

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****29 CFR Part 1910****[Docket No. H-371]****RIN 1218-AB46****Occupational Exposure to Tuberculosis****AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Proposed rule; termination of rulemaking.

**SUMMARY:** OSHA is withdrawing its 1997 proposed standard on Occupational Exposure to Tuberculosis (TB). Because of a broad range of Federal and community initiatives, the rate of TB has declined steadily and dramatically since OSHA began work on the proposal in 1993. Hospitals, which are the settings where workers are likely to have the highest risk of exposure to TB bacteria, have come into substantial compliance with Federal guidelines for preventing the transmission of TB. Overall reductions in TB mean that all workers are much less likely now to encounter infectious TB patients in the course of their jobs.

In addition, an OSHA standard is unlikely to result in a meaningful reduction of disease transmission caused by contact with the most significant remaining source of occupational risk: exposure to individuals with undiagnosed and unsuspected TB. Particularly outside of hospitals, workers often will not identify suspect TB cases quickly enough to implement isolation procedures and other precautions before exposure occurs.

OSHA recognizes, however, that continued vigilance is necessary to maintain the gains achieved so far. OSHA intends to provide guidance to workplaces with less medical expertise and fewer resources than hospitals, and to use cooperative relationships with employers, public health experts and other government agencies to promote TB control. OSHA will also continue to enforce the General Duty Clause of the OSH Act and relevant existing standards in situations where employers' failure to implement available precautions exposes workers to the hazard of TB infection.

**DATES:** This withdrawal is effective December 31, 2003.

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**SUPPLEMENTARY INFORMATION:****I. Background**

On August 25, 1993, the Coalition to Fight TB in the Workplace petitioned OSHA to promulgate both an Emergency Temporary Standard (ETS) under section 6(c) of the Occupational Safety and Health Act (OSH Act), and a permanent occupational health standard under section 6(b) of the Act to protect workers from occupational exposure to TB (Ex.1). 29 U.S.C. 655(b), 655(c). Citing the resurgence of TB at that time and the emergence and increasing prevalence of multi-drug resistant TB (MDR-TB), the petition argued that a mandatory standard was needed to address the hazards associated with occupational exposure to TB. According to the petition, TB Guidelines developed by the Federal Centers for Disease Control and Prevention (CDC) were not an adequate response to this hazard because the guidelines were not mandatory and were not being implemented fully or rigorously in most workplaces. The petition also requested that, as an interim measure, OSHA immediately issue nationwide enforcement guidelines.

On October 8, 1993, OSHA issued a directive governing enforcement activities to address occupational exposure to TB. (Ex. 7-1-A, updated February 9, 1996) The directive explained that, although OSHA had no standard directed specifically at occupational exposure to TB, some of its generally applicable standards provide protection from this hazard. For example, OSHA's Respiratory Protection Standard, 29 CFR 1910.134, requires employers to provide protection to workers exposed to airborne hazards. When this standard was revised in 1998, the earlier version was recodified as an interim standard governing respirators used to provide protection from TB. (29 CFR 1910.139; 63 FR 1152) (For the revocation of this rule, see the final rule published elsewhere in this separate part of the **Federal Register**) Another standard, 29 CFR 1901.145, requires accident prevention tags to warn of biological hazards. In addition, section 5(a)(1), the General Duty Clause of the Act, requires that each employer:

\* \* \* furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.

OSHA compliance personnel were directed to evaluate employers' efforts

to protect their workers from TB at health care facilities and other workplaces where CDC had identified a risk of occupational TB transmission, as well as to respond to complaints about inadequate TB control measures. The TB Directive is still in effect. OSHA has also implemented a number of National and Local 2002-2003 National Emphasis Program (NEP) for nursing and personal care facilities directed enforcement personnel to determine whether each facility where there was a suspect or confirmed TB case within the past six months had implemented appropriate infection control procedures, including isolation procedures and employee skin tests. OSHA conducted 1000 inspections under the NEP this year.

On January 26, 1994, OSHA responded to the rulemaking petition, saying that it was initiating rulemaking on a permanent standard, but would not issue an ETS. On October 17, 1997, OSHA published a Proposed Rule on Occupational Exposure to Tuberculosis (62 FR 54160). In the proposal, the Agency made a preliminary determination that workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings faced a significant risk of incurring TB infection through occupational exposure. The Agency also made a preliminary conclusion that use of established infection prevention and control measures could reduce or eliminate this significant risk. The protective measures OSHA proposed were based in large part on existing CDC guidelines, and included instituting procedures for the early identification and treatment of TB patients, isolating patients with infectious TB in rooms designed to protect others from contact with disease-causing microorganisms, requiring healthcare workers to use respirators to perform certain high-hazard procedures on infectious patients, training workers in TB recognition and control, and providing medical follow-up for occupationally exposed workers who become infected and information to their colleagues with similar exposures.

OSHA accepted comments and held public hearings on the proposed standard in 1998. Additional comments on specific issues were also accepted in 1999 and 2002. (64 FR 32447 (June 17, 1999); 64 FR 34625 (June 28, 1999); 67 FR 3465 (January 24, 2002); 67 FR 9934 (March 5, 2002)) On the latter occasion, OSHA asked for comment on a revised risk assessment and peer reviews of that assessment, as well as on a National Academy of Sciences/Institute of Medicine (NAS/IOM) report,