

**DEPARTMENT OF LABOR****Mine Safety and Health Administration**

RIN 1219-AB38

**30 CFR Parts 5, 15, 18, 19, 20, 22, 23, 27, 28, 33, 35, and 36****Fees for Testing, Evaluation, and Approval of Mining Products****AGENCY:** Mine Safety and Health Administration (MSHA), Labor.**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** On August 9, 2005, we issued a direct final rule amending our regulations to reflect changes in policies and procedures for administering fees for testing, evaluation, and approval of equipment and materials manufactured for use in the mining industry. The direct final rule had an effective date of November 7, 2005, provided we did not receive significant adverse comments. Concurrent with the direct final rule's publication in the **Federal Register**, we published a separate, identical proposed rule to speed notice and comment rulemaking in the event we received significant adverse comments which required the withdrawal of the direct final rule.

One interested party submitted a comment to us regarding this rulemaking. The comment raises an issue beyond the scope of the rulemaking, and we do not consider the comment to be a "significant adverse comment." Therefore, this notice confirms the effective date of the direct final rule.

**DATES:** The direct final rule (Fees for Testing, Evaluation, and Approval of Mining Products (70 FR 46336) published August 9, 2005) is effective November 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Rebecca J. Smith, Acting Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Blvd., Room 2302, Arlington, Virginia 22209-3939, 202-693-9440 (telephone), 202-693-9441 (telefax), or [smith.rebecca@dol.gov](mailto:smith.rebecca@dol.gov).

**SUPPLEMENTARY INFORMATION:****I. Summary of the Direct Final Rule**

On August 9, 2005, we published a direct final rule (70 FR 46336) amending our regulations to reflect established policies and procedures relating to testing, evaluation, and approval of equipment and materials manufactured for use in the mining industry.

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. The direct final rule updates part 5 to reflect these initiatives and makes corresponding changes throughout parts 15 through 36. The primary purpose of the direct final rule was to address fee calculation and administration to cover the cost of Approval and Certification Center services including "approvals" as explained in the direct final rule's preamble 70 FR 46336-46337.

Additionally, the rule removes references in parts 5, 15, and 33 to the Department of the Interior's former Bureau of Mines (BOM), which was dissolved in 1996 (Pub. L. 104-99). Prior to its dissolution, BOM conducted testing required by part 15 (Requirements for approval of explosives and sheathed explosive units) on our behalf at its Pittsburgh Research Center. In 1996 this facility was transferred to the Department of Health and Human Services, National Institute for Occupational Safety and Health (NIOSH) as a purely research function (Pub. L. 104-208). NIOSH initially assisted us with part 15 testing, but no longer has the resources to conduct these tests. To resolve this issue, the direct final rule allows us to use other organizations to conduct part 15 testing. The direct final rule does not diminish existing safety or health protections for miners.

**II. Discussion of Comments**

Since the rule requirements were not controversial and primarily concerned agency procedures, we determined that

the subject of this rulemaking was suitable for a direct final rule. We anticipated no significant adverse comments; however, we published a separate, identical proposed rule (70 FR 46345) concurrently with the 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 a direct final rule, we 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 is not considered significant and adverse unless the comment explains how the rule would be ineffective without the addition.

We received only one comment on the direct final rule. The commenter stated that fees should be increased and used to offset environmental damage caused by mining operations. The commenter misinterprets the purpose of the fees in the direct final rule. As noted earlier, the primary purpose of the direct final rule was to address fee calculation and administration to cover the cost of Approval and Certification Center services, including "approvals" as explained in the direct final rule's preamble 70 FR 46336-46337.

Accordingly, we do not consider this comment to be a significant adverse comment because it goes beyond the scope of the rulemaking, does not explain why the direct final rule is inappropriate, does not challenge the rule's underlying premise, and does not explain why the direct final rule would be ineffective or unacceptable without a change.

Since we have received no significant adverse comments, the direct final rule is effective on the date indicated above.

Dated: November 1, 2005.

**David G. Dye,***Acting Assistant Secretary for Mine Safety and Health.*

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