

MINE SAFETY APPLIANCES CO
Form S-3/A
May 27, 2004
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As filed with the Securities and Exchange Commission on May 27, 2004

Registration No. 333-114533

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

AMENDMENT NO. 1

TO

FORM S-3

REGISTRATION STATEMENT

UNDER THE SECURITIES ACT OF 1933

MINE SAFETY APPLIANCES COMPANY

(Exact name of Registrant as specified in its charter)

PENNSYLVANIA

(State or other jurisdiction of incorporation or organization)

25-0668780

(I.R.S. Employer Identification No.)

121 Gamma Drive

RIDC Industrial Park

O Hara Township

Pittsburgh, PA 15238

(412) 967-3000

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(Address, Including Zip Code, and Telephone Number, Including Area Code, of each Registrant's Principal Executive Offices)

John T. Ryan III

Chairman and Chief Executive Officer

121 Gamma Drive

RIDC Industrial Park

O Hara Township

Pittsburgh, PA 15238

(412) 967-3000

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

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Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, check the following box:

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box:

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee(4)
Common Stock, no par value(3)	3,027,000 shares	\$ 28.59	\$ 86,541,930	\$ 10,964.86

(1) Includes shares of common stock that the underwriters will have the right to purchase to cover over-allotments, if any.

(2) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(c) of the Securities Act of 1933, as amended, based on the average of the high and low prices per share of the registrant's common stock as reported on the American Stock Exchange on April 14, 2004.

(3) Includes preferred stock purchase rights, which prior to the occurrence of certain events, will not be exercisable or evidenced separately from the common stock.

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(4) Previously paid in connection with the filing of the initial Registration Statement.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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The information in this preliminary prospectus is not complete and may be changed. The selling shareholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and the selling shareholders are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

PRELIMINARY PROSPECTUS

SUBJECT TO COMPLETION

May 27, 2004

2,632,174 Shares

MINE SAFETY APPLIANCES COMPANY

Common Stock

The selling shareholders are offering 2,632,174 shares of our common stock. We will not receive any proceeds from the sale of the shares of our common stock sold by the selling shareholders.

Our common stock is listed on the American Stock Exchange, and we have applied to list our common stock on the New York Stock Exchange, under the symbol MSA. On May 26, 2004, the reported last sale price of our common stock on the American Stock Exchange was \$30.40 per share.

Investing in our common stock involves a high degree of risk. Before buying any shares, you should carefully consider the risk factors described in Risk factors beginning on page 8.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

	Per Share	Total
Public offering price	\$	\$

Underwriting discounts and commissions	\$	\$
Proceeds, before expenses, to the selling shareholders	\$	\$

The underwriters may also purchase up to an additional 394,826 shares of common stock from one of the selling shareholders, the MSA Non-Contributory Pension Plan for Employees, at the public offering price, less underwriting discounts and commissions, within 30 days from the date of this prospectus. The underwriters may exercise this option only to cover over-allotments, if any. If the underwriters exercise the option in full, the total underwriting discounts and commissions will be \$, and the total proceeds, before expenses, to the selling shareholders will be \$.

The underwriters are offering the common stock as set forth under Underwriting. Delivery of the shares of common stock will be made in New York, New York on or about , 2004.

UBS Investment Bank

The date of this prospectus is , 2004.

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You should only rely on the information contained or incorporated by reference in this prospectus. We have not and the underwriters have not authorized anyone to provide you with information different from that contained or incorporated by reference in this prospectus. The selling shareholders are offering to sell, and seeking offers to buy, shares of common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of common stock.

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Forward-looking statements

This prospectus, including the sections entitled Prospectus summary, Risk factors, Management's discussion and analysis of financial condition and results of operations and Business, and the documents incorporated by reference in this prospectus contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These statements relate to future events or our future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our or our industry's actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. These risks and other factors include, among other things, those listed under Risk factors, and elsewhere in this prospectus and in the documents incorporated by reference in this prospectus. In some cases, you can identify forward-looking statements by words such as may, will, should, expects, intends, plans, anticipates, believes, estimates, predicts, potential, continue or the negative of these terms or other comparable words. These statements are only predictions and are not guarantees of future performance. Therefore, actual events or results may differ materially from those expressed or forecast in these forward-looking statements. In evaluating these statements, you should specifically consider various factors, including the

risks outlined under Risk factors in this prospectus.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. We are under no duty to update publicly any of the forward-looking statements after the date of this prospectus whether as a result of new information, future events or otherwise.

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Prospectus summary

The following summary highlights selected information in this prospectus, but it may not contain all of the information that you should consider before deciding to invest in our common stock. You should read this prospectus carefully, including the Risk factors section and the consolidated financial statements, including the notes thereto, included elsewhere in this prospectus, as well as the documents incorporated by reference herein. In this prospectus, all references to we, us, our and MSA refer to Mine Safety Appliances Company and its subsidiaries, unless the context otherwise requires or it is otherwise indicated.

OVERVIEW

We are a global leader in the development, manufacture and supply of sophisticated products that protect people's health and safety. Sophisticated safety products typically integrate any combination of electronics, mechanical systems and advanced materials to protect users against hazardous or life threatening situations. Our comprehensive line of safety products are used by workers around the world in the fire service, homeland security, construction and other industries, as well as the military. This broad product offering includes self-contained breathing apparatus, or SCBAs, gas masks, gas detection instruments, head protection, respirators and thermal imaging devices. Additionally, we also provide a broad offering of consumer and contractor safety products through retail channels. Our net sales from continuing operations have increased from approximately \$509.7 million in 2001 to approximately \$696.5 million in 2003, a compound annual growth rate of 16.9%. Excluding the favorable currency exchange effects of approximately \$36.6 million, our net sales from continuing operations have increased from approximately \$509.7 million in 2001 to approximately \$659.9 million in 2003, a compound annual growth rate of 13.8%. We achieved these results through growth in the markets we serve and increased penetration of those markets at a rate that we believe is greater than that of our peers.

We dedicate significant resources to research and development, which allows us to produce innovative, sophisticated safety products that are often first to market and exceed industry standards. Our global product development teams include cross-geographic and cross-functional members from various areas throughout the company, including research and development, marketing, sales, operations and quality management. Our engineers and technical associates work closely with the safety industry's leading standards-setting groups and trade associations, such as the National Institute for Occupational Safety and Health, or NIOSH, and the National Fire Protection Association, or NFPA, to develop industry product requirements and standards and anticipate their impact on our product lines. Evidencing our commitment to innovation, in 2003, we generated nearly one-third of our net sales from new products introduced over the prior three years.

We tailor our product offerings and distribution strategy to satisfy distinct customer preferences that vary across geographic regions. We believe that we best serve these customer preferences by organizing our business into the following three geographic segments: North America; Europe; and International. Our net sales from continuing operations for the quarter ended March 31, 2004 were approximately \$129.6 million, \$39.4 million and \$25.5 million, and for the year ended December 31, 2003 were approximately \$452.6 million, \$146.2 million and \$97.7 million, for the North America, Europe and International segments, respectively.

INDUSTRY BACKGROUND

We believe the worldwide personal protection equipment market, including the sophisticated safety products market in which we compete, generated net sales in excess of \$5.0 billion in 2003. The industry supplying this market is broad and highly fragmented with few participants able to offer a comprehensive line of safety products. Generally, global demand for safety products has been stable

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because purchases of these products are non-discretionary since they protect workers in hazardous and life-threatening work environments and because their use is often mandated by government and industry regulations.

Several trends are reshaping the worldwide personal protection equipment market, including the following:

Ø *Heightened global awareness of and commitment to worker safety.*

Ø *Integration of electronics into safety products.*

Ø *Focus on domestic preparedness and homeland security.*

We believe that those developers, manufacturers and suppliers of safety products that can best meet the challenges and opportunities created by these industry trends will be best positioned to capture greater market share.

COMPETITIVE STRENGTHS

We believe the following strengths are critical to our success and continue to provide us with competitive advantages:

Strong, trusted and well-recognized brand representing a long-standing dedication to safety. Since 1914, we have been dedicated to protecting the health and safety of workers throughout the world. While our original customers were workers in the mining industry, we have evolved to supply the fire service, homeland security, construction and other industries and the military, as well as retail consumers and contractors, with high-quality, sophisticated safety products. The MSA brand, associated with durability and reliability, has helped us cultivate a loyal customer base. End-users have a strong preference for safety equipment from recognized manufacturers with a proven track record of producing quality products because they depend upon this equipment to protect them in hazardous or life-threatening situations.

Innovative product offering with expertise in safety and electronics integration. Over the course of our 90-year history of protecting people's health and safety, we have developed an expertise in creating both electronic instruments and safety products. We believe that the skills we have developed and our ability to create integrated products across these two areas of expertise provide us with a competitive advantage. We also benefit from the fact that we have the in-house engineering, technological and operational capabilities to integrate gas detection, communication and thermal imaging technologies with advanced respiratory and head protection products.

Diverse portfolio of safety products, sold to a wide range of end-users, across diverse geographic markets. We have a comprehensive line of personal safety products. MSA's broad range of products protect the health and safety of end-users in more than 120 countries in industries as diverse as manufacturing, chemical, steel, construction, hazardous materials, oil and gas, power plant, utility, shipbuilding, agricultural and paper, as well as sectors including first responders and the military. We believe that this end-market diversity helps mitigate the effects of an economic downturn in any particular industry or geographic region. We also have a diverse customer base, with no single non-military customer accounting for more than 1.5% of our 2003 net sales, and no single military customer accounting for more than 4.3% of our 2003 net sales. Our U.S. military customers, which are comprised of multiple U.S. government entities, including the U.S. Department of Defense, represented the

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largest group of military customers based on our 2003 net sales and accounted for approximately 12% of such sales.

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Strong relationships with leading safety equipment distributors in North America. We conduct a significant portion of our global sales through distributors, with virtually all non-military sales in North America being made through various industry distribution channels. We have developed strong strategic relationships with key safety products distributors in North America as a result of our dedicated sales force, our strong brand name and our broad product offering. To generate demand, our sales force works jointly with select distributors to call on end-users of our products to educate them about hazards, exposure limits, safety requirements and product applications, as well as specific performance requirements of our products. We believe this strategy allows us to deliver a customer value proposition that differentiates our products and services from those of our competitors resulting in increased customer loyalty and demand.

Ability to anticipate and adapt quickly to market requirements. The safety products market is constantly evolving as a result of regulatory bodies and standard-setting entities updating their requirements at five-year intervals, new hazard assessments and the integration of new technologies into personal protective equipment. This gives us an opportunity to develop, manufacture and often be the first to introduce new products to meet changes in standards and performance requirements. Because of our technological sophistication, our participation on global standard-setting bodies, our commitment to research and development and our knowledgeable sales organization, we believe we are well positioned to anticipate and adapt to the needs of changing product standards and gain the approvals and certifications necessary to meet new government and multi-national product regulations.

Experienced management team. We have an experienced senior management team. Our chairman and chief executive officer, John T. Ryan III, vice president and president of MSA North America, William M. Lambert, and vice president, chief financial officer and treasurer, Dennis L. Zeitler, have worked at MSA for approximately 35, 23 and 27 years, respectively. Under the leadership of these key members of management, we have successfully improved operations, integrated acquisitions and increased market share. Additionally, the top 80 members of our global management team have worked at MSA for an average of 18 years.

GROWTH STRATEGY

We are executing a targeted growth strategy designed to capitalize on our strong customer relationships, leverage our expertise in developing innovative products and improve our operational efficiency. Our growth strategy includes the following:

Identify and develop promising new markets. Our safety products have wide-ranging applications across many markets. We continue to identify, develop and produce safety products that meet the needs of attractive new markets where there are growing demands for MSA's safety solutions. We identify these new markets using criteria such as market size, growth potential, opportunities created by regulation and our ability to transfer existing technologies to new applications. We believe that we will be successful in developing new market opportunities as a result of our brand reputation, electronics expertise, adaptability, strong distributor relationships and the reliability and innovation of our designs.

Focus on innovation and new product introductions. Our focus on innovation and new product introductions allows us to provide unique safety solutions to customers with fast-to-market product development. We plan to continue to dedicate significant financial and human resources to research and development and to work closely with customers and potential customers to develop these solutions. Internally, we monitor our success in this area by measuring the percentage of annual net sales from new products introduced over the prior three years. In 2003, we generated nearly one-third of our net sales

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from new products, an achievement which represents an increasing trend for us over the past five years. Consistent with our prior performance, we expect to continue to focus our resources on a high-quality new product development pipeline with staged introductions over the coming three-to-five year period.

Further strengthen relationships with major distributors. We continue to invest in our sales organization and information technology systems in order to support and strengthen our distributor relationships. To better serve our customers, we are hiring market specialists and training them to have more specialized knowledge of our growing product lines. We are also organizing our sales force into teams in order to provide broader coverage of our distributors. In terms of information technology, we are further investing in our online ePartner Network and our SAP System, which we installed six years ago, so that we may continue to be recognized by our distributors as their most integrated vendor. We intend to further enhance our growth prospects by continuing to work closely with our distributors, understand their business needs and integrate our systems to improve the efficiency and effectiveness of the distribution supply chain management process.

Optimize factory performance and drive operational excellence. We have a successful track record of significantly improving operating margins. Our *DRIVE for Excellence* initiative focuses on process excellence, resulting in reduced costs, increased inventory turns, improved operations and more efficient and effective supply chain management processes. In addition, initiatives in Lean Sigma, a combination of Lean Manufacturing and Six Sigma programs, have continued to benefit our business. An immediate benefit from Lean Sigma is improved asset utilization and factory efficiency. We plan to further drive operational excellence through our efforts to capture and implement best practices at our facilities around the world. We intend to effect further process improvements and cost reductions through these shared best practices and by optimizing the use of our global manufacturing capacity.

Position international business to capture growth. Our international operations represent a key opportunity for our overall growth. The core international growth markets in which we currently have a presence are China, Australia, South Africa and Brazil. To accelerate our penetration of the Asia-Pacific region, our largest international market, we are focusing our international expansion efforts on new opportunities in countries such as Malaysia, Korea and Taiwan. The growth in our International segment is driven by a number of factors, including heightened awareness of worker safety needs, increased promulgation and enforcement of safety regulations and increased overseas manufacturing. We believe we will continue to benefit from these trends by expanding our already significant manufacturing, sales and customer service presence overseas.

Pursue strategic acquisitions. The safety products industry offers a broad range of products, is highly fragmented and is characterized by many product manufacturers that offer only single product lines. We have successfully acquired and integrated several complementary personal protection equipment companies. We maintain a strong balance sheet with sufficient liquidity to provide capital resources both to invest in the growth of our existing businesses and to allow us to move rapidly and with certainty when acquisition opportunities of interest arise in our industry. We intend to continue to selectively pursue acquisitions that will add complementary product offerings, provide access to new geographic markets and distribution channels and expand our technological capabilities.

PRINCIPAL EXECUTIVE OFFICES

MSA is a Pennsylvania corporation formed in 1914. Our principal executive offices are located at 121 Gamma Drive, RIDC Industrial Park, O Hara Township, Pittsburgh, Pennsylvania 15238, and our telephone number is (412) 967-3000. We maintain a website at www.msanet.com where general information about our business is available. The information contained in our website is not a part of this prospectus.

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The offering

Common stock being offered by the selling shareholders	2,632,174 shares
Common stock to be outstanding after this offering	40,610,059 shares
Use of proceeds	We will not receive any proceeds from the sale of shares offered by the selling shareholders. The selling shareholders will receive all net proceeds from the sale of shares of our common stock in this offering. See Use of proceeds.
American Stock Exchange symbol; proposed New York Stock Exchange symbol	MSA
Dividend policy	We currently pay a regular quarterly cash dividend. In 2003, we paid cash dividends totaling \$0.26 per share of common stock. See Dividend policy for a discussion of the factors that will affect the determination by our board of directors to declare dividends, as well as other matters concerning our dividend distribution.

Unless otherwise indicated, common stock to be outstanding after this offering is based on 40,610,059 shares outstanding as of May 25, 2004, including 3,549,719 shares of common stock held by our Stock Compensation Trust. Earnings per share data presented in this prospectus excludes shares of common stock held by our Stock Compensation Trust. The shares held by our Stock Compensation Trust are available to satisfy our obligations under our stock incentive plans, which include 2,196,201 options granted to our officers and directors, 1,899,136 of which are currently exercisable or will become exercisable within 60 days. Except as otherwise indicated, the information in this prospectus assumes the underwriters' over-allotment option is not exercised.

The selling shareholders in this offering include the MSA Non-Contributory Pension Plan for Employees, the Pittsburgh Oratory, John T. Ryan III, our chairman and chief executive officer, and certain members of the Ryan family, as set forth in the table below. The 2,068,674 shares being offered by the MSA Pension Plan reflect approximately 79% of the common stock being offered hereby. As a result of the recent performance of our common stock, the trading price of which has increased approximately 200% in the last 12 months, the selling stockholders are offering their shares at this time for the purpose of diversifying their respective portfolios.

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The summary of our selected financial data set forth below for the years ended December 31, 1999, 2000, 2001, 2002 and 2003 and for the three months ended March 31, 2003 and 2004 and as of December 31, 2003 and March 31, 2004 should be read in conjunction with Selected historical financial data, Management's discussion and analysis of financial condition and results of operations, and our historical consolidated financial statements, including the respective notes thereto, appearing elsewhere or incorporated by reference in this prospectus. In the opinion of management, the interim financial information presented below includes all adjustments (consisting of normal recurring accruals) necessary for a fair presentation of our results of operations and financial position for such periods. Interim results are not necessarily indicative of full year results. All share and per share information in this prospectus has been adjusted to reflect the 3-for-1 stock splits of our common stock effected on May 24, 2000 and January 28, 2004.

Statement of operations data:	Years ended December 31,					For the three months ended March 31,	
	1999	2000	2001	2002	2003	2003	2004
(dollars in thousands, except per share data)							
Net sales	\$ 462,166	\$ 468,307	\$ 509,736	\$ 564,426	\$ 696,473	\$ 160,391	\$ 194,490
Other income	3,619	2,444	2,776	2,271	1,724	96	786
Cost of products sold(a)	282,687	277,972	292,940	331,215	408,219	93,853	109,331
Selling, general and administrative(a)	131,281	124,840	130,092	140,924	170,081	39,096	47,730
Research and development	15,235	15,988	16,740	20,372	21,722	5,042	5,215
Depreciation and amortization	20,550	20,936	22,590	21,525	23,208	5,393	5,820
Interest expense	3,916	4,040	5,349	4,769	4,564	1,119	514
Currency exchange (gains) losses	(694)	(444)	1,197	(191)	(3,356)	(1,150)	667
Provision for income taxes	3,098	8,531	17,753	16,870	24,835	6,635	9,861
Net income from continuing operations	9,712	18,888	25,851	31,213	48,924	10,499	16,138
Net income from discontinued operations(b)	6,614	4,351	5,780	3,864	2,685	1,514	
Gain on sale of discontinued operations after tax(b)					13,658		
Change in reporting period, net of tax(c)	(1,192)						
Net income	\$ 15,134	\$ 23,239	\$ 31,631	\$ 35,077	\$ 65,267	\$ 12,013	\$ 16,138
Earnings per share data:							
Basic per common share continuing operations	\$.22	\$.51	\$.72	\$.85	\$ 1.33	\$.29	\$.44
Diluted per common share continuing operations	.22	.51	.71	.85	1.31	.29	.43
Dividends paid per common share	.15	.16	.18	.22	.26	.06	.07
Weighted average number of common shares outstanding basic	38,917	36,904	35,729	36,512	36,730	36,631	36,964

(footnotes on following page)

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Balance sheet data:	<u>As of December 31,</u>	<u>As of March 31,</u>
	2003	2004
(dollars in thousands,		
except per share data)		
Working capital(d)	\$ 206,216	\$ 221,521
Working capital ratio(d)	2.8	2.9
Net property	120,560	120,069
Total assets(e)	643,885	663,428
Long-term debt	59,915	59,717
Common shareholders equity	306,867	320,887
Equity per common share	8.31	8.67

- (a) Noncash pension income, pre-tax, was approximately \$10.2 million, \$14.9 million, \$15.0 million, \$13.1 million and \$8.8 million for the years ended December 31, 1999, 2000, 2001, 2002 and 2003, respectively. These represent the aggregate amounts included in costs of products sold and selling, general and administrative expenses.
- (b) On September 12, 2003, we sold certain assets of the Callery Chemical Division to BASF Corporation for approximately \$64.6 million. The operating results of the Callery Chemical Division and the gain on the sale of such division have been classified as discontinued operations for all periods presented, except for the three months ended March 31, 2004. Net income from discontinued operations for 2002 includes approximately \$42,000 of expenses directly related to the sale of the division.
- (c) In 1999, the fiscal year end for certain international affiliates was changed from November 30th to December 31st. The after-tax effect of the change in reporting period is included in the 1999 income statement as a change in accounting principle.
- (d) Working capital at December 31, 2003 excludes assets held for sale.
- (e) Total assets include approximately \$2.3 million of assets held for sale at December 31, 2003.

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Risk factors

You should carefully consider the risks described below together with all of the other information contained or incorporated by reference in this prospectus before you decide to invest in our common stock. If any of the following risks actually occur, our business, financial condition or results of operations could suffer. In that event, the trading price of our common stock could decline, and you may lose all or part of your investment.

RISKS RELATED TO OUR BUSINESS

A reduction in the spending patterns of government agencies could materially and adversely affect our net sales, earnings and cash flow.

The demand for our products sold to the fire services industry, the homeland security market and to U.S. government agencies, including the Department of Defense, is, in large part, driven by available government funding. The level of government funding in these areas has increased significantly since the tragedies of September 11, 2001 and has fueled the demand for many of our products such as SCBAs and gas masks. Approximately 12%, or \$83.7 million, of our net sales for the year ended December 31, 2003 were made directly to U.S. government entities, including the Department of Defense. As of April 15, 2004, we had three firm fixed-price contracts with an aggregate value exceeding \$78.0 million with the U.S. Army to produce Advanced Combat Helmets. Government budgets are set annually and we cannot assure you that government funding will be sustained at the same level in the future. A significant reduction in available government funding in the future could materially and adversely affect our net sales, earnings and cash flow.

The markets in which we compete are highly competitive, and some of our competitors have greater financial and other resources than we do. The competitive pressures faced by us could materially and a