2004 (69 FR 44476), announced that a public hearing was scheduled for October 28, 2004 at 10 a.m., in the auditorium of the Internal Revenue Service building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 2702 of the Internal Revenue Code. The public comment period for these proposed regulations expired on October 25, 2004.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of topics to be addressed by October 7, 2004. As of October 25, 2004, no one has requested to speak. Therefore, the public hearing scheduled for October 28, 2004 is cancelled.

Guy R. Traynor,

Federal Register Liaison, Publications & Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures & Administration).

[FR Doc. 04–24129 Filed 10–25–04; 2:01 pm]

BILLING CODE 4830–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Parts 2700, 2701, 2702, and 2704

Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Federal Mine Safety and Health Review Commission (the ''Commission'') is seeking suggestions regarding changes to improve its procedural rules (29 CFR part 2700), Government in the Sunshine Act regulations (29 CFR part 2701), regulations implementing the Freedom of Information Act (29 CFR part 2702), and regulations implementing the Equal Access to Justice Act (29 CFR part 2704).

DATES: Written and electronic comments must be submitted on or before January 25, 2005.

ADDRESSES: Written comments should be mailed to Thomas Stock, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001. Persons submitting written comments shall provide an original and three copies of their comments. Electronic comments should state ''Comments on Advanced Notice of Proposed Rulemaking'' in the subject line and be sent to *tstock@fmshrc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Stock, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, telephone 202–434–9935; FAX: 202–434–9944.

SUPPLEMENTARY INFORMATION: The Commission is reviewing its rules set forth in 29 CFR parts 2700, 2701, 2702, and 2704 to determine if revisions would aid the efficient adjudication of proceedings before the Commission and its judges. In particular, the Commission is considering revisions to its procedural rules set forth in part 2700. Since it last significantly revised its procedural rules in March 1993, the Commission has identified several rules that require further revision, clarification, or expansion. Revisions to part 2700 that the Commission is considering are described in the following text. The Commission will also examine its procedures for processing requests for relief from final judgment. The Commission requests comments from members of the interested public regarding the procedural rule revisions for consideration described in this notice. The Commission also invites submission of other revisions to the procedural rules (part 2700) not described in this notice that will lead to the more efficient adjudication of cases.

While no specific revisions to the Commission's regulations implementing the Government in Sunshine Act (part 2701), the Freedom of Information Act (part 2702), and the Equal Access to Justice Act (part 2704) are set forth in this notice, the Commission encourages members of the interested public to comment on any revisions or additions to those regulations.

Subpart A—General Provisions

29 CFR 2700.5(d) and 29 CFR 2700.7(c)

Commission Procedural Rule 5(d) currently provides that a notice of contest of a citation or order; a petition for assessment of penalty; a complaint for compensation; a complaint of discharge, discrimination or interference; an application for temporary reinstatement; and an application for temporary relief shall be filed by personal delivery or by registered or certified mail, return receipt requested. 29 CFR 2700.5(d). Commission Procedural Rule 7(c) also requires that such documents, in addition to a proposed penalty assessment, shall be served by personal delivery or by registered or certified mail, return receipt requested. 29 CFR 2700.7(c); *see also* 29 CFR 2700.45(a) (providing in part for service by certified mail of pleadings in a temporary reinstatement proceeding). Although not explicitly required by the Commission's procedural rules in all circumstances (*cf.* 29 CFR 2700.66(a) (requiring show cause orders to be mailed by registered or certified mail, return receipt requested)), the Commission as a matter of practice generally mails by certified mail, return receipt requested, a judge's decision after hearing, default orders, and orders that require timely action by a party.

The Commission is reviewing the use of certified mail for parties' filings and documents issued by the Commission. On one hand, certified mail can be costly and time-consuming. On the other hand, the return receipt associated with certified mail provides reliable information regarding the service of documents. The Commission will balance these competing factors in considering whether mailing by certified mail is appropriate. The Commission is also reviewing forms of mailing and delivery that might be an acceptable substitute for certified mail.

In addition, Commission Procedural Rule 5(d) provides that certain documents, including petitions for discretionary review, may be filed by facsimile transmission. 29 CFR 2700.5(d). The Commission is reviewing whether notices designating a petition for discretionary review as an opening brief may also be filed by facsimile transmission.

29 CFR 2700.5(e)

Commission Procedural Rule 5(e) currently sets forth the number of copies to be submitted in cases before a judge and the Commission. 29 CFR 2700.5(e). Experience has indicated that not all judges require the number of copies required by the rule but, rather, that one copy should suffice. The Commission is considering requiring fewer copies than are currently required by the rule.

29 CFR 2700.8

Commission Procedural Rule 8 provides in part that the last day of a period computed shall be included unless that day is a Saturday, Sunday, or Federal holiday, in which event the period runs until the next business day. 29 CFR 2700.8. The rule further provides that when a period of time prescribed in the rules is less than seven days, intermediate Saturdays, Sundays, and Federal holidays shall be excluded in the computation of time. *Id.* Rule 8 also states that when the service of a document is by mail, 5 days shall be

added to the time allowed by the rules for the filing of a response or other documents. *Id.*

The Commission is considering whether to more closely conform its computation-of-time rule with the Federal rules. For instance, Federal rules provide that when a period of time prescribed is less than *eleven* days, intermediate Saturdays, Sundays, and legal holidays are excluded in the computation. Fed. R. Civ. P. 6(a); Fed. R. App. Proc. 26(a)(2). Fed. R. Civ. P. 6(e) further provides in part that *three* days are added to any period whenever the party required to act is served by mail. Fed. R. Civ. P. 6(e). In light of the Federal rules, the Commission is considering whether it should increase the period for which intervening Saturdays, Sundays and legal holidays shall be excluded, and decrease the number of days added for filing a response if service is by mail.

The Commission is also considering clarifying changes to Commission Procedural Rule 8 that would dispel confusion regarding the circumstances and the types of mail and delivery that qualify for the additional days for filing when service is by mail. In addition, the Commission is considering making explicit that if the 40th day following a judge's decision falls on a Saturday, Sunday, or Federal holiday, the Commission may act on the petition for discretionary review of the judge's decision until the close of the next business day. If the Commission does not grant that petition for discretionary review, the petition would be deemed denied and the judge's decision would be deemed final at the close of that business day.

29 CFR 2700.10(c)

Commission Procedural Rule 10(c) currently provides that prior to filing a ''procedural motion,'' the moving party shall make reasonable efforts to confer with other parties and state in the motion if the other parties oppose the motion. 29 CFR 2700.10(c).

The Commission is considering whether the phrase ''procedural motion'' should be changed to clarify that it refers to a non-dispositive motion.

Subpart B (Contests of Citations and Orders); Subpart C (Contests of Proposed Penalties); and Subpart D (Complaints for Compensation)

Subparts B and C

The Commission has dual filing requirements under subparts B and C that reflect the filing procedures set forth in sections 105(a) and (d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(a) and (d) (2000). Subpart B sets forth the manner in which a party may contest a citation or order before the Secretary has proposed a civil penalty for the alleged violation described in the citation or order. Subpart C sets forth the manner in which a party may contest a civil penalty after a proposed penalty assessment has been issued. If a party chooses not to file a contest of a citation or order under subpart B, it may nonetheless contest the proposed penalty assessment under subpart C. In such circumstances, in addition to contesting the proposed penalty assessment, the party may challenge the fact of violation and any special findings alleged in the citation or order. *See* 29 CFR 2700.21 (''An operator's failure to file a notice of contest of a citation or order * * * shall not preclude the operator from challenging, in a penalty proceeding, the fact of violation or any special findings * * *''); *Quinland Coals Inc.,* 9 FMSHRC 1614, 1621 (Sept. 1987) (holding that fact of violation and special findings may be placed in issue by the operator in a civil penalty proceeding regardless of whether the operator has availed itself of the opportunity to file a contest proceeding). However, if a party files a contest of a citation or order under subpart B, it must also file additional pleadings under subpart C in order to challenge the proposed penalty assessment related to the citation or order.

The dual filing requirements are not consistent, leading to confusion. Experience has shown that a party may fail to contest a proposed penalty assessment or to answer the Secretary's petition for assessment of penalty under subpart C based on the mistaken belief that it is relieved of those obligations by filing a notice of a contest of a citation or order under subpart B.

The Commission is considering whether the filing requirements relating to contesting citations, orders, and proposed penalties may be streamlined while remaining consistent with the procedures set forth in sections 105(a) and (d) of the Mine Act. For instance, the Commission is considering adding a provision that would state that, by filing a notice of contest of a citation or order, the party would be deemed to also contest any subsequent proposed penalty assessment. Alternatively, the Commission could simply clarify in its rules that the filing of a notice of contest of a citation or order under subpart B does not relieve the party of the obligation to contest a proposed penalty assessment or answer the Secretary's petition for assessment of penalty under subpart C.

29 CFR 2700.44(a) and 29 CFR 2700.28(b)

Commission Procedural Rule 44(a), which pertains to a petition for the assessment of a penalty for an alleged violation of section 105(c) of the Mine Act, 30 U.S.C. 815(c), currently provides that ''[t]he 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.'' 29 CFR 2700.44(a), *citing* 30 U.S.C. 820(i). Commission Procedural Rule 44(a) was promulgated to codify the Commission's holding in *Secretary of Labor on behalf of Bailey* v. *Arkansas-Carbona Co.,* 5 FMSHRC 2042, 2044–48 (Dec. 1983), that the Secretary is required to set forth in a discrimination complaint the amount of the penalty supported by information on the six criteria set forth in section 110(i) of the Mine Act.

Procedural Rule 28, which sets forth the procedure for the Secretary to file a petition for assessment of penalty when an operator has contested a proposed penalty in other (non-discrimination) cases, does not include the ''short and plain statement'' requirement of Rule 44(a). Rather, Rule 28 provides merely that the petition for assessment of penalty shall state whether the citation or order has been contested and the docket number of any contest, and that the party against whom a penalty is filed has 30 days to answer the petition. 29 CFR 2700.28(b).

The Commission is considering whether the provisions of Commission Procedural Rules 44(a) and 28(b) should be made consistent by adding to Rule 28(b) the short and plain statement requirement of Rule 44(a) so as to provide notice of the basis for a penalty to the party against whom the penalty is filed.

Subpart E—Complaints of Discharge, Discrimination or Interference

29 CFR 2700.45

Commission Procedural Rule 45 sets forth the procedure for proceedings involving the temporary reinstatement of a miner alleging discrimination under section 105(c) of the Mine Act, 30 U.S.C. 815(c). Currently, as to a judge's jurisdiction, Commission Procedural Rule 45 states only that a judge shall dissolve an order of temporary reinstatement if the Secretary of Labor's investigation reveals that the provisions of section 105(c)(1) of the Mine Act have not been violated. 29 CFR 2700.45(g).

The Commission is considering whether to revise Rule 45 to set forth the Commission's holding in *Secretary of Labor on behalf of York* v. *BR&D Enterprises, Inc.,* 23 FMSHRC 386, 388–89 (Apr. 2001), that a Commission administrative law judge retains jurisdiction over a temporary reinstatement proceeding pending issuance of a final Commission order on the underlying complaint of discrimination.

Subpart G—Hearings

29 CFR 2700.54

Commission Procedural Rule 54 currently provides in part that written notice of the time, place, and nature of a hearing shall be given to all parties at least 20 days before the date set for hearing. 29 CFR 2700.54. The Commission is considering whether the rule should be revised to require an administrative law judge to consult with all parties before setting a date for hearing.

29 CFR 2700.56(d) and (e)

Commission Procedural Rule 56(d) sets forth a time for initiating discovery, providing in part that ''[d]iscovery shall be initiated within 20 days 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[s] 105(c) or 111 of the Act has been filed.'' 29 CFR 2700.56(d), *citing* 30 U.S.C. 815(c) and 821. Commission Procedural Rule 56(e) sets forth a time for completing discovery, providing that ''[d]iscovery shall be completed within 40 days after its initiation.'' 29 CFR 2700.56(e).

Experience under the rule has indicated that the time-frames given in the Commission's procedural rules for initiating and completing discovery may be too restrictive. Particularly, the Commission is considering whether there should be no specific time-frame for initiating discovery, and whether 40 days is too short a period of time for the completion of discovery. The Commission is considering whether it should replace those time-frames with a provision that discovery should not delay or otherwise impede disposition of the case and that, in any event, discovery should be completed at least 30 days prior to the date of the scheduled hearing.

29 CFR 2700.67

Commission Procedural Rule 67(a) currently provides that ''[a]t any time after commencement of a proceeding and no later than 10 days before the date fixed for the hearing on the merits, a party may move the Judge to render summary decision disposing of all or part of the proceeding.'' 29 CFR 2700.67(a).

The Commission is considering whether the filing deadline for a summary decision motion should be changed from ten days to 20 or 30 days before the hearing, allowing the judge a greater period of time to rule on the motion.

29 CFR 2700.69

Commission Procedural Rule 69(c) sets forth the procedure for the correction of clerical errors in a judge's decision. 29 CFR 2700.69(c). It provides that, at any time before the Commission has directed review of a judge's decision, a judge may correct clerical errors on his/her own motion, or on the motion of a party. *Id.* After the Commission has directed review of the judge's decision or after the judge's decision has become the final order of the Commission, the judge may correct clerical errors with the leave of the Commission. *Id.*

The Commission is considering inserting a provision which would make explicit that clerical corrections made subsequent to the issuance of a judge's decision do not toll the period for filing a petition for discretionary review of the judge's decision on the merits. *See Begley, employed by Manalapan Mining Co.,* 22 FMSHRC 943, 944 (Aug. 2000).

Subpart H—Review by the Commission

29 CFR 2700.70(h)

Commission Procedural Rule 70(h) currently provides that a petition for discretionary review that is not granted within 40 days after the issuance of an administrative law judge's decision is deemed denied. 29 CFR 2700.70(h).

The Commission is considering making explicit its present practice under the rule that, if the 40th day after a judge's decision falls on a Saturday, Sunday, or Federal holiday, the Commission may act on a petition for discretionary review of the judge's decision until the close of the next business day following the 40th day. If the Commission does not grant the petition for discretionary review, the petition would be deemed denied, and the judge's decision would be deemed final at the close of that business day.

29 CFR 2700.72

Commission Procedural Rule 72 currently provides that an unreviewed decision of a judge is not a precedent binding upon the Commission. 29 CFR 2700.72.

The Commission believes that any citation in a pleading to an unreviewed decision of a judge should be designated parenthetically as such. Such a revision would provide the reader with information regarding whether the citation is binding precedent on the proposition for which it is cited.

29 CFR 2700.76

Commission Procedural Rule 76 currently sets forth the procedure for interlocutory review by the Commission. 29 CFR 2700.76. While the rule specifies that the Commission's review is confined to the issues raised in the judge's certification or to the issues raised in the petition for interlocutory review (29 CFR 2700.76 (d)), there is no description of what constitutes the record on interlocutory review.

The Commission is considering whether it should revise Commission Procedural Rule 76 to state what constitutes the record on interlocutory review.

29 CFR 2700.78

Commission Procedural Rule 78(b) currently provides in part that, unless the Commission orders otherwise, the filing of a petition for reconsideration does not stay the effect of a Commission decision and does not affect the finality of a decision for purposes of review in the courts. 29 CFR 2700.78(b).

The Commission is considering whether it should revise Commission Procedural Rule 78 to state that the filing of a petition for reconsideration tolls the time period for filing an appeal for judicial review until the Commission has issued an order disposing of the petition for reconsideration.

29 CFR 2700.80

The Commission is considering revising Rule 80(a) to clarify that certain ethical conduct is required of individuals practicing before the Commission or its judges.

Miscellaneous

Electronic Filing

The Commission is considering the feasibility of electronic filing and may consider initiating a program that would permit the electronic filing of limited categories of documents in proceedings on a voluntary basis.

Public Review of Comments

All comments responding to this notice will be a matter of public record and available for public inspection and copying by appointment with Ella Waymer, between the hours of 9 a.m. and 5 p.m. on business days at the Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue,

NW., 9th Floor, Room 9536, Washington DC 20001; telephone 202-434–9935.

Michael F. Duffy,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 04–24023 Filed 10–26–04; 8:45 am]

BILLING CODE 6735–01–P

POSTAL SERVICE

39 CFR Part 111

Use of Ancillary Service Endorsement for Mailing Certain Types of Checks

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Domestic Mail Manual (DMM) to require an endorsement requesting forwarding or return on certain mailpieces containing checks sent at Standard Mail postage rates, including ''convenience'' and ''balance transfer'' checks.

DATES: Written comments must be received on or before November 26, 2004.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Mailing Standards, United States Postal Service, 475 L'Enfant Plaza, SW., Rm 3436, Washington DC 20260–3436. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington DC, between 9 a.m. and 4 p.m., Monday through Friday. Comments may not be submitted via fax or e-mail.

FOR FURTHER INFORMATION CONTACT: William Chatfield, Mailing Standards, United States Postal Service, 202–268–7278.

SUPPLEMENTARY INFORMATION: The Postal Service has observed an increased amount of mail containing checks, including ''convenience'' and ''balance transfer'' checks. For instance, a common marketing tool is to include convenience checks with credit card-related mailings to encourage addressees to complete a check for cash, with the amount added to the credit card balance. Financial institutions also are using balance transfer checks to encourage addressees to transfer balances from competitor credit cards to the mailer's credit card. In many cases, these mailpieces are not requested by the addressee. In addition, other checks are sent through the mail. For example, check vendors and producers mail new books of blank checks to fulfill orders from their customers.

The secure carriage of our customers' correspondence is a paramount consideration for the Postal Service. This consideration is particularly important when we are entrusted with mailings containing checks. The security of mailpieces containing checks is enhanced by ensuring that they are, if undeliverable as addressed, either forwarded to the addressee's new address or returned to the sender.

Mail entered as First-Class Mail receives forwarding and return service if undeliverable as originally addressed. Many mailings that contain checks are required, due to the nature of their contents, to be entered as First-Class Mail. Other mailings that contain checks, even though eligible for Standard Mail rates, are entered as First-Class Mail, which expedites handling and ensures the forwarding or return of undeliverable pieces. However, some mailings that contain checks eligible for Standard Mail rates are mailed at those rates.

Under the proposal, certain checks not required to be entered as First-Class Mail may be sent as Standard Mail only if the mailpiece bears an ancillary service endorsement resulting in the forwarding or return of undeliverable mailpieces. The use of such endorsements is a low-cost solution for mailers, particularly those who maintain updated address lists, since these endorsements require the payment of fees or additional postage only for mail that is undeliverable as addressed.

Endorsements satisfying the proposed standard would include ''Return Service Requested,'' ''Address Service Requested,'' and ''Forwarding Service Requested'' or, for authorized users of bulk parcel return service, ''Return Service Requested—BPRS'' or ''Address Service Requested—BPRS.'' Mailpieces required to bear one of these endorsements would be those with checks drawn on an account of a party other than the mailer or mailer's agent, whether or not the checks are blank. An endorsement would not be required on mailpieces containing rebate, refund, and similar checks that are drawn on the mailer's account, whether or not they are mailed as Standard Mail.

Implementation Schedule

If the proposal is adopted, the Postal Service intends to defer implementation until June 1, 2005. This delayed implementation date would give customers adequate time to budget and plan for future mailings.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b),(c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations (CFR). *See* 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

E Eligibility

* * * * *

E600 Standard Mail

E610 Basic Standards

* * * * *

2.0 CONTENT

* * * * *

[Add new 2.4 to read as follows:]

2.4 Checks

Checks that are drawn (or intended to be drawn) on an account of a party other than the mailer or mailer's agent and that are not required to be entered as First-Class Mail may be sent as Standard Mail only when the envelope or container bears one of the following ancillary service endorsements: ''Return Service Requested,'' ''Address Service Requested,'' or ''Forwarding Service Requested.'' Mailers authorized to use bulk parcel return service to mail Standard Mail machinable parcels must use the endorsement ''Return Service Requested—BPRS'' or ''Address Service Requested—BPRS.'' These provisions apply to all mailpieces containing such checks, whether blank or with some or all of the fields completed.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 if the proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–23647 Filed 10–26–04; 8:45 am]

BILLING CODE 7710–12–P