

April 30, 2003

Hon. Tammy D. McCutchen  
Administrator  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Dear Ms. McCutchen:

Founded in 1919, the National Restaurant Association is the leading trade association for the \$426 billion restaurant industry. Representing more than 60,000 members and over 300,000 restaurant outlets in 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands, the National Restaurant Association has always supported high standards for foodservice worker protection, especially for those individuals under 18 years old. The following comments are furnished in response to the National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders, May 2002.

With 11.7 million employees the National Restaurant Association has invested billions of dollars annually in education programs and training to reduce injuries and protect workers from work related illnesses. The training, education, equipment and facility improvement efforts undertaken by the restaurant industry have been very successful at reducing the incidence of injury for all workers. The incidence of nonfatal occupational injuries at eating and drinking places totaled 5.2 per 100 employees in 2001, down from 5.5 in 1999. Since 1992, eating and drinking nonfatal injury incidence rates have continuously declined from 8.9 per 100 full-time equivalent workers to a new low of 5.2 in 2001. We are proud of the fact that eating and drinking places had a substantially lower, and in many cases, half the injury incidence rate of other industries in 2001.

We believe that all workers benefit from the actions taken by restaurants to improve safety and that teen workers employed in restaurants work in one of the safest environments. Below are specific comments and suggestions we put forth as you review possible changes in hazardous work orders for teenagers:

**HO 10: Occupations in the operation of power-driven meat-processing machines...:**

We are concerned about the impact on restaurants of any proposal that would limit meat slicing, cutting vegetables and other operations in restaurants with very small powered electric knives, etc. We understand the concern with large commercial meat slicers that teenagers are currently prohibited from operating, however, very small new powered knives may also be prohibited under the NIOSH recommendations. While not widely available, small hand held electric knives/slicers are being developed and used to address ergonomics issues associated with commercial slicing and cutting operations. These products are gaining in popularity and are an effective alternative to the large commercial meat slicers which pose far less of a hazard to workers.

We would request that specific guidance based on this section limit application to only large commercial meat slicers. Exemption should be considered for commercial electric knives and hand held slicers. With appropriate personal protective equipment, the risk of injury should be very similar or identical to that from the common kitchen knife.

**HO 11: Power driven bakery machine occupations:**

We are concerned with the impact of this recommendation on restaurants that do baking in counter top or wall ovens of six cubic feet or less. Many countertop or small wall convection ovens in use today do not produce the same high temperatures as large commercial baking ovens and are very similar to the ones use by teens in their homes. We have reviewed FDA Food Code 2001 recommendations for the definition of portable equipment and found the following:

**FDA Food Code 2001: Applicability and Terms Defined**

**1-201.10 Statement of Application and Listing of Terms.**

(24) "**Easily movable**" means:

- (a) Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of EQUIPMENT for cleaning; and
- (b) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the EQUIPMENT to be moved for cleaning of the EQUIPMENT and adjacent area.

We suggest that teens be allowed to operate convection ovens (power driven), portable ovens (easily movable) or small commercial ovens similar to the ones used in homes in size, temperature and capacity of six cubic feet or less. We agree that large commercial baking ovens in excess of six cubic feet should be maintained as not appropriate for teen workers due to their size and high temperatures.

**Confined Spaces, page 127:**

NIOSH is asking that the agency consider a recommendation to establish a new HO for nonagricultural industries "prohibiting work inside any confined space." While we understand the need to protect teen workers in the high hazard confined spaces noted in the recommendations, we do not see the same hazard in walk-in refrigerators and freezers. In fact, the injury data used to make the case for the prohibition of work in confined spaces does not list or mention commercial restaurant walk-in refrigerators or freezers.

We believe that the safety controls and design of restaurant commercial walk-in refrigerators and freezers make them very safe for all employees including teens.

As you consider the recommendation and/or development of new restrictions for nonagricultural confined spaces, we request that you not include restaurant walk-in refrigerators or freezers. We believe that a review of the available BLS data will show that walk-in refrigerators or freezers in eating and drinking establishments are not associated with any significant hazard. We feel there is a good safety record regarding walk-in refrigerators and freezers in restaurants; therefore they should not be included in any new work restrictions for teens.

The federal government and restaurant industry must work together in order to ensure the safety of all workers in the industry and deploy resources effectively and efficiently. We appreciate the opportunity to submit these comments. Please feel free to call us at (202) 331-5900 with any questions.

Sincerely,

Rob Green  
Vice President  
Federal Relations

Steven F. Grover  
Vice President  
Health and Safety Regulatory Affairs

Cc: Steven C. Anderson, President and Chief Executive Officer  
Lee Culpepper, Senior Vice President of Government Affairs and Public Policy  
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