

54-309



April 14, 1995

OSHA Docket Office, Docket H-049  
The Occupational Safety and Health Administration  
U.S. Department of Labor, Room N-2625  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

OSHA  
DOCKET OFFICER  
DATE \_\_\_\_\_

Re: OSHA Notice of Proposed Rulemaking on Respiratory Protection,  
29 CFR § 1910.134, 59 FR 58884, November 15, 1994.

Dear Assistant Secretary Dear:

The following comments are in response to OSHA's November 15, 1994 Notice of Proposed Rulemaking on Respiratory Protection. Associated Builders and Contractors (ABC), a national trade association representing 17,500 construction contractors, subcontractors, and related firms, urges the Occupational Safety and Health Administration (OSHA) to address the following comments and concerns as the agency moves forward with its rulemaking process.

**(b) Definitions**

*Fit Factor.* The definition should exclude the mention of a test chamber because it excludes one of today's most commonly used devices for quantitative fit testing, TSI Portacount®. See related comments in paragraph (f) and Appendix II.

*Hazardous Exposure Level (HEL):* The definition should exclude the provisional requirement to use NIOSH recommended exposure levels (RELs) when no permissible exposure limit (PEL) or threshold limit value (TLV) exist. Many REL values are simply the lowest level of analytical detection, set without regard to toxicological, epidemiological, or other scientifically-derived information. As such, RELs should not be accorded preference *a priori* to limits that are derived by scientific processes (e.g., AIHA, Workplace Environmental Exposure Level guides (WEELS) for substances without other exposure limits).<sup>1</sup>

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<sup>1</sup> American Industrial Hygiene Association, 1994, Workplace Environmental Exposure Level Guides: Current AIHA WEELS, Revised December 1994, *American Industrial Hygiene Association Journal*, 56(2): 202-203. Feb., 1995.

Paragraph (4) of the definition of *hazardous exposure levels* should be changed. The regulatory text should read: "*Hazardous exposure level* means: . . . (4) If there is no PEL or TLV for the hazardous chemical, an exposure level based on available scientific information including MSDSs."

### **(c) Respiratory Protection Program**

#### **Voluntary Use**

The use of respiratory protection equipment should be based on hazard assessment using sound industrial hygiene principles. If the hazard assessment indicates a situation that does not justify the required use of a respirator, the employer should be permitted to provide an employee with a respirator without triggering compliance with the full standard.

In construction, there are many instances in which an employee may request a respirator when there is no indication of the need for protection (i.e. cutting the grass, sweeping the floor). Such a request requires employers to: obtain a physician's opinion for those employees, provide training, and develop programs to address the use, inspection, and storage of those respirators. In low risk situations with no potential for over-exposure of employees to workplace contaminants, employers should be given the option of providing single use respirators, preferably one with the least breathing resistance, without having to implement all the provisions of the proposed rule.

The employer's respiratory protection program should address the voluntary use of respirators and include training for employees and supervisors regarding the selection of equipment and its limitations. The employer should not be required to conduct a medical evaluation when use of a respirator is not necessitated by the hazard assessment; however, providing a medical questionnaire to employees, as in medical evaluation alternative 3, could be appropriate to determine if any unique reasons exist to merit further medical evaluation.

#### **(d) Selection of Respirators**

Paragraph (2) would require each respirator user to be presented with three sizes each of two makes of respirators. This requirement is burdensome and unnecessary. Most people can easily and adequately be fitted from a selection of three sizes from one make of respirator (or from any combination of makes). Those few who cannot will be precluded by the subsequent fit-test from wearing the respirator in a hazardous environment.

Paragraph (8)(ii) would prohibit the use of an air-purifying respirator for substances without adequate warning properties but with detection thresholds in excess of three times the HEL (such as zinc or silica). Such a restriction could, for example, require a pipefitter

who is torch cutting metal with a galvanized coating to use an air-supplied respirator of SCBA--even when working outdoors. Although the unnecessary overprotection of the worker is an economic concern, the real issue is that the proposed requirement could add one more item to the array of electrical power cords, pneumatic lines, and fall-protection devices already attached to or trailing many construction workers. Some of these items could become tripping hazards and could even inhibit egress in emergencies.

Paragraph (10)(ii) is confusing. OSHA should clarify its intent or consider using graphic displays to better communicate this proposed requirement.

#### **(e) Medical Evaluation**

Of the three alternatives presented by OSHA for medical evaluation, the first alternative provides the greatest degree of flexibility for employers who rely on a physician to determine the best means of evaluating respirator users. While alternatives 2 and 3 accord less discretion to the examining physician, the use of a medical questionnaire, recommended in alternative 3, can be beneficial to trigger the need for a medical examination and the appropriate scope of the examination. For instance, if the employee has personal or family history of high blood pressure, then additional tests may be appropriate for that individual, but not for all employees. The questionnaire can reduce the potential for excessive testing by overly cautious physicians. OSHA should consider including a medical questionnaire in a non-mandatory appendix.

#### **(f) Fit Testing**

Quantitative fit testing is generally considered superior to qualitative fit testing because the former is objective while the latter is subjective. However, the proposed standard provides little if any incentive (by virtue of higher APFs) for the employers to conduct quantitative fit testing. The exception is quantitative fit testing for users of full-face, air-purifying respirators working in atmospheres with 10-50 times the HEL. This exception deals with a minority of respirator uses.

Paragraph (2) would require annual fit testing for respirator users. The annual requirement should also apply to the OSHA substance-specific standards (such as asbestos, lead, and acrylonitrile) that require fit testing every six months. If not, OSHA should demonstrate with objective evidence that the six-month requirement is necessary for these substances when annual fit testing is deemed appropriate for other workplace substances.

#### **(g) Use of Respirators**

Paragraph (g)(9) would require that disposable respirators (which cannot be cleaned and sanitized) be discarded at the end of each task or work shift, whichever comes first. This should be clarified to allow employees to keep their disposable respirator

in a clean container (e.g., a large zip lock bag) during the parts of a single shift in which the same task may be repeated several times intermittently. Employees should still have the option of discarding soiled respirators after each task; however, many tasks are performed without significant contamination of the respirator.

#### **(h) Maintenance and Care of Respirators**

Paragraph (1)(i) would require respirators that are issued for the exclusive use of one employee to be cleaned and disinfected at the end of each shift. Disinfecting the face piece during and after each shift can be accomplished by each respirator user and is reasonable; complete dismantling of the respirator, as recommended in Appendix B, is not reasonable.

OSHA should revise the proposal as follows: (1) allow cleaning the respirator at any time; (2) require disinfecting the respirator at the end of each shift; and (3) require dismantling and thorough cleaning of the respirator (a) at the end of the 40 shift hours or the end of one work week, whichever ever comes first, or (b) when conditions develop that impair proper respirator function.

#### **(i) Supplied Air Quality and Use**

Paragraph (4)(ii) should be revised to require employers to change air-purifying sorbent bed and filters, in accordance with the manufacturers's instructions. The changes should be documented, retained for a period of one year, and made available to OSHA on request.

#### **(n) Effective Dates**

The standard should be phased in over a 12-month period following promulgation. This will allow for the development or revision of existing written programs and SOPs; allow for the training or retraining of a competent person and respirator users; and allow time for the medical evaluation of respirator users in remote locations.

#### **(o) Appendices**

##### **Appendix A, Part II**

In paragraph (A)(13), OSHA has wisely standardized the fit test exercise regimen for all uses, including the substance-specific standards which the proposal would modify. This change should remain in the final standard.

Paragraph (B)(4)(h) would require the use of a 200 ml per minute pump to deliver irritant smoke. This requirement would necessitate the purchase or costly modification of a sampling pump at each fit testing station. As such, it should be incumbent upon OSHA

to demonstrate that the "constant and stable rate" of irritant smoke delivered by such a pump yields a significantly superior fit test compared to that achieved with smoke delivered by an aspirator bulb. OSHA dismissed earlier objections to this point without providing objective evidence for its position; it should be required to do so in the final standard.

Further, this requirement could cause employees to be exposed unnecessarily and excessively to irritant smoke if they request the use of a respirator (thereby necessitating fit testing) in accordance with 29 CFR § 1926.28. This standard can be interpreted to require respiratory protection for exposures *not* in excess of applicable limits, even when respirators are not required by specific OSHA standards.

Paragraph (C) would potentially prohibit the use of the TSI Portacount® fit testing device. Over the years this device has become an industry standard for quantitative fit testing. Many employers rely exclusively on the Portacount®, and some have significant financial investments in the equipment and operator training. *Given the degree to which many employers are invested in this technology, it should be incumbent upon OSHA to demonstrate that the Portacount® does not provide reliable quantitative fit-testing results.*

The requirement in paragraph (C)(4)(h) for three independent fit-tests is unnecessary, given that a safety factor of ten is already a part of the derived APF for each class of respirator and exposure concentration. OSHA should instead allow any one fit test results to exceed minimum fit factor requirements (either 100 or 500) before use is approved for the specified class of respirator and exposure concentration.

#### Conclusion

ABC appreciates the opportunity to provide the above comments on the proposed respiratory protection rule. On behalf of its 17,500 members, ABC urges OSHA to revise the proposal to address these concerns in order that the final rule reflects the realities of the construction industry.

Sincerely,



Suey Howe  
Director, Federal Regulations