

period of limitations described in paragraph (g) of this section, the taxpayer may petition the bankruptcy court any time after the administrative claim is filed and before the expiration of the period of limitations.

(e) *Procedures for an administrative claim*—(1) *Manner*. An administrative claim for the lesser of \$1,000,000 or actual, direct economic damages as defined in paragraph (b) of this section shall be sent in writing to the Chief, Local Insolvency Unit, for the judicial district in which the taxpayer filed the underlying bankruptcy case giving rise to the alleged violation.

(2) *Form*. The administrative claim shall include—

(i) The name, taxpayer identification number, current address, and current home and work telephone numbers (with an identification of any convenient times to be contacted) of the taxpayer making the claim;

(ii) The location of the bankruptcy court in which the underlying bankruptcy case was filed and the case number of the case in which the violation occurred;

(iii) A description, in reasonable detail, of the violation (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iv) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(v) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available documentation or evidence); and

(vi) The signature of the taxpayer or duly authorized representative.

(3) *Duly authorized representative defined*. For purposes of this paragraph (e), a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(f) *No action in bankruptcy court for any sum in excess of the dollar amount sought in the administrative claim*. No action for actual, direct economic damages under paragraph (a) of this section may be instituted in federal bankruptcy court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (e) of this section,

except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(g) *Period of limitations*—(1) *Time for filing*. A petition for damages under paragraph (a) of this section must be filed in bankruptcy court within two years after the date the cause of action accrues.

(2) *Right of action accrues*. A cause of action under paragraph (a) of this section accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(h) *Recovery of litigation costs and administrative costs under section 7430*—(1) *In general*. Litigation costs, as defined in § 301.7433-1(b)(2)(i), including attorneys fees, not recoverable under this section may be recoverable under section 7430 if a taxpayer challenges in whole or in part an Internal Revenue Service denial of an administrative claim for damages by filing a petition in the bankruptcy court. If, following the Internal Revenue Service's denial of an administrative claim for damages, a taxpayer files a petition in the bankruptcy court challenging that denial in whole or in part, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(ii) (relating to net worth and size requirements), the taxpayer will be considered a prevailing party for purposes of section 7430, unless the Internal Revenue Service establishes that the position of the Internal Revenue Service in the proceeding was substantially justified. Such taxpayer will generally be entitled to attorneys' fees and other reasonable litigation costs not recoverable under this section. For purposes of this paragraph (h), if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond will be considered a denial of the claim on the grounds that the Internal Revenue Service did not willfully violate Bankruptcy Code section 362 or 524.

(2) *Administrative costs*—(i) *In general*. Administrative costs, as defined in § 301.7433-1(b)(2)(ii), including attorneys' fees, not recoverable under this section may be recoverable under section 7430. See § 301.7430-8.

(ii) *Limitation regarding recoverable administrative costs*. Administrative costs may be awarded only if incurred

on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(i) *Effective date*. This section is applicable to actions taken by the Internal Revenue Service officials after July 22, 1998.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1910

[Docket No. H-371]

RIN 1218-AB46

#### Occupational Exposure to Tuberculosis

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Extension of comment period.

**SUMMARY:** On January 24, 2002, OSHA re-opened the rulemaking record (67 FR 3465) for 60 days to submit to the record the Agency's final draft risk assessment, peer review reports on the draft final risk assessment, and the National Academy of Sciences/Institute of Medicine (NAS/IOM) report "Tuberculosis in the Workplace" and to request comments on these documents. OSHA is extending the deadline for 60 days from March 25, 2002 until May 24, 2002, to allow interested parties additional time for submitting their comments to the record.

**DATES:** Comments and data must be postmarked no later than May 24, 2002. Comments submitted electronically or by FAX must be submitted by May 24, 2002.

**ADDRESSES:** Send two copies of your comments to: Docket Office, Docket H-371, Room N-2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Comments of 10 pages or fewer may be transmitted by FAX to: 202-693-1648, provided that the original and one copy of the comments are sent to the Docket Office immediately thereafter.

You may also submit comments electronically to <http://ecomments.osha.gov>. Information such as studies and journal articles cannot be

attached to electronic submissions and must be submitted in duplicate to the Docket Office address listed above. Such attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct submission.

The entire record for the TB rulemaking, including the peer reviewers' reports, OSHA's draft final risk assessment and the NAS/IOM report, is available for inspection and copying in the Docket Office, Docket H-371, telephone 202-693-2350.

**FOR FURTHER INFORMATION CONTACT:**

Amanda Edens, Directorate of Health Standards Programs, Occupational Safety and Health Administration, Room N-3718, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone (202) 693-2270, FAX (202) 693-1678.

**SUPPLEMENTARY INFORMATION:** On October 17, 1997, OSHA published a proposed standard for Occupational Exposure to TB (62 FR 54160). In the proposal, the Agency made a preliminary determination based on a review of the available data that workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings are at significant risk of incurring TB infection while caring for their patients and clients or performing certain procedures potentially involving exposure to TB.

Many persons submitted comments addressing OSHA's preliminary quantitative risk assessment and suggested that OSHA should use more current data in developing its final quantitative risk assessment. In response to these concerns, OSHA reopened the rulemaking record for 30 days to solicit data and comments with respect to assessing the occupational risk of TB infection and disease (64 FR 34625, June 28, 1999). After reviewing all comments in the expanded record, the Agency revised its preliminary quantitative risk assessment to produce a draft final risk assessment. (Ex. 184) The Agency then chose to have this draft final risk assessment peer reviewed by two experts in the fields of TB epidemiology and risk assessment. The peer reviewers selected were Dr. Richard Menzies and Dr. Mark Nicas. Dr. Menzies, Professor and Director of the Respiratory Epidemiology Unit at McGill University in Montreal, Canada, is a physician experienced in the epidemiology, diagnosis, and treatment of TB and is a recognized research scientist, having published numerous scientific papers in the area of occupational exposure to and treatment of TB. Dr. Menzies is also an expert in

the use of tuberculin skin testing as a diagnostic test for infection. Dr. Mark Nicas, Professor at the University of California Berkeley and a Certified Industrial Hygienist, is a recognized research scientist, having published numerous scientific papers in the area of occupational exposure to TB and the development of mathematical models for TB transmission. These two reviewers evaluated the overall methodology used by OSHA in the draft final risk assessment, the appropriateness of these studies for the exposure scenarios, the adequacy of the mathematical models, the values of the parameters used to estimate the TB case activation and death rates, the use and estimates of state background infection rates, and the uncertainties associated with the OSHA risk estimates. (Exs. 185 and 186)

In 1999, the U.S. Congress requested that the National Academy of Sciences undertake a short-term study of occupational TB (Pub. L. 106-113) including evaluation of the risks to health care workers due to occupational exposure to TB, the extent to which the TB guidelines of the Centers for Disease Control and Prevention are being implemented, and the potential effectiveness of an OSHA TB standard to protect workers from occupational exposure to TB. The report that was prepared by the IOM, the health policy arm of the Academy, was released on January 16, 2001. In view of the significance of this report, OSHA also placed this report in the record for comment. (Ex. 187)

On February 13, 2002, the Association for Professionals in Infection Control and Epidemiology (APIC), the American Health Care Association (AHCA), and the American Society for Microbiology (ASM), requested from the Secretary of Labor a 60 day extension of the deadline for submitting comments. The letter stated that the APIC, AHCA and ASM believed that the current deadline did not provide sufficient time for a thorough examination of the new risk assessment documents OSHA had added to the rulemaking record.

Risk assessment, as well as the other issues addressed in the re-opening of the record, continues to be of concern to OSHA, and the Agency wants to ensure that all interested parties have ample time to submit comments. Therefore, OSHA has decided to extend the deadline for submitting comments an additional 60 days from March 25, 2002 until May 24, 2002.

**Authority:** This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor,

200 Constitution Avenue, NW, Washington, DC 20210. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C 655), Secretary of Labor's Order No. 3-2000 (65 FR 50017) and 29 CFR part 1911.

Signed at Washington, DC, this 27th day of February, 2002.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

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## DEPARTMENT OF EDUCATION

### 34 CFR Chapter II

#### **Office of Elementary and Secondary Education; Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA); Improving the Academic Achievement of the Disadvantaged; Correction**

**AGENCY:** Department of Education.

**ACTION:** Notice of meeting to conduct a negotiated rulemaking process; correction.

**SUMMARY:** On February 28, 2002 a notice of meetings to conduct a negotiated rulemaking process relating to improving the academic achievement of the disadvantaged was published in the **Federal Register** (67 FR 9223). This document corrects the address of the meetings, the list of individuals who will participate in negotiated rulemaking, and a Web site address.

**FOR FURTHER INFORMATION CONTACT:**

Susan Wilhelm, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, room 3W202, Washington, DC 20202-6132. Telephone (202) 260-0826.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed in the preceding paragraph.

The meeting site is accessible to individuals with disabilities. If you need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in alternative format), notify the contact person listed in this notice in advance of the scheduled meeting date. We will make every effort to meet any request we receive.