



ILLINOIS DEPARTMENT OF LABOR

Rod R. Blagojevich
Governor

Catherine M. Shannon
Acting Director

January 22, 2007

**Illinois Law Enforcement Alarm System
Mr. James Page, Executive Director
1905 East Main
Urbana, Illinois 61802**

**Re: Illinois Department of Labor (IDOL) / Safety Inspection and Education Division (SIED)
Enforcement and Guidance of Occupational Safety and Health Administration (OSHA)
Respiratory Protection Standards**

Dear Mr. Page:

This correspondence is in response to your inquiry regarding Respiratory Protection Guidelines and enforcement of OSHA Standards under 29 CFR 1910.134 by the Illinois Department of Labor (IDOL) Safety Inspection and Education (SIED) Inspectors for Law Enforcement personnel.

After responding to the Illinois Law Enforcement Alarm System (ILEAS) inquiries regarding Respiratory Protection for Law Enforcement Agencies throughout the State of Illinois (please refer to correspondence of August 8, 2003 and July 14, 2004), all SIED Inspectors were informed of inspection procedures and guidelines referencing these documents. The Department's Inspectors were also reminded of their obligations of conducting thorough and objective inspections consisting of the following protocols:

- 1.** Presentation of Credentials to the Employer and stating the purpose of their inspection, ie: Fatality/Catastrophe (Fat/Cat), Complaint Investigation, General (unannounced routine) Inspection or Advisory (Consultation) Inspection;
- 2.** Conduct an "Opening Conference" with Management and Labor representatives regarding the purpose of the inspection, Employer/Employee/IDOL Inspector inspection procedures;
- 3.** Review pertinent records regarding Occupational Safety and Health including but not limited to:
 - Occupational Safety and Health Injury/Illness Logs (OSHA 300)

- Written Safety and Health Programs, Policies, Standard Operating Procedures (SOP's), Job Safety Analysis (JSA) related to specific operations performed by employees and potential exposure levels;
 - Training records reflecting the employer's written programs and guidelines and the issuance of employee Personal Protective Equipment (PPE); and
4. The Inspector will then proceed to conduct a physical inspection of the facility and conclude with a "Closing Conference" to review the Inspector's findings.

The SIED Inspection staff were also apprised of Law Enforcement concerns regarding the use of the "AVON" Respirators issued by ILEAS and used for "Escape Only" or "Voluntary Basis" not requiring a full Respiratory Program in accordance with OSHA Standards 29 CFR 1910.134 Appendix D and a USDOL/OSHA Safety and Health Information Bulletin (SHIB 08-29-03 {A}) **CBRN Escape Respirators** and instructed to conduct their inspection activities accordingly.

The second part of your inquiry refers to the use of the N-95 "surgical" type masks for pandemic flu preparedness and its designation of a "respirator" requiring "medicals, fit testing, training, etc." This is a twofold question that I will answer in two parts:

1. According to the National Institute of Occupational Safety and Health (NIOSH), the Center for Disease Control (CDC), and the Occupational Safety and Health Administration (OSHA), the N-95 "surgical" type of mask described is considered to be a respirator and requires compliance with OSHA standards under 29 CFR 1910.134.
2. However, there are several publications and guidelines regarding the use of the N-95 Respirators for "Routine" and "Voluntary Use" purposes which are outlined in the following references:

OSHA

- OSHA/NIOSH Interim Guidance – April 1, 2005
Chemical – Biological – Radiological – Nuclear (CBRN)
Personal Protective Equipment Selection Matrix for Emergency Responders
- 05/24/2004 – Application of OSHA standards to escape and protection of employees from threats associated with terrorist actions.
- 03/04/1996 - Fit testing and fit factors for the N-95 respirators for protection against TB exposure.
- 02/05/2004 – Fit testing for employees who wear respirators to protect against M. Tuberculosis, SARS, Smallpox, and Monkeypox.
- 10/01/1999 – Respirators for voluntary use and cleaning respirators during fit testing.

- 09/06/1995 – Update: OSHA Enforcement Policy for Occupational Exposure to Tuberculosis.

CDC/NIOSH

- NIOSH Respirator Selection Logic 2004
Respirator Fact Sheet
What You Should Know In Deciding Whether to Buy Escape Hoods, Gas Masks, or Other Respirators for Preparedness at Home and Work
Chapter III. Respirator Selection Logic Sequence
Chapter IV. Escape Respirators
Chapter VI. Glossary of Respiratory Protection Terms

Appendix – NIOSH Respirator Use Policy Approved: August 4, 1999

After careful review of this information, the N-95 Respirators used on a Voluntary basis would not require implementation of a Respiratory Program. My opinion is based in part from a May 24, 2004 OSHA "Letter of Interpretation" specifically addressing two questions regarding this matter:

Question 1: Does OSHA feel that its standards and regulatory authority apply to the unique characteristics, hazards, and issues involving the escape and protection of employees from the threats associated with a deliberate terrorist act?

Response 1: Terrorist events are not considered foreseeable workplace emergencies for purposes of OSHA standards requiring employers to anticipate and prepare for such emergencies. However, OSHA's role is not limited to enforcement, but includes a mandate to advise employers as to effective means of preventing occupational injuries and illnesses. OSHA has published emergency preparedness guidance on its public web page to assist employers and employees in the planning for all types of emergencies including terrorist-type incidents.

Guidance published includes: the Emergency Planning Matrix, Emergency Response e-Tool, Anthrax Matrix, Anthrax Health and Safety Plan (HASP), and a fact sheet for high-rise building occupants.

If an employer chooses to develop an emergency plan to safeguard its employees from the possibility of a terrorist event, OSHA recommends that it contact the local emergency planning committee (LEPC) and plan exercises with those involved in community response, so the employer understands the capabilities and limitations of the community response plan.

Question 2: Would OSHA require full compliance with 1910.120 for respiratory fit testing of employees and medical certifications? To what level of detail would the employer be required to provide training to its employees under 1910.120 or other OSHA regulations?

Response 2: HAZWOPER would not apply if employees are only being evacuated from the office building. Respirator use is generally covered by OSHA's Respiratory Protection Standard 29 CFR 1910.134. An employer choosing to provide respirators for voluntary use by employees during an evacuation following a terrorist incident would have few obligations under the respiratory protection standard.

Under the "voluntary use" provision of the Respiratory Protection Standard, OSHA requires the employer to provide each employee with the material in Appendix D of the standard and to establish and implement those elements of a written program that would ensure that the use of the respirator itself would not create a hazard.

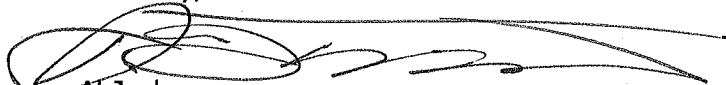
OSHA does not require medical certification voluntary-use respirators to be fit-tested. Also, OSHA does not require medical certification of employees whose only use of respirators would be for escape from such a terrorist incident.

I have also reviewed the "State of Illinois Law Enforcement Respirator Regulations" matrix that you submitted and agree while this is a summary and not an all inclusive document, it does provide basic guidance for most agencies to follow regarding written protocols and Standard Operating Procedures (SOP's), training requirements and the issuance of the proper protection associated with the hazards requiring such protection.

Once again, this information will be distributed to all of the SIED Inspectors instructing them follow this and previous correspondence regarding Respiratory Protection Guidelines for Law Enforcement Agencies while conducting their inspections of Occupational Safety and Health Standards under the provisions of the Illinois Health and Safety Act, Safety Inspection and Education Act and Illinois Department of Labor Rules and Regulations.

If you have any other questions regarding this matter, please do not hesitate to contact my office.

Sincerely,



Al Juskenas
SIED Manager