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December 18, 1987

The Honorable Otis R. Bowen, M.D.
Secretary
The Department of Health and Human Services
Room 615F
Hubert H. Humphrey Building
Washington, DC 20201

Dear Otis:

It has recently come to my attention that the National Institute for Occupational Safety and Health (NIOSH) has proposed new regulations to modify the process by which respirators are certified.

Having reviewed 42 CFR 84, as released in the August 27th Federal Register, I am concerned about three major factors of the proposal.

First, I am troubled that NIOSH is treating this proposed change in regulations as a "minor rulemaking" -- defined by Executive Order 12291 as limited to an impact of \$100,000,000. The manufacturers of the respirators believe that this change will cost them up to \$700,000,000 and that many manufacturers will end up out of business due to the provision.

Second, the proposed regulations call for self-testing and workplace testing and for re-certification -- but do not include, in any section, the protocols to use to implement such testing. This uncertainty, at the very least, constitutes a denial of due process in the "notice and comment" stage of administrative rulemaking; and at the very most could result in an even costlier impact than the industry is now predicting.

Finally, both the industry and the unions, including the AFL-CIO feel that self-certification and testing could result in lowered and unpredictable safety levels. I find this possibility deeply troubling.

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On the basis of these concerns, and the impact I know this proposal will have on worker safety and the respirator industry, I urge you to have this proposal withdrawn. Surely there must be an alternative to such a troubling situation.

I look forward to hearing from you on this matter.

Sincerely,


John H. Chafee
United States Senator

JHC/tlf