citation, order, or proposed penalty, or directing other appropriate relief. Such order shall become final 30 days after its issuance. The rules of procedure prescribed by the Commission shall provide affected miners or representatives of affected miners an opportunity to participate as parties to hearings under this section. The Commission shall take whatever action is necessary to expedite proceedings for hearing appeals of orders issued under section 814 of this title.

(Pub. L. 91–173, title I, § 105, Dec. 30, 1969, 83 Stat. 753; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1303.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1), was in the original ''this Act'', meaning Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, known as the Federal Mine Safety and Health Act of 1977, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–164 substituted provisions under which the Secretary must notify the operator of the civil penalty he proposes to assess following the issuance of a citation or order and the operator must give notice that he will contest the citation or proposed assessment for provisions under which an operator was required to apply for review of an order issued under section 814 of this title and under which an investigation was made, hearings held, and information presented.

Subsec. (b). Pub. L. 95–164 substituted provisions relating to the steps to be taken following the failure of the operator to correct violations, including provisions relating to temporary relief formerly contained in subsec. (d), for provisions requiring the Secretary to make findings of fact and to issue a written decision upon receiving the report of an investigation.

Subsec. (c). Pub. L. 95–164 added subsec. (c). Former subsec. (c), directing the Secretary to take action under this section as promptly as possible, was incorporated into a part of par. (3).

Subsec. (d). Pub. L. 95–164 added subsec. (d). Former subsec. (d) redesignated (b)(2).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

§ 816. Judicial review of Commission orders

(a) Petition by person adversely affected or aggrieved; temporary relief

(1) Any person adversely affected or aggrieved by an order of the Commission issued under this chapter may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or in the United States Court of Appeals for the District of Columbia Circuit, by filing in such court within 30 days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have exclusive jurisdiction of the proceeding and of the questions determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside, in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Commission may modify or set aside its original order by reason of such modified or new findings of fact. Upon the filing of the record after such remand proceedings, the jurisdiction of the court shall be exclusive and its judgment and degree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(2) In the case of a proceeding to review any order or decision issued by the Commission under this chapter, except an order or decision pertaining to an order issued under section 817(a) of this title or an order or decision pertaining to a citation issued under section 814(a) or (f) of this title, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding, if—

(A) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(B) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(C) such relief will not adversely affect the health and safety of miners in the coal or other mine.

(3) In the case of a proceeding to review any order or decision issued by the Panel under this chapter, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding, if—

(A) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief; and

(B) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding.

(b) Petition by Secretary for review or enforcement of final Commission orders

The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in the Court of Appeals for the District of Columbia Circuit, and the provisions of subsection (a) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a) of this section, is filed within 30 days after issuance of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such 30-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 815 of this title, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the operator named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a) of this section, the court of appeals may assess the penalties provided in section 820 of this title, in addition to invoking any other available remedies.

(c) Stay of order or decision of Commission or Panel

The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the Commission or the Panel.

(Pub. L. 91–173, title I, §106, Dec. 30, 1969, 83 Stat. 754; Pub. L. 95–164, title II, §201, Nov. 9, 1977, 91 Stat. 1306; Pub. L. 98–620, title IV, §402(34), Nov. 8, 1984, 98 Stat. 3360.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, known as the Federal Mine Safety and Health Act of 1977, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–620 struck out provision that petitions filed under this subsection had to be heard expeditiously.

1977—Subsec. (a)(1). Pub. L. 95–164 added subsec. (a)(1) consisting of a revision of the provisions of former subsecs. (a), (b), (d), and (f) with additions to cover the proceedings in the reviewing court.

Subsec. (a)(2). Pub. L. 95–164 redesignated subsec. (c)(1) as (a)(2) and substituted ''issued by the Commission'' for ''issued by the Secretary'' and ''under section 817(a) of this title or an order or decision pertaining to a citation issued under section 814(a) or (f) of this title'' for ''under section 814(a) of this title or an order or decision pertaining to a notice issued under section 814(b) or (i) of this title'' in the provisions preceding subpar. (A).

Subsec. (a)(3). Pub. L. 95–164 redesignated subsec. (c)(2) as (a)(3).

Subsec. (b). Pub. L. 95–164 added subsec. (b). Provisions of former subsec. (b) were incorporated as revised into subsec. (a)(1).

Subsec. (c). Pub. L. 95–164 redesignated subsec. (e) as (c). Former subsec. (c), which consisted of pars. (1) and (2), redesignated (a)(2) and (3).

Subsec. (d). Pub. L. 95–164 struck out subsec. (d) and incorporated its provisions, relating to review by the Supreme Court, into subsec. (a)(1).

Subsec. (e). Pub. L. 95–164 redesignated subsec. (e) as (c).

Subsec. (f). Pub. L. 95–164 struck out subsec. (f) which related to the appointment of attorneys by the Secretary to represent him in proceedings instituted under this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

§817. Procedures to counteract dangerous conditions

(a) Withdrawal orders

If, upon any inspection or investigation of a coal or other mine which is subject to this chapter, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the extent of the area of such mine throughout which the danger exists, and issue an order requiring the operator of such mine to cause all persons, except those referred to in section 814(c) of this title, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such imminent danger and the conditions or practices which caused such imminent danger no longer exist. The issuance of an order under this subsection shall not preclude the issuance of a citation under section 814 of this title or the proposing of a penalty under section 820 of this title.

(b) Notice to mine operators; further investigation; findings and decision by Secretary

(1) If, upon any inspection of a coal or other mine, an authorized representative of the Secretary finds (A) that conditions exist therein which have not yet resulted in an imminent danger, (B) that such conditions cannot be effectively abated through the use of existing technology, and (C) that reasonable assurance cannot be provided that the continuance of mining operations under such conditions will not result in an imminent danger, he shall determine the area throughout which such conditions exist, and thereupon issue a notice to the operator of the mine or his agent of such conditions, and shall file a copy thereof, incorporating his findings therein, with the Secretary and with the representative of the miners of such mine. Upon receipt of such copy, the Secretary shall cause such further investigation to be made as he deems appropriate, including an opportunity for the operator or a representative of the miners to present information relating to such notice.

(2) Upon the conclusion of an investigation pursuant to paragraph (1), and an opportunity