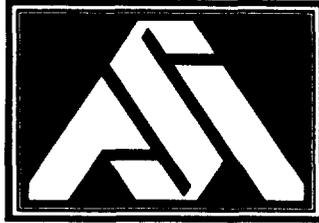


54-293



April 14, 1995

OSHA Docket Office, Docket H-049  
Occupational Safety and Health Administration  
U.S. Department of Labor  
Room N-3649  
200 Constitution Avenue, NW  
Washington, DC 20210

OSHA  
DOCKET  
DATE APR 14 1995

Re: OSHA NPRM on Respiratory Protection

Dear Assistant Secretary:

The American Subcontractors Association (ASA) is pleased to submit comments to the Occupational Safety and Health Administration on the proposed rulemaking for respiratory protection, published November 15, 1994.

ASA is a national trade association with a membership of over 6,000 specialty trade contractors. A majority of our members are small companies, engaged in the construction practices.

We commend OSHA for drafting an update of this standard. OSHA is obviously faced with assuring new technologies are allowed in the workplace, while protecting employees through effective safety programs. ASA champions prevention.

The following comments are focused on the specifications in this proposed standard. Recommendations and questions are provided for OSHA's consideration during the rulemaking process.

#### **(b) Definitions**

##### **Fit factor**

The definition provided excludes devices, such as the TSI Portacount®, that are frequently used by contractors, especially small employers. "Test chamber" does not include these devices.

##### **Hazardous Exposure Limit**

Contractors are familiar with the permissible exposure limits (PEL) in OSHA's general industry standard, and these are acceptable standards. However, the required use of the American Conference of Governmental Industrial Hygienists' latest edition of *Threshold Limit Values* may place employers at a disadvantage. Without regular access to this information and very limited resources for attaining data from various resources, small contractors will be required to turn to

third parties, i.e. ACGIH, for standards. Will there be proper notification by OSHA in the Federal Register when these standards change?

The NIOSH Recommended Exposure Limits are not a scientifically-sound basis for the Hazardous Exposure Limit. This reference should be removed from the proposed standard.

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

(2) If a manufacturer's product is in compliance with respirator specifications, according to NIOSH, there is little to gain from requiring a contractor to offer two brands of a respirator in the initial fitting. If a proper fit does not occur, other provisions in the proposed standard would assure the employee receives a proper fitting respirator, regardless of the manufacturer.

(3) In this paragraph, an employer is required to obtain and evaluate information on potential hazards. Contractors will use the data provided by manufacturers and OSHA standards to determine the factors that are listed. Does OSHA expect contractors to rely on other sources, such as scientific journals, to determine these hazards?

#### **(3)(v)**

ASA recommends this is changed to "(the employer shall obtain and evaluate the following information)...When a substance specific standard applies, the results of workplace sampling of airborne concentrations of contaminants in accordance with that standard;"

#### **(e) Medical Evaluations**

This standard would essentially require every employee to be given a physical at the employers expense. If the use of a respirator is a normal element of their job, such as 20 percent of the time, a simple employee medical questionnaire could be provided that must be signed and kept in confidence. Perhaps the questionnaire could be forwarded to a consulting physician. The current standard's provision (1926.103 (e)(10)) is reasonable. "The local physician shall determine what health and physical conditions are pertinent."

Certain items as determined by OSHA, such as a history of respiratory problems, would alert physicians and employers to the need for a medical evaluation. Employees that are doing work requiring respirators, may get regular physicals as deemed appropriate by the physician and employer considering the working conditions and the employee's health.

#### **(f) Fit Testing/Appendix A**

The mandatory Appendix A requires employers to keep extensive records on each fit test for each employee. These are not necessary. When the respiratory protection program is implemented, additional recordkeeping procedures should not be dictated. Employers will implement "fit testing procedures" including annual fitting in the most effective manner for their workplace. Also, many substance specific standards require six month fittings. These should be changed to annual to

allow employers to use a consistent standard, unless OSHA can demonstrate why the frequency should be six months.

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

Requiring disposable respirators to be discarded at the end of each task or work shift, whichever comes first, is presuming that it is contaminated after one task. When the respiratory protection program is implemented, the employee will be capable of assessing when a disposal respirator should be discarded based on working conditions. A clean container could be one means of preserving it through a work shift.

#### **(h) Maintenance and care of respirators**

(1) (i) Cleaning and disinfecting respirators issued for the exclusive use of an employee after each day's use may be inappropriate depending on the work performed. This daily requirement is arbitrary, for cleaning and disaffection may be necessary several times a day or only several times a week. When the respiratory protection program is implemented, the employee will be capable of assessing when a respirator should be cleaned and disinfected or the employer may determine the appropriate frequency based on working conditions and the manufacturer's recommendations.

#### **(4) (i) - (ii)**

The specification for a appropriately trained person is duplicitous with the manufacturer's recommendations. Depending on those recommendations, a trained person may or may not be necessary to do various repairs, such as replace a strap. The company's respiratory protection program can establish the extent of training for repair based on the manufacturers' recommendations. Therefore, paragraph (i) is not necessary; paragraph (ii) may be revised to say:

"Repairs shall be performed according to the manufacturer's recommendations concerning the type and extent of repairs that can be performed and using parts designed for the respirator;"

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

Most small contractors rely on organizations, such as ASA, to educate them on new standards. The process generally entails an overview of the new standards, an evaluation of their current operating procedures, changes in their written SOPs and recordkeeping procedures, purchasing any new equipment, training employees and completing necessary medical examinations. The 90 day period after publication is a very short time frame for this transition to a new program. ASA recommends a six to 12 month time frame that allows companies to implement the standard properly.

ASA is concerned by OSHA's cost analysis. First, small business would be more severely impacted by this regulation than indicated. Specifically, the implementation of changes are extremely draining on a company whose CEO is also personnel manager, sales manager, safety superintendent and project supervisor. The cost of revising the SOPs, creating new paperwork forms, evaluating and buying equipment, and training employees on one revised standard is an enormous percentage of the company's resources. Table A. - Annualized Costs of Proposed Revisions to Respirator Standard does not factor costs for the written procedures in the proposed regulation. Contractors in complete compliance with the current standard would incur substantial costs in this area.

Here's one example of its potential impact. As a result of implementation, OSHA estimates that profits of a company could be reduced by as much as one percent in a worst case scenario. The Construction Financial Management Association's Sixth Annual Construction Industry Financial Survey (1994) reported that, of those special trade contractors reporting, net earnings after taxes were 00.7 percent. That is less than one percent.

ASA appreciates the opportunity to comment and recognizes the work OSHA has put into rewriting this standard. We look forward to working with you to address the issues raised here, including the impact on small business.

Sincerely,  
  
Anita Drummond  
Manager of Government Relations

cc: SBA Office of Advocacy