

## § 44.20

## 30 CFR Ch. I (7–1–11 Edition)

In no case, however, shall the Administrator's order remain in effect for more than one year, unless renewed or affirmed by the presiding administrative law judge.

(k) *Application for relief to give effect to the proposed decision and order.* At any time following the proposed decision and order of the Administrator on the accompanying petition for modification, any party may request relief to give effect to the proposed decision and order until it becomes final.

(l) An application for relief under paragraph (k) shall be filed with the Administrator and shall include a good faith representation that no party is expected to contest the granting of the petition for modification.

(m) A decision to grant relief requested under paragraph (k) will take effect on the seventh day following the decision. If a request for hearing on the proposed decision and order is filed in accordance with § 44.14 prior to the seventh day following the granting of such relief, the relief will not become effective. If such request for hearing on the proposed decision and order is filed after relief becomes effective, the relief will expire immediately.

[55 FR 53441, Dec. 28, 1990]

### Subpart C—Hearings

#### § 44.20 Designation of administrative law judge.

Within 5 days after receipt of a referral of a request for hearing in a petition for modification proceeding, the Chief Administrative Law Judge shall designate an administrative law judge appointed under section 3105 of Title 5 of the United States Code to preside over the hearing.

[55 FR 53442, Dec. 28, 1990]

#### § 44.21 Filing and form of documents.

(a) *Where to file.* After a petition has been referred to the Office of the Chief Administrative Law Judge, the parties will be notified of the name and address of the administrative law judge assigned to the case. All further documents shall be filed with the administrative law judge at the address designated or with the Chief Administrative Law Judge, if the assignment has

not been made. While the petition is before the Assistant Secretary at any stage of the proceeding, all documents should be filed with the Assistant Secretary of Labor for Mine Safety and Health, 1100 Wilson Blvd., Room 2322, Arlington, Virginia 22209–3939.

(b) *Caption, title and signature.* (1) The documents filed in any proceeding under this part shall be captioned in the name of the operator of the mine to which the proceeding relates and in the name of the mine or mines affected. After a docket number has been assigned to the proceeding by the Office of the Chief Administrative Law Judge, the caption shall contain such docket number.

(2) After the caption each such document shall contain a title which shall be descriptive of the document and which shall identify the party by whom the document is submitted.

(3) The original of all documents filed shall be signed at the end by the party submitting the document or, if the party is represented by an attorney, by such attorney. The address of the party or the attorney shall appear beneath the signature.

[43 FR 29518, July 7, 1978, as amended at 67 FR 38384, June 4, 2002]

#### § 44.22 Administrative law judges; powers and duties.

(a) *Powers.* An administrative law judge designated to preside over a hearing shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpoenas on his own motion or upon written application of a party;

(3) To rule upon offers of proof and receive relevant evidence;

(4) To take depositions or have depositions taken when the ends of justice would be served;

(5) To provide for discovery and determine its scope;

(6) To regulate the course of the hearing and the conduct of parties and their counsel;

(7) To consider and rule upon procedural requests;

(8) To hold conferences for settlement or simplification of issues by consent of the parties;

(9) To make decisions in accordance with the Act, this part, and section 557 of title 5 of the United States Code; and

(10) To take any other appropriate action authorized by this part, section 556 of title 5 of the United States Code, or the Act.

(b) *Disqualification.* (1) When an administrative law judge deems himself disqualified to preside over a particular hearing, he shall withdraw therefrom by notice on the record directed to the Chief Administrative Law Judge.

(2) Any party who deems an administrative law judge for any reason to be disqualified to preside or continue to preside over a particular hearing, may file with the Chief Administrative Law Judge of the Department of Labor a motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chief Administrative Law Judge shall rule upon the motion.

(c) *Contumacious conduct; failure or refusal to appear or obey rulings of a presiding administrative law judge.* (1) Contumacious conduct at any hearing before the administrative law judge shall be grounds for exclusion from the hearing.

(2) If a witness or party refuses to answer a question after being directed to do so or refuses to obey an order to provide or permit discovery, the administrative law judge may make such orders with regard to the refusal as are just and appropriate, including an order denying the application of a petitioner or regulating the contents of the record of the hearing.

(d) *Referral to Federal Rules of Civil Procedure and Evidence.* On any procedural question not regulated by this part, the act, or the Administrative Procedure Act, an administrative law judge shall be guided to the extent practicable by any pertinent provisions of the Federal Rules of Civil Procedure or Federal Rules of Evidence, as appropriate.

(e) *Remand.* The presiding administrative law judge shall be authorized to remand the petition for modification proceeding to the appropriate Administrator based upon new evidence which

was not available to the Administrator and which may have materially affected the Administrator's proposed decision and order. Remand may be upon the judge's own motion or the motion of any party, and shall be granted in the discretion of the presiding administrative law judge.

[43 FR 29518, July 7, 1978, as amended at 55 FR 53442, Dec. 28, 1990]

#### § 44.23 Prehearing conferences.

(a) *Convening a conference.* Upon his own motion or the motion of a party, the administrative law judge may direct the parties or their counsel to meet with him for a conference to consider:

(1) Simplification of issues;

(2) Necessity or desirability of amendments to documents for clarification, simplification, or limitation;

(3) Stipulations and admissions of facts;

(4) Limitation of the number of parties and expert witnesses; and

(5) Such other matters as may tend to expedite the disposition of the proceeding and assure a just conclusion thereof.

(b) *Record of conference.* The administrative law judge may, where appropriate, issue an order which recites the action taken at the conference, amendments allowed to any filed documents, and agreements made between the parties as to any of the matters considered. The order shall limit the issues for hearing to those not disposed of by admissions or agreements. Such an order controls the subsequent course of the hearing, unless modified at the hearing to prevent manifest injustice.

#### § 44.24 Discovery.

Parties shall be governed in their conduct of discovery by appropriate provisions of the Federal Rules of Civil Procedure, except as provided in § 44.25 of this part. After consultation with the parties, the administrative law judge shall prescribe a time of not more than 45 days to complete discovery. Alternative periods of time for discovery may be prescribed by the presiding administrative law judge upon the request of any party. As soon as is practicable after completion of discovery, the administrative law judge