

## Standard Interpretations

/ Clarification of OSHA's asbestos standards for general industry and construction and the respiratory protection standard as applied to medical surveillance of employees.

- **Standard Number:** 1910.134 ; 1910.1001 ; 1910.1001(g) ; 1910.1001(g)(1) ; 1910.1001(l) ; 1926.1101 ; 1926.1101(h) ; 1926.1101(h)(1) ; 1926.1101(h)(2) ; 1926.1101(h)(2)(ii) ; 1926.1101(l)(4) ; 1926.1101(m)(1)(i)

OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

May 10, 2007

Jim Rafferty, D.O., MPH  
Arbor Occupational Medicine  
4790 Table Mesa Drive, Suite 200  
Boulder, CO 80305

Dear Dr. Rafferty:

Thank you for your letter dated February 22, 2007, to the Occupational Safety and Health Administration (OSHA). You have questions regarding OSHA's Asbestos standards for general industry and construction (as provided in 29 CFR 1910.1001 and 29 CFR 1926.1101, respectively) and the Respiratory Protection standard (in 29 CFR 1910.134) as applied to medical surveillance of employees. This reply letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any question not detailed in your original correspondence. Your paraphrased questions and our replies are below.

**Question 1:** I need to know whether or not an employee who requires medical surveillance under the Asbestos standards for general industry or construction must complete an OSHA respirator health questionnaire under the Respiratory Protection standard prior to receiving a physician's written opinion under the Asbestos standards, particularly when the employer no longer requires that employee to wear a respirator. The only sections within the Asbestos standards that discuss 1910.134 are 1910.1001(g) and 1926.1101(h), both of which pertain only to 'respiratory protection' and not to 'medical surveillance.' Also, neither of the Asbestos standards' sections on 'medical surveillance,' 1910.1001(l) for general industry and 1926.1101(m) for construction, provide an examining physician with guidance on what history forms he/she will be required to review prior to writing a physician's opinion on an employee examined under the Asbestos standards.

**Reply 1:** Your letter correctly stated that OSHA's medical surveillance provisions for its Asbestos standards for

general industry and construction are described in paragraphs 1910.1001(l) and 1926.1101(m), respectively. We also point out that these two standards have mandatory appendices that include standardized medical questionnaires to be administered to employees to assist a physician's evaluation of an employee's medical history with particular emphasis on the respiratory system. The appendices are the same for both standards - *Appendix D to §1910.1001 - Medical Questionnaires; Mandatory*, and *Appendix D to §1926.1101 - Medical Questionnaires; Mandatory*.

Your letter also correctly stated that employers under the scope of OSHA's Asbestos standards for general industry or construction must ensure employees are provided respiratory protection in accordance with paragraphs 1910.1001(g) for general industry and 1926.1101(h) for construction. We point out that subparagraphs 1910.1001(g)(2)(i) for general industry, and 1926.1101(h)(2)(i) for construction, both state:

*The employer must implement a respiratory protection program in accordance with 29 CFR 1910.134(b) through (d) (except (d)(1)(iii)), and (f) through (m).*

Note that paragraph 1910.134(e), *Medical Evaluation*, was not included in the above provision for the respiratory protection program of the Asbestos standards. That medical evaluation provision in the Respiratory Protection standard, 1910.134(e), requires employers to have a physician or other licensed health care professional (PLHCP) perform medical evaluations using a medical questionnaire or an initial medical examination that obtains the same information as the medical questionnaire in an appendix to the Respiratory Protection standard - *Appendix C to §1910.134: OSHA Respirator Medical Evaluation Questionnaire (Mandatory)*.

The reason that OSHA did not add this medical evaluation provision into the Asbestos standards was explained in OSHA's 1998 rulemaking for the Respiratory Protection standard:

*[E]ach of the existing substance-specific OSHA standards includes unique medical-evaluation requirements for employees who use respirators. OSHA believes that the medical-evaluation requirements for respirator use established under its existing substance-specific standards provide a high degree of medical protection to employees who are required to use respirators to control their exposures to the airborne substances regulated by the substance-specific standards. In addition, the medical-evaluation requirements for respirator use in the substance-specific standards are part of a comprehensive, integrated medical-surveillance program designed to evaluate employees for conditions and risks associated with exposure to the regulated substances; consequently, OSHA believes that any revision to the frequency or content of medical evaluations for respirator use would unnecessarily disrupt ongoing medical-surveillance programs and, therefore, jeopardize the health of employees who must use respirators to prevent exposure to hazardous workplace substances. (63 FR 1267)*

Since the Asbestos standards already required a standardized medical questionnaire to be administered to employees to assist a physician's evaluation of medical history with particular emphasis on the respiratory system, the Respirator Questionnaire in 1910.134 was not necessary.

Thus, employers providing a medical surveillance program for employees under OSHA's Asbestos standards are not required to comply with the medical evaluation provision of OSHA's Respiratory Protection standard.

**Question 2:** If an employer has instituted engineering and work practice controls so that employees are no longer exposed to asbestos above the 8-hour time-weighted average (TWA) permissible exposure limit (PEL) or the 30-minute excursion limit and the employer no longer requires the employees to wear respirators, does the employer

still need to obtain medical opinions under the Respiratory Protection standard about whether or not these employees may use respirators in the future?

**Reply 2:** This question describes a situation wherein at least one of the listed criteria for respiratory protection no longer applies under the Asbestos standards because engineering and work practice controls have reduced employee exposures at or below the PEL. For asbestos in general industry, the criteria for respiratory protection are listed in four (4) subparagraphs, 1910.1001(g)(1)(i)-1910.1001(g)(1)(iv), wherein respirators must be used during:

*1910.1001(g)(1)(i) - Periods necessary to install or implement feasible engineering and work-practice controls;*

*1910.1001(g)(1)(ii) - Work operations, such as maintenance and repair activities, for which engineering and work-practice controls are not feasible;*

*1910.1001(g)(1)(iii) - Work operations for which feasible engineering and work-practice controls are not yet sufficient to reduce employee exposure to or below the TWA and/or excursion limit; or,*

*1910.1001(g)(1)(iv) - Emergencies.*

For asbestos in construction, the criteria for respiratory protection are listed in eight (8) subparagraphs 1926.1101(h)(1)(i)-1926.1101(h)(1)(viii), wherein respirators must be used during:

*1926.1101(h)(1)(i) -Class I asbestos work;*

*1926.1101(h)(1)(ii) - Class II asbestos work when [asbestos-containing material (ACM)] is not removed in a substantially intact state;*

*1926.1101(h)(1)(iii) - Class II and III asbestos work that is not performed using wet methods, except for removal of ACM from sloped roofs when a negative-exposure assessment has been conducted and ACM is removed in an intact state;*

*1926.1101(h)(1)(iv) - Class II and III asbestos work for which a negative-exposure assessment has not been conducted;*

*1926.1101(h)(1)(v) - Class III asbestos work when TSI or surfacing ACM or [presumed asbestos-containing material (PACM)] is being disturbed;*

*1926.1101(h)(1)(vi) - Class IV asbestos work performed within regulated areas where employees who are performing other work are required to use respirators;*

*1926.1101(h)(1)(vii) - Work operations covered by this section for which employees are exposed above the TWA or excursion limit; or,*

*1926.1101(h)(1)(viii) - Emergencies.*

Your question describes the situation where an employer has instituted engineering and work practice controls so that employees are no longer exposed to asbestos above the TWA or excursion limit, which corresponds to the elimination of only one of the above criteria for respirators, i.e., 1910.1001(g)(1)(iii) or 1926.1101(h)(1)(vii). If the employer can also show that all of the other respirator criteria above do not apply to the asbestos work, then medical surveillance is no longer required. However, if any of these remaining criteria apply, then the employer must continue to provide certain medical surveillance or examinations, described below.

Specifically, employers must comply with subparagraphs 1910.1001(g)(2)(iii) for general industry, or 1926.1101(h)(2)(ii) for construction, which both state, in part:

*No employee shall be assigned to asbestos work that requires respirator use if, based on their most recent medical examination, the examining physician determines that the employee will be unable to function normally while using a respirator, or that the safety or health of the employee or other employees will be impaired by the employee's respirator use. . . [Text is from the initial part of 29 CFR 1926.1101(h)(2)(ii).]*

Additionally, the situation posed in your question may require an employer to adjust the overall medical surveillance program, depending on whether the employer's asbestos work is under the general industry standard or the construction standard. For general industry, per subparagraph 1910.1001(l)(1)(i), medical surveillance for asbestos is not required for employees whose exposures no longer exceed the TWA and/or excursion limit. Furthermore, for any employees who were previously exposed above the PEL and received annual medical exams, the employer may discontinue the periodic exams, except to provide or make available one final medical exam at the time of that employee's termination of employment, per subparagraph 1910.1001(l)(4).

However, as mentioned above, employers must continue to comply with the remaining respiratory protection provisions; thus, subparagraph 1910.1001(g)(2)(iii) may still require a specific medical examination to determine if an employee will be able to wear a respirator in those situations. The physician may use a questionnaire he or she deems most suitable to assist in making this determination, or make an examination without the assistance of a questionnaire.

For employers under the Asbestos standard for construction, medical surveillance is not solely dependent on employee exposures, as in the general industry Asbestos standard. Per subparagraph 1926.1101(m)(1)(i)(A), if employees, who for a combined total of 30 or more days per year, are engaged in Class I, II, and III work, then the employer must institute a medical surveillance program. Additionally, per subparagraph 1926.1101(m)(1)(i)(B), for employees otherwise required by this standard to wear a negative pressure respirator, employers shall ensure employees are *physically able* to perform the work and use the equipment. This latter provision mirrors the above-mentioned respiratory protection provision, subparagraph 1926.1101(h)(2)(ii), which requires a specific medical examination to determine if an employee will be able to wear a respirator in those situations.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can continue to consult OSHA's website at <http://www.osha.gov>. If you have any further questions, please feel free to contact the OSHA Office of Health

Sincerely,

Richard E. Fairfax, Director  
Directorate of Enforcement Programs

## UNITED STATES DEPARTMENT OF LABOR

Occupational Safety & Health Administration  
200 Constitution Ave NW  
Washington, DC 20210  
☎ 800-321-6742 (OSHA)  
TTY  
[www.OSHA.gov](http://www.OSHA.gov)

### **FEDERAL GOVERNMENT**

White House  
Severe Storm and Flood Recovery  
Assistance  
Disaster Recovery Assistance  
[DisasterAssistance.gov](http://DisasterAssistance.gov)  
[USA.gov](http://USA.gov)  
No Fear Act Data  
U.S. Office of Special Counsel

### **OCCUPATIONAL SAFETY & HEALTH**

Frequently Asked  
Questions  
A - Z Index  
Freedom of Information  
Act (FOIA)