

1 DEPARTMENT OF LABOR
2 MINE SAFETY AND HEALTH ADMINISTRATION
3 OFFICE OF STANDARDS, REGULATIONS AND VARIANCES

4 _____ X
5 In re: Testing and Evaluation by Independent)
6 Laboratories and Non-MSHA Product)
7 Safety Standards)
8 _____ X

9 PURSUANT TO NOTICE, the above-entitled public
10 hearing was taken at 9:05 a.m., on January 7, 2003, at 3203
11 Quebec Street, Denver, Colorado, before and before Amanda L.
12 Maze, Registered Professional Reporter and Notary Public.

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14 APPEARANCES:

15 For the Mine Safety and Health Administration:

16 Dave Chirdon, Electrical Safety Division

17 Bud Page, Electrical Safety Division

18 Roslyn Fontaine, Technical Support

19 Linda Fort, Solicitor's Office

20 Ronald Ford, Office of Standards, Regulations, and
21 Variances

22 Debra Janes, Office of Standards, Regulations, and
23 Variances

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1 P R O C E E D I N G S

2 MR. CHIRDON: It's 9:05 on January 7th,
3 2003. We're at the Denver Doubletree Hotel in
4 Denver, Colorado. And my name is Dave Chirdon. I'm
5 the chief of the Electrical Safety Division at
6 MSHA's Approval Certification Center. I'll be to
7 moderator for the hearing today on testing and
8 evaluation by independent laboratories and non-MSHA
9 safety standards, also referred to as Part 6.

10 On behalf of Dave Lauriski, I would like
11 to welcome everyone here today. And sitting with me
12 here at the table is Bud Page from the Approval
13 Certification Center; Rosyln Fontaine, from our
14 Office of Technical Support; Linda Fort from the
15 Office of the Solicitor; Ron Ford from our Office of
16 Standards, Regulations and Variances, and Debra
17 Janes, also from the Office of Standards,
18 Regulations and Variances.

19 This is the first of two hearings on the
20 proposed rule that would offer applicants for MSHA
21 product approval alternate testing requirements for
22 testing and evaluation of products that MSHA
23 approves for use in gassy underground mines. The
24 second hearing will be held on Thursday,
25 January 9th, 2003, at the Holiday Inn Meadowlands in

1 Washington, Pennsylvania.

2 The initial announcement of these two
3 rulemaking hearings was contained in the Notice of
4 Proposed Rulemaking published on October 17th, 2002,
5 in the Federal Register. Copies of this Federal
6 Register document are available in the back of the
7 room.

8 The purpose of these hearings is to
9 receive information from the public that will help
10 us evaluate our proposed rule. The scope of the
11 issues we are addressing with this proposed rule are
12 well defined, and this hearing will be limited to
13 soliciting public input on these issues.

14 We welcome comment on two issues in
15 particular: Whether or not manufacturers of certain
16 products, who seek MSHA approval, would use an
17 independent laboratory to perform, in whole or part,
18 the necessary testing and evaluation for approval;
19 and whether or not manufacturers would have their
20 products approved based on a non-MSHA product safety
21 standard such to be equivalent to MSHA product
22 approval requirements. These two issues were
23 discussed in the October 17th Federal Register
24 document.

25 I'd like to give you some background that

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1 led us to this revised proposed rule. Under the
2 Federal Mine Safety and Health Act of 1977, MSHA is
3 responsible for prescribing the technical design,
4 construction, and test requirements for certain
5 products used in gassy underground mines, and for
6 testing and evaluating them for MSHA approval based
7 on these requirements. These technical requirements
8 are set forth in the Agency's approval regulations
9 in Title 30, Code of Federal Regulations, or 30 CFR,
10 Parts 7 through 36.

11 MSHA currently charges applicants a fee to
12 perform the testing and evaluation of products
13 submitted for MSHA approval. Following MSHA
14 approval, manufacturers must ensure that the product
15 continues to conform to the MSHA-approved
16 specifications.

17 In the mid 1980s, MSHA reviewed its
18 product approval program to determine whether it
19 could be restructured to provide increased safety to
20 miners without increasing cost to the applicants.
21 That review resulted in that the promulgation in
22 1988 of 30 CFR, Testing by Applicant or Third-Party.

23 MSHA represented -- excuse me -- Part 7
24 represented MSHA's first departure from its role of
25 front-end testing of products for approval. It

1 substituted manufacturer or third-party testing for
2 a limited number of products for testing that
3 previously had been conducted by MSHA.

4 In 1993, MSHA initiated a further review
5 of its approval and certification activities,
6 including its Part 7 applicant or third-party
7 testing program. Based on that review, the Agency
8 reaffirmed the objectives of the Part 7 concept to
9 increase post-approval product audits and direct
10 more resources to evaluation of safety and
11 technological improvements in products for use
12 underground.

13 However, MSHA determined that while the
14 Part 7 program was a step in the right direction,
15 the limited scope of that program did not free up
16 sufficient resources to allow MSHA to fully redirect
17 its efforts to meet these objectives. After
18 considering how best to accomplish these goals, the
19 Agency decided to initiate rulemaking to modify
20 MSHA's rulemaking procedure.

21 In 1994, MSHA issued a proposed rule that
22 would have required testing and evaluation be
23 performed by Nationally Recognized Testing
24 Laboratories, or NTRLs, under the OSHA program,
25 instead of testing and evaluation by MSHA. In

1 addition, the 1994 proposed rule would have allowed
2 applicant's to request MSHA product approval based
3 on approval requirements other than MSHA's, as long
4 as those requirements provided at least the same
5 degree of protection as MSHA's approval
6 requirements. MSHA would have continued to verify
7 that approval requirements were met and would have
8 retained full responsibility for issuing product
9 approvals.

10 Based on comments from the public to the
11 1994 proposed rule, this revised proposed rule
12 provides a number of revisions to the original
13 proposal. The major changes are:

14 First, the revised proposal would be
15 voluntary. Manufacturers could choose to use
16 independent labs to perform all or part of their
17 testing and evaluation necessary for approval or
18 could elect to have MSHA perform the necessary
19 testing and evaluation.

20 Second, applicants would not have to use
21 only independent laboratories that are Nationally
22 Recognized Testing Labs -- Laboratories under OSHA's
23 program, but could choose an independent laboratory
24 recognized by a variety of laboratory accreditation
25 programs, such as that of American National

1 Standards Institute, or ANSI, or International
2 Electrotechnical Commission, the IEC.

3 Third, only MSHA would conduct required
4 post-approval product audits. Audits conducted by
5 independent laboratories would not be required under
6 the revised proposal. Fourth, only the MSHA mark
7 would be required on MSHA-approved products, not
8 both the MSHA and independent laboratory mark.

9 Finally, the revised proposal would allow
10 public input into the process of making equivalency
11 determinations of non-MSHA product safety standards.
12 MSHA would notify the public through publication in
13 the Federal Register of MSHA's intent to review a
14 particular non-MSHA standard for equivalency and
15 provide an opportunity for public input on that
16 issue.

17 However, like Part 7, under both the 1994
18 proposed rule and this revised proposed rule, the
19 review of any testing and evaluation performed by an
20 independent laboratory and the issuance of the MSHA
21 product approval would still remain the full
22 responsibility of MSHA's Certification and Approval
23 Center.

24 The issues surrounding the use of
25 independent laboratories and after non-MSHA product

1 safety standards are important to MSHA. We will use
2 the information provided by you to help us decide
3 how best to proceed in this rulemaking. These two
4 hearings will give manufacturers, mine operators,
5 miners, and their representatives, and other
6 interested parties an opportunity to present their
7 views in this revised proposed rule.

8 To date, we have received two comments on
9 this proposal. Copies of these comments are located
10 on the table at the entrance to the room. If you
11 prefer, you can view these comments on our website
12 at the following address. The address is posted on
13 the board in front here. And it's
14 www.msha.gov/regs/comments/inclab/inclabedocket.htm.

15 The format of this public hearing will be
16 as follows: Formal rules of evidence will not
17 apply, and this hearing will be conducted in an
18 informal manner. No one has notified us in advance
19 of their intent to speak. Anyone that has signed up
20 today to speak will make their presentations first.

21 For the record, nobody is present. Nobody
22 has signed up to speak. After all scheduled
23 speakers have finished, others can request to speak.
24 When the last speaker is finished, we will conclude
25 this public hearing. The hearing will end no later

1 than 5 p.m.

2 If you wish to present any written
3 standards or information today, please clearly
4 identify your material. When you give it to me, I
5 will identify the material by the title as
6 submitted.

7 You may also submit comments following the
8 public hearing. Please submit them to MSHA by
9 February 10, 2003, which is the close of the
10 post-hearing comment period. Comments may be
11 submitted to MSHA by electronic mail at
12 comments@msha.gov, by fax at 202.693.9441, or by
13 regular mail or hand deliver to MSHA, Office of
14 Standards, Regulations and Variances, 1100 Wilson
15 Boulevard, Room 2352, Arlington, Virginia,
16 22209-3939.

17 A verbatim transcript of this public
18 hearing will be available upon request. If you want
19 a personal copy of the hearing transcript, please
20 make arrangements with the court reporter. The
21 procedures will also be the same for the other
22 public hearing in Washington, Pennsylvania. MSHA
23 will post the verbatim transcripts of both the
24 Denver and Washington, PA, public hearings on its
25 website. They should be posted there approximately

1 one week after the Washington, Pennsylvania, hearing
2 is concluded on January 9th.

3 At this point, again, this is nobody
4 present and no speakers have signed up to speak, so
5 we'll go off the record at this point and go back on
6 the record at 11 a.m. and give people a chance to
7 show up.

8 (Recess taken.)

9 MR. CHIRDON: We're back on the record.
10 It's 11 a.m. on Tuesday, January 7th, 2003, and no
11 one has appeared for the hearings. And we're going
12 to conclude the hearing at this point.

13 (The hearing concluded at 11:03 a.m.)

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1 STATE OF COLORADO)
)ss. REPORTER'S CERTIFICATE
2 COUNTY OF DENVER)

3 I, Amanda L. Maze, Registered Professional
4 Reporter and Notary Public within the State of
5 Colorado, do hereby certify that this hearing was
6 taken in shorthand by me at the time and place
7 herein set forth and thereafter reduced to
8 typewritten form, and that the foregoing 9 pages
9 constitutes a true and correct transcript.

10 I further certify that I am not related
11 to, employed by, nor of counsel for any of the
12 parties or attorneys herein, nor otherwise
13 interested in the result of the within action.

14 In witness whereof, I have hereunto
15 affixed my hand this 9th day of January, 2003. My
16 commission expires: May 7, 2003.

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Amanda L. Maze
Registered Professional Reporter
and Notary Public