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SOL V. BURGESS MINING & CONSTRUCTION  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
WASHINGTON, DC  
March 18, 1980

RAY MARSHALL, SECRETARY OF LABOR  
UNITED STATES DEPARTMENT OF  
LABOR

v. Docket No. SE 79-42-R

BURGESS MINING AND CONSTRUCTION  
CORPORATION

#### ORDER

Burgess Mining and Construction Corporation has moved to vacate the direction for review. Burgess asserts that the Secretary's failure to file his brief within 20 days after our granting of his Petition for discretionary review is governed by 29 CFR 2700.72. That rule requires the petitioner to file its brief within 20 days of the granting of a direction for review and provides that if the Petitioner fails to do so, the direction for review may be vacated.

The Secretary filed his brief by mail 25 days after our order directing review. The Secretary argues that his brief was timely filed and cites 29 CFR 2700.8(b), which provides:

when service of a document is by mail, 5 days shall be added to the time allowed by these rules for the filing of a response or other document.

While we are concerned with any undue delay in the proceedings before us and construe our rules so as to expedite matters wherever possible, we also are bound to interpret our rules so as to secure just determinations. 29 CFR 2700.1(c). Rule 8(b) was promulgated to ensure, as far as possible, that Parties served by mail not be deprived, through the vagaries of the post, of time elsewhere allowed

in our rules for the preparation and filing of responses.

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The Secretary was served by mail with our direction for review. Under Rule 8(b), 5 days may properly be added to the 20 days allowed under Rule 72 within which to file his brief in response to our direction. 1/ His brief, which was filed by mail on the 25th day, was therefore timely.

Accordingly, the motion to vacate is denied.

1/ Rule 8(b) does not, however, apply to the 30 day statutory period for filing a PDR after issuance of a judge's decision. See our order dismissing the PDR in Sunbeam Coal, PITT 79-210 thru 214 (March 10, 1980).