

**Dragon, Karen E. (CDC/NIOSH/EID)**

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**From:** Rush, Mike [MRush@aar.org]  
**Sent:** Friday, June 19, 2009 4:00 PM  
**To:** nicocindocket@cdc.gov  
**Subject:** RIN: 0920-AA10, 42 CFR pt. 84  
**Attachments:** 2009 dhhs respirator comments.pdf

The enclosed comments were submitted today at regulations.gov. Thank you.

<<2009 dhhs respirator comments.pdf>>

Michael J. Rush

Associate General Counsel

Association of American Railroads

50 F St., N.W.

Washington, D.C. 20001-1564

Ph: (202) 639-2503

Fax: (202) 639-2868

E-mail: [mrush@aar.org](mailto:mrush@aar.org)

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BEFORE THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

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RIN 0920-AA10:  
APPROVAL TESTS AND STANDARDS FOR  
CLOSED-CIRCUIT ESCAPE RESPIRATORS;  
NOTICE OF PROPOSED RULEMAKING

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COMMENTS OF THE  
ASSOCIATION OF AMERICAN RAILROADS

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The Association of American Railroads (AAR),<sup>1</sup> on behalf of itself and its member railroads, submits the following comments on the proposed standards for closed-circuit respirators.<sup>2</sup> AAR's member railroads, subject to a statutory requirement that their locomotive crews have access to respirators, potentially would be affected by these proposed standards. AAR's main concerns are that the proposed standards would require larger and heavier respirators impractical for railroad use and make tens of millions of dollars worth of equipment obsolete before the end of the equipment's useful life.

The preamble to the proposed requirements overlooks the potential applicability of the proposed requirements to the railroad industry. The preamble discusses respirator use by miners, the Navy, and other industries where work is performed underground or in confined spaces.<sup>3</sup> No mention is made of the railroad industry.

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<sup>1</sup>AAR is a trade association whose membership includes freight railroads that operate 72 percent of the line-haul mileage, employ 92 percent of the workers, and account for 95 percent of the freight revenue of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service.

<sup>2</sup>See 73 Fed. Reg. 75,027 (Dec. 10, 2008).

<sup>3</sup>73 Fed. Reg. 75,028.

Section 413 of the Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, provides that by April 16, 2010, DOT must require railroads "to provide emergency escape breathing apparatus suitable to provide head and neck coverage with respiratory protection for all crewmembers in locomotive cabs on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of a release." Locomotive crews typically consist of two people, although it is not uncommon to find four people in the locomotive cab.

From a railroad perspective, key characteristics of a respirator are size and weight. It is not clear whether respirators will be stored in locomotive cabs or whether employees will be assigned respirators that they will carry to and from locomotives. It may be that both circumstances will occur. In either case, size is clearly an issue. Capacity to store equipment in a locomotive cab is extremely limited. With a need to store up to four respirators, it is important that the size be limited. Of course, if an employee needs to carry a respirator to the cab, size and weight will be of critical concern from that perspective, as well.

In an accident, the size and weight of the respirator could also bear on the ability of a crewmember to escape the locomotive cab. The locomotive cab has fairly narrow doors for egress. Clearly, it would be unacceptable for a respirator to be of such a size and weight that it would impede the ability of a crewmember to exit the cab.

Finally, AAR is concerned about the proposal making obsolete tens of millions of dollars worth of respirator equipment that the railroad industry will be acquiring in the near future. To meet the statutory and forthcoming regulatory requirements mandating the availability of respirators for train crews, the railroads contemplate purchasing respirators best suited for the industry's needs, but that might not meet the final standards. Under the proposal, equipment not meeting the new standards would need to be phased out before the end of their useful lives. The preamble's main justification for doing so is that "actual deployment duration of current CCERs in coal mines tends to be less than designated, due to wear and tear and damaging environmental conditions."<sup>4</sup> No such showing has been made for the railroad industry.

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<sup>4</sup>73 Fed. Reg. 75,029.

The preamble also expresses concern that without a requirement that existing respirators be discarded if they do not meet the forthcoming new requirements, respirators could be used for "13 to 18 years following the effective date of the final standard."<sup>5</sup> From the railroad industry's perspective, even assuming the new standard permits the use of respirators with acceptable size and weight dimensions, there would need to be a countervailing safety benefit justifying a requirement to discard respirators worth millions of dollars if those respirators do not meet the forthcoming standard.

In sum, the proposed respirator requirements fail to take into account the use of respirators in the railroad industry, including size and weight considerations and the potential financial impact on railroads. AAR and its member railroads would be pleased to provide any additional information that might be needed to take into account respirator use in the railroad industry.

Thank you for considering AAR's comments.

Respectfully submitted,



Louis P. Warchot  
Michael J. Rush  
Counsel for the Association  
of American Railroads  
50 F St., N.W.  
Washington, D.C. 20001  
(202) 639-2503

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<sup>5</sup>73 Fed. Reg.75,029.