

## § 44.7

document or other material is served upon the party by mail, 5 days shall be added to the prescribed period: *Provided*, that specific provisions may, for good cause, be made otherwise by an order of an administrative law judge or the Assistant Secretary in a particular proceeding pending before that person.

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

### § 44.7 Filing.

For purposes of this part, a petition, request for hearing, notice of appeal, or other document shall be considered to be filed when received, or when mailed by certified mail, return receipt requested. Such documents may be filed by telecopier or other electronic means.

[55 FR 53440, Dec. 28, 1990]

### § 44.8 Ex parte communication.

There shall be no ex parte communication with respect to the merits of any case not concluded between the Assistant Secretary or the administrative law judge, including any employee or agent of the Assistant Secretary or of the administrative law judge, and any of the parties, intervenors, representatives, or other interested parties.

[55 FR 53440, Dec. 28, 1990]

### § 44.9 Posting of petition.

An operator of a mine for which there is no representative of miners shall post a copy of each petition concerning the mine on the mine bulletin board and shall maintain the posting until a ruling on the petition becomes final.

## Subpart B—Initial Procedure for Petitions for Modification

### § 44.10 Filing of petition; service.

A petition for modification of the application of a mandatory safety standard under section 101(c) of the Act may be filed only by the operator of the affected mine or any representative of the miners at such mine. All petitions must be in writing and must be filed with the Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100

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Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939. If the petition is filed by a mine operator, a copy of the petition shall be served by the mine operator upon a representative of miners at the affected mine. If the petition is filed by a representative of the miners, a copy of the petition shall be served by the representative of miners upon the mine operator. Service shall be accomplished personally or by registered or certified mail, return receipt requested.

[55 FR 53440, Dec. 28, 1990, as amended at 67 FR 38384, June 4, 2002]

### § 44.11 Contents of petition.

(a) A petition for modification filed pursuant to §44.10 shall contain:

(1) The name and address of the petitioner.

(2) The mailing address and mine identification number of the mine or mines affected.

(3) The mandatory safety standard to which the petition is directed.

(4) A concise statement of the modification requested, and whether the petitioner proposes to establish an alternate method in lieu of the mandatory safety standard or alleges that application of the standard will result in diminution of safety to the miners affected or requests relief based on both grounds.

(5) A detailed statement of the facts the petitioner would show to establish the grounds upon which it is claimed a modification is warranted.

(6) Identification of any representative of the miners at the affected mine, if the petitioner is a mine operator.

(b) A petition for modification shall not include a request for modification of the application of more than one mandatory safety standard. A petition for modification shall not request relief for more than one operator. However, an operator may file a petition for modification pertaining to more than one mine where it can be shown that identical issues of law and fact exist as to the petition for each mine.

### § 44.12 Procedure for public notice of petition received.

(a) Within 15 days from the filing of a petition for modification, the Mine Safety and Health Administration will

give notice of the petition to each known representative of miners or the operator of the affected mine, as appropriate, and shall publish notice of the petition in the FEDERAL REGISTER.

(b) The FEDERAL REGISTER notice shall contain a statement that the petition has been filed, identify the petitioner and the mine or mines to which the petition relates, cite the mandatory safety standard for which modification is sought, and describe the requested relief.

(c) All such notices shall advise interested parties that they may, within 30 days from the date of publication in the FEDERAL REGISTER, in writing, comment upon or provide information relative to the proposed modification.

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

**§ 44.13 Proposed decision.**

(a) Upon receipt of a petition for modification, the Mine Safety and Health Administration shall cause an investigation to be made as to the merits of the petition. Any party may request that the investigation of the petition for modification be expedited, or that the time period for investigating the petition be extended. Such requests shall be granted in the discretion of the Administrator upon good cause shown.

(b) As soon as is practicable after the investigation is completed, the appropriate Administrator shall make a proposed decision and order, which shall be served upon all parties to the proceeding. The proposed decision shall become final upon the 30th day after service thereof, unless a request for hearing has been filed with the appropriate Administrator, as provided in § 44.14 of this part.

(c) Service of the proposed decision is complete upon mailing.

[55 FR 53440, Dec. 28, 1990]

**§ 44.14 Request for hearing**

A request for hearing filed in accordance with § 44.13 of this part must be filed within 30 days after service of the proposed decision and shall include:

(a) A concise summary of position on the issues of fact or law desired to be raised by the party requesting the hearing, including specific objections

to the proposed decision. A party other than petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition, and

(b) An indication of a desired hearing site.

(c) *Partial appeal.* (1) If the Administrator has issued a proposed decision and order granting the requested modification, a request for hearing on the proposed decision and order may be made by any party based upon objection to one or more of the terms and conditions of the Administrator's proposed decision and order. If such a request for hearing is made, the request should specify which of the terms and conditions should be the subject of the hearing.

(2) During the pendency of the partial appeal, the proposed decision and order of the Administrator will become final on the 30th day after service thereof, unless a request for hearing on the proposed decision and order is filed in accordance with paragraph (a) of this section by any other party. The decision and order will remain in effect as proposed by the Administrator until the terms and conditions for which the hearing was requested are modified, affirmed, or set aside by a final order of the presiding administrative law judge or the Assistant Secretary. The presiding administrative law judge shall take such action upon a determination of whether—

(i) The terms and conditions for which the hearing was requested are necessary to ensure that the alternative method of achieving the result of the standard will at all times guarantee to the miners at the mine at least the same measure of protection afforded to the miners at the mine by such standard; or

(ii) In the case of a petition involving a finding by the Administrator of a diminution of safety to the miners caused by application of the standard at the mine, whether the terms and conditions for which the hearing was requested are necessary to provide equivalent protection to the miners at the mine from the hazard against which the standard is directed.

[43 FR 29518, July 7, 1978, as amended at 55 FR 53441, Dec. 28, 1990]