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OSHA Docket Office  
Docket No. GE2003-1  
Room N-2625  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

**RE: Draft Ergonomics for the Prevention of Musculoskeletal Disorders:  
Guidelines for Retail Grocery Stores**

Dear Sir or Madame:

The Food Marketing Institute (FMI) welcomes the opportunity to comment on OSHA's document entitled "Ergonomics for the Prevention of Musculoskeletal Disorders, Draft Guidelines for Retail Grocery Stores."

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. FMI's members employ some four million Americans in the process of distributing food and grocery products to our nation's consumers. On a daily basis our industry provides consumers with a variety and choice of high quality, safe product at prices that are the envy of the world. We are proud of our record in this regard and in the role our members play in their local communities. In serving our customers, our employees and associates are our most important assets. Their health and safety is crucial to our success and as a result they are vitally interested in these draft ergonomics guidelines which directly affect our industry.

FMI believes that voluntary guidelines can serve as a useful tool in addressing ergonomic related injuries. However, we believe the draft guidelines need considerable revision to make them less programmatic and more user friendly and practical for real world use. In particular, the guidelines must acknowledge more clearly the scientific uncertainty concerning the causes of ergonomic injuries and it needs to clarify its intent concerning the use of the guidelines as an enforcement tool.

### Background

The food distribution industry has been at the forefront of efforts to improve worker health and safety for many years, and we are proud to say that our industry has been “ahead of the curve” in efforts to address what are commonly called repetitive stress or ergonomics and injuries. FMI established an ergonomics task force in 1990 consisting of nearly 30 leading safety and loss prevention experts from a wide range of retail and wholesale food distribution companies. This group met regularly and spearheaded a very active research effort, which led to a number of programs undertaken to raise awareness in our industry and improve worker safety. Here are a few of the ergonomic-specific programs and products which resulted from the efforts of that group:

- FMI began sponsoring annual Occupational Safety & Health Conferences in 1991. The conference is now known as the Risk, Insurance & Safety Management Conference and is held every October. The three-day conference focuses on best practices and idea exchanges to help companies continue to reduce injuries. The conference attracts the top safety experts in our industry from throughout the U.S.
- FMI produced an educational video, Proper Scanning Methods for Supermarket Cashiers, in 1992. The video has been widely used by companies throughout the country in training their employees. FMI has also produced a number of other safety-related videos that have been incorporated into employee training programs at retail grocery stores.
- Also in 1992 FMI released a lengthy booklet entitled “Suggestions For Ergonomic Improvement of Scanning Check stand Designs” which has been widely used throughout our industry, resulting in changes at hundreds of thousands of check stands to make scanning procedures more worker-friendly. We believe this has had a major impact on the significant reduction of injuries in the past decade, more than one-third in retail grocery stores.
- In 1996, FMI released an education manual, “Working Smart in the Retail Environment, Ergonomics Guide” which has also been widely used and contains useful information such as proper scanning and lifting techniques.
- Also in the early 1990’s FMI developed a 100-page OSHA Compliance Manual for the Supermarket Industry to assist our members in meeting OSHA requirements.
- FMI supports an industry-wide Risk, Insurance & Safety Management Committee to identify issues and concerns relating to safety in supermarkets.
- FMI moderates two e-shares for member companies to exchange ideas and information. Our OSHA e-share allows companies to exchange information relating to OSHA regulations and legislative issues, and our Safety e-share allows the exchange of ideas and solutions for addressing safety issues in grocery stores.

These programs are just a sample of the aggressive approach FMI and our member companies have taken over many years to address injuries and illnesses in the food distribution industry, and ergonomics in particular. The response from our member companies has been extremely positive and we can state with confidence that the vast majority of companies are committed to reducing injuries because it is in the best interest of employees, but also because it is in the best interests of companies to have a healthy, happy and productive workforce. We are proud that as a result of these efforts recorded injuries in retail grocery stores, regardless of the scientific debate as to the true nature of these injuries, have been reduced by approximately one-third over the past decade. We believe that no other industry can match the pro-active approach which the grocery industry has taken over more than a decade to address concerns about ergonomic injuries.

While our industry has taken a proactive approach to addressing ergonomics, our industry also vigorously opposes a federal regulatory approach such as that which was proposed by the previous administration. There continues to be a great deal of uncertainty and confusion about the relationship between such injuries and workplace activities. For example, who can say why one cashier reports carpal tunnel syndrome while another worker, performing the same activities at the next register for the same period of time, does not? Our industry has also learned from experience that efforts to address employee reports of injuries must be considered on a case-by-case basis. What works for one worker may not work for another, and employers often must find the best solution by trial-and-error. Therefore, it is not productive to pursue a one-size-fits-all federal regulatory approach. Employers must have the freedom and flexibility to work with their employees to identify potential ergonomic problems, and find solutions which best addresses the situations. Furthermore, the private sector must have the flexibility to make adjustments to reflect improvements in technology over time. A rigid federal regulation would lock in current practices, thus limiting the opportunity for new technologies or practices which may be developed in the future and which could have a greater impact on injury reduction. For these reasons and more, the food distribution industry took a leading role in the effort to rescind the ergonomics regulation, and our industry continues to vigorously oppose any mandatory federal ergonomics regulation.

Following passage in Congress of legislation to rescind the Clinton administration's ergonomics regulation, Secretary Chao in April, 2002 announced a "four-pronged" program of voluntary cooperation between OSHA and businesses to reduce the risk of injuries. One prong of that program was the development of industry- and task-specific voluntary guidelines. FMI believed that this approach was much preferable to a mandatory federal regulation. "Food retailers across America applaud Labor Secretary Elaine Chao's announcement to support voluntary ergonomics initiatives," said Tim Hammonds, FMI President and CEO in a News Release dated April 8, 2002. "And we look forward to working with the agency to further reduce worker injuries."

Shortly after the Secretary announced the voluntary ergonomics initiative, at an April 25, 2002 hearing before the House Committee on Education and the Workforce Subcommittee on Workforce Protections, Assistant Secretary Henshaw announced that guidelines for grocery scanning would be one of the first sets of guidelines to be considered by OSHA. In response to a question from Rep. Lynn Woolsey (D-CA), Mr. Henshaw stated, "Scanners. Obviously, there is a lot of repetitive motion. On our radar screen, as far as developing guidelines, are those industries with high ergonomic hazards. And, certainly grocery scanning is an extreme repetitive motion." This public statement was the first indication our industry was given that we would be the subject of one of the first sets of ergonomics guidelines OSHA would write.

On June 10, 2002 FMI issued a News Release indicating that we would be voluntarily cooperating with OSHA in preparing the voluntary guidelines. "Over the past decade, the food retail industry has taken the lead in reducing repetitive-motion injuries," said FMI President and CEO Tim Hammonds. "We are pleased to answer OSHA Administrator John Henshaw's call to join in the development of guidelines and information, which our member companies may use voluntarily to reduce injuries even further." Hammonds also said in the statement "I would like to commend Administrator Henshaw and Secretary of Labor Elaine Chao for the new spirit of cooperation they have brought to the leadership of OSHA in the past 18 months. The proposed voluntary guidelines will give our member companies helpful suggestions and the flexibility to develop injury-reduction strategies that best suit their individual situation."

FMI has been fully cooperative in providing information to OSHA as the agency has developed the proposed voluntary guidelines. We have provided OSHA staff a large volume of materials related to the work we have done in the area of ergonomics over the years. We have also sought to answer any questions or provide helpful information to assist OSHA staff in their work, although we were not provided access to details of OSHA's proposal while it was being developed.

In addition, FMI worked to fulfill requests from OSHA staff to meet with representatives of companies in the supermarket industry which have proactively sought to address concerns about workplace ergonomics and which have found ways to reduce repetitive stress and similar injuries. In response to FMI requests a number of companies did choose to meet with the OSHA staff either in Washington, D.C. or at their corporate headquarters. We also should note that many companies were hesitant or unwilling to meet with OSHA due to concerns about how the information they provided would be used. There continues to be well-founded concern in the business community that despite the good intentions of the Secretary and others that the culture of heavy-handed enforcement at OSHA has not changed.

### The Guidelines and OSHA Enforcement

The concern about OSHA's enforcement methods has been exacerbated in recent months by OSHA's approach to this issue. While FMI and the food distribution industry remain committed to the voluntary approach enunciated by Sec. Chao, OSHA itself is sending very mixed signals in this regard.

Specifically, our members have viewed with great interest the approach taken by OSHA toward the nursing home industry. That industry was the very first to agree to cooperate with OSHA in the development of voluntary ergonomics guidelines, yet it was also one of the first targets for ergonomics citations under the general duty clause 5(a)(1) of the Act. Indeed, three such citations were issued against various facilities owned by Alpha Health Services, Inc. at the very time that ergonomics guidelines were being finalized for the nursing home industry.

FMI takes no position on the merits of the Sec. 5(a)(1) citations issued against nursing homes, nor on the substance of the guidelines for nursing homes. However our members have expressed alarm at the fact that the very first industry to agree to work in a cooperative manner with OSHA on guidelines, was also the first industry to be targeted for general duty clause enforcement proceedings. This is especially disconcerting because of the difficulties OSHA has had in satisfying its burden of proof in prior general duty clause cases involving ergonomics and because OSHA leadership has stated publicly that if an employer is exercising good faith, has a process or system in place, and is working on identifying and controlling hazards, it would not be a candidate for a 5(a)(1) citation. This apparent reverse in position is likely to have a chilling affect on other industries that may be considering cooperative programs with OSHA, and it certainly will cause our industry to proceed with great caution. After all, why would an industry volunteer to cooperate on guidelines if that industry is then likely to be targeted for enforcement proceedings?

We would also highlight our strong concern about the abatement suggestions contained in the nursing home citations noted above, which appear to closely reflect the information contained in the final nursing home guidelines. This is particularly true in the abatement suggestions which suggest that the company establish formal ergonomics programs with "worksites analysis," "occupational health management," and "training and education." The requirements under these sections sound strikingly similar to the programmatic suggestions contained in the nursing home guidelines (and in the rescinded regulations), despite repeated assertions from the Department that voluntary guidelines will not be used for enforcement purposes and will not be the basis of general duty citations. When the "suggestions" in guidelines are essentially applied as abatement procedures in general duty citations, then for all intents and purposes the guidelines have become an enforcement tool for the affected industry. FMI would strongly oppose any efforts to use the voluntary guidelines in a manner which makes them a de-facto regulation. We do not believe that OSHA is intending to masquerade regulations as

guidelines, but recent activity certainly raises questions about the practices which OSHA will follow as guidelines are published.

We would like to note for the record the following statements made by OSHA:

- First, contained in the document “Ergonomics FAQs” which can be found on OSHA’s internet web site: “OSHA will not be focusing its enforcement efforts on employers who have implemented effective ergonomic programs or who are making good-faith efforts to reduce ergonomic hazards.”
- Second, at an April 25, 2002 hearing before the Subcommittee on Workforce Protections of the Committee on Education and the Workforce, Assistant Secretary Henshaw made the following statement in his prepared remarks (page 41 of the hearing transcript): “I want to make it clear that we are not enforcing guidelines—Indeed, if we were, that would merely make them a rule by another name.”
- At the same hearing on April 25, 2002, Assistant Secretary Henshaw engaged in the following discussion (found on page 19 of the hearing transcript):

Mr. Henshaw: “What we are going to do is make sure that an employer is exercising good faith, has a process, has a system, and is working on identifying and controlling hazards. These employers more than likely would not be candidates under 5(a)(1).”

Mr. Keller: “Well, let me stop you and ask you about that. Let’s say an employer voluntarily implements OSHA’s ergonomics guidelines with respect to bagging turkeys, or distributing beer or Coca-Cola products. Are they guaranteed not to be cited under the general duty clause?”

Mr. Henshaw: “I don’t know if I can guarantee anything. What I can say is certainly somebody who is exercising good faith, and to me if they are implementing an OSHA guideline, somebody else’s guideline, or somebody else’s process, I don’t care whether you call it guideline or not. If these employers are implementing some kind of process to identify and control hazards, then they wouldn’t be candidates for the 5(a)(1).”

In light of the above comments, and the direction which enforcement of the general duty clause has taken in recent months, FMI urges Secretary Chao to conduct a comprehensive review of OSHA’s enforcement program, including the relationship between the guidelines and enforcement, and consider what steps may be taken to ensure that industries and parties which are making good-faith efforts to cooperate with OSHA do not become targets for unwarranted enforcement actions. Sec. Chao and the Department must undertake actions to ensure that the statements highlighted above are actually followed by field-level OSHA inspectors and that the process

under which general duty citations are reviewed and approved by the agency includes steps to ensure that companies making “good faith efforts” are not being targeted. We believe it is also time that Congress use its oversight functions to review the program.

### Principles for Guidelines

On October 22, 2002 FMI submitted comments to OSHA on the proposed guidelines for the nursing home industry. We were concerned about the direction of these first guidelines and viewed the public comment period as our opportunity to present some basic principles which we believe should be the cornerstone of ergonomics guidelines produced by OSHA. In those comments we presented five principles which FMI believes should be the cornerstone of ergonomics guidelines produced by OSHA. Below are those five principles, and our general view about whether the proposed grocery guidelines conform to those principles. Our detailed comments on the substance of the proposed guidelines will follow.

- Ergonomics guidelines should address clearly identifiable problems and present proven solutions. OSHA’s draft guidelines for grocery stores cover virtually every job in retail stores, not just scanning, which Assistant Secretary Henshaw indicated would be the focus. There continues to be significant scientific debate surrounding the relationship between these types of injuries and job functions. As long as scientific uncertainty continues, it is extremely important to acknowledge this uncertainty and refrain from including suggestions in the guidelines in areas where there is significant scientific uncertainty. While many of the workplace “solutions” contained in the draft grocery guidelines do offer helpful suggestions such as proper lifting techniques and proper scanning and bagging techniques, a greater effort must be made in the final guidelines to recognize the fact that there continues to be uncertainty about the relationship between certain work activities and so-called ergonomic injuries. While many of the suggestions in the guidelines may help to reduce the opportunity for injuries, there is no guarantee, and that fact needs to be repeatedly stated throughout the document.
- Ergonomics guidelines should emphasize practical solutions over formal, bureaucratic programs. The “ergonomic solutions” section of the proposed guidelines contains many suggestions that may be helpful to workers and employers. However there continues to be an unnecessary emphasis on the establishment of formal, bureaucratic ergonomic “processes” and programs. While formal programs may be suitable to some companies, particularly larger ones, we believe that the emphasis should be on practical solutions that can be easily applied.
- Ergonomics guidelines should be easy-to-use, and written in plain English. OSHA staff made a good effort to address this concern in the proposed

grocery guidelines. We do believe however that the final guidelines could be shorter and much more concise.

- Ergonomics guidelines should offer employers options and flexibility. The final grocery guidelines need to emphasize that employers may “pick and choose” from among the many suggestions in the document to apply to their particular work site. The document should be viewed as a “toolbox” to which managers and workers can turn to address particular problems as they arise, rather than as a comprehensive program which should be fully applied to every workplace.
- Ergonomics guidelines will only be successful if they are put to use; not sitting on a shelf. Only time will tell if the grocery guidelines will meet this important test. We believe that the draft guidelines need significant modification if they are to be used widely. In the detailed comments offered below, we have made an effort to make suggestions that will allow the final document to be put to use on a widespread basis in our industry.

### Specific Comments

#### Cover Page

The proposed title for the document, “Ergonomics for the Prevention of Musculoskeletal Disorders” should be changed. We have two concerns about this title. First, it is too complicated and confusing for the employers and employees that OSHA hopes will use the guidelines. The term “musculoskeletal disorders” may be much used in Washington, D.C. but it is not often used or understood by those for whom the document is intended. Second, and more importantly, the title implies that use of this document will guarantee the *prevention* of musculoskeletal disorders. As we have outlined above, there is no guarantee of this. Indeed, if OSHA believes that this is an appropriate title then we do have a serious problem and would not be able to support any guideline. As an alternative we suggest “Ergonomic Options for a More Comfortable and Productive Workplace,” or “Ergonomic Ideas to Help Create a More Comfortable, Productive & Healthier Workplace.”

The subtitle, “Guidelines for Retail Grocery Stores” should be amended to “Voluntary Guidelines for Retail Grocery Stores,” or preferably “Voluntary Suggestions for Retail Grocery Stores.” In order to further emphasize the fact that these guidelines are voluntary and not mandatory in nature, in every place throughout the document where the word “guidelines” is used, the word should be preceded by “voluntary.”

#### Executive Summary (Page 1)

- The first paragraph should be amended to reflect a new title as suggested above, “OSHA’s Ergonomic Options for a More Comfortable & Productive Workplace:



Voluntary Guidelines for Retail Grocery Stores provide...” Also, the second sentence should be amended to read, “Many of the *recorded* work-related injuries and illnesses experienced by grocery store workers are musculoskeletal disorders (MSD’s), such as carpal tunnel syndrome, back injuries and sprains or strains that may develop from *various factors including* lifting, repetitive motion, or overexertion. *MSD’s may also be caused partly or wholly by factors outside of work.*” (*Italics* are FMI’s suggested changes.)

- The second paragraph should be expanded to further recognize the scientific controversy surrounding these injuries. We suggest the first sentence state “More remains to be learned about the relationship between workplace activities and the development of MSD’s, *and OSHA strongly supports further scientific study.*”
- In the third paragraph we suggest the addition of “voluntary” before the word “guidelines” in three places: in line six “The purpose of these *voluntary* guidelines...”; line eight “These *voluntary* guidelines...”; and line thirteen, “...addressed in these *voluntary* guidelines may...”
- In the fourth paragraph we suggest the addition of “voluntary” before the word “guidelines” in two places: in line one “The general information in these *voluntary* guidelines...” and in the fifth line “...solutions in these *voluntary* guidelines...”

#### Executive Summary, continued (Page 2)

- Again, we note five places on this page where the word “voluntary” should be added before the word “guidelines”: the first sentence on this page “The heart of these *voluntary* guidelines...”; the first line of the second paragraph “To develop these *voluntary* guidelines...”; the first line of the third paragraph “These *voluntary* guidelines...”; the fourth line of the third paragraph “...failure to implement the *voluntary* guidelines...”; and the last sentence in the third paragraph “...implementation of the *voluntary* guidelines...”
- The first paragraph on this page, lists seven bullet points which are intended to comprise a formal ergonomics program. As we have repeatedly stated we believe OSHA continues to focus too much on the establishment of formal, bureaucratic programs. This paragraph should be deleted or substantially modified. We will discuss these program elements in greater detail below under the proposed section entitled, “A Process for Protecting Workers.”
- The final paragraph, in which OSHA provides a disclaimer about the voluntary nature of the proposed guidelines, is extremely important to our industry. We believe the paragraph should be expanded to further elaborate on these issues. In addition it needs further emphasis. We suggest it be all in bold print and emphasized in the appearance of the final document. As noted above we believe the guidelines must be improved to emphasize that there is no solid proof that the measures contained in the document will guarantee a reduction in injuries, and we are concerned about the guidelines being used as a blueprint for abatement measures under general duty ergonomics citations. Therefore, we strongly

recommend changes to this paragraph as indicated below. Additions proposed by FMI are in italics:

“These *voluntary* guidelines are advisory in nature and informational in content. They are not a new standard or regulation and do not create any new OSHA duties. Under the OSHA Act, the extent of an employer’s obligation to address ergonomic hazards is governed by the general duty clause. 29 U.S.C. 654(a)(1). An employer’s failure to implement the voluntary guidelines is not a violation, or evidence of a violation, and may not be used as evidence of a violation, of the general duty clause. Furthermore, the fact that OSHA has developed this document is not evidence and may not be used as evidence of an employer’s obligations under the general duty clause; the fact that a measure is recommended in this document but not adopted by an employer is not evidence, and may not be used as evidence, of a violation of the general duty clause. *This document and the information in it shall not serve as a “blueprint” or basis for abatement purposes in any general duty investigation or general duty citation.* In addition, the recommendations contained herein should be adapted to the needs and resources of each individual place of employment. Thus, implementation of the *voluntary* guidelines may differ from site to site depending on the circumstances at each particular site. *These voluntary guidelines do not contain guaranteed solutions to potential injuries and are not intended to substitute other actions an employer may undertake. The suggestions contained herein may be used in whole or in part by an employer or may complement other efforts. In fact, because every workplace is different OSHA has rejected the creation of a one-size-fits-all federal ergonomics regulation and these voluntary guidelines shall not serve as the basis of any such mandatory regulation, and OSHA would oppose efforts to make these voluntary guidelines into a mandatory regulation OSHA would also oppose any efforts by states to adopt these voluntary guidelines as mandatory law or regulation.*”

### Introduction (Page 3)

- The second paragraph should be amended as follows (FMI recommendations in italics): “*Some* grocery store work is physically demanding. Grocery store workers *may* handle ~~thousands~~ *hundreds* of items each day to stock shelves, check groceries, decorate bakery items, and prepare meat products. These tasks involve several *potential* risk factors. The most important of these are:” We believe these changes would make this paragraph more accurately reflect the realities of work in a typical grocery store.
- The section in the second paragraph which defines “force,” “repetition,” and “awkward postures” references FMI’s publication entitled “Working Smart in the Retail Environment: Ergonomics Guide,” which also defines these potential risk factors. While the proposed guidelines reference our material, the definitions used do not mirror those found in FMI’s guide. Additionally, our Guide also

states “However, as we said before, this doesn’t mean that you will injure yourself, just that you are more likely to. Many people exposed to these risk factors do not get injured.” Furthermore, in FMI’s publication, the definition of these “potential risk factors” is also followed by a section called “personal risk factors,” which lists a series of things outside the workplace which may also cause injuries. FMI’s publication states, “Remember that things you do outside the workplace can contribute to the possibility of getting injured. Even housework may present risks for some people.” OSHA makes no similar statements in the proposed voluntary guidelines.

- In the third paragraph, second sentence the word “voluntary” should be added prior to the word “guidelines.”
- FMI recommends that the final paragraph on page 3 be deleted. This paragraph states, “In 2001, BLS reported about 17,600 MSDs with days away from work that occurred from a one-time event or repetitive activity. Back cases accounted for more than 9,500 MSDs. About 80% (13,800) of all MSDs were sprain, strain and tear injuries.” We do not see any need to include this statement in these voluntary guidelines. The information is not specifically related to grocery stores and may mislead the reader to believe that it is. This paragraph does not make any useful point about the grocery industry.
- The case-study included on page 3, concerning display cases which are less awkward to stock, may be better understood if it included a photograph or illustration. We believe this section should also include a disclaimer stating “there is no guarantee that this design will reduce injuries.” Finally, the source citation (15) is an email from “Supervalu Supermarkets, Inc.” The proper name of the company is SUPERVALU INC.
- The box included in the lower right corner of page 3 lists “Grocery Store Occupations with the largest Number of MSDs, 2001” and cites a special study prepared by BLS for OSHA. FMI has several questions about these figures. We have never before seen such figures which break out injuries among various job descriptions within a workplace, and would like to see an explanation of how these figures were calculated by BLS and an explanation of how BLS was able to separate MSD injuries from all other injuries to arrive at these figures. When FMI requested information on this we were provided a two-page chart, which states in a footnote that musculoskeletal disorders includes “cases where the nature of the injury is: sprains, strains, tears; back pain, hurt back; soreness, pain, hurt, except back; carpal tunnel syndrome; hernia....” Thus, virtually any injury may be considered a musculoskeletal disorder. Furthermore, there is no explanation about what the numbers mean. For instance the box lists 4,985 MSD injures suffered by “stock handlers and baggers.” Is this 4,985 total or is this number based on thousands? If we add the total number of injuries among the six listed categories, one is led to believe that in 2001 there were 14,298 MSD injuries in the entire grocery store industry, which employs approximately 4 million Americans. The first paragraph on page 3 indicates that our industry “reported 180,800 work-related injury and illness cases” in 2001, therefore we are

led to believe that only slightly more than 14,000 of those (or about 8%) were MSDs. Also, we would like to know how BLS broke all grocery store employees into the six listed categories when it is frequent that employees may perform activities in more than one of the categories within the same shift. For example, a “sales counter clerk” may go help stock shelves when there are few customers wishing to check out, thus putting the employee in the category designated “stock handlers and baggers.” Without a great deal of further explanation, FMI firmly believes this section must be removed from the final version of the voluntary guidelines. The figures and how they were derived are not properly explained, and they could be very misleading to the reader.

Introduction (continued) Page 4

- FMI *emphatically* rejects the first sentence of the first paragraph on page 4, which states “Employers should consider an MSD to be work-related if an event or exposure in the work environment either caused or contributed to the MSD, or significantly aggravated a pre-existing MSD.” We understand that this statement reflects the OSHA recordkeeping rule, but believe it is not justified in this context. It would require employers to accept complete responsibility for every MSD injury regardless of just how much the injury may actually be related to job functions if at all. There is too much scientific uncertainty, and too many factors affecting each individual employee including personal physical characteristics and activities outside the workplace for OSHA to make such a broad statement, which has tremendous implications for the broader employer community beyond the supermarket industry. FMI strongly believes this statement must be removed from the final guidelines and recommends the entire first paragraph on page 4 be deleted. An alternative statement might read, for example, “Employers should be alert to MSD’s which may be caused by workplace factors or MSDs which are caused by factors outside the workplace but exasperated at work. Additional scientific research must continue in this area.”
- The second paragraph on page 4, which contains just four sentences, presents the only significant acknowledgment by OSHA in this document that factors outside the workplace may cause or contribute to MSDs. There continue to be many unanswered questions, and scientific debate, about the relationship between these injuries and outside activities. We recommend that this paragraph be further expanded to give proper deference to what we believe is an extremely important issue affecting not only the grocery industry but many other industries in the U.S. economy. Because the statements included in this paragraph apply to a broad array of American businesses, we encourage OSHA to work with the National Coalition on Ergonomics, of which FMI is a longtime member, to develop acceptable language that will appropriately reflect the impact of factors outside the workplace and the continuing scientific debate in this area.
- The third and fourth paragraphs on page 4 seek to explain the positive impact ergonomic changes could have on businesses by reducing injuries. This could help encourage businesses to use information from the voluntary guidelines. The

- first sentence in the fourth paragraph should be amended to include the word “voluntary” before the word “guidelines.” The statement in the second paragraph, “Many changes can be made without significantly increasing costs” should be deleted. Many of the changes proposed in this document come with substantial costs to our industry, costs which are magnified due to the extremely competitive nature of our industry in which companies typically operate on a profit margin of only about one percent. OSHA should not dismiss these costs nor mislead the readers of this document about the costs associated with the recommendations.
- The lower right corner of page 4 contains an example of how one company reduced the manual handling of ice in a display case. This is a good example of a relatively simple and inexpensive change which could reduce the opportunity for injuries and we urge that it be retained. However, we suggest a disclaimer be included stating “there is no guarantee this will reduce injuries, but these changes help to minimize repetitive lifting associated with scooping ice.”

#### A Process for Protecting Workers (Page 5)

This section, as the title implies, sets forth a type of formalized system OSHA encourages employers to establish for addressing ergonomics in their workplaces. Our industry for many years has consistently held the position that the answer to minimizing the opportunity for injuries lies in practical solutions, not formal, inflexible bureaucratic programs which over-emphasize process, recordkeeping and paperwork. While it is true that some employers, particularly large companies, find it helpful to establish formal programs, many do not. This is particularly true for small, family-run businesses with limited time and resources. We believe that the final OSHA voluntary guidelines should focus primarily on offering practical solutions rather than emphasizing formal programs.

This proposed section devotes a full seven pages to activities which focus on programs and process, not practical solutions. We strongly believe that this section should be shortened and streamlined, and made more concise so that the primary emphasis of the whole document is on practical solutions. Our comments below will offer some suggestions for achieving this objective.

- The first paragraph on page 5 should be amended as follows (italics are additions): “*Many of the recommendations below are practices taken from safety programs that grocery stores have developed and that OSHA observed while performing site visits at grocery stores and other OSHA sources.* They are intended to provide a flexible framework that a grocery store manager can adapt to an individual store *if he or she believes it will reduce injuries.* In ~~many grocery stores~~ stores with such programs, ergonomics, other employee safety and health efforts, workers’ compensation and risk management are integrated into a single program, and are usually administered by the same staff. ~~OSHA recommends that employers develop a process for systematically addressing ergonomics issues in their facilities, and incorporate this process into an overall program to recognize~~

- and prevent occupational safety and health hazards.” FMI strongly objects to the last sentence in this proposed paragraph and believe it must be deleted. Just as OSHA has rejected the formal bureaucratic programs proposed by the prior administration, OSHA should not now encourage the use of such programs.
- The first sentence in the second paragraph should be replaced: ~~“Store and company management personnel should consider the general steps discussed below when establishing and implementing an ergonomics process.~~ For those employers choosing to establish formal ergonomics programs, below are some possible elements of such a program.”
  - The section entitled “Provide Management Support” should be significantly shortened. The identical section in the final Nursing Home Guidelines is just one paragraph. If OSHA believes this section must be retained at all, alternative language might state, “Your support for reducing ergonomic injuries, and communicating your support to your employees, is very important. You have already demonstrated that support by reading these voluntary guidelines. It is also important that you develop goals and do your best to provide the resources necessary to enhance the safety of your workplace.”
  - The case study cited on page 5, from Lucky Stores, is based on an article which appeared in BNA in 1992, now nearly 11 years old. The article highlights a general safety and health program at that company, not specifically an ergonomics program which is the subject of these draft voluntary guidelines. For these reasons we believe this case study should be removed.

#### A Process for Protecting Workers continued (Pages 6 and 7)

- The section entitled “Involve Employees” is identical to the same section contained in the final Nursing Home Guidelines. The final bullet point, “Participate in developing the grocery store’s ergonomics process” assumes that every business will establish a formal “process” and should be removed.
- The section entitled “Identify Problems” is unnecessarily lengthy, over-emphasizes formal analysis, and is not likely to be easily understood by the typical reader. The identical section in the final Nursing Home Guidelines is just one paragraph. An alternative to this section might read, “It is important to periodically review your job site and the activities of employees to identify possible ergonomic issues. This could include a review of OSHA 300 and 301 injury and illness information, workers’ compensation records and employee reports of problems. When reviewing the various jobs in a grocery store, pay particular attention to the “risk factors” mentioned earlier—force, repetition, and awkward postures, however the presence of these risk factors does not necessarily mean that the job poses a risk of injury.” We oppose the use of the word “problems” which may be substituted by “issues” or “concerns” or “opportunities.”
- Some of the points made in the proposed section “Identify Problems” are particularly troublesome to FMI. The bullet encouraging “evaluating what various studies have suggested are risk factors for MSDs” is not an activity which

a grocery store manager is likely to undertake. The inclusion of “contact stress” as one of the listed “ergonomic risk factors” does not apply to the grocery industry, and was not listed in the proposed introduction, and therefore should be deleted.

Figure 1. Checklist for Identifying Potential Ergonomics Concerns by Workplace Activity (Page 8)

- The first sentence on this Checklist may lead the reader to believe that any particular activity listed will cause injury. We suggest changing this sentence to state “Below is a series of job activities which may help you identify possible areas of ergonomic concern. Repetitive activities or combinations of these activities could pose a concern.”
- Under “Force in Lifting,” we suggest clarification of the first statement concerning pinching. Most lifts do not require pinching but the employee may lift this way anyway. The question, “is the lift made with one hand?” should be changed to “is heavy lifting done with one hand?” since many small items in a grocery store may be easily lifted with one hand.
- Under the section “Force in Pushing, Pulling, Carrying” the statement “Are there cracks in the floor...” should be changed to “cracks creating an uneven surface” since most floors contain some cracks which do not inhibit free movement. Also, the question “are heavy objects carried manually for a long distance,” the term long distance is not defined.
- Under “Awkward and Static Postures,” in the fourth bullet the word “twisted” would be more accurate if it were replaced with “flexed.” Also, the question “Does the job require standing for most of the shift” should be expanded to include “without an anti-fatigue mat.”

Figure 2. Checklist for Identifying Potential Ergonomics Concerns at Job-Specific Workstations (Page 9)

- The first sentence of the introductory comments should be edited to read, “If the answer to ~~any~~ a majority of the following...” And the final word, “problem” would be best replaced by “concern.”
- Under “Cashiering,” the second bullet promotes adjustable keyboards. Some of our members have indicated that after installing these keyboards, at great expense, employees often do not utilize them.
- Under “Shelf Stocking & Stockrooms,” the first bullet should be edited to read “are step stools *or ladders* available to reach high shelves?”
- Under “Bakery,” the final bullet should replace the word “twisted” with “flexed.”

Continued (Page 10 and 11)

- The section entitled “Implement Solutions” seems an obvious point and redundant. Obviously the point of the voluntary guidelines is to promote solutions, and a large section follows entitled “Implementing Solutions.” This

- paragraph seems unnecessary and in the interest of brevity we recommend that it be deleted.
- The section entitled “Address Reports of Injuries” should be made much shorter and more concise. The two paragraphs might be replaced with a statement such as “Early intervention is an effective method of handling potential injuries. Employees should report injuries early so that action can be taken to address any potential job-related issues. Medical treatment and possible work restrictions could be necessary, but attention should be paid to addressing root problems early to avoid more costly actions if injuries are left unaddressed. Employees should also be aware that what they think is an injury may be caused by activities outside of work such as yard work, physical training, etc.”
  - Similarly the section entitled “Provide Training” should be shortened and made more concise. The second half of the proposed section (beginning on page 11) recommends a separate training program for staff who “coordinate and direct ergonomics efforts” as well as separate training programs for management and supervisory personnel. FMI recommends that these sections be deleted. A single grocery store is highly unlikely to establish three separate forms of training, but would be more likely to undertake one effort which addresses all employees who may have exposure to potential ergonomics issues. Also, the last sentence of the first paragraph of this section reads, “OSHA recommends training for all grocery store employees...” We believe this should be edited to read, “OSHA recommends training for employees who may be exposed to potential ergonomic-related issues...”

#### Implementing Solutions (Page 12)

- The case study concerning plastic pallets contained on page 12 should be more thoroughly examined before OSHA makes this recommendation. Plastic pallets were included as “Scenario No. MH-29” contained in the Clinton administration’s ergonomics regulation. At that time FMI sought input from our members on this suggestion, and found numerous problems. For instance, one company that made the transition from wood to plastic pallets reported no resulting decrease in MSDs, but did encounter several problems. The company reported that plastic pallets have decreased load stability because plastic pallets don’t provide the traction offered by wood pallets. Cases can slip off the pallet and fall to the floor when rounding a corner. As a result, pallet jack operators began to “look back” while driving to make sure the pallets were not slipping, and this resulted in an injurious collision. Plastic pallets also may be more slippery when wet, and in cold storage. A company also reported these pallets do not stack well in transit and that drivers had to re-stack the pallets resulting in greater driver injuries. Transition to plastic pallets also resulted in costly warehouse re-engineering and the elimination of jobs in repairing wood pallets. Also, concerns have been raised by many in our industry about plastic pallets in the case of fire, because plastic



- burns much hotter than wood. Some member companies have reported concerns raised by local fire marshals.
- OSHA should consider using actual photographs, rather than artists' diagrams to demonstrate recommended work techniques. While some of the diagrams OSHA has used in the proposed voluntary guidelines were taken from FMI's Ergonomics Guide, real photos of real situations would be likely to enhance the usability of the final document.

#### Storewide Ergonomic Solutions (Page 13)

- The background graph in the upper right corner of this page is confusing. We believe OSHA is attempting to demonstrate an injury-reduction chart, but the chart has been reversed, and in the draft seems to show an increase.
- A disclaimer on this page should be added stating "Using these techniques won't guarantee injury reduction, but they will help you work more safely and comfortably."

#### Storewide Ergonomic Solutions (Page 14)

- This page is written concisely and offers useful lifting techniques. The last sentence of the "lifting safety" paragraph should be deleted. It reads, "For lighter items, the employer should ensure that employees use good lifting techniques." Employers cannot be responsible for ensuring that every employee uses proper techniques for every lift throughout every day. No matter how much training employees receive and how much they are encouraged to lift properly, some employees for a variety of reasons will not always utilize what they have been taught.

#### Storewide Ergonomic Solutions (Page 15)

- The paragraph at the top of the page should include a disclaimer stating "Using these techniques won't guarantee injury reduction, but they will help you work more safely and comfortably."
- The second bullet under "Back" references work performed while sitting. The diagram does not indicate whether the person is working as a cashier or working in a bakery, but if this diagram is intended to show a cashier, we recommend removing this bullet. Due to a reduction in reach, many safety experts in our industry believe that sitting down at a checkout stand creates additional potential ergonomic exposures. At a minimum, this issue requires greater scientific research.

#### Storewide Ergonomic Solutions (Page 16)

- The "Windshield Wiper Pattern" section at the bottom of this page is not clearly understandable, and does not seem relevant to the rest of this page. We do not see the need for this point and recommend it be deleted.

Front End (Page 17)

- The first bullet in the column on the left, which encourages use of conveyors with both a foot and hand switch, is outdated technology. The vast majority of modern checkout stations employ an electronic eye to turn the conveyor belt on and off.
- FMI recommends that the fifth and sixth bullets in the left column, which recommend check stands designed for sitting, be removed unless OSHA can demonstrate clear scientific evidence of the benefits. As mentioned earlier, sitting down during cashiering activities may limit reach, cause unnecessary bending and twisting and could cause injuries, not prevent them. OSHA may wish to study European sit-down checkout systems, with consideration given for differences in U.S. and European health care delivery systems.
- A disclaimer on this page should be added stating “Adopting these changes won’t guarantee injury reduction, but they will help you work more safely and comfortably.”

Front End, continued (Page 18)

- The third bullet in the left column of page 18 recommends height-adjustable keyboards, and the fifth bullet recommends adjustable check stand heights. Some companies report that after purchasing and installing them, many employees fail to utilize them. When OSHA made this proposal as part of the Clinton administration’s ergonomics rule (Scenario MH-71, Control Number 1) OSHA estimated the cost of these engineering changes at \$500 per check stand. In a grocery store with 15 checkout lanes, this is an additional cost of \$7,500. This is a very substantial cost even using OSHA’s own estimates. The true cost is likely to be much higher. One member company estimated that this engineering change could cost \$2,000 per cash register or more. Before making this recommendation, OSHA should further study the cost of implementation and undertake a study to determine how widespread employees use adjustable keyboards when available, then determine whether the cost is balanced by the benefit.
- Similarly, the fourth bullet in the right column recommends height-adjustable bag stands. This is also a recommendation which was made by OSHA under the Clinton administration (Scenario MH-71, Control Number 2). OSHA estimated the cost at that time of \$250 per check stand (another \$3,750 cost for the 15-lane grocery store, using OSHA’s own cost estimates which are lower than the true cost). Again, a feasibility study should be undertaken before this recommendation is made.
- The sixth bullet in the right column, recommending bags with handles, seems irrelevant. Modern grocery stores for many years have offered plastic bags with handles, as well as a paper alternative for those customers who prefer them.

Stocking (Page 19 and 20)

- The diagram at the top of page 20 shows a residential-use two-step ladder that is not commercial grade, presumably for use in reaching upper shelves. In constant use these types of ladders can become unstable and could cause a fall hazard.

OSHA should consider using a picture of a commercial grade two-step ladder instead.

- The seventh bullet in the left column of page 20, concerning plastic pallets, should be removed as discussed above.
- The eleventh bullet in the left column of page 20 makes two different recommendations, one concerning the size of dolly wheels and the other concerning raising the bottom shelves in a grocery store. These two points are totally unrelated. The second recommendation is not realistic since it would require major engineering changes and probably result in the loss of a tremendous amount of display space when done throughout the entire store. That display space is critically important as food manufacturers and retailers struggle to include as many products as possible in the limited space available in a grocery store in order to enhance the consumers' shopping experience. The recommendation to raise bottom shelves is in no way feasible and should be removed.
- The second and third bullets in the right column of page 20 recommends installation of roller bed conveyors and turntables in stockrooms. This may be preferable in some instances, but many storage areas may not have adequate room for these, or they may not be necessary in certain room configurations.
- The fourth bullet in the right column of page 20 recommends powered hand jacks or scissors-lifts to raise pallets to waist height. These items are highly expensive to purchase. Before making this recommendation OSHA should further study the cost and benefits and determine whether it is a realistic option.
- A disclaimer on this page should be added stating "Adopting these changes won't guarantee injury reduction, but they will help you work more safely and comfortably."

#### Bakery (Pages 21 and 22)

- The first bullet in the left column has a typographical error, "...the cake is at about at elbow height..."
- On page 22, again a residential ladder is shown rather than one of commercial-grade. See comments concerning page 20.
- While FMI notes that OSHA has included a statement at the bottom of page 21 indicating that these recommendations apply specifically to grocery stores, these recommendations could have implications to other bakeries. We therefore urge OSHA to carefully consider the comments filed by the American Bakers Association or other groups also representing the baking industry.
- A disclaimer on this page should be added stating "Adopting these changes won't guarantee injury reduction, but they will help you work more safely and comfortably."

Meat (Pages 23 and 24)

- Again, a residential ladder is shown, and should be replaced with a commercial grade ladder.
- The fifth bullet in the left column of page 24 again recommends height-adjustable work surfaces. FMI again recommends further study comparing the cost of this engineering change and whether employees take advantage of height-adjustable surfaces when they are available.
- A disclaimer on this page should be added stating “Adopting these changes won’t guarantee injury reduction, but they will help you work more safely and comfortably.”

Produce (Page 25)

- A disclaimer on this page should be added stating “Adopting these changes won’t guarantee injury reduction, but they will help you work more safely and comfortably.”

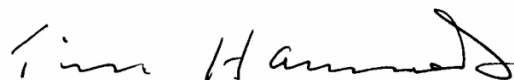
Additional Sources of Information (Pages 26-27)

- FMI recommends the addition to this section of a landmark study recently conducted at the Mayo Clinic in Scottsdale, AZ concerning the relationship between carpal tunnel syndrome and heavy computer use. The study has implications for those in the grocery industry and beyond. The results of the study were published in the June 12, 2001 issue of Neurology.
- FMI also recommends the addition to this section of a new study conducted by a leading group of physicians in Denmark reviewing the relationship between the use of keyboards and mouse devices and the occurrence of possible carpal tunnel syndrome. The study was published in the June 11, 2003 issue of The Journal of the American Medical Association, Vol. 289 No. 22.

Conclusion

FMI appreciates the opportunity to submit these comments on behalf of our retail grocery members who will be directly affected by these voluntary ergonomics guidelines. If OSHA adopts all of the changes we have recommended, the draft document will be more likely to be used in grocery stores. Thank you.

Sincerely,



Tim Hammonds  
President and CEO