

Miller, Diane M. (CDC/NIOSH/EID)

From: Watzman, Bruce [BWatzman@nma.org]
Sent: Friday, June 19, 2009 7:56 AM
To: NIOSH Docket Office (CDC)
Subject: RIN: 0920-AA10 42 CFR Part 84
Attachments: 6-18-09_SCSR Comment Letter.doc

Attached are the comments of the National Mining Association in response to the Notice of Proposed Rulemaking to amend 42 CFR Part 48 regarding "Approval Tests and Standards for Closed-Circuit Respirators."

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June 18, 2008

NIOSH Docket Office, Docket #005
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4676 Columbia Parkway
Cincinnati, OH 45226

RE: PIN: 0920-AA10 and "42 C.F.R. Pt. 84"

The National Mining Association (NMA) appreciates this opportunity to comment on National Institute for Occupational Safety and Health (NIOSH) Notice of Proposed Rulemaking (NPR) amending the regulations governing testing and approval standards for closed-circuit escape respirators. (73 Fed. Reg. 75,027). NMA member companies operating underground coal mines have a keen interest in this proceeding as the availability and performance of self-contained self-rescuers (SCSR) has received heightened scrutiny in the aftermath of the tragic mining disasters that occurred in last few years.

As NIOSH is well aware SCSR performance and availability has been the subject of extensive scrutiny and, often times, controversy. Unit operational problems have resulted in the issuance of numerous user warnings, product recalls and modification requirements. As a result miner and mine operator confidence has been shaken. To the degree that the NPR will restore confidence in the life-saving capabilities of these units, we support its intent.

We are concerned however, as discussed below, that NIOSH has not fully considered the on-the-ground implications of the NPR. We are aware of the detailed technical comments that have previously been submitted in this proceeding. Without passing judgment as to the validity of each element, we encourage NIOSH to closely examine the comments. A facial review of the comments identify several significant issues which, if correct, raise serious concerns that call into question the justification for and feasibility of the NPR without improving miner safety.

Of particular concern is proposed § 84.301 that will establish a schedule for phasing-in the implementation of the testing and certification requirements and establish an artificial six-year timeframe for the replacement of currently approved devices. We find the latter requirement to be unnecessary and without justification.

Moreover, we are concerned that the NPR has not sufficiently considered manufacturer production constraints and how this will impact mine operator ability to obtain, within an unusually short timeframe, a sufficient quantity of units to satisfy industry demand.

In June 2006 the Mine Improvement and New Emergency Response Act (MINER) was enacted. Among its many goals, the act addressed the perceived shortcoming of the systems underground coal mine operators had deployed to respond to the post-accident needs of miners trapped underground. One of the central elements of the act was the requirement for the placement of additional storages of SCSR's throughout the underground environment. It should be noted that in addition to the MINER Act, several states enacted revisions to their existing statutory requirements, many of which mirror the act's requirements.

In 2008 NMA surveyed its underground coal members to determine compliance with the MINER Act requirements and to identify compliance impediments. As of April 2008, the 18 respondents to the survey, who collectively produce approximately 65 percent of our nation's underground coal, had taken delivery of more than 150,000 new SCSR's for deployment underground. Unfortunately, more than 20,000 units remained on back-order as of that date and while they have since been delivered, this demonstrates the existing production constraints and the enormous problem that will be created should the final rule impose an arbitrary date for the replacement of all SCSR's. Rather than imposing an artificial date for the replacement of all existing SCSR's, we believe the final rule should provide for the orderly replacement of units, at the end of their service life, with units meeting the new testing and certification requirements.

Our second concern is one that the industry has voiced repeatedly -- the size and weight of SCSR's. As NIOSH is well aware many miners resist wearing the current generation of what are characterized as "belt-wearable" SCSR's, despite design advances. Space limitations, ergonomic considerations and comfort factors remain foremost considerations in determining the wear-ability of individual units. While the NPR does not specifically address these issues, we are concerned that the new test protocol will necessitate the production of larger, heavier units. We encourage NIOSH to take into account design considerations as the final rule is developed.

In addition, the NPR includes enhanced requirements for the goggles that miners will wear. We are concerned that this will necessitate larger cases for the current SCSR's and replacement of all the units, when there have been no complaints documented regarding the use of the current models; again all this with no improvement to miner safety.

Lastly, while we agree in principle with duration testing using the more reliable metabolic simulator, we cannot make a definitive response until we know how the current SCSR's will fare under the new requirements. As we understand it, current man test #4 will still be used. This creates the possibility that a device could pass

NIOSH
June 18, 2009
Page Three

the duration test on the simulator but fail the less predictable man test #4. The uncertainty created by such an outcome is not acceptable. To remedy this we recommend that the simulator be used for determination of duration of the devices while man test #4 be used only to determine the wear-ability for human subjects.

In closing thank you again for providing us the opportunity to comment on this important proceeding to advance miner safety and health.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce Watzman".

Bruce Watzman
Senior Vice President, Regulatory Affairs