

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.

[58 FR 12164, Mar. 3, 1993, as amended at 64 FR 48713, Sept. 8, 1999; 71 FR 44207, Aug. 4, 2006]

§ 2700.11 Withdrawal of pleading.

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

§ 2700.12 Consolidation of proceedings.

The Commission and its Judges 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, Arlington, Virginia, 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 his notice of contest with the Commission at the time he 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

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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.

[58 FR 12164, Mar. 3, 1993, as amended by 71 FR 44207, Aug. 4, 2006]

§ 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

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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 pleadings.* 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 expeditiously served on all parties and on any miner or miners' representative who has participated in the emergency response plan review process, such as by personal delivery, including courier service, by express mail, or by facsimile transmission.

(e) *Proceedings before the Judge—(1) Submission of materials.* Within 15 calendar days of the referral, the parties shall submit to the Judge assigned to the matter all relevant materials regarding the dispute. Such submissions shall include a request for any relief