



Virginia  
Regulatory  
Town Hall

## Exempt Action Final Regulation Agency Background Document

<b>Agency Name:</b>	Department of Labor and Industry/ Safety and Health Codes Board
<b>VAC Chapter Number:</b>	16 VAC 25-90-1910.134
<b>Regulation Title:</b>	Respiratory Protection Standard
<b>Action Title:</b>	Respiratory Protection Standard; Revisions to Appendix A – Controlled Negative Pressure REDON Fit Testing Protocol
<b>Date:</b>	December 14, 2004

Where a regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 9-6.14:1 *et seq.* of the *Code of Virginia*) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and file the final regulation with the Registrar in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

**Note agency actions exempt pursuant to § 9-6.14:4.1(B)** do not require filing with the Registrar a Notice of Intended Regulatory Action, or at the proposed stage. When the regulation is promulgated and submitted to the Registrar, the agency need only provide a statement citing the specific Virginia Code section referencing the exemption and an authority certification letter from the Attorney General's Office. No specific format is required.

This form should be used for actions **exempt from the Administrative Process Act pursuant to § 9-6.14:4.1(C)** at the final stage. Note that agency actions exempt pursuant to § 9-6.14:4.1(C) of the APA do not require filing with the Registrar a Notice of Intended Regulatory Action, and at the proposed stage.

### Summary

*Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation, instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

Federal OSHA has approved an additional quantitative fit testing protocol, the controlled negative pressure (CNP) REDON fit testing protocol, for inclusion in Appendix A of its Respiratory Protection Standard, §1910.134. The CNP REDON protocol will assess respirator fit

effectively and also will train employees to detect leakage while donning and doffing a respirator. (69 FR 46989) The CNP REDON protocol is not expected to replace existing fit testing protocols, but instead is an alternative to them. Federal OSHA has adopted its protocol under the provisions of the Respiratory Protection Standard that allow individuals to submit evidence for including additional fit testing protocols in this standard. (67 FR 46986)

The CNP REDON protocol requires the performance of three different test exercises followed by two redonnings of the respirator. The three test exercises, listed in order of administration, are normal breathing, bending over, and head shaking. (69 FR 46986) The CNP protocol previously approved by federal OSHA specifies eight test exercises, including one redonning of the respirator. In addition to amending the Respiratory Protection Standard to include the CNP REDON protocol, federal OSHA also made several editorial and non-substantive technical revisions to the standard associated with the CNP REDON protocol and the previously approved CNP protocol. The technical revisions include the following:

- A. Paragraph 14(a) of Part I.A in Appendix A of the Respiratory Protection Standard would exempt both the previously approved CNP protocol and the CNP REDON protocol from the test exercises specified for the other approved fit testing protocols listed in the appendix. OSHA deemed this revision necessary because the CNP REDON protocol consists of a test exercise procedure that differs substantially from the procedure required for the other OSHA-approved fit testing protocols. (69 FR 46987)
- B. In the introductory paragraph in Part I.A. of Appendix A, the outdated reference to the CNP instrument manufacturer as “Dynatech Nevada” was corrected to “Occupational Health Dynamics of Birmingham, Alabama” to accurately identify the current manufacturer of this instrument.
- C. Paragraph (c) of the previously approved CNP protocol under Part I.A.4 of the Respiratory Protection Standard was revised to include the screen tracing currently provided on the CNP test instrument as a visual warning device to detect test subjects’ non-compliance with the breath-hold procedure.
- D. In paragraph (a)(5) of the previously approved CNP protocol, the breath-hold requirement was corrected to 10 seconds from 20 seconds because implementing correct fit test procedures would improve the assessment of respirator fit factors using the previously approved CNP protocol as well as the new CNP REDON protocol. (*Id.*)

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

On December 14, 2004, the Safety and Health Codes Board adopted a federal identical revision to Appendix A – Controlled Negative Pressure REDON Fit Testing Protocol of 16 VAC 25-90-1910.134, Respiratory Protection Standard, § 1910.134.

The effective date for this revision is March 15, 2004.

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### Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The revisions to Appendix A –Controlled Negative Pressure REDON Fit Testing Protocol have no impact on the institution of the family or family stability.