

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

## PROCEDURAL RULES 29 C.F.R. Part 2700



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**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
PROCEDURAL RULES – 29 C.F.R. Part 2700**

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## Subpart A – General Provisions

### § 2700.1 Scope; applicability of other rules; construction.

#### (a) Scope.

(1) This part sets forth rules applicable to proceedings before the Federal Mine Safety and Health Review Commission (“the Commission”) and its Administrative Law Judges (“ALJs”). The Commission is an adjudicative agency that provides administrative trial and appellate review of legal disputes arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (“the Act”). The Commission is an independent agency, not a part of nor affiliated in any way with the U.S. Department of Labor or its Mine Safety and Health Administration (“MSHA”). The location of the Commission’s headquarters is at 1331 Pennsylvania Avenue, N.W., Suite 520N, Washington, DC 20004-1710; and its primary phone number is 202-434-9900. The Commission maintains a website at <http://www.fmshrc.gov> where these rules, recent and many past decisions of the Commission and its ALJs, and other information regarding the Commission, can be accessed.

(2) Unless the Commission provides otherwise, amendments to these rules are effective 60 days following publication in the Federal Register and apply to cases initiated after they take effect. They also apply to further proceedings in cases pending on the effective date, except to the extent that application of the amended rules would not be feasible, or would work injustice, in which event the former rules of procedure would continue to apply.

(b) Applicability of other rules. On any procedural question not regulated by the Act, these Procedural Rules, or the Administrative Procedure Act (particularly 5 U.S.C. 554 and 556), the Commission and its ALJs shall be guided so far as practicable by the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure.

(c) Construction. These rules shall be construed to secure the just, speedy and inexpensive determination of all proceedings, and to encourage the participation of miners and their representatives.

### § 2700.2 Definitions.

For purposes of this part, the definitions contained in section 3 of the Act, 30 U.S.C. 802, apply. For ease of reference throughout this part, the “Secretary of Labor” or “Acting Secretary of Labor” shall be referred to as the “Secretary.” Similarly, a Commission Administrative Law Judge shall be referred to as an “ALJ.”

§ 2700.3 Who may appear before the Commission as a representative of a party.

(a) Notice of appearance. When first making an appearance, each representative of a party must file a notice of appearance that indicates on whose behalf the appearance is made and the proceeding name and docket number.

(b) Who may appear. Persons who may represent a party or subpoenaed witness before an ALJ or the Commission include:

(1) An attorney who is a member of a bar in good standing of the highest court of a State, Commonwealth, or Territory of the United States, or the District of Columbia where the attorney has been licensed to practice law, who will promptly disclose to the ALJ any action suspending, enjoining, restraining, disbaring, or otherwise currently restricting the attorney in the practice of law in any jurisdiction where the attorney is licensed to practice law;

(2) A party;

(3) A representative of miners;

(4) An owner, partner, officer or employee of a party when the party is a labor organization, an association, a partnership, a corporation, a governmental agency, other business entity, or a political subdivision; or

(5) Any other person with the permission of the presiding ALJ or the Commission.

(c) Entry of appearance. A representative of a party shall enter an appearance in a proceeding under the Act or these procedural rules by signing the first document filed on behalf of the party with the Commission or ALJ in accordance with § 2700.6; filing a written entry of appearance with the Commission or ALJ; or, if the Commission or ALJ permits, by orally entering an appearance in open hearing.

(d) Duties. All representatives authorized to appear before the Commission shall be subject to 2700.80 (Standards of conduct; disciplinary proceedings). A representative must be diligent, prompt, and forthright when dealing with parties, other representatives and the ALJ, and act in a manner that furthers the fair and orderly conduct of the proceeding.

(e) Withdrawal of appearance. A representative who desires to withdraw after filing a notice of appearance, or a party desiring to withdraw the appearance of a representative, must file a motion with the Commission or ALJ. The motion must state that a notice of the withdrawal has been provided to all parties. The Commission or ALJ may deny a representative's motion to withdraw when necessary to avoid undue delay or prejudice to the rights of a party.

§ 2700.4 Parties, intervenors, and amici curiae.

(a) Party status. A person, including the Secretary or an operator, who is named as a party or who is permitted to intervene, is a party. In a proceeding instituted by the Secretary under section 105(c)(2) of the Act, 30 U.S.C. 815(c)(2), the complainant on whose behalf the Secretary has filed the complaint is a party and may present additional evidence. A miner, applicant for employment, or representative of a miner who has filed a complaint with the Commission under section 105(c)(3) or 111 of the Act, 30 U.S.C. 815(c)(3) and 821, and an affected miner or the miner's representative who has become a party in accordance with paragraph (b) of this section, are parties.

(b) Intervention—

(1) Intervention by affected miners and their representatives. Before a case has been assigned to an ALJ, affected miners or their representatives shall be permitted to intervene upon filing a written notice of intervention with the Commission. If the case has been assigned to an ALJ, the notice of intervention shall be filed with the ALJ. Notices of intervention shall be filed with the Commission or ALJ in accordance with § 2700.5(c). The Commission or the ALJ shall provide forthwith a copy of the notice to all parties. After the start of the hearing, affected miners or their representatives may intervene upon just terms and for good cause shown.

(2) Intervention by other persons.

(i) Motions by other persons for leave to intervene shall be filed before the start of a hearing on the merits unless the ALJ, for good cause shown, allows a later filing. The motion shall set forth:

(A) The interest of the movant relating to the property or events that are the subject of the proceeding;

(B) The reasons why such interest is not otherwise adequately represented by the parties already involved in the proceeding; and

(C) A showing that intervention will not unduly delay or prejudice the adjudication of the issues.

(ii) Such intervention is not a matter of right but of the sound discretion of the ALJ. In denying a motion to intervene, the ALJ may alternatively permit the movant to participate in the proceeding as amicus curiae.

(c) Procedure for participation as amicus curiae. Any person may move to participate as amicus curiae in a proceeding before an ALJ. Such participation as amicus curiae shall not be a matter of right but of the sound discretion of the ALJ. A motion for participation as amicus curiae shall set forth the interest of the movant and show that the granting of the motion will not unduly delay or prejudice the adjudication of the issues. If the ALJ permits amicus curiae participation, the ALJ's order shall specify the time within which such amicus curiae memorandum, brief, or other filing must be filed and the time within which a reply may be made. The movant may conditionally attach its memorandum, brief, or other filing to its motion for participation as amicus curiae.

§ 2700.5 General requirements for pleadings and other documents; filing requirements; status or informational requests.

(a) Jurisdiction. A proposal for a penalty under section 110, 30 U.S.C. 820; an answer to a notice of contest of a citation or withdrawal order issued under section 104, 30 U.S.C. 814; an answer to a notice of contest of an order issued under section 107, 30 U.S.C. 817; a complaint issued under section 105(c) or 111, 30 U.S.C. 815(c) and 821; and an application for temporary reinstatement under section 105(c)(2), 30 U.S.C. 815(c)(2), shall allege that the violation or imminent danger took place in or involves a mine that has products which enter commerce or has operations or products that affect commerce. Jurisdictional facts that are alleged are deemed admitted unless specifically denied in a responsive pleading.

(b) How to file. Unless otherwise provided for in the Act, these rules, or by order, filing may be accomplished in person, by U.S. Postal Service, by third-party commercial carrier, or by electronic transmission. Instructions for electronic filing may be accessed on the Commission's website (<http://www.fmshrc.gov>).

(c) Where to file. Unless otherwise provided for in the Act, these rules, or by order:

(1) Filing by electronic transmission. A document may be filed by electronic transmission with the Commission and its ALJs. Instructions for electronic filing may be accessed on the Commission's website (<http://www.fmshrc.gov>).

(2) Filing in person, by U.S. Postal Service, by third-party commercial carrier—

(i) Before an ALJ has been assigned. Before an ALJ has been assigned to a case, all documents shall be filed with the Commission. Documents filed with the Commission shall be addressed to the Docket Office, Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue, NW, Suite 520N, Washington, DC 20004-1710.

(ii) After an ALJ has been assigned. After an ALJ has been assigned, and before a decision has been issued, documents shall be filed with the ALJ at the address set forth on the notice of the assignment.

(iii) After an ALJ has issued a final decision. After the ALJ has issued a final decision, documents shall be filed with the Commission as described in paragraph (c)(2)(i) of this section.

(d) Necessary information. All documents shall be legible and shall clearly identify on the cover page the filing party by name. All documents shall be dated and shall include the assigned docket number, page numbers, and the filing person's address, business telephone number, cell telephone number if available, fax number if available, and email address if available. Written notice of any change in contact information shall be given promptly to the Commission or the ALJ and all other parties.

(e) Privacy considerations. Persons submitting information to the Commission shall protect information that tends to identify certain individuals, constitute an unwarranted intrusion of personal privacy, or disclose confidential commercial information as defined by 29 CFR 2702.6(a)(1) in the following manner:

(1) Social security numbers, financial account numbers, driver's license numbers, or other personal identifying numbers, shall be redacted or excluded;

(2) Minor children shall be identified only by initials;

(3) If dates of birth must be included, only the year shall be used;

(4) Parties shall exercise caution when filing medical records, medical treatment records, medical diagnosis records, employment history, and individual financial information, and shall redact or exclude materials unnecessary to a disposition of the case, provided the party provides notice to other parties and the ALJ of the types of material redacted and the reason for such redactions.

(5) Parties shall, consistent with 29 CFR 2702.6, exercise caution when providing corporate or commercial information and, with the permission of the ALJ, shall redact or exclude any portion of its filing unnecessary to a disposition of the case or shall designate by appropriate markings any portion that it considers to be confidential.

(6) The Commission may order, sua sponte or pursuant to a party's motion, that a filing be submitted for in-camera review or placed under seal. The Commission may subsequently unseal the filing or order the person who made the submission to substitute a redacted version in the record. Prior to unsealing a filing, the Commission shall provide the party that submitted the filing a reasonable opportunity to object to the unsealing or to withdraw the filing. If no response is received, the Commission will take appropriate action at its discretion. No placements under seal, redactions or withdrawals shall be permitted during the pendency of a subpoena duces tecum validly issued to the Commission or a valid request pursuant to 29 CFR part 2702 related to the filing.

(f) Effective date of filing. Unless otherwise provided for in the Act, these rules, or by order:

(1) Filing by electronic transmission. When filing is by electronic transmission, filing is effective upon successful receipt by the Commission. The electronic transmission shall be in the manner specified by the Commission's website (<http://www.fmshrc.gov>).

(2) Filing in person, by U.S. Postal Service, or by third-party commercial carrier. When filing is by U.S. Postal Service, filing is effective upon mailing, except that the filing of a motion for extension of time, any document in an emergency response plan dispute proceeding, a petition for review of a temporary reinstatement order, a motion for summary decision, a petition for discretionary review, and a motion to exceed page limit is effective only upon receipt. See §§ 2700.9(a), 2700.24(d), 2700.45(f), 2700.67(a), 2700.70(a), (f), and 2700.75(f). When filing is in person or by third-party commercial carrier, filing is effective upon successful receipt by the Commission.

(g) Number of copies. Unless otherwise ordered or stated in this part, only the original of a document shall be filed.

(h) Form of filings. All documents, including those filed electronically, shall appear in at least 12-point type on paper 8½ by 11 inches in size, with margins of at least 1 inch on all four sides. Text and footnotes shall appear in the same size type. Text shall be double spaced. Headings and footnotes may be single spaced. Quotations of 50 words or more may be single spaced and indented left and right. Excessive footnotes are prohibited. The failure to comply with the requirements of this paragraph or the use of compacted or otherwise compressed printing features may be grounds for rejection of a filing.

(i) Citation to a decision of an ALJ. Each citation to a decision of an ALJ should include “(ALJ)” at the end of the citation.

(j) Status or informational requests. Information concerning filing requirements, the status of cases, or docket information may be accessed through the Commission’s website (<http://www.fmshrc.gov>). In the event such information is unavailable through the Commission’s website or the requesting party does not have access to the website, such status or informational requests must be directed to the Docket Office of the Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue, NW, Suite 520N, Washington, DC 20004-1710; 202-434-9950.

§ 2700.6 Signing of documents.

(a) Signature. All documents filed with the Commission must be signed by a party or representative of the party.

(1) Documents not filed by electronic transmission. A party or representative of the party shall sign a document by handwritten signature.

(2) Documents filed by electronic transmission.

(i) A party or representative of the party may sign a document by including the notation “/s/” followed by the typewritten name of the party or representative of the party filing the document.

(ii) A party or representative of the party may sign a document by including a graphical duplicate of the handwritten signature.

(b) Meaning of Signature. A document or signature may not be denied legal effect or enforceability solely because it is in electronic form. When a party or representative of the party signs a document in the manner described in paragraph (a) of this section, that person’s signature shall constitute a certification:

(1) That under the provisions of the law, including these rules and all federal conflict of interest statutes, the person is authorized and qualified to represent the particular party in the matter; and

(2) That the person has read the document; that based on knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 2700.7 Service.

(a) Generally. A copy of each document filed with the Commission shall be served on all parties. Whenever a party is represented by an attorney or other authorized representative who has entered an appearance on behalf of such party pursuant to § 2700.3, service thereafter shall be made upon the attorney or other authorized representative. In addition, a copy of a notice of contest of a citation or order, a petition for assessment of penalty, a discrimination or interference complaint, a complaint for compensation, and an application for temporary relief shall be served upon the representative of miners, if known.

(b) Posting. A copy of an order, citation, notice, or decision required under section 109 of the Act, 30 U.S.C. 819, to be posted on a mine bulletin board shall, upon receipt, be immediately posted on such bulletin board by the operator.

(c) Manner of service. Unless otherwise provided for in the Act, these rules, or by order:

(1) Methods of service. Documents may be served in person, by U.S. Postal Service, or by third-party commercial carrier, or by email or other electronic transmission. For documents filed pursuant to §§ 2700.9(a), 2700.24, 2700.45, 2700.70(f), 2700.75(f), and subpart F (applications for temporary relief), the method of service used must be no less expeditious than that used for filing, except that if service by email or other electronic transmission is impossible, the filing party must serve in person, or by third party commercial carrier, resulting in same-day delivery.

(2) Effective date of service. When service is by U.S. Postal service, service is effective upon mailing. When service is in person, or by third-party commercial carrier, or by email or other electronic transmission, service is effective upon successful receipt by the party intended to be served.

(d) Proof of service. All pleadings and other filed documents shall be accompanied by a certification setting forth the date, method of service, and all contact information used.

§ 2700.8 Computation of time.

Unless otherwise provided for in the Act, these rules, or by order, the due date for a filing or other deadline for party or Commission action (hereinafter “due date”) is determined sequentially as follows:

(a) Except to the extent otherwise provided herein (see, e.g., §§ 2700.24 and 2700.45), when the period of time prescribed for action is less than 11 days, Saturdays, Sundays, and federal holidays shall be excluded in determining the due date.

(b) When a party serves a filing by a method of delivery resulting in other than same-day service, the due date for party action in response is extended 5 additional calendar days beyond the date otherwise prescribed, after consideration of paragraph (a) of this section where applicable. (n.b. A proposed penalty assessment is not a filing with the Commission and additional days are not added to the time for responding to a proposed assessment.)

(c) The day from which the designated period begins to run shall not be included in determining the due date. The last day of the prescribed period for action, after consideration of paragraphs (a) and (b) of this section where applicable, shall be included and be the due date, unless it is a Saturday, Sunday, federal holiday, or other day on which the Commission’s offices are not open or the Commission is open but unable to accept filings, in which event the due date shall be the next day which is not one of the aforementioned days.

(d) The time of filing with the Commission shall be determined using Washington, DC, local time. For filing by electronic means, the due date ends at midnight Washington, DC, local time. For filing by other means, the due date ends at 5:00 p.m. Washington, DC, local time.

(e) (1) Example 1. A motion is filed with the Commission on Wednesday, July 2, 2025. Under § 2700.10(d), other parties in the proceeding have 8 days in which to respond to the motion. Because the response period is less than 11 days, intervening weekends and holidays, such as Friday, July 4, 2025, are excluded in determining the due date. A response is thus due by Tuesday, July 15, 2025. In addition, those parties not served with the motion on the day it was filed have 5 additional calendar days in which to respond, or until Monday, July 21, 2025.

(2) Example 2: An ALJ issues a final decision in a case on Friday, July 11, 2025. Under § 2700.70(a), parties have until August 11, 2025, to file with the Commission a petition for discretionary review of the ALJ’s decision. Even though the decision was mailed, 5 additional calendar days are not added, because paragraph (b) of this section only applies to actions in response to parties’ filings. However, because August 10, 2025, is a Sunday, the actual due date for the petition is Monday, August 11, 2025.

(3) Example 3: Pursuant to § 2700.24(a), the Secretary files a referral of a citation arising out of a dispute over the content of an operator's emergency response plan. Certain subsequent deadlines in such cases are specifically established by reference to calendar days, and thus paragraph (a) of this section would not necessarily apply in determining due dates. For instance, if the referral was filed on Thursday, July 10, 2025, the short and plain statement the operator must file in response within 5 calendar days would be due Tuesday, July 15, 2025, because the intervening weekend days would not be excluded in determining the due date. If the fifth calendar day were to fall on a weekend, holiday, or other day on which the Commission is not open however, the terms of paragraph (c) of this section would apply and the due date would be the next day the Commission is open.

#### § 2700.9 Extensions of time.

(a) The time for filing or serving any document may be extended for good cause shown. Filing of a motion requesting an extension of time is effective upon receipt. A motion requesting an extension of time shall be received no later than 3 days prior to the expiration of the time allowed for the filing or serving of the document, and shall comply with § 2700.10. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by email or other electronic transmission is impossible, the filing party must serve in person, or by third-party commercial carrier, resulting in same-day delivery.

(b) In exigent circumstances, an extension of time may be granted even though the request was filed after the designated time for filing has expired. In such circumstances, the party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the time prescribed for the filing had expired.

(c) This rule does not apply to petitions for discretionary review filed pursuant to section 113(d)(2)(A)(i) of the Act, 30 U.S.C. 823(d)(2)(A)(i), and § 2700.70(a).

#### § 2700.10 Motions.

(a) An application for an order shall be by motion which, unless made during a hearing or a conference, shall be made in writing and shall set forth the relief or order sought. Proceedings on any motion made at a hearing or during a conference shall be recorded.

(b) Written motions shall be set forth in a document separate from other filings.

(c) Prior to filing any motion other than a dispositive motion, the moving party shall confer or make reasonable efforts to confer with the other parties and shall state in the motion if any other party opposes or does not oppose the motion.

(d) A statement in opposition to a written motion may be filed by any party within 8 days after service upon the party. Unless otherwise ordered, oral argument on motions will not be heard. Where circumstances warrant, a motion may be ruled upon prior to the expiration of the time for response; a party adversely affected by the ruling may seek reconsideration.

§ 2700.11 Withdrawal of filing.

A party may withdraw a filing at any stage of a proceeding with the approval of the ALJ or the Commission.

§ 2700.12 Consolidation of proceedings.

The Commission and its ALJs may at any time, upon their own motion or a party's motion, order the consolidation of proceedings that involve similar issues.

**Subpart B – Contests of Citations and Orders**

§ 2700.20 Notice of contest of a citation or order issued under section 104 of the Act.

(a) Who may contest.

(1) An operator may contest:

- (i) A citation or an order issued under section 104 of the Act, 30 U.S.C. 814;
- (ii) A modification of a citation or an order issued under section 104 of the Act; and
- (iii) The reasonableness of the length of time fixed for abatement in a citation or modification thereof issued under section 104 of the Act.

(2) A miner or representative of miners may contest:

- (i) The issuance, modification or termination of any order issued under section 104 of the Act; and
- (ii) The reasonableness of the length of time fixed for abatement in a citation or modification thereof issued under section 104 of the Act.

(b) Time to contest. Contests filed by an operator pursuant to paragraph (a)(1) of this section shall be filed with the Secretary at the appropriate Regional Solicitor's Office or at the Solicitor's Office, Mine Safety and Health Division, Washington, DC, within 30 days of receipt by the operator of the contested citation, order, or modification. Contests filed by a miner or representative of miners pursuant to paragraph (a)(2) of this section shall be filed in the same manner within 30 days of receipt by the miner or representative of miners of the contested order, modification, or termination.

(c) Notification by the Secretary. The Secretary, in accordance with section 105(d) of the Act, 30 U.S.C. 815(d), shall immediately advise the Commission of such notice of contest upon its receipt.

(d) Copy to Commission. The contesting party shall also file a copy of the notice of contest with the Commission at the time the party files with the Secretary.

(e) Contents of notice of contest.

(1) A notice of contest shall contain a short and plain statement of:

(i) The party's position with respect to each issue of law and fact that the party contends is pertinent; and

(ii) The relief requested by the party.

(2) A legible copy of the contested citation or order shall be attached to the notice of contest. If a legible copy is not available, the notice of contest shall set forth the text of the contested citation or order.

(f) Answer. Within 20 days after service of a notice of contest, the Secretary shall file an answer responding to each allegation of the notice of contest.

§ 2700.21 Effect of filing notice of contest of citation or order.

(a) The filing of a notice of contest of a citation or order issued under section 104 of the Act, 30 U.S.C. 814, does not constitute a challenge to a proposed penalty assessment that may subsequently be issued by the Secretary under section 105(a) of the Act, 30 U.S.C. 815(a), which is based on that citation or order. A challenge to such a proposed penalty assessment must be filed as a separate notice of contest of the proposed penalty assessment. See § 2700.26.

(b) An operator's failure to file a notice of contest of a citation or order issued under section 104 of the Act, 30 U.S.C. 814, shall not preclude the operator from challenging, in a penalty proceeding, the fact of violation or any special findings contained in a citation or order including the assertion in the citation or order that the violation was of a significant and substantial nature or was caused by the operator's unwarrantable failure to comply with the standard.

§ 2700.22 Notice of contest of imminent danger withdrawal orders under section 107 of the Act.

(a) Time to file. A notice of contest of a withdrawal order issued under section 107 of the Act, 30 U.S.C. 817, or any modification or termination of the order, shall be filed with the Commission by the contesting party within 30 days of receipt of the order or any modification or termination of the order.

(b) Contents of notice of contest.

(1) A notice of contest shall contain a short and plain statement of:

(i) The contesting party's position on each issue of law and fact that the contesting party contends is pertinent; and

(ii) The relief requested by the contesting party.

(2) A legible copy of the contested order shall be attached to the notice of contest. If a legible copy is not available, the notice of contest shall set forth the text of the contested order.

(c) Answer. Within 15 days after service of the notice of contest, the Secretary shall file an answer responding to each allegation of the notice of contest.

§ 2700.23 Review of a subsequent citation or order.

(a) The contesting party shall file any subsequent citation or order that modifies or terminates the citation or order under review within 30 days of its receipt. The notice of contest under section 105 or section 107 of the Act, 30 U.S.C. 815 and 817, unless withdrawn, shall be deemed to challenge any such subsequent citation or order.

(b) A person who is not a party in a pending proceeding for review of a citation or order may obtain review of a modification or termination of the citation or order by filing a notice of contest under section 105 or section 107 of the Act. The notice of contest shall be filed within 30 days of receipt of the citation or order that modifies or terminates the citation or order being reviewed.

§ 2700.24 Emergency response plan dispute proceedings.

(a) Referral by the Secretary. The Secretary shall immediately refer to the Commission any citation arising from a dispute between the Secretary and an operator with respect to the content of the operator's emergency response plan, or any refusal by the Secretary to approve such a plan. Any referral made pursuant to this paragraph shall be made within two business days of the issuance of any such citation.

(b) Contents of referral. A referral shall consist of a notice of plan dispute describing the nature of the dispute; a copy of the citation issued by the Secretary; a short and plain statement of the Secretary's position with respect to any disputed plan provision; and a copy of the disputed provision of the emergency response plan.

(c) Short and plain statement by the operator. Within five calendar days following the filing of the referral, the operator shall file with the Commission a short and plain statement of its position with respect to the disputed plan provision.

(d) Filing and service of documents. The filing with the Commission of any document in an emergency response plan dispute proceeding, including the referral, is effective upon receipt. A copy of each document filed with the Commission in such a proceeding shall be served on all parties and on any miner or miners' representative who has participated in the emergency response plan review process by a method of service no less expeditious than that used for filing, except that if service by email or other electronic transmission is impossible, the filing party must serve in person, or by third-party commercial carrier, resulting in same-day delivery.

(e) Proceedings before the ALJ—

(1) Submission of materials. Within 15 calendar days of the referral, the parties shall submit to the ALJ assigned to the matter all relevant materials regarding the dispute. Such submissions shall include a request for any relief sought and may include proposed findings of fact and conclusions of law. Such materials may be supported by affidavits or other verified documents, and shall specify the grounds upon which the party seeks relief. Supporting affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated.

(2) Hearing.

(i) Within 5 calendar days following the filing of the Secretary's referral, any party may request a hearing and shall so advise the Commission's Chief ALJ or designee, and simultaneously notify the other parties.

(ii) Within 10 calendar days following the filing of the Secretary's referral, the Commission's Chief ALJ or designee may issue an order scheduling a hearing on the ALJ's own motion, and must immediately so notify the parties.

(iii) If a hearing is ordered under paragraph (e)(2)(i) or (ii) of this section, the hearing shall be held within 15 calendar days of the filing of the referral. The scope of such a hearing is limited to the disputed plan provision or provisions. If no hearing is held, the ALJ assigned to the matter shall review the materials submitted by the parties pursuant to paragraph (e)(1) of this section, and shall issue a decision pursuant to paragraph (f) of this section.

(f) Disposition—

(1) Decision of the ALJ. Within 15 calendar days following receipt by the ALJ of all submissions and testimony made pursuant to paragraph (e) of this section, the ALJ shall issue a decision that constitutes the ALJ's final disposition of the proceedings. The decision shall be in writing and shall include all findings of fact and conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented by the record, and an order. The parties shall be notified of the ALJ's decision by the most expeditious means reasonably available.

(2) Stay of plan provision. Notwithstanding § 2700.69(b), an ALJ shall retain jurisdiction over a request for a stay in an emergency response plan dispute proceeding. Within two business days following service of the decision, the operator may file with the ALJ a request to stay the inclusion of the disputed provision in the plan during the pendency of an appeal to the Commission pursuant to paragraph (g) of this section. The Secretary shall respond to the operator's motion within two business days following service of the motion. The ALJ shall issue an order granting or denying the relief sought within two business days after the filing of the Secretary's response.

(g) Review of decision. Any party may seek review of an ALJ's decision, including the ALJ's order granting or denying a stay, by filing with the Commission a petition for discretionary review pursuant to § 2700.70. Neither an operator's request for a stay nor the issuance of an order addressing the stay request affects the time limits for filing a petition for discretionary review of an ALJ's decision with the Commission under this paragraph (g). The Commission shall act upon a petition on an expedited basis. If review is granted, the Commission shall issue a briefing order. Except as otherwise ordered or provided for herein, the provisions of § 2700.75 apply. The Commission will not grant motions for extension of time for filing briefs, except under extraordinary circumstances.

### **Subpart C – Contests of Proposed Penalties**

#### § 2700.25 Proposed penalty assessment.

The Secretary, by certified mail, shall notify the operator or any other person against whom a penalty is proposed of the violation alleged, the amount of the proposed penalty assessment, and that such person shall have 30 days to notify the Secretary of the intent to contest the proposed penalty assessment.

#### § 2700.26 Notice of contest of proposed penalty assessment.

A person has 30 days after receipt of the proposed penalty assessment within which to notify the Secretary of the contest of the proposed penalty assessment. A person who wishes to contest a proposed penalty assessment must provide such notification regardless of whether the person has previously contested the underlying citation or order pursuant to § 2700.20. The Secretary shall immediately transmit to the Commission any notice of contest of a proposed penalty assessment.

#### § 2700.27 Effect of failure to contest proposed penalty assessment.

If, within 30 days from the receipt of the proposed penalty assessment, the operator or other person fails to notify the Secretary of the contest of the proposed penalty, the Secretary's proposed penalty assessment shall be deemed to be a final order of the Commission not subject to review by any court or agency.

#### § 2700.28 Filing of petition for assessment of penalty with the Commission.

(a) Time to file. Within 45 days of receipt of a timely contest of a proposed penalty assessment, the Secretary shall file with the Commission a petition for assessment of penalty.

(b) Contents. The petition for assessment of penalty shall:

(1) List the alleged violations and the proposed penalties. Each violation shall be identified by the number and date of the citation or order and the section of the Act or regulations alleged to be violated. The list shall include no more than 20 citations or orders which are the subject of the petition for assessment of penalty.

(2) Include a short and plain statement of supporting reasons based on the criteria for penalty assessment set forth in section 110(i) of the Act, 30 U.S.C. 820(i).

(3) State whether the citation or order has been contested pursuant to § 2700.20 and the docket number of any contest proceeding.

(4) Advise the party against whom the petition is filed that an answer to the petition must be filed within 30 days pursuant to § 2700.29 and that the answer must be filed regardless of whether the party has already filed a notice of contest of the citation, order, or proposed penalty assessment involved.

(c) Attachments. A legible copy of each citation or order for which a penalty is sought shall be attached to the petition for assessment of penalty. If a legible copy is not available, the petition for assessment of penalty shall set forth the text of the citation or order.

§ 2700.29 Answer.

A party against whom a petition for assessment of penalty is filed shall file an answer within 30 days after service of the petition for assessment of penalty. An answer shall include a short and plain statement responding to each allegation of the petition.

§ 2700.30 Assessment of penalty.

(a) In assessing a penalty the ALJ shall determine the amount of penalty in accordance with the six statutory criteria contained in section 110(i) of the Act, 30 U.S.C. 820(i), and incorporate such determination in a written decision. The decision shall contain findings of fact and conclusions of law on each of the statutory criteria and an order requiring that the penalty be paid.

(b) In determining the amount of penalty, neither the ALJ nor the Commission shall be bound by a penalty proposed by the Secretary or by any offer of settlement made by a party.

§ 2700.31 Penalty settlement.

(a) General. A proposed penalty that has been contested before the Commission may be settled only with the approval of the Commission upon motion. A settlement motion must be accompanied by a proposed order approving settlement.

(b) Content of motion—

(1) Factual support. A motion to approve a penalty settlement shall include for each violation the amount of the penalty proposed by the Secretary, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties.

(2) Certification. The party filing a motion must certify that the opposing party has authorized the filing party to represent that the opposing party consents to the granting of the motion and the entry of the proposed order approving settlement.

(c) Content of proposed order. A proposed order approving a penalty settlement shall include for each violation the amount of the penalty proposed by the Secretary, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties. Proposed orders shall not be submitted in PDF format.

(d) Filing of motion and proposed order prior to filing of petition. If a motion to approve settlement and proposed order is filed with the Commission before the Secretary has filed a petition for assessment of penalty, the filing party must also submit as attachments, electronic copies of the proposed penalty assessment and citations and orders at issue. If such attachments are filed, the Secretary need not file a petition for assessment of penalty.

(e) Final order. Any order by the ALJ approving a settlement shall set forth the reasons for approval and shall be supported by the record. Such order shall become the final order of the Commission 40 days after issuance unless the Commission has directed that the order be reviewed. An ALJ may correct clerical errors in an order approving settlement in accordance with the provisions of § 2700.69(c).

**Subpart D – Complaints for Compensation**

§ 2700.35 Time to file.

A complaint for compensation under section 111 of the Act, 30 U.S.C. 821, shall be filed within 90 days after the beginning of the period during which the complainants are idled or would have been idled by the order that gives rise to the claim.

§ 2700.36 Contents of complaint.

A complaint for compensation shall include:

- (a) A short and plain statement of the facts giving rise to the claim, including the period for which compensation is claimed;
- (b) The total amount of the compensation claimed, if known; and
- (c) A legible copy of any pertinent order of withdrawal or, if a legible copy is not available, the text of the order.

§ 2700.37 Answer.

Within 30 days after service of a complaint for compensation, the operator shall file an answer responding to each allegation of the complaint.

**Subpart E – Complaints of Discharge, Discrimination or Interference**

§ 2700.40 Who may file.

(a) The Secretary. A discrimination or interference complaint under section 105(c)(2) of the Act, 30 U.S.C. 815(c)(2), shall be filed by the Secretary if, after an investigation conducted pursuant to section 105(c)(2), the Secretary determines that a violation of section 105(c)(1), 30 U.S.C. 815(c)(1), has occurred.

(b) Miner, representative of miners, or applicant for employment. A discrimination or interference complaint under section 105(c)(3) of the Act, 30 U.S.C. 815(c)(3), may be filed by the complaining miner, representative of miners, or applicant for employment if the Secretary, after investigation, has determined that the provisions of section 105(c)(1) of the Act, 30 U.S.C. 815(c)(1), have not been violated.

§ 2700.41 Time to file.

(a) The Secretary. A discrimination or interference complaint shall be filed by the Secretary within 30 days after the Secretary's written determination that a violation has occurred.

(b) Miner, representative of miners, or applicant for employment. A discrimination or interference complaint may be filed by a complaining miner, representative of miners, or applicant for employment within 30 days after receipt of a written determination by the Secretary that no violation has occurred.

§ 2700.42 Contents of complaint.

A discrimination or interference complaint shall include a short and plain statement of the facts, setting forth the alleged discharge, discrimination or interference, and a statement of the relief requested.

§ 2700.43 Answer.

Within 30 days after service of a discrimination or interference complaint, the respondent shall file an answer responding to each allegation of the complaint.

§ 2700.44 Petition for assessment of penalty in discrimination or interference cases.

(a) Petition for assessment of penalty in Secretary's complaint. A discrimination or interference complaint filed by the Secretary shall propose a civil penalty of a specific amount for the alleged violation of section 105(c) of the Act, 30 U.S.C. 815(c). The petition for assessment of penalty shall include a short and plain statement of supporting reasons based on the criteria for penalty assessment set forth in section 110(i) of the Act, 30 U.S.C. 820(i).

(b) Petition for assessment of penalty after sustaining of complaint by miner, representative of miners, or applicant for employment. Immediately upon issuance of a decision by an ALJ sustaining a discrimination or interference complaint brought pursuant to section 105(c)(3), 30 U.S.C. 815(c)(3), the ALJ shall notify the Secretary in writing of such determination. The Secretary [shall] file with the Commission a petition for assessment of civil penalty within 45 days of receipt of such notice.

§ 2700.45 Temporary reinstatement proceedings.

(a) Service of documents. A copy of each document filed with the Commission in a temporary reinstatement proceeding shall be served on all parties, the miner (in cases where the miner is without representation), and also on any representative of the complainant miner so identified in the miner's complaint to the Secretary or identified in subsequent filings, by a method of service as expeditious as that used for filing, except that, if service by email or other electronic transmission is impossible, the filing party must serve in person, or by third-party commercial carrier, resulting in same-day delivery.

(b) Contents of application. An application for temporary reinstatement shall state the Secretary's finding that the miner's discrimination or interference complaint was not frivolously brought and shall be accompanied by an affidavit setting forth the Secretary's reasons supporting this finding. The application also shall include a copy of the miner's complaint to the Secretary and proof of notice to and service on the person against whom relief is sought by the most expeditious method of notice and delivery reasonably available.

(c) Request for hearing. Within 10 calendar days following receipt of the Secretary's application for temporary reinstatement, the person against whom relief is sought shall advise the Commission's Chief ALJ or designee, and simultaneously notify the Secretary, the miner (in cases where the miner is without representation), and any miner's representative who is due service under paragraph (a) of this section, whether a hearing on the application is requested. If no hearing is requested, the ALJ assigned to the matter shall immediately review the Secretary's application and, if based on the contents thereof the ALJ determines that the miner's complaint was not frivolously brought, the ALJ shall immediately issue a written order of temporary reinstatement. If a hearing on the application is requested, the hearing shall be held within 10 calendar days following receipt of the request for hearing by the Commission's Chief ALJ or designee, unless compelling reasons are shown in an accompanying request for an extension of time.

(d) Hearing. The scope of a hearing on an application for temporary reinstatement is limited to a determination as to whether the miner's complaint was frivolously brought. The burden of proof shall be upon the Secretary to establish that the complaint was not frivolously brought. In support of the application for temporary reinstatement, the Secretary may limit presentation to the testimony of the complainant. The respondent shall have an opportunity to cross-examine any witnesses called by the Secretary and may present testimony and documentary evidence in support of its position that the complaint was frivolously brought.

(e) Order on application.

(1) Within 7 calendar days following the close of a hearing on an application for temporary reinstatement, the ALJ shall issue a written order granting or denying the application. However, in extraordinary circumstances, the ALJ's time for issuing an order may be extended as deemed necessary by the ALJ.

(2) The ALJ's order shall include findings and conclusions supporting the determination as to whether the miner's complaint has been frivolously brought.

(3) The parties shall be notified of the ALJ's determination by the most expeditious means reasonably available.

(4) An ALJ's order temporarily reinstating a miner is not a final decision within the meaning of § 2700.69, and except during appellate review of such order by the Commission or courts, the ALJ shall retain jurisdiction over the temporary reinstatement proceeding.

(f) Review of order. Review by the Commission of an ALJ's written order granting or denying an application for temporary reinstatement may be sought by filing with the Commission a petition, which shall be captioned "Petition for Review of Temporary Reinstatement Order," with supporting arguments, within 5 business days following receipt of the ALJ's written order. The filing of any such petition is effective upon receipt. The filing of a petition shall not stay the effect of the ALJ's order unless the Commission so directs; a motion for such a stay will be granted only under extraordinary circumstances. Any response shall be filed within 5 business days following service of a petition. Filings under this rule shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing, except that if service by email or other electronic transmission is impossible, the filing party must serve in person, or by third-party commercial carrier, resulting in same-day delivery. The Commission's ruling on a petition shall be made on the basis of the petition and any response (any further briefs will be entertained only at the express direction of the Commission), and shall be rendered within 10 calendar days following receipt of any response or the expiration of the period for filing such response. In extraordinary circumstances, the Commission's time for decision may be extended.

(g) Dissolution of order. If, following an order of temporary reinstatement, the Secretary determines that the provisions of section 105(c)(1), 30 U.S.C. 815(c)(1), have not been violated, the ALJ shall be so notified. An order dissolving the order of reinstatement shall not bar the filing of an action by the miner on the miner's own behalf under section 105(c)(3) of the Act, 30 U.S.C. 815(c)(3), and § 2700.40(b).

## **Subpart F – Applications for Temporary Relief**

### **§ 2700.46 Procedure.**

(a) When to file. As provided in section 105(b)(2) of the Act, 30 U.S.C. 815(b)(2), an application for temporary relief from any modification or termination of any order or from any order issued under section 104 of the Act, 30 U.S.C. 814, may be filed at any time before such order becomes final. No temporary relief shall be granted with respect to a citation issued under sections 104(a) or (f) of the Act. 30 U.S.C. 814(a) and (f).

(b) Statements in opposition. Any party opposing the application shall file a statement in opposition within 4 days after receipt of the application.

(c) Prior hearing required. Temporary relief shall not be granted prior to a hearing on such application.

(d) Service of documents. A copy of each document filed with the Commission under subpart F of this part must be served on all parties by a means of delivery no less expeditious than that used for filing, except that if service by email or other electronic transmission is impossible, the filing party must serve in person, or by third-party commercial carrier, resulting in same-day delivery.

§ 2700.47 Contents of application.

(a) An application for temporary relief shall contain:

(1) A showing of substantial likelihood that the findings and decision of the ALJ or the Commission will be favorable to the applicant;

(2) A statement of the specific relief requested; and

(3) A showing that such relief will not adversely affect the health and safety of miners in the affected mine.

(b) An application for temporary relief may be supported by affidavits or other evidence.

**Subpart G – Hearings**

§ 2700.50 Assignment of ALJs.

ALJs shall be assigned cases in rotation as far as practicable.

§ 2700.51 Hearing dates and sites.

All cases will be assigned a hearing date and site by order of the ALJ. In fixing the time and place of the hearing, the ALJ shall give due regard to the convenience and necessity of the parties or their representatives and witnesses, the availability of suitable hearing facilities, and other relevant factors.

§ 2700.52 Expedition of proceedings.

(a) Motions. In addition to making a written motion pursuant to § 2700.10, a party may request expedition of proceedings by oral motion, with concurrent notice to all parties. Oral motions shall be reduced to writing within 24 hours.

(b) Timing of hearing. Unless all parties consent to an earlier hearing, an expedited hearing on the merits of the case shall not be held on less than 4 days notice.

§ 2700.53 Prehearing conferences and statements.

(a) The ALJ may require the parties to participate in a prehearing conference, either in person or by telephone or other video/audio teleconferencing. Notwithstanding the mandatory recordings of motions on the record in accordance with § 2700.10(a), any in-person or telephonic conference shall be recorded at a party's request or within the ALJ's discretion. The participants at any such conference may consider and take action with respect to:

(1) The formulation and simplification of the issues;

(2) The possibility of obtaining stipulations, admissions of fact and of documents that will avoid unnecessary proof and advance rulings from the ALJ on the admissibility of evidence;

(3) The exchange of exhibits and the names of witnesses and a synopsis of the testimony expected from each witness;

(4) The necessity or desirability of amendments to the filings and the joinder of parties;

(5) The possibility of agreement disposing of any or all of the issues in dispute;

(6) Such other matters as may aid in the expedition of the hearing or the disposition of the case.

(b) The ALJ may also require the parties to submit prehearing statements addressing one or more of the matters set forth in paragraph (a) of this section.

§ 2700.54 Notice of hearing.

Except in expedited proceedings, written notice of the time, place, and nature of the hearing, the legal authority under which the hearing is to be held, and the matters of fact and law asserted shall be given to all parties at least 20 days before the date set for hearing.

§ 2700.55 Powers of ALJs.

Subject to these rules, an ALJ is empowered to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas authorized by law;
- (c) Rule on offers of proof and receive relevant evidence;
- (d) Order depositions to be taken;
- (e) Regulate the course of the hearing;
- (f) Hold conferences for the settlement or simplification of the issues;
- (g) Dispose of procedural requests or similar matters;
- (h) Make decisions in the proceedings, provided that the ALJ shall not be assigned to make a recommended decision; and
- (i) Take other action authorized by these rules, by 5 U.S.C. 556, or by the Act.

§ 2700.56 Discovery; general.

(a) Discovery methods. Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; or requests for admissions, for production of documents or objects or for permission to enter upon property for inspecting, copying, photographing, and gathering information.

(b) Scope of discovery. Parties may obtain discovery of any relevant, non-privileged matter that is admissible evidence or appears likely to lead to the discovery of admissible evidence.

(c) Limitation of discovery. Upon motion by a party or by the person from whom discovery is sought or upon the ALJ's own motion, an ALJ may, for good cause shown, limit discovery to prevent undue delay or to protect a party or person from oppression or undue burden or expense.

(d) Initiation of discovery. Discovery may be initiated after an answer to a notice of contest, an answer to a petition for assessment of penalty, or an answer to a complaint under section 105(c) or 111 of the Act has been filed. 30 U.S.C. 815(c) and 821.

(e) Completion of discovery. Discovery shall not unduly delay or otherwise impede disposition of the case, and must be completed at least 20 days prior to the scheduled hearing date. For good cause shown, the ALJ may extend or shorten the time for discovery.

§ 2700.57 Depositions.

(a) Generally. Any party, without leave of the ALJ, may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories.

(b) Orders for deposition. If the parties are unable to agree, the time, place, and manner of taking depositions shall be governed by order of the ALJ.

§ 2700.58 Interrogatories, requests for admissions and requests for production of documents.

(a) Interrogatories. Any party, without leave of the ALJ, may serve written interrogatories upon another party. A party served with interrogatories shall answer each interrogatory separately and fully in writing under oath within 25 days of service unless the proponent of the interrogatories agrees to a longer time. The ALJ may order a shorter or longer time period for responding. A party objecting to an interrogatory shall state the basis for the objection in its answer.

(b) Requests for admissions. Any party, without leave of the ALJ, may serve on another party a written request for admissions. A party served with a request for admissions shall respond to each request separately and fully in writing within 25 days of service, unless the party making the request agrees to a longer time. The ALJ may order a shorter or longer time period for responding. A party objecting to a request for admissions shall state the basis for the objection in its response. Any matter admitted under this rule is conclusively established for the purpose of the pending proceeding unless the ALJ, on motion, permits withdrawal or amendment of the admission.

(c) Request for production, entry or inspection. Any party, without leave of the ALJ, may serve on another party a written request to produce and permit inspection, copying or photocopying of designated documents or objects, or to permit a party or its agent to enter upon designated property to inspect and gather information. A party served with such a request shall respond in writing within 25 days of service unless the party making the request agrees to a longer time. The ALJ may order a shorter or longer period for responding. A party objecting to a request for production, entry or inspection shall state the basis for the objection in its response.

§ 2700.59 Failure to cooperate in discovery; sanctions.

Upon the failure of any person, including a party, to respond to a discovery request or upon an objection to such a request, the party seeking discovery may file a motion with the ALJ requesting an order compelling discovery. If any person, including a party, fails to comply with an order compelling discovery, the ALJ may make such orders with regard to the failure as are just and appropriate, including deeming as established the matters sought to be discovered or dismissing the proceeding in favor of the party seeking discovery. For good cause shown the ALJ may excuse an objecting party from complying with the request.

§ 2700.60 Subpoenas.

(a) Compulsory attendance of witnesses and production of documents. The Commission and its ALJs are authorized to issue subpoenas, on their own motion or on the oral or written application of a party, requiring the attendance of witnesses and the production of documents or physical evidence. A subpoena may be served by any person who is at least 18 years of age. A subpoena may also be served by registered or certified mail, return receipt requested, but, in such case, any risk of delivery is on the serving party. A copy of the subpoena bearing a certificate of service shall be filed with the Commission or the ALJ.

(b) Fees payable to witnesses. Subpoenaed witnesses shall be paid the same fees and mileage as are paid in the district courts of the United States. The witness fees and mileage shall be paid by the party at whose request the witness appears, or by the Commission if a witness is subpoenaed on the motion of the Commission or an ALJ. This paragraph does not apply to Government employees who are called as witnesses by the Government.

(c) Motions to revoke or modify subpoenas. Any person served with a subpoena may move within 5 days of service or at the hearing, whichever is sooner, to revoke or modify the subpoena. The Commission or the ALJ, as appropriate, shall revoke or modify the subpoena if it seeks information outside the proper scope of discovery as set forth in § 2700.56(b); or if it does not describe with sufficient particularity the evidence required to be produced; or if for any other reason it is found to be invalid or unreasonable. The Commission or the ALJ shall set forth a concise statement of the grounds for such ruling.

(d) Availability of transcript. Persons compelled to submit evidence at a public proceeding are entitled to obtain, on payment of prescribed costs, a transcript of that part of the proceeding that sets forth their testimony or refers to their production of evidence.

(e) Failure to comply. Upon the failure of any person to comply with an order to testify or with a subpoena issued by the Commission or the ALJ, the ALJ or the Commission's General Counsel, at the request of the ALJ or at the direction of the Commission, may undertake to initiate proceedings in the appropriate district court of the United States for the enforcement of the subpoena.

§ 2700.61 Name of miner informant.

An ALJ shall not, except in extraordinary circumstances, disclose or order a person to disclose to an operator or its agent the name of an informant who is a miner.

§ 2700.62 Name of miner witness.

An ALJ shall not, until 2 days before a hearing, disclose or order a person to disclose to an operator or its agent the name of a miner who is expected by the ALJ to testify or whom a party expects to summon or call as a witness.

§ 2700.63 Evidence; presentation of case.

(a) Relevant evidence, including hearsay evidence, that is not unduly repetitious or cumulative is admissible.

(b) The proponent of an order has the burden of proof. A party shall have the right to present a case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

§ 2700.64 Exhibits.

All exhibits received in evidence in a hearing or submitted for the record in any proceeding before the Commission shall be deemed part of the official record of the proceeding. The withdrawal of original exhibits may be permitted by the Commission or the ALJ, upon request and after notice to the other parties, if true copies are substituted, where practical, for the originals.

§ 2700.65 Proposed findings, conclusions and orders.

The ALJ may require the submission of proposed findings of fact, conclusions of law, and orders, together with supporting briefs. The proposals shall be served upon all parties, and shall contain adequate references to the record and authorities.

§ 2700.66 Summary disposition of proceedings.

(a) Generally. When a party fails to comply with an order of an ALJ or these rules, except as provided in paragraph (b) of this section, an order to show cause shall be directed to the party before the entry of any order of default or dismissal. The order shall be provided to the party by the most expeditious means reasonably available.

(b) Failure to attend hearing. If a party fails to attend a scheduled hearing, the ALJ, where appropriate, may find the party in default or dismiss the proceeding without issuing an order to show cause.

(c) Penalty proceedings. When the ALJ finds a party in default in a civil penalty proceeding, the ALJ shall also enter an order assessing appropriate penalties and directing that such penalties be paid.

§ 2700.67 Summary decision of the ALJ.

(a) Filing of motion for summary decision. At any time after commencement of a proceeding and no later than 25 days before the date fixed for the hearing on the merits, a party may move the ALJ to render summary decision disposing of all or part of the proceeding. Filing of a summary decision motion and an opposition thereto shall be effective upon receipt.

(b) Grounds. A motion for summary decision shall be granted only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows:

- (1) That there is no genuine issue as to any material fact; and
- (2) That the moving party is entitled to summary decision as a matter of law.

(c) Form of motion. A motion shall be accompanied by a memorandum of points and authorities specifying the grounds upon which the party seeks summary decision and a statement of material facts specifying each material fact as to which the party contends there is no genuine issue. Each material fact set forth in the statement shall be supported by a reference to accompanying affidavits or other verified documents.

(d) Form of opposition. An opposition to a motion for summary decision shall include a memorandum of points and authorities specifying why the moving party is not entitled to summary decision and may be supported by affidavits or other verified documents. The opposition shall also include a separate concise statement of each genuine issue of material fact necessary to be litigated, supported by a reference to any accompanying affidavits or other verified documents. Material facts identified as not in issue by the moving party shall be deemed admitted for purposes of the motion unless controverted by the statement in opposition. If a party does not respond in opposition, summary decision, if appropriate, shall be entered in favor of the moving party.

(e) Affidavits. Supporting and opposing affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to the affidavit or be incorporated by reference if not otherwise a matter of record. The ALJ shall permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, admissions, or further affidavits.

(f) Case not fully adjudicated on motion. If a motion for summary decision is denied in whole or in part, the ALJ shall ascertain what material facts are controverted and shall issue an order directing further proceedings as appropriate.

#### § 2700.68 Substitution of the ALJ.

(a) Generally. Should an ALJ become unavailable to the Commission, the proceedings assigned to that ALJ shall be reassigned to a substitute ALJ.

(b) Substitution following a hearing. The substitute ALJ may render a decision based upon the existing record, provided the parties are notified of the ALJ's intent and they are given an opportunity to object. An objection to the ALJ rendering a decision based upon the existing record shall be filed within 10 days following receipt of the ALJ's notice, or the objection shall be deemed to be waived. An objection shall be founded upon a showing of a need for the resolution of conflicting material testimony requiring credibility determinations. Upon good cause shown the ALJ may order a further hearing on the merits, which shall be limited, so far as practicable, to the testimony in dispute.

§ 2700.69 Decision of the ALJ.

(a) Form and content of the ALJ's decision. The ALJ shall make a decision that constitutes a final disposition of the proceedings. The decision shall be in writing and shall include all findings of fact and conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented by the record, and an order. If a decision is announced orally from the bench, it shall be reduced to writing after the filing of the transcript. An order by an ALJ approving a settlement proposal is a decision of the ALJ.

(b) Termination of the ALJ's jurisdiction. Except to the extent otherwise provided herein, the jurisdiction of the ALJ terminates when the ALJ's decision has been issued.

(c) Correction of clerical errors. At any time before the Commission has directed that an ALJ's decision be reviewed, and on the ALJ's own motion or the motion of a party, the ALJ may correct clerical errors in decisions, orders, or other parts of the record. After the Commission has directed that an ALJ's decision be reviewed, the ALJ may correct such errors with the leave of the Commission. If an ALJ's decision has become the final order of the Commission, the ALJ may correct such errors with the leave of the Commission. Neither the filing of a motion to correct a clerical error, nor the issuance of an order or amended decision correcting a clerical error, shall toll the time for filing a petition for discretionary review of the ALJ's decision on the merits.

(d) Effect of decision of the ALJ. A decision of an ALJ is not a precedent binding upon the Commission.

**Subpart H – Review by the Commission**

§ 2700.70 Petitions for discretionary review.

(a) Procedure. Any person adversely affected or aggrieved by an ALJ's decision or order may file with the Commission a petition for discretionary review within 30 days after issuance of the decision or order. Filing of a petition for discretionary review is effective upon receipt. Two or more parties may join in the same petition; the Commission may consolidate related petitions. Procedures governing petitions for review of temporary reinstatement orders are found at § 2700.45(f).

(b) Review discretionary. Review by the Commission shall not be a matter of right but of the sound discretion of the Commission. Review by the Commission shall be granted only by affirmative vote of at least two of the Commissioners present and voting.

(c) Grounds. Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of the Commission;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) Requirements. Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record, when assignments of error are based on the record, and by statutes, regulations, or other principal authorities relied upon. Except by permission of the Commission and for good cause shown, petitions for discretionary review shall not exceed 35 pages. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the ALJ had not been afforded an opportunity to pass.

(e) Statement in opposition to petition. A statement in opposition to a petition for discretionary review may be filed, but the opportunity for such filing shall not require the Commission to delay its action on the petition.

(f) Motion for leave to exceed page limit. A motion requesting leave to exceed the page limit shall be received not less than 3 days prior to the date the petition for discretionary review is due to be filed, shall state the total number of pages proposed, and shall comply with § 2700.10. Filing of a motion requesting an extension of page limit is effective upon receipt. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by email or other electronic transmission is impossible, the filing party must serve in person, or by third-party commercial carrier, resulting in same-day delivery.

(g) Scope of review. If a petition is granted, review shall be limited to the issues raised by the petition, unless the Commission directs review of additional issues pursuant to § 2700.71.

(h) Denial of petition. A petition not granted within 40 days after the issuance of the ALJ's decision is deemed denied.

§ 2700.71 Review by the Commission on its own motion.

At any time within 30 days after the issuance of an ALJ's decision, the Commission may, by the affirmative vote of at least two of the Commissioners present and voting, direct the case for review on its own motion. Review shall be directed only upon the ground that the decision may be contrary to law or Commission policy or that a novel question of policy has been presented. The Commission shall state in such direction for review the specific issue of law, Commission policy, or novel question of policy to be reviewed. Review shall be limited to the issues specified in such direction for review.

§ 2700.72 [Reserved].

§ 2700.73 Procedure for intervention.

After the Commission has directed a case for review, a person may move to intervene. A motion to intervene shall be filed within 30 days after the Commission's direction for review unless the Commission, for good cause shown, allows a later filing. Intervention before the Commission shall not be a matter of right but of the sound discretion of the Commission. The movant shall set forth:

(a) A legally protectible interest directly relating to the property or events that are the subject of the case on review;

(b) A showing that the disposition of the proceeding may impair or impede the movant's ability to protect that interest;

(c) The reasons why the movant's interest is not adequately represented by parties already involved in the proceeding; and

(d) The reasons why the movant should be excused for failing to file for intervention before the ALJ. A motion for intervention shall also show that the granting of the motion will not unduly delay the proceeding or prejudice any party and shall explain why the movant's participation as an amicus curiae would be inadequate. If the Commission permits intervention, the Commission's order shall specify the time within which the intervenor's brief and any response or reply may be filed. In denying a motion to intervene, the Commission may alternatively permit the movant to participate in the proceeding as amicus curiae.

§ 2700.74 Procedure for participation as amicus curiae.

(a) After the Commission has directed a case for review, any person may move to participate as amicus curiae. Such participation before the Commission shall not be a matter of right but of the sound discretion of the Commission. A motion for participation as amicus curiae shall set forth the interest of the movant; indicate which party's position, if any, the movant supports; the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case; and show that the granting of the motion will not unduly delay the proceeding or prejudice any party. The movant may conditionally attach its brief to its motion for participation as amicus curiae.

(b) The brief of an amicus curiae shall be filed within the initial briefing period (see § 2700.75(a)(1)) allotted to the party whose position the amicus curiae supports.

(c) In the interest of avoiding duplication of argument, however, the Commission may permit the filing of an amicus curiae brief within 20 days after the close of the briefing period set forth in § 2700.75(a)(1), provided that the amicus curiae's motion for participation as an amicus curiae is filed within the initial briefing period (see § 2700.75(a)(1)) allotted to the party whose position the amicus curiae supports. If the Commission grants any such motion, the Commission's order shall specify the time within which a response or reply may be made to the amicus curiae brief.

(d) Any person who does not support a party in the proceeding must file its motion for participation as amicus curiae and brief no later than 20 days after initial briefs are filed (see § 2700.75(a)(1)). A motion for participation as amicus curiae must comply with the requirements set forth in paragraph (a) of this section. A brief of amicus curiae must comply with § 2700.75(c).

§ 2700.75 Briefs.

(a) Time to file—

(1) Opening and response briefs. Within 30 days after the Commission grants a petition for discretionary review, the petitioner shall file an opening brief. The petitioner may notify the Commission and all other parties within the 30-day period that the petition and any supporting memorandum are to constitute the opening brief. Other parties may file response briefs within 30 days after the petitioner's brief is served. If the Commission directs review on its own motion, all parties shall file any opening briefs within 30 days of the direction for review. In such cases, a party may file a response brief within 20 days after service of the opposing party's opening brief.

(2) Reply briefs. In cases where the Commission has granted a petition for discretionary review, the petitioner may file a reply brief within 20 days after the service of the response briefs.

(b) Additional briefs. No further briefs shall be filed except by leave of the Commission.

(c) Length of brief. Except by permission of the Commission and for good cause shown, opening and response briefs shall not exceed 35 pages, and reply briefs shall not exceed 15 pages. A brief of an amicus curiae shall not exceed 25 pages. A brief of an intervenor shall not exceed the page limitation applicable to the party whose position it supports in affirming or reversing the ALJ, or if a different position is taken, such brief shall not exceed 25 pages. Tables of contents or authorities shall not be counted against the length of a brief.

(d) Motion for extension of time. A motion for an extension of time to file a brief shall comply with § 2700.9. The Commission may decline to accept a brief that is not timely filed.

(e) Consequences of petitioner's failure to file brief. If a petitioner fails to timely file a brief or to designate the petition as the opening brief, the direction for review may be vacated.

(f) Motion for leave to exceed page limit. A motion requesting leave to exceed the page limit for a brief shall be received not less than 3 days prior to the date the brief is due to be filed, shall state the total number of pages proposed, and shall comply with § 2700.10. Filing of a motion requesting an extension of page limit is effective upon receipt. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by email or other electronic transmission is impossible, the filing party must serve in person, or by third-party commercial carrier, resulting in same-day delivery.

(g) Number of copies. Unless otherwise ordered or stated in this part, only the original of a document shall be filed.

(h) Table of contents. Each opening and response brief filed with the Commission shall contain a table of contents. Unless otherwise ordered by the Commission, a party is not required to submit a table of contents for a previously filed petition for discretionary review that has been designated as the party's opening brief pursuant to paragraph (a) of this section.

§ 2700.76 Interlocutory review.

(a) Procedure. Interlocutory review by the Commission shall not be a matter of right but of the sound discretion of the Commission. Procedures governing petitions for review of temporary reinstatement orders are found at § 2700.45(f).

(1) Review cannot be granted unless:

(i) The ALJ has certified, upon the ALJ's own motion or the motion of a party, that an interlocutory ruling involves a controlling question of law and that in the ALJ's opinion immediate review will materially advance the final disposition of the proceeding; or

(ii) The ALJ has denied a party's motion for certification of the interlocutory ruling to the Commission, and the party files with the Commission a petition for interlocutory review within 30 days of the ALJ's denial of such motion for certification.

(2) In the case of either paragraph (a)(1)(i) or (ii) of this section, the Commission, by a majority vote of the full Commission or a majority vote of a duly constituted panel of the Commission, may grant interlocutory review upon a determination that the ALJ's interlocutory ruling involves a controlling question of law and that immediate review may materially advance the final disposition of the proceeding. Interlocutory review by the Commission shall not operate to suspend the hearing unless otherwise ordered by the Commission. Any grant or denial of interlocutory review shall be by written order of the Commission.

(b) Petitions for interlocutory review. Where the ALJ denies a party's motion for certification of an interlocutory ruling and the party seeks interlocutory review, a petition for interlocutory review shall be in writing and shall not exceed 15 pages. A copy of the ALJ's interlocutory ruling sought to be reviewed and of the ALJ's order denying the petitioner's motion for certification shall be attached to the petition.

(c) Briefs. When the Commission grants interlocutory review, it shall also issue an order which addresses page limits on briefs and the sequence and schedule for filing of initial briefs, and, if permitted by the order, reply briefs.

(d) Scope of review. Unless otherwise specified in the Commission's order granting interlocutory review, review shall be confined to the issues raised in the ALJ's certification or to the issues raised in the petition for interlocutory review.

§ 2700.77 Oral argument.

Oral argument may be ordered by the Commission on its own motion or on the motion of a party. A party requesting oral argument shall do so by separate motion no later than the time that it files its opening or response brief.

§ 2700.78 Reconsideration.

(a) A petition for reconsideration must be filed with the Commission within 10 days after the issuance of a decision or order of the Commission. Any response must be filed with the Commission within 10 days of service of the petition.

(b) Unless the Commission orders otherwise, the filing of a petition for reconsideration shall not stay the effect of a decision or order of the Commission.

§ 2700.79 Correction of clerical errors.

The Commission may correct clerical errors in its decisions at any time.

**Subpart I – Miscellaneous**

§ 2700.80 Standards of conduct; disciplinary proceedings.

(a) Standards of conduct. Representatives appearing before the Commission or before Commission ALJs pursuant to § 2700.3(b) shall conform to the standards of ethical conduct required of practitioners under the American Bar Association's Model Rules of Professional Conduct ("ABA's Model Rules"). The Commission shall apply the ABA's Model rules as far as practicable.

(b) Grounds. Disciplinary proceedings may be instituted against anyone who is appearing or has appeared before the Commission on grounds that such person has engaged in unethical or unprofessional conduct; has failed to comply with these rules or an order of the Commission or its ALJs; has been disbarred or suspended by a court or administrative agency; or has been disciplined by an ALJ under paragraph (e) of this section.

(c) Disciplinary proceedings shall be subject to the following procedure:

(1) Disciplinary referral. Except as provided in paragraph (e) of this section, an ALJ or other person having knowledge of circumstances that may warrant disciplinary proceedings against a representative who is appearing or has appeared before the Commission shall forward to the Commission for action such information in the form of a written disciplinary referral. Whenever the Commission receives a disciplinary referral, the matter shall be assigned a docket number and a notice will be issued to the individual named in the referral of the initiation of an investigation.

(2) Inquiry and preliminary determination by the Commission. The Commission shall conduct an inquiry concerning a disciplinary referral and shall determine whether disciplinary proceedings are warranted. The Commission may require persons to submit affidavits setting forth their knowledge of relevant circumstances.

(i) Termination of referral. If the Commission determines that disciplinary proceedings are not warranted, it shall issue an order terminating the referral.

(ii) Further disciplinary proceedings. Whenever, as a result of its inquiry, the Commission, by a majority vote of the full Commission or a majority vote of a duly constituted panel of the Commission, determines that the circumstances warrant a hearing, the Commission shall issue an order specifying the disciplinary issues to be resolved through hearing and order the Commission's Chief ALJ to assign the matter to an ALJ, from within or outside of the Commission, other than the referring ALJ, for hearing and decision. The Commission may designate counsel from within or outside of the Commission to prosecute the matter before the ALJ.

(3) Hearing before an ALJ—

(i) Assignment. Upon the Commission's order determining that further proceedings are warranted, the Commission's Chief ALJ shall select a Commission ALJ, or select a non-Commission ALJ, and issue an order of assignment for hearing. The order of assignment shall advise the respondent that the respondent may file a statement in accordance with paragraph (c)(3)(ii) of this section.

(ii) Response. The respondent named in the disciplinary proceeding may file a statement responding to the Commission's decision within 30 days after service of the order of assignment.

(iii) Evidence and applicability of hearing rules. The parties shall have the opportunity to present evidence and cross-examine witnesses. Subpart G of this part, governing Commission hearings before ALJs shall apply as appropriate to all Commission disciplinary proceedings.

(iv) ALJ's decision. The ALJ's decision shall include findings of fact and conclusions of law and either an order dismissing the proceedings or an appropriate disciplinary order, which may include reprimand, suspension, or prohibition from appearing before the Commission.

(d) Appeal from ALJ's decision. Any person adversely affected or aggrieved by the ALJ's decision is entitled to review by the Commission. A person seeking such review shall file a notice of appeal with the Commission within 30 days after the issuance of the ALJ's decision.

(e) Misconduct before an ALJ. An ALJ may order the removal of any person, including a representative of a party, who engages in disruptive conduct in the ALJ's presence. If a representative is ordered removed, the ALJ shall allow the party represented by the person a reasonable time to engage another representative. In all instances of removal of a person for disruptive conduct, the ALJ shall place in the record a written statement on the matter. A party aggrieved by an ALJ's order of removal may appeal by requesting interlocutory review pursuant to § 2700.76 or, alternatively, may assign the ALJ's ruling as error in a petition for discretionary review.

#### § 2700.81 Recusal and disqualification.

(a) Recusal. Whenever a Commissioner or an ALJ deems appropriate, the Commissioner or ALJ may choose to be recused from a proceeding.

(b) Request to withdraw. A party may request a Commissioner or an ALJ to withdraw on grounds of personal bias or other disqualification. A party shall make such a request by promptly filing an affidavit setting forth in detail the matters alleged to constitute personal bias or other grounds for disqualification.

(c) Procedure if Commissioner or ALJ does not withdraw. If, upon being requested to withdraw pursuant to paragraph (b) of this section, the Commissioner or the ALJ does not withdraw from the proceeding, the Commissioner or ALJ shall so rule upon the record, stating the grounds for such ruling. If the ALJ does not withdraw, the ALJ shall proceed with the hearing, or, if the hearing has been completed, the ALJ shall proceed with the issuance of a decision, unless the Commission stays the hearing or further proceedings upon the granting of a petition for interlocutory review of the ALJ's decision not to withdraw.

§ 2700.82 Ex parte communications.

(a) For purposes of this section, the following definitions shall apply:

(1) Ex parte communication means an oral or written communication not on the public record concerning any matter or proceeding with respect to which reasonable prior notice to all parties has not been given. A status or informational request does not constitute an ex parte communication.

(2) Status or informational request means a request for a status report on any matter or proceeding or a request concerning filing requirements or other docket information.

(3) Merits of a case, which shall be broadly construed by the Commission, includes discussion of the factual or legal issues in a case or resolution of those issues.

(b) Prohibited ex parte communication. There shall be no ex parte communication with respect to the merits of a case not concluded, between the Commission, including any member, ALJ, officer, or agent of the Commission who is employed in the decisional process, and any of the parties, intervenors, representatives, amici, or other interested persons.

(c) Procedure in case of violation.

(1) In the event a prohibited ex parte communication occurs, the Commission or the ALJ may make such orders or take such action to remedy the effect of the ex parte communication as circumstances require. Upon notice and hearing, the Commission may take disciplinary action against any person who knowingly and willfully makes or causes to be made a prohibited ex parte communication.

(2) A memorandum setting forth all ex parte communications, whether prohibited or not, shall be placed on the public record of the proceeding.

(d) Status or informational requests. Information concerning filing requirements, the status of cases, or docket information may be accessed through the Commission's website (<http://www.fmshrc.gov>). In the event such information is unavailable through the Commission's website, such status or informational requests must be directed to the Docket Office of the Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue, NW, Suite 520N, Washington, DC 20004-1710; 202-434-9950.

§ 2700.83 Authority to sign orders.

The Chair or other designated Commissioner is authorized to sign on behalf of a quorum of the Commission, orders disposing of the following procedural motions: motions for extensions of time, motions for permission to file briefs in excess of page limits, motions to accept late filed briefs, motions to consolidate, motions to expedite proceedings, motions for oral argument, and similar procedural motions. In the absence of a designated Chair or Acting Chair, Commissioners continue to be authorized to sign orders disposing of procedural motions as identified above.

**Subpart J – [reserved]**