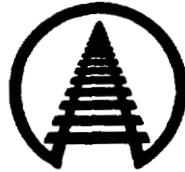


54-286



**ASSOCIATION
OF AMERICAN
RAILROADS**

Michael J. Rush
Associate General Counsel

April 14, 1995

COMMUNICATIONS SECTION
DATE: APR 14 1995
TIME: _____

The Docket Office
Docket H049
U.S. Department of Labor
Occupational Safety and Health Administration
Room N2625
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Docket No. H049: Respiratory Protection

Dear Sir:

Enclosed please find an original and five copies of the Comments of the Association of American Railroads.

Also, for our records, please stamp a copy of the comments indicating receipt and return to me in the enclosed self-addressed envelope.

Sincerely,

Mike J. Rush

Enclosures

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

DOCKET NO. H049:
RESPIRATORY PROTECTION

COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads (AAR)¹ submits the following comments on OSHA's proposed changes to its respiratory protection program.² AAR has comments on numerous aspects of OSHA's proposal.

Generally, OSHA's proposal is extremely detailed, the antithesis of the performance standard approach the President has directed regulatory agencies to adopt. AAR urges OSHA to revisit these regulations with a view as to whether the agency can specify the desired result rather than the many details of a respiratory protection program.

Following are AAR's comments on specific aspects of OSHA's proposal.

Subsection (b): Definitions

The definition of hazardous exposure level is too broad. OSHA would include not only its own permissible exposure levels, but also threshold limit values of the American Conference of Governmental Industrial Hygienists and NIOSH Recommended Exposure Limits. Furthermore, where there are no such levels or limits, OSHA would use "an exposure level based on available scientific information. . . ." ³

¹A trade association whose member railroads operate 75 percent of the line-haul mileage, employ 89 percent of the workers, and account for 91 percent of the freight revenue of all railroads in the United States; and who operate almost all of the nation's inter-city passenger trains.

²59 Fed. Reg. 58884 (Nov. 15, 1994).

³59 Fed. Reg. 58938.

OSHA should only reference its own permissible exposure limits (PELs). The other limits referenced in the proposal have not been adopted by OSHA after notice and an opportunity to comment. If they warrant attention as permissible exposure limits, OSHA should initiate the required regulatory proceedings. Simply put, OSHA seemingly has no legal basis for using in this proceeding thresholds other than PELs.

Furthermore, OSHA should delete the portion of the definition relying on "available scientific information" to establish an exposure level. This aspect of the definition is so vague as to make it completely unintelligible to the regulated community. Hence, it is probably unenforceable.

Subsection (d): Selection of Respirators

AAR opposes proposed (d)(2), which requires that employers must provide a selection of respirators from at least two different manufacturers. Some employers have chosen to use respirators from a single manufacturer in order to avoid the inadvertent mixing of respirator components in the field, particularly facepieces and cartridges. Furthermore, it can be significantly more expensive to stock components from more than one supplier.

Proposed (d)(3) would require that the employer obtain and evaluate numerous pieces of information in selecting respirators. When relevant, railroads collect this information and use it in selecting respirators. However, all the information is not relevant all the time. This is a perfect example of where OSHA could specify the outcome and leave the details to the regulated community, perhaps using the details of (c)(3) in a non-mandatory appendix.

AAR opposes the proposed prohibition of the use of the ANSI protection factors.⁴ OSHA would rely exclusively on the NIOSH respirator selection tables. AAR believes the ANSI factors are based on better techniques and more closely reflect workplace situations.

Finally, the selection of the proper respirator would be enhanced by a label indicating the respirator's type. Respirators should be labeled by their regulatory category, e.g., negative or positive pressure respirator, powered air-purifying respirator, or self-contained breathing apparatus (SCBA).

⁴Proposed (d)(5); 59 Fed. Reg. 58901, 902.

Subsection (e): Medical Evaluation

OSHA asks for comments on whether medical removal protection should be included in the rule.⁵ Medical removal protection would provide job protection for employees who are found to be unable to wear the respirators required for their jobs.

AAR opposes the insertion in this rule of medical removal protection. This is not a safety issue. OSHA should also keep in mind that any medical removal protection provision it might select could conflict with collective bargaining agreements.

Insofar as the three regulatory options for medical evaluations are concerned, AAR endorses the comments of the Burlington Northern Railroad (BN), an AAR member, submitted to OSHA on January 17, 1995.⁶ BN supported the third alternative, the use of a health questionnaire supplemented by medical evaluations on a case-by-case basis. AAR, too, prefers the third alternative. The three alternatives are discussed below.

Regardless of which alternative is chosen, AAR urges OSHA to provide flexibility insofar as the frequency with which employees are medically evaluated. While SCBA wearers should undergo medical evaluations annually, others could go longer. Employers should at least be free to use the age of the employee as a criterion for how frequently employees must be evaluated. OSHA should be satisfied as long as employers have a defensible methodology for determining the frequency of evaluations.

Alternative 1: Written Medical Opinions For All

OSHA's first alternative would require that for each employee who would wear a respirator for more than five hours during any work week, the company obtain a written opinion from a licensed physician as to the fitness of the employee to wear the respirator at issue. The physician would be supplied with information on the type of respirator to be used and the working conditions. Whether an actual physical exam would be appropriate would be left to the physician's discretion. In an appendix, OSHA would suggest the tests to be performed should the physician determine that a physical exam would be appropriate.

⁵59 Fed. Reg. 58912.

⁶Letter from T. Mears, Vice President, BN, to Docket Officer.

In criticizing this proposal, BN referred to its own experience with such a requirement. BN's initial respiratory protection program required a doctor's written opinion on each employee's ability to wear respiratory protection. BN used a network of 550 physicians for this program, in addition to personal physicians of BN employees.

BN's experience with this type of program was unfavorable. Despite having issued guidelines to the physicians involved, BN found that the doctors varied greatly in the type of exams they performed. Some performed meaningless testing. Some engaged in excessive testing. And some, of course, properly performed pulmonary function testing at a reasonable cost.

Even more troubling was the inconsistency in judgements about the ability of employees with minor respiratory ailments to wear respirators. Thus, from the employee's perspective BN's program was not providing the consistency and quality necessary to provide confidence that appropriate judgements were being made about the ability of employees to wear respiratory protection safely.

Alternative 2: Physician's Opinion Based on Medical History and Medical Exam

In addition to requiring a physician's opinion on the ability of the employee to wear a respirator, the second alternative would require the taking of the employee's medical history and a medical exam. BN's experience with a system relying on a multitude of physicians rendering opinions on the ability of employees to wear respirators is pertinent to judging the desirability of the second alternative. AAR opposes the second alternative for the same reasons it believes the first alternative is undesirable.

Leaving aside the issue of the desirability of alternative two, AAR has comments on some of the specific issues raised by OSHA in its discussion of this alternative. In proposed Appendix C, OSHA sets forth suggested elements of a medical exam.⁷ Assuming, *arguendo*, that medical exams should be performed on all employees, the generic exam should be very basic. Detailed exams of most employees are unnecessary and wasteful. Accordingly, were OSHA to adopt this alternative, the suggested elements of a medical exam in Appendix C should be limited to height, weight, vital signs, and a pulmonary function test performed by a NIOSH-certified respiratory technician. Further testing should be

⁷See 59 Fed. Reg. 58948.

based on the employee's history and the results of the basic medical exam.

OSHA asks for comments on whether doctors should check for perforated eardrums (tympanic membranes).⁸ Employees know if they have eardrum problems. Thus, it would be appropriate to ask employees if they have had such problems on the medical questionnaire rather than require that eardrums be checked during the medical exam.

Regarding endocrine system problems, AAR wishes to emphasize that the existence of endocrine problems should not automatically disqualify an employee from wearing respiratory protection. Many employees with such problems can safely wear respiratory protection if educated about the appropriate precautions that should be taken.

Alternative 3: Health Questionnaire Supplemented by Medical Exam, as Appropriate

The third alternative would require that all employees complete a health questionnaire. Employees would undergo medical exams if the answers to the questionnaire indicated such a need.

BN and other railroads currently have respirator programs consistent with the third alternative. All employees who are found to be able to wear respirators are fit tested and trained.

Railroads do take extra steps for employees who use SCBA. Potential SCBA wearers undergo medical exams. In addition, SCBA users wear their respirators during a trial period as part of the education and fit-testing program.

AAR urges adoption of the third alternative. The alternative would identify employees who cannot wear respiratory protection and ensure that those do wear such protection are given appropriate respirators. The third alternative also would help hold costs to a reasonable level by not requiring needless medical expenditures. The third alternative is the only option that would meet OSHA's objectives at a reasonable cost.

Subsection (f): Fit Testing

OSHA's proposed use of a protection factor of fifty for quantitative fit testing of tight fitting air-purifying

⁸59 Fed. Reg. 58908, 909.

respirators with full facepieces is overkill. NIOSH's Respirator Decision Logic, which OSHA proposes to use as a basis for selecting respirators, uses a protection factor of twenty-five for any powered air-purifying or supplied-air respirators equipped with a hood or helmet.

Accordingly, fit testing should not be required for wearers of tight fitting full facepieces if a protection factor of twenty-five is sufficient since these devices have already been found to provide such protection. Fit testing of such devices would drive up the expense of respirator programs without enhancing employees' protection. Should a higher protection factor be necessary, then fit testing would be appropriate.

AAR opposes the requirement in proposed Appendix A that three successful fit tests be required if quantitative fit testing is used. Only one fit test is required for qualitative fit testing.

OSHA's reasoning in support of requiring three tests is faulty. OSHA suggests that three tests are necessary because of variation in fit that inevitably occurs each time a respirator is worn. Several tests will account for such variation, OSHA believes.⁹

However, OSHA already incorporates a safety factor of ten in this proposal. This safety factor compensates for any variation in wearing respirators.

AAR strongly urges OSHA to permit the use of quantitative fit test methods other than the chamber/corn oil system suggested in the proposal. The Porta-Count instrument, for example, is much simpler, easier to use, and portable. The Porta-Count also is widely accepted. It is important that railroads, which have small, very mobile work crews, have a practical quantitative fit testing system which is easily mobile.

AAR opposes OSHA's suggestion that employees undergo fit testing annually. Follow-up to successful fit testing should only be necessary if an individual changes respirators or there is a change in facial features. Thus, all that annual fit testing would accomplish is to drive up industry's costs. Fit testing takes fifteen to twenty minutes per respirator.

OSHA should give employers a thirty-day grace period to perform quantitative fit testing when the employer's quantitative

⁹59 Fed. Reg. 58920.

fit testing equipment is unavailable, such as when it is being repaired. OSHA has included a thirty-day grace period for employers using outside contractors for quantitative fit testing when the contractors are not available (in which case a qualitative fit test must be performed). There is no rational distinction between the unavailability of a contractor and the unavailability of an employer's equipment.

Subsection (g): Use of Respirators

AAR opposes the proposed requirement that in situations where "oxygen deficiency or the concentrations of a hazardous chemical are unknown and/or potentially dangerous to the life or health" of employees, employers must use SCBA or combination full facepiece pressure demand supplied air respirators with auxiliary self-contained air supply.¹⁰ Industry has also successfully used 10-15 minute escape/egress respirators for environments normally free from excessive contaminants and oxygen deficiencies, but which can undergo rapid changes in the environment. Typically, in such circumstances continuous monitoring devices are normally used. When the alarm on such a device goes off, these escape/egress respirators are quickly donned, permitting safe egress.

These escape/egress devices benefit employer and employee alike. Compared to the devices OSHA references for use in life/health threatening situations, these devices require less maintenance. Employees can become proficient in their use with less training and practice.

Accordingly, AAR urges OSHA to withdraw the restrictive language requiring the use of SCBAs and full facepiece pressure demand supplied air respirators in life/health threatening situations.

AAR supports OSHA's decision not to prohibit wearers from using contact lenses.¹¹ AAR, like OSHA, is not aware of problems that have arisen with contact lenses being used with respiratory protection.

AAR also supports OSHA's decision not to require employers to provide employees with the option of using powered air-purifying respirators (PAPR) in lieu of negative pressure

¹⁰Proposed (g) (2) (I).

¹¹59 Fed. Reg. 58921.

respirators. A PAPR can be fifty times more expensive than a regular half-mask negative pressure respirator. If there is no safety justification for requiring a PAPR, then there is no justification for requiring employers to incur the expense of making PAPRs available as an option.

Finally, AAR sides with those commenters urging OSHA to prohibit the use of respirators by employees with beards when respirator use is required under these regulations.¹² AAR also strongly opposes the suggestion that the agency should require employers to provide employees with loose-fitting respirators when facial hair interferes with a facepiece seal. Loose-fitting respirators can cost \$700. There is no safety reason to require employers to undergo this expense.

Subsection (h): Maintenance and Care of Respirators

OSHA engages in overkill in proposing to require the cleaning and disinfecting of respirators issued to one employee after each day's use. Railroads often use respirators for short periods of time, sometimes only for a few minutes. It would be a waste of industry resources to require the cleaning and disinfecting of respirators each time they were used for only a few minutes.

Flexibility would be in order here. The requirement should be result oriented, i.e., respirators must be kept clean. No specific cleaning protocol should be mandated.

Subsection (I): Supplied Air Quality and Use

AAR supports OSHA's decision to continue to require Grade D breathing air instead of a higher grade for compressed air.¹³ There is no evidence that using a higher grade would have a safety impact. Yet, a requirement to use a higher grade clearly would increase industry's costs.

Subsection (k): Training

OSHA should clarify that an employer's refresher training

¹²See 59 Fed. Reg. 58921.

¹³See 59 Fed. Reg. 58925.

course does not have to duplicate the original training course. An employee in a refresher class is familiar with the limitations and maintenance and care requirements of the employee's respirator.

OSHA should also clarify the requirement in (k)(1) for hazard communication training. Specifically, OSHA should state that this subsection does not impose additional requirements beyond those set forth in the hazard communication regulations, i.e., training under the hazard communication regulations satisfies the mandate in (k)(1).

Subsection (l): Respiratory Protection Program Evaluation

The proposal that the employer periodically consult employees to "assess wearer acceptance and attempt to correct any problems" is another example of too much detail. Railroads have observed that it would be much better to train employees to bring problems with respirators to the attention of management at once so that corrective action can be taken immediately. OSHA need not specify in these regulations precisely how employers will ensure that problems are addressed and taken care of. In any event, employers would be ill-advised to rely solely on periodic program evaluations to address problems with their respiratory protection program.

Subsection (m): Recordkeeping

One editorial suggestion AAR has is to put all the recordkeeping requirements in one subsection. In addition to the records required to be kept by subsection (m), section II(A)(12) of mandatory Appendix A contains mandatory fit test recordkeeping provisions. At the very least, a reference to the requirements in Appendix A should be included in subsection (m).

Section 1910.1025: Lead

OSHA's proposal to limit qualitative fit testing to half-mask respirators is inconsistent with its general respiratory requirements for qualitative fit testing. In the general standards, OSHA proposes to permit qualitative fit testing for full facepiece respirators where protection factors of ten or less are necessary. The lead standards should not differ in this respect. Otherwise, OSHA would be denying some employees the enhanced protection of full, as opposed to half, facepiece

respirators.

The Regulatory Impact Analysis

OSHA seemingly has underestimated the potential costs of this rule. It assigns no costs to medical evaluation.¹⁴ Clearly, there will be costs associated with the medical evaluation requirement. Should OSHA choose to require medical exams for all respirator users, the cost of the medical evaluation provision will be very high. From the perspective of AAR's members, there would be no benefit from this increased cost since they have aggressive respiratory protection programs in place.

Respectfully submitted,



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April 14, 1995

¹⁴59 Fed. Reg. 58893.