

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;

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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.

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(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.

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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.

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(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.

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9. Section 57.5044 is revised to read as follows:

§ 57.5044 Respirators.

In environments exceeding 1.0 WL, miners shall wear respirators approved