

SUBCHAPTER B—TESTING, EVALUATION, AND APPROVAL OF MINING PRODUCTS

PART 5—FEES FOR TESTING, EVALUATION, AND APPROVAL OF MINING PRODUCTS

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AUTHORITY: 30 U.S.C. 957.

SOURCE: 80 FR 45056, July 29, 2015, unless otherwise noted.

§ 5.10 Purpose and scope.

This part establishes a system under which MSHA charges a fee for services provided. This part includes the management and calculation of fees for the approval program, which includes: Application processing, testing and evaluation, approval decisions, post-approval activities, and termination of approvals.

§ 5.30 Fee calculation.

(a) *Fee calculation.* MSHA charges a fee based on an hourly rate for Approval and Certification Center (A&CC) approval program activities and other associated costs, such as travel expenses and part 15 fees. Part 15 fees for services provided to MSHA by other organizations may be set by those organizations.

(b) *Hourly rate calculation.* The hourly rate consists of direct and indirect costs of the A&CC's approval program divided by the number of direct hours worked on all approval program activities.

(1) Direct costs are compensation and benefit costs for hours worked on approval program activities.

(2) Indirect costs are a proportionate share of the following A&CC costs:

(i) Compensation and benefit hours worked in support of all A&CC activities;

(ii) A&CC building and equipment depreciation costs;

(iii) A&CC utilities, facility and equipment maintenance, and supplies and materials; and

(iv) Information Technology and other services the Department of Labor provides to the A&CC.

(c) *Fees are charged for—*

(1) Application processing (*e.g.*, administrative and technical review of applications, computer tracking, and status reporting);

(2) Testing and evaluation (*e.g.*, analysis of drawings, technical evaluation, testing, test set up and test tear down, and internal quality control activities);

(3) Approval decisions (*e.g.*, consultation on applications, records control and security, document preparation); and

(4) Two post-approval activities: changes to approvals and post-approval product audits.

(d) *Fees are not charged for—*

(1) Technical assistance not related to processing an approval application;

(2) Technical programs, including development of new technology programs;

(3) Participation in research conducted by other government agencies or private organizations; and

(4) Regulatory review activities, including participation in the development of health and safety standards, regulations, and legislation.

(e) *Fee estimate.* Except as provided in paragraphs (e)(1) and (2) of this section, on completion of an initial administrative review of the application, the A&CC will prepare a maximum fee estimate for each application. A&CC will begin the technical evaluation after the applicant authorizes the fee estimate.

(1) The applicant may pre-authorize an expenditure for services, and may further choose to pre-authorize either a maximum dollar amount or an expenditure without a specified maximum amount.

(i) All applications containing a pre-authorization statement will be put in the queue for the technical evaluation on completion of an initial administrative review.

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(ii) MSHA will concurrently prepare a maximum fee estimate for applications containing a statement pre-authorizing a maximum dollar amount, and will provide the applicant with this estimate.

(2) Where MSHA's estimated maximum fee exceeds the pre-authorized maximum dollar amount, the applicant has the choice of cancelling the action and paying for all work done up to the time of the cancellation, or authorizing MSHA's estimate.

(3) Under the Revised Acceptance Modification Program (RAMP), MSHA expedites applications for acceptance of minor changes to previously approved, certified, accepted, or evaluated products. The applicant must pre-authorize a fixed dollar amount, set by MSHA, for processing the application.

(f) If unforeseen circumstances are discovered during the evaluation, and MSHA determines that these circumstances would result in the actual costs exceeding either the pre-authorized expenditure or the authorized maximum fee estimate, as appropriate, MSHA will prepare a revised maximum fee estimate for completing the evaluation. The applicant will have the option of either cancelling the action and paying for services rendered or authorizing MSHA's revised estimate, in which case MSHA will continue to test and evaluate the product.

(g) If the actual cost of processing the application is less than MSHA's maximum fee estimate, MSHA will charge the actual cost.

§ 5.40 Fee administration.

Applicants and approval holders will be billed for all fees, including actual travel expenses, if any, when approval program activities are completed. Invoices will contain specific payment instruction, including the address to mail payments and authorized methods of payment.

§ 5.50 Fee revisions.

The hourly rate will remain in effect for at least one year and be subject to revision at least once every three years.

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

Sec.

6.1 Purpose and effective date.

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6.30 MSHA listing 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.