

DEPARTMENT OF HEALTH AND HUMAN SERVICES

84-175

JAN 25 1988

The Honorable Austin J. Murphy  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Murphy:

Thank you for your letter of December 23 regarding the proposed regulations governing the certification of respirators. Please excuse the delay in responding.

The current regulations under which the Mine Health and Safety Administration and the National Institute for Occupational Safety and Health test and certify respirators (30 CFR Part 11) were originally promulgated in 1972. During the last several years, there has been a growing consensus among the respirator manufacturers and user community that these requirements need revision to reflect the technical advances in the field and the increased knowledge regarding environmental factors in the workplace. Some of the steps taken to develop the proposed rule are outlined in the enclosed preamble (52 FR 32402).

We are, of course, anxious to receive comments on both the technical and policy elements of this proposed rule. Toward that end, in October we extended our original comment period and announced two public hearings (52 FR 37639). The first took place in San Francisco on January 20, 1988, and the second is scheduled for January 27-28, 1988, in Washington, D.C. We look forward to hearing from all parties concerned, and I assure you that all comments received will be placed into the record and will be carefully considered in any final rulemaking decision.

Sincerely,

SR

Otis R. Bowen, M.D.  
Secretary

Enclosure

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December 23, 1987

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Honorable Otis R. Bowen, M.D.  
Secretary  
Department of Health and Human Services  
Hubert Humphrey Building  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Bowen:

It has come to my attention that the National Institute for Occupational Safety and Health (NIOSH) has proposed to modify the process by which respirators are certified.

Having reviewed the proposed changes (as reported in the August 27th Federal Register) and having talked with industry and worker representatives, I have three major concerns about this proposal.

I find it difficult to understand why an initiative which will cost the industry up to \$700,000,000 is considered a "minor rulemaking" when according to Executive Order 12291 a "minor rulemaking" must be limited to an impact of \$100,000,000 or less. It seems that someone has misstated the case in the proposal.

Secondly, I find that industry, and ultimately workers' safety, are denied due process when they have been asked to respond to a proposal which is so incomplete that it doesn't include a protocol nor the details necessary for a responsible comment.

And finally, it is my understanding that the proposal is not technically feasible in that it calls for workplace testing for which the technology has not yet even been developed.

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December 23, 1987  
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On the basis of these concerns, and the impact I know this proposal will have on the industry and worker safety, I would like to urge you to have NIOSH and the Office of Management and Budget recall this proposal.

I look forward to hearing from you as soon as possible on this matter which is of utmost concern to me.

Very Truly Yours,

  
AUSTIN J. MURPHY  
Member of Congress

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