



March 30, 2010

U.S. Occupational Safety & Health Administration
Docket Office
Room N2625
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

**RE: OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION
DOCKET NO. OSHA-2009-0044**

The National Association of Chemical Distributors (NACD) is pleased to provide the following input regarding the Proposed Rulemaking by the U.S. Occupational Safety and Health Administration (OSHA) on occupational safety and illness recording and reporting requirements.

NACD represents more than 240 chemical distribution companies throughout North America. These companies operate approximately 1,500 facilities and employ over 20,500 people. NACD members represent between 80% to 90% of the chemical distribution facilities in the nation and more than 90% of the industry's gross revenue. NACD member companies have established themselves as leaders in health, safety, security, and environmental performance through implementation of Responsible Distribution established in 1991 as a condition of membership in NACD. Responsible Distribution is a third-party verified management practice. Among the Guiding Principles of Responsible Distribution, by which each NACD member pledges to manage their businesses, is a commitment to operate their facilities in a manner that protects the health and safety of their employees, the public, and the environment. Additionally, each member pledges to work with customers, in accordance with manufacturer recommendations, on product stewardship including handling, use, transportation, and disposal of chemicals.

The membership includes small businesses as well as regional and national companies. Handling, storing, repackaging, and transporting hazardous substances are an integral part of the chemical distribution business. Annually, NACD members deliver 81 billion pounds of product in approximately 5.3 million chemical distribution shipments, while traveling over 199 million miles.

According to OSHA's annual data on workplace injuries and illnesses, chemical distribution is one of the safest industries in wholesale trade. Additionally, similar data annually collected by NACD show positive results in our members' health and safety performance. NACD publicly reports its membership's aggregate data at www.ResponsibleDistribution.com.

**COMMENTS BY THE
NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS
REGARDING THE U.S. OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION'S
PROPOSED RULEMAKING SEEKING PUBLIC INPUT ON THE REVISION OF THE
OCCUPATIONAL INJURY AND ILLNESS RECORDING AND REPORTING REGULATION
TO RESTORE A MUSCULOSKELETAL DISORDERS (MSD) COLUMN TO THE OSHA 300
LOG.**

[DOCKET NO. OSHA-2009-0044]

NACD has serious concerns with OSHA's proposal to restore a column to the OSHA 300 Log that would require employers to record work-related musculoskeletal disorders (MSD). The MSD requirement would place an undue burden on the chemical distribution industry, specifically small business distributors, many of whom do not have the expertise to fully comply with this ruling. In addition, according to several NACD members, OSHA's cost and time estimates relating to the MSD requirement are grossly unrealistic. OSHA's definition of MSD is vague and confusing, which could also lead to serious difficulty in compliance with this rule.

The following input was developed with and is based on information from NACD members, who have the technical expertise and first-hand experience in these matters.

1) Difficulty Assessing a Work-Related MSD

The purpose of the OSHA 300 Log is to record illnesses and injuries experienced as a result of work. This Log has been an effective way to clearly track *work-related* injuries and illnesses. A requirement to track MSD injuries and illnesses is not nearly as clear because it is extremely difficult to determine whether an MSD is work or non-work related. Accurately reporting chronic and acute MSDs is not adequately addressed in this proposed rule and could lead to confusion and lack of compliance.

The proposed rule lists several examples of MSDs, including "Carpal tunnel syndrome, rotator cuff syndrome, and low back pain." NACD Members have expressed concerns with identifying chronic MSD that could be associated with out-of-work activities. For instance, a chemical distribution company employee responsible for lifting and packing products might regularly engage in physical activity outside of work, like tennis or basketball, that results in repeated stress on ligaments and bones. The employee could be suffering from a chronic MSD as a result of the lifting and packing motions in work, the tennis or basketball activities, or a combination of both in and out of work activities. For this reason, NACD believes that it is not only impractical, but also inappropriate for OSHA to require non-medically trained individuals to identify the underlying cause of a condition and report it in a separate column on the OSHA 300 Log. If the condition is clearly work-related, it will have already been captured in the current format. At the very least, OSHA must clarify the definition of MSD and address the reporting requirements for in and out of work acute and chronic MSD.

2) Additional Cost to Employers

Much of the concern from NACD members on the proposed rule focuses on the economic impact. OSHA's estimate of an extra 6 minutes in time for the first year and 1 minute in subsequent years, as well as the \$4.00 first year and \$.67 subsequent year cost, is grossly inadequate and does not take into account new systems and processes that must be put into place as a result of this rule. Examples of some of the costs reported by NACD Members include:

Updated Software Costs: Several NACD members have policies in place that require company facilities to record accident and injury information via an electronic database. That information is then sent to that member's corporate headquarters where it is analyzed on a quarterly basis, and used to determine any potential need for updates to workplace safety standards. One NACD member with multiple facilities around the country estimated that the database changes alone to account for an MSD column would be at least \$6,000. Depending on the complexity of the database, those costs could be even higher.

Employee Screening: Depending on state labor law, the MSD proposal could lead to employers initiating pre-screening of potential employees for existing MSD before hiring. One NACD Member listed an increase in potential costs in medical screening by as much as \$600 to \$1,300 depending on the screening medical office and location. One NACD small business Member with just over 65 employees estimated that the cost of a potential screening program could be between \$40,800 and \$88,400. Also, members have expressed concerns over the potential legal costs associated with instituting a screening program, if allowed under their state laws. NACD requests clarification as to OSHA's position on the potential for pre-screening of employees for MSD and any costs associated with MSD employee pre-screening.

Staff Time: OSHA's estimate regarding time spent by employers to implement an MSD policy does not take into account the issues raised above (Software updates and employee screening), as well as the time and resources necessary to assess *in vs. out* of work MSD (See Difficult Assessing a Work-Related MSD above). Many NACD members are small businesses with limited regulatory staff expertise. The proposed rule, which includes possible MSD like Sciatica, Epicondylitis, and Raynaud's phenomenon, would be overly burdensome and would in many cases require the hiring of an additional staff member to ensure compliance.

3) *Potential for Larger Ergonomics Regulation*

NACD is concerned that the proposed rule, which will result in a negative economic impact for the chemical distribution industry, is a prelude towards a more expansive and burdensome ergonomics framework. We request that OSHA clarify in its final rule the potential uses, if any, for an MSD column outside of its stated purpose of accurate data collection for the Bureau of Labor Statistics.

Thank you for the opportunity to comment. If you have any questions, or require any additional information, please do not hesitate to contact me at 703/527-6223.

Respectfully Submitted

Christopher Parinello
Manager, Government Affairs
NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS
1555 Wilson Boulevard
Suite 700
Arlington, VA 22209