NCE National Coalition on Ergonomics

October 27, 2005

Mr. Keith L. Goddard
Director, Directorate of Evaluation and Analysis
United States Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: *Appeal of Information Quality Correction Request No. 123* (April 1, 2005) *Ergonomics Guidelines for Poultry Processing, Retail Grocery Stores, and Nursing Homes*

Dear Mr. Goddard:

The National Coalition on Ergonomics ("NCE") respectfully appeals the decision, dated July 28, 2005 ("Decision"), denying the above-referenced Information Quality Act ("IQA") correction request ("Request"). This appeal is being filed within the extension period granted in your letter of September 8, 2005.

Background

NCE's Request encompasses three OSHA publications: *Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing* (Sept. 2, 2004) ("Poultry Guidelines"); *Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Retail Grocery Stores* (May 28, 2004) ("Grocery Guidelines"); and *Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Nursing Homes* (Mar. 13, 2003) ("Nursing Home Guidelines"). NCE strongly supports the stated goal of these Guidelines, which is to share "best practices" and "voluntary solutions" without having to justify a "scientifically valid" standard. Testimony of Elaine L. Chao before the Committee on Health, Education, Labor and Pensions, Apr. 18, 2002. The final product, however, fails to meet this objective. Disregarding the "lack of consensus" on causes and solutions, Testimony of Elaine L. Chao before the Committee on Health, Education, Labor and Pensions, Apr. 18, 2002, the Guidelines falsely portray the science as clear and settled.

Both in approach and in justification, the Guidelines are virtually indistinguishable from the final ergonomics standard that Congress rejected four years ago. Notwithstanding the promise of "industry-specific" Guidelines, http://www.osha.gov/ergonomics/FAQs-external.html, each document recommends a virtually identical seven-prong program that replicates every major element of the former standard. The following table summarizes these parallels:

Poultry Guidelines	Grocery Guidelines	Nursing Home Guidelines	Rescinded Standard
"providing management support" (p. 5)	"provide management support" (p. 7)	"provide management support" (p. 6)	"management leadership" § 1900.900(h)
"involving employees" (p. 5)	"involve employees" (p. 7)	"involve employees" (p. 6)	"employee participation" § 1900.900(i)
"providing training" (p. 5)	"provide training" (p. 11)	"provide training" (p. 7)	"training" § 1900.900(t)
"identifying problems" (p. 7)	"identify problems" (p. 7)	"identify problems" (p. 6)	"job hazard analysis" § 1900.900(j)
"implementing solutions" (p. 8)	"implement solutions" (p. 8)	"implement solutions" (p. 7)	"reduce MSD hazards" § 1900.900(k)
"addressing reports of injuries" (p. 8)	"address reports of injuries" (p. 8)	"address reports of injuries" (p. 7)	"MSD management" § 1900.900(p)
"evaluating ergonomics efforts" (p. 9)	"evaluate progress" (p. 11)	"evaluate ergonomics efforts" (p. 7)	"evaluate your ergonomics program" § 1900.900(u)

The Guidelines also purport to draw scientific justification from the same primary sources as the former standard: reports produced by the National Academy of Sciences ("NAS") and National Institute for Occupational Safety and Health ("NIOSH"). By scientific standards, the NIOSH report is quite stale, having been produced more than eight years ago. Even the NAS report is nearly five years old. The Guidelines, however, reflect no substantial attempt to update these documents with the latest scientific research. While OSHA did refer to a few individual studies, it included publications dating back as far as the 1980s. *See* Nursing Home Guidelines at 33 (citing sources as old as 1988); Grocery Guidelines at 27 (citing sources as old as 1989); Poultry Guidelines at 89 (citing sources as old as 1986).

The Decision places particular emphasis on the NAS report "because it was conducted pursuant to a congressional charge." Decision at 1. The majority of Congress,

however, flatly rejected the reading of that report that OSHA now advances. Like OSHA, minority members argued during floor debate that NAS had found strong science supporting a link between physical activity and injury and the use of workplace modifications as a remedy. *See*, *e.g.*, 147 Cong. Rec. S1837 (daily ed. Mar. 6, 2001) (statement of Sen. Kennedy) (arguing that NAS found "conclusive, indisputable evidence" of a "'clear causal relationship' between working conditions and ergonomic injuries"); *compare* Decision at 8 (asserting that the NAS report establishes such a relationship). The majority disagreed, pointing out that these claims were based on "selective reading" of NAS' conclusions. 147 Cong. Rec. H720 (daily ed. Mar. 7, 2001) (statement of Sen. Enzi).

The majority of Congress determined that the NAS and NIOSH reports did not constitute "a substantial body of evidence." *Id.* at H720 (statement of Rep. Ganske). The NAS report, in particular, found "more study" necessary before definitive conclusions could be drawn on "the relationships between causal factors and outcomes." *Id.* Members of the majority repeatedly emphasized the inadequacy of the NAS to support the same claims that OSHA now seeks to advance in its Guidelines. *See*, *e.g.*, 147 Cong. Rec. S1853 (daily ed. Mar. 6, 2001) (statement of Sen. Bond) (NAS found so many non-workplace factors to be significant that the regulatory program – now repeated in OSHA's guidelines – "will do little, if anything, to protect these employees from MSDs"); 147 Cong. Rec. H688 (daily ed. Mar. 7, 2001) (statement of Rep. Norwood) (NAS does not support the program set forth in the standard "in any way at all"); *see also id.* at H703 (Rep. Otter) (introducing material into the record stating that the NAS report "shows the contradictory nature of the research on ergonomic injury and work-relatedness"); *id.* at H705 (statement of Rep. Davis) (NAS report establishes the need for further research to clarify the relationship between workplace activity and MSDs).[1]

It is certainly possible to select passages from the NAS and NIOSH reports that appear to support aggressive claims about the causes of MSDs and effective solutions. The Decision – like the preamble to the rejected rule and floor statements from minority members who opposed the rescission resolution – focuses on such excerpts. Unbalanced ergonomic advocacy, however, is not permitted in an "influential" document governed by the IQA. The excerpts quoted in OSHA's Decision are counterbalanced by other findings, noted in NCE's Request and in this appeal, which acknowledge the scientific uncertainty associated with these issues. OSHA is obligated to consider the totality of these reports, and also to take into account other more recent scientific research, in order to present a

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[1] OSHA reliance on the recent OMB Final Information Quality Bulletin on Peer Review ("Bulletin") is misplaced for the same reason. Under the terms of the Bulletin, "official reports of the National Academy of Sciences are generally presumed to have been adequately peer reviewed." Bulletin § II.2. NCE never contended, however, that NAS lacks sufficient credentials or that its findings require peer review. The problem, as Congress recognized when it rejected the standard, is that NAS' report hardly speaks with a single, certain voice in support of the scientific claims advanced by OSHA or the seven-part program that is premised on those claims.

complete, fair, and accurate portrayal of existing science. The Guidelines fall woefully short in this regard.

NCE established in its Request that its members have a clear interest in the accuracy of information contained in the Guidelines, *see* Request at 2, and that the Guidelines constitute "influential" information subject to heightened IQA obligations, *id.* at 3. OSHA has effectively conceded these points by producing a Decision that is silent on both issues. The key issue in this appeal, therefore, is whether the substantive statements contained in the Guidelines are accurately presented and fully supported by sound science. While this issue was raised in the original Request, OSHA has yet to provide a satisfactory answer to the arguments and evidence that NCE submitted.

OSHA's Use of Terminology Does Not Meet IQA Standards for Influential Information

In its Guidelines, OSHA refers to "MSDs" as "injuries" affecting specific body parts. *E.g.*, Poultry Guidelines at 5. The agency defends this terminology by invoking the NIOSH and NAS reports, which refer to lists of "disorders." *See* Decision at 5-6. Yet, the very quotes cited in the Decision underscore the distinction between "disorder" and "injury" that is missing from the Guidelines. NAS, for example, refers to "syndromes that occur in the absence of defined radiographic abnormalities or commonly occur in the presence of unrelated radiographic abnormalities," such as "nonspecific backache." NAS Report at 431 (quoted in Decision at 6). NIOSH similarly refers to "disorders" rather than injuries, NIOSH Report at 1-1 (quoted in Decision at 6), explaining that "[w]ork-related MSDs are defined differently in different studies" with a "scarcity of objective measures" or "standardized criteria." *Id.* at 1-7. The Guidelines present none of these concepts and reflect none of this uncertainty. To the contrary, OSHA chooses to convey a single-minded emphasis on "injuries" to the general public.

"Disorders" are distinct from clinically diagnosable "injuries" or "illnesses." *See* NAS Report at 25. NAS defines a "disorder" as "an alteration in an individual's usual sense of wellness or ability to function," which "may or may not be associated with well-recognized anatomic, physiologic, or psychiatric pathology." *Id.* at 36. An "injury," on the other hand, is "a biological event representing the impact of an environmental alteration on the individual." *Id.* at 23. Most of the vaguely defined conditions commonly referred to as MSDs "do not satisfy rigorous diagnostic criteria for well-defined clinical entities," *id.* at 25. According to the NAS, this is "more often the case than not." *Id*. OSHA misstates the state of medical science, and seriously misleads the public, when it states that MSDs are a category of "injuries" affecting specific body parts, Poultry Guidelines at 5, or that they can be classified through a list of specific medical conditions, Grocery Guidelines at 5.

OSHA's Decision cites various references to "injury" in the NAS Report, emphasizing NAS' conclusion that "injury" is "inextricably bound" with non-biological impacts on the individual. *See* NAS Report at 23 (cited in Decision at 5 n.4). These references, however, only serve to undercut OSHA's position. The key conclusion that NAS derived from the "inextricabl[e]" interrelationship it described was that

"musculoskeletal disorders should be approached in the context of the whole person rather than focusing on body regions in isolation." NAS Report at 9 (Conclusion 3). The Guidelines disregard this finding by presenting MSDs solely as "injuries" affecting specific body parts – "hands, wrists, elbows, shoulders, neck, and low back," Poultry Guidelines at 5 – which can be remedied by solutions that act on these body parts alone. *E.g.*, Grocery Guidelines at 19 ("reduces stress on the knees and legs while kneeling"); *id.* at 21 ("reduce the stress on the worker's hands"), *id.* at 25 ("reduce stress on the back"); Poultry Guidelines at 14 ("alleviate physical fatigue and stress on a particular set of muscles and tendons").

This is not the first time that OSHA has struggled with the definition of "MSD." In 2001, it conducted several forums to receive public comments on the issue, deferring a recordkeeping regulation that would have imposed separate recordkeeping requirements for MSDs. 66 Fed. Reg. 35113 (July 3, 2001). OSHA now claims that its decision to withdraw the recordkeeping requirement was based solely on concerns about the usefulness of separate MSD data, Decision at 4 n.2, but the administrative record shows otherwise. When OSHA deferred the effective date of the original rule, it noted that one of the "key issues" it was reconsidering was "the approach to defining an ergonomic injury." *Id.* at 35115. "[T]o implement a new definition of MSD while the Agency is considering the issue," OSHA concluded, "could create unnecessary confusion and uncertainty." *Id.* In December 2002 OSHA stated that it still intended "to publish a final rule in 2003 to resolve the MSD definition issue for the year 2004 and beyond," 67 Fed. Reg. 77166 (Dec, 17, 2002). Ultimately, however, OSHA withdrew the rule without resolving the "confusion and uncertainty." 68 Fed. Reg. 38601 (June 30, 2003). OSHA explained that it had not settled on a single approach and that "[d]ifferent definitions might . . . be appropriate in some contexts." *Id.* at 38605.

OSHA must not now engage in a stealth rulemaking in the form of Guidelines that revive a definition it was unable to support after two years of formal administrative procedure. If OSHA insists upon doing so by relying heavily upon NAS, however, it must at the very least employ the term in the same way that NAS does. "Disorders," in NAS' view, are "alteration[s] in an individual's usual sense of wellness" that should be addressed through a focus on the "whole person." By presenting MSDs exclusively as "injuries" that should be addressed through physical workplace modifications aimed at reducing stress on specific body parts, the Guidelines misstate NAS' conclusions and violate IQA standards of utility, objectivity, and integrity.

OSHA's Treatment of Causation Does Not Meet IQA Standards for Influential Information

OSHA's Guidelines similarly imply a level of certainty about the causes of MSDs that is completely unjustified by current science. In defense of its Guidelines, OSHA quotes extensively from the NAS and NIOSH reports, which discuss "relationships" or "associations" between physical workplace factors and certain types of MSDs. *See*

Decision at 8-9. The Decision, however, disregards both of the primary concerns raised in NCE's Request.

First, while NAS and NIOSH certainly describe scientific research concerning various suspected "risk factors," they also note the presence of substantial disagreement and controversy concerning the conclusions to be drawn from these studies. *See*, *e.g.*, NAS Report at 1-2 (describing the current "debate"); NIOSH Report at 1-14 (analysis only "represents a first step in assessing the work-relatedness of MSDs"); *see also* Request at 7 (quoting congressional statements describing the uncertainty in NAS' conclusions and the need for additional research). In contrast, the Guidelines falsely portray findings from NAS and NIOSH as if they are clear and uncontested—totally ignoring language in the reports themselves and a wealth of new data-driven scientific study.

Second, by repeatedly stating that physical stresses "can lead to" or "can result" in MSDs, Decision at 10, the Guidelines falsely imply a causal link that science has been unable to establish. The American College of Occupational and Environmental Medicine ("ACOEM"), described by OSHA as "the world's largest occupational medical society," 65 Fed. Reg. 68263 (Nov. 14, 2000), emphasized this very distinction in the Practice Guidelines it issued earlier this year:

> [A]t present, risk factors that have been found to be associated with or predictive of certain WRMSDs [work related MSDs] and other syndromes have not necessarily been found to be causal for these entities. Due to the absence of certainty regarding causality and the lack of quantitative exposure-response data, most recommendations for the prevention of WRMSDs will be qualitative. While practitioners must make good-faith efforts to prevent these complaints, these assumptions should not extend to opinions about causation for benefits or medicolegal purposes.

ACOEM, *Occupational Medicine Practice Guidelines* 2-3 (2d ed. 2004) (emphasis added). OSHA's Decision did not respond to, or even acknowledge, this very important point.[2]

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[2] The Decision also asserts that the NAS and NIOSH reports support statements that certain risk factors "'are associated' with increased risk of pain and injury." Decision at 10. The Guidelines certainly would be improved if they emphasized "associations" rather than implying causation, although the reference to "pain and injury" still does not accurately describe the endpoint of most scientific research. Unfortunately, the Guidelines rarely if ever use this terminology. The Grocery Guidelines refer to associations twice on page 8, the Nursing Home Guidelines use the term once on page 4 and another time on page 5, and the Poultry Guidelines never use this terminology at all. The consistent message of the Guidelines, reflected in each of the quotes reproduced in the Request and in other passages throughout the three documents, is that physical factors can "result in" or "lead to" MSDs. *See* Request at 5-6.

OSHA's Descriptions of Proposed Solutions Do Not Meet IQA Standards for Influential Information

OSHA's Guidelines also assert, without substantial qualification, that "workplace modifications" and other "ergonomic principles" will "reduce the[] risk of injury." Request at 8 (quoting Guidelines). OSHA defends these statements by quoting isolated portions of NAS' conclusions concerning ergonomic interventions. Decision at 11 (quoting NAS Report at 328). The Decision fails to mention, however, that the two paragraphs immediately following the three numbered conclusions in the quoted passage contain some very important qualifications:

> 4. Because of limitations in the scientific literature, a comprehensive and systematic research program, supported by an infrastructure linking industry, labor, government, and academic efforts, is needed to further clarify and distinguish the features that make interventions effective for specific musculoskeletal disorders.
>
> 5. Although generic guidelines have been developed and successfully applied in intervention programs, no single specific design, restriction, or practice for universal application is supported by the existing scientific literature.

NAS Report at 329 (emphasis added).

OSHA's Guidelines pay no heed to either of these warnings. They suggest that specific interventions have been found uniformly effective for individual risk factors affecting specific parts of the body, without any mention of "limitations in the scientific literature" that cast doubt on these conclusions. They also consistently propose a "specific design" for "universal application" – a seven-part program that recycles the rescinded standard – promising that this cookie-cutter approach can reduce the risk of injury.

Unlike OSHA, NAS expressly and unequivocally disclaimed any implication that ergonomic interventions can reduce the risk of specific MSDs. At the conclusion of the panel's deliberations, Dr. Robert Szabo submitted a dissenting opinion questioning the strength of established associations between "risk factors (exposures) and a disease (outcome variable)." NAS Report at 440. Emphasizing the panel's consensus finding that "[f]ew high-quality intervention studies" exist relating either to the low back or to upper extremity disorders, *id.* at 439; *see also id.* at 308 (conclusion by full panel), Dr. Szabo argued: "There is little doubt that most ergonomic interventions increase comfort in the work environment, which is of great benefit to the worker, . . . [but] they have not lowered the incidence of well-documented medical conditions . . . ." *Id.* at 452.

The panel responded to this criticism not by disagreeing with Dr. Szabo, but by making clear that no such effectiveness claim was being advanced with respect to the effectiveness of interventions. The NAS report, according to the full panel, "states that interventions influenced pain reports and not the occurrence of specifically defined

disorders of the upper extremities." *Id.* at 458-59. The only relevant outcome, therefore, is "amelioration of symptoms, which is the end point in the relevant literature." *Id.* at 459.

Beyond the NAS Report, the only other justification that OSHA advances for its conclusions concerning the effectiveness of interventions is "the practical experience of employers and employees." Such literature must be important, OSHA asserts, because NAS has approved "best practices" as a resource contributing to the "weight and pattern of the evidence." Decision at 11 (citing NAS Report at 328). NAS, however, merely made the unremarkable observation that the "congruence" of best practices with "more scientific literature" can add to the weight of the overall evidence. NAS Report at 328. Never did NAS claim that mere anecdotes could overcome the lack of "high-quality scientific intervention studies," *id.* at 308, which prompted the disclaimer in response to Dr. Szabo.

Despite the initial enthusiasm that is often generated by "success stories," long term experience paints a less optimistic picture. *See*, *e.g.*, OSHA Docket No. S-777, Ex. 32-185-3, at 3-1 (data submitted by the United Auto Workers, showing that injury rates in the automobile industry have more than tripled since ergonomics programs were first instituted in the late 1980s). The Request sets forth several specific examples of anecdotal claims that proved to be at the very least misleading, if not completely inaccurate. *See* Request at 13 n.7. The Decision does not address any of these concerns.

Anecdotal information does not even remotely satisfy OSHA's own guidelines for IQA compliance, which require, among other things, "the best available peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices." U.S. Department of Labor, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Labor* ("IQG") at 15 (2002). If OSHA's information quality obligations were satisfied simply by gathering positive employer self-reports without any independent verification or scientific control, these IQA requirements would become a dead letter.

In stark contrast to its unquestioning reliance on employer anecdotes, the agency quickly dismisses formal scientific studies cited by NCE, including A. Yassi, J.E. Cooper, R.B. Tate, S. Gerlach, M. Muir, J. Trottier & K. Massey, "A Randomized Controlled Trial to Prevent Patient Lift and Transfer Injuries of Health Care Workers," Spine 26(16):1739-46 (2001). The Decision argues that the Yassi study does not undermine the "'weight' of evidence supporting the effectiveness of interventions," Decision at 11 n.7 (citing NAS Report at 365 n.7) and that it actually supports other information presented in the Guidelines, *id*. The Yassi study is particularly significant, however, because it is exactly the type of "high-quality" randomized controlled trial ("RCT") that NAS found lacking in the literature at the time of its report. *See* NAS Report at 308. When an RCT reaches negative conclusions on an issue for which NAS found very little quality research, OSHA cannot objectively claim that the "weight" of evidence is unaffected. The alleged "support" for OSHA's Guidelines in the Yassi study, moreover, relates to benefits such as "reduced fatigue," "comfort," and "morale." These are unmeasurable, subjective concepts

and do not constitute scientific, evidence-based support for OSHA's assertion that ergonomic programs can reduce the risk of injury.

The Yassi study, moreover, is far from alone in raising very serious questions about conclusions set forth in the Guidelines. Just this past June, for example, a group of scientists headed by Dr. Fredric Gerr announced the results of an RCT analyzing the effectiveness of various interventions for MSDs allegedly related to computer use. F. Gerr, M. Marcus, C. Monteilh, L. Hannan, D. Ortiz & D. Kleinbaum, "A Randomised Controlled Trial of Postural Interventions for Prevention of Musculoskeletal Symptoms Among Computer Users," Occup. Environ. Med. 62:478-87 (2005). The interventions in the study closely resemble recommendations endorsed in the Guidelines. *Compare*, *e.g.*, *id.* at 479 (description of tested interventions) *with* Grocery Guidelines at 18 (postural interventions, including adjustable keyboards, for grocery cashiers). The study's conclusion, which was "not expected" by these scientists, was that there were "no significant differences in time to symptoms" for any of the studied interventions. Occup. Environ. Med. 62 at 486. These results are particularly significant because Dr. Gerr served on the panel that produced the NAS report. He also testified on behalf of OSHA during the ergonomics rulemaking.

OSHA is obligated, under the IQA, to examine the most current and most rigorous research before it disseminates statements in an "influential" document about the causes and suggested remedies for "injuries." It should not limit itself to the NIOSH and NAS reports, which are quickly becoming outdated. Nor should it rely upon unscientific anecdotes. In addition to the sources mentioned in this appeal, NCE is in the process of preparing a more detailed analysis of recent research findings that OSHA should take into account. It will file this document as an addendum to this appeal as soon as it is completed.

The IQA Requires Appropriate Disclaimers To Avoid Misleading the Public

The IQA's requirements certainly do not prevent OSHA from disseminating information concerning approaches that employers have found helpful in addressing these issues in the context of specific industries. NCE strongly supports a guidelines process that would inform employers of best practices that various companies have found beneficial. The IQA is implicated, not when OSHA communicates such advice, but rather when the agency makes broad and insufficiently qualified claims concerning the scientific justification for its recommendations. Information in the Guidelines must be presented in a manner that does not imply scientific certainty where none exists.

OSHA acknowledges that the IQA requires a balanced presentation, including any disclaimers that are necessary "to ensure an accurate, clear, complete, and unbiased presentation." IQG at 12 (quoted in Decision at 12). It argues, however, that its obligations are discharged by statements that "[m]ore remains to be learned about the relationship between workplace activities and the development of MSDs" and that "MSDs are multi-factorial in origin." Decision at 12. Neither statement satisfies the requirements of the IQA.

It will not surprise anyone that "more remains to be learned" about ergonomics. That is inevitably true of any area of scientific inquiry. Such a statement has no effect at all on what OSHA claims that scientists have *already* learned about the nature and causes of MSDs and about allegedly effective remedies. An objective reader will be left with the impression that science has already established that MSDs are a category of defined "injuries," caused at least in part by physical workplace activity, which can be prevented by workplace interventions. More may remain "to be learned," but the document indicates that this much is clearly understood. None of the intense debate about each these propositions is acknowledged or even implied.

Nor do the acknowledgements of "multi-factorial" origins or psychosocial or other influences communicate the current scientific uncertainty. Similar acknowledgements were included in the rescinded standard, *see*, *e.g.*, 65 Fed. Reg. 68531, but the bottom line conclusion of that rulemaking was unaffected. To be effective, and to satisfy the IQA's requirements of utility, objectivity, and integrity as well as to more clearly distinguish the Guidelines as suggestive rather than a thinly disguised regulation, OSHA at the very least must directly acknowledge scientific uncertainty relating to the single factor on which it chooses to focus in its Guidelines: physical workplace activity.

Conclusion

It would be entirely appropriate – and helpful – for the agency to provide accurate, appropriately qualified, industry-specific information on workplace changes that may enhance employee comfort, reduce fatigue, and improve efficiency. OSHA, however, should not create unrealistic expectations by making claims, without appropriate scientific support, that programs modeled on the former standard can reduce ergonomic "hazards." Such Guidelines, in fact, may do more harm than good by encouraging employees to view work tasks or equipment as "injury" dangers, creating unnecessary disability, loss of income, and other consequences that ergonomic controls will be unable to cure. *See* "Scaring Patients Into Disability," Backletter 20(3):36 (2005) (reporting statements by Richard A. Deyo, M.D., a member of the NAS panel). In the end, the Guidelines may motivate employers to divert limited resources away from proven safety and health initiatives in other areas into formal ergonomics programs that will not achieve their intended purpose.

In light of these concerns, it is imperative for OSHA to take another look at the Poultry, Grocery, and Nursing Home Guidelines in order to clearly and prominently acknowledge scientific uncertainty. NCE is not asking OSHA to engage in a comprehensive rewrite; it merely asks the agency to accompany the existing materials with unambiguous disclaimers that clearly communicate the uncertain state of the science. At present, scientific research does not justify anything more than an objective collection of best practices, which employers may examine and implement according to their best judgment. Workplace initiatives may ameliorate discomfort, may make the job less exerting, and, according to the NAS definition of "MSD," may promote a sense of well-being. To oversell these guidelines as a means of eliminating the risk factors for "injury" is

to misrepresent and ignore peer-reviewed, evidence-based science, which the IQA demands before these guidelines can be disseminated in their present form.

Detailed, constructive suggestions as to how OSHA may bring the Guidelines into compliance with the IQA were submitted during the public comment periods for all three documents. *See* Docket No. GE2002-1, Ex. 4-36 (comments of the National Association of Manufacturers on the Draft Nursing Home Guidelines); Docket No. GE2003-1, Ex. 3-16 (comments of the U.S. Chamber of Commerce on the Draft Grocery Guidelines); Docket No. GE2003-2, Ex. 3-5 (comments of the National Association of Manufacturers on the Draft Poultry Guidelines). Although the IQA does not mandate the precise language suggested in these comments, it does require OSHA to fully and honestly disclose scientific uncertainty in a manner similar to these suggestions.

In light of the arguments and evidence submitted in this appeal, and to be submitted in the addendum that NCE intends to file describing the findings of recent scientific research, NCE respectfully urges OSHA to withdraw and reconsider the Poultry, Grocery, and Nursing Home Guidelines and to include appropriate acknowledgements of scientific uncertainty sufficient to bring them into compliance with the IQA.[3]

Sincerely,

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Chair, National Coalition on Ergonomics

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[3] The Information Quality Guidelines (IQG) authorizes OSHA to designate a panel to hear appeals of influential information, such as the Guidelines, when it determines "that such an appellate board is needed and is an efficient way to provide expertise or perspective or otherwise to improve the resolution of the appeal." IQG at 8. The importance and complexity of this appeal would certainly justify such a panel. Specific procedures are not set forth in the IQG. If OSHA chooses to employ a panel, NCE requests that it follow procedures similar to analogous processes such as arbitration, in which the parties jointly participate in the selection of qualified panel members.