

# *SPECIAL* Report



NATIONAL ROOFING CONTRACTORS ASSOCIATION

January 3, 2000

Dear Member:

In late November 1999, the Occupational Safety and Health Administration (OSHA) published its Proposed Rule for an ergonomics standard (64 CFR 65768, Nov. 23, 1999). Comments about the proposal are due by Feb. 1, 2000, and public hearings are scheduled to begin Feb. 22.

Although construction employers are specifically exempted from this proposed standard, OSHA has invited comments about whether that exemption is appropriate, and says, more than once, that a construction standard is being considered. In addition, OSHA asks for comments about whether certain activities, such as manual material handling, should be covered for all industries.

In the proposal, OSHA invites comments about a number of issues that are important to all employers, and we encourage members and affiliate organizations to take this opportunity to go on record with the agency about any proposal to create additional employer responsibilities for reducing or eliminating injuries related to repetitive motion and musculoskeletal disorders (MSDs). NRCA will be offering comments on the proposed standard; generally, our position will be that the proposed rule is flawed in its design; is so vague that it will be impossible to comply with; is unduly burdensome; and includes cost estimates, developed by OSHA, that are absurdly understated.

In addition, NRCA is a member of the National Coalition on Ergonomics, an organization working for a more reasonable approach to addressing workplace ergonomic injuries. The Coalition has asked OSHA for an extension to the comment period; we believe that allowing just nine weeks to prepare comments on a 310-page proposal is terribly insufficient.

## **Background**

OSHA has been considering an ergonomics standard for years but has been plagued with difficulties in getting one developed for several reasons. First, ergonomics is an inexact science, and there is no consensus about exactly how MSDs develop or how widespread they are in the workplace. Second, most reasoned estimates at the true cost of a standard suggest that significantly reducing MSDs in the workplace is extremely expensive; the Small Business Administration, for example, estimates the cost to small businesses alone will exceed \$15 billion annually. And third, there is no single, sure way to reduce or eliminate MSDs.

In this proposed standard, OSHA overcomes these obstacles by putting the burden for identifying and reducing those risks squarely on employers, without, unfortunately, offering any specifics about how to do either. Further, OSHA estimates that the standard will actually represent a net savings to employers, by virtue of reduced workers' compensation costs.

## **Coverage of the Proposed Standard**

OSHA's proposed standard applies to all general industry employers with workers involved in manual handling or manufacturing production jobs and any other general industry employer with one or more workers who experience a covered work-related MSD. Construction employers are among those who are not included in this proposed standard, but are identified as being under consideration for a separate standard.

For an MSD to be considered “covered” for purposes of triggering employer obligations under the proposed standard, the injury or illness must meet three criteria. First, it must (i) be diagnosed by a health care professional, (ii) result in a positive physical finding or (iii) be serious enough to require medical treatment, days away from work or assignment to light-duty work (i.e., it must be an OSHA-recordable injury or illness). Second, the MSD must be directly related to an employee’s job. Third, it must be specifically connected to activities that form the core or a significant part of a worker’s job. Under the proposed standard, even one covered MSD will bring an employer within the standard’s full compliance obligations.

### **Requirements of the Standard**

OSHA’s proposed standard imposes different obligations for every employer, depending on the type of work his employees perform, the existence of any ergonomics programs and the company’s MSD experience. A single company-wide program covering all jobs will not comply with the standard; instead, employers must tailor a separate program for each job. And regardless of whether there are any reported MSDs, employers with manual material handling or manufacturing production jobs are required to establish “basic” ergonomics programs, consisting of management leadership, employee participation, and hazard information and reporting.

If only one employee in a manufacturing, manual material handling or general industry job experiences a covered MSD, the employer is required to implement a “full” ergonomics program unless he can correct the ergonomic hazard with a “quick fix” -- a response to a problem that can be “fixed” right away without the need for a full program. A quick fix must eliminate the hazard within 90 days, and the employer must verify that the quick fix has worked.

A full ergonomics program requires five elements in addition to the elements required in a basic program, as follows:

1. Job hazard analysis and control
2. Training
3. MSD management for workers with covered injuries
4. Program evaluation
5. Record keeping

The full program provisions are quite burdensome. For example, it becomes an employer’s responsibility to evaluate all “problem” jobs for ergonomic risk factors, review his entire program every three years, consult with employees about the program’s effectiveness and correct any deficiencies. Employers are also required, under the MSD management component, to provide prompt responses to injured employees; provide access to health professionals; provide information to health professionals about the jobs and MSD hazards encountered; and obtain written opinions from health professionals about how to manage employees’ recoveries. Employers must provide “work restriction protection” (WRP) during recovery periods. WRP is 100 percent pay and benefits for employees put on light-duty work and 90 percent pay and 100 percent benefits for employees who must be removed from existing work duties. WRP benefits must be maintained for six months or until an employee can return to work, whichever occurs first.

OSHA’s proposed standard offers little guidance in terms of how to measure compliance. Instead, the standard requires an employer to create controls that eliminate or “materially reduce” MSD hazards, without defining what is meant by materially reduce.

### **Cost Estimates**

OSHA estimates that the standard will prevent some 300,000 MSDs, saving employers about \$9 billion in workers’ compensation expenses, while costing only \$4.2 billion annually to implement. According to OSHA, it will cost employers an average of \$150 per year per work station to get a work station fixed.

Some employer organizations have put the actual cost at five to 10 times OSHA’s estimate.

## Conclusion

Even though OSHA's proposed standard will not -- at least initially -- apply to construction employers, if it is adopted it will become the model for future standards that will likely apply to construction employers. NRCA believes that the proposed standard is flawed in several ways:

- The triggering mechanism -- one recordable MSD injury -- can go into effect even if the injury is not work-related, so long as it is recorded. Many employers, following OSHA's advice, record injuries they believe to be unrelated to work; this would be enough to trigger compliance with the full ergonomics program even if an employer were ultimately proved right, i.e., an employee's injury was found to be unrelated to work.
- There are no good criteria for measuring "elimination" or "material reduction" in MSD hazards. These will always be judgment calls, left to an OSHA inspector, even though many ergonomic corrections require long periods of time to evaluate.
- The "work restriction provisions" exceed most states' workers' compensation benefits, and go far beyond OSHA's statutory mandate. These provisions would create incentives for employees to report injuries and become an administrative nightmare for employers.
- OSHA's cost estimates don't account for such things as lost productivity. Imagine the real cost, for example, for an hourly employee who must go on light-duty work for an indefinite period of time. OSHA's \$150 per work station estimate doesn't consider these costs.

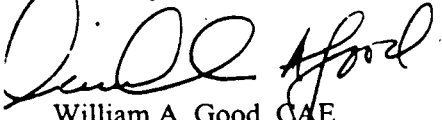
We strongly encourage all members and affiliate organizations to share their thoughts about OSHA's proposed ergonomics standard with OSHA, with as much specificity as possible, by writing to:

OSHA Docket Office  
Docket No. S-777  
U.S. Department of Labor  
200 Constitution Ave., NW, Room N-2625  
Washington, DC 20210

Comments should be submitted in duplicate.

As always, feel free to call us with your questions, comments and concerns.

Sincerely,



William A. Good, CAE  
Executive Vice President

P.S. The page that follows includes a list of points that you may want to include if you choose to submit comments to OSHA. Specific arguments are always more helpful than generalities.

## **Proposed OSHA Ergonomics Standard:**

### **Key Points**

- OSHA's cost estimate does not include productivity losses from "fixing" jobs with ergonomic hazards, nor does it include costs for "work restriction protection," such as when an employee receives 100 percent pay and benefits while doing light-duty work.

In addition, if the requirements of the standard really would save employers money, they would have been implemented long ago.

- The proposed standard requires employers, when they implement a "full ergonomics program," to eliminate or materially reduce the risk of musculoskeletal injury -- without defining what "materially reduce" means and without telling employers how to achieve the goal.
- The proposed standard provides incentives for employees to report ergonomic injuries, because they are eligible for full pay and benefits while being assigned light-duty work -- or even while being removed from work.
- Employers, on the other hand, will have incentives to avoid recording injuries, because a single recordable MSD injury can trigger a burdensome and expensive set of requirements. This goes against what OSHA typically advises, which is to record all injuries.
- It is impossible to imagine how an ergonomics standard could be realistically applied to the construction industry, where there are no fixed work stations, and where manual material handling is a core part of the job. It will be far more useful to rely on training and education than on inspect-and-fine compliance to improve the workplace.
- There are no known solutions to common workplace activities that may produce ergonomic injuries. MSDs can result from such things as lifting a single five-pound box, or turning too suddenly. Without providing any specific guidance as to how to correct these activities, the standard places the employer in an impossible situation.