

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the operator of such mine to cause all persons, except those referred to in section 814(c) of this title, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such imminent danger and the conditions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 for a public hearing upon request by any interested party, the Secretary shall make findings of fact, and shall by decision incorporating such findings therein, either cancel the notice issued under this subsection or issue an order requiring the operator of such mine to cause all persons in the area affected, except those persons referred to in subsection (c) of section 814 of this title to be withdrawn from, and be prohibited from entering, such area until the Secretary, after a public hearing affording all interested persons an opportunity to present their views, determines that such conditions have been abated. Any hearing under this paragraph shall be of record and shall be subject to section 554 of title 5.

(c) Form and content of orders

Orders issued pursuant to subsection (a) of this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger and a description of the area of the coal or other mine from which persons must be withdrawn and prohibited from entering.

(d) Findings; duration of orders

Each finding made and order issued under this section shall be given promptly to the operator of the coal or other mine to which it pertains by the person making such finding or order, and all of such findings and orders shall be in writing, and shall be signed by the person making them. Any order issued pursuant to subsection (a) of this section may be modified or terminated by an authorized representative of the Secretary. Any order issued under subsection (a) or (b) of this section shall remain in effect until vacated, modified, or terminated by the Secretary, or modified or vacated by the Commission pursuant to subsection (e) of this section, or by the courts pursuant to section 816(a) of this title.

(e) Reinstatement, modification, and vacatur of orders

(1) Any operator notified of an order under this section or any representative of miners notified of the issuance, modification, or termination of such an order may apply to the Commission within 30 days of such notification for reinstatement, modification or vacation of such order. The Commission shall forthwith afford an opportunity for a hearing (in accordance with section 554 of title 5 but without regard to subsection (a)(3) of such section) and thereafter shall issue an order, based upon findings of fact,

vacating, affirming, modifying, or terminating the Secretary's order. The Commission and the courts may not grant temporary relief from the issuance of any order under subsection (a) of this section.

(2) The Commission shall take whatever action is necessary to expedite proceedings under this subsection.

(Pub. L. 91-173, title I, §107, Dec. 30, 1969, 83 Stat. 755; Pub. L. 95-164, title II, §201, Nov. 9, 1977, 91 Stat. 1307.)

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

1977—Pub. L. 95-164 substituted provisions relating to the procedures to be followed to counteract dangerous conditions in coal or other mines for provisions relating to the posting of notices, orders, and decisions at coal mines, see section 819 of this title.

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.

§ 818. Injunctions

(a) Civil action by Secretary

(1) The Secretary may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which a coal or other mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent—

(A) violates or fails or refuses to comply with any order or decision issued under this chapter, or fails or refuses to comply with any order or decision, including a civil penalty assessment order, that is issued under this chapter,

(B) interferes with, hinders, or delays the Secretary or his authorized representative, or the Secretary of Health and Human Services or his authorized representative, in carrying out the provisions of this chapter,

(C) refuses to admit such representatives to the coal or other mine,

(D) refuses to permit the inspection of the coal or other mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine,

(E) refuses to furnish any information or report requested by the Secretary or the Secretary of Health and Human Services in furtherance of the provisions of this chapter, or

(F) refuses to permit access to, and copying of, such records as the Secretary or the Secretary of Health and Human Services determines necessary in carrying out the provisions of this chapter.

(2) The Secretary may institute a civil action for relief, including permanent or temporary in-

junction, restraining order, or any other appropriate order in the district court of the United States for the district in which the coal or other mine is located or in which the operator of such mine has his principal office whenever the Secretary believes that the operator of a coal or other mine is engaged in a pattern of violation of the mandatory health or safety standards of this chapter, which in the judgment of the Secretary constitutes a continuing hazard to the health or safety of miners.

(b) Jurisdiction; relief; findings of Commission or Secretary

In any action brought under subsection (a) of this section, the court shall have jurisdiction to provide such relief as may be appropriate. In the case of an action under subsection (a)(2) of this section, the court shall in its order require such assurance or affirmative steps as it deems necessary to assure itself that the protection afforded to miners under this chapter shall be provided by the operator. Temporary restraining orders shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure, as amended, except that the time limit in such orders, when issued without notice, shall be seven days from the date of entry. Except as otherwise provided herein, any relief granted by the court to enforce any order under paragraph (1) of subsection (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this subchapter, unless prior thereto, the district court granting such relief sets it aside or modifies it. In any action instituted under this section to enforce an order or decision issued by the Commission or the Secretary after a public hearing in accordance with section 554 of title 5, the findings of the Commission or the Secretary, as the case may be, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(Pub. L. 91-173, title I, §108, Dec. 30, 1969, 83 Stat. 756; Pub. L. 95-164, title II, §201, Nov. 9, 1977, 91 Stat. 1309; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 109-236, §9, June 15, 2006, 120 Stat. 501.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(A), (B), (E), (F), (2) and (b), 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.

Rule 65 of the Federal Rules of Civil Procedure, referred to in subsec. (b), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2006—Subsec. (a)(1)(A). Pub. L. 109-236 inserted before comma at end " , or fails or refuses to comply with any order or decision, including a civil penalty assessment order, that is issued under this chapter".

1977—Pub. L. 95-164 redesignated existing provisions as subsecs. (a)(1) and (b), added subsec. (a)(2), and in the redesignated provisions inserted references to findings of the Commission, inserted requirement that in actions brought under subsec. (a)(2) the courts require such assurances or affirmative action as they deem necessary to assure that the protections offered by this