



## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Part 2700

#### Procedural Rules

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Mine Safety and Health Review Commission (the “Commission”) is an independent adjudicatory agency that provides trials and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977 (the “Mine Act”). Trials are held before the Commission’s Administrative Law Judges, and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate. This rule makes final revisions to many of the Commission’s procedural rules. The Commission makes these changes in a continued effort to ensure the just, speedy, and inexpensive determination of all proceedings before the Commission.

**DATES:** These final rules are effective on **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The Commission will accept written and electronic comments received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Written comments should be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Ave. NW, Suite 520N, Washington, DC 20004-1710. Electronic comments should state “Comments on Procedural Rules” in the subject line and be sent to [RulesComments@fmshrc.gov](mailto:RulesComments@fmshrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review

Commission, at (202) 434-9935.

## **SUPPLEMENTARY INFORMATION:**

The final rules will apply to cases initiated after the rules take effect. The final rules also will apply to further proceedings in cases pending on the effective date, except to the extent that such application would be infeasible or unfair, in which event the former procedural rules would continue to apply.

### **I. Background**

In October 2020, the Commission published a Notice of Proposed Rulemaking (“NPRM”). 85 FR 63,047 (Oct. 6, 2020). In the notice, the Commission explained that it proposed both new rules and revisions to its current rules that reflect the Commission’s practices. The Commission proposed adding new Commission Procedural Rule 32 which pertained to motions to reopen orders that have become final as the result of a failure to make a timely filing. The Commission also proposed new Commission Procedural Rule 72 which described the method by which the Commission empanels Commissioners, as authorized by section 113(c) of the Mine Act, 30 U.S.C. 823(c). The Commission proposed adding provisions to § 2700.5(e) for protecting sensitive commercial information, and for placing sensitive documents under Commission seal. In addition, the Commission proposed numerous changes with respect to § 2700.80, which more fully describe the Commission’s process for investigating and making determinations in disciplinary proceedings. Finally, the Commission proposed more technical changes, including those necessitated by the evolution of the Commission’s electronic management of its dockets, as well as other corrections and stylistic changes.

Although the proposed rules were procedural in nature and did not require notice and comment publication under the Administrative Procedure Act (“APA”), 5 U.S.C. 551, 553(b)(3)(A), the Commission invited comment from the interested public until December 7, 2020. The Commission received comments from the Secretary of Labor

through the U.S. Department of Labor’s Office of the Solicitor (“the Secretary”), the United Mine Workers of America (“the UMWA”), and another member of the mining bar who practices before the Commission. As discussed in the section-by-section analysis below, some changes have been made in response to the comments received.

## **II. Section-by-Section Analysis**

Set forth below is an analysis of the comments received on the Commission’s proposed rules and the final actions taken.

### **A. Changes related to the Commission’s paperless docketing system**

In 2014, the Commission began using an electronic case management system (“eCMS”) in order to more efficiently manage its caseload. In late 2013, the Commission published interim rules permitting parties to file and serve documents electronically. 78 FR 77354 (Dec. 23, 2013). The Commission later adopted those interim rules as final rules. 84 FR 59931 (Nov. 7, 2019). Although parties may continue to file documents non-electronically with the Commission as they have in the past, unless otherwise directed by the Commission in response to emergencies and special circumstances such as the COVID-19 considerations, experience has shown that a vast majority of documents are filed electronically through eCMS.

The Commission proposed changes to its procedural rules in recognition that most documents are filed electronically and that eCMS will likely evolve. For instance, it is likely that in the future, eCMS will allow parties to serve documents electronically through the system. Currently, parties may serve documents electronically only through the use of email. The Commission proposed changing its service requirements to allow parties to serve documents electronically by other means in addition to email in anticipation of such changes to eCMS. These proposed changes appear identically in §§ 2700.7(c) (general service requirements); 2700.9(a) (motions for extensions of time); 2700.24(d) (filing and service of documents in emergency response plan dispute

proceedings; 2700.45(a) and 2700.45(f) (service in temporary reinstatement proceedings); 2700.46(d) (service of documents in temporary relief proceedings); 2700.70(f) (motions for leave to exceed page limit relating to petitions for discretionary review); and 2700.75(f) (motions for leave to exceed page limit relating to briefs).

In addition, documents issued by the Commission may be offered in electronic format rather than in paper format to parties. Consequently, the Commission proposed deleting provisions in §§ 2700.4(b)(1), 2700.24(f)(1), 2700.45(e)(3), 2700.54, 2700.66(a) that specify a method of postal mail for the issuance of documents by the Commission under those provisions. Although the Mine Act does not specify the method by which the Commission must distribute its issuances, the Commission intends to use the most expeditious means reasonably available which is appropriate under the circumstances. Because Commission Procedural Rules 24 (emergency response plan dispute proceedings) and 45 (temporary reinstatement proceedings) deal with expedited proceedings, they shall retain their current language stating that the parties shall be notified of the Judge's decision or determination by the "most expeditious means reasonably available." The Commission proposed adding similar language to Commission Procedural Rule 66 (summary disposition of proceedings) in paragraph (a) stating that the order to show cause shall be provided to the party who has failed to comply by "the most expeditious means reasonably available."

The Commission received no comments regarding these proposed changes and adopts them as proposed.

#### **B. Gender-specific pronouns**

The masculine gender is currently used throughout the Commission's Procedural Rules. The Commission proposed changing the gender-specific pronouns in its rules to more gender-neutral language. Conforming changes were proposed for §§ 2700.4(a); 2700.6(a)(1), (a)(2)(ii) and (b); 2700.8 (Example 2); 2700.20(d); 2700.24(e)(2)(i) and

(ii); 2700.25; 2700.26; 2700.27; 2700.41(a); 2700.45(b), (c), (d) and (g); 2700.55(h); 2700.56(c); 2700.58(c); 2700.61; 2700.62; 2700.63(b); 2700.68(a) and (b); 2700.69(a), (b) and (c); 2700.73(b); 2700.75(a)(1) and (e); and 2700.76(a)(1)(i); 2700.81(a) and (c).

The Commission also proposed deleting the provision in Procedural Rule 1(c) that currently states that “[w]herever the masculine gender is used in these rules, the feminine gender is also implied.” 29 CFR 2700.1(c). In addition, the Commission proposed revising references in § 2700.83 from “Chairman” to “Chair.”

The Commission received no comments regarding these proposed changes and adopts them as proposed.

**C. Consistency in use of language**

**1. References to pleadings**

The term “pleading” generally refers to those documents filed in the beginning stage of proceedings in which parties formally submit their claims and defenses (i.e., petitions, answers). The Commission’s rules sometimes erroneously use the term “pleading,” when the use of a more generic term, such as “document” or “filing” is intended. The Commission proposed changing the term “pleading” to the term “document” or “filing” when the more generic term is intended in §§ 2700.4(c), 2700.5(h), 2700.8(b) and Example 2, 2700.10(b), 2700.11, 2700.24(d), 2700.45(a) and (f), 2700.46(d), and 2700.53(a)(4).

The Commission received no comments regarding these proposed changes and adopts them as proposed.

**2. References to website**

The Commission proposed changing all references from “Web site” to “website,” in keeping with current accepted usage. Such changes are proposed with respect to §§ 2700.1(a)(1), and 2700.5(b), (c)(1), (f)(1), and (j).

The Commission received no comments regarding these proposed changes and

adopts them as proposed.

### **3. References to Judge and Secretary of Labor**

The Commission proposed capitalizing the word “Judge” wherever it appears in the Commission’s Procedural Rules. Such changes were proposed with respect to §§ 2700.24(f)(2) and 2700.67(e).

The Commission also proposed making changes to references to the Secretary of Labor, noting that the rules variously refer to the Secretary of Labor as “Secretary” and “Secretary of Labor.” The Commission proposed that the first reference in the text of a rule would be to the “Secretary of Labor,” with a parenthetical indicating that subsequent references would be to the “Secretary.”

The Commission received one comment regarding these proposed changes. The Secretary suggested that in order to streamline the rules, the Commission could explain the shortened reference to the Secretary in just one rule, for example, in Commission Procedural Rule 1. In addition, the Secretary commented that the word “Judge” should be replaced by “ALJ” or “administrative law judge” in order to distinguish between the Commission’s administrative law judges and federal district court judges.

The Commission agrees with the Secretary that the rules should explain the shortened reference to the Secretary in just one rule. The Commission believes that the explanation is more appropriately made in Rule 2, which pertains to “Definitions,” rather than in Rule 1. Accordingly, in Rule 2, the Commission clarifies that references to the “Secretary” are to “the Secretary of Labor” or the “Acting Secretary of Labor.” This change affects § 2700.8, Example 3.

In addition, the Commission has revised Rule 2 to clarify that a Commission Administrative Law Judge shall be referred to as an “ALJ” throughout the Commission’s rules. This change affects §§ 2700.1, 2700.3, 2700.4, 2700.5, 2700.8, 2700.11, 2700.12, 2700.24, 2700.30, 2700.31, 2700.44, 2700.45, 2700.47, 2700.50, 2700.51, 2700.53,

2700.55, 2700.56, 2700.57, 2700.58, 2700.59, 2700.60, 2700.61, 2700.62, 2700.64, 2700.65, 2700.66, 2700.67, 2700.68, 2700.69, 2700.70, 2700.71, 2700.73, 2700.75, 2700.76, 2700.80, 2700.81, and 2700.82.

#### **4. References to discrimination.**

The Commission did not propose any changes to references to discrimination in the NPRM.

The Secretary commented that references to “discrimination” that appear in the rules should also be to “interference.”

Section 105(c) of the Mine Act, 30 U.S.C. 815(c), refers to both discrimination and interference. The Commission recognizes that proceedings involving alleged discrimination, interference, or both are processed in an identical manner procedurally. The Commission agrees that references to “discrimination” in the Commission’s Procedural Rules should also be to “interference.” This change impacts Rules 7(a); 40(a) and (b); 41(a) and (b); 42, 43, 44(a) and (b); and 45(b).

#### **D. Subpart A – General Provisions**

##### **§ 2700.3 Who may practice.**

The Commission proposed revising Commission Procedural Rule 3 to clarify who may appear before the Commission as a representative of a party, and the conduct required of, and actions prohibited by, those who appear before the Commission. The proposed revisions set forth the requirements for making an appearance and listed those persons who may represent a party or subpoenaed witness. The proposed revisions further provided that all individuals authorized to practice before the Commission, including attorney representatives and other non-attorney persons, shall be subject to the standards of conduct and disciplinary proceedings set forth in 29 CFR 2700.80. As discussed below, the Commission proposed revising Commission Procedural Rule 80(a)

to state in part that the American Bar Association's Model Rules of Professional Conduct shall be considered in the Commission's disciplinary proceedings.

The Commission received only one comment regarding the proposed changes. The Secretary agreed with proposed paragraph (b)(4), which states in part that an employee of a governmental agency need not seek the presiding Judge's approval before representing a party before the Commission. The Secretary further commented that, consistent with proposed paragraph (b)(4), because Conference and Litigation Representatives ("CLRs") need not get prior approval before representing a party, conforming changes should be made to Rule 31(c)(2). The Secretary noted that § 2700.31(c)(2) currently requires CLRs to include language in proposed settlement orders stating that the Judge accepts the CLR to represent the Secretary.

Upon further consideration, the Commission found unnecessary proposed paragraph (e) specifying actions prohibited by representatives. The Commission believes that the standard of conduct required of representatives is adequately addressed by the changes to Rule 80. Accordingly, the Commission is withdrawing proposed paragraph (e) pertaining to prohibited actions. The Commission otherwise adopts Rule 3 as proposed. In addition, the Commission agrees with the Secretary's comment and has made conforming changes to Rule 31.

**§ 2700.4 Parties, intervenors, and amici curiae.**

Current Commission Procedural Rule 5, 29 CFR 2700.5, provides that parties may file documents by electronic means and non-electronic means and provides instructions for doing so. The Commission proposed revising § 2700.4(b) to state that notices of intervention shall be filed in accordance with the filing requirements set forth in Commission Procedural Rule 5. In addition, as noted with respect to changes related to the Commission's paperless docketing system, the Commission proposed deleting the

reference in current § 2700.4(b)(1) that appears to recognize that copies of a notice of intervention may be provided by the Commission only by postal mail.

The Commission received no comments regarding these proposed changes and adopts them as proposed.

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

The Commission proposed inserting “filing requirements” in the title of Rule 5 in recognition that a large part of Rule 5 pertains to filing requirements. The Commission received no comments regarding this proposed change and adopts it as proposed.

The Commission also proposed revising paragraph (a) to replace an erroneous citation of “30 U.S.C. 820(c)” with the correct citation of “30 U.S.C. 820.” The Commission received no comments regarding this proposed change and adopts it as proposed.

Paragraph (c)(2) of Rule 5 (§ 2700.5(c)(2)) provides instructions for filing documents by non-electronic means. The Commission proposed two changes with respect to this paragraph. First, the Commission proposed amending paragraph (c)(2)(i) of Rule 5 to require that filings submitted by a means other than electronic transmission should be sent to the Commission’s Docket Office rather than to the Commission’s Executive Director. The Commission’s Executive Director plays no role with respect to filings, and the proposed change reflects the Commission’s actual practice. The Commission proposed a conforming change to Rule 4(b)(1) (§ 2700.4(b)(1)). The Commission received no comments regarding these proposed changes and adopts them as proposed.

Second, the Commission proposed deleting paragraph (c)(2)(iii) as superfluous and possibly confusing. Paragraph (2)(c) sets forth filing instructions pertaining to the following specific timeframes: (i) before a Judge has been assigned; (ii) after a Judge has been assigned; (iii) interlocutory review; and (iv) after a Judge has issued a final decision.

Section 2700.5(c)(2)(iii) relating to documents filed in connection with interlocutory review is unnecessary and possibly confusing because such documents also fall under § 2700.5(c)(2)(ii) (after a Judge has been assigned). In addition, § 2700.5(c)(2)(iii) refers the reader to § 2700.76, which does not provide detailed information about how to file documents non-electronically. The Commission received no comments regarding this proposed change and adopts it as proposed.

The Commission proposed revising paragraph (e) of Commission Procedural Rule 5 in order to address various privacy considerations. Parties sometimes provide confidential commercial information to the Commission. Further, a party may request documents from an opposing party that contain such information. The Commission proposed adding paragraph (5) to § 2700.5(e) in order to include a requirement that parties take steps to protect their confidential commercial information. In addition, while the Commission's Judges already consider and decide motions to place records under seal, currently there is no Commission rule that specifically addresses the Commission's procedure for doing so. The Commission proposed adding paragraph (6) to § 2700.5(e) in order to expressly address the procedures for placing documents under Commission seal.

The Commission received two comments regarding the proposed changes to § 2700.5(e). The Secretary commented that proposed § 2700.5(e)(6) should be revised to permit in camera review in appropriate cases. The UMWA commented that the Commission should clarify what constitutes "sensitive commercial information."

The Commission recognizes that Judges already order in-camera review in appropriate circumstances. The Commission has added language to Rule 5(e)(6) to permit in-camera review in order to clarify and codify the Commission's practice.

Regarding the UMWA's comment that the Commission should clarify what constitutes "sensitive commercial information," the Commission notes that such language appears only in the preamble of the NPRM, rather than in Rule 5. Proposed § 2700.5(e)

referred to “confidential commercial information.” The Commission added language to § 2700.5(e) clarifying that “confidential commercial information” is defined in 29 CFR § 2702.6(a)(1).

Paragraph (j) of Rule 5 sets forth the manner in which status or informational requests shall be made. It provides that such requests may be satisfied by accessing the Commission’s website or by directing the request to the address of the Docket Office. The Commission proposed revising the rule to include a telephone number for contacting the Docket Office for those who need to contact the Docket Office in an expeditious manner but who do not have access to a computer. The Commission received no comments regarding this proposed change and adopts it as proposed.

Finally, the Commission deleted the option to file documents by facsimile transmission from §§ 2700.5(b), 2700.5(c)(2)(i), and 2700.5(f)(2) in recognition that the Commission no longer has the capability of receiving facsimile transmissions. Conforming changes have also been made to §§ 2700.7(c)(1), 2700.7(c)(2), 2700.8(d), 2700.9(a), 2700.24(d), 2700.45(a), 2700.45(f), and 2700.70(f).

**§ 2700.6 Signing of documents.**

Although Commission Procedural Rule 6 states how and by whom documents filed with the Commission must be signed, there is no specific requirement that all such documents shall be signed. The Commission proposed adding a requirement that all documents filed with the Commission must be signed.

The Commission received no comments regarding this proposed change and adopts it as proposed.

**§ 2700.8 Computation of time.**

Section 2700.8(b) currently provides that five additional days are added to the due date for responding to a pleading served by a method of delivery resulting in other than same-day service. As noted above with respect to references to pleadings, the

Commission proposed changing the term “pleading” to “filing” since the Commission intends for the provision to apply to more documents than just those filed with the Commission during the initial stage of proceedings that set forth a party’s claims and defenses.

The Commission also proposed adding a clarification to Rule 8(b) that the five extra days are not added for a response to a proposed penalty assessment because a proposed penalty assessment is not a filing with the Commission. Rather, a proposed penalty assessment is a notification sent by the Secretary to the operator or any other person against whom a civil penalty is proposed.

The Commission received no comments regarding these proposed changes and adopts them as proposed.

**§ 2700.10   Motions.**

Commission Procedural Rule 10, which addresses motions, currently provides that oral motions may be made during a hearing or a conference. However, the rule does not require that any proceedings on such oral motions shall be on the record. A lack of such record makes review of proceedings on oral motions difficult. The Commission proposed adding a provision requiring that proceedings on any motion made at hearing or during a conference shall be on the record. The Commission also proposed making a conforming revision to § 2700.53(a) recognizing that a Judge has the discretion to record any in-person or telephonic conference.

The Commission received two comments on these proposed changes. The Secretary agreed with the proposed changes to Rule 10. With respect to the proposed changes to Rule 53, the Secretary commented that transcripts should be made available upon request and that “reasonable” should be deleted from the phrase, “a transcript should be made available upon reasonable request” since transcripts should be readily accessible and because “reasonable” is not defined. In addition, the Secretary suggested

that Rule 53 should clarify that the Judge will notify the parties when a Judge records a conference.

A member of the mining bar commented that the recording of all in-person or telephonic motions should be mandatory rather than within the Judge's discretion unless the conference is purely non-substantive in nature.

The Commission modified the proposed language of Rule 10(a) to specify that proceedings on any motion made at a hearing or during a conference shall be "recorded" rather than stating that such proceedings shall be "on the record." The Commission found the phrase "on the record" to be somewhat vague and colloquial and potentially confusing.

Upon further consideration of the proposed changes to Rule 53(a), the Commission included language clarifying that any in-person or telephonic conference shall be recorded at a party's request in addition to being recorded within the Judge's discretion. If the conference concerns a settlement discussion or mediation, the parties may request that the matter not be recorded. The Commission deleted the proposed change pertaining to transcript requests as unnecessary.

**E. Subpart C – Contests of Proposed Penalties**

**§ 2700.25 Proposed penalty assessment.**

The Commission received a suggestion that the service requirements in a regulation promulgated by the Department of Labor's Mine Safety and Health Administration ("MSHA") at 30 CFR 100.8(a) are inconsistent with the service requirements in § 2700.25, and that changes should be made to Commission Procedural Rule 25.

Section 2700.25 requires that the Secretary shall send a notice of a proposed civil penalty to an operator or any other person against whom a penalty is proposed by "certified mail." The requirements of Commission Procedural Rule 25 are taken directly

from the language of § 105(a) of the Mine Act, 30 U.S.C. 815(a), which authorizes notification of a proposed penalty by “certified mail” only.

In contrast, § 100.8 states that proposed penalty assessments shall be “delivered” to an operator’s name and address of record. Section 100.8 sets forth what constitutes a proper service address but does not state how service to that address should be made. The Commission declined proposing changes to Commission Procedural Rule 25 since the rule is wholly consistent with the Mine Act. There were no comments on the Commission’s determination that changes should not be proposed.

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

The Commission proposed two changes to Rule 28. First, the Commission proposed adding a provision to § 2700.28(b)(1) indicating that no more than 20 citations or orders may be the subject of a petition for assessment of penalty. The Commission recognized that past practice has demonstrated that more than 20 citations or orders make a docket too large and unwieldy for the Commission to efficiently manage.

The Commission received one comment on this proposed change. The Secretary commented that the current system results in penalty petitions containing more than 20 violations only on rare occasions. The Secretary urged the Commission not to adopt the proposed change, citing the Commission’s ability to manually split dockets as one of several reasons why the practical need for this rule change was not clear. The Secretary also cited logistical confusion, inefficiency, and unintended substantive consequences, particularly when multiple dockets contain citations and orders involving the same inspection, inspector, and mine personnel.

The Commission has determined that it shall adopt this change as proposed. The Commission’s Docket Office currently is required to manually split dockets containing more than 20 citations and orders. This approach is not sustainable in light of anticipated increasing numbers of large dockets and the Commission’s limited resources. As to the

Secretary's other concerns, the Commission may address such concerns on a case-by-case basis, including by consolidating proceedings as appropriate pursuant to 29 CFR 2700.12.

Second, the Commission proposed making a correction to 29 CFR 2700.28(b)(2). Current Commission Procedural Rule 28(b)(2) mistakenly refers to a "single penalty assessment [that] has been proposed under 30 CFR 100.4." The Commission proposed deleting the reference to single penalty assessments in recognition that single penalty assessments have been subsumed by regular assessments.

The Commission received no comments regarding this proposed change and adopts it as proposed.

**§ 2700.31   Penalty settlement.**

The Commission proposed three changes with respect to Rule 31. First, the Commission proposed making a correction to § 2700.31(a). Paragraph (a) of § 2700.31 currently provides that "in all penalty proceedings, except for discrimination proceedings arising under section 105(c) of the Mine Act," a settlement motion must be accompanied by a proposed order approving settlement. In "discrimination proceedings, a party need not file a proposed order." 29 CFR 2700.31(a). The Commission proposed deleting the reference to discrimination proceedings because the reference appears to erroneously include discrimination proceedings arising under section 105(c) of the Act as a subcategory of "all penalty proceedings."

For purposes of concision, the Commission is further revising this proposed change to delete the reference to "all penalty proceedings." Although the Commission has deleted this language, the remaining language of Rule 31 provides the necessary context clarifying that parties are required to file proposed orders approving settlement in all penalty proceedings, including penalty proceedings associated with a discrimination proceeding.

Second, the Commission proposed deleting unnecessary filing requirements. Section 2700.31(d) currently sets forth requirements for electronically filing proposed settlement documents under the rule. Paragraph (d) was added to Rule 31 prior to the development of e-CMS. After the development of e-CMS, the Commission promulgated rule changes for the electronic filing and service of documents, which are now final rules and include all documents filed in accordance with Rule 31. *See, e.g.,* 29 CFR 2700.5, 2700.7. The Commission proposed deleting references to electronic filing appearing in Rule 31 as superfluous and potentially confusing.

The Commission received no comments regarding this proposed change and adopts it as proposed.

The Commission also proposed deleting references that appear in Rule 31 regarding forms for approved orders approving settlement. The Commission prefers exercising flexibility regarding whether it shall provide sample forms for proposed orders approving settlement on its website.

The Commission received no comments regarding this proposed change and adopts it as proposed.

**§ 2700.32**    **Motions to reopen.**

The Commission receives requests to reopen final orders that generally fall into two categories. Requests in the first category involve circumstances in which a party has failed to file a timely contest of a proposed penalty assessment and the proposed penalty thereby becomes a final order of the Commission by operation of section 105(a) of the Mine Act, 30 U.S.C. 815(a). *See* 29 CFR 2700.27. Requests in the second category involve circumstances in which a Commission Administrative Law Judge issues a default order because a party has failed to file an answer to a petition for assessment of penalty filed by the Secretary. *See* 29 CFR 2700.28 and 2700.29.

The Commission proposed a new rule setting forth procedures for motions to reopen drawn from the Commission's experience in receiving and disposing of such motions. The Secretary commented on the proposed rule and suggested wording changes.

Upon further consideration, the Commission is withdrawing the proposed rule at this time. The Commission recognizes that the creation of a rule may not necessarily increase the efficiency of the Commission's processing of motions to reopen or reduce the instances in which a party seeks relief. The Commission may revisit the issue of promulgating a new rule in the future. In the meantime, the Commission will continue to provide guidance concerning motions to reopen in its case law and in informal guidance available on the Commission's website.

**F. Subpart E – Complaints of Discharge, Discrimination or Interference**  
**§ 2700.44 Petition for assessment of penalty in discrimination cases.**

The Commission proposed revisions to Commission Procedural Rule 44 so that cases brought under 30 U.S.C. 815(c)(3) could be treated in a manner similar to those brought under 30 U.S.C. 815(c)(2) in terms of when a decision becomes ripe for review. In addition, in recognition of the Mine Act's requirement that proceedings under section 105(c) "shall be expedited by the Secretary and the Commission," the Commission proposed changes to § 2700.44 that permitted expedition and eliminated unnecessary delay. 30 U.S.C. 815(c)(3).

The Commission also proposed adding a new paragraph (c) to 29 CFR 2700.41, stating that proceedings under subpart E of the part 2700, which pertain to complaints of discharge, discrimination or interference, are to be expedited.

The Commission further proposed making a conforming change to § 2700.69(a) to explicitly require that any decision of a Judge that is not final shall be denoted as an "interim decision."

The Commission received two comments regarding these changes. The Secretary suggested wording changes to proposed Rule 44. The UMWA and the Secretary expressed concern about the impact that proposed Rule 41(c) would have upon adequate case preparation.

Upon further consideration, the Commission withdraws these proposed revisions. The Commission recognizes that the proposed changes may create confusion rather than clarity and efficiency. The Commission may revisit these proposed changes in future rulemakings.

**§ 2700.45 Temporary reinstatement proceedings.**

The Commission did not propose any changes to 29 CFR 2700.45 in the NPRM. However, a member of the mining bar commented that a provision should be added to Rule 45 requiring that a Complainant's counsel or representative must be notified if the operator requests a hearing regarding the Secretary's application for temporary reinstatement. The rule currently provides that such notice must be provided only to the Chief Administrative Law Judge and the Secretary.

The Commission agrees with the commenter that the rule should be changed. The Commission has revised §§ 2700.45(a) and 2700.45(c) to make explicit who must receive hearing requests, as well as documents, in a temporary reinstatement proceeding.

**G. Subpart G – Hearings**

**§ 2700.64 Retention of exhibits.**

Commission Procedural Rule 64 pertains generally to exhibits which are made part of the official record. The Commission proposed revising the title of the rule to more generally refer to "exhibits," rather than "retention of exhibits" since the rule encompasses more than the retention of exhibits. In addition, the Commission proposed changing the rule to reflect that exhibits shall be "deemed part of" the official record, rather than "retained with" the official record. The Commission's official record is electronic and some physical exhibits will be deemed to be part of the official record

although they may not be retained in a digital format with the other parts of the official record.

The Commission received no comments on these proposed changes and adopts them as proposed.

#### **H. Subpart H – Review by the Commission**

##### **§ 2700.72 Commission Panels.**

Rule 72 is currently reserved. In order to promote transparency as to its functioning, the Commission proposed creating a new Procedural Rule 72 which would explain the Commission’s process for empaneling Commissioners. Section 113(c) of the Mine Act, 30 U.S.C. 823(c), provides in part that the Commission is authorized “to delegate to any group of three or more members any or all of the powers of the Commission.” Proposed Rule 72 provided that the Commission may empanel a group of three or more members to hear any pending matter, and that a Commissioner’s assignment to such a panel may be made by a random method agreed upon by a majority of Commissioners.

The Commission received two comments regarding proposed Rule 72. The UMWA commented that Rule 72 should specify that the parties should be informed about the “random method” used to determine the Commission panel so that parties could object if they believed the method used was not truly random. Another commenter questioned the need for 3-member panels given that the Commission’s caseload is not extensive. The commenter stated that if the Commission decides to keep the rule, Rule 72 should be revised to include a provision whereby the losing side in a 2-1 decision issued by a panel has the right to petition the full Commission to re-hear the matter.

Upon further consideration, the Commission withdraws proposed Rule 72. The Commission believes that section 113(c) of the Mine Act provides sufficient information about the Commission’s empanelment authority.

**§ 2700.75   Briefs.**

The Commission did not propose any changes to its rules in the NPRM regarding briefs on appeal before the Commission.

The Secretary, however, commented that the Commission should revise its rules to set the required length of appellate briefs based on word count rather than page count. The Secretary explained that such a change would conform the Commission's rules to the approach that Federal Courts of Appeals have taken. In addition, the Secretary states the change would also eliminate the differing number of pages that result from setting the same text in different typefaces or from manipulating type.

The Commission has determined that it shall not make the suggested change at this time. Some documents filed with the Commission do not use word processing programs and are hand-written. In addition, § 2700.5 has procedural requirements in place that prohibit a filer from using word processing features to avoid page limits.

**§ 2700.76   Interlocutory review.**

The Commission proposed no changes to 29 CFR 2700.76 in the NPRM.

A member of the mining bar commented that the Commission should revise Rule 76 to establish a time limit for Judges to make a determination on a motion to certify a matter for interlocutory review. The commenter expressed a concern that a Judge could fail to act on a motion for certification until the issue became moot.

The Commission has determined that it will not make this change at this time. However, the Commission will consider this suggestion in future rulemakings.

**§ 2700.78   Reconsideration.**

The Commission proposed revising Commission Procedural Rule 78 in order to clarify when a motion for reconsideration must be filed. Rule 78 currently provides that a petition for reconsideration must be filed with the Commission within 10 days after a

decision or order. The proposed revision clarified that the ten-day period is counted from the issuance of the decision or order.

The Commission received no comments on the proposed change and adopts it as proposed.

**I. Subpart I – Miscellaneous**

**§ 2700.80 Standards of conduct; disciplinary proceedings.**

The Commission proposed making changes to Commission Procedural Rule 80 that would clarify the Commission's procedure in disciplinary proceedings and the standards applicable in such proceedings.

Rule 80(a) currently provides that individuals practicing before the Commission or its Judges shall conform to the standards of ethical conduct required of practitioners in the courts of the United States. The Commission proposed revising Rule 80(a) to state that the American Bar Association's Model Rules of Professional Conduct shall be considered in the Commission's disciplinary proceedings.

The Commission also proposed revising § 2700.80(c) to provide appropriate notice to the person named in a disciplinary referral, and to permit the person an opportunity for response. Proposed paragraph (c)(1) of Rule 80 required the Commission to provide written notice to the person named in a disciplinary referral of the initiation of an investigation. The Commission proposed revising paragraph (c)(2) of rule 80 to provide that after the Commission has determined that a hearing is warranted on the matter described in the disciplinary referral, the Commission shall specify the disciplinary issues to be resolved through hearing.

Proposed paragraph (c)(3) permitted the respondent named in the disciplinary proceeding an opportunity to file a response. In addition, proposed paragraph (c)(3) provided that the Chief Administrative Law Judge may assign the proceeding to a Commission Administrative Law Judge or to a non-Commission Administrative Law

Judge. Proposed paragraph (c)(3) clarified that subpart G of part 2700, pertaining to hearings before the Commission's Administrative Law Judges, also applies as appropriate to all Commission disciplinary proceedings.

The Commission received one comment on the proposed changes. The Secretary commented on a typographical error in the proposed changes to Rule 80, noting that the word "Model" had been omitted in identifying the ABA Rules in § 2700.80(a). The Secretary further commented that to the extent an attorney may be a member of a state bar with any rule that may conflict in any way with the ABA Model Rules, the Commission should exercise discretion in favor of the attorney's state bar rules.

The Commission has made the correction noted by the Secretary but has determined that it will not accept the Secretary's suggestion to apply state ethics laws in Rule 80 proceedings. Practitioners appearing before the Commission live, work, and appear in various locations, making a number of jurisdictions' rules of conduct potentially applicable. The Commission believes it is more equitable to apply the same standards of conduct to all individuals appearing before the Commission. The Commission adopted all other changes as proposed.

**§ 2700.82 Ex parte communications.**

Commission Procedural Rule 5(j) sets forth requirements regarding the manner in which status or informational requests shall be made. Section 2700.82(d) sets forth slightly different requirements for making status or informational requests. In keeping with the Commission's actual practice, the Commission proposed making changes to § 2700.82(d) so that it conforms with the provisions of § 2700.5(j).

The Commission received no comments regarding the proposed change and adopts it as proposed.

**§ 2700.83 Authority to sign orders.**

Currently under § 2700.83, the Chairman or other designated Commissioner is authorized to sign an order on behalf of the other Commissioners disposing of certain procedural motions. The motions subject to Commission Procedural Rule 83 are non-substantive and involve minor procedural issues such as motions for extensions of time. The vast majority of those motions are unopposed.

The Commission proposed three changes to 29 CFR 2700.83. First, the Commission proposed adding a provision to § 2700.83 clarifying that in the absence of a quorum, the remaining Commissioner or Commissioners may dispose of the procedural motions subject to the rule.

The Commission received one comment on this proposed change. The Secretary commented that although the proposed change was practical, the Mine Act does not appear to permit a single Commissioner to act alone.

The Commission is withdrawing this proposed change at this time.

Second, the Commission proposed deleting the provision in Procedural Rule 83 stating that a person aggrieved by an order signed by the Chairman or designated Commissioner under the rule may request that the order be signed by the participating Commissioners. The Commission has not received such a request and, given the unopposed nature of the motions at issue, considers it unlikely that it would receive such a request in the future.

The Commission received no comments regarding this proposed change and adopts it as proposed.

Third, consistent with changing gender-specific pronouns to more gender-neutral language throughout its rules, the Commission proposed changing references from “Chairman” to “Chair.”

The Commission received no comments regarding this proposed change and adopts it as proposed.

### **III. Notice and Public Procedure**

#### **A. Executive Orders:**

The Commission is an independent regulatory agency under section 3(b) of Executive Order (“E.O.”) 12866 (Sept. 30, 1993), 58 FR 51735 (Oct. 4, 1993); E.O. 13563 (Jan. 18, 2011), 76 FR 3821 (Jan. 21, 2011); E.O. 13771 (Jan. 30, 2017), 82 FR 9339 (Feb. 3, 2017), *repealed by* E.O. 13992 (Jan. 20, 2021), 86 FR 7049 (Jan. 25, 2021); E.O. 13777 (Feb. 24, 2017), 82 FR 12285 (Mar. 1, 2017), *repealed by* E.O. 13992 (Jan. 20, 2021), 86 FR 7049 (Jan. 25, 2021); and E.O. 13132 (Aug. 4, 1999), 64 FR 43255 (Aug. 10, 1999).

The Commission has determined that this rulemaking does not have “takings implications” under E.O. 12630 (Mar. 15, 1988), 53 FR 8859 (Mar. 18, 1988).

The Commission has determined that these regulations meet all applicable standards set forth in E.O. 12988 (Feb. 5, 1996), 61 FR 4729 (Feb. 7, 1996).

#### **B. Statutory Requirements:**

Although notice-and-comment rulemaking requirements under the Administrative Procedure Act (“APA”) do not apply to rules of agency procedure (5 U.S.C. 553(b)(4)(A)), the Commission invites members of the interested public to submit comments on this final rule. The Commission will accept public comment until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

The Commission has determined that this rulemaking is exempt from the requirements of the Regulatory Flexibility Act (“RFA”) (5 U.S.C. 601 et seq.), because the proposed rule would not have a significant economic impact on a substantial number of small entities.

The Commission has determined that this rule is not a “major rule” under the Small Business Regulatory Enforcement Fairness Act (“SBREFA”) (5 U.S.C. 804(2)).

The Commission has determined that the Paperwork Reduction Act (“PRA”) (44 U.S.C. 3501 et seq.) does not apply because these rules do not contain any information collection requirements that require the approval of the OMB.

The Commission has determined that the Congressional Review Act (“CRA”) (5 U.S.C. 801 et seq.) does not apply because, pursuant to 5 U.S.C. 804(3)(C), these rules are rules of agency procedure or practice that do not substantially affect the rights or obligations of non-agency parties.

The Commission has determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment requiring an environmental assessment under the National Environmental Policy Act (“NEPA”) (42 U.S.C. 4321 et seq.).

The Commission is an independent regulatory agency, and as such, is not subject to the requirements of the Unfunded Mandates Reform Act (“UMRA”) (2 U.S.C. 1532 et seq.).

### **List of Subjects in 29 CFR Part 2700**

Administrative practice and procedure, Confidential business information, Mine safety and health, Penalties, Whistleblowing.

For the reasons stated in the preamble, the Commission amends 29 CFR part 2700 as follows:

### **PART 2700—PROCEDURAL RULES**

1. The authority citation for part 2700 is revised to read as follows:

Authority: 30 U.S.C. 815, 820, and 823.

#### **Subpart A—General Provisions**

2. Revise § 2700.1 to read as follows:

**§ 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, NW, 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.

3. Revise § 2700.2 to read as follows:

**§ 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.”

4. Revise § 2700.3 to read as follows:

**§ 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.

5. Revise § 2700.4 to read as follows:

**§ 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.

6. Revise § 2700.5 to read as follows:

**§ 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, or 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, cellular telephone 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 gives 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 sealing 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 (h) 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.

7. Revise § 2700.6 to read as follows:

**§ 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.

8. In § 2700.7, revise paragraphs (a) and (c)(1) and (2) to read as follows:

**§ 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.

\* \* \* \* \*

(c) \* \* \*

(1) *Methods of service.* Documents may be served in person, by U.S. Postal Service, 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, 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.

\* \* \* \* \*

9. In § 2700.8:

- a. Revise the introductory text and paragraphs (b) and (d);
- b. Remove examples 1, 2, and 3 from the end of the section; and
- c. Add paragraph (e).

The revisions and additions read as follows:

**§ 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:

\* \* \* \* \*

(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.)

\* \* \* \* \*

(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 Tuesday, 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.

10. In § 2700.9, revise paragraph (a) to read as follows:

**§ 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.

\* \* \* \* \*

11. In § 2700.10, revise paragraphs (a) and (b) to read as follows:

**§ 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.

\* \* \* \* \*

12. Revise § 2700.11 to read as follows:

**§ 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.

13. Revise § 2700.12 to read as follows:

**§ 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**

14. In § 2700.20, revise paragraphs (b) and (d) to read as follows:

**§ 2700.20 Notice of contest of a citation or order issued under § 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, D.C., 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.

\* \* \* \* \*

(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.

\* \* \* \* \*

15. In § 2700.24, revise paragraphs (d), (e), (f), and (g) to read as follows:

**§ 2700.24 Emergency response plan dispute proceedings.**

\* \* \* \* \*

(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**

16. Revise § 2700.25 to read as follows:

**§ 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.

17. Revise § 2700.26 to read as follows:

**§ 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.

18. Revise § 2700.27 to read as follows:

**§ 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.

19. In § 2700.28, revise paragraphs (b)(1) and (2) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(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).

\* \* \* \* \*

20. Revise § 2700.30 to read as follows:

**§ 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.

21. Revise § 2700.31 to read as follows:

**§ 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 E—Complaints of Discharge, Discrimination or Interference**

22. Revise § 2700.40 to read as follows:

#### **§ 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.

23. Revise § 2700.41 to read as follows:

**§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.

24. Revise § 2700.42 to read as follows:

**§ 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.

25. Revise § 2700.43 to read as follows:

**§ 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.

26. Revise § 2700.44 to read as follows:

**§ 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 file with the Commission a petition for assessment of civil penalty within 45 days of receipt of such notice.

27. Revise § 2700.45 to read as follows:

**§ 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**

28. In § 2700.46, revise paragraph (d) to read as follows:

##### **§ 2700.46 Procedure.**

\* \* \* \* \*

(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.

29. In § 2700.47, revise paragraph (a) to read as follows:

##### **§ 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.

\* \* \* \* \*

### **Subpart G—Hearings**

30. Revise § 2700.50 to read as follows:

#### **§ 2700.50 Assignment of ALJs.**

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

31. Revise § 2700.51 to read as follows:

#### **§ 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.

32. Revise § 2700.53 to read as follows:

#### **§ 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.

33. Revise § 2700.54 to read as follows:

**§ 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.

34. Revise § 2700.55 to read as follows:

**§ 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.

35. In § 2700.56, revise paragraphs (c) and (e) to read as follows:

**§ 2700.56 Discovery; general.**

\* \* \* \* \*

(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.

\* \* \* \* \*

(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.

36. Revise § 2700.57 to read as follows:

**§ 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.

37. Revise § 2700.58 to read as follows:

**§ 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.

38. Revise § 2700.59 to read as follows:

**§ 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.

39. Revise § 2700.60 to read as follows:

**§ 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.

40. Revise § 2700.61 to read as follows:

**§ 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.

41. Revise § 2700.62 to read as follows:

**§ 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.

42. In § 2700.63, revise paragraph (b) to read as follows:

**§ 2700.63 Evidence; presentation of case.**

\* \* \* \* \*

(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.

43. Revise § 2700.64 to read as follows:

**§ 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.

44. Revise § 2700.65 to read as follows:

**§ 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.

45. Revise § 2700.66 to read as follows:

**§ 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.

46. In § 2700.67, revise paragraphs (a), (e), and (f) to read as follows:

**§ 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.

\* \* \* \* \*

(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.

47. Revise § 2700.68 to read as follows:

**§ 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.

48. Revise § 2700.69 to read as follows:

**§ 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**

49. Revise § 2700.70 to read as follows:

##### **§ 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.

50. Revise § 2700.71 to read as follows:

**§ 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.

51. In § 2700.73, revise paragraphs (b) and (d) to read as follows:

**§ 2700.73 Procedure for intervention.**

\* \* \* \* \*

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

\* \* \* \* \*

(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.

52. In § 2700.75, revise paragraphs (a)(1), (c), (e), and (f) to read as follows:

**§ 2700.75 Briefs.**

(a) \* \* \*

(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.

\* \* \* \* \*

(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.

\* \* \* \* \*

(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.

\* \* \* \* \*

53. Revise § 2700.76 to read as follows:

**§ 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.

54. In § 2700.78, revise paragraph (a) to read as follows:

**§ 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.

\* \* \* \* \*

### **Subpart I—Miscellaneous**

55. Revise § 2700.80 to read as follows:

#### **§ 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) *Procedure.* 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.

56. Revise § 2700.81 to read as follows:

**§ 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.

57. In § 2700.82, revise paragraphs (b), (c), and (d) to read as follows:

**§ 2700.82 Ex parte communications.**

\* \* \* \* \*

(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.

58. Revise § 2700.83 to read as follows:

**§ 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.

Dated: January 8, 2025

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Mary Lu Jordan

Chair, Federal Mine Safety and Health Review Commission

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