

March 2000

"OSHA's New Ergonomics Standard: A Controversial Proposal" by Scott Arquilla

In late November of 1999, the Occupational Safety and Health Administration (OSHA) published its long delayed Proposed Ergonomics Standard (the "proposed standard") in the Federal Register, 64 Fed. Reg. 65768 (Nov. 23, 1999). Although it is not in effect at this time, the proposed standard is in the rulemaking stage with public hearings scheduled to begin March 13 and April 11, 2000 in Washington DC and Chicago, respectively. (A third hearing, date to be determined, will also be held in Portland, Oregon.) The impact of the proposed standard, if and when it ever becomes effective, is expected to be significant and far-reaching for those of us in the truss industry. The purpose of this article is to familiarize readers with the proposed standard's basic provisions in hopes of fully appreciating the impact of compliance requirements.

WHAT IS AN MSD?

OSHA is concerned about the rise of Musculoskeletal Disorders (MSDs) in the workplace. Per the proposed standard, an MSD is an injury or disorder of soft tissues of the body (i.e. muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs). MSDs do not include injuries caused by slips, trips, falls or other accidents. Examples of MSDs include carpal tunnel syndrome, rotator cuff syndrome, De Quervain's disease, trigger finger, tarsal tunnel syndrome, sciatica, epicondylitis, tendinitis, Raynaud's phenomenon, carpet layer's knee, herniated spinal disc and low back pain, among others.

The proposed standard applies to industries whose employees work in "manufacturing" or "manual handling" jobs. As defined, manufacturing jobs are vocations in which employees perform "the physical work activities" of producing a product and in which these activities make up a significant amount of their work time. Manual handling jobs are those in which forceful manual handling (e.g. forceful lifting/lowering, pushing/pulling or carrying) is a core element of the employee's job. In our industry, virtually all jobs would be covered by the proposed standard. Interestingly enough, however, the proposed standard does not apply to agricultural, construction or maritime operations.

For an MSD to be covered for purposes of triggering employer obligations under the proposed standard, the injury or illness must meet three criteria:

- It must (a) be diagnosed by a health care professional (HCP), (b) result in a positive physical finding or (c) be serious enough to require medical treatment, days away from work or assignment to light duty (i.e., it must be a recordable injury or illness per OSHA guidelines).
- It must be directly related to the employee's job.
- It must be directly connected to activities that form the core or significant part of the employee's job.

Under the proposed standard, just one covered MSD will bring an employer within the new compliance obligation.

THE "BASIC" PROGRAM

Companies must tailor a separate program for each job-type, as one company-wide program covering all jobs will not comply. All employers will be required to establish "basic" ergonomics programs consisting of two elements:

- Management leadership and employee participation. Employers are required to designate an individual to be responsible for ergonomics and to supply resources and training for the program, ensure that the company's policies do not discourage employees from reporting problems and advise employees how they can become involved in the program.
- Hazard information and reporting. Employers are required to provide employees periodically with information relating to ergonomics, stress the importance of reporting, set up a formal system for employees to report signs and symptoms of MSDs and have employers respond promptly to any and all reports.

FROM A "QUICK FIX" TO THE "FULL" PROGRAM

If only one employee reports or experiences a MSD, the employer is required to implement a "full" ergonomics program, unless it can fix the hazard with a "quick fix." In a quick fix, the employer will (a) care for the injured employee, (b) work with employees to eliminate the MSD hazard within 90 days, (c) verify that the fix was successful within another 30 days and (d) keep a record of the quick fix controls. If the basic program results in another MSD or, if the quick fix doesn't work, a "full" ergonomics program will need to be implemented.

The "full" program requires five additional elements:

- Job hazard analysis and control. Employers are required to evaluate all "problem" jobs for risk factors. My space is too limited here to list all of the examples provided by OSHA in the proposed standard, but activities such as doing "the same motion over and over, performing tasks that involve long reaches, maintaining same position or posture while performing tasks, and using hand and power tools" are some examples. Risk factors include "force, repetition, awkward and static postures and positions, contact stress, cold temperatures and vibration." Hazard control includes (a) asking employees for recommendations about eliminating or materially reducing MSDs, (b) identification assessment and feasibility controls to eliminate or materially reduce the hazards, (c) tracking progress in eliminating or materially reducing the MSD hazards and (d) identification and evaluation of MSD hazards when changes in processes occur or new equipment is installed.
- Training. An employer must provide training to employees so they are aware of the ergonomics program, MSD hazards and measures for eliminating or materially reducing those hazards. Training must be given initially and periodically (at least every three years) at no cost to employees. Training must be provided to employees, their supervisors and to persons involved in setting up and managing the program. Training must be in a language employees

understand and the employees must have the opportunity to ask questions and receive answers.

- MSD management for workers with covered injuries. The employer must promptly provide the temporary “work restrictions” and “work restriction protection” required by this standard whenever an MSD is reported, at no cost to the employee. The employer must respond promptly to the employee(s) with covered MSDs to prevent their condition from getting worse, determine whether temporary work restrictions are necessary and provide employees with prompt access to a health care professional (HCP) for evaluation, management and follow-up. If an employee is put on temporary work restrictions, the employer must provide the temporary work restriction in accordance with the HCP’s opinion, ensure the appropriate follow-up is provided during the recovery period and maintain the employee’s work restriction protection (WRP) while temporary work restrictions are provided. Of great significance is the fact that an employee receives 100% pay and benefits while on light duty and 90% pay and 100% benefits when they must be removed from work for up to six months or until the employee can return to work, whichever occurs first. Fortunately, the proposed standard states that WRP benefits can be offset by worker’s compensation or similar benefits, but most experts believe the additional expense will be borne by the employer directly. Insurance professionals question whether this program might supercede and replace worker’s compensation.
- Program evaluation. At least every three years, the employer must evaluate the program by (a) consulting with employees in problem jobs to assess their view of the effectiveness of the program, (b) identifying deficiencies in same and evaluating the effectiveness of the program to ensure it is functioning and (c) ensuring it is eliminating or materially reducing MSD hazards. If, after review, a deficiency exists, corrective action must be taken promptly so that the company is in compliance with the proposed standard.
- Record keeping. Records of employee reports and management responses, hazard analysis and control, quick fix control and ergonomics program evaluation must be kept for three years or until replaced by updated records. MSD management records must be kept for the duration of the employee’s employment plus three years.

GRANDFATHER CLAUSE & ECONOMIC IMPLICATIONS

If an employer already has an ergonomics program in place at the time of enactment, there is a grandfather clause to protect them. The basic problem with an existing program, however, is that OSHA would still require that MSD hazards are eliminated or “materially” reduced, just as is the case with the proposed standard.

The magnitude of the proposed standard is clear. What bothers most insurance and safety professionals is the ambiguity of the proposed standard in terms of determining whether a company is in compliance. The proposed standard only vaguely states that an employer is in compliance when the controls eliminate or “materially” reduce MSD hazards. The term “materially” would also make an existing ergonomics program difficult, if not impossible, to conform to the proposed standard. Given the inability to measure full compliance, it is difficult to envision any scenario in which a typical truss manufacturer could ever avoid implementation of a full ergonomics program.

OSHA’s goal in proposing this Ergonomics Standard is to prevent what it reports at approximately

300,000 MSDs annually, saving employers about \$9 billion, while costing about \$4.2 billion, annually. OSHA estimates employer costs at \$150 per workstation that is fixed or reconfigured. Recent studies indicate OSHA's cost estimates to be very conservative. The food distribution industry study estimated the costs of their compliance could run from \$14 to \$26 billion alone. Would you be able to bring each of your workstations into compliance for \$150 each if this proposed standard is enacted?

TAKE ACTION!

What can we do to stop this pending standard? The first public hearing gets underway on March 13 and representatives from WTCA will attend. The proposed standard clearly goes far beyond OSHA's statutory mandate and could very easily become an administrative nightmare for employers. Therefore, it is up to us to actively write our Representatives, Senators and OSHA officials.

For more in-depth information on OSHA's rulemaking, a copy of the full proposal is available on OSHA's web site at www.osha.gov. Or, to order a free CD-ROM or print version, call 202/693-1888. Many articles have been written covering various aspects of the proposed standard over the past few years and I would encourage all readers to seek them out. Lastly, rely on your insurance and/or safety experts for further information and answers to your questions.

Acknowledgements:

- OSHA Observer, December 1999, Vedder, Price, Kaufman and Kammholz, Chicago, IL.
- "SubThepart Y," Ergonomics Program Standard (Abbreviated version), Occupational Safety and Health Administration, U.S. Department of Labor.

Scott Arquilla is Vice President of Best Homes, Inc., Hazel Crest, IL. He is also the Chairperson of WTCA's Management Committee.

[SBC HOME PAGE](#)

Copyright © 2000 by Truss Publications, Inc. All rights reserved. For permission to reprint materials from SBC Magazine, call 608/310-6706 or email editor@sbcmag.info.

The mission of Structural Building Components Magazine (SBC) is to increase the knowledge of and to promote the common interests of those engaged in manufacturing and distributing of structural building components to ensure growth and continuity, and to be the information conduit by staying abreast of leading-edge issues. SBC will take a leadership role on behalf of the component industry in disseminating technical and marketplace information, and will maintain advisory committees consisting of the most knowledgeable professionals in the industry. The opinions expressed in SBC are those of the authors and those quoted solely, and are not necessarily the opinions of any of the affiliated associations (SBCC, WTCA, SCDA & STCA).