

**DEPARTMENT OF LABOR****Mine Safety and Health Administration****30 CFR Parts 6, 7, 18, 19, 20, 22, 23, 27, 33, 35, and 36****RIN 1219-AA87****Testing and Evaluation by Independent Laboratories and Non-MSHA Product Safety Standards****AGENCY:** Mine Safety and Health Administration (MSHA), Department of Labor.**ACTION:** Final rule.

**SUMMARY:** This final rule establishes alternate requirements for testing and evaluation of products that MSHA approves for use in gassy underground mines. It is being published in response to comments received as the result of a 1994 proposed rule and an October 17, 2002, revised proposed rule on the same subject. It allows manufacturers of certain products, who seek MSHA approval under Title 30 of the Code of Federal Regulations (30 CFR), the option of using an independent laboratory to perform, in whole or part, the necessary testing and evaluation for approval which MSHA would normally perform so that such products can be used in gassy mines in the United States. Testing and evaluation as used in this final rule means testing, evaluation, or both. This final rule also permits manufacturers to have their products approved based on non-MSHA product safety standards. This will occur only after MSHA has determined that such standards are equivalent to its applicable product approval requirements or can be modified to provide at least the same degree of protection as those MSHA requirements. The final rule should increase the availability of a wider variety of mining products having enhanced safety features by reducing costs and broadening the market for mining equipment.

**EFFECTIVE DATE:** This regulation is effective August 18, 2003.

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the final rule in an electronic file on computer disk. The final rule also is available on the Internet at *http://www.msha.gov/REGSINFO.HTM*.

**SUPPLEMENTARY INFORMATION:****I. Background**

From its creation by Congress in 1910, MSHA's predecessor, the Bureau of Mines, U.S. Department of the Interior, was responsible for the testing and evaluation of mining products. Under the Federal Mine Safety and Health Act of 1977 (Mine Act), MSHA is responsible for prescribing the technical design, construction, and the test requirements for certain products used in underground mines, and for testing and evaluating them for approval based on those requirements. These technical requirements are set forth in the Agency's approval regulations in 30 CFR parts 7 through 36.

MSHA's approval regulations govern the process through which manufacturers may obtain MSHA approval, certification, acceptance or evaluation of certain products for use in underground mines. Each of these separate approval actions has specific application procedures and technical requirements for testing and evaluation. MSHA currently conducts the testing and evaluation of products for a fee paid by the applicant. Following MSHA approval, manufacturers must ensure that the product continues to conform to the technical requirements tested, evaluated, and approved by MSHA.

When MSHA receives an application for approval of a product for use in underground mines, every aspect of the documentation package is reviewed to determine whether the product meets the technical requirements of the applicable provisions of 30 CFR parts 15 through 36. Each drawing and specification in the package is cross-checked against these requirements and, for some products, samples of the product or parts of the product are disassembled and examined by MSHA for conformity with the drawings and specifications. After MSHA verifies that an applicant's product complies with the design and construction requirements, MSHA then tests the product to determine whether it performs according to the approval requirements, unless the design obviates the need for testing. If the product passes the tests and meets all MSHA requirements, MSHA issues an approval for the product.

Once MSHA has approved a product, the manufacturer is authorized to place an MSHA approval marking on the product that identifies it as approved for use in underground mines. Use of the

MSHA marking obligates the manufacturer to maintain the quality of the product as approved. The MSHA marking indicates to the mining community that the product has been manufactured according to the drawings and specifications upon which the approval was based. Any proposed change to an approved product that causes it to differ from the design or construction described in the original documentation approved by MSHA must be submitted to the Agency for approval prior to implementation of the change. If MSHA approves the change, the Agency issues an extension of approval or a notice of acceptance of the modified product to the manufacturer.

In the mid-1980s, the Agency reviewed its product approval program to determine whether it could be restructured to provide improved safety to miners without increasing cost to the applicant. That review resulted in the promulgation in 1988 of 30 CFR part 7, Testing by Applicant or Third-Party, which represented MSHA's first departure from its role of front-end prototype testing of products for approval, by substituting manufacturer or third-party testing of a limited number of products for the testing that previously had been conducted by MSHA.

The objectives of the program were to permit MSHA to redirect its resources to its post-approval product audit functions, as well as to the review of technological improvements in mining products. The Agency's shift in emphasis was intended to enhance the safety of products in mines by providing the mining community a greater assurance that approved products in mines continue to be manufactured as approved, by detecting any problems in manufactured products more effectively, and by enabling a more expeditious introduction of new technology.

Products selected as suitable for applicant or third-party testing under part 7 were those with characteristics which could be objectively tested in a routine and readily reproducible manner, with no elements of subjective analysis. Products whose testing results depend on the experience, judgement, and knowledge of the personnel executing the tests, such as testing a complex intrinsically safe circuit, were not included in the part 7 program.

Under part 7, all product testing is conducted according to MSHA-specified tests and procedures, using calibrated and accurate instruments. Moreover, the product testing is subject to Agency observation. Part 7 is not a self-certification program. The part 7 concept shifts only the testing of certain