

Mine Safety and Health Admin., Labor

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43.8 Informal review upon the issuance of a notice of negative finding.

AUTHORITY: Secs. 103(g), and 508, Federal Mine Safety and Health Act of 1977 Pub. L. 95-164, 91 Stat. 1298 83 Stat. 803 (30 U.S.C. 813(g) and 957); sec. 307, Federal Mine Safety and Health Amendments Act of 1977, Pub. L. 95-164, 91 Stat. 1322 (30 U.S.C. 801 note).

SOURCE: 43 FR 29515, July 7, 1978, unless otherwise noted.

Subpart A—General

§ 43.1 Definitions.

For purposes of this part, *Act* means the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164, as amended by Pub. L. 95-164, and “Secretary” means the Secretary of Labor or his designee.

§ 43.2 General.

(a) Under section 103(g)(1) of the Act, a representative of miners, or where there is no such representative, a miner, who has reasonable grounds to believe that a violation of the act or a mandatory health or safety standard exists, or an imminent danger exists, has a right to obtain a special inspection if he or she gives notice of such violation to the Secretary or his duly authorized representative. The notice shall be reduced to writing and signed by the miners’ representative or miner, and a copy that does not reveal the name of the person giving the notice must be served on the operator no later than at the time of the inspection. If the Secretary determines that a violation or danger does not exist, he must so notify the miners’ representative or miner in writing.

(b) Under section 103(g)(2) of the Act, a representative of miners or, if there is no such representative, a miner, may notify in writing an authorized representative of the Secretary who is on mine premises prior to or during an inspection, of any violation or imminent danger which he or she has reason to believe exists in the mine. There shall be procedures for the informal review of any refusal by the Secretary’s authorized representative to issue a citation with respect to such alleged violation or danger, including notification to the miners’ representative or miner

of the reasons for his disposition of the case.

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

[43 FR 29515, July 7, 1978, as amended at 47 FR 14696, Apr. 6, 1982; 60 FR 33722, June 29, 1995]

§ 43.3 Purpose and scope of this part.

This part sets forth the procedures for giving notice to the Secretary under section 103(g)(1) of the Act, for responding to such notices and for reviewing refusals by authorized representatives of the Secretary to issue citations or orders under section 103 (g)(1) or (g)(2). Specifically, Subpart B details the steps to be taken by a representative of miners or a miner in making a request for a special inspection and by the Secretary in processing and taking action on such a request under section 103(g)(1). Subpart C sets forth informal review procedures which a representative of miners or a miner may request under sections 103 (g)(1) and (g)(2) where no citation or order is issued under those sections.

Subpart B—Special Inspections

§ 43.4 Requirements for giving notice.

(a) A representative of miners or, where there is no such representative, a miner, who has reasonable grounds to believe that a violation of the act or a mandatory health or safety standard exists, or that an imminent danger exists, may obtain a special inspection by giving notice to the Secretary or any authorized representative of the Secretary of such violation or danger.

(b) Any such notice shall set forth the alleged violation or imminent danger and the location of such violation or danger and shall be reduced to a writing signed by the representative of miners or miner giving such notice.

(c) A copy of such written notice shall be provided to the operator or his agent by the Secretary or his authorized representative no later than the time that the inspection begins. In addition, if the notice indicates that an imminent danger exists, the operator or his agent shall be notified as quickly as possible of the alleged danger. The name of the person giving such notice

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and the names of any individual miners referred to therein shall not appear in the copy of the written notice or in a notification provided to the operator.

§ 43.5 Action by the Secretary.

(a) As soon as possible after the receipt of a notice of alleged violation or imminent danger under this subpart, the Secretary or his authorized representative shall make a special inspection to determine if a citation or withdrawal order should be issued, unless on the face of the notice, the condition complained of, even if it were found to exist, would clearly not constitute a violation or imminent danger.

(b) Where the Secretary or his authorized representative makes a special inspection under this subpart and finds a violation or imminent danger, a citation or withdrawal order, as appropriate, shall be issued.

§ 43.6 Notice of negative finding.

(a) If it is determined that a special inspection is not warranted, a written notice of negative finding shall be issued as soon as possible following such determination.

(b) If it is determined that an inspection is warranted and upon such inspection it is determined that neither a citation nor a withdrawal order should be issued for the alleged violation or imminent danger, a written notice of negative finding shall be issued by the authorized representative of the Secretary prior to leaving the mine premises.

(c) Any notice of negative finding issued under this part shall be issued to the representative of miners or miner seeking the special inspection and a copy shall be served upon the operator.

Subpart C—Informal Review

§ 43.7 Informal review upon written notice given to an inspector on the mine premises.

(a) A representative of miners or, where there is no such representative, a miner, who has reason to believe that a violation of the Act or a mandatory health or safety standard exists, or an imminent danger exists, may notify an

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authorized representative of the Secretary in writing prior to or during an inspection conducted by such representative of any violation of the Act or mandatory health or safety standard or of any imminent danger which he or she has reason to believe exists in the mine being inspected. Where the authorized representative or the Secretary refuses to issue a citation or order with respect to such alleged violation or imminent danger, the representative of miners or miner may obtain review of such refusal in accordance with paragraphs (b) through (d) of this section.

(b) A request for informal review shall be sent in writing to the appropriate district manager within 10 days of the date of the refusal to issue a citation or order and shall be accompanied by any supporting information the person requesting review wishes to submit.

(c) After receipt of the request for informal review, the district manager or his agent may hold, at his or her discretion, an informal conference where the person requesting review can present his views.

(d) After review of all written and oral statements submitted, the district manager may either affirm the refusal to issue a citation or order or may direct that a new inspection be conducted with respect to the alleged violation or imminent danger. The district manager shall furnish the person requesting review with a written statement of the reasons for his or her final disposition of the request as soon thereafter as possible. A copy of such statement shall be furnished the operator. The district manager's determination in the matter shall be final.

§ 43.8 Informal review upon issuance of a notice of negative finding.

A person to whom a notice of negative finding has been issued pursuant to § 43.6 of this part may request informal review of such finding in accordance with the provisions of § 43.7(b)–(d) of this subpart.