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JB Moran

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September 21, 1987

Federal Express

Mr. John Moran
Director, Division of Safety Research
National Institute for Occupational
Safety and Health
944 Chestnut Ridge Road
Morgantown, West Virginia 26505

Re: Request for Recall of
Proposed 42 C.F.R. Part 84

Dear Mr. Moran:

On behalf of the members of the Respiratory Protection Group of the Industrial Safety Equipment Association, Inc. ("ISEA")^{*} we hereby request the recall of 42 C.F.R. Part 84 as proposed on August 27, 1987 (52 Fed. Reg. 32402) for the following reasons:

^{*}/

The members of ISEA's Respiratory Protection Group are:

Airolife Safety Inc.
American Optical Corporation
Biosystems, Inc.
E. D. Bullard Company
Glendale Protective Technologies, Inc.
Mine Safety Appliances Company
Minnesota Mining and Manufacturing Co., Inc. (3M)
Moldex-Metric, Inc.
National Draeger, Inc.
Parmelee Industries
Pro-Tech Respirators, Inc.
Racal Airstream
Scott Aviation
Sellstrom Manufacturing Company
Siebe North, Inc.
Survivair - U.S. Divers Company
WGM/ Willson Safety Products

Under the Administrative Procedure Act, notice of a proposed rule must include "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. §553(b)(3)(1982). This requirement exists to assure that interested parties are afforded the opportunity to offer informed criticism or comments on agency proposals. See, Ethyl Corp. v. Environmental Protection Agency, 541 F.2d 1, 48 (D.C. Cir. 1976). In the instant proposal NIOSH has failed to give the detailed notice required by the APA, thereby denying an opportunity for informed comment and full participation by interested parties in the rulemaking process.

As set forth at 42 C.F.R. §84.31 through §84.34, the proposed rule requires workplace or simulated workplace testing prior to certification. The preamble to the proposed rule states that NIOSH will provide applicants detailed model protocols to perform these tests upon request. The preamble further states that NIOSH "has begun to develop model protocols for performing such tests in a proven and reliable manner."

NIOSH notes that these protocols when and if developed would be too voluminous to be included in the Federal Register notice. The preamble states NIOSH's intention, however, to make the protocols available at the time of final rulemaking. NIOSH thereafter solicits comments on these unidentified model tests that will supposedly "assure reliability and reproducibility of mandatory workplace and simulated workplace test results."

The foregoing proposal for workplace testing protocols is insufficient and should be recalled for further development. The proposal as it currently exists fails to identify sufficiently the substance of the workplace testing and simulated workplace testing that will be required for certification. Without further specificity regarding the details of such testing, it is impossible for ISEA, or NIOSH for that matter, to evaluate and comment on the technical accuracy and feasibility of the proposed protocols.

While ISEA and its members generally support workplace testing, such testing can only assure reliability of the equipment when reliability of the test method itself has been established. Mandatory undefined workplace testing, as NIOSH now proposes, certainly does not advance reliability and it is thus premature to require such testing before reliable protocols have

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been established. Accordingly, the proposed rule denies the opportunity for informed comment and criticism and the notice is therefore defective.

ISEA thus requests that NIOSH recall proposed Part 84 until it has developed protocols for workplace testing in sufficient detail to afford interested persons the opportunity to comment.

Sincerely,


Paul A. Koches

PAK:mlr

cc: J. Donald Millar

Number: 84-003 Date Rec'd.: 22 September 1987 Pages: 3

From: Paul A. Koches

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|--|--|
| <input type="checkbox"/> Consultant | <input type="checkbox"/> Professional Association |
| <input type="checkbox"/> Firefighter | <input checked="" type="checkbox"/> Respirator Manufacturers |
| <input type="checkbox"/> Government | <input checked="" type="checkbox"/> Trade Association |
| <input type="checkbox"/> Independent lab | <input type="checkbox"/> Union |
| <input type="checkbox"/> Individual | <input type="checkbox"/> University |
| <input type="checkbox"/> Industry | <input type="checkbox"/> _____ |

Comments on:

- Extension of time for comments
- Public meeting
- Preamble

Subparts:

- | | |
|--|--|
| <input type="checkbox"/> A General provisions | <input type="checkbox"/> O Technical definitions |
| <input type="checkbox"/> B Application procedures | <input type="checkbox"/> P Respirator classification |
| <input type="checkbox"/> C Quality Assurance | <input type="checkbox"/> Q General requirements |
| <input type="checkbox"/> D Testing by applicant | <input type="checkbox"/> R Face seal leakage |
| <input type="checkbox"/> Lab testing | <input type="checkbox"/> S SCBA |
| <input checked="" type="checkbox"/> Workplace testing | <input type="checkbox"/> T SAR |
| <input type="checkbox"/> E Certification label | <input type="checkbox"/> U APR general requirements |
| <input type="checkbox"/> F Operation & Maintenance | <input type="checkbox"/> V Particulate APR |
| <input type="checkbox"/> G Modification of respirator | <input type="checkbox"/> W Gas and vapor APR cartridge |
| <input type="checkbox"/> H Withdrawal of certification | <input type="checkbox"/> X Gas and vapor APR canister |
| <input type="checkbox"/> I Appeals | <input type="checkbox"/> Y Organic gas and vapor |
| <input type="checkbox"/> J Fees | <input type="checkbox"/> Z Unlisted gas and vapor |
| <input type="checkbox"/> K Mine rescue and emergency | <input type="checkbox"/> Appendix A |

Other

Recall 42 CFR Part 84 until protocols for workplace
testing are developed in sufficient detail to afford
interested persons the opportunity to comment