

§ 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