C)(1)

Consult with the physician for the purposes of reviewing and discussing the records requested,

1910.1020(e)(2)(ii)(C)(2)

Accept a summary of material facts and opinions in lieu of the records requested, or

1910.1020(e)(2)(ii)(C)(3)

Accept release of the requested records only to a physician or other designated representative.

1910.1020(e)(2)(ii)(D)

Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employee's health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's

request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

1910.1020(e)(2)(ii)(E)

A physician, nurse, or other responsible health care personnel maintaining medical records may delete from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

1910.1020(e)(2)(iii)

Analyses using exposure or medical records.

1910.1020(e)(2)(iii)(A)

Each employee shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

1910.1020(e)(2)(iii)(B)

Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.), the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of the analysis need not be provided.

1910.1020(e)(3)

OSHA access.

1910.1020(e)(3)(i)

Each employer shall, upon request, and without derogation of any rights under the Constitution or the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., that the employer chooses to exercise, assure the prompt access of representatives of the Assistant Secretary of Labor for Occupational Safety and Health to employee exposure and medical records and to analyses using exposure or medical records. Rules of agency practice and procedure governing OSHA access to employee medical records are contained in 29 CFR 1913.10.

1910.1020(e)(3)(ii)

Whenever OSHA seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to 29 CFR 1913.10(d), the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

1910.1020(f)

Trade secrets.

1910.1020(f)(1)

Except as provided in paragraph (f)(2) of this section, nothing in this section precludes an employer from deleting from records requested by a health professional, employee, or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in mixture, as long as the health professional, employee, or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the requesting party to identify where and when exposure occurred.

1910.1020(f)(2)

The employer may withhold the specific chemical identity, including the chemical name and other specific identification of a toxic substance from a disclosable record provided that:

1910.1020(f)(2)(i)

The claim that the information withheld is a trade secret can be supported;

1910.1020(f)(2)(ii)

All other available information on the properties and effects of the toxic substance is disclosed;

1910.1020(f)(2)(iii)

The employer informs the requesting party that the specific chemical identity is being withheld as a trade secret; and

1910.1020(f)(2)(iv)

The specific chemical identity is made available to health professionals, employees and designated representatives in accordance with the specific applicable provisions of this paragraph.

1910.1020(f)(3)

Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a toxic substance is necessary for emergency or first-aid treatment, the employer shall immediately disclose the specific chemical identity of a trade secret chemical to the treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of paragraphs (f)(4) and (f)(5), as soon as circumstances permit.

1910.1020(f)(4)

In non-emergency situations, an employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under paragraph (f)(2) of this section, to a health professional, employee, or designated representative if:

1910.1020(f)(4)(i)

The request is in writing;

1910.1020(f)(4)(ii)

The request describes with reasonable detail one or more of the following occupational health needs for the information:

1910.1020(f)(4)(ii)(A)

To assess the hazards of the chemicals to which employees will be exposed;

1910.1020(f)(4)(ii)(B)

To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;

1910.1020(f)(4)(ii)(C)

To conduct pre-assignment or periodic medical surveillance of exposed employees;

1910.1020(f)(4)(ii)(D)

To provide medical treatment to exposed employees;

1910.1020(f)(4)(ii)(E)

To select or assess appropriate personal protective equipment for exposed employees;

1910.1020(f)(4)(ii)(F)

To design or assess engineering controls or other protective measures for exposed employees; and

1910.1020(f)(4)(ii)(G)

To conduct studies to determine the health effects of exposure.

1910.1020(f)(4)(iii)

The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information would not enable the health professional, employee or designated representative to provide the occupational health services described in paragraph (f)(4)(ii) of this section:

1910.1020(f)(4)(iii)(A)
The properties and effects of the chemical;

1910.1020(f)(4)(iii)(B)
Measures for controlling workers' exposure to the chemical;

1910.1020(f)(4)(iii)(C)
Methods of monitoring and analyzing worker exposure to the chemical; and,

1910.1020(f)(4)(iii)(D)
Methods of diagnosing and treating harmful exposures to the chemical;

1910.1020(f)(4)(iv)
The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and,

1910.1020(f)(4)(v)
The health professional, employee, or designated representative and the employer or contractor of the services of the health professional or designated representative agree in a written confidentiality agreement that the health professional, employee or designated representative will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to OSHA, as provided in paragraph (f)(7) of this section, except as authorized by the terms of the agreement or by the employer.

1910.1020(f)(5)
The confidentiality agreement authorized by paragraph (f)(4)(iv) of this section:

1910.1020(f)(5)(i)
May restrict the use of the information to the health purposes indicated in the written statement of need;

1910.1020(f)(5)(ii)
May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and,

1910.1020(f)(5)(iii)
May not include requirements for the posting of a penalty bond.

1910.1020(f)(6)
Nothing in this section is meant to preclude the parties from pursuing non-contractual remedies to the extent permitted by law.

1910.1020(f)(7)
If the health professional, employee or designated representative receiving the trade secret information decides that there is a need to disclose it to OSHA, the employer who provided the information shall be informed by the health professional prior to, or at the same time as, such disclosure.

1910.1020(f)(8)
If the employer denies a written request for disclosure of a specific chemical identity, the denial must:

1910.1020(f)(8)(i)
Be provided to the health professional, employee or designated representative within thirty days of the request;

1910.1020(f)(8)(ii)

Be in writing;

1910.1020(f)(8)(iii)

Include evidence to support the claim that the specific chemical identity is a trade secret;

1910.1020(f)(8)(iv)

State the specific reasons why the request is being denied; and,

1910.1020(f)(8)(v)

Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

1910.1020(f)(9)

The health professional, employee, or designated representative whose request for information is denied under paragraph (f)(4) of this section may refer the request and the written denial of the request to OSHA for consideration.

1910.1020(f)(10)

When a heath professional employee, or designated representative refers a denial to OSHA under paragraph (f)(9) of this section, OSHA shall consider the evidence to determine if:

1910.1020(f)(10)(i)

The employer has supported the claim that the specific chemical identity is a trade secret;

1910.1020(f)(10)(ii)

The health professional employee, or designated representative has supported the claim that there is a medical or occupational health need for the information; and

1910.1020(f)(10)(iii)

The health professional, employee or designated representative has demonstrated adequate means to protect the confidentiality.

1910.1020(f)(11)

1910.1020(f)(11)(i)

If OSHA determines that the specific chemical identity requested under paragraph (f)(4) of this section is not a *bona fide* trade secret, or that it is a trade secret but the requesting health professional, employee or designated representatives has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means for complying with the terms of such agreement, the employer will be subject to citation by OSHA.

1910.1020(f)(11)(ii)

If an employer demonstrates to OSHA that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the Assistant Secretary may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the occupational health needs are met without an undue risk of harm to the employer.

1910.1020(f)(12)

Notwithstanding the existence of a trade secret claim, an employer shall, upon request, disclose to the Assistant Secretary any information which this section requires the employer to make available. Where there is a trade secret claim, such claim shall be made no later than at the time the information is provided to the Assistant Secretary so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

1910.1020(f)(13)

Nothing in this paragraph shall be construed as requiring the disclosure under any circumstances of process or percentage of mixture information which is trade secret.

1910.1020(g)

Employee information.

1910.1020(g)(1)

Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform current employees covered by this section of the following:

1910.1020(g)(1)(i)

The existence, location, and availability of any records covered by this section;

1910.1020(g)(1)(ii)

The person responsible for maintaining and providing access to records; and

1910.1020(g)(1)(iii)

Each employee's rights of access to these records.

1910.1020(g)(2)

Each employer shall keep a copy of this section and its appendices, and make copies readily available, upon request, to employees. The employer shall also distribute to current employees any informational materials concerning this section which are made available to the employer by the Assistant Secretary of Labor for Occupational Safety and Health.

1910.1020(h)

Transfer of records.

1910.1020(h)(1)

Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this section to the successor employer. The successor employer shall receive and maintain these records.

1910.1020(h)(2)

Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected current employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

1910.1020(i)

Appendices. The information contained in appendices A and B to this section is not intended, by itself, to create any additional obligations not otherwise imposed by this section nor detract from any existing obligation.

[1] Material safety data sheets must be kept for those chemicals currently in use that are effected by the Hazard Communication Standard in accordance with 29 CFR 1910.1200(g).

[61 FR 5507, Feb. 13, 1996; 61 FR 9227, March 7, 1996; 61 FR 31427, June 20, 1996; 71 FR 16673, April 3, 2006; 76 FR 33608, June 8, 2011]

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration
200 Constitution Ave NW
Washington, DC 20210
1-800-321-OSHA
1-800-321-6742
www.osha.gov

EXHIBIT 3

There are also sound policy justifications. The approach to ''work-relationship'' adopted in the final rule is more cost-effective than the alternative approaches and will result in more accurate injury and illness data. OSHA expects that for each reported injury or illness, employers generally will be able to apply the geographic presumption more easily and quickly than a test requiring an assessment of the relative contribution of employment and personal causes. The incremental reduction in the time necessary to complete each entry, when multiplied by the total number of entries per year, will result in a substantial cumulative saving in paperwork burden in comparison to the burden that would be imposed by the alternatives.

The geographic presumption will also produce more consistent and accurate reporting. OSHA believes that it would be difficult to measure the precise degree to which personal and occupational factors cause accidents or illnesses. Accordingly, any test requiring that job duties or tasks be ''significant'' or ''predominant'' causative factors would necessarily involve a high degree of subjective judgment. There is likely to be substantial inconsistency, both in the treatment of successive, similar cases by the same employer, and in the treatment of such cases among different employers. Moreover, such a test would fail to capture cases in which the workplace contribution to an injury or illness was imperfectly known or misunderstood at the time the case was reported. Recording all cases caused by events or exposures at work, with only limited exceptions, produces data that enables OSHA, employers and others to better understand the causal relationships present in the work environment. Although OSHA has not adopted a test for determining significant contribution by work, the final rule does include provisions to make sure that workplace aggravation of a pre-existing injury must be significant before work relationship is established (see discussion of 1904.5(b)(4)).

A number of commenters argued that because OSHA's mission is to eliminate preventable occupational injuries and illnesses, the determination of work-relatedness must turn upon whether the case could have been prevented by the employer's safety and health program. Dow expressed this view as follows:

> [T]he goal of this recordkeeping system should be to accurately measure the effectiveness of safety and health programs in the workplace. Activities where safety and health programs could have no impact on preventing or mitigating the condition should not be logged and included in the Log and Summary nor used by OSHA to determine its inspection schedule. If the event was caused by something beyond the employer's control, it should not be considered a recordable event that calls into question a facility's safety and health program. * * * Credibility in this regulation rests on whether the recorded data accurately reflects the safety and health of the workplace. Including events where the workplace had virtually no involvement undermines the credibility of the system and results in continued resistance to this regulation.

Ex. 15–335B. The law firm of Constangy, Brooks and Smith, LLC, urged OSHA to adopt the second alternative definition in the proposal because cases that are ''predominantly caused by workplace conditions'' are the ones most likely to be preventable by workplace controls. They stated, ''[s]ince OSHA's ultimate mission is the prevention of workplace injuries and illnesses, it is reasonably necessary to require recording only when the injury or illness can be prevented by the employer.'' Ex. 15–345.

OSHA believes that these comments reflect too narrow a reading of the purposes served by injury and illness records. Certainly one important purpose for recordkeeping requirements is to enable employers, employees and OSHA to identify hazards that can be prevented by compliance with existing standards or recognized safety practices. However, the records serve other purposes as well, including facilitating the research necessary to support new occupational safety and health standards and to better understand causal connections between the work environment and the injuries and illnesses sustained by employees. As discussed above, these purposes militate in favor of a general presumption of work-relationship for injuries and illnesses that result from events or exposures at the worksite, with exceptions for specific types of cases that can be safely excluded without significantly impairing the usefulness of the database.

3. The Criteria for Determining the Significance of an Injury or Illness

Section 1904.7 of the final rule sets forth the criteria to be used by employers in determining whether work-related occupational injuries and illnesses are significant, and therefore recordable. Under § 1904.7, a work-related injury or illness is significant for recordkeeping purposes if it results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. Employers must also record any significant injury or illness diagnosed by a physician or other licensed health care professional even if it does not does not result in the one of the listed outcomes. OSHA's definition of a ''significant'' injury or illness in this context is based on two key principles discussed below. The first is that the requirement for recording only significant cases applies equally to ''injuries'' and ''illnesses'' for recordkeeping purposes. The second principle is that the criteria expressly mentioned in the Act, such as death, loss of consciousness or restriction of work, are mandatory but not exclusive indicia of significance; any significant injury or illness diagnosed by a physician or other licensed health care professional must also be recorded. These two principles are addressed below, while the definitions applicable to the specific criteria themselves, and related evidentiary issues, are discussed in the preamble explanation for section 1904.7.

a. The significant case requirement applies equally to injuries and illnesses; employers are no longer to report insignificant illnesses. OSHA distinguishes between injuries and illnesses based on the nature of the precipitating event or exposure. Cases which result from instantaneous events are generally considered injuries, while cases which result from non-instantaneous events, such as a latent disease or cumulative trauma disorder, are considered illnesses. *Id.*

Under the former recordkeeping regulations, occupational injuries had to be recorded if they were non-minor in nature; that is, if they resulted in loss of consciousness, or required medical treatment, time off work, restriction of work, lost time, or transfer to another job. 61 FR 4036. However, all occupational illnesses had to be reported, regardless of severity. *Id.* This difference in the severity threshold for recording injuries and illnesses had, in the past, been based upon the particular phrasing of section 8(c)(2) of the Act:

> The Secretary * * * shall 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, restriction of work or motion, or transfer to another job.''

29 U.S.C. 657(c)(2). Because the severity criteria appear in the clause defining ''minor injuries,'' OSHA had construed the section to require recordation of all work-related illnesses, even those that do not meet the severity

workplace, receive treatment, and recover fully within a few weeks. At some future time, the worker may suffer another cut, bruise or rash from another workplace event. In such cases, it is clear that the two injuries or illnesses are unrelated events, and that each represents an injury or illness that must be separately evaluated for its recordability.

However, it is sometimes difficult to determine whether signs or symptoms are due to a new event or exposure, or are a continuance of an injury or illness that has already been recorded. This is an important distinction, because a new injury or illness requires the employer to make a new entry on the OSHA 300 Log, while a continuation of an old recorded case requires, at most, an updating of the original entry. Section 1904.6 of the final rule being published today explains what employers must do to determine whether or not an injury or illness is a new case for recordkeeping purposes.

The basic requirement at § 1904.6(a) states that the employer must consider an injury or illness a new case to be evaluated for recordability if (1) the employee has not previously experienced a recorded injury or illness of the same type that affects the same part of the body, or (2) the employee previously experienced a recorded injury or illness of the same type that affected the same part of the body but had recovered completely (all signs and symptoms of the previous injury or illness had disappeared) and an event or exposure in the work environment caused the injury or illness, or its signs or symptoms, to reappear.

The implementation question at § 1904.6(b)(1) addresses chronic work-related cases that have already been recorded once and distinguishes between those conditions that will progress even in the absence of workplace exposure and those that are triggered by events in the workplace. There are some conditions that will progress even in the absence of further exposure, such as some occupational cancers, advanced asbestosis, tuberculosis disease, advanced byssinosis, advanced silicosis, etc. These conditions are chronic; once the disease is contracted it may never be cured or completely resolved, and therefore the case is never ''closed'' under the OSHA recordkeeping system, even though the signs and symptoms of the condition may alternate between remission and active disease.

However, there are other chronic work-related illness conditions, such as occupational asthma, reactive airways dysfunction syndrome (RADs), and sensitization (contact) dermatitis, that recur if the ill individual is exposed to the agent (or agents, in the case of cross-reactivities or RADs) that triggers the illness again. It is typical, but not always the case, for individuals with these conditions to be symptom-free if exposure to the sensitizing or precipitating agent does not occur.

The final rule provides, at paragraph (b)(1), that the employer is not required to record as a new case a previously recorded case of chronic work-related illness where the signs or symptoms have recurred or continued in the absence of exposure in the workplace. This paragraph recognizes that there are occupational illnesses that may be diagnosed at some stage of the disease and may then progress without regard to workplace events or exposures. Such diseases, in other words, will progress without further workplace exposure to the toxic substance(s) that caused the disease. Examples of such chronic work-related diseases are silicosis, tuberculosis, and asbestosis. With these conditions, the ill worker will show signs (such as a positive TB skin test, a positive chest roentgenogram, etc.) at every medical examination, and may experience symptomatic bouts as the disease progresses.

Paragraph 1904.6(b)(2) recognizes that many chronic occupational illnesses, however, such as occupational asthma, RADs, and contact dermatitis, are triggered by exposures in the workplace. The difference between these conditions and those addressed in paragraph 1904.6(b)(1) is that in these cases exposure triggers the recurrence of symptoms and signs, while in the chronic cases covered in the previous paragraph, the symptoms and signs recur even in the absence of exposure in the workplace. This distinction is consistent with the position taken by OSHA interpretations issued under the former recordkeeping rule (see the *Guidelines* discussion below). The Agency has included provisions related to new cases/continuations of old cases in the final rule to clarify its position and ensure consistent reporting.

Paragraph 1904.6(b)(3) addresses how to record a case for which the employer requests a physician or other licensed health care professional (HCP) to make a new case/continuation of an old case determination. Paragraph (b)(3) makes clear that employers are to follow the guidance provided by the HCP for OSHA recordkeeping purposes. In cases where two or more HCPs make conflicting or differing recommendations, the employer is required to base his or her decision about recordation based on the most authoritative (best documented, best reasoned, or most persuasive) evidence or recommendation.

The final rule's provisions on the recording of new cases are nearly identical to interpretations of new case recordability under the former rule. OSHA has historically recognized that it is generally an easier matter to differentiate between old and new cases that involve injuries than those involving illnesses: the *Guidelines* stated that ''the aggravation of a previous injury almost always results from some new incident involving the employee * * * [w]hen work-related, these new incidents should be recorded as new cases on the OSHA forms, assuming they meet the criteria for recordability * * *'' (Ex. 2, p. 31). However, the *Guidelines* also stated that ''certain illnesses, such as silicosis, may have prolonged effects which recur over time. The recurrence of these symptoms should not be recorded as a new case on the OSHA forms. * * * Some occupational illnesses, such as certain dermatitis or respiratory conditions, may recur as the result of new exposures to sensitizing agents, and should be recorded as new cases.''

OSHA developed and included specific guidance for evaluating when cumulative trauma disorders (CTDs) (ergonomic injuries and illnesses, now known as musculoskeletal disorders, or MSDs) should be recorded as new cases in the *Ergonomics Program Management Guidelines For Meatpacking Plants* (Ex. 11, p. 15) which were published in 1990. These *Guidelines* provided:

> If and when an employee who has experienced a recordable CTD becomes symptom free (including both subjective symptoms and physical findings), any recurrence of symptoms establishes a new case. Furthermore, if the worker fails to return for medical care within 30 days, the case is presumed to be resolved. Any visit to a health care provider for similar complaints after the 30-day interval ''implies reinjury or reexposure to a workplace hazard and would represent a new case.''

Thus, the former rule had different ''new case'' criteria for musculoskeletal disorders than for other injuries and illnesses. (For the final rule's recording criteria for musculoskeletal disorders, see Section 1904.12.)

OSHA's recordkeeping NPRM proposed a single approach to the identification of new cases for all injuries and illnesses, including musculoskeletal disorders. The proposal would have required the recurrence of a pre-existing injury or illness to be considered a new case to evaluate for recordability if (1) it resulted from a

new work event or exposure, or (2) 45 days had elapsed since medical treatment, work restriction, or days away from work had ceased, and the last sign or symptom had been experienced. The proposed approach would, in effect, have extended the recurrence criteria for musculoskeletal disorders to all injury and illness cases, but would have increased the no-medical-intervention interval from 30 to 45 days. A recurrence of a previous work-related injury or illness would have been presumed, under the proposed approach, to be a new case if (1) it resulted from a new work accident or exposure, or (2) 45 days had elapsed since medical treatment had been administered or restricted work activity or days away had occurred and since the last sign or symptom had been experienced. This proposed presumption would have been rebuttable if there was medical evidence indicating that the prior case had not been resolved. In the proposal, OSHA also asked for input on the following questions related to new case recording:

> OSHA solicits comment on the appropriateness of the 45-day interval. Is 45 days too short or long of a period? If so, should the period be 30 days? 60 days? 90 days? or some other time period? Should different conditions (*e.g.* back cases, asthma cases etc.) have different time intervals for evaluating new cases?
>
> OSHA is also seeking input for an improved way to evaluate new cases. Should a new category of cases be created to capture information on recurring injuries and illnesses? One option is to add an additional ''check box'' column to the proposed OSHA Form 300 for identifying those cases that are recurrences of previously recorded injuries and illnesses. This would allow employers, employees and OSHA inspectors to differentiate between one time cases and those that are recurrent, chronic conditions. This approach may help to remove some of the stigma of recording these types of disorders and lead to more complete records. OSHA solicits input on this approach. Will a recurrence column reduce the stigma of recording these types of cases? Should recurrences be included in the annual summaries? Should a time limit be used to limit the use of a recurrence column?

In response to the views and evidence presented by commenters to the record, OSHA has decided not to adopt the proposed approach to the recording of new/recurring cases in the final rule. Commenters expressed a wide variety of views about the recording of recurring injury and illness cases. Some commenters favored the proposed approach as drafted. Others, however, objected to it on many grounds: (1) the time limit should be longer or shorter than the 45 days proposed; (2) the proposed approach would result in under- or overreporting; (3) it would conflict with workers' compensation requirements; (4) it was too restrictive (5) it would encourage excessive use of the health care system; and (6) it should be replaced by a physician or other licensed health care professional's opinion.

A number of commenters supported OSHA's proposed approach (see, *e.g.*, Exs. 15: 27, 65, 70, 151, 152, 154, 179, 180, 181, 185, 186, 188, 214, 331, 332, 336, 359, 387, 396, 424, 428). Representative of these comments was one from The Fertilizer Institute (TFI):

> TFI agrees with OSHA's proposed 45 day criterion for the recording of new cases. Concerning OSHA's solicitation of comments on whether different conditions should have different evaluation periods, TFI encourages OSHA to adopt a single time period for all conditions. Different evaluation periods for different conditions will lead to complexity and confusion without any resulting benefit to recordkeeping (Ex. 15: 154).

Other commenters supported the concept of using a time limit for determining new cases, but thought the number of days should be higher (see, *e.g.*, Exs. 15: 45, 49, 61, 82, 89, 131, 147, 184, 235, 331, 389). Some commenters generally opposed the time limit concept but made recommendations for longer time periods if OSHA decided in the final rule to adopt a time limit (see, *e.g.*, Exs. 15: 38, 79, 89, 111, 136, 137, 141, 194, 224, 246, 266, 278, 288, 299, 313, 335, 352, 353, 430). The longer intervals suggested by commenters included 60 days (see, *e.g.*, Exs. 15: 82, 389); 90 days (see, *e.g.*, Exs. 15: 38, 49, 79, 147, 184, 246, 299, 313, 331, 335, 352, 353, 430); 120 days (Ex. 15: 194); 180 days (see, *e.g.*, Exs. 15: 61, 111, 136, 137, 141, 224, 266, 278, 288); one year (Ex. 15: 131); and five years (Ex. 15: 89).

A large number of commenters opposed the proposed approach for identifying new cases that would then be tested for their recordability (see, *e.g.*, Exs. 15: 33, 38, 39, 41, 78, 79, 89, 95, 102, 107, 111, 119, 127, 133, 136, 137, 141, 153, 171, 176, 194, 199, 203, 224, 225, 231, 246, 266, 273, 278, 281, 288, 289, 299, 301, 305, 307, 308, 313, 335, 337, 341, 346, 348, 352, 353, 375, 395, 405, 410, 413, 424, 425, 428, 430, 440). Some commenters argued that the proposed 45-day interval was arbitrary (see, *e.g.*, Exs. 15: 119, 203, 289, 313, 352, 353, 395), that it conflicted with workers' compensation new case determinations (see, *e.g.*, Exs. 15: 38, 119, 136, 137, 141, 224, 266, 278), that the approach would not work in the case of chronic injury (see, *e.g.*, Exs. 33; 15: 176, 199, 231, 273, 299, 301, 305, 308, 337, 346, 348, 375), or that the proposed 45-day rule would result in over-reporting of occupational injuries and illnesses (see, *e.g.*, Exs. 15: 119, 127, 136, 137, 141, 171, 199, 224, 266, 278, 305, 337, 424, 425). The comments of the NYNEX Corporation (Ex. 15: 199) illustrate the general concerns of these commenters:

> We do not agree, however, with the second criterion of a symptom free 45 day period following medical treatment, restriction, or days away from work. This criterion fails to take into account the persistent nature of many chronic or recurring conditions, i.e., back strains, musculoskeletal disorders, where the symptoms may disappear for a period of time, but the underlying conditions are still present. If adopted, this criterion could cause injury and illness data to be artificially inflated with the onset of ''new'' cases, which in fact are recurrences of existing conditions. This in turn could lead to false epidemics and a diversion of resources from more legitimate workplace concerns.

On the other hand, William K. Principe of Constangy, Brooks & Smith, LLC (Ex. 15: 428) was concerned that the proposed method would result in fewer recordable cases:

> Since many employees will report that they continued to experience symptoms or that they continue to have good days and bad days, the new rule will result in many fewer recordable CTD [cumulative trauma disorder] cases. In fact, at some hand-intensive manual operations, the number of CTD cases should be drastically reduced under the proposal that 45 days must elapse since the last symptom. There is something fundamentally wrong with a recordkeeping system that one year shows a high incidence of CTDs and the next shows a dramatic decline, when the underlying conditions remain virtually identical.

United Parcel Service (Ex. 15: 424) stated that there should be no time limit to determining whether or not a case is a recurrence:

> In UPS's experience, however, it is a simple process to determine, by medical referral or by examining prior medical history, whether a condition is a recurrence. This has long been the practice, and indeed the [proposal] contemplates it will remain the practice through the first 44 days. It does not become any more complex on the 45th, 50th, or 100th day; and if in an individual employer's judgment it does, then the employer may of course report the condition as a new injury.

Three commenters disapproved of OSHA's approach because it would have been applicable to all recurrences and they believe that each case must be evaluated on its own merits (Exs. 15: 78, 184, 203). The International Dairy Foods Association (IDFA) described this concern succinctly: ''Each injury has its own resolution based on the injury, illness, degree, and numerous other factors that are characteristic of the

considered work related for recordkeeping purposes.

Paragraph 1904.10(b)(6) allows the employer not to record a hearing loss case if physician or other licensed health care professional determines that the hearing loss is not work-related or has not been aggravated by occupational noise exposure. This provision is consistent with the Occupational Noise standard, and it allows the employer not to record a hearing loss case that is not related to workplace events or exposures; examples of such cases are hearing loss cases occurring before the employee is hired or those unrelated to workplace noise.

The recordkeeping provisions in section 1904.10 of the final recordkeeping rule thus match the provisions of the Occupational Noise standard by (1) covering the same employers and employees (with the exception of cases occurring among employees not covered by that standard whose employers have audiometric test results and high-noise workplaces); (2) using the same measurements of workplace noise; (3) using a common definition of hearing loss, i.e., the STS; (4) using the same hearing loss measurement methods; (5) using the same definitions of baseline audiogram and revised baseline audiogram; (6) using the same method to account for age correction in audiogram results; and (7) allowing certain temporary threshold shifts to be set aside if a subsequent audiogram demonstrates that they are not permanent or a physician or other licensed health care professional finds they are not related to workplace noise exposure.

The Former Rule

The regulatory text of OSHA's former recordkeeping rule did not specifically address the recording of hearing loss cases, and the § 1910.95 Occupational Noise Standard does not address the recording of hearing loss cases on the OSHA Log. However, the 1986 *Recordkeeping Guidelines* provided clear advice to employers to the effect that work-related hearing loss was a recordable disorder, that it could be either an injury or illness, depending on the events and exposures causing the hearing loss, and that all hearing loss illnesses were required to be recorded, regardless of the industry in which the employer worked (Ex. 2, p. 4). However, the *Guidelines* did not provide specific guidance on the kinds of hearing test or audiogram results that would constitute a recordable, work-related hearing loss.

In 1990, OSHA considered issuing a Compliance Directive addressing the recording of hearing loss cases on employers' OSHA 200 Logs, but decided that the issue of the recording of hearing loss cases should be addressed through notice-and-comment rulemaking at the time of the revision of the recordkeeping rule. To address this topic in the interim before the final recordkeeping rule was issued, OSHA sent a memorandum to its field staff (June 4, 1991) to clarify its enforcement policy on the recording of occupational hearing loss and cumulative trauma disorders on the OSHA 200 Log, on the grounds that these cases ''have received national attention and require immediate clarification.'' The memorandum specified that ''OSHA will issue citations to employers for failing to record work related shifts in hearing of an average of 25 dB or more at 2000, 3000, and 4000 hertz (Hz) in either ear on the OSHA 200 Log.'' The interim enforcement policy was intended to provide a conservative approach to the issue until the recordkeeping rulemaking was completed. The interim policy stated that ''The upcoming revision of the recordkeeping regulations, guidelines and related instructional materials will address the recordability criteria for all work related injuries and illnesses.'' The memo also mentioned the use of standard threshold shifts (STS) results, saying:

> Employers are presently required by 29 CFR 1910.95 to inform employees in writing within 21 days of the determination of a Standard Threshold Shift (an average of 10 dB or more at 2000, 3000 and 4000 Hz in either ear) and to conduct specific follow-up procedures as required in paragraph (g) of the standard. Employers should be encouraged to use this information as a tracking tool for focusing noise reduction and hearing protection efforts.

The Proposal

The proposed recordkeeping criterion for recording a case of hearing loss (61 FR 4064) was an average shift of 15 decibels (dB) or more at 2000, 3000, and 4000 hertz in one or both ears after the employee's hearing loss had been adjusted for presbycusis (age-related hearing loss). OSHA proposed to permit employers to delete the record of the hearing loss injury or illness if a retest performed within 30 days indicated that the original shift was not permanent. Once a 15 dB work-related shift had occurred, however, OSHA proposed that the employee's baseline audiogram (for recordkeeping purposes) be adjusted to reflect that loss. A subsequent audiogram would have to reveal an additional 15 dB shift from the new or revised baseline value to be considered a new hearing loss injury or illness. OSHA proposed to presume work-relationship if an employee was exposed on the job to an 8-hour time-weighted average noise level equaling 85 dB(A) (61 FR 4064).

OSHA also raised several issues related to hearing loss recording in the proposal (61 FR 4064):

> The lowest action level in the noise standard is an average shift of 10 decibels or more at 2000, 3000 and 4000 hertz. OSHA is proposing the 15 decibel criteria for recordkeeping purposes to account for variations in the reliability of individual audiometric testing results.
>
> OSHA asks for input on which level of a shift in hearing should be used as a recording criteria; 10 decibels? 20 decibels? 25 decibels? For each level, what baseline should be used? Preemployment (original) baseline? Audiometric zero? Is adjusting for presbycusis appropriate?

Comments on the Proposal

OSHA's proposed recording criterion for hearing loss received more comments than the proposed criterion for any other type of injury or illness other than musculoskeletal disorders. The hearing loss comments cover a wide variety of issues, including which hearing test results should or should not be considered an OSHA recordable illness, the choice of baseline audiograms, retesting and persistence of hearing loss, determining work relatedness, the appropriateness of correcting audiograms for aging (presbycusis), and the role of physicians and other licensed health care professionals in the determination of recordable hearing loss cases. The issues raised by commenters are organized by topic and discussed below.

The Definition of Recordable Hearing Loss

There was limited support among commenters for OSHA's proposed 15 dB shift recording criterion (see, *e.g.*, Exs. 15: 50, 61, 84, 111, 113, 156, 188, 233, 281, 289, 349, 407). However, many of these commenters supported the use of a 15 dB shift as the recording criterion only if the final recordkeeping rule also reflected other changes, such as eliminating the correction for aging (see, *e.g.*, Exs. 15: 50, 188, 407) or limiting the recording of hearing loss to one case per worker per lifetime (Ex. 15: 349). For example, General Electric (Ex. 15: 349) suggested limiting the recording of hearing loss to one case per employee:

> GE supports recording an average standard threshold shift of 15 decibels (dB) or more at 2000, 3000, and 4000 hertz in one or both ears, adjusted for presbycusis and with a deletion upon retest as described. The establishment of the recording criteria at a level slightly higher than STS requiring action in the noise standards allows the

medical evaluation concludes that the TB infection did not arise as a result of occupational exposure, a physician or other licensed health care professional could use the CDC Guidelines or another method to investigate the origin of the case. If such an investigation resulted in information that demonstrates that the case is not related to a workplace exposure, the employer need not record the case. For example, such an investigation might reveal that the employee had been vaccinated in childhood with the BCG vaccine. The employer may wish, in such cases, to keep records of the investigation and determination.

Section 1904.12 Recording Criteria for Cases Involving Work-Related Musculoskeletal Disorders

Section 1904.12, entitled ''Recording criteria for cases involving work-related musculoskeletal disorders,'' provides requirements for recording work-related musculoskeletal disorders (MSDs). MSDs are defined in the final recordkeeping rule as ''injuries and disorders of the muscles, nerves, tendons, ligaments, joints, cartilage, and spinal discs.''

Paragraph 1904.12(a) establishes the employer's basic obligation to enter recordable musculoskeletal disorders on the Log and to check the musculoskeletal disorder column on the right side of the Log when such a case occurs. The paragraph states that, ''[i]f any of your employees experiences a recordable work-related musculoskeletal disorder (MSD), you must record it on the OSHA 300 Log by checking the ''musculoskeletal disorder'' column.'' Paragraph 1904.12(b)(1) contains the definition of 'musculoskeletal disorder' used for recordkeeping purposes. Paragraphs 1904.12(b)(2) and 1904.12(b)(3) provide answers to questions that may arise in implementing the basic requirement, including questions on the work-relatedness of MSDs.

The Proposal

The proposal defined MSDs as ''injuries and illnesses * * * result[ing] from ergonomic hazards,'' such as lifting, repeated motion, and repetitive strain and stress on the musculoskeletal system. (61 FR 4046) This language was derived, in part, from the definition of the term ''cumulative trauma disorders (CTDs),'' used in OSHA's *Ergonomics Program Management Guidelines For Meatpacking Plants* (hereafter ''*Meatpacking Guidelines*''). The 1990 *Meatpacking Guidelines* used the term CTDs to cover ''health disorders arising from repeated biomechanical stress due to ergonomic hazards.'' (Ex. 11 at p. 20.)

Appendix B to the recordkeeping rule proposed requirements for employers to follow when recording MSDs. The proposed requirements would have required recording: (1) whenever an MSD was diagnosed by a health care provider, or (2) whenever an employee presented with one or more of the objective signs of such disorders, such as swelling, redness indicative of inflammation, or deformity. When either of these two criteria was met, or when an employee experienced subjective symptoms, such as pain, and one or more of the general criteria for recording injuries and illnesses (i.e., death, loss of consciousness, days away from work, restricted work, job transfer, or medical treatment) were met, an MSD case would have been recordable under the proposal.

The proposal also contained special provisions for determining whether hot and cold treatments administered to alleviate the signs and symptoms of MSDs would be considered first aid or medical treatment. Under the former recordkeeping rule, the application of hot and cold treatment on the first visit to medical personnel was considered first aid, while the application of such treatment on the second or subsequent visit was considered to constitute medical treatment. OSHA proposed to revise this provision to consider hot or cold therapy to be first aid for all injuries and illnesses except MSDs, but to consider two or more applications of such therapy medical treatment if used for an MSD case (61 FR 4064). Whether hot and cold therapies constitute first aid or medical treatment is addressed in detail in section 1904.7 of the final recordkeeping rule. As discussed in that section, under the final rule, hot and cold therapies are considered first aid, regardless of the type of injury or illness to which they are applied or the number of times such therapy is applied.

The Final Rule's Definition of Musculoskeletal Disorder

The preamble to the proposal described an MSD as an injury or disorder ''resulting from'' ergonomic hazards. However, OSHA has not carried this approach forward in the final rule because it would rely on an assessment of the cause of the injury, rather than the nature of the injury or illness itself.

Paragraph 1904.12(b)(1) of the final rule therefore states, in pertinent part, that MSDs ''are injuries and disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs. MSDs do not include injuries caused by slips, trips, falls, or other similar accidents.'' This language clarifies that, for recordkeeping purposes, OSHA is not defining MSDs as injuries or disorders caused by particular risk factors in the workplace. Instead, the Agency defines MSDs as including all injuries to the listed soft tissues and structures of the body regardless of physical cause, unless those injuries resulted from slips, trips, falls, motor vehicle accidents, or similar accidents. To provide examples of injuries and disorders that are included in the definition of MSD used in the final rule, Section 1904.12(b)(1) contains a list of examples of MSDs; however, musculoskeletal conditions not on this list may also meet the final rule's definition of MSD.

Determining the Work-Relatedness of MSDs

Section 1904.12(b)(2) provides that ''[t]here are no special criteria for determining which musculoskeletal disorders to record. An MSD case is recorded using the same process you would use for any other injury or illness.'' This means that employers must apply the criteria set out in sections 1904.5–1904.7 of the final rule to determine whether a reported MSD is ''work-related,'' is a ''new case,'' and then meets one or more of the general recording criteria. The following discussion supplements the information provided in the summary and explanation accompanying section 1904.5, to assist employers in deciding which MSDs are work-related.

For MSDs, as for all other types of injuries and illnesses, the threshold question is whether the geographic presumption established in paragraph 1904.5(a) applies. The presumption applies whenever an MSD or other type of injury or illness ''results from an event or exposure in the work environment.'' For recordkeeping purposes, an ''event'' or ''exposure'' includes any identifiable incident, occurrence, activity, or bodily movement that occurs in the work environment. If an MSD can be attributed to such an event or exposure, the case is work related, regardless of the nature or extent of the ergonomic risk factors present in the workplace or the worker's job.

This position is not new to the final rule; it is clearly reflected in the 1986 BLS *Recordkeeping Guidelines.* The *Guidelines* contain the following discussion of the applicability of the work-relatedness presumption to back injuries and hernia cases, which reflects OSHA's position under this final rule:

> Back and hernia cases should be evaluated in the same manner as any other case.

and injury data are particularly useful at the establishment level, where employers and employees can use them to evaluate the establishment's health experience and compare it to the national experience or to the experience of other employers in their industry or their own prior experience. The data are also useful to OSHA personnel performing worksite inspections, who can use this information to identify potential health hazards at the establishment.

Under the final rule, the OSHA 300 form has therefore been modified specifically to collect information on five types of occupational health conditions: musculoskeletal disorders, skin diseases or disorders, respiratory conditions, poisoning, and hearing loss. There is also an ''all other illness'' column on the Log. To record cases falling into one of these categories, the employer simply enters a check mark in the appropriate column, which will allow these cases to be separately counted to generate establishment-level summary information at the end of the year.

OSHA rejected the option suggested by the UBC and others (see, *e.g.*, Exs. 20, 15: 27, 369, 371)—to add a single column that would include a code for different types of conditions—because such an approach could require employers to scan and separately tally entries from the column to determine the total number of each kind of illness case, an additional step that OSHA believes would be unduly burdensome. Because the scanning and tallying are complex, this approach also would be likely to result in computational errors.

In the final rule, two of the illness case columns on the OSHA 300 Log are identical to those on the former OSHA Log: a column to capture cases of skin diseases or disorders and one to capture cases of systemic poisoning. The single column for respiratory conditions on the new OSHA Form 300 will capture data on respiratory conditions that were formerly captured in two separate columns, i.e., the columns for respiratory conditions due to toxic agents (formerly column 7c) and for dust diseases of the lungs (formerly column 7b). Column 7g of the former OSHA Log provided space for data on all other occupational illnesses, and that column has also been continued on the new OSHA 300 Log. On the other hand, column 7e from the former OSHA Log, which captured cases of disorders due to physical agents, is not included on the new OSHA Log form. The cases recorded in former column 7e primarily addressed heat and cold disorders, such as heat stroke and hypothermia; hyperbaric effects, such as caisson disease; and the effects of radiation, including occupational illnesses caused by x-ray exposure, sun exposure and welder's flash. Because space on the form is at a premium, and because column 7e was not used extensively in the past (recorded column 7e cases accounted only for approximately five percent of all occupational illness cases), OSHA has not continued this column on the new OSHA 300 Log.

OSHA has, however, added a new column specifically to capture hearing loss cases on the OSHA 300 Log. The former Log included a column devoted to repeated trauma cases, which were defined as including noise-induced hearing loss cases as well as cases involving a variety of other conditions, including certain musculoskeletal disorders. Several commenters recommended that separate data be collected on hearing loss (see, *e.g.*, Exs. 20, 53X, p.76, 15: 31). Dedicating a column to occupational hearing loss cases will provide a valuable new source of information on this prevalent and often disabling condition. Although precise estimates of the number of noise-exposed workers vary widely by industry and the definition of noise dose used, the EPA estimated in 1981 that about 9 million workers in the manufacturing sector alone were occupationally exposed to noise levels above 85 dBA. Recent risk estimates suggest that exposure to this level of noise over a working lifetime would cause material hearing impairment in about 9 percent, or approximately 720,000, U.S. workers (NIOSH, 1998). A separate column for occupational hearing loss is also appropriate because the BLS occupational injury and illness statistics only report detailed injury characteristics information for those illness cases that result in days away from work. Because most hearing loss cases do not result in time off the job, the extent of occupational hearing loss has not previously been accurately reflected in the national statistics. By creating a separate column for occupational hearing loss cases, and clearly articulating in section 1904.10 of the final rule the level of hearing loss that must be recorded, OSHA believes that the recordkeeping system will, in the future, provide accurate estimates of the incidence of work-related loss of hearing among America's workers.

Column on the Log for Musculoskeletal Disorders

Column 7f of the former Log also was intended to capture cases involving repetitive motion conditions, such as carpal tunnel syndrome, tendinitis, etc. These conditions have been called by many names, including repetitive stress injuries, cumulative trauma disorders, and overuse injuries. OSHA has decided to include a separate column on the Log for musculoskeletal disorders (MSDs), the preferred term for injuries and illnesses of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs, including those of the upper extremities, lower extremities, and back. Many MSDs are caused by workplace risk factors, such as lifting, repetitive motion, vibration, overexertion, contact stress, awkward or static postures, and/or excessive force. The repeated trauma column on the former OSHA Log did not permit an accurate count of musculoskeletal disorders, both because other conditions, such as occupational hearing loss, were included in the definition of repeated trauma and because many musculoskeletal disorders—including lower back injuries—were excluded. The column was limited to disorders classified as illnesses, but OSHA instructed employers to record all back cases as injuries rather than illnesses, even though back disorders are frequently associated with exposure to occupational stresses over time (Ex. 2, p. 38).

In its proposal, OSHA asked for comment on the need for a separate column containing information on musculoskeletal disorder (MSD) cases such as low back pain, tendinitis and carpal tunnel syndrome. OSHA received numerous comments opposing the addition of an MSD column to the Log (see, *e.g.*, Exs. 15: 9, 60, 78, 105, 122, 136, 137, 141, 201, 218, 221, 224, 266, 278, 305, 308, 318, 346, 395, 397, 406, 414, 430). These commenters objected on several grounds: because they believed that including such a column would make the forms more complex (Ex. 15: 414), because the column would have ''no utility'' (Ex. 15: 397), or because the column would only capture a small percentage of total MSD cases (Ex. 15: 210). Several commenters objected because they believed that an MSD column would duplicate information already obtained through the case description (see, *e.g.*, Exs. 15: 9, 105, 210, 221, 406). For example, the law firm of Ogletree, Deakins, Nash, Smoak & Stewart offered comments on behalf of a group of employers known as the ODNSS Coalition, remarking that ''The log and system of OSHA recordkeeping would not benefit from a separate column for musculoskeletal disorders. The proposed rules for recording these disorders are clear, and

the United Technologies Company (UTC) stated that ''[U]TC does not believe that the recording or not recording of restricted days will influence management's decision to temporarily assign employees to restricted work. The decision to place an employee on restricted work is driven by workers' compensation costs rather than OSHA incidence rates'' (Ex. 15: 440). The American Textile Manufacturers Association (ATMI) agreed:

> [A]TMI believes that this will not provide an incentive for employers to temporarily assign injured or ill workers to jobs with little or no productive value to avoid recording a case as one involving days away from work. The restricted work activity day count is in no way related to an employer wanting to avoid having days away from work. Workers' compensation claims and, for the most part, company safety awards are based on the number of ''lost-time accidents.'' The counting of restricted work days has never been an incentive or disincentive for these two key employer safety measures and ATMI believes that this will not change. (Ex. 15: 156)

Other commenters, however, believed there could be incentive effects (see, *e.g.*, Exs. 15: 13, 31, 74, 111, 359, 369).

In the final rule, OSHA has decided to require employers to record the number of days of restriction or transfer on the OSHA 300 Log. From the comments received, and based on OSHA's own experience, the Agency finds that counts of restricted days are a useful and needed measure of injury and illness severity. OSHA's decision to require the recording of restricted and transferred work cases on the Log was also influenced by the trend toward restricted work and away from days away from work. In a recent article, the BLS noted that occupational injuries and illnesses are more likely to result in days of restricted work than was the case in the past. From 1978 to 1986, the annual rate in private industry for cases involving only restricted work remained constant, at 0.3 cases per 100 full-time workers. Since 1986, the rate has risen steadily to 1.2 cases per 100 workers in 1997, a fourfold increase. At the same time, cases with days away from work declined from 3.3 in 1986 to 2.1 in 1997 (Monthly Labor Review, June 1999, Vol. 122. No. 6, pp. 11–17). It is clear that employers have caused this shift by modifying their return-to-work policies and offering more restricted work opportunities to injured or ill employees. Therefore, in order to get an accurate picture of the extent of occupational injuries and illnesses, it is necessary for the OSHA Log to capture counts of days away from work *and* days of job transfer or restriction.

The final rule thus carries forward OSHA's longstanding requirement for employers to count and record the number of restricted days on the OSHA Log. On the Log, restricted work counts are separated from days away from work counts, and the term ''lost workday'' is no longer used. OSHA believes that the burden on employers of counting these days will be reduced somewhat by the simplified definition of restricted work, the counting of calendar days rather than work days, capping of the counts at 180 days, and allowing the employer to stop counting restricted days when the employees job has been permanently modified to eliminate the routine job functions being restricted (see the preamble discussion for 1904.7 General Recording Criteria).

Separate 300 Log Data on Occupational Injury and Occupational Illness

OSHA proposed (61 FR 4036–4037) to eliminate any differences in the way occupational injuries, as opposed to occupational illnesses, were recorded on the forms. The proposed approach would not, as many commenters believed, have made it impossible to determine the types and number of cases of occupational illnesses at the aggregated national level, although it would have eliminated the distinction between injuries and illnesses at the individual establishment level. In other words, the proposed approach would have involved a coding system that the BLS could use to project the incidences of several types of occupational illnesses nationally, but would not have permitted individual employers to calculate the incidence of illness cases at their establishments.

Many commenters reacted with concern to the proposal to eliminate, for recording purposes, the distinction between occupational injuries and occupational illnesses, and to delete the columns on the Log used to record specific categories of illnesses (see, *e.g.*, Exs. 15: 213, 288, 359, 369, 407, 418, 429, 438). For example, Con Edison stated that ''Distinguishing between injuries and illness is a fundamental and essential part of recordkeeping'' (Ex. 15: 21), and the National Institute for Occupational Safety and Health (NIOSH) discussed the potentially detrimental effects on the Nation's occupational injury and illness statistics of such a move, stating ''For occupational health surveillance purposes * * * NIOSH recommends that entries on the OSHA log continue to be categorized separately as illnesses and injuries'' (Ex. 15: 407).

Many commenters also criticized OSHA's proposal to delete from the Log the separate columns for 7 categories of occupational illnesses (see, *e.g.*, Exs. 20, 35, 15: 27, 283, 371). These commenters pointed out that these categories of illnesses have been part of the recordkeeping system for many years and that they captured data on illness cases in 7 categories: occupational skin diseases or disorders, dust diseases of the lungs, respiratory conditions due to toxic agents, poisoning (systemic effects of toxic materials), disorders due to physical agents, disorders associated with repeated trauma, and all other occupational illnesses. Typical of the views of commenters concerned about the proposal to delete these columns from the Log was the comment of the United Auto Workers: ''OSHA should abandon the plan to change the OSHA 200 form to eliminate illness categories. The illness categories in the summary presently provide critically necessary information about cumulative trauma disorders, and useful information about respiratory conditions'' (Ex: 15: 348).

Several commenters supported the proposed concept of adding a single column to the form on which employers would enter illness codes that would correspond to the illness conditions listed in proposed Appendix B, which could then be decoded by government classifiers to project national illness incidence rates for coded conditions (see, *e.g.*, Exs. 20, 15: 27, 369, 371). For example, the United Brotherhood of Carpenters and Joiners of America stated:

> The UBC would recommend [that].* * * A column should be added for an identification code for recordable conditions from Appendix B. (Eg. 1 = hearings loss, 2 = CTD's. 3 = blood lead. Etc.) (Ex. 20).

After a thorough review of the comments in the record, however, OSHA has concluded that the proposed approach, which would have eliminated, for recording purposes, the distinction between work-related injuries and illnesses, is not workable in the final rule. The Agency finds that there is a continuing need for separately identifiable information on occupational illnesses and injuries, as well as on certain specific categories of occupational illnesses. The published BLS statistics have included separate estimates of the rate and number of occupational injuries and illnesses for many years, as well as the rate and number of different types of occupational illnesses, and employers, employees, the government, and the public have found this information useful and worthwhile. Separate illness