

§42.10

SOURCE: 50 FR 11643, Mar. 22, 1985, unless otherwise noted. Redesignated at 67 FR 42382, June 21, 2002.

Subpart A [Reserved]

Subpart B—Tuition Fees

§ 42.10 Tuition fees.

The National Mine Health and Safety Academy, located in Beckley, West Virginia, will charge tuition fees to all persons attending Academy courses, except employees of Federal, State, or local governments, persons attending the Academy under a program supported through an MSHA State grant, and persons performing a direct service. Also, subject to available resources, MSHA may waive all or part of fees for students, or persons employed by a non-profit organization, who are invited by MSHA to attend an Academy course which would, in the Agency's judgment, contribute to improved conduct, supervision, or management of a function or activity under the Federal Mine Safety and Health Act of 1977 or a function related to an MSHA appropriation. Requests for waivers must be in writing.

[62 FR 60985, Nov. 13, 1997]

§ 42.20 Schedule of fees.

(a) Tuition fees will be computed on the basis of the cost to the Government for the Academy to conduct the course, as determined by the Superintendent of the Academy.

(b) The tuition fee for each course will be stated in the course announcement and will be reassessed on an annual basis.

§ 42.30 Procedure for payment.

When notified of acceptance for a course by the Academy, applicants shall submit a check or money order to the Academy, payable to the "Mine Safety and Health Administration" in the amount indicated by the course announcement prior to the commencement of the course.

§ 42.40 Refunds.

An applicant may withdraw an application and receive a full refund of tuition fees provided that written notifi-

30 CFR Ch. I (7-1-25 Edition)

cation to the Academy's Student Services Branch is mailed no later than 14 days before the course begins.

Subpart C—Room and Board

§ 42.50 Charges for room and board.

The Academy will charge room and board to all persons staying at the Academy, except MSHA personnel, persons attending the Academy under a program supported through an MSHA State grant, and persons performing a direct service. Also, subject to available resources, MSHA may waive all or part of fees for students, or persons employed by a non-profit organization, who are invited by MSHA to attend an MSHA-sponsored training or meeting which would, in the Agency's judgment, contribute to improved conduct, supervision, or management of a function or activity under the Federal Mine Safety and Health Act of 1977 or a function related to an MSHA appropriation. Requests for waivers must be in writing. Charges for room and board will be based upon the average cost per person of the lodging, meals, and services provided and will be reassessed on an annual basis.

[62 FR 60985, Nov. 13, 1997]

PART 43—PROCEDURES FOR PROCESSING HAZARDOUS CONDITIONS COMPLAINTS

Subpart A—General

Sec.

- 43.1 Definitions.
- 43.2 General.
- 43.3 Purpose and scope of this part.

Subpart B—Special Inspections

- 43.4 Requirements for giving notice.
- 43.5 Action by the Secretary.
- 43.6 Notice of negative finding.

Subpart C—Informal Review

- 43.7 Informal review upon written notice given to an inspector on the mine premises.
- 43.8 Informal review upon the issuance of a notice of negative finding.

AUTHORITY: Secs. 103(g), and 508, Federal Mine Safety and Health Act of 1977 Pub. L. 91-173 as amended by Pub. L. 95-164, 91 Stat. 1298 83 Stat. 803 (30 U.S.C. 813(g) and 957); sec.

Mine Safety and Health Admin., Labor**§43.4**

307, Federal Mine Safety and Health Amendments Act of 1977, Pub. L. 95-164, 91 Stat. 1322 (30 U.S.C. 801 note).

SOURCE: 43 FR 29515, July 7, 1978, unless otherwise noted.

Subpart A—General**§ 43.1 Definitions.**

For purposes of this part, *Act* means the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173, as amended by Pub. L. 95-164, and “Secretary” means the Secretary of Labor or his designee.

§ 43.2 General.

(a) Under section 103(g)(1) of the Act, a representative of miners, or where there is no such representative, a miner, who has reasonable grounds to believe that a violation of the act or a mandatory health or safety standard exists, or an imminent danger exists, has a right to obtain a special inspection if he or she gives notice of such violation to the Secretary or his duly authorized representative. The notice shall be reduced to writing and signed by the miners' representative or miner, and a copy that does not reveal the name of the person giving the notice must be served on the operator no later than at the time of the inspection. If the Secretary determines that a violation or danger does not exist, he must so notify the miners' representative or miner in writing.

(b) Under section 103(g)(2) of the Act, a representative of miners or, if there is no such representative, a miner, may notify in writing an authorized representative of the Secretary who is on mine premises prior to or during an inspection, of any violation or imminent danger which he or she has reason to believe exists in the mine. There shall be procedures for the informal review of any refusal by the Secretary's authorized representative to issue a citation with respect to such alleged violation or danger, including notification to the miners' representative or miner

of the reasons for his disposition of the case.

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[43 FR 29515, July 7, 1978, as amended at 47 FR 14696, Apr. 6, 1982; 60 FR 33722, June 29, 1995]

§ 43.3 Purpose and scope of this part.

This part sets forth the procedures for giving notice to the Secretary under section 103(g)(1) of the Act, for responding to such notices and for reviewing refusals by authorized representatives of the Secretary to issue citations or orders under section 103 (g)(1) or (g)(2). Specifically, Subpart B details the steps to be taken by a representative of miners or a miner in making a request for a special inspection and by the Secretary in processing and taking action on such a request under section 103(g)(1). Subpart C sets forth informal review procedures which a representative of miners or a miner may request under sections 103 (g)(1) and (g)(2) where no citation or order is issued under those sections.

Subpart B—Special Inspections**§ 43.4 Requirements for giving notice.**

(a) A representative of miners or, where there is no such representative, a miner, who has reasonable grounds to believe that a violation of the act or a mandatory health or safety standard exists, or that an imminent danger exists, may obtain a special inspection by giving notice to the Secretary or any authorized representative of the Secretary of such violation or danger.

(b) Any such notice shall set forth the alleged violation or imminent danger and the location of such violation or danger and shall be reduced to a writing signed by the representative of miners or miner giving such notice.

(c) A copy of such written notice shall be provided to the operator or his agent by the Secretary or his authorized representative no later than the time that the inspection begins. In addition, if the notice indicates that an imminent danger exists, the operator or his agent shall be notified as quickly as possible of the alleged danger. The name of the person giving such notice

§43.5

30 CFR Ch. I (7-1-25 Edition)

and the names of any individual miners referred to therein shall not appear in the copy of the written notice or in a notification provided to the operator.

§ 43.5 Action by the Secretary.

(a) As soon as possible after the receipt of a notice of alleged violation or imminent danger under this subpart, the Secretary or his authorized representative shall make a special inspection to determine if a citation or withdrawal order should be issued, unless on the face of the notice, the condition complained of, even if it were found to exist, would clearly not constitute a violation or imminent danger.

(b) Where the Secretary or his authorized representative makes a special inspection under this subpart and finds a violation or imminent danger, a citation or withdrawal order, as appropriate, shall be issued.

§ 43.6 Notice of negative finding.

(a) If it is determined that a special inspection is not warranted, a written notice of negative finding shall be issued as soon as possible following such determination.

(b) If it is determined that an inspection is warranted and upon such inspection it is determined that neither a citation nor a withdrawal order should be issued for the alleged violation or imminent danger, a written notice of negative finding shall be issued by the authorized representative of the Secretary prior to leaving the mine premises.

(c) Any notice of negative finding issued under this part shall be issued to the representative of miners or miner seeking the special inspection and a copy shall be served upon the operator.

Subpart C—Informal Review

§ 43.7 Informal review upon written notice given to an inspector on the mine premises.

(a) A representative of miners or, where there is no such representative, a miner, who has reason to believe that a violation of the Act or a mandatory health or safety standard exists, or an imminent danger exists, may notify an authorized representative of the Sec-

retary in writing prior to or during an inspection conducted by such representative of any violation of the Act or mandatory health or safety standard or of any imminent danger which he or she has reason to believe exists in the mine being inspected. Where the authorized representative or the Secretary refuses to issue a citation or order with respect to such alleged violation or imminent danger, the representative of miners or miner may obtain review of such refusal in accordance with paragraphs (b) through (d) of this section.

(b) A request for informal review shall be sent in writing to the appropriate district manager within 10 days of the date of the refusal to issue a citation or order and shall be accompanied by any supporting information the person requesting review wishes to submit.

(c) After receipt of the request for informal review, the district manager or his agent may hold, at his or her discretion, an informal conference where the person requesting review can present his views.

(d) After review of all written and oral statements submitted, the district manager may either affirm the refusal to issue a citation or order or may direct that a new inspection be conducted with respect to the alleged violation or imminent danger. The district manager shall furnish the person requesting review with a written statement of the reasons for his or her final disposition of the request as soon thereafter as possible. A copy of such statement shall be furnished the operator. The district manager's determination in the matter shall be final.

§ 43.8 Informal review upon issuance of a notice of negative finding.

A person to whom a notice of negative finding has been issued pursuant to § 43.6 of this part may request informal review of such finding in accordance with the provisions of § 43.7(b)–(d) of this subpart.

Mine Safety and Health Admin., Labor**§ 44.3****PART 44—RULES OF PRACTICE FOR PETITIONS FOR MODIFICATION OF MANDATORY SAFETY STANDARDS****Subpart A—General**

Sec.

- 44.1 Scope and construction.
- 44.2 Definitions.
- 44.3 Parties.
- 44.4 Standard of evaluation of petitions; effect of petitions granted.
- 44.5 Notice of a granted petition for modification.
- 44.6 Service.
- 44.7 Filing.
- 44.8 Ex parte communication.
- 44.9 Posting of petition.

Subpart B—Initial Procedure for Petitions for Modification

- 44.10 Filing of petition; service.
- 44.11 Contents of petition.
- 44.12 Procedure for public notice of petition received.
- 44.13 Proposed decision.
- 44.14 Request for hearing.
- 44.15 Referral to Chief Administrative Law Judge.
- 44.16 Application for temporary relief; relief to give effect to the proposed decision and order.

Subpart C—Hearings

- 44.20 Designation of administrative law judge.
- 44.21 Filing and form of documents.
- 44.22 Administrative law judges; powers and duties.
- 44.23 Prehearing conferences.
- 44.24 Discovery.
- 44.25 Depositions.
- 44.26 Subpoenas; witness fees.
- 44.27 Consent findings and rules or orders.
- 44.28 Notice of hearing.
- 44.29 Motions.
- 44.30 Hearing procedures.
- 44.31 Proposed findings of fact, conclusions, and orders.
- 44.32 Initial decision.
- 44.33 Departmental review.
- 44.34 Transmission of record.
- 44.35 Decision of the Assistant Secretary.

Subpart D—Summary Decisions

- 44.40 Motion for summary decision.
- 44.41 Summary decision.

Subpart E—Effect of Initial Decision

- 44.50 Effect of appeal on initial decision.
- 44.51 Finality for purposes of judicial review.

44.52 Revocation of modification.

44.53 Amended modification.

AUTHORITY: 30 U.S.C. 957.

SOURCE: 43 FR 29518, July 7, 1978, unless otherwise noted.

Subpart A—General**§ 44.1 Scope and construction.**

(a) The procedures and rules of practice set forth in this part shall govern petitions for modification of mandatory safety standards filed under section 101(c) of the Act.

(b) These rules shall be liberally construed to carry out the purpose of the Act by assuring adequate protection of miners and to secure just and prompt determination of all proceedings consistent with adequate consideration of the issues involved.

[43 FR 29518, July 7, 1978, as amended at 55 FR 53440, Dec. 28, 1990]

§ 44.2 Definitions.

As used in this part, unless the context clearly requires otherwise, the term—

(a) *Act* means the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173, as amended by Pub. L. 95-164.

(b) *Secretary, operator, agent, person, miner, and coal or other mine*, have the meanings set forth in section 3 of the act.

(c) *Assistant Secretary* means the Assistant Secretary of Labor for Mine Safety and Health.

(d) *Administrative law judge* means an administrative law judge of the Department of Labor appointed under section 3105 of title 5 of the United States Code.

(e) *Representative of miners* means a person or organization designated by two or more miners to act as their representative for purposes of the act and who is in compliance with 30 CFR part 40.

[43 FR 29518, July 7, 1978, as amended at 55 FR 53440, Dec. 28, 1990]

§ 44.3 Parties.

Parties to proceedings under this part shall include the Mine Safety and Health Administration, the operator of the mine, and any representative of the miners in the affected mine. Any other