

(3) A copy of an initial decision and final decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing in accordance with Subpart C of this part.

### Subpart E—Effect of Initial Decision

#### § 44.50 Effect of appeal on initial decision.

Except as provided in § 44.14(c), a proposed decision and order of an Administrator is not operative pending appeal to an administrative law judge, and a decision of an administrative law judge is not operative pending appeal to the Assistant Secretary.

[55 FR 53443, Dec. 28, 1990]

#### § 44.51 Finality for purposes of judicial review.

Only a decision by the Assistant Secretary shall be deemed final agency action for purposes of judicial review. A decision by an Administrator or administrative law judge which becomes final for lack of appeal is not deemed final agency action for purposes of 5 U.S.C. 704.

#### § 44.52 Revocation of modification.

(a) *Petition for revocation.* Any party to a proceeding under this part in which a petition for modification of a mandatory safety standard was granted by an Administrator, administrative law judge, or the Assistant Secretary may petition that the modification be revoked. Such petition shall be filed with the Chief Administrative Law Judge for disposition.

(b) *Revocation by the Administrator.* The appropriate Administrator may propose to revoke a modification previously granted by the Administrator, an administrative law judge, or the Assistant Secretary, by issuing a proposed decision and order revoking the modification. Such proposed revocation and a statement of reasons supporting the proposal must be served upon all parties to the proceeding, and shall become final on the 30th day after

service thereof unless a hearing is requested in accordance with § 44.14.

(c) Revocation of a granted modification must be based upon a change in circumstances or because findings which originally supported the modification are no longer valid.

(d) Disposition of the revocation shall be subject to all procedures of subparts C through E of this part.

[55 FR 53443, Dec. 28, 1990]

#### § 44.53 Amended modification.

(a) The Administrator may propose to revise the terms and conditions of a granted modification by issuing an amended proposed decision and order, along with a statement of reasons for the amended proposed decision and order, when one or both of the following occurs:

(1) A change in circumstances which originally supported the terms and conditions of the modification.

(2) The Administrator determines that findings which originally supported the terms and conditions of the modification are no longer valid.

(b) The Administrator's amended proposed decision and order shall be served upon all parties to the proceeding and shall become final upon the 30th day after service thereof, unless a request for hearing on the proposed amendments is filed under § 44.14. If a request for hearing is filed, the amended proposed decision and order shall be subject to all procedures of subparts C through E of this part as if it were a proposed decision and order of the Administrator issued in accordance with § 44.13. The original modification shall remain in effect until superseded by a final amended modification.

(c) In cases where the original decision and order was based upon an alternative method of achieving the result of the standard, the amended decision and order shall at all times provide to miners at the mine at least the same measure of protection afforded to the miners at the mine by such standard. In cases where the original decision and order was based upon a diminution of safety to the miners resulting from application of the standard at such time, the amended decision and order