

person claiming a right of participation as an interested party in a proceeding may become a party upon application to the Assistant Secretary and the granting of such application. After referral of a petition to the Chief Administrative Law Judge, all applications for status as a party shall be made to the Chief Administrative Law Judge for his disposition.

§ 44.4 Standard of evaluation of petitions; effect of petitions granted.

(a) A petition for modification of application of a mandatory safety standard may be granted upon a determination that—

(1) An alternative method of achieving the result of the standard exists that will at all times guarantee no less than the same measure of protection afforded by the standard, or

(2) Application of the standard will result in a diminution of safety to the miners.

(b) Except as may be provided in § 44.16 for relief to give effect to a proposed decision and order, a decision of an Administrator or an administrative law judge granting or denying a petition for modification shall not be effective until time for appeal has expired under § 44.14 or § 44.33, as appropriate.

(c) All petitions for modification granted pursuant to this part shall have only future effect: *Provided*, That the granting of the modification under this part shall be considered as a factor in the resolution of any enforcement action previously initiated for claimed violation of the subsequently modified mandatory safety standard. Orders granting petitions for modification may contain special terms and conditions to assure adequate protection to miners. The modification, together with any conditions, shall have the same effect as a mandatory safety standard.

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

§ 44.5 Notice of a granted petition for modification.

(a) Every final action granting a petition for modification under this part shall be published in the FEDERAL REGISTER. Every such final action published shall specify the statutory

grounds upon which the modification is based and a summary of the facts which warranted the modification.

(b) Every final action or a summary thereof granting a petition for modification under this part shall be posted by the operator on the mine bulletin board at the affected mine and shall remain posted as long as the modification is effective. If a summary of the final action is posted on the mine bulletin board, a copy of the full decision shall be kept at the affected mine office and made available to the miners.

§ 44.6 Service.

(a) Copies of all documents filed in any proceeding described in this part and copies of all notices pertinent to such proceeding shall be served by the filing party on all other persons made parties to the proceeding under § 44.3. If a request for hearing has been filed by any party, a copy of all subsequent documents filed shall be served upon the Mine Safety and Health Administration through its representative, the Office of the Solicitor, Department of Labor.

(b) All documents filed subsequent to a petition for modification may be served personally or by first class mail to the last known address of the party. Service may also be completed by telecopier or other electronic means.

(c) Whenever a party is represented by an attorney who has signed any document filed on behalf of such party or otherwise entered an appearance on behalf of such party, service thereafter shall be made upon the attorney.

(d) Any party filing a petition for modification under these rules shall file proof of service in the form of a return receipt where service is by registered or certified mail or an acknowledgment by the party served or a verified return where service is made personally. A certificate of service shall accompany all other documents filed by a party under these rules.

(e) Service by mail shall be complete upon mailing. Service by telecopier or other electronic means shall be complete upon receipt.

(f) Whenever a party has the right to do some act within a prescribed period after the service of a document or other material upon the party and the

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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