



MAR 24 2008

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

FROM: DONALD G. SHALHOUB
Deputy Assistant Secretary

A handwritten signature in black ink, appearing to read "D. Shalhoub", written over the printed name.

SUBJECT: Tuberculosis and Respiratory Protection Enforcement

The Federal Register Notice published on December 31, 2003, withdrew the standard 29 CFR 1910.139 -- Respiratory Protection for M. Tuberculosis. At that time, establishments whose respiratory protection programs for tuberculosis were formerly covered under 29 CFR 1910.139 were required to adapt their programs to comply with the requirements of 29 CFR 1910.134.

Congress subsequently restricted OSHA's appropriations in the years that followed and provided "[t]hat none of the funds appropriated under this paragraph shall be obligated or expended to administer or enforce the provisions of 29 CFR 1910.134(f)(2) . . . to the extent that such provisions require the annual fit testing (after the initial fit testing) of respirators for occupational exposure to tuberculosis."

The appropriations restriction affected only annual fit testing of respirators used for protection against tuberculosis. No other provisions of the respiratory protection standard were affected by the appropriations restriction. All requirements of the respiratory protection standard, including annual fit testing, continued to be cited for respirator use against other hazards, such as Severe Acute Respiratory Syndrome (SARS) or other bioaerosols.

The accompanying text to the legislation advised OSHA to take no further action "until such time as the CDC completes the revision of its TB guidelines." The CDC issued "Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings, 2005" in December of 2005. These guidelines recommended periodic fit testing in accordance with federal, state and local regulations. However, Continuing Appropriations Resolutions that followed provided funding "under the authority and conditions provided in the applicable appropriations Act for fiscal year 2006..."

Congress passed the 2008 omnibus appropriations bill and President Bush signed it into law on December 26, 2007. This new appropriation has no restriction on the enforcement of the Respiratory Protection standard. On January 2, 2008, OSHA will resume full enforcement of the entire Respiratory Protection standard, including 1910.134(f)(2).

This restriction has also been removed with respect to outreach and assistance activities (e.g., education and training, and compliance assistance); participation in OSHA's recognition programs (i.e., SHARP and VPP) or strategic partnerships; and the use of Federal funds appropriated for State plan States and Consultation projects.

If you have any questions, feel free to contact the Office of Health Enforcement at (202) 693-2190.

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

Raleigh, North Carolina

Field Information System

Operational Procedure Notice 131B

Subject: Enforcement Procedures for Respiratory Protection Against *M. tuberculosis*; Suspended enforcement of the provisions of 29 CFR 1910.134(f)(2), fit-testing

A. Purpose.

This notice announces the suspended enforcement of the annual fit-testing requirement in paragraph (f)(2) of the respiratory protection standard for respirators used to protect against occupational exposure to *M. tuberculosis* in those facilities formerly subject to compliance with 29 CFR 1910.139, Respiratory Protection for *M. tuberculosis* (TB).

B. Discussion.

Public Law 108-447 (H.R. 4818, the FY 2005 Consolidated Appropriations Act), which was signed into law on December 8, 2004, prohibited OSHA from using any FY 2005 appropriated funds to administer or enforce the provisions of 29 CFR 1910.134(f)(2) regarding annual fit-testing of respirators worn to protect against occupational exposure to tuberculosis.

Public Law 109-149 (H.R. 3010, the FY 2006 Consolidated Appropriations Act), which was signed in to law on December 30, 2005, continues to prohibit OSHA from using any FY 2006 appropriated funds to administer or enforce the provisions of 29 CFR 1910.134(f)(2) regarding annual fit-testing of respirators worn to protect against occupational exposure to tuberculosis.

This prohibition only affects annual fit testing of respirators used for protection against tuberculosis. It does not apply to the requirement for initial fit-testing of TB respirators, nor does it apply to the requirement to conduct annual fit-testing for all other required respirator usage in the affected facilities (i.e., 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).

In addition, outreach and assistance activities (e.g., education and training, and compliance assistance) cannot state or imply that annual fit testing of respirators for protection against tuberculosis is required, or recommend that employers implement annual fit testing if their sole use of respirators is to protect employees against tuberculosis.

C. References.

- Memorandum from Paula O. White, Director of Cooperative and State Programs, to State Designees and Consultation Project Managers, December 23, 2004.
- Public Law 108-447, FY 2005 Consolidated Appropriations Act, December 8, 2004.
- 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.
- CPL 2-0.120, Inspection Procedures for the Respiratory Protection Standard, September 25, 1998.
- CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act, May 28, 1998.

D. Action.

Employers may not be inspected or cited for the requirement to do annual fit testing of respirators worn for occupational exposure to tuberculosis. This applies to all OSHNC compliance inspections, including programmed inspections, employee complaints, and imminent danger situations. (See CPL 2.106 for circumstances when respirators are required to be worn for protection against occupational exposure to tuberculosis.) This prohibition includes referrals for potential violations of the annual fit testing requirements for respirators and occupational exposure to tuberculosis that result from investigations conducted under the North Carolina Retaliatory Employment Discrimination Act (REDA).

No other provisions of the respiratory protection standard as it applies to occupational exposure to tuberculosis are affected by the appropriations restriction, including the provisions of 29 CFR 1910.134(f)(2) for the lack of initial fit testing or whenever a different respirator face piece is used. This restriction also does not affect 29 CFR 1910.134(f)(3) which requires additional fit testing whenever facial changes have occurred which could affect the proper fit of the respirator.

Moreover, the prohibition against annual fit testing of respirators applies only to protection against tuberculosis. All requirements of the respiratory protection standard, including annual fit testing, may continue to be cited for respirator use against other hazards, including Severe Acute Respiratory Syndrome (SARS) or other bioaerosols.

E. Expiration.

OPN 131A is canceled. This revised OPN was effective on October 1, 2005 and will remain in effect until revised or canceled by the Director.

Signed on Original
J. Edgar Geddie, Ph.D.
Health Standards Officer

Signed on Original
Allen McNeely
Director

1/10/06
Date of Signature