

under this chapter, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the Secretary to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review or the Secretary, resulting from administrative proceedings, deems proper.

(Pub. L. 95-87, title V, § 525, Aug. 3, 1977, 91 Stat. 511.)

#### § 1276. Judicial review

##### (a) Review by United States District Court; venue; filing of petition; time

(1) Any action of the Secretary to approve or disapprove a State program or to prepare or promulgate a Federal program pursuant to this chapter shall be subject to judicial review by the United States District Court for the District which includes the capital of the State whose program is at issue. Any action by the Secretary promulgating national rules or regulations including standards pursuant to sections 1251, 1265, 1266, and 1273 of this title shall be subject to judicial review in the United States District Court for the District of Columbia Circuit. Any other action constituting rulemaking by the Secretary shall be subject to judicial review only by the United States District Court for the District in which the surface coal mining operation is located. Any action subject to judicial review under this subsection shall be affirmed unless the court concludes that such action is arbitrary, capricious, or otherwise inconsistent with law. A petition for review of any action subject to judicial review under this subsection shall be filed in the appropriate Court within sixty days from the date of such action, or after such date if the petition is based solely on grounds arising after the sixtieth day. Any such petition may be made by any person who participated in the administrative proceedings and who is aggrieved by the action of the Secretary.

(2) Any order or decision issued by the Secretary in a civil penalty proceeding or any other proceeding required to be conducted pursuant to section 554 of title 5 shall be subject to judicial review on or before 30 days from the date of such order or decision in accordance with subsection (b) of this section in the United States District Court for the district in which the surface coal mining operation is located. In the case of a proceeding to review an order or decision issued by the Secretary under the penalty section of this chapter, the court shall have jurisdiction to enter an order requiring payment of any civil penalty assessment enforced by its judgment. This availability of review established in this subsection shall not be construed to limit the operations of rights established in section 1270 of this title.

##### (b) Evidence; conclusiveness of findings; orders

The court shall hear such petition or complaint solely on the record made before the Secretary. Except as provided in subsection (a), the findings of the Secretary if supported by sub-

stantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

##### (c) Temporary relief; prerequisites

In the case of a proceeding to review any order or decision issued by the Secretary under this chapter, including an order or decision issued pursuant to subsection (c) or (d) of section 1275 of this title pertaining to any order issued under paragraph (2), (3), or (4) of subsection (a) of section 1271 of this title for cessation of coal mining and reclamation operations, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if—

(1) all parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(3) such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

##### (d) Stay of action, order, or decision of Secretary

The commencement of a proceeding under this section shall not, unless specifically ordered by 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.)

#### Editorial Notes

##### 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”.

#### Statutory Notes and Related Subsidiaries

##### 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.)

#### Editorial Notes

##### 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.