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**Federal Register**

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**Part III**

**Department of Labor**

**Mine Safety and Health Administration**

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**30 CFR Parts 11, 70, and 71  
Respiratory Protective Devices; Proposed  
Rule**

## DEPARTMENT OF LABOR

## Mine Safety and Health Administration

## 30 CFR Parts 11, 70, and 71

## Respiratory Protective Devices

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

**SUMMARY:** This proposal would remove existing rules for the joint approval of respiratory protective equipment by the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services. The existing rules would be replaced by revised approval procedures and technical requirements for respirators being proposed by NIOSH in a separate rulemaking. The existing rules, which are currently administered jointly by NIOSH and MSHA, would be replaced by new rules, which will be administered solely by NIOSH, with joint certification and approval by NIOSH and MSHA of certain specified mining-related devices. Removal of the existing rules would be contingent upon the NIOSH rulemaking becoming final. Existing provisions for the selection, use, and maintenance of respirators at coal mines would be retained and recodified. This notice should be read in conjunction with the proposed rule published by NIOSH elsewhere in today's Federal Register.

**DATES:** Written comments must be submitted on or before July 25, 1994.

**ADDRESSES:** Send written comments to the Mine Safety and Health Administration (MSHA), Office of Standards, Regulations, and Variances, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

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

## SUPPLEMENTARY INFORMATION:

## I. Background

The existing rules and procedures in 30 CFR part 11 for approval of respiratory protective devices, or respirators, evolved from rules and procedures developed by the U.S. Department of the Interior, Bureau of Mines. Until 1972, the Bureau of Mines was solely responsible for testing and approving respirators. In 1972, the Bureau of Mines and NIOSH jointly published 30 CFR part 11. These regulations replaced the Bureau of Mines' rules and procedures, and

delineated the responsibilities of the two agencies. Under these regulations, the Bureau of Mines evaluated respirator performance, and NIOSH was responsible for administration of the quality control provisions. The Bureau of Mines also tested the safety of electrical components of respirators intended for use in potentially explosive atmospheres in underground gassy mines (intrinsic safety) under the requirements of 30 CFR part 18.

A Memorandum of Understanding between the two agencies of May 30, 1972, refined their respective roles and in 1973, part 11 was amended. Under this arrangement, NIOSH undertook primary responsibility for performance testing of respirators. Although all approvals continued to be issued jointly, the Bureau of Mines principally retained only the responsibility to test for intrinsic safety the small number of respirators with electrical components intended for use in gassy underground mines.

In 1974, the Mining Enforcement and Safety Administration, MSHA's predecessor agency, was created and the responsibilities of the Bureau of Mines under part 11 were transferred to that agency. Since it was created in 1978, MSHA has continued to test electrical components of certain respirators for intrinsic safety and has issued separate approvals for respirators meeting the requirements of 30 CFR part 18. While MSHA currently reviews applications for respirator approvals and has conducted some product evaluations, laboratory testing, quality assurance, and product audit for certain respirators, the testing and certification activities specified by part 11 are primarily conducted by NIOSH.

## II. Discussion of Proposal

Elsewhere in today's Federal Register, NIOSH is proposing in a separate rulemaking to transfer requirements for the approval of respiratory protective equipment to 42 CFR part 84, and upgrade the testing requirements for particulate filters. Under the NIOSH proposal, MSHA and NIOSH would continue to review and approve respirators jointly for mine emergencies and mine rescue, and their associated service-life plans and users' manuals. Among the types of devices which would continue to be subject to joint approval are self-contained, self-rescue devices. Retention of joint approval under the NIOSH proposal would preserve MSHA's role in the certification of certain respirators whose unique use in mining is an important part of safeguarding the health and safety of miners. In addition, MSHA

would continue to test electrical components of certain respirators to be used in mines and issue a separate MSHA approval under 30 CFR part 18 for such respirators.

In implementing the proposed regulation, NIOSH and MSHA will develop a new Memorandum of Understanding (MOU) which will reflect the roles of both agencies in the respirator approval program. For example, the MOU will provide that NIOSH will notify MSHA immediately of field complaints and identified deficiencies concerning approved respirators.

MSHA's rulemaking would remove part 11 from title 30. Removal of part 11 would, however, be contingent on publication of the NIOSH proposal as a final rule. All existing MSHA respirator use provisions in part 11 would be retained and recodified in 30 CFR parts 70 and 71.

Commenters responding to the separate NIOSH proposal to revise the particulate filter provisions should direct those comments to NIOSH, to be included in the appropriate rulemaking record. The issue of MSHA's role in the approval of respirators will also be the subject of the NIOSH proposal and, therefore, commenters should direct responses on this issue to both MSHA and NIOSH. Both rulemaking activities will be coordinated to ensure that the level of protection afforded to miners and other affected workers is maintained at all times during the transition period. All technical data and commenter information will be shared by the respective agencies.

## III. Other Sections Affected

After the title 42 rulemaking is completed and part 11 is removed, MSHA anticipates that conforming nomenclature revisions would be needed in standards in title 30 that reference the use of approved respirators.

These conforming nomenclature revisions may require that references be made to NIOSH, or that references to MSHA or the Secretary of Labor be deleted. Nothing in the anticipated nomenclature revisions would change the compliance responsibility of mine operators, who would continue to be required to provide miners with "approved" respirators.

## IV. Executive Order 12866 and Regulatory Flexibility Act

This is not a significant rule under Executive Order 12866. In addition, this rule would not have a significant economic impact on a substantial number of small entities. Therefore, a

regulatory flexibility analysis is not been prepared.

#### V. Paperwork Reduction Act

The recordkeeping and reporting requirements in 30 CFR part 11 would be transferred to 42 CFR part 84 under NIOSH. Comments on these requirements should be addressed directly to NIOSH.

#### List of Subjects in 30 CFR Parts 11, 70, and 71

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

Dated: May 11, 1994.

#### J. Davitt McAteer,

*Assistant Secretary for Mine Safety and Health.*

Accordingly, under the authority of 30 U.S.C. 957, it is proposed to amend subchapter B and subchapter O, chapter I, title 30 of the Code of Federal Regulations as follows:

*[§§ 11.2-1 and 11.4 Redesignated as §§ 70.310 and 71.710]*

1. Sections 11.2-1 and 11.4 are redesignated as §§ 70.310 in subpart D of part 70 and 71.710 in subpart H of part 71, respectively.

#### PART 11—[REMOVED]

1. Part 11 is removed.

#### PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Newly redesignated § 70.310 is revised to read as follows:

#### § 70.310 Selection, fit, use, and maintenance of approved respirators.

In order to assure 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 ANSI Z88.2-1969, "Practices for Respiratory Protection," 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 71—[AMENDED]

1. The authority citation for part 71 is revised to read as follows:

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

2. Newly redesignated § 71.710 is revised to read as follows:

#### § 71.710 Selection, fit, use, and maintenance of approved respirators.

In order to assure 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 ANSI Z88.2-1969, "Practices for Respiratory Protection," 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.

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