

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

From: JoeMNelson@aol.com
Sent: Tuesday, March 29, 2011 10:40 AM
To: NIOSH Docket Office (CDC)
Subject: Docket #221
Attachments: NIOSH Letter Docket #221.pdf

To whom it may concern,

Please review the attached letter regarding docket #221 referencing 42 CFR Part 84. Thank you

Joe Nelson

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NIOSH Mailstop: C-34
Robert A. Taft Laboratory
4676 Columbia Parkway
Cincinnati, OH 45226
Re: Docket #221

March 28, 2011

To whom it may concern,

I am writing today to express my viewpoint on the upcoming review of 42 CFR Part 84 that provides NIOSH with test and approval criteria for self-contained breathing apparatus (SCBA) manufactured, sold, or distributed in North America. Under the current standards, NIOSH is limited in its' scope of testing "entire SCBA ensembles" including the cylinder as part of this ensemble. This inclusion of the cylinder as part of the ensemble is unwarranted and outdated to say the least. Since the United States Department of Transportation (DOT) has exclusive jurisdiction over the standards, testing, retesting, handling, and transportation of compressed gas cylinders in the United States, they should be the sole authority on cylinders that can be used in SCBA. In fact, NIOSH requires that an "ensemble" being submitted for testing must have a "DOT APPROVED" cylinder as part of the approval process which in itself proves redundancy. This outdated "ensemble" approach to the approval process has many negative impacts that should be seriously considered in this re-evaluation of 42 CFR Part 84.

As a 45 year veteran of the United States Fire Service, serving in various ranks within the department, including 19 years as the chief of the department, gives me valuable insight into this problem and the urgent need to resolve it. I am not only speaking for myself, but for thousands of other Fire Chiefs, both active and retired that have had to deal with this issue for years. This problem has many facets and each need to be considered in your evaluation. I will try to give you some samples of the dilemma facing the modern day Fire Chief.

- 1) The current "ensemble" approach forces the owner of an SCBA to purchase replacement/spare cylinders from the manufacturer of the SCBA, knowing that NO SCBA MANUFACTURER makes their own cylinders, but purchases them through one of the cylinder manufacturers. Then they mark these cylinders up with an astronomical profit margin and gouge the customer.
- 2) After submitting this cylinder as part of their "ensemble" adds absolutely no tangible value to the cylinder and it doesn't increase their cost of the cylinder.
- 3) Most of the SCBA manufacturers "shop" for the lowest cost cylinder to use in their SCBA to increase their profit margin on the SCBA and spare cylinder sales. Often this leads to the purchaser buying an inferior product at an inflated price.

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- 4) These overpriced cylinders often lead to departments not being able to sustain adequate levels of spare or current cylinders in their inventories.
- 5) When replacement cylinders are purchased through the SCBA manufacturers, they include a new cylinder valve. The old cylinder valve can easily be refurbished and installed on a replacement cylinder if the end user could purchase the cylinder only from an approved DOT cylinder manufacturer. This approach saves precious resources and certainly is friendlier to the environment.
- 6) The current president and administration has pledge to review and revise the duplication of federal standards that overburden the economy and cause conflicts. The current 42CFR Part 84 would be a good beginning, whereas we have two federal agencies determining the suitability of a compressed gas cylinder being used in a SCBA.
- 7) The time to make a change is now considering the current financial strains on the economy, and all local, state, and federal departments. Decreased tax collections have led to deep financial cuts in the fire department budgets. We can see on a routine basis the layoffs of firefighters and the implementation of roving "brownouts" of fire stations (fire stations closed for predetermined shifts) due to the lack of funding. The implementation of docket #221 would free up millions of precious dollars that could be used to support firefighter's salaries and benefits.

The above mentioned reasons for a change in this standard strictly dealt with the financial end of the reasons for change. Now we must look at the tactical reasons for change in this standard.

- 1) National Fire Protection Association standards as well as most state O.S.H.A. standards require the use of an N.F.P.A. and N.I.O.S.H. approved SCBA. In fact N.F.P.A. requires a SCBA to be N.I.O.S.H. certified prior to being tested to the more rigorous N.F.P.A. standards for use by firefighters and the unique circumstances of their working environment.
- 2) The use of any other cylinder in a SCBA other than the one provided by the manufacturer of that SCBA is a technical violation of the N.I.O.S.H. standard thereby voiding the N.I.O.S.H. approval. Ergo, this violation would automatically void the N.F.P.A. certification of that device. This could lead to liability concerns for the municipality and/or the fire ground commander that authorized the use of an "unapproved" cylinder if there were an accident of any sort.
- 3) We must learn our lessons from prior incidents in our modern day history. The events of September 11, 2001 in New York City, as well as the incidents at the Pentagon and Oklahoma City show that these catastrophic events require multi-jurisdictional emergency response in order to save lives and control the incident.

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- 4) More often than not, these incidents place great strains on the need for respiratory protection. In most cases, the responding emergency service workers do not use the same make, model, or brand of SCBA. If the initial responders start running low on replacement cylinders and the cylinders can't be replenished in a timely fashion would mean that we would have inadequate respiratory protection for the first responders. The on scene commander would be placed in the unenviable position of choosing whether to have the first responders go without SCBA, or using an "unapproved" SCBA because they decided to use another department's replacement cylinders.
- 5) FEMA has spent billions of taxpayer dollars in training and equipping the USAR teams throughout the United States to provide a strike force to handle any and all types of natural disasters, mass causality incidents, terror attacks, attacks caused by weapons of mass destruction, etc. Again, due to the high demands of respirator protection in most of these incidents, there is a real possibility that sufficient fresh air cylinders would be unavailable from their own equipment resources.

There are many other reasons that I could list to justify the much needed revision to this standard, but I feel that I have made my point both from a financial and tactical standpoint in this document. As long as a cylinder manufacturer can validate the volume of air contained in a cylinder, it's operating pressure, and passes the stringent DOT standards, these cylinders should be able to be used in any SCBA as long as the cylinder didn't change the form, fit, or function of that SCBA.

In my opinion, the failure to change an outdated, redundant federal regulation could only be justified in one word. That word is "protectionism", to allow SCBA manufacturer's to maintain overly zealous profit margins at the expense of the safety and well-being of the first responder. Thank you for your time and consideration in this matter.

Sincerely,

Joseph M. Nelson

Fire Chief Joseph M. Nelson (ret.)

Bucks County, PA Station 53