

**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