

§ 44.28

motions and requests, filed in written form and rulings thereon; any documents or papers filed in connection with prehearing conferences; and, if a hearing has been held, the transcript of testimony and any proposed findings, conclusions, rules or orders, and supporting reasons as may have been filed.

(3) A waiver of further procedural steps before the administrative law judge and Assistant Secretary; and

(4) A waiver of any right to challenge or contest the validity of the findings and rule or order made in accordance with the agreement.

(c) *Submission.* On or before expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the Chief Administrative Law Judge or presiding administrative law judge, as appropriate, for his consideration; or

(2) Inform the Chief Administrative Law Judge or presiding administrative law judge, as appropriate, that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and rule or order is submitted within the time allowed, the Chief Administrative Law Judge or presiding administrative law judge, as appropriate, may accept the agreement by issuing his decision based upon the agreed findings.

[43 FR 29518, July 7, 1978, as amended at 55 FR 53442, Dec. 28, 1990]

§ 44.28 Notice of hearing.

(a) The administrative law judge shall fix a place and date for the hearing and notify all parties at least 30 days in advance of the date set, unless at least one party requests and all parties consent to an earlier date, or the hearing date has been otherwise advanced in accordance with this part. The notice shall include:

(1) The time, place, and nature of the hearing; and

(2) The legal authority under which the hearing is to be held.

(b) In accordance with the provisions of section 554 of title 5 of the United States Code, a party may move for transfer of a hearing on the basis of convenience to parties and witnesses. Such motion should be filed with the administrative law judge assigned to the case.

30 CFR Ch. I (7-1-06 Edition)

§ 44.29 Motions.

Each motion filed shall be in writing and shall contain a short and plain statement of the grounds upon which it is based. A statement in opposition to the motion may be filed by any party within 10 days after the date of service. The administrative law judge may permit oral motions during proceedings.

§ 44.30 Hearing procedures.

(a) *Order of proceeding.* Except as may be ordered otherwise by the administrative law judge, the petitioner shall proceed first at a hearing.

(b) *Burden of proof.* The petitioner shall have the burden of proving his case by a preponderance of the evidence.

(c) *Evidence—(1) Admissibility.* A party shall be entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for full and true disclosure of the facts. Any oral or documentary evidence may be received, but the administrative law judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(2) *Testimony of witnesses.* The testimony of a witness shall be upon oath or affirmation administered by the administrative law judge.

(3) *Objections.* If a party objects to admission or rejection of any evidence, limitation of the scope of any examination or cross-examination, or failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on such objections shall appear in the record.

(4) *Exceptions.* Formal exception to an adverse ruling is not required.

(d) *Official notice.* Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the Department of Labor by reason of its functions is presumed to be expert: *Provided,* That the parties shall be given adequate notice at the hearing or by reference in the presiding administrative law judge's decision of the matters so noticed and shall be given adequate opportunity to show the contrary.

(e) *Transcript.* Copies of the transcript of the hearing may be obtained by the parties upon written application filed with the reporter and payment of fees at the rate provided in the agreement with the reporter.

§ 44.31 Proposed findings of fact, conclusions, and orders.

After consultation with the parties, the administrative law judge may prescribe a time period of 30 days within which each party may file proposed findings of fact, conclusions of law, and rule or order, together with a supporting brief expressing the reasons for such proposals. Such time may be expedited or extended upon request and at the discretion of the Administrative Law Judge. Proposals and briefs shall be served on all other parties and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

[55 FR 53442, Dec. 28, 1990]

§ 44.32 Initial decision.

(a) Within 60 days after the time allowed for the filing of proposed findings of fact and conclusions of law, the administrative law judge shall make and serve upon each party a decision, which shall become final upon the 30th day after service thereof, unless an appeal is filed as provided in § 44.33 of this part. After consultation with the parties, the administrative law judge may expedite or extend the time for issuing the decision. The decision of the administrative law judge shall include:

(1) A statement of findings of fact and conclusions of law, with reasons therefor, upon each material issue of fact, law, or discretion presented on the record; and

(2) The appropriate rule, order, relief, or denial thereof.

(b) The decision of the administrative law judge shall be based upon a consideration of the whole record and shall state all facts officially noticed and relied upon. It shall be made on the basis of a preponderance of reliable and probative evidence.

[43 FR 29518, July 7, 1978, as amended at 55 FR 53442, Dec. 28, 1990]

§ 44.33 Departmental review.

(a) *Notice of appeal.* Any party may appeal from the initial decision of the administrative law judge by filing with the Assistant Secretary a notice of appeal within 30 days after service of the initial decision. The Assistant Secretary may consolidate related appeals. Copies of a notice of appeal shall be served on all parties to the proceeding in accordance with § 44.6 of this part.

(b) *Statement of objections.* Within 20 days after filing the notice of appeal, the appellant shall file his statement of objections to the decision of the administrative law judge and serve copies on all other parties to the proceeding. The statement shall refer to the specific findings of fact, conclusions of law, or terms of the order objected to in the initial decision. Where any objection is based upon evidence of record, the objection need not be considered by the Assistant Secretary if specific record citations to the pertinent evidence are not contained in the statement of objections.

(c) *Responding statements.* Within 20 days after service of the statement of objections, any other party to the proceeding may file a statement in response.

[43 FR 29518, July 7, 1978, as amended at 55 FR 53442, Dec. 28, 1990]

§ 44.34 Transmission of record.

If an appeal is filed, the administrative law judge shall, as soon thereafter as is practicable, transmit the record of the proceeding to the Assistant Secretary for review. The record shall include: the petition; the MSHA investigation report; any request for hearing on the petition; the transcript of testimony taken at the hearing, together with exhibits admitted in evidence; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions of law, rules or orders, and supporting reasons, as may have been filed; and the administrative law judge's decision.

[55 FR 53442, Dec. 28, 1990]