for accuracy. If the historic absorption ratio is found to be materially inaccurate, the ratio could no longer be used. The proposed regulations defined an historic absorption ratio as being materially inaccurate when (1) the taxpayer's actual absorption ratio deviates by more than 50 percent from the taxpayer's historic absorption ratio, (2) the taxpayer's actual absorption ratio deviates by more than one-half of one percentage point from the taxpayer's historic absorption ratio, and (3) the amount of additional section 263A costs capitalizable to items on hand at year-end using the actual absorption ratio deviates by more than $100,000 from the amount of additional section 263A costs capitalizable to items on hand at year-end using the historic absorption ratio. In response to the written comments received and the oral comments presented at a public hearing held on September 1, 1999, and based on an internal IRS survey, it has been determined that the potential for abuse using the current regulations' rule of reviewing a historic absorption ratio every six years is small. Further, this potential for abuse is outweighed by the burden that would be placed on taxpayers by requiring an annual review of the accuracy of their ratios. Accordingly, these proposed regulations are being withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–113910–98) that was published in the **Federal Register** on May 24, 1999 (64 FR 27936) is withdrawn.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue Service.

[FR Doc. 01–16717 Filed 7–2–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. R–02A]

RIN 1218–AC00

Occupational Injury and Illness Recording and Reporting Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed delay of effective date; request for comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) issued a final rule on Occupational Injury and Illness Recording and Reporting Requirements (66 FR 5916, January 19, 2001), which is scheduled to become effective on January 1, 2002. Following a careful review conducted pursuant to White House Chief of Staff Andrew Card's memorandum (66 FR 7702), the Agency has determined that all but a few of the provisions of the final rule should take effect as scheduled.

OSHA has also determined that it will reconsider the provisions in the final rule for: recording occupational hearing loss based on the occurrence of a Standard Threshold Shift (STS) in hearing acuity (Section 1904.10); and defining ''musculoskeletal disorder'' (MSD) and checking the column on the OSHA 300 Log identifying a recordable MSD (Section 1904.12). Accordingly, OSHA proposes to delay the effective date of Sections 1904.10 and 1904.12 until January 1, 2003. Employers should read carefully Section II. of this document, Effect of Proposal Delay on Employer Recordkeeping Obligations in Calendar Year 2002, to understand what their recordkeeping obligations would be during the period January 1, 2002 through January 1, 2003 if the proposed delay takes effect. OSHA is also asking for comment on the appropriate criteria for recording hearing loss cases. See Section III.

DATES: Written comments must be postmarked by September 4, 2001.

ADDRESSES: Comments are to be submitted in writing in triplicate. All comments shall be submitted to: Docket Officer, Docket No. R–02A, Occupational Safety and Health Administration, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Comments of 10 pages or less may be faxed to (202) 693–1648. You may also submit your comments electronically through OSHA's home page at *www.osha.gov*. Please note that you may not attach materials such as studies or journal articles to your electronic statement. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic statement by name, date, and subject, so that we can attach the materials to your electronically submitted statement.

FOR FURTHER INFORMATION CONTACT: Jim Maddux, Occupational Safety and Health Administration, U.S. Department of Labor, Directorate of Safety Standards Programs, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION: Because OSHA's final recordkeeping rule was published on January 19, 2001, with an effective date of January 1, 2002, it was subject to the regulatory review required by the Andrew Card memorandum. The Agency has carefully considered the rulemaking record and the submissions of interested parties, and has had several meetings with business and labor representatives. As a result of this process, the Secretary has determined that the final recordkeeping rule should be implemented in large part, on January 1, 2002, as scheduled. The final rule is the result of an effort begun in the 1980s, involving businesses, labor organizations, health professionals and others, to improve the quality of the injury and illness records maintained under the Occupational Safety and Health Act. The new rule simplifies the recordkeeping process by making the record requirements more logical and coherent, by explaining the requirements in plain language, by consolidating the interpretations and guidance previously found in a host of secondary sources, and by providing new recordkeeping forms that are easier to understand and complete. However, the Agency's review has identified grounds for reconsidering two elements of the final rule, and for delaying the effective date of the requirements related to these elements, as explained below.

I. Why OSHA Is Proposing To Delay the Effective Date of the Final Rule Requirements on Hearing Loss and the MSD Definition and Column

A. Recording occupational hearing loss cases: Section 1904.10 of the final rule requires employers to record, by

checking the ''hearing loss'' column on the OSHA 300 Log (Log), a case in which an employee's hearing test (audiogram) reveals that a Standard Threshold Shift (STS) in hearing acuity has occurred. An STS is defined as ''a change in hearing threshold, relative to the most recent audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000 and 4000 hertz in one or both ears.'' Section 1904.10(b)(1). The final rule itself does not require testing of employees' hearing. However, OSHA's occupational noise standard (29 C.F.R. 1910.95) requires employers in general industry to conduct periodic audiometric testing of employees when employees' noise exposures are equal to, or more than, an 8-hour time-weighted average 85dB. If such testing reveals that an employee has sustained hearing loss equal to an STS, the employer must take protective measures, including requiring the use of hearing protectors, to prevent further hearing loss.

The current recordkeeping rule, which remains in effect until January 1, 2002, contained no specific threshold for recording hearing loss cases. In 1991, OSHA issued an enforcement policy on the criteria for recording occupational hearing loss, to remain in effect until new criteria were established by rulemaking. The 1991 policy stated that OSHA would cite employers for failing to record work related shifts in hearing of an average of 25dB or more at 2000, 3000, and 4000 Hertz in either ear.

One of the major issues in the recordkeeping rulemaking was to quantify the level of hearing loss that should be recorded as a ''significant'' health condition. This was critical because OSHA determined that minor or insignificant health conditions should no longer be recordable. See, e.g., 66 FR 5931. OSHA proposed a requirement to record hearing loss averaging 15dB at 2000, 3000 and 4000 Hertz in one or both ears. The agency asked for comment on several alternative criteria, including, 10, 20 and 25dB. The final rule used the STS criterion of 10dB instead of the proposed 15dB level.

In selecting an STS as the appropriate criterion for recording hearing loss, OSHA relied heavily on evidence submitted by the Coalition to Preserve OSHA and NIOSH and Protect Workers' Hearing that a 10dB loss in hearing acuity represents a serious health problem. ''OSHA [was] particularly persuaded by the Coalition's argument that 'An age-corrected STS is a large hearing change that can affect communicative competence' because an age-corrected STS represents a significant amount of cumulative hearing change from baseline hearing levels.'' 66 FR 6008. Based on this and other evidence, OSHA found that an STS ''represents a non-minor injury or illness of the type Congress identified as appropriate for recordkeeping purposes.'' 66 FR 6009.

Following publication of the final rule in January 2001, OSHA received submissions from interested parties criticizing the finding that an STS represents a significant health condition. Exhibits 1–2, 1–3, 1–4, 1–5, 1–6, 1–7. These parties argue that an STS is not necessarily considered a serious health problem by the medical community, by State workers compensation systems, or by the occupational noise standard (29 CFR 1910.95). The American Iron and Steel Institute noted that, ''According to the AMA, a person has suffered material impairment when testing reveals a 25dB average hearing loss from audiometric zero at 500, 1000, 2000, and 3000 hertz.'' AISI and other commenters assert that an STS is merely a precursor event indicating the need for follow-up actions, not a material health impairment standing alone.

OSHA has reviewed the record and agrees that reconsideration of the criteria for recording hearing loss is warranted. There is evidence in the record suggesting that an STS can constitute a serious health problem for individuals with pre-existing hearing loss. See 66 FR 6008 (''For an individual with pre-existing high frequency hearing loss on the baseline, STS usually involves substantial progression into the critical speech frequencies.'') There is also evidence that an STS is not necessarily a serious condition, and some commenters have questioned whether it is even a reliable criterion under real-world testing conditions. See, e.g., Exhibit 1–2. Finally, NIOSH notes in its Criteria for a Recommended Standard—Noise Exposure, ''the incipient permanent threshold shift may manifest itself with the same order of magnitude as typical audiometric measurement variability; about a 10-dB change in hearing thresholds.'' In view of this uncertainty, OSHA believes that the record should be reopened to permit consideration of additional medical and other relevant evidence, and to explore alternative approaches. For example, Organization Resources Counselors, Inc. (ORC) in its post-promulgation submissions urged the Agency to consider a sliding scale which would take account of an individual's existing level of impairment in determining whether further occupational hearing loss warrants recording. (Exhibits 1–6, 1–7). ORC's suggested approach, which was not addressed in the rulemaking, also deserves careful consideration.

In light of the decision to reconsider the 10dB criterion, OSHA is proposing to delay the effective date of Section 1904.10 until January 1, 2003, and to remove the ''Hearing loss'' column from the version of the Log to be used during calendar year 2002. OSHA believes that this proposed action is appropriate for several reasons. If OSHA decides to change the hearing loss criterion beginning in 2003, records of hearing loss cases based on the 10dB level for 2002 will be of little value since they could not be compared to records maintained either under the former rule's 25dB level or any new level effective in 2003. On the other hand, continuing the 25dB recording requirement for 2002 will yield data comparable to that for earlier years even if OSHA implements a new requirement for 2003. Furthermore, the proposed delay of the effective date would avoid the confusion and additional paperwork burden that would result if employers were required to implement the 10dB requirement for 2002, only to change over to a new requirement in 2003. These factors appear to outweigh any potential benefit to be gained by permitting Section 1904.10 to become effective while OSHA is reconsidering the 10dB criterion. If implementation of Section 1904.10 is delayed as proposed in this document, OSHA will provide new forms to be used for calendar year 2002 that do not contain a ''Hearing loss'' column.

B. Defining an MSD and checking the MSD column: Section 1904.12 of the final rule states that if an employee experiences a recordable musculoskeletal disorder (MSD), the employer must record it on the OSHA Log and must check the MSD column. For recordkeeping purposes, the rule defines MSDs as disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs that are not caused by slips, trips, falls, motor vehicle accidents or other similar accidents (see Section 1904.12(b)(1)). The Section also explains that in determining whether an MSD is recordable, the employer must use the same criteria that apply to other injuries or illnesses. To be recordable, the disorder must be work-related, must be a new case, and must meet one or more of the general recording criteria. Section 1904.12(b)(2) states that ''[t]here are no special criteria for determining which musculoskeletal disorders to record,'' and refers the reader to other sections of the rule in which the basic recording criteria are found.

OSHA's purpose in including an MSD column on the Log was to gather data on ''musculoskeletal disorders'' as that term is defined in Section 1904.12. Following Congressional disapproval of OSHA's ergonomics standard (PL 107.5, Mar. 20, 2001), the Secretary announced that she intends to develop a comprehensive plan to address ergonomic hazards and scheduled a series of forums to consider basic issues related to ergonomics (66 FR 31694, 66 FR 33578). One of the key issues to be considered in connection with the Secretary's comprehensive plan is the approach to defining an ergonomic injury.

Based on these developments, the Secretary believes that it is premature to define an MSD for recordkeeping purposes. Any definition of ''musculoskeletal disorder'' or other term for soft tissue injuries in the recordkeeping rule should be informed by the views of business, labor and the public health community on the problem of ergonomic hazards in the workplace, which the Secretary's forums are intended to elicit. Furthermore, to require employers to implement a new definition of MSD while the Agency is considering the issue in connection with the comprehensive ergonomics plan could create unnecessary confusion and uncertainty. Therefore, OSHA is proposing to delay the effective date of § 1904.12. Accordingly, the Log to be used for calendar year 2002 would not contain a definition for MSD or an MSD column. When the Department has progressed further in developing its comprehensive approach to ergonomic hazards, it will be in a better position to consider how employers will be required to report work-related ergonomics injuries.

This proposed action does not affect the employer's obligation to record all injuries and illnesses that meet the criteria set out in Sections 1904.4–1904.7, regardless of whether a particular injury or illness meets the definition of MSD found in Section 1904.12. Employers will be required to record soft-tissue disorders, including those involving subjective symptoms such as pain, as injuries or illnesses if they meet the general recording criteria that apply to all injuries and illnesses. The proposed delay of the effective date of Section 1904.12 does not affect this basic requirement. It simply means that employers will not have to determine which injuries should be classified under the category of ''MSDs'' or ''ergonomic injuries'' during the calendar year 2002.

II. Effect of the Proposed Delay of the Effective Date on Employer's Recordkeeping Obligations in Calendar Year 2002

A one-year delay of the effective date of the specified recordkeeping provisions would have the following effect on an employer's recordkeeping obligations during the 2002 calendar year:

Hearing loss cases: Employers would continue to record work-related shifts of an average of 25 dB or more at 2000, 3000, and 4000 hertz (Hz) in either ear on the OSHA 300 Log. When a recordable hearing loss occurs, the audiogram indicating the hearing loss would become the new baseline for determining whether future additional hearing loss by the individual must be recorded. Employers would check either the ''injury'' or the ''all other illness''column, as appropriate.

Soft-tissue disorder: Employers would record disorders affecting the muscles, nerves, tendons, ligaments and other soft tissue areas of the body in accordance with the general criteria in Sections 1904.4–1904.7 applicable to any injury or illness. Employers would also treat the symptoms of soft-tissue disorders the same as symptoms of any other injury or illness. Soft-tissue cases would be recordable only if they are work-related (Sec. 1904.5), are a new case (Sec. 1904.6), and meet one or more of the general recording criteria (Sec. 1904.7). Employers would check either the ''injury'' or the ''all other illness'' column, as appropriate.

III. Issues for Public Comment

OSHA particularly invites comment on the following issues. Issue 1. What is the appropriate criterion for recording cases of occupational hearing loss? OSHA is particularly interested in comments on the advantages and disadvantages of various hearing loss levels, including 10, 15, 20 and 25 dB, on alternative approaches such as the use of a sliding scale in which smaller incremental shifts would be recordable for employees with significant pre-existing hearing loss, and on the frequency of ''false positive'' results or other errors in audiometric measurements associated with each of these levels and approaches. Issue 2. What is the variability of audiometric testing equipment and how should this variability be taken into account, if at all, in the recordkeeping rule? Issue 3. What is the appropriate benchmark against which to measure hearing loss, e.g., the employee's baseline audiogram, audiometric zero, or some other measure? Issue 4. Should the recordkeeping rule treat subsequent hearing losses in the same employee as a new case for recording purposes?

Paperwork Reduction Act

On January 22, 2001, the Office of Management and Budget (OMB) received OSHA's request under the Paperwork Reduction Act of 1995 for approval of the information collection requirements in the final recordkeeping rule. This request for approval was withdrawn by the Agency on March 26, 2001, before OMB acted on it. OSHA will resubmit a request for OMB approval of the information collection requirements in the final rule, including appropriate changes in such requirements resulting from this proposal.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601), the Acting Assistant Secretary certifies that the proposed rule will not have a significant adverse impact on a substantial number of small entities.

Executive Order

This document has been deemed significant under Executive Order 12866 and has been reviewed by OMB.

Authority

This document was prepared under the direction of R. Davis Layne, Acting Assistant Secretary for Occupational Safety and Health. It is issued under Section 8 of the Occupational Safety and Health Act (29 U.S.C. 657), and 5 U.S.C. 553.

Issued at Washington, DC this 28th day of June, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–16669 Filed 6–29–01; 9:53 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL–7006–7]

Proposed Approval of the Clean Air Act, Section 112(l), Delegation of Authority to Washington Department of Ecology and Four Local Air Agencies in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the authority of Clean Air Act (CAA), section 112(l), EPA proposes to approve the State of