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

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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.

Å 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 selfrescuers (FSR), self-contained selfrescuers (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