

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

products to the applicant or a third party. The evaluation of the test results and the issuance of the approval remain the responsibility of the Agency. This final rule will not affect the testing aspects of part 7. Part 7, unlike the other approval parts, will continue to permit testing by the applicant or by third party laboratories that are not necessarily independent from the manufacturer.

In 1993, MSHA initiated a further review of its approval and certification activities, including its part 7 applicant or third-party testing program. Based on this review, the Agency reaffirmed the objectives of the part 7 concept to increase post-approval product audits and direct more resources to evaluation of safety and technological improvements in products for use underground. However, MSHA determined that while the part 7 program was a step in the right direction, the limited scope of that program did not free up sufficient resources to allow MSHA to fully redirect its efforts to meet those objectives. After considering how best to accomplish those goals, the Agency decided to initiate rulemaking to modify MSHA's approval program in two ways, which it did in 1994. Under a 1994 proposed rule titled "Testing and Evaluation by Nationally Recognized Testing Laboratories and Use of Equivalent Testing and Evaluation Requirements," applicants seeking MSHA product approval would have been required to use independent laboratories recognized by the Occupational Safety and Health Administration (OSHA) under its Nationally-Recognized Testing Laboratories (NRTL) program for the required testing and evaluation. This would have been in place of MSHA testing and evaluation of products. As with the part 7 program, however, MSHA would have continued to verify that approval requirements were met and would have retained full responsibility for issuing the product approval. Thus, the 1994 proposed rule would not have constituted a self-certification program. Second, MSHA or appropriately recognized independent laboratories would have been permitted, upon an applicant's request, to test and evaluate a product for approval based on approval requirements other than the Agency's, as long as those requirements provided an equal or a greater degree of protection. This would have allowed MSHA to approve a product meeting the International Electrotechnical Commission's (IEC) approval standards, or some other approval requirements different from those specified in

MSHA's regulations, provided that MSHA first had determined that those requirements were equivalent or could be modified to provide protection equivalent to that afforded by products tested and evaluated according to MSHA approval requirements. In this way, the Agency could have taken advantage of revisions to product safety standards developed by other countries or standards development organizations to address technological advances or improvements in product safety. Such an approach would have permitted the introduction of a wider variety of improved products into U.S. mines more quickly than if the Agency had to undertake rulemaking to address each technological advancement or improvement in product safety, capability, and performance.

A notice of proposed rulemaking (NPRM) for a new part 6 was published on November 30, 1994 (59 FR 61376). The NPRM comment period was extended to February 21, 1995 (60 FR 8209). A Public Hearing Notice was published on October 10, 1995 (60 FR 52640), scheduling a public hearing for November 15, 1995. That hearing was rescheduled to April 30, 1996. (61 FR 15743). The post-hearing comment period ended on May 31, 1996. (61 FR 15743). The 1996 proposed rule was not published as a final rule.

MSHA introduced a revised proposed rule in the **Federal Register** on October 17, 2002. This revised proposed rule offered applicants for MSHA product approval alternate requirements for testing and evaluation of products that MSHA approves for use in gassy underground mines. Based on comments from the public to the 1994 proposed rule, the revised proposed rule provided a number of revisions to the original proposed rule. The major changes in the revised proposed rule are outlined below.

First, the revised proposal would be voluntary. Manufacturers could choose to use independent laboratories to perform all or part of the testing and evaluation necessary for approval, or could elect to have MSHA perform the necessary testing and evaluation. Second, applicants would not have to use only independent laboratories that were National Recognized Testing Laboratories under OSHA's program, but could choose an independent laboratory recognized by other laboratory accreditation programs, such as that of the American National Standards Institute (ANSI) or the International Electrotechnical Commission (IEC). Third, only MSHA would conduct required post-approval product audits. Audits conducted by

independent laboratories would not be required under the revised proposal. Fourth, only the MSHA mark would be required on MSHA-approved products, not both the MSHA and independent laboratory mark. Finally, the revised proposal would allow public input into the process of making equivalency determinations of non-MSHA product safety standards. MSHA would notify the public through publication in the **Federal Register** of MSHA's intent to review a particular non-MSHA standard for equivalency and provide an opportunity for public input on that issue.

However, like part 7, under both the 1994 proposed rule and the revised proposed rule, the review of any testing and evaluation performed by an independent laboratory and the issuance of the MSHA product approval would still remain the full responsibility of MSHA's Approval and Certification Center.

MSHA requested comments from the public (67 FR 64196). MSHA received two general comments regarding this revised proposed rule. The public comment period closed on December 31, 2002. MSHA held two public hearings. One was on January 7, 2003, in Denver, Colorado. The other hearing was held on January 9, 2003, in Washington, Pennsylvania. No comments or statements regarding the revised proposal were provided by any party at either of the public hearings. The post-hearing comment period closed on February 10, 2003.

II. Discussion of Final Rule

A. Introduction

Under this final rule, manufacturers seeking MSHA approval could choose to have their products tested and evaluated either by an independent laboratory or by MSHA. MSHA will be able to accept the independent laboratory's test and evaluation results in lieu of performing its own.

This final rule recognizes the industry's need to expedite the transfer of technology into the mining environment. This transfer should improve the health and safety of miners. The alternate program in this final rule will permit a manufacturer who has had a product tested and evaluated by an independent laboratory to submit the test reports and technical information to MSHA to obtain MSHA approval for the product.

MSHA is aware of certain instruments that are currently listed (approved) by independent laboratories for use in hazardous gas and dust atmospheres that may also be suitable for use in the

mine environment. These instruments include: Portable methane detectors, air sampling pumps, oxygen deficiency meters, air velocity meters, carbon monoxide detectors, hydrogen sulfide detectors, powered respirators and accessories, toxic gas detectors, portable two-way radios, laser surveying instruments, mine rescue communications systems, photometers, temperature sensing devices, personal audible and visual alarms, heat detection systems, voice amplifiers, position sensing devices, tape recorders, pressure sensing devices, data recording instruments, electrical diagnostic test instruments, sound level meters, sound level calibrators, audio dosimeters, and cable fault detectors.

MSHA has issued approvals for a number of instruments that were already listed (approved) by an independent laboratory at the time of application for MSHA approval. Examples of some of these instruments are: Motorola MT2000 and HT1000 Hand-held Radios; MSA Microgard Portable Alarm for warning of low levels of oxygen and high levels of methane; MSA Escort Elf Portable Pump for sampling of the mine atmosphere for dust; MSA Passport and Mini Series Personal Alarms for warning of high levels of toxic and combustible gases; Industrial Scientific Corporation Model SP402 Sampling Pump for remote monitoring of oxygen, toxic and combustible gases; and Industrial Scientific Corporation Model TMX410 Four-Gas Monitor for monitoring and warning of high levels of toxic and combustible gases and low levels of oxygen.

MSHA recognizes that there are many more products, including instruments, motors, explosion-proof enclosures, conveyor belts and hydraulic fluids, that are listed by independent laboratories that have not been submitted for MSHA approval. These products, used in other industries, can offer safety-related benefits to the mining industry and are considered potential candidates for the program that is created by this rule. By permitting acceptance of independent laboratory test and evaluation results, MSHA believes that some of these product manufacturers will be encouraged to submit their products for MSHA approval.

MSHA is also aware that many instruments and products have been listed (approved) by independent laboratories to Underwriter's Laboratories (UL) and Factory Mutual (FM) intrinsic safety standards for use in Class I (explosive gas-air mixtures) and Class II (explosive dust-air mixtures) atmospheres. Many of the same tests

and design requirements that MSHA uses under its intrinsic safety regulations are also used in the UL and FM standards. Under this final rule, applicants seeking MSHA approval of instruments or other products for intrinsic safety purposes could submit the results of any independent laboratory's testing and evaluation for intrinsic safety to MSHA as part of their applications. If, after review, MSHA determined that the testing already conducted was performed properly, MSHA could accept the test results and will not have to repeat testing in cases where the tests were the same. This will reduce costs and the time spent by manufacturers to obtain MSHA approval. If the review raised questions or concerns about the validity of test and evaluations submitted, MSHA will need to perform repeat testing. MSHA, of course, will conduct additional testing and evaluation where the UL and FM intrinsic safety requirements were not the same as MSHA's.

Under this final rule, MSHA will retain its testing and evaluation capabilities, but will offer applicants the alternative of submitting independent laboratory test and evaluation results for MSHA approval. MSHA will have the authority to accept the test and evaluation results in lieu of conducting its own tests and evaluations. MSHA also will have the authority to conduct or to observe any additional or repeat test and evaluation to ensure compliance with the MSHA requirements.

This final rule will also permit manufacturers to request MSHA approval 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.

No approvals will be issued under part 6. Instead, any approval issued based on part 6 provisions will continue to be approved under the applicable product approval parts. The necessary conforming language to those other approval parts is published in this **Federal Register** notice of final rulemaking.

In developing this final rule, MSHA has made every effort to address the comments received on the October 17, 2002, revised proposal. Two commenters submitted comments regarding the revised proposed rule.

One commenter expressed its support for the revised proposed rule indicating that " * * * the Revised Proposed Rule contained language which addressed all

of our concerns." The commenter was in agreement with allowing manufacturers to utilize independent laboratory testing facilities while maintaining the test facility at MSHA. It agreed that requiring the use of OSHA's Nationally Recognized Testing Laboratories (NRTLs) which must conduct semi-annual audits was unnecessary since MSHA conducts its own audits. The commenter was also supportive of MSHA's proposal to approve equipment designed to non-MSHA product safety standards, particularly international standards, once MSHA has determined that they provide at least the same degree of protection, in their original or modified form, as MSHA's product approval requirements. The commenter indicated that the proposed provision on equivalency would assist in maintaining a single product line for use in multiple countries. This commenter also urged MSHA to "pursue working toward harmonizing with the world in regard to globalized standards," specifically suggesting that MSHA join the IECEx scheme that permits one global standard and allows member countries to accept the certification issued by other member countries.

The second commenter expressed its concern regarding the competency of independent laboratories when compared with that of MSHA's own testing and evaluation capabilities. It indicated that MSHA and its predecessors have almost a century of experience and developed knowledge regarding the evaluation of mining products. The commenter recognized that independent laboratories may have the appropriate expertise to test to MSHA requirements, but asserted that the lack of mining-specific knowledge would reduce the industry's confidence in the test and evaluation results. This commenter was further concerned about the potential for "institutional atrophy" that could occur within MSHA with the reduction in testing and evaluation experience. The commenter expressed concern with a potential conflict of interest that could result from an independent laboratory being hired by a manufacturer. The commenter expressed similar concerns that a laboratory could be influenced to "gloss over negative aspects of a mining product" in an effort to keep the manufacturer as a customer.

MSHA has carefully evaluated the concern expressed about accepting third party testing results. Under this final rule, before an independent laboratory's test and evaluation results will be considered, the manufacturer must provide evidence to MSHA that the

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

(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

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

input through a **Federal Register** notice once it decides to evaluate a particular standard or group of standards for equivalency. Because MSHA is solely responsible for the approval of mining products under the Mine Act, MSHA will retain the ultimate decision on equivalency. No comments on the specific language in § 6.20(b) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (c) requires that MSHA publish a listing of all final equivalency determinations in this part 6 and the applicable approval parts. The listing will state whether MSHA accepts the non-MSHA product safety standards in their original form, or will require modifications to demonstrate equivalency. If modifications are required, they will also be provided in the listing. MSHA will notify the public of each equivalency determination and will publish a summary of the basis for its determination in the **Federal Register**. MSHA's Approval and Certification Center will provide complete equivalency determination reports upon request. No comments on the specific language in § 6.20(c) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (d) requires that after MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations in the **Federal Register**, applicants can seek MSHA product approval based on such non-MSHA product safety standards. No comments on the specific language in § 6.20(d) were received. Therefore, the final language remains unchanged from the revised proposed rule.

The Agency believes that this final rule will encourage a more rapid introduction of mining products embodying new technology with enhanced safety features. In addition, testing and evaluation to "equivalent" standards, that provide at least the same degree of protection to miners as those in the various MSHA product approval regulations could achieve multiple objectives. These include metric conversion, greater compatibility with international standards, and a more competitive posture for U.S. products in the international market.

Section 6.20 provides that MSHA will determine which non-MSHA product safety standards, or groups of standards, are equivalent or can be modified to be equivalent. The decision to perform an equivalency evaluation will be based on MSHA's determination of the overall value of conducting the evaluation. It is

MSHA's intention to base its decision on factors such as the number of potential applications for approval using a particular non-MSHA product safety standard, the number of potential products affected, and its knowledge of the standard and the potential for it being equivalent. MSHA began this process some time ago in order to compare its approval requirements to those of other organizations because of the increasing use of those non-MSHA product safety standards in international trade and because of requests from the public. The equivalency analysis will be conducted by the Agency's Approval and Certification Center using personnel with expertise in the approval requirements involved.

MSHA's equivalency determinations will be based on the objectives of its product approval requirements and the hazards they were designed to address. Section 101(a)(9) of the Mine Act provides that no new standard can reduce the protection afforded miners by an existing standard. For this reason, MSHA must assure that any non-MSHA product safety standard provides at least the same degree of protection for the miners who may use the product approved under that standard. MSHA cannot accept product safety standards, domestic or international, without determining whether they are equivalent or whether some modifications to those product safety standards are needed to achieve the objectives of the existing MSHA product approval requirements. While certain standards, including those accepted by other mining agencies, may be equivalent, MSHA must make that determination on a standard-by-standard basis. It is MSHA's belief that certain product safety standards may well be equivalent without modifications; others may require modification. The Agency will do a systematic analysis first to make this determination.

MSHA's equivalency analysis will compare the subject product safety standards, whether domestic or international, and MSHA's applicable product approval requirements. Where they differ, each difference will be examined to assess its effect on overall safety, and the differences as a whole will be assessed. Where the differences do not impact the objectives of the MSHA requirements, MSHA will issue a determination that the standard is equivalent to MSHA's approval requirements. However, if certain design criteria or performance requirements fail to meet MSHA's objectives or could diminish the safety of the product in

underground mines, MSHA will specify the modifications necessary to reconcile the differences between the two so that at least the same degree of protection is provided.

Under this final rule, when MSHA evaluates a product safety standard to determine equivalency, the Agency will be looking at the standard as a whole and whether it meets the objectives of MSHA's applicable product approval requirements. The Agency recognizes that some non-MSHA product safety standards may have more stringent provisions than MSHA's comparable approval requirements. However, it is not the Agency's intention to require more stringent protections where a non-MSHA product safety standard may afford them. MSHA intends to require modifications only where the non-MSHA standard does not provide equivalent protection. For manufacturers who choose to design products to more stringent standards, for purposes other than MSHA approval, this final rule provides the vehicle for them to obtain MSHA approval even if their products were not designed specifically to MSHA's approval requirements. It is not the Agency's intention to develop a "hybrid" regulation, choosing the most stringent requirements from both the MSHA requirements and non-MSHA standards. This final rule requires modifications to provide at least the same degree of protection as MSHA's product approval requirements.

After MSHA has determined that equivalent requirements exist or that certain requirements, other than those in MSHA approval regulations, can be modified to provide at least the same degree of protection, the applicant will be given the option of requesting that MSHA base its approval on the equivalent, non-MSHA product safety standard, instead of on MSHA's applicable product approval requirements. This option will benefit manufacturers by permitting them to design products to a single set of requirements for sale in multiple markets (domestic and international as well as mining and non-mining applications). This option will also benefit miners by encouraging a more rapid introduction of mining products embodying new technology with enhanced safety features.

Because this final rule permits approval of mining equipment intended to compete in multiple market areas with differing approval requirements, the approved product design will incorporate the highest level of safety required by any of the intended market areas. For example, if the target areas

include mining and non-mining markets, and the non-mining market has a product safety standard with more stringent approval requirements than MSHA for a specific product, MSHA could, at the request of the applicant, issue an approval based on the more stringent requirements. The approval documentation will state that the product fulfills both the applicable approval requirements in the non-mining standard and MSHA's approval requirements. In this case, the approved product sold in mining markets will provide a greater degree of protection than that specified by MSHA under existing requirements. Should the non-mining market have product safety standards which are, in some aspects, less stringent than those of MSHA, the applicant will be required to fulfill the non-mining standards' requirements and, in addition, all other requirements deemed necessary to ensure that the product provides at least the same degree of protection demanded by the MSHA approval requirements. In this situation, the approved product will exceed the safety requirements of the non-mining standard and meet those of MSHA. The same analysis will apply if the targeted areas were foreign and domestic markets.

In these situations, MSHA's approval documentation will show that the product had fulfilled the requirements of any non-MSHA product safety standard and those of MSHA. In the first instance, the product marketed in the non-mining application will embody a higher level of safety, while in the second instance it will embody equivalent safety. In no case will the product provide less protection than mandated by MSHA approval requirements.

The following example illustrates how MSHA will evaluate non-MSHA product safety standards to determine if they provide at least the same degree of protection as MSHA's product approval requirements. MSHA's approval regulation under 30 CFR part 18 requires explosion testing of explosion-proof enclosures using a methane-in-air mixture. The IEC explosion-proof enclosure standard (IEC 60079-1) requires the use of more sensitive test gases. That standard specifies the use of methane to determine "reference pressures" and uses a hydrogen/methane fuel mixture to test for flame propagation. The tests used in both MSHA requirements and the IEC standard produce higher pressures/temperatures than occur during normal operation.

One obvious difference in the two test protocols is MSHA's criterion to observe

for the "discharge of flame" (hot glowing gases) during any of the tests. The IEC standard does not have this requirement. The reason for this difference is that MSHA tests enclosures "as manufactured" without any intentional gaps and, unlike the IEC, does not require flamepath gaps to be enlarged to the maximum specified by design. Therefore, during MSHA testing, flamepaths are not forced open to any appreciable amount, unless there are defects or weaknesses in the enclosure. This is important because MSHA's requirements do not contain provisions for regular prototype pressure testing to supplement the explosion tests, as do the IEC requirements. Such pressure testing is specifically designed to identify faulty products over a broader range of pressures than can be achieved by the MSHA explosion testing protocol.

Considering the above discussion, MSHA's explosion testing protocol, with combustible mixtures of methane as the test gas and using the discharge of flame as an additional criterion to flame propagation for test failure, sets a high evaluation standard for explosion-proof enclosures used on mining equipment in the U.S. However, testing is accomplished without introducing intentional flamepath flange gaps. In contrast, the IEC standard requires that tests be conducted with flamepath gaps intentionally enlarged to within 80% to 100% of the maximum specified design. Thus, the IEC test standard allows for luminous flame to pass, but with insufficient energy to ignite the surrounding atmosphere and uses a more easily ignitable test gas than methane. This concession is significant when flamepath gaps are purposely enlarged for testing. Such a practice could produce non-incendive luminous gas discharges during testing, which would be considered unacceptable under MSHA test protocols. MSHA has no evidence that such a non-incendive luminous gas discharge is unsafe. The MSHA requirement and the IEC standard could be considered equivalent because the MSHA requirement to observe no discharge of flame is offset by the IEC's use of a more easily ignitable test gas and intentional gap enlargement.

With all other factors equal, MSHA could consider the explosion test specified by IEC to be equivalent to the explosion test procedure followed by MSHA in fulfillment of 30 CFR 18.62. In this manner a single test could verify conformity to the test requirements of both product standards with no reduction of safety in either case.

This example highlights the methods that will be employed by MSHA when determining if a non-MSHA product safety standard provides at least the same degree of protection as MSHA's product approval requirements. In like fashion, other differences between MSHA requirements and the IEC standards will be analyzed to determine if they are equivalent or if modifications to the IEC standards will be required.

This same process will be applied to all non-MSHA product safety standards that will be evaluated for equivalency. For example, MSHA requires that a component in an intrinsically safe circuit be tested to determine that it will not overheat under fault conditions and ignite a layer of coal dust. UL requires the product to be marked with a maximum temperature rating (also called a "T-Code") or tested using a different ignitable dust or gas. MSHA will determine if the temperature rating is below the minimum ignition temperature of a coal dust layer or if the specified dust layer (*e.g.*, grain dust) used in the test has a lower ignition temperature than a coal dust layer currently used in MSHA tests. If equivalency could not be determined, MSHA will require an additional test using a layer of a specified type and size of coal dust to ensure at least the same degree of protection is provided.

MSHA anticipates that cost savings from use of equivalent non-MSHA product safety standards could reduce the manufacturer's unit cost by permitting more standardized construction (*i.e.*, single product line) and, thus, improve the manufacturer's competitive position. This, together with the need to provide products meeting the highest level of safety demanded by the market areas of interest, could encourage a more rapid introduction of mining products embodying new technology with enhanced safety features. In general, this final rule should provide increased opportunity for direct competition leading to improved safety and performance quality in mining products.

Under this final rule, manufacturers who apply for MSHA approval of their products can have MSHA base the approval on either MSHA approval requirements or the equivalent non-MSHA product safety standards. MSHA will retain the responsibility of approving or denying an application based on all information submitted in the application.

As is the case with existing MSHA approval regulations, this final rule will not discriminate between U.S. and foreign manufacturers. Any manufacturer, either domestic or

foreign, wishing to acquire an MSHA product approval will be able to take advantage of this "equivalency" program.

Further, this final rule will be consistent with the North American Free Trade Agreement (NAFTA) and the Agreement on Technical Barriers to Trade (TBT).

Equivalency Under Part 7

Under the final rule, an equivalency provision is provided in part 7 which will operate like the provision for equivalency in § 6.20.

Under this provision, § 7.2 will be amended by adding a definition of "equivalent non-MSHA product safety standards." 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 technical requirements in the subparts of part 7. This definition is essentially the same as that in § 6.2 of part 6. No comments on the specific language in § 7.2 were received. Therefore, the final language remains unchanged from the revised proposed rule.

Section 7.10 MSHA Acceptance of Equivalent Non-MSHA Product Safety Standards

Section 7.10(a) is similar to § 6.20(a) and provides that MSHA will accept non-MSHA product safety standards, or group of standards, as equivalent after determining that they: (1) Provide at least the same degree of protection as MSHA's technical requirements for the products in other subparts of this part; or (2) can be modified to provide at least the same degree of protection as those MSHA requirements. No comments on the specific language of § 7.10(a) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (b) of § 7.10 provides that MSHA publish its intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input. No comments on the specific language in § 7.10(b) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (c) of § 7.10 provides that MSHA publish a listing of all equivalency determinations for this part 7. The listing will state whether MSHA accepts the non-MSHA product safety standards in their original form, or will require modifications to demonstrate equivalency. If modifications are required, they will also be included in this listing for part 7. MSHA will notify

the public of each equivalency determination and will publish a summary of the basis for its determination in the **Federal Register**. MSHA's Approval and Certification Center will provide complete equivalency determination reports upon request. No comments on the specific language in § 7.10(c) were received. Therefore, the final language remains unchanged from the revised proposed rule.

Paragraph (d) of § 7.10 provides that after MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations, applicants can seek MSHA product approval based on such non-MSHA product safety standards. No comments on the specific language in § 7.10(d) were received. Therefore, the final language remains unchanged from the revised proposed rule.

MSHA is aware of some foreign and domestic non-MSHA product safety standards that could be used to test and evaluate products approved under the various subparts of part 7. These standards are used in other countries and other industries. Some of these non-MSHA product safety standards can provide at least the same degree of protection as MSHA requirements and can provide consistent, repeatable test results.

MSHA intends to operate its equivalency program under part 7, the same as previously described in the discussion of § 6.20 on equivalency.

III. Paperwork Reduction Act

This final rule will result in a total of approximately 29 burden hours and \$654 dollars of related costs. A breakdown of the burden hours and related costs by provision and by applicant size can be found in Chapter VII of the Regulatory Economic Analysis (REA) supporting this final rule. The REA is located on our Web site at <http://www.msha.gov/regsinfo.htm>.

This rule contains no substantive changes to the paperwork requirements contained in parts 18, 19, 20, 22, 23, 27, 33, 35, and 36 which are currently approved under OMB Control Number 1219-0066. The paperwork requirements contained in § 6.10 have been submitted to the Office of Management and Budget (OMB) for review under 44 U.S.C. 3504(h) of the Paperwork Reduction Act of 1995, as amended. Persons are not obligated to comply with them until approved by OMB.

Under § 6.10 applicants will have to provide information stated in paragraphs (a)(1) through (a)(4) for

MSHA to accept testing and evaluation performed by an independent laboratory. Currently, applicants must submit only information requested in paragraph (a)(4). If applicants choose to use independent laboratories, information requested in paragraphs (a)(1) through (a)(3) will be needed because MSHA will no longer be performing all the testing and evaluation associated with the approval application. Providing the information under § 6.10(a)(1) through (a)(3) will result in a total of approximately 24 burden hours and \$458 of associated costs.

Section 6.10(d) states that after review of the information required under paragraph (a)(1) through (a)(4), MSHA will notify the applicant if additional information and testing are required. If an independent laboratory conducts any additional or repeat testing, then the applicant will have to send the test results to MSHA. Sending any additional or repeat testing results to MSHA under § 6.10(d) will result in a total of 2 burden hours and \$39 of associated costs.

Section 6.10(f) states that, once the product is approved, the approval holder will have to notify MSHA of all product defects of which the approval holder is aware. Notification is assumed to be in the form of a letter to MSHA. Notifying MSHA of product defects under § 6.10(f) will result in a total of 3 burden hours and \$157 of associated costs.

IV. Executive Order 12866

A. Compliance Costs

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of regulations. MSHA has determined that this final rule does not meet the criteria of an economically significant regulatory action pursuant to Executive Order 12866 section 3(f)(1) in that it will not have an effect on the economy of \$100 million or otherwise have any material adverse effect. Although this final rule is not an economically significant action, MSHA has completed a REA in which the economic impact of the final rule is estimated. For a complete breakdown of the compliance costs for this final rule see chapter IV of the REA. The REA is summarized as follows.

The final rule will result in an annual net cost savings of about \$1.5 million. Applicants seeking MSHA product approval employing 500 or fewer workers will realize a net cost savings of \$0.66 million. Applicants employing more than 500 workers will realize a net cost savings of \$0.86 million.

The net cost savings of \$0.66 million, for applicants employing 500 or fewer workers, consists of cost savings of \$0.68 million and compliance costs of \$0.02 million. The net cost savings of \$0.86 million, for applicants employing more than 500 workers, consists of cost savings of \$0.88 million and compliance costs of \$0.02 million.

B. Benefits

This final rule should encourage non-mining manufacturers with products that could be applicable to mining to apply for approvals. The modification of the approval process will expedite the introduction of technologically-advanced products into the mine, thus improving miner safety. Finally, the rule will reduce applicants' costs by eliminating repeat testing and evaluation and the need for multiple product lines. For a more complete discussion of the Benefits of this final rule, see chapter III of the REA.

V. Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's economic impact on small entities. Under the RFA, MSHA must use the Small Business Administration's (SBA's) criterion for a small entity in determining a rule's economic impact unless, after consultation with the SBA Office of Advocacy, MSHA establishes an alternative definition for a small entity and publishes that definition in the **Federal Register** for notice and comment.

For the mining industry, SBA defines "small" as a mine with 500 or fewer workers. In addition, most applicants (manufacturers) that file for an MSHA approval for their products operate in industries such as those involved in measurement, analysis, controlling instruments, photographic instruments, commercial and industrial lighting fixtures, and conveyors. SBA considers the small business size standard for such industries to be 500 or fewer employees. To ensure that this final rule conforms to the RFA, MSHA analyzed the economic impact of the final rule on small entities that are defined as those employing 500 or fewer workers.

A. Factual Basis for Certification

Based on its analysis, MSHA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. MSHA has so certified this finding to the SBA. The factual basis for this certification is discussed in chapter V of the REA.

B. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, the final rule does not include any Federal mandate that will result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector of more than \$100 million. MSHA is not aware of any State, local, or tribal governments which manufacture products applicable to mining.

C. Executive Order 13132 (Federalism)

MSHA has reviewed this final rule in accordance with Executive Order 13132 regarding federalism, and has determined that it will not have "federalism implications." The final rule will not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." MSHA is not aware of any State or local governments which manufacture products applicable to mining.

D. Executive Order 13045 (Health and Safety Effect on Children)

In accordance with Executive Order 13045, MSHA has evaluated the environmental health and safety effect of this final rule on children. The Agency has determined that the final rule will not have an adverse impact on children.

E. Executive Order 13175 (Indian Tribal Governments)

MSHA certifies that this final rule will not impose substantial direct compliance costs on Indian tribal governments. MSHA is not aware of any tribal governments which manufacture products applicable to mining.

F. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This final rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it will not involve implementation of a policy with takings implications.

G. Executive Order 12988 (Civil Justice Reform)

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this final rule will not unduly burden the Federal court system. The final rule has been written so as to provide a clear legal standard

for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

H. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, MSHA has reviewed this final rule for its energy impacts. MSHA has determined that this final rule will not have any adverse effects on energy supply, distribution, or use.

List of Subjects in 30 CFR Parts 6, 7, 18, 19, 20, 22, 23, 27, 33, 35, and 36

Mine Safety and Health, Reporting and Recordkeeping Requirements, Research

Signed in Arlington, Virginia, this 9th day of June, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

■ For the reasons set out in the preamble, chapter I of title 30 of the Code of Federal Regulations is amended as follows:

■ 1. Part 6 is added to read as follows:

PART 6—TESTING AND EVALUATION BY INDEPENDENT LABORATORIES AND NON-MSHA PRODUCT SAFETY STANDARDS

Sec.

6.1 Purpose and effective date.

6.2 Definitions.

6.10 Use of independent laboratories.

6.20 MSHA acceptance of equivalent non-MSHA product safety standards.

Authority: 30 U.S.C. 957.

§ 6.1 Purpose and effective date.

This part sets out alternate requirements 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 part, the necessary testing and evaluation for approval. It also permits manufacturers to have their products approved based on non-MSHA product safety standards once MSHA has determined that the non-MSHA standards are equivalent to MSHA's applicable product approval requirements or can be modified to provide at least the same degree of protection as those MSHA requirements. The provisions of this part may be used by applicants for product approval under parts 18, 19, 20, 22, 23, 27, 33, 35, and 36. This rule is effective August 18, 2003.

§ 6.2 Definitions.

The following definitions apply in this part.

Applicant. An individual or organization that manufactures or controls the assembly of a product and applies to MSHA for approval of that product.

Approval. 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 also are used to denote MSHA approval.

Approval holder. 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 standards. 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. A laboratory that:

(1) has been recognized by a laboratory accrediting organization 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. 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. A document, or group of documents, that specifies the requirements for the testing and evaluation of a product for use in explosive gas and dust atmospheres, and, when appropriate, includes documents addressing the flammability properties of products.

§ 6.10 Use of independent laboratories.

(a) MSHA will accept testing and evaluation performed by an independent laboratory for purposes of MSHA product approval provided that MSHA receives as part of the application:

(1) Written evidence of the laboratory's independence and current

recognition by a laboratory accrediting organization;

(2) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(3) Identification of components or features of the product that are critical to the safety of the product; and

(4) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by the applicable part under this chapter.

(b) Product testing and evaluation performed by independent laboratories for purposes of MSHA approval must comply with the applicable MSHA product approval requirements.

(c) Product testing and evaluation must be conducted or witnessed by the laboratory's personnel.

(d) After review of the information required under paragraphs (a)(1) through (a)(4) of this section, MSHA will notify the applicant if additional information or testing is required. The applicant must provide this information, arrange any additional or repeat tests and notify MSHA of the location, date, and time of the test(s). MSHA may observe any additional testing conducted by an independent laboratory. Further, MSHA may decide to conduct the additional or repeated tests at the applicant's expense. The applicant must supply any additional components necessary for testing and evaluation.

(e) Upon request by MSHA, but not more than once a year, except for cause, approval holders of products approved based on independent laboratory testing and evaluation must make such products available for post-approval audit at a mutually agreeable site at no cost to MSHA.

(f) Once the product is approved, the approval holder must notify MSHA of all product defects of which they become aware.

§ 6.20 MSHA acceptance of equivalent non-MSHA product safety standards.

(a) 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 in parts 18, 19, 20, 22, 23, 27, 33, 35 and 36 of this chapter; or

(2) Can be modified to provide at least the same degree of protection as those MSHA requirements.

(b) 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.

(c) A listing of all equivalency determinations will be published in this part 6 and the applicable approval parts. The listing will state whether MSHA accepts the non-MSHA product safety standards in their original form, or whether MSHA will require modifications to demonstrate equivalency. If modifications are required, they will be provided in the listing. MSHA will notify the public of each equivalency determination and will publish a summary of the basis for its determination. MSHA will provide equivalency determination reports to the public upon request to the Approval and Certification Center.

(d) After MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations, applicants may seek MSHA product approval based on such non-MSHA product safety standards.

PART 7—TESTING BY APPLICANT OR THIRD PARTY

■ 2–3. The authority for part 7 continues to read as follows:

Authority: 30 U.S.C. 957.

■ 4. Amend § 7.2 by adding a new definition to read as follows:

§ 7.2 Definitions.

* * * * *

Equivalent non-MSHA product safety standards. 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 technical requirements in the subparts of this part, or can be modified to provide at least the same degree of protection as those MSHA requirements.

* * * * *

■ 5. Amend subpart A by adding a new § 7.10 to read as follows:

§ 7.10 MSHA acceptance of equivalent non-MSHA product safety standards.

(a) 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 applicable technical requirements for a product in the subparts of this part; or

(2) Can be modified to provide at least the same degree of protection as those MSHA requirements.

(b) 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.

(c) A listing of all equivalency determinations will be published in this part 7. The listing will state whether MSHA accepts the non-MSHA product safety standards in their original form, or whether MSHA will require modifications to demonstrate equivalency. If modifications are required, they will be provided in the listing. MSHA will notify the public of each equivalency determination and will publish a summary of the basis for its determination. MSHA will provide equivalency determination reports to the public upon request to the Approval and Certification Center.

(d) After MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations, applicants may seek MSHA product approval based on such non-MSHA product safety standards.

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

■ 6. The authority for part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 7. Amend § 18.6 by revising paragraph (a) to read as follows:

§ 18.6 Applications.

(a)(1) Investigation leading to approval, certification, extension thereof, or acceptance of hose or conveyor belt, will be undertaken by MSHA only pursuant to a written application accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration to cover the fees. The application shall be accompanied by all necessary drawings, specifications, descriptions, and related materials, as set out in this part.

(2) Where the applicant for approval has used an independent testing laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as

submitted to the independent laboratory by the applicant and as required by this part.

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

(4) The application, all related documents, and all correspondence concerning it shall be addressed to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

* * * * *

■ 8. Amend § 18.15 by revising paragraph (a) to read as follows:

§ 18.15 Changes after approval or certification.

* * * * *

(a)(1) Application shall be made as for an original approval or letter of certification requesting that the existing approval or certification be extended to cover the proposed changes and shall be accompanied by drawings, specifications, and related information, showing the changes in detail.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved or certified product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

PART 19—ELECTRIC CAP LAMPS

■ 9. The authority for part 19 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 10. Revise § 19.3 to read as follows:

§ 19.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval

of any lamp, the manufacturer shall make application by letter for an investigation leading to approval of its lamp. This application, accompanied by a check, bank draft, or money order, payable to U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete lamp, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(1) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(2) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(3) Identification of components or features of the product that are critical to the safety of the product; and

(4) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(c) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

■ 11. Amend § 19.13 by revising paragraph (a) to read as follows:

§ 19.13 Instructions for handling future changes in lamp design.

* * * * *

(a)(1) The manufacturer shall write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this letter the manufacturer should submit a revised drawing or drawings showing the changes in detail, and one of each of the changed lamp parts.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

PART 20—ELECTRIC MINE LAMPS OTHER THAN STANDARD CAP LAMPS

■ 12. The authority for part 20 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 13. Revise § 20.3 to read as follows:

§ 20.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any lamp, the manufacturer shall make application by letter for an investigation of the lamp. This application, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete lamp, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(1) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(2) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(3) Identification of components or features of the product that are critical to the safety of the product; and

(4) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required under this part.

(c) An applicant may request testing and evaluation to non-MSHA product

safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

■ 14. Amend § 20.14 by revising paragraph (a) to read as follows:

§ 20.14 Instructions for handling future changes in lamp design.

* * * * *

(a)(1) The manufacturer shall write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and describing the change or changes proposed. With this letter the manufacturer should submit a revised drawing or drawings showing the changes in detail, and one of each of the changed lamp parts.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

PART 22—PORTABLE METHANE DETECTORS

■ 15. The authority for part 22 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 16. Revise § 22.4 to read as follows:

§ 22.4 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any methane detector, the manufacturer shall make application by letter for an investigation leading to approval of the detector. This application, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to the

Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete detector, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(1) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(2) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(3) Identification of components or features of the product that are critical to the safety of the product; and

(4) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(c) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

■ 17. Section 22.11 is amended by revising paragraph (a) to read as follows:

§ 22.11 Instructions on handling future changes in design.

* * * * *

(a)(1) The manufacturer must write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this request, the manufacturer should submit a revised drawing or drawings showing changes in detail, together with one of each of the parts affected.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each

requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

PART 23—TELEPHONES AND SIGNALING DEVICES

■ 18. The authority for part 23 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 19. Revise § 23.3 to read as follows:

§ 23.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any telephone or signaling device, the manufacturer shall make application by letter for an investigation leading to approval of the device. This application, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete telephone or signaling device, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(1) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(2) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(3) Identification of components or features of the product that are critical to the safety of the product; and

(4) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(c) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

■ 20. Amend § 23.14 by revising paragraph (a) to read as follows:

§ 23.14 Instructions for handling future changes in design.

* * * * *

(a)(1) The manufacturer shall write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this request, the manufacturer should submit a revised drawing or drawings showing the changes in detail, together with one of each of the parts affected.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

PART 27—METHANE-MONITORING SYSTEMS

■ 21. The authority for part 27 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 22. Amend § 27.4 by revising paragraph (a) to read as follows:

§ 27.4 Applications.

(a)(1) No investigation or testing for certification will be undertaken by MSHA except pursuant to a written application, accompanied by all drawings, specifications, descriptions, and related materials and also a check, bank draft, or money order payable to the U.S. Mine Safety and Health Administration, to cover the fees. The application and all related matters and correspondence concerning it shall be addressed to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to the product approval requirements under this part.

* * * * *

■ 23. Amend 27.11 by revising paragraph (a) to read as follows:

§ 27.11 Extension of certification.

* * * * *

(a)(1) Application shall be made as for an original certification, requesting that the existing certification be extended to cover the proposed changes. The application shall include complete drawings, specifications, and related data, showing the changes in detail.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

PART 33—DUST COLLECTORS FOR USE IN CONNECTION WITH ROCK DRILLING IN COAL MINES

■ 24. The authority for part 33 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 25. Amend § 33.6 by revising paragraph (a) to read as follows:

§ 33.6 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application (except as otherwise provided in paragraph (e) of this section), accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees; and all prescribed drawings, specifications, and all related materials. The application and all related matters and all correspondence concerning it shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

- (i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;
- (ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;
- (iii) Identification of components or features of the product that are critical to the safety of the product; and
- (iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

* * * * *

■ 26. Amend § 33.12 by revising paragraph (a) to read as follows:

§ 33.12 Changes after certification.

* * * * *

(a)(1) Application shall be made as for an original certificate, requesting that the existing certification be extended to cover the proposed changes, and shall

be accompanied by drawings, specifications, and related data showing the changes in detail.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

- (i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;
- (ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;
- (iii) Identification of components or features of the product that are critical to the safety of the product; and
- (iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

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PART 35—FIRE-RESISTANT HYDRAULIC FLUIDS

■ 27. The authority for part 35 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 28. Amend § 35.6 by revising paragraph (a) to read as follows:

§ 35.6 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees; and all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence concerning it shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

- (i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;
- (ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

* * * * *

■ 29. Amend § 35.12 by revising paragraph (a) to read as follows:

§ 35.12 Changes after certification.

* * * * *

(a)(1) Application shall be made, as for an original certificate of approval, requesting that the existing certification be extended to cover the proposed change. The application shall be accompanied by specifications and related material as in the case of an original application.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

- (i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;
- (ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;
- (iii) Identification of components or features of the product that are critical to the safety of the product; and
- (iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

PART 36—APPROVAL REQUIREMENTS FOR PERMISSIBLE MOBILE DIESEL-POWERED TRANSPORTATION EQUIPMENT

■ 30. The authority for part 36 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 31. Amend § 36.6 by revising paragraph (a) to read as follows:

§ 36.6 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except

pursuant to a written application, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees; and all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence concerning it shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

* * * * *

■ 32. Amend § 36.12 by revising paragraph (a) to read as follows:

§ 36.12 Changes after certification.

* * * * *

(a)(1) Application shall be made, as for an original certificate of approval, requesting that the existing certification be extended to cover the proposed change. The application shall be accompanied by specifications and related material as in the case of an original application.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

* * * * *

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