Federal Register

Tuesday,
August 9, 2005

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 5, 15, et al.
Fees for Testing, Evaluation, and Approval of Mining Products; Final Rule and Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 5, 15, 18, 19, 20, 22, 23, 27, 28, 33, 35, and 36

RIN 1219–AB38

Fees for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Direct final rule.

SUMMARY: We are amending our regulations to reflect established policy and procedures for administering fees for testing, evaluation, and approval of equipment and materials manufactured for use in the mining industry. This direct final rule eliminates the application fee, allows applicants to pre-authorize expenditures for processing applications, allows outside organizations conducting part 15 testing (explosives and sheathed explosive units) on our behalf to set fees for this testing, incorporates changes concerning our programs and organization, and makes non-substantive conforming changes to related regulations.

DATES: This direct final rule is effective November 7, 2005, without further notice, unless we receive significant adverse comment by October 11, 2005. If we receive such comment, we will publish a timely withdrawal of this direct final rule in the **Federal Register**.

ADDRESSES: Comments must include Regulation Identifier Number (RIN) 1219–AB38 and may be submitted by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail to *comments@msha.gov*. Please include RIN 1219–AB38 in the subject line of the message.

If you are unable to submit comments by e-mail or through the Federal eRulemaking portal, please identify your comments by RIN 1219–AB38 and submit them by any of the following methods:

- Facsimile: (202) 693–9441.
- Regular Mail or Hand Delivery: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22201–3939.

Access to Docket: We post all comments received without change, including any personal information provided, at *http://www.msha.gov* at the ''Rules & Regs'' link. Additionally, we post this document, our Program Policy Manual, and all Program Information Bulletins, Standard Administrative Procedures, and Program Policy Letters discussed in the **SUPPLEMENTARY INFORMATION** section of this preamble on our Web site at *http://www.msha.gov*. The public docket may be viewed at our Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Rebecca J. Smith, Acting Director, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), 202–693–9441 (fax), or *smith.rebecca@dol.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Direct Final Rule and Concurrent, Identical Proposed Rule

Since the rule requirements are not controversial and primarily concern agency procedures, we have determined that the subject of this rulemaking is suitable for a direct final rule. No significant adverse comments are anticipated. However, concurrent with this direct final rule, a separate, identical proposed rule is published in today's issue of the **Federal Register**. The duplicate proposed rule will speed notice and comment rulemaking in the event we receive significant adverse comments and withdraw this direct final rule. All interested parties should comment at this time because we will not initiate an additional comment period. If no significant adverse comments to the accompanying proposed rule are received on or before October 11, 2005, this direct final rule will become effective November 7, 2005, without further notice.

If significant adverse comments are received, we will publish a timely notice in the **Federal Register** withdrawing this direct final rule, and will then proceed with the rulemaking by addressing the comments and developing a final rule from the proposed rule published elsewhere in today's issue of the **Federal Register**. For purposes of withdrawing this direct final rule, a significant adverse comment is one that explains (1) why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response through the notice and comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this rule would be ineffective without the addition.

II. Background

A. Rulemaking History

The Federal Mine Safety and Health Act of 1977 (the Mine Act) (Pub. L. 91–173, as amended by Pub. L. 95–164) gives the Mine Safety and Health Administration responsibility for prescribing the technical design, construction, and evaluation criteria for certain products used in underground mines and for testing and approving these products so that the products will not cause a mine fire explosion or a mine fire. Most of the Mine Act's regulations for testing and approving these products relate to ''permissible'' equipment. The Mine Act's implementing regulations at Title 30 of the Code of Federal Regulations (30 CFR), parts 6 through 36 contain procedures by which applicants may apply for and have equipment approved as ''permissible,'' as defined in section 318 of the Mine Act, 30 U.S.C. 878, for use in mines.

On May 8, 1987, we published a final rule (52 FR 17506) adding 30 CFR part 5 (Fees for testing, evaluation, and approval of mining products). This rule created a uniform method for calculating fees and established specific procedures for administering the fee program. Since our initial implementation of part 5, changes to agency policies and procedures have significantly increased the efficiency of the approval process and the administration of the fee program. In particular, we have eliminated the application fee, allowed applicants to pre-authorize expenditures, and restructured existing programs for expediting requests for changes to previously approved mining products. This direct final rule will update part 5 to reflect these initiatives.

Additionally, this rule removes a number of references to the Department of the Interior's former Bureau of Mines, which was dissolved in 1996 (Pub. L. 104–99). Prior to that time, the Bureau of Mines conducted part 15 testing on our behalf. NIOSH has assisted us with part 15 testing; however, NIOSH no longer has the resources to conduct these tests. This rule allows us to use other organizations to conduct part 15 testing.

B. Scope of Approval Activities

The mining products that we approve range from small electronic devices to large complex mining systems. Our

Approval and Certification Center (Center) evaluates and tests these mining products and issues, among other things, ''approvals,'' ''certifications,'' ''acceptances,'' ''extensions,'' and ''field modifications.''

Under the narrow definition of ''approval,'' approvals are issued to a completely assembled machine or system or to an explosive. Under this definition, approval of a mining product constitutes a license authorizing the approval-holder to build and distribute the product for use in underground mines, and to advertise the product as ''MSHA-approved.'' The approval-holder accepts the responsibility for constructing or formulating the product in exact accordance with all drawings and specifications that accompany the approval.

A ''certification'' is issued to a component or sub-system of a completely assembled machine or system. An ''acceptance'' is issued for materials and certain other products. An ''extension'' of an approval or certification allows the applicant to make design modifications to the product. A ''field modification'' allows the owner of an MSHA approved piece of equipment to make specific changes to approved electrical equipment.

Additionally, we administer a number of voluntary programs which are covered by this regulation to evaluate products to determine conformance to safety requirements of 30 CFR parts 56, 57, 75, and 77, or to determine the product's suitability for specific mining applications. For example, we use these voluntary programs to evaluate ground wire monitors, lighting systems, sealants and stopping systems, conveyor belt lagging material, belt wipers, and hydraulic hose and fire suppression agents and systems.

Except where stated otherwise, we use the term ''approval'' in this preamble and regulation in a broad sense to represent our formal recognition of products that are approved, certified, or otherwise formally accepted for use in mining operations.

Our regulations also allow other parties to perform product testing under certain circumstances. Part 6 of 30 CFR allows independent laboratories to test and evaluate certain mining products. It also permits MSHA to approve equipment designed to non-MSHA product safety standards once we have determined that the standard(s) can provide at least the same degree of protection or can be modified to provide at least the same degree of protection as 30 CFR requirements. Part 7 allows the applicant or a third party to test certain products for which the testing requirements are objective in nature and can be routinely conducted by personnel knowledgeable in the particular product line or category. We retain the responsibility for evaluating the test results and issuing the approval for all products tested and evaluated under parts 6 and 7.

C. The Approval Process

The approval process begins with the filing of an application. Parts 6 through 36 provide instructions for preparing and filing applications, which can vary with the type of mining product and type of approval requested. We administratively review each new application, and upon determination that the application is in order, prepare a fee estimate, if one is required. Our technical experts then thoroughly investigate, test, and evaluate the product.

Following successful completion of the evaluation and testing, we provide the applicant with a written notice that the product meets all the applicable requirements.

III. Section-by-Section Analysis

A. Section 5.10 Purpose and Scope

Existing section 5.10 sets out the purpose and scope of part 5. Revised section 5.10 remains substantially unchanged from the existing regulation. The term ''testing, evaluation and approval'' in existing paragraph (a) is changed to ''services provided under this subchapter.'' This change more clearly conveys that part 5 applies to all services which the Center provides and for which a fee is charged. These services include ''approvals'' as defined in both the narrow and broad sense as explained earlier in Part II B, ''Scope of Approval Activities.'' The term ''Except as provided in section 5.30(a)'' is added to the beginning of 5.10(b) to clarify that outside organizations conducting part 15 testing on our behalf may set the fees for this testing. These outside organizations will likely be government agencies or non-government organizations with laboratory facilities capable of performing part 15 tests.

B. Section 5.20 Effective Date

Existing section 5.20 established the effective date of the 1987 rule. Such a notice is not needed at this time because this **Federal Register** document provides the effective date for the direct final rule. For this reason, this revised rule deletes existing § 5.20.

C. Section 5.30 Fee Calculation

Existing paragraph 5.30(a) imposes a non-refundable application fee. This fee was intended to recover costs for initial review and administrative processing of the application in the event the applicant cancelled the action prior to commencement of the technical evaluation. Upon completion of the evaluation and testing, this payment was credited against the total charges billed to the applicant.

Paying and processing this fee placed an additional administrative burden on the applicants and on us, and delayed the approval process. The applicant incurred the burden of remitting two payments during the application process, and we expended resources to process both payments. The technical evaluation could not begin until our finance office confirmed that the payment for the application fee had been posted. After reviewing this activity, we issued Program Policy Letter (PPL) No. 96–II–1, ''Waiver of the $100 Application Fee for Testing, Evaluation, and Approval of Mining Products,'' effective January 1, 1996. This policy is now incorporated into our Program Policy Manual. In revised paragraph 5.30(a), the requirement for an application fee is removed to reflect our elimination of this fee.

Revised paragraph 5.30(a) also incorporates and revises provisions from existing paragraphs 5.30(b) and (e). The provision from revised paragraph 5.30(b), which lists criteria for determining hourly fees, contains three revisions. First, the term ''testing, evaluation and approval'' in existing paragraph 5.30(b) is changed to ''services provided under this subchapter'' and moved to revised paragraph 5.30(b). Second, the existing language concerning direct and indirect costs that is repeated from Section 5.10(b)(1) is omitted to eliminate redundancy. Third, since these criteria for determining hourly fees also apply to any flat rate fees that we would establish, the term ''hourly fees'' is changed to ''fees.'' As noted earlier, when the existing rule was promulgated, we charged flat rate fees for certain services for which turnaround time was predictable and stable. The shift to the current system of hourly fees was driven partially by concerns about the equitable distribution of costs among applicants.

As mentioned above, the provision in existing paragraph 5.30(e), concerning fees for tests conducted for MSHA by the former Bureau of Mines under part 15 (Requirements for approval of explosives and sheathed explosive units) is incorporated into revised paragraph 5.30(a) and is substantially revised. The existing paragraph provides that ''Tests conducted by the

Bureau of Mines for MSHA under part 15 are flat rate items.'' When the existing rule was promulgated, the former Bureau of Mines conducted these tests on our behalf. After the Bureau was dissolved, its facility for conducting explosives testing was transferred first to the Department of Energy and subsequently to NIOSH as a purely research function (30 U.S.C. 1 note).

In January 1996 we received one application for the full range of part 15 tests. Since then we have received six part 15 applications, all for minor tests. During this time we relied on NIOSH to conduct part 15 tests; however, NIOSH did not have the facilities for conducting part 15 chemical analysis tests, and contracted another organization to conduct these tests. That organization subsequently ceased doing chemical analysis tests. NIOSH recently informed us that they no longer have the resources to perform all the part 15 tests. Since we do not have the facilities to conduct these tests, we must contract with other organizations to do any future part 5 testing. Revised paragraph 5.30(a) allows organizations conducting part 15 testing on our behalf to set the fees for these tests. Since we cannot predict what fees the outside organizations will charge for any of these tests, the regularly published fee schedule, required under paragraph 5.50, will no longer specify the fees for part 15 testing.

Revised paragraph 5.30(a) removes the term ''Bureau of Mines'' as well as the requirement to charge flat rate fees for part 15 testing. The revised paragraph provides that ''part 15 fees for services provided to MSHA by other organizations may be set by those organizations.'' That is, the new rule allows us to pass on the cost of services provided to MSHA by other organizations so that these costs can be billed to the applicant.

Existing paragraph 5.30(b), as explained above, is also moved to revised paragraph 5.30(a). Revised paragraph 5.30(b) contains the provision from existing paragraph 5.30(c) concerning our maximum fee estimate.

Under existing paragraph 5.30(c), we prepare an estimate of the maximum fees that would be incurred during evaluation of the product. The preamble to the existing rule, at 52 FR 17509, indicates our intent to provide this estimate to the applicant before beginning the technical evaluation ''to provide the applicant the opportunity to discuss the estimate or withdraw the application.'' Existing paragraph 5.30(c) further provides that if unforeseen circumstances are discovered during the evaluation that would result in the actual fees exceeding this estimate, the applicant has the choice of canceling the action and paying for all work done up to the time of the cancellation, or approving our estimated maximum amount. If the estimate exceeds the actual fees, the applicant is charged the lesser amount. An exception to this provision exists for applications that were submitted under our two former flat rate fee programs. These services were charged a predetermined amount and therefore no estimate was provided. These two programs are outlined in detail below in the discussion of existing paragraph 5.30(d).

In 1991, we revised our Program Policy Manual to allow applicants seeking approval of longwall equipment the option of pre-authorizing fees for testing and evaluation. The pre-authorization statement, submitted as part of the application, allowed the technical evaluation to begin immediately. At the request of applicants seeking testing and evaluation of other products, we expanded the policy to allow a pre-authorization option for all products submitted for approval. We published this policy in Program Policy Letter No. 92–II–3, ''30 CFR Part 5 Fee Pre-Authorization,'' effective June 1, 1992. Under this policy, which is currently incorporated into our Program Policy Manual, applicants, other than those seeking modifications under our program for expedited modifications, may elect to pre-authorize an expenditure for fees by submitting a pre-authorization statement with the application. The applicant must either specify a maximum authorized expenditure for fees, or authorize an expenditure with no maximum amount. The latter option authorizes us to perform all testing and evaluation services that we deem necessary.

Under existing policy, we determine whether or not to prepare a maximum fee estimate and when to begin the technical evaluation using the following guidelines:

No pre-authorization statement: We prepare a maximum fee estimate which the applicant must authorize before the technical evaluation begins.

Pre-authorized maximum expenditure: The applicant provides us with a maximum pre-authorized amount. We prepare a maximum fee estimate and at the same time forward the application for the technical evaluation. If no other applications are waiting in the queue, the technical evaluation may begin immediately. Where our estimate exceeds the pre-authorized amount, the applicant has the choice of canceling the action and paying for all work done up to the time of the cancellation, or approving our estimated maximum amount.

Pre-authorized expenditure with no stated maximum: The applicant pre-authorizes an expenditure with no stated maximum amount. We forward the application immediately for the technical evaluation, and the applicant receives no estimated maximum fee estimate.

The revised paragraph modifies provisions in existing paragraph 5.30(c) to provide exceptions for pre-authorized fees and flat rate programs. Paragraph 5.30(b)(1) is added to reflect our policy of allowing applicants the option of pre-authorizing fees.

Paragraph 5.30(b)(2) is added to reflect our policy of requiring a specific pre-authorized expenditure for applications submitted under the Revised Application Modification Program (RAMP). This program is discussed in the narrative for § 5.30(d).

Finally, the existing rule uses the term ''estimated maximum fee (cap).'' For a number of reasons, including continuity, we no longer use the term ''cap'' to refer to this amount. The revised rule replaces this term wherever it appears in the rule with the term ''maximum fee estimate.''

The provisions of existing paragraph 5.30(c) address:

(1) Our determination of a maximum fee estimate prior to the start of technical evaluation;

(2) Unforeseen circumstances during the technical evaluation which could result in the actual cost exceeding the maximum fee estimate; and

(3) The situation where the maximum fee estimate exceeds the actual cost.

The first provision is moved to paragraph 5.30(b), and is discussed above. The second provision remains in paragraph 5.30(c), and third provision is moved to paragraph 5.30(d).

The second provision, involving unforeseen circumstances during the technical evaluation that could result in the actual cost exceeding the maximum fee estimate, requires us to provide the applicant with a revised maximum fee estimate for completing the evaluation. The applicant may then either cancel the evaluation or authorize the revised fee estimate. Under our policy, if the applicant chooses to cancel the evaluation, fees will be charged for work performed up to the cancellation. If the applicant authorizes the new maximum fee estimate, we will continue testing and evaluating the product.

Revised paragraph 5.30(c) leaves this provision substantially unchanged, but the concept is applied to any expenditure approved by the applicant,

whether that expenditure is the estimated maximum fee or the applicant's pre-authorized expenditure. This provision is not applicable where the pre-authorized expenditure has no stated maximum. Additionally, the term ''cap'' is changed to ''maximum fee estimate.''

Existing paragraph 5.30(d) addresses the former Stamped Notification Acceptance Program (SNAP) and Stamped Revision Acceptance (SRA) program. These programs were developed to expedite the acceptance of certain minor changes to previously approved products, and required only a few documents to be submitted with the application. SNAP addressed acceptance of single changes to an approved product, including changes that pertained to the technical requirements of an approved product without adversely affecting permissibility. SRA addressed acceptance of single or multiple changes to an approved product, provided the change(s) did not affect the technical requirements. The Center charged a flat rate fee for services provided under these programs.

Over time, using and administering both of these programs created inefficiency and unnecessary duplication. Applicants were often uncertain which program (e.g., SNAP, SRA, or an extension of approval) to use for requesting changes in the design of approved products. This confusion often led to administrative errors and the need to re-submit the application. Further, since SNAP applied to single changes to approved products, a separate application was required for each specific proposed change. In 1998, both programs were replaced with the Revised Approval Modification Program (RAMP). Under RAMP, requests for acceptance of minor changes to approved products are made by submitting a letter of application describing the changes, along with drawings and specifications that fully describe each change. Services provided under RAMP are charged an hourly fee, and the letter of application must contain a statement authorizing a minimum dollar amount set by the Agency. A discussion of RAMP was included in the notice of fee adjustments, published on December 18, 1998 (63 FR 70163), and in Standard Application Procedure ASAP1005, ''Revised Approval Modification Program (RAMP) Application Procedure'' published on March 28, 2000.

Revised paragraph 5.30(d) removes the SNAP and SRA requirements, and retains the provision in existing paragraph 5.30(c) concerning applications for which the estimated maximum fee exceeds the actual hourly fee. The existing provision requires us to charge the actual fee. Revised paragraph 5.30(d) leaves this provision substantially unchanged; however, the scope is expanded to include instances where the actual hourly fee exceeds any expenditure approved by the applicant, whether that expenditure is the estimated maximum fee or the applicant's pre-authorized expenditure.

Existing paragraph 5.30(e) addresses fees for testing under part 15. The revised rule moves this provision to paragraph 5.30(a) and deletes paragraph 5.30(e) entirely. The revisions to part 15 fees are discussed in the narrative for revised paragraph 5.30(a).

D. 5.40 Fee Administration

Existing paragraph 5.40(a) provides applicants with detailed instructions for submitting the application fee. Existing paragraph 5.40(b) concerns the method of paying for services provided under SNAP and SRA. Since the application fee, SNAP, and SRA have been eliminated, as discussed above, these paragraphs are removed. Existing paragraph 5.40(c) addresses billing procedures for services which are billed at an hourly rate. The existing paragraph provides that applicants are billed when processing of the application is complete; any actual travel expenses are included in the bill; and the invoice will contain specific payment instructions. Our current regulations in 30 CFR Parts 18 through 36 allow payment for part 5 fees only by check, bank draft, or money order.

Revised section 5.40 applies the billing procedures in existing paragraph 5.40(c) to all fees administered under part 5, and informs applicants that invoices will contain specific payment instructions, including the address to mail payments and authorized methods of payment.

Applicants had informally requested that MSHA allow payment by credit card as a means of expediting the payment process and decreasing administrative costs to applicants. MSHA determined that this option can benefit both the applicant and the government, and recently began accepting payments by credit card. Revised paragraph 5.40 allows MSHA the flexibility to accept credit card payment as an authorized method of payment. The remaining provisions of existing paragraph 5.40(c) are substantially unchanged.

E. Overview of Conforming Changes

Parts 18, 19, 20, 22, 23, 27, 28, 33, 35, and 36 contain detailed instructions for submitting applications for approvals and certifications. Each part instructs the applicant to send a check, bank draft, or money order with the application. The rule removes this instruction, and any other reference to payments submitted with applications, to allow these sections to conform to the revised part 5 provisions concerning application fees and payment of fees, and to reflect our current policy, as stated in the Program Policy Manual. Additionally, the rule updates the Center's address and removes outdated references to the former Bureau of Mines.

F. Section 15.3 Observers at Tests and Evaluations

The term ''Bureau of Mines, U.S. Department of the Interior'' is replaced with the term ''designees of MSHA.'' As explained in the discussion of revised paragraph 5.30(a), the Bureau of Mines no longer exists.

G. Section 18.6 Applications

In paragraph 18.6(a)(1), the term ''accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration to cover the fees,'' is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

H. Section 19.3 Applications

In paragraph 19.3(a), the term ''accompanied by a check, bank draft, or money order, payable to U.S. Mine Safety and Health Administration, to cover all the necessary fees,'' is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

I. Section 20.3 Applications

In paragraph 20.3(a), the term ''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,'' is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

J. Section 22.4 Applications

In paragraph 22.4(a), the term ''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,'' is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

K. Section 23.3 Applications

In paragraph 23.3(a), the term ''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,'' is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

L. Section 27.4 Applications

In paragraph 27.4(a)(1), the term ''and also a check, bank draft, or money order payable to the U.S. Mine Safety and Health Administration, to cover the fees'' is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

M. Section 27.9 Date for Conducting Tests

The existing section lists the ''application, payment of necessary fees, and submission of required material'' as criteria for determining the order of testing when more than one application is pending. The revised section removes the reference to payment of fees and revises the sentence to conform to similar provisions in existing § 18.8 (Date for conducting investigation and tests). The revised sentence reads: ''The date of receipt of an application will determine the order of precedence for investigation and testing.'' The revised section reflects our policy of waiving the application fee.

N. Section 28.10 Application Procedures

Existing § 28.10 requires applicants seeking approval of certain fuses to submit the fuses to a nationally recognized independent testing laboratory for examination, inspection, and testing prior to submitting an approval application to the Center. Paragraph 28.10(c) contains instructions for submitting these laboratory data and results to the Center, and includes a requirement that payment for the application fee accompany these documents. Revised paragraph 28.10(c) removes the requirement to send a payment with the laboratory documents. This change corresponds to the elimination of the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

O. Section 33.3 Consultation

This section contains an outdated address for the Center and a reference to the former Bureau of Mines. The revised section updates the Center's address and replaces the term ''Bureau'' with ''MSHA.''

P. Section 33.6 Applications

In paragraph 33.6(a)(1), the term ''accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees;'' is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

Q. Section 35.6 Applications

In paragraph 35.6(a)(1), the term ''accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees;'' is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40.

R. Section 36.6 Applications

In paragraph 36.6(a)(1), the term ''accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees;'' is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40.

S. Derivation and Distribution Tables

The following derivation table lists each section number of the final rule and the section number of the existing standard from which the section is derived.

DERIVATION TABLE

Final rule	Existing section
Removed	5.20.
Removed	5.30(a).
5.30(a)	5.30(b).
5.30(b)	5.30(c).
5.30(c)	5.30(c).
5.30(d)	5.30(c).
Removed	5.30(e).
5.40	5.40(c).

The following distribution table lists each section number of the existing standards, and the section number of the final rule which contains provisions derived from the corresponding existing section.

DISTRIBUTION TABLE

Existing section	Final rule
5.20(a)	Removed.
5.30(a)	Removed.
5.30(b)	5.30(a).
5.30(c)	5.30(b), (c), and (d).
5.30(d)	Removed.
5.30(e)	Removed.
5.40(a)	Removed.
5.40(b)	Removed.
5.40(c)	5.40.

IV. Regulatory Impact Analysis

A. Executive Order 12866 Regulatory Planning and Review

Compliance Costs

Executive Order 12866, as amended by Executive Order 13258, requires that regulatory agencies assess both the costs and benefits of intended regulations. We have satisfied the requirement of Executive Order 12866 for this rule and determined that the rule does not have an annual effect of $100 million or more on the economy. Therefore, the rule is not an economically significant regulatory action pursuant to section 3(f)(1) of Executive Order 12866.

The rule affects applicants who request approval for products used in the mining industry. The rule does not result in any cost increases or savings to these applicants.

As noted earlier, existing § 5.30(a) imposes a non-refundable standard application fee on each initial application. Since we eliminated the application fee in 1996, deleting the application fee requirement from existing § 5.30(a) would not cause applicants to incur any costs or cost savings.

Benefits

The rule will change our existing regulatory language to be consistent

with current practices and will continue to allow us to process applications in a timely and efficient manner. Thus, new and improved products that enhance the safety of the miner will be allowed to enter the mine as soon as possible.

The application fee discussed above was intended to offset administrative review costs in the event that the applicant cancelled an application prior to commencement of the technical evaluation. We eliminated this fee because it tended to lengthen the approval and certification process and placed unnecessary burdens on us and the applicant. This rulemaking eliminates the outdated application fee language in the existing regulation.

Also as noted earlier, since 1992, we have allowed the applicant to pre-authorize an expenditure for the testing and evaluation that is associated with an application. This permits us to begin immediate evaluation work if no other applications are awaiting initial actions. This rulemaking adds regulatory language that continues to allow applicants the option to pre-authorize an expenditure for testing and evaluation that is associated with an application.

Furthermore, no provision in this rulemaking diminishes the health or safety of U.S. miners.

B. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's economic impact on small entities. Under the RFA, we 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, we established an alternative definition for a small entity and publish that definition in the **Federal Register** for notice and comment. This rule applies to persons or entities applying for approval of products used in the mining industry. These applicants operate in industries involved in measurement, analysis, or controlling instruments; photographic instruments; commercial and industrial lighting fixtures; conveyors; or mining equipment. SBA's definition of a small business for these industries is 500 or fewer employees. Therefore, we have examined the impact on applicants which have 500 or fewer employees and seek MSHA approval for mining products.

C. Factual Basis for Certification

Using SBA's definition of a small entity, there are no annual cost increases or savings to applicants affected by this rulemaking. Therefore, we have concluded that this rule will not have a significant economic impact on a substantial number of small entities.

V. Other Regulatory Matters

A. Paperwork Reduction Act of 1995

There are no paperwork burden hours or costs associated with this rulemaking. Therefore, this direct final rule contains no information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Unfunded Mandates Reform Act

This rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments; nor will it increase private sector expenditures by more than $100 million annually; nor will it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 requires no further agency action or analysis.

C. Assessment of Federal Regulations and Policies on Families

This rule has no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, Section 654 of the Treasury and General Government Appropriations Act of 1999 requires no further agency action, analysis, or assessment.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This rule does not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

E. Executive Order 12988: Civil Justice Reform

This rule was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. The rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. We have determined that this rule would meet the applicable standards provided in Section 3 of Executive Order 12988.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This rule has no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13286, requires no further agency action or analysis.

G. Executive Order 13132: Federalism

This rule does not have ''federalism implications,'' because it does 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.'' Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule has no ''tribal implications'' because it does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, MSHA personnel reviewed this rule for its impact on the supply, distribution, and use of energy. This rule does not result in any cost increases or savings to applicants seeking approval for mining products and would not reduce the supply of coal nor increase its price.

This rule is not a ''significant energy action,'' because it is not ''likely to have a significant adverse effect on the supply, distribution, or use of energy'' ''(including a shortfall in supply, price increases, and increased use of foreign supplies).'' Accordingly, Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires no further agency action or analysis.

J. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, we thoroughly reviewed this rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. We determined and certified that this rule does not have a significant economic impact on a substantial number of small entities.

Dated: July 29, 2005.

David G. Dye,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

List of Subjects

30 CFR Part 5

Fees, Mine safety and health.

30 CFR Parts 15 and 18

Fees, Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Parts 19, 20, 22, 27, and 28

Fees, Mine safety and health.

30 CFR Parts 23, 33, 35, and 36

Fees, Mine safety and health, Reporting and recordkeeping requirements, Research.

■ Accordingly, Chapter I of Title 30 of the Code of Federal Regulations is amended as follows:

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

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 30 U.S.C. 957.

■ 2. Section 5.10 is amended by revising paragraph (a) to read as follows:

§ 5.10 Purpose and scope.

(a) This part establishes a system under which MSHA charges a fee for services provided under this subchapter. This part includes the management and calculation of these fees.

* * * * *

■ 3. Section 5.20 is removed.

■ 4. Section 5.30 is revised to read as follows:

§ 5.30 Fee calculation.

(a) MSHA bases fees under this subchapter on the direct and indirect costs of the services provided, except that part 15 fees for services provided to MSHA by other organizations may be set by those organizations.

(b) Except as provided in paragraphs (b)(1) and (2) of this section, upon completion of an initial administrative review of the application, the Approval and Certification Center will prepare a maximum fee estimate for each application and will begin the technical evaluation once the applicant authorizes the fee estimate.

(1) The applicant may pre-authorize an expenditure for services under this subchapter, and may further choose to pre-authorize either a maximum dollar amount or an expenditure without a specified maximum amount. All applications containing a pre-authorization statement will immediately be put in the queue for the technical evaluation upon completion of an initial administrative review. 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. 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.

(2) 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.

(c) 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.

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

* * * * *

■ 5. Section 5.40 is revised to read as follows:

§ 5.40 Fee administration.

Applicants will be billed for all fees, including actual travel expenses, if any, when processing of the application is completed. Invoices will contain specific payment instructions, including the address to mail payments and authorized methods of payment.

* * * * *

PART 15—REQUIREMENTS FOR APPROVAL OF EXPLOSIVES AND SHEATHED EXPLOSIVE UNITS

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

Authority: 30 U.S.C. 957.

■ 7. Section 15.3 is revised to read as follows:

§ 15.3 Observers at tests and evaluation.

Only personnel of MSHA, designees of MSHA, representatives of the applicant, and such other persons as agreed upon by MSHA and the applicant shall be present during tests and evaluations conducted under this part.

* * * * *

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

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

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

■ 9. Section 18.6(a)(1) is revised to read as follows:

§ 18.6 Application procedures and requirements.

(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. The application shall be accompanied by all necessary drawings, specifications, descriptions, and related materials, as set out in this part. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

PART 19—ELECTRIC CAP LAMPS

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

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

■ 11. In § 19.3 the heading and paragraph (a) are revised to read as follows:

§ 19.3 Application procedures and requirements.

(a) Before MSHA will undertake the active investigation leading to approval of any lamp, the applicant shall make application by letter for an investigation leading to approval of the lamp. This

application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059, together with the required drawings, one complete lamp, and instructions for its operation. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

PART 20—ELECTRIC MINE LAMPS OTHER THAN STANDARD CAP LAMPS

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

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

■ 13. In § 20.3 the heading and paragraph (a) are revised to read as follows:

§ 20.3 Application procedures and requirements.

(a) Before MSHA will undertake the active investigation of any lamp, the applicant shall make application by letter for an investigation of the lamp. This application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059, together with the required drawings, one complete lamp, and instructions for its operation. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

PART 22—PORTABLE METHANE DETECTORS

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

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

■ 15. In § 22.4 the heading and paragraph (a) are revised to read as follows:

§ 22.4 Application procedures and requirements.

(a) Before MSHA will undertake the active investigation of leading to approval of any methane detector, the applicant shall make application by letter for an investigation leading to approval of the detector. This application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059, together with the required drawings, one complete detector, and instructions for its operation. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

PART 23—TELEPHONES AND SIGNALING DEVICES

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

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

■ 17. In § 23.3 the heading and paragraph (a) are revised to read as follows:

§ 23.3 Application procedures and requirements.

(a) Before MSHA will undertake the active investigation of leading to approval of any telephone or signaling device, the applicant shall make application by letter for an investigation leading to approval of the device. This application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059, together with the required drawings, one complete telephone or signaling device, and instructions for its operation. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

PART 27—METHANE-MONITORING SYSTEMS

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

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

■ 19. In § 27.4 the heading and paragraph (a)(1) are revised to read as follows:

§ 27.4 Application procedures and requirements.

(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. The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

§ 27.9 [Amended]

■ 20. Section 27.9 is amended by revising the first sentence to read ''The date of receipt of an application will determine the order of precedence for investigation and testing.''

PART 28—FUSES FOR USE WITH DIRECT CURRENT IN PROVIDING SHORT-CIRCUIT PROTECTION FOR TRAILING CABLES IN COAL MINES

■ 21. The authority citation for part 28 continues to read as follows:

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

§ 28.10 [Amended]

■ 22. Section 28.10, paragraph (c), is amended by removing the final sentence and adding ''Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.'' in its place.

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

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

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

■ 24. Section 33.3 is revised to read as follows:

§ 33.3 Consultation.

By appointment, applicants or their representatives may visit the Approval and Certification Center, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, to discuss with MSHA personnel proposed designs of equipment to be submitted in accordance with the regulations of this part. No charge is made for such consultation and no written report thereof will be made to the applicant.

* * * * *

■ 25. In § 33.6 the heading and paragraph (a)(1) are revised to read as follows:

§ 33.6 Application procedures and requirements.

(a)(1) No investigation or testing for certification will be undertaken by MSHA except pursuant to a written application (except as provided in paragraph (e) of this section), accompanied by all prescribed drawings, specifications, and related materials. The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

PART 35—FIRE-RESISTANT HYDRAULIC FLUIDS

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

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

■ 27. In § 35.6 the heading and paragraph (a)(1) are revised to read as follows:

§ 35.6 Application procedures and requirements.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application accompanied by all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

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

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

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

■ 29. In § 36.6 the heading and paragraph (a)(1) are revised to read as follows:

§ 36.6 Application procedures and requirements.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application accompanied by all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

[FR Doc. 05–15495 Filed 8–8–05; 8:45 am]

BILLING CODE 4510–43–P