

**DEPARTMENT OF LABOR****Mine Safety and Health Administration****DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Disease Control and Prevention****Memorandum of Understanding Between the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health Regarding the Respirator Approval Program**

**AGENCY:** Mine Safety and Health Administration, Labor and National Institute for Occupational Safety and Health, CDC, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice is to advise the public of the issuance of a memorandum of understanding (MOU) between the Mine Safety and Health Administration (MSHA), U.S. Department of Labor, and the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control, U.S. Department of Health and Human Services. This MOU delineates the roles of both agencies in a new respirator approval program under the provisions of 42 CFR part 84. Concurrently, MSHA is removing 30 CFR part 11 which contained the provisions of the existing respirator approval program. Both the MSHA and NIOSH final rules are published elsewhere in this separate part of the **Federal Register**.

**DATES:** This MOU will become operative on July 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Peter M. Turcic, Chief, MSHA Approval and Certification Center, 304-547-2029, or Richard W. Metzler, Chief, Certification and Quality Assurance Branch, NIOSH Division of Safety Research, 304-285-5907.

**SUPPLEMENTARY INFORMATION:** On December 10, 1984, MSHA and NIOSH entered into an agreement for consultation, coordination, and cooperation in effectively and efficiently carrying out their respective safety and health functions under the Federal Mine Safety and Health Act of 1977. This MOU supplements the 1984 agreement and, to the extent inconsistent with that agreement, supersedes it. This MOU is being published concurrently with the MSHA and NIOSH final rules addressing the approval of respirators to aid in understanding these rulemakings.

Dated: May 24, 1995.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.*

Dated: May 24, 1995.

**Linda Rosenstock,**

*Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.*

Memorandum of Understanding Between the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health

**I. Introduction****A. Background**

The Federal Mine Safety and Health Act of 1977 (Mine Act) provides for the protection of the health and safety of our Nation's miners. In furtherance of the goals of the Mine Act, the Secretaries of Health and Human Services (HHS) and Labor coordinate their expertise and activities in the field of mine health and safety. This Memorandum of Understanding (MOU) sets out the procedures to be followed by the Secretaries in coordinating their responsibilities with respect to the joint approval of respirators.

On May 4, 1978, the National Institute for Occupational Safety and Health (NIOSH) of the Department of Health, Education and Welfare, predecessor to HHS, entered into an Agreement with the Mine Safety and Health Administration (MSHA), Department of Labor, to ensure full and effective use of the capabilities and resources of NIOSH and MSHA to assist in planning research and to provide the maximum utilization of technological developments resulting from mine health and safety research. That Agreement was revised on December 10, 1984. This Memorandum of Understanding (MOU) supplements the above mentioned Agreements and, to the extent inconsistent with those Agreements, supersedes them.

**B. Purpose**

The purpose of this MOU is to establish procedures to be followed by MSHA and NIOSH in exercising their respective responsibilities for joint approval of certain respirators under the provisions of 42 CFR Part 84. It also establishes guidelines for interaction between MSHA and NIOSH with respect to issues dealing with respirator certification and related matters. These issues include but are not limited to: certification, quality assurance, and field complaints.

**C. Authority**

This MOU is consistent with, and is entered into under the authority of, the Mine Act.

**II. Joint Approval of Respirators Used for Mine Rescue and Other Mine Emergencies****A. Respirators Subject to Joint Approval**

1. NIOSH will conduct the examinations, inspections and tests of respirators submitted for certification pursuant to the requirements of 42 CFR Part 84.

2. Except for those respirators used for mine rescue and other mine emergencies,

NIOSH is solely responsible to evaluate and certify respirators under the provisions of 42 CFR part 84.

3. MSHA and NIOSH will jointly evaluate respirators used for mine rescue and other mine emergencies and subsequently issue a joint certification of approval for such respirators.

4. Respirators used for mine rescue and other mine emergencies include filter self-rescuers (FSRS), self-contained self-rescuers (SCSR), mine rescue apparatus (long duration, closed and open circuit devices), and other self-contained breathing apparatus (SCBA). In the event a new class of respirator is submitted for certification, NIOSH will consult with MSHA concerning the potential for mine use and the need for joint approval.

5. In the event of disagreement as to whether a particular class of respirator is used for mine rescue and other mine emergencies, MSHA will make a final determination.

**B. Preapproval Procedures**

Prior to MSHA/NIOSH joint approval of respirators used for mine rescue and other mine emergencies, the following procedures will be followed to assist in the determination of whether a candidate respirator has fulfilled the applicable requirements of 42 CFR part 84:

1. MSHA and NIOSH will provide such consultation and assistance to each other as necessary to assure the proper joint approval of respirators and fulfill the intent of 42 CFR Part 84.

2. MSHA will, by mutual agreement with NIOSH, provide subjects for NIOSH testing of jointly approved respirators in accordance with the pertinent requirements of 45 CFR Part 46 and the Human Subject Review Board.

3. As coequals in the joint approval of respirators used for mine rescue and other mine emergencies, MSHA and NIOSH will share access to all examinations, inspections, tests, evaluations and other pertinent information leading to the certification of such respirators.

4. MSHA and NIOSH will jointly evaluate the respirator service life plans and user's manuals for jointly approved respirators.

5. MSHA and NIOSH will jointly establish any limitations to be required for jointly approved respirators.

**C. Joint Approval**

1. NIOSH will conduct all examinations, inspections and tests of respirators pursuant to the requirements of 42 CFR Part 84.

2. NIOSH and MSHA will jointly determine whether a candidate respirator intended for mine rescue and other mine emergencies has fulfilled the requirements of 42 CFR Part 84. Upon such determination, NIOSH and MSHA will issue a joint respirator approval, which shall include appropriate use limitations.

3. NIOSH and MSHA shall sign the approval certificate and each Agency shall maintain timely processing procedures.

**III. Quality Assurance**

1. NIOSH and MSHA will notify each other in advance of the intent to conduct audits of respirators and/or manufacturing sites for

jointly approved respirators and will invite joint participation in such activities. Care will be taken to prevent duplication or repetition of audit activities.

2. The results of NIOSH or MSHA audits of jointly approved respirators will be shared immediately with the other Agency through established procedures.

3. Discrepancies or nonconformances identified in audits of jointly approved respirators and/or manufacturing sites for jointly approved respirators will be resolved jointly by MSHA and NIOSH.

4. NIOSH will notify MSHA of all respirator discrepancies and nonconformances identified with any respirator bearing the NIOSH certification. If MSHA determines that the respirator in question has significant mine use, MSHA will consult with NIOSH and jointly participate in resolution of mine use problems.

#### **IV. Post-Approval Complaints**

1. Reports of discrepancies or nonconformances involving jointly approved respirators will be shared immediately between the two agencies and investigations of such discrepancies and nonconformances will be jointly conducted by NIOSH and MSHA.

2. MSHA and NIOSH will jointly participate in the planning and resolution of complaints involving MSHA/NIOSH approved respirators. Such joint participation will include all activities related to product

retrofit, recalls, stop sale notices, user notices, and revocation of prior certifications.

3. MSHA and NIOSH will promptly notify each other of respirator field complaints received by either Agency. MSHA will participate with NIOSH in resolution of such complaints only if MSHA determines that the cause of the complaint or its resolution has an impact on the mining industry.

#### **V. Respirators With Electrical Components**

1. Respirators having electrical components and intended for use in mines where methane may be present must be permissible and are subject to the requirements of 30 CFR Part 18. These respirators will be approved for permissibility solely by MSHA. MSHA will independently conduct the examinations, inspections and tests of respirators submitted for certification pursuant to the requirements of 30 CFR Part 18. NIOSH will provide consultation as requested by MSHA.

2. MSHA will independently conduct audits, nonconformance investigations, and resolve nonconformances associated with the electrical components of respirators approved in accordance with 30 CFR Part 18 requirements. A report of all such audit results will be promptly provided to NIOSH by MSHA.

3. MSHA will notify NIOSH in advance of the intent to audit Part 18 respirators. Care will be taken to coordinate audit activities

and prevent duplication or unnecessary repetition of audit efforts.

#### **VI. Administration**

This MOU will be administered on behalf of MSHA by the Chief, Approval and Certification Center or by such other representative as the Assistant Secretary for Mine Safety and Health designates in writing to NIOSH.

This MOU will be administered on behalf of NIOSH by the Chief, Certification and Quality Assurance Branch or by such other representative as the Director of NIOSH designates in writing to MSHA.

#### **VII. Effective Date, Amendment and Termination**

This MOU will become operative on the effective date of 42 CFR part 84 and upon execution of this MOU by both parties. It may be modified or terminated only upon written agreement executed by both parties.

Dated: May 4, 1995.

J. Davitt McAteer,

*Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.*

Dated: May 4, 1995.

Linda Rosenstock,

*Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services.*

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