

basis before the start of technical evaluation. When unforeseen circumstances discovered during evaluation would result in the hourly fee exceeding the cap, the applicant will have the option to cancel the action or receive a new maximum fee estimate. If the actual hourly fee for processing the application is less than the cap, the lesser amount is charged.

(d) The Stamped Notification Acceptance Program (SNAP) and Stamped Revision Acceptance (SRA) program are expedited programs allowing manufacturers to submit minor changes to previously approved products. A flat fee is charged for these services.

(e) Tests conducted by the Bureau of Mines for MSHA under part 15 are flat rate items. However, these fees will be included with hourly evaluation rates and billed out at the conclusion of the processing.

§ 5.40 Fee administration.

(a) Applicants must submit a check or money order for the application fee to MSHA Finance Branch, P.O. Box 25367, Denver Federal Center, Denver, Colorado 80225, at the time the application is submitted to the Approval and Certification Center. The check or money order must bear the “company assigned application number” of the application for approval. The application for approval must bear the check or money order number, amount of check, the date the payment was mailed to MSHA Finance Branch, and the company-assigned application number identical to the number placed on the check or money order.

(b) Applicants for SNAP and SRA services must submit the full fee to MSHA Finance Branch at the above address at the time the application is submitted to the Approval and Certification Center.

(c) Applicants for services for which an hourly fee is charged will be billed for the fee when processing of the action is completed. Actual travel expenses, if any, incurred in processing the application will be added. Invoices will contain specific payment instructions.

§ 5.50 Fee revisions.

Each fee schedule shall remain in effect for at least one year and be subject to revision at least once every three years.

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.

SOURCE: 68 FR 36417, June 17, 2003, unless otherwise noted.

§ 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

Subpart A—General

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