

§ 1240. Emergency powers

(a) The Secretary is authorized to expend moneys from the fund for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices, on eligible lands, if the Secretary makes a finding of fact that—

(1) an emergency exists constituting a danger to the public health, safety, or general welfare; and

(2) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

(b) The Secretary, his agents, employees, and contractors shall have the right to enter upon any land where the emergency exists and any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare. Such entry shall be construed as an exercise of the police power and shall not be construed as an act of condemnation of property nor of trespass thereof. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: *Provided, however*, That this provision is not intended to create new rights of action or eliminate existing immunities.

(Pub. L. 95-87, title IV, § 410, Aug. 3, 1977, 91 Stat. 466.)

§ 1240a. Certification**(a) Certification of completion of coal reclamation**

(1) The Governor of a State, or the head of a governing body of an Indian tribe, with an approved abandoned mine reclamation program under section 1235 of this title may certify to the Secretary that all of the priorities stated in section 1233(a) of this title for eligible lands and waters pursuant to section 1234 of this title have been achieved. The Secretary, after notice in the Federal Register and opportunity for public comment, shall concur with such certification if the Secretary determines that such certification is correct.

(2)(A) The Secretary may, on the initiative of the Secretary, make the certification referred to in paragraph (1) on behalf of any State or Indian tribe referred to in paragraph (1) if on the basis of the inventory referred to in section 1233(c) of this title all reclamation projects relating to the priorities described in section 1233(a) of this title for eligible land and water pursuant to section 1234 of this title in the State or tribe have been completed.

(B) The Secretary shall only make the certification after notice in the Federal Register and opportunity for public comment.

(b) Eligible lands, waters, and facilities

If the Secretary has concurred in a State or tribal certification under subsection (a), for pur-

poses of determining the eligibility of lands and waters for annual grants under section 1232(g)(1) of this title, section 1234 of this title shall not apply, and eligible lands, waters, and facilities shall be those—

(1) which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

(2) for which there is no continuing reclamation responsibility under State or other Federal laws. In determining the eligibility under this subsection of Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977, date referred to in paragraph (1) the applicable date shall be August 28, 1974, and November 26, 1980, respectively.

(c) Priorities

Expenditures of moneys for lands, waters, and facilities referred to in subsection (b) shall reflect the following objectives and priorities in the order stated (in lieu of the priorities set forth in section 1233 of this title):

(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of mineral mining and processing practices.

(2) The protection of public health, safety, and general welfare from adverse effects of mineral mining and processing practices.

(3) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

(d) Specific sites and areas not eligible

Sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 and following) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 and following) shall not be eligible for expenditures from the Fund under this section.

(e) Utilities and other facilities

Reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads, and such other facilities serving the public adversely affected by mineral mining and processing practices, and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices, shall be deemed part of the objectives set forth, and undertaken as they relate to, the priorities stated in subsection (c).

(f) Public facilities related to coal or minerals industry

Notwithstanding subsection (e), where the Secretary has concurred in the certification referred to in subsection (a) and where the Governor of a State or the head of a governing body of an Indian tribe determines there is a need for activities or construction of specific public facilities related to the coal or minerals industry

in States impacted by coal or minerals development and the Secretary concurs in such need, then the State or Indian tribe, as the case may be, may use annual grants made available under section 1232(g)(1) of this title to carry out such activities or construction.

(g) Application of other provisions

The provisions of sections 1237 and 1238 of this title shall apply to subsections (a) through (e) of this section, except that for purposes of this section the references to coal in sections 1237 and 1238 of this title shall not apply.

(h) Payments to States and Indian tribes

(1) In general

(A) Payments

(i) In general

Notwithstanding section 1231(f)(3)(B) of this title, from funds referred to in section 1232(i)(2) of this title, the Secretary shall make payments to States or Indian tribes for the amount due for the aggregate unappropriated amount allocated to the State or Indian tribe under subparagraph (A) or (B) of section 1232(g)(1) of this title.

(ii) Conversion as equivalent payments

Amounts allocated under subparagraph (A) or (B) of section 1232(g)(1) of this title shall be reallocated to the allocation established in section 1232(g)(5) of this title in amounts equivalent to payments made to States or Indian tribes under this paragraph.

(B) Amount due

In this paragraph, the term “amount due” means the unappropriated amount allocated to a State or Indian tribe before October 1, 2007, under subparagraph (A) or (B) of section 1232(g)(1) of this title.

(C) Schedule

Payments under subparagraph (A) shall be made in 7 equal annual installments, beginning with fiscal year 2008.

(D) Use of funds

(i) Certified States and Indian tribes

A State or Indian tribe that makes a certification under subsection (a) in which the Secretary concurs shall use any amounts provided under this paragraph for the purposes established by the State legislature or tribal council of the Indian tribe, with priority given for addressing the impacts of mineral development.

(ii) Uncertified States and Indian tribes

A State or Indian tribe that has not made a certification under subsection (a) in which the Secretary has concurred shall use any amounts provided under this paragraph for the purposes described in section 1233 of this title.

(2) Subsequent State and Indian tribe share for certified States and Indian tribes

(A) In general

Notwithstanding section 1231(f)(3)(B) of this title, from funds referred to in section

1232(i)(2) of this title, the Secretary shall pay to each certified State or Indian tribe an amount equal to the sum of the aggregate unappropriated amount allocated on or after October 1, 2007, to the certified State or Indian tribe under subparagraph (A) or (B) of section 1232(g)(1) of this title.

(B) Certified State or Indian tribe defined

In this paragraph the term “certified State or Indian tribe” means a State or Indian tribe for which a certification is made under subsection (a) in which the Secretary concurs.

(3) Manner of payment

(A) In general

Subject to subparagraph (B), payments to States or Indian tribes under this subsection shall be made without regard to any limitation in section 1231(d) of this title and concurrently with payments to States under that section.

(B) Initial payments

The first 3 payments made to any State or Indian tribe shall be reduced to 25 percent, 50 percent, and 75 percent, respectively, of the amounts otherwise required under paragraph (2)(A).

(C) Installments

Amounts withheld from the first 3 annual installments as provided under subparagraph (B) shall be paid in 2 equal annual installments beginning with fiscal year 2018.

(4) Reallocation

(A) In general

The annual amount allocated under subparagraph (A) or (B) of section 1232(g)(1) of this title to any State or Indian tribe that makes a certification under subsection (a) of this section in which the Secretary concurs shall be reallocated and available for grants under section 1232(g)(5) of this title.

(B) Allocation

The grants shall be allocated based on the amount of coal historically produced before August 3, 1977, in the same manner as under section 1232(g)(5) of this title.

(5) Limitation on annual payments

Notwithstanding any other provision of this subsection, the total annual payment to a certified State or Indian tribe under this subsection shall be not more than \$15,000,000.

(6) Supplemental funding

(A) Waiver of limitation

Notwithstanding paragraph (5), the limitation on the total annual payments to a certified State or Indian tribe under this subsection shall not apply for fiscal years 2014 and 2015.

(B) Limitation on waiver

Notwithstanding subparagraph (A), the total annual payment to a certified State or Indian tribe under this subsection for fiscal year 2014 shall not be more than \$28,000,000 and for fiscal year 2015 shall not be more than \$75,000,000.

(C) Insufficient amounts

If the total annual payment to a certified State or Indian tribe under paragraphs (1) and (2) is limited by subparagraph (B), the Secretary shall—

- (i) give priority to making payments under paragraph (2); and
- (ii) use any remaining funds to make payments under paragraph (1).

(Pub. L. 95-87, title IV, §411, as added Pub. L. 101-508, title VI, §6010(2), Nov. 5, 1990, 104 Stat. 1388-296; amended Pub. L. 109-432, div. C, title II, §206, Dec. 20, 2006, 120 Stat. 3016; Pub. L. 112-141, div. F, title I, §100125, July 6, 2012, 126 Stat. 915; Pub. L. 112-175, §142, Sept. 28, 2012, 126 Stat. 1321; Pub. L. 113-40, §10(d), Oct. 2, 2013, 127 Stat. 546.)

REFERENCES IN TEXT

The Uranium Mill Tailings Radiation Control Act of 1978, referred to in subsec. (d), is Pub. L. 95-604, Nov. 8, 1978, 92 Stat. 3021, as amended, which is classified principally to chapter 88 (§7901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7901 of Title 42 and Tables.

The Comprehensive Environmental Response Compensation and Liability Act of 1980, referred to in subsec. (d), probably means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§9601 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 411 of Pub. L. 95-87 was renumbered section 412 and was classified to section 1241 of this title, prior to being omitted from the Code.

AMENDMENTS

2013—Subsec. (h)(6). Pub. L. 113-40 added par. (6).
2012—Subsec. (h)(4)(A). Pub. L. 112-175 amended subpar. (A) generally. Prior to amendment, text read as follows: “The amount allocated to any State or Indian tribe under subparagraph (A) or (B) of section 1232(g)(1) of this title that is paid to the State or Indian tribe as a result of a payment under paragraph (1) or (2) shall be reallocated and available for grants under section 1232(g)(5) of this title.”

Subsec. (h)(5). Pub. L. 112-141 added par. (5).
2006—Subsec. (a). Pub. L. 109-432, §206(1), designated existing provisions as par. (1) and added par. (2).
Subsec. (h). Pub. L. 109-432, §206(2), added subsec. (h).

EFFECTIVE DATE

Section effective Oct. 1, 1991, see section 6014 of Pub. L. 101-508 set out as an Effective Date of 1990 Amendment note under section 1231 of this title.

§ 1241. Omitted

CODIFICATION

Section, Pub. L. 95-87, title IV, §412, formerly §411, Aug. 3, 1977, 91 Stat. 466, renumbered §412, Pub. L. 101-508, title VI, §6010(1), Nov. 5, 1990, 104 Stat. 1388-296, which required the Secretary of the Interior or the State pursuant to an approved State program to report to Congress annually on operations under the fund together with recommendations for future use of the fund, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 109 of House Document No. 103-7.

§ 1242. Powers of Secretary or State**(a) Engage in work, promulgate rules and regulations, etc., to implement and administer this subchapter**

The Secretary or the State pursuant to an approved State program, shall have the power and authority, if not granted it otherwise, to engage in any work and to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the provisions of this subchapter.

(b) Engage in cooperative projects

The Secretary or the State pursuant to an approved State program, shall have the power and authority to engage in cooperative projects under this subchapter with any other agency of the United States of America, any State and their governmental agencies.

(c) Request for action to restrain interference with regard to this subchapter

The Secretary or the State pursuant to an approved State program, may request the Attorney General, who is hereby authorized to initiate, in addition to any other remedies provided for in this subchapter, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this subchapter.

(d) Construct and operate plants for control and treatment of water pollution resulting from mine drainage

The Secretary or the State pursuant to an approved State program, shall have the power and authority to construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water: *Provided*, That the above provisions of this paragraph shall not be deemed in any way to repeal or supersede any portion of the Federal Water Pollution Control Act (33 U.S.C.A. 1151, et seq. as amended) [33 U.S.C. 1251 et seq.] and no control or treatment under this subsection shall in any way be less than that required under the Federal Water Pollution Control Act. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

(e) Transfer funds

The Secretary may transfer funds to other appropriate Federal agencies, in order to carry out the reclamation activities authorized by this subchapter.

(Pub. L. 95-87, title IV, §413, formerly §412, Aug. 3, 1977, 91 Stat. 466, renumbered §413, Pub. L. 101-508, title VI, §6010(1), Nov. 5, 1990, 104 Stat. 1388-296.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act (33 U.S.C.A. 1151, et seq. as amended), referred to in subsec. (d), is act June 30, 1948, ch. 758, 62 Stat. 1155, formerly classified to chapter 23 (§1151 et seq.) of Title 33, Navigation and Navigable Waters, which was completely revised by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, and is classified generally to chapter 26 (§1251 et seq.) of Title 33.