

§ 35.3

otherwise produces, a fire-resistant hydraulic fluid or a concentrate for the production thereof, and seeks a certificate of approval.

[Sched. 30, 24 FR 10201, Dec. 17, 1959, as amended at 39 FR 24005, June 28, 1974; 43 FR 12317, Mar. 24, 1978]

§ 35.3 Consultation.

By appointment, applicants or their representatives may visit Approval and Certification Center, RR 1, Box 251, Industrial Park Road, Triadelphia, WV 26059, to discuss with qualified MSHA personnel proposed fluids 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 submitted to the applicant.

[Sched. 30, 24 FR 10201, Dec. 17, 1959, as amended at 43 FR 12317, Mar. 24, 1978; 60 FR 35694, July 11, 1995]

§ 35.4 Types of hydraulic fluid for which certificates of approval may be granted.

Certificates of approval will be granted for completely compounded or mixed fluids and not for individual ingredients; except that when a concentrate is submitted for testing, complete instructions for mixing with water or other vehicle shall be furnished to MSHA, together with the vehicle other than water, and the approval will cover only the specific mixture that constitutes the hydraulic fluid for use in coal mines.

§ 35.5 [Reserved]

§ 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.

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(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant must provide to MSHA as part of the approval application:

(i) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(ii) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(iii) Identification of components or features of the product that are critical to the safety of the product; and

(iv) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by this part.

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

(b) Descriptions and specifications shall be adequate in detail to identify fully the composition of the hydraulic fluid and to disclose its characteristics. Descriptions and specifications shall include:

(1) An identifying name or number of the fluid or concentrate for the production thereof.

(2) Pour point, °F.; freezing point, °F.; color; neutralization number or pH; viscosity at 100 °F., 150 °F., 175 °F. (Saybolt or Furol); viscosity index; specific gravity.

(3) A statement of the water or other vehicle content in percent by weight or volume and how it affects fire resistance of the hydraulic fluid. If water is the vehicle, the statement shall include the applicant's method for determining water content quickly in the field.

(c) The application shall state whether the fluid submitted for test is toxic or irritating to the skin and what precautions are necessary in handling it.

(d) The application shall state that the applicant has tested the fluid

which he believes to have fire-resistant properties, the basis for such determination, and submit with his application the data resulting from the applicant's use or laboratory tests to determine the fire-resistant properties of the fluid.

(e) The application shall contain evidence that the fluid has lubricating and hydraulic properties and is satisfactory for use in underground mining machinery; and shall state that the fluid, or concentrate for the production thereof, is fully developed and is of the composition that the applicant believes to be a suitable marketable product.

(f) The application shall state the nature, adequacy, and continuity of control of the constituents of the fluid to maintain its fire-resistant characteristics and how each lot will be sampled and tested to maintain its protective qualities. MSHA reserves the right to have its qualified representative(s) inspect the applicant's control-test equipment, procedures, and records, and to interview the personnel who conduct the control tests to satisfy MSHA that the proper procedure is being followed to insure that the fire-resistant qualities of the hydraulic fluid are maintained.

(g) When MSHA notifies the applicant that the application will be accepted, it will also notify him as to the number of samples and related materials that will be required for testing. Ordinarily a 5-gallon sample of hydraulic fluid will be required provided that it is a finished product or, if in concentrate form, enough shall be furnished to make a 5-gallon sample when mixed with water or other vehicle according to the applicant's instructions. All samples and related materials required for testing must be delivered (charges prepaid) to Approval and Certification Center, RR 1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

[Sched. 30, 24 FR 10201, Dec. 17, 1959, as amended at 43 FR 12317, Mar. 24, 1978; 60 FR 35694, July 11, 1995; 68 FR 36422, June 17, 2003; 70 FR 46344, Aug. 9, 2005]

§ 35.7 Date for conducting tests.

The date of acceptance of an application will determine the order of precedence for testing when more than one

application is pending, and the applicant will be notified of the date on which tests will begin. However, not more than two fluids will be tested consecutively for one applicant provided other applications are pending. If a fluid fails to meet any of the requirements, it shall lose its order of precedence. If an application is submitted to resume testing after correction of the course of failure, it will be treated as a new application and the order of precedence for testing will be so determined.

§ 35.8 Conduct of investigations, tests, and demonstrations.

Prior to the issuance of a certificate of approval, necessary Government personnel, representatives of the applicant, and such other persons as may be mutually agreed upon, may observe the investigations or tests. MSHA shall hold as confidential and shall not disclose features of this hydraulic fluid such as the chemical analysis, specifications, descriptions, and related material. After issuing a certificate of approval MSHA may conduct such public demonstrations and tests of the approved hydraulic fluid as it deems appropriate. The conduct of all investigations, tests, and demonstrations shall be under the direction and control of MSHA, and any other persons shall be present only as observers.

[Sched. 30, 24 FR 10201, Dec. 17, 1959, as amended at 39 FR 24005, June 28, 1974]

§ 35.9 Certificates of approval.

(a) Upon completion of an investigation of a hydraulic fluid MSHA will issue to the applicant either a certificate of approval or a written notice of disapproval as the case may require. No informal notification of approval will be issued. If a certificate of approval is issued, no test data or detailed results of tests will accompany it. If a notice of disapproval is issued, it will be accompanied by details of the defect(s), with a view to possible correction. MSHA will not disclose, except to the applicant, any information on a fluid upon which a notice of disapproval has been issued.

(b) A certificate of approval will be accompanied by a list of specifications covering the characteristics of a hydraulic fluid upon which the certificate