

WEST VIRGINIA CODE: §22A-1-17

§22A-1-17. Review of orders and notices by the director.

(a) (1) An operator, issued an order pursuant to the provisions of section fifteen of this article, or any representative of miners in any mine affected by such order or by any modification or termination of such order, may apply to the director for review of the order within thirty days of receipt thereof or within thirty days of its modification or termination. An operator, issued a notice pursuant to subsection (b), section fifteen of this article, or any representative of miners in any mine affected by such notice, may, if the operator believes that the period of the time fixed in such notice for the abatement of the violation is unreasonable, apply to the director for review of the notice within thirty days of the receipt thereof. The applicant shall send a copy of such application to the representative of miners in the affected mine, or the operator, as appropriate. Upon receipt of such application, the director shall cause such investigation to be made as the director deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the operator or the representative of miners in such mine, to enable the operator and the representative of miners in such mine to present information relating to the issuance and continuance of such order or the modification or termination thereof or to the time fixed in such notice. The filing of an application for review under this law does not operate as a stay of any order or notice.

(2) The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five days prior to the hearing.

(b) Upon receiving the report of such investigation, the director shall make findings of fact, and issue a written decision, incorporating therein an order vacating, affirming, modifying or terminating the order, or the modification or termination of such order, or the notice complained of and incorporate findings therein.

(c) In view of the urgent need for prompt decision of matters submitted to the director under this law, all actions which the director takes under this section shall be taken as promptly as practicable, consistent with adequate consideration of the issues involved.

(d) Pending completion of the investigation required by this section, the applicant may file with the director a written request that the director grant temporary relief from any modification or termination of any order, or from any order issued under section fifteen of this article, except an order issued under section sixteen of this article, together with a detailed statement giving reasons for granting such relief. The director may grant such relief, under such conditions as he or she may prescribe, if:

(1) A hearing has been held in which all parties were given an opportunity to be heard;

(2) The applicant shows that there is substantial likelihood that the findings of the director

will be favorable to the applicant; and

(3) Such relief will not adversely affect the health and safety of miners in the coal mine.

No temporary relief shall be granted in the case of a notice issued under section fifteen of this article.