

the court, operate as a stay of the action, order, or decision of the Secretary.

**(e) Action of State regulatory authority**

Action of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law, but the availability of such review shall not be construed to limit the operation of the rights established in section 1270 of this title except as provided therein.

(Pub. L. 95-87, title V, § 526, Aug. 3, 1977, 91 Stat. 512.)

**§ 1277. Special bituminous coal mines**

**(a) Issuance of separate regulations; criteria**

The regulatory authority is authorized to issue separate regulations for those special bituminous coal surface mines located west of the 100th meridian west longitude which meet the following criteria:

(1) the excavation of the specific mine pit takes place on the same relatively limited site for an extended period of time;

(2) the excavation of the specific mine pit follows a coal seam having an inclination of fifteen degrees or more from the horizontal, and continues in the same area proceeding downward with lateral expansion of the pit necessary to maintain stability or as necessary to accommodate the orderly expansion of the total mining operation;

(3) the excavation of the specific mine pit involves the mining of more than one coal seam and mining has been initiated on the deepest coal seam contemplated to be mined in the current operation;

(4) the amount of material removed is large in proportion to the surface area disturbed;

(5) there is no practicable alternative method of mining the coal involved;

(6) there is no practicable method to reclaim the land in the manner required by this chapter; and

(7) the specific mine pit has been actually producing coal since January 1, 1972, in such manner as to meet the criteria set forth in this section, and, because of past duration of mining, is substantially committed to a mode of operation which warrants exceptions to some provisions of this subchapter.

**(b) New bituminous coal surface mines**

Such separate regulations shall also contain a distinct part to cover and pertain to new bituminous coal surface mines which may be developed after August 3, 1977, on lands immediately adjacent to lands upon which are located special bituminous mines existing on January 1, 1972. Such new mines shall meet the criteria of subsection (a) except for paragraphs (3) and (7), and all requirements of State law, notwithstanding in whole or part the regulations issued pursuant to subsection (c) of this section. In the event of an amendment or revision to the State's regulatory program, regulations, or decisions made thereunder governing such mines, the Secretary shall issue such additional regulations as necessary to meet the purposes of this chapter.

**(c) Scope of alternative regulations**

Such alternative regulations may pertain only to the standards governing onsite handling of spoils, elimination of depressions capable of collecting water, creation of impoundments, and regrading to the approximate original contour and shall specify that remaining highwalls are stable. All other performance standards in this subchapter shall apply to such mines.

(Pub. L. 95-87, title V, § 527, Aug. 3, 1977, 91 Stat. 513.)

**§ 1278. Surface mining operations not subject to this chapter**

The provisions of this chapter shall not apply to any of the following activities:

(1) the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him; and

(2) the extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction under regulations established by the regulatory authority.

(Pub. L. 95-87, title V, § 528, Aug. 3, 1977, 91 Stat. 514; Pub. L. 100-34, title II, § 201(a), May 7, 1987, 101 Stat. 300.)

AMENDMENTS

1987—Pub. L. 100-34 inserted “and” after “him;” in par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: “the extraction of coal for commercial purposes where the surface mining operation affects two acres or less; and”.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-34, title II, § 201(b)-(e), May 7, 1987, 101 Stat. 300, provided that:

“(b) EFFECTIVE DATE FOR NEW OPERATIONS.—The amendments made by this section [amending this section] shall take effect on the date 30 days after the enactment of this Act [May 7, 1987] with respect to each operator commencing surface coal mining operations on or after such date.

“(c) EFFECTIVE DATE FOR EXISTING OPERATIONS.—The amendments made by this section shall take effect on the date 6 months after the enactment of this Act with respect to each operator commencing surface coal mining operations pursuant to an authorization under State law before the date 30 days after the enactment of this Act. Nothing in this Act [amending this section and section 1232 of this title] shall preclude reclamation activities pursuant to State law or regulations at the site of any surface coal mine which was exempt from the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.] under section 528(2) of that Act [30 U.S.C. 1278(2)], as in effect before the enactment of this Act.

“(d) EFFECT ON STATE LAW.—To the extent that any provision of a State law, or of a State regulation, adopted pursuant to the exception under section 528(2) of the Surface Mining Control and Reclamation Act of 1977 as in effect before the enactment of this Act, is inconsistent with the amendments made by this section, such provision shall be of no further force and effect after the effective date of such amendments.

“(e) DEFINITION.—For purposes of this section, the term ‘surface coal mining operations’ has the meaning provided by section 701(28) of the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1291(28)].”

**§ 1279. Anthracite coal mines**

(a) The Secretary is authorized to and shall issue separate regulations according to time

schedules established in this chapter for anthracite coal surface mines, if such mines are regulated by environmental protection standards of the State in which they are located. Such alternative regulations shall adopt, in each instance, the environmental protection provisions of the State regulatory program in existence on August 3, 1977, in lieu of sections 1265 and 1266 of this title. Provisions of sections 1259 and 1269 of this title are applicable except for specified bond limits and period of revegetation responsibility. All other provisions of this chapter apply and the regulation issued by the Secretary of Interior for each State anthracite regulatory program shall so reflect: *Provided, however*, That upon amendment of a State's regulatory program for anthracite mining or regulations thereunder in force in lieu of the above-cited sections of this chapter, the Secretary shall issue such additional regulations as necessary to meet the purposes of this chapter.

(b) Omitted.

(Pub. L. 95-87, title V, § 529, Aug. 3, 1977, 91 Stat. 514.)

#### CODIFICATION

Subsec. (b) of this section, which required the Secretary of the Interior to report to Congress biennially on the effectiveness of State anthracite regulatory programs operating in conjunction with this chapter with respect to protecting the environment, 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.

### SUBCHAPTER VI—DESIGNATION OF LANDS UNSUITABLE FOR NONCOAL MINING

#### § 1281. Designation procedures

##### (a) Review of Federal land areas for unsuitability for noncoal mining

With respect to Federal lands within any State, the Secretary of Interior may, and if so requested by the Governor of such State shall, review any area within such lands to assess whether it may be unsuitable for mining operations for minerals or materials other than coal, pursuant to the criteria and procedures of this section.

##### (b) Criteria considered in determining designations

An area of Federal land may be designated under this section as unsuitable for mining operations if (1) such area consists of Federal land of a predominantly urban or suburban character, used primarily for residential or related purposes, the mineral estate of which remains in the public domain, or (2) such area consists of Federal land where mining operations would have an adverse impact on lands used primarily for residential or related purposes.

##### (c) Petition for exclusion; contents; hearing; temporary land withdrawal

Any person having an interest which is or may be adversely affected shall have the right to petition the Secretary to seek exclusion of an area from mining operations pursuant to this section or the redesignation of an area or part thereof as suitable for such operations. Such petition shall

contain allegations of fact with supporting evidence which would tend to substantiate the allegations. The petitioner shall be granted a hearing within a reasonable time and finding with reasons therefor upon the matter of their petition. In any instance where a Governor requests the Secretary to review an area, or where the Secretary finds the national interest so requires, the Secretary may temporarily withdraw the area to be reviewed from mineral entry or leasing pending such review: *Provided, however*, That such temporary withdrawal be ended as promptly as practicable and in no event shall exceed two years.

##### (d) Limitation on designations; rights preservation; regulations

In no event is a land area to be designated unsuitable for mining operations under this section on which mining operations are being conducted prior to the holding of a hearing on such petition in accordance with subsection (c) hereof. Valid existing rights shall be preserved and not affected by such designation. Designation of an area as unsuitable for mining operations under this section shall not prevent subsequent mineral exploration of such area, except that such exploration shall require the prior written consent of the holder of the surface estate, which consent shall be filed with the Secretary. The Secretary may promulgate, with respect to any designated area, regulations to minimize any adverse effects of such exploration.

##### (e) Statement

Prior to any designation pursuant to this section, the Secretary shall prepare a detailed statement on (i) the potential mineral resources of the area, (ii) the demand for such mineral resources, and (iii) the impact of such designation or the absence of such designation on the environment, economy, and the supply of such mineral resources.

##### (f) Area withdrawal

When the Secretary designates an area of Federal lands as unsuitable for all or certain types of mining operations for minerals and materials other than coal pursuant to this section he may withdraw such area from mineral entry or leasing, or condition such entry or leasing so as to limit such mining operations in accordance with his determination, if the Secretary also determines, based on his analysis pursuant to subsection (e), that the benefits resulting from such designation would be greater than the benefits to the regional or national economy which could result from mineral development of such area.

##### (g) Right to appeal

Any party with a valid legal interest who has appeared in the proceedings in connection with the Secretary's determination pursuant to this section and who is aggrieved by the Secretary's decision (or by his failure to act within a reasonable time) shall have the right of appeal for review by the United States district court for the district in which the pertinent area is located.

(Pub. L. 95-87, title VI, § 601, Aug. 3, 1977, 91 Stat. 515.)