

final rule prohibits a manufacturer from using the mark of an independent laboratory if it chooses to do so, as long as it carries the MSHA mark as well.

Paragraph (e) requires that approval holders of products approved based on independent laboratory testing and evaluation make such products available for audit upon request by MSHA. This will not occur more than once a year, except for cause. Such an audit will be conducted at a mutually agreeable site at no cost to MSHA. This is to ensure that products bearing the MSHA marking meet the approval requirements and are manufactured in accordance with the approved drawings and specifications. Although MSHA will not specifically require manufacturers to adhere to audits required by independent laboratories, MSHA recognizes that most manufacturers who elect to have their products listed (approved) by independent laboratories generally accept those laboratories' audit requirements to maintain their listing.

MSHA will continue to conduct audits as part of its post-approval product audit program. MSHA conducts audits to ensure conformity with the technical requirements upon which the approval was based. Approved products to be audited by MSHA will be selected by the Agency as representative of those distributed for use in underground mines. When an approved product is requested by MSHA for audit from the approval holder, the Agency will arrange to examine and evaluate it at a mutually agreed upon time and location and will permit the approval holder to observe audit-related tests. This examination and evaluation could take place at an MSHA facility, at the manufacturer's plant or distribution center, or at any other place agreed upon by MSHA and the approval holder. The approval holder will be able to obtain the report resulting from such audits.

Product testing and evaluation performed by both foreign and domestic laboratories for purposes of MSHA approval will have to comply with MSHA product approval requirements. In this regard, under this final rule, MSHA will carefully review all product testing and evaluation reports submitted in support of product approval applications prior to an approval decision being made. This will ensure that such testing and evaluation has been performed in accordance with MSHA procedures and requirements. Finally, the manufacturer will be ultimately responsible for any product, under any of the approval parts covered, regardless of who performs the testing

(i.e., foreign or domestic independent laboratory or MSHA). Once the product is in the mines, the mine operator is required to maintain the product in approved condition.

This final rule provision for post-approval product audits will allow MSHA to more effectively determine whether products are, in fact, being manufactured as approved. MSHA, not the manufacturer, will select the product. MSHA also will continue to obtain approved products from sources other than the manufacturer. This approach is particularly useful for products that are "one of a kind" or of limited distribution. Because these products are not readily found at mine suppliers or distributors, they are difficult to locate without the assistance of the approval holder.

In determining which approved products will be subject to audit at any particular time, MSHA will consider a variety of factors such as, but not limited to, whether the manufacturer has previously produced the approved product or similar products, whether the approved product is new or part of a new product line, or whether the approved product is intended for a unique application or limited distribution. Other considerations could include product complexity, the manufacturer's previous product audit results, product population in the mining community, and the time since the last audit or since the product was first approved.

Based on MSHA's experience, the Agency anticipates few instances in which more than one approved product will be required to be audited "for cause" from any one manufacturer in any one year. There are circumstances or causes, however, under which additional products for audit may be necessary to ascertain compliance with the technical requirements upon which an approval is based. Examples of such circumstances include verified complaints about the safety of an approved product, evidence of product changes that have not been approved, audit test results that warrant further testing to determine compliance, and evaluation of corrective action taken by an approval holder. Under these circumstances, the approval holder will have to provide, at no cost to MSHA, additional approved products so the Agency could ensure that the approval holder is meeting its obligation to manufacture the product as approved.

When discrepancies are found during MSHA audits of approved products, MSHA will require that the manufacturer take all necessary corrective actions. These actions could

include, but are not limited to, the approval holder recalling or retrofitting the approved product involved, and issuing notices of such action to users. Revocation of the approval by MSHA may result when discrepancies in approved products are not corrected. No comments on the specific language in § 6.10(e) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (f) requires approval holders to notify MSHA of all product defects they discover, once products are approved. A defect is a nonconformance with the MSHA approved design, including any drawings and specifications. There are varying degrees of significance of defects. It is MSHA's intent that all defects be reported to the Agency.

Because the use of products with defects could create hazards underground, immediate notification should be made by expedient means, such as by telephone, e-mail, or fax. The telephone notification should be followed-up in writing. The oral and written notification should include a description of the nature and extent of the problem. No comments on the specific language in § 6.10(f) were received. Therefore, the final language remains unchanged from the revised proposed rule.

§ 6.20 MSHA Acceptance of Equivalent Non-MSHA Product Safety Standards

Section 6.20(a) of this section states that MSHA will accept non-MSHA product safety standards, or groups of standards, as equivalent after determining that they: (1) Provide at least the same degree of protection as MSHA's product approval requirements set forth for the product in other parts of this chapter; or (2) can be modified to provide at least the same degree of protection as those MSHA requirements.

Non-MSHA product safety standards will be considered equivalent when MSHA determines that, in their original or modified form, they provide at least the same degree of protection as MSHA's product approval requirements in part 18, 19, 20, 22, 23, 27, 33, 35 or 36 of this chapter. No comments on the specific language in § 6.20(a) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (b) provides that MSHA will publish its intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input. MSHA encourages public input in the equivalency process. It will solicit such