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July 22, 1994

NIOSH Docket Office
Robert A. Taft Laboratories
Mail Stop C 34
4676 Columbia Parkway
Cincinnati, Ohio 45226

Dear Sir or Madam:

The enclosed comments are submitted by the American Mining Congress (AMC) in response to a National Institute for Occupational Safety and Health (NIOSH) proposed rule addressing NIOSH's and the Mine Safety and Health Administration's (MSHA) certification requirements for respiratory protective devices (Federal Register, Vol. 59, No. 99, May 24, 1994). Of specific concern to AMC member companies, the proposal would replace existing MSHA regulations with NIOSH regulations, and change the current testing requirements for particulate filters.

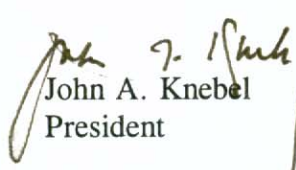
AMC is a national trade association representing producers of most of the United States' coal, metals, industrial and agricultural minerals; manufacturers of mining equipment (including respiratory devices); and engineering and other firms serving the mining industry. As such, this proposed rule is of particular interest.

In our comments, AMC commends the approach taken in seeking to rationalize the regulation of respirators. We believe that a clear regulatory system will best serve the interests of the manufacturer and user of respiratory devices.

AMC is concerned that there be accountability between NIOSH and MSHA as a regulatory transition takes place and thereafter. In our comments, we, therefore, request an opportunity for the mining community to participate in the drafting of the Memorandum of Understanding defining responsibilities and areas of jurisdiction. AMC also addresses technical concerns in these comments.

It is our belief that the issues raised by AMC, if addressed by the agencies, will improve the regulation of respiratory protective devices to the benefit of all concerned. We thank you for this opportunity to comment.

Sincerely,


John A. Knebel
President

Enclosure

JUL 25 1994



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President

**COMMENTS OF THE
AMERICAN MINING CONGRESS**

ON

MINE SAFETY AND HEALTH ADMINISTRATION

AND

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

PROPOSED REGULATIONS REGARDING RESPIRATORY PROTECTIVE DEVICES

42 CFR PART 84 AND 30 CFR PART 11

INTRODUCTION

The American Mining Congress (AMC) welcomes the opportunity to comment on the proposed rules of the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) regarding requirements for respiratory protective devices.

AMC is a national trade association whose membership encompasses: (1) producers of most of the United States' metals, uranium, coal, and industrial and agricultural minerals; (2) manufacturers of mining and mineral processing machinery, equipment and supplies (including respiratory protective devices); and (3) engineering and consulting firms and financial institutions that serve the mining industry.

In general, AMC supports the approach taken by the agencies in seeking to rationalize the regulation of respirators. AMC feels that a well-described and clear regulatory system will be in the best interest of the manufacturer of respiratory devices, the mine operator and the miner. The transition of authority regulating respiratory protective devices from MSHA to NIOSH, with a commitment to the improvement of efficiency, could benefit the certification program significantly. AMC agrees with NIOSH that the most important benefit expected from the proposed rule should be to produce significant improvements in the level of protection provided to users of respirators. AMC supports the transfer of regulatory responsibility to NIOSH, because it will enhance the accountability for regulatory actions, as well as improve and expedite the approval process and consolidate responsibility in one agency.

AMC is concerned, however, that there be accountability between agencies as a regulatory transition takes place. The Memorandum of Understanding (MOU) that

continued . . .

describes the responsibilities of each agency after the promulgation of the standards, and its prompt issuance, are exceptionally important. MSHA must have strong authority under the MOU between the agencies, particularly relating to mine-specific respiratory protection devices. These include, but are not limited to, filter self-rescuers, self-contained self-rescuers and emergency rescue equipment. The expertise of MSHA in this field is exceptionally valuable, and has been accumulated over many years. MSHA has the professional staff that is expert in the field, with extensive experience in both respirators and in the mining environment. This resource should be utilized to its fullest extent.

The mining industry faces unique respiratory applications which warrant special attention. Consequently, AMC requests an opportunity for the mining community to participate in the development of the MOU to insure that this document serves the needs of both agencies and the industry.

MODULAR RULEMAKING

AMC supports the modular approach that the agencies are taking in the development of the amendment to the Code of Federal Regulations addressing specific respiratory devices. Rulemaking attempting to address all the issues concerning respiratory devices would be cumbersome and would likely result in errors and excessively burdensome requirements. This modular approach to treat, where possible, each aspect of respiratory protective devices discretely, will help insure that each issue is appropriately considered.

Additionally, AMC recommends that a separate module be added for the consideration of regulations addressing the issues of powered air-purifying respirators. These devices have unique problems dealing with airflow, filter efficiency and fit, and therefore deserve special consideration. AMC suggests that, in many cases, these air filtration devices meeting established standards are engineering controls, not personal protective devices, and should be recognized as such in this and in future rulemakings.

These air filtration devices perform the same function as controls that have traditionally been considered engineering controls. In the case of total mine engineering controls, they increase ventilation, and they remove particulate matter. There is no distinction to be made between these area engineering controls and individual engineering controls, except the size of the area affected. Traditionally recognized engineering controls protect the mine environment. In the case of air filtration devices, the breathing zone of the miner is protected. The result is the same. Clean air is provided.

PROSPECTIVE/RETROSPECTIVE APPLICATION

AMC supports "grandfathering" those respiratory protective devices manufactured to current approval criteria. Applications submitted to NIOSH after the rule becomes effective will be accepted for 30 days in accordance with 30 CFR 11, as the proposed regulation is now written.

AMC is concerned about the effect this proposal could have on products already in use and currently available from suppliers, whether manufacturers or distributors. AMC opposes rules that immediately or retroactively decertify machinery, equipment or devices that were previously approved and were manufactured to both government and private specifications. AMC suggests that the proposed regulation be clarified to insure that it does not decertify any respiratory protective device manufactured prior to the effective date of the promulgation of the regulations, if that device is in accord with approval criteria before or at the time of the promulgation of this rule.

Specifically, AMC urges that Section 84.1, Subpart A - General Provisions, of the proposed regulations be amended to add subparagraph (e) as follows: (e) "Nothing in these regulations should be construed as an action that would decertify any respiratory device that was manufactured in accordance with approval criteria in effect before or at the time of the promulgation of this rule."

TECHNICAL COMMENTS

A major concern is that, as written, 42 CFR 84 will likely only provide new respirators to the health-care industry, at an undetermined cost, for protection against tuberculosis and not significantly improve the levels of respiratory protection for the millions of industrial workers depending on respirators. NIOSH is proposing that particulate filters be classified according to their demonstrated efficiency ratings against discriminating challenge aerosols. Under the proposed rule, there will be three ratings:

- Type A = 99.97% efficient (HEPA)
- Type B = 99% efficient
- Type C = 95% efficient

NIOSH also proposed to have two certification classes. One class is for "solid only" particulates (like dusts) and the other is "liquid and solid" (like dusts and mists). It is clearly a tiered system of "better/best" protection, relying heavily on the user-community to identify the potential hazard as a "solid only" or a "liquid and solid" hazardous atmosphere. As described by NIOSH, six new respirator groups will emerge:

NIOSH Classes and Resulting 6 Groups		<i>BETTER</i> "Solid Only" Certification	<i>BEST</i> "Liquid and Solid" Certification
Type A	99.97% efficient	1	4
Type B	99% efficient	2	5
Type C	95% efficient	3	6

Two things are most certain: first, Type A, B and C filters for "solid only" classification will not look like the same efficiency-rated filters in the "liquid and solid" classification. And second, the "solid only" certified filters and respirators will likely be considerably less expensive, encouraging (and perhaps ensuring) their misuse and misapplication in dust and mist environments. Clearly this is not in the best interest of protecting workers.

It would seem that NIOSH's stated goals of 42 CFR 84 providing "significant improvements in the level of protection to wearers" and "enabling users to easily discern the level of protection that can be expected when using a respirator" would be better satisfied by not having this tiered system of respiratory protection, but by requiring that for any of the proposed filter efficiencies, the filter would have to meet the "liquid and solid" requirements. In doing so, the safety professional and the worker would both know, for example, that the 99.97% efficient particulate respirator they're using is providing respiratory protection to the highest level the government requires.

When NIOSH first published 42 CFR 84 for public comment in 1987, that was required -- that all filters be tested against liquid and solid challenge aerosols and that the filter efficiency rating be based on how well it performed against both challenges. This 1987 NIOSH position remains the best in terms of worker protection.

Thermally generated monodispersed dioctyl phthalate (DOP) has been the industry standard for classifying HEPA filters for over two decades. And as a point of reference, current respirator certification under 30 CFR Part 11 requires HEPA filters to be tested against thermally generated DOP. Thermally generated DOP has a long-standing and proven track record as a very discriminating test agent for particulate air filters, and should be used as the aerosol.

The new NIOSH-proposed test procedure will call for a polydispersed and neutralized, cold-nebulized DOP challenge aerosol instead of a monodispersed, thermally generated (sometimes called "hot") DOP aerosol.

NIOSH scientists have stated that either aerosol generation method produces an acceptable particulate size distribution and that in their testing, either aerosol generation method gives the same filter penetration test result. However, comparative testing has been limited to mechanical HEPA filter media only, not all classes of filter efficiency and not the very large class of filters known as electrostatics. These electrostatics have good initial filter efficiency, according to NIOSH, but they degrade over time, increasing worker exposure.

This potentially compromises worker safety because filter efficiencies can be overstated if the lesser penetrating test method is used. Additionally, the proposed certification and testing procedures specified will continue to permit filters with degrading

performance levels to enter the workplace.

CONCLUSION

AMC appreciates the opportunity to participate in this important rulemaking. We look forward to working with both agencies to help craft regulations that will be of benefit to the manufacturers of respiratory protective devices, the mine operators and the miners.