

APPENDIX A TO PREAMBLE—COMPARISON OF FINAL RULE TO PROPOSED RULE—Continued

Proposed section	Final section	Change from proposal to final
84.200	84.200	No change from proposal.
84.201	84.201	No change from proposal.
84.202	84.202	No change from proposal.
84.203	84.203	No change from proposal.
84.204	84.204	No change from proposal.
84.205	84.205	No change from proposal.
84.206	84.206	No change from proposal.
84.207	84.207	No change from proposal.
84.250	84.250	No change from proposal.
84.251	84.251	No change from proposal.
84.252	84.252	No change from proposal.
84.253	84.253	No change from proposal.
84.254	84.254	No change from proposal.
84.255	84.255	No change from proposal.
84.256	84.256	No change from proposal.
84.257	84.257	No change from proposal.
84.258	84.258	No change from proposal.

Subpart KK (Dust, Fume, and Mist; Pesticide; Paint Spray; Powered Air-Purifying High Efficiency Respirators and Combination Gas Masks) has been added to the final rule to allow needed applications for extensions of approvals for dust/fume/mist respirators previously approved under 30 CFR Part 11. This subpart also includes the requirements for powered air-purifying respirators.

- 84.1100 Scope and effective dates.
- 84.1101 Definitions.
- 84.1102 Examination, inspection and testing of complete respirator assemblies; fees.
- 84.1103 Approval labels and markings; approval of contents; use.
- 84.1130 Respirators; description.
- 84.1131 Respirators; required components.
- 84.1132 Breathing tubes; minimum requirements.
- 84.1133 Harnesses; installation and construction; minimum requirements.
- 84.1134 Respirator containers; minimum requirements.
- 84.1135 Half-mask facepieces, full facepieces, hoods, helmets, and mouthpieces; fit; minimum requirements.
- 84.1136 Facepieces, hoods, and helmets; eyepieces; minimum requirements.
- 84.1137 Inhalation and exhalation valves; minimum requirements.
- 84.1138 Head harnesses; minimum requirements.
- 84.1139 Air velocity and noise levels; hoods and helmets; minimum requirements.
- 84.1140 Dust, fume, and mist respirators; performance requirements; general.
- 84.1141 Isoamyl acetate tightness test; dust, fume, and mist respirators designed for respiratory protection against fumes of various metals having an air contamination level not less than 0.05 milligram per cubic meter; minimum requirements.
- 84.1142 Isoamyl acetate tightness test; respirators designed for respiratory protection against dusts, fumes, and mists having an air contamination level less than 0.05 milligram per cubic meter, or against radionuclides; minimum requirements.

- 84.1143 Dust, fume, and mist air-purifying filter tests; performance requirements; general.
- 84.1144 Silica dust test for dust, fume, and mist respirators; single-use or reusable filters; minimum requirements.
- 84.1145 Silica dust test; non-powered single-use dust respirators; minimum requirements.
- 84.1146 Lead fume test for dust, fume, and mist respirators; minimum requirements.
- 84.1147 Silica mist test for dust, fume, and mist respirators; minimum requirements.
- 84.1148 Tests for respirators designed for respiratory protection against more than one type of dispersoid; minimum requirements.
- 84.1149 Airflow resistance tests; all dust, fume, and mist respirators; minimum requirements.
- 84.1150 Exhalation valve leakage test; minimum requirements.
- 84.1151 DOP filter test; respirators designed as respiratory protection against dusts, fumes, and mists having an air contamination level less than 0.05 milligram per cubic meter and against radionuclides; minimum requirements.
- 84.1152 Silica dust loading test; respirators designed as protection against dusts, fumes, and mists having an air contamination level less than 0.05 milligram per cubic meter and against radionuclides; minimum requirements.
- 84.1153 Dust, fume, mist, and smoke tests; canister bench tests; gas mask canisters containing filters; minimum requirements.
- 84.1154 Canister and cartridge requirements.
- 84.1155 Filters used with canisters and cartridges; location; placement.
- 84.1156 Pesticide respirators; performance requirements; general.
- 84.1157 Chemical cartridge respirators with particulate filters; performance requirements; general.
- 84.1158 Dust, fume, and mist tests; respirators with filters; minimum requirements; general.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 11, 49, 56, 57, 58, 70, 72, 75

RIN 1219-AA85

Respiratory Protective Devices

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule, in conjunction with the National Institute for Occupational Safety and Health (NIOSH) final rule published concurrently in this **Federal Register**, transfers to NIOSH existing Mine Safety and Health Administration (MSHA) regulations pertaining to the testing, performance, and joint MSHA-NIOSH approval of respirators under the Mine Act. MSHA retains existing provisions related to the selection, use, and maintenance of respirators for coal and metal and nonmetal mines. Under the NIOSH rule, MSHA retains joint approval responsibility for certain mining-related respiratory protective devices. MSHA's transfer of the respirator approval program to NIOSH will more accurately reflect the respective roles of the two agencies in the approval of respirators. A memorandum of understanding (MOU) between MSHA and NIOSH delineates the roles of both agencies in the respirator approval program. This MOU is published elsewhere in this separate part of the **Federal Register**. MSHA's final rule will not affect the compliance responsibilities of mine operators.

EFFECTIVE DATE: This final rule is effective on July 10, 1995. The incorporation by reference of certain

publications listed in the regulations is approved by the Director of the **Federal Register** as of July 10, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 703-235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

Until 1972, the U.S. Bureau of Mines (BOM) was solely responsible for testing and approving respirators. In 1972, BOM and NIOSH jointly published 30 CFR part 11 which replaced BOM's rules and procedures and delineated the responsibilities of the two agencies. Under these regulations, BOM evaluated respirator performance and NIOSH administered the quality control provisions. BOM also tested the intrinsic safety of electrical components of respirators intended for use in potentially explosive atmospheres in underground mines under the requirements of 30 CFR part 18.

A memorandum of understanding (MOU) between the two agencies, dated May 30, 1972, refined their respective roles. In 1973, 30 CFR part 11 was amended and NIOSH acquired primary responsibility for performance testing of respirators, although all approvals continued to be issued jointly. BOM retained its responsibility for testing the intrinsic safety of electrical components of respirators intended for use in underground gassy mines.

In 1974, the Mining Enforcement and Safety Administration (MESA), MSHA's predecessor agency, was created and BOM's responsibilities under 30 CFR were transferred to that agency. MESA continued to test the electrical components of certain respirators for intrinsic safety under 30 CFR part 18 and issue supplemental approvals permitting these components to be used in underground gassy mines.

When it was created in 1978, MSHA took over the responsibilities for respirator testing and approval which previously had been conducted by MESA. In addition, MSHA currently reviews applications for respirator approvals and has conducted some product evaluations, laboratory testing, and quality assurance product audits for certain respirators. The testing and approval activities specified by 30 CFR part 11 continue to be conducted primarily by NIOSH.

II. Discussion of Final Rule

A. General Discussion

MSHA is transferring the requirements for approval of respirators from 30 CFR part 11 to NIOSH, which

is publishing the requirements elsewhere in this separate part of the **Federal Register** as a new 42 CFR part 84. To effectuate the transfer, MSHA is publishing this final rule removing 30 CFR part 11. NIOSH also is upgrading the testing requirements for particulate filters, which improve the current approach to evaluating the effectiveness of an air-purifying respirator's filter to remove toxic particulates from the ambient air. The new testing requirements for particulate filters update existing provisions to be consistent with two decades of advances in respiratory protection technology.

Under 42 CFR part 84, MSHA and NIOSH will continue to review and jointly approve respirators for mine rescue and other mine emergencies and their associated service-life plans and users manuals. These respirators include devices such as filter self-rescuers (FSR), self-contained self-rescuers (SCSR), mine rescue apparatus (long duration, closed and open circuit devices), and other self-contained breathing apparatus (SCBA). Retention of joint approval under the NIOSH final rule preserves MSHA's role in the approval of certain respirators whose use in mines is an important part of safeguarding the health and safety of miners. In addition, MSHA will continue to test the intrinsic safety of electrical components of respirators to be used in underground coal mines and underground gassy metal and nonmetal mines and issue a separate MSHA approval under 30 CFR part 18 for such respirator components.

To facilitate implementing this rule, NIOSH and MSHA have developed a new MOU which delineates the roles of both agencies in the respirator approval program. For example, the MOU establishes procedures to be followed by both agencies for joint approval of respirators used for mine rescue and other mine emergencies; it establishes guidelines for consultation and exchange of information between MSHA and NIOSH with respect to issues dealing with respirator approval and related matters; and it provides that NIOSH and MSHA notify each other immediately of field complaints and identified deficiencies concerning approved respirators.

MSHA and NIOSH have coordinated their rulemaking activities to ensure that the level of protection provided miners and other affected workers by the existing standards will not be lessened. In particular, all technical data and commenter information have been shared by the respective agencies.

B. Comments to MSHA's Proposed Rule

MSHA received few comments from the mining community and the public. Most comments were addressed to NIOSH. Generally, comments to MSHA supported the transfer of the respirator approval program to NIOSH. One commenter explained that the transfer and redesignation would enhance accountability for regulatory actions, improve and expedite the approval process, and consolidate responsibility in one agency. This same commenter requested an opportunity to participate in the development of the MOU to ensure that MSHA retains a strong role with regard to mine-specific respiratory devices because of MSHA's expertise in the field. A commenter to NIOSH also expressed concern that MSHA's role would be diminished under the transfer and asked to participate in the development of the MOU.

MSHA and NIOSH have concluded that the MOU is most appropriately developed by the two agencies because it is an administrative tool to delineate their respective roles. The MOU does not impose any additional obligations on the mining industry. Recognizing the concerns of commenters, however, the MOU carefully details how MSHA will continue to have a strong role with respect to respiratory protective devices used in the mining industry.

A commenter requested that MSHA incorporate by reference the most recent American National Standards Institute (ANSI) standard for respiratory protective devices, "ANSI Z88.2-1992," in the recodification of §§ 11.2-1 and 11.4 which incorporate by reference ANSI Z88.2-1969 "Practices for Respiratory Protection." ANSI Z88.2 addresses respiratory protection programs which include the selection, fit, use, and maintenance of respirators. The 1992 ANSI standard differs substantively from the 1969 ANSI standard. Incorporating by reference the 1992 ANSI standard is beyond the scope of this rulemaking which addresses the administrative transfer of the respirator approval program to NIOSH and, as discussed below, the nonsubstantive recodification of §§ 11.2-1 and 11.4. Although ANSI Z88.2-1969 is retained in this final rule, MSHA currently is addressing respiratory protection programs in its air quality rulemaking.

C. Other Sections Affected

The final rule removes 30 CFR part 11; however, it retains those provisions which relate to the selection, use, and maintenance of respirators. Section 11.2(a) requires the use of approved respirators and the maintenance of such

respirators in an approved condition. As discussed previously, §§ 11.2-1 and 11.4 require the selection, fitting, use, and maintenance of respirators in accordance with ANSI Z88.2. Because these provisions are use-related, as opposed to approval-related, MSHA addresses them in separate standards for the use of respirators. MSHA had proposed that these provisions be recodified in 30 CFR parts 70 and 71. Instead, MSHA is recodifying these provisions in 30 CFR part 72, "Health Standards for Coal Mines" to ease understanding and eliminate duplication. This final rule does not change the requirements for metal and nonmetal mines in 30 CFR 56/57.5005 which already reference ANSI Z88.2-1969.

This final rule makes conforming, nonsubstantive editorial and nomenclature revisions to standards in title 30 that reference the use of respirators approved under 30 CFR part 11 to reflect the transfer of those standards to 42 CFR part 84. These revisions do not change the compliance responsibility of mine operators who continue to be required to provide miners with "approved" respirators.

D. Grandfathering of Respirators Approved Under 30 CFR Part 11

Approvals issued under 30 CFR part 11 for all respirators, except particulate filter respirators, will be unaffected by 42 CFR part 84. For 3 years from July 10, 1995, NIOSH will continue to authorize manufacturers to sell, as MSHA-NIOSH "approved" devices, particulate filter respirators which had been approved under 30 CFR part 11. This will allow adequate time for manufacturers to convert to production of respirators meeting the new particulate filter requirements of 42 CFR part 84. Until supplies of particulate filter respirators which had been approved under 30 CFR part 11 are depleted, MSHA will allow their use as "approved" devices.

As discussed in the preamble to 42 CFR part 84, applications for approval or extensions of approval received prior to the effective date of 42 CFR part 84 will be processed under the requirements of 30 CFR part 11. Applications for approval or extensions of approval received on or after the effective date of 42 CFR part 84 will be processed under the provisions of 42 CFR part 84. For additional information on the transition from 30 CFR part 11 to 42 CFR part 84, see the NIOSH final rule published elsewhere in this separate part of the **Federal Register**.

The new 42 CFR part 84 does not include the provisions of 30 CFR 11.2(b)

which allowed gas masks approved under the former BOM Schedule 14F (dated April 23, 1955) to continue to be accepted as "approved" devices for use in hazardous atmospheres. MSHA's experience indicates that few of these 14F gas masks currently are sold or used. As indicated in the preamble to 42 CFR part 84, published elsewhere in this separate part of the **Federal Register**, the approval records on these BOM-approved respirators no longer exist and, therefore, NIOSH has no way of monitoring their production to ensure that they continue to meet the approved design. Thus, the removal of the provisions in 30 CFR 11.2(b) removes the authority to continue marketing these respirators as "approved" devices.

III. Executive Order 12866 and Regulatory Flexibility Act

This is not a significant rule under Executive Order 12866. In addition, this rule does not have a significant economic impact on a substantial number of small entities as it only removes the regulations in 30 CFR part 11; retains certain responsibilities for the use of respirators in mining; and makes nonsubstantive revisions. The Agency, therefore, has not prepared a regulatory flexibility analysis.

IV. Paperwork Reduction Act

The recordkeeping and reporting requirements in 30 CFR part 11 have been transferred to 42 CFR part 84.

List of Subjects

30 CFR Part 11

Administrative practice and procedure, Mine safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

30 CFR Parts 49, 56, 57, 58, 70, and 75

Mine safety and health, Personal protective equipment, Reporting and recordkeeping requirements, Respirators.

30 CFR Part 72

Coal, Incorporation by reference, Mine safety and health, Personal protective equipment, Respirators.

For the reasons set out in the preamble and under the authority of 30 U.S.C. 957, 30 CFR chapter I is amended as follows.

§§ 11.2-1 and 11.4 [Redesignated as §72.710]

1. Sections 11.2-1 and 11.4 are redesignated as §72.710, paragraphs (a) and (b) respectively, in subpart E of part 72.

PART 11—[REMOVED]

2. Part 11 is removed.

PART 49—[AMENDED]

3. The authority citation for part 49 is revised to read as follows:

Authority: 30 U.S.C. 811, 825(e), 957.

4. Section 49.6 is amended by revising paragraph (a)(1) to read as follows:

§ 49.6 Equipment and maintenance requirements.

(a) * * *

(1) Twelve self-contained oxygen breathing apparatus, each with a minimum of 2 hours capacity (approved by MSHA and NIOSH under 42 CFR part 84, subpart H), and any necessary equipment for testing such breathing apparatus;

* * * * *

PART 56—[AMENDED]

5. The authority citation for part 56 is revised to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

6. Section 56.5005 is amended by revising paragraph (a) to read as follows:

§ 56.5005 Control of exposure to airborne contaminants.

* * * * *

(a) Respirators approved by NIOSH under 42 CFR part 84 which are applicable and suitable for the purpose intended shall be furnished and miners shall use the protective equipment in accordance with training and instruction.

* * * * *

PART 57—[AMENDED]

7. The authority citation for part 57 is revised to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

8. Section 57.5005 is amended by revising paragraph (a) to read as follows:

§ 57.5005 Control of exposure to airborne contaminants.

* * * * *

(a) Respirators approved by NIOSH under 42 CFR part 84 which are applicable and suitable for the purpose intended shall be furnished and miners shall use the protective equipment in accordance with training and instruction.

* * * * *

9. Section 57.5044 is revised to read as follows:

§ 57.5044 Respirators.

In environments exceeding 1.0 WL, miners shall wear respirators approved

by NIOSH for radon daughters prior to July 10, 1995 or under the equivalent section of 42 CFR part 84 and such respirator use shall be in compliance with § 57.5005.

10. Section 57.15030 is revised to read as follows:

§ 57.15030 Provision and maintenance of self-rescue devices.

A 1-hour self-rescue device approved by MSHA and NIOSH under 42 CFR part 84 shall be made available by the operator to all personnel underground. Each operator shall maintain self-rescue devices in good condition.

11. Section 57.22315 is amended by revising the second sentence to read as follows:

§ 57.22315 Self-contained breathing apparatus (V-A mines).

* * * Such apparatus shall be approved by MSHA and NIOSH under 42 CFR part 84 and shall be maintained in accordance with manufacturers' specifications. * * *

PART 58—[AMENDED]

12. The authority citation for part 58 is revised to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

13. Section 58.610 is amended by revising paragraph (a) to read as follows:

§ 58.610 Abrasive blasting.

(a) *Surface and underground mines.* When an abrasive blasting operation is performed, all exposed miners shall use in accordance with 30 CFR 56.5005 or 57.5005 respirators approved for abrasive blasting by NIOSH under 42 CFR part 84, or the operation shall be performed in a totally enclosed device with the miner outside the device.

* * * * *

PART 70—[AMENDED]

14. The authority citation for part 70 is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957, 961.

15. Section 70.300 is revised to read as follows:

§ 70.300 Respiratory equipment; respirable dust.

Respiratory equipment approved by NIOSH under 42 CFR part 84 shall be made available to all persons whenever exposed to concentrations of respirable dust in excess of the levels required to be maintained under this part. Use of respirators shall not be substituted for environmental control measures in the active workings. Each operator shall maintain a supply of respiratory equipment adequate to deal with

occurrences of concentrations of respirable dust in the mine atmosphere in excess of the levels required to be maintained under this part.

§ 70.300-1 [Removed]

16. Section 70.300-1 is removed.
17. Section 70.305 is revised to read as follows:

§ 70.305 Respiratory equipment; gas, dusts, fumes, or mists.

Respiratory equipment approved by NIOSH under 42 CFR part 84 shall be provided to persons exposed for short periods to inhalation hazards from gas, dusts, fumes, or mist. When the exposure is for prolonged periods, other measures to protect such persons or to reduce the hazard shall be taken.

§ 70.305-1 [Removed]

18. Section 70.305-1 is removed.

PART 72—[AMENDED]

19. The authority citation for part 72 is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957, 961.

20. Section 72.610 is amended by revising paragraph (a) to read as follows:

§ 72.610 Abrasive blasting.

(a) *Surface and underground mines.* When an abrasive blasting operation is performed, all exposed miners shall properly use respirators approved for abrasive blasting by NIOSH under 42 CFR part 84, or the operation shall be performed in a totally enclosed device with the miner outside the device.

* * * * *

21. Newly redesignated § 72.710 is revised to read as follows:

§ 72.710 Selection, fit, use, and maintenance of approved respirators.

In order to ensure the maximum amount of respiratory protection, approved respirators shall be selected, fitted, used, and maintained in accordance with the provisions of the American National Standards Institute's "Practices for Respiratory Protection ANSI Z88.2-1969," which is hereby incorporated by reference. This publication may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018, and may be inspected at any Coal Mine Health and Safety district and subdistrict office, or at MSHA's Office of Standards, 4015 Wilson Boulevard, Arlington, VA, and at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

PART 75—[AMENDED]

22. The authority citation for part 75 is revised to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

23. Section 75.2 is amended by adding the following definitions in alphabetical order to read as follows:

§ 75.2 Definitions.

* * * * *

Filter Self-Rescuer (FSR). A type of gas mask approved by MSHA and NIOSH under 42 CFR part 84 for escape only from underground mines and which provides at least 1 hour of protection against carbon monoxide.

* * * * *

Self-Contained Self-Rescuer (SCSR). A type of closed-circuit, self-contained breathing apparatus approved by MSHA and NIOSH under 42 CFR part 84 for escape only from underground mines.

* * * * *

24. Section 75.1714 is amended by revising paragraph (a) to read as follows:

§ 75.1714 Availability of approved self-rescue devices; instruction in use and location.

(a) Each operator shall make available to each miner who goes underground, and to visitors authorized to enter the mine by the operator, an approved self-rescue device or devices which is adequate to protect such person for 1 hour or longer.

* * * * *

25. Section 75.1714-1 is revised to read as follows:

§ 75.1714-1 Approved self-rescue devices.

The requirements of § 75.1714 shall be met by making available to each person referred to in that section a self-rescue device or devices, which have been approved by MSHA and NIOSH under 42 CFR part 84, as follows:

- (a) A 1-hour SCSR;
- (b) A SCSR of not less than 10 minutes and a 1-hour canister; or
- (c) Any other self-contained breathing apparatus which provides protection for a period of 1 hour or longer and which is approved for use by MSHA as a self-rescue device when used and maintained as prescribed by MSHA.

26. Section 75.1714-2 is amended by revising the introductory text of paragraph (e), the introductory text of paragraph (e)(1), paragraphs (e)(1)(v), (e)(2), (e)(3), (f), and the introductory text of paragraph (g) to read as follows:

§ 75.1714-2 Self-rescue devices; use and location requirements.

* * * * *

(e) A mine operator may apply to the District Manager under § 75.1101-23 for

permission to place the SCSR more than 25 feet away.

(1) The District Manager shall consider the following factors in deciding whether to permit an operator to place a SCSR more than 25 feet from a miner:

* * * * *

(v) Proposed location of SCSRs,

* * * * *

(2) Such application shall not be approved by the District Manager unless it provides that, while underground, all miners whose SCSR is more than 25 feet away shall have a FSR approved by MSHA and NIOSH under 42 CFR part 84 sufficient to enable each miner to get to a SCSR.

(3) An operator may not obtain permission under paragraph (e) of this section to place SCSRs more than 25 feet away from miners on trips into and out of the mine.

(f) If a SCSR is not carried out of the mine at the end of a miner's shift, the place of storage must be approved by the District Manager, a sign with the word "SELF-RESCUER" or "SELF-RESCUERS" shall be conspicuously posted at each storage place, and direction signs shall be posted leading to each storage place.

(g) Where devices of not less than 10 minutes and 1 hour are made available in accordance with § 75.1714-1(b), such devices shall be used and located as follows:

* * * * *

27. Section 75.1714-3 is amended by revising paragraphs (c) and (d) to read as follows:

§ 75.1714-3 Self-rescue devices; inspection, testing, maintenance, repair, and recordkeeping.

* * * * *

(c) All FSRs approved by MSHA and NIOSH under 42 CFR part 84, except

devices using vacuum containers as the only method of sealing, shall be tested at intervals not exceeding 90 days by weighing each device on a scale or balance accurate to within +1 gram. A device that weighs more than 10 grams over its original weight shall be removed from service.

(d) All SCSRs approved by MSHA and NIOSH under 42 CFR part 84 shall be tested in accordance with instructions approved by MSHA and NIOSH. Any device which does not meet the specified test requirements shall be removed from service.

* * * * *

Dated: May 24, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

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