

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Part 1910****[Docket No. H-371]****RIN 1218-AA05****Respiratory Protection for M. Tuberculosis****AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Final rule; revocation.

SUMMARY: OSHA is revoking "Respiratory Protection for M. Tuberculosis" (29 CFR 1910.139) which is simply a recodification of OSHA's 1971 General Industry Respiratory Protection standard that was revised in 1998. At the time of the revision of the 1971 standard, OSHA decided that, because its proposed standard for occupational exposure to TB, published three months earlier, included a comprehensive respiratory protection provision, the Agency would allow compliance with the previous respirator standard for TB protection until completion of the TB rulemaking. Thus, pending conclusion of the TB rulemaking, OSHA redesignated the old Respiratory Protection Standard in a new section entitled "Respiratory Protection for M. tuberculosis". However, in a document published elsewhere in this separate part of the **Federal Register**, OSHA is today withdrawing its proposed TB standard. Because this withdrawal concludes the TB rulemaking, OSHA is revoking the redesignated Respiratory Protection Standard, and will begin applying the General Industry Respiratory Protection Standard (29 CFR 1910.134) to respiratory protection against TB.

DATES: This revocation is effective December 31, 2003.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**I. Background**

On October 17, 1997, OSHA published its Notice of Proposed Rulemaking (NPRM) for Occupational Exposure to TB (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 were at

significant risk of incurring TB infection while caring for their patients and clients or performing certain procedures. The Agency also preliminarily concluded that this significant risk can be minimized or eliminated using infection prevention and control measures that have been demonstrated to be highly effective in reducing or eliminating job-related TB infections. These measures included the use of respiratory protection when performing certain high-hazard procedures on infectious individuals.

On January 8, 1998 OSHA revised its 1971 General Industry Standard for Respiratory Protection (63 FR 1152). Because the 1997 TB proposal included all of the respiratory protection provisions that OSHA believed would be applicable to respirator use for TB protection, the Agency did not require this use to comply with the new § 1910.134 during the rulemaking proceedings on the TB proposal. Instead, pending conclusion of the TB rulemaking, OSHA redesignated the old § 1910.134 as § 1910.139, "Respiratory protection for M. tuberculosis."

However, OSHA is today withdrawing its proposed TB standard (*see* Occupational Exposure to Tuberculosis; Proposed Rule; Withdrawal published elsewhere in this **Federal Register**), and with this document is revoking 29 CFR 1910.139.

II. Reasons for the Revocation of 29 CFR 1910.139

OSHA is revoking 29 CFR 1910.139 because it was intended to apply only during the pendency of the TB rulemaking, and that rulemaking is being terminated. The standard being revoked is simply a recodification of OSHA's 1971 General Industry Respiratory Protection Standard, 29 CFR 1910.134, which was revised in 1998. (63 FR 1152, (January 8, 1998)). At the time of the revision, OSHA decided that, because the TB proposal issued three months earlier included a self-contained respiratory protection provision, the Agency would allow compliance with the previous respirator standard for TB protection until completion of the TB rulemaking. (62 FR 54289; 63 FR 1180). To accomplish this, OSHA redesignated the old § 1910.134 as § 1910.139, "Respiratory protection for M. tuberculosis." OSHA made clear in both rulemakings, however, that it intended the respiratory protection requirements ultimately made applicable to TB protection to be consistent with the revised § 1910.134, and the TB proposal was itself consistent with that revision. (62 FR 54257, 54287-54288; 63 FR 1180). In

fact, the relevant comments from the Respiratory Protection rulemaking were made part of the TB rulemaking. (Exs. 150-1 through 150-178). With this termination of the TB rulemaking, it is now appropriate for OSHA to begin applying the revised 29 CFR 1910.134 to respiratory protection against TB.

Applying the General Industry Respiratory Protection standard to the use of respirators for TB protection is supported by the records in both the TB and respirator rulemaking proceedings. OSHA noted in the proposed TB rule that one option was to apply the general respirator standard to TB protection. (62 FR 54257). A number of participants in the TB rulemaking urged OSHA to take this course. (*See, e.g.*, Exs. 17-215; 17-271; 17-455; 17-570; 17-906; 17-1145). The proposed TB standard's respiratory protection requirements were largely consistent with those in the revised general industry standard. One of the hazards the latter standard was designed to address is the "inhalation of bacteria * * * including tuberculosis." (63 FR 1159).

The revised general industry standard reflects the Agency's evaluation of current knowledge and technology as they relate to effective respiratory protection programs. The revisions help to ensure that employers have sufficient guidance to select and maintain appropriate respiratory protection. Given the extensive rulemaking undertaken to establish these requirements, and the intensive review and consideration of all issues related to respiratory protection in that rulemaking, the Agency believes it is appropriate and necessary to ensure that employees exposed to TB have the same protections as employees exposed to other types of hazards in the workplace. All facilities that use respirators for any purpose other than TB protection are already required to comply with the revised respiratory protection standard. The revised standard has also been upheld in its entirety by the U.S. Court of Appeals for the Eleventh Circuit. *AISI v. OSHA*, 182 F.3d 1261, 1273 (11th Cir. 1999).

The new requirements in the revised respiratory protection standard include updating the facility's respirator program, complying with amended medical evaluation requirements, annual fit testing of respirators, and some training and recordkeeping provisions. These provisions were also included in the TB proposal, and the only one that elicited significant comment was the requirement for annual fit testing.

With regard to updating each facility's respiratory protection program,