

§ 2700.8

(e) *Proof of service.* All pleadings and other filed documents shall be accompanied by a statement setting forth the date and manner of service.

[58 FR 12164, Mar. 3, 1993, as amended at 64 FR 48713, Sept. 8, 1999; 71 FR 44206, Aug. 4, 2006; 72 FR 2191, Jan. 18, 2007]

§ 2700.8 Computation of time.

The due date for a pleading or other deadline for party or Commission action (hereinafter "due date") is determined sequentially as follows:

(a) Except to the extent otherwise provided herein (see, e.g., §§ 2700.24 and 2700.45), when the period of time prescribed for action is less than 11 days, Saturdays, Sundays, and federal holidays shall be excluded in determining the due date.

(b) When a party serves a pleading by a method of delivery 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.

(c) The day from which the designated period begins to run shall not be included in determining the due date. The last day of the prescribed period for action, after consideration of paragraphs (a) and (b) of this section where applicable, shall be included and be the due date, unless it is a Saturday, Sunday, Federal holiday, or other day on which the Commission's offices are not open or the Commission is open but unable to accept filings, in which event the due date shall be the next day which is not one of the aforementioned days.

Example 1: A motion is filed with the Commission on Friday, July 1, 2005. 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 Monday, July 4, 2005, are excluded in determining the due date. A response is thus due by Thursday, July 14, 2005. In addition, those parties not served with the motion on the day it was filed, such as by facsimile or messenger, have 5 additional calendar days in which to respond, or until Tuesday, July 19, 2005.

Example 2: A Commission Judge issues his final decision in a case on Friday, July 1, 2005. Under § 2700.70(a), parties have until

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July 31, 2005, to file with the Commission a petition for discretionary review of the Judge'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' pleadings. However, because July 31, 2005, is a Sunday, the actual due date for the petition is Monday, August 1, 2005.

Example 3: Pursuant to § 2700.24(a), the Secretary of Labor 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, January 4, 2007, the short and plain statement the operator must file in response within 5 calendar days would be due Tuesday, January 9, 2007, 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) would apply and the due date would be the next day the Commission is open.

[71 FR 44207, Aug. 4, 2006, as amended at 72 FR 2191, Jan. 18, 2007]

§ 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 facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery.

(b) In exigent circumstances, an extension of time may be granted even though the request was filed after the designated time for filing has expired. In such circumstances, the party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the