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American Federation of Labor and Congress of Industrial Organizations

EXECUTIVE COUNCIL



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December 23, 1987

Director
Division of Safety Research
NIOSH
944 Chestnut Ridge Road
Morgantown, West Virginia 26505

RECEIVED
1987 DEC 31 PM 12:13
NIOSH

Re: 42 CFR Part 84

Dear Director:

The AFL-CIO is pleased to submit comments on NIOSH's proposed regulations regarding the Revision of Tests and Requirements for Certification of permissibility of Respiratory Protection Devices Used in Mines and Mining, 42 CFR Part 84.

The AFL-CIO has a direct interest in the proposed regulation on respirator certification. Member of AFL-CIO unions work in environments where exposures to toxic substances occur and the use of respirators is necessary. Deficiencies in the current NIOSH respiratory protection certification program have created serious problems and put workers at risk. The lack of workplace testing, failure to update certifications and other problems have resulted in the use of respirators which are certified, but which provide inadequate protection. For some workers, such as firefighters, these deficiencies have contributed to serious illness and even death.

The AFL-CIO agrees with NIOSH that the certification regulations and procedures need to be revised and updated, and we are pleased that after years of delay that NIOSH is finally addressing this important issue. We are deeply concerned, however, that the proposed regulations and revised procedures do not establish a sound and reliable certification program.

The AFL-CIO must strongly object to NIOSH's proposal to establish a program of self-certification by equipment manufacturers. Under the proposal equipment manufacturers, not NIOSH, would be responsible for testing respirators. NIOSH's role would be to establish testing standards, to review the test methodologies and results submitted by manufacturers, and to conduct further tests where deemed necessary.

The AFL-CIO does not believe that such a program of self-certification can provide adequate assurance that equipment performs adequately. Even if test standards are employed, there will be considerable variability in testing methods between respirator manufacturers, and assuring the quality of testing programs will be difficult. Moreover, manufacturers are in business to increase the market share for their respirators. Experience has shown that manufacturers' judgement and claims about the effectiveness of respirators often exceeds that of government agencies. Given these realities the AFL-CIO does not believe it is appropriate to place the responsibility for testing respirators with the manufacturers.

The AFL-CIO recognizes that NIOSH has experienced problems and difficulties running the testing program at its Morgantown facility given current resources and staffing levels. If it is not possible for NIOSH to conduct an adequate in-house certification program, we believe that NIOSH should look towards the development of a third party certification program with testing conducted by an independent group overseen by NIOSH using test standards established by the agency. Such a program would have greater consistency, more accountability, and greater independence than the self-certification program proposed by NIOSH.

The AFL-CIO welcomes NIOSH's proposal to expand the testing requirements to better evaluate the effectiveness of respirators under workplace conditions. Studies and experience have shown that under conditions of actual use, respirators can and do provide very different levels of protection than in laboratory environments. Information on the protection afforded under workplace conditions is crucial to making a meaningful evaluation of the respirator's effectiveness.

The AFL-CIO is concerned, however, that the proposed testing and certification regulations will not provide an adequate assessment of the performance of respirators under workplace conditions. The regulations would allow simulated work environments, as opposed to actual work environments to be used for testing. Simulated environments can not replicate the actual conditions experienced in the workplace and should not be allowed as a substitute for actual workplace tests. The regulations, as proposed, also do not provide any specific guidance on the test procedures that must be employed to evaluate respirators in workplace environments. Given the great variability that has been demonstrated in the results of numerous studies on workplace protection factors, it is important that NIOSH establish strict guidelines and test procedures for these tests. Further, it is not clear that the regulations would require workplace tests to be conducted to assess the performance of the equipment over time as it is subject to conditions of use that may affect its performance. Absent such testing, there can be no assurance that equipment functions adequately under actual conditions of use.

The AFL-CIO is also concerned about provisions of the proposal which would allow manufacturers to apply for a certification of a higher performance level for equipment based upon workplace or simulated workplace tests. Given the variability that exists both in tests results as well as the level of protection that is afforded by respirators in actual workplace conditions, the AFL-CIO does not believe that it is appropriate for NIOSH to certify respirators for a higher performance level based upon the kind of testing that is outlined in the proposal. The AFL-CIO is deeply concerned that this aspect of the proposal may be used by employers and others to support claims that respiratory protection is an acceptable means to protect workers from toxic substance exposure and to undermine efforts to install engineering controls to limit exposures. We urge NIOSH to clearly state in any final rule that the agency issues that even with improvements in certification procedures, respirators should still not be considered as a primary means of control for toxic substance exposures.

Sincerely,



Margaret Seminario
Associate Director
Department of Occupational Safety,
Health and Social Security