

**TESTIMONY OF THE FLEXIBLE PACKAGING ASSOCIATION ON THE ERGONOMICS
STANDARD PROPOSED IN THE TUESDAY, NOVEMBER 23, 1999 EDITION OF THE
*FEDERAL REGISTER.***

Presented Thursday March 30, 2000

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

Good afternoon. My name is Joyce Dickerson, and I am here before you today, representing the Flexible Packaging Association. Flexible packaging is an \$18 billion industry in the United States, directly employing 87,000 people. FPA has served as the voice of the industry since the association was formed in 1950. Its members manufacture or convert paper, plastic film, aluminum foil, or any combination of those materials. Flexible packaging generally takes the shape of bags, pouches, labels, and wraps, and serves a multitude of markets including food, pharmaceuticals, medical supplies, household goods, personal care products, pet food, garden and lawn care, and agricultural and industrial applications.

The flexible packaging industry is a very innovative and forward-thinking industry. Our members are extremely committed to issues like environmental compliance and workplace safety. Accordingly, they have spent hundreds of millions of dollars on environmental, safety and ergonomics programs. FPA and the industry that it represents is committed to addressing the issue ergonomics. However, we take issue with this proposed ergonomics standard appearing in the Tuesday, November 23, 1999 edition of the *Federal Register*. FPA appreciates this opportunity to provide testimony regarding the proposed standard, as there are many areas of concern to the Flexible

Packaging Association. These concerns can be grouped into three categories. The first concern is the overall lack of scientific foundation to support the provisions of the proposal. The second concern is the untenable timeline advanced for finalizing this new set of regulations and finally, we have objections to specific provisions of the current ergonomics proposal.

Our first concern surrounds the scientific foundation for the provisions of this ergonomics standard. In addressing this scientific foundation, the Occupational Safety and Health Administration asserts that the evidence "strongly" supports two basic conclusions: First, that there is a positive relationship between work-related musculoskeletal disorders (or MSDs) and work place risk factors, and second, that ergonomics programs and specific ergonomic interventions can reduce these injuries (64 FR 65769). However, in October of 1998, both the Congress and the President appropriated nearly \$1 million to fund a comprehensive study by the National Academy of Sciences (or NAS). This expenditure was deemed necessary to evaluate questions regarding the diagnosis and causes of MSDs (reference Public Law 105-277). The funding of such a study indicates the need for further scientific evidence relating to the causes of MSD's and calls into question the presence of "strong conclusions" that OSHA cites as evidence for its proposed ergonomics

standard. What's more, the financial ramifications of this proposed standard are tremendous. OSHA itself has estimated that it will cost \$4.2 billion annually to comply with the proposed ergonomics standard. Industry estimates reach as high as \$18 billion. With such potentially expensive ramifications, OSHA must compile clear scientific and medical justifications before promulgating this regulation. The FPA feels the scientific evidence cited by OSHA does not sufficiently answer basic questions which are fundamental to establishing an effective ergonomics standard.

FPA further believes that what scientific evidence OSHA *has* used to create this far-reaching ergonomics proposal is inherently flawed. These two sources, a July 1997 report by the National Institute for Occupational Safety and Health (or NIOSH) and an August 1998 workshop held by the National Academy of Sciences suffer from severe shortcomings in their methodology and conclusions. The NIOSH report reviewed only studies which it found beneficial and supported their overall conclusion. NIOSH failed to use generally accepted methods of research when conducting their study and their conclusion fell short of what is prudent in developing a regulation of this magnitude. The NIOSH report claims there may be a connection between musculoskeletal disorders and workplace factors, but fails to establish any

specific connection. The NAS workshop concluded there was insufficient evidence to assess the level of risk to workers and suggested additional research.

These two studies do not contain the scientific certainty necessary to be the basis for an ergonomics regulation. Neither document answers fundamental questions such as: How many repetitions are too much? How heavy is too heavy? How much lifting is too much? What are the effects of non-work related factors? Questions such as these must be satisfactorily addressed before mandating that industry spend billions of dollars to comply with new ergonomics regulations.

FPA is not alone in its questions regarding the presence of sufficient scientific evidence on which OSHA has based its ergonomics proposal. In testimony before the U.S House of Representative's Committee on Education and the Workforce, Subcommittee on Work Force Protections, Dr. Michael Vender, a noted hand surgeon and Chairman of the Industrial Injuries and Prevention Committee of the American Society of Surgery of the Hand testified that "the same factors described as 'work-related' are in fact descriptive adjectives that apply equally to non-job activities. With present level understanding, the

effects of on-the-job and off-the-job activities cannot be separated. The quantitative relationships between the factors and the medical conditions have so far eluded discovery by medical science. That is, we simply don't know how much is too much."

Like OSHA, FPA believes that the issues surrounding ergonomics are serious. However, FPA is convinced that the prudent course of action requires a pause for the release of the pending National Academy of Science study. This medical and scientific research addresses the diagnosis, causes, and preventative measures of repetitive stress injuries and musculoskeletal disorders (or MSDs) and is critical to making the informed decisions necessary before promulgating an ergonomics regulation of this magnitude. The haste in promulgating this ergonomics standard is ill-advised and is counter productive to the goal of establishing an effective and workable rule based on sound science.

As previously stated, our next concern deals with specific objections to provisions of the current ergonomics proposal. The proposed ergonomics standard, as currently written, is largely unworkable and wrought with

inaccuracies. The Flexible Packaging Association would like to specifically highlight the following issues.

First, the “Trigger Point”: OSHA's proposed ergonomics standard establishes a "trigger point" of one single reported MSD to require the adherence of a company to the six-part standard. This full ergonomics program proposed by OSHA will be extremely burdensome and will require significant resources to implement. This is an excessively stringent requirement given the vast array of possible non-work related factors that could cause the symptoms of MSDs. Such a stringent requirement does not account for an individual employee's physical condition, medical history, or possible non-adherence to proper safety requirements specific to a certain job function. A single reported MSD does not necessarily indicate a problem which requires an ergonomic program. There are too many other potential factors involved in MSDs. FPA recommends a trigger point that takes into account the facility's prior health and safety record, along with factors such as an employee's physical and medical conditions, as previously stated.

Our next specific concern is regarding the creation of a special category of worker's compensation. The Flexible Packaging Association objects to OSHA

creating a federally mandated special category of worker's compensation given that each state already has a system in place. There are two major areas of concern to the FPA regarding this portion of the ergonomics proposal: first, the discriminatory results that could arise out of two different compensation levels for worker injuries and second, the incentives the ergonomics proposal creates for fraudulent reporting.

The proposed standard creates a level of compensation, 90% of after-tax earnings, which is virtually unmatched among states' workers' compensation systems. This creates a two-tiered system, resulting in cases where employees having sustained far more traumatic injuries will be compensated at a lower rate. It also establishes situations where employees on restricted work function receive 100 percent of their after-tax earnings, while regular employees performing the same exact functions would receive a lesser rate. This proposed system creates an inherently discriminatory result.

Fraudulent reporting is also likely to result from creating a higher pay rate for MSDs. This aspect of the ergonomics proposal creates an incentive for non-work related strains, sprains, and pains to be classified as MSDs, making them eligible for compensation. Furthermore, OSHA has no mechanism for

employers to investigate suspected fraudulent claims. In forbidding health care providers to reveal findings, diagnoses or other information not related to MSD hazards on the job, employers have no means of investigating the validity of an employee's claim.

Another disturbing aspect FPA finds in the proposed ergonomics standard is the ambiguity in definitions and the possibility of this ambiguity leading to ill-advised or inconsistent enforcement. The attempts to define potential risk factors are inherently problematic. For instance, in proposed section 1910.918(c), an employer must identify ergonomic risk factors such as "objects or people moved are heavy". The definition of "heavy" is extremely ambiguous; what I define as heavy may not seem heavy to you at all.

Obviously, the definition of "heavy" changes with each employee; regulatory standards as far-reaching as this cannot be based on such ambiguous language as "heavy", "feasible controls", "considerable effort", or "materially reduce." This ambiguity will lead to erratic enforcement and a lack of understanding on how to comply.

Under the proposed ergonomic standard, FPA also takes issue with OSHA's treatment of drug testing. An integral part of many employer's worker health

and safety programs is drug testing. In order for an employer to create a safe working environment it is sometimes necessary to conduct drug tests in conjunction with a reported work related injury. While the standard does not explicitly *prohibit* workplace drug testing, it *does* suggest that drug testing could have a negative effect on reporting of MSDs and suggests that employers reevaluate their policies. Workplace drug testing programs serve two main purposes: first, by deterring employees from using drugs and alcohol in a manner which could effect their work performance and second, by identifying drug and alcohol abuse as a significant contributor to workplace accidents and injuries. It is FPA's position that OSHA's suggestions regarding workplace drug testing are inappropriate, without merit and could possibly lead to unjust citations and penalties under the ergonomics standard. It should be deleted from any final ergonomics standard.

In conclusion, we would like to point out that OSHA itself states that as a general principle, and according to 64 FR 65787, OSHA regulation should "focus on areas where problems are severe and solutions are well-understood." This general principle is based on legislative intent and case law interpreting section 6 of the Occupational Safety and Health Act. It is FPA's

opinion that the proposed ergonomics standard does not meet this criteria on *either* account. According to Bureau of Labor and Statistics the overall incidence rate for MSDs has been steadily declining over the last 5 years. MSDs reports have fallen from 748,900 in 1992 to 582,700 in 1997. Less than 0.5 percent of the labor force is affected by MSD injuries and rarely does it result in a fatality.

The members of the Flexible Packaging Association are committed to operating strong worker health and safety programs. Without a healthy workforce companies cannot successfully compete in today's market. FPA believes this commitment is reducing MSD injuries and that this reduction will continue.

Finally, it is FPA's position that this proposed regulation is largely unworkable, because it is based on a medical condition that is not yet fully understood, and because there is no sufficiently clear link between MSDs and work-related activities, taking into account non work-related factors. Until there is further study regarding MSDs, and there is a link established between MSDs and work-related activities, the Occupational Safety and Health Administration should not move forward with this rulemaking. With the

incidences of ergonomic injuries steadily declining, there is no need for such a far-reaching and overly burdensome regulation. The FPA strongly urges OSHA to wait for the proper scientific evidence before promulgating an ergonomics standard.

The Flexible Packaging Association appreciates the opportunity to comment on this proposal.