

the number of test subjects generally used, the distribution of the subjects within the panel cells, the sizing basis, and the representation of male and female test subjects. What pass/fail criteria are you currently using to approve proto-types for further development or production?

(a) As a manufacturer, do you use facepiece-to-face seal criteria to qualify a design for production? Please include details about the criteria in your answer.

(b) As a purchaser, what are the attributes you use to determine which brand(s) or model(s) of respirators to buy (e.g., price point, size, supplier, availability)?

3. Does your company use a panel or portion of a panel to develop respirators for a defined user group (e.g., users with smaller facial features, users with larger facial features)? If so, please define the user group, the panel used, the cells included, and the number of subjects generally needed.

(a) Could the LANL half-facepiece panel be used to test respirators for defined user groups? Please explain why or why not and include related implementation issues.

(b) What issues do you foresee in the implementation of fit testing standards for defined user groups?

4. Does your company use a panel or a portion of a panel to ensure the quality of a manufactured product line? If so, what test method and panel are used? How many subjects are included? Please explain how you maintain your pool of subjects.

5. NIOSH currently uses the LANL half-facepiece panel (lip length, which is actually the lip width, and face length) for categorizing human subjects to evaluate those half-mask respirators evaluated for fit. What are the advantages and/or disadvantages of using the LANL half-facepiece panel for an inward leakage requirement for half-mask air-purifying particulate respirators, approved under subpart K, which are currently not evaluated for fit?

make them consistent, to the greatest extent possible.

Some of the nondiscrimination provisions reflect statutory prohibitions on discrimination that arise out of the civil service laws codified at title 5, United States Code, and OPM's authority to enforce the merit system principles. Others were promulgated to reflect the provisions of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e, *et seq.*), the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*), and the Age Discrimination in Employment Act of 1967, as amended (ADEA) (29 U.S.C. 621–634). As a result, we are adopting two formulations of the nondiscrimination language. For those grounded in Title VII of the Civil Rights Act, the Rehabilitation Act, the ADEA, and the GINA, the provisions will reflect the statutory prohibitions on discrimination on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information and retaliation for exercising rights under the statutes enumerated above, where retaliation rights are available. For those grounded in the civil service laws, the provisions will reflect the statutory prohibitions against discrimination on those bases (5 U.S.C. 2302(b)(1)(A)–(D)), as well as prohibitions against discrimination on the basis of marital status (5 U.S.C. 2302(b)(1)(E)); political affiliation (*id.*), and sexual orientation, labor organization affiliation or non-affiliation, status as a parent, or any other non-merit-based factor (E.O. 13087; E.O. 13152; 5 U.S.C. 2302(b)(10)); and retaliation for exercising rights under the statutes enumerated above, where retaliation rights are available. (5 U.S.C. 2302(b)(9)(A)–(B)).

Other provisions in our existing regulations are grounded in other specific legal authorities (such as our Federal Equal Opportunity Employment Program regulations at 5

Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293.

Sec. 315.610 also issued under 5 U.S.C. 3304(c).

Sec. 315.611 also issued under 5 U.S.C. 3304(f).

Sec. 315.612 also issued under E.O. 13473.

Sec. 315.708 also issued under E.O. 13318, 3 CFR, 2004 Comp. p. 265.

Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp. p. 229.

Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

■ 6. Revise § 315.806(d) to read as follows:

§ 315.806 Appeal rights to the Merit Systems Protection Board.