

84-146

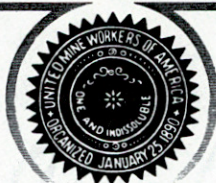
# United Mine Workers of America

RECEIVED

1988 FEB 4 AM 10:04

TELEPHONE  
AREA CODE (202) 842-7200

NIOSH



UNITED MINE WORKERS' BUILDING  
900 FIFTEENTH STREET, N. W.

Washington, D.C.

20005

© 21

January 29, 1988

Nelson Leidel, Sc.D., Docket Officer  
National Institute for Occupational  
Safety and Health  
1600 Clifton Road, N.E.  
Atlanta, GA 30333

Dear Dr. Leidel:

The United Mine Workers of America is pleased to comment on the proposed rules, 42 CFR, Part 84 concerning Revision of Tests and Requirements for Certification of Permissibility of Respiratory Protective Devices Used in Mines and Mining. We appreciate you extending the period for offering comments.

First, we endorse the comments submitted to you by the AFL-CIO in their letter of December 23, 1987, and wish to make additional comments here.

Second, the apparent exclusive focus of these rules on "mines and mining" is evident both in the title of the proposed rules and in the definitions. Since most of our members work in the mining industry, we naturally do not object to insuring that respirators will protect miners. But we see no need to exclude, implicitly or explicitly, the many other workers who use respirators. Therefore, the title and the language of the rule should be changed to be consistent with the explanation you offered in January 20th "Statement for the Record" concerning this issue.

Third, we object strenuously to de facto self-certification implied in the proposed rules. We fail to see the problem for which this is a solution. The problem with existing testing and certification is the nature of the testing, not who does it. Respirator manufacturers have an

Nelson Leidel  
January 29, 1988  
Page Two

obvious vested interest in getting their products to market. This is not to challenge their integrity, but it is to recognize the needless incentive to conduct less than rigorous testing of their products. In addition, we doubt that all manufacturers would have the necessary expertise to conduct testing. The procedures outlined in the rules for NIOSH examining manufacturers' data or for exercising the option of conducting your own tests are not sufficient guarantee of adequate testing.

An additional problem with self-certification is that inevitably, manufacturers will conduct tests differently from one another, limiting the comparability of the relative protectiveness of respirators. For the ultimate user, (i.e., workers), this presents them with having to choose between unlike products, a needless complication.

Perhaps this problem will be cleared up when you publish testing protocols. But this depends on what you require in the protocols. Therefore, we request that you publish the protocols as soon as possible, and that you extend the comment period in order to accomodate comments on the protocols.

There are some alternatives to self-certification. One would be to require testing and certification by a competent thrid party, who is independent of any manufacturer or anybody else with a vested commercial interest. Another possible solution would be for NIOSH to continue to test and certify respirators. If this is "beyond NIOSH's budget," perhaps manufacturers could pay a fee in order to have their products tested. If NIOSH were to continue to test, it would more likely insure uniformity of testing procedures.

Fourth, we welcome the requirement for testing under workplace or simulated workplace conditions, or what has been called "field testing." The central problem here is the absence of agreement between laboratory testing and field testing. This raises the issue, not of the lack of validity of field testing, but of the failure of laboratory testing to predict how respirators will perform in the field. Our members, and all other workers, do not wear respirators under laboratory conditions; they wear them at work. And it is at work that we expect them to protect. It is this problem for which field testing is a proposed solution. While we welcome your attempt to respond to this problem, field testing may not be the most practical solution. The most obvious reason is the wide variety of workplaces in the Nation, which a testing

Nelson Leidel  
January 29, 1888  
Page Three

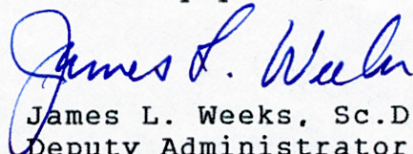
protocol may not be able to accomodate. But this merely begs the questions of what your testing protocol requires.

Finally, we must place the issue of testing and certification of respirators in its proper context. The ultimate objective, of course, is to protect workers from airborne hazards encountered on the job. Standard industrial hygiene practice, recently emphasized by Melvin First (AIHAJ 1983 44:621-626), is to control occupational health hazards through the use of engineering controls rather than the ue of personal protective devices, such as respirators. We endorse this approach and request that NIOSH explicitly recognize this priority in the final rule.

Nevertheless, we recognize that respirators (and other personal protective devices) are commonly used. Since engineering controls are in general preferred, whenever workers must use respirators, we expect them to work. We do not want NIOSH or any other agency to contributed to an environment that would tolerate the common cavalier attitude with which respirators are used on the job. This can be achieved in part by rigorous and appropriate testing and certification. Creating such an environment can be aided also by appropriate regulations enforced either by OSHA or MSHA (e.g., 29 C.F.R., 1910.134 and 30 C.F.R., 70.300-305) that apply to employers and mine operators. Ideally, regulations and policies to insure proper use of respirators should include not only testing and certification, but regulations concerning their use. Admittedly, this is beyond NIOSH's reach, but you should consider this larger context in your own rule-making.

I hope you find these comments constructive. We look forward to seeing the testing protocols.

Sincerely yours,



James L. Weeks, Sc.D., CIH  
Deputy Administrator  
Occupational Health

cc: Joe Main  
Margaret Seminario, AFL-CIO

/cdp  
opeiu 2