

the permit area within any 12-month period. If, after such review, the Director determines that a pattern of violations exists or has existed, he or she shall issue an order to show cause as provided in paragraph (a)(1) of this section.

(4)(i) In determining the number of violations within any 12-month period, the Director shall consider only violations issued as a result of a Federal inspection carried out—

(A) During enforcement of a Federal program or a Federal lands program;

(B) During the interim program and before the applicable State program was approved pursuant to section 502 or 504 of the Act; or

(C) During Federal enforcement of a State program in accordance with section 504(b) or 521(b) of the Act.

(ii) The Director may not consider violations issued as a result of inspections other than those mentioned in paragraph (a)(4)(i) of this section in determining whether to exercise his or her discretion under paragraph (a)(2) of this section, except as evidence of the willful or unwarranted nature of the permittee's failure to comply.

(b) If the permittee files an answer to the show cause order and requests a hearing under 43 CFR part 4, a public hearing shall be provided as set forth in that part. The Office of Hearings and Appeals shall give thirty days written notice of the date, time and place of the hearing to the Director, the permittee, the State regulatory authority, if any, and any intervenor. Upon receipt of the notice, the Director shall publish it, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations, and shall post it at the State or field office closest to those operations.

(c) Within sixty days after the hearing, and within the time limits set forth in 43 CFR part 4, the Office of Hearings and Appeals shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the Office of Hearings and Appeals revokes or suspends the permit and the permittee's right to mine under the Act, the permittee shall immediately cease surface

coal mining operations on the permit area and shall:

(1) If the permit and the right to mine under the Act are revoked, complete reclamation within the time specified in the order; or

(2) If the permit and the right to mine under the Act are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

(d) 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 § 845.15(b)(2) of this chapter.

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

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

(1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. 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 permittee or his or her designated agent, or by any 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.

Surface Mining Reclamation and Enforcement, Interior

§ 843.15

(b) Designation by any person of an agent for service of notices and orders shall be made in writing to the appropriate State or field office of the Office.

(c) The Office shall furnish copies of notices and orders to the State regulatory authority, if any, promptly after their issuance. The Office may furnish copies to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area.

[47 FR 35637, Aug. 16, 1982, as amended at 56 FR 28445, June 20, 1991]

§ 843.15 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 mine site 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 mine site shall be deemed to be reasonably close to the mine site 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" includes (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 mine site.

(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 subsection:

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

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he or she will be deemed to have waived an informal public hearing unless he or she requests one within 30 days after service of the notice; 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 5 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 or her request is received on or after the 21st day after service of the notice or 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 that notice or order; and

(3) The State regulatory authority, if any.

(d) The Office shall also post notice of the hearing at the State or field office closest to the mine site and, where practicable, publish it 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 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.

(f) Within five days after the close of the informal public hearing, the Office