

## § 2702.8

in the commerial interest of the requester.”

(2) The Executive Director, upon request, shall determine whether a waiver or reduction of fees is warranted. Requests shall be made concurrently with requests for information under § 2702.3. Appeals of adverse decisions may be made to the Chairman within 5 working days. Determination of appeals will be made by the Chairman within 10 working days of receipt.

[54 FR 3022, Jan. 23, 1989, as amended at 62 FR 55336, Oct. 24, 1997]

### § 2702.8 Advance payment of fees; interest; debt collection procedures.

(a) Advance payment of fees generally will not be required. However, an advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed \$250.

(b) Requesters who have previously failed to pay a fee charged in timely fashion (i.e., within 30 days of the date of billing) may be required first to pay that amount plus any applicable interest (or demonstrate that the fee has been paid) and then make an advance payment of the full amount of the estimated fee before the new or pending request is processed.

(c) Interest charges may be assessed on any unpaid bill starting on the 31st day following the day on which the billing was sent at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(d) The Debt Collection Act of 1982, Pub. L. 97-365, including disclosure to consumer credit reporting agencies and the use of collection agencies will be utilized to encourage payment where appropriate.

[54 FR 3023, Jan. 23, 1989]

## PART 2703—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Sec.

2703.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

2703.2 Designated agency ethics official and alternate designated agency ethics official.

AUTHORITY: 5 U.S.C. 7301; 5 CFR 2638.202.

## 29 CFR Ch. XXVII (7-1-04 Edition)

SOURCE: 61 FR 39872, July 31, 1996, unless otherwise noted.

### § 2703.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Members and employees of the Federal Mine Safety and Review Commission are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635; the Commission's regulations at 5 CFR part 8401, which supplement the executive branch-wide standards; and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

### § 2703.2 Designated agency ethics official and alternate designated agency ethics official.

The Chairman shall appoint an individual to serve as the designated agency ethics official, and an individual to serve in an acting capacity in the absence of the primary designated agency ethics official (alternate designated agency ethics official), to coordinate and manage the Commission's ethics program.

## PART 2704—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN COMMISSION PROCEEDINGS

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AUTHORITY: (5 U.S.C. 504(c)(1); Pub. L. 99-80, 99 Stat. 183; Pub. L. 104-121, 110 Stat. 862.

SOURCE: 47 FR 10001, Mar. 9, 1982, unless otherwise noted.

**Subpart A—General Provisions**

**§ 2704.100 Purpose of these rules.**

The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called “adversary adjudications”) before this Commission. An eligible party may receive an award when it prevails over the Department of Labor, Mine Safety and Health Administration (MSHA), unless the Secretary of Labor’s position in the proceeding was substantially justified or special circumstances make an award unjust. In addition to the foregoing ground of recovery, an eligible party may receive an award if the demand of the Secretary is substantially in excess of the decision of the Commission and unreasonable, unless the applicant party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. The rules in this part describe the parties eligible for each type of award. They also explain how to apply for awards, and the procedures and standards that this Commission will use to make the awards.

[63 FR 63175, Nov. 12, 1998]

**§ 2704.101 Definitions.**

The following terms shall have the following meaning when used in these rules:

*Adjudication Officer*, as defined in 5 U.S.C. 504(b)(1)(D), means the Commission’s administrative law judge who presided at the underlying adversary adjudication between the applicant and the Secretary of Labor. For the sake of clarity, references hereafter shall be to “administrative law judge”.

*The Act* means the Equal Access to Justice Act 5 U.S.C. 504;

*The Commission* means the Federal Mine Safety and Health Review Commission, created as an independent agency under 30 U.S.C. 823;

*The Mine Act* means the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq*;

*The Secretary* means the Secretary of Labor or his designee.

**§ 2704.102 Applicability.**

Section 2704.105(a) applies to adversary adjudications before the Commission pending or commenced on or after August 5, 1984. Section 2704.105(b) applies to adversary adjudications commenced on or after March 29, 1996.

[63 FR 63175, Nov. 12, 1998]

**§ 2704.103 Proceedings covered.**

(a) The Act applies to adversary adjudications conducted by this Commission. These are adjudications before the Commission arising under the Mine Act in which the position of the Secretary of Labor is represented by an attorney or other representative who enters an appearance and participates in the proceeding. For this Commission, the types of proceedings generally covered include:

(1) Contests of citations or orders issued under section 104 or 107 of the Mine Act (30 U.S.C. 814, 817);

(2) Contests of penalties proposed under section 105 (a) and (b) of the Mine Act (30 U.S.C. 815(a), (b));

(3) Challenges to claims of discrimination under section 105(c) of the Mine Act (30 U.S.C. 815(c)) where the Secretary of Labor represents the miner;

(b) The Commission may also designate a proceeding not listed in paragraph (a) of this section as an adversary adjudication for purposes of the Act by so stating in an order initiating