

(ANSI); and the International Electrotechnical Commission (IEC).

The Agency believes that there are two essential qualifications that laboratories must meet in order for MSHA and the mining community to have assurance that any product, tested and evaluated by third party laboratories, is safe for use in the mining environment. First, MSHA believes that the laboratory must be independent of commercial, financial, or other pressures that could influence the results of the testing and evaluation process. Independence of the testing laboratory from the manufacturer is essential, under this part 6, for MSHA and the mining public to have confidence in the results of testing and evaluation conducted outside the Agency's Approval and Certification Center. Unlike part 7, independence of the laboratories is required under part 6 due to the subjective nature of the tests and evaluations performed, and often require the use of engineering judgement. Second, MSHA needs some evidence that the laboratory is competent to test and evaluate to a particular product safety standard. This final rule permits MSHA to accept testing and evaluation performed by an independent laboratory provided that MSHA receives written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization.

MSHA recognizes that some foreign laboratories meet the criteria for independent laboratories. Therefore, a manufacturer could choose to use a foreign laboratory as long as it is free from commercial, financial and other pressures that could influence the testing and evaluation process and has been accredited by a recognized accrediting organization such as the IEC to perform testing and evaluation to MSHA's requirements. Guide 17025 of the International Organization for Standardization (ISO)/IEC "General requirements for the competence of testing and calibration laboratories" and ISO/IEC Guide 65 "General requirements for bodies operating product certification systems" are the main documents used both nationally and internationally by organizations which accredit laboratories. Moreover, the United States is a member of the World Trade Organization (WTO). The Technical Barriers to Trade Agreement applies to members of the WTO and requires members to ensure that technical regulations are not prepared, adopted, or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means that, under the agreement,

standards could not be promulgated that discriminate between foreign and domestic manufacturers and laboratories.

MSHA emphasizes that it will continue to test and evaluate products at the manufacturers' request. It also needs to retain testing and evaluation capability for the purposes of post-approval product audits, accident investigations, and for purposes of technical assistance. In addition, as discussed later in § 6.20 of this final rule, MSHA will be evaluating other non-MSHA product safety standards to determine equivalency, increasing its testing and evaluation expertise.

The final rule allows the optional use of a wide network of independent laboratories, eliminating the concern about monopolies. It also provides manufacturers the option to have MSHA perform some or all of the testing and evaluation necessary for approval. MSHA believes that assessing other non-MSHA product safety standards' equivalency to MSHA's approval requirements and continuing its responsibility for product audits will maintain MSHA's expertise in mine equipment safety. Under this final rule, the Agency will continue to be involved in direct product testing and evaluation if manufacturers choose to submit their products to MSHA for testing and evaluation. No comments on the specific language in § 6.10(a) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (b) of this section requires that product testing and evaluation performed by independent laboratories for purposes of MSHA approval comply with MSHA product approval requirements. The final rule does not permit an independent laboratory to change a testing standard or any elements incorporated into the standard. This is due to the critical nature of the testing and evaluation of products to be used in a potentially hazardous underground mining environment. No comments on the specific language in § 6.10(b) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (c) of this section requires product testing to be conducted or witnessed by the independent laboratory's personnel. No comments on the specific language in § 6.10(c) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Under paragraph (d) of this section, MSHA will notify applicants, after the review of information required under paragraph (a), if additional information

and testing will be required. The applicant will be required to provide the information. The applicant will have to supply any additional components necessary for testing and evaluation. Without a complete application, MSHA will be unable to initiate the technical review of the product.

After determining that an application package is complete, MSHA will initiate a technical review to ensure that the independent laboratory's testing and evaluation results were both reasonable and appropriate for the particular product. If the technical review of the package indicates deficiencies resulting from inadequate data, illogical or unreasonable testing or evaluation results, or the omission of required information, the applicant will be notified of the discrepancy and given a reasonable period of time to provide the needed information and correct the apparent deficiency. If MSHA determines that additional or repeat testing is required, the applicant will have to arrange for any additional or repeat tests and notify MSHA of the location, date and time of the test(s). MSHA could elect to observe additional testing conducted by an independent laboratory or MSHA could conduct the additional or repeat tests at the applicant's expense. The applicant will need to supply any additional components necessary for testing and evaluation. No comments on the specific language in § 6.10(d) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Following the administrative and technical reviews of the product approval package, MSHA will issue an approval, or a notice denying approval, to the applicant. A notice denying approval will state the reasons on which the denial is based. If an approval is issued, the approval holder will be authorized and required to place an MSHA mark on the product which signifies to the user of the product that it is approved for use in gassy underground mines. The product drawings and specifications, the independent laboratory's testing and evaluation results, and its statement of product compliance with the applicable approval requirements, as well as written evidence of the laboratory's independence and current recognition by an accrediting organization, will be retained in the approval file at MSHA's Approval and Certification Center.

The final rule does not require that manufacturers use the mark of the independent laboratory that tested and evaluated the product or its components. However, nothing in this