

§ 200.935

to comply with the Department's request within ninety days of the date of that request or within such longer time as may be specified by the Secretary, the Department will return the application to the applicant. The Department will not refund any fees paid toward an application returned under this paragraph. The application will be considered further only if it is resubmitted along with payment of the full fee as required by these regulations.

(5) *Ineligible applications.* If the Secretary determines that an application or request will not be considered because it is not eligible for issuance of a technical suitability document, the Department will promptly return the application or request, refund any fees paid, and explain why the application or request is ineligible.

(6) *Cancellation of a technical suitability document.* If the Department determines that (i) the conditions under which a technical suitability document was issued have so changed as to affect the production of, or to compromise the integrity of, the material, product, or system approved thereby, or (ii) that the producer has changed its organizational form without notifying HUD, or (iii) that the producer is not complying with the responsibilities it assumed as a condition of HUD's acceptance of its material, product or system, the Department will notify the producer or manufacturer that the technical suitability document may be cancelled. However, before cancelling a technical suitability document, the Department will give the manufacturer reasonable notice in writing of the specific reasons therefore and an opportunity to present its views on why the technical suitability document should not be cancelled. No refund of fees will be made on a cancelled document.

(e) *Identification.* (1) Applications for issuance of a MEB, SEB, TCB, or MR submitted to HUD Headquarters will be identified with a case number. The applicant will be notified of the case number when receipt of the application is acknowledged. Thereafter, the case number will be used on all correspondence relating to the application. When a final draft of a new document is prepared for publication and distribution,

24 CFR Ch. II (4-1-10 Edition)

a bulletin or release number will be assigned to the new issuance.

(2) In the case of an application for an ALA submitted to a field office, the application will be processed in accordance with the identification and processing procedures established by the responsible field office. The field office will notify the applicant of receipt of the application and inform the applicant of the procedures that will be followed with respect to the issuance of an ALA.

(Information collection requirements in paragraphs (b), (c), (d)(1), (2), (3) and (4) were approved by the Office of Management and Budget under control number 2502-0313)

[49 FR 31856, Aug. 9, 1984, as amended at 58 FR 60250, Nov. 15, 1993]

§ 200.935 Administrator qualifications and procedures for HUD building products certification programs.

(a) *General.* This section establishes administrator qualifications and procedures for the HUD Building Products Certification Programs under section 521 of the National Housing Act and the HUD Minimum Property Standards. Under these programs organizations acceptable to HUD validate manufacturers' certifications that certain building products or materials meet applicable standards. HUD may decide to implement a certification program for a particular building product or material for a variety of reasons, such as when deemed necessary by HUD to facilitate the introduction of new and innovative products or materials; or in response to reports of fraud or misrepresentation by manufacturers in advertising that their product or materials comply with a standard.

(b) *Definitions*—(1) *Certification program* ("program"). The procedure under which accepted administrators validate manufacturers' certifications that particular building products or materials meet applicable HUD standards. A separate program is used to validate certifications for each particular product or material for which HUD requires certifications.

(2) *Program administrator* (“*administrator*”). An organization which conducts the program validating the manufacturer’s certification that a particular building product or material meets applicable HUD standards.

(c) *Administrator qualifications and application procedures*—(1) *Qualifications*. Each program administrator shall be capable of conducting a certification program with respect to organization, staff and facilities, and have a reputation for adhering to high ethical standards. To be considered acceptable for conducting a certification program, each administrator shall:

(i) Be a technically qualified organization with past experience in the administration of certification programs. The certification program(s) shall be under the supervision of a qualified professional with six years of experience in interpreting testing standards, test methods, evaluating test reports and quality control programs. Each administrator is responsible for staffing the program with qualified professional personnel with experience in interpreting testing standards, test methods, evaluating test reports and quality control programs. The staff shall be adequate to service all aspects of the program.

(ii) Have field inspectors trained to make selections of materials for testing from manufacturer’s stock or from distributors’ establishments and to conduct product compliance inspections. Such inspectors must be trained and experienced in evaluating manufacturer’s quality control records to ascertain with a reasonable degree of assurance that continuing production remains in compliance with the applicable standard set forth in the Use of Materials (UM) Bulletin. When inspectors are used to evaluate laboratory operations, they shall be qualified and under the supervision of the administrator. They shall be knowledgeable in such areas as test methods, quality control, testing techniques, and instrument calibration.

(iii) Have facilities and capabilities for communications with manufacturers, laboratories, and HUD, including publication of a directory of certified products and a list of accredited laboratories, if required by the program.

(iv) Have adequate policies and practices for preserving information entrusted to its care. HUD reserves the right to review all technical records related to the program for the purpose of monitoring.

(v) Have a copy of all applicable standards, test methods and related information necessary to carry out the program.

(vi) Have a registered or pending certification mark at the United States Patent Office and be willing to license, on a uniform basis, the use of that mark by manufacturers as a validation of the manufacturer’s certification that the product complies with the applicable standard.

(2) *Applications procedures*. Any organization desiring HUD acceptance as a qualified administrator to conduct a certification program shall make application in writing to the Director, Office of Architecture and Engineering Standards. The application shall state the particular certification program for which acceptance is requested and include information indicating compliance with each of the qualification requirements by number and subsection. Attached to the application shall be:

(i) A list of certification programs in which the organization is participating or has participated and the types of participation (sponsor, administrator, testing laboratory, etc.).

(ii) A procedural guide used in one of these programs.

(iii) A directory or listing used in one of these programs.

(iv) A reproduction or facsimile of the organization’s registered or pending mark.

(v) A proposed procedural guide for the particular certification program. HUD certification program procedures described in paragraph (d) of this section shall be followed.

(3) *Acceptance*. HUD shall review each submission and notify the applicant whether or not they are accepted or rejected. HUD shall be notified immediately of any change(s) in the administrator’s submission regarding program procedures and/or major personnel associated with the program. HUD reserves the right to suspend or debar an administrator in accordance with 2 CFR part 2424.

(d) *HUD building products certification procedures*—(1) *Certification program development.* Certification program development by an administrator shall be based upon the procedures and standards for the specific building product described in a Use of Materials Bulletin or a Materials Release.

(2) *License agreement.* Each administrator shall have a written license agreement with each participating manufacturer binding each to the provisions of the specific program and authorizing the manufacturer to use the administrator's mark, seal, or label on its products. The administrator shall have the right to terminate any agreement prior to an expiration date, for example, if there has been a breach of the requirement of the certification program by the manufacturer.

(3) *Laboratory approval.* The administrator shall review laboratories that apply for participation in this program on the basis of the procedures described in paragraph (e) of this section. A list of approved laboratories shall be maintained by the administrator. When the certification program allows the use of the administrator's testing laboratories, the laboratories shall be reviewed by a qualified party acceptable to HUD. As accreditation procedures are made available through the National Voluntary Laboratory Accreditation Program (NVLAP) for specific products, HUD may require such accreditation.

(4) *Initial testing and quality control review*—(i) *Initial testing.* Each participating manufacturer shall submit to the appropriate administrator, the product(s) specification and statement(s) that the product complies with the applicable standard. The administrator shall select samples of the product(s), or when HUD specifies as acceptable, a prototype. The particular method of sample selection shall be determined by HUD for each specific product certification program. Other methods of initial sample selection may be used if deemed necessary. If a failure occurs on the initial tests, additional sampling and testing may be done at the manufacturer's request. The administrator's validation of the manufacturer's declaration of certifi-

cation shall be withheld until a finding of compliance is achieved.

(ii) *Quality assurance system review.* (A) Each administrator shall examine a participating manufacturer's facilities and quality assurance system procedures to determine that they are adequate to assure continuing production of the product that complies with the applicable standard. These quality assurance system procedures shall be documented in the administrator's and the manufacturer's files. If a manufacturer's quality assurance system is not satisfactory to the administrator, validation of the manufacturer's declaration of certification shall be withheld. The following American Society for Quality Control (ASQC) standards, which are incorporated by reference, may be used as guidelines in any quality assurance review:

(1) ASQC Q9000–1–1994 Quality Management and Quality Assurance Standards Guidelines for Selection and Use;

(2) ASQC Q9001–1994 Quality Systems—Model for Quality Assurance in Design, Development, Production, Installation, and Servicing;

(3) ASQC Q9002–1994 Quality Systems—Model for Quality Assurance in Production, Installation, and Servicing;

(4) ASQC Q9003–1994 Quality Systems—Model for Quality Assurance in Final Inspection and Test;

(5) ASQC Q9004–1–1994 Quality Management and Quality System Elements-Guidelines.

(B) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the American Society for Quality Control (ASQC), 611 East Wisconsin Avenue, Milwaukee, WI 53202.

(5) *Notice of validation.* When initial testing, quality control review, and evaluation of other technical data are satisfactory to the administrator, a Notice of Validation or Certification shall be issued to the manufacturer. This allows the use of the administrator's registered mark on the product label.

(6) *Labeling.* Each administrator shall issue to the manufacturer labels, tags, marks containing the administrator's

validation mark, and the manufacturer's certification of compliance with the applicable standard. The registered administrator's (validator's) mark shall be on the label. A sponsor's (association, testing agencies, society or others) mark may be used in addition to the administrator's mark. The manufacturer's certification of compliance to the standard may be coded. Additional information such as type, grade, class, etc., may also be coded. When coding is used, the code shall be described in the directory or listing.

(7) *Directory or listing.* When required by the program, the administrator shall publish a directory or listing for all certified products. The directory shall list the items described in paragraph (d)(6) of this section. The directory shall also carry a complete list of approved laboratories and shall be updated to reflect additions or deletions of certified products and laboratories. Directories or listings shall be published periodically as described in the specific program. Each administrator shall make a complimentary distribution of the directory or listing to the HUD Field Offices and other government agencies designated by HUD. A subscription fee may be charged to others requesting copies.

(8) *Periodic tests and quality control inspections.* Samples of the certified product or prototype shall be selected periodically from the plant, warehouse inventory or sales points. The samples shall be sent to an administrator-approved laboratory and tested in accordance with the applicable standard. The frequency of testing shall be described in the specific building product program. The administrator shall periodically visit the manufacturer's facility to assure that the initially accepted quality control procedures are being followed.

(9) *Product decertification.* If a failure should occur in any test, the laboratory shall notify the administrator and the manufacturer. The manufacturer shall notify the administrator if a retest is requested. If a retest is not requested, validation shall be withdrawn. If the manufacturer requests a retest, the administrator shall select new samples and submit them to the same or another laboratory at the manufac-

turer's expense, for retest of only the test requirement(s) in which the failure(s) occurred. If the specified number of specimens pass the retest, the product can continue to be validated and listed. If the designated number of specimens described in the UM Bulletin fail, the administrator shall decertify the product. The manufacturer may request that a new selection be made of the product after correction or modifications and be subjected to the initial acceptance testing procedure or to a program of retesting established by the administrator. The administrator may decertify the product on the basis of inadequate quality control by the manufacturer. The administrator shall notify the manufacturer, HUD headquarters and the HUD Field Offices of any decertification within 7 days. When the product is decertified the manufacturer shall remove labels, tags or marks from all production and inventory in his/her control determined to be in noncompliance.

(10) *Challenge response.* Any person or organization may submit a sample of a manufacturer's certified product to the administrator in substantiation of a claim of noncompliance. Submission shall be made to the administrator that validated the manufacturer's product. The administrator shall notify the manufacturer that its product has been challenged and shall make arrangements to obtain test samples of the challenged product. An estimate of the cost of the special sample selection and testing shall be made to the complainant. The complainant shall pay the estimated cost of the investigation in advance of any testing of the challenged product, unless HUD believes the complaint to be in the public's interest. HUD may conduct its own investigation when deemed necessary based upon a complaint or a product failure. The administrator shall submit the sample of the challenged product to an approved laboratory of the administrator's choice with the request to test compliance of only the challenged requirement(s). If the samples tested prove that the product failed to meet the standard, the product shall be decertified immediately. The manufacturer whose product is decertified shall reimburse the administrator for all

costs of the investigation and the administrator shall refund the complainant's advance payment. If the tests prove that the product does comply with the standard, the complainant shall be notified that the tests do not support the complaint and that the advance fee has been used for the cost of testing and investigating the claim.

(1) *Maintainance of the program.* Each administrator shall maintain the program in conformance with administrative letters issued by HUD for the purpose of clarifying procedures and interpreting the applicable standard. These letters may also be used to revise and amend the procedures used in specific programs. Significant changes in any program shall be published in the FEDERAL REGISTER.

(e) *Laboratory qualifications.* The following laboratory qualifications apply to all testing laboratories participating in the program including manufacturer's laboratories and the administrator's own laboratories when designated in the specific program.

(1) *Organization and personnel.* Laboratories wishing to participate in a certification program shall apply to the administrator and shall furnish the following information:

(i) Name of laboratory, address, telephone number, name and title of official to be contacted for this program.

(ii) Name and qualifications of person assigned by the laboratory to supervise testing under a specific certification program.

(iii) Name and qualifications of engineers and other key personnel who shall conduct the testing.

(iv) Brief review of training program for personnel associated with program to assure the operational efficiency and uniformity of the testing and quality control procedures.

Each laboratory shall notify the administrator of any change in its submission regarding procedures and/or major personnel associated with the program.

(2) *Equipment and facilities.* Each laboratory shall:

(i) Describe the test instruments and testing facilities to be used in making the test(s) required by the applicable standard. Information shall include: Item of equipment, manufacturer, type

or model, serial number, range, precision, frequency of calibration and dates of calibration.

(ii) Provide photographs of the listed equipment.

(iii) Provide a description of the applicable standards and calibration equipment being used and the calibration procedures followed, including National Bureau of Standards traceability, when applicable. List outside organizations providing calibration services, if used.

(iv) Demonstrate that measurements can be made with existing equipment and repeated precision within the limits established by the applicable standards. Administrator may periodically require laboratories to conduct collaborative testing on standard reference materials.

(v) Provide evidence, when regulated temperatures and humidity are required, that charts are maintained from a continuous recorder registering both wet and dry bulb temperature or relative humidity. The charts are to be properly dated, retained and available for inspection.

(vi) Provide a list of standards, test methods and other information necessary to carry out the program.

(3) *Testing methodology.* (i) Describe concisely the procedures for conducting the tests required and the specific equipment to be used.

(ii) Attach a sample test report showing representative test results and accompanied by test data forms for each test required. When approved for program participation, testing laboratories may be required by administrator to report test results on standard summary report forms.

(4) *Subcontractors.* If a testing laboratory plans to subcontract any of its testing to other laboratories, only approved laboratories acceptable to the administrator shall be used.

(5) *Laboratory quality control.* The laboratory shall develop operating quality control procedures acceptable to the administrator. The procedures of the American Council of Independent Laboratories¹ may be used as a guideline.

¹Copies are available from the American Council of Independent Laboratories, Inc., 1725 "K" Street, NW., Washington, DC 20006.

(6) *Approval of laboratories.* Administrators shall develop detailed laboratory approval requirements and conduct periodic inspections to assure each test laboratory's capability. Laboratory approval may be granted for 2 years. Reapproval of the laboratory shall be necessary every 2 years. When a program allows the use of an administrator's own laboratories, these laboratories shall be reviewed by a qualified third party acceptable to HUD. Documentation of acceptance for administrator laboratories shall be maintained by the administrator and HUD. Administrator laboratories shall be subject to reapproval every two years.

(7) *Withdrawal of approval.* Laboratory approval shall be withdrawn or temporarily suspended if it is determined that the laboratory is not complying with the approved requirements. Causes for suspension include, but are not limited to, the following:

- (i) Incompetence.
- (ii) Failure to test in accordance with the test methods described in the standard.
- (iii) Issuance of test reports which fail to comply with the requirements described in the specific product certification program.
- (iv) Falsification of the information reported.
- (v) A statement implying validation of the product using a test report which constitutes only part of the total standard.
- (vi) Deceptively utilizing references in advertising or other promotional activities.
- (vii) Submission of incomplete or inadequate information and documentation called for herein.

[44 FR 54656, Sept. 20, 1979, as amended at 63 FR 5423, Feb. 2, 1998; 72 FR 73494, Dec. 27, 2007]

§ 200.936 Supplementary specific procedural requirements under HUD building products certification program for solid fuel type room heaters and fireplace stoves.

(a) *Applicable standards.* Solid fuel type room heaters and fireplace stoves certified under the HUD Building Products Certification Program shall be designed, assembled and tested in con-

formance with the following standards, which are incorporated by reference:

(1) ANSI/UL 737 (1978), for fireplace stoves;

(2) ANSI/UL 1482 (1979), for solid fuel type room heaters with coal amendments.

(b) *Labelling.* (1) Under the procedures set forth in paragraph (d)(6) of § 200.935, concerning labelling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. In the case of solid fuel type room heaters and fireplace stoves, the following additional information must be included on the certification label:

- (i) The manufacturer's statement of conformance to the HUD Building Products Certification Program;
- (ii) The manufacturer's name and the identity and location of manufacturing plant;
- (iii) The specification designation and manufacturer series or model number; and
- (iv) The type of fuel to be used.

(2) The certification label must be permanently affixed to the heater or stove and be readily visible after the heater or stove is installed.

(c) *Periodic tests and quality control inspections.* Under the procedures set forth in paragraph (d)(8) of § 200.935, concerning periodic tests and quality control inspections, the frequency of testing for a product must be described in the specific building product certification program. In the case of solid fuel type room heaters and fireplace stoves, testing and inspection shall be conducted as follows:

(1) Once every four years, beginning with the initial administrator visit, a sample of each certified product shall be selected by the administrator for testing for compliance with the applicable standards in a laboratory which has been accredited under the National Voluntary Laboratory Accreditation Program.

(2) The administrator shall visit the manufacturer's facility two times a