

DEPARTMENT OF LABOR**Mine Safety and Health Administration****30 CFR Part 47**

RIN 1219-AB04

National Mine Health and Safety Academy

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

ACTION: Final rule.

SUMMARY: This final rule amends the existing MSHA standards for charging tuition and room and board at MSHA's National Mine Health and Safety Academy (Academy) in Beckley, West Virginia. The final rule provides that MSHA may waive tuition fees and room and board charges for the training or meetings of students and non-profit organizations, after the Agency determines that the program would improve the implementation of a statutory function or an activity under the Federal Mine Safety and Health Act of 1977 (Mine Act) or a function related to an MSHA appropriation.

EFFECTIVE DATE: November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; MSHA, Office of Standards, Regulations, and Variances; phone 703-235-1910.

SUPPLEMENTARY INFORMATION:**I. Paperwork Reduction Act**

This final rule contains no information collection requirements.

II. Introduction and Rulemaking Background

Under § 502(c)(1) of the Mine Act, the Academy is responsible for training programs for mine inspectors, mining personnel, or other persons as designated by the Secretary of Labor.

On March 22, 1985, MSHA published a final rule (50 FR 11642) in part 47 of title 30 of the Code of Federal Regulations. Part 47 contains the Agency's regulations on tuition fees, procedures for tuition payment and refunds, and charges for room and board. The rule was promulgated pursuant to OMB Circular A-25, which provides that government agencies are to recover all expenses for federally provided services which convey special benefits to recipients beyond those accruing to the general public.

Existing § 47.10 provides that the Academy will charge tuition fees to all persons attending Academy courses except employees of Federal, State, or local governments and persons attending the Academy under an MSHA

State grant program. The authority to waive tuition fees was based, in part, upon § 302 of the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4742), which generally permits Federal agencies to admit State and local government employees to Agency training programs established for Federal personnel and to waive the costs of training.

Existing § 47.50 states that the Academy will charge room and board to all persons staying at the Academy except MSHA personnel, other persons performing a direct service for MSHA, and persons attending the Academy under a program supported through an MSHA State grant. Under existing § 47.50, MSHA has discretion, although very limited, to waive expenses for room and board for private persons, provided that they are performing a direct service for MSHA. For example, this provision may be applied when persons actively participate in the presentation of an Agency-sponsored event.

The general prohibition on waiving the collection of room and board expenses was derived from 31 U.S.C. 551 (now 31 U.S.C. 1345) which prohibits the use of appropriated funds for transportation and room and board for non-governmental personnel. The narrow discretion to waive the collection of room and board expenses for private persons performing a direct service for MSHA was derived from 5 U.S.C. 5703 which authorizes per diem, travel, and transportation expenses for non-governmental personnel, such as experts, consultants, and persons serving without pay.

Since promulgation of the current regulation, the Department of Labor has received permanent Congressional authorization to use appropriated funds for expenses for non-governmental attendees at meetings, including training seminars. Section 505 of Pub. L. 102-394, 106 Stat. 1792 (Oct. 6, 1992), the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act for fiscal year 1993 provides permanent authority to use specified appropriations for:

* * * [the] expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of those functions or activities.

MSHA believes that this authority can be used effectively to advance safety and health protection for the Nation's miners by fostering the professional expertise and participation of non-profit

organizations and students who can assist the Agency in the implementation of its statutory functions related to activities such as inspections, investigations, compliance promotions, accident prevention initiatives, and training development programs.

On occasion, under appropriate statutory authority, MSHA authorizes, on a reimbursable basis, use of the Academy for programs unrelated to the Agency's mission. This practice is unchanged by the final rule.

III. Discussion and Summary of the Final Rule

The final rule amends existing §§ 47.10 and 47.50, regarding tuition fees and room and board charges at the Academy by adding a new provision allowing MSHA discretion to waive such fees and charges for students, or persons employed by non-profit organizations to attend training or meetings. MSHA may waive such fees only when training or a meeting at the Academy would contribute to an improvement in the conduct, supervision, or management of a Mine Act function or activity or a function related to an MSHA appropriation. The training or meeting would have to be MSHA-sponsored, and the qualifying non-governmental personnel would have to be invited by MSHA to participate in the training or meeting. Requests for waivers must be in writing.

The objective of this rule is to further MSHA's mission of preventing accidents and illnesses among miners through education. The waiver of fees and room and board charges will be dependent upon the availability of MSHA resources. In implementing this rule, MSHA may waive fees and charges after determining that the content of the training or meeting furthers the Agency's mission or a function related to an MSHA appropriation. MSHA will not waive fees and room and board charges for any program unrelated to the Agency's mission.

MSHA reserves the authority not to grant a waiver of fees, in whole or in part, although the training or meeting may directly further the Agency's mission and the person is invited by MSHA. The Agency intends to administer the rule in a fair and equitable manner in order to expand safety and health educational opportunities for the mining public. Training for MSHA personnel will be given first priority.

IV. Exemption From Notice and Comment

This final rule amends a general statement of Agency practice and relates

to Agency management. Publication of a general notice of proposed rulemaking, therefore, is not required by the Administrative Procedure Act, 5 U.S.C. 553.

V. Executive Order 12866, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act (SBREFA)

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of final regulations. It has been determined that this final rule is a significant regulatory action. MSHA has determined that this final rule will further the Agency's mission of preventing accidents and illnesses among miners through education at an annual cost of approximately \$60,000.

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the SBREFA amendments to the RFA, MSHA must consult with the Small Business Administration (SBA) concerning any rule for which a regulatory flexibility analysis is required. This is not a major rule under SBREFA. This final rule imposes no costs on the public. A regulatory flexibility analysis, therefore, is not required. In the spirit of SBREFA, however, the Agency has provided a copy of this final rule and regulatory flexibility certification statement to the SBA Office of Advocacy. In addition, MSHA will mail a copy of the final rule, including the preamble and regulatory flexibility certification statement, to all mine operators and miners' representatives.

Regulatory Flexibility Certification Statement

In accordance with § 605 of the RFA, MSHA certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

Factual Basis for Certification

The Agency has used a qualitative approach in concluding that the final rule does not have a significant impact on a substantial number of small entities. MSHA estimated that the final rule would result in an annual net benefit to the public and that the only effect of the final rule will be to reduce costs to the public. Therefore, there is no need for a regulatory flexibility analysis.

VI. Unfunded Mandates Reform Act of 1995

MSHA has determined that, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, this final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million. Moreover, the Agency has determined that for purposes of § 203 of that Act, this final rule does not significantly or uniquely affect small governments.

List of Subjects in 30 CFR Part 47

Education, Intergovernmental relations, Mine safety and health.

Dated: November 6, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, part 47, chapter I, subchapter H, of title 30 of the Code of Federal Regulations is amended as follows:

PART 47—[AMENDED]

1. The authority citation for part 47 continues to read as follows:

Authority: 30 U.S.C. 957.

2. Section 47.10 is revised to read as follows:

§ 47.10 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.

3. Section 47.50 is revised to read as follows:

§ 47.50 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.

[FR Doc. 97-29900 Filed 11-12-97; 8:45 am]

BILLING CODE 4510-43-P