

**ALASKA STATE LEGISLATURE
JOINT COMMITTEE ON ADMINISTRATIVE REGULATION REVIEW**

April 10, 2002

8:35 a.m.

HOUSE MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Jeannette James
Representative Joe Hayes

HOUSE MEMBERS ABSENT

All House members present

SENATE MEMBERS PRESENT

Senator Robin Taylor, Vice Chair

SENATE MEMBERS ABSENT

Senator Lyda Green
Senator Georgianna Lincoln

COMMITTEE CALENDAR

Proposed Regulations on Occupational Safety and Health Including
Ergonomics

PREVIOUS ACTION

No previous action to record

WITNESS REGISTER

FRANK DILLION, Executive Vice President
Alaska Trucking Association
3443 Minnesota Drive
Anchorage, Alaska 99503

POSITION STATEMENT: Expressed the need for the Department of
Labor & Workforce Development to wait for the new federal
proposals and regulations before moving ahead with state action.

THYES SHAUB
National Federation of Independent Business
217 Second Street, Number 206

Juneau, Alaska 99801

POSITION STATEMENT: Testified in opposition to the proposed draft regulations.

ED FLANAGAN, Commissioner

Department of Labor & Workforce Development

PO Box 21149

Juneau, Alaska 99802-1149

POSITION STATEMENT: Discussed the proposed draft regulations.

RICHARD MASTRIANO, Director

Division of Labor Standards & Safety

Department of Labor & Workforce Development

PO Box 107021

Anchorage, Alaska 99510-7021

POSITION STATEMENT: Provided additional information regarding the proposed draft regulations.

NEIL MACKINNON, President

Alaska Laundry & Cleaners

1114 Glacier Avenue

Juneau, Alaska 99801

POSITION STATEMENT: Expressed concerns with the proposed draft regulations.

PAM LaBOLLE, President

Alaska State Chamber of Commerce

217 2nd Street

Juneau, Alaska 99801

POSITION STATEMENT: Related the findings of a National Academy of Sciences report.

KAY SLACK, Private Business Owner

(No address provided)

POSITION STATEMENT: Expressed concerns with the proposed regulations.

MARY LOU JOVICH, Occupational Therapist;

Healthcare Professional

(No address provided)

POSITION STATEMENT: Indicated the need for these proposed ergonomic regulations.

STEVE TROSPER, Safety Coordinator

Local 959, Teamsters;

Safety Representative, Alaska Petroleum Joint Crafts Council

(No address provided)

POSITION STATEMENT: Testified that these proposed regulations would actually save businesses money.

SHAWN SMITH, McGee Industries
(No address provided)

POSITION STATEMENT: Expressed concerns with the proposed ergonomic regulations.

MEERA KOHLER, President and CEO
Alaska Village Electric Co-op
(No address provided)

POSITION STATEMENT: Urged the committee to do what it could to ensure that these regulations aren't implemented without a comprehensive review as to whether these regulations are necessary.

ACTION NARRATIVE

TAPE 02-4, SIDE A
Number 001

CHAIR LESIL MCGUIRE called the Joint Committee on Administrative Regulation Review to order at 8:35 a.m. Representatives McGuire, James, and Hayes were present at the call to order. Senator Taylor arrived as the meeting was in progress.

PROPOSED REGULATIONS ON OCCUPATIONAL SAFETY AND HEALTH INCLUDING ERGONOMICS

CHAIR MCGUIRE announced that the committee would discuss the proposed draft regulations on occupational safety and health, including those pertaining to ergonomics. She informed everyone that the committee has been approached by a number of concerned individuals regarding these proposed draft regulations. Therefore, the committee wanted to have the department update the committee with regard to the process as well as have those with concerns to articulate those concerns.

Number 0242

FRANK DILLION, Executive Vice President, Alaska Trucking Association (ATA), testified via teleconference. He informed the committee that ATA was founded 43 years ago to promote trucking safety and productivity in Alaska, which continues to be ATA's core mission. The association is responsible for the adoption of the commercial driver's license law in Alaska as

well as for the implementation of the Federal Motor Carrier regulations. Mr. Dillion said:

Trucking company owners do care about their employees' health and safety. Having said that I must express grave concerns on the part of the association's membership concerning the preliminary draft regulations on ergonomics, violence in the workplace, and indoor air quality. Currently, Federal Motor Carrier safety regulations require that every company have a written safety program that is fully implemented to protect workers in their workplace. The problem with these regulations is ... the details. It appears, upon reading the draft of these regulations, that most trucking operations would be simply unable to comply because of the very nature of freight handlings and the operations of trucks on the highway. Driving an automobile or truck is inherently dangerous, probably the most dangerous activity that you're involved in. Alaska's trucking industry, however, has an outstanding safety record, even under the conditions we find ourselves in of marginally maintained roads and adverse weather. In fact, the industry was ... recently recognized by the Commercial Vehicle Safety Alliance as having the best safety record for commercial vehicle operations of all 50 states.

After several years at the federal level, OSHA [Occupational Safety and Health Organization] came to the conclusion that the imposition of most of what is being proposed in these state regulations simply wouldn't work. Congress sent them back to completely revamp and revise their proposal. That revision is underway now. The implementation of these ergonomic regulations could and certainly would effect many trucking operations. I'm certain that you are aware [that] the federal government is revisiting the entire workplace ergonomic issue. It would, therefore, seem prudent that the Department of Labor wait to see the new federal proposals and regulations before they move ahead with state action.

The sections on violence in the workplace seem to be of very questionable value in preventing or stopping the kinds of things that have recently made headlines in workplace violence. No trucking business wants to

see violence in the workplace. In fact, I was unable to find a single company in Alaska that had a policy encouraging violence in the workplace. ATA members have many questions about who would do the training, what sort of certification would be necessary on the staff for counseling, and truly how this would effectively stop someone whose intent on coming to the workplace and committing an act of violence ..., or how it would prevent a spontaneous act of violence from happening between employees and/or company employees and customers. It would, therefore, appear to be nothing more [than] a burdensome level of recordkeeping with very little opportunity of effectively solving what we do know and we do consider a serious problem.

I've been working for years on the questions of outdoor air quality. And chairing the Citizen's Air Quality Advisory Board for the Municipality of Anchorage, I know how expensive it is to monitor air quality. I'm a little bit confused about the language and requirements in the sections of the proposed regulations concerning indoor air quality. If, in fact, by monitoring indoor air quality, it is as simple as the maintenance of the heating and air conditioning systems on a regular basis and keeping the records of that, that would seem reasonable. It would also seem reasonable that in office space areas the plug in type CO monitors ... [but] anything beyond that would be both unreasonable and unnecessary.

Number 0672

THYES SHAUB, National Federation of Independent Business (NFIB), informed the committee that NFIB has 2,500 members in Alaska and the average NFIB employer has fewer than five employees. Therefore, these are relatively small businesses. At the federal level, NFIB has been actively involved in the ergonomics issue. She pointed out that the committee packet should include a chronology of recent ergonomic actions at the federal level. The draft regulations for the Alaska Department of Labor & Workforce Development are specific to what each business should do. She noted that [the draft regulations] require many written reports that are very expensive for small businesses to do. While NFIB doesn't agree with additional mandates for any business, NFIB is interested in working with the department in regard to education that could be provided, she said. Ms. Shaub

also pointed out that the committee packet should include a summary of the written requirements [per the proposed draft regulations]. Ms. Shaub highlighted that the current workers' compensation rules and regulations include safety rules that could merely be provided to the businesses. Those businesses that have continual workers' compensation claims for a particular injury could be required to address it under the current laws and regulations. In conclusion, Ms. Shaub announced NFIB's opposition to the implementation of new state regulations until the federal level review is complete.

Number 1077

ED FLANAGAN, Commissioner, Department of Labor & Workforce Development (DLWD), stressed that [this meeting] is an effort to obtain as much public input as possible before the formal regulation process begins. He then turned to the issue of ergonomics at the national level, which came to attention through the U.S. Department of Labor's efforts to address musculoskeletal disorders caused by postures or repetitive motions in the workplace. This was initiated by the first Bush Administration. The [federal] regulation that resulted was announced late in the Clinton Administration. The regulation was very proscriptive. Although the state's proposed draft regulations are less proscriptive and intended to be user-friendly, there are portions with which he has concern. For instance, the requirements to remove an injured individual from the workplace and allow 90-100 percent wages to continue is concerning. Such situations seem to interfere with the workers' compensation legislation.

COMMISSIONER FLANAGAN turned to the Governor's Safety and Health Conference that occurred in March. During that meeting, Commissioner Flanagan said that he mentioned the need for Alaska to develop its own standard to address ergonomic injuries in the workplace. Interest in that was expressed by those in the business community. Finally, in October it was decided that a pre-proposal would be appropriate. Commissioner Flanagan pointed out that there are other components to the program beyond ergonomics such as the written safety and health program, which really restores what has been state law for probably 20 years. He recalled when the department moved to the federal regulations by adopting them by reference with some state specific standards. However, one of the state standards that wasn't maintained, but should've been, was the written safety and health program. Currently, all construction workers are required, per the federal law, to have a written safety and

health program. He pointed out that the written safety and health programs can be fairly simple and basic documents.

COMMISSIONER FLANAGAN explained that many of the initial comments were taken and there were meetings with some labor folks. Also, the department ran some display advertisements and a press release noting the scheduled meetings. There were many comments from those and he responded to many of them. Commissioner Flanagan stated that there is a win-win situation with these regulations, although he acknowledged that it may be a difficult road to achieving it. He encouraged those with an interest to remain involved. He announced that the comments from today will be taken and there will be a significant rewrite of the regulations. He acknowledged that many employers confuse the need to identify whether an activity exists at a specified rate versus a limit. Furthermore, most employers are already doing this in order to be enlightened.

Number 1922

CHAIR McGUIRE interjected and turned to the [regulations] that specify that certain repetitious activities can only be done certain amounts of time.

COMMISSIONER FLANAGAN clarified that the [regulations] are such that if [a business has employees] that perform one of the listed tasks for more than the specified time, the employee is in the caution zone for that activity. Commissioner Flanagan held up the State of Washington's [regulations] as a good [model]. Furthermore, the State of Washington, since it is the workers' compensation insurer for the state, has empirical data to specify the costs. He acknowledged that it may be challenged.

CHAIR McGUIRE asked if Commissioner Flanagan is aware of what was happening in the State of Washington -- that businesses are packing up and leaving.

COMMISSIONER FLANAGAN pointed out that the ergonomic regulations in the State of Washington don't go into effect until at least another year. Therefore, there is more going on with regard to the economy in the State of Washington [than these health and safety regulations].

CHAIR McGUIRE related that most small businesses would characterize the State of Washington as one of the most onerous states with regard to ergonomics regulations.

COMMISSIONER FLANAGAN reiterated that the State of Washington's regulations have delayed enforcement dates, which Alaska would certainly have. He suggested that the earliest enforcement in Alaska would be six months to a year after the regulations are promulgated. If there was any enforcement at six months, it would be for the State of Alaska alone and then other employers would be phased in.

Number 2089

CHAIR McGUIRE asked if Commissioner Flanagan believes that the current OSHA standards aren't adequate enough to protect the safety and health of the employees in the State of Alaska.

COMMISSIONER FLANAGAN related his belief that the state could do better, which he says means he believes that those OSHA standards aren't adequate. In further response to Chair McGuire, Commissioner Flanagan noted that lost workday incidents per worker are declining. However, there are many complaints with regard to indoor air quality. [These proposed draft regulations] provide things for the employer to do [by providing a standard]. With regard to ergonomics, there are many ergonomic injuries. Commissioner Flanagan said, "As long as we don't have a standard, we're not doing as much as we can."

CHAIR McGUIRE asked if there was a model used in the development of these proposed draft regulations.

COMMISSIONER FLANAGAN explained that before the federal standard there was a standard in North Carolina, which offers a guideline that is an enforceable standard. He wasn't sure where the caution zone concept came from, the State of Washington or North Carolina.

CHAIR McGUIRE directed attention to pages 6-10 of the proposed draft regulations and inquired as to how the timelines specified were chosen for various activities.

COMMISSIONER FLANAGAN, before deferring to Mr. Mastriano, emphasized that those aren't prohibitions or limitations of the activities.

RICHARD MASTRIANO, Director, Division of Labor Standards & Safety, Department of Labor & Workforce Development, said that these standards were taken from the federal standards as well as those from North Carolina and the State of Washington.

CHAIR MCGUIRE inquired as to the science behind these standards.

MR. MASTRIANO answered that the science comes from the injuries.

CHAIR MCGUIRE asked that the [scientific] information be provided to the committee. She pointed out that regulations do impact businesses and sometimes result in an unfunded mandate on private business. If there is science behind the regulations, let's discuss that because it will enable negotiations with regard to the threshold.

Number 2440

REPRESENTATIVE JAMES inquired as to the status of ergonomic claims in the state.

COMMISSIONER FLANAGAN explained that Alaska's lost workday injuries are declining across all industries. Information has been extrapolated for the national body for workers' compensation. He doubted that [the department] has specific data with regard to the reduction of ergonomic injuries other than trends extrapolated from national data. However, there is a figure for back injuries, which amount to about 20 percent of the claims in the state. Although all of those claims may be caused by something other than an ergonomic situation, there's a compensable state injury. The aforementioned is the reason some employers support this.

REPRESENTATIVE JAMES highlighted that musculoskeletal problems may be related to what an individual has done in the past rather than their current activity. [In those cases] she didn't know that [these proposed draft regulations] would help. Representative James inquired as to the time and cost spent on these regulations thus far.

COMMISSIONER FLANAGAN said that the [department] has tried to do this cheaply and thus far has had only the cost for the display advertisements, holding meetings, and mailings. He noted that the cost for developing the regulations is yet to come.

REPRESENTATIVE JAMES related her feeling that perhaps spending all of this money isn't relevant. She said that she has yet to be convinced of the need to go into depth with this issue.

COMMISSIONER FLANAGAN stated, "If I thought this was unnecessary, we, obviously, wouldn't be undertaking it." He

mentioned that he checked with industry folks to determine whether they thought this was worth doing and some did. Commissioner Flanagan noted his responsibility to the workers and employers of this state regardless of the federal issues and agendas.

REPRESENTATIVE JAMES pointed out that Alaska has a lot of small business, which can't be swept into everything and thus small businesses have faced more restrictions and difficulties. These difficulties result in people doing things illegally, she posited. Therefore, she agreed with Ms. Shaub's suggestion of providing [these small businesses] with educational materials. Representative James announced her opposition to the written statement of health. However, she expressed support of bullet-points that businesses could choose to fit their situation.

COMMISSIONER FLANAGAN explained: "That's basically what we did, in large part, ... with our consultation programs when we did have the requirement, until '96, for a written safety and health program." There are models with components that can be adjusted to fit the size of the business. He said that [the department] is aware that 80 percent of the state's employers have less than ten employees. He stressed that [the proposed draft regulations] need a lot of work. Commissioner Flanagan said that there is a place for safety regulations with a healthy dose of consultation.

REPRESENTATIVE JAMES indicated that the best place to spend the money [is the consultation and education piece].

TAPE 02-4, SIDE B

REPRESENTATIVE JAMES expressed concern with those employees who have injuries generated from activities that aren't related to work, but the injury is reported as work related. "I just think we're just howling at the moon in this particular case and think we're not having to go this far yet on this issue," she said.

Number 2955

SENATOR TAYLOR related his understanding that lost workdays have declined over a period of time.

COMMISSIONER FLANAGAN agreed with that understanding. In further response to Senator Taylor, he said that lost workdays have experienced a significant decline when one goes back to the start of the OSHA program in 1973. He attributed this decline

to the OSHA program as well as the efforts of employers and labor organizations.

SENATOR TAYLOR charged:

So, now, during the entire period that you've folks have been here, seven-and-a-half years, you've watched these numbers come down. And, now, with about six months left in this administration, you launch into a whole new program on ergonomics. I think that's fascinating to me that all of a sudden, out of the blue, we've got a real concern for ergonomics that you just have to put in place before you leave office.

COMMISSIONER FLANAGAN reiterated his earlier testimony that the federal government dominated the issue of ergonomics until January 2001. In March 2001, the governor's safety conference met and suggested that it might be time to address ergonomics, in a state-specific way, since the federal government doesn't seem to be moving forward. At that meeting, interest by industry was expressed. Since that time, the department has met with industry. Commissioner Flanagan also reiterated that these are [proposed draft regulations] for people to consider. Furthermore, the administration still has a job to do and that's what is happening.

SENATOR TAYLOR said, "I sometimes wonder what that job is that you think you're doing." He then directed attention to page 9 (4)(B) of the draft regulations, which refers to "gripping an unsupported object weighing 10 or more pounds per hand, or gripping with a force of 10 or more pounds per hand, more than two hours total per day (comparable to clamping light duty automotive jumper cables onto a battery)". Senator Taylor likened this description to bowling. He turned to page 9 (5)(A), which he said sounds like golf. "Somehow these are standards that if you set them and someone exceeds them, we know have a compensable injury and we have a way of tracing it back - some ergonomically stressed muscle - ... and fault can be established with the employer. In fact, no fault is necessary," he charged.

COMMISSIONER FLANAGAN said that's incorrect. Commissioner Flanagan emphasized that the [proposed draft regulations] pertain to the specified actions in the workplace. "We know these injuries happen," he said. Therefore, doing the specified activity may lead to an injury in some people. Commissioner Flanagan clarified that these proposed draft regulations are not

a prohibition or limitation on the specified activities but rather the regulations identify a caution zone. He explained that if employees are doing some of the listed activities, then the employer needs to do an assessment. If there are changes that could be done economically, then some action should be taken. With regard to the claim, Commissioner Flanagan stated that the claim is already present. If an employee has an injury, whether from bowling or a work-related activity, the workers' compensation board will sort out whether there is a claim. Establishing regulations doesn't establish [an entitlement to compensation] or claims.

SENATOR TAYLOR interjected that the claims aren't present and recalled Commissioner Flanagan's earlier remarks that claims, lost workdays, have been significantly decreasing for years. Senator Taylor said, "In fact, you've not only seen the lost workdays going down, you've seen a significant decrease in these types of claims. So, you see, there isn't a claim there."

COMMISSIONER FLANAGAN specified that there is no data to illustrate a decline or increase in these [ergonomic] claims. "We know there are still a significant amount of potentially musculoskeletal disorders," he explained. Lost workdays incidents have decreased across the aggregate of industries and all occupations and all types of injuries.

Number 2621

SENATOR TAYLOR surmised that Commissioner Flanagan is viewing the situation as one in which the glass is half full, the number of injuries. However, the statistics and testimony presented by Commissioner Flanagan indicate that the glass is half empty, and therefore the volume of injuries is decreasing significantly. "The fact that you have failed to be able to discern which are ergonomic injuries and which are not is absolutely no justification. In fact, if anything, it's the opposite until such time as you can establish that there is some increase in ergonomic injuries that we should be assisting and protecting both employees and employers from the claims of." He questioned why the department would launch an effort to protect everyone from something that is experiencing fewer claims. Senator Taylor expressed the possibility of studying this issue first in order to determine whether the ergonomic claims have increased. Furthermore, he expressed the need [for the department] to show that there is a "war" that needs to be won. He indicated that the current regulations may already have won the war.

COMMISSIONER FLANAGAN expressed the need to do better and attempt to reach a minimum of lost workdays. He reiterated that this is the beginning of the regulatory process.

Number 2495

CHAIR MCGUIRE inquired as to the fiscal note these regulations would generate for the state and private business.

COMMISSIONER FLANAGAN answered that he didn't have any information on that. In further response to Chair McGuire, he said that the intention is that [these regulations] wouldn't cost a lot. [The low cost] would be achieved by having the regulations be close to a guideline. Furthermore, safety could result in savings in workers' compensation.

CHAIR MCGUIRE reiterated her request to have the department explain the science behind these proposed draft regulations. Additionally, she requested that a fiscal note for these regulations be presented.

CHAIR MCGUIRE recalled Commissioner Flanagan's testimony regarding delayed enforcement of the regulations. She related her belief that it sounds as if [the department] has a course that it is following. She asked if Commissioner Flanagan intended for these proposed draft regulations to be promulgated at some point. If that is the case, when would that occur, she asked. She predicted that the regulations would be promulgated in October.

COMMISSIONER FLANAGAN expressed hope that there would be some agreement with the regulations amongst industry and the private sector.

CHAIR MCGUIRE interjected her belief that if there isn't agreement, the regulations would be promulgated anyway.

COMMISSIONER FLANAGAN disagreed and mentioned the possibility that no regulations will be promulgated. Furthermore, the delayed enforcement allows the consultation section to train and for employers to obtain resources.

Number 2262

CHAIR MCGUIRE surmised, "So, you really are giving it a good faith effort to put it out there? And if you find that they're

onerous, as many people have said to you, there's a possibility you won't do it?"

COMMISSIONER FLANAGAN replied, "That is a distinct possibility."

CHAIR MCGUIRE said that she doubted that to be the case.

COMMISSIONER FLANAGAN noted his resentment of that statement.

CHAIR MCGUIRE related her belief that the department will find a few people who will agree with the regulations, which will be enough to establish a middle ground. In that case, when would the regulations be promulgated, she asked.

COMMISSIONER FLANAGAN responded that he didn't know. He mentioned that October might be optimistic. In further response to Chair McGuire, Commissioner Flanagan said that any later than October would be problematic, however, "because we're not going to be around much longer than that."

SENATOR TAYLOR stressed, "The timing is literally based politically on what's going to occur this fall. And it's a joke to suggest that it's anything other than that." He predicted that Lieutenant Governor Fran Ulmer would be signing these regulations two days before she walks out the door. Therefore, the next administration will be hamstrung with a set of OSHA regulations that can be utilized by some members of industry as leverage for state contracts. Senator Taylor charged: "That's where the interest is, that's what the political motivation is. And this administration didn't want to have to, over the last seven years, negotiate contracts with a set of regs like this to be available ..."

COMMISSIONER FLANAGAN interjected, "That assertion is ludicrous."

Number 2121

REPRESENTATIVE JAMES suggested that many of the items in the regulations make sense as guidelines. However, she said she didn't believe having these regulations in law is appropriate.

COMMISSIONER FLANAGAN disagreed. He explained that [the department] believes that there should be some enforcement mechanism.

Number 2018

NEIL MACKINNON, President, Alaska Laundry & Cleaners, informed the committee that in December he was visited by an OSHA inspector for five consecutive days. That visit resulted in having to update his musculoskeletal disorders (MSDs); to rewrite his hazardous communication plan that includes a personal protective equipment assessment plan; [to write] a hazardous assessment of the entire operation, an asbestos assessment, a respirator plan, and a blood-borne pathogen plan. Those are just the beginning. These are not basic and simple documents. Mr. MacKinnon pointed out that he had canned plans from the laundry association and the hospital association, but the OSHA inspector said that the plans had to be tailored to the specific business. He said that he couldn't estimate the costs for such plans because for plans such as the asbestos assessment plan an outside consultant is required.

MR. MACKINNON turned to the ergonomic part of [the regulations] and said that he couldn't afford it. He said that most of the [activities required of his employees] fall under these regulations and he said he didn't know how to get around it. Mr. MacKinnon identified the problem with ergonomics as the lack of a defined accident. For instance, someone could complain of back pain and relate it to their job. He suggested that doctors who place patients on workers' compensation receive a blank check. Mr. MacKinnon related his experiences with workers' compensation claims and informed the committee that of the four claims [files at his business], three went to the same doctor and one claim [could be related to a defined accident]. Mr. MacKinnon informed the committee that when he had a skiing accident he went to the same doctor used in three of the four workers' compensation claims at his business. Three times in his first meeting with the doctor, the doctor asked if his injury could be work related. He reiterated that the lack of a defined injury in ergonomics is the problem and employees and doctors take advantage of it.

Number 1662

PAM LaBOLLE, President, Alaska State Chamber of Commerce, began by associating herself with Ms. Shaub's testimony. Ms. LaBolle turned to ergonomics and mentioned the National Academy of Sciences (NAS) report entitled, "Musculoskeletal Disorders and the Workplace". She said that the premise of the report is that one must deal with the whole person when diagnosing causes and cures for MSDs. She said:

NAS believes that the factors are inextricably bound and that an effective response must include an integrated program considering work procedures and organizational characteristics as well as biomechanical factors. However, in light of the uncertainty about the interrelationship and relative contribution of these factors, NAS also demanded more research on these complicated factors and their interrelationship. The recommendations of NAS, to a great extent, is what caused Congress to overturn the regulations promulgated.

And another point: the OSHA's legally required significant risk finding, NAS countered by describing the host of flaws with the statistics that ... OSHA acquired. First, there are no comprehensive national data sources capturing medically determined musculoskeletal disorders. Almost all the data regarding these MSDs are based on individual self-reports and surveys. Thirdly, the survey data does not and cannot distinguish MSDs that may be associated with work from those likely not associated with work. And without the statistical refinements sought by NAS, including efforts to capture demographics and other details necessary to intelligently review the role of nonoccupational influences, the Bureau of Labor Standards' statistics cannot [lend] support for any rules, and particularly for one that focuses single-mindedly on biomechanical factors. So, this is what the National Academy of Sciences had to say: The science is not there to support the ergonomic regulations strictly associated with biomechanical activities.

SENATOR TAYLOR asked if Ms. LaBolle found it fascinating and coincidental that the Clinton Administration waited a full seven-and-a-half years before attempting to implement ergonomics and leave it for the next administration. He likened that pattern to what is happening now in Alaska.

MS. LaBOLLE said she found that interesting.

Number 1406

KAY SLACK, Private Business Owner, testified via teleconference. Ms. Slack pointed out that businesses are motivated by cost savings, even workers' compensation policies will offer a

discount for written safety programs. All businesses looking for cost savings will take advantage of that. She noted her appreciation of Senator Taylor pointing out that [these regulations] may be motivated by other reasons. Ms. Slack suggested that those people Commissioner Flanagan said were interested in the regulations are probably training professionals who would benefit from these regulations due to increased business for them. She questioned how these regulations will be enforced. The enforcement of the current regulations isn't necessarily done in a timely fashion, except when there is a complaint against an employer. She told the committee that when she served on the task force for the Department of Labor when it reviewed possible cost savings, she was told that the department is "very slim" in enforcement employees.

MS. SLACK recalled Commissioner Flanagan's testimony denouncing those who, after the state chamber announced that these regulations were in the works, made a public outreach. She expressed frustration that after she made a comment she was told that she didn't know what she was talking about. Ms. Slack noted that she is deeply disturbed by these regulations. Furthermore, the cost to the business community will be outrageous and the written plans are onerous on the private business community in particular.

Number 1153

MARY LOU JOVICH, Occupational Therapist; Healthcare Professional, testified via teleconference. Ms. Jovich reviewed her work history as a contractor for some of the oil industries' large contractors, the federal government, and one of the largest hospitals in the state. She noted that her background is from her time working with the State of Washington's Department of Labor & Industries during the state's development of ergonomic standards. Therefore, she heard the pros and cons of the standards being proposed in [the State of Washington]. As a healthcare professional in Alaska, Ms. Jovich related her observation that injuries, many of which are unnecessary, still occur. Ms. Jovich informed the committee that there are large and small employers in the State of Alaska that have developed good ergonomic programs and thus have reduced their industrial insurance rates, workers' compensation claims, et cetera. Those employers have reduced their employees' exposure to getting hurt, which she saw as the bottom line. With regard to the discussion that there has been a decrease in the number of lost

work days, Ms. Jovich questioned whether it's acceptable for 500 people to have back problems versus 1,000 people.

MS. JOVICH informed the committee that there is a science behind ergonomics. The National Institute of Occupational Safety and Health has performed studies [that have lead] to vibration standards for the whole body and the hand. She explained how these standards were derived from placing force needles measuring force in cadavers to taking force measurements from healthy human workers. Ms. Jovich stressed that there are standards, permissible exposure limits, threshold limits, et cetera. These standards provide a basis from which she can determine whether a job is hazardous or not and provide low-cost solutions. She pointed out that ergonomics doesn't mean high costs. Ms. Jovich suggested that the state send this information to new businesses when they receive their business license. She pointed out that businesses can avail themselves of DLWD's free consultation services.

CHAIR MCGUIRE asked if this has to be mandated in law.

MS. JOVICH replied yes. She informed the committee that the reason employers are doing this now is to be grandfathered in when the new ergonomic regulations come into effect.

Number 0730

STEVE TROSPER, Safety Coordinator, Local 959, Teamsters; Safety Representative, Alaska Petroleum Joint Crafts Council, testified via teleconference. He informed the committee that he has been in his current occupational safety and health position for 12 years. Mr. Trospen turned to the requirement for a written safety and health program and echoed earlier testimony that this has been in place for some time. This requirement works well and isn't onerous on small businesses because there are an infinite number of safety program models available to be tailored to a specific workplace. As a safety [coordinator], Mr. Trospen said that it's absolutely imperative that there be a written program that can be tracked and used to train employees.

MR. TROSPER acknowledged that the ergonomic standard appears to be the most controversial standard. However, he said that he didn't see anything onerous with the ergonomic standard. There seems to be a general fear of ergonomic standards because people see them as [costs]. Mr. Trospen informed the committee that there is empirical evidence that those companies who have adopted and implemented good ergonomic programs have saved money

in workers' compensation, lost time, and training costs. The [ergonomic injuries] generally effect the oldest employees, which are typically the most experienced employees. Therefore, he surmised that a cost-benefit analysis would illustrate a cost savings. Furthermore, the numbers represent real people. Mr. Trosper pointed out that Alaska is the worst performing state for workplace fatalities and injuries. Moreover, Alaska has an aging workforce. Therefore, Mr. Trosper predicted that [ergonomic] injuries will likely increase as time passes.

MR. TROSPER turned to the workplace violence and indoor air quality standards. He noted the problems with indoor air quality in Alaska because of winters and the tight buildings. With regard to workplace violence, Mr. Trosper pointed out that by tracking behavior the worker-on-worker violence can be prevented. Again, these [standards] will save money.

Number 0361

SHAWN SMITH, McGee Industries, testified via teleconference. He provided the following testimony:

The one feeling gets from reading the new proposed ergonomic regulation is that employers have all the time in the world to monitor employee work habits. The proposed regulations have tremendous assumptions and potentials for economic loss for the construction industry and of the State of Alaska. We already have a problem with employees abusing the workers' comp insurance laws; they are written liberally enough to allow for bogus claims. We have laws that make it easy for employees to get medical treatment for free whether the job caused the injury or not. Now you want to adopt a regulation that will further add to the medical insurance costs and make it even easier to file for claims. When and where will we draw the line? The employer can't be held responsible for the employees outside of work, and distinguishing injuries caused on the job and ones outside will be impossible. And an injury due to ergonomic issues will certainly always be the employer's fault the way the workers' comp laws are written.

Number 0234

MEERA KOHLER, President and CEO, Alaska Village Electric Co-op, testified via teleconference. Ms. Kohler expressed the need for

caution for the hundreds of rural Alaskan employers who haven't been represented during today's process or in the past. Ms. Kohler said she didn't believe these proposed regulations have been transmitted to all businesses registered with the Department of Community & Economic Development, as should have been the case. Most of the village employers are unaware that these regulations are looming. She informed the committee that most businesses in rural Alaska have one to three employees, with the primary employee owning the business. With regard to the need for written plans, Ms. Kohler expressed the need to recognize that the primary language in rural Alaska isn't English. Furthermore, the daily inspections [are impossible for rural Alaska]. Ms. Kohler related her belief that these regulations are going to provide the opportunity for harassment in the workplace. Therefore, she urged the committee to do what it could to ensure that these regulations aren't implemented without a comprehensive review as to whether these regulations are necessary. She pointed out that before the federal OSHA implemented regulations with regard to electrical workers, it performed a study across the nation for five years. A broad-blanket application, as is the case with these regulations, is poorly thought out and unnecessary.

TAPE 02-5, SIDE A

SENATOR TAYLOR related his belief that the chair intended to work with the department to ensure that any regulations that are promulgated have some basis in fact and science and comport with the law. He reiterated his suspicion that similar tactics were used at the end of the Clinton Administration for the same regulations.

ADJOURNMENT

There being no further business before the committee, the Joint Committee on Administrative Regulation Review meeting was adjourned at 10:16 a.m.