

laboratory is independent from outside influences and has been accredited by a laboratory accrediting organization to test to the particular standard. Test and evaluation results from an outside laboratory will be scrutinized by MSHA. The results, required by the final rule to be submitted to MSHA, will include the complete report which outlines the conduct of each test. The test and evaluation results will be used by MSHA to determine compliance with the applicable product approval requirements on which the MSHA approval is based. MSHA will have the option to require the independent laboratory to repeat or conduct additional tests if there is any reason to question the supplied test data. MSHA will also have the option of performing the repeat or additional tests. In addition, MSHA's post-approval product audit program will ensure that approved products are produced in compliance with all approval requirements.

The use of third party laboratories in the MSHA approval process has proven to be successful under 30 CFR, part 7, Testing by Applicant or Third Party. This regulation, which permits an applicant to submit their own test results or those from a third party, has been in place since 1988. There have been notably few instances of questionable laboratory test results of part 7 approved products in more than 14 years of experience with the regulation. The few cases dealt with the laboratory's lack of understanding of a particular test standard. In these cases, MSHA's oversight resulted in corrections to the laboratory's test process and the issues were resolved prior to any part 7 product approval.

For the reasons stated above, MSHA has no reason to anticipate problems with competency or conflict of interest associated with independent laboratory testing and evaluation.

B. Section-by-Section Discussion

The following portion of the preamble discusses each provision of the final part 6 rule. The text of the final rule is included at the end of the document.

§ 6.1 Purpose and Effective Date

This section explains that the purpose of this final rule is to establish an alternate program for testing and evaluation of products MSHA approves for use in gassy underground mines. It permits manufacturers of certain products who seek MSHA approval to use an independent laboratory to perform, in whole or in part, the necessary testing and evaluation for approval. It also permits manufacturers

to request to have their products approved based on non-MSHA product safety standards once MSHA has determined that the non-MSHA product safety standards are equivalent to MSHA's applicable product approval requirements or can be modified to provide at least the same degree of protection as MSHA's requirements. No comments on the specific language in § 6.1 were received. Therefore, the final language remains unchanged from the revised proposed rule.

The provisions of this part apply to any application for approval or extension of approval filed under 30 CFR part 18, 19, 20, 22, 23, 27, 33, 35, or 36, and received by MSHA after the effective date of this rule. It will become effective 60 days after publication of the final rule in the **Federal Register**.

§ 6.2 Definitions

This section of the final rule defines and clarifies the key terms used in part 6.

Applicant. This term is used to describe an individual or organization that manufactures or controls the assembly of a product and that applies to MSHA for approval of that product.

Approval. This term is used to describe a written document issued by MSHA which states that a product has met the applicable requirements of part 18, 19, 20, 22, 23, 27, 33, 35, or 36. The definition is based on the existing definitions of "approval" in the parts specified above. It is expanded to include "certification" and "acceptance" because these terms are also used to denote MSHA approval.

Approval holder. This term is used to describe an applicant whose application for approval of a product under part 18, 19, 20, 22, 23, 27, 33, 35, or 36 of this chapter has been approved by MSHA.

Equivalent non-MSHA product safety standard. This term is used to describe a non-MSHA product safety standard, or group of standards, that is determined by MSHA to provide at least the same degree of protection as the applicable MSHA product approval requirements in parts 18, 19, 20, 22, 23, 27, 33, 35, and 36, or which in modified form, provide at least the same degree of protection.

Independent Laboratory. This term is used to describe a laboratory that: (1) has been recognized by a laboratory accrediting organization (e.g., OSHA NRTL, American National Standards Institute (ANSI), International Electrotechnical Commission (IEC), etc.) to test and evaluate products to a product safety standard, and (2) is free from commercial, financial, and other

pressures that may influence the results of the testing and evaluation process.

Post-approval product audit. This term applies to the examination, testing, or both, by MSHA of approved products selected by MSHA to determine whether those products meet the applicable product approval requirements and have been manufactured as approved.

Product safety standard. This term is used to describe a document, or group of documents, that specify the requirements for the testing and evaluation of a product for use in explosive gas and dust atmospheres, and, when appropriate, include documents addressing the flammability properties of products.

No comments on the specific language of the proposed definitions in § 6.2 were received. Therefore, the language in each of the definitions in the final rule remains unchanged from the revised proposed rule.

§ 6.10 Use of Independent Laboratories

Under paragraph (a) of this section, manufacturers who seek approval of certain products will be permitted to use an independent laboratory to perform, in whole or in part, the necessary testing and evaluation for MSHA product approval. This final rule does not require manufacturers to use independent laboratories. Instead, it gives manufacturers the option of having either MSHA or an independent laboratory do the testing and evaluation.

Also, under this final rule, if independent laboratories are used, applicants need to submit, as part of the approval application, four items set out in paragraphs (a)(1), (2), (3), and (4) of § 6.10. They include written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization; a complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements; identification of components or features of the product that are critical to the safety of the product; and all documentation, including drawings and specifications, which are required by the applicable approval part under this chapter.

The Agency determined that it is essential for the laboratories performing testing and evaluation to be recognized by a laboratory accrediting organization. These organizations determine the qualifications of laboratories. Several competent laboratory accrediting programs exist including, but not limited to, those operated by OSHA; the American National Standards Institute