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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: 30 U.S.C. 1201 *et seq.*, Pub. L. 100-34, Pub. L. 101-410, and Pub. L. 104-134.

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).