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(2) If no inspection was conducted, an explanation of the reason for not inspecting;

(3) A statement as to the person's right to informal review of the actions or inactions of the Office.

(4) The permittee shall receive copies of all such reports which have not already been given to the permittee, except that the name of the complainant shall be removed.

(d) *Review of action of local offices.* A person who does not agree with the action taken by the Office on their report may request the Regional Director to review the complaint and actions taken. The Regional Director shall advise the person in writing, within 30 days of the results of the review. Informal review under this subsection shall not affect any rights to formal review or a citizen's suit.

§ 721.14 Failure to give notice and lack of reasonable belief.

No notice of violation or cessation order may be vacated by reason of failure to give notice required by the Act or these regulations prior to the inspection; or by reason of a subsequent determination that prior to the inspection the Office did not have information sufficient to create a reasonable belief that a violation had occurred.

PART 722—ENFORCEMENT PROCEDURES

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AUTHORITY: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62701, Dec. 13, 1977, unless otherwise noted.

§ 722.1 Scope.

The regulations of this part set forth general procedures governing issuance of orders of cessation, notices of violation, and orders to show cause under section 521 of the Act.

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§ 722.11 Imminent dangers and harms.

(a) If an authorized representative of the Secretary finds conditions or practices, or violations of any requirement of the Act, or any requirement of this chapter applicable during the interim regulatory program, which create an imminent danger to the health or safety of the public, the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or that portion of the operation relevant to the condition, practice, or violation.

(b) If an authorized representative of the Secretary finds conditions or practices, or violations of any requirement of the Act, or any requirement of this chapter applicable during the interim regulatory program, which are causing, or can reasonably be expected to cause, significant, imminent environmental harm to land, air, or water resources, the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or that portion of the operation relevant to the condition, practice, or violation.

(c) Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit required by this subchapter constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

(d) An authorized representative of the Secretary shall impose affirmative obligations on an operator which the authorized representative deems necessary to abate the condition, practice, or violation if—

(1) A cessation order is issued under paragraph (a) or (b) of this section; and

(2) The cessation of mining or reclamation activities will not completely abate the imminent danger or harm or eliminate the practices or conditions that contributed to the imminent danger or harm.

(e) When imposing affirmative obligations under this section, the authorized representative of the Secretary shall require abatement of the imminent danger or harm in the most expeditious manner physically possible. The affirmative obligation shall include a time by which abatement shall be accomplished and may include, among other things, the use of existing or additional personnel and equipment.

(f) Reclamation operations not directly the subject of the order or affirmative obligation shall continue during any cessation order.

(g) An authorized representative of the Secretary shall terminate a cessation order issued under paragraph (a) or (b) of this section by written notice when the authorized representative determines that the conditions or practices or violations that contributed to the imminent danger to life or the environment have been eliminated.

[42 FR 62701, Dec. 13, 1977, as amended at 45 FR 67501, Oct. 10, 1980; 47 FR 18558, Apr. 29, 1982]

§ 722.12 Non-imminent dangers or harms.

(a) If an authorized representative of the Secretary finds conditions or practices, or violations of any requirement of the Act, or of any requirement of this chapter applicable during the interim regulatory program, but such violations do not create an imminent danger to the health or safety of the public, or are not causing and cannot reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the authorized representative shall issue a notice of violation fixing a reasonable time for abatement.

(b) An authorized representative of the Secretary may extend the time to abate a violation by written notice if the failure to abate within the time set was not caused by the permittee's lack of diligence.

(c) An authorized representative of the Secretary may establish interim steps in an abatement period. If the permittee fails to meet any interim step within the time set, the authorized representative may extend the time set for meeting the interim step, in accordance with this section, or may

issue a cessation order pursuant to § 722.13 of this part.

(d) The total time for abatement as originally fixed and subsequently extended shall not exceed 90 days except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in § 722.12(e). An extended abatement date pursuant to this section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

(e) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

(3) Where the permittee cannot abate within 90 days due to a labor strike;

(4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly:

(i) Would cause more environmental harm than it would prevent; or

(ii) Requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(f) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(g) If any of the conditions in paragraphs (e) (1) through (4) exist, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an

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abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of § 722.12 (d) and (e). In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The inspector's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(h) Any determination made under paragraph (g) shall be in writing and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR 4.1281 and the regulations at 43 CFR part 4.

(i) No extension granted under paragraph (b) may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph (g).

[42 FR 62701, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1978, as amended at 45 FR 67501, Oct. 10, 1980; 46 FR 41704, Aug. 17, 1981]

§ 722.13 Failure to abate.

An authorized representative of the Secretary shall order cessation of surface coal mining and reclamation operations, or the portion relevant to the violation, when a notice of violation has been issued under § 722.12 of this part and the permittee fails to abate the violation within the time originally fixed or subsequently extended. In a cessation order issued under this section, the authorized representative shall impose affirmative obligations to abate the violation in the manner provided in § 722.11 of this part. Reclamation operations not directly the subject

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of the order or affirmative obligation shall continue during any cessation order. A cessation order issued under this section shall be terminated as provided in § 722.11 of this part.

§ 722.14 Service of notices of violation, cessation orders, and orders to show cause.

(a) A notice of violation or cessation order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:

(1) By tendering a copy at the surface coal mining and reclamation operation to the designated agent or to the person to whom it is directed. If no such agent is reasonably available, a copy may be tendered to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the surface coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his or her designated agent, or by any alternative means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

(b) A show cause order, or a vacation, modification or termination of a notice or order, may be served on the person to whom it is issued in either manner provided in paragraph (a) of this section.

(c) Designation by any person of an agent for service of notices and orders shall be made in a conspicuous, easy-

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to-read manner on the mine identification sign, or on the mine bulletin board posted by the minesite office.

(d) The Office shall furnish copies of notices and orders to the State regulatory authority, if any, after their issuance. The Office may furnish copies to any person having an interest in the surface coal mining and reclamation operation or the permit area, such as the owner of the fee, a corporate officer of the permittee, or the bonding company.

(Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 521(a)(5) (30 U.S.C. 1211, 1251, 1271(a)(5)))

[45 FR 2628, Jan. 11, 1980, as amended at 56 FR 28445, June 20, 1991]

§ 722.15 Informal public hearing.

(a) Except as provided in paragraphs (b) and (c) of this section, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the minesite so that it may be viewed during the hearing or at any other location acceptable to the Office and the person to whom the notice or order was issued. The Office of Surface Mining office nearest to the minesite shall be deemed to be reasonably close to the minesite unless a closer location is requested and agreed to by the Office. Expiration of a notice or order shall not affect the Office's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice or violation in question has been abated, or the hearing has been waived. For purposes of this section only, mining means (1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a minesite.

(b) A notice of violation or cessation order shall not expire as provided in paragraph (a) of this section if the informal public hearing has been waived or if, with the consent of the person to

whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this section:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order is issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he will be deemed to have waived an informal public hearing unless he requests one within 30 days after service of the notice or order, and

(ii) Fails to request an informal public hearing within that time.

(2) The written notice referred to in paragraph (b)(1)(i) of this section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his request is received on or after the 21st day after the service of the notice of order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) The Office shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to the notice or order; and

(3) The State regulatory authority, if any.

(d) The Office shall also post notice of the hearing at the regional district or field office closest to the minesite, and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

(e) Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings, shall not govern the conduct of these informal public hearings. An informal public hearing shall be conducted by a representative of the Office, who may accept oral or written arguments and any other relevant information from any person attending.

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(f) Within five business days after the date of the informal public hearing, the Office shall affirm, modify, or vacate the notice or order in writing and send its decision to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to the notice or order; and

(3) The State regulatory authority, if any.

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under sections 518(b), 521(a)(4), or 525 of the Act.

(h) The person conducting the hearing for the Office shall determine whether or not the minesite should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the minesite will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or the required remedial action.

(Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 521(a)(5) (30 U.S.C. 1211, 1251, 1271(a)(5)))

[45 FR 2628, Jan. 11, 1980]

§ 722.16 **Pattern of violations.**

(a) The regulations of this section set forth the procedures governing the suspension or revocation of State permits and rights to mine under this Act based on a pattern of violations arising during Federal inspections during the initial regulatory program.

(b) *Definitions.* As used in this section—

(1) *Violations of the same or related requirements of the Act, regulations or permit conditions* means noncompliance with any single section of parts 715, 716, or 717 of this chapter.

(2) *Violations of different requirements of the Act, regulations, or permit conditions* means noncompliance with different sections of parts 715, 716, or 717 of this chapter.

(3) *Unwarranted failure to comply* means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Act or these regulations due to indifference, lack of diligence, lack of reasonable care; or the failure to abate any violation of such permit, the Act

or regulations due to indifference, lack of diligence, or lack of reasonable care.

(4) *Willful violation* means an intentional action or omission which violates the Act, regulations or permit conditions required under the Act.

(5) *Inspection* as used in this section means any visit to the mine.

(c) *Order to show cause.* (1) If the Director determines that a pattern of violations of any requirements of the Act, the regulations, or a permit condition imposed under the Act or regulations exists, or has existed, and that such violations are caused by the unwarranted failure of the permittee or were willful violations, the Director shall issue an order to the permittee to show cause why the permit should not be suspended or revoked.

(2) The Director may determine that a pattern of violations exists or has existed, after considering the circumstances, including—

(i) The number of willful violations or violations caused by unwarranted failure to comply with the same or related requirements of the Act, regulations, or permit conditions during two or more Federal inspections;

(ii) The number of willful violations or violations caused by unwarranted failure to comply with different requirements of the Act, regulations, or permit conditions; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) Violations of the same or related requirements of the Act, regulations, or permit conditions required by the Act during three or more Federal inspections within any 12-month period which were either caused by the unwarranted failure of the permittee to comply with the Act, the regulations or permit conditions required by the Act, or were willful violations, shall constitute a pattern of violations. A show cause order shall issue unless the Director finds that it would not further enforcement of the performance standards of the Act.

(d) *Suspension or revocation of permit.*

(1) The order to show cause shall be issued and a public hearing, if requested, shall be conducted under the procedures of 43 CFR part 4.

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(2) If the Secretary finds that a pattern of violations exists or has existed, the permit and right to mine under this Act shall be either suspended or revoked and the permittee directed to complete necessary corrective measures and reclamation operations.

(e) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the Director shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue an order to show cause as appropriate pursuant to 30 CFR 723.15(b)(2).

[42 FR 62701, Dec. 13, 1977 and 46 FR 58783, Sept. 4, 1980]

§ 722.17 Inability to comply.

(a) Neither a notice of violation nor a cessation order issued under this part may be vacated because of inability to comply.

(b) A permittee may not be deemed to have shown good cause for not suspending or revoking a permit by showing inability to comply.

(c) Unless caused by lack of diligence, inability to comply may be considered in mitigation of the amount of a civil penalty under part 723 of this chapter and of the duration of the suspension of the permit under § 722.16 of this part.

PART 723—CIVIL PENALTIES

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AUTHORITY: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

SOURCE: 45 FR 58783, Sept. 4, 1980, unless otherwise noted.

§ 723.1 Scope.

This part covers the assessment of civil penalties under section 518 of the Act for violations of a permit condition, any provision of Title V of the Act, or any implementing regulations, except for the assessment of individual civil penalties under section 518(f), which is covered by part 724. This part governs when a civil penalty is assessed and how the amount is determined, and sets forth applicable procedures. This part applies to cessation orders and notices of violation issued under part 722 of this chapter during a Federal inspection.

[53 FR 3674, Feb. 8, 1988]

§ 723.2 Objective.

Civil penalties are assessed under section 518 of the Act and this part to deter violations and to ensure maximum compliance with the terms and purpose of the Act on the part of the coal mining industry.

§ 723.11 How assessments are made.

The Office shall review each notice of violation and cessation order in accordance with the assessment procedures described in §§ 723.12, 723.13, 723.14, 723.15, and 723.16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

§ 723.12 When penalty will be assessed.

(a) The Office shall assess a penalty for each cessation order.

(b) The Office shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in § 723.13.

(c) The Office may assess a penalty for each notice of violation assigned 30 points or less under the point system described in § 723.13. In determining whether to assess a penalty, the Office shall consider the factors listed in § 723.13(b).