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MAR 16 1988

The Honorable Jim Sasser
United States Senate
Washington, D.C. 20510

Dear Senator Sasser:

Thank you for your letter of February 16 on behalf of Mr. William P. Reeves regarding the proposed regulations governing the certification of respirators.

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 announced two public hearings (52 FR 37639). The first took place in San Francisco on January 20, 1988, and the second was January 27-28, 1988, in Washington, D.C. Enclosed is a copy of the opening statement from those hearings which clarifies many of the misunderstandings of this regulation. We have also extended the comment period until March 28, 1988 (53 FR 5595).

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 yours,

James O. Mason

James O. Mason, M.D., Dr.P.H.
Assistant Surgeon General
Director

Enclosures

cc:
OD
FMO
CDCW
NIOSH
NIOSH/W
NIOSH/Docket Office

CDC:NIOSH:LSparks
CDC ID #D41590; NIOSH #3266
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JIM SASSER
TENNESSEE

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United States Senate

WASHINGTON, DC 20510

February 16, 1988

Dr. James O. Mason
Director
Centers for Disease Control
Building 1, Room 2000
1600 Clifton Road, N.E.
Atlanta, Georgia 30333

Dear Dr. Mason:

I have received the enclosed correspondence from Mr. William P. Reeves, III, President, Safety Equipment Distributing Company of Knoxville, Tennessee, regarding his concerns relative to certain proposed regulations by the National Institute for Occupational Health and Safety.

I will appreciate your giving favorable consideration to the valid points raised by Mr. Reeves, being as helpful as possible to his concerns. I will further appreciate your providing me with a report that I may pass on to him.

Thank you for your courtesy and assistance.

Sincerely,

Jim Sasser

Jim Sasser
United States Senator

SAFETY EQUIPMENT DISTRIBUTING COMPANY, INC.

408 ERIN DRIVE KNOXVILLE, TENNESSEE 37919
P. O. BOX 10827 TELEPHONE 615 584-8663

January 12, 1988

Senator Jim Sasser
SR363 Russell Senate Office Building
Washington, D. C. 20510

Dear Senator Sasser:

The National Institute for Occupational Health and Safety (NIOSH) currently certifies respirators for use in general industry, mining and construction. On August 27, 1987, NIOSH proposed (42 CFR 84, Federal Register) regulations which will have a disastrous impact on worker safety and on our industry.

The Safety Equipment Distributors Association, of which Safety Equipment Distributing Company of Knoxville, Tennessee, is a part, feels strongly that this proposal must be withdrawn.

The proposal provides no protocols, nor specific requirements, so it is impossible for us to exercise our right to comment on it in a meaningful way. This denies us due process.

While our industry recognizes the value of regulation and, by and large, has little problem with the concept of workplace testing, the fact of the matter is that the technology is not available to conform to the proposed change. This is not the way to improve a process; it will, in fact, destroy a process which works but needs tuning.

Even though 90 per-cent of the respirators in use today are used for non-mining (industrial and construction) purposes, the proposal requires that we test all respirators under mining conditions thereby ignoring the safety interest of the majority of workers who use respirators.

Finally, the proposed changes will cost our industry up to $700,000,000 which will threaten the very viability of the industry as well as worker safety.

The management and employees of Safety Equipment Distributing Company trust that we can count on your support in this matter of critical interest to Tennessee labor and industry. We urge you to immediately contact Health and Human Services Secretary, Dr. Otis Bowen, to request that the proposed ruling be withdrawn.

Enclosed is a fact sheet which outlines the proposal, our objections and recommendations.

Thank you in advance for your assistance on this matter and I look forward to hearing from you once you have contacted Secretary Bowen as we are very anxious about the resolution of this problem.

Sincerely,

William P. Reeves, III
President

Enclosure

ISEA Fact Sheet
(NIOSH proposal to change certification process for respirators.)

I. Current Situation:

The National Institute for Occupational Safety and Health (NIOSH) currently certifies respirators for use in general industry, mining and construction.

II. Proposed Changes:

On August 27, 1987, NIOSH proposed (42 CFR part 84, Federal Register) to limit it's certification activities to respirators used in mining, thereby requiring manufacturers of respirators used in general industry and construction to "self-certify" their products.

Manufacturers will be required to test their own respirators in the workplace or a simulated environment. However, the proposed "workplace" stipulation requires that all testing be conducted in mining operations.

All respirators currently in use will have to be re-certified under the new process and manufacturers will be required to re-test any respirators which are modified in the most minor ways.

III. Concerns about Proposed Changes:

(1) Testing in and for the Wrong Environment:

Ninety per-cent of respirators used in the United States are for non-mining use. By limiting respirator testing to mining, NIOSH is ignoring the safety and health needs of the vast majority of respirator users.

(2) Economic Impact:

The costs of developing new standards, re-certification of existing respirators and workplace testing (with no proven protocols) would create an unbearable burden on manufacturers and end users. The net effect would be a major set-back to worker safety.

(3) Effects on Industries which provide respirator protection for workers:

It is likely that modifications required to make general industry respirators meet mine standards as well as the increased costs of the end product will adversely effect worker safety. Employers who have workers in marginal need areas, may no longer provide respirators. Moreover workers may not be willing to use respirators which are potentially too large, too unwieldy and uncomfortable.

(4) Requirement for Workplace Testing:

While the Industrial Safety Equipment Association (representing every major respirator manufacturer in the United States) is not in principal opposed to workplace testing, consensus standards and procedures must first be developed.

For example, it is presently impossible to test the broad array of different respirators in the workplace because the technology is not yet developed.

Even if the technology for workplace testing existed, there are not enough mines in the United States in which the tests can be performed without threatening the safety of workers.

(5) "Self-Certification" is a misnomer:

Given the fact that NIOSH will review tests results, reserve the right to re-test at its discretion and continue to have the ultimate say, manufacturers will, in effect, not be certifying. Instead, they will be testing their products for NIOSH.

(6). Proposed Rule is Major Ruling and not a Minor Ruling.

Implementation of the proposed rule would cost manufacturers up to $700,000,000 annually making the proposed rule a "major ruling" and not a "minor ruling" as portrayed by NIOSH. This would cause hardship on manufacturers and end users and be in conflict with Executive Order 12291.

(7). No Protocol issued with proposed regulation:

While NIOSH has issued it's proposed standards for certification, it has not released a protocol outlining the requirements, rules, details and procedures for the required workplace testing. This omission denies respirator manufacturers due process and, furthermore, makes it impossible

for them to respond to the proposal in a meaningful way because it is not complete.

IV. Recommendations:

1. The Proposed 42 CRF 84 must be withdrawn.

2. If NIOSH is to no longer certify respirators for general industry and construction, resources must be committed to developing a consensus standard for all respirator certification for use in all industrial applications.

3. This consensus standard must then be certified through a non-governmental third party.