

Workplace Advisory Memo 10.1.21

The Use of Filtering Facepiece Respirators (N95s, etc.) as Source Control rather than as Respiratory Protection

As certain employers, including Oregon state government, have set out to provide better protection for their employees when others in the workplace have not been fully vaccinated, the question has arisen about requiring such unvaccinated employees to wear N95 or comparable filtering facepiece respirators to protect others in the workplace. In such situations, the question naturally arises as to whether such use constitutes “required use” of a respirator under the Respiratory Protection Standard (the rule is found in 29 CFR 1910.134, which has been adopted by reference by Oregon OSHA).

A. “Voluntary Use” of respirators applies only to situations where the *employee* chooses to use a respirator.

Under the respiratory protection standard, there are essentially three categories of respirator use:

- *Mandatory or Regulatory-Required Use*, where the nature of the hazard is such that one or more Oregon OSHA rules require that a respirator be used. A full respiratory protection program is required.
- *Employer-Required Use*, where the employer may not be required to enforce respirator use, but chooses to do so. A full respiratory protection program is required (other than when exceptions apply, such as that in the temporary Wildfire Smoke Rule, OAR 437-002-1080).
- *Employee Voluntary Use*, where neither the rules nor the employer requires the use of respirators to address the actual or potential respiratory hazard. In most such cases, certain relevant elements of the Respiratory Protection Program, including medical evaluation, must be implemented. However, voluntary use of filtering facepiece respirators, such as N95s, does not require medical evaluation and requires only that information in Appendix D of the rule be shared with the employee.

B. Requiring the use of a filtering facepiece respirator as source control does *not* trigger the requirements of the Respiratory Protection Standard.

Because such use of filtering facepiece respirators as “source control” is clearly not “voluntary use” under the standard, it can appear to trigger the requirements of the Respiratory Protection Standard. However, this is not the case. 29 CFR 1910.134(a)(2) includes the basic requirement to use respirators when the other controls described in (a)(1) are not sufficiently effective: “A respirator shall be provided to each employee *when such equipment is necessary to protect the health of such employee.*” [emphasis added]

If the respirator is not being used “to protect the health of” the employee wearing it, the provisions of the rule are not triggered. The Oregon OSHA COVID-19 rule, found in OAR 437-001-0744, clearly contemplates the use of respirators both as “source control” and as respiratory protection. The definition of “source control” found in OAR 437-001-0744(2)(x) reads as follows:

(x) Source control – means the use of protective equipment or other measures such as face coverings to prevent the spread of illness from a potentially infectious person to others. A typical example of source control for COVID-19 is to use a mask or face covering to limit the spread of respiratory droplets and aerosols from the wearer to others. Respirators can be used as source control in addition to providing protection for the wearer. [emphasis added]

C. Filtering Facepiece Respirators (such as N95s) do not provide a sufficient risk of hazard to preclude their use as source control in the absence of a medical evaluation.

In a situation where filtering facepiece respirators are being used as enhanced source control (even though they will also provide enhanced protection to the wearer), the hazard is comparable to that encountered by voluntary use of such filtering facepiece respirators under the Respiratory Protection Standard and additional protective measures are not necessary.

D. Other respirators provide a potential risk to employees, making medical evaluation necessary even if they are being used as source control rather than respiratory protection.

Before requiring employees to use a respirator other than a filtering facepiece respirator as source control, the employer must ensure that the respirator itself does not present a hazard to the employee. The simplest and most straightforward means of doing so is to apply the medical evaluation requirements of the Respiratory Protection Standard.