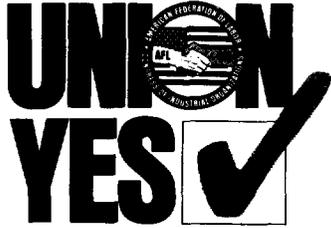


AMERICAN FEDERATION  
OF LABOR AND CONGRESS  
OF INDUSTRIAL ORGANIZATIONS

54-428



May 12, 1995

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The Docket Office

Docket H-049  
U.S. Department of Labor  
Occupational Safety and Health Administration  
200 Constitution Avenue, N.W., Room N2625  
Washington, D.C. 20210

OSHA  
DOCKET OFFICER  
DATE MAY 12 1995

Dear Docket Officer:

These comments are in response to OSHA's solicitation for comments on its Notice of Proposed Rulemaking to modify the current Standard on Respiratory Protection (29 CFR 1910.134).

The AFL-CIO, comprised of 86 affiliated unions representing more than 13.6 million workers, applauds the OSHA's decision to revise its existing standards on respiratory protection. The proposed modifications will significantly improve the quality of respiratory protection; improve worker health, morale and productivity; and result in substantial cost savings to employers through reduced health costs and other improvements.

These comments are not intended to be a full and complete response to the many questions and comments contained in this proposal, but will address those major areas of concern to the AFL-CIO. Generally, where this document does not comment on a specific area addressed by OSHA, it can be assumed that we have no major disagreement with the position stated in the proposed modifications of the standard.

Sincerely,

A handwritten signature in black ink, appearing to read "Rex Tingle".

Rex Tingle  
Industrial Hygienist  
Department of Occupational  
Safety and Health

Enclosure

RT/odt  
opeiu#2, afl-cio

**COMMENTS OF THE  
AMERICAN FEDERATION OF LABOR AND  
CONGRESS OF INDUSTRIAL ORGANIZATIONS  
CONCERNING OSHA'S PROPOSED  
RESPIRATORY PROTECTION STANDARD**

**DOCKET NUMBER H-049**

The AFL-CIO, comprised of 86 affiliated unions representing more than 13 million workers, welcomes this opportunity to comment on OSHA's proposed regulations governing respiratory protection in the workplace. We applaud the agency's decision to move forward on a revision of its existing standard to protect workers from adverse health associated with the inhalation of toxic materials. The proposed modifications will significantly improve the quality of respiratory protection in workplaces across the United States, improve worker health, morale and productivity, and result in substantial cost savings to employers through reduced health costs and other improvements.

The need for a modification of the current respiratory protection standard has been well documented in comments to OSHA in its request for information by labor unions, governmental agencies and other sources. In addition, the proper selection, use and maintenance of respirators continues to be a problem for workers and industry across the United States.

The AFL-CIO remains adamantly opposed to any relaxation of requirements contained in the current standard, particularly the requirement that the primary means of protection be accomplished by engineering controls and/or substitution of hazardous materials. Respirators should be used only when effective engineering controls or substitution to less toxic materials are not feasible or while the new safeguards are being implemented.

These comments are not intended to be a full and complete response to the many questions and comments contained in this proposal, but will address those major areas of concern to the AFL-CIO. Generally, where this document does not comment on a specific area addressed by OSHA, it can be assumed that we have no major disagreement with the position stated in the proposed modifications of the standard.

### **Comments on Specific Provisions of the Proposed Rule**

#### **(a) Scope and Application**

The AFL-CIO supports maintaining the basic industrial hygiene practice in protecting workers from the exposure to and inhalation of potentially hazardous airborne contaminants through engineering controls, administrative controls and finally, personal protection in this order. This fundamental approach to respiratory protection is essential in an employer's attempt to eliminate airborne toxins in the workplace. We believe that employers should approach control measures through the substitution of less hazardous substances in a process, by new technologies, by isolating or enclosing a hazardous operation or by providing adequate ventilation. Only when these options are completely exhausted should respiratory protection be considered.

We believe that the general scope of both the current respiratory standard and the proposed modified standard adequately cover the scope and application of most uses of respirators. The areas which have specific standards already in existence (i.e., lead, asbestos) should remain in affect. We would suggest that in the event a material is known to cause a specific health or safety hazard, the material safety data sheet should be reviewed for proper selection of respiratory protection. If there is no material safety data sheet available or it does not contain respirator information on the data sheet, the highest level of protection should be required. We would also encourage the Agency to incorporate as a non-mandatory appendix, the NIOSH decision logic chart to help employers and employees when they are attempting to adequately determine respiratory protection for those chemicals which may need special attention.

**(a) (2) Respirators shall be provided by the employer**

The AFL-CIO feels strongly that this provision of the proposal remain. We support the efforts of the Agency to ensure that the most adequate respiratory protection be provided by the employer. Throughout the OSHA Act, from the General Duty Clause to the concluding paragraph, the enabling language of statute clearly indicates that Congress intended it to be the employer's duty and obligation to provide appropriate personal protective equipment at no cost to the employee.

**(b) Definitions**

The AFL-CIO supports the definition section of this proposed rulemaking. We generally agree with all definitions proposed, but we would like to comment on several specific definitions. We would also encourage the Agency to include a definition for a *qualified person* and several other terms used throughout the proposal which will provide clarification when attempting to interpret the proposed standard.

*Qualified Person:* This should be defined as, someone who is capable of identifying existing and predictable respiratory hazardous in the workplace and who maintains a common knowledge of the respirator standard. This individual should possess the authority to take prompt corrective action to eliminate hazards including the measures required in subsection (c). The *qualified person* shall be certified by the manufacturer(s) for their ability to select and maintain the type(s) of respirator(s) that is/are used on the job site or possess the experience and knowledge needed to properly select respirators for the employees and job situation.

*Disposable Respirator:* The AFL-CIO has some concerns about the use of this definition. Too often employers and employees confuse disposable respirators with disposable masks such as those used for dust. This occurred on a regular basis in the asbestos industry. Although these respirators used in the asbestos industry were NIOSH approved, NIOSH later rescinded the use of disposable respirators where asbestos

exposures existed. The current definition does not include that these respirators meet the NIOSH/MSHA criteria before use. Also, disposable respirators are notorious for not passing qualitative fit testing procedures. If the Agency is to move forward with the inclusion of disposable respirators in this or any other standard, the Agency should limit the use of these types of respirators to areas which have engineering and administrative controls and where air monitoring procedures are in place.

*Hazardous Exposure Level:* With the inclusion of TLV's, REL's and the use of available scientific information, such as material safety data sheets, the proposal allows employers immense versatility when attempting to comply with the standard. In the event that this information allows for multiple recommendations for respiratory protection, the AFL-CIO would encourage the Agency to incorporate additional language which requires the use of the highest protection recommended.

*Immediate Danger to Life or Health:* The AFL-CIO strongly supports the definition without the inclusion of escape time provision.

#### ***Additional Definitions***

The AFL-CIO recommends that the following terms used in the preamble should be defined to avoid any disparity on how to comply with those portions of the standard which are affected by their use.

*"Fume" and "Vapor":* Both of these terms are well defined in many of the Agency's standards. We feel that the definition of these terms in the standard is very important since they are used in a specific technical sense for respirators, but are usually confused in common parlance.

*"Quarter facepiece", "Half facepiece" and "Full facepiece":* Should be defined as in the preamble section II. C.

"Tight-fitting Respirator": This term is referenced several times in proposed paragraphs (c) and (f). The term is not defined and it is not clear whether the Agency purposely excludes mouthpiece escape respirators from this term.

"Air purifying Respirators": Should be amended to explicitly exclude "powered air-purifying respirators" per the proposal (f)(6)(iii).

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

The AFL-CIO strongly supports the Agency's proposal that employers who are required to use respirators or voluntarily use respirators in the workplace establish a written respiratory protection program. The written program constitutes an employer's plan for dealing with worker protection from hazardous airborne contaminants that may be present in the workplace, and as such, we view these provisions as the fundamental core of the standard.

Requiring a written program is essential in providing uniformity and consistency while supplying the maximum protection for workers who use respirators in the workplace. Because this is a performance based standard, the built-in flexibility will allow large, medium and small employers relative ease to comply with these provisions of the standard.

Specifically, while we believe it is imperative that the Agency supply a flexible standard which is cost effective, medical evaluations should be required as stated in (c)(1)(ii) for any one who voluntarily or non-voluntarily wears a respirator in the workplace. The criteria for this statement can be clarified in our comments on medical evaluations.

We applaud the Agency's inclusion of a *qualified person* (c)(2), who has the appropriate training and experience to effectively manage and administer the respiratory protection program at a facility. We do not believe it is necessary for an employer who has multiple sites to have a *qualified person* on each site if the following criteria is completed: site evaluations conducted, proper respirators selected and fit tested, and employee training performed. However, the employer is still required to have the

*qualified person* assure that respirators are properly used and maintained as necessary to protect the health and safety of employees using respirators. When new procedures, processes, chemicals, materials or site changes (i.e., confined spaces) occur which may present new respiratory protection problems, the *qualified person* will be responsible for a new site evaluation and the selection of new respiratory protection (i.e., different filters, going from a half-face to a full-face respirator), including fit testing procedures if new respirators are introduced. The *qualified person* shall be responsible for the management and administration of all elements of the respiratory protection program set forth in paragraph (1).

When the employer fulfills the aforementioned criteria, a *qualified person* should not be necessary for each site but, instead, the employer should be required to have a person (i.e. supervisor) on site responsible for a specific portion of the respiratory protection program (**It should be reiterated that the qualified person is still responsible for the overall program**). The *site person's* responsibilities would include coordinating with the *qualified person* to correct and answer employee concerns and to be available to issue replacement parts as they relate to respirators at the jobsite. However, the *site person* would not need the same level of training and expertise as the *qualified person*. The *site person* would attend and complete the same training that is provided to the respirator user in subparagraph (k). Additional training for the *site person* would be determined by the *qualified person*. We believe that the *site person* should have supervisory authority, since they will be responsible for ensuring the effectiveness of the aforementioned criteria at the site.

We believe this approach would ease the regulatory requirements on a large number of employers, while ensuring that respiratory protection programs are operated and maintained by a knowledgeable and competent person, thus providing protection for employees working at the site.

We also support the explicit requirement to make written respiratory protection programs accessible to workers and their representatives.

**(d) Selection of Respirators**

The AFL-CIO strongly supports the explicit requirements to provide respirators at no cost and to make available a range of different sized respirators and manufacturer styles in accordance with the proposed standard subparagraphs (d)(1) and (2). The AFL-CIO agrees with the statement made by the Agency in the preamble that only when adequate selections of respirators are available can an employee achieve the best possible fit. Employers usually do not comply with this portion of the standard, although it is one of the most crucial procedures in respiratory protection. In the case of air-supplied respirators (i.e., SCBA's), it is not feasible to offer a variety of these respirators. Also, it is not permitted to offer different manufacturers' styles of facepieces with different manufacturers' air supplies.

We support the detailed list of factors to be considered in respirator selection as proposed in subparagraph (d)(3). The Agency has successfully incorporated the important framework from the NIOSH decision logic criteria in an easy-to-understand form. We feel this will be very useful to employers than the current language in 1910.132 (b)(2).

The AFL-CIO supports the continued requirement for workplace sampling of airborne concentrations of contaminants per proposal subparagraph (d)(3)(v). We would like to encourage the Agency to include language which will represent sampling protocols for other contaminants such as biological hazards in a non-mandatory appendix. The Agency may also consider the referencing or inclusion as a non-mandatory appendix for the NIOSH air-sampling guidelines.

We explicitly support the use of NIOSH/MSHA approved respirators per the proposal paragraph (d)(4). By using this proven means of certification, both employers

and employees are assured that the respirators they are wearing will provide them the level of protection needed to work safely in their workplace.

Regarding the use of non-NIOSH/MSHA approved respirators in situations which approved respirators are not available. Until the Agency provides more specific information concerning this policy we will not be able to provide comments.

The AFL-CIO supports the limits on air-purifying respirators, which are strongly supported by the NIOSH decision logic criteria per the proposal (d)(8). We are concerned about allowing the use of cartridges with end-of-service life indicators that depend on the presence of moisture in the air. In dry atmospheres, these cartridges can allow dangerously high levels of exposure to occur.

**(e) Medical Evaluation**

The AFL-CIO has several strong concerns about the use of five hours/week as the action level to trigger into the medical evaluation provisions per the proposal (e)(1). We believe if an employee wears a respirator voluntarily or as prescribed by an Agency standard or by the employer, a medical evaluation should occur. The rigor of the medical evaluation should depend on the medical history of the individual, the type of situation in which the respirator is to be used, and the type and concentration of hazardous contaminants present during use. At a minimum, the employer prior to issuing a respirator should be required to have all employees answer a medical history questionnaire to determine if further evaluation is necessary. Results of the medical/work history, evaluation and/or physical examination should remain confidential. We feel physician reports to employers should contain only a statement of approval or disapproval for employees who were tested.

The AFL-CIO would like to propose that the medical evaluation provisions of this standard provide workers the right to binding independent medical determinations to assure protection of their health and well being. We believe that past testimony on this issue confirms the necessity for independent medical opinions, supports the feasibility of

such a requirement and endorses the three physicians review procedure for the resolution of conflicting options for removal or return of workers to/from their jobs. The medical evaluation provision of this standard should follow the provisions developed in the lead standard.

We also have some concerns about the potential violations posed by the Americans with Disabilities Act in regard to medical evaluations. For example, the first element of the medical evaluation is listed as hearing ability, for which employers can easily provide reasonable accommodations. If this individual has heart ailments, accommodation for this person becomes complicated. From our experience, these are the types of cases in which the employee is terminated or placed in a less paying position. With the major health concern to exposed employees and ADA concerns, it is particularly important that a medical removal protection provision be incorporated in the standard.

The basis of medical removal should be the recommendation of the company and/or personal physician to transfer an employee to a position other than his/her regularly assigned position. It is very important that the affected employee retain his/her right to consult with his/her personal physician during a transfer. Also, the employee should be assured that his/her seniority, current salary and bumping rights remain the same with the sole exception of being placed in a higher classified position where he/she will receive the current salary for that position. If a situation arises which conflicting reviews are present, an impartial third physician's opinion should be given with their decision which is final and binding for both parties. The impartial third physician should be selected by the other participating physicians and must be competent to adequately evaluate and render a decision based upon information which caused the removal. The cost of the third physician should be equally split by the employee and the company. It should be noted that medical surveillance programs that use the independent physician format are operating effectively in several industrial settings, and the AFL-CIO supports the inclusion of this practice in the proposed standard.

### **(f) Fit Test**

The AFL-CIO strongly supports subparagraph (f)(1), which requires employers to ensure that the respirator selected fits the employee well enough to reduce employee exposure inside the mask to levels below PEL's, TLV's or REL's.

We support subparagraph (f)(2) of the proposal which requires that the employer ensure an employee is fit-tested prior to initial use of a respirator whenever a different make or size respirator is used. However, we believe this provision must be expanded to also require training of employees to ensure proper use, proper maintenance of the respirator and an explanation of health hazards as it relates to chemicals in which they are potentially exposed to as required under the Hazard Communication Standard (29 CFR 1910.1200).

We also support (f)(6) the use of a ten (10) time maximum hazardous exposure level regardless of the measured fit factor in the chamber for half mask and quarter mask and fifty (50) times for full facepiece.

We strongly support (f)(7) the employees ability to be refitted as necessary. We would like to encourage the Agency to include dental conditions to this section. The addition of braces to a quarter mask or half mask user can prove to be an effective deterrent to proper facepiece to face seals.

### **(g) Respirator Use**

The AFL-CIO strongly supports written standard operating procedures for respirator use in the workplace which includes routine use, IDLH situations, emergency situations and use in oxygen-deficient atmospheres. It should be noted, that the use of engineering controls, substitution and administrative controls should be exhausted and documented prior to the use of any respirator. The use of positive pressure self-containing breathing apparatus or a combination full facepiece pressure demand supplied air with auxiliary self-contained air supply is a critical component to safe and effective respiratory protection in IDLH and oxygen-deficient atmospheres.

In subparagraphs (g)(2)(ii-iv) we have some concerns about the term "retrieval equipment" as it is now defined. From our interpretation of this section, it would seem that the Agency would allow the use of body belts and rope, as long as the area is not a permit-required confined space. Our experience with confined space and non-permitted space rescues demonstrates that the use of full-body harness and mechanical retrieval equipment is the only reliable retrieval equipment available.

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

The AFL-CIO supports the Agency's position on clean and proper storage of respirators outside the contaminated work area. We also support the routine inspections and disinfection of respirators as required by this proposed section. After reviewing this section, we would like to urge the Agency to modify paragraph (h) to switch (h)(3) the inspection portion of the paragraph to (h)(1). By adjusting this paragraph it allows for a more common sense approach by inspection first to determine what maintenance actions are necessary to bring a respirator up to this standard and manufacturer's recommendations. We also believe that subparagraphs (A) and (B) of Appendix B should be mandatory.

To help eliminate the use of respirators which fail to pass inspection (h)(4), we encourage the Agency to incorporate an "out of service" marking on the respirator. It is important that the standard provide protection for workers who rely on the *qualified person* or *site person* to do the maintenance on their respirator. By incorporating this modification, which is similar to tagging out a danger source CFR 1910.147 (lockout-tagout), the Agency can decrease the likelihood of these respirators being introduced into the workplace and reduce unnecessary exposure to hazardous substances of affected employees.

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

We strongly support the requirement for the employer to ensure that compressed air, compressed oxygen, liquid air, and liquid oxygen used for respiration is of high purity

and in accordance with the specifications listed in (i)(1). This provision is especially important for those employees who are required to use SCBA's or airline respirators. We would like to encourage the Agency to incorporate a CO alarm/monitor for certain compressors (d)(2)(ii). We believe that the requirement in (i)(1) and (i)(3) may not be sufficient to ensure that carbon monoxide is eliminated from the system. CO alarm/monitors should be required on all systems which service employees with Grade D breathing air.

**(j) Identification of Filters, Cartridges, and Canisters**

The AFL-CIO strongly supports this provision of the standard. We view the selection of the proper filter as important as any component of the standard. We also support the continued use of Table I-1 of the current CFR 1910.134. This table is very useful to both the employer and employees in the selection of filters. The Agency should consider adding the NIOSH color criteria for filter selection as a non-mandatory appendix. The NIOSH criteria not only uses colors, it also includes the generic chemical names in which the filter will protect employees from exposure.

**(k) Training**

The AFL-CIO strongly supports the requirements of performing training in respiratory protection to all affected employees upon initial assignment when new hazards are introduced into the workplace and annually thereafter. We feel it is imperative that the training be provided in a manner which is comprehensible to those receiving the information. The purpose of this section is to assure that the affected individuals understand the need for respirators, the hazardous materials from which the respirators and cartridges are designed to protect them from, and how to properly care and maintain their equipment. Training programs need to be designed specifically for each workplace and the hazards associated with that environment. Training should be hands-on and the employee must have the right to ask questions during the program.

In subparagraph (k)(1)(ii), training should specifically include a list of conditions as in Appendix C (b)(1-8) that may preclude wearing certain types of respirators or wearing of a respirator in certain environments.

**(l) Respiratory Protection Program Evaluation**

The AFL-CIO strongly supports the at least annual evaluation of the effectiveness of the written respiratory protection program. We also, strongly support and applaud the Agency's inclusion of frequent random inspections of the workplace to ensure that the provisions of the program are being properly implemented for all affected employees. We feel that it is important to preserve the periodic consultation with employees to effectively correct and maintain a respiratory protection program.

**(m) Recordkeeping and Access to Records**

We support this provision of the standard.

**COMMENTS ON OTHER ISSUES**

**Worker Participation**

The proposed rule revision misses a very important component, it fails to explicitly provide for worker participation in the development and implementation of the program. We suggest that the proposed revisions of this standard be modified to explicitly provide for worker participation in the development and implementation of the program. Moreover, we suggest that the proposal explicitly provide that nothing in the regulation alters an employer's responsibility to bargain with a designated representative of the employees. Such a provision would make clear that employees and their unions retain the right to bargain with the employer over conditions of employment, including the means of implementing the Agency's revised respiratory protection standard.

**Conclusion**

Thank you for your consideration of these comments. We look forward to participating in the public hearing activities of this proposed rule.