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August 29, 2001

Docket Officer
Docket No. R-02A
Occupational Safety and Health Administration
Room N-2625
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

**Re: Occupational Injury and Illness Recording and Reporting Requirements;
Docket No. R-02A**

Dear Sir or Madam:

The Food Marketing Institute (FMI) is pleased to submit this comment in response to the proposed delay of effective date of the final rule on Occupational Injury and Illness Recording and Reporting Requirements. 66 Fed. Reg. 35113 (July 3, 2001).

FMI conducts programs in research, education, industry relations and public affairs on behalf of its 2,300 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of \$340 billion — three-quarters of all food retail store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Food retailers and wholesalers employ more than 3 million Americans and, accordingly, FMI and its members are vitally interested in workplace health and safety.

The Occupational Safety and Health Administration (OSHA) issued a final rule on Occupational Injury and Illness Reporting Requirements that is scheduled to become effective on January 1, 2002. 66 Fed. Reg. 5916 (January 19, 2001). After review of that final rule pursuant to the Card Memorandum, 66 Fed. Reg. 7702 (January 24, 2001), OSHA decided to reconsider two provisions of the rule: Section 1904.12 defining "musculoskeletal disorder" (MSD) and checking the MSD column on the OSHA 300 log; and Section 1904.10 relating to the recording of occupational hearing loss. OSHA is proposing to delay the effective date of these provisions until January 2, 2003 pending this review.

FMI supports the proposed delay of effective date and the reconsideration of these provisions. In particular, we agree that it is inappropriate for OSHA to include a definition of

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MSD in these rules and to require a separate column in the illness and injury logs for these disorders.

The disagreement and controversy over the definition of MSD's played a large role in the recent Congressional disapproval of OSHA's proposed ergonomics standard. (P.L. No. 107-5, March 20, 2001). Subsequent to the Congressional disapproval, the Secretary announced an intention to develop a comprehensive plan to address ergonomic hazards and OSHA has conducted a series of forums to consider the basic issues related to ergonomics, including the fundamental issue of the proper definition of these injuries. FMI testified at the first of these forums (testimony enclosed).

In these circumstances it clearly is premature for OSHA to include a definition for MSD's in this rule at this time. As OSHA correctly notes, the adoption of a definition in this context, while the agency is considering the issue as part of its comprehensive ergonomics plan, would cause unnecessary confusion and uncertainty. Thus, it is appropriate to delay implementation of this provision.

Similarly, we believe the appropriate criterion for the recording of hearing loss cases requires further consideration.

FMI appreciates the opportunity to submit these comments and we look forward to working with OSHA as it develops its plan for addressing the ergonomics issue.

Sincerely,

George Green
Vice President
General Counsel

Enclosure