As COVID-19 continues to spread throughout the United States, one concern is whether there are sufficient numbers of respirators in order to protect healthcare providers who are on the frontlines of dealing with infected and potentially infected patients. On March 11, 2020, President Trump issued a Presidential Memorandum stating that the government “must ensure that our healthcare providers have full access to the products they need.” In that memorandum, the President acknowledged that “at present, public health experts anticipate shortages in the supply of personal respiratory devices (respirators) available for use by healthcare workers in mitigating further transmission of COVID-19.” In order to address this issue, the memorandum tasks the Secretary of Labor to “consider all appropriate and necessary steps to increase the availability of respirators.”

In response to the Presidential Memorandum, on March 14, 2020, the Department of Labor issued temporary enforcement guidance regarding respirators. The guidance became effective on the date it was issued and will remain in effect until further notice. It is intended to address the potential supply shortages of N95 filtering
facepiece respirators in the face of the COVID-19 outbreak. The guidance reiterated that “appropriate respiratory protection is required for all healthcare personnel providing direct care” to patients with known or suspected COVID-19. The guidance goes on to recognize that healthcare providers must still take measures to conserve respirator supplies. In order to assist with this conservation effort, OSHA recommends that healthcare employers “provide [healthcare providers] with another respirator of equal or higher protection, such as N99 or N100 filtering facepieces, reusable elastomeric respirators with appropriate filters or cartridges, or powered air purifying respirators (PAPR).” Additionally, OSHA suggested that healthcare employers change their method of fit testing “from a destructive method (i.e., quantitative) to a non-destructive method (i.e., qualitative).” This way the respirator can then be used safely for work tasks after the fit test is conducted.

Finally, the guidance stated that OSHA field offices would be exercising enforcement discretion regarding its annual fit testing requirement, 29 CFR § 1910.134(f)(2), so long as employers in the health care industry did the following:

- Make a good-faith effort to comply with 29 CFR § 1910.134;
- Use only NIOSH-certified respirators;
- Implement CDC and OSHA strategies for optimizing the supply of N95 filtering facepiece respirators and prioritizing their use;
- Perform initial fit tests for each HCP with the same model, style, and size respirator that the worker will be required to wear for protection against COVID-19 (initial fit testing is essential to determine if the respirator properly fits the worker and is capable of providing the expected level of protection);
- Inform workers that the employer is temporarily suspending the annual fit testing of N95 filtering facepiece respirators to preserve and prioritize the supply of respirators for use in situations where they are required to be worn;
- Explain to workers the importance of performing a user seal check (i.e., a fit check) at each donning to make sure they are getting an adequate seal from their respirator, in accordance with the procedures outlined in 29 CFR § 1910.134, Appendix B-1, User Seal Check Procedures;
- Conduct a fit test if they observe visual changes in the employee’s physical condition that could affect respirator fit (e.g., facial scarring, dental changes, cosmetic surgery, or obvious changes in body weight) and explain to workers that, if their face shape has changed since their last fit test, they may no longer be getting a good facial seal with the respirator and, thus, are not being adequately protected; and,
- Remind workers that they should inform their supervisor or their respirator program administrator if the integrity and/or fit of their N95 filtering facepiece respirator is compromised.

OSHA reiterated that this enforcement discretion only applies to annual fit testing for healthcare personnel and does not apply or impact any of the other requirements
of Respiratory Protections standard such as initial fit testing, maintenance, care, and training. Given this guidance and guidance from the Center for Disease Control and Prevention regarding extended use and limited reuse of respirators, healthcare employers are in a difficult position of having to both conserve their respirator supply and ensure that its employees are appropriately protected.

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