

**North Carolina Department of Labor
Division of Occupational Safety and Health**

Raleigh, North Carolina

Field Information System

Operational Procedure Notice 131

Subject: Interim Enforcement Procedures for Respiratory Protection Against *M. tuberculosis*; Revocation of 29 CFR 1910.139

A. Purpose.

This notice establishes North Carolina's policy for conducting inspections for compliance with the respiratory protection standard, 29 CFR 1910.134, in those facilities whose use of respirators were formerly subject to compliance with 29 CFR 1910.139, Respiratory Protection for *M. tuberculosis*.

B. Scope.

This policy applies only to general industry in the five occupational settings previously identified as having a higher than normal incidence of occupational exposure to *M. tuberculosis*: healthcare settings; correctional institutions; facilities for the long term care of the elderly; drug treatment centers; and homeless shelters.

C. References.

- 29 CFR 1910, "North Carolina Occupational Safety and Health Standards for General Industry," with amendments through April 1, 2003.
- 29 CFR 1910.134, Respiratory Protection.
- Federal Register, Vol. 68, December 31, 2003, pages 75767-75775, Proposed Rule: Termination of Rulemaking.
- Federal Register, Vol. 68, December 31, 2003, pages 75776-75780, Final Rule; Revocation: Respiratory Protection for *M. Tuberculosis*.
- CPL 2.106, Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis, February 9, 1996.
- CPL 2-0.120, Inspection Procedures for the Respiratory Protection Standard, September 25, 1998.

D. Expiration.

This OPN is effective from June 30, 2004 through December 31, 2004 and expires on January 1, 2005. Beginning January 1, 2005 all violations regarding use of respiratory protection to protect against tuberculosis will be cited in accordance with 29 CFR 1910.134.

E. **Action.**

In response to the termination of rulemaking on a standard to protect against occupational exposure to *M. tuberculosis* (TB), federal OSHA has revoked 29 CFR 1910.139 (1910.139) and shifted requirements for the use of respirators to protect against TB to those of the respiratory protection standard, 29 CFR 1910.134 (1910.134). In order to ensure that the content and enforcement of standards governing the occupational use of respirators remain “at least as effective” as those of federal OSHA, OSHNC has similarly revoked 1910.139 and shifted coverage of the use of respirators to protect against TB to 1910.134 effective June 30, 2004.

OSHNC has chosen to delay enforcement of 1910.134 for respiratory protection to protect against occupational exposure to TB until January 1, 2005 in the five occupational settings previously recognized by the Center for Disease Control and Prevention (CDC) as having a higher than normal incidence of occupational exposure to TB. These occupational settings are: healthcare institutions; correctional institutions; facilities for the long term care of the elderly; drug treatment centers; and homeless shelters. Delay of enforcement in these occupational settings is contingent upon existing compliance with all of the provisions of 1910.139.

The respiratory protection standard at 1910.134 includes several requirements that were not as detailed in the revoked rule, such as updating the facility’s respirator program, medical evaluation requirements, annual fit testing of respirators, and some training and recordkeeping provisions. Consequently, OSHNC will delay enforcement of these requirements for six (6) months for those establishments required to provide respirators due to potential exposure to tuberculosis and will not cite these new requirements for establishments with workers exposed only to tuberculosis.

When an inspection is initiated in response to a complaint relative to occupational exposure to TB, or as part of a general schedule inspection, in one of the five occupational settings above, the compliance safety and health officer (CSHO) will determine if the facility has had a suspected or confirmed active case of tuberculosis within the previous six (6) months. If a positive determination is made, an inspection of the facility will be conducted in accordance with CPL 2.106, “Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis.” Under this directive, employees occupationally exposed to TB are required to wear respirators under the following circumstances:

- a. When workers enter rooms housing individuals with suspected or confirmed infectious TB.
- b. When workers are present during the performance of high hazard procedures on individuals who have suspected or confirmed infectious TB.
- c. When emergency-medical-response personnel or others transport, in a closed vehicle, an individual with suspected or confirmed infectious TB.

If the CSHO determines that none of the requirements of 1910.139 or 1910.134 are being met, the employer will be cited under the appropriate provisions of 1910.134 in accordance with CPL 2-0.120 (September 25, 1998), “Inspection Procedures for the Respiratory Protection Standard.” When the employer is found to be in partial compliance with the provisions of 1910.139 but violations of specific provisions are identified (e.g., inadequate written standard operation procedures exist, inadequate training or lack of training, etc.), the employer will be cited for the corresponding provisions of 1910.134 in accordance with Table 1 as follows:

Table 1: Correlation between 1910.139 & 1910.134

1910.139	Provision	1910.134	Provision
(b)(1)	Written standard operating procedures governing the selection and use of respirators shall be established	(c)(1)	In any workplace where respirators are necessary to protect the health of the employee or whenever respirators are required by the employer, the employer shall establish and implement a written respiratory protection program with worksite-specific procedures.
(b)(3)	The user shall be instructed and trained in the proper use of respirators and their limitations.	(k)(1)(i) – (vii)	<p>The employer shall ensure that each employee can demonstrate knowledge of at least the following:</p> <ul style="list-style-type: none"> (i) Why the respirator is necessary and how improper fit, usage, or maintenance can compromise the protective effect of the respirator; (ii) What the limitations and capabilities of the respirator are; (iii) How to use the respirator effectively in emergency situations, including situations in which the respirator malfunctions; (iv) How to inspect, put on and remove, use, and check the seals of the respirator; (v) What the procedures are for maintenance and storage of the respirator; (vi) How to recognize medical signs and symptoms that may limit or prevent the effective use of respirators; and (vii) The general requirements of this section.

1910.139	Provision	1910.134	Provision
(b)(10)	Persons should not be assigned to tasks requiring use of respirators unless it has been determined that they are physically able to perform the work and use the equipment.	(e)(1)	The employer shall provide a medical evaluation to determine the employee's ability to use a respirator, before the employee is fit tested or required to use the respirator in the workplace. The employer may discontinue an employee's medical evaluations when the employee is no longer required to use a respirator.
(b)(11)	Respirators shall be selected from among those [jointly] approved by [the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health...]	(d)(1)(ii)	The employer shall select a NIOSH-certified respirator. The respirator shall be used in compliance with the conditions of its certification.
(e)(5)	For safe use of any respirator, it is essential that the user be properly instructed in its selection, use, and maintenance. Both supervisors and workers shall be so instructed by competent persons. Training shall provide the men an opportunity to handle the respirator, have it fitted properly, test its facepiece-to-face seal, wear it in normal air for a long familiarity period, and, finally, <u>to wear it in a test atmosphere.</u>	(f)(1)	The employer shall ensure that employees using a tight-fitting facepiece respirator pass an appropriate qualitative fit test (QLFT) or quantitative fit test (QNFT) as stated in this paragraph
(e)(5)(i)	Every respirator wearer shall receive fitting instructions including demonstrations and practice in how the respirator should be worn, how to adjust it, and how to determine if it fits properly. Respirators shall not be worn when conditions prevent a good face seal. Such conditions may be a growth of beard, sideburns, a skull cap that projects under the facepiece, or temple pieces on glasses...	(g)(1)(i)(A)	The employer shall not permit respirators with tight-fitting facepieces to be worn by employees who have: Facial hair that comes between the sealing surface of the facepiece and the face or that interferes with valve function; or
		(g)(1)(i)(B)	Any condition that interferes with the face-to-facepiece seal or valve function.

Signed on Original

J. Edgar Geddie, Ph.D.
Health Standards Officer

Signed on Original

Kevin D. Beauregard
Assistant Director

3/26/04
Date of Signature