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## Building and Construction Trades Department

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March 26, 2010

NIOSH Docket Office  
Robert A. Taft Laboratories  
MS-C34  
4676 Columbia Pkwy.  
Cincinnati, OH 45226

Re: RIN: 0920-AA33 Comments on Total Inward Leakage Revisions of 42 CFR part 84

The Building and Construction Trades Department of the AFL-CIO, its 13 affiliated unions, and their approximately 3 million members, support the long overdue proposed TIL changes in the NIOSH respirator fit testing.

Construction employees are heavy users of personal protective technologies such as respirators. Among construction workers, 28.7% used respirators compared to 8.3% of all employees sampled in the NIOSH/BLS Survey of Respirator Use and Practices (SRUP). The majority (60%) of construction employers fail to select respirators based on fit testing, which makes TIL testing even more critical for worker protection. In addition, fully one quarter of the US construction workforce is self-employed, which means they are not covered by the OSH Act and even less likely to be fit tested.

Although we strongly support this enhanced respirator testing prior to certification, several aspects of the proposed regulations are inadequate:

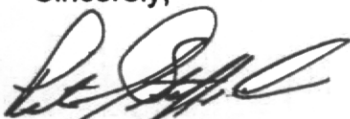
- The 3 year transition or phase in period is excessive, and should be reduced to 90 days. As described in the October 30, 2009 Federal Register, preliminary NIOSH assessments found that 30% of the 101 respirator models tested failed to provide adequate seals to protect users. It is intolerable to allow continued manufacture and use of products known to provide inadequate protection for most users. As a minimum, during this excessive transition, NIOSH should require manufacturers to mark these failed devices to warn employers and workers that they do not comply with OSHA fit requirements for most workers. Uncertified respirators can still legally be sold for use by consumers and self-

employed workers, so manufacturers would not be forced to discard residual inventories of products that fail to meet NIOSH certification.

- The protocol fails to adequately consider the increase in inward leakage associated with increased negative pressure or differential pressure associated with increased resistance of the cartridge or filter. As particles form a cake on the filter media, negative pressure increases. Manufacturers currently provide recommended filter cartridge or respirator replacement schedules or a differential pressure above which replacement is recommended. The TIL test should be repeated at the end of the recommended use period at expected filter loading level, prior to the manufacturer's recommended scheduled cartridge replacement. This could be averaged with the TIL for the new cartridge or facepiece, to approximate leakage over the use period.
- For employers who actually perform the required fit tests for respirator selection (NIOSH estimates 40%), the failures in current products add further costs for repeat testing. TIL testing should reduce the costs to contractors/employers who make sincere efforts to protect their employees, by reducing repeat fit tests. Delayed implementation may reduce the financial impact of the rule change on manufacturers and importers, but will increase the economic impact on the much larger group of employers/contractors using these respirators.
- The TIL protocol does not assure that effective products will be available in the market for all segments of the working population. Sub-populations with facial feature dimensions far from the population averages may not be able to find any respirator that will fit; effectively excluding them from many job opportunities or led to higher than acceptable exposures to hazardous materials. Some of these groups may include minorities that already suffer from histories of discrimination and significant economic and health disparities. Although allowing products to be marketed for specific subpopulations (small, medium, large, etc.) will ideally increase options; NIOSH should monitor, and make public, any gaps where some groups of workers cannot be adequately fit with currently certified negative pressure half-face respirators.

We encourage NIOSH to move as rapidly as possible to implement these improved requirements that will help both employers and employees.

Sincerely,



Pete Stafford  
Director of Safety and Health