

MEMO TO THE RECORD

SUBJECT: Meeting with the Jefferson Group concerning NIOSH Respirator Regulation 42 CFR Part 84

FROM: Director, NIOSH Washington Office

Time: 10:00 a.m. 9 January 1989
Place: HHH Bldg., Washington, DC

Attendees:

Mr. Mark Cowan, The Jefferson Group
Mr. Richard Grunburg, MSA
Mr. Fred J. Hannett, The Jefferson Group
Dr. George E. Hardy, CDC
Mr. Richard A. Lemen, NIOSH/CDC
Dr. James O. Mason, CDC
Mr. Gene Matthews, OGC/CDC
Dr. J. Donald Millar, NIOSH/CDC
Mr. James Spool, Siebe North Inc.
Mr. Frank E. Wilcher, Jr., ISEA

Dr. Mason called the meeting to order and asked Mr. Cowan, of The Jefferson Group to give a brief overview of his organization. Mr. Cowan explained that The Jefferson Group was a bi-partisan government relations organization which represented the Industrial Safety Equipment Association concerning their interest in the proposed new Respirator Regulation 42 CFR Part 84.

Mr. Cowan then explained the concerns of ISEA about 42 CFR Part 84. The four major points Mr. Cowan made were:

1. ISEA recognizes that 30 CFR Part 11 is badly out of date and revisions to the certification process are necessary. The ISEA members realize these changes will result in additional costs; however, these costs must be reasonable, while at the same time not jeopardizing the health and safety of workers.
2. ISEA feels that the proposed 42 CFR Part 84 as it is being revised, per Dr. Mason's recent letter, can be a good rule, but many highly technical issues must be settled first. ISEA feels strongly that the best way to reach a workable and effective solution to all aspects of this issue is through negotiated rulemaking. Public hearings with no dialogue are not the best way to deal with such technical issues. Mr. Cowan provided an EPA announcement which he feels clearly spells out the advantages of negotiated rulemaking.

3. ISEA is pleased to note Dr. Mason's acceptance of their offer to assist CDC/NIOSH with the requested information for the regulatory impact analysis after they have had an opportunity to review the proposed rule when it is published.
4. ISEA also feels that negotiated rulemaking is a must for the workplace testing discussions. CDC/NIOSH has said that workplace testing will be addressed separately from the Part 84 rulemaking and that public hearings are likely. Because there are so many unresolved technical issues with respect to workplace testing, time and resources will be saved, and a more effective rule developed, if CDC/NIOSH begins with negotiated rulemaking.

In summary, Mr. Cowan indicated that ISEA and its member industries want to be cooperative and do indeed want a new standard in this area. The industry would be most cooperative in assisting CDC/NIOSH in undertaking a feasibility study for workplace testing prior to promulgation of the new rule, since they have strong concerns about the applicability of workplace testing.

Dr. Mason explained the decisions made in this new proposed rule and indicated that workplace testing had been removed from this second proposal and would be the subject of a separate rulemaking process. The second proposed rule is currently moving through the regulatory process outside of HHS and to change at this time would not be realistic. Dr. Mason requested that CDC/NIOSH staff discuss the various options for receiving suggestions about the workplace testing part of the rulemaking and to brief him on those options at a later time. Dr. Mason then asked Dr. Millar to discuss the present status of 42 CFR Part 84.

Dr. Millar indicated that the second proposed rule considered over 4000 pages of comments and that as a result some 200 changes were made in this version over the previous one. Dr. Millar indicated that a public meeting would be held early this year to discuss workplace testing and that he had indicated this to Mr. Wilcher in his November 22, 1988, letter to him.

Mr. Cowan asked about the public meeting on workplace testing and Dr. Millar explained that it would most probably be in Morgantown after the publication of the current revision of the proposed rule.

Dr. Mason asked Mr. Cowan if he could discuss in more detail the rulemaking and their concerns. Mr. Cowan indicated that at this time they were not prepared to discuss specific technical issues about sampling and workplace testing. Dr. Millar indicated that certainly this would be of interest to NIOSH, and Mr. Cowan indicated he would like to do this prior to the publication of the present draft.

Dr. Mason indicated that we would go on with the present process and asked Mr. Matthews to look at the feasibility of holding such a technical meeting after the present draft is published. Mr. Matthews stated that he will review this possibility and that Dr. Mason would then get back to Mr. Cowan on the details of this meeting. Mr. Cowan indicated that such a meeting should involve the technical experts of NIOSH with the technical experts from industry in order for the meeting to be productive. Mr. Matthews indicated that any such meeting must have representation from all concerned parties affected by the rule and suggested that this technical meeting should not be in lieu of a general public hearing during the informal rulemaking.

Mr. Cowan indicated that it was good that CDC/NIOSH had removed the workplace testing portion of the rule from the current draft. Mr. Cowan's concerns centered on the feasibility of workplace testing and on who and how the industry would be affected by this provision. Dr. Mason indicated that this was a necessary part of the rule to determine if the respirator really provides adequate protection in actual workplace situations. Dr. Millar further indicated that such testing was essential to prevent accidental deaths from improper respirator use. Mr. Grunburg indicated that further discussions should center on the adequacy of field testing in the certification process, particularly on its technical merits.

Dr. Mason closed the meeting stating that he would get back to Mr. Cowan on the feasibility of holding a technical meeting in addition to the informal hearing on this rulemaking. Mr. Cowan indicated that this was acceptable to himself and his clients.

Richard Lemen