

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

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**From:** Kathy Sloan [ksloan@mines.state.wv.us]  
**Sent:** Thursday, June 18, 2009 3:12 PM  
**To:** NIOSH Docket Office (CDC)  
**Subject:** RIN: 0920-AA10 and 42 CFR pt. 84  
**Attachments:** COMMENTS 0920-AA10 & 42 CFR PT 84.pdf

NIOSH Docket Office  
Docket 005  
Robert A. Taft Laboratories, MS-C34  
4676 Columbia Parkway  
Cincinnati, OH 45226

**Re: RIN: 0920-AA10 and 42 CFR pt 84**

To Whom It May Concern:

Attached please find comments from WV Office of Miners' Health, Safety & Training in reference to RIN: 0920-AA10 and 42 CFR pt 84.



*State of West Virginia*  
Joe Manchin III, Governor

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

**Re: RIN: 0920-AA10 and 42 CFR pt 84**

To Whom It May Concern:

The West Virginia Office of Miners' Health, Safety & Training submits the following comments in reference to RIN: 0920-AA10 and 42 CFR pt 84.

1) While the State of West Virginia applauds NIOSH's intent that these rules dispel ambiguities concerning the behavior of self-contained self-rescuers, the arbitrary change in the accepted name of the device to "closed-circuit escape respirators" has apparently prompted considerable uncertainty concerning what device the proposed rule actually addresses. This uncertainty has resulted in those most affected not recognizing that the proposed rule affected them. The minimal response at the NIOSH public hearings, with only two mining industry speakers, is evidence that the community did not understand the rule's potential impact. It is requested that the rule be republished under the industry-accepted "self-contained self-rescuer" and the time period for comment extended accordingly.

2) NIOSH, in consultation with MSHA, developed these proposed performance and reliability requirements for closed-circuit escape respirators (self-contained self-rescuers) during the development process without outreach to those in the state regulatory community. It is the position of the State of West Virginia that federal mine safety regulators should include their peers in State mines safety agencies in the rule development process. Such entities are not only exceptional sources of expertise focused on the same goal, but as sovereign legal entities they are due such early access.

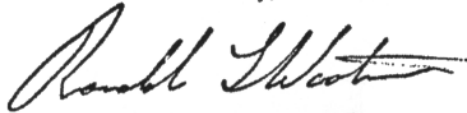
3) The State of West Virginia commends the move to provide an approval methodology that is independent of the subjective approach introduced in the current "man-test." However, the benefits should be fully realized by the simulation of multiple realistic demand models and the full reporting of the results in a manner that would allow the user to best determine and predict the unit's performance in their situation. Additionally, the testing should not be terminated until multiple performance thresholds are breached to allow use in forensic analysis where it is determined that units may not have performed as predicted.

4) The State of West Virginia has repeatedly suggested that NIOSH conduct scientifically sound empirical testing of respiratory demand of escaping miners under real world scenarios that builds upon the studies conducted in 1983. The lack of defensible demand statistics continues to be a concern and a source of contention among those responding to NIOSH and MSHA rulemaking.

5) The State of West Virginia is very concerned about the timelines proposed for replacement of existing SCSR inventories. Tens of thousands of SCSRs have been purchased pursuant to state and federal regulations in the last three years. It was the understanding of the legislative bodies that the service life of those devices was as approved at the time the purchases were ordered. Absent some definitive demonstration of imminent threat to health and safety, an arbitrary decrease in the life of these units is indefensible. We request that units be replaced with ones (meeting whatever new protocol is eventually promulgated) as they reach the end of the service life approved at the time they were sold.

6) The State of West Virginia encourages NIOSH to expand upon its Long Term Field Evaluations. The value of these evaluations has been extensive, and their use of automated testing is the justification for the proposed new standards. These evaluations should be included as an integral part of the approval and continuation of approval process.

Sincerely,



Ronald L. Wooten  
Director

RLW:ks