

Subsec. (c). Pub. L. 95-164 struck out “, who shall be an individual who has no economic interest in the coal mining industry, and who is not an operator, miner, or an officer or employee of the Federal Government or any State or local government” after “chairman of each such committee” and inserted “(including the chairman)” after “A majority of the members”.

Subsec. (d). Pub. L. 95-164 reenacted subsec. (d) without change.

CHANGE OF NAME

“United States Bureau of Mines” substituted for “Bureau of Mines” in subsec. (b)(1)(A) pursuant to section 10(b) of Pub. L. 102-285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subssecs. (b) and (c) pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

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.

TRANSFER OF FUNCTIONS

Functions vested by law in Office of Science and Technology and in Director or Deputy Director of Office of Science and Technology transferred to Director of National Science Foundation, and Office of Science and Technology, including offices of Director and Deputy Director, provided for by sections 1 and 2 of Reorg. Plan No. 2, of 1962, eff. June 8, 1962, 27 F.R. 5419, 76 Stat. 1253, abolished by sections 2 and 3(a)(5) of Reorg. Plan No. 1 of 1973, eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, both set out in the Appendix to Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 813. Inspections, investigations, and record-keeping

(a) Purposes; advance notice; frequency; guidelines; right of access

Authorized representatives of the Secretary or the Secretary of Health and Human Services

shall make frequent inspections and investigations in coal or other mines each year for the purpose of (1) obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of accidents, and the causes of diseases and physical impairments originating in such mines, (2) gathering information with respect to mandatory health or safety standards, (3) determining whether an imminent danger exists, and (4) determining whether there is compliance with the mandatory health or safety standards or with any citation, order, or decision issued under this chapter or other requirements of this chapter. In carrying out the requirements of this subsection, no advance notice of an inspection shall be provided to any person, except that in carrying out the requirements of clauses (1) and (2) of this subsection, the Secretary of Health and Human Services may give advance notice of inspections. In carrying out the requirements of clauses (3) and (4) of this subsection, the Secretary shall make inspections of each underground coal or other mine in its entirety at least four times a year, and of each surface coal or other mine in its entirety at least two times a year. The Secretary shall develop guidelines for additional inspections of mines based on criteria including, but not limited to, the hazards found in mines subject to this chapter, and his experience under this chapter and other health and safety laws. For the purpose of making any inspection or investigation under this chapter, the Secretary, or the Secretary of Health and Human Services, with respect to fulfilling his responsibilities under this chapter, or any authorized representative of the Secretary or the Secretary of Health and Human Services, shall have a right of entry to, upon, or through any coal or other mine.

(b) Notice and hearing; subpoenas; witnesses; contempt

For the purpose of making any investigation of any accident or other occurrence relating to health or safety in a coal or other mine, the Secretary may, after notice, hold public hearings, and may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Records of employee exposure to toxic materials or harmful physical agents; undue exposure

The Secretary, in cooperation with the Secretary of Health and Human Services, shall

issue regulations requiring operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable mandatory health or safety standard promulgated under this chapter. Such regulations shall provide miners or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each miner or former miner to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each operator shall promptly notify any miner who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable mandatory health or safety standard promulgated under section 811 of this title, or mandated under subchapter II of this chapter, and shall inform any miner who is being thus exposed of the corrective action being taken.

(d) Accident investigations; records

All accidents, including unintentional roof falls (except in any abandoned panels or in areas which are inaccessible or unsafe for inspections), shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such accidents and investigations shall be kept and the information shall be made available to the Secretary or his authorized representative and the appropriate State agency. Such records shall be open for inspection by interested persons. Such records shall include man-hours worked and shall be reported at a frequency determined by the Secretary, but at least annually.

(e) Collecting information without unreasonable burden on operators

Any information obtained by the Secretary or by the Secretary of Health and Human Services under this chapter shall be obtained in such a manner as not to impose an unreasonable burden upon operators, especially those operating small businesses, consistent with the underlying purposes of this chapter. Unnecessary duplication of effort in obtaining information shall be reduced to the maximum extent feasible.

(f) Participation of representatives of operators and miners in inspections

Subject to regulations issued by the Secretary, a representative of the operator and a representative authorized by his miners shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any coal or other mine made pursuant to the provisions of subsection (a) of this section, for the purpose of aiding such inspection and to participate in pre- or post-inspection conferences held at the mine. Where there is no authorized miner representative, the Secretary or his authorized representative shall consult with a reasonable number of miners concerning matters of health and safety in such mine. Such representative of miners who is also an employee of the operator shall suffer no loss of pay during the period of his participa-

tion in the inspection made under this subsection. To the extent that the Secretary or authorized representative of the Secretary determines that more than one representative from each party would further aid the inspection, he can permit each party to have an equal number of such additional representatives. However, only one such representative of miners who is an employee of the operator shall be entitled to suffer no loss of pay during the period of such participation under the provisions of this subsection. Compliance with this subsection shall not be a jurisdictional prerequisite to the enforcement of any provision of this chapter.

(g) Immediate inspection; notice of violation or danger; determination

(1) Whenever a representative¹ of the miners or a miner in the case of a coal or other mine where there is no such representative has reasonable grounds to believe that a violation of this chapter or a mandatory health or safety standard exists, or an imminent danger exists, such miner or representative shall have a right to obtain an immediate inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, signed by the representative of the miners or by the miner, and a copy shall be provided the operator or his agent no later than at the time of inspection, except that the operator or his agent shall be notified forthwith if the complaint indicates that an imminent danger exists. The name of the person giving such notice and the names of individual miners referred to therein shall not appear in such copy or notification. Upon receipt of such notification, a special inspection shall be made as soon as possible to determine if such violation or danger exists in accordance with the provisions of this subchapter. If the Secretary determines that a violation or danger does not exist, he shall notify the miner or representative of the miners in writing of such determination.

(2) Prior to or during any inspection of a coal or other mine, any representative of miners or a miner in the case of a coal or other mine where there is no such representative, may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this chapter or of any imminent danger which he has reason to believe exists in such mine. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation or order with respect to such danger and shall furnish the representative of miners or miner requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

(h) Records and reports; compilation and publication; availability

In addition to such records as are specifically required by this chapter, every operator of a coal or other mine shall establish and maintain such records, make such reports, and provide such information, as the Secretary or the Sec-

¹ So in original. Probably should be "representative".

retary of Health and Human Services may reasonably require from time to time to enable him to perform his functions under this chapter. The Secretary or the Secretary of Health and Human Services is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by this chapter, all records, information, reports, findings, citations, notices, orders, or decisions required or issued pursuant to or under this chapter may be published from time to time, may be released to any interested person, and shall be made available for public inspection.

(i) Spot inspections

Whenever the Secretary finds that a coal or other mine liberates excessive quantities of methane or other explosive gases during its operations, or that a methane or other gas ignition or explosion has occurred in such mine which resulted in death or serious injury at any time during the previous five years, or that there exists in such mine some other especially hazardous condition, he shall provide a minimum of one spot inspection by his authorized representative of all or part of such mine during every five working days at irregular intervals. For purposes of this subsection, "liberation of excessive quantities of methane or other explosive gases" shall mean liberation of more than one million cubic feet of methane or other explosive gases during a 24-hour period. When the Secretary finds that a coal or other mine liberates more than five hundred thousand cubic feet of methane or other explosive gases during a 24-hour period, he shall provide a minimum of one spot inspection by his authorized representative of all or part of such mine every 10 working days at irregular intervals. When the Secretary finds that a coal or other mine liberates more than two hundred thousand cubic feet of methane or other explosive gases during a 24-hour period, he shall provide a minimum of one spot inspection by his authorized representative of all or part of such mine every 15 working days at irregular intervals.

(j) Accident notification; rescue and recovery activities

In the event of any accident occurring in any coal or other mine, the operator shall notify the Secretary thereof and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. For purposes of the preceding sentence, the notification required shall be provided by the operator within 15 minutes of the time at which the operator realizes that the death of an individual at the mine, or an injury or entrapment of an individual at the mine which has a reasonable potential to cause death, has occurred. In the event of any accident occurring in a coal or other mine, where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activities in such mine.

(k) Safety orders; recovery plans

In the event of any accident occurring in a coal or other mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the coal or other mine, and the operator of such mine shall obtain the approval of such representative, in consultation with appropriate State representatives, when feasible, of any plan to recover any person in such mine or to recover the coal or other mine or return affected areas of such mine to normal.

(Pub. L. 91-173, title I, § 103, Dec. 30, 1969, 83 Stat. 749; Pub. L. 95-164, title II, § 201, Nov. 9, 1977, 91 Stat. 1297; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 109-236, § 5(a), June 15, 2006, 120 Stat. 498.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (c), and (e) to (h), 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

2006—Subsec. (j). Pub. L. 109-236 inserted second sentence.

1977—Subsec. (a). Pub. L. 95-164 inserted provisions authorizing representatives of the Secretary of Health, Education, and Welfare to make inspections, expanded the area of inspection and investigation to include mines other than coal mines, inserted provisions requiring the inspection of surface mines at least two times a year, inserted provisions requiring the development of guidelines for additional inspections of mines, and inserted provisions, formerly contained in subsec. (b), authorizing the entry to, upon, or through, any coal or other mine for the purpose of making inspection or investigation.

Subsec. (b). Pub. L. 95-164 redesignated subsec. (d) as (b) and substituted "coal or other mine" for "coal mine". Provisions of former subsec. (b) were incorporated into subsec. (a).

Subsecs. (c) to (e). Pub. L. 95-164 added subsecs. (c) to (e), struck out former subsec. (c) which provided for the utilization of facilities and personnel of other Federal agencies, and redesignated former subsecs. (d) and (e) as (b) and (j), respectively.

Subsec. (f). Pub. L. 95-164 redesignated subsec. (h) as (f), inserted provision for a representative of the operator to accompany the Secretary or his representative in the physical inspection of a mine, extended the provisions to cover mines other than coal mines, and inserted provisions relating to the choice of the authorized representative of the miners, the representative's duties, and the choice of more than one representative. Former subsec. (f) redesignated (k).

Subsec. (g). Pub. L. 95-164 designated existing provisions as par. (1), inserted provisions to par. (1) as so designated which extended the right to an immediate inspection to individual miners when there is no representative of the miners, provided for immediate notification to the mine operator or his agent if the complaint indicates that the danger is imminent, kept the name of the person giving the notice and the names of the individual miners off the copy or notification, and required the Secretary to notify the miners or their representatives if he determines that a violation or danger does not exist, and added par. (2).

Subsec. (h). Pub. L. 95-164 added subsec. (h). The provisions of former subsec. (h), relating to the right of the miners' representative to accompany the authorized representative of the Secretary on the inspection, were incorporated into subsec. (f).

Subsec. (i). Pub. L. 95-164 inserted definition of "liberation of excessive quantities of methane or other explosive gases" and inserted provisions for a reduced schedule of one spot inspections in mines with liberation rates for methane or other explosive gases lower than that required to qualify as "excessive".

Subsecs. (j), (k). Pub. L. 95-164 redesignated former subsecs. (e) and (f) as (j) and (k), respectively.

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsecs. (a), (c), (e), and (h) pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

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.

§ 814. Citations and orders

(a) Issuance and form of citations; prompt issuance

If, upon inspection or investigation, the Secretary or his authorized representative believes that an operator of a coal or other mine subject to this chapter has violated this chapter, or any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this chapter, he shall, with reasonable promptness, issue a citation to the operator. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the chapter, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The requirement for the issuance of a citation with reasonable promptness shall not be a jurisdictional prerequisite to the enforcement of any provision of this chapter.

(b) Follow-up inspections; findings

If, upon any follow-up inspection of a coal or other mine, an authorized representative of the Secretary finds (1) that a violation described in a citation issued pursuant to subsection (a) of this section has not been totally abated within the period of time as originally fixed therein or as subsequently extended, and (2) that the period of time for the abatement should not be further extended, he shall determine the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to immediately cause all persons, except those persons referred to in subsection (c) of this section, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(c) Exempt persons

The following persons shall not be required to be withdrawn from, or prohibited from entering, any area of the coal or other mine subject to an order issued under this section:

(1) any person whose presence in such area is necessary, in the judgment of the operator or an authorized representative of the Secretary, to eliminate the condition described in the order;

(2) any public official whose official duties require him to enter such area;

(3) any representative of the miners in such mine who is, in the judgment of the operator or an authorized representative of the Secretary, qualified to make such mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the conditions described in the order; and

(4) any consultant to any of the foregoing.

(d) Findings of violations; withdrawal order

(1) If, upon any inspection of a coal or other mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard, and if he also finds that, while the conditions created by such violation do not cause imminent danger, such violation is of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health or safety standards, he shall include such finding in any citation given to the operator under this chapter. If, during the same inspection or any subsequent inspection of such mine within 90 days after the issuance of such citation, an authorized representative of the Secretary finds another violation of any mandatory health or safety standard and finds such violation to be also caused by an unwarrantable failure of such operator to so comply, he shall forthwith issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c) of this section to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(2) If a withdrawal order with respect to any area in a coal or other mine has been issued pursuant to paragraph (1), a withdrawal order shall promptly be issued by an authorized representative of the Secretary who finds upon any subsequent inspection the existence in such mine of violations similar to those that resulted in the issuance of the withdrawal order under paragraph (1) until such time as an inspection of such mine discloses no similar violations. Following an inspection of such mine which discloses no similar violations, the provisions of paragraph (1) shall again be applicable to that mine.

(e) Pattern of violations; abatement; termination of pattern

(1) If an operator has a pattern of violations of mandatory health or safety standards in the coal or other mine which are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards, he shall be given written notice that such pattern exists. If, upon any inspection within 90 days after the issuance of such notice, an authorized representative of the Secretary finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a coal or other mine safety