

G-87

May 23, 1982

FEDERAL LEVEL
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
Respiratory Protection

JTH
~~6-6~~ 82
File-OSHA
6-7 M/M

The Occupational Safety and Health Administration announced that it is seeking public comments on plans to revise its standards covering respirators used to limit worker exposure to toxic substances in the workplace (Federal Register, May 14, 1982, pp.20803-9, attached). OSHA's current regulations were issued in 1971 based on then-current national consensus standards developed by the American National Standards Institute. Since that time, "the field of industrial respiratory protection has advanced significantly", but the OSHA standard has not been amended to reflect these advances.

Current regulations require engineering controls to be used to reduce excessive employee exposure to airborne contaminants, and permit respirator use only while feasible engineering controls are being installed or when such controls are not considered feasible.

This requirement "is the subject of continuing controversy" where respirator programs are considered "more cost effective than engineering controls," the agency stated.

Evaluation of the technical aspects of respirator effectiveness is considered by the agency "to be an important and crucial first step in re-examining the broad policy of the priority of engineering controls over respirators," OSHA declared. The subject of "hierarchy of controls" will be addressed in a separate request for comment "in the near future," the notice said.

OSHA's request for data addressed such matters as respirator testing criteria; surveillance of working conditions where respirators are used; effectiveness of powered air purifying respirators, protection factors, appropriate respiratory protection standards for construction and maritime industries; special problems for small business; effect of respirator wear on productivity; cost of respirator programs; requirements for effec-

DTH 000036875

appeared in the Federal Register for Tuesday, February 9, 1982 (47 FR 5902).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (28 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by June 8, 1982. Each speaker will be limited to 10 minutes for oral presentation exclusive of time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 0 of the Treasury Directive for improving government regulations appearing in the Federal Register for Wednesday, November 8, 1973.

By direction of the Commissioner of Internal Revenue.

David E. Dickinson,
Director, Legislation and Regulations Division.

(FR Doc. 82-13217 Filed 5-13-82; 8:45 am)

BILLING CODE 4022-01-01

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

(Docket No. H-022)

Hazard Communication; Public Hearings

Note.—This document originally appeared in the Federal Register for Wednesday, May 12, 1982. It is reprinted in this issue to meet requirements for publication on the Tuesday/Friday schedule assigned to the Department of Labor.

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of proposed rulemaking; modification of hearing notice.

SUMMARY: On March 19, 1982, OSHA Published a notice of proposed

rulemaking (NPRM) on hazard communication in the Federal Register (47 FR 12092). A notice announcing dates and locations for public hearings on the NPRM was published on April 18, 1982 (47 FR 16348).

The locations announced for the hearings were Washington, D.C., Houston, San Diego and Detroit. The selection of these sites was based primarily on geographical considerations. Interested parties have since suggested that participation on the West Coast could be significantly increased by moving the hearing site there from San Diego to Los Angeles. OSHA has agreed to this suggestion and is hereby announcing that the hearing originally scheduled for San Diego on July 20, 1982, will take place instead in Los Angeles at the address indicated below. The other hearings will take place on the dates and at the locations announced in the April 18th notice at 47 FR 16348. The hearings will be conducted in accordance with the procedures specified in the March 19th NPRM at 47 FR 12092.

In order to allow interested parties more opportunity to decide to participate in the regional hearings, OSHA is also hereby extending the time for submission of notices of intention to appear and statements for these regional hearings. Notices and statements for participants in the Washington, D.C. hearing are still due May 18, 1982, and June 1, 1982, respectively.

DATES: Notices of intention to appear at the regional hearings must be received on or before June 15, 1982. Statements and any documentary evidence to be presented at these hearings must be submitted by July 1, 1982.

The date each hearing will begin and the cities in which they will be held are as follows:

Date hearing begins	City
1. June 15, 1982	Washington, D.C.
2. July 13, 1982	Houston, Texas.
3. July 20, 1982	Los Angeles, California.
4. July 27, 1982	Detroit, Michigan.

ADDRESSES: Notices of intention to appear at the hearings, statements and documentary evidence should be submitted to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room N3635, Washington, D.C. 20210, (202) 523-8024.

The address for the hearing on July 20, 1982 is:

Santa Barbara (A) Room, Western Bonaventure Los Angeles Hotel, Fifth

and Figueroa Streets, Los Angeles, California.

Notices of intention to appear at the public hearings, as well as any other information gathered by the Agency during this rulemaking, will be available for inspection and copying in the Docket Office, Docket H-022, Occupational Safety and Health Administration, 200 Constitution Avenue N.W., Room S3212, Washington, D.C. 20210; (202) 523-7691.

FOR FURTHER INFORMATION CONTACT:

Hearings: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room N3635, Washington, D.C. 20210; (202) 523-8024.

Proposal: Ms. Jennifer Silk, Office of Special Standards, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room N3633, Washington, D.C. 20210; (202) 523-7103.

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

(Secs. 6(b), 6(c) and 6(g), Pub. L. 91-593, 84 Stat. 1593, 1599, 1609; 29 U.S.C. 655, 657; 29 CFR Part 1911; Secretary of Labor's Order No. 8-76 (41 FR 28059))

Signed at Washington, D.C., this 10th day of May 1982.

Thorne G. Auchter,

Assistant Secretary for Occupational Safety and Health.

(FR Doc. 82-12975 Filed 5-10-82; 12:03 pm)

BILLING CODE 4510-25-01

29 CFR Parts 1910, 1915-1918, and 1923

(Docket No. H-040)

Respiratory Protection

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice requests data, views, and arguments concerning possible revisions to OSHA standards on respiratory protection in 29 CFR 1910.134, 29 CFR 1915.82, 29 CFR 1916.82, 29 CFR 1917.82, 29 CFR 1918.102, and 29 CFR 1920.103 including the need to regulate, relevant alternatives, and economic impact.

DATES: Data, views and arguments should be submitted by September 13, 1982.

ADDRESSES: Written submissions in response to this notice should be submitted to the Docket Officer, Docket

respirator suppliers have claimed to be inhibited from developing improved respirators which do not fit into existing categories or which provide protection from chemicals not included in present approval criteria because of the time involved from respirator development to ultimate approval. Suggestions on regulatory or other changes to further encourage the development of improved respirators and to permit their approval are requested.

It has become evident to OSHA that there is a good deal of confusion among respirator users over the distinction between the "fit factor" as determined by QNFT and the true, effective "protection factor" which is the actual protection afforded by a respirator when in use. The manufacturers of quantitative fit test equipment have correctly emphasized that their equipment does not take account of the normal filter leakage and measures only the leakage around the face/sealing area of the mask plus any contribution from exhalation valve leakage.

In addition, it has become apparent that the laboratory type testing of QNFT may tend to overestimate how well a respirator fits when an employee wearing it is working at his job. Therefore there is uncertainty now about how high an apparent protection factor (actually fit factor) must be demonstrated by QNFT to insure that employees are properly protected on the job.

OSHA has also been evaluating the appropriateness of improved methods of qualitative fit testing as an alternative to the quantitative fit testing required by the lead standard (29 CFR 1910.1025). Although that issue is being dealt with in a separate rulemaking proceeding (see 46 FR 27358, May 19, 1981), the arguments and information involved are also relevant to this advance notice. Therefore the record of that rulemaking (docket no. H-049A) will also be placed in the record of this proceeding. One of the major questions involved in that rulemaking is whether qualitative fit testing (QLFT) can be so arranged and conducted as to properly determine whether a respirator is in fact adequate for a specific application.

Another important question is whether di-2-ethylhexyl phthalate (DEHP), the most widely used challenge agent for QNFT, should continue to be used for QNFT in view of the recent finding by the National Toxicology Program that DEHP caused cancer in rats and mice in a two year feeding study. This study is reported in "NTP Technical Report on the Carcinogenesis Bioassay of Di-2-ethylhexyl phthalate—CAS 117-81-7," DHHS Publ. No. NIH-

81-1773, which is available in draft form (dated Oct. 15, 1980) in the OSHA docket office (Docket file H-049A, exhibit 12). There are several substitute challenge agents that can be used to conduct QNFT, thereby considerably reducing the importance of DEHP. Examples include corn oil and di-2-ethylhexyl sebacate.

All of these factors indicate to OSHA that existing standards related to respiratory protection should be reexamined in light of current knowledge and accepted industrial hygiene practice. If OSHA does not respond to this situation, many employees may be needlessly overexposed to a variety of airborne toxic materials because of inappropriate respirator programs. Such exposure could result in severe illness and disability. Alternatively, obsolete regulation may unnecessarily limit an employer's options in providing respiratory protection, or restrict innovation in respiratory protection devices. Inadequate regulations may also impose unnecessary costs.

Consequently, OSHA is interested in receiving data and views from all interested parties on a wide variety of issues related to the revision of OSHA's respiratory protection standards. These issues are presented in the form of questions to assist interested persons in developing their responses. These questions represent issues that have already been brought to the Agency's attention. Some are of general nature and others address specialized technical issues which may be principally of interest only to the technical community. Interested persons, of course, may wish to submit information and views on issues that are not addressed by the questions or to respond only to some of the questions of special interest to themselves.

Paragraph (a)(1) of § 1910.134 requires that engineering controls be used to reduce excessive employee exposures to airborne contaminants and permits the use of respirators only while feasible engineering controls are being installed or when such controls are not feasible. This requirement is the subject of continuing controversy in those situations where respiratory protection programs are thought to be more cost effective than engineering controls. This rulemaking on respiratory protection standards is a necessary prerequisite in addressing this policy. Although the agency is inviting comment on this subject (see question 30), OSHA regards the evaluation of the technical aspects of respirator adequacy and effectiveness, as well as respirator program requirements, to be an

important and crucial first step in reexamining the broad policy of the priority of engineering controls over respirators. Rational decisions concerning when it is appropriate to use respirators must be based on prior knowledge of the effectiveness of respirators and respiratory protection programs. The factors that determine the performance levels of respirator programs are independent of decisions to employ respiratory protection in some particular situation. In a like manner, judgements as to cost effectiveness must also be based on prior knowledge of the costs associated with respiratory protection programs. Thus, OSHA will address the technical aspects of respiratory protection in this rulemaking before addressing the larger subject of the relationship between engineering controls and personal protective equipment. General policy with respect to engineering controls is a controversial standards policy important enough to be treated separately from the technical aspects of respirators and respiratory protection programs. Therefore OSHA will in the near future publish a separate notice discussing in detail this subject of the hierarchy of controls and requesting comment separately on issues relevant to it.

In order to assist the public and the Agency in evaluating these issues, OSHA has compiled the following background information and reports.

Los Alamos National Laboratory (LANL) of the University of California at Los Alamos, New Mexico, has done considerable work on respiratory protection. Their report LA-6034-MS, issued January 1976, entitled "Respirator Protection Factors," is the basic source for the protection factors now commonly applied to various respirators. This report also discusses quantitative fit testing. Other LANL reports that may be of interest include LA-5488, issued March 1974, "Selection of Respirator Test Panels Representative of U.S. Adult Facial Sizes"; LA-6722-PR, issued February 1977, "Respirator Studies for the National Institute for Occupational Safety and Health: July, 1975—Dec. 31, 1976," which discusses various aspects of quantitative fit testing and respirator evaluation; and LA-7317-PR, issued June 1978, "Respirator Studies for the National Institute for Occupational Safety and Health: Jan. 1—Dec. 31, 1977," which discusses the testing of powered air purifying respirators, interlaboratory comparison of data for dust-fume-mist filters, and fit testing for gas and vapor respirators. The LANL work has also resulted in reports in the literature, including "Effect of Facial Hair on

e. Should it be allowable to use substances identified as potential inogens as fit test challenge agents? If so, what basis should be used to determine that the probable dose is acceptable or unacceptable?

f. What basis should OSHA use to determine the acceptability of suggested QLFT protocols?

g. With the use of nonirritating test agents, does test subject bias significantly affect the usefulness of qualitative testing, or affect the test results a significant amount of the time?

h. Should increased testing or more frequent testing be required for respirators with facepieces that need adjustment other than strap tension to fit properly?

i. Under what circumstances and using what testing protocol would QLFT be sufficient to ensure that an employee's respirator fits sufficiently well?

6.a. What protocol(s), if any, for quantitative fit testing (QNFT) should be specified as acceptable testing method(s) in any new OSHA standards?

b. To be an adequate test, should QNFT be able to distinguish the respirator efficiency for each test exercise performed by the test subject?

c. To be an adequate test, should QNFT be able to demonstrate the variation of contaminant concentration behind the respirator during the breathing cycle?

d. What exercises should be performed by the test subject during QNFT, and for how long?

e. What test agents are suitable for QNFT, and what are the essential characteristics of an appropriate aerosol for solid and liquid agents?

f. What algorithm should be used to calculate the protection factor from QNFT?

g. What situations require QNFT?

h. What is an acceptable accuracy for a QNFT test?

i. Should it be allowable to use substances identified as suspect carcinogens as test agents? If so, what basis should be used to determine that the probable dose is acceptable or unacceptable?

j. Should increased testing (i.e. repetitions) be required for respirators with facepieces that need adjustment other than strap tension to fit properly?

k. For each required protection factor, how high a fit factor, determined by QNFT, should be required to ensure proper employee protection?

How will the fit factor determined with different testing equipment, challenge agents, procedures, and test conditions?

7. Which respirator related provisions, if any, of the more recent OSHA health standards (e.g. § 1910.1018(h)—arsenic, § 1910.1029(g)—coke oven emissions, § 1910.1043(f)—cotton dust, etc.) should be made generally applicable by incorporation into § 1910.134, Parts 1915–1918, or § 1928.103?

8.a. What type and level of training and retraining should be provided to all respirator users (c.f. § 1910.134(b)(2), (e)(5), (e)(5)(i), § 1915.82(a)(4), § 1928.103(c)(1))?

b. In such training, what topics should be covered and how thoroughly?

c. In which cases should more specialized or comprehensive training be required?

d. How should required training and retraining be specified?

9. What specifications should be made concerning the content of standard operating procedures presently required in § 1910.134(b)(1) and (e)(3)?

10.a. What medical screening, if any, of potential users of respirators should be required?

b. For those employees who use respirators, is it safe to require medical examinations only in those cases where there is some complaint by the employee or a problem is noticed by the fit testing technician?

c. Should the regulations limit an employer's choice of type, class or specialty of health care provider in obtaining these medical examinations?

d. Could a questionnaire be used to select those few individuals who should be medically examined?

e. What medical conditions, if any, of an employee should preclude the wearing of a respirator? Explain.

f. What medical conditions, if any, could be aggravated by wearing a respirator?

g. Could the wearing of a respirator medically endanger an employee? If so, with what respirator, and as a result of what medical condition?

11. The respirator testing criteria used by the National Institute for Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA) (30 CFR Part 11) have been acknowledged by NIOSH to be in need of extensive revision.

a. Should OSHA independently address the adequacy and application of some or all types or models of respirators? If yes, specify in detail.

b. Should OSHA always accept the adequacy of MSHA/NIOSH approved respirators without additional requirements (e.g. higher performance requirements for use against certain substances)?

c. Under what circumstances, if any, should OSHA allow the use of respirators not approved by MSHA/NIOSH under 30 CFR Part 11?

d. Should OSHA automatically reject any modification to approved respirators?

e. Should OSHA allow the interchange of parts between different makes or types of respirators?

f. Should OSHA recognize other organizations' (other than NIOSH) testing and certification of respirators?

g. Are there changes in regulations or procedures that would encourage more rapid development and utilization of respirators to provide protection from chemicals for which there are no currently approved respirators?

h. Are there changes in regulations or procedures which would encourage more rapid development and utilization of respirators which would provide immediate warning of over exposure; improved communication capabilities; reduced skin irritation, breathing resistance or heat stress; or other improvements?

i. In order for negative pressure air purifying respirators to be permitted for protection from a gaseous chemical, should that chemical always present adequate warning properties?

j. How, if at all, should OSHA address physical aspects of respirator performance and suitability such as abrasion resistance, tear strength, withstanding temperature extremes, corrosion resistance, and field of vision?

12. Should OSHA continue to accept as adequate all manufacturers' instructions for fit checking (§ 1910.134 (e)(5)(i))?

13. When, if at all, should OSHA limit the amount of time in a single shift that employers may require their employees to wear respirators? (The lead standard (29 CFR 1910.1025 (f)(1)(i) imposes a limit of 4.4 hours in some cases.)

14. In determining compliance with exposure standards for those employees wearing respirators, should OSHA assume that an employee's exposure has been reduced by a factor equal to the assigned protection factor of the respirator? Such an assumption is already part of the enforcement policy for the cotton dust standard. (See 46 FR 85738, Dec. 30, 1980.) It allows an employee to wear a respirator for only part of the work shift when respirators are relied upon to achieve compliance with permissible exposure levels.

15.a. What degree of surveillance of work area conditions and degree of employee exposure and stress are adequate to ensure safe use of respirators (c.f. § 1910.134 (b)(8))?

Washington, D.C. 20210; telephone 202-7884.

This document was prepared under the direction of Thorne Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, D.C. 20210.

List of Subjects in 29 CFR Parts 1910, 1915-1918, 1926

Occupational safety and health, Respiratory protection.

(Sec. 6, Pub. L. 91-596, 84 Stat. 1593 (29 U.S.C. 655), 29 CFR Part 1911; 40 U.S.C. 333; 33 U.S.C. 941; 41 U.S.C. 35, 38; Secretary of Labor's Order No. 8-76 (41 FR 25059))

Signed at Washington, D.C., this 10th day of May 1982.

Thorne Auchter,

Assistant Secretary of Labor.

[FR Doc. 82-13103 Filed 5-13-82; 8:45 am]

BILLING CODE 4510-26-21

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Subtitle A and Chs. I-IV, VI and VII

Department of Education Semiannual Regulations Agenda and Review List

AGENCY: Office of the Secretary, Ed.

ACTION: Publication of the semiannual agenda of regulations.

SUMMARY: The Secretary of Education publishes a semiannual agenda of regulations as required by the Regulatory Flexibility Act and Executive Order 12291 ("Federal Regulations"). This agenda provides a brief description of regulations being developed or reviewed by the Department of Education. The purpose of the agenda is to encourage more effective public participation in the regulatory process

by giving the public early information about pending regulatory activities.

FOR FURTHER INFORMATION CONTACT: Questions or comments related to specific regulations listed in this agenda should be directed to the contact person listed for that set of regulations.

Questions or comments on the overall agenda should be directed to A. Neal Shedd, Director, Division of Regulations Management, Office of the General Counsel, Department of Education, Room 2129 FOB-3, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 245-7091.

SUPPLEMENTARY INFORMATION:

Executive Order 12291, dated February 17, 1981, and the Regulatory Flexibility Act, Pub. L. 96-354, enacted September 19, 1980, require the Department of Education to publish, in October and April of each year, an agenda of regulations that the Department expects to issue and currently effective regulations that are under review. The agenda includes both notices of proposed rulemaking (NPRMs) currently being drafted and pending final regulations (FR) for which NPRMs have been published.

For each set of proposed or final regulations listed, the agenda provides a: (1) Title, (2) summary, (3) contact person, and (4) decision date (expected month of publication of the final regulations (FR) or (NPRM)).

The summary of each set of regulations includes: (1) A brief description of the proposed or final regulations; (2) notice whether a regulatory impact analysis is required by Executive order 12291; (3) notice whether a regulatory flexibility analysis is required by the Regulatory Flexibility Act; (4) a brief statement of the Department's objectives in issuing or

reviewing the regulations; (5) the legal basis for the regulations; and (6) the Code of Federal Regulations part number assigned to the regulations.

The Department is required by Executive Order 12291 to prepare a regulatory impact analysis for any set of regulations that is a "major rule" as defined by the order, and that is not exempted from the requirements in the order. This semiannual agenda specifies whether or not a regulatory impact analysis will be prepared for each set of regulations listed.

The Regulatory Flexibility Act requires that Federal agencies take into account the impact of their regulations on "small entities," including small businesses, small governmental jurisdictions, and other small organizations. The Department must prepare an initial regulatory flexibility analysis for any proposed regulations for which a notice of proposed rulemaking is issued on or after January 1, 1981 if the proposed regulations will have a significant economic impact on a substantial number of small entities. The Department's plan for review of regulations under the Regulatory Flexibility Act was published on August 5, 1981 at 46 FR 39352. A reference has been included in this agenda to indicate whether a regulatory flexibility analysis is required.

This publication in the Federal Register does not impose any binding obligation on the Department with regard to any specific item on the agenda. Regulatory action in addition to the items listed is not precluded.

Dated: May 7, 1982.

T. H. Dell,

Secretary of Education.

DEPARTMENT OF EDUCATION SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST

Title	Summary	Contact	Earliest expected decision date
Privacy Act Regulations—Amendment	A. <i>Description:</i> The amendment would exempt from certain access and notice provisions of the Privacy Act investigatory materials compiled for law enforcement purposes and contained in the complaint file and log system of records of the Office for Civil Rights. B. <i>Regulatory impact analysis:</i> Not required. C. <i>Regulatory flexibility analysis:</i> Not required. D. <i>Objectives:</i> The amendment would enhance the ability of the Department to acquire information pertinent to the compliance status of recipients and to achieve compliance by voluntary means. E. <i>Legal basis:</i> Section 5 of the Privacy Act of 1974 (5 U.S.C. 552a(k)). F. <i>Citation:</i> 34 CFR Part 60.	Antonio J. Caffa, (202) 245-2104.	NPRM May 1982.
Education Department General Administrative Regulations (EDGAR)—Grant Programs without Specific Regulations—Parts 75 and 76.	A. <i>Description:</i> The regulations under review establish procedures for grant awards under a program that does not have program-specific regulations. B. <i>Regulatory impact analysis:</i> Not required. C. <i>Regulatory flexibility analysis:</i> Not applicable. D. <i>Objectives:</i> Amendments, if any, to the regulations would be designed to effect regulatory relief, including reduction of paperwork and compliance burdens and improvement of cost effectiveness. E. <i>Legal basis:</i> Section 414, of the Department of Education Organization Act (20 U.S.C. 3474). F. <i>Citation:</i> 34 CFR Parts 75 and 76.	Chester Glod, (202) 245-7810.	NPRM May 1982.
Indian Fellowship Program	A. <i>Description:</i> The regulations under review implement those provisions of the Indian Education Act of 1972 that apply to Indian students applying for and receiving fellowships for study in six specified fields.	Alice Ford, (202) 245-7525.	NPRM May 1982.