

Summary of Comments and Agency Decisions

Title: Respiratory Protection, 29 CFR 1910.134, Subdivision I/Respiratory Protection and OAR 437-004-1041, Subdivision I/Respiratory Protection

Administrative Order Number: 1-2020

Adopted Date: February 13, 2020

Effective Date: February 13, 2020

Background:

On Sept. 26, 2019, federal OSHA adopted final rules for adding two additional PortaCount® quantitative fit testing protocols to its Respiratory Protection Standard (29 CFR 1910.134, Appendix A). Prior to these rules, Appendix A of the Respiratory Protection Standard provided employers with four quantitative fit testing protocol options. The two new methods added to Appendix A include the modified ambient aerosol condensation nuclei counter (MCNC) quantitative fit testing protocol for full-facepiece and half-mask elastomeric respirators (MCNC-ER), and the MCNC quantitative fit testing protocol for filtering facepiece respirators (MCNC-FFR). Both protocols (MCNC-ER and MCNC-FFR) are abbreviated variations of the current federal OSHA accepted ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol (also referred to as the PortaCount® protocol). Appendix A in the Respiratory Protection Standard (29 CFR 1910.134) and Appendix A in OAR 437-004-1041 (Oregon OSHA's agriculture respiratory protection standard) were amended to include both the MCNC-ER and MCNC-FFR protocols. These protocols cover general industry, construction, and agriculture (through amendment of 437-004-1041).

Oregon OSHA also adopted the addition of the controlled negative pressure (CNP) REDON quantitative fit testing protocol to Appendix A of OAR 437-004-1041. The Respiratory Protection Standard (29 CFR 1910.134) already had the CNP REDON protocol listed as an option to general industry and construction employers. By adding the CNP REDON protocol to Appendix A of OAR 437-004-1041, Oregon OSHA improved compliance homogeneity between the Respiratory Protection Standard (29 CFR 1910.134) and its agriculture equivalent, OAR 437-004-1041, and provided each employer group with access to the same quantitative fit testing methods.

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Oregon OSHA held one public hearing on Jan. 7, 2020, at the Oregon OSHA Salem Field Office. No public comments were given at this hearing. The agency received two public comments during the comment period. The first comment was provided by a representative of a safety company and provided non-specific suggestions related to Oregon OSHA field staff training regarding respirator fit testing. The second comment was provided by a rural fire department representative who expressed concern that this new rulemaking would incur additional costs for small employers. This rulemaking provides employers with increased flexibility in choosing fit testing protocols for their employees. The rule does not require employers to update or replace their current fit testing equipment or methods if the fit testing

methods currently in use already meet the existing standards. Because the proposed rulemaking offers additional options and does not remove any existing options, employers would be expected to select those fit testing methods that suit their needs. Thus, this rulemaking will not have a significant fiscal impact on small businesses.