



Exempt Action Final Regulation Agency Background Document

Agency name	Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation	16 VAC 25-90-1910.139 and 16 VAC 25-90-1910.134
Regulation title	Respiratory Protection for M. Tuberculosis, §1910.139; Final Rule; Revocation
Action title	Revocation of the Final Rule for Respiratory Protection for M. Tuberculosis, §1910.139; and the Application of Respiratory Protection Standard, General Industry, §1910.134, to Respiratory Protection against Tuberculosis
Final agency action date	April 21, 2004
Document preparation date	May 11, 2004

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the of the Administrative Process Act (APA) (townhall.state.va.us/dpbpages/dpb_apa.htm), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

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Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

On December 31, 2003, OSHA withdrew its 1997 Tuberculosis proposal and revoked §1910.139, Respiratory Protection for M. Tuberculosis, which was intended to apply only pending the conclusion of the Tuberculosis rulemaking. With the withdrawal of the Tuberculosis proposal and revocation of §1910.139, OSHA will begin applying the general industry respiratory protection standard for protection, 29 CFR 1910.134, against Tuberculosis on July 1, 2004. (68 FR 75767)

The new requirements in the respiratory protection standard, §1910.134, include the following:

- § updating the facility's respirator program;
- § complying with amended medical evaluation requirements;
- § annual fit testing of respirators; and
- § training and recordkeeping provisions.

Highlights of §1910.134

The existing respiratory protection rule provides employers with additional guidance on what constitutes an appropriate and effective program, giving employers a better road map to follow when relying on respiratory protection in the workplace. The standard specifies how a systematic approach to evaluating workplace conditions, selecting the appropriate respirator, ensuring the respirator fits, and maintaining the respirator properly is to be implemented in the workplace. (68 FR 75777)

The repealed standard, Section 1910.139, required medical evaluation, but did not set forth the components of the evaluation, or how it was to be accomplished. The medical evaluation provisions of §1910.134 set forth the minimum requirements employers must implement to determine if employees are medically qualified to wear respirators in their places of work.

The medical evaluation provisions of §1910.134 are significantly better than the repealed standard, §1910.139. They ensure that the healthcare professional, the employee, and the employer are aware of the factors that must be considered in evaluating an employee's respiratory protection needs, and provide the tools to ensure appropriate decisions are made. (68 FR 75777)

Section 1910.134 requires employers to provide effective training to employees who are required to use respirators. The training must be comprehensive, understandable and recur at least annually.

OSHA believes that the provisions of §1910.134 represent its assessment of the best information available at the time that rule was issued to ensure that respiratory protection in the workplace is effective. To expend similar protection to workers exposed to Tuberculosis in the workplace, OSHA will apply all of the provisions of §1910.134, including annual fit testing to Tuberculosis exposures. (68 FR 75778)

NOTE: On January 14, 2004, federal OSHA issued an announcement that it would delay until July 1, 2004, enforcing several provisions of the respiratory protection standard for establishments required to provide respirators for protection from potential exposure to Tuberculosis. The Safety and Health Codes Board repealed §1910.139 effective July 1, 2004 and approved delaying enforcement of several provisions until December 31, 2004 to provide the same six month phase in as federal OSHA.

The six-month phase-in period will allow affected employers to come into compliance with the additional requirements of OSHA's respiratory protection standard, such as conducting annual respirator fit testing and performing medical evaluations for covered employees and annual training for respirator use.

For those establishments required to provide respirators due to potential exposure to Tuberculosis, the Virginia Occupational Safety and Health Program (VOSH) will allow them up to 6 months to come into compliance

with these sections. During the six-month phase-in period, VOSH will not cite these new requirements for establishments with workers exposed only to tuberculosis. All elements of the revoked rule continue to be enforced under the corresponding elements of the current respiratory protection standard.

The federal OSHA/VOSH delay does not affect establishments already covered under the respiratory protection rule where there is exposure to hazardous substances other than tuberculosis. All provisions of the rule will continue to be applied to those employers.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

The revocation of the Final Rule for Respiratory Protection for M. Tuberculosis, §1910.139, and the application of the Respiratory Protection Standard, General Industry, §1910.134, to Respiratory Protection against Tuberculosis have no impact on the institution of the family or family stability.