

§ 44.13

30 CFR Ch. I (7-1-02 Edition)

give notice of the petition to each known representative of miners or the operator of the affected mine, as appropriate, and shall publish notice of the petition in the FEDERAL REGISTER.

(b) The FEDERAL REGISTER notice shall contain a statement that the petition has been filed, identify the petitioner and the mine or mines to which the petition relates, cite the mandatory safety standard for which modification is sought, and describe the requested relief.

(c) All such notices shall advise interested parties that they may, within 30 days from the date of publication in the FEDERAL REGISTER, in writing, comment upon or provide information relative to the proposed modification.

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

§ 44.13 Proposed decision.

(a) Upon receipt of a petition for modification, the Mine Safety and Health Administration shall cause an investigation to be made as to the merits of the petition. Any party may request that the investigation of the petition for modification be expedited, or that the time period for investigating the petition be extended. Such requests shall be granted in the discretion of the Administrator upon good cause shown.

(b) As soon as is practicable after the investigation is completed, the appropriate Administrator shall make a proposed decision and order, which shall be served upon all parties to the proceeding. The proposed decision shall become final upon the 30th day after service thereof, unless a request for hearing has been filed with the appropriate Administrator, as provided in § 44.14 of this part.

(c) Service of the proposed decision is complete upon mailing.

[55 FR 53440, Dec. 28, 1990]

§ 44.14 Request for hearing

A request for hearing filed in accordance with § 44.13 of this part must be filed within 30 days after service of the proposed decision and shall include:

(a) A concise summary of position on the issues of fact or law desired to be raised by the party requesting the hearing, including specific objections

to the proposed decision. A party other than petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition, and

(b) An indication of a desired hearing site.

(c) *Partial appeal.* (1) If the Administrator has issued a proposed decision and order granting the requested modification, a request for hearing on the proposed decision and order may be made by any party based upon objection to one or more of the terms and conditions of the Administrator's proposed decision and order. If such a request for hearing is made, the request should specify which of the terms and conditions should be the subject of the hearing.

(2) During the pendency of the partial appeal, the proposed decision and order of the Administrator will become final on the 30th day after service thereof, unless a request for hearing on the proposed decision and order is filed in accordance with paragraph (a) of this section by any other party. The decision and order will remain in effect as proposed by the Administrator until the terms and conditions for which the hearing was requested are modified, affirmed, or set aside by a final order of the presiding administrative law judge or the Assistant Secretary. The presiding administrative law judge shall take such action upon a determination of whether—

(i) The terms and conditions for which the hearing was requested are necessary to ensure that the alternative method of achieving the result of the standard will at all times guarantee to the miners at the mine at least the same measure of protection afforded to the miners at the mine by such standard; or

(ii) In the case of a petition involving a finding by the Administrator of a diminution of safety to the miners caused by application of the standard at the mine, whether the terms and conditions for which the hearing was requested are necessary to provide equivalent protection to the miners at the mine from the hazard against which the standard is directed.

[43 FR 29518, July 7, 1978, as amended at 55 FR 53441, Dec. 28, 1990]