# TITLE 30—MINERAL LANDS AND MINING


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## CHAPTER 1—UNITED STATES BUREAU OF MINES


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### § 1. United States Bureau of Mines; establishment; director; experts and other employees

There is hereby established in the Department of the Interior a bureau of mining, metallurgy, and mineral technology, to be designated the United States Bureau of Mines, and there shall be a director of said bureau, who shall be thoroughly equipped for the duties of said office by technical education and experience and who shall be appointed by the President, by and with the advice and consent of the Senate; and there

shall also be in the said bureau such experts and other employees, to be appointed by the Secretary of the Interior, as may be required to carry out the purposes of sections 1, 3, and 5 to 7 of this title in accordance with the appropriations made from time to time by Congress for such purposes.

(May 16, 1910, ch. 240, § 1, 36 Stat. 369; Feb. 25, 1913, ch. 72, § 1, 37 Stat. 681; Ex. Ord. No. 4239, June 4, 1925; Ex. Ord. No. 6611, Feb. 22, 1934; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

CHANGE OF NAME

''United States Bureau of Mines'' substituted in text for ''Bureau of Mines'' pursuant to section 10(b) of Pub. L. 102–285, set out below.

Section 10(b) of Pub. L. 102–285 provided that: ''The Bureau of Mines established by the Act of May 16, 1910 (30 U.S.C. 1), is designated as and shall hereafter [on and after May 18, 1992] be known as the United States Bureau of Mines.''

TRANSFER OF FUNCTIONS

For provisions appropriating funds for the closure of the United States Bureau of Mines and the transfer of its functions, see Pub. L. 104–99, title I, § 123, Jan. 26, 1996, 110 Stat. 32, and Pub. L. 104–134, title I, § 101(c) [title I], set out as a note below.

Pub. L. 104–134, title I, § 101(c) [title I], Apr. 26, 1996, 110 Stat. 1321–156, 1321–167; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, provided in part: ''That there hereby are transferred to, and vested in, the Secretary of Energy: (1) the functions pertaining to the promotion of health and safety in mines and the mineral industry through research vested by law in the Secretary of the Interior or the United States Bureau of Mines and performed in fiscal year 1995 by the United States Bureau of Mines at its Pittsburgh Research Center in Pennsylvania, and at its Spokane Research Center in Washington; (2) the functions pertaining to the conduct of inquiries, technological investigations and research concerning the extraction, processing, use and disposal of mineral substances vested by law in the Secretary of the Interior or the United States Bureau of Mines and performed in fiscal year 1995 by the United States Bureau of Mines under the minerals and materials science programs at its Pittsburgh Research Center in Pennsylvania, and at its Albany Research Center in Oregon; and (3) the functions pertaining to mineral reclamation industries and the development of methods for the disposal, control, prevention, and reclamation of mineral waste products vested by law in the Secretary of the Interior or the United States Bureau of Mines and performed in fiscal year 1995 by the United States Bureau of Mines at its Pittsburgh Research Center in Pennsylvania: *Provided further*, That, if any of the same functions were performed in fiscal year 1995 at locations other than those listed above, such functions shall not be transferred to the Secretary of Energy from those other locations: *Provided further*, That the Director of the Office of Management and Budget, in consultation with the Secretary of Energy and the Secretary of the Interior, is authorized to make such determinations as may be necessary with regard to the transfer of functions which relate to or are used by the Department of the Interior, or component thereof affected by this transfer of functions, and to make such dispositions of personnel, facilities, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with, the functions transferred herein as are deemed necessary to accomplish the purposes of this transfer: *Provided further*, That all reductions in personnel complements resulting from the provisions of this Act [probably means Pub. L. 104–134, title I, § 101(c), Apr. 26, 1996, 110 Stat. 1321–156; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, known as the Department of the Interior and Related Agencies Appropriations Act, 1996, see Tables for classification] shall, as to the functions transferred to the Secretary of Energy, be done by the Secretary of the Interior as though these transfers had not taken place but had been required of the Department of the Interior by all other provisions of this Act before the transfers of function became effective: *Provided further*, That the transfers of function to the Secretary of Energy shall become effective on the date specified by the Director of the Office of Management and Budget, but in no event later than 90 days after enactment into law of this Act [Apr. 26, 1996]: *Provided further*, That the reference to 'function' includes, but is not limited to, any duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be.''

[Pub. L. 104–208, div. A, title I, § 101(e) [title II], Sept. 30, 1996, 110 Stat. 3009–233, 3009–244, provided in part: ''That the functions described in clause (1) of the first proviso under the subheading 'mines and minerals' under the heading 'Bureau of Mines' in the text of title I of the Department of the Interior and Related Agencies Appropriations Act, 1996, as enacted by section 101(c) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134) [set out above], are hereby transferred to, and vested in, the Secretary of Health and Human Services, subject to section 1531 of title 31, United States Code''.]

Functions vested in, or delegated to, Secretary of Energy and Department of Energy under or with respect to sections 1, 3, and 5 to 7 of this title and other authorities relating to certain fossil energy research and development transferred to, and vested in, Secretary of the Interior, by section 100 of Pub. L. 97–257, 96 Stat. 841, set out as a note under section 7152 of Title 42, The Public Health and Welfare.

Functions of Secretary of the Interior, Department of the Interior, and officers and components of Department of the Interior under sections 1, 3, and 5 to 7 of this title and other authorities exercised by Bureau of Mines relating to fuel supply and demand analysis and data gathering, research and development relating to increased efficiency of production technology of solid fuel minerals other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining, and coal preparation and analysis transferred to, and vested in, Secretary of Energy as part of the creation of Department of Energy by Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565. See section 7152(d) of Title 42.

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

Bureau of Mines originally created in Department of the Interior. Bureau transferred to Department of Commerce by Ex. Ord. No. 4239, but transferred back to Department of the Interior by Ex. Ord. No. 6611.

### § 1a. Transfer of activities, employees, records, etc., from Bureau of Foreign and Domestic Commerce to the United States Bureau of Mines

There is hereby transferred from the Department of Commerce, Bureau of Foreign and Domestic Commerce, to the Department of the Interior, United States Bureau of Mines, all those activities of the Minerals Division of the Bureau of Foreign and Domestic Commerce concerned with economic and statistical analyses of mineral commodities, domestic and foreign, together with all employees, records, files, equip-

ment, publications, and funds pertaining thereto, effective immediately.

(May 9, 1935, ch. 101, § 1, 49 Stat. 205; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

CHANGE OF NAME

''United States Bureau of Mines'' substituted in text for ''Bureau of Mines'' pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

### § 2. Performance of duties in absence of director

On and after July 1, 1916, in the absence of the Director of the United States Bureau of Mines the assistant director of said bureau shall perform the duties of the director during the latter's absence, and in the absence of the Director and of the Assistant Director of the United States Bureau of Mines the Secretary of the Interior may designate some officer of said bureau to perform the duties of the director during his absence.

(July 1, 1916, ch. 209, § 1, 39 Stat. 303; Ex. Ord. No. 4239, June 4, 1925; Ex. Ord. No. 6611, Feb. 22, 1934; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

CHANGE OF NAME

''United States Bureau of Mines'' substituted in text for ''Bureau of Mines'' pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

### § 3. Duties of United States Bureau of Mines

It shall be the province and duty of the United States Bureau of Mines, subject to the approval of the Secretary of the Interior, to conduct inquiries and scientific and technologic investigations concerning mining, and the preparation, treatment, and utilization of mineral substances with a view to improving health conditions, and increasing safety, efficiency, economic development, and conserving resources through the prevention of waste in the mining, quarrying, metallurgical, and other mineral industries; to inquire into the economic conditions affecting these industries; to investigate explosives and peat; and on behalf of the Government to investigate the mineral fuels and unfinished mineral products belonging to, or for the use of, the United States, with a view to their most efficient mining, preparation, treatment, and use; and to disseminate information concerning these subjects in such manner as will best carry out the purposes of the provisions of sections 1, 3, and 5 to 7 of this title.

(May 16, 1910, ch. 240, § 2, 36 Stat. 370; Feb. 25, 1913, ch. 72, § 2, 37 Stat. 681; Ex. Ord. No. 4239, June 4, 1925; Ex. Ord. No. 6611, Feb. 22, 1934; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

CHANGE OF NAME

''United States Bureau of Mines'' substituted in text for ''Bureau of Mines'' pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

### § 4. Investigation of lignite coal and peat

The Secretary of the Interior is authorized and directed to make experiments and investigations, through the United States Bureau of Mines, of lignite coals and peat, to determine the commercial and economic practicability of their utilization in producing fuel oil, gasoline substitutes, ammonia, tar, solid fuels, gas for power, and other purposes. The Secretary of the Interior is authorized and directed subject to applicable regulations under the Federal Property and Administrative Services Act of 1949,[1] as amended, to sell or otherwise dispose of any property, plant, or machinery purchased or acquired under the provisions of this section, as soon as the experiments and investigations authorized have been concluded, and report the results of such experiments and investigations to Congress.

(Feb. 25, 1919, ch. 23, §§ 1, 2, 40 Stat. 1154; Ex. Ord. No. 4239, June 4, 1925; Ex. Ord. No. 6611, Feb. 22, 1934; Oct. 31, 1951, ch. 654, § 2(18), 65 Stat. 707; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

CODIFICATION

First sentence of this section is from first clause of section 1 of act Feb. 25, 1919. Second sentence is from section 2 of said act.

AMENDMENTS

1951—Act Oct. 31, 1951, inserted reference to applicable regulations of the Federal Property and Administrative Services Act of 1949, as amended.

CHANGE OF NAME

''United States Bureau of Mines'' substituted in text for ''Bureau of Mines'' pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

### § 4a. Omitted

CODIFICATION

Section, act June 25, 1926, ch. 674, § 1, 44 Stat. 768, authorized appropriation of $100,000 for fiscal year ending June 30, 1927, and the four succeeding fiscal years for investigation of potash deposits.

### § 4b. Cooperation with individuals, municipalities, etc.; contracts with owners; agreements as to prices

The Secretary of the Interior and the Secretary of Commerce jointly are hereby author-

[1] See References in Text note below.

ized, within their discretion, to cooperate under formal agreement with individuals, associations, corporations, States, and municipalities, educational institutions, or other bodies, for the purposes of this section: *Provided*, That before undertaking drilling operations upon any tract or tracts of land, the mineral deposits of which are not the property of the United States, the Secretary of the Interior and the Secretary of Commerce jointly shall enter into a contract or contracts with the owners or lessees, or both, of the mineral rights therein, and the aforesaid contract or contracts shall provide, among other things, that, if deposits of potash minerals or oil shall be discovered in pursuance of operations under said contract or contracts and if and when said mineral deposits shall be mined and sold, the owners or lessees, or both, of said mineral rights shall pay to the Government and its cooperators a royalty of not less than 2½ per centum of the sale value of any potash minerals and oil therefrom, said payments to continue until such time as the total amount derived from said royalty is equal to not more than the cost of the exploration, as may be determined by the Secretary of the Interior and the Secretary of Commerce jointly: *Provided further*, That all Federal claims for reimbursement under this section shall automatically expire twenty years from the date of approval of the contracts entered into, in accordance with the provisions thereof, unless sooner terminated by agreement between the owners or lessees of the potash mineral rights and oil and the Secretary of the Interior and the Secretary of Commerce jointly: *Provided further*, That said contract or contracts shall not restrict the Secretary of the Interior and the Secretary of Commerce jointly in the choice of drilling locations within the property or in the conduct of the exploratory operations, so long as such selection or conduct do not interfere unreasonably with the surface of the land or with the improvements thereof, and said contract or contracts shall provide that the United States shall not be liable for damages on account of such reasonable use of the surface as may be necessary in the proper conduct of the work.

(June 25, 1926, ch. 674, § 2, 44 Stat. 768; Mar. 3, 1927, ch. 356, 44 Stat. 1388.)

AMENDMENTS

1927—Act Mar. 3, 1927, amended provisions generally.

### § 4c. Investigation of sub-bituminous and lignite coal

The United States Bureau of Mines, under the general direction of the Secretary of the Interior, is authorized to conduct investigations, studies, and experiments on its own initiative and in cooperation with individuals, State institutions, laboratories, and other organizations, with a view to (1) the development of a commercially practicable carbonization method of processing sub-bituminous and lignite coal so as to convert such coal into an all-purpose fuel, to provide fertilizers, and obtain such other byproducts thereof as may be commercially valuable; (2) the development of efficient methods, equipment, and devices for burning lignite or char therefrom; and (3) determining and developing methods for more efficient utilization of such sub-bituminous and lignite coal for purposes of generating electric power.

(May 15, 1936, ch. 397, § 1, 49 Stat. 1275; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

CHANGE OF NAME

''United States Bureau of Mines'' substituted in text for ''Bureau of Mines'' pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

### § 4d. Plants, machinery, and equipment

The United States Bureau of Mines is further authorized, under the general direction of the Secretary of the Interior, to erect such plants, construct and purchase such machinery and equipment, and to take such other steps as it may deem necessary and proper to effectuate the purposes of section 4c of this title.

(May 15, 1936, ch. 397, § 2, 49 Stat. 1275; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

CHANGE OF NAME

''United States Bureau of Mines'' substituted in text for ''Bureau of Mines'' pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

### § 4e. Omitted

CODIFICATION

Section, act May 15, 1936, ch. 397, § 3, 49 Stat. 1275, appropriated $100,000 for carrying out provisions of sections 4c and 4d of this title to be expended during certain fiscal years, the last ending June 30, 1939.

### §§ 4f to 4*o*. Transferred

CODIFICATION

Sections 4f to 4*o* were transferred to sections 451 to 460, respectively, of this title, and subsequently repealed by Pub. L. 91–173, title V, § 509, Dec. 30, 1969, 83 Stat. 803.

### § 5. Reports of investigations

The Director of the United States Bureau of Mines shall prepare and publish, subject to the direction of the Secretary of the Interior, under the appropriations made from time to time by Congress, reports of inquiries and investigations, with appropriate recommendations of the bureau, concerning the nature, causes, and prevention of accidents, and the improvement of conditions, methods, and equipment, with special reference to health, safety, and prevention of waste in the mining, quarrying, metallurgical, and other mineral industries; the use of explosives and electricity, safety methods and appliances, and rescue and first-aid work in said industries; the causes and prevention of mine fires; and other subjects included under the provisions of sections 1, 3, and 5 to 7 of this title.

(May 16, 1910, ch. 240, § 3, 36 Stat. 370; Feb. 25, 1913, ch. 72, § 3, 37 Stat. 681; Ex. Ord. No. 4239, June 4, 1925; Ex. Ord. No. 6611, Feb. 22, 1934; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

CHANGE OF NAME

''United States Bureau of Mines'' substituted in text for ''Bureau of Mines'' pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

### §6. Personal interest of director and members of Bureau in mines

In conducting inquiries and investigations authorized under sections 1, 3, and 5 to 7 of this title neither the director nor any member of the United States Bureau of Mines shall have any personal or private interest in any mine or the products of any mine under investigation, or shall accept employment from any private party for services in the examination of any mine or private mineral property, or issue any report as to the valuation or the management of any mine or other private mineral property. Nothing herein shall be construed as preventing the temporary employment by the United States Bureau of Mines, at a compensation not to exceed $10 per day, in a consulting capacity or in the investigation of special subjects, of any engineer or other expert whose principal professional practice is outside of such employment by said bureau.

(May 16, 1910, ch. 240, §4, 36 Stat. 370; Feb. 25, 1913, ch. 72, §4, 37 Stat. 682; Pub. L. 102–285, §10(b), May 18, 1992, 106 Stat. 172.)

CHANGE OF NAME

''United States Bureau of Mines'' substituted in text for ''Bureau of Mines'' pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

### §7. Fees for tests or investigations

For tests or investigations authorized by the Secretary of the Interior under the provisions of sections 1, 3, and 5 to 7 of this title, except those performed for the Government of the United States or State governments within the United States, a fee sufficient in each case to compensate the United States Bureau of Mines for the entire cost of the services rendered shall be charged, according to a schedule prepared by the Director of the United States Bureau of Mines and approved by the Secretary of the Interior, who shall prescribe rules and regulations under which such tests and investigations may be made. All moneys received from such sources shall be paid into the Treasury to the credit of miscellaneous receipts.

(May 16, 1910, ch. 240, §5, 36 Stat. 370; Feb. 25, 1913, ch. 72, §5, 37 Stat. 682; June 30, 1932, ch. 314, §311, 47 Stat. 410; Ex. Ord. No. 4239, June 4, 1935; Ex. Ord. No. 6611, Feb. 22, 1934; Pub. L. 102–285, §10(b), May 18, 1992, 106 Stat. 172.)

AMENDMENTS

1932—Act June 30, 1932, substituted ''Secretary of Commerce'' for ''Secretary of the Interior'' and changed a reasonable fee to be charged to a fee sufficient to compensate for entire cost of services rendered.

CHANGE OF NAME

''United States Bureau of Mines'' substituted in text for ''Bureau of Mines'' pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

EFFECTIVE DATE OF 1932 AMENDMENT

Amendment by act June 30, 1932, effective July 1, 1932, see section 314 of that act.

### §8. Additional mining experiment stations and mine safety stations authorized

The Secretary of the Interior is hereby authorized and directed to establish and maintain in the several important mining regions of the United States and the Territory of Alaska, as Congress may appropriate for the necessary employees and other expenses, under the United States Bureau of Mines and in accordance with the provisions of sections 1, 3, and 5 to 7 of this title, ten mining experiment stations and seven mine safety stations, movable or stationary, in addition to those established prior to March 3, 1915, the province and duty of which shall be to make investigations and disseminate information with a view to improving conditions in the mining, quarrying, metallurgical, and other mineral industries, safeguarding life among employees, preventing unnecessary waste of resources, and otherwise contributing to the advancement of these industries. Not more than three mining experiment stations and mine safety stations authorized in this section shall be established in any one fiscal year under the appropriations made therefor.

(Mar. 3, 1915, ch. 95, §1, 38 Stat. 959; Ex. Ord. No. 4239, June 4, 1925; Ex. Ord. No. 6611, Feb. 22, 1934; Pub. L. 102–285, §10(b), May 18, 1992, 106 Stat. 172.)

CHANGE OF NAME

''United States Bureau of Mines'' substituted in text for ''Bureau of Mines'' pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

### §9. Acceptance of lands from States

The Secretary of the Interior is authorized to accept lands, buildings, or other contributions from the several States offering to cooperate in carrying out the purposes of section 8 of this title.

(Mar. 3, 1915, ch. 95, §2, 38 Stat. 959; Ex. Ord. No. 6611, Feb. 22, 1934.)

TRANSFER OF FUNCTIONS

See note set out under section 1 of this title.

### § 10. Headquarters of mine rescue cars; site for experimental work; leases and donations

The Secretary of the Interior is authorized to accept any suitable land or lands, buildings, or improvements that may be donated for the headquarters of mine rescue cars and construction of necessary railway sidings and housing for the same, or as the site of an experimental mine and plant for studying explosives, and to enter into leases for periods not exceeding ten years, subject to annual appropriations by Congress.

(June 5, 1920, ch. 235, § 1, 41 Stat. 912; Ex. Ord. No. 6611, Feb. 22, 1934.)

TRANSFER OF FUNCTIONS

See note set out under section 1 of this title.

### § 11. Omitted

CODIFICATION

Section, act May 9, 1938, ch. 187, § 1, 52 Stat. 329, providing that purchase of supplies and equipment or procurement of services for Bureau of Mines might be made in open market without compliance with section 5 of Title 41, Public Contracts, where amount involved did not exceed $100, was a provision of Interior Department appropriation act and was discontinued in acts subsequent to 1938 appropriation act.

### § 12. Repealed. Oct. 25, 1951, ch. 562, § 1(16), 65 Stat. 638

Section, act Aug. 13, 1946, ch. 961, 60 Stat. 1057, related to preservation of technical and economic records of domestic sources of ores of metals and minerals. See sections 2103, 2908, and 3102 of Title 44, Public Printing and Documents.

### § 13. Research laboratory for utilization of anthracite coal; establishment and maintenance

The Secretary of the Interior, acting through the United States Bureau of Mines, is authorized and directed to establish, equip, and maintain a research laboratory in the anthracite region of Pennsylvania to conduct researches and investigations on the mining, preparation, and utilization of anthracite coal and to develop new scientific, chemical, and technical uses and new and extended markets and outlets for anthracite coal and its products. Such laboratory shall be planned as a center for information and assistance in matters pertaining to conserving resources for national defense; to the more efficient mining, preparation, and utilization of anthracite coal; and pertaining to safety, health, and sanitation in mining operations and other matters relating to problems of the anthracite industry.

(Dec. 18, 1942, ch. 764, § 1, 56 Stat. 1056.)

TRANSFER OF FUNCTIONS

For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see note set out under section 1 of this title.

AUTHORIZATION OF APPROPRIATIONS

Section 5 of act Dec. 18, 1942, provided that: ''In order to carry out the purposes of this Act [sections 13 to 16 of this title] there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of (a) $450,000 for the erection and equipment of a building or buildings, including plumbing, lighting, heating, general service, and experimental equipment and apparatus, the necessary roads, walks, and ground improvement, and land for the site of the building if no land is donated; and (b) $175,000 annually for the maintenance and operation of the experimental station, including personal services, supplies, equipment, and expenses of travel and subsistence.''

### § 14. Acquisition of land; cooperation with other agencies

For the purpose of sections 13 to 16 of this title the Secretary, acting through the United States Bureau of Mines, is authorized to acquire land and interests therein, and to accept in the name of the United States donations of any property, real or personal, and to utilize voluntary or uncompensated services at such laboratory. The Secretary is authorized and directed to cooperate with other departments or agencies of the Federal Government, States, and State agencies and institutions, counties, municipalities, business or other organizations, corporations, associations, universities, scientific societies, and individuals, upon such terms and conditions as he may prescribe.

(Dec. 18, 1942, ch. 764, § 2, 56 Stat. 1057.)

TRANSFER OF FUNCTIONS

For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see note set out under section 1 of this title.

### § 15. Repealed. Pub. L. 86–533, § 1(17), June 29, 1960, 74 Stat. 248

Section, act Dec. 18, 1942, ch. 764, § 3, 56 Stat. 1057, related to reports to Congress of expenditures and donations to laboratory established under sections 13 to 16 of this title.

### § 16. Research laboratory for utilization of anthracite coal; establishment of advisory committee; composition; functions; appointment

The Secretary of the Interior, acting through the United States Bureau of Mines, may, in his discretion, create and establish an advisory committee composed of not more than six members to exercise consultative functions, when required by the Secretary, in connection with the administration of sections 13 to 16 of this title. The said committee shall be composed of representatives of anthracite coal mine owners, of representatives of anthracite coal mine workers and the public in equal number. The members of said committee shall be appointed by the Secretary of the Interior without regard to the civil-service laws.

(Dec. 18, 1942, ch. 764, § 4, 56 Stat. 1057.)

REFERENCES IN TEXT

The civil-service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See particularly, section 3301 et seq. of Title 5.

TRANSFER OF FUNCTIONS

For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see note set out under section 1 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year

period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

## CHAPTER 2—MINERAL LANDS AND REGULATIONS IN GENERAL


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### § 21. Mineral lands reserved

In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

(R.S. § 2318.)

CODIFICATION

R.S. § 2318 derived from act July 4, 1866, ch. 166, § 5, 14 Stat. 86.

### § 21a. National mining and minerals policy; "minerals" defined; execution of policy under other authorized programs

The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, (3) mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and (4) the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities.

For the purpose of this section ''minerals'' shall include all minerals and mineral fuels including oil, gas, coal, oil shale and uranium.

It shall be the responsibility of the Secretary of the Interior to carry out this policy when exercising his authority under such programs as may be authorized by law other than this section.

(Pub. L. 91–631, title I, § 101, formerly § 2, Dec. 31, 1970, 84 Stat. 1876; Pub. L. 104–66, title I, § 1081(b), Dec. 21, 1995, 109 Stat. 721; renumbered title I, § 101, Pub. L. 104–325, § 2(1), (2), Oct. 19, 1996, 110 Stat. 3994.)

AMENDMENTS

1995—Pub. L. 104–66 in last par. struck out at end ''For this purpose the Secretary of the Interior shall include in his annual report to the Congress a report on the state of the domestic mining, minerals, and mineral reclamation industries, including a statement of the trend in utilization and depletion of these resources, together with such recommendations for legislative programs as may be necessary to implement the policy of this section.''

SHORT TITLE

Section 1 of Pub. L. 91–631 provided: ''That this Act [enacting this section] may be cited as the 'Mining and Minerals Policy Act of 1970'.''

### § 22. Lands open to purchase by citizens

Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

(R.S. § 2319.)

CODIFICATION

R.S. § 2319 derived from act May 10, 1872, ch. 152, § 1, 17 Stat. 91.

Words ''Except as otherwise provided,'' were editorially supplied on authority of act Feb. 25, 1920, ch. 85, 41 Stat. 437, popularly known as the Mineral Lands Leasing Act, which is classified to chapter 3A (§ 181 et seq.) of this title.

SHORT TITLE

Sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 43, and 47 of this title are based on sections of the Revised Statutes which are derived from act May 10, 1872, ch. 152, 17 Stat. 91, popularly known as the ''General Mining Act of 1872''.

### § 23. Length of claims on veins or lodes

Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, located prior to May 10, 1872, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the 10th day of May 1872, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th day of May 1872 render such limitation necessary. The end lines of each claim shall be parallel to each other.

(R.S. § 2320.)

CODIFICATION

R.S. § 2320 derived from act May 10, 1872, ch. 152, § 2, 17 Stat. 91.

### § 24. Proof of citizenship

Proof of citizenship, under sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

(R.S. § 2321.)

REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, referred to in text, were in the original ''this chapter'', meaning chapter 6 of title 32 of the Revised Statutes, consisting of R.S. §§ 2318 to 2352.

CODIFICATION

R.S. § 2321 derived from act May 10, 1872, ch. 152, § 7, 17 Stat. 94.

### § 25. Affidavit of citizenship

Applicants for mineral patents, if residing beyond the limits of the district wherein the claim

is situated, may make any oath or affidavit required for proof of citizenship before the clerk of any court of record or before any notary public of any State or Territory.

(Apr. 26, 1882, ch. 106, § 2, 22 Stat. 49.)

### § 26. Locators' rights of possession and enjoyment

The locators of all mining locations made on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim existed on the 10th day of May 1872 so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. Nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

(R.S. § 2322.)

CODIFICATION

R.S. § 2322 derived from act May 10, 1872, ch. 152, § 3, 17 Stat. 91.

### § 27. Mining tunnels; right to possession of veins on line with; abandonment of right

Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

(R.S. § 2323.)

CODIFICATION

R.S. § 2323 derived from act May 10, 1872, ch. 152, § 4, 17 Stat. 92.

SHORT TITLE

This section is popularly known as the Tunnel Site Act.

### § 28. Mining district regulations by miners: location, recordation, and amount of work; marking of location on ground; records; annual labor or improvements on claims pending issue of patent; co-owner's succession in interest upon delinquency in contributing proportion of expenditures; tunnel as lode expenditure

The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims made after May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the 10th day of May 1872, that is granted a waiver under section 28f of this title, and until a patent has been issued therefor, not less than $100 worth of labor shall be performed or improvements made during each year. On all claims located prior to the 10th day of May 1872, $10 worth of labor shall be performed or improvements made each year, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several coowners to contribute his proportion of the expenditures required hereby, the coowners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures. The period within which the work required to be done annually on all unpatented mineral claims located since May 10, 1872, including such claims in the Territory of Alaska, shall commence at 12 o'clock meridian on the 1st day of September succeeding the date of location of such claim.

Where a person or company has or may run a tunnel for the purposes of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since May 10, 1872;

and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by this section. On all such valid claims the annual period ending December 31, 1921, shall continue to 12 o'clock meridian July 1, 1922.

(R.S. § 2324; Feb. 11, 1875, ch. 41, 18 Stat. 315; Jan. 22, 1880, ch. 9, § 2, 21 Stat. 61; Aug. 24, 1921, ch. 84, 42 Stat. 186; Pub. L. 85–736, § 1, Aug. 23, 1958, 72 Stat. 829; Pub. L. 103–66, title X, § 10105(b), Aug. 10, 1993, 107 Stat. 406.)

CODIFICATION

R.S. § 2324 derived from act May 10, 1872, ch. 152, § 5, 17 Stat. 92.

AMENDMENTS

1993—Pub. L. 103–66 inserted ''that is granted a waiver under section 28f of this title,'' after ''On each claim located after the 10th day of May 1872,''.

1958—Pub. L. 85–736 changed period for doing annual assessment work on unpatented mineral claims, substituting ''1st day of September'' for ''1st day of July''.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

ASSESSMENT WORK YEARS, 1957–58 AND 1958–59

Section 2 of Pub. L. 85–736 provided that the period commencing in 1957 for the performance of annual assessment work under this section shall end at 12 o'clock meridian on the 1st day of July 1958, and the period commencing in 1958 for the performance of such annual assessment work shall commence at 12 o'clock meridian on the 1st day of July 1958, and shall continue to 12 o'clock meridian on Sept. 1, 1959.

### § 28–1. Inclusion of certain surveys in labor requirements of mining claims; conditions and restrictions

The term ''labor'', as used in the third sentence of section 28 of this title, shall include, without being limited to, geological, geochemical and geophysical surveys conducted by qualified experts and verified by a detailed report filed in the county office in which the claim is located which sets forth fully (a) the location of the work performed in relation to the point of discovery and boundaries of the claim, (b) the nature, extent, and cost thereof, (c) the basic findings therefrom, and (d) the name, address, and professional background of the person or persons conducting the work. Such surveys, however, may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim, and each such survey shall be nonrepetitive of any previous survey on the same claim.

(Pub. L. 85–876, § 1, Sept. 2, 1958, 72 Stat. 1701.)

### § 28–2. Definitions

As used in section 28–1 of this title,

(a) The term ''geological surveys'' means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

(b) The term ''geochemical surveys'' means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

(c) The term ''geophysical surveys'' means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuities in geological formations;

(d) The term ''qualified expert'' means an individual qualified by education or experience to conduct geological, geochemical or geophysical surveys, as the case may be.

(Pub. L. 85–876, § 2, Sept. 2, 1958, 72 Stat. 1701.)

### § 28a. Omitted

CODIFICATION

Section, act June 29, 1950, ch. 404, 64 Stat. 275, provided for extension of time of annual assessment work, on mining claims in the United States, including Alaska, for period commencing July 1, 1949, until 12 o'clock noon Oct. 1, 1950, and also provided for commencement of assessment work or improvements required for year ending 12 o'clock noon July 1, 1951, immediately following 12 o'clock noon July 1, 1950. See sections 28b to 28e of this title.

### § 28b. Annual assessment work on mining claims; temporary deferment; conditions

The performance of not less than $100 worth of labor or the making of improvements aggregating such amount, which labor or improvements are required under the provisions of section 28 of this title to be made during each year, may be deferred by the Secretary of the Interior as to any mining claim or group of claims in the United States upon the submission by the claimant of evidence satisfactory to the Secretary that such mining claim or group of claims is surrounded by lands over which a right-of-way for the performance of such assessment work has been denied or is in litigation or is in the process of acquisition under State law or that other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

(June 21, 1949, ch. 232, § 1, 63 Stat. 214.)

### § 28c. Length and termination of deferment

The period for which said deferment may be granted shall end when the conditions justifying deferment have been removed: *Provided*, That the initial period shall not exceed one year but may be renewed for a further period of one year if justifiable conditions exist: *Provided further*, That the relief available under sections 28b to 28e of this title is in addition to any relief available under any other Act of Congress with respect to mining claims.

(June 21, 1949, ch. 232, § 2, 63 Stat. 215.)

### § 28d. Performance of deferred work

All deferred assessment work shall be performed not later than the end of the assessment year next subsequent to the removal or ces-

sation of the causes for deferment or the expiration of any deferments granted under sections 28b to 28e of this title and shall be in addition to the annual assessment work required by law in such year.

(June 21, 1949, ch. 232, § 3, 63 Stat. 215.)

**§ 28e. Recordation of deferment**

Claimant shall file or record or cause to be filed or recorded in the office where the notice or certificate of location of such claim or group of claims is filed or recorded, a notice to the public of claimant's petition to the Secretary of the Interior for deferment under sections 28b to 28e of this title, and of the order or decision disposing of such petition.

(June 21, 1949, ch. 232, § 4, 63 Stat. 215.)

**§ 28f. Fee**

**(a) Claim maintenance fee**

The holder of each unpatented mining claim, mill, or tunnel site, located pursuant to the mining laws of the United States, whether located before, on or after August 10, 1993, shall pay to the Secretary of the Interior, on or before September 1 of each year for years 2004 through 2008, a claim maintenance fee of $100 per claim or site[1] Such claim maintenance fee shall be in lieu of the assessment work requirement contained in the Mining Law of 1872 (30 U.S.C. 28–28e)[2] and the related filing requirements contained in section 1744(a) and (c) of title 43.

**(b) Time of payment**

The claim maintenance fee payable pursuant to subsection (a) of this section for any assessment year shall be paid before the commencement of the assessment year, except that for the initial assessment year in which the location is made, the locator shall pay the claim maintenance fee at the time the location notice is recorded with the Bureau of Land Management. The location fee imposed under section 28g of this title shall be payable not later than 90 days after the date of location.

**(c) Oil shale claims subject to claim maintenance fees under Energy Policy Act of 1992**

This section shall not apply to any oil shale claims for which a fee is required to be paid under section 2511(e)(2) of the Energy Policy Act of 1992 (Public Law 102–486; 106 Stat. 3111; 30 U.S.C. 242).

**(d) Waiver**

(1) The claim maintenance fee required under this section may be waived for a claimant who certifies in writing to the Secretary that on the date the payment was due, the claimant and all related parties—

(A) held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands; and

(B) have performed assessment work required under the Mining Law of 1872 (30 U.S.C. 28–28e)[2] to maintain the mining claims held by the claimant and such related parties for the assessment year ending on noon of September 1 of the calendar year in which payment of the claim maintenance fee was due.

(2) For purposes of paragraph (1), with respect to any claimant, the term ''related party'' means—

(A) the spouse and dependent children (as defined in section 152 of title 26), of the claimant; and

(B) a person who controls, is controlled by, or is under common control with the claimant.

For purposes of this section, the term control includes actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means.

(3) If a small miner waiver application is determined to be defective for any reason, the claimant shall have a period of 60 days after receipt of written notification of the defect or defects by the Bureau of Land Management to: (A) cure such defect or defects, or (B) pay the $100 claim maintenance fee due for such period.

(Pub. L. 103–66, title X, § 10101, Aug. 10, 1993, 107 Stat. 405; Pub. L. 105–240, § 116, Sept. 25, 1998, 112 Stat. 1570; Pub. L. 105–277, div. A, § 101(e) [title I], Oct. 21, 1998, 112 Stat. 2681–231, 2681–235; Pub. L. 107–63, title I, [(1)], Nov. 5, 2001, 115 Stat. 418; Pub. L. 108–108, title I, Nov. 10, 2003, 117 Stat. 1245.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in subsec. (a), are classified generally to this title.

The Mining Law of 1872 (30 U.S.C. 28–28e), referred to in subsecs. (a) and (d)(1)(B), probably means act May 10, 1872, ch. 152, 17 Stat. 91, as amended. That act was incorporated into the Revised Statutes as R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344, which are classified to sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 42, and 47 of this title. For complete classification of R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344 to the Code, see Tables.

CODIFICATION

Pub. L. 108–108, which directed the amendment of section 28 of title 30, United States Code, ''in section 28f(a)'', was executed by making the amendment to section 10101 of Pub. L. 103–66, which is classified to this section, to reflect the probable intent of Congress. See 2003 Amendment note below.

Pub. L. 107–63, which directed the amendment of section 28f of title 30, United States Code, was executed by making the amendment to section 10101 of Pub. L. 103–66, which is classified to this section, to reflect the probable intent of Congress. See 2001 Amendment note below.

Pub. L. 105–277, which directed the amendment of section 28f of title 30, United States Code, was executed by making the amendment to section 10101 of Pub. L. 103–66, which is classified to this section, to reflect the probable intent of Congress. See 1998 Amendment notes below.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–108 substituted ''for years 2004 through 2008'' for ''for years 2002 through 2003''. See Codification note above.

2001—Subsec. (a). Pub. L. 107–63 added first sentence and struck out former first sentence which read as follows: ''The holder of each unpatented mining claim, mill, or tunnel site, located pursuant to the mining

[1] So in original. Probably should be followed by a period.

[2] See References in Text note below.

laws of the United States, whether located before or after August 10, 1993, shall pay to the Secretary of the Interior, on or before September 1 of each year for years 1999 through 2001, a claim maintenance fee of $100 per claim or site.'' See Codification note above.

1998—Subsec. (a). Pub. L. 105–277 added first sentence and struck out former first sentence which read as follows: ''The holder of each unpatented mining claim, mill, or tunnel site located pursuant to the mining laws of the United States before October 1, 1998 shall pay the Secretary of the Interior, on or before September 1, 1999 a claim maintenance fee of $100 per claim site.'' See Codification note above.

Pub. L. 105–240 substituted ''The holder of each unpatented mining claim, mill, or tunnel site located pursuant to the mining laws of the United States before October 1, 1998 shall pay the Secretary of the Interior, on or before September 1, 1999 a claim maintenance fee of $100 per claim site.'' for ''The holder of each unpatented mining claim, mill or tunnel site located pursuant to the Mining Laws of the United States, whether located before or after August 10, 1993, shall pay to the Secretary of the Interior, on or before August 31 of each year, for years 1994 through 1998, a claim maintenance fee of $100 per claim.''

Subsec. (d)(3). Pub. L. 105–277 added par. (3). See Codification note above.

SIMILAR PROVISIONS

Similar provisions were contained in Pub. L. 102–381, title I, Oct. 5, 1992, 106 Stat. 1378, 1379.

### § 28g. Location fee

Notwithstanding any other provision of law, for every unpatented mining claim, mill or tunnel site located after August 10, 1993, and before September 30, 2008, pursuant to the Mining Laws of the United States, the locator shall, at the time the location notice is recorded with the Bureau of Land Management, pay to the Secretary of the Interior a location fee, in addition to the claim maintenance fee required by section 28f of this title, of $25.00 per claim.

(Pub. L. 103–66, title X, § 10102, Aug. 10, 1993, 107 Stat. 406; Pub. L. 105–277, div. A, § 101(e) [title I], Oct. 21, 1998, 112 Stat. 2681–231, 2681–235; Pub. L. 107–63, title I, [(2)], Nov. 5, 2001, 115 Stat. 419; Pub. L. 108–108, title I, Nov. 10, 2003, 117 Stat. 1245.)

REFERENCES IN TEXT

The Mining Laws of the United States, referred to in text, are classified generally to this title.

CODIFICATION

Pub. L. 108–108, which directed the amendment of section 28 of title 30, United States Code, ''in section 28g'', was executed by making the amendment to section 10102 of Pub. L. 103–66, which is classified to this section, to reflect the probable intent of Congress. See 2003 Amendment note below.

Pub. L. 107–63, which directed the amendment of section 28f(a) of title 30, United States Code, in section 28g, was executed by making the amendment to section 10102 of Pub. L. 103–66, which is classified to this section, to reflect the probable intent of Congress. See 2001 Amendment note below.

Pub. L. 105–277, which directed the amendment of section 28g of title 30, United States Code, was executed by making the amendment to section 10102 of Pub. L. 103–66, which is classified to this section, to reflect the probable intent of Congress. See 1998 Amendment note below.

AMENDMENTS

2003—Pub. L. 108–108 substituted ''2008'' for ''2003''. See Codification note above.

2001—Pub. L. 107–63 substituted ''2003'' for ''2001''. See Codification note above.

1998—Pub. L. 105–277 substituted ''2001'' for ''1998''. See Codification note above.

SIMILAR PROVISIONS

Similar provisions were contained in Pub. L. 102–381, title I, Oct. 5, 1992, 106 Stat. 1378, 1379.

### § 28h. Co-ownership

The co-ownership provisions of the Mining Law of 1872 (30 U.S.C. 28)[1] shall remain in effect, except that in applying such provisions, the annual claim maintenance fee required under this Act shall, where applicable, replace applicable assessment requirements and expenditures.

(Pub. L. 103–66, title X, § 10103, Aug. 10, 1993, 107 Stat. 406.)

REFERENCES IN TEXT

The Mining Law of 1872 (30 U.S.C. 28), referred to in text, probably means act May 10, 1872, ch. 152, 17 Stat. 91, as amended. That act was incorporated into the Revised Statutes as R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344, which are classified to sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 42, and 47 of this title. For complete classification of R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344 to the Code, see Tables.

This Act, referred to in text, is Pub. L. 103–66, Aug. 10, 1993, 107 Stat. 312, known as the Omnibus Budget Reconciliation Act of 1993. The annual claim maintenance fee required under this Act probably refers to the fee required under section 28f of this title. For complete classification of this Act to the Code, see Tables.

SIMILAR PROVISIONS

Similar provisions were contained in Pub. L. 102–381, title I, Oct. 5, 1992, 106 Stat. 1378, 1379.

### § 28i. Failure to pay

Failure to pay the claim maintenance fee or the location fee as required by sections 28f to 28k of this title shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law.

(Pub. L. 103–66, title X, § 10104, Aug. 10, 1993, 107 Stat. 406.)

SIMILAR PROVISIONS

Similar provisions were contained in Pub. L. 102–381, title I, Oct. 5, 1992, 106 Stat. 1378, 1379.

### § 28j. Other requirements

#### (a) Federal Land Policy and Management Act requirements

Nothing in sections 28f to 28k of this title shall change or modify the requirements of section 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(b)), or the requirements of section 314(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(c)) related to filings required by section 314(b), and such requirements shall remain in effect with respect to claims, and mill or tunnel sites for which fees are required to be paid under this section.

[1] See References in Text note below.

**(b) Omitted**

**(c) Fee adjustments**

(1) The Secretary of the Interior shall adjust the fees required by sections 28f to 28k of this title to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor every 5 years after August 10, 1993, or more frequently if the Secretary determines an adjustment to be reasonable.

(2) The Secretary shall provide claimants notice of any adjustment made under this subsection not later than July 1 of any year in which the adjustment is made.

(3) A fee adjustment under this subsection shall begin to apply the first assessment year which begins after adjustment is made.

(Pub. L. 103–66, title X, § 10105, Aug. 10, 1993, 107 Stat. 406.)

CODIFICATION

Section is comprised of section 10105 of Pub. L. 103–66. Subsec. (b) of section 10105 of Pub. L. 103–66 amended section 28 of this title.

SIMILAR PROVISIONS

Similar provisions were contained in Pub. L. 102–381, title I, Oct. 5, 1992, 106 Stat. 1378, 1379.

**§ 28k. Regulations**

The Secretary of the Interior shall promulgate rules and regulations to carry out the terms and conditions of sections 28f to 28k of this title as soon as practicable after August 10, 1993.

(Pub. L. 103–66, title X, § 10106, Aug. 10, 1993, 107 Stat. 407.)

SIMILAR PROVISIONS

Similar provisions were contained in Pub. L. 102–381, title I, Oct. 5, 1992, 106 Stat. 1378, 1379.

**§ 29. Patents; procurement procedure; filing: application under oath, plat and field notes, notices, and affidavits; posting plat and notice on claim; publication and posting notice in office; certificate; adverse claims; payment per acre; objections; nonresident claimant's agent for execution of application and affidavits**

A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title, and section 661 of title 43, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the Director of the Bureau of Land Management, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the Director of the Bureau of Land Management that $500 worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of $5 per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43. Where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits.

(R.S. § 2325; Jan. 22, 1880, ch. 9, § 1, 21 Stat. 61; Mar. 3, 1925, ch. 462, 43 Stat. 1144, 1145; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, referred to in text, were in the original "this chapter", meaning chapter 6 of title 32 of the Revised Statutes, consisting of R.S. §§ 2318 to 2352.

CODIFICATION

R.S. § 2325 derived from act May 10, 1872, ch. 152, § 6, 17 Stat. 92.

AMENDMENTS

1925—Act Mar. 3, 1925, affected words, in first sentence of text, now reading "United States supervisor of surveys," and words, in next to last sentence of text, now reading "register of the proper land office." Those

words formerly read ''United States surveyor general'' and ''register and receiver of the proper land office,'' respectively. This act abolished the office of surveyor general, and transferred to and consolidated with the Field Surveying Service, under the jurisdiction of the U.S. Supervisor of Surveys, the administration, equipment, etc., of such office, and consolidated the offices and functions of the register and receiver.

TRANSFER OF FUNCTIONS

Director of the Bureau of Land Management substituted for United States Supervisor of Surveys wherever appearing. In the establishment of The Bureau of Land Management by Reorg. Plan No. 3 of 1946, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100, set out in the Appendix to Title 5, Government Organization and Employees, the office of Supervisor of Surveys was abolished and the functions and powers were transferred to the Secretary of the Interior, to be performed by such officers or agencies of the Department as might be designated by the Secretary. Under that authority, the functions and powers formerly exercised by the Supervisor of Surveys were delegated to the Chief Cadastral Engineer, subject to the supervision of the Director of the Bureau of Land Management. In the general reorganization and realignment of functions of the Bureau, the office of the Chief Cadastral Engineer was abolished, and the functions of that office have been delegated to the Director of the Bureau of Land Management. See 43 C.F.R. § 9180.0–3(a)(1).

Office of register of district land office abolished and all functions of register transferred to Secretary of the Interior, or to officers and agencies of Department of the Interior as Secretary may designate, by Reorg. Plan No. 3 of 1946, § 403, set out in the Appendix to Title 5.

See also Transfer of Functions note set out under section 1 of this title.

**§ 30. Adverse claims; oath of claimants; requisites; waiver; stay of land office proceedings; judicial determination of right of possession; successful claimants' filing of judgment roll, certificate of labor, and description of claim in land office, and acreage and fee payments; issuance of patents for entire or partial claims upon certification of land office proceedings and judgment roll; alienation of patent title**

Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment roll with the register of the land office, together with the certificate of the Director of the Bureau of Land Management that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the register $5 per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment roll shall be certified by the register to the Director of the Bureau of Land Management, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the Director of the Bureau of Land Management whereupon the register shall certify the proceedings and judgment roll to the Director of the Bureau of Land Management, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever.

(R.S. § 2326; Mar. 3, 1925, ch. 462, 43 Stat. 1144, 1145; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

CODIFICATION

R.S. § 2326 derived from act May 10, 1872, ch. 152, § 7, 17 Stat. 93.

AMENDMENTS

1925—Act Mar. 3, 1925, affected words, in third and fourth sentences of text, now reading ''United States supervisor of surveys'', and words, in third sentence of text, now reading ''pay to the register $5 per acre.'' Such words formerly read ''surveyor-general'', and ''pay to the receiver five dollars per acre'', respectively. Such act is treated more fully in notes under section 29 of this title.

TRANSFER OF FUNCTIONS

Director of the Bureau of Land Management substituted for United States Supervisor of Surveys following the words ''certificate of the'' in sentence beginning ''After such judgment'' and following the words ''description by the'' in sentence beginning ''If it appears''. In the establishment of the Bureau of Land Management by Reorg. Plan No. 3 of 1946, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100, set out in the Appendix to Title 5, Government Organization and Employees, the office of Supervisor of Surveys was abolished and the functions and powers were transferred to the Secretary of the Interior, to be performed by such officers or agencies of the Department as might be designated by the Secretary. Under that authority, the functions and powers formerly exercised by the Supervisor of Surveys were delegated to the Chief Cadastral Engineer, subject to the supervision of the Director of the Bureau of Land Management. In the general reorganization and realignment of functions of the Bureau, the office of the Chief Cadastral Engineer was abolished, and the functions of that office have been delegated to the Director of the Bureau of Land Management. See 43 C.F.R. § 9180.0–3(a)(1).

''Director of the Bureau of Land Management'' was substituted for ''Commissioner of the General Land Office'' following the words ''register to the'' in sentence beginning ''After such judgment'' and in sentence beginning ''If it appears'' following the words ''judgment roll to the'' on authority of Reorg. Plan No. 3 of 1946, set § 403, set out in the Appendix to Title 5. Section 403 of Reorg. Plan No. 3 of 1946, abolished the office of the Commissioner of the General Land Office and consolidated the functions of the General Land Office with the

Grazing Service to form the Bureau of Land Management.

Office of register of district land office abolished and all functions of register transferred to Secretary of the Interior, or to officers and agencies of Department of the Interior as Secretary may designate, by Reorg. Plan No. 3 of 1946, § 403, set out in the Appendix to Title 5.

### § 31. Oath: agent or attorney in fact, beyond district of claim

The adverse claim required by section 30 of this title may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or of the State or Territory where the adverse claimant may then be, or before any notary public of such State or Territory.

(Apr. 26, 1882, ch. 106, § 1, 22 Stat. 49.)

### § 32. Findings by jury; costs

If, in any action brought pursuant to section 30 of this title, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land office or be entitled to a patent for the ground in controversy until he shall have perfected his title.

(Mar. 3, 1881, ch. 140, 21 Stat. 505.)

### § 33. Existing rights

All patents for mining claims upon veins or lodes issued prior to May 10, 1872, shall convey all the rights and privileges conferred by sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43 where no adverse rights existed on the 10th day of May, 1872.

(R.S. § 2328.)

REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, referred to in text, were in the original ''this chapter'', meaning chapter 6 of title 32 of the Revised Statutes, consisting of R.S. §§ 2318 to 2352.

CODIFICATION

R.S. § 2328 derived from act May 10, 1872, ch. 152, § 9, 17 Stat. 94.

Provision of this section respecting prosecution of applications for patents for mining claims in General Land Office, pending May 10, 1872, was omitted from the Code.

### § 34. Description of vein claims on surveyed and unsurveyed lands; monuments on ground to govern conflicting calls

The description of vein or lode claims upon surveyed lands shall designate the location of the claims with reference to the lines of the public survey, but need not conform therewith; but where patents have been or shall be issued for claims upon unsurveyed lands, the Director of the Bureau of Land Management in extending the public survey, shall adjust the same to the boundaries of said patented claims so as in no case to interfere with or change the true location of such claims as they are officially established upon the ground. Where patents have issued for mineral lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the monuments of the official survey upon which the patent grant is based, and the Director of the Bureau of Land Management in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between the said monuments of such patented claims and the descriptions of said claims in the patents issued therefor the monuments on the ground shall govern, and erroneous or inconsistent descriptions or calls in the patent descriptions shall give way thereto.

(R.S. § 2327; Apr. 28, 1904, ch. 1796, 33 Stat. 545; Mar. 3, 1925, ch. 462, 43 Stat. 1144; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

CODIFICATION

R.S. § 2327 derived from act May 10, 1872, ch. 152, § 8, 17 Stat. 94.

AMENDMENTS

1925—Act Mar. 3, 1925, affected words now reading ''United States supervisor of surveys'' in first and second sentences of text. These words formerly read ''the surveyor-general.'' This act abolished the office of surveyor general, and transferred to and consolidated with the Field Surveying Service, under the jurisdiction of the U.S. Supervisor of Surveys, the administration, equipment, etc., of such office.

TRANSFER OF FUNCTIONS

Director of the Bureau of Land Management, substituted for United States Supervisor of Surveys wherever appearing. In the establishment of the Bureau of Land Management by Reorg. Plan No. 3 of 1946, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100, set out in the Appendix to Title 5, Government Organization and Employees, the office of Supervisor of Surveys was abolished and the functions and powers were transferred to the Secretary of the Interior, to be performed by such officers or agencies of the Department as might be designated by the Secretary. Under that authority, the functions and powers formerly exercised by the Supervisor of Surveys were delegated to the Chief Cadastral Engineer, subject to the supervision of the Director of the Bureau of Land Management. In the general reorganization and realignment of functions of the Bureau, the office of the Chief Cadastral Engineer was abolished, and the functions of that office have been delegated to the Director of the Bureau of Land Management. See 43 C.F.R. § 9180.0–3(a)(1).

See also note set out under section 1 of this title.

### § 35. Placer claims; entry and proceedings for patent under provisions applicable to vein or lode claims; conforming entry to legal subdivisions and surveys; limitation of claims; homestead entry of segregated agricultural land

Claims usually called ''placers,'' including all forms of deposit, excepting veins of quartz, or

other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands. And where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the 10th day of May 1872, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead purposes.

(R.S. §§ 2329, 2331; Mar. 3, 1891, ch. 561, § 4, 26 Stat. 1097.)

CODIFICATION

R.S. § 2329 derived from act July 9, 1870, ch. 235, § 12, 16 Stat. 217.

R.S. § 2331 derived from act May 10, 1872, ch. 152, § 10, 17 Stat. 94.

SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of Title 43, Public Lands.

### § 36. Subdivisions of 10-acre tracts; maximum of placer locations; homestead claims of agricultural lands; sale of improvements

Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the 9th day of July 1870, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

(R.S. § 2330; Mar. 3, 1891, ch. 561, § 4, 26 Stat. 1097.)

CODIFICATION

R.S. § 2330 derived from act July 9, 1870, ch. 235, § 12, 16 Stat. 217.

SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of Title 43, Public Lands.

### § 37. Proceedings for patent where boundaries contain vein or lode; application; statement including vein or lode; issuance of patent: acreage payments for vein or lode and placer claim; costs of proceedings; knowledge affecting construction of application and scope of patent

Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, including such vein or lode, upon the payment of $5 per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer claim, or any placer claim not embracing any vein or lode claim, shall be paid for at the rate of $2.50 per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section 23 of this title, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

(R.S. § 2333.)

REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, referred to in text, were in the original ''this chapter'', meaning chapter 6 of title 32 of the Revised Statutes, consisting of R.S. §§ 2318 to 2352.

CODIFICATION

R.S. § 2333 derived from act May 10, 1872, ch. 152, § 11, 17 Stat. 94.

### § 38. Evidence of possession and work to establish right to patent

Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, in the absence of any adverse claim; but nothing in such sections shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

(R.S. § 2332.)

REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, referred

to in text, were in the original ''this chapter'', meaning chapter 6 of title 32 of the Revised Statutes, consisting of R.S. §§ 2318 to 2352.

CODIFICATION

R.S. § 2332 derived from act July 9, 1870, ch. 235, § 13, 16 Stat. 217.

SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of Title 43, Public Lands.

### § 39. Surveyors of mining claims

The Director of the Bureau of Land Management may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Director of the Bureau of Land Management shall also have power to establish the maximum charges for surveys and publication of notices under sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the Director may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register of the land office, which statement shall be transmitted, with the other papers in the case, to the Director of the Bureau of Land Management.

(R.S. § 2334; Mar. 3, 1925, ch. 462, 43 Stat. 1144, 1145; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, referred to in text, were in the original ''this chapter'', meaning chapter 6 of title 32 of the Revised Statutes, consisting of R.S. §§ 2318 to 2352.

CODIFICATION

R.S. § 2334 derived from act May 10, 1872, ch. 152, § 12, 17 Stat. 95.

AMENDMENTS

1925—Act Mar. 3, 1925, affected words in first sentence of text, now reading ''The United States supervisor of surveys,'' and words in third sentence of text, now reading ''money paid the register of the Land Office.'' Such words formerly read ''the surveyor-general of the United States,'' and ''and money paid the register and the receiver of the land-office.'' Such act is treated more fully in note under section 29 of this title.

TRANSFER OF FUNCTIONS

Director of the Bureau of Land Management substituted for United States Supervisor of Surveys in sentence beginning ''The Director of the Bureau of Land Management may appoint''. In the establishment of the Bureau of Land Management by Reorg. Plan No. 3 of 1946, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100, set out in the Appendix to Title 5, Government Organization and Employees, the office of Supervisor of Surveys was abolished and the functions and powers were transferred to the Secretary of the Interior, to be performed by such officers or agencies of the Department as might be designated by the Secretary. Under that authority, the functions and powers formerly exercised by the Supervisor of Surveys were delegated to the Chief Cadastral Engineer, subject to the supervision of the Director of the Bureau of Land Management. In the general reorganization and realignment of functions of the Bureau, the office of the Chief Cadastral Engineer was abolished, and the functions of that office have been delegated to the Director of the Bureau of Land Management. See 43 C.F.R. § 9180.0–3(a)(1).

In sentence beginning ''The Director of the Bureau of Land Management shall also have power'', ''Director of the Bureau of Land Management'' substituted for ''Commissioner of the General Land Office'' in two instances and ''Director'' for ''Commissioner'' on authority of Reorg. Plan No. 3 of 1946, § 403, set out in the Appendix to Title 5. Section 403 of Reorg. Plan No. 3 of 1946, abolished the office of the Commissioner of the General Land Office and consolidated the functions of the General Land Office with the Grazing Service to form the Bureau of Land Management.

Office of register of district land office abolished and all functions of register transferred to Secretary of the Interior, or to officers and agencies of Department of the Interior as Secretary may designate, by Reorg. Plan No. 3 of 1946, § 403, set out in the Appendix to Title 5.

See also note set out under section 1 of this title.

### § 40. Verification of affidavits

All affidavits required to be made under sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title, and section 661 of title 43 may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register of the land office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

(R.S. § 2335; Mar. 3, 1925, ch. 462, 43 Stat. 1145; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, referred to in text, were in the original ''this chapter'', meaning chapter 6 of title 32 of the Revised Statutes, consisting of R.S. §§ 2318 to 2352.

CODIFICATION

R.S. § 2335 derived from act May 10, 1872, ch. 152, § 13, 17 Stat. 95.

AMENDMENTS

1925—Act Mar. 3, 1925, affected words in first sentence of text, now reading ''before the register of the land of-

fice.'' Such words formerly read ''before the register and receiver of the land-office.'' Such act is treated more fully in note under section 29 of this title.

TRANSFER OF FUNCTIONS

Office of register of district land office abolished and all functions of register transferred to Secretary of the Interior, or to officers and agencies of Department of the Interior as Secretary may designate, by Reorg. Plan No. 3 of 1946, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100, set out in the Appendix to Title 5, Government Organization and Employees.

See also note set out under section 1 of this title.

### § 41. Intersecting or crossing veins

Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right-of-way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

(R.S. § 2336.)

CODIFICATION

R.S. § 2336 derived from act May 10, 1872, ch. 152, § 14, 17 Stat. 96.

### § 42. Patents for nonmineral lands: application, survey, notice, acreage limitation, payment

#### (a) Vein or lode and mill site owners eligible

Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location made on and after May 10, 1872, of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43 for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

#### (b) Placer claim owners eligible

Where nonmineral land is needed by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim, and is used or occupied by the proprietor for such purposes, such land may be included in an application for a patent for such claim, and may be patented therewith subject to the same requirements as to survey and notice as are applicable to placers. No location made of such nonmineral land shall exceed five acres and payment for the same shall be made at the rate applicable to placer claims which do not include a vein or lode.

(R.S. § 2337; Pub. L. 86–390, Mar. 18, 1960, 74 Stat. 7.)

REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, referred to in subsec. (a), were in the original ''this chapter'', meaning chapter 6 of title 32 of the Revised Statutes, consisting of R.S. §§ 2318 to 2352.

CODIFICATION

R.S. § 2337 derived from act May 10, 1872, ch. 152, § 15, 17 Stat. 96.

AMENDMENTS

1960—Pub. L. 86–390 designated existing provisions as subsec. (a) and added subsec. (b).

### § 43. Conditions of sale by local legislature

As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

(R.S. § 2338.)

CODIFICATION

R.S. § 2338 derived from act July 26, 1866, ch. 262, § 5, 14 Stat. 252.

SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of Title 43, Public Lands.

### §§ 44, 45. Omitted

CODIFICATION

Section 44, R.S. § 2341; act Mar. 3, 1891, ch. 561, § 4, 26 Stat. 1097, provided for extension of provisions of Homestead laws to citizens of United States who had prior to 1874 located on lands designated prior to 1866 as mineral lands, and improved them for agricultural purposes, provided no valuable mineral deposits had been discovered thereon.

Section 45, R.S. § 2342; act Mar. 3, 1891, ch. 561, § 4, 26 Stat. 1097, provided for setting apart the lands as agricultural.

### § 46. Additional land districts and officers

The President is authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43.

(R.S. § 2343.)

REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, referred to in text, were in the original ''this chapter'', meaning chapter 6 of title 32 of the Revised Statutes, consisting of R.S. §§ 2318 to 2352.

CODIFICATION

R.S. § 2343 derived from act July 26, 1866, ch. 262, § 7, 14 Stat. 252.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of the Interior of authority vested in the President by this section, see Ex.

Ord. No. 10250, June 5, 1951, 16 F.R. 5385, set out as a note under section 301 of Title 3, The President.

SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of Title 43, Public Lands.

### § 47. Impairment of rights or interests in certain mining property

Nothing contained in sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43 shall be construed to impair in any way, rights or interests in mining property acquired under laws in force prior to July 9, 1870; nor to affect the provisions of the act entitled ''An act granting to A. Sutro the right-of-way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada'', approved July 25, 1866.

(R.S. § 2344.)

REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, referred to in text, were in the original ''this chapter'', meaning chapter 6 of title 32 of the Revised Statutes, consisting of R.S. §§ 2318 to 2352.

CODIFICATION

R.S. § 2344 derived from acts July 9, 1870, ch. 235, § 17, 16 Stat. 218; May 10, 1872, ch. 152, § 16, 17 Stat. 96.

SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of Title 43, Public Lands.

### § 48. Lands in Michigan, Wisconsin, and Minnesota; sale and disposal as public lands

Except as otherwise provided in chapter 3A of this title, the provisions of sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 47, 51, and 52 of this title and section 661 of title 43 shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase, according to legal subdivisions, in like manner as before the 10th day of May 1872. And any bona fide entries of such lands within the States named since the 10th day of May 1872 may be patented without reference to such sections of this title. Such lands shall be offered for public sale in the same manner, and at the same minimum price, as other public lands.

(R.S. § 2345; Mar. 3, 1891, ch. 561, § 4, 26 Stat. 1097; Feb. 25, 1920, ch. 85, § 1, 41 Stat. 437.)

REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 47, 51 and 52 of this title and section 661 of title 43, referred to in text, were in the original ''the preceding provisions of this chapter'', meaning chapter 6 of title 32 of the Revised Statutes, consisting of R.S. §§ 2318 to 2344.

CODIFICATION

R.S. § 2345 derived from act Feb. 18, 1873, ch. 159, 17 Stat. 465.

AMENDMENTS

1920—The exception clause has been inserted at beginning of this section because of act Feb. 25, 1920, which provided that deposits of coal, phosphate, sodium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, shall be subject to disposition in the form and manner provided by this act.

### § 49. Lands in Missouri and Kansas; disposal as agricultural lands

Except as otherwise provided in chapter 3A of this title, within the States of Missouri and Kansas deposits of coal, iron, lead, or other mineral are excluded from the operation of sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 42, and 47 of this title, and all lands in said States shall be subject to disposal as agricultural lands.

(May 5, 1876, ch. 91, 19 Stat. 52; Feb. 25, 1920, ch. 85, § 1, 41 Stat. 437.)

REFERENCES IN TEXT

Sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 42, and 47 of this title, referred to in text, were in the original ''the act entitled 'An act to promote the development of mining resources of the United States' approved May tenth, eighteen hundred and seventy-two'', meaning act May 10, 1872, ch. 152, 17 Stat. 91, popularly known as the Mining Act of 1872. That act was incorporated into the Revised Statutes as R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344, which are classified to sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 42, and 47 of this title. For complete classification of R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344 to the Code, see Tables.

AMENDMENTS

1920—The exception clause has been inserted at beginning of this section because of act Feb. 25, 1920, which provided that deposits of coal, phosphate, sodium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, shall be subject to disposition in the form and manner provided by such act.

### § 49a. Mining laws of United States extended to Alaska; exploration and mining for precious metals; regulations; conflict of laws; permits; dumping tailings; pumping from sea; reservation of roadway; title to land below line of high tide or high-water mark; transfer of title to future State

The laws of the United States relating to mining claims, mineral locations, and rights incident thereto are extended to the Territory of Alaska: *Provided*, That, subject only to the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, and to the laws for the protection of fish and game, and subject also to such general rules and regulations as the Secretary of the Interior may prescribe for the preservation of order and the prevention of injury to the fish and game, all land below the line of ordinary high tide on tidal waters and all land below the line of ordinary high-water mark on nontidal water navigable in fact, within the jurisdiction of the United States, shall be subject to exploration and mining for gold and other precious metals, and in the Chilkat River, and its tributaries, within two and three-tenths miles of United States survey numbered 991 for all metals, by citizens of the United States, or persons who have legally declared their intentions to become such, under such reasonable rules and regulations as the miners in organized mining districts may have heretofore made or may hereafter

make governing the temporary possession thereof for exploration and mining purposes until otherwise provided by law: *Provided further*, That the rules and regulations established by the miners shall not be in conflict with the mining laws of the United States; and no exclusive permit shall be granted by the Secretary of the Interior authorizing any person or persons, corporation, or company to excavate or mine under any of said waters, and if such exclusive permit has been granted it is revoked and declared null and void. The rules and regulations prescribed by the Secretary of the Interior under this section shall not, however, deprive miners on the beach of the right given to dump tailings into or pump from the sea opposite their claims, except where such dumping would actually obstruct navigation or impair the fish and game, and the reservation of a roadway sixty feet wide under section 687a–2[1] of title 43, shall not apply to mineral lands or town sites. No person shall acquire by virtue of this section any title to any land below the line of ordinary high tide or the line of ordinary high-water mark, as the case may be, of the waters described in this section. Any rights or privileges acquired hereunder with respect to mining operations in land, title to which is transferred to a future State upon its admission to the Union and which is situated within its boundaries, shall be terminable by such State, and the said mining operations shall be subject to the laws of such State.

(June 6, 1900, ch. 786, title I, § 26, 31 Stat. 329; May 31, 1938, ch. 297, 52 Stat. 588; Aug. 8, 1947, ch. 514, § 1, 61 Stat. 916; Pub. L. 85–662, Aug. 14, 1958, 72 Stat. 615.)

REFERENCES IN TEXT

Section 687a–2 of title 43, referred to in text, was repealed by Pub. L. 94–579, title VII, §§ 703(a), 704(a), Oct. 21, 1976, 90 Stat. 2789, 2792.

CODIFICATION

Section was formerly classified to section 381 of Title 48, Territories and Insular Possessions.

AMENDMENTS

1958—Pub. L. 85–662 substituted ''fish and game'' for ''fisheries'' in three places, and inserted provisions permitting mining for all metals in Chilkat River, and its tributaries, within two and three-tenths miles of United States survey numbered 991.

1947—Act Aug. 8, 1947, permitted exploration for and mining of gold and other precious metals in beds of navigable streams.

1938—Act May 31, 1938, extended waters subject to exploration and mining for gold to include all water on shores, bays, and inlets of Alaska, and substituted Secretary of the Interior for Secretary of War, among other changes.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

NON-IMPAIRMENT OF VALID CLAIMS AND RIGHTS

Section 2 of act Aug. 8, 1947, provided: ''Nothing in this Act [amending this section] shall be deemed to affect or impair any valid claims, rights or privileges, including possessory claims under the first proviso of section 8 of the Act of May 17, 1884 (23 Stat. 26) [25 U.S.C. 280a], arising under any other provision of law.''

[1] See References in Text note below.

## § 49b. Mining laws relating to placer claims extended to Alaska

The general mining laws of the United States so far as they are applicable to placer-mining claims, as prior to May 4, 1934, extended to the Territory of Alaska, are declared to be in full force and effect in said Territory: *Provided*, That nothing herein shall be held to change or affect the rights acquired by locators or owners of placer-mining claims prior to May 4, 1934, located in said Territory under act August 1, 1912 (37 Stat. 242, 243) and amendatory act March 3, 1925 (43 Stat. 1118).

(May 4, 1934, ch. 211, § 2, 48 Stat. 663.)

REFERENCES IN TEXT

Act August 1, 1912 (37 Stat. 242, 243) and amendatory act March 3, 1925 (43 Stat. 1118), referred to in text, were repealed by section 1 of act May 4, 1934. See sections 35 to 37 and 49b of this title.

CODIFICATION

Section was formerly classified to sections 119 and 381a of Title 48, Territories and Insular Possessions.

EFFECTIVE DATE

Section 3 of act May 4, 1934, provided that: ''This Act [enacting this section] shall take effect thirty days subsequent to the date of convening of the first regular session of the Alaska Territorial Legislature which is held after the passage of this Act [May 4, 1934].''

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

## § 49c. Recording notices of location of Alaskan mining claims

Notices of location of mining claims shall be filed for record within ninety days from the date of the discovery of the claim described in the notice, and all instruments shall be recorded in the recording district in which the property or subject matter affected by the instrument is situated, and where the property or subject matter is not situated in any established recording district the instrument affecting the same shall be recorded in the office of the clerk of the division of the court having supervision over the recording division in which such property or subject matter is situated.

(June 6, 1900, ch. 786, title I, § 15, 31 Stat. 327.)

CODIFICATION

Section is comprised of the proviso of section 15 of act June 6, 1900, which was formerly classified to section 382 of Title 48, Territories and Insular Possessions. The remainder of section 15, which was formerly classified to section 119 of Title 48, was omitted from the Code.

## § 49d. Miners' regulations for recording notices in Alaska; certain records legalized

Miners in any organized mining district may make rules and regulations governing the re-

cording of notices of location of mining claims, water rights, flumes and ditches, mill sites and affidavits of labor, not in conflict with this Act or the general laws of the United States; and nothing in this Act shall be construed so as to prevent the miners in any regularly organized mining district not within any recording district established by the court from electing their own mining recorder to act as such until a recorder therefor is appointed by the court: *Provided further*, All records regularly made by the United States commissioner prior to June 6, 1900, at Dyea, Skagway, and the recorder at Douglas City, not in conflict with any records regularly made with the United States commissioner at Juneau, are legalized. And all records made in good faith prior to June 6, 1900, in any regularly organized mining district are made public records.

(June 6, 1900, ch. 786, title I, § 16, 31 Stat. 328.)

REFERENCES IN TEXT

This Act, referred to in text, means act June 6, 1900, ch. 786, 31 Stat. 321, as amended. For complete classification of title I of this act to the Code, see Tables. Title III of this act provided for the Alaska Civil Code.

CODIFICATION

Section is comprised of the two provisos of section 16 of act June 6, 1900, and part of the last sentence of that section, which were formerly classified to section 383 of Title 48, Territories and Insular Possessions. The remainder of section 16 (excluding the last sentence) which was formerly classified to section 120 of Title 48, was omitted from the Code.

### § 49e. Annual labor or improvements on Alaskan mining claims; affidavits; burden of proof; forfeitures; location anew of claims; perjury

During each year and until patent has been issued therefor, at least $100 worth of labor shall be performed or improvements made on, or for the benefit or development of, in accordance with existing law, each mining claim in Alaska heretofore or hereafter located. And the locator or owner of such claim or some other person having knowledge of the facts may also make and file with the said recorder of the district in which the claims shall be situated an affidavit showing the performance of labor or making of improvements to the amount of $100 as aforesaid and specifying the character and extent of such work. Such affidavits shall set forth the following: First, the name or number of the mining claims and where situated; second, the number of days' work done and the character and value of the improvements placed thereon; third, the date of the performance of such labor and of making improvements; fourth, at whose instance the work was done or the improvements made; fifth, the actual amount paid for work and improvement, and by whom paid when the same was not done by the owner. Such affidavit shall be prima facie evidence of the performance of such work or making of such improvements, but if such affidavits be not filed within the time fixed by this section the burden of proof shall be upon the claimant to establish the performance of such annual work and improvements. And upon failure of the locator or owner of any such claim to comply with the provisions of this section, as to performance of work and improvements, such claim shall become forfeited and open to location by others as if no location of the same had ever been made. The affidavits required may be made before any officer authorized to administer oaths, and the provisions of sections 1621 and 1622 of title 18, are extended to such affidavits. Said affidavits shall be filed not later than ninety days after the close of the year in which such work is performed.

(Mar. 2, 1907, ch. 2559, § 1, 34 Stat. 1243.)

CODIFICATION

''Sections 1621 and 1622 of title 18'' substituted in text for ''sections fifty-three hundred and ninety-two and fifty-three hundred ninety-three of the Revised Statutes'', which had been classified to section 231 and 232 of former Title 18, Criminal Code and Criminal Procedure, on authority of act June 25, 1948, ch. 645, 62 Stat. 683, the first section of which enacted Title 18, Crimes and Criminal Procedure.

Section was formerly classified to section 384 of Title 48, Territories and Insular Possessions.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

### § 49f. Fees of recorders in Alaska for filing proofs of work and improvements

The recorders for the several divisions or districts of Alaska shall collect the sum of $1.50 as a fee for the filing, recording, and indexing annual proofs of work and improvements for each claim so recorded under the provisions of section 49e of this title.

(Mar. 2, 1907, ch. 2559, § 2, 34 Stat. 1243.)

CODIFICATION

Section was formerly classified to section 385 of Title 48, Territories and Insular Possessions.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

### § 50. Grants to States or corporations not to include mineral lands

No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the 30th day of January 1865 shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

(R.S. § 2346.)

REFERENCES IN TEXT

The first session of the Thirty-eighth Congress, referred to in text, was begun Dec. 7, 1863, and ended July 4, 1864, 13 Stat. 1 to 417, contain legislation passed at such session.

CODIFICATION

R.S. § 2346 derived from Res. Jan. 30, 1865, No. 10, 13 Stat. 567.

### § 51. Water users' vested and accrued rights; enumeration of uses; protection of interest; rights-of-way for canals and ditches; liability for injury or damage to settlers' possession

Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right-of-way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

(R.S. § 2339.)

REPEALS

*Provision of this section, ''and the right-of-way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.'' was repealed by Pub. L. 94–579, title VII, § 706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System.*

CODIFICATION

R.S. § 2339 derived from act July 26, 1866, ch. 262, § 9, 14 Stat. 253.

Section is also set out as the first par. of section 661 of Title 43, Public Lands.

SAVINGS PROVISION

Repeal by Pub. L. 94–579, title VII, § 706(a), Oct. 21, 1976, 90 Stat. 2793, insofar as applicable to the issuance of rights-of-way not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see note set out under section 1701 of Title 43, Public Lands.

SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of Title 43, Public Lands.

### § 52. Patents or homesteads subject to vested and accrued water rights

All patents granted, or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by section 51 of this title.

(R.S. § 2340; Mar. 3, 1891, ch. 561, § 4, 26 Stat. 1097.)

REPEALS

*Provision of this section, '', or rights to ditches and reservoirs used in connection with such water rights,'' was repealed by Pub. L. 94–579, title VII, § 706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System.*

CODIFICATION

R.S. § 2340 derived from act July 9, 1870, ch. 235, § 17, 16 Stat. 218.

Section is also set out as the second par. of section 661 of Title 43, Public Lands.

SAVINGS PROVISION

Repeal by Pub. L. 94–579, title VII, § 706(a), Oct. 21, 1976, 90 Stat. 2793, insofar as applicable to the issuance of rights-of-way not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see note set out under section 1701 of Title 43, Public Lands.

SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of Title 43, Public Lands.

### § 53. Possessory actions for recovery of mining titles or for damages to such title

No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States; but each case shall be adjudged by the law of possession.

(R.S. § 910.)

CODIFICATION

R.S. § 910 derived from act Feb. 27, 1865, ch. 64, § 9, 13 Stat. 441.

Section was formerly classified to section 690 of Title 28 prior to the general revision and enactment of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, § 1, 62 Stat. 869.

### § 54. Liability for damages to stock raising and homestead entries by mining activities

Notwithstanding the provisions of any Act of Congress to the contrary, any person who on and after June 21, 1949 prospects for, mines, or removes by strip or open pit mining methods, any minerals from any land included in a stock raising or other homestead entry or patent, and who had been liable under such an existing Act only for damages caused thereby to the crops or improvements of the entryman or patentee, shall also be liable for any damage that may be caused to the value of the land for grazing by such prospecting for, mining, or removal of minerals. Nothing in this section shall be considered to impair any vested right in existence on June 21, 1949.

(June 21, 1949, ch. 232, § 5, 63 Stat. 215.)

SIMILAR PROVISIONS

Provisions similar to this section were contained in act June 17, 1949, ch. 221, § 2, 63 Stat. 201.

## CHAPTER 3—LANDS CONTAINING COAL, OIL, GAS, SALTS, ASPHALTIC MATERIALS, SODIUM, SULPHUR, AND BUILDING STONE

SUBCHAPTER I—COAL LAND ENTRIES IN GENERAL

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72. Preference right of coal mine entry; acreage limitation.
73. Presentation of claims.
74. Number of coal land entries; other entries upon noncompliance with conditions.
75. Conflicting claims upon coal lands; rules and regulations.
76. Reservation of rights upon coal lands; sale of certain mining lands.
77. Alabama coal lands; agricultural entry.

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81. Rights of entrymen of lands subsequently classified as coal lands; disposal of coal deposits.
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84. Applications for entry.
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86. Disposition of lands in Indian reservations with reservation of coal; examination and appraisal of lands.
87. Statements in application; patents.
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SUBCHAPTER III—PETROLEUM, OTHER MINERAL OIL, OR GAS LAND ENTRIES UNDER MINING LAWS

101. Omitted.
102. Assessment work on contiguous oil lands, located as claims, of same owner.
103. Patents for oil or gas lands not denied because of transfer before discovery of oil or gas; acreage limitation; nonapplication to withdraw lands.
104. Agreements with applicants for patents as to disposition of oil or gas, or proceeds thereof, pending determination of title; Navy Petroleum Fund.

SUBCHAPTER IV—HOMESTEAD ENTRY OF LANDS IN UTAH, WITHDRAWN OR CLASSIFIED AS OIL LANDS

111 to 113. Repealed.

SUBCHAPTER V—AGRICULTURAL ENTRY OF LANDS WITHDRAWN OR CLASSIFIED AS CONTAINING PHOSPHATE, NITRATE, POTASH, OIL, GAS, ASPHALTIC MINERALS, SODIUM, OR SULPHUR

121. Agricultural entry or purchase of lands withdrawn or classified as containing phosphate, nitrate, potash, oil, or gas; reservations to United States; application.
122. Patents; reservation in the United States of reserved deposits; acquisition of right to remove deposits; application for entry to disprove classification.
123. Persons locating lands subsequently withdrawn or classified; patents to.
124. Agricultural entry or purchase of lands withdrawn or classified as containing sodium or sulphur.
125. Patents in North Platte Reclamation Project; mineral rights; subrogation.

SUBCHAPTER VI—LOCATION OF PHOSPHATE ROCK LANDS UNDER PLACER-MINING LAWS

131. Omitted.

SUBCHAPTER VII—PERMITS TO PROSPECT FOR CHLORIDES, SULPHATES, CARBONATES, BORATES, SILICATES, OR NITRATES OF POTASSIUM

141 to 152. Repealed.

SUBCHAPTER VIII—BUILDING STONE OR SALINE LAND ENTRIES UNDER PLACER-MINING LAWS

161. Entry of building-stone lands; previous law unaffected.
162. Entry of saline lands; limitation.

SUBCHAPTER IX—DISPOSAL OF ALABAMA LANDS AS AGRICULTURAL LANDS

171. Disposal as agricultural lands.
172. Certain Alabama lands subject to homestead entry.

### SUBCHAPTER I—COAL LAND ENTRIES IN GENERAL

#### § 71. Entry of unappropriated or unreserved Federal coal lands; eligibility; application; acreage limitation; price per acre

Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the register of not less than $10 per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than $20 per acre for such lands as shall be within fifteen miles of such road.

(R.S. § 2347; Mar. 3, 1925, ch. 462, 43 Stat. 1145.)

CODIFICATION

R.S. § 2347 derived from act Mar. 3, 1873, ch. 279, § 1, 17 Stat. 607.

AMENDMENTS

1925—Act Mar. 3, 1925, affected words which now read ''upon payment to the register of not less than.'' Such words originally read ''upon payment to the receiver of not less than.'' Such act consolidated the offices of receiver and register.

TRANSFER OF FUNCTIONS

Office of register of district land office abolished and all functions of register transferred to Secretary of the Interior, or to officers and agencies of Department of the Interior as Secretary may designate, by Reorg. Plan No. 3 of 1946, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100, set out in the Appendix to Title 5, Government Organization and Employees.

See also note set out under section 1 of this title.

INDIAN LANDS EXCEPTED

Commenting on this section and sections 72 to 76 of this title the Department of the Interior says:

"While there may be some Indian lands still subject to coal entry by virtue of the provisions of law opening such lands to entry, the coal land laws generally were superseded by the leasing Act of Feb. 25, 1920, 41 Stat. 437 [section 181 et seq. of this title], and it is at least questionable whether the coal land laws should be carried into the Code."

### § 72. Preference right of coal mine entry; acreage limitation

Any person or association of persons severally qualified, as provided in section 71 of this title, who have opened and improved, or shall open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under section 71 of this title, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as provided in section 71 of this title, shall have expended not less than $5,000 in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

(R.S. § 2348.)

CODIFICATION

R.S. § 2348 derived from act Mar. 3, 1873, ch. 279, § 2, 17 Stat. 607.

INDIAN LANDS EXCEPTED

See note set out under section 71 of this title.

### § 73. Presentation of claims

All claims under section 72 of this title must be presented to the register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office.

(R.S. § 2349.)

CODIFICATION

R.S. § 2349 derived from act Mar. 3, 1873, ch. 279, § 3, 17 Stat. 607.

TRANSFER OF FUNCTIONS

Office of register of district land office abolished and all functions of register transferred to Secretary of the Interior, or to officers and agencies of Department of the Interior as Secretary may designate, by Reorg. Plan No. 3 of 1946, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100, set out in the Appendix to Title 5, Government Organization and Employees.

See also note set out under section 1 of this title.

INDIAN LANDS EXCEPTED

See note set out under section 71 of this title.

### § 74. Number of coal land entries; other entries upon noncompliance with conditions

Sections 71 to 73 of this title shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section 72 of this title shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

(R.S. § 2350.)

CODIFICATION

R.S. § 2350 derived from act Mar. 3, 1873, ch. 279, § 4, 17 Stat. 607.

INDIAN LANDS EXCEPTED

See note set out under section 71 of this title.

### § 75. Conflicting claims upon coal lands; rules and regulations

In case of conflicting claims upon coal lands where the improvements shall be commenced, after the third day of March, 1873, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made prior to the third day of March, 1873, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Director of the Bureau of Land Management is authorized to issue all needful rules and regulations for carrying into effect the provisions of this section and sections 71 to 74 of this title.

(R.S. § 2351; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

CODIFICATION

R.S. § 2351 derived from act Mar. 3, 1873, ch. 279, § 5, 17 Stat. 608.

TRANSFER OF FUNCTIONS

"Director of the Bureau of Land Management" substituted in text for "Commissioner of the General Land Office" on authority of Reorg. Plan No. 3 of 1946, § 403, set out in the Appendix to Title 5, Government Organization and Employees.

See also note set out under section 1 of this title.

INDIAN LANDS EXCEPTED

See note set out under section 71 of this title.

### § 76. Reservation of rights upon coal lands; sale of certain mining lands

Nothing in sections 71 to 75 of this title shall be construed to destroy or impair any rights which may have attached prior to the third day of March, 1873, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

(R.S. § 2352.)

CODIFICATION

R.S. § 2352 derived from act Mar. 3, 1873, ch. 279, § 6, 17 Stat. 608.

INDIAN LANDS EXCEPTED

See note set out under section 71 of this title.

### § 77. Alabama coal lands; agricultural entry

Unreserved public lands containing coal deposits in the State of Alabama which on April 23, 1912, were being withheld from homestead entry under the provisions of section 171 of this title, may be entered under the homestead laws of the United States subject to the provisions, terms, conditions, and limitations prescribed in sections 83 to 85 of this title.

(Apr. 23, 1912, ch. 87, 37 Stat. 90.)

REFERENCES IN TEXT

The homestead laws of the United States, referred to in text, are classified generally to chapter 7 (§ 161 et seq.) of Title 43, Public Lands.

## SUBCHAPTER II—COAL LAND ENTRIES UNDER NONMINERAL LAND LAWS WITH RESERVATION OF COAL TO UNITED STATES

### § 81. Rights of entrymen of lands subsequently classified as coal lands; disposal of coal deposits

Any person who has in good faith located, selected, or entered under the nonmineral land laws of the United States any lands which subsequently are classified, claimed, or reported as being valuable for coal, may, if he shall so elect, and upon making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which shall contain a reservation to the United States of all coal in said lands, and the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal land laws in force at the time of such disposal, but no person shall enter upon said lands to prospect for, or mine and remove coal therefrom, without previous consent of the owner under such patent, except upon such conditions as to security for and payment of all damages to such owner caused thereby as may be determined by a court of competent jurisdiction. The owner under such patent shall have the right to mine coal for use on the land for domestic purposes prior to the disposal by the United States of the coal deposit. Nothing herein contained shall be held to affect or abridge the right of any locator, selector, or entryman to a hearing for the purpose of determining the character of the land located, selected, or entered by him. Such locator, selector, or entryman who has made or shall make final proof showing good faith and satisfactory compliance with the law under which his land is claimed shall be entitled to a patent without reservation unless at the time of such final proof and entry it shall be shown that the land is chiefly valuable for coal.

(Mar. 3, 1909, ch. 270, 35 Stat. 844.)

PROTECTION OF SANCTITY OF CONTRACTS AND LEASES OF SURFACE PATENT HOLDERS WITH RESPECT TO COALBED METHANE GAS

Pub. L. 105–367, § 1, Nov. 10, 1998, 112 Stat. 3313, provided that:

''(a) IN GENERAL.—Subject to subsection (b), the United States shall recognize as not infringing upon any ownership rights of the United States to coalbed methane any—

''(1) contract or lease covering any land that was conveyed by the United States under the Act entitled 'An Act for the protection of surface rights of entrymen', approved March 3, 1909 (30 U.S.C. 81), or the Act entitled 'An Act to provide for agricultural entries on coal lands', approved June 22, 1910 (30 U.S.C. 83 et seq.), that was—

''(A) entered into by a person who has title to said land derived under said Acts, and

''(B) that conveys rights to explore for, extract, and sell coalbed methane from said land; or

''(2) coalbed methane production from the lands described in subsection (a)(1) by a person who has title to said land and who, on or before the date of enactment of this Act [Nov. 10, 1998], has filed an application with the State oil and gas regulating agency for a permit to drill an oil and gas well to a completion target located in a coal formation.

''(b) APPLICATION.—Subsection (a)—

''(1) shall apply only to a valid contract or lease described in subsection (a) that is in effect on the date of enactment of this Act;

''(2) shall not otherwise change the terms or conditions of, or affect the rights or obligations of any person under such a contract or lease;

''(3) shall apply only to land with respect to which the United States is the owner of coal reserved to the United States in a patent issued under the Act of March 3, 1909 (30 U.S.C. 81), or the Act of June 22, 1910 (30 U.S.C. 83 et seq.), the position of the United States as the owner of the coal not having passed to a third party by deed, patent or other conveyance by the United States;

''(4) shall not apply to any interest in coal or land conveyed, restored, or transferred by the United States to a federally recognized Indian tribe, including any conveyance, restoration, or transfer made pursuant to the Indian Reorganization Act, June 18, 1934 (c. 576, 48 Stat. 984, as amended) [25 U.S.C. 461 et seq.]; the Act of June 28, 1938 (c. 776, 52 Stat. 1209 as implemented by the order of September 14, 1938, 3 Fed. Reg. 1425); and including the area described in section 3 of Public Law 98–290 [25 U.S.C. 668 note]; or any executive order;

''(5) shall not be construed to constitute a waiver of any rights of the United States with respect to coalbed methane production that is not subject to subsection (a); and

''(6) shall not limit the right of any person who entered into a contract or lease before the date of enactment of this Act [Nov. 10, 1998], or enters into a contract or lease on or after the date of enactment of this Act, for coal owned by the United States, to mine and remove the coal and to release coalbed methane without liability to any person referred to in subsection (a)(1)(A) or (a)(2).''

Similar provisions were contained in Pub. L. 105–277, div. A, § 101(e) [title III, § 349], Oct. 21, 1998, 112 Stat. 2681–231, 2681–300.

LANDS IN NORTH PLATTE RECLAMATION PROJECT; MINERAL RIGHTS

Patents for lands in North Platte Reclamation Project not to contain reservations of minerals in certain cases, see section 125 of this title.

### § 82. New or supplemental patents, in case of lands subsequently classified as noncoal

The Secretary of the Interior is authorized and directed in cases where patents for public lands have been issued to entrymen under the provisions of sections 81 and 83 to 85 of this title, reserving to the United States all coal deposits therein, and lands so patented are subsequently classified as noncoal in character, to issue new or supplemental patents without such reservation.

(Apr. 14, 1914, ch. 55, 38 Stat. 335.)

### § 83. Homestead or desert-land and other entries

Unreserved public lands of the United States exclusive of Alaska which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws by actual settlers only, the desert-land law, to selection under section 641 of title 43, and to withdrawal under the Act approved June seventeenth, nineteen hundred and two, known as the Reclamation Act, whenever such entry, selection, or withdrawal shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same. But all homestead entries made hereunder shall be subject to the conditions, as to residence and cultivation, of entries under section 218 of title 43. Those who have initiated nonmineral entries, selections, or locations in good faith, prior to June 22, 1910, on lands withdrawn or classified as coal lands may perfect the same under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in sections 83 to 85 of this title.

(June 22, 1910, ch. 318, § 1, 36 Stat. 583; June 16, 1955, ch. 145, § 1, 69 Stat. 138.)

REFERENCES IN TEXT

The homestead laws, referred to in text, are classified generally to chapter 7 (§ 161 et seq.) of Title 43, Public Lands.

The desert-land law, referred to in text, is classified generally to chapter 9 (§ 321 et seq.) of Title 43.

The Reclamation Act, referred to in text, is act June 17, 1902, ch. 1093, 32 Stat. 388, as amended, which is classified generally to chapter 12 (§ 371 et seq.) of Title 43. The withdrawal provision of such Act is classified to section 416 of Title 43. For complete classification of this Act to the Code, see Short Title note set out under section 371 of Title 43 and Tables.

AMENDMENTS

1955—Act June 16, 1955, removed 160-acre limitation on desert entry.

ADDITIONAL DESERT-LAND ENTRY

Section 3 of act June 16, 1955, as amended by Pub. L. 85–641, § 2, Aug. 14, 1958, 72 Stat. 596, provided that: ''Any person who, prior to June 16, 1955, made a valid desert-land entry on lands subject to such Act of June 22, 1910 [sections 83 to 85 of this title], or of July 17, 1914 [sections 121 to 123 of this title], may, if otherwise qualified, make one additional entry, as a personal privilege, not assignable, upon one or more tracts of desert land subject to the provisions of such Acts, as hereby amended, and section 7 of the Act entitled 'An Act to stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development to stabilize the livestock industry dependent upon the public range, and for other purposes', approved June 28, 1934, as amended (48 Stat. 1269, 1272; 43 U.S.C. 315f). The additional land entered by any person pursuant to this section shall not, together with his original entry, exceed three hundred and twenty acres, and all the tracts included within the additional entry authorized by this section shall be sufficiently close to each other to be managed satisfactorily as an economic unit, as determined under rules and regulations issued by the Secretary of the Interior. Additional entries authorized by this section shall be subject to all the requirements of the desert-land law.''

SUPPLEMENTAL PROVISIONS

Section 90 of this title, act Apr. 30, 1912, ch. 99, 37 Stat. 105, supplements this section by making provisions for the selection of coal lands by the several States, and for their sale under the laws providing for the sale of isolated or disconnected tracts of public lands.

### § 84. Applications for entry

Any person desiring to make entry under the homestead laws or the desert-land law, any State desiring to make selection under section 641 of title 43, and the Secretary of the Interior in withdrawing under the Reclamation Act lands classified as coal lands, or valuable for coal, with a view of securing or passing title to the same in accordance with the provisions of said Acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of sections 83 to 85 of this title.

(June 22, 1910, ch. 318, § 2, 36 Stat. 584.)

REFERENCES IN TEXT

The homestead laws, referred to in text, are classified generally to chapter 7 (§ 161 et seq.) of Title 43, Public Lands.

The desert-land law, referred to in text, is classified generally to chapter 9 (§ 321 et seq.) of Title 43.

The Reclamation Act, referred to in text, is act June 17, 1902, ch. 1093, 32 Stat. 388, as amended, which is classified generally to chapter 12 (§ 371 et seq.) of Title 43. The withdrawal provision of such Act is classified to section 416 of Title 43. For complete classification of this Act to the Code, see Short Title note set out under section 371 of Title 43 and Tables.

SUPPLEMENTAL PROVISIONS

See note set out under section 83 of this title.

### § 85. Patents for lands, with reservation of coal; disposal of coal deposits

Upon satisfactory proof of full compliance with the provisions of the laws under which entry is made, and of sections 83 to 85 of this title, the entryman shall be entitled to a patent to the land entered by him, which patent shall contain a reservation to the United States of all the coal in the lands so patented, together with the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right, at all times, to enter upon the lands selected, entered, or patented, as provided by sections 83 to 85 of this title, for the purpose of prospecting for coal thereon upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal deposits in any such land, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal

therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages. The owner under such limited patent shall have the right to mine coal for use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits. Nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, enter, or select, under the land laws of the United States, lands which have been classified as coal lands with a view of disproving such classification and securing a patent without reservation.

(June 22, 1910, ch. 318, § 3, 36 Stat. 584.)

REFERENCES IN TEXT

The land laws, referred to in text, are classified generally to Title 43, Public Lands.

SUPPLEMENTAL PROVISIONS

See note set out under section 83 of this title.

**§ 86. Disposition of lands in Indian reservations with reservation of coal; examination and appraisal of lands**

In any Indian reservation opened to settlement and entry pursuant to a classification of the surplus lands therein as mineral and nonmineral, such surplus lands not otherwise reserved or disposed of, which have been or may be withdrawn or classified as coal lands or are valuable for coal deposits, shall be subject to the same disposition as is or may be prescribed by law for the nonmineral lands in such reservation whenever proper application shall be made with a view of obtaining title to such lands, with a reservation to the United States of the coal deposits therein and of the right to prospect for, mine, and remove the same. Such surplus lands, prior to any disposition hereunder, shall be examined, separated into classes the same as are the nonmineral lands in such reservations, and appraised, as to their value, exclusive of the coal deposits therein, under such rules and regulations as shall be prescribed by the Secretary of the Interior for that purpose.

(Feb. 27, 1917, ch. 133, § 1, 39 Stat. 944.)

**§ 87. Statements in application; patents**

Any applicant for lands mentioned in section 86 of this title shall state in his application that the same is made in accordance with and subject to the provisions and reservations of sections 86 to 89 of this title, and upon submission of satisfactory proof of full compliance with the provisions of law under which application or entry is made and of sections 86 to 89 of this title shall be entitled to a patent to the lands applied for and entered by him, which patent shall contain a reservation to the United States of all the coal deposits in the lands so patented, together with the right to prospect for, mine, and remove the same.

(Feb. 27, 1917, ch. 133, § 2, 39 Stat. 945.)

**§ 88. Disposition of coal by United States**

If the coal-land laws have been or shall be extended over lands applied for, entered, or patented hereunder the coal deposits therein shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right at all times to enter upon the lands applied for, entered, or patented under sections 86 to 89 of this title, for the purpose of prospecting for coal thereon, if such coal deposits are then subject to disposition, upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal deposits in any such lands, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages. The owner under such limited patent shall have the right to mine coal for personal use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits. Nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications made under the applicable land laws of the United States for any such surplus lands which have been or may be classified as coal lands with a view of disproving such classification and securing a patent without reservation.

(Feb. 27, 1917, ch. 133, § 3, 39 Stat. 945.)

**§ 89. Disposition of proceeds**

The net proceeds derived from the sale and entry of surplus lands in conformity with the provisions of sections 86 to 89 of this title shall be paid into the Treasury of the United States to the credit of the same fund under the same conditions and limitations as are or may be prescribed by law for the disposition of the proceeds arising from the disposal of other surplus lands in such Indian reservation. The provisions of sections 86 to 89 of this title shall not apply to the lands of the Five Civilized Tribes of Indians in Oklahoma.

(Feb. 27, 1917, ch. 133, § 4, 39 Stat. 945.)

**§ 90. Selection of coal lands by States; sale in isolated or disconnected tracts**

Unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands or are valuable for coal shall, in addition to the classes of entries or filings described in sections 83 to 85 of this title be subject to selection by the several States within whose limits the lands are situate, under grants made by Congress, and to disposition, in

the discretion of the Secretary of the Interior, under the laws providing for the sale of isolated or disconnected tracts of public lands, but there shall be a reservation to the United States of the coal in all such lands so selected or sold and of the right to prospect for, mine, and remove the same in accordance with the provisions of said sections, and such lands shall be subject to all the conditions and limitations of said sections.

(Apr. 30, 1912, ch. 99, 37 Stat. 105.)

SUPPLEMENTAL PROVISIONS

Act Apr. 30, 1912, is supplemental to sections 83 to 85 of this title.

## SUBCHAPTER III—PETROLEUM, OTHER MINERAL OIL, OR GAS LAND ENTRIES UNDER MINING LAWS

### § 101. Omitted

CODIFICATION

Section, act Feb. 11, 1897, ch. 216, 29 Stat. 526, related to entry of mineral oil lands under placer mining laws. See section 181 et seq. of this title.

SAVINGS PROVISION

Section 193 of this title contains a savings provision protecting valid claims in existence on Feb. 20, 1920.

### § 102. Assessment work on contiguous oil lands, located as claims, of same owner

Where oil lands are located under the provisions of sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43 as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all, where such labor will tend to the development or to determine the oil-bearing character of such contiguous claims.

(Feb. 12, 1903, ch. 548, 32 Stat. 825.)

REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, referred to in text, were in the original ''title thirty-two, chapter six, Revised Statutes of the United States'', consisting of R.S. §§ 2318 to 2352.

### § 103. Patents for oil or gas lands not denied because of transfer before discovery of oil or gas; acreage limitation; nonapplication to withdraw lands

In no case shall patent be denied to or for any lands located or claimed prior to March 2, 1911, under the mining laws of the United States containing petroleum, mineral oil, or gas solely because of any transfer or assignment thereof or of any interest or interests therein by the original locator or locators, or any of them, to any qualified persons or person or corporation, prior to discovery of oil or gas therein, but if such claim is in all other respects valid and regular, patent therefor not exceeding one hundred and sixty acres in any one claim shall issue to the holder or holders thereof, as in other cases. The above provisions shall not apply where such lands were at the time of inception of development on or under such claim withdrawn from mineral entry.

(Mar. 2, 1911, ch. 201, § 1, 36 Stat. 1015.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in text, are classified generally to this title.

### § 104. Agreements with applicants for patents as to disposition of oil or gas, or proceeds thereof, pending determination of title; Navy Petroleum Fund

Where applications for patents have been or may be offered for any oil or gas land included in an order of withdrawal upon which oil or gas had been discovered, or was being produced prior to March 2, 1911, or upon which drilling operations were in actual progress on October 3, 1910, and oil or gas is thereafter discovered thereon, and where there has been no final determination by the Secretary of the Interior upon such applications for patent, said Secretary, in his discretion, may enter into agreements, under such conditions as he may prescribe with such applicants for patents in possession of such land or any portions thereof, relative to the disposition of the oil or gas produced therefrom or the proceeds thereof, pending final determination of the title thereto by the Secretary of the Interior, or such other disposition of the same as may be authorized by law. Any money which may accrue to the United States under the provisions of sections 103 and 104 of this title from lands within the Naval Petroleum Reserves shall be set aside for the needs of the Navy and deposited in the Treasury to the credit of a fund to be known as the Navy Petroleum Fund, which fund shall be applied to the needs of the Navy as Congress may from time to time direct, by appropriation or otherwise.

(Mar. 2, 1911, ch. 201, § 2, as added Aug. 25, 1914, ch. 287, 38 Stat. 708.)

## SUBCHAPTER IV—HOMESTEAD ENTRY OF LANDS IN UTAH, WITHDRAWN OR CLASSIFIED AS OIL LANDS

### §§ 111 to 113. Repealed. Dec. 16, 1930, ch. 14, § 1, 46 Stat. 1028

Section 111, act Aug. 24, 1912, ch. 367, § 1, 37 Stat. 496, related to homestead entry of lands in Utah.

Section 112, act Aug. 24, 1912, ch. 367, § 2, 37 Stat. 496, related to required information in the application for entry.

Section 113, act Aug. 24, 1912, ch. 367, § 3, 37 Stat. 496, related to reservation of oil and gas to the United States in the lands entered.

Provisions on entry of lands withdrawn or classified as oil lands are contained in sections 121 to 123 of this title.

SUBCHAPTER V—AGRICULTURAL ENTRY OF LANDS WITHDRAWN OR CLASSIFIED AS CONTAINING PHOSPHATE, NITRATE, POTASH, OIL, GAS, ASPHALTIC MINERALS, SODIUM, OR SULPHUR

### § 121. Agricultural entry or purchase of lands withdrawn or classified as containing phosphate, nitrate, potash, oil, or gas; reservations to United States; application

Lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for those deposits, shall be subject to appropriation, location, selection, entry, or purchase, if otherwise available, under the nonmineral land laws of the United States, whenever such location, selection, entry, or purchase shall be made with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same. All applications to locate, select, enter, or purchase under this section shall state that the same are made in accordance with and subject to the provisions and reservations of sections 121 to 123 of this title.

(July 17, 1914, ch. 142, § 1, 38 Stat. 509; June 16, 1955, ch. 145, § 2, 69 Stat. 138.)

AMENDMENTS

1955—Act June 16, 1955, removed 160-acre limitation on desert entry.

ADDITIONAL DESERT-LAND ENTRY

Increase of limitation with respect to desert entries to 320 acres, see note set out under section 83 of this title.

### § 122. Patents; reservation in the United States of reserved deposits; acquisition of right to remove deposits; application for entry to disprove classification

Upon satisfactory proof of full compliance with the provisions of the laws under which the location, selection, entry, or purchase is made, the locator, selector, entryman, or purchaser shall be entitled to a patent to the land located, selected, entered, or purchased, which patent shall contain a reservation to the United States of the deposits on account of which the lands so patented were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same, such deposits to be subject to disposal by the United States only as shall be hereafter expressly directed by law: *Provided, however*, That all mineral deposits heretofore or hereafter reserved to the United States under sections 121 to 123 of this title which are subject, at the time of application for patent, to valid and subsisting rights acquired by discovery and location under the mining laws of the United States made prior to the date of the Mineral Leasing Act of February 25, 1920 [30 U.S.C. 181 et seq.], shall hereafter be subject to disposal to the holders of those valid and subsisting rights by patent under the mining laws of the United States in force at the time of such disposal. Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the minerals therefrom, and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages. Nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, select, enter, or purchase, under the land laws of the United States, lands which have been withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic mineral lands, with a view of disproving such classification and securing patent without reservation, nor shall persons who have located, selected, entered, or purchased lands subsequently withdrawn, or classified as valuable for said mineral deposits, be debarred from the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands entered, selected, or located are in fact nonmineral in character.

(July 17, 1914, ch. 142, § 2, 38 Stat. 509; July 20, 1956, ch. 652, 70 Stat. 592.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in text, are classified generally to this title.

The Mineral Leasing Act of February 25, 1920, referred to in text, is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified generally to chapter 3A (§ 181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

The land laws of the United States, referred to in text, are classified generally to Title 43, Public Lands.

AMENDMENTS

1956—Act July 20, 1956, permitted disposal of mineral deposits which are subject, at the time of application for patent, to valid and subsisting rights acquired by discovery and location under the mining laws made prior to Feb. 25, 1920.

LANDS IN NORTH PLATTE RECLAMATION PROJECT; MINERAL RIGHTS

Patents for lands in North Platte Reclamation Project not to contain reservations of minerals in certain cases, see section 125 of this title.

### § 123. Persons locating lands subsequently withdrawn or classified; patents to

Any person who has, in good faith, located, selected, entered, or purchased, or any person who shall locate, select, enter, or purchase, after July 17, 1914, under the nonmineral land laws of the United States, any lands which are subse-

quently withdrawn, classified, or reported as being valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, may, upon application therefor, and making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which patent shall contain a reservation to the United States of all deposits on account of which the lands were withdrawn, classified, or reported as being valuable, together with the right to prospect for, mine, and remove the same.

(July 17, 1914, ch. 142, § 3, 38 Stat. 510.)

NORTH PLATTE RECLAMATION PROJECT; ENTRY PRIOR TO JULY 17, 1914; MINERAL RIGHTS

Patents for lands in North Platte Reclamation Project not to contain reservations of minerals in certain cases, see section 125 of this title.

### § 124. Agricultural entry or purchase of lands withdrawn or classified as containing sodium or sulphur

Lands withdrawn, classified, or reported as valuable for sodium and/or sulphur and subject to prospecting, leasing, or development under the General Leasing Act of February 25, 1920, or Acts amendatory thereof or supplementary thereto [30 U.S.C. 181 et seq.], shall be subject to appropriation, location, selection, entry, or purchase if otherwise available in the form and manner and subject to the reservations, provisions, limitations, and conditions of the Act of Congress approved July 17, 1914 (38 Stat. L. 509; U.S.C., title 30, sec. 123); *Provided, however*, That lands lying within the geologic structure of a field, or withdrawn, classified, or reported as valuable for any of the minerals named herein and/or in any of said sections, or upon which leases or prospecting permits have been applied for or granted, for the production of any of such minerals, shall not be subject to such appropriation, location, selection, entry, or purchase unless it shall be determined by the Secretary of the Interior that such disposal will not unreasonably interfere with operations under said sections.

(Mar. 4, 1933, ch. 278, 47 Stat. 1570.)

REFERENCES IN TEXT

The General Leasing Act of February 25, 1920, referred to in text, probably means the Mineral Leasing Act of 1920, act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified generally to chapter 3A (§ 181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

The Act of Congress approved July 17, 1914, referred to in text, is act July 17, 1914, ch. 142, 38 Stat. 509, as amended, which is classified to sections 121 to 123 of this title.

### § 125. Patents in North Platte Reclamation Project; mineral rights; subrogation

Where reclamation homestead entry was made prior to July 17, 1914, pursuant to the Act of June 17, 1902 (32 Stat. 389, 43 U.S.C. sec. 431), as supplemented, for lands in the Northport Division or the Interstate Division of the North Platte Reclamation Project, and after such entry the lands have been or are hereafter withdrawn, classified, or reported as being valuable for any of the minerals named in sections 81 and 121 to 124 of this title, the patent shall not contain a reservation of such minerals. If any such mineral deposits on account of which the lands were withdrawn, classified or reported as being valuable have been leased by the United States, such patent shall be made subject to the rights of the lessee, but the patentee shall be subrogated to the rights of the United States under the lease.

(Apr. 17, 1954, ch. 152, 68 Stat. 56.)

REFERENCES IN TEXT

Act of June 17, 1902, referred to in text, is act June 17, 1902, ch. 1093, 32 Stat. 388, as amended, popularly known as the Reclamation Act, which is classified generally to chapter 12 (§ 371 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 371 of Title 43 and Tables.

## SUBCHAPTER VI—LOCATION OF PHOSPHATE ROCK LANDS UNDER PLACER-MINING LAWS

### § 131. Omitted

CODIFICATION

Section, act Jan. 11, 1915, ch. 9, 38 Stat. 792, provided for perfection under placer mining laws of locations made in good faith prior to Jan. 11, 1915, on public lands containing deposits of phosphate rock.

## SUBCHAPTER VII—PERMITS TO PROSPECT FOR CHLORIDES, SULPHATES, CARBONATES, BORATES, SILICATES, OR NITRATES OF POTASSIUM

### §§ 141 to 152. Repealed. Feb. 7, 1927, ch. 66, § 6, 44 Stat. 1058

Section 141, act Oct. 2, 1917, ch. 62, § 1, 40 Stat. 297, related to permits to prospect.

Section 142, act Oct. 2, 1917, ch. 62, § 2, 40 Stat. 298, related to patents to permittees.

Section 143, act Oct. 2, 1917, ch. 62, § 3, 40 Stat. 298, related to leases to permittees for campsites.

Section 144, act Oct. 2, 1917, ch. 62, § 4, 40 Stat. 299, related to cancellation of permits.

Section 145, act Oct. 2, 1917, ch. 62, § 5, 40 Stat. 299, related to restrictions on leasehold interests.

Section 146, act Oct. 2, 1917, ch. 62, §§ 6, 7, 40 Stat. 299, related to reservations in leases.

Section 147, act Oct. 2, 1917, ch. 62, § 8, 40 Stat. 300, related to forfeitures in leases.

Section 148, act Oct. 2, 1917, ch. 62, § 9, 40 Stat. 300, related to potassium salts deposits.

Section 149, act Oct. 2, 1917, ch. 62, § 10, 40 Stat. 300, related to disposition of royalties and rentals.

Section 150, act Oct. 2, 1917, ch. 62, § 11, 40 Stat. 300, related to rules and regulations.

Section 151, act Oct. 2, 1917, ch. 62, § 12, 40 Stat. 300, related to regulations for disposition of deposits.

Section 152, act Oct. 2, 1917, ch. 62, § 13, 40 Stat. 300, related to provisions in leases for regulation of price and disposition of minerals.

## SUBCHAPTER VIII—BUILDING STONE OR SALINE LAND ENTRIES UNDER PLACER-MINING LAWS

### § 161. Entry of building-stone lands; previous law unaffected

Any person authorized to enter lands under the mining laws of the United States may enter

lands that are chiefly valuable for building stone under the provisions of the law in relation to placer mineral claims. Lands reserved for the benefit of the public schools or donated to any States shall not be subject to entry under this section. Nothing contained in this section shall be construed to repeal section 471 of title 16 relating to the establishment of national forests.

(Aug. 4, 1892, ch. 375, §§1, 3, 27 Stat. 348.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in text, are classified generally to this title.

CODIFICATION

First two sentences of this section are from section 1 and last sentence of this section is from section 3 of act Aug. 4, 1892.

### § 162. Entry of saline lands; limitation

All unoccupied public lands of the United States containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, shall be subject to location and purchase under the provisions of the law relating to placer-mining claims. The same person shall not locate or enter more than one claim hereunder.

(Jan. 31, 1901, ch. 186, 31 Stat. 745.)

## SUBCHAPTER IX—DISPOSAL OF ALABAMA LANDS AS AGRICULTURAL LANDS

### § 171. Disposal as agricultural lands

Except as otherwise provided in chapter 3A of this title, all public lands within the State of Alabama, whether mineral or otherwise, shall be subject to disposal only as agricultural lands. All lands which had been reported to the General Land Office prior to March 3, 1883, as containing coal and iron shall first be offered at public sale.

(Mar. 3, 1883, ch. 118, 22 Stat. 487; Feb. 25, 1920, ch. 85, §1, 41 Stat. 437.)

CODIFICATION

Section is from act Mar. 3, 1883, which contained an additional provision relating to pending homesteads, which was omitted because of its temporary nature.

AMENDMENTS

1920—The exception clause was inserted at beginning of this section because of act Feb. 25, 1920, which provided that deposits of coal, phosphate, sodium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, shall be subject to disposition in the form and manner provided by such act.

TRANSFER OF FUNCTIONS

General Land Office abolished and functions transferred to Bureau of Land Management by Reorg. Plan No. 3 of 1946, §403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100, and regulations thereunder. See note set out under section 1 of Title 43, Public Lands.

### § 172. Certain Alabama lands subject to homestead entry

All lands designated as agricultural in the reclassification of the public lands of Alabama by the Secretary of the Interior under authority of Act March 27, 1906 (chapter 1347, section 1, Thirty-fourth Statutes, page 88), shall be subject to homestead entry as such.

(Mar. 27, 1906, ch. 1347, §2, 34 Stat. 88.)

REFERENCES IN TEXT

Act March 27, 1906 (chapter 1347, section 1, Thirty-fourth Statutes, page 88), referred to in text, is not classified to the Code.

## CHAPTER 3A—LEASES AND PROSPECTING PERMITS

### SUBCHAPTER I—GENERAL PROVISIONS

Sec.
181. Lands subject to disposition; persons entitled to benefits; reciprocal privileges; helium rights reserved.
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187. Assignment or subletting of leases; relinquishment of rights under leases; conditions in leases for protection of diverse interests in operation of mines, wells, etc.; State laws not impaired.
187a. Oil or gas leases; partial assignments.
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191a. Late payment charges under Federal mineral leases.
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192. Payment of royalties in oil or gas; sale of such oil or gas.
192a. Cancellation or modification of contracts.
192b. Application to contracts.
192c. Rules and regulations governing issuance of certain leases; disposition of receipts.
193. Disposition of deposits of coal, and so forth.
193a. Preference right of United States to purchase coal for Army and Navy; price for coal; civil actions; jurisdiction.
194. Repealed.
195. Enforcement.
196. Cooperative agreements; delegation of authority.

### SUBCHAPTER II—COAL

201. Leases and exploration.
201–1 to 201b. Repealed or Omitted.
202. Common carriers; limitations of lease or permit.
202a. Consolidation of coal leases into logical mining unit.
203. Additional lands or deposits.
204. Repealed.
205. Consolidation of leases.
206. Noncontiguous coal or phosphate tracts in single lease.
207. Conditions of lease.
208. Permits to take coal for local domestic needs without royalty payments; corporation exclusion; area to municipalities for household use without profit.

Sec.
208–1. Exploratory program for evaluation of known recoverable coal resources.
208–2, 208a. Repealed.
209. Suspension, waiver, or reduction of rents or royalties to promote development or operation; extension of lease on suspension of operations and production.

SUBCHAPTER III—PHOSPHATES

211. Phosphate deposits.
212. Surveys; royalties; time payable; annual rentals; term of leases; readjustment on renewals; minimum production; suspension of operation.
213. Royalties for use of deposits of silica, limestone, or other rock embraced in lease.
214. Use of surface of other public lands; acreage; forest lands exception.

SUBCHAPTER IV—OIL AND GAS

221 to 222i. Omitted.
223. Leases; amount and survey of land; term of lease; royalties and annual rental.
223a. Repealed.
224. Payments for oil or gas taken prior to application for lease.
225. Condition of lease, forfeiture for violation.
226. Lease of oil and gas lands.
226–1. Extension of noncompetitive oil or gas lease issued before September 2, 1960.
226–2. Limitations for filing oil and gas contests.
226–3. Lands not subject to oil and gas leasing.
226a, 226b. Repealed.
226c. Reduction of royalties under existing leases.
226d to 227. Omitted.
228. Prospecting permits and leases to persons of lands not withdrawn; terms and conditions of; fraud of claimants.
229. Preference right to permits or leases of claimants of lands bona fide entered as agricultural land; terms and conditions.
229a. Water struck while drilling for oil and gas.
230 to 233. Repealed.
233a. Permits or leases of certain lands in Oklahoma; retention of royalties.
234 to 236. Repealed.
236a. Lands in naval petroleum reserves and naval oil-shale reserves; effect of other laws.
236b. Existing leases within naval petroleum reserves not affected.
237. Omitted.

SUBCHAPTER V—OIL SHALE

241. Leases of lands.
242. Oil shale claims.

SUBCHAPTER VI—ALASKA OIL PROVISO

251. Leases to claimants of withdrawn lands; terms and conditions; acreage; annual rentals and royalties; fraud of claimants.

SUBCHAPTER VII—SODIUM

261. Prospecting permits; lands included; acreage.
262. Leases to permittees; survey of lands; royalties and annual rentals.
263. Permits to use or lease of nonmineral lands for camp sites, and other purposes; annual rentals; acreage.

SUBCHAPTER VIII—SULPHUR

271. Prospecting permits; lands included; acreage.
272. Leases to permittees; privileges extended to oil and gas permittees.
273. Lease of lands not covered by permits or leases; acreage; rental.
274. Lands containing coal or other minerals.
275. Laws applicable.
276. Application of subchapter to Louisiana and New Mexico only.

Sec.

SUBCHAPTER IX—POTASH

281. Prospecting permits for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium; authorization; acreage; lands affected.
282. Leases to permittees of lands showing valuable deposits; royalty.
283. Lands containing valuable deposits not covered by permits or leases; authority to lease; acreage; conditions; renewals; exemptions from rentals and royalties; suspension of operations.
284. Lands containing coal or other minerals in addition to potassium deposits; issuance of prospecting permits and leases; covenants in potassium leases.
285. Laws applicable.
286. Disposition of royalties and rents from potassium leases.
287. Extension of prospecting permits.

## SUBCHAPTER I—GENERAL PROVISIONS

### § 181. Lands subject to disposition; persons entitled to benefits; reciprocal privileges; helium rights reserved

Deposits of coal, phosphate, sodium, potassium, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Appalachian Forest Act, approved March 1, 1911 (36 Stat. 961), and those in incorporated cities, towns, and villages and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this chapter to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this chapter.

The term ''oil'' shall embrace all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).

The term ''combined hydrocarbon lease'' shall refer to a lease issued in a special tar sand area pursuant to section 226 of this title after November 16, 1981.

The term ''special tar sand area'' means (1) an area designated by the Secretary of the Interior's orders of November 20, 1980 (45 FR 76800–76801) and January 21, 1981 (46 FR 6077–6078) as containing substantial deposits of tar sand.

The United States reserves the ownership of and the right to extract helium from all gas produced from lands leased or otherwise granted under the provisions of this chapter, under such rules and regulations as shall be prescribed by the Secretary of the Interior: *Provided further*, That in the extraction of helium from gas produced from such lands it shall be so extracted as

to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof.

(Feb. 25, 1920, ch. 85, §1, 41 Stat. 437; Feb. 7, 1927, ch. 66, §5, 44 Stat. 1058; Aug. 8, 1946, ch. 916, §1, 60 Stat. 950; Pub. L. 86–705, §7(a), Sept. 2, 1960, 74 Stat. 790; Pub. L. 97–78, §1(1), (4), Nov. 16, 1981, 95 Stat. 1070.)

REFERENCES IN TEXT

The Appalachian Forest Act, referred to in the first undesignated paragraph, is act Mar. 1, 1911, ch. 186, 36 Stat. 961, as amended, also known as the Weeks Law, which is classified to sections 480, 500, 513 to 519, 521, 552 and 563 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 552 of Title 16 and Tables.

AMENDMENTS

1981—Pub. L. 97–78, in first par., substituted ''gilsonite (including all vein-type solid hydrocarbons),'' for ''native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried)'', and added, after first par. three paragraphs which defined ''oil'', ''combined hydrocarbon lease'', and ''special tar sand area'', respectively.

1960—Pub. L. 86–705 included deposits of native asphalt, solid and semisolid bitumen, and bituminous rock.

1946—Act Aug. 8, 1946, reenacted: existing par., less three provisos, as first sentence of first par., inserting ''potassium'' after ''sodium'', which was also included in the 1927 amendment, and substituting provision for disposition of deposits ''in incorporated cities, towns, and villages, and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves'' for such disposition ''in national parks, and in lands withdrawn or reserved for military or naval uses or purposes'' and phrase ''associations of such citizens'' for ''any association of such persons''; former third proviso as second sentence of first par.; former first proviso, as second par., inserting reservation of ownership provision and striking out ''permitted'' before ''leased or otherwise granted''; and former second proviso as proviso in second par.

1927—Act Feb. 7, 1927, included deposits of potassium.

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106–463, §1, Nov. 7, 2000, 114 Stat. 2010, provided that: ''This Act [amending section 184 of this title and enacting provisions set out as a note under section 184 of this title] may be cited as the 'Coal Market Competition Act of 2000'.''

Pub. L. 106–393, title V, §501, Oct. 30, 2000, 114 Stat. 1624, provided that: ''This title [amending section 191 of this title and enacting provisions set out as a note under section 191 of this title] may be cited as the 'Mineral Revenue Payments Clarification Act of 2000'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–203, title V, §5101(a), Dec. 22, 1987, 101 Stat. 1330–256, provided that: ''This subtitle [subtitle B (§§5101–5113) of Pub. L. 100–203, enacting sections 195 and 226–3 of this title, amending sections 187a, 187b, 188, 191, and 226 of this title and section 3148 of Title 16, Conservation, and enacting provisions set out as notes under this section and section 226 of this title] may be cited as the 'Federal Onshore Oil and Gas Leasing Reform Act of 1987'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–78, Nov. 16, 1981, 95 Stat. 1070, which amended this section and sections 182, 184, 209, 226, 241, 351, and 352 of this title and enacted provisions set out as a note under this section, is popularly known as the ''Combined Hydrocarbon Leasing Act of 1981''.

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–377, §1(a), Aug. 4, 1976, 90 Stat. 1083, as amended by Pub. L. 95–554, §8, Oct. 30, 1978, 92 Stat. 2075, provided that: ''This Act [enacting sections 202a, 208–1, and 208–2 of this title, amending sections 184, 191, 201, 203, 207, 209, and 352 of this title, repealing sections 201–1 and 204 of this title, and enacting provisions set out as notes under sections 184, 201, 201–1, 203, and 204 of this title] may be cited as the 'Federal Coal Leasing Amendments Act of 1976'.''

SHORT TITLE OF 1960 AMENDMENT

Section 1 of Pub. L. 86–705 provided: ''That this Act [amending this section and sections 182, 184, 187a, 226, 226–1, 226–2, and 241 of this title, and enacted provisions set out as notes under sections 187a and 226 of this title] may be cited as the 'Mineral Leasing Act Revision of 1960'.''

SHORT TITLE

Act Feb. 25, 1920, ch. 85, §44, as added Dec. 22, 1987, Pub. L. 100–203, title V, §5113, 101 Stat. 1330–263, provided that: ''This Act [enacting this chapter] may be cited as the 'Mineral Leasing Act'.''

This chapter is also popularly known as the ''Mineral Leasing Act of 1920'' and the ''Mineral Lands Leasing Act''.

SAVINGS PROVISION

Provisions of Federal Land Policy and Management Act of 1976, Pub. L. 94–579, Oct. 21, 1976, 90 Stat. 2743, not to be construed as permitting any person to place, or allow to be placed, spent oil shale, etc., on any Federal land other than land leased for the recovery of shale oil under the act of Feb. 25, 1920, section 181 et seq. of this title, see section 701(d) of Pub. L. 94–579, set out as a note under section 1701 of Title 43, Public Lands.

Section 15 of act Aug. 8, 1946, provided: ''No repeal or amendment made by this Act [enacting sections 187a, 187b, 226c–226e, and 236b, amending this section and sections 184, 188, 193, 209, 225, 226, and 285, and repealing sections 223a, 226a, and 226b of this title] shall affect any right acquired under the law as it existed prior to such repeal or amendment, and such right shall be governed by the law in effect at the time of its acquisition; but any person holding a lease on the effective date of this Act [Aug. 8, 1946] may, by filing a statement to that effect, elect to have his lease governed by the applicable provisions of this Act instead of by the law in effect prior thereto.''

CONSTRUCTION AND APPLICABILITY OF 1981 AMENDMENTS

Section 1(10), (11) of Pub. L. 97–78 provided that:

''(10) Nothing in this Act [see Short Title of 1981 Amendment note above] shall affect the taxable status of production from tar sand under the Crude Oil Windfall Profit Tax Act of 1980 (Public Law 96–223) [see Tables for classification], reduce the depletion allowance for production from tar sand, or otherwise affect the existing tax status applicable to such production.

''(11) No provision of this Act [see Short Title of 1981 Amendment note above] shall apply to national parks, national monuments, or other lands where mineral leasing is prohibited by law. The Secretary of the Interior shall apply the provisions of this Act to the Glen Canyon National Recreation Area, and to any other units of the national park system where mineral leasing is permitted, in accordance with any applicable minerals management plan if the Secretary finds that there will be no resulting significant adverse impacts on the administration of such area, or on other contiguous units of the national park system.''

ADMISSION OF ALASKA AS STATE: SELECTION OF LANDS

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan.

3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

Selection of lands by Alaska from lands made available by Statehood provisions including lands subject to leases, permits, licenses or contracts issued under this chapter, see section 6(h) of Pub. L. 85–508, set out as note preceding section 21 of Title 48.

OUTER CONTINENTAL SHELF; MINERAL LEASES

Grant by the Secretary of the Interior of mineral leases on submerged lands of outer Continental Shelf, see section 1331 et seq., of Title 43, Public Lands.

### § 182. Lands disposed of with reservation of deposits of coal, etc.

The provisions of this chapter shall also apply to all deposits of coal, phosphate, sodium, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), or gas in the lands of the United States, which lands may have been or may be disposed of under laws reserving to the United States such deposits, with the right to prospect for, mine, and remove the same, subject to such conditions as are or may hereafter be provided by such laws reserving such deposits.

(Feb. 25, 1920, ch. 85, § 34, 41 Stat. 450; Pub. L. 86–705, § 7(a), Sept. 2, 1960, 74 Stat. 790; Pub. L. 97–78, § 1(1), Nov. 16, 1981, 95 Stat. 1070.)

AMENDMENTS

1981—Pub. L. 97–78 substituted ''gilsonite (including all vein-type solid hydrocarbons),'' for ''native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried)''.

1960—Pub. L. 86–705 included native asphalt, solid and semisolid bitumen, and bituminous rock.

### § 183. Cancellation of prospecting permits

The Secretary of the Interior shall reserve and may exercise the authority to cancel any prospecting permit upon failure by the permittee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit, and shall insert in every such permit issued under the provisions of this chapter appropriate provisions for its cancellation by him.

(Feb. 25, 1920, ch. 85, § 26, 41 Stat. 448.)

### § 184. Limitations on leases held, owned or controlled by persons, associations or corporations

**(a) Coal leases**

No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter or otherwise, coal leases or permits on an aggregate of more than 75,000 acres in any one State and in no case greater than an aggregate of 150,000 acres in the United States: *Provided*, That any person, association, or corporation currently holding, owning, or controlling more than an aggregate of 150,000 acres in the United States on the date of enactment of this section shall not be required on account of this section to relinquish said leases or permits: *Provided, further*, That in no case shall such person, association, or corporation be permitted to take, hold, own, or control any further Federal coal leases or permits until such time as their holdings, ownership, or control of Federal leases or permits has been reduced below an aggregate of 150,000 acres within the United States.

**(b) Sodium leases or permits, acreage**

(1) No person, association, or corporation, except as otherwise provided in this subsection, shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, sodium leases or permits on an aggregate of more than five thousand one hundred and twenty acres in any one State.

(2) The Secretary may, in his discretion, where the same is necessary in order to secure the economic mining of sodium compounds leasable under this chapter, permit a person, association, or corporation to take or hold sodium leases or permits on up to 30,720 acres in any one State.

**(c) Phosphate leases, acreage**

No person, association, or corporation shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, phosphate leases or permits on an aggregate of more than twenty thousand four hundred and eighty acres in the United States.

**(d) Oil or gas leases, acreage, Alaska; options, semi-annual statements**

(1) No person, association, or corporation, except as otherwise provided in this chapter, shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, oil or gas leases (including options for such leases or interests therein) on land held under the provisions of this chapter exceeding in the aggregate two hundred forty-six thousand and eighty acres in any one State other than Alaska[1] *Provided, however*, That acreage held in special tar sand areas, and acreage under any lease any portion of which has been committed to a federally approved unit or cooperative plan or communitization agreement or for which royalty (including compensatory royalty or royalty in-kind) was paid in the preceding calendar year, shall not be chargeable against such State limitations. In the case of the State of Alaska, the limit shall be three hundred thousand acres in the northern leasing district and three hundred thousand acres in the southern leasing district, and the boundary between said two districts shall be the left limit of the Tanana River from the border between the United States and Canada to the confluence of the Tanana and Yukon Rivers, and the left limit of the Yukon River from said confluence to its principal southern mouth.

(2) No person, association, or corporation shall take, hold, own, or control at one time options to acquire interests in oil or gas leases under the provisions of this chapter which involve, in the aggregate, more than two hundred thousand

[1] So in original. Probably should be followed by a colon.

acres of land in any one State other than Alaska, or, in the case of Alaska, more than two hundred thousand acres in each of its two leasing districts, as hereinbefore described. No option to acquire any interest in such an oil or gas lease shall be enforcible if entered into for a period of more than three years (which three years shall be inclusive of any renewal period if a right to renew is reserved by any party to the option) without the prior approval of the Secretary. In any case in which an option to acquire the optionor's entire interest in the whole or a part of the acreage under a lease is entered into, the acreage to which the option is applicable shall be charged both to the optionor and to the optionee, but the charge to the optionor shall cease when the option is exercised. In any case in which an option to acquire a part of the optionor's interest in the whole or a part of the acreage under a lease is entered into, the acreage to which the option is applicable shall be fully charged to the optionor and a share thereof shall also be charged to the optionee, as his interest may appear, but after the option is exercised said acreage shall be charged to the parties pro rata as their interests may appear. In any case in which an assignment is made of a part of a lessee's interest in the whole or part of the acreage under a lease or an application for a lease, the acreage shall be charged to the parties pro rata as their interests may appear. No option or renewal thereof shall be enforcible until notice thereof has been filed with the Secretary or an officer or employee of the Department of the Interior designated by him to receive the same. Each such notice shall include, in addition to any other matters prescribed by the Secretary, the names and addresses of the parties thereto, the serial number of the lease or application for a lease to which the option is applicable, and a statement of the number of acres covered thereby and of the interests and obligations of the parties thereto and shall be subscribed by all parties to the option or their duly authorized agents. An option which has not been exercised shall remain charged as hereinbefore provided until notice of its relinquishment or surrender has been filed, by either party, with the Secretary or any officer or employee of the Department of the Interior designated by him to receive the same. In addition, each holder of any such option shall file with the Secretary or an officer or employee of the Department of the Interior as aforesaid within ninety days after the 30th day of June and the 31st day of December in each year a statement showing, in addition to any other matters prescribed by the Secretary, his name, the name and address of each grantor of an option held by him, the serial number of every lease or application for a lease to which such an option is applicable, the number of acres covered by each such option, the total acreage in each State to which such options are applicable, and his interest and obligation under each such option. The failure of the holder of an option so to file shall render the option unenforcible[2] by him. The unenforcibility[3] of any option under the provisions of this paragraph shall not diminish the number of acres deemed to be held under option by any person, association, or corporation in computing the amount chargeable under the first sentence of this paragraph and shall not relieve any party thereto of any liability to cancellation, forfeiture, forced disposition, or other sanction provided by law. The Secretary may prescribe forms on which the notice and statements required by this paragraph shall be made.

**(e) Association or stockholder interests, conditions; combined interests**

(1) No person, association, or corporation shall take, hold, own or control at one time any interest as a member of an association or as a stockholder in a corporation holding a lease, option, or permit under the provisions of this chapter which, together with the area embraced in any direct holding, ownership or control by him of such a lease, option, or permit or any other interest which he may have as a member of other associations or as a stockholder in other corporations holding, owning or controlling such leases, options, or permits for any kind of minerals, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee, optionee, or permittee under this chapter, except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than 10 per centum of the stock or other instruments of ownership or control of such association or corporation, and except that within three years after September 2, 1960 no valid option in existence prior to September 2, 1960 held by a corporation or association on September 2, 1960 shall be chargeable to any stockholder of such corporation or to a member of such association so long as said option shall be so held by such corporation or association under the provisions of this chapter.

(2) No contract for development and operation of any lands leased under this chapter, whether or not coupled with an interest in such lease, and no lease held, owned, or controlled in common by two or more persons, associations, or corporations shall be deemed to create a separate association under the preceding paragraph of this subsection between or among the contracting parties or those who hold, own or control the lease in common, but the proportionate interest of each such party shall be charged against the total acreage permitted to be held, owned or controlled by such party under this chapter. The total acreage so held, owned, or controlled in common by two or more parties shall not exceed, in the aggregate, an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee, optionee, or permittee under this chapter.

**(f) Limitations on other sections; combined interests permitted for certain purposes**

Nothing contained in subsection (e) of this section shall be construed (i) to limit sections 227, 228, 251 of this title or (ii), subject to the approval of the Secretary, to prevent any number of lessees under this chapter from combining their several interests so far as may be nec-

[2] So in original. Probably should be ''unenforceable''.

[3] So in original. Probably should be ''unenforceability''.

essary for the purpose of constructing and carrying on the business of a refinery or of establishing and constructing, as a common carrier, a pipeline or railroad to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees under this chapter or in the transportation of coal or (iii) to increase the acreage which may be taken, held, owned, or controlled under this section.

**(g) Forbidden interests acquired by descent, will, judgment, or decree; permissible holding period**

Any ownership or interest otherwise forbidden in this chapter which may be acquired by descent, will, judgment, or decree may be held for two years after its acquisition and no longer.

**(h) Cancellation, forfeiture, or disposal of interests for violation; bona fide purchasers and other valid interests; sale by Secretary; record of proceedings**

(1) If any interest in any lease is owned, or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of this chapter, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, in any appropriate proceeding instituted by the Attorney General. Such a proceeding shall be instituted in the United States district court for the district in which the leased property or some part thereof is located or in which the defendant may be found.

(2) The right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, interest in a lease, option to acquire a lease or an interest therein, or permit which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been canceled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation. If, in any such proceeding, an underlying lease, interest, option, or permit is canceled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation, forfeiture, or compulsory disposition, the underlying lease, interest, option, or permit shall be sold by the Secretary to the highest responsible qualified bidder by competitive bidding under general regulations subject to all outstanding valid interests therein and valid options pertaining thereto. Likewise if, in any such proceeding, less than the whole interest in a lease, interest, option, or permit is canceled or forfeited to the Government, the partial interests so canceled or forfeited shall be sold by the Secretary to the highest responsible qualified bidder by competitive bidding under general regulations. If competitive bidding fails to produce a satisfactory offer the Secretary may, in either of these cases, sell the interest in question by such other method as he deems appropriate on terms not less favorable to the Government than those of the best competitive bid received.

(3) The commencement and conclusion of every proceeding under this subsection shall be promptly noted on the appropriate public records of the Bureau of Land Management.

**(i) Bona fide purchasers, conditions for obtaining dismissals**

Effective September 21, 1959, any person, association, or corporation who is a party to any proceeding with respect to a violation of any provision of this chapter, whether initiated prior to said date or thereafter, shall have the right to be dismissed promptly as such a party upon showing that he holds and acquired as a bona fide purchaser the interest involving him as such a party without violating any provisions of this chapter. No hearing upon any such showing shall be required unless the Secretary presents prima facie evidence indicating a possible violation of this chapter on the part of the alleged bona fide purchaser.

**(j) Waiver or suspension of rights**

If during any such proceeding, a party thereto files with the Secretary a waiver of his rights under his lease (including particularly, where applicable, rights to drill and to assign) or if such rights are suspended by the Secretary pending a decision in the proceeding, whether initiated prior to enactment of this chapter or thereafter, payment of rentals and running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or suspension of the rights until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

**(k) Unlawful trusts; forfeiture**

Except as otherwise provided in this chapter, if any lands or deposits subject to the provisions of this chapter shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form a part of or are in any wise controlled by any combination in the form of an unlawful trust, with the consent of the lessee, optionee, or permittee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), gas, or sodium entered into by the lessee, optionee, or permittee or any agreement or understanding, written, verbal, or otherwise, to which such lessee, optionee, or permittee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in this chapter, the lease, option, or permit shall be forfeited by appropriate court proceedings.

**(*l*) Rules and regulations; notice to and consultation with Attorney General; application of antitrust laws; definitions**

(1) At each stage in the formulation and promulgation of rules and regulations concerning

coal leasing pursuant to this chapter, and at each stage in the issuance, renewal, and readjustment of coal leases under this chapter, the Secretary of the Interior shall consult with and give due consideration to the views and advice of the Attorney General of the United States.

(2) No coal lease may be issued, renewed, or readjusted under this chapter until at least thirty days after the Secretary of the Interior notifies the Attorney General of the proposed issuance, renewal, or readjustment. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary of the Interior as to whether such lease would create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises the Secretary of the Interior that a lease would create or maintain such a situation, the Secretary of the Interior may not issue such lease, nor may he renew or readjust such lease for a period not to exceed one year, as the case may be, unless he thereafter conducts a public hearing on the record in accordance with subchapter II of chapter 5 of title 5 and finds therein that such issuance, renewal, or readjustment is necessary to effectuate the purposes of this chapter, that it is consistent with the public interest, and that there are no reasonable alternatives consistent with this chapter, the antitrust laws, and the public interest.

(3) Nothing in this chapter shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(4) As used in this subsection, the term ''antitrust law'' means—

(A) the Act entitled ''An Act to protect trade and commerce against unlawful restraints and monopolies'', approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(B) the Act entitled ''An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes'', approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

(C) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(D) sections 73 and 74 of the Act entitled ''An Act to reduce taxation, to provide revenue for the Government, and for other purposes'', approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or

(E) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(Feb. 25, 1920, ch. 85, §27, 41 Stat. 448; Apr. 30, 1926, ch. 197, 44 Stat. 373; July 3, 1930, ch. 854, §1, 46 Stat. 1007; Mar. 4, 1931, ch. 506, 46 Stat. 1524; Aug. 8, 1946, ch. 916, §6, 60 Stat. 954; June 1, 1948, ch. 365, 62 Stat. 285; June 3, 1948, ch. 379, §6, 62 Stat. 291; Aug. 2, 1954, ch. 650, 68 Stat. 648; Pub. L. 85–122, Aug. 13, 1957, 71 Stat. 341; Pub. L. 85–698, Aug. 21, 1958, 72 Stat. 688; Pub. L. 86–294, §1, Sept. 21, 1959, 73 Stat. 571; Pub. L. 86–391, §1(c), Mar. 18, 1960, 74 Stat. 8; Pub. L. 86–705, §3, Sept. 2, 1960, 74 Stat. 785; Pub. L. 88–526, §1, Aug. 31, 1964, 78 Stat. 710; Pub. L. 88–548, Aug. 31, 1964, 78 Stat. 754; Pub. L. 94–377, §§11, 15, Aug. 4, 1976, 90 Stat. 1090, 1091; Pub. L. 97–78, §1(2), (5), Nov. 16, 1981, 95 Stat. 1070; Pub. L. 106–191, §2, Apr. 28, 2000, 114 Stat. 232; Pub. L. 106–463, §3, Nov. 7, 2000, 114 Stat. 2011; Pub. L. 109–58, title III, §352, Aug. 8, 2005, 119 Stat. 714.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a), probably means the date of enactment of Pub. L. 94–377, which was Aug. 4, 1976.

The Act entitled ''An Act to protect trade and commerce against unlawful restraints and monopolies'', approved July 2, 1890, as amended, referred to in subsec. (*l*)(4)(A), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

The Act entitled ''An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes'', approved October 15, 1914, as amended, referred to in subsec. (*l*)(4)(B), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, and is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in subsec. (*l*)(4)(C), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Act of June 19, 1936, chapter 592, referred to in subsec. (*l*)(4)(E), is act June 19, 1936, ch. 592, 49 Stat. 1526, known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

CODIFICATION

In subsec. (*l*)(2), ''subchapter II of chapter 5 of title 5'' substituted for ''the Administrative Procedure Act'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

2005—Subsec. (d)(1). Pub. L. 109–58 inserted '', and acreage under any lease any portion of which has been committed to a federally approved unit or cooperative plan or communitization agreement or for which royalty (including compensatory royalty or royalty in-kind) was paid in the preceding calendar year,'' after ''acreage held in special tar sand areas''.

2000—Subsec. (a). Pub. L. 106–463 inserted heading, struck out ''(1)'' before ''No person'', substituted ''75,000 acres'' for ''forty-six thousand and eighty acres'', and substituted ''150,000 acres'' for ''one hundred thousand acres'' wherever appearing.

Subsec. (b)(2). Pub. L. 106–191 substituted ''30,720 acres'' for ''fifteen thousand three hundred and sixty acres''.

1981—Subsec. (d)(1). Pub. L. 97–78, §1(5), inserted proviso that acreage held in special tar sand areas not be chargeable against State limitations.

Subsec. (k). Pub. L. 97–78, §1(2), substituted ''gilsonite (including all vein-type solid hydrocarbons)'' for ''native asphalt, solid and semisolid bitumen, bituminous rock''.

1976—Subsec. (a)(1). Pub. L. 94–377, §11(a), inserted ''or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation'' before ''shall take, hold, own or control'', ''and in no case greater than an aggregate of one hundred thousand acres in the United States'' after ''in

any one State,'' proviso relating to non-relinquishment of leases or permits by an entity owning or controlling more than an aggregate of one hundred thousand acres, and proviso prohibiting ownership or control of further Federal leases or permits until reduction to below an aggregate of one hundred thousand acres.

Subsec. (a)(2). Pub. L. 94–377, § 11(b), struck out par. (2) providing for application, hearing and granting of additional acreage, not to exceed 5120 acres in any one State, to a person, association or corporation requiring such extra acreage to carry on business economically, and the subsequent reevaluation of such entity's continuing need for such extra acreage.

Subsec. (*l*). Pub. L. 94–377, § 15, added subsec. (*l*).

1964—Subsec. (a)(1). Pub. L. 88–526 struck out '', except as otherwise provided in this subsection,'' after ''corporation'' and increased aggregate number of acres from 10,240 to 46,080 acres.

Subsec. (c). Pub. L. 88–548 increased aggregate number of acres from 10,240 to 20,480 acres.

1960—Pub. L. 86–705 generally revised provisions and divided them into subsecs. (a) to (k). Other changes concerned: maximum acreage in Alaska, unreported options, their unenforceability, form for notice of options, party to give notice, inclusion of options in acreage determinations, charge of association or corporate holdings against principal stockholders, hearings requirement based upon prima facie evidence of violations, running of time against a lease and the payment of rentals during a waiver or suspension of a lessee's rights.

Pub. L. 86–391 authorized issuance of phosphate permits.

1959—Pub. L. 86–294 inserted provision that the right of cancellation or forfeiture for violations shall not apply so as to affect adversely the interest of a bona fide purchaser in a lease acquired in conformity with acreage limitations; that bona fide purchasers in such situations have the right to be dismissed as parties from proceedings; and that if a party to proceedings files waiver of rights to drill or assigns his interests, or if such rights are suspended pending decision, he shall, if he is not in violation of provisions, have the right to have his interest extended for a period of time equal to the period between filing of waiver or order of suspension and final decision, without payment of rental.

1958—Pub. L. 85–698 increased limitation on acreage which may be taken or held under coal leases or permits in any one State from 5,120 to 10,240 acres, permitted applications for additional coal leases or permits not exceeding 5,120 additional acres in the State, provided for hearings on such applications, authorized reevaluation and cancellation of leases and permits for additional acreage, and prohibited assignment, transfer, or sale of any of the additional acreage without the Secretary's approval.

1957—Pub. L. 85–122 struck out ''or permits exceeding in the aggregate five thousand one hundred and twenty acres in any one State, and'' after ''phosphate leases'' in second sentence.

1954—Act Aug. 2, 1954, increased acreage that any one person can hold in the aggregate from fifteen thousand three hundred and sixty acres to forty-six thousand and eighty acres, increased number of acres that can be held under option from one hundred thousand acres to two hundred thousand acres, and extended terms of the option from 2 to 3 years.

1948—Act June 1, 1948, substituted in second proviso ''within two years after the passage of this Act'' for ''on or before August 8, 1950'' in order to allow options to be exercised up to that time.

Act June 3, 1948, increased aggregate acreage allowed one person, etc., from two thousand five hundred and sixty acres to five thousand one hundred and twenty acres of coal or sodium leases, and increased the aggregate acreage allowed one person, etc., from seven thousand six hundred and eighty acres to fifteen thousand three hundred and sixty acres of oil or gas leases.

1946—Act Aug. 8, 1946, principally doubled amount of land that may be leased by any person or corporation in any one State and abolished former acreage limitation of 2,560 acres on one structure; excluded operating contracts and leases held in common from definition of ''association''; inserted provisions relating to options; and omitted provisions relating to cooperative or unit plans and operating, drilling or development contracts.

1931—Act Mar. 4, 1931, amended section generally.

1930—Act July 3, 1930, amended section generally.

1926—Act Apr. 30, 1926, amended section generally.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 2 of Pub. L. 86–294 provided that: ''The rights granted by the second and third sentences of the amendment contained within section 1 of this Act [amending this section to provide that holder of interest in lease has right to be dismissed from cancellation or forfeiture proceedings upon showing he acquired his interest as bona fide purchaser and without violation of provisions, and to provide right to have his lease extended if rights thereunder to drill and to assign are suspended or waived during such proceedings and it is determined he is not in violation of provisions] shall apply with respect to any proceeding now pending or initiated after the date of enactment of this Act [Sept. 21, 1959].''

SAVINGS PROVISION

See note set out under section 181 of this title.

Section 11(b) of Pub. L. 94–377 provided in part that repeal by such section of subsec. (a)(2) of this section is subject to valid existing rights.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Interior, referred to in subsec. (*l*), to promulgate regulations under this chapter relating to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, transferred to Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare. Section 7152(b) of Title 42 was repealed by Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and functions of Secretary of Energy returned to Secretary of the Interior. See House Report No. 97–315, pp. 25, 26, Nov. 5, 1981.

FINDINGS

Pub. L. 106–463, § 2, Nov. 7, 2000, 114 Stat. 2010, provided that: ''Congress finds that—

''(1) Federal land contains commercial deposits of coal, the Nation's largest deposits of coal being located on Federal land in Utah, Colorado, Montana, and the Powder River Basin of Wyoming;

''(2) coal is mined on Federal land through Federal coal leases under the Act of February 25, 1920 (commonly known as the 'Mineral Leasing Act') (30 U.S.C. 181 et seq.);

''(3) the sub-bituminous coal from these mines is low in sulfur, making it the cleanest burning coal for energy production;

''(4) the Mineral Leasing Act sets for each leasable mineral a limitation on the amount of acreage of Federal leases any 1 producer may hold in any 1 State or nationally;

''(5)(A) the present acreage limitation for Federal coal leases has been in place since 1976;

''(B) currently the coal lease acreage limit of 46,080 acres per State is less than the per-State Federal lease acreage limit for potash (96,000 acres) and oil and gas (246,080 acres);

''(6) coal producers in Wyoming and Utah are operating mines on Federal leaseholds that contain total acreage close to the coal lease acreage ceiling;

''(7) the same reasons that Congress cited in enacting increases for State lease acreage caps applicable

in the case of other minerals—the advent of modern mine technology, changes in industry economics, greater global competition, and the need to conserve Federal resources—apply to coal;

''(8) existing coal mines require additional lease acreage to avoid premature closure, but those mines cannot relinquish mined-out areas to lease new acreage because those areas are subject to 10-year reclamation plans, and the reclaimed acreage is counted against the State and national acreage limits;

''(9) to enable them to make long-term business decisions affecting the type and amount of additional infrastructure investments, coal producers need certainty that sufficient acreage of leasable coal will be available for mining in the future; and

''(10) to maintain the vitality of the domestic coal industry and ensure the continued flow of valuable revenues to the Federal and State governments and of energy to the American public from coal production on Federal land, the Mineral Leasing Act should be amended to increase the acreage limitation for Federal coal leases.''

Pub. L. 106–191, § 1, Apr. 28, 2000, 114 Stat. 231, provided that: ''The Congress finds and declares that—

''(1) The Federal lands contain commercial deposits of trona, with the world's largest body of this mineral located on such lands in southwestern Wyoming.

''(2) Trona is mined on Federal lands through Federal sodium leases issued under the Mineral Leasing Act of 1920 [30 U.S.C. 181 et seq.].

''(3) The primary product of trona mining is soda ash (sodium carbonate), a basic industrial chemical that is used for glass making and a variety of consumer products, including baking soda, detergents, and pharmaceuticals.

''(4) The Mineral Leasing Act [30 U.S.C. 181 et seq.] sets for each leasable mineral limitations on the amount of acreage of Federal leases any one producer may hold in any one State or nationally.

''(5) The present acreage limitation for Federal sodium (trona) leases has been in place for over five decades, since 1948, and is the oldest acreage limitation in the Mineral Leasing Act. Over this time frame Congress and/or the BLM has revised acreage limits for other minerals to meet the needs of the respective industries. Currently, the sodium lease acreage limitation of 15,360 acres per State is approximately one-third of the per State Federal lease acreage cap for coal (46,080 acres) and potassium (51,200 acres) and one-sixteenth that of oil and gas (246,080 acres).

''(6) Three of the four trona producers in Wyoming are operating mines on Federal leaseholds that contain total acreage close to the sodium lease acreage ceiling.

''(7) The same reasons that Congress cited in enacting increases in other minerals' per State lease acreage caps apply to trona: the advent of modern mine technology, changes in industry economics, greater global competition, and need to conserve the Federal resource.

''(8) Existing trona mines require additional lease acreage to avoid premature closure, and are unable to relinquish mined-out areas to lease new acreage because those areas continue to be used for mine access, ventilation, and tailings disposal and may provide future opportunities for secondary recovery by solution mining.

''(9) Existing trona producers are having to make long term business decisions affecting the type and amount of additional infrastructure investments based on the certainty that sufficient acreage of leaseable [sic] trona will be available for mining in the future.

''(10) To maintain the vitality of the domestic trona industry and ensure the continued flow of valuable revenues to the Federal and State governments and products to the American public from trona production on Federal lands, the Mineral Leasing Act should be amended to increase the acreage limitation for Federal sodium leases.''

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

### § 184a. Authorization of States to include in agreements for conservation of oil and gas resources lands acquired from United States

Notwithstanding the provisions of any applicable grant, deed, patent, exchange, or law of the United States, any State owning lands or interests therein acquired by it from the United States may consent to the operation or development of such lands or interests, or any part thereof, under agreements approved by the Secretary of the Interior made jointly or severally with lessees or permittees of lands or mineral deposits of the United States or others, for the purpose of more properly conserving the oil and gas resources within such State. Such agreements may provide for the cooperative or unit operation or development of part or all of any oil or gas pool, field, or area; for the allocation of production and the sharing of proceeds from the whole or any specified part thereof regardless of the particular tract from which production is obtained or proceeds are derived; and, with the consent of the State, for the modification of the terms and provisions of State leases for lands operated and developed thereunder, including the term of years for which said leases were originally granted, to conform said leases to the terms and provisions of such agreements: *Provided*, That nothing in this section contained, nor the effectuation of it, shall be construed as in any respect waiving, determining or affecting any right, title, or interest, which otherwise may exist in the United States, and that the making of any agreement, as provided in this section, shall not be construed as an admission as to the title or ownership of the lands included.

(Jan. 26, 1940, ch. 14, 54 Stat. 17.)

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

### § 185. Rights-of-way for pipelines through Federal lands

#### (a) Grant of authority

Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 181 of this title in accordance with the provisions of this section.

#### (b) Definitions

(1) For the purposes of this section ''Federal lands'' means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf.

A right-of-way through a Federal reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.

(2) ''Secretary'' means the Secretary of the Interior.

(3) ''Agency head'' means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands.

**(c) Inter-agency coordination**

(1) Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary, is authorized to grant or renew the right-of-way or permit for the purposes set forth in this section.

(2) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved, to grant or renew rights-of-way or permits through the Federal lands involved. The Secretary may enter into interagency agreements with all other Federal agencies having jurisdiction over Federal lands for the purpose of avoiding duplication, assigning responsibility, expediting review of rights-of-way or permit applications, issuing joint regulations, and assuring a decision based upon a comprehensive review of all factors involved in any right-of-way or permit application. Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction.

**(d) Width limitations**

The width of a right-of-way shall not exceed fifty feet plus the ground occupied by the pipeline (that is, the pipe and its related facilities) unless the Secretary or agency head finds, and records the reasons for his finding, that in his judgment a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips and campsites and they need not necessarily be connected or contiguous to the pipe and may be the subjects of separate rights-of-way.

**(e) Temporary permits**

A right-of-way may be supplemented by such temporary permits for the use of Federal lands in the vicinity of the pipeline as the Secretary or agency head finds are necessary in connection with construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

**(f) Regulatory authority**

Rights-of-way or permits granted or renewed pursuant to this section shall be subject to regulations promulgated in accord with the provisions of this section and shall be subject to such terms and conditions as the Secretary or agency head may prescribe regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination.

**(g) Pipeline safety**

The Secretary or agency head shall impose requirements for the operation of the pipeline and related facilities in a manner that will protect the safety of workers and protect the public from sudden ruptures and slow degradation of the pipeline.

**(h) Environmental protection**

(1) Nothing in this section shall be construed to amend, repeal, modify, or change in any way the requirements of section 102(2)(C) [42 U.S.C. 4332(2)(C)] or any other provision of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(2) The Secretary or agency head, prior to granting a right-of-way or permit pursuant to this section for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way or permit which shall comply with this section. The Secretary or agency head shall issue regulations or impose stipulations which shall include, but shall not be limited to: (A) requirements for restoration, revegetation, and curtailment of erosion of the surface of the land; (B) requirements to insure that activities in connection with the right-of-way or permit will not violate applicable air and water quality standards nor related facility siting standards established by or pursuant to law; (C) requirements designed to control or prevent (i) damage to the environment (including damage to fish and wildlife habitat), (ii) damage to public or private property, and (iii) hazards to public health and safety; and (D) requirements to protect the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes. Such regulations shall be applicable to every right-of-way or permit granted pursuant to this section, and may be made applicable by the Secretary or agency head to existing rights-of-way or permits, or rights-of-way or permits to be renewed pursuant to this section.

**(i) Disclosure**

If the applicant is a partnership, corporation, association, or other business entity, the Secretary or agency head shall require the applicant to disclose the identity of the participants in the entity. Such disclosure shall include where applicable (1) the name and address of each partner, (2) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote, and (3) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of

shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

**(j) Technical and financial capability**

The Secretary or agency head shall grant or renew a right-of-way or permit under this section only when he is satisfied that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the project for which the right-of-way or permit is requested in accordance with the requirements of this section.

**(k) Public hearings**

The Secretary or agency head by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local government agencies and the public adequate notice and an opportunity to comment upon right-of-way applications filed after the date of enactment of this subsection.

**(*l*) Reimbursement of costs**

The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market rental value of the right-of-way or permit, as determined by the Secretary or agency head.

**(m) Bonding**

Where he deems it appropriate the Secretary or agency head may require a holder of a right-of-way or permit to furnish a bond, or other security, satisfactory to the Secretary or agency head to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or permit or by any rule or regulation of the Secretary or agency head.

**(n) Duration of grant**

Each right-of-way or permit granted or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project, but in no event more than thirty years. In determining the duration of a right-of-way the Secretary or agency head shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The Secretary or agency head shall renew any right-of-way, in accordance with the provisions of this section, so long as the project is in commercial operation and is operated and maintained in accordance with all of the provisions of this section.

**(*o*) Suspension or termination of right-of-way**

(1) Abandonment of a right-of-way or noncompliance with any provision of this section may be grounds for suspension or termination of the right-of-way if (A) after due notice to the holder of the right-of-way, (B) a reasonable opportunity to comply with this section, and (C) an appropriate administrative proceeding pursuant to section 554 of title 5, the Secretary or agency head determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed upon condition, event, or time.

(2) If the Secretary or agency head determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

(3) Deliberate failure of the holder to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: *Provided*, That where the failure to use the right-of-way is due to circumstances not within the holder's control the Secretary or agency head is not required to commence proceedings to suspend or terminate the right-of-way.

**(p) Joint use of rights-of-way**

In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary or agency head the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way or permit area granted pursuant to this section.

**(q) Statutes**

No rights-of-way for the purposes provided for in this section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. Any application for a right-of-way filed under any other law prior to the effective date of this provision may, at the applicant's option, be considered as an application under this section. The Secretary or agency head may require the applicant to submit any additional information he deems necessary to comply with the requirements of this section.

**(r) Common carriers**

(1) Pipelines and related facilities authorized under this section shall be constructed, operated, and maintained as common carriers.

(2)(A) The owners or operators of pipelines subject to this section shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.

(B) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased.

(3)(A) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act [15 U.S.C. 717 et seq.] or by any public utility subject to regulation by a State or municipal regulatory agency

having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(B) Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipelines is offered for sale, each such pipeline shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(4) The Government shall in express terms reserve and shall provide in every lease of oil lands under this chapter that the lessee, assignee, or beneficiary, if owner or operator of a controlling interest in any pipeline or of any company operating the pipeline which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipeline operating a lease or purchasing gas or oil under the provisions of this chapter.

(5) Whenever the Secretary has reason to believe that any owner or operator subject to this section is not operating any oil or gas pipeline in complete accord with its obligations as a common carrier hereunder, he may request the Attorney General to prosecute an appropriate proceeding before the Secretary of Energy or Federal Energy Regulatory Commission or any appropriate State agency or the United States district court for the district in which the pipeline or any part thereof is located, to enforce such obligation or to impose any penalty provided therefor, or the Secretary may, by proceeding as provided in this section, suspend or terminate the said grant of right-of-way for noncompliance with the provisions of this section.

(6) The Secretary or agency head shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which he deems necessary to determine whether a right-of-way shall be granted or renewed and the terms and conditions which should be included in the right-of-way. Such information may include, but is not limited to: (A) conditions for, and agreements among owners or operators, regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand; (B) conditions for adding or abandoning intake, offtake, or storage points or facilities; and (C) minimum shipment or purchase tenders.

**(s) Exports of Alaskan North Slope oil**

(1) Subject to paragraphs (2) through (6) of this subsection and notwithstanding any other provision of this chapter or any other provision of law (including any regulation) applicable to the export of oil transported by pipeline over right-of-way granted pursuant to section 1652 of title 43, such oil may be exported unless the President finds that exportation of this oil is not in the national interest. The President shall make his national interest determination within five months of November 28, 1995. In evaluating whether exports of this oil are in the national interest, the President shall at a minimum consider—

(A) whether exports of this oil would diminish the total quantity or quality of petroleum available to the United States;

(B) the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential adverse effects of exports of this oil on the environment, which shall be completed within four months of November 28, 1995; and

(C) whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

If the President determines that exports of this oil are in the national interest, he may impose such terms and conditions (other than a volume limitation) as are necessary or appropriate to ensure that such exports are consistent with the national interest.

(2) Except in the case of oil exported to a country with which the United States entered into a bilateral international oil supply agreement before November 26, 1979, or to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency, any oil transported by pipeline over right-of-way granted pursuant to section 1652 of title 43 shall, when exported, be transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (as determined in accordance with section 50501 of title 46).

(3) Nothing in this subsection shall restrict the authority of the President under the Constitution, the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.), or Part B of title II of the Energy Policy and Conservation Act (42 U.S.C. 6271–76) to prohibit exports.

(4) The Secretary of Commerce shall issue any rules necessary for implementation of the President's national interest determination, including any licensing requirements and conditions, within 30 days of the date of such determination by the President. The Secretary of Commerce shall consult with the Secretary of Energy in administering the provisions of this subsection.

(5) If the Secretary of Commerce finds that exporting oil under authority of this subsection has caused sustained material oil supply shortages or sustained oil prices significantly above world market levels and further finds that these supply shortages or price increases have caused or are likely to cause sustained material adverse employment effects in the United States, the Secretary of Commerce, in consultation with the Secretary of Energy, shall recommend, and the President may take, appropriate action concerning exports of this oil, which may include modifying or revoking authority to export such oil.

(6) Administrative action under this subsection is not subject to sections 551 and 553 through 559 of title 5.

**(t) Existing rights-of-way**

The Secretary or agency head may ratify and confirm any right-of-way or permit for an oil or gas pipeline or related facility that was granted under any provision of law before the effective date of this subsection, if it is modified by mutual agreement to comply to the extent practical with the provisions of this section. Any action taken by the Secretary or agency head pursuant to this subsection shall not be considered a major Federal action requiring a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1970 (Public Law 90–190; 42 U.S.C. 4321).[1]

**(u) Limitations on export**

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1979: *Provided*, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.

**(v) State standards**

The Secretary or agency head shall take into consideration and to the extent practical comply with State standards for right-of-way construction, operation, and maintenance.

**(w) Reports**

(1) The Secretary and other appropriate agency heads shall report to the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate annually on the administration of this section and on the safety and environmental requirements imposed pursuant thereto.

(2) The Secretary or agency head shall promptly notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate upon receipt of an application for a right-of-way for a pipeline twenty-four inches or more in diameter, and no right-of-way for such a pipeline shall be granted until a notice of intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to the terms and conditions he proposes to impose, has been submitted to such committees.

(3) Periodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.

**(x) Liability**

(1) The Secretary or agency head shall promulgate regulations and may impose stipulations specifying the extent to which holders of rights-of-way and permits under this chapter shall be liable to the United States for damage or injury incurred by the United States in connection with the right-of-way or permit. Where the right-of-way or permit involves lands which are under the exclusive jurisdiction of the Federal Government, the Secretary or agency head shall promulgate regulations specifying the extent to which holders shall be liable to third parties for injuries incurred in connection with the right-of-way or permit.

(2) The Secretary or agency head may, by regulation or stipulation, impose a standard of strict liability to govern activities taking place on a right-of-way or permit area which the Secretary or agency head determines, in his discretion, to present a foreseeable hazard or risk of danger to the United States.

(3) Regulations and stipulations pursuant to this subsection shall not impose strict liability for damage or injury resulting from (A) an act of war, or (B) negligence of the United States.

(4) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(5) The regulations and stipulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liability, damage, or claims arising in connection with the right-of-way or permit.

(6) Any regulation or stipulation promulgated or imposed pursuant to this section shall provide that all owners of any interest in, and all affiliates or subsidiaries of any holder of, a right-of-way or permit shall be liable to the United States in the event that a claim for damage or injury cannot be collected from the holder.

(7) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

[1] So in original. Probably should be ''National Environmental Policy Act of 1969 (Public Law 91–190; 42 U.S.C. 4332(2)(C))''.

**(y) Antitrust laws**

The grant of a right-of-way or permit pursuant to this section shall grant no immunity from the operation of the Federal antitrust laws.

(Feb. 25, 1920, ch. 85, § 28, 41 Stat. 449; Aug. 21, 1935, ch. 599, § 1, 49 Stat. 678; Aug. 12, 1953, ch. 408, 67 Stat. 557; Pub. L. 93–153, title I, § 101, Nov. 16, 1973, 87 Stat. 576; Pub. L. 95–91, title III, §§ 301(b), 306, title IV, § 402(a), (b), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 578, 581, 583, 584, 606, 607; Pub. L. 99–64, title I, § 123(b), July 12, 1985, 99 Stat. 156; Pub. L. 101–475, § 1, Oct. 30, 1990, 104 Stat. 1102; Pub. L. 103–437, § 11(a)(1), Nov. 2, 1994, 108 Stat. 4589; Pub. L. 104–58, title II, § 201, Nov. 28, 1995, 109 Stat. 560; Pub. L. 104–66, title I, § 1121(k), Dec. 21, 1995, 109 Stat. 724.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (h)(1), is Pub. L. 91–190, Jan 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 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 4321 of Title 42 and Tables.

The date of enactment of this subsection, referred to in subsec. (k), the effective date of this provision, referred to in subsec. (q), and the effective date of this subsection, referred to in subsec. (t), probably mean the date of approval of Pub. L. 93–153, which was Nov. 16, 1973.

The Natural Gas Act, referred to in subsec. (r)(3)(A), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

The International Emergency Economic Powers Act, referred to in subsec. (s)(3), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, as amended, which is classified generally to chapter 35 (§ 1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The National Emergencies Act, referred to in subsec. (s)(3), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§ 1601 et seq.) of Title 50. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

The Energy Policy and Conservation Act, referred to in subsec. (s)(3), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended. Part B of title II of the Act is classified generally to part B (§ 6271 et seq.) of subchapter II of chapter 77 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 6201 of Title 42 and Tables.

The Export Administration Act of 1979, referred to in subsec. (u), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of Title 50, Appendix, and Tables.

CODIFICATION

In subsec. (s)(2), ''section 50501 of title 46'' substituted for ''section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)'' on authority of Pub. L. 109–304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 50501 of Title 46, Shipping.

AMENDMENTS

1995—Subsec. (s). Pub. L. 104–58 amended heading and text of subsec. (s) generally. Prior to amendment, subsec. (s) provided that the Secretary of Interior, in consultation with Federal and State agencies, review need for national system of transportation and utility corridors across Federal lands and report to Congress and the President by July 1, 1975.

Subsec. (w)(4). Pub. L. 104–66 struck out par. (4) which read as follows: ''The Secretary of the Department of Transportation shall report annually to the President, the Congress, the Secretary of the Interior, and the Secretary of Energy any potential dangers of or actual explosions, or potential or actual spillage on Federal lands and shall include in such report a statement of corrective action taken to prevent such explosion or spillage.''

1994—Subsec. (w)(1), (2). Pub. L. 103–437 substituted ''Natural Resources'' for ''Interior and Insular Affairs'' before ''of the United States House''.

1990—Subsec. (w)(1). Pub. L. 101–475, § 1(a), substituted ''Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate'' for ''House and Senate Committees on Interior and Insular Affairs''.

Subsec. (w)(2). Pub. L. 101–475, § 1(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary or agency head shall notify the House and Senate Committees on Interior and Insular Affairs promptly upon receipt of an application for a right-of-way for a pipeline twenty-four inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty days (not counting days on which the House of Representatives or the Senate has adjourned for more than three days) after a notice of intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.''

1985—Subsec. (u). Pub. L. 99–64 substituted ''Export Administration Act of 1979 (50 U.S.C. App. 2401 and following)'' for ''Export Administration Act of 1969 (Act of December 30, 1969; 83 Stat. 841)'' and ''Export Administration Act of 1979'' for ''Export Administration Act of 1969'' in two places.

1973—Pub. L. 93–153 completely rewrote the section substituting 25 subsecs. lettered (a) through (y) covering all aspects of the granting of rights-of-way for pipelines through Federal lands for the former single unlettered paragraph under which rights-of-way of 25 feet on each side of the pipeline could be granted and under which the pipeline was to be operated as a common carrier.

1953—Act Aug. 12, 1953, permitted companies subject to Federal regulation, or public utilities subject to State regulations, to pass through the public domain without incurring the obligation to become a common carrier.

1935—Act Aug. 21, 1935, substituted ''may be granted by the Secretary of the Interior'' for ''are granted'' and inserted ''and conditions'' after ''regulations'' in two places, and ''and shall accept, convey, transport, or purchase without discrimination, oil or natural gas produced from Government lands in the vicinity of the pipe line in such proportionate amounts as the Secretary of the Interior may, after a full hearing with notice thereof to the interested parties and a proper finding of facts, determine to be reasonable:'' after ''and maintained as common carriers.''.

CHANGE OF NAME

Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior related to compliance

with grants of rights-of-way and temporary use permits for Federal land and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of Department of Agriculture, related to compliance with associated land use permits authorized for and in conjunction with grants of rights-of-way across Federal lands issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

''Secretary of Energy or Federal Energy Regulatory Commission'' substituted for ''Interstate Commerce Commission or Federal Power Commission'' in subsec. (r)(5) pursuant to sections 301(b), 306, 402(a), (b), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(b), 7155, 7172(a), (b), 7293, and 7297 of Title 42, The Public Health and Welfare, and which transferred functions vested in Interstate Commerce Commission, and Chairman and members thereof, relating to transportation of oil by pipeline to Secretary of Energy (except for certain functions which were transferred to Federal Energy Regulatory Commission within Department of Energy), and terminated Federal Power Commission and transferred its functions to Secretary of Energy (except for certain functions which were transferred to Federal Energy Regulatory Commission).

REIMBURSEMENT OF ADMINISTRATIVE AND OTHER COSTS

Pub. L. 105–277, div. A, §101(e) [title II], Oct. 21, 1998, 112 Stat. 2681–231, 2681–272, provided that: ''Notwithstanding any other provision of law, hereafter money collected, in advance or otherwise, by the Forest Service under authority of section 101 of Public Law 93–153 (30 U.S.C. 185(1)[(*l*)]) as reimbursement of administrative and other costs incurred in processing pipeline right-of-way or permit applications and for costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities, may be used to reimburse the applicable appropriation to which such costs were originally charged.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 105–83, title II, Nov. 14, 1997, 111 Stat. 1576.

Pub. L. 104–208, div. A, title I, §101(d) [title II], Sept. 30, 1996, 110 Stat. 3009–181, 3009–208.

Pub. L. 104–134, title I, §101(c) [title II], Apr. 26, 1996, 110 Stat. 1321–156, 1321–184; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 103–332, title II, Sept. 30, 1994, 108 Stat. 2524.

Pub. L. 103–138, title II, Nov. 11, 1993, 107 Stat. 1403.

Pub. L. 102–381, title II, Oct. 5, 1992, 106 Stat. 1401.

Pub. L. 102–154, title II, Nov. 13, 1991, 105 Stat. 1017.

GAO REPORT

Section 202 of Pub. L. 104–58 directed the Comptroller General of the United States to commence, three years after Nov. 28, 1995, a review of energy production in California and Alaska and the effects of Alaskan North Slope oil exports, if any, on consumers, independent refiners, and shipbuilding and ship repair yards on the West Coast and in Hawaii, and to submit to Congress, within twelve months after commencing the review, a report containing recommendations for Congress and the President to address job loss in the shipbuilding and ship repair industry on the West Coast, as well as adverse impacts on consumers and refiners on the West Coast and in Hawaii, that are attributed to Alaska North Slope oil exports.

OUTER CONTINENTAL SHELF; PIPELINE RIGHTS-OF-WAY

Pipeline rights-of-way in connection with oil, gas, and other leases on submerged lands of outer Continental Shelf, see section 1334 of Title 43, Public Lands.

EXPORTS OF ALASKAN NORTH SLOPE (ANS) CRUDE OIL

Memorandum of President of the United States, Apr. 28, 1996, 61 F.R. 19507, provided:

Memorandum for the Secretary of Commerce [and] the Secretary of Energy

Pursuant to section 28(s) of the Mineral Leasing Act, as amended, 30 U.S.C. 185, I hereby determine that exports of crude oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act [43 U.S.C. 1652] are in the national interest. In making this determination, I have taken into account the conclusions of an interagency working group, which found that such oil exports:

—will not diminish the total quantity or quality of petroleum available to the United States; and

—are not likely to cause sustained material oil supply shortages or sustained oil price increases significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including those located in noncontiguous States and Pacific Territories.

I have also considered the interagency group's conclusions regarding potential environmental impacts of lifting the ban. Based on their findings and recommendations, I have concluded that exports of such crude oil will not pose significant risks to the environment if certain terms and conditions are met.

Therefore, pursuant to section 28(s) of the Mineral Leasing Act I direct the Secretary of Commerce to promulgate immediately a general license, or a license exception, authorizing exports of such crude oil, subject to appropriate documentation requirements, and consistent with the following conditions:

—tankers exporting ANS exports must use the same route that they do for shipments to Hawaii until they reach a point 300 miles due south of Cape Hinchinbrook Light and then turn toward Asian destinations. After reaching that point, tankers in the ANS oil trade must remain outside of the 200 nautical-miles Exclusive Economic Zone of the United States as defined in the Fisheries Conservation and Management Act (16 U.S.C. 1811) [probably means the Magnuson-Stevens Fishery Conservation and Management Act]. This condition also applies to tankers returning from foreign ports to Valdez, Alaska. Exceptions can be made at the discretion of the vessel master only to ensure the safety of the vessel;

—that export tankers be equipped with satellite-based communications systems that will enable the Coast Guard independently to determine their location. The Coast Guard will conduct appropriate monitoring of the tankers, a measure that will ensure compliance with the 200-mile condition, and help the Coast Guard respond quickly to any emergencies;

—the owner or operator of an Alaskan North Slope crude oil export tankship shall maintain a Critical Area Inspection Plan for each tankship in the trade in accordance with the U.S. Coast Guard's Navigation and Inspection Circular No. 15–91 as amended, which shall include an annual internal survey of the vessel's cargo block tanks; and

—the owner or operator of an Alaskan North Slope crude oil export tankship shall adopt a mandatory program of deep water ballast exchange (i.e., in 2,000 me-

ters water depth). Exceptions can be made at the discretion of the captain only in order to ensure the safety of the vessel. Recordkeeping subject to Coast Guard audit will be required as part of this regime.

The Secretary of Commerce is authorized and directed to inform the appropriate committees of the Congress of this determination and to publish it in the Federal Register.

WILLIAM J. CLINTON.

### § 186. Reservation of easements or rights-of-way for working purposes; reservation of right to dispose of surface of lands; determination before offering of lease; easement periods

Any permit, lease, occupation, or use permitted under this chapter shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights-of-way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this chapter, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes. The Secretary of the Interior, in his discretion, in making any lease under this chapter, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, insofar as said surface is not necessary for use of the lessee in extracting and removing the deposits therein. If such reservation is made it shall be so determined before the offering of such lease. The said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved.

(Feb. 25, 1920, ch. 85, § 29, 41 Stat. 449.)

### § 187. Assignment or subletting of leases; relinquishment of rights under leases; conditions in leases for protection of diverse interests in operation of mines, wells, etc.; State laws not impaired

No lease issued under the authority of this chapter shall be assigned or sublet, except with the consent of the Secretary of the Interior. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any child under the age of sixteen in any mine below the surface; provisions securing the workmen complete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare. None of such provisions shall be in conflict with the laws of the State in which the leased property is situated.

(Feb. 25, 1920, ch. 85, § 30, 41 Stat. 449; Pub. L. 95–554, § 5, Oct. 30, 1978, 92 Stat. 2074.)

AMENDMENTS

1978—Pub. L. 95–554 substituted "provisions prohibiting the employment of any child under the age of sixteen in any mine below the surface" for "provisions prohibiting the employment of any boy under the age of sixteen or the employment of any girl or woman, without regard to age, in any mine below the surface".

### § 187a. Oil or gas leases; partial assignments

Notwithstanding anything to the contrary in section 187 of this title, any oil or gas lease issued under the authority of this chapter may be assigned or subleased, as to all or part of the acreage included therein, subject to final approval by the Secretary and as to either a divided or undivided interest therein, to any person or persons qualified to own a lease under this chapter, and any assignment or sublease shall take effect as of the first day of the lease month following the date of filing in the proper land office of three original executed counterparts thereof, together with any required bond and proof of the qualification under this chapter of the assignee or sublessee to take or hold such lease or interest therein. Until such approval, however, the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed. The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: *Provided, however*, That the Secretary may, in his discretion, disapprove an assignment of any of the following, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas:

(1) A separate zone or deposit under any lease.

(2) A part of a legal subdivision.

(3) Less than 640 acres outside Alaska or of less than 2,560 acres within Alaska.

Requests for approval of assignment or sublease shall be processed promptly by the Secretary. Except where the assignment or sublease is not in accordance with applicable law, the approval shall be given within 60 days of the date of receipt by the Secretary of a request for such approval. Upon approval of any assignment or sublease, the assignee or sublessee shall be bound by the terms of the lease to the same extent as if such assignee or sublessee were the original lessee, any conditions in the assignment or sublease to the contrary notwithstanding. Any par-

tial assignment of any lease shall segregate the assigned and retained portions thereof, and as above provided, release and discharge the assignor from all obligations thereafter accruing with respect to the assigned lands; and such segregated leases shall continue in full force and effect for the primary term of the original lease, but for not less than two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the lands originally subject to such lease. Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this chapter. Upon the segregation by an assignment of a lease issued after September 2, 1960 and held beyond its primary term by production, actual or suspended, or the payment of compensatory royalty, the segregated lease of an undeveloped, assigned, or retained part shall continue for two years, and so long thereafter as oil or gas is produced in paying quantities.

(Feb. 25, 1920, ch. 85, §30A, formerly §30a, as added Aug. 8, 1946, ch. 916, §7, 60 Stat. 955; amended July 29, 1954, ch. 644, §1(6), 68 Stat. 585; Pub. L. 86–705, §6, Sept. 2, 1960, 74 Stat. 790; renumbered §30A and amended Pub. L. 100–203, title V, §5103, Dec. 22, 1987, 101 Stat. 1330–258.)

AMENDMENTS

1987—Pub. L. 100–203 substituted third to fifth sentences for former third sentence which read as follows: ''The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: *Provided, however*, That the Secretary may, in his discretion, disapprove an assignment of a separate zone or deposit under any lease, or of a part of a legal subdivision.''

1960—Pub. L. 86–705 amended last sentence to restrict automatic extensions after Sept. 2, 1960.

1954—Act July 29, 1954, authorized partial assignment of a lease in its extended term regardless of reason for extension.

SAVINGS PROVISION

See note set out under section 181 of this title.

LEASES ISSUED PRIOR TO SEPTEMBER 2, 1960

Section 6 of Pub. L. 86–705 provided in part that: ''The provisions of this section 6 [amending this section] shall not be applicable to any lease issued prior to the effective date of this Act [Sept. 2, 1960].''

### §187b. Oil or gas leases; written relinquishment of rights; release of obligations

Notwithstanding any provision to the contrary in section 187 of this title, a lessee may at any time make and file in the appropriate land office a written relinquishment of all rights under any oil or gas lease issued under the authority of this chapter or of any legal subdivision of the area included within any such lease. Such relinquishment shall be effective as of the date of its filing, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to place all wells on the lands to be relinquished in condition for suspension or abandonment in accordance with the applicable lease terms and regulations; thereupon the lessee shall be released of all obligations thereafter accruing under said lease with respect to the lands relinquished, but no such relinquishment shall release such lessee, or his bond, from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of the relinquishment.

(Feb. 25, 1920, ch. 85, §30B, formerly §30b, as added Aug. 8, 1946, ch. 916, §8, 60 Stat. 956; renumbered §30B, Pub. L. 100–203, title V, §5103, Dec. 22, 1987, 101 Stat. 1330–258.)

SAVINGS PROVISION

See note set out under section 181 of this title.

### §188. Failure to comply with provisions of lease

**(a) Forfeiture**

Except as otherwise herein provided, any lease issued under the provisions of this chapter may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property, or some part thereof, is located whenever the lessee fails to comply with any of the provisions of this chapter, of the lease, or of the general regulations promulgated under this chapter and in force at the date of the lease; and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof.

**(b) Cancellation**

Any lease issued after August 21, 1935, under the provisions of section 226 of this title shall be subject to cancellation by the Secretary of the Interior after 30 days notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement under section 226(m) of this title which contains a well capable of production of unitized substances in paying quantities. Such notice in advance of cancellation shall be sent the lease owner by registered letter directed to the lease owner's record post-office address, and in case such letter shall be returned as undelivered, such notice shall also be posted for a period of thirty days in the United States land office for the district in which the land covered by such lease is situated, or in the event that there is no district land office for such district, then in the post office nearest such land. Notwithstanding the provisions of this section, however, upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law: *Provided, however*, That when the time for payment falls upon any day in which the proper office for payment is not open, payment may be received the next official working day and shall be considered as timely made: *Provided*, That if the rental payment due under a lease is paid on or before the anniversary date but either (1) the amount of the payment has been or is hereafter deficient and the deficiency is nominal, as determined by the Secretary by regulation, or (2) the payment was calculated in accordance with the acreage figure stated in the lease, or in any decision affecting the lease, or

made in accordance with a bill or decision which has been rendered by him and such figure, bill, or decision is found to be in error resulting in a deficiency, such lease shall not automatically terminate unless (1) a new lease had been issued prior to May 12, 1970, or (2) the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent to him by the Secretary.

**(c) Reinstatement**

Where any lease has been or is hereafter terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of rental due, but such rental was paid on or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if—

(1) a petition for reinstatement, together with the required rental, including back rental accruing from the date of termination of the lease, is filed with the Secretary; and

(2) no valid lease has been issued affecting any of the lands covered by the terminated lease prior to the filing of said petition. The Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him. In any case where a reinstatement of a terminated lease is granted under this subsection and the Secretary finds that the reinstatement of such lease will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable: *Provided*, That (A) such extension shall not exceed a period equivalent to the time beginning when the lessee knew or should have known of the termination and ending on the date the Secretary grants such petition; (B) such extension shall not exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination; and (C) when the reinstatement occurs after the expiration of the term or extension thereof the lease may be extended from the date the Secretary grants the petition.

**(d) Additional grounds for reinstatement**

(1) Where any oil and gas lease issued pursuant to section 226(b) or (c) of this title or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) has been, or is hereafter, terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of the rental due, and such rental is not paid or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was justifiable or not due to lack of reasonable diligence on the part of the lessee, or, no matter when the rental is paid after termination, it is shown to the satisfaction of the Secretary that such failure was inadvertent, the Secretary may reinstate the lease as of the date of termination for the unexpired portion of the primary term of the original lease or any extension thereof remaining at the date of termination, and so long thereafter as oil or gas is produced in paying quantities. In any case where a lease is reinstated under this subsection and the Secretary finds that the reinstatement of such lease (A) occurs after the expiration of the primary term or any extension thereof, or (B) will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable, but in no event for more than two years from the date the Secretary authorizes the reinstatement and so long thereafter as oil or gas is produced in paying quantities.

(2) No lease shall be reinstated under paragraph (1) of this subsection unless—

(A) with respect to any lease that terminated under subsection (b) of this section on or before August 8, 2005, a petition for reinstatement (together with the required back rental and royalty accruing after the date of termination) is filed on or before the earlier of—

(i) 60 days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice; or

(ii) 15 months after the termination of the lease; or

(B) with respect to any lease that terminates under subsection (b) of this section after August 8, 2005, a petition for reinstatement (together with the required back rental and royalty accruing after the date of termination) is filed on or before the earlier of—

(i) 60 days after receipt of the notice of termination sent by the Secretary by certified mail to all lessees of record; or

(ii) 24 months after the termination of the lease.

**(e) Conditions for reinstatement**

Any reinstatement under subsection (d) of this section shall be made only if these conditions are met:

(1) no valid lease, whether still in existence or not, shall have been issued affecting any of the lands covered by the terminated lease prior to the filing of such petition: *Provided, however*, That after receipt of a petition for reinstatement, the Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him;

(2) payment of back rentals and either the inclusion in a reinstated lease issued pursuant to the provisions of section 226(b) of this title of a requirement for future rentals at a rate of not less than $10 per acre per year, or the inclusion in a reinstated lease issued pursuant to the provisions of section 226(c) of this title of a requirement that future rentals shall be at a rate not less than $5 per acre per year, all as determined by the Secretary;

(3)(A) payment of back royalties and the inclusion in a reinstated lease issued pursuant to the provisions of section 226(b) of this title of a requirement for future royalties at a rate of not less than 16⅔ percent computed on a

sliding scale based upon the average production per well per day, at a rate which shall be not less than 4 percentage points greater than the competitive royality[1] schedule then in force and used for royalty determination for competitive leases issued pursuant to such section as determined by the Secretary: *Provided*, That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the termination of the original lease;

(B) payment of back royalties and inclusion in a reinstated lease issued pursuant to the provisions of section 226(c) of this title of a requirement for future royalties at a rate not less than 16⅔ percent: *Provided*, That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the cancellation or termination of the original lease; and

(4) notice of the proposed reinstatement of a terminated lease, including the terms and conditions of reinstatement, shall be published in the Federal Register at least thirty days in advance of the reinstatement.

A copy of said notice, together with information concerning rental, royalty, volume of production, if any, and any other matter which the Secretary deemed significant in making this determination to reinstate, shall be furnished to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate at least thirty days in advance of the reinstatement. The lessee of a reinstated lease shall reimburse the Secretary for the administrative costs of reinstating the lease, but not to exceed $500. In addition the lessee shall reimburse the Secretary for the cost of publication in the Federal Register of the notice of proposed reinstatement.

**(f) Issuance of noncompetitive oil and gas lease; conditions**

Where an unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil or gas, has been or is hereafter deemed conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 1744 of title 43, and it is shown to the satisfaction of the Secretary that such failure was inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the owner, the Secretary may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease, consistent with the provisions of section 226(e) of this title, to be effective from the statutory date the claim was deemed conclusively abandoned. Issuance of such a lease shall be conditioned upon:

(1) a petition for issuance of a noncompetitive oil and gas lease, together with the required rental and royalty, including back rental and royalty accruing from the statutory date of abandonment of the oil placer mining claim, being filed with the Secretary—

(A) with respect to any claim deemed conclusively abandoned on or before January 12, 1983, on or before the one hundred and twentieth day after January 12, 1983, or

(B) with respect to any claim deemed conclusively abandoned after January 12, 1983, on or before the one hundred and twentieth day after final notification by the Secretary or a court of competent jurisdiction of the determination of the abandonment of the oil placer mining claim;

(2) a valid lease not having been issued affecting any of the lands covered by the abandoned oil placer mining claim prior to the filing of such petition: *Provided, however*, That after the filing of a petition for issuance of a lease under this subsection, the Secretary shall not issue any new lease affecting any of the lands covered by such abandoned oil placer mining claim for a reasonable period, as determined in accordance with regulations issued by him;

(3) a requirement in the lease for payment of rental, including back rentals accruing from the statutory date of abandonment of the oil placer mining claim, of not less than $5 per acre per year;

(4) a requirement in the lease for payment of royalty on production removed or sold from the oil placer mining claim, including all royalty on production made subsequent to the statutory date the claim was deemed conclusively abandoned, of not less than 12½ percent; and

(5) compliance with the notice and reimbursement of costs provisions of paragraph (4) of subsection (e) of this section but addressed to the petition covering the conversion of an abandoned unpatented oil placer mining claim to a noncompetitive oil and gas lease.

**(g) Treatment of leases**

(1) Except as otherwise provided in this section, a reinstated lease shall be treated as a competitive or a noncompetitive oil and gas lease in the same manner as the original lease issued pursuant to section 226(b) or (c) of this title.

(2) Except as otherwise provided in this section, the issuance of a lease in lieu of an abandoned patented oil placer mining claim shall be treated as a noncompetitive oil and gas lease issued pursuant to section 226(c) of this title.

(3) Notwithstanding any other provision of law, any lease issued pursuant to section 223 of this title shall be eligible for reinstatement under the terms and conditions set forth in subsections (c), (d), and (e) of this section, applicable to leases issued under section 226(c) of this title except, that, upon reinstatement, such lease shall continue for twenty years and so long thereafter as oil or gas is produced in paying quantities.

(4) Notwithstanding any other provision of law, any lease issued pursuant to section 223 of this title shall, upon renewal on or after November 15, 1990, continue for twenty years and so long thereafter as oil or gas is produced in paying quantities.

**(h) Statutory provisions applicable to leases**

The minimum royalty provisions of section 226(m) of this title and the provisions of section

[1] So in original. Probably should be ''royalty''.

209 of this title shall be applicable to leases issued pursuant to subsections (d) and (f) of this section.

**(i) Royalty reductions**

(1) In acting on a petition to issue a noncompetitive oil and gas lease, under subsection (f) of this section or in response to a request filed after issuance of such a lease, or both, the Secretary is authorized to reduce the royalty on such lease if in his judgment it is equitable to do so or the circumstances warrant such relief due to uneconomic or other circumstances which could cause undue hardship or premature termination of production.

(2) In acting on a petition for reinstatement pursuant to subsection (d) of this section or in response to a request filed after reinstatement, or both, the Secretary is authorized to reduce the royalty in that reinstated lease on the entire leasehold or any tract or portion thereof segregated for royalty purposes if, in his judgment, there are uneconomic or other circumstances which could cause undue hardship or premature termination of production; or because of any written action of the United States, its agents or employees, which preceded, and was a major consideration in, the lessee's expenditure of funds to develop the property under the lease after the rent had become due and had not been paid; or if in the judgment of the Secretary it is equitable to do so for any reason.

**(j) Discretion of Secretary**

Where, in the judgment of the Secretary of the Interior, drilling operations were being diligently conducted on the last day of the primary term of the lease, and, except for nonpayment of rental, the lessee would have been entitled to extension of his lease, pursuant to section 226–1(d) of this title, the Secretary of the Interior may reinstate such lease notwithstanding the failure of the lessee to have made payment of the next year's rental, provided the conditions of subparagraphs (1) and (2) of subsection (c) of this section are satisfied.

(Feb. 25, 1920, ch. 85, § 31, 41 Stat. 450; Aug. 8, 1946, ch. 916, § 9, 60 Stat. 956; July 29, 1954, ch. 644, § 1(7), 68 Stat. 585; Pub. L. 87–822, § 1, Oct. 15, 1962, 76 Stat. 943; Pub. L. 91–245, §§ 1, 2, May 12, 1970, 84 Stat. 206; Pub. L. 97–451, title IV, § 401, Jan. 12, 1983, 96 Stat. 2462; Pub. L. 100–203, title V, §§ 5102(d)(2), 5104, Dec. 22, 1987, 101 Stat. 1330–258, 1330–259; Pub. L. 101–567, § 1, Nov. 15, 1990, 104 Stat. 2802; Pub. L. 103–437, § 11(a)(1), Nov. 2, 1994, 108 Stat. 4589; Pub. L. 109–58, title III, § 371(b), Aug. 8, 2005, 119 Stat. 734.)

REFERENCES IN TEXT

The Mineral Leasing Act for Acquired Lands, referred to in subsec. (d)(1), is act Aug. 7, 1947, ch. 513, 61 Stat. 913, as amended, which is classified generally to chapter 7 (§ 351 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 351 of this title and Tables.

AMENDMENTS

2005—Subsec. (d)(2)(A), (B). Pub. L. 109–58 added subpars. (A) and (B) and struck out former subpars. (A) and (B), which related to reinstatement with respect to any lease that terminated under subsec. (b) of this section prior to Jan. 12, 1983, and reinstatement with respect to any lease that terminated under subsec. (b) of this section on or after Jan. 12, 1983.

1994—Subsec. (e). Pub. L. 103–437 substituted ''Natural Resources'' for ''Interior and Insular Affairs'' before ''of the House'' in concluding provisions.

1990—Subsec. (g)(3), (4). Pub. L. 101–567 added pars. (3) and (4).

1987—Subsec. (b). Pub. L. 100–203, § 5104, amended first sentence generally. Prior to amendment, first sentence read as follows: ''Any lease issued after August 21, 1935, under the provisions of section 226 of this title shall be subject to cancellation by the Secretary of the Interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas.''

Subsec. (h). Pub. L. 100–203, § 5102(d)(2), substituted ''section 226(m)'' for ''section 226(j)''.

1983—Subsecs. (d) to (j). Pub. L. 97–451 added subsecs. (d) to (i) and redesignated former subsec. (d) as (j).

1970—Subsec. (b). Pub. L. 91–245, § 1, inserted proviso authorizing continuance of a lease where timely paid rent is nominally deficient or miscalculated due to an error either in acreage figure stated in the lease, in any decision affecting the lease, or in a bill or decision rendered by the Secretary, except where a new lease was issued prior to May 12, 1970 or the lessee failed to pay the deficiency within the period allowed by the Secretary.

Subsec. (c). Pub. L. 91–245, § 2, inserted provisions allowing reinstatement of a lease despite a twenty-day delay in payment of rent, made the payment of back rental accruing from the date of termination of the lease a prerequisite to such reinstatement, restricted the Secretary's power to issue a new lease on the lands covered by the terminated lease, gave the Secretary discretion to extend the term of a reinstated lease so as to afford the lessee a reasonable opportunity to continue operations under the lease, and struck out requirement that the petition for reinstatement of any lease terminated prior to Oct. 15, 1962 be filed within 180 days after Oct. 15, 1962.

1962—Pub. L. 87–822 designated existing pars. as subsecs. (a) and (b) and added subsecs. (c) and (d).

1954—Act July 29, 1954, provided for automatic termination of a lease on failure to pay rental on or before anniversary date of lease, for any lease on which there is no well capable of producing oil or gas in paying quantities.

1946—Act Aug. 8, 1946, principally added second par. relating to cancellation of leases by Secretary of the Interior.

CHANGE OF NAME

Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

SAVINGS PROVISION

See note set out under section 181 of this title.

REINSTATEMENT OF LEASES

Pub. L. 109–58, title III, § 371(a), Aug. 8, 2005, 119 Stat. 734, provided that:

''Notwithstanding section 31(d)(2)(B) of the Mineral Leasing Act (30 U.S.C. 188(d)(2)(B)) as in effect before the effective date of this section [probably means the date of enactment of Pub. L. 109–58, Aug. 8, 2005], and notwithstanding the amendment made by subsection (b) of this section [amending this section], the Secretary of the Interior may reinstate any oil and gas lease issued under that Act [30 U.S.C. 181 et seq.] that was terminated for failure of a lessee to pay the full amount of rental on or before the anniversary date of the lease, during the period beginning on September 1, 2001, and ending on June 30, 2004, if—

''(1) not later than 120 days after the date of enactment of this Act [Aug. 8, 2005], the lessee—

''(A) files a petition for reinstatement of the lease;

''(B) complies with the conditions of section 31(e) of the Mineral Leasing Act (30 U.S.C. 188(e)); and

''(C) certifies that the lessee did not receive a notice of termination by the date that was 13 months before the date of termination; and

''(2) the land is available for leasing.''

AUTHORITY FOR ISSUANCE OF LEASES UNAFFECTED BY REINSTATEMENT OF LEASES

Section 2 of Pub. L. 87–822 provided that: ''Nothing in this Act [amending this section] shall be construed as limiting the authority of the Secretary of the Interior to issue, during the periods in which petitions for reinstatement may be filed, oil and gas leases for any of the lands affected.''

OUTER CONTINENTAL SHELF; CANCELLATION OF LEASES

Cancellation of mineral leases on submerged lands of outer Continental Shelf, see sections 1334 and 1337 of Title 43, Public Lands.

### § 188a. Surrender of leases

The Secretary of the Interior is authorized to accept the surrender of any lease issued pursuant to any of the provisions of this chapter, or any amendment thereof, where the surrender is filed in the Bureau of Land Management subsequent to the accrual but prior to the payment of the yearly rental due under the lease, upon payment of the accrued rental on a pro rata monthly basis for the portion of the lease year prior to the filing of the surrender. The authority granted to the Secretary of the Interior by this section shall extend only to cases in which he finds that the failure of the lessee to file a timely surrender of the lease prior to the accrual of the rental was not due to a lack of reasonable diligence, but it shall not extend to claims or cases which have been referred to the Department of Justice for purposes of suit.

(Nov. 28, 1943, ch. 329, 57 Stat. 593; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

TRANSFER OF FUNCTIONS

''Bureau of Land Management'' substituted in text for ''General Land Office'' on authority of Reorg. Plan No. 3 of 1946, § 403, set out in the Appendix to Title 5, Government Organization and Employees.

### § 189. Rules and regulations; boundary lines; State rights unaffected; taxation

The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this chapter. Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

(Feb. 25, 1920, ch. 85, § 32, 41 Stat. 450.)

TRANSFER OF FUNCTIONS

Functions of Secretary of the Interior to promulgate regulations under this chapter relating to fostering of competition for Federal leases, implementation of alternative bidding systems authorized for award of Federal leases, establishment of diligence requirements for operations conducted on Federal leases, setting of rates for production of Federal leases, and specifying of procedures, terms, and conditions for acquisition and disposition of Federal royalty interests taken in kind, transferred to Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare. Section 7152(b) of Title 42 was repealed by Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and functions of Secretary of Energy returned to Secretary of the Interior. See House Report No. 97–315, pp. 25, 26, Nov. 5, 1981.

OUTER CONTINENTAL SHELF; RULES AND REGULATIONS WITH RESPECT TO LEASES

Rules and regulations with respect to mineral leases on submerged lands of outer Continental Shelf to be prescribed by Secretary of the Interior, see section 1334 of Title 43, Public Lands.

### § 190. Oath; requirement; form; blanks

All statements, representations, or reports required by the Secretary of the Interior under this chapter shall be upon oath, unless otherwise specified by him, and in such form and upon such blanks as the Secretary of the Interior may require.

(Feb. 25, 1920, ch. 85, § 33, 41 Stat. 450.)

### § 191. Disposition of moneys received

#### (a) In general

All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C. 1701 et seq.], and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], shall be paid into the Treasury of the United States; and, subject to the provisions of subsection (b) of this section, 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as ''miscellaneous receipts'', as provided by section 7433(b) of title 10.

All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

**(b) Administrative costs**

In determining the amount of payments to the States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.

**(c) Rentals received on or after August 8, 2005**

(1) Notwithstanding the first sentence of subsection (a) of this section, any rentals received from leases in any State (other than the State of Alaska) on or after August 8, 2005, shall be deposited in the Treasury, to be allocated in accordance with paragraph (2).

(2) Of the amounts deposited in the Treasury under paragraph (1)—

(A) 50 percent shall be paid by the Secretary of the Treasury to the State within the boundaries of which the leased land is located or the deposits were derived; and

(B) 50 percent shall be deposited in a special fund in the Treasury, to be known as the ''BLM Permit Processing Improvement Fund'' (referred to in this subsection as the ''Fund'').

(3) For each of fiscal years 2006 through 2015, the Fund shall be available to the Secretary of the Interior for expenditure, without further appropriation and without fiscal year limitation, for the coordination and processing of oil and gas use authorizations on onshore Federal land under the jurisdiction of the Pilot Project offices identified in section 15924(d) of title 42.

(Feb. 25, 1920, ch. 85, § 35, 41 Stat. 450; May 27, 1947, ch. 83, 61 Stat. 119; Aug. 3, 1950, ch. 527, 64 Stat. 402; Pub. L. 85–88, § 2, July 10, 1957, 71 Stat. 282; Pub. L. 85–508, §§ 6(k), 28(b), July 7, 1958, 72 Stat. 343, 351; Pub. L. 94–273, § 6(2), Apr. 21, 1976, 90 Stat. 377; Pub. L. 94–377, § 9, Aug. 4, 1976, 90 Stat. 1089; Pub. L. 94–422, title III, § 301, Sept. 28, 1976, 90 Stat. 1323; Pub. L. 94–579, title III, § 317(a), Oct. 21, 1976, 90 Stat. 2770; Pub. L. 97–451, title I, §§ 104(a), 111(g), Jan. 12, 1983, 96 Stat. 2451, 2456; Pub. L. 100–203, title V, § 5109, Dec. 22, 1987, 101 Stat. 1330–261; Pub. L. 100–443, § 5(b), Sept. 22, 1988, 102 Stat. 1768; Pub. L. 103–66, title X, § 10201, Aug. 10, 1993, 107 Stat. 407; Pub. L. 106–393, title V, § 503, Oct. 30, 2000, 114 Stat. 1624; Pub. L. 109–58, title III, § 365(g), Aug. 8, 2005, 119 Stat. 725.)

REFERENCES IN TEXT

The Federal Oil and Gas Royalty Management Act of 1982, referred to in subsec. (a), is Pub. L. 97–451, Jan. 12, 1983, 96 Stat. 2447, which is classified generally to chapter 29 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

The Geothermal Steam Act of 1970, referred to in subsec. (a), is Pub. L. 91–581, Dec. 24, 1970, 84 Stat. 1566, which is classified principally to chapter 23 (§ 1001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The Reclamation Act, referred to in subsec. (a), is act June 17, 1902, ch. 1093, 32 Stat. 388, as amended, which is classified generally to chapter 12 (§ 371 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 371 of Title 43 and Tables.

CODIFICATION

''Section 7433(b) of title 10'' substituted in subsec. (a) for ''the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252)'', which was classified to section 524 of former Title 34, Navy, on authority of act Aug. 10, 1956, ch. 1041, § 49(b), 70A Stat. 640, the first section of which enacted Title 10, Armed Forces.

Provisions of subsec. (a) which authorized the payment of monies to the Territory of Alaska were omitted as superseded by the provisions authorizing the payment of monies to the State of Alaska.

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–58 added subsec. (c).

2000—Subsec. (b). Pub. L. 106–393 amended subsec. (b) generally. Prior to amendment, subsec. (b) related to deductions for administration from the amount to be paid to States under this section or under other laws requiring payment to a State of revenues derived from the leasing of onshore lands owned by the United States for the production of the same types of minerals leasable under this chapter or of geothermal steam.

1993—Pub. L. 103–66 struck out last sentence, designated remaining provisions as subsec. (a) and in first sentence inserted ''and, subject to the provisions of subsection (b) of this section,'' before ''50 per centum'', and added subsec. (b). Prior to amendment, last sentence read as follows: ''In determining the amount of payments to States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.''

1988—Pub. L. 100–443 struck out ''notwithstanding the provisions of section 20 thereof,'' before ''shall be paid''.

1987—Pub. L. 100–203 inserted at end ''In determining the amount of payments to States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.''

1983—Pub. L. 97–451, § 111(g), inserted reference to interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982.

Pub. L. 97–451, § 104(a), struck out ''as soon as practicable after March 31 and September 30 of each year'' after ''Secretary of the Treasury'' and ''of those from Alaska'', and inserted at end provisions directing that payments to States be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, that warrants be issued by the Treasury not later than 10 days after receipt of the money by the Treasury, that moneys placed in a suspense account which are determined to be payable to a State be made not later than the last business day of the month in which a dispute is resolved, and that amounts placed in a suspense account pending resolution bear interest until the dispute is resolved.

1976—Pub. L. 94–579 substituted provisions setting forth determination of amount, time for payments, and manner of expenditure by the States of all moneys re-

ceived from sales, etc., under provisions of this chapter and the Geothermal Steam Act of 1970, and proviso relating to naval petroleum reserve moneys, for provisions setting forth determination of amount and time for payment to the States of all moneys received from sales, etc., under the provisions of this chapter, and provisos relating to naval petroleum reserve moneys, additional moneys from sales, etc., under this chapter and the Geothermal Steam Act of 1970, and expenditure of State oil shale funds.

Pub. L. 94–422 inserted proviso that all moneys paid to any State from sales, bonuses, royalties, and rentals of oil shale in public lands may be used by any State for planning, construction, and maintenance of public facilities as legislature of State may direct.

Pub. L. 94–377 substituted ''40 per centum thereof shall be paid into, reserved'' for ''52½ per centum thereof shall be paid into, reserved'', inserted ''and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof'' before ''shall be paid into the Treasury of the United States'', ''and the Geothermal Steam Act of 1970'' before ''from lands within the naval petroleum reserves'' and before ''not otherwise disposed of by this section'', and provisos relating to the payment of an additional 12½ per centum of all money received from lands under provisions of this chapter and the Geothermal Steam Act of 1970 to the State within whose boundaries the lands are located, to be used for construction of public facilities, and relating to the use of funds received by Colorado and Utah under the specified leases.

Pub. L. 94–273 substituted ''March'' for ''December'' and ''September'' for ''June''.

1958—Pub. L. 85–508, §§6(k), 28(b), struck out provisions which related to disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska and substituted '', and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislators thereof'' for '', and of those from Alaska 52½ per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska'' before proviso.

1957—Pub. L. 85–88 inserted '', and of those from Alaska 52½ per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska'' before proviso.

1950—Act Aug. 3, 1950, in providing that payments to States be made bi-annually instead of annually, substituted ''as soon as practicable after December 31 and June 30 of each year'' for ''after the expiration of each fiscal year''.

1947—Act May 27, 1947, extended provisions by allocating 37½% of the money received from sales, bonuses, royalties, and rentals of public lands to the Territory of Alaska, for the construction and maintenance of public schools or other public educational institutions and inserted provisions relating to disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 104(a) of Pub. L. 97–451 applicable with respect to payments received by the Secretary of the Treasury after Oct. 1, 1983, unless the Secretary by rule, prescribes an earlier effective date, see section 104(c) of Pub. L. 97–451, set out as an Effective Date note under section 1714 of this title.

SAVINGS PROVISION

Amendment by Pub. L. 94–579 not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94–579, set out as a note under section 1701 of Title 43, Public Lands.

FINDINGS

Pub. L. 106–393, title V, §502, Oct. 30, 2000, 114 Stat. 1624, provided that: ''The Congress finds the following:

''(1) Section 10201 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66; 107 Stat. 407) amended section 35 of the Mineral Leasing Act (30 U.S.C. 191) to change the sharing of onshore mineral revenues and revenues from geothermal steam from a 50:50 split between the Federal Government and the States to a complicated formula that entailed deducting from the State share of leasing revenues '50 percent of the portion of the enacted appropriations of the Department of the Interior and any other agency during the preceding fiscal year allocable to the administration of all laws providing for the leasing of any onshore lands or interest in land owned by the United States for the production of the same types of minerals leasable under this Act or of geothermal steam, and to enforcement of such laws * * *'.

''(2) There is no legislative record to suggest a sound public policy rationale for deducting prior-year administrative expenses from the sharing of current-year receipts, indicating that this change was made primarily for budget scoring reasons.

''(3) The system put in place by this change in law has proved difficult to administer and has given rise to disputes between the Federal Government and the States as to the nature of allocable expenses. Federal accounting systems have proven to be poorly suited to breaking down administrative costs in the manner required by the law. Different Federal agencies implementing this law have used varying methodologies to identify allocable costs, resulting in an inequitable distribution of costs during fiscal years 1994 through 1996. In November 1997, the Inspector General of the Department of the Interior found that 'the congressionally approved method for cost sharing deductions effective in fiscal year 1997 may not accurately compute the deductions'.

''(4) Given the lack of a substantive rationale for the 1993 change in law and the complexity and administrative burden involved, a return to the sharing formula prior to the enactment of the Omnibus Budget Reconciliation Act of 1993 [Aug. 10, 1993] is justified.''

FUNDS HELD BY COLORADO AND UTAH FROM INTERIOR DEPARTMENT OIL SHALE TEST LEASES

Section 317(b) of Pub. L. 94–579 provided that: ''Funds now held pursuant to said section 35 [this section] by the States of Colorado and Utah separately from the Department of the Interior oil shale test leases known as C–A; C–B; U–A and U–B shall be used by such States and subdivisions as the legislature of each State may direct giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services.''

ADMISSION OF ALASKA AS STATE

Effectiveness of amendment by Pub. L. 85–508 was dependent on admission of Alaska into the Union under sections 6(k) and 8(b) of Pub. L. 85–508. Admission was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508. See notes preceding section 21 of Title 48, Territories and Insular Possessions.

OUTER CONTINENTAL SHELF; REVENUES FROM LEASES

Disposition of revenues from leases on submerged lands of outer Continental Shelf, see sections 1337 and 1338 of Title 43, Public Lands.

## § 191a. Late payment charges under Federal mineral leases

### (a) Distribution of late payment charges

Any interest or other charges paid to the United States by reason of the late payment of any royalty, rent, bonus, or other amount due to

the United States under any lease issued by the United States for the extraction of oil, gas, coal, or any other mineral, or for geothermal steam, shall be deposited in the same account and distributed to the same recipients, in the same manner, as such royalty, rent, bonus, or other amount.

**(b) Effective date**

Subsection (a) of this section shall apply with respect to any interest, or other charge referred to in subsection (a) of this section, which is paid to the United States on or after July 1, 1988.

**(c) Prohibition against recoupment**

Any interest, or other charge referred to in subsection (a) of this section, which was paid to the United States before July 1, 1988, and distributed to any State or other recipient is hereby deemed to be authorized and approved as of the date of payment or distribution, and no part of any such payment or distribution shall be recouped from the State or other recipient. This subsection shall not apply to interest or other charges paid in connection with any royalty, rent, bonus, or other amount determined not to be owing to the United States.

(Pub. L. 100–524, § 7, Oct. 24, 1988, 102 Stat. 2607.)

CODIFICATION

Section was enacted as part of the Congaree Swamp National Monument Expansion and Wilderness Act, and not as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

### § 191b. Collection of unpaid and underpaid royalties and late payment interest owed by lessees

Beginning in fiscal year 1996 and thereafter, the Secretary shall take appropriate action to collect unpaid and underpaid royalties and late payment interest owed by Federal and Indian mineral lessees and other royalty payors on amounts received in settlement or other resolution of disputes under, and for partial or complete termination of, sales agreements for minerals from Federal and Indian leases.

(Pub. L. 104–134, title I, § 101(c) [title I], Apr. 26, 1996, 110 Stat. 1321–156, 1321–167; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation act:

Pub. L. 103–332, title I, Sept. 30, 1994, 108 Stat. 2508.

### § 192. Payment of royalties in oil or gas; sale of such oil or gas

All royalty accruing to the United States under any oil or gas lease or permit under this chapter on demand of the Secretary of the Interior shall be paid in oil or gas.

Upon granting any oil or gas lease under this chapter, and from time to time thereafter during said lease, the Secretary of the Interior shall, except whenever in his judgment it is desirable to retain the same for the use of the United States, offer for sale for such period as he may determine, upon notice and advertisement on sealed bids or at public auction, all royalty oil and gas accruing or reserved to the United States under such lease. Such advertisement and sale shall reserve to the Secretary of the Interior the right to reject all bids whenever within his judgment the interest of the United States demands; and in cases where no satisfactory bid is received or where the accepted bidder fails to complete the purchase, or where the Secretary of the Interior shall determine that it is unwise in the public interest to accept the offer of the highest bidder, the Secretary of the Interior, within his discretion, may readvertise such royalty for sale, or sell at private sale at not less than the market price for such period, or accept the value thereof from the lessee: *Provided*, That inasmuch as the public interest will be served by the sale of royalty oil to refineries not having their own source of supply for crude oil, the Secretary of the Interior, when he determines that sufficient supplies of crude oil are not available in the open market to such refineries, is authorized and directed to grant preference to such refineries in the sale of oil under the provisions of this section, for processing or use in such refineries and not for resale in kind, and in so doing may sell to such refineries at private sale at not less than the market price any royalty oil accruing or reserved to the United States under leases issued pursuant to this chapter: *Provided further*, That in selling such royalty oil the Secretary of the Interior may at his discretion prorate such oil among such refineries in the area in which the oil is produced: *Provided, however*, That pending the making of a permanent contract for the sale of any royalty, oil or gas as herein provided, the Secretary of the Interior may sell the current product at private sale, at not less than the market price: *And provided further*, That any royalty, oil, or gas may be sold at not less than the market price at private sale to any department or agency of the United States.

(Feb. 25, 1920, ch. 85, § 36, 41 Stat. 451; July 13, 1946, ch. 574, 60 Stat. 533.)

AMENDMENTS

1946—Act July 13, 1946, inserted first two provisos which were enacted in order to assist small business enterprise by encouraging the operation of oil refineries not having an adequate supply of crude oil.

OUTER CONTINENTAL SHELF; ROYALTIES FROM LEASES

Payment of royalties from mineral leases on submerged lands of outer Continental Shelf, see section 1337 of Title 43, Public Lands.

### § 192a. Cancellation or modification of contracts

Where, under any existing contract entered into pursuant to the first proviso in the second paragraph of section 192 of this title, any refinery is required to pay a premium price for the purchase of Government royalty oil, such refinery may, at its option, by written notice to the Secretary of the Interior, elect either—

(1) to terminate such contract, the termination to take place at the end of the calendar

month following the month in which such notice is given; or

(2) to retain such contract with the modifications, that (a) the price, on and after March 1, 1949, shall be as defined in the contract, without premium payments, (b) any credit thereby resulting from past premium payments shall be added to the refinery's account, and (c) the Secretary may, at his option, elect to terminate the contract as so modified, such termination to take place at the end of the third calendar month following the month in which written notice thereof is given by the Secretary.

(Sept. 1, 1949, ch. 529, § 1, 63 Stat. 682.)

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

### § 192b. Application to contracts

The provisions of sections 192a to 192c of this title shall apply to all existing contracts for the purchase of Government royalty oil entered into after July 13, 1946, and prior to September 1, 1949, irrespective of whether a determination of preference status was made in connection with the award of such contracts, but shall not apply to any such contract which subsequent to its award has been transferred, through the acquisition of stock interests or other transactions, to the ownership or control of a refinery ineligible for a preference under section 192 of this title, and the regulations in force thereunder at the time of such transfer.

(Sept. 1, 1949, ch. 529, § 2, 63 Stat. 682.)

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

### § 192c. Rules and regulations governing issuance of certain leases; disposition of receipts

The Secretary of the Interior is authorized under general rules and regulations to be prescribed by him to issue leases or permits for the exploration, development, and utilization of the mineral deposits, other than those subject to the provisions of chapter 7 of this title, in those lands added to the Shasta National Forest by the Act of March 19, 1948 (Public Law 449, Eightieth Congress), which were acquired with funds of the United States or lands received in exchange therefor: *Provided*, That any permit or lease of such deposits in lands administered by the Secretary of Agriculture shall be issued only with his consent and subject to such conditions as he may prescribe to insure the adequate utilization of the lands for the purposes set forth in the Act of March 19, 1948: *And provided further*, That all receipts derived from leases or permits issued under the authority of sections 192a to 192c of this title shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease or permit, the intention of this provision being that sections 192a to 192c of this title shall not affect the distribution of receipts pursuant to legislation applicable to such lands.

(Sept. 1, 1949, ch. 529, § 3, 63 Stat. 683.)

REFERENCES IN TEXT

Act of March 19, 1948 (Public Law 449, Eightieth Congress), referred to in text, is act Mar. 19, 1948, ch. 139, 62 Stat. 83. See Shasta National Forest codification note set out under sections 486a to 486w of Title 16, Conservation.

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Interior under this section, with respect to use and disposal from lands under jurisdiction of Secretary of Agriculture of those mineral materials which Secretary of Agriculture is authorized to dispose of from other lands under his jurisdiction under sections 601 to 604 and 611 to 615 of this title, see Pub. L. 86–509, June 11, 1960, 74 Stat. 205, set out as a Transfer of Functions from Secretary of the Interior to Secretary of Agriculture note under section 2201 of Title 7, Agriculture.

### § 193. Disposition of deposits of coal, and so forth

The deposits of coal, phosphate, sodium, potassium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits in Lander, Wyoming, coal entries numbered 18 to 49, inclusive, shall be subject to disposition only in the form and manner provided in this chapter, except as provided in sections 1716 and 1719 of title 43, and except as to valid claims existent on February 25, 1920, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery.

(Feb. 25, 1920, ch. 85, § 37, 41 Stat. 451; Feb. 7, 1927, ch. 66, § 5, 44 Stat. 1058; Aug. 8, 1946, ch. 916, § 11, 60 Stat. 957; Pub. L. 95–554, § 4, Oct. 30, 1978, 92 Stat. 2074.)

CODIFICATION

Section was from act Feb. 25, 1920, in which words now reading "in Lander, Wyoming, coal entries numbered 18 to 49, inclusive," originally read "described in the joint resolution entitled 'Joint resolution authorizing the Secretary of the Interior to permit the continuation of coal mining operations on certain lands in Wyoming,' approved August 12, 1912, (Thirty-seven Statutes at Large p. 1346)." The change was effected by interpolation, in lieu of the reference to the 1912 resolution, the actual description of lands contained in said resolution.

AMENDMENTS

1978—Pub. L. 95–554 provided for disposition of minerals as provided in sections 1716 and 1719 of title 43.

1946—Act Aug. 8, 1946, excluded from section 5 of act Feb. 7, 1927, the incorporation, by reference, of section 181 of this title, and reenacted inclusion of deposits of potassium.

1927—Act Feb. 7, 1927, included deposits of potassium.

### § 193a. Preference right of United States to purchase coal for Army and Navy; price for coal; civil actions; jurisdiction

The United States shall, at all times, have the preference right to purchase so much of the

product of any mine or mines opened upon the lands sold under the provisions of this Act, as may be necessary for the use of the Army and Navy, and at such reasonable and remunerative price as may be fixed by the President; but the producers of any coal so purchased who may be dissatisfied with the price thus fixed shall have the right to prosecute suits against the United States in the United States Court of Federal Claims for the recovery of any additional sum or sums they may claim as justly due upon such purchase.

(May 28, 1908, ch. 211, § 2, 35 Stat. 424; Pub. L. 97–164, title I, § 160(a)(10), Apr. 2, 1982, 96 Stat. 48; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

REFERENCES IN TEXT

This Act, referred to in text, is act May 28, 1908, ch. 211, 35 Stat. 424. Sections 1, 3, and 4 of this Act related to consolidation of claims permitted and the limit of acreage, prohibition against unlawful trusts, etc., and contents of patents, respectively, and are not classified to the Code.

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

Section was formerly classified to section 453 of Title 48, Territories and Insular Possessions.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

## § 194. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 644

Section, acts Feb. 25, 1920, ch. 85, § 38, 41 Stat. 451; Mar. 3, 1925, ch. 462, 43 Stat. 1145, related to fees and commissions of registers (successors to consolidated offices of registers and receivers), the predecessors of managers.

## § 195. Enforcement

### (a) Violations

It shall be unlawful for any person:

(1) to organize or participate in any scheme, arrangement, plan, or agreement to circumvent or defeat the provisions of this chapter or its implementing regulations, or

(2) to seek to obtain or to obtain any money or property by means of false statements of material facts or by failing to state material facts concerning:

(A) the value of any lease or portion thereof issued or to be issued under this chapter;

(B) the availability of any land for leasing under this chapter;

(C) the ability of any person to obtain leases under this chapter; or

(D) the provisions of this chapter and its implementing regulations.

### (b) Penalty

Any person who knowingly violates the provisions of subsection (a) of this section shall be punished by a fine of not more than $500,000, imprisonment for not more than five years, or both.

### (c) Civil actions

Whenever it shall appear that any person is engaged, or is about to engage, in any act which constitutes or will constitute a violation of subsection (a) of this section, the Attorney General may institute a civil action in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to, a prohibition from participation in exploration, leasing, or development of any Federal mineral, or any combination of the foregoing.

### (d) Corporations

(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who knowingly authorized, ordered, or carried out the proscribed activity shall be subject to the same action.

(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action, unless it is shown that the officer, employee, or agent was acting without the knowledge or consent of the corporation or other entity.

### (e) Remedies, fines, and imprisonment

The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines, and imprisonment afforded by any other law or regulation.

### (f) State civil actions

(1) A State may commence a civil action under subsection (c) of this section against any person conducting activity within the State in violation of this section. Civil actions brought by a State shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

(2) A State shall notify the Attorney General of the United States of any civil action filed by

the State under this subsection within 30 days of filing of the action. The Attorney General of the United States shall notify a State of any civil action arising from activity conducted within that State filed by the Attorney General under this subsection within 30 days of filing of the action.

(3) Any civil penalties recovered by a State under this subsection shall be retained by the State and may be expended in such manner and for such purposes as the State deems appropriate. If a civil action is jointly brought by the Attorney General and a State, by more than one State or by the Attorney General and more than one State, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in the manner determined by the court rendering judgment in such action.

(4) If a State has commenced a civil action against a person conducting activity within the State in violation of this section, the Attorney General may join in such action but may not institute a separate action arising from the same activity under this section. If the Attorney General has commenced a civil action against a person conducting activity within a State in violation of this section, that State may join in such action but may not institute a separate action arising from the same activity under this section.

(5) Nothing in this section shall deprive a State of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.

(Feb. 25, 1920, ch. 85, § 41, as added Pub. L. 100–203, title V, § 5108, Dec. 22, 1987, 101 Stat. 1330–260.)

### § 196. Cooperative agreements; delegation of authority

Notwithstanding any other provision of law, for fiscal year 1992 and each year thereafter, the Secretary of the Interior or his designee is authorized to—

(a) enter into a cooperative agreement or agreements with any State or Indian tribe to share royalty management information, to carry out inspection, auditing, investigation or enforcement (not including the collection of royalties, civil penalties, or other payments) activities in cooperation with the Secretary, except that the Secretary shall not enter into such cooperative agreement with a State with respect to any such activities on Indian lands except with the permission of the Indian tribe involved; and

(b) upon written request of any State, to delegate to the State all or part of the authorities and responsibilities of the Secretary under the authorizing leasing statutes, leases, and regulations promulgated pursuant thereto to conduct audits, investigations, and inspections, except that the Secretary shall not undertake such a delegation with respect to any Indian lands except with permission of the Indian tribe involved,

with respect to any lease authorizing exploration for or development of coal, any other solid mineral, or geothermal steam on any Federal lands or Indian lands within the State or with respect to any lease or portion of a lease subject to section 1337(g) of title 43, on the same terms and conditions as those authorized for oil and gas leases under sections 1732, 1733, 1735, and 1736 of this title and the regulations duly promulgated with respect thereto: *Provided further*, That section 1734 of this title shall apply to leases authorizing exploration for or development of coal, any other solid mineral, or geothermal steam on any Federal lands, or to any lease or portion of a lease subject to section 1337(g) of title 43: *Provided further*, That the Secretary shall compensate any State or Indian tribe for those costs which are necessary to carry out activities conducted pursuant to such cooperative agreement or delegation.

(Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1001.)

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

## SUBCHAPTER II—COAL

### § 201. Leases and exploration

#### (a) Leases

(1) The Secretary of the Interior is authorized to divide any lands subject to this chapter which have been classified for coal leasing into leasing tracts of such size as he finds appropriate and in the public interest and which will permit the mining of all coal which can be economically extracted in such tract and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands for leasing and shall award leases thereon by competitive bidding: *Provided*, That notwithstanding the competitive bidding requirement of this section, the Secretary may, subject to such conditions which he deems appropriate, negotiate the sale at fair market value of coal the removal of which is necessary and incidental to the exercise of a right-of-way permit issued pursuant to title V of the Federal Land Policy and Management Act of 1976 [43 U.S.C. 1761 et seq.]. No less than 50 per centum of the total acreage offered for lease by the Secretary in any one year shall be leased under a system of deferred bonus payment. Upon default or cancellation of any coal lease for which bonus payments are due, any unpaid remainder of the bid shall be immediately payable to the United States. A reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section to public bodies, including Federal agencies, rural electric cooperatives, or nonprofit corporations controlled by any of such entities: *Provided*, That the coal so offered for lease shall be for use by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers (except for short-term sales to others). No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease. Prior to his determina-

tion of the fair market value of the coal subject to the lease, the Secretary shall give opportunity for and consideration to public comments on the fair market value. Nothing in this section shall be construed to require the Secretary to make public his judgment as to the fair market value of the coal to be leased, or the comments he receives thereon prior to the issuance of the lease. He is authorized, in awarding leases for coal lands improved and occupied or claimed in good faith, prior to February 25, 1920, to consider and recognize equitable rights of such occupants or claimants.

(2)(A) The Secretary shall not issue a lease or leases under the terms of this chapter to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation, where any such entity holds a lease or leases issued by the United States to coal deposits and has held such lease or leases for a period of ten years when such entity is not, except as provided for in section 207(b) of this title, producing coal from the lease deposits in commercial quantities. In computing the ten-year period referred to in the preceding sentence, periods of time prior to August 4, 1976, shall not be counted.

(B) Any lease proposal which permits surface coal mining within the boundaries of a National Forest which the Secretary proposes to issue under this chapter shall be submitted to the Governor of each State within which the coal deposits subject to such lease are located. No such lease may be issued under this chapter before the expiration of the sixty-day period beginning on the date of such submission. If any Governor to whom a proposed lease was submitted under this subparagraph objects to the issuance of such lease, such lease shall not be issued before the expiration of the six-month period beginning on the date the Secretary is notified by the Governor of such objection. During such six-month period, the Governor may submit to the Secretary a statement of reasons why such lease should not be issued and the Secretary shall, on the basis of such statement, reconsider the issuance of such lease.

(3)(A)(i) No lease sale shall be held unless the lands containing the coal deposits have been included in a comprehensive land-use plan and such sale is compatible with such plan. The Secretary of the Interior shall prepare such land-use plans on lands under his responsibility where such plans have not been previously prepared. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare a comprehensive land-use plan for such areas where such plans have not been previously prepared. The plan of the Secretary of Agriculture shall take into consideration the proposed coal development in these lands: *Provided*, That where the Secretary of the Interior finds that because of non-Federal interest in the surface or because the coal resources are insufficient to justify the preparation costs of a Federal comprehensive land-use plan, the lease sale can be held if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located or a land use analysis prepared by the Secretary of the Interior.

(ii) In preparing such land-use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the case of a finding by the Secretary of the Interior that because of non-Federal interests in the surface or insufficient Federal coal, no Federal comprehensive land-use plans can be appropriately prepared, the responsible State entity shall consult with appropriate State agencies and local governments and the general public and shall provide an opportunity for public hearing on proposed plans prior to their adoption, if requested by any person having an interest which is, or may be, adversely affected by the adoption of such plans.

(iii) Leases covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of the other Federal agency and upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

(B) Each land-use plan prepared by the Secretary (or in the case of lands within the National Forest System, the Secretary of Agriculture pursuant to subparagraph (A)(i)) shall include an assessment of the amount of coal deposits in such land, identifying the amount of such coal which is recoverable by deep mining operations and the amount of such coal which is recoverable by surface mining operations.

(C) Prior to issuance of any coal lease, the Secretary shall consider effects which mining of the proposed lease might have on an impacted community or area, including, but not limited to, impacts on the environment, on agricultural and other economic activities, and on public services. Prior to issuance of a lease, the Secretary shall evaluate and compare the effects of recovering coal by deep mining, by surface mining, and by any other method to determine which method or methods or sequence of methods achieves the maximum economic recovery of the coal within the proposed leasing tract. This evaluation and comparison by the Secretary shall be in writing but shall not prohibit the issuance of a lease; however, no mining operating plan shall be approved which is not found to achieve the maximum economic recovery of the coal within the tract. Public hearings in the area shall be held by the Secretary prior to the lease sale.

(D) No lease sale shall be held until after the notice of the proposed offering for lease has been given once a week for three consecutive weeks in a newspaper of general circulation in the county in which the lands are situated in accordance with regulations prescribed by the Secretary.

(E) Each coal lease shall contain provisions requiring compliance with the Federal Water Pollution Control Act (33 U.S.C. 1151–1175) [33 U.S.C. 1251 et seq.] and the Clean Air Act [42 U.S.C. 7401 et seq.].

(4)(A) The Secretary shall not require a surety bond or any other financial assurance to guaran-

tee payment of deferred bonus bid installments with respect to any coal lease issued on a cash bonus bid to a lessee or successor in interest having a history of a timely payment of noncontested coal royalties and advanced coal royalties in lieu of production (where applicable) and bonus bid installment payments.

(B) The Secretary may waive any requirement that a lessee provide a surety bond or other financial assurance to guarantee payment of deferred bonus bid installment with respect to any coal lease issued before August 8, 2005, only if the Secretary determines that the lessee has a history of making timely payments referred to in subparagraph (A).

(5) Notwithstanding any other provision of law, if the lessee under a coal lease fails to pay any installment of a deferred cash bonus bid within 10 days after the Secretary provides written notice that payment of the installment is past due—

(A) the lease shall automatically terminate; and

(B) any bonus payments already made to the United States with respect to the lease shall not be returned to the lessee or credited in any future lease sale.

**(b) Exploration**

(1) The Secretary may, under such regulations as he may prescribe, issue to any person an exploration license. No person may conduct coal exploration for commercial purposes for any coal on lands subject to this chapter without such an exploration license. Each exploration license shall be for a term of not more than two years and shall be subject to a reasonable fee. An exploration license shall confer no right to a lease under this chapter. The issuance of exploration licenses shall not preclude the Secretary from issuing coal leases at such times and locations and to such persons as he deems appropriate. No exploration license will be issued for any land on which a coal lease has been issued. A separate exploration license will be required for exploration in each State. An application for an exploration license shall identify general areas and probable methods of exploration. Each exploration license shall contain such reasonable conditions as the Secretary may require, including conditions to insure the protection of the environment, and shall be subject to all applicable Federal, State, and local laws and regulations. Upon violation of any such conditions or laws the Secretary may revoke the exploration license.

(2) A licensee may not cause substantial disturbance to the natural land surface. He may not remove any coal for sale but may remove a reasonable amount of coal from the lands subject to this chapter included under his license for analysis and study. A licensee must comply with all applicable rules and regulations of the Federal agency having jurisdiction over the surface of the lands subject to this chapter. Exploration licenses covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

(3) The licensee shall furnish to the Secretary copies of all data (including, but not limited to, geological, geophyscal,[1] and core drilling analyses) obtained during such exploration. The Secretary shall maintain the confidentiality of all data so obtained until after the areas involved have been leased or until such time as he determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first.

(4) Any person who willfully conducts coal exploration for commercial purposes on lands subject to this chapter without an exploration license issued hereunder shall be subject to a fine of not more than $1,000 for each day of violation. All data collected by said person on any Federal lands as a result of such violation shall be made immediately available to the Secretary, who shall make the data available to the public as soon as it is practicable. No penalty under this subsection shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation.

(Feb. 25, 1920, ch. 85, §2(a), (b), 41 Stat. 438; June 3, 1948, ch. 379, §1, 62 Stat. 289; Pub. L. 86–252, §2, Sept. 9, 1959, 73 Stat. 490; Pub. L. 88–526, §2(a), (b), Aug. 31, 1964, 78 Stat. 710; Pub. L. 94–377, §§2–4, Aug. 4, 1976, 90 Stat. 1083, 1085; Pub. L. 95–554, §2, Oct. 30, 1978, 92 Stat. 2073; Pub. L. 109–58, title IV, §436, Aug. 8, 2005, 119 Stat. 762.)

REFERENCES IN TEXT

This section, referred to in subsec. (a)(1), is section 2 of act Feb. 25, 1920, as amended, which is comprised of subsecs. (a) to (d). Subsecs. (a) and (b) of section 2 comprise this section, subsec. (c) of section 2 comprises section 202 of this title, and subsec. (d) of section 2, as added by section 5(b) of Pub. L. 94–377, comprises section 202a of this title.

The Federal Land Policy and Management Act of 1976, referred to in subsec. (a)(1), is Pub. L. 94–579, Oct. 21, 1976, 90 Stat. 2743, as amended. Title V of the Federal Land Policy and Management Act of 1976 is classified generally to subchapter V (§1761 et seq.) of chapter 35 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (a)(3)(E), 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. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, referred to in subsec. (a)(3)(E), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 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 7401 of Title 42 and Tables.

CODIFICATION

Section is comprised of subsecs. (a) and (b) of section 2 of act Feb. 25, 1920, as amended by section 1 of act June 3, 1948. Subsec. (c) of section 2 of act Feb. 25, 1920, is classified to section 202 of this title. Subsec. (d) of said section 2, as added by Pub. L. 94–377, §5(b), Aug. 4, 1976, 90 Stat. 1086, is classified to section 202a of this title.

[1] So in original. Probably should be ''geophysical,''.

AMENDMENTS

2005—Subsec. (a)(4), (5). Pub. L. 109–58 added pars. (4) and (5).

1978—Subsec. (a)(1). Pub. L. 95–554 authorized negotiated fair market value sales of coal when exercising Federal land policy and management right-of-way permits.

1976—Subsec. (a). Pub. L. 94–377, § 2, designated existing provisions as par. (1), substituted provisions authorizing the division of any lands subject to this chapter which have been classified for coal leasing into tracts as the Secretary finds appropriate, in the public interest and will permit the mining of all economically extractable coal, such leases to be awarded by competitive bidding for provisions authorizing the division of classified or unclassified lands into tracts of forty acres, or multiples thereof, in such form as, in the Secretary's opinion will permit the most economical mining, such leases to be awarded by competitive bidding or by such other method adopted by general regulation, inserted provisions relating to deferred bonus payments leasing, leasing to public agencies, and to the fair market value of leases, struck out provision for notice of proposed offering for lease in a newspaper of general circulation prior to approval or issuance of a competitive lease of coal, and added pars. (2) and (3).

Subsec. (b). Pub. L. 94–377, § 4, designated existing provisions as par. (1), substituted provisions relating to the issuance, term and conditions of exploration licenses for provisions relating to the issuance of prospecting permits for a term of two years, for not exceeding 5125 acres, with an extension period of two years if the permittee has been unable, with the exercise of reasonable diligence to determine the existence or workability of coal deposits and desires further exploration, and added pars. (2) to (4).

1964—Subsec. (a). Pub. L. 88–526, § 2(a), removed limitation on a single competitive lease by striking out ''but in no case exceeding two thousand five hundred and sixty acres in any one leasing tract,'' after ''such tracts,''.

Subsec. (b). Pub. L. 88–526, § 2(b), increased limitation on the area carried by a prospecting permit from 2,560 to 5,120 acres.

1959—Subsec. (a). Pub. L. 86–252 struck out ''outside of the Territory of Alaska,'' after ''United States,''.

1948—Act June 3, 1948, amended section generally, dividing it into subsections (a) to (c) and making minor technical changes. Subsecs. (a) and (b) comprise this section and subsec. (c) is set out as section 202 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title IV, § 438, Aug. 8, 2005, 119 Stat. 763, provided that: ''The amendments made by this subtitle [subtitle D (§§ 431–438) of title IV of Pub. L. 109–58, amending this section and sections 202a, 203, and 207 of this title] apply with respect to any coal lease issued before, on, or after the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 99–190, § 101(d) [title III, § 320], Dec. 19, 1985, 99 Stat. 1224, 1266, provided that: ''The provisions of section 2(a)(2)(A) of the Mineral Lands Leasing Act of 1920 (41 Stat. 437) [subsec. (a)(2)(A) of this section], as amended by section 3 of the Federal Coal Leasing Amendments Act of 1976 (90 Stat. 1083) [Pub. L. 94–377, see 1976 Amendment note above] shall not take effect until December 31, 1986.''

SAVINGS PROVISION

Section 4 of Pub. L. 94–377 provided that the amendment made by that section is subject to valid existing rights.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Interior, referred to subsec. (a)(3)(D), to promulgate regulations under this chapter relating to fostering of competition for Federal leases transferred to Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare. Section 7152(b) of Title 42 was repealed by Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and functions of Secretary of Energy returned to Secretary of the Interior. See House Report No. 97–315, pp. 25, 26, Nov. 5, 1981.

STUDY OF COAL LEASES BY DIRECTOR OF THE OFFICE OF TECHNOLOGY ASSESSMENT

Section 10 of Pub. L. 94–377 provided that the Director of the Office of Technology Assessment conduct a complete study of coal leases entered into by the United States under sections 201, 202, and 202a of this title, which study was to include an analysis of all mining activities, present and potential value of these leases, receipts to the Federal Government from these leases, and recommendations as to the feasibility of the use of deep mining technology in leased areas, with the results of his study to be submitted to Congress within one year after Aug. 4, 1976.

COAL MINING ON AREAS OF NATIONAL PARK, WILDLIFE, WILDERNESS PRESERVATION, TRAIL, SCENIC RIVERS, SYSTEMS NOT AUTHORIZED

Section 16 of Pub. L. 94–377 provided that: ''Nothing in this Act [see Short Title of 1976 Amendment note under section 181 of this title], or the Mineral Lands Leasing Act [this chapter] and the Mineral Leasing Act for Acquired Lands [section 351 et seq. of this title] which are amended by this Act, shall be construed as authorizing coal mining on any area of the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National System of Trails, and the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act [section 1276(a) of Title 16, Conservation].''

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

## § 201–1. Repealed. Pub. L. 94–377, § 5(a), Aug. 4, 1976, 90 Stat. 1086

Section, Pub. L. 88–526, § 2(c), (d), Aug. 31, 1964, 78 Stat. 710, permitted the entering into of contracts for collective prospecting, development or operation of coalfields by lessees for the purpose of conserving natural resources.

SAVINGS PROVISION

Section 5(a) of Pub. L. 94–377 provided that the repeal of this section is subject to valid existing rights.

## § 201a. Repealed. June 3, 1948, ch. 379, § 8, 62 Stat. 291

Section, act Mar. 9, 1928, ch. 159, § 1, 45 Stat. 251, related to extension of coal prospecting permits.

## § 201b. Omitted

CODIFICATION

Section, act Mar. 9, 1928, ch. 159, § 2, 45 Stat. 251, provided for extension of coal permits already expired for a period of two years from Mar. 9, 1928.

## § 202. Common carriers; limitations of lease or permit

No company or corporation operating a common-carrier railroad shall be given or hold a

permit or lease under the provisions of this chapter for any coal deposits except for its own use for railroad purposes; and such limitations of use shall be expressed in all permits and leases issued to such companies or corporations; and no such company or corporation shall receive or hold under permit or lease more than ten thousand two hundred and forty acres in the aggregate nor more than one permit or lease for each two hundred miles of its railroad lines served or to be served from such coal deposits exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam.

Nothing in this section and section 201 of this title shall preclude such a railroad of less than two hundred miles in length from securing one permit or lease thereunder but no railroad shall hold a permit or lease for lands in any State in which it does not operate main or branch lines.

(Feb. 25, 1920, ch. 85, § 2(c), 41 Stat. 438; June 13, 1944, ch. 244, 58 Stat. 275; June 3, 1948, ch. 379, § 1, 62 Stat. 289.)

CODIFICATION

Section is comprised of subsec. (c) of section 2 of act Feb. 25, 1920, as amended by section 1 of act June 3, 1948. Subsecs. (a) and (b) of section 2 of act Feb. 25, 1920, are classified to section 201 of this title. Subsec. (d) of said section 2, as added by Pub. L. 94–377, § 5(b), Aug. 4, 1976, 90 Stat. 1086, is classified to section 202a of this title.

AMENDMENTS

1948—Act June 3, 1948, reenacted this section without change except to make it subsec. (c) of section 2 of act Feb. 25, 1920.

1944—Act June 13, 1944, inserted ''more than ten thousand two hundred and forty acres in the aggregate nor'' before ''more than one permit'', substituted ''railroad lines served or to be served from such coal deposits'' for ''railroad line within the State in which such property is situated,'', and prohibited a railroad from holding a permit or lease for lands in any State in which it did not operate main or branch lines.

## § 202a. Consolidation of coal leases into logical mining unit

### (1) Approval by Secretary; public hearing; definition

The Secretary, upon determining that maximum economic recovery of the coal deposit or deposits is served thereby, may approve the consolidation of coal leases into a logical mining unit. Such consolidation may only take place after a public hearing, if requested by any person whose interest is or may be adversely affected. A logical mining unit is an area of land in which the coal resources can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of coal reserves and other resources. A logical mining unit may consist of one or more Federal leaseholds, and may include intervening or adjacent lands in which the United States does not own the coal resources, but all the lands in a logical mining unit must be under the effective control of a single operator, be able to be developed and operated as a single operation and be contiguous.

### (2) Mining plan; requirements

(A) After the Secretary has approved the establishment of a logical mining unit, any mining plan approved for that unit must require such diligent development, operation, and production that the reserves of the entire unit will be mined within a period established by the Secretary which shall not be more than forty years.

(B) The Secretary may establish a period of more than 40 years if the Secretary determines that the longer period—

(i) will ensure the maximum economic recovery of a coal deposit; or

(ii) the longer period is in the interest of the orderly, efficient, or economic development of a coal resource.

### (3) Conditions for approval

In approving a logical mining unit, the Secretary may provide, among other things, that (i) diligent development, continuous operation, and production on any Federal lease or non-Federal land in the logical mining unit shall be construed as occurring on all Federal leases in that logical mining unit, and (ii) the rentals and royalties for all Federal leases in a logical mining unit may be combined, and advanced royalties paid for any lease within a logical mining unit may be credited against such combined royalties.

### (4) Amendment to lease

The Secretary may amend the provisions of any lease included in a logical mining unit so that mining under that lease will be consistent with the requirements imposed on that logical mining unit.

### (5) Leases issued before date of enactment of this Act

Leases issued before the date of enactment of this Act may be included with the consent of all lessees in such logical mining unit, and, if so included, shall be subject to the provisions of this section.

### (6) Lessee required to form unit

By regulation the Secretary may require a lessee under this chapter to form a logical mining unit, and may provide for determination of participating acreage within a unit.

### (7) Required acreage

No logical mining unit shall be approved by the Secretary if the total acreage (both Federal and non-Federal) of the unit would exceed twenty-five thousand acres.

### (8) Acreage limitations for coal leases not waived

Nothing in this section shall be construed to waive the acreage limitations for coal leases contained in section 184(a) of this title.

(Feb. 25, 1920, ch. 85, § 2(d), as added Pub. L. 94–377, § 5(b), Aug. 4, 1976, 90 Stat. 1086; amended Pub. L. 109–58, title IV, § 433, Aug. 8, 2005, 119 Stat. 761.)

REFERENCES IN TEXT

The date of enactment of this Act, referred to in par. (5), probably means the date of enactment of Pub. L. 94–377, which was approved Aug. 4, 1976.

This section, referred to in pars. (5) and (8), is section 2 of act Feb. 25, 1920, as amended, which is comprised

of subsecs. (a) to (d). Subsecs. (a) and (b) of section 2 are classified to section 201 of this title, subsec. (c) of section 2 is classified to section 202 of this title, and subsec. (d) of section 2, as added by section 5(b) of Pub. L. 94–377, is classified to this section.

CODIFICATION

Section is comprised of subsec. (d) of section 2 of act Feb. 25, 1920, as added by Pub. L. 94–377. Subsecs. (a) and (b) of said section 2 are classified to section 201 of this title. Subsec. (c) of said section 2 is classified to section 202 of this title.

AMENDMENTS

2005—Par. (2). Pub. L. 109–58 designated existing provisions as subpar. (A) and added subpar. (B).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable with respect to any coal lease issued before, on, or after Aug. 8, 2005, see section 438 of Pub. L. 109–58, set out as a note under section 201 of this title.

### § 203. Additional lands or deposits

#### (a) In general

(1) Except as provided in paragraph (3), on a finding by the Secretary under paragraph (2), any person, association, or corporation holding a lease of coal lands or coal deposits under the provisions of this chapter may with the approval of the Secretary of the Interior,[1] secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous or cornering to those embraced in the lease.

(2) A finding referred to in paragraph (1) is a finding by the Secretary that the modifications—

(A) would be in the interest of the United States;

(B) would not displace a competitive interest in the lands; and

(C) would not include lands or deposits that can be developed as part of another potential or existing operation.

(3) In no case shall the total area added by modifications to an existing coal lease under paragraph (1)—

(A) exceed 960 acres; or

(B) add acreage larger than that in the original lease.

#### (b) Terms and conditions

The Secretary shall prescribe terms and conditions which shall be consistent with this chapter and applicable to all of the acreage in such modified lease except that nothing in this section shall require the Secretary to apply the production or mining plan requirements of sections 202a(2) and 207(c) of this title.

#### (c) Royalties

The minimum royalty provisions of section 207(a) of this title shall not apply to any lands covered by this modified lease prior to a modification until the term of the original lease or extension thereof which became effective prior to the effective date of this Act has expired.

(Feb. 25, 1920, ch. 85, § 3, 41 Stat. 439; Pub. L. 94–377, § 13(b), Aug. 4, 1976, 90 Stat. 1090; Pub. L. 95–554, § 3, Oct. 30, 1978, 92 Stat. 2074; Pub. L. 109–58, title IV, § 432, Aug. 8, 2005, 119 Stat. 760.)

[1] So in original. The comma probably should not appear.

REFERENCES IN TEXT

Sections 202a(2) and 207(c) of this title, referred to in subsec. (b), was in the original ''section 2(d)(2) and 7(c) of this Act (30 U.S.C. 201(d)(2) and 207(c))'', and was translated as sections 202a(2) and 207(c) of this title to reflect the probable intent of Congress.

The effective date of this Act, referred to in subsec. (c), probably means the date of enactment of Pub. L. 95–554, which was approved Oct. 30, 1978.

AMENDMENTS

2005—Pub. L. 109–58 designated first sentence as par. (1) of subsec. (a), substituted ''Except as provided in paragraph (3), on a finding by the Secretary under paragraph (2), any person'' for ''Any person'' and ''secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous or cornering to those embraced in the lease'' for ''upon a finding by him that it would be in the interest of the United States, secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous or cornering to those embraced in such lease, but in no event shall the total area added by such modifications to an existing coal lease exceed one hundred sixty acres, or add acreage larger than that in the original lease'', added pars. (2) and (3), and designated second and third sentences as subsecs. (b) and (c), respectively.

1978—Pub. L. 95–554 authorized modification of leases to include coal lands or coal deposits cornering to those embraced in the leases and inserted provision respecting application of production or mining plan requirements of sections 202a(2) and 207(c) and minimum royalty provisions of section 207(a) of this title.

1976—Pub. L. 94–377 struck out the advantage to the lessee as one of the conditions for modification of the original lease, substituted provision prohibiting the addition of total area in excess of 160 acres or adding acreage larger than that in the original lease for provision limiting the total area embraced in such modified lease to an aggregate of 2560 acres, and inserted provision authorizing the Secretary to prescribe terms and conditions consistent with this chapter which shall be applicable to the total acreage in the modified lease.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable with respect to any coal lease issued before, on, or after Aug. 8, 2005, see section 438 of Pub. L. 109–58, set out as a note under section 201 of this title.

SAVINGS PROVISION

Section 13(b) of Pub. L. 94–377 provided that the amendment made by that section is subject to valid existing rights.

### § 204. Repealed. Pub. L. 94–377, § 13(a), Aug. 4, 1976, 90 Stat. 1090

Section, act Feb. 25, 1920, ch. 85, § 4, 41 Stat. 439, provided for the leasing of an additional tract of land or coal deposit, not to exceed 2560 acres, upon a showing by a lessee that all workable deposits of coal would be exhausted, worked out, or removed within three years thereafter.

SAVINGS PROVISION

Section 13(a) of Pub. L. 94–377 provided that the repeal of this section is subject to valid existing rights.

### § 205. Consolidation of leases

If, in the judgment of the Secretary of the Interior, the public interest will be subserved thereby, lessees holding under lease areas not exceeding the maximum permitted under this chapter may consolidate their leases through the surrender of the original leases and the in-

clusion of such areas in a new lease of not to exceed two thousand five hundred and sixty acres of contiguous lands.

(Feb. 25, 1920, ch. 85, § 5, 41 Stat. 439.)

**§ 206. Noncontiguous coal or phosphate tracts in single lease**

Where coal or phosphate lands aggregating two thousand five hundred and sixty acres and subject to lease hereunder do not exist as contiguous areas, the Secretary of the Interior is authorized, if, in his opinion, the interests of the public and of the lessee will be thereby subserved, to embrace in a single lease noncontiguous tracts which can be operated as a single mine or unit.

(Feb. 25, 1920, ch. 85, § 6, 41 Stat. 439.)

**§ 207. Conditions of lease**

**(a) Term of lease; annual rentals; royalties; readjustment of conditions**

A coal lease shall be for a term of twenty years and for so long thereafter as coal is produced annually in commercial quantities from that lease. Any lease which is not producing in commercial quantities at the end of ten years shall be terminated. The Secretary shall by regulation prescribe annual rentals on leases. A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations. The lease shall include such other terms and conditions as the Secretary shall determine. Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended.

**(b) Diligent development and continued operation; suspension of condition on payment of advance royalties**

(1) Each lease shall be subject to the conditions of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee.

(2) The Secretary of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of advance royalties.

(3) Advance royalties described in paragraph (2) shall be no less than the production royalty which would otherwise be paid and shall be computed on a fixed reserve to production ratio (determined by the Secretary).

(4) Advance royalties described in paragraph (2) shall be computed—

(A) based on—

(i) the average price in the spot market for sales of comparable coal from the same region during the last month of each applicable continued operation year; or

(ii) in the absence of a spot market for comparable coal from the same region, by using a comparable method established by the Secretary of the Interior to capture the commercial value of coal; and

(B) based on commercial quantities, as defined by regulation by the Secretary of the Interior.

(5) The aggregate number of years during the period of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed 20 years.

(6)[1] The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under a lease described in paragraph (5) to the extent that the advance royalties have not been used to reduce production royalties for a prior year.

(6)[1] The Secretary may, upon six months' notification to the lessee cease to accept advance royalties in lieu of the requirement of continued operation.

(7) Nothing in this subsection shall be construed to affect the requirement contained in the second sentence of subsection (a) of this section relating to commencement of production at the end of ten years.

**(c) Operation and reclamation plan**

Prior to taking any action on a leasehold which might cause a significant disturbance of the environment, the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval.

(Feb. 25, 1920, ch. 85, § 7, 41 Stat. 439; Pub. L. 94–377, § 6, Aug. 4, 1976, 90 Stat. 1087; Pub. L. 109–58, title IV, §§ 434, 435, Aug. 8, 2005, 119 Stat. 761, 762.)

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58, § 434, designated first to third and seventh and eighth sentences as pars. (1) to (3) and (6) and (7), respectively, substituted "Advance royalties described in paragraph (2)" for "Such advance royalties" in par. (3), added pars. (4), (5), and (6) related to amount of any production royalty paid, and struck out fourth to sixth sentences which read as follows: "The aggregate number of years during the period of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed ten. The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under such lease to the extent that such advance royalties have not been used to reduce production royalties for a prior year. No advance royalty paid during the initial twenty-year term of a lease shall be used to reduce a production royalty after the twentieth year of a lease."

Subsec. (c). Pub. L. 109–58, § 435, struck out "and not later than three years after a lease is issued," before "the lessee shall submit".

1976—Pub. L. 94–377 designated existing provisions as subsec. (a), substituted provisions limiting the lease term to 20 years and for so long thereafter as coal is produced annually in commercial quantities for provision authorizing leases for indeterminate periods upon condition of diligent development and continued oper-

[1] So in original. Two pars. (6) have been enacted.

ation except for strikes, the elements, or casualties not attributable to lessees; provisions for payment of royalties as determined by the Secretary of not less than 12½ per centum of coal value, except as reduced for coal from underground mining operations for provisions specifying royalties as stated in the lease, but not less than 5 cents per ton; provision for rentals as prescribed by regulation for provision setting rentals as fixed by the Secretary at not less than 25 cents per acre for the first year, 50 cents for the second, third, fourth and fifth years, and $1 for each year thereafter, and provision for readjustment of royalties and terms and conditions after primary period of twenty years and subsequent ten year intervals for provision for readjustment after twenty years unless otherwise provided by law, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable with respect to any coal lease issued before, on, or after Aug. 8, 2005, see section 438 of Pub. L. 109–58, set out as a note under section 201 of this title.

### § 208. Permits to take coal for local domestic needs without royalty payments; corporation exclusion; area to municipalities for household use without profit

In order to provide for the supply of strictly local domestic needs for fuel, the Secretary of the Interior may, under such rules and regulations as he may prescribe in advance, issue limited licenses or permits to individuals or associations of individuals to prospect for, mine, and take for their use but not for sale, coal from the public lands without payment of royalty for the coal mined or the land occupied, on such conditions not inconsistent with this chapter as in his opinion will safeguard the public interests. This privilege shall not extend to any corporations. In the case of municipal corporations the Secretary of the Interior may issue such limited license or permit, for not to exceed three hundred and twenty acres for a municipality of less than one hundred thousand population, and not to exceed one thousand two hundred and eighty acres for a municipality of not less than one hundred thousand and not more than one hundred and fifty thousand population; and not to exceed two thousand five hundred and sixty acres for a municipality of one hundred and fifty thousand population or more, the land to be selected within the State wherein the municipal applicant may be located, upon condition that such municipal corporations will mine the coal therein under proper conditions and dispose of the same without profit to residents of such municipality for household use: *Provided*, That the acquisition or holding of a lease under sections 181, 201, and 202 to 207 of this title shall be no bar to the holding of such tract or operation of such mine under said limited license.

(Feb. 25, 1920, ch. 85, § 8, 41 Stat. 440.)

### § 208–1. Exploratory program for evaluation of known recoverable coal resources

#### (a) Authorization; purpose

The Secretary is authorized and directed to conduct a comprehensive exploratory program designed to obtain sufficient data and information to evaluate the extent, location, and potential for developing the known recoverable coal resources within the coal lands subject to this chapter. This program shall be designed to obtain the resource information necessary for determining whether commercial quantities of coal are present and the geographical extent of the coal fields and for estimating the amount of such coal which is recoverable by deep mining operations and the amount of such coal which is recoverable by surface mining operations in order to provide a basis for—

(1) developing a comprehensive land use plan pursuant to section 2;

(2) improving the information regarding the value of public resources and revenues which should be expected from leasing;

(3) increasing competition among producers of coal, or products derived from the conversion of coal, by providing data and information to all potential bidders equally and equitably;

(4) providing the public with information on the nature of the coal deposits and the associated stratum and the value of the public resources being offered for sale; and

(5) providing the basis for the assessment of the amount of coal deposits in those lands subject to this chapter under subparagraph (B) of section 201(a)(3) of this title.

#### (b) Seismic, geophysical, geochemical or stratigraphic drilling

The Secretary, through the United States Geological Survey, is authorized to conduct seismic, geophysical, geochemical, or stratigraphic drilling, or to contract for or purchase the results of such exploratory activities from commercial or other sources which may be needed to implement the provisions of this section.

#### (c) Exploratory drilling by party not under contract to United States; confidentiality of information prior to award of lease

Nothing in this section shall limit any person from conducting exploratory geophysical surveys including seismic, geophysical, chemical surveys to the extent permitted by section 201(b) of this title. The information obtained from the exploratory drilling carried out by a person not under contract with the United States Government for such drilling prior to award of a lease shall be provided the confidentiality pursuant to subsection (d) of this section.

#### (d) Availability to public of all data, information, maps, surveys; confidentiality of information purchased from commercial sources not under contract to United States prior to award of lease

The Secretary shall make available to the public by appropriate means all data, information, maps, interpretations, and surveys which are obtained directly by the Department of the Interior or under a service contract pursuant to subsection (b) of this section. The Secretary shall maintain a confidentiality of all proprietary data or information purchased from commercial sources while not under contract with the United States Government until after the areas involved have been leased.

**(e) Information or data from Federal departments or agencies; confidentiality of proprietary information or data; utilization of Federal departments and agencies by agreement**

All Federal departments or agencies are authorized and directed to provide the Secretary with any information or data that may be deemed necessary to assist the Secretary in implementing the exploratory program pursuant to this section. Proprietary information or data provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. In addition, the Secretary is authorized and directed to utilize the existing capabilities and resources of other Federal departments and agencies by appropriate agreement.

**(f) Publication of geological and geophysical maps and reports of lands offered for lease**

The Secretary is directed to prepare, publish, and keep current a series of detailed geological, and geophysical maps of, and reports concerning, all coal lands to be offered for leasing under this chapter, based on data and information compiled pursuant to this section. Such maps and reports shall be prepared and revised at reasonable intervals beginning eighteen months after the date of enactment of this Act. Such maps and reports shall be made available on a continuing basis to any person on request.

**(g) Implementation plan for coal lands exploration program; development and transmittal to Congress; contents**

Within six months after the date of enactment of this Act, the Secretary shall develop and transmit to Congress an implementation plan for the coal lands exploration program authorized by this section, including procedures for making the data and information available to the public pursuant to subsection (d) of this section, and maps and reports pursuant to subsection (f) of this section. The implementation plan shall include a projected schedule of exploratory activities and identification of the regions and areas which will be explored under the coal lands exploration program during the first five years following the enactment of this section. In addition, the implementation plan shall include estimates of the appropriations and staffing required to implement the coal lands exploration program.

**(h) Stratigraphic drilling; scope; statement of results**

The stratigraphic drilling authorized in subsection (b) of this section shall be carried out in such a manner as to obtain information pertaining to all recoverable reserves. For the purpose of complying with subsection (a) of this section, the Secretary shall require all those authorized to conduct stratigraphic drilling pursuant to subsection (b) of this section to supply a statement of the results of test boring of core sampling including logs of the drill holes; the thickness of the coal seams found; an analysis of the chemical properties of such coal; and an analysis of the strata layers lying above all the seams of coal. All drilling activities shall be conducted using the best current technology and practices.

(Feb. 25, 1920, ch. 85, § 8A, as added Pub. L. 94–377, § 7, Aug. 4, 1976, 90 Stat. 1087.)

REFERENCES IN TEXT

Section 2, referred to in subsec. (a)(1), means section 2 of act Feb. 25, 1920, as amended, and is comprised of subsecs. (a) to (d). Subsecs. (a) and (b) of section 2 are classified to section 201 of this title, subsec. (c) of section 2 is classified to section 202 of this title, and subsec. (d) of section 2, as added by section 5(b) of Pub. L. 94–377, is classified to section 202a of this title.

The date of enactment of this Act, referred to in subsecs. (f) and (g), probably means the date of enactment of Pub. L. 94–377, which was approved Aug. 4, 1976.

**§ 208–2. Repealed. Pub. L. 104–66, title I, § 1091(e), Dec. 21, 1995, 109 Stat. 722**

Section, act Feb. 25, 1920, ch. 85, § 8B, as added Aug. 4, 1976, Pub. L. 94–377, § 8, 90 Stat. 1089, related to reports to Congress on leasing and production of coal lands, contents, recommendations, and reports by Attorney General on competition in the coal industry and on effectiveness of antitrust laws.

**§ 208a. Repealed. Pub. L. 97–468, title VI, § 615(a)(3), Jan. 14, 1983, 96 Stat. 2578**

Section, act July 19, 1932, ch. 513, 47 Stat. 707, authorized general manager of Alaska Railroad to purchase coal annually for railroad from two or more operating companies in areas adjacent to railroad.

Section was formerly classified to section 445a of Title 48, Territories and Insular Possessions.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 97–468 became effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(a) of Pub. L. 97–468.

**§ 209. Suspension, waiver, or reduction of rents or royalties to promote development or operation; extension of lease on suspension of operations and production**

The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of coal, oil, gas, oil shale, gilsonite (including all vein-type solid hydrocarbons), phosphate, sodium, potassium and sulfur, and in the interest of conservation of natural resources, is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof segregated for royalty purposes, whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein.[1] *Provided, however*, That in order to promote development and the maximum production of tar sand, at the request of the lessee, the Secretary shall review, prior to commencement of commercial operations, the royalty rates established in each combined hydrocarbon lease issued in special tar sand areas. For purposes of this section, the term ''tar sand'' means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either: (1) contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise, or (2) contains a hydrocarbonaceous material and is produced by

[1] So in original. The period probably should be a colon.

mining or quarrying. In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production under any lease granted under the terms of this chapter, any payment of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto. The provisions of this section shall apply to all oil and gas leases issued under this chapter, including those within an approved or prescribed plan for unit or cooperative development and operation. Nothing in this section shall be construed as granting to the Secretary the authority to waive, suspend, or reduce advance royalties.

(Feb. 25, 1920, ch. 85, § 39, as added Feb. 9, 1933, ch. 45, 47 Stat. 798; amended Aug. 8, 1946, ch. 916, § 10, 60 Stat. 957; June 3, 1948, ch. 379, § 7, 62 Stat. 291; Pub. L. 94–377, § 14, Aug. 4, 1976, 90 Stat. 1091; Pub. L. 97–78, § 1(3), (7), Nov. 16, 1981, 95 Stat. 1070, 1071.)

AMENDMENTS

1981—Pub. L. 97–78 inserted reference to gilsonite (including all vein-type solid hydrocarbons) and inserted proviso that, in order to promote development and the maximum production of tar sand, at the request of the lessee, the Secretary review, prior to commencement of commercial operations, the royalty rates established in each combined hydrocarbon lease issued in special tar sand areas, and that, for purposes of this section, ''tar sand'' means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise, or contains a hydrocarbonaceous material and is produced by mining or quarrying.

1976—Pub. L. 94–377 inserted sentence at end that nothing in this section shall be construed as granting to the Secretary authority to waive, suspend, or reduce advance royalties.

1948—Act June 3, 1948, extended applicability of section to oil shale, phosphate, sodium, potassium, and sulphur.

1946—Act Aug. 8, 1946, principally inserted first and third sentences relating to waiver, suspension or reduction of royalties or rentals, and applicability of section to cooperative or unit plans, respectively.

SAVINGS PROVISION

See note set out under section 181 of this title.

## SUBCHAPTER III—PHOSPHATES

### § 211. Phosphate deposits

#### (a) Authorization to lease land; terms and conditions; acreage

The Secretary of the Interior is authorized to lease to any applicant qualified under this chapter, through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, any phosphate deposits of the United States, and lands containing such deposits, including associated and related minerals, when in his judgment the public interest will be best served thereby. The lands shall be leased under such terms and conditions as are herein specified, in units reasonably compact in form of not to exceed two thousand five hundred and sixty acres.

#### (b) Prospecting permits; issuance; term; acreage; entitlement to lease

Where prospecting or exploratory work is necessary to determine the existence or workability of phosphate deposits in any unclaimed, undeveloped area, the Secretary of the Interior is authorized to issue, to any applicant qualified under this chapter, a prospecting permit which shall give the exclusive right to prospect for phosphate deposits, including associated minerals, for a period of two years, for not more than two thousand five hundred and sixty acres; and if prior to the expiration of the permit the permittee shows to the Secretary that valuable deposits of phosphate have been discovered within the area covered by his permit, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit.

#### (c) Extension of term of permit

Any phosphate permit issued under this section may be extended by the Secretary for such an additional period, not in excess of four years, as he deems advisable, if he finds that the permittee has been unable, with reasonable diligence, to determine the existence or workability of phosphate deposits in the area covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons warranting such an extension in the opinion of the Secretary.

(Feb. 25, 1920, ch. 85, § 9, 41 Stat. 440; June 3, 1948, ch. 379, § 2, 62 Stat. 290; Pub. L. 86–391, § 1(a), Mar. 18, 1960, 74 Stat. 7.)

AMENDMENTS

1960—Pub. L. 86–391 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1948—Act June 3, 1948, included provision limiting amount of land in lease.

### § 212. Surveys; royalties; time payable; annual rentals; term of leases; readjustment on renewals; minimum production; suspension of operation

Each lease shall describe the leased lands by the legal subdivisions of the public-land surveys. All leases shall be conditioned upon the payment to the United States of such royalties as may be specified in the lease, which shall be fixed by the Secretary of the Interior in advance of offering the same, at not less than 5 per centum of the gross value of the output of phosphates or phosphate rock and associated or related minerals. Royalties shall be due and payable as specified in the lease either monthly or quarterly on the last day of the month next following the month or quarter in which the minerals are sold or removed from the leased land. Each lease shall provide for the payment of a rental payable at the date of the lease and annually thereafter which shall be not less than 25 cents per acre for the first year, 50 cents per acre for the second and third years, respectively, and $1 per acre for each year thereafter, during the continuance of the lease. The rental paid for any year shall be credited against the royalties for that year. Leases shall be for a term of twenty years and so long thereafter as the lessee complies with the terms and conditions of the lease and upon the further condition that at the

end of each twenty-year period succeeding the date of the lease such reasonable readjustment of the terms and conditions thereof may be made therein as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such periods. Leases shall be conditioned upon a minimum annual production or the payment of a minimum royalty in lieu thereof, except when production is interrupted by strikes, the elements, or casualties not attributable to the lessee. The Secretary of the Interior may permit suspension of operations under any such leases when marketing conditions are such that the leases cannot be operated except at a loss.

(Feb. 25, 1920, ch. 85, § 10, 41 Stat. 440; June 3, 1948, ch. 379, § 3, 62 Stat. 290.)

AMENDMENTS

1948—Act June 3, 1948, amended section generally, omitting provisions relating to amount of lands in lease, and inserting provisions regarding royalties.

### § 213. Royalties for use of deposits of silica, limestone, or other rock embraced in lease

Any lease to develop and extract phosphates, phosphate rock, and associated or related minerals under the provisions of sections 211 to 214 of this title shall provide that the lessee may use so much of any deposit of silica or limestone or other rock situated on any public lands embraced in the lease as may be utilized in the processing or refining of the phosphates, phosphate rock, and associated or related minerals mined from the leased lands or from other lands upon payments of such royalty as may be determined by the Secretary of the Interior, which royalty may be stated in the lease or, as to the leases already issued, may be provided for in an attachment to the lease to be duly executed by the lessor and the lessee.

(Feb. 25, 1920, ch. 85, § 11, 41 Stat. 440; June 3, 1948, ch. 379, § 4, 62 Stat. 291.)

AMENDMENTS

1948—Act June 3, 1948, amended section generally, omitting provision relating to royalties and annual rents, and inserting provisions relating to use of deposits of silica, limestone or other rock embraced in the lease upon the payment of a suitable royalty.

### § 214. Use of surface of other public lands; acreage; forest lands exception

The holder of any lease or permit issued under the provisions of sections 211 to 214 of this title shall have the right to use so much of the surface of unappropriated and unentered public lands not a part of his lease or permit, not exceeding eighty acres in area, as may be determined by the Secretary to be necessary or convenient for the extraction, treatment, and removal of the mineral deposits, but this provision shall not be applicable to national forest lands.

(Feb. 25, 1920, ch. 85, § 12, 41 Stat. 441; June 3, 1948, ch. 379, § 5, 62 Stat. 291; Pub. L. 86–391, § 1(b), Mar. 18, 1960, 74 Stat. 8.)

AMENDMENTS

1960—Pub. L. 86–391 substituted ''lease or permit'' for ''lease'' in two places.

1948—Act June 3, 1948, increased lands to be used from 40 to 80 acres, excepted national forest lands from its provisions, and substituted ''The holder of any lease issued under the provisions of sections 211 to 214 of this title'', ''public lands not a part of his lease'', and ''or convenient for the extraction'' for ''Any qualified applicant to whom the Secretary of the Interior may grant a lease to develop and extract phosphates, or phosphate rock, under the provisions of this chapter'', ''lands'', and ''for the proper prospecting for or development, extraction'', respectively.

## SUBCHAPTER IV—OIL AND GAS

### §§ 221 to 222i. Omitted

CODIFICATION

Sections expired by their own terms. They provided as follows:

Section 221, acts Feb. 25, 1920, ch. 85, § 13, 41 Stat. 441; Aug. 21, 1935, ch. 599, § 1, 49 Stat. 674, provided for prospecting permits, their terms and conditions, extension, location of lands, marking land, notice of application for permits, permits in Alaska, exchanging permits for leases, and limited extensions to Dec. 31, 1938.

Section 222, act Jan. 11, 1922, ch. 28, 42 Stat. 356, authorized Secretary of the Interior to extend time for drilling not to exceed three years.

Section 222a, act Apr. 5, 1926, ch. 107, § 1, 44 Stat. 236, authorized a further extension of two years for drilling.

Section 222b, act Apr. 5, 1926, ch. 107, § 2, 44 Stat. 236, provided for extension of expired permits for a period of two years from Apr. 5, 1926.

Section 222c, act Mar. 9, 1928, ch. 168, § 1, 45 Stat. 252, authorized a two year extension for permits.

Section 222d, act Mar. 9, 1928, ch. 168, § 2, 45 Stat. 252, authorized a two year extension of permits already expired.

Section 222e, act Jan. 23, 1930, ch. 25, § 1, 46 Stat. 58, provided that permits issued or extended for three years might be further for three years.

Section 222f, act Jan. 23, 1930, ch. 25, § 2, 46 Stat. 59, provided for an extension of permits already expired for a period of three years from Jan. 23, 1930.

Section 222g, act June 30, 1932, ch. 319, § 1, 47 Stat. 445, provided for a further extension of three years.

Section 222h, act June 30, 1932, ch. 319, § 2, 47 Stat. 446, authorized an extension, for permits already expired, of three years from June 30, 1932.

Section 222i, acts Aug. 26, 1937, ch. 828, 50 Stat. 842; Aug. 11, 1939, ch. 716, 53 Stat. 1418, provided for final extension of prospecting permits, outstanding on Dec. 31, 1937, to Dec. 31, 1939.

COMPROMISE OF CLAIMS FOR ACCRUED RENTAL

Act July 29, 1942, ch. 534, § 2, 56 Stat. 726, authorized Secretary of the Interior to make a compromise settlement of any claim for accrued rental under a lease issued pursuant to the provisions of section 221 of this title, in any case in which he determined that it would be financially beneficial to the United States to make such a compromise settlement or in any case in which he determined that collection of the full amount of such accrued rental from the lessee was inadvisable because of the lessee's financial resources being limited.

### § 223. Leases; amount and survey of land; term of lease; royalties and annual rental

Upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit: *Provided*, That the permittee shall be granted a lease for as much as one hundred and sixty acres of said lands, if there be that number

of acres within the permit. The area to be selected by the permittee, shall be in reasonably compact form and, if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposits made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of $1 per acre, the rental paid for any one year to be credited against the royalties as they accrue for that year, and shall continue in force otherwise as prescribed in section 226 of this title for leases issued prior to August 21, 1935. The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12½ per centum in amount or value of the production nor more than the royalty rate prescribed by regulation in force on January 1, 1935, for secondary leases issued under this section, and under such other conditions as are fixed for oil or gas leases issued under section 226 of this title the royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe: *Provided further*, That the Secretary shall have the right to reject any or all bids.

(Feb. 25, 1920, ch. 85, § 14, 41 Stat. 442; Aug. 21, 1935, ch. 599, § 1, 49 Stat. 676.)

AMENDMENTS

1935—Act Aug. 21, 1935, inserted ''reasonably'' before ''compact form'' and substituted ''and shall continue in force otherwise as prescribed in section 226 of this title for leases issued prior to August 21, 1935'' and ''oil or gas leases issued under section 226 of this title'' for ''with the right of renewal as prescribed in section 226 of this title'' and ''oil or gas leases in this chapter'', respectively.

LIMITATION OF ROYALTY ON DISCOVERIES DURING WAR PERIOD

Act Dec. 24, 1942, ch. 812, 56 Stat. 1080, limiting royalty obligation of oil or gas lessee who drills well resulting in discovery of new deposit on public domain during the national emergency was repealed by Joint Res. July 25, 1947, ch. 327, § 1, 61 Stat. 449.

OUTER CONTINENTAL SHELF; LEASES

Grant by Secretary of the Interior of oil, gas, and other mineral leases on submerged lands of outer Continental Shelf, see section 1331 et seq. of Title 43, Public Lands.

### § 223a. Repealed. Aug. 8, 1946, ch. 916, § 14, 60 Stat. 958

Section, act Aug. 21, 1935, ch. 599, § 2, 49 Stat. 679, related to new oil and gas leases in lieu of old.

SAVINGS PROVISION

See note set out under section 181 of this title.

### § 224. Payments for oil or gas taken prior to application for lease

Until the permittee shall apply for lease to the one quarter of the permit area heretofore provided for he shall pay to the United States 20 per centum of the gross value of all oil or gas secured by him from the lands embraced within his permit and sold or otherwise disposed of or held by him for sale or other disposition.

(Feb. 25, 1920, ch. 85, § 15, 41 Stat. 442.)

### § 225. Condition of lease, forfeiture for violation

All leases of lands containing oil or gas, made or issued under the provisions of this chapter, shall be subject to the condition that the lessee will, in conducting his explorations and mining operations, use all reasonable precautions to prevent waste of oil or gas developed in the land, or the entrance of water through wells drilled by him to the oil sands or oil-bearing strata, to the destruction or injury of the oil deposits. Violations of the provisions of this section shall constitute grounds for the forfeiture of the lease, to be enforced as provided in this chapter.

(Feb. 25, 1920, ch. 85, § 16, 41 Stat. 443; Aug. 8, 1946, ch. 916, § 2, 60 Stat. 951.)

AMENDMENTS

1946—Act Aug. 8, 1946, omitted condition that no wells should be drilled within two hundred feet of boundaries of leased lands.

SAVINGS PROVISION

See note set out under section 181 of this title.

OUTER CONTINENTAL SHELF; TERMS AND CONDITIONS OF LEASES

Terms and conditions of mineral leases on submerged lands of outer Continental Shelf, see section 1337 of Title 43, Public Lands.

### § 226. Lease of oil and gas lands

#### (a) Authority of Secretary

All lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits may be leased by the Secretary.

#### (b) Lands within known geologic structure of a producing oil or gas field; lands within special tar sand areas; competitive bidding; royalties

(1)(A) All lands to be leased which are not subject to leasing under paragraphs (2) and (3) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than 2,560 acres, except in Alaska, where units shall be not more than 5,760 acres. Such units shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. Lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty at a rate of not less than 12.5 percent in amount or value of the production removed or sold from the lease. The Secretary shall accept the highest bid from a re-

sponsible qualified bidder which is equal to or greater than the national minimum acceptable bid, without evaluation of the value of the lands proposed for lease. Leases shall be issued within 60 days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year. All bids for less than the national minimum acceptable bid shall be rejected. Lands for which no bids are received or for which the highest bid is less than the national minimum acceptable bid shall be offered promptly within 30 days for leasing under subsection (c) of this section and shall remain available for leasing for a period of 2 years after the competitive lease sale.

(B) The national minimum acceptable bid shall be $2 per acre for a period of 2 years from December 22, 1987. Thereafter, the Secretary, subject to paragraph (2)(B), may establish by regulation a higher national minimum acceptable bid for all leases based upon a finding that such action is necessary: (i) to enhance financial returns to the United States; and (ii) to promote more efficient management of oil and gas resources on Federal lands. Ninety days before the Secretary makes any change in the national minimum acceptable bid, the Secretary shall notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. The proposal or promulgation of any regulation to establish a national minimum acceptable bid shall not be considered a major Federal action subject to the requirements of section 4332(2)(C) of title 42.

(2)(A)(i) If the lands to be leased are within a special tar sand area, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than 5,760 acres, which shall be as nearly compact as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary.

(ii) Royalty shall be 12½ per centum in amount or value of production removed or sold from the lease, subject to subsection (k)(1)(c)[1] of this section.

(iii) The Secretary may lease such additional lands in special tar sand areas as may be required in support of any operations necessary for the recovery of tar sands.

(iv) No lease issued under this paragraph shall be included in any chargeability limitation associated with oil and gas leases.

(B) For any area that contains any combination of tar sand and oil or gas (or both), the Secretary may issue under this chapter, separately—

(i) a lease for exploration for and extraction of tar sand; and

(ii) a lease for exploration for and development of oil and gas.

(C) A lease issued for tar sand shall be issued using the same bidding process, annual rental, and posting period as a lease issued for oil and gas, except that the minimum acceptable bid required for a lease issued for tar sand shall be $2 per acre.

[1] So in original. Probably should be subsection ''(k)(1)(C)''.

(D) The Secretary may waive, suspend, or alter any requirement under section 183 of this title that a permittee under a permit authorizing prospecting for tar sand must exercise due diligence, to promote any resource covered by a combined hydrocarbon lease.

(3)(A) If the United States held a vested future interest in a mineral estate that, immediately prior to becoming a vested present interest, was subject to a lease under which oil or gas was being produced, or had a well capable of producing, in paying quantities at an annual average production volume per well per day of either not more than 15 barrels per day of oil or condensate, or not more than 60,000 cubic feet of gas, the holder of the lease may elect to continue the lease as a noncompetitive lease under subsection (c)(1) of this section.

(B) An election under this paragraph is effective—

(i) in the case of an interest which vested after January 1, 1990, and on or before October 24, 1992, if the election is made before the date that is 1 year after October 24, 1992;

(ii) in the case of an interest which vests within 1 year after October 24, 1992, if the election is made before the date that is 2 years after October 24, 1992; and

(iii) in any case other than those described in clause (i) or (ii), if the election is made prior to the interest becoming a vested present interest.

(C) Notwithstanding the consent requirement referenced in section 352 of this title, the Secretary shall issue a noncompetitive lease under subsection (c)(1) of this section to a holder who makes an election under subparagraph (A) and who is qualified to hold a lease under this chapter. Such lease shall be subject to all terms and conditions under this chapter that are applicable to leases issued under subsection (c)(1) of this section.

(D) A lease issued pursuant to this paragraph shall continue so long as oil or gas continues to be produced in paying quantities.

(E) This paragraph shall apply only to those lands under the administration of the Secretary of Agriculture where the United States acquired an interest in such lands pursuant to the Act of March 1, 1911 (36 Stat. 961 and following).

**(c) Lands subject to leasing under subsection (b); first qualified applicant**

(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this chapter shall be entitled to a lease of such lands without competitive bidding, upon payment of a non-refundable application fee of at least $75. A lease under this subsection shall be conditioned upon the payment of a royalty at a rate of 12.5 percent in amount or value of the production removed or sold from the lease. Leases shall be issued within 60 days of the date on which the Secretary identifies the first responsible qualified applicant.

(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the

highest bid was less than the national minimum acceptable bid and (ii) for which, at the end of the period referred to in subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall again be available for leasing only in accordance with subsection (b)(1) of this section.

(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is cancelled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.

**(d) Annual rentals**

All leases issued under this section, as amended by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, shall be conditioned upon payment by the lessee of a rental of not less than $1.50 per acre per year for the first through fifth years of the lease and not less than $2 per acre per year for each year thereafter. A minimum royalty in lieu of rental of not less than the rental which otherwise would be required for that lease year shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.

**(e) Primary terms**

Competitive and noncompetitive leases issued under this section shall be for a primary term of 10 years: *Provided, however*, That competitive leases issued in special tar sand areas shall also be for a primary term of ten years. Each such lease shall continue so long after its primary term as oil or gas is produced in paying quantities. Any lease issued under this section for land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.

**(f) Notice of proposed action; posting of notice; terms and maps**

At least 45 days before offering lands for lease under this section, and at least 30 days before approving applications for permits to drill under the provisions of a lease or substantially modifying the terms of any lease issued under this section, the Secretary shall provide notice of the proposed action. Such notice shall be posted in the appropriate local office of the leasing and land management agencies. Such notice shall include the terms or modified lease terms and maps or a narrative description of the affected lands. Where the inclusion of maps in such notice is not practicable, maps of the affected lands shall be made available to the public for review. Such maps shall show the location of all tracts to be leased, and of all leases already issued in the general area. The requirements of this subsection are in addition to any public notice required by other law.

**(g) Regulation of surface-disturbing activities; approval of plan of operations; bond or surety; failure to comply with reclamation requirements as barring lease; opportunity to comply with requirements**

The Secretary of the Interior, or for National Forest lands, the Secretary of Agriculture, shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this chapter, and shall determine reclamation and other actions as required in the interest of conservation of surface resources. No permit to drill on an oil and gas lease issued under this chapter may be granted without the analysis and approval by the Secretary concerned of a plan of operations covering proposed surface-disturbing activities within the lease area. The Secretary concerned shall, by rule or regulation, establish such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface-disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease. The Secretary shall not issue a lease or leases or approve the assignment of any lease or leases under the terms of this section to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, during any period in which, as determined by the Secretary of the Interior or Secretary of Agriculture, such entity has failed or refused to comply in any material respect with the reclamation requirements and other standards established under this section for any prior lease to which such requirements and standards applied. Prior to making such determination with respect to any such entity the concerned Secretary shall provide such entity with adequate notification and an opportunity to comply with such reclamation requirements and other standards and shall consider whether any administrative or judicial appeal is pending. Once the entity has complied with the reclamation requirement or other standard concerned an oil or gas lease may be issued to such entity under this chapter.

**(h) National Forest System Lands**

The Secretary of the Interior may not issue any lease on National Forest System Lands reserved from the public domain over the objection of the Secretary of Agriculture.

**(i) Termination**

No lease issued under this section which is subject to termination because of cessation of production shall be terminated for this cause so long as reworking or drilling operations which were commenced on the land prior to or within sixty days after cessation of production are conducted thereon with reasonable diligence, or so long as oil or gas is produced in paying quantities as a result of such operations. No lease issued under this section shall expire because operations or production is suspended under any order, or with the consent, of the Secretary. No

lease issued under this section covering lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same unless the lessee is allowed a reasonable time, which shall be not less than sixty days after notice by registered or certified mail, within which to place such well in producing status or unless, after such status is established, production is discontinued on the leased premises without permission granted by the Secretary under the provisions of this chapter.

**(j) Drainage agreements; primary term of lease, extension**

Whenever it appears to the Secretary that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, he may negotiate agreements whereby the United States, or the United States and its lessees, shall be compensated for such drainage. Such agreements shall be made with the consent of the lessees, if any, affected thereby. If such agreement is entered into, the primary term of any lease for which compensatory royalty is being paid, or any extension of such primary term, shall be extended for the period during which such compensatory royalty is paid and for a period of one year from discontinuance of such payment and so long thereafter as oil or gas is produced in paying quantities.

**(k) Mining claims; suspension of running time of lease**

If, during the primary term or any extended term of any lease issued under this section, a verified statement is filed by any mining claimant pursuant to subsection (c) of section 527 of this title, whether such filing occur prior to September 2, 1960 or thereafter, asserting the existence of a conflicting unpatented mining claim or claims upon which diligent work is being prosecuted as to any lands covered by the lease, the running of time under such lease shall be suspended as to the lands involved from the first day of the month following the filing of such verified statement until a final decision is rendered in the matter.

**(*l*) Exchange of leases; conditions**

The Secretary of the Interior shall, upon timely application therefor, issue a new lease in exchange for any lease issued for a term of twenty years, or any renewal thereof, or any lease issued prior to August 8, 1946, in exchange for a twenty-year lease, such new lease to be for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities and at a royalty rate of not less than 12½ per centum in amount or value of the production removed or sold from such leases, except that the royalty rate shall be 12½ per centum in amount or value of the production removed or sold from said leases as to (1) such leases, or such parts of the lands subject thereto and the deposits underlying the same, as are not believed to be within the productive limits of any producing oil or gas deposit, as such productive limits are found by the Secretary to have existed on August 8, 1946; and (2) any production on a lease from an oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease, and which is determined by the Secretary to be a new deposit; and (3) any production on or allocated to a lease pursuant to an approved cooperative or unit plan of development or operation from an oil or gas deposit which was discovered after May 27, 1941, on land committed to such plan, and which is determined by the Secretary to be a new deposit, where such lease, or a lease for which it is exchanged, was included in such plan at the time of discovery or was included in a duly executed and filed application for the approval of such plan at the time of discovery.

**(m) Cooperative or unit plan; authority of Secretary of the Interior to alter or modify; communitization or drilling agreements; term of lease, conditions; Secretary to approve operating, drilling or development contracts, and subsurface storage**

For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of said oil or gas pool, field, or like area, is then subject to any cooperative or unit plan of development or operation), lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary is thereunto authorized, in his discretion, with the consent of the holders of leases involved, to establish, alter, change, or revoke drilling, producing, rental, minimum royalty, and royalty requirements of such leases and to make such regulations with reference to such leases, with like consent on the part of the lessees, in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of the public interest. The Secretary may provide that oil and gas leases hereafter issued under this chapter shall contain a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States.

Any plan authorized by the preceding paragraph which includes lands owned by the United States may, in the discretion of the Secretary, contain a provision whereby authority is vested in the Secretary of the Interior, or any such person, committee, or State or Federal officer or agency as may be designated in the plan, to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such plan. All leases operated under any such plan approved or prescribed by the Secretary shall be excepted in determining holdings or control under the provisions of any section of this chapter.

When separate tracts cannot be independently developed and operated in conformity with an established well-spacing or development program, any lease, or a portion thereof, may be

pooled with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary of the Interior to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed thereto.

Any lease issued for a term of twenty years, or any renewal thereof, or any portion of such lease that has become the subject of a cooperative or unit plan of development or operation of a pool, field, or like area, which plan has the approval of the Secretary of the Interior, shall continue in force until the termination of such plan. Any other lease issued under any section of this chapter which has heretofore or may hereafter be committed to any such plan that contains a general provision for allocation of oil or gas shall continue in force and effect as to the land committed so long as the lease remains subject to the plan: *Provided*, That production is had in paying quantities under the plan prior to the expiration date of the term of such lease. Any lease heretofore or hereafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization: *Provided, however*, That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities. The minimum royalty or discovery rental under any lease that has become subject to any cooperative or unit plan of development or operation, or other plan that contains a general provision for allocation of oil or gas, shall be payable only with respect to the lands subject to such lease to which oil or gas shall be allocated under such plan. Any lease which shall be eliminated from any such approved or prescribed plan, or from any communitization or drilling agreement authorized by this section, and any lease which shall be in effect at the termination of any such approved or prescribed plan, or at the termination of any such communitization or drilling agreement, unless relinquished, shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities.

The Secretary of the Interior is hereby authorized, on such conditions as he may prescribe, to approve operating, drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, associations, or corporations whenever, in his discretion, the conservation of natural products or the public convenience or necessity may require it or the interests of the United States may be best subserved thereby. All leases operated under such approved operating, drilling, or development contracts, and interests thereunder, shall be excepted in determining holdings or control under the provisions of this chapter.

The Secretary of the Interior, to avoid waste or to promote conservation of natural resources, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under this chapter. Such authorization may provide for the payment of a storage fee or rental on such stored oil or gas or, in lieu of such fee or rental, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease on which storage is so authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

**(n) Conversion of oil and gas leases and claims on hydrocarbon resources to combined hydrocarbon leases for primary term of 10 years; application**

(1)(A) The owner of (1) an oil and gas lease issued prior to November 16, 1981, or (2) a valid claim to any hydrocarbon resources leasable under this section based on a mineral location made prior to January 21, 1926, and located within a special tar sand area shall be entitled to convert such lease or claim to a combined hydrocarbon lease for a primary term of ten years upon the filing of an application within two years from November 16, 1981, containing an acceptable plan of operations which assures reasonable protection of the environment and diligent development of those resources requiring enhanced recovery methods of development or mining. For purposes of conversion, no claim shall be deemed invalid solely because it was located as a placer location rather than a lode location or vice versa, notwithstanding any previous adjudication on that issue.

(B) The Secretary shall issue final regulations to implement this section within six months of November 16, 1981. If any oil and gas lease eligible for conversion under this section would otherwise expire after November 16, 1981, and before six months following the issuance of implementing regulations, the lessee may preserve his conversion right under such lease for a period ending six months after the issuance of implementing regulations by filing with the Secretary, before the expiration of the lease, a notice of intent to file an application for conversion. Upon submission of a complete plan of operations in substantial compliance with the regulations promulgated by the Secretary for the filing of such plans, the Secretary shall suspend the running of the term of any oil and gas lease proposed for conversion until the plan is finally approved or disapproved. The Secretary shall act upon a proposed plan of operations within fifteen months of its submittal.

(C) When an existing oil and gas lease is converted to a combined hydrocarbon lease, the royalty shall be that provided for in the original oil and gas lease and for a converted mining claim, 12½ per centum in amount or value of production removed or sold from the lease.

(2) Except as provided in this section, nothing in the Combined Hydrocarbon Leasing Act of 1981 shall be construed to diminish or increase the rights of any lessee under any oil and gas lease issued prior to November 16, 1981.

**(*o*) Certain outstanding oil and gas deposits**

(1) Prior to the commencement of surface-disturbing activities relating to the development of oil and gas deposits on lands described under paragraph (5), the Secretary of Agriculture shall require, pursuant to regulations promulgated by the Secretary, that such activities be subject to terms and conditions as provided under paragraph (2).

(2) The terms and conditions referred to in paragraph (1) shall require that reasonable advance notice be furnished to the Secretary of Agriculture at least 60 days prior to the commencement of surface disturbing activities.

(3) Advance notice under paragraph (2) shall include each of the following items of information:

(A) A designated field representative.

(B) A map showing the location and dimensions of all improvements, including but not limited to, well sites and road and pipeline accesses.

(C) A plan of operations, of an interim character if necessary, setting forth a schedule for construction and drilling.

(D) A plan of erosion and sedimentation control.

(E) Proof of ownership of mineral title.

Nothing in this subsection shall be construed to affect any authority of the State in which the lands concerned are located to impose any requirements with respect to such oil and gas operations.

(4) The person proposing to develop oil and gas deposits on lands described under paragraph (5) shall either—

(A) permit the Secretary to market merchantable timber owned by the United States on lands subject to such activities; or

(B) arrange to purchase merchantable timber on lands subject to such surface disturbing activities from the Secretary of Agriculture, or otherwise arrange for the disposition of such merchantable timber, upon such terms and upon such advance notice of the items referred to in subparagraphs (A) through (E) of paragraph (3) as the Secretary may accept.

(5)(A) The lands referred to in this subsection are those lands referenced in subparagraph (B) which are under the administration of the Secretary of Agriculture where the United States acquired an interest in such lands pursuant to the Act of March 1, 1911 (36 Stat. 961 and following), but does not have an interest in oil and gas deposits that may be present under such lands. This subsection does not apply to any such lands where, under the provisions of its acquisition of an interest in the lands, the United States is to acquire any oil and gas deposits that may be present under such lands in the future but such interest has not yet vested with the United States.

(B) This subsection shall only apply in the Allegheny National Forest.

**(p) Deadlines for consideration of applications for permits**

**(1) In general**

Not later than 10 days after the date on which the Secretary receives an application for any permit to drill, the Secretary shall—

(A) notify the applicant that the application is complete; or

(B) notify the applicant that information is missing and specify any information that is required to be submitted for the application to be complete.

**(2) Issuance or deferral**

Not later than 30 days after the applicant for a permit has submitted a complete application, the Secretary shall—

(A) issue the permit, if the requirements under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other applicable law have been completed within such timeframe; or

(B) defer the decision on the permit and provide to the applicant a notice—

(i) that specifies any steps that the applicant could take for the permit to be issued; and

(ii) a list of actions that need to be taken by the agency to complete compliance with applicable law together with timelines and deadlines for completing such actions.

**(3) Requirements for deferred applications**

**(A) In general**

If the Secretary provides notice under paragraph (2)(B), the applicant shall have a period of 2 years from the date of receipt of the notice in which to complete all requirements specified by the Secretary, including providing information needed for compliance with the National Environmental Policy Act of 1969.

**(B) Issuance of decision on permit**

If the applicant completes the requirements within the period specified in subparagraph (A), the Secretary shall issue a decision on the permit not later than 10 days after the date of completion of the requirements described in subparagraph (A), unless compliance with the National Environmental Policy Act of 1969 and other applicable law has not been completed within such timeframe.

**(C) Denial of permit**

If the applicant does not complete the requirements within the period specified in subparagraph (A) or if the applicant does not comply with applicable law, the Secretary shall deny the permit.

(Feb. 25, 1920, ch. 85, §17, 41 Stat. 443; July 3, 1930, ch. 854, §1, 46 Stat. 1007; Mar. 4, 1931, ch. 506, 46 Stat. 1523; Aug. 21, 1935, ch. 599, §1, 49 Stat. 676; Aug. 8, 1946, ch. 916, §3, 60 Stat. 951; July 29, 1954, ch. 644, §1(1)–(3), 68 Stat. 583; Pub. L. 86–507, §1(21), June 11, 1960, 74 Stat. 201; Pub. L. 86–705, §2, Sept. 2, 1960, 74 Stat. 781; Pub. L. 97–78, §1(6), (8), Nov. 16, 1981, 95 Stat. 1070, 1071; Pub. L. 100–203, title V, §5102(a)–(d)(1), Dec. 22, 1987, 101 Stat. 1330–256, 1330–257; Pub. L. 102–486, title XXV, §§2507(a), 2508(a), 2509, Oct. 24, 1992, 106 Stat. 3107–3109; Pub. L. 103–437, §11(a)(1), Nov. 2, 1994, 108 Stat. 4589; Pub. L. 104–66, title I, §1081(a), Dec. 21, 1995, 109 Stat. 721; Pub. L. 109–58, title III, §§350(a), (b), 366, 369(j)(1), Aug. 8, 2005, 119 Stat. 711, 726, 730.)

REFERENCES IN TEXT

Act of March 1, 1911, referred to in subsecs. (b)(3)(E) and (*o*)(5)(A), is act Mar. 1, 1911, ch. 186, 36 Stat. 961, as amended, known as the Weeks Law, which is classified to sections 480, 500, 513 to 519, 521, 552, and 563 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 552 of Title 16 and Tables.

The Federal Onshore Oil and Gas Leasing Reform Act of 1987, referred to in subsec. (d), is subtitle B (§§5101 to 5113) of title V of Pub. L. 100–203, Dec. 22, 1987, 101 Stat. 1330–256. For complete classification of this Act to the Code, see Short Title of 1987 Amendment note set out under section 181 of this title and Tables.

The Combined Hydrocarbon Leasing Act of 1981, referred to in subsec. (n)(2), is Pub. L. 97–78, Nov. 16, 1981, 95 Stat. 1070, which amended sections 181, 182, 184, 209, 226, 241, 351, and 352 of this title and enacted a provision set out as a note under section 181 of this title. For complete classification of this Act to the Code, see Short Title of 1981 Amendment note set out under section 181 of this title and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (p)(2)(A), (3)(A), (B), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 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 4321 of Title 42 and Tables.

AMENDMENTS

2005—Subsec. (b)(1)(B). Pub. L. 109–58, §350(b), inserted ‘‘, subject to paragraph (2)(B),’’ after ‘‘Thereafter, the Secretary’’.

Subsec. (b)(2). Pub. L. 109–58, §350(a), designated existing provisions as subpar. (A) and added subpars. (B) to (D).

Subsec. (b)(2)(A). Pub. L. 109–58, §369(j)(1), designated first sentence as cl. (i), substituted ‘‘5,760’’ for ‘‘five thousand one hundred and twenty’’, designated second and third sentences as cls. (ii) and (iii), respectively, and added cl. (iv).

Subsec. (p). Pub. L. 109–58, §366, added subsec. (p).

1995—Subsec. (j). Pub. L. 104–66 struck out at end ‘‘The Secretary shall report to Congress at the beginning of each regular session all such agreements entered into during the previous year which involve unleased Government lands.’’

1994—Subsec. (b)(1)(B). Pub. L. 103–437 substituted ‘‘Natural Resources’’ for ‘‘Interior and Insular Affairs’’ before ‘‘of the United States House’’.

1992—Subsec. (b)(1)(A). Pub. L. 102–486, §2507(a)(1), substituted ‘‘under paragraphs (2) and (3)’’ for ‘‘under paragraph (2)’’.

Subsec. (b)(3). Pub. L. 102–486, §2507(a)(2), added par. (3).

Subsec. (e). Pub. L. 102–486, §2509, substituted ‘‘Competitive and noncompetitive leases issued under this section shall be for a primary term of 10 years: *Provided, however*,’’ for ‘‘Competitive leases issued under this section shall be for a primary term of five years and noncompetitive leases for a primary term of ten years: *Provided, however*,’’.

Subsec. (*o*). Pub. L. 102–486, §2508(a), added subsec. (*o*).

1987—Subsec. (b)(1). Pub. L. 100–203, §5102(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ‘‘If the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than six hundred and forty acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary and of such royalty as may be fixed in the lease, which shall be not less than 12½ per centum in amount or value of the production removed or sold from the lease.’’

Subsec. (c). Pub. L. 100–203, §5102(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ‘‘If the lands to be leased are not subject to leasing under subsection (b) of this section, the person first making application for the lease who is qualified to hold a lease under this chapter shall be entitled to a lease of such lands without competitive bidding. Such leases shall be conditioned upon the payment by the lessee of a royalty of 12½ per centum in amount or value of the production removed or sold from the lease.’’

Subsec. (d). Pub. L. 100–203, §5102(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ‘‘All leases issued under this section shall be conditioned upon payment by the lessee of a rental of not less than 50 cents per acre for each year of the lease. Each year’s lease rental shall be paid in advance. A minimum royalty of $1 per acre in lieu of rental shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.’’

Subsecs. (f) to (n). Pub. L. 100–203, §5102(d)(1), added subsecs. (f) to (h) and redesignated former subsecs. (f) to (k) as (i) to (n), respectively.

1981—Subsec. (b). Pub. L. 97–78, §1(6)(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 97–78, §1(6)(b), substituted ‘‘subject to leasing under subsection (b) of this section’’ for ‘‘within any known geological structure of a producing oil or gas field’’.

Subsec. (e). Pub. L. 97–78, §1(6)(c), inserted proviso that competitive leases in special tar sand areas be for a primary term of ten years.

Subsec. (k). Pub. L. 97–78, §1(8), added subsec. (k).

1960—Pub. L. 86–705 generally amended this section and sections 226d and 226e of this title, combining all three sections and subdividing provisions into subsections (a) to (j) of this section. Among other changes were: substitution of a fixed 10-year term for a renewable 5-year term for noncompetitive leases, the addition of subsec. (h) provisions with respect to the running of time against a lease during a contest of the claim, an increase in the minimum yearly rentals from 25 to 50 cents an acre, and striking out provisions that permitted a waiver of second-year and third-year rentals in certain situations.

Pub. L. 86–507 authorized notice of withdrawal to be given by certified mail.

1954—Act July 29, 1954, in second par., provided, that no lease shall terminate for nonproduction (1) if reworking or drilling operations are begun within 60 days after cessation of production, (2) if cessation of production is by order or with consent of the Secretary of the Interior, or (3) unless the lessee is given a reasonable time of at least 60 days to place a well, capable of producing paying quantities of oil or gas, on a producing status.

Act July 29, 1954, in third par., made sure that if a lessee seasonably applies for an extension of the initial five-year term of the lease he will be given such extension for either 5 years or 2 years, depending on whether or not the land is in a producing structure.

Act July 29, 1954, in fifth par., provided that the primary term of a lease which is effected by an agreement under which the United States received compensatory royalty remains in full force and effect for 1 year following discontinuance of compensatory royalty payments.

1946—Act Aug. 8, 1946, principally substituted, with respect to the leasing of lands not within a known geological structure of a producing oil or gas field, a royalty rate of 12½ per cent without further provision as to lease terms or quality of production; substituted a minimum royalty of $1 per acre per annum after discovery for the advance rental of not less than 25 cents per acre per annum required prior to discovery; provided that all leases shall be for a primary term of 5 years which shall continue thereafter for so long as oil or gas is produced in paying quantities, and that leases, with certain exceptions, shall be subject to one renewal for 5 years, and, if not subject to renewal, shall extend for an additional 2 years if diligent operations are in progress at the lease expiration date.

1935—Act Aug. 21, 1935, amended section generally.
1931—Act Mar. 4, 1931, amended section generally.
1930—Act July 3, 1930, amended section generally.

CHANGE OF NAME

Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 2507(b) of Pub. L. 102–486 provided that: ''The amendments made by subsection (a) [amending this section] apply with respect to those mineral estates in which the interest of the United States becomes a vested present interest after January 1, 1990.''

REGULATIONS

Pub. L. 109–58, title III, §350(c), Aug. 8, 2005, 119 Stat. 711, provided that: ''Not later than 45 days after the date of enactment of this Act [Aug. 8, 2005], the Secretary [of the Interior] shall issue final regulations to implement this section [amending this section].''

Section 2508(b) of Pub. L. 102–486 provided that: ''Within 90 days after the enactment of this Act [Oct. 24, 1992] the Secretary of Agriculture shall promulgate regulations to implement the amendment made by subsection (a) [amending this section].''

Section 5107 of Pub. L. 100–203 provided that:

''(a) REGULATIONS.—The Secretary shall issue final regulations to implement this subtitle [subtitle B (§§5101–5113) of title V of Pub. L. 100–203, see Short Title of 1987 Amendment note set out under section 181 of this title] within 180 days after the enactment of this subtitle [Dec. 22, 1987]. The regulations shall be effective when published in the Federal Register.

''(b) TREATMENT UNDER OTHER LAW.—The proposal or promulgation of such regulations shall not be considered a major Federal action subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)].

''(c) TEST SALE.—The Secretary may hold one or more lease sales conducted in accordance with the amendments made by this subtitle before promulgation of regulations referred to in subsection (a). Sale procedures for such sale shall be established in the notice of sale.''

SAVINGS PROVISION

Section 8 of Pub. L. 86–705 provided that: ''No amendment made by this Act [see Short Title of 1960 Amendment note set out under section 181 of this title] shall affect any valid right in existence on the effective date [Sept. 2, 1960] of the Mineral Leasing Act Revision of 1960.''

See note set out under section 181 of this title.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Interior, referred to in subsec. (j), to promulgate regulations under this chapter relating to establishment of diligence requirements for operations conducted on Federal leases, setting of rates for production of Federal leases, and specifying of procedures, terms, and conditions for acquisition and disposition of Federal royalty interests taken in kind, transferred to Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare. Section 7152(b) of Title 42 was repealed by Pub. L. 97–100, title II, §201, Dec. 23, 1981, 95 Stat. 1407, and functions of Secretary of Energy returned to Secretary of the Interior. See House Report No. 97–315, pp. 25, 26, Nov. 5, 1981.

PENDING APPLICATIONS, OFFERS, AND BIDS

Section 5106 of Pub. L. 100–203 provided that:

''(a) Notwithstanding any other provision of this subtitle [subtitle B (§§5101–5113) of title V of Pub. L. 100–203, see Short Title of 1987 Amendment note set out under section 181 of this title] and except as provided in subsection (b) of this section, all noncompetitive oil and gas lease applications and offers and competitive oil and gas bids pending on the date of enactment of this subtitle [Dec. 22, 1987] shall be processed, and leases shall be issued under the provisions of the Act of February 25, 1920 [this chapter], as in effect before its amendment by this subtitle, except where the issuance of any such lease would not be lawful under such provisions or other applicable law.

''(b) No noncompetitive lease applications or offers pending on the date of enactment of this subtitle for lands within the Shawnee National Forest, Illinois; the Ouachita National Forest, Arkansas; Fort Chaffee, Arkansas; or Eglin Air Force Base, Florida; shall be processed until these lands are posted for competitive bidding in accordance with section 5102 of this subtitle [amending this section and section 188 of this title]. If any such tract does not receive a bid equal to or greater than the national minimum acceptable bid from a responsible qualified bidder then the noncompetitive applications or offers pending for such a tract shall be reinstated and noncompetitive leases issued under the Act of February 25, 1920, as in effect before its amendment by this subtitle, except where the issuance of any such lease would not be lawful under such provisions or other applicable law. If competitive leases are issued for any such tract, then the pending noncompetitive application or offer shall be rejected.

''(c) Except as provided in subsections (a) and (b) of this section, all oil and gas leasing pursuant to the Act of February 25, 1920, after the date of enactment of this subtitle shall be conducted in accordance with the provisions of this subtitle.''

REPORT TO CONGRESS

Section 5110 of Pub. L. 100–203 provided that: ''The Secretary shall submit annually for 5 years after enactment of this subtitle [Dec. 22, 1987] to the Congress a report containing appropriate information to facilitate congressional monitoring of this subtitle [subtitle B (§§5101–5113) of title V of Pub. L. 100–203, see Short Title of 1987 Amendment note set out under section 181 of this title]. Such report shall include, but not be limited to—

''(1) the number of acres leased, and the number of leases issued, competitively and noncompetitively;

''(2) the amount of revenue received from bonus bids, filing fees, rentals, and royalties;

''(3) the amount of production from competitive and noncompetitive leases; and

''(4) such other data and information as will facilitate—

''(A) an assessment of the onshore oil and gas leasing system, and

''(B) a comparison of the system as revised by this subtitle with the system in operation prior to the enactment of this subtitle.''

LAND USE STUDY

Section 5111 of Pub. L. 100–203 provided that: ''The National Academy of Sciences and the Comptroller General of the United States shall conduct a study of the manner in which oil and gas resources are considered in the land use plans developed by the Secretary of the Interior in accordance with provisions of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743) [Pub. L. 94–579, see Short Title note under 43 U.S.C. 1701] and the Secretary of Agriculture in accordance with the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476) [Pub. L. 93–378, 16 U.S.C. 1600 et seq.], as amended by the National Forest Management Act of 1976 (90 Stat. 2949) [Pub. L. 94–588, see Short Title of 1976 Amendment note under 16 U.S.C. 1600], and recommend any improvements that may be necessary to ensure that—

''(1) potential oil and gas resources are adequately addressed in planning documents;

''(2) the social, economic, and environmental consequences of exploration and development of oil and gas resources are determined; and

''(3) any stipulations to be applied to oil and gas leases are clearly identified.''

REINSTATEMENT AND EXTENSION OF CERTAIN TEN-YEAR OIL AND GAS LEASES

Act July 14, 1952, ch. 742, 66 Stat. 630, provided: ''That any lease issued for a ten-year term in exchange for an oil and gas prospecting permit pursuant to sections 13 and 17 of the Act entitled 'An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain', approved February 25, 1920, as amended by the Act of August 21, 1935 (49 Stat. 674) [sections 221 and 226, respectively, of this title], and prior to amendment by the Act of August 8, 1946 [act Aug. 8, 1946, ch. 916, § 3, 60 Stat. 951], and upon which drilling operations were being diligently prosecuted on the expiration date of such lease, prior to the effective date of this Act [July 14, 1952], is hereby reinstated effective from the expiration date of the lease and shall continue in effect for a period of two years after the effective date of this Act and so long thereafter as oil or gas is produced in paying quantities, if, within ninety days after the enactment of this Act, payment is made, under the terms of such lease as reinstated and extended, of any sums due the United States for prior years. This Act shall not be applicable to any lands which, subsequent to such expiration and prior to the enactment of this Act, have been withdrawn from leasing, leased, or otherwise disposed of.''

OUTER CONTINENTAL SHELF; LEASES

Grant by Secretary of the Interior of oil, gas, and other mineral leases on submerged lands of outer Continental Shelf, see section 1331 et seq. of Title 43, Public Lands.

## § 226–1. Extension of noncompetitive oil or gas lease issued before September 2, 1960

### (a) Lands not withdrawn from leasing

Upon the expiration of the initial five-year term of any noncompetitive oil or gas lease which was issued prior to September 2, 1960, and which has been maintained in accordance with applicable statutory requirements and regulations, the record titleholder thereof shall be entitled to a single extension of the lease, unless then otherwise provided by law, for such lands covered by it as are not, on the expiration date of the lease, withdrawn from leasing. A withdrawal, however, shall not affect the right to an extension if actual drilling operations on such lands were commenced prior to the effective date of the withdrawal and were being diligently prosecuted on the expiration date of the lease. No withdrawal shall be effective within the meaning of this section until ninety days after notice thereof has been sent by registered or certified mail to each lessee to be affected by such withdrawal.

### (b) Known and unknown geologic structures of producing fields

As to lands not within the known geologic structure of a producing oil or gas field, a noncompetitive oil or gas lease to which this section is applicable shall be extended for a period of five years and so long thereafter as oil or gas is produced in paying quantities. As to lands within the known geologic structure of a producing oil or gas field, a noncompetitive lease to which this section is applicable shall be extended for a period of two years and so long thereafter as oil or gas is produced in paying quantities.

### (c) Application requirement

Any noncompetitive oil or gas lease extended under this section shall be subject to the rules and regulations in force at the expiration of the initial five-year term of the lease. No extension shall be granted, however, unless within a period of ninety days prior to the expiration date of the lease an application therefor is filed by the record titleholder or an assignee whose assignment has been filed for approval or an operator whose operating agreement has been filed for approval.

### (d) Commencement of actual drilling operations

Any lease issued prior to September 2, 1960, which has been maintained in accordance with applicable statutory requirements and regulations and which pertains to land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.

(Pub. L. 86–705, § 4, Sept. 2, 1960, 74 Stat. 789.)

CODIFICATION

Section was enacted as part of Mineral Leasing Act Revision of 1960, and not as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

## § 226–2. Limitations for filing oil and gas contests

No action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within ninety days after the final decision of the Secretary relating to such matter. No such action contesting such a decision of the Secretary rendered prior to September 2, 1960 shall be maintained unless the same be commenced or taken within ninety days after September 2, 1960.

(Feb. 25, 1920, ch. 85, § 42, as added Pub. L. 86–705, § 5, Sept. 2, 1960, 74 Stat. 790.)

## § 226–3. Lands not subject to oil and gas leasing

### (a) Prohibition

The Secretary shall not issue any lease under this chapter or under the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.] on any of the following Federal lands:

(1) Lands recommended for wilderness allocation by the surface managing agency.

(2) Lands within Bureau of Land Management wilderness study areas.

(3) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area.

(4) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an act of Congress.

**(b) Exploration**

In the case of any area of National Forest or public lands subject to this section, nothing in this section shall affect any authority of the Secretary of the Interior (or for National Forest Lands reserved from the public domain, the Secretary of Agriculture) to issue permits for exploration for oil and gas, coal, oil shale, phosphate, potassium, sulphur, gilsonite or geothermal resources by means not requiring construction of roads or improvement of existing roads if such activity is conducted in a manner compatible with the preservation of the wilderness environment.

(Feb. 25, 1920, ch. 85, §43, as added Pub. L. 100–203, title V, §5112, Dec. 22, 1987, 101 Stat. 1330–262; amended Pub. L. 100–443, §5(c), Sept. 22, 1988, 102 Stat. 1768.)

REFERENCES IN TEXT

The Geothermal Steam Act of 1970, referred to in subsec. (a), is Pub. L. 91–581, Dec. 24, 1970, 84 Stat. 1566, which is classified principally to chapter 23 (§1001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–443, §5(c)(1), inserted ''or under the Geothermal Steam Act of 1970'' after ''under this chapter'' and directed that ''oil and gas'' be stricken which was executed by striking those words where they appeared after ''not issue any'' in introductory provisions, but not where they appeared in par. (3) as the probable intent of Congress.

Subsec. (b). Pub. L. 100–443, §5(c)(2), inserted '', coal, oil shale, phosphate, potassium, sulphur, gilsonite or geothermal resources'' after ''oil and gas''.

## §§226a, 226b. Repealed. Aug. 8, 1946, ch. 916, §14, 60 Stat. 958

Section 226a, act July 8, 1940, ch. 548, 54 Stat. 742, related to lease of lands not within known productive field. See section 226 of this title.

Section 226b, acts July 29, 1942, ch. 534, §1, 56 Stat. 726; Dec. 22, 1943, ch. 376, 57 Stat. 608; Sept. 27, 1944, ch. 429, 58 Stat. 755; Nov. 30, 1945, ch. 495, 59 Stat. 587, related to preference right to new oil and gas lease upon expiration of five-year non-competitive oil and gas lease. See section 226 of this title.

SAVINGS PROVISION

See note set out under section 181 of this title.

## §226c. Reduction of royalties under existing leases

From and after August 8, 1946, the royalty obligation to the United States under all leases requiring payment of royalty in excess of 12½ per centum, except leases issued or to be issued upon competitive bidding, is reduced to 12½ per centum in amount or value of production removed or sold from said leases as to (1) such leases, or such part of the lands subject thereto, and the deposits underlying the same, as are not believed to be within the productive limits of any oil or gas deposit, as such productive limits are found by the Secretary to exist on August 8, 1946, and (2) any production on a lease from an oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease, and which is determined by the Secretary to be a new deposit; and (3) any production on or allocated to a lease pursuant to an approved unit or cooperative agreement from an oil or gas deposit which was discovered after May 27, 1941, on land committed to such agreement, and which is determined by the Secretary to be a new deposit, where such lease was included in such agreement at the time of discovery, or was included in a duly executed and filed application for the approval of such agreement at the time of discovery.

(Aug. 8, 1946, ch. 916, §12, 60 Stat. 957.)

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

SAVINGS PROVISION

See note set out under section 181 of this title.

OUTER CONTINENTAL SHELF; REFUNDS ON MINERAL-LEASE PAYMENTS

Refunds of excess payments with respect to oil, gas, and other leases on submerged lands of outer Continental Shelf, see section 1339 of Title 43, Public Lands.

## §§226d, 226e. Omitted

CODIFICATION

Sections were completely amended by Pub. L. 86–705, §2, Sept. 2, 1960, 74 Stat. 781, and included in section 17 of Mineral Leasing Act of Feb. 25, 1920, classified to section 226 of this title.

Section 226d, act Feb. 25, 1920, ch. 85, §17a, as added Aug. 8, 1946, ch. 916, §4, 60 Stat. 952, provided for the exchange of leases and fixed royalty rates for new leases.

Section 226e, act Feb. 25, 1920, ch. 85, §17b, as added Aug. 8, 1946, ch. 916, §5, 60 Stat. 952; amended July 29, 1954, ch. 644, §1(4), (5), 68 Stat. 585, permitted establishment of cooperative or unit plans, setting up procedures for regulating production, approving contracts and preventing waste.

## §227. Omitted

CODIFICATION

Section, acts Feb. 25, 1920, ch. 85, §18, 41 Stat. 443; Feb. 25, 1928, ch. 104, 45 Stat. 148, authorized the United States to issue leases for a period of twenty years to persons who relinquished all rights claimed or possessed prior to July 3, 1910 under preexisting placer mining law provided relinquishment was filed in the General Land Office within six months after Feb. 25, 1920.

## §228. Prospecting permits and leases to persons of lands not withdrawn; terms and conditions of; fraud of claimants

Any person who on October 1, 1919, was a bona fide occupant or claimant of oil or gas lands under a claim initiated while such lands were not withdrawn from oil or gas location and entry, and who had previously performed all acts under then existing laws necessary to valid locations thereof except to make discovery, and upon which discovery had not been made prior to February 25, 1920, and who has performed work or expended on or for the benefit of such locations an amount equal in the aggregate of $250 for each location if application therefor shall be made within six months from February 25, 1920, shall be entitled to prospecting permits thereon upon the same terms and conditions,

and limitations as to acreage, as other permits provided for in this chapter, or where any such person has made such discovery, prior to said February 25, 1920, he shall be entitled to a lease thereon under such terms as the Secretary of the Interior may prescribe unless otherwise provided for in section 227[1] of this title: *Provided*, That where such prospecting permit is granted upon land within any known geologic structure of a producing oil or gas field, the royalty to be fixed in any lease thereafter granted thereon or any portion thereof shall be not less than 12½ per-centum of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost: *Provided, however*, That the provisions of this section shall not apply to lands reserved for the use of the Navy. No claimant for a permit or lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith shall be entitled to any of the benefits of this section.

All permits or leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear.

(Feb. 25, 1920, ch. 85, § 19, 41 Stat. 445.)

REFERENCES IN TEXT

Section 227 of this title, referred to in text, was omitted from the Code.

### § 229. Preference right to permits or leases of claimants of lands bona fide entered as agricultural land; terms and conditions

In the case of lands bona fide entered as agricultural, and not withdrawn or classified as mineral at the time of entry, but not including lands claimed under any railroad grant, the entryman or patentee, or assigns, where assignment was made prior to January 1, 1918, if the entry has been patented with the mineral right reserved, shall be entitled to a preference right to a permit and to a lease, as herein provided, in case of discovery; and within an area not greater than a township such entryman and patentees, or assigns holding restricted patents may combine their holdings, not to exceed two thousand five hundred and sixty acres for the purpose of making joint application. Leases executed under this section and embracing only lands so entered shall provide for the payment of a royalty of not less than 12½ per centum as to such areas within the permit as may not be included within the discovery lease to which the permittee is entitled under section 223 of this title.

(Feb. 25, 1920, ch. 85, § 20, 41 Stat. 445.)

### § 229a. Water struck while drilling for oil and gas

**(a) Acquisition; condition in lease**

All prospecting permits and leases for oil or gas made or issued under the provisions of this chapter shall be subject to the condition that in case the permittee or lessee strikes water while drilling instead of oil or gas, the Secretary of the Interior may, when such water is of such quality and quantity as to be valuable and usable at a reasonable cost for agricultural, domestic, or other purposes, purchase the casing in the well at the reasonable value thereof to be fixed under rules and regulations to be prescribed by the Secretary.

**(b) Prior leases**

In cases where water wells producing such water have heretofore been or may hereafter be drilled upon lands embraced in any prospecting permit or lease heretofore issued under this chapter, the Secretary may in like manner purchase the casing in such wells.

**(c) Disposition**

The Secretary may make such purchase and may lease or operate such wells for the purpose of producing water and of using the same on the public lands or of disposing of such water for beneficial use on other lands, and where such wells have heretofore been plugged or abandoned or where such wells have been drilled prior to the issuance of any permit or lease by persons not in privity with the permittee or lessee, the Secretary may develop the same for the purposes of this section: *Provided*, That owners or occupants of lands adjacent to those upon which such water wells may be developed shall have a preference right to make beneficial use of such water.

**(d) Revolving fund**

The Secretary may use so much of any funds available for the plugging of wells as he may find necessary to start the program provided for by this section, and thereafter he may use the proceeds from the sale or other disposition of such water as a revolving fund for the continuation of such program, and such proceeds are hereby appropriated for such purpose.

**(e) Operations under lease not restricted**

Nothing in this section shall be construed to restrict operations under any oil or gas lease or permit under any other provision of this chapter.

(Feb. 25, 1920, ch. 85, § 40, as added June 16, 1934, ch. 557, 48 Stat. 977; amended Pub. L. 94–579, title VII, § 704(a), Oct. 21, 1976, 90 Stat. 2792.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–579 struck out proviso relating to reservation of land as a water hole under section 300 of title 43.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 704(a) of Pub. L. 94–579 provided that the amendment made by that section is effective on and after Oct. 21, 1976.

SAVINGS PROVISION

Amendment by Pub. L. 94–579 not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94–579, set out as a note under section 1701 of Title 43, Public Lands.

### §§ 230 to 233. Repealed. June 22, 1948, ch. 605, § 3, 62 Stat. 576

Section 230, act Mar. 4, 1923, ch. 249, § 1, 42 Stat. 1448, authorized permits and leases for certain United States citizens and corporations in Oklahoma.

[1] See References in Text note below.

Section 231, act Mar. 4, 1923, ch. 249, § 2, 42 Stat. 1448, required applications for permits and leases to be made not later than sixty days after Mar. 4, 1923.

Section 232, act Mar. 4, 1923, ch. 249, § 3, 42 Stat. 1448, limited amount of land any one person or corporation could be granted.

Section 233, act Mar. 4, 1923, ch. 249, § 4, 42 Stat. 1448, provided for payment of royalties to United States.

SAVINGS PROVISION

Section 3 of act June 22, 1948, provided that the repeal of these sections is subject to existing valid rights.

### § 233a. Permits or leases of certain lands in Oklahoma; retention of royalties

The Secretary of the Interior is directed to retain in his custody until otherwise directed by law the 12½ per centum and other royalties heretofore or hereafter received by him in pursuance of section 233[1] of this title.

(Mar. 4, 1925, ch. 550, § 2, 43 Stat. 1302.)

REFERENCES IN TEXT

Section 233 of this title, referred to in text, was repealed by act June 22, 1948, ch. 605, § 3, 62 Stat. 576.

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

### §§ 234 to 236. Repealed. June 22, 1948, ch. 605, § 3, 62 Stat. 576

Section 234, act Mar. 4, 1923, ch. 249, § 5, 42 Stat. 1449, provided for application of other laws to leases and permits granted under sections 230 to 233 and 234 to 236 of this title, and for disposition of lands and deposits remaining unappropriated and undisposed of.

Section 235, act Mar. 4, 1923, ch. 249, § 6, 42 Stat. 1449, prohibited interference with certain lands in possession of receivers appointed by the Supreme Court.

Section 236, act Mar. 4, 1923, ch. 249, § 7, 42 Stat. 1450, authorized promulgation of rules and regulations necessary to accomplish purposes of sections 230 to 233 and 234 to 236 of this title.

SAVINGS PROVISION

Section 3 of act June 22, 1948, provided that the repeal of these sections is subject to existing valid rights.

### § 236a. Lands in naval petroleum reserves and naval oil-shale reserves; effect of other laws

Nothing in sections 185, 221,[1] 223, 223a,[1] and 226 of this title and this section shall be construed as affecting any lands within the borders of the naval petroleum reserves and naval oil-shale reserves or agreements concerning operations thereunder or in relation to the same, but the Secretary of the Navy is hereby authorized, with the consent of the President, to enter into agreements such as those provided for under sections 184 and 226 of this title, which agreement shall not, unless expressed therein, operate to extend the terms of any lease affected thereby.

(Aug. 21, 1935, ch. 599, § 3, 49 Stat. 679.)

REFERENCES IN TEXT

Section 221 of this title, referred to in text, was omitted from the Code.

Section 223a of this title, referred to in text, was repealed by act Aug. 8, 1946, ch. 916, § 14, 60 Stat. 958.

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

### § 236b. Existing leases within naval petroleum reserves not affected

Nothing in this act shall be construed as affecting existing leases within the borders of the naval petroleum reserves, or agreements concerning operations thereunder or in relation thereto.

(Aug. 8, 1946, ch. 916, § 13, 60 Stat. 958; Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 675.)

REFERENCES IN TEXT

This act, referred to in text, is act Aug. 8, 1946, ch. 916, 60 Stat. 950, as amended, which is classified generally to sections 181, 184, 187a, 187b, 188, 193, 209, 225, 226, 226c to 226e, 236b, and 285 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

AMENDMENTS

1956—Act Aug. 10, 1956, repealed the portion of this section after ''thereto'' which authorized the Secretary of the Navy, with the consent of the President, to enter into agreements such as those provided for in section 236e of this title, which agreements, should not, unless expressed therein, operate to extend the term of any lease affected thereby.

### § 237. Omitted

CODIFICATION

Section, Pub. L. 95–372, title VI, § 602, Sept. 18, 1978, 92 Stat. 694, which required the Secretary of the Interior to submit annual reports to Congress on delinquent royalty accounts under leases issued under any Act regulating development of oil and gas on Federal lands, 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 111 of House Document No. 103–7.

## SUBCHAPTER V—OIL SHALE

### § 241. Leases of lands

#### (a) In general

(1) The Secretary of the Interior is hereby authorized to lease to any person or corporation qualified under this chapter any deposits of oil shale, and gilsonite (including all vein-type solid hydrocarbons) belonging to the United States and the surface of so much of the public lands containing such deposits, or land adjacent thereto, as may be required for the extraction and reduction of the leased minerals, under such rules and regulations, not inconsistent with this chapter, as he may prescribe.

(2) No lease hereunder shall exceed 5,760 acres of land, to be described by the legal subdivisions of the public-land surveys, or if unsurveyed, to be surveyed by the United States, at the expense of the applicant, in accordance with regulations to be prescribed by the Secretary of the Interior.

[1] See References in Text note below.

[1] See References in Text note below.

(3) Leases may be for indeterminate periods, upon such conditions as may be imposed by the Secretary of the Interior, including covenants relative to methods of mining, prevention of waste, and productive development.

(4) For the privilege of mining, extracting, and disposing of the oil or other minerals covered by a lease under this section the lessee shall pay to the United States such royalties as shall be specified in the lease and an annual rental, payable at the beginning of each year, at the rate of $2.00 per acre per annum, for the lands included in the lease, the rental paid for any one year to be credited against the royalties accruing for that year; such royalties to be subject to readjustment at the end of each twenty-year period by the Secretary of the Interior. For the purpose of encouraging the production of petroleum products from shales the Secretary may, in his discretion, waive the payment of any royalty and rental during the first five years of any lease. Any person having a valid claim to such minerals under existing laws on January 1, 1919, shall, upon the relinquishment of such claim, be entitled to a lease under the provisions of this section for such area of the land relinquished as shall not exceed the maximum area authorized by this section to be leased to an individual or corporation. No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section. No one person, association, or corporation shall acquire or hold more than 50,000 acres of oil shale leases in any one State. For gilsonite (including all vein-type solid hydrocarbons) no person, association, or corporation shall acquire or hold more than seven thousand six hundred eighty acres in any one State without respect to the number of leases.

(5) No lease issued under this section shall be included in any chargeability limitation associated with oil and gas leases.

**(b) Offer for lease; deposits other than oil shale; questioned validity because of location; preference rights**

If an offer for a lease under the provisions of this section for deposits other than oil shale is based upon a mineral location, the validity of which might be questioned because the claim was based on a placer location rather than on a lode location, or vice versa, the offeror shall have a preference right to a lease if the offer is filed not more than one year after September 2, 1960.

**(c)[1] Multiple use principal leases; gilsonite including all vein-type solid hydrocarbons**

With respect to gilsonite (including all vein-type solid hydrocarbons) a lease under the multiple use principle may issue notwithstanding the existence of an outstanding lease issued under any other provision of this chapter.

**(c)[1] Offsite leases**

(1) The Secretary may within the State of Colorado lease to the holder of the Federal oil shale lease known as Federal Prototype Tract C–a additional lands necessary for the disposal of oil shale wastes and the materials removed from mined lands, and for the building of plants, reduction works, and other facilities connected with oil shale operations (which lease shall be referred to hereinafter as an ''offsite lease''). The Secretary may only issue one offsite lease not to exceed six thousand four hundred acres. An offsite lease may not serve more than one Federal oil shale lease and may not be transferred except in conjunction with the transfer of the Federal oil shale lease that it serves.

(2) The Secretary may issue one offsite lease of not more than three hundred and twenty acres to any person, association or corporation which has the right to develop oil shale on non-Federal lands. An offsite lease serving non-Federal oil shale land may not serve more than one oil shale operation and may not be transferred except in conjunction with the transfer of the non-Federal oil shale land that it serves. Not more than two offsite leases may be issued under this paragraph.

(3) An offsite lease shall include no rights to any mineral deposits.

(4) The Secretary may issue offsite leases after consideration of the need for such lands, impacts on the environment and other resource values, and upon a determination that the public interest will be served thereby.

(5) An offsite lease for lands the surface of which is under the jurisdiction of a Federal agency other than the Department of the Interior shall be issued only with the consent of that other Federal agency and shall be subject to such terms and conditions as it may prescribe.

(6) An offsite lease shall be for such periods of time and shall include such lands, subject to the acreage limitations contained in this subsection, as the Secretary determines to be necessary to achieve the purposes for which the lease is issued, and shall contain such provisions as he determines are needed for protection of environmental and other resource values.

(7) An offsite lease shall provide for the payment of an annual rental which shall reflect the fair market value of the rights granted and which shall be subject to such revisions as the Secretary, in his discretion, determines may be needed from time to time to continue to reflect the fair market value.

(8) An offsite lease may, at the option of the lessee, include provisions for payments in any year which payments shall be credited against any portion of the annual rental for a subsequent year to the extent that such payment is payable by the Secretary of the Treasury under section 191 of this title to the State within the boundaries of which the leased lands are located. Such funds shall be paid by the Secretary of the Treasury to the appropriate State in accordance with section 191 of this title, and such funds shall be distributed by the State only to those counties, municipalities, or jurisdictional subdivisions impacted by oil shale development and/or where the lease is sited.

(9) An offsite lease shall remain subject to leasing under the other provisions of this chapter where such leasing would not be incompatible with the offsite lease.

[1] Two subsecs. (c) have been enacted.

**(d) Considerations governing issuance of offsite lease**

In recognition of the unique character of oil shale development:

(1) In determining whether to offer or issue an offsite lease under subsection (c) of this section, the Secretary shall consult with the Governor and appropriate State, local, and tribal officials of the State where the lands to be leased are located, and of any additional State likely to be affected significantly by the social, economic, or environmental effects of development under such lease, in order to coordinate Federal and State planning processes, minimize duplication of permits, avoid delays, and anticipate and mitigate likely impacts of development.

(2) The Secretary may issue an offsite lease under subsection (d)[2] after consideration of (A) the need for leasing, (B) impacts on the environment and other resource values, (C) socioeconomic factors, and (D) information from consultations with the Governors of the affected States.

(3) Before determining whether to offer an offsite lease under subsection (c) of this section, the Secretary shall seek the recommendation of the Governor of the State in which the lands to be leased are located as to whether or not to lease such lands, what alternative actions are available, and what special conditions could be added to the proposed lease to mitigate impacts. The Secretary shall accept the recommendations of the Governor if he determines that they provide for a reasonable balance between the national interest and the State's interests. The Secretary shall communicate to the Governor, in writing, and publish in the Federal Register the reasons for his determination to accept or reject such Governor's recommendations.

(Feb. 25, 1920, ch. 85, § 21, 41 Stat. 445; Pub. L. 86–705, § 7, Sept. 2, 1960, 74 Stat. 790; Pub. L. 97–78, § 1(1), Nov. 16, 1981, 95 Stat. 1070; Pub. L. 97–394, title III, § 318, Dec. 30, 1982, 96 Stat. 1999; Pub. L. 109–58, title III, § 369(j)(2), Aug. 8, 2005, 119 Stat. 731.)

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58 designated first to third sentences as pars. (1) to (3), respectively, substituted ''5,760'' for ''five thousand one hundred and twenty'' in par. (2), designated fourth to eighth sentences as par. (4) and substituted ''rate of $2.00 per acre'' for ''rate of 50 cents per acre'', ''No one person'' for ''Not more than one lease shall be granted under this section to any one person'', and ''shall acquire or hold more than 50,000 acres of oil shale leases in any one State. For'' for ''except that with respect to leases for'', and added par. (5).

1982—Subsecs. (c), (d). Pub. L. 97–394 added subsecs. (c) and (d).

1981—Subsec. (a). Pub. L. 97–78 substituted ''and gilsonite (including all vein-type solid hydrocarbons)'' and ''gilsonite (including all vein-type hydrocarbons)'' for ''native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried)''.

Subsec. (c). Pub. L. 97–78 substituted ''gilsonite (including all vein-type solid hydrocarbons)'' for ''native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried)''.

1960—Pub. L. 86–705 designated existing provisions as subsec. (a) and added subsecs. (b) and (c). Other changes included addition of native asphalt, solid and semisolid bitumen, and bituminous rock within the scope of the section, and insertion of the limitation upon such holdings.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Interior to promulgate regulations under this chapter relating to establishment of diligence requirements for operations conducted on Federal leases, setting of rates for production of Federal leases, and specifying of procedures, terms, and conditions for acquisition and disposition of Federal royalty interests taken in kind, transferred to Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare. Section 7152(b) of Title 42 was repealed by Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and functions of Secretary of Energy returned to Secretary of the Interior. See House Report No. 97–315, pp. 25, 26, Nov. 5, 1981.

## § 242. Oil shale claims

**(a) Notice**

Notwithstanding any other provision of law, within 60 days from October 24, 1992, the Secretary of the Interior shall provide notice to each holder of an unpatented oil shale mining claim of the requirements of this Act. Such notice shall be made by registered mail and by publication in a newspaper of general circulation in the areas in which such claims are located.

**(b) Full patent**

The holder of a valid oil shale mining claim who has filed a patent application and received first half final certificate for patent by October 24, 1992, may obtain a patent pursuant to the general mining laws of the United States.

**(c) Patent**

(1) Notwithstanding any other provision of law, the holder of a valid oil shale mining claim who has filed a patent application which has been accepted for processing by the Department of the Interior by October 24, 1992, but has not received first half final certificate for patent by October 24, 1992, may receive only a patent limited to the oil shale and associated minerals, upon payment of $2.50 per acre. Title to the surface and to all other minerals, including, but not limited to, oil, gas, and coal, shall remain in the United States. Patents issued pursuant to this subsection shall provide for surface use to the same extent as is provided under applicable law prior to October 24, 1992, with respect to oil shale mining claims, subject to the requirements of subsection (f) of this section.

(2) Maintenance of claims referred to in this subsection prior to patent issuance shall be in accordance with the requirements of applicable law prior to October 24, 1992.

(3) Any holder of a valid oil shale mining claim referred to in this subsection may maintain such claim in accordance with the requirements set forth in subsection (e)(2) of this section in lieu of receiving a patent under this section.

(4) Notwithstanding any other provision of law, any person referred to in paragraph (1) who

[2] So in original. Probably should be subsection ''(c)''.

obtains compensation from the United States as a result of the application of this section being declared to be a taking of property within the meaning of the Fifth Amendment to the United States Constitution, may obtain a full patent upon tender to the Secretary of the amount of such compensation, not including interest, and upon the receipt of such amount, the Secretary shall convey to such person a patent in the form and manner provided under the general mining laws of the United States. Such tender may only be made within 3 years of obtaining such compensation.

**(d) Election**

(1) Notwithstanding any other provision of law, within 180 days from the date of which the Secretary provided notice under subsection (a) of this section, a holder of a valid oil shale mining claim for which a patent application was not filed and accepted for processing by the Department of the Interior prior to October 24, 1992, shall file with the Secretary a notice of election to—

(A) proceed to limited patent as provided in subsection (e)(1) of this section; or

(B) maintain the unpatented claim as provided for in subsection (e)(2) of this section.

(2) Failure to file the notice of election as required by paragraph (1) shall be deemed conclusively to constitute an abandonment of the claim by operation of law.

(3) Any claim holder who elects to proceed under paragraph (1)(A) must apply for a patent within 2 years from the date of election or notify the Secretary in writing prior to expiration of the 2-year period of a decision to maintain such claim as provided in paragraph (1)(B) or such claim shall be deemed conclusively to have been abandoned by operation of law.

(4) The provisions of this subsection shall be in addition to the requirements of section 1744 of title 43.

**(e) Effect of election**

(1) Notwithstanding any other provisions of law, a claim holder subject to the election requirements of subsection (d) of this section who elects to receive a limited patent shall receive title only to the oil shale associated minerals, upon payment of fair market value for the oil shale and associated minerals. Title to the surface and to all other minerals, including, but not limited to oil, gas, and coal, shall remain in the United States. Patents issued pursuant to this subsection shall provide for surface use to the same extent as is provided under applicable law prior to October 24, 1992, with respect to oil shale mining claims, subject to the requirements of subsection (f) of this section.

(2) Notwithstanding any other provision of law, a claim holder referred to in subsection (c) of this section or a claim holder subject to the election requirements of subsection (d) of this section who maintains or elects to maintain an unpatented claim shall maintain such claim by complying with the general mining laws of the United States, and with the provisions of this section, except that the claim holder shall no longer be required to perform annual labor, and instead shall pay to the Secretary $550 per claim per year for deposit as miscellaneous receipts in the general fund of the Treasury, commencing with calendar year 1993. Such fee shall accompany the filing made by the claim holder with the Bureau of Land Management pursuant to section 1744(a)(2) of title 43.

**(f) Reclamation**

In addition to other applicable requirements, any person who holds a limited patent or maintains a claim pursuant to this section shall be required to carry out reclamation as prescribed by the Secretary and to furnish a bond or other appropriate financial guarantee in an amount sufficient to ensure adequate reclamation of the lands to be disturbed by any aspect of the proposed mining activities.

**(g) Reaffirmation of requirements**

Without comment on the adequacy of current or former standards for determining validity of oil shale claims, Congress reaffirms the requirements of law that a patent may issue only to persons who hold valid claims and the need for careful review of any applications.

**(h) Issuance of patents**

Notwithstanding any other provision of law, with respect to any oil shale mining claim located under the general mining laws of the United States, no patent for such claim shall be issued except as provided by this section.

(Pub. L. 102–486, title XXV, § 2511, Oct. 24, 1992, 106 Stat. 3109.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of Title 42, The Public Health and Welfare, and Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

## SUBCHAPTER VI—ALASKA OIL PROVISO

### § 251. Leases to claimants of withdrawn lands; terms and conditions; acreage; annual rentals and royalties; fraud of claimants

Any bona fide occupant or claimant of oil or gas bearing lands in the Territory of Alaska, who, or whose predecessors in interest, prior to withdrawal had complied otherwise with the requirements of the mining laws, but had made no discovery of oil or gas in wells and who prior to withdrawal had made substantial improvements for the discovery of oil or gas on or for each location or had prior to February 25, 1920 expended not less than $250 in improvements on or for each location shall be entitled, upon relinquishment or surrender to the United States within one year from February 25, 1920, or within six months after final denial or withdrawal of application for patent, to a lease or leases, under this chapter covering such lands, not exceeding five leases in number and not exceeding an aggregate of one thousand two hundred and eighty acres in each: *Provided*, That the annual lease rentals for

lands in the Territory of Alaska not within any known geological structure of a producing oil or gas field and the royalty payments from production of oil or gas sold or removed from such lands shall be identical with those prescribed for such leases covering similar lands in the States of the United States, except that leases which may issue pursuant to applications or offers to lease such lands, which applications or offers were filed prior to and were pending on May 3, 1958, shall require the payment of 25 cents per acre as lease rental for the first year of such leases; but the aforesaid exception shall not apply in any way to royalties to be required under leases which may issue pursuant to offers or applications filed prior to May 3, 1958.

The Secretary of the Interior shall neither prescribe nor approve any cooperative or unit plan of development or operation nor any operating, drilling, or development contract establishing different royalty or rental rates for Alaska lands than for similar lands within the States of the United States.

No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

(Feb. 25, 1920, ch. 85, § 22, 41 Stat. 446; Pub. L. 85–505, § 10, July 3, 1958, 72 Stat. 324.)

AMENDMENTS

1958—Pub. L. 85–505 struck out provisions which related to prospecting permits, provided that the annual lease rentals and royalty payments shall be identical with those prescribed for leases covering similar lands in the States of the United States, permitted a payment of 25 cents per acre as lease rental for the first year of the lease in those leases issued pursuant to applications or offers filed prior to and pending on May 3, 1958, and prohibited the Secretary from prescribing or approving any cooperative or unit plan of development or operation or any operating, drilling, or development contract establishing different royalty or rental rates for Alaska lands than for similar lands within the States of the United States.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

## SUBCHAPTER VII—SODIUM

### § 261. Prospecting permits; lands included; acreage

The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium, in lands belonging to the United States for a period of not exceeding two years: *Provided*, That the area to be included in such a permit shall not exceed two thousand five hundred and sixty acres of land in reasonably compact form.

(Feb. 25, 1920, ch. 85, § 23, 41 Stat. 447; Dec. 11, 1928, ch. 19, 45 Stat. 1019.)

AMENDMENTS

1928—Act Dec. 11, 1928, struck out ''and directed'' after ''authorized'', ''dissolved in and soluble in water, and accumulated by concentration, in lands belonging to the United States for a period not exceeding two years,'' after ''nitrates of sodium'', and last proviso which read ''*Provided further*, That the provisions of this section shall not apply to lands in San Bernardino County, California.''

### § 262. Leases to permittees; survey of lands; royalties and annual rentals

Upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one of the substances enumerated in section 261 of this title have been discovered by the permittee within the area covered by his permit and that such land is chiefly valuable therefor, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit at a royalty of not less than 2 per centum of the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market; the lands in such lease to be taken in compact form by legal subdivisions of the public land surveys or, if the land be not surveyed, by survey executed at the cost of the permittee in accordance with regulations prescribed by the Secretary of the Interior. Lands known to contain valuable deposits of one of the substances enumerated in section 261 of this title and not covered by permits or leases shall be subject to lease by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt and in such areas as he shall fix, not exceeding two thousand five hundred and sixty acres. All leases under this section shall be conditioned upon the payment by the lessee of such royalty as may be fixed in the lease, not less than 2 per centum of the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market, and the payment in advance of a rental of 25 cents per acre for the first calendar year or fraction thereof, 50 cents per acre for the second, third, fourth, and fifth calendar years respectively; and $1 per acre per annum thereafter during the continuance of the lease, such rental for any one year to be credited against royalties accruing for that year. Leases under this section shall be for a period of twenty years, with preferential right in the lessee to renew for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such period: *Provided*, That nothing in this chapter shall prohibit the mining and sale of sodium compounds under potassium leases issued pursuant to subchapter VII [§ 141 et seq.] of chapter 3 of this title and subchapter IX of this chapter, nor the mining and sale of potassium compounds as a byproduct from sodium leases taken under this section: *Provided further*, That on application by any lessee the Secretary of the Interior is authorized to modify the rental and royalty provisions stipulated in any existing sodium lease to conform to the provisions of this section.

(Feb. 25, 1920, ch. 85, § 24, 41 Stat. 447; Dec. 11, 1928, ch. 19, 45 Stat. 1019.)

REFERENCES IN TEXT

Subchapter VII [§ 141 et seq.] of chapter 3 of this title, referred to in text, was repealed by act Feb. 7, 1927, ch. 66, § 6, 44 Stat. 1058.

Subchapter IX of this chapter, referred to in text, was in the original ''act February 7, 1927 (Forty-fourth Statutes at Large, page 1057)'' meaning act Feb. 7, 1927, ch. 66, 44 Stat. 1057, as amended, which enacted subchapter IX (§ 281 et seq.) of this chapter, amended sections 181 and 193 of this title, and repealed subchapter VII (§ 141 et seq.) of chapter 3 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1928—Act Dec. 11, 1928, amended section generally.

SODA ASH ROYALTY REDUCTION

Pub. L. 109–338, title I, Oct. 12, 2006, 120 Stat. 1786, provided that:

''SEC. 101. SHORT TITLE.

''This title may be cited as the 'Soda Ash Royalty Reduction Act of 2006'.

''SEC. 102. REDUCTION IN ROYALTY RATE ON SODA ASH.

''Notwithstanding section 102(a)(9) of the Federal Land Policy [and] Management Act of 1976 (43 U.S.C. 1701(a)(9)), section 24 of the Mineral Leasing Act (30 U.S.C. 262), and the terms of any lease under that Act [30 U.S.C. 181 et seq.], the royalty rate on the quantity or gross value of the output of sodium compounds and related products at the point of shipment to market from Federal land in the 5-year period beginning on the date of enactment of this Act [Oct. 12, 2006] shall be 2 percent.

''SEC. 103. STUDY.

''After the end of the 4-year period beginning on the date of enactment of this Act [Oct. 12, 2006], and before the end of the 5-year period beginning on that date, the Secretary of the Interior shall report to Congress on the effects of the royalty reduction under this title, including—

''(1) the amount of sodium compounds and related products at the point of shipment to market from Federal land during that 4-year period;

''(2) the number of jobs that have been created or maintained during the royalty reduction period;

''(3) the total amount of royalty paid to the United States on the quantity or gross value of the output of sodium compounds and related products at the point of shipment to market produced during that 4-year period, and the portion of such royalty paid to States; and

''(4) a recommendation of whether the reduced royalty rate should apply after the end of the 5-year period beginning on the date of enactment of this Act.''

### § 263. Permits to use or lease of nonmineral lands for camp sites, and other purposes; annual rentals; acreage

In addition to areas of such mineral land which may be included in any such prospecting permits or leases, the Secretary of the Interior, in his discretion, may grant to a permittee or lessee of lands containing sodium deposits, and subject to the payment of an annual rental of not less than 25 cents per acre, the exclusive right to use, during the life of the permit or lease, a tract of unoccupied nonmineral public land, not exceeding forty acres in area, for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease.

(Feb. 25, 1920, ch. 85, § 25, 41 Stat. 447.)

## SUBCHAPTER VIII—SULPHUR

### § 271. Prospecting permits; lands included; acreage

The Secretary of the Interior is hereby authorized and directed, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for sulphur in lands belonging to the United States located in the States of Louisiana and New Mexico for a period of not exceeding two years: *Provided*, That the area to be included in such a permit shall be not exceeding six hundred and forty acres of land in reasonably compact form.

(Apr. 17, 1926, ch. 158, § 1, 44 Stat. 301; July 16, 1932, ch. 498, 47 Stat. 701.)

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

AMENDMENTS

1932—Act July 16, 1932, substituted ''States of Louisiana and New Mexico'' for ''State of Louisiana''.

### § 272. Leases to permittees; privileges extended to oil and gas permittees

Upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of sulphur have been discovered by the permittee within the area covered by his permit, and that the land is chiefly valuable therefor, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit, at a royalty of 5 per centum of the quantity or gross value of the output of sulphur at the point of shipment to market, such lease to be taken in compact form by legal subdivisions of the public-land surveys; or if the land be not surveyed, by survey executed at the cost of the permittee in accordance with regulations prescribed by the Secretary of the Interior: *Provided*, That where any person having been granted an oil and gas permit makes a discovery of sulphur in lands covered by said permit, he shall have the same privilege of leasing not to exceed six hundred and forty acres of said land under the same terms and conditions as are given a sulphur permittee under the provisions of this section.

(Apr. 17, 1926, ch. 158, § 2, 44 Stat. 301.)

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

### § 273. Lease of lands not covered by permits or leases; acreage; rental

Lands known to contain valuable deposits of sulphur and not covered by permits or leases shall be held subject to lease by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt and in such areas as he shall fix, not exceeding six hundred and forty acres; all leases to be conditioned upon the payment by the lessee of such royalty as may be fixed in the lease and the payment in advance of

a rental of 50 cents per acre per annum, the rental paid for any one year to be credited against the royalties accruing for that year.

(Apr. 17, 1926, ch. 158, § 3, 44 Stat. 301.)

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

### § 274. Lands containing coal or other minerals

Prospecting permits or leases may be issued in the discretion of the Secretary of the Interior under the provisions of this subchapter for deposits of sulphur in public lands also containing coal or other minerals on condition that such other deposits be reserved to the United States for disposal under applicable laws.

(Apr. 17, 1926, ch. 158, § 4, 44 Stat. 302.)

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

### § 275. Laws applicable

The general provisions of sections 181 to 184, 185 to 188, 189 to 192, 193, and 194[1] of this title, are made applicable to permits and leases under this subchapter, sections 181 and 193 of this title being amended to include deposits of sulphur, and section 184 of this title being amended so as to prohibit any person, association, or corporation from taking or holding more than three sulphur permits or leases in any one State during the life of such permits or leases.

(Apr. 17, 1926, ch. 158, § 5, 44 Stat. 302.)

REFERENCES IN TEXT

Section 194 of this title, referred to in text, was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 644.

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

### § 276. Application of subchapter to Louisiana and New Mexico only

The provisions of this subchapter shall apply only to the States of Louisiana and New Mexico.

(Apr. 17, 1926, ch. 158, § 6, 44 Stat. 302; July 16, 1932, ch. 498, 47 Stat. 701.)

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

AMENDMENTS

1932—Act July 16, 1932, substituted ''States of Louisiana and New Mexico'' for ''State of Louisiana''.

## SUBCHAPTER IX—POTASH

### § 281. Prospecting permits for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium; authorization; acreage; lands affected

The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium in lands belonging to the United States for a period of not exceeding two years: *Provided*, That the area to be included in such a permit shall not exceed two thousand five hundred and sixty acres of land in reasonably compact form: *Provided further*, That the prospecting provisions of this subchapter shall not apply to lands and deposits in or adjacent to Searles Lake, California, which lands may be leased by the Secretary of the Interior under the terms and provisions of this subchapter.

(Feb. 7, 1927, ch. 66, § 1, 44 Stat. 1057.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this Act'', meaning act Feb. 7, 1927, ch. 66, 44 Stat. 1057, as amended, which enacted this subchapter, amended sections 181 and 193 of this title, and repealed subchapter VII (§ 141 et seq.) of chapter 3 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

### § 282. Leases to permittees of lands showing valuable deposits; royalty

Upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one of the substances enumerated in this subchapter has been discovered by the permittee within the area covered by his permit, and that such land is chiefly valuable therefor, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit, at a royalty of not less than 2 per centum of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market, such lease to be taken in compact form by legal subdivisions of the public land surveys, or if the land be not surveyed, by survey executed at the cost of the permittee in accordance with regulations prescribed by the Secretary of the Interior.

(Feb. 7, 1927, ch. 66, § 2, 44 Stat. 1057.)

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

### § 283. Lands containing valuable deposits not covered by permits or leases; authority to lease; acreage; conditions; renewals; exemptions from rentals and royalties; suspension of operations

Lands known to contain valuable deposits enumerated in this subchapter and not covered by permits or leases shall be held subject to lease by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, and in such areas as he shall fix, not exceeding two thousand five hundred and sixty

[1] See References in Text note below.

acres; all leases to be conditioned upon the payment by the lessee of such royalty as may be fixed in the lease, not less than 2 per centum of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market, and the payment in advance of a rental of 25 cents per acre for the first calendar year or fraction thereof; 50 cents per acre for the second, third, fourth, and fifth years, respectively; and $1 per acre per annum thereafter during the continuance of the lease, such rental for any year being credited against royalties accruing for that year. Any lease issued under this subchapter shall be for a term of twenty years and so long thereafter as the lessee complies with the terms and conditions of the lease and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such reasonable adjustment of the terms and conditions thereof may be made therein as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such periods. Leases shall be conditioned upon a minimum annual production or the payment of a minimum royalty in lieu thereof, except when production is interrupted by strikes, the elements, or casualties not attributable to the lessee. The Secretary of the Interior may permit suspension of operations under any such leases when marketing conditions are such that the leases cannot be operated except at a loss. The Secretary upon application by the lessee prior to the expiration of any existing lease in good standing shall amend such lease to provide for the same tenure and to contain the same conditions, including adjustment at the end of each twenty-year period succeeding the date of said lease, as provided for in this subchapter. In the discretion of the Secretary of the Interior the area involved in any lease resulting from a prospecting permit may be exempt from any rental in excess of 25 cents per acre for twenty years succeeding its issue, and the production of potassium compounds under such a lease may be exempt from any royalty in excess of the minimum prescribed in this subchapter for the same period.

(Feb. 7, 1927, ch. 66, § 3, 44 Stat. 1057; June 3, 1948, ch. 379, § 9, 62 Stat. 292.)

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

AMENDMENTS

1948—Act June 3, 1948, increased renewal term from ten to twenty years, provided for reasonable adjustment of terms, provided minimum conditions, and permitted suspension of operations under certain conditions.

### § 284. Lands containing coal or other minerals in addition to potassium deposits; issuance of prospecting permits and leases; covenants in potassium leases

Prospecting permits or leases may be issued under the provisions of this subchapter for deposits of potassium in public lands, also containing deposits of coal or other minerals, on condition that such other deposits be reserved to the United States for disposal under appropriate laws: *Provided*, That if the interests of the Government and of the lessee will be subserved thereby, potassium leases may include covenants providing for the development by the lessee of chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium, magnesium, aluminum, or calcium, associated with the potassium deposits leased, on terms and conditions not inconsistent with the sodium provisions of subchapter VII of this chapter: *Provided further*, That where valuable deposits of mineral now subject to disposition under the general mining laws are found in fissure veins on any of the lands subject to permit or lease under this subchapter, the valuable minerals so found shall continue subject to disposition under the said general mining laws notwithstanding the presence of potash therein.

(Feb. 7, 1927, ch. 66, § 4, 44 Stat. 1058.)

REFERENCES IN TEXT

The sodium provisions of subchapter VII of this chapter, referred to in text, was in the original "the sodium provisions of the Act of February 25, 1920 (Forty-first Statutes at Large, page 437)", which means sections 23 to 25 of act Feb. 25, 1920, ch. 85, 41 Stat. 447, which are classified to subchapter VII (§ 261 et seq.) of this chapter.

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

### § 285. Laws applicable

The general provisions of sections 182 to 184, 185 to 188, 189 to 192, 193, and 194[1] of this title, are made applicable to permits and leases under this subchapter.

(Feb. 7, 1927, ch. 66, § 5, 44 Stat. 1058; Aug. 8, 1946, ch. 916, § 11, 60 Stat. 957.)

REFERENCES IN TEXT

Section 194 of this title, referred to in text, was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 644.

CODIFICATION

Provision of this section that section 193 of this title was amended to include deposits of potassium was omitted from this section as executed to section 193 of this title.

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

AMENDMENTS

1946—Act Aug. 8, 1946, struck out reference to section 181 of this title.

SAVINGS PROVISION

See note set out under section 181 of this title.

### § 286. Disposition of royalties and rents from potassium leases

All money received from royalties and rentals from any lease issued or renewed under the provisions of subchapter VII of chapter 3 of this title, shall be paid into, reserved, and appro-

[1] See References in Text note below.

priated as follows: 52½ per centum to the Reclamation Fund, 10 per centum to the Treasury of the United States as miscellaneous receipts, and 37½ per centum shall be paid by the Secretary of the Treasury, after the expiration of each fiscal year, to the State within the boundaries of which the leased lands or deposits are or were located, such money to be used by such State or subdivision thereof for the construction and maintenance of public roads or for the support of schools or other public educational institutions, as the legislature of the State may direct.

(Feb. 7, 1927, ch. 66, §6, 44 Stat. 1058; June 1, 1948, ch. 356, 62 Stat. 279.)

REFERENCES IN TEXT

Subchapter VII of chapter 3, referred to in text, was in the original "the Act entitled 'An Act to authorize exploration for and disposition of potassium' approved October 2, 1917", meaning act Oct. 2, 1917, ch. 62, 40 Stat. 297, which was classified to subchapter VII (§141 et seq.) of chapter 3 of this title and which was repealed by act Feb. 7, 1927, ch. 66, §6, 44 Stat. 1058.

CODIFICATION

Section is composed of the second sentence of section 6 of act Feb. 7, 1927, as added by act June 1, 1948. The first sentence of section 6 repealed former sections 141 to 152 of this title and did not affect pending applications for permits or leases filed prior to Jan. 1, 1926, or valid claims existent on Feb. 7, 1927, and thereafter maintained in compliance with the laws under which initiated, which claims could be perfected under such laws, including discovery.

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

### §287. Extension of prospecting permits

Any prospecting permit issued under this subchapter may be extended by the Secretary of the Interior for a period not exceeding two years, upon a showing of satisfactory cause.

(Feb. 7, 1927, ch. 66, §7, as added May 7, 1932, ch. 174, 47 Stat. 151.)

CODIFICATION

Section was not enacted as part of act Feb. 25, 1920, ch. 85, 41 Stat. 437, known as the Mineral Leasing Act, which comprises this chapter.

## CHAPTER 4—LEASE OF GOLD, SILVER, OR QUICKSILVER DEPOSITS WHEN TITLE CONFIRMED BY COURT OF PRIVATE LAND CLAIMS

Sec.
291. Lease of gold, silver, or quicksilver deposits on lands title to which confirmed by Court of Private Land Claims.
292. Royalties and rentals; disposition.
293. Duties of Secretary of the Interior.

### §291. Lease of gold, silver, or quicksilver deposits on lands title to which confirmed by Court of Private Land Claims

All gold, silver, or quicksilver deposits, or mines or minerals of the same on lands embraced within any land claim confirmed or hereafter confirmed by decree of the Court of Private Land Claims, and which did not convey the mineral rights to the grantee by the terms of the grant, and to which such grantee has not become otherwise entitled in law or in equity, may be leased by the Secretary of the Interior to the grantee, or to those claiming through or under him, for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years, upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods.

(June 8, 1926, ch. 503, §1, 44 Stat. 710.)

### §292. Royalties and rentals; disposition

For the privilege of mining or extracting the gold, silver, or quicksilver deposits in the land covered by such lease, the lessee shall pay to the United States a royalty, which shall not be less than 5 per centum nor more than 12½ per centum of the net value of the output of the gold, silver, or quicksilver at the mine, due and payable at the end of each month succeeding that of the extraction of the minerals from the mine. All moneys received from royalties and rentals under the provisions of this chapter shall be deposited in the Treasury of the United States, and disposed of in the same manner as rentals and royalties under the provisions of section 191 of this title.

(June 8, 1926, ch. 503, §2, 44 Stat. 710.)

### §293. Duties of Secretary of the Interior

The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying this chapter into full force and effect.

(June 8, 1926, ch. 503, §3, 44 Stat. 710.)

## CHAPTER 5—LEASE OF OIL AND GAS DEPOSITS IN OR UNDER RAILROADS AND OTHER RIGHTS-OF-WAY

Sec.
301. Authorization for lease of oil and gas deposits; by and to whom leased.
302. Assignment of lease; subletting.
303. Conditions precedent to award of lease; preferred class; bidding.
304. Provisions authorized in lease.
305. Royalties under lease.
306. Rules and regulations.

### §301. Authorization for lease of oil and gas deposits; by and to whom leased

Whenever the Secretary of the Interior shall deem it to be consistent with the public interest he is authorized to lease deposits of oil and gas in or under lands embraced in railroad or other rights of way acquired under any law of the United States, whether the same be a base fee or mere easement: *Provided*, That, except as hereinafter authorized, no lease shall be executed hereunder except to the municipality, corporation, firm, association, or individual by whom such right of way was acquired, or to the lawful successor, assignee, or transferee of such municipality, corporation, firm, association, or individual.

(May 21, 1930, ch. 307, §1, 46 Stat. 373.)

### § 302. Assignment of lease; subletting

The right conferred by this chapter may, subject to the approval of the Secretary of the Interior, be assigned or sublet by the owner thereof to any corporation, firm, association, or individual.

(May 21, 1930, ch. 307, § 2, 46 Stat. 373.)

### § 303. Conditions precedent to award of lease; preferred class; bidding

Prior to the award of any lease under section 301 of this title, the Secretary of the Interior shall notify the owner or lessee of adjoining lands and allow him a reasonable time, to be fixed in the notice given, within which to submit an offer or bid of the amount or percentage of compensatory royalty that such owner will agree to pay for the extraction through wells on his or its adjoining land, of the oil or gas under and from such adjoining right of way, and at the same time afford the holder of the railroad or other right of way a like opportunity within the same time to submit its bid or offer as to the amount or percentage of royalty it will agree to pay, if a lease for the extraction of the oil and gas deposits under the right of way be awarded to the holder of such right of way. In case of competing offers by the said parties in interest, the Secretary shall award the right to extract the oil and gas to the bidder, duly qualified, making the offer in his opinion most advantageous to the United States. In case but one bid or offer is received after notice duly given, he may, in his discretion, award the right to extract the oil and gas to such bidder.

(May 21, 1930, ch. 307, § 3, 46 Stat. 374.)

### § 304. Provisions authorized in lease

Any lease granted by the Secretary of the Interior pursuant to this chapter may, in the discretion of said Secretary, contain a provision giving the lessee the right, with the approval of said Secretary, to shut down the operation of any well or wells the operation of which has become unprofitable, to resume operations when such resumption may result in profit, and to abandon any well or wells that cease to produce oil and/or gas in paying quantities.

(May 21, 1930, ch. 307, § 4, 46 Stat. 374.)

### § 305. Royalties under lease

The royalty to be paid to the United States under any lease to be issued, or agreement made pursuant to this chapter, shall be determined by the Secretary of the Interior, in no case to be less than 12½ per centum in amount or value of the production, nor for more than twenty years: *Provided*, That when the oil or gas is produced from land adjacent to the right of way the amount or value of the royalty to be paid to the United States shall be within the discretion of the Secretary of the Interior: *Provided further*, That when the daily average production of any oil well does not exceed ten barrels per day said Secretary may, in his discretion, reduce the royalty on subsequent production.

(May 21, 1930, ch. 307, § 5, 46 Stat. 374.)

### § 306. Rules and regulations

The Secretary of the Interior is authorized and directed to adopt rules and regulations governing the exercise of the discretion and authority conferred by this chapter, which rules and regulations shall constitute a part of any application or lease hereunder.

(May 21, 1930, ch. 307, § 6, 46 Stat. 374.)

## CHAPTER 6—SYNTHETIC LIQUID FUEL DEMONSTRATION PLANTS

### §§ 321 to 325. Omitted

CODIFICATION

Section 321, acts Apr. 5, 1944, ch. 172, § 1, 58 Stat. 190; Mar. 15, 1948, ch. 117, 62 Stat. 79; Sept. 22, 1950, ch. 988, § 1, 64 Stat. 905, authorized the Secretary of the Interior for not more than eleven years to construct, maintain, and operate plants producing synthetic liquid fuel from coal, oil shale, agricultural and forestry products and prescribed the size of the plants and amount of production.

Section 322, act Apr. 5, 1944, ch. 172, § 2, 58 Stat. 190, in order to carry out the 11 year demonstration plant program, authorized laboratory research and development, acquisition by purchase of license of secret processes, inventions, etc., acquisition of land, plants, etc., contracting for personnel, and cooperation with other Federal and State agencies. See note for section 321 above.

Section 323, acts Apr. 5, 1944, ch. 172, § 3, 58 Stat. 191; Oct. 31, 1951, ch. 654, § 4(2), 65 Stat. 709, related to licenses and patent rights under the 11 year demonstration plant program. See note for section 321 above.

Section 324, act Apr. 5, 1944, ch. 172, § 4, 58 Stat. 191, provided that moneys received under this chapter for products and royalties from the 11 year demonstration plant program be paid into the Treasury as miscellaneous receipts and a report to Congress on all operations under this chapter be rendered by the Secretary on or before the first day of January of each year. See note for section 321 above.

Section 325, act Apr. 5, 1944, ch. 172, § 5, 58 Stat. 191, authorized the Secretary to issue rules and regulations to carry out the 11 year demonstration plant program under this chapter and provided that the authority and duties of the Secretary be exercised through the Bureau of Mines. See note for section 321 above.

AUTHORIZATION OF APPROPRIATIONS

Section 6 of act Apr. 5, 1944, as amended by acts Mar. 15, 1948, and Sept. 22, 1950, § 1, authorized appropriations of not to exceed $87,600,000 to carry out the provisions of this chapter.

MORGANTOWN, W. VA., EXPERIMENT STATION

Section 2 of act Sept. 22, 1950, provided that out of the $87,600,000 authorized to carry out this chapter, not to exceed $2,600,000 be used for the construction and equipment of an experiment station in or near Morgantown, West Virginia, for research in mining, preparation, and utilization of coal, petroleum, natural gas, peat, and other minerals.

## CHAPTER 7—LEASE OF MINERAL DEPOSITS WITHIN ACQUIRED LANDS

Sec.
351. Definitions.
352. Deposits subject to lease; consent of department heads; lands excluded.
353. Sale of lands unaffected; reservation of mineral rights; sale subject to prior lease; naval petroleum reserves unaffected.
354. Lease of partial or future interests in deposits.

Sec.
355. Disposition of receipts.
356. Furnishing description of lands and title documents; recordation of documents; authenticated copies.
357. State or local government rights; taxation.
358. Rights under prior leases; priority of pending applications; exchange of leases.
359. Rules and regulations.
360. Authority to manage certain mineral leases.

## §351. Definitions

As used in this chapter ''United States'' includes Alaska. ''Acquired lands'' or ''lands acquired by the United States'' include all lands heretofore or hereafter acquired by the United States to which the ''mineral leasing laws'' have not been extended, including such lands acquired under the provisions of the Act of March 1, 1911 (36 Stat. 961, 16 U.S.C., sec. 552). ''Secretary'' means the Secretary of the Interior, ''Mineral leasing laws'' shall mean the Act of October 20, 1914 (38 Stat. 741, 48 U.S.C., sec. 432); the Act of February 25, 1920 (41 Stat. 437, 30 U.S.C., sec. 181); the Act of April 17, 1926 (44 Stat. 301, 30 U.S.C., sec. 271); the Act of February 7, 1927 (44 Stat. 1057, 30 U.S.C., sec. 281), and all Acts heretofore or hereafter enacted which are amendatory of or supplementary to any of the foregoing Acts. ''Lease'' includes ''prospecting permit'' unless the context otherwise requires. The term ''oil'' shall embrace all nongaseous hydrocarbon substances other than those leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).

(Aug. 7, 1947, ch. 513, §2, 61 Stat. 913; Pub. L. 97–78, §1(9)(a), Nov. 16, 1981, 95 Stat. 1072.)

REFERENCES IN TEXT

Act of March 1, 1911, referred to in text, is act Mar. 1, 1911, ch. 186, 36 Stat. 961, as amended, known as the Weeks Law, which is classified to sections 480, 500, 513 to 519, 521, 552, and 563 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 552 of Title 16 and Tables.

Act of October 20, 1914, referred to in text, is act Oct. 20, 1914, ch. 330, 38 Stat. 741, known as the Alaska Coal Lands Act, which was repealed by Pub. L. 86–252, §1, Sept. 9, 1959, 73 Stat. 490. The subject matter of this Act is generally covered by subchapters I to VII (§181 et seq.) of chapter 3A of this title. For complete classification of this Act to the Code prior to repeal, see Tables.

Act of February 25, 1920, referred to in text, is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, known as the Mineral Leasing Act, which is classified generally to chapter 3A (§181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

Act of April 17, 1926, referred to in text, is act Apr. 17, 1926, ch. 158, 44 Stat. 301, as amended, which is classified generally to subchapter VIII (§271 et seq.) of chapter 3A of this title. For complete classification of this Act to the Code, see Tables.

Act of February 7, 1927, referred to in text, is act Feb. 7, 1927, ch. 66, 44 Stat. 1057, as amended, which enacted subchapter IX (§281 et seq.) of chapter 3A of this title, amended sections 181 and 193 of this title, and repealed subchapter VII (§141 et seq.) of chapter 3 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1981—Pub. L. 97–78 inserted definition of ''oil''.

SHORT TITLE

Section 1 of act Aug. 7, 1947, provided: ''That this Act [enacting this chapter] may be cited as the 'Mineral Leasing Act for Acquired Lands'.''

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

OUTER CONTINENTAL SHELF LANDS; DEFINITION

Definition of ''outer Continental Shelf'' with respect to jurisdiction of United States, and mineral leases on submerged lands of such shelf, see section 1331 et seq. of Title 43, Public Lands.

## §352. Deposits subject to lease; consent of department heads; lands excluded

Except where lands have been acquired by the United States for the development of the mineral deposits, by foreclosure or otherwise for resale, or reported as surplus pursuant to the provisions of the Surplus Property Act of October 3, 1944 (50 U.S.C., sec. 1611 and the following), all deposits of coal, phosphate, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), gas, sodium, potassium, and sulfur which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States (exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, or (b) tidelands or submerged lands) may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof. Coal or lignite under acquired lands set apart for military or naval purposes may be leased by the Secretary, with the concurrence of the Secretary of Defense, to a governmental entity (including any corporation primarily acting as an agency or instrumentality of a State) which produces electrical energy for sale to the public if such governmental entity is located in the State in which such lands are located. The provisions of subchapter VIII of chapter 3A of this title shall apply to deposits of sulfur covered by this chapter wherever situated. No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit, or holding a mortgage or deed of trust secured by such lands which is unsatisfied of record, and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered: *Provided*, That nothing in this chapter is intended, or shall be construed, to apply to or in any manner affect any mineral rights, exploration permits, leases or conveyances nor minerals that are or may be in any tidelands; or submerged lands; or in lands underlying the three mile zone or belt involved in the case of the United States of America against the State of California now pending on application for rehearing in the Supreme Court

of the United States; or in lands underlying such three mile zone or belt, or the continental shelf, adjacent or littoral to any part of the land within the jurisdiction of the United States of America.

(Aug. 7, 1947, ch. 513, § 3, 61 Stat. 914; Pub. L. 94–377, § 12, Aug. 4, 1976, 90 Stat. 1090; Pub. L. 97–78, § 1(9)(b), Nov. 16, 1981, 95 Stat. 1072.)

REFERENCES IN TEXT

The Surplus Property Act of October 3, 1944, referred to in text, is act Oct. 3, 1944, ch. 479, 58 Stat. 765, which was classified principally to sections 1611 to 1646 of Title 50, Appendix, War and National Defense, and was repealed, effective July 1, 1949, with the exception of sections 1622, 1631, 1637, and 1641 of Title 50, Appendix, by act June 30, 1949, ch. 288, title VI, § 602(a)(1), 63 Stat. 399, renumbered Sept. 5, 1950, ch. 849, § 6(a), (b), 64 Stat. 583. Sections 1622 and 1641 were partially repealed by the 1949 act, and section 1622 is still set out in part in Title 50, Appendix. Section 1622(g) was repealed and reenacted as sections 47151 to 47153 of Title 49, Transportation, by Pub. L. 103–272, §§ 1(e), 7(b), July 5, 1994, 108 Stat. 1278–1280, 1379. Section 1631 was repealed by act June 7, 1939, ch. 190, § 6(e), as added by act July 23, 1946, ch. 590, 60 Stat. 599, and is covered by sections 98 et seq. of Title 50. Section 1637 was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948, and is covered by section 3287 of Title 18, Crimes and Criminal Procedure. Provisions of section 1641 not repealed by the 1949 act were repealed by Pub. L. 87–256, § 111(a)(1), Sept. 21, 1961, 75 Stat. 538, and are covered by chapter 33 (§ 2451 et seq.) of Title 22, Foreign Relations and Intercourse. The provisions of the Surplus Property Act of 1944 originally repealed by the 1949 act were covered by provisions of the 1949 act which were classified to chapter 10 (§ 471 et seq.) of former Title 40, Public Buildings, Property, and Works, and which were repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

For definition of ''mineral leasing laws'', see section 351 of this title.

Subchapter VIII (§ 271 et seq.) of chapter 3A of this title, referred to in text, was in the original a reference to the provisions of the Act of April 17, 1926 (44 Stat. 301), as heretofore or hereafter amended.

The application for rehearing in the case of the United States of America against the State of California, referred to in text, was denied on Oct. 13, 1947, by the Supreme Court of the United States. See 68 S. Ct. 37, 332 U.S. 787, 92 L. Ed. 370.

AMENDMENTS

1981—Pub. L. 97–78 inserted reference to gilsonite (including all vein-type solid hydrocarbons).

1976—Pub. L. 94–377 substituted ''or (b)'' for ''(b) set apart for military or naval purposes, or (c)'' and inserted provision allowing the Secretary, with the concurrence of the Secretary of Defense, to lease coal or lignite under lands set aside for military purposes to a governmental entity which produces electrical energy for sale to the public if such governmental entity is located in the State in which such lands are located.

OUTER CONTINENTAL SHELF; LEASES

Grant by Secretary of the Interior of oil, gas, and other mineral leases on submerged lands of outer Continental Shelf, see section 1331 et seq. of Title 43, Public Lands.

### § 353. Sale of lands unaffected; reservation of mineral rights; sale subject to prior lease; naval petroleum reserves unaffected

Nothing herein contained shall be deemed or construed to (a) amend, modify, or change any existing law authorizing or requiring the sale of acquired lands, or (b) empower any commission, bureau, or agency of the Government to make a reservation of the minerals in the sale of any acquired land: *Provided*, That any such sale or conveyance of lands shall be made by the agency having jurisdiction thereof, subject to any lease theretofore made, covering the mineral deposits underlying such lands: *Provided further*, That nothing in this chapter is intended, or shall be construed to affect in any manner any provision of chapter 641 of title 10.

(Aug. 7, 1947, ch. 513, § 4, 61 Stat. 914.)

CODIFICATION

''Chapter 641 of title 10'' substituted in text for ''the Act of June 30, 1938 (32 Stat. 1252), amending the Act of June 4, 1920 (41 Stat. 813)'', which had been classified to section 524 of former Title 34, Navy, on authority of act Aug. 10, 1956, ch. 1041, § 49(b), 70A Stat. 640, the first section of which enacted Title 10, Armed Forces.

### § 354. Lease of partial or future interests in deposits

Where the United States does not own all of the mineral deposits under any lands sought to be leased and which are affected by this chapter, the Secretary is authorized to lease the interest of the United States in any such mineral deposits when, in the judgment of the Secretary, the public interest will be best served thereby; subject, however, to the provisions of section 352 of this title. Where the United States does not own any interest or owns less than a full interest in the minerals that may be produced from any lands sought to be leased, and which are or will be affected by this chapter and where, under the provisions of its acquisition, the United States is to acquire all or any part of such mineral deposits in the future, the Secretary may lease any interest of the United States then owned or to be acquired in the future in the same manner as provided in the preceding sentence.

(Aug. 7, 1947, ch. 513, § 5, 61 Stat. 914.)

### § 355. Disposition of receipts

(a) Subject to the provisions of section 35(b) of the Mineral Leasing Act (30 U.S.C. 191(b)), all receipts derived from leases issued under the authority of this chapter shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this chapter shall not affect the distribution of receipts pursuant to legislation applicable to such lands: *Provided, however*, That receipts from leases or permits for minerals in lands set apart for Indian use, including lands the jurisdiction of which has been transferred to the Department of the Interior by the Executive order for Indian use, shall be deposited in a special fund in the Treasury until final disposition thereof by the Congress. Notwithstanding the preceding provisions of this section, all receipts derived from leases on lands acquired for military or naval purposes, except the naval petroleum reserves and national oil shale reserves, shall be paid into the Treasury of the United States and disposed of in the same manner as

provided under section 35 of the Act of February 25, 1920 (41 Stat. 450; 30 U.S.C. 191), in the case of receipts from sales, bonuses, royalties, and rentals of the public lands under that Act [30 U.S.C. 181 et seq.].

(b) Notwithstanding any other provision of law, any payment to a State under this section shall be made by the Secretary of the Interior and shall be made not later than the last business day of the month following the month in which such moneys or associated reports are received by the Secretary of the Interior, whichever is later. The preceding sentence shall also apply to any payment to a State derived from a lease for mineral resources issued by the Secretary of the Interior under section 520 of title 16. The Secretary shall pay interest to a State on any amount not paid to the State within that time at the rate prescribed under section 1721[1] of this title from the date payment was required to be made under this subsection until the date payment is made.

(Aug. 7, 1947, ch. 513, § 6, 61 Stat. 915; Pub. L. 97–94, § 1, Dec. 17, 1981, 95 Stat. 1205; Pub. L. 102–486, title XXV, § 2506(a), Oct. 24, 1992, 106 Stat. 3106; Pub. L. 103–66, title X, § 10202(a), Aug. 10, 1993, 107 Stat. 408; Pub. L. 107–76, title VII, § 751(e)(2), Nov. 28, 2001, 115 Stat. 739.)

REFERENCES IN TEXT

The Mineral Leasing Act, referred to in subsec. (a), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified generally to chapter 3A (§ 181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

Section 1721 of this title, referred to in subsec. (b), was in the original ''section 111 of the Federal Oil and Gas Royalty Management Act of 1982'', which enacted section 1721 of this title and amended section 191 of this title.

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–76 inserted after first sentence ''The preceding sentence shall also apply to any payment to a State derived from a lease for mineral resources issued by the Secretary of the Interior under section 520 of title 16.''

1993—Subsec. (a). Pub. L. 103–66 substituted ''Subject to the provisions of section 35(b) of the Mineral Leasing Act (30 U.S.C. 191(b)), all receipts'' for ''All receipts'' in first sentence.

1992—Pub. L. 102–486 designated existing provisions as subsec. (a) and added subsec. (b).

1981—Pub. L. 97–94 inserted provision that all receipts derived from leases on lands acquired for military or naval purposes, except the naval petroleum reserves and national shale oil reserves, be paid into the Treasury of the United States and disposed of in the same manner as provided under section 35 of the Act of February 25, 1920, in the case of receipts from sales, bonuses, royalties, and rentals of the public lands under that Act.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2 of Pub. L. 97–94 provided that: ''The amendment made by the first section of this Act [amending this section] shall take effect with respect to leases entered into after January 1, 1981.''

OUTER CONTINENTAL SHELF; REVENUES FROM LEASES

Disposition of revenues from leases on submerged lands of outer Continental Shelf, see sections 1337(g) and 1338 of Title 43, Public Lands.

[1] See References in Text note below.

## § 356. Furnishing description of lands and title documents; recordation of documents; authenticated copies

Upon request by the Secretary, the heads of all executive departments, independent establishments, or instrumentalities having jurisdiction over any of the lands referred to in section 351 of this title shall furnish to the Secretary the legal description of all of such lands, and all pertinent abstracts, title papers, and other documents in the possession of such agencies concerning the status of the title of the United States to the mineral deposits that may be found in such lands.

Abstracts, title papers, and other documents furnished to the Secretary under this section shall be recorded promptly in the Bureau of Land Management in such form as the Secretary shall deem adequate for their preservation and use in the administration of this chapter, whereupon the originals shall be returned promptly to the agency from which they were received. Duly authenticated copies of any such abstracts, title papers, or other documents may, however, be furnished to the Secretary, in lieu of the originals, in the discretion of the agency concerned.

(Aug. 7, 1947, ch. 513, § 7, 61 Stat. 915.)

TRANSFER OF FUNCTIONS

See note set out under section 1 of this title.

## § 357. State or local government rights; taxation

Nothing contained in this chapter shall be construed to affect the rights of the State or other local authorities to exercise any right which they may have with respect to properties covered by leases issued under this chapter, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

(Aug. 7, 1947, ch. 513, § 8, 61 Stat. 915.)

## § 358. Rights under prior leases; priority of pending applications; exchange of leases

Nothing in this chapter shall affect any rights acquired by any lessee of lands subject to this chapter under the law as it existed prior to August 7, 1947, and such rights shall be governed by the law in effect at the time of their acquisition; but any person qualified to hold a lease who, on August 7, 1947, had pending an application for an oil and gas lease for any lands subject to this chapter which on the date the application was filed was not situated within the known geologic structure of a producing oil or gas field, shall have a preference right over others to a lease of such lands without competitive bidding. Any person holding a lease on lands subject hereto, which lease was issued prior to August 7, 1947, shall be entitled to exchange such lease for a new lease issued under the provisions of this chapter, at any time prior to the expiration of such existing lease.

(Aug. 7, 1947, ch. 513, § 9, 61 Stat. 915.)

OUTER CONTINENTAL SHELF; JURISDICTION OF UNITED STATES; VALIDATION OF PRIOR LEASES

Jurisdiction of United States over outer Continental Shelf, grant of leases on submerged lands thereof, and

validation of prior leases, see section 1331 et seq. of Title 43, Public Lands.

### § 359. Rules and regulations

The Secretary of the Interior is authorized to prescribe such rules and regulations as are necessary and appropriate to carry out the purposes of this chapter, which rules and regulations shall be the same as those prescribed under the mineral leasing laws to the extent that they are applicable.

(Aug. 7, 1947, ch. 513, § 10, 61 Stat. 915.)

REFERENCES IN TEXT

For definition of ''mineral leasing laws'', see section 351 of this title.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Interior to promulgate regulations under this chapter relating to fostering of competition for Federal leases, implementation of alternative bidding systems authorized for award of Federal leases, establishment of diligence requirements for operations conducted on Federal leases, setting of rates for production of Federal leases, and specifying of procedures, terms, and conditions for acquisition and disposition of Federal royalty interests taken in kind, transferred to Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare. Section 7152(b) of Title 42 was repealed by Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and functions of Secretary of Energy returned to Secretary of the Interior. See House Report No. 97–315, pp. 25, 26, Nov. 5, 1981.

### § 360. Authority to manage certain mineral leases

Each department, agency and instrumentality of the United States which administers lands acquired by the United States with one or more existing mineral lease shall transfer to the Secretary of the Interior the authority to administer such lease and to collect all receipts due and payable to the United States under the lease. In the case of lands acquired on or before October 24, 1992, the authority to administer the leases and collect receipts shall be transferred to the Secretary of the Interior as expeditiously as practicable after October 24, 1992. In the case of lands acquired after October 24, 1992, such authority shall be vested with the Secretary at the time of acquisition. The provisions of section 355 of this title shall apply to all receipts derived from such leases where such receipts are due and payable to the United States under the lease in the same manner as such provisions apply to receipts derived from leases issued under the authority of this chapter. For purposes of this section, the term ''existing mineral lease'' means any lease in existence at the time land is acquired by the United States. Nothing in this section shall be construed to affect the existing surface management authority of any Federal agency.

(Aug. 7, 1947, ch. 513, § 11, as added Pub. L. 102–486, title XXV, § 2506(b), Oct. 24, 1992, 106 Stat. 3106.)

## CHAPTER 8—DEVELOPMENT OF LIGNITE COAL RESOURCES

Sec.
401. Establishment of research laboratory; duties.
402. Acquisition of lands and property; utilization of voluntary services; cooperation with other Federal, State, and private agencies.
403. Repealed.
404. Establishment of an advisory committee; composition and appointment.

### § 401. Establishment of research laboratory; duties

The Secretary of the Interior, acting through the United States Bureau of Mines, is authorized and directed to establish, equip, and maintain a research laboratory in the lignite-consuming region of North Dakota to conduct researches and investigations on the mining, preparation, and utilization of lignite coal and to develop new scientific, chemical, and technical uses and new and extended markets and outlets for lignite coal and its products. Such laboratory shall be planned as a center for information and assistance in matters pertaining to conserving lignite coal resources for national defense and security; to the more efficient mining, preparation, and utilization of lignite coal; and pertaining to safety, health, and sanitation in mining operations and other matters relating to problems of the lignite industry.

(Mar. 25, 1948, ch. 146, § 1, 62 Stat. 85.)

TRANSFER OF FUNCTIONS

For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see note set out under section 1 of this title.

APPROPRIATIONS

Section 5 of act Mar. 25, 1948, provided that: ''In order to carry out the purposes of this Act [enacting this chapter] there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of (a) $750,000 for the erection and equipment of a building or buildings, including plumbing, lighting, heating, general service, and experimental equipment and apparatus, the necessary roads, walks, and ground improvement, and land for the site of the building if no land is donated; and (b) $250,000 annually for the maintenance and operation of the experimental station, including personal services, supplies, equipment, and expenses of travel and subsistence.''

### § 402. Acquisition of lands and property; utilization of voluntary services; cooperation with other Federal, State, and private agencies

For the purpose of this chapter the Secretary, acting through the United States Bureau of Mines, is authorized to acquire land and interests therein, and to accept in the name of the United States donations of any property, real or personal, and to utilize voluntary or uncompensated services at such laboratory. The Secretary is authorized and directed to cooperate with other departments or agencies of the Federal Government, States, and State agencies and institutions, counties, municipalities, business or other organizations, corporations, associations, universities, scientific societies, and individuals, upon such terms and conditions as he may prescribe.

(Mar. 25, 1948, ch. 146, § 2, 62 Stat. 85.)

TRANSFER OF FUNCTIONS

For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see note set out under section 1 of this title.

### §403. Repealed. Pub. L. 93–608, §1(12), Jan. 2, 1975, 88 Stat. 1969

Section, act Mar. 25, 1948, ch. 146, §3, 62 Stat. 85, required Secretary of the Interior, acting through Bureau of Mines, to report to Congress on activities, expenditures, etc., of laboratory.

### §404. Establishment of an advisory committee; composition and appointment

The Secretary of the Interior, acting through the United States Bureau of Mines, may, in his discretion, create and establish an advisory committee composed of not more than six members to exercise consultative functions, when required by the Secretary, in connection with the administration of this chapter. The said committee shall be composed of representatives of lignite coal-mine owners, of representatives of lignite coal-mine workers and the public in equal number. The members of said committee shall be appointed by the Secretary of the Interior without regard to the civil-service laws.

(Mar. 25, 1948, ch. 146, §4, 62 Stat. 85.)

REFERENCES IN TEXT

The civil-service laws, referred to in text, are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

TRANSFER OF FUNCTIONS

For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see note set out under section 1 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

## CHAPTER 9—RARE AND PRECIOUS METALS EXPERIMENT STATION

Sec.
411. Establishment and operation of experimental plant.
412. Acquisition of lands and interests; acceptance of money and property; disposition and use of money.

### §411. Establishment and operation of experimental plant

The Secretary of the Interior, acting through the United States Bureau of Mines, is authorized and directed to establish, equip, and maintain a research laboratory at Reno, Nevada, for research, investigation, and as a center for information and assistance in matters pertaining to the mining, preparation, metallurgy, use, and conservation of the rare and precious metals of the Sierra Nevada mining region, and pertaining to other problems affecting the mining industry of that region.

(June 21, 1950, ch. 338, §1, 64 Stat. 248; Pub. L. 102–285, §10(b), May 18, 1992, 106 Stat. 172.)

CHANGE OF NAME

"United States Bureau of Mines" substituted in text for "Bureau of Mines" pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

APPROPRIATIONS

Section 3 of act June 21, 1950, provided that: "In order to carry out the purposes of this Act [enacting this chapter] there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of (a) $750,000 for the erection and equipment of a building or buildings, including plumbing, lighting, heating, ventilation, general service, experimental equipment and apparatus, the necessary roads, walks, and ground improvements; and (b) $250,000 annually for the maintenance and operation of the experiment station, including personal services, supplies, equipment, and expenses of travel and subsistence."

### §412. Acquisition of lands and interests; acceptance of money and property; disposition and use of money

For the purposes of this chapter the Secretary, acting through the United States Bureau of Mines, is authorized to acquire land and interests therein; to receive and accept money and property, real or personal, or interests therein, and services as a gift, bequest, or contribution; and may conduct activities or projects in cooperation with any person, firm, agency, or organization, Federal, State, or private. Money so received shall be deposited in the Treasury of the United States in a special fund or funds for disbursement by the United States Bureau of Mines and shall remain available for the purposes for which received and accepted until expended.

(June 21, 1950, ch. 338, §2, 64 Stat. 248; Pub. L. 102–285, §10(b), May 18, 1992, 106 Stat. 172.)

CHANGE OF NAME

"United States Bureau of Mines" substituted in text for "Bureau of Mines" pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

## CHAPTER 10—COAL MINE SAFETY

REPEAL OF CHAPTER

*Chapter repealed by Pub. L. 91–173, title V, §509, Dec. 30, 1969, 83 Stat. 803, on the operative date of sections 811 to 821 and 861 to 878 of this title, which became operative ninety days after the enactment of Pub. L. 91–173, approved Dec. 30, 1969, except that this chapter would continue to apply to any order, notice, decision, finding or any proceedings related to such*

*order, notice, decision, or finding issued prior to the operative date of sections 811 to 812 and 861 to 878 of this title.*

### §§ 451 to 460, 471 to 483. Repealed. Pub. L. 91–173, title V, § 509, Dec. 30, 1969, 83 Stat. 803

Section 451, act May 7, 1941, ch. 87, title 1, § 101, formerly § 1, 55 Stat. 177; renumbered title I, § 101, July 16, 1952, ch. 877, § 4(4), 66 Stat. 710, authorized Secretary of the Interior to make annual investigations of coal mines to obtain information relating to health and safety conditions.

Section 452, act May 7, 1941, ch. 87, title I, § 102, formerly § 2, 55 Stat. 178; renumbered title I, § 102, and amended July 16, 1952, ch. 877, § 4(3), (5), (6), 66 Stat. 710, empowered Secretary of the Interior to make inspections at any time.

Section 453, act May 7, 1941, ch. 87, title I, § 103, formerly § 3, 55 Stat. 178; renumbered title I, § 103, and amended July 16, 1952, ch. 877, § 4(5), (7), 66 Stat. 710, authorized investigators to enter any mine affecting interstate commerce.

Section 454, act May 7, 1941, ch. 87, title I, § 104, formerly § 4, 55 Stat. 178; renumbered title I, § 104, and amended July 16, 1952, ch. 877, § 4(5), (7), (8), 66 Stat. 709, provided for penalty for refusal to admit investigator.

Section 455, act May 7, 1941, ch. 87, title I, § 105, formerly § 5, 55 Stat. 178; renumbered title I, § 105, and amended July 16, 1952, ch. 877, §§ 3, 4(5), 66 Stat. 709, 710, provided for filing of accident information.

Section 456, act May 7, 1941, ch. 87, title I, § 106, formerly § 6, 55 Stat. 178; renumbered title I, § 106, and amended July 16, 1952, ch. 877, § 4(3), (5), 66 Stat. 710, directed Secretary of the Interior to compile and publish reports and to expend funds for advancement of health and safety in mines.

Section 457, act May 7, 1941, ch. 87, title I, § 107, formerly § 7, 55 Stat. 179; renumbered title I, § 107, and amended July 16, 1952, ch. 877, § 4(3), (5), (9), 66 Stat. 710, provided for administration of provisions of sections 451 to 460 of this title by Bureau of Mines and directed Federal agencies to cooperate with State mine safety agencies.

Section 458, act May 7, 1941, ch. 87, title I, § 108, formerly § 8, 55 Stat. 179; renumbered title I, § 108, and amended July 16, 1952, ch. 877, § 4(3), (5), 66 Stat. 710, authorized creation of an advisory committee and provided for its functions and composition.

Section 459, act May 7, 1941, ch. 87, title I, § 109, formerly § 9, 55 Stat. 179; renumbered title I, § 109, and amended Oct. 28, 1949, ch. 782, § 1106(a), 63 Stat. 972; July 16, 1952, ch. 877, § 4(3), (5), 66 Stat. 710, authorized employment of personnel for administration of sections 451 to 460 of this title and set out qualification conditions.

Section 460, act May 7, 1941, ch. 87, title I, § 111, formerly 11, 55 Stat. 179; renumbered title I, § 110, and amended July 16, 1952, ch. 877, § 4(3), (5), 66 Stat. 710, defined ''Commerce'' as used in sections 451 to 460 of this title.

Section 471, act May 7, 1941, ch. 87, title II, § 201, as added July 16, 1952, ch. 877, § 1, 66 Stat. 692; amended Mar. 26, 1966, Pub. L. 89–376, § 2(a), 80 Stat. 84, defined terms as used in sections 471 to 483 of this title.

Section 472, act May 7, 1941, ch. 87, title II, § 202, as added July 16, 1952, ch. 877, § 1, 66 Stat. 693; amended Mar. 26, 1966, Pub. L. 89–376, § 3(b), 80 Stat. 87, set out provisions for annual and special instructions, directed Federal agencies to coordinate operations with State mine safety agencies created pursuant to enumerated conditions and authorized any such State inspector to enter any mine affecting commerce.

Section 473, act May 7, 1941, ch. 87, title II, § 203, as added July 16, 1952, ch. 877, § 1, 66 Stat. 694; amended Mar. 26, 1966, Pub. L. 89–376, § 3(a), 80 Stat. 85, set out procedures for withdrawal when immediate or nonimmediate dangers were found to exist in mines.

Section 474, act May 7, 1941, ch. 87, title II, § 204, as added July 16, 1952, ch. 877, § 1, 66 Stat. 696, set out procedures for giving notice of findings and orders.

Section 475, act May 7, 1941, ch. 87, title II, § 205, as added July 16, 1952, ch. 877, § 1, 66 Stat. 697; amended Mar. 26, 1966, Pub. L. 89–376, § 3(c), (d), 80 Stat. 87, authorized continuation of Federal Coal Mine Safety Board of Review and provided for its composition, powers, and procedures.

Section 476, act May 7, 1941, ch. 87, title II, § 206, as added July 16, 1952, ch. 877, § 1, 66 Stat. 699; amended Mar. 26, 1966, Pub. L. 89–376, § 3(e), 80 Stat. 88, set out procedures for Director of Bureau of Mines to review applications for annulment or revision of orders closing mines because of immediate and nonimmediate dangers.

Section 477, act May 7, 1941, ch. 87, title II, § 207, as added July 16, 1952, ch. 877, § 1, 66 Stat. 700; amended June 11, 1960, Pub. L. 86–507, § 1(22), (23), 74 Stat. 201; Mar. 26, 1966, Pub. L. 89–376, § 3(f), 80 Stat. 90, set out procedures for review by Federal Coal Mine Safety Board of Review of applications for annulment or revision of orders closing mines because of immediate or nonimmediate dangers.

Section 478, act May 7, 1941, ch. 87, title II, § 208, as added July 16, 1952, ch. 877, § 1, 66 Stat. 702; amended June 11, 1960, Pub. L. 86–507, § 1(24), 74 Stat. 201, set out procedures for judicial review of orders by Federal Coal Mine Safety Board of Review.

Section 479, act May 7, 1941, ch. 87, title II, § 209, as added July 16, 1952, ch. 877, § 1, 66 Stat. 703, set out mandatory mine safety provisions respecting roof support, ventilation, coal dust and rock dust, electrical equipment, fire protection, and other miscellaneous matters.

Section 480, act May 7, 1941, ch. 87, title II, § 210, as added July 16, 1952, ch. 877, § 1, 66 Stat. 708; amended Mar. 26, 1966, Pub. L. 89–376, § 4, 80 Stat. 91, set out penalties for violations of provisions of sections 473 or 476 of this title.

Section 481, act May 7, 1941, ch. 87, title II, § 211, as added July 16, 1952, ch. 877, § 1, 66 Stat. 708, provided for effect on State laws of provisions of sections 471 to 483 of this title.

Section 482, act May 7, 1941, ch. 87, title II, § 212, as added July 16, 1952, ch. 877, § 1, 66 Stat. 709; amended Mar. 26, 1966, Pub. L. 89–376, § 5, 80 Stat. 91, set out procedures for issuance of certificates of equipment conformity, expanded educational programs, directed Federal agencies to coordinate their activities with State agencies to eliminate duplication of efforts, expenses and enforcement requirements, and provided that Director annually report on administration of his functions.

Section 483, act May 7, 1941, ch. 87, title II, § 213, as added July 16, 1952, ch. 877, § 1, 66 Stat. 709, provided that Administrative Procedure Act was not to be applicable to provisions of sections 471 to 483 of this title.

For subject matter formerly contained in this chapter, see section 801 et seq. of this title.

## CHAPTER 11—MINING CLAIMS ON LANDS SUBJECT TO MINERAL LEASING LAWS

Sec.
501. Mining claims located between July 31, 1939, and January 1, 1953.
502. Reservation of minerals to the United States; rights of entry, disposition and removal.
503. Reservations required by law; atomic energy materials.
504. Power to make arrangements respecting atomic energy materials as unaffected.
505. ''Mineral leasing laws'' defined.

### § 501. Mining claims located between July 31, 1939, and January 1, 1953

#### (a) Force and effect

Subject to the provisions of this chapter and to any valid intervening rights acquired under laws of the United States, any mining claim located under the mining laws of the United

States subsequent to July 31, 1939, and prior to January 1, 1953, on lands of the United States which were, at the time of such location—

(1) included in a permit or lease issued under the mineral leasing laws; or

(2) covered by an application or offer for a permit or lease which had been filed under the mineral leasing laws; or

(3) known to be valuable for minerals subject to disposition under the mineral leasing laws;

shall be effective to the same extent as if such mining claim had been located on lands which were at the time of such location subject to location under the mining laws of the United States: *Provided, however*, That in order to obtain the benefits of this chapter, the owner of any such mining claim shall, not later than one hundred and twenty days after August 12, 1953, post on such claim in the manner required for posting notice of location of mining claims and file for record in the office where the notice or certificate of location of such claim is of record an amended notice of location of such claim, stating that such notice is filed pursuant to the provisions of this chapter and for the purpose of obtaining the benefits thereof.

**(b) Labor and improvement**

Labor performed or improvements made upon or for the benefit of such mining claims after the original location thereof shall be recognized as applicable thereto for all purposes to the same extent as labor performed and improvements made upon or for the benefit of mining claims which are not affected by this chapter.

**(c) Withdrawal or reservation**

Any withdrawal or reservation made after the original location of such mining claim affecting land covered by such mining claim is modified and amended so that the effect thereof upon such mining claim shall be the same as if such mining claim had been located upon lands of the United States, which, subsequent to July 31, 1939, and prior to the date of such withdrawal, were subject to location under the mining laws of the United States.

(Aug. 12, 1953, ch. 405, § 1, 67 Stat. 539.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in subsecs. (a) and (c), are classified generally to this title.

For definition of ''mineral leasing laws'', referred to in subsec. (a)(1) to (3), see section 505 of this title.

### § 502. Reservation of minerals to the United States; rights of entry, disposition and removal

Any mining claim given force and effect as provided in section 501 of this title shall be subject to the reservation to the United States of all minerals which, upon August 12, 1953, are provided in the mineral leasing laws to be disposed of thereunder, and the right of the United States, its lessees, permittees, and licensees, to enter upon the land covered by such mining claim to prospect for, mine, treat, store, and remove such minerals, and to use so much of the surface and subsurface of such mining claim as may be necessary for such purposes, and to enter upon such land whenever reasonably necessary for the purpose of prospecting for, mining, treating, storing, and removing such minerals on and from other lands of the United States; and any patent issued for any such mining claim shall contain such reservation.

(Aug. 12, 1953, ch. 405, § 2, 67 Stat. 539.)

REFERENCES IN TEXT

For definition of ''mineral leasing laws'', see section 505 of this title.

### § 503. Reservations required by law; atomic energy materials

The rights under any mining claim given force and effect by this chapter shall also be subject to the reservation to the United States specified in section 5(b)(7) of the Atomic Energy Act of 1946, as amended, and, in addition, any reservation or reservations required by any other provision or provisions of law; and any patent issued for such mining claim shall contain such reservations.

(Aug. 12, 1953, ch. 405, § 3, 67 Stat. 540.)

REFERENCES IN TEXT

Section 5(b)(7) of the Atomic Energy Act of 1946, as amended, referred to in text, was formerly classified to section 1805(b)(7) of Title 42, The Public Health and Welfare, and prohibited any benefit to a person from confidential information acquired from participation in development of atomic energy program respecting deposits of fissionable source materials on public lands. Such provisions are covered in section 68(a), (b) of the Atomic Energy Act of 1954, as amended, which is classified to section 2098(a), (b) of Title 42.

### § 504. Power to make arrangements respecting atomic energy materials as unaffected

Except as this chapter provides for (a) validation of certain mining claims located on lands described in section 501 of this title, and (b) the modification and amendment of certain withdrawals or reservations of land, nothing in this chapter shall affect any power or authority duly vested in the Atomic Energy Commission or any other agency, department or officer of the United States to make leases, withdrawals, reservations or other arrangements with respect to source materials as defined in section 5(b)(1) of the Atomic Energy Act of 1946, as amended.

(Aug. 12, 1953, ch. 405, § 4, 67 Stat. 540.)

REFERENCES IN TEXT

Section 5(b)(1) of the Atomic Energy Act of 1946, as amended, referred to in text, was formerly classified to section 1805(b)(1) of Title 42, The Public Health and Welfare, and defined ''source material''. Such term is defined in section 11(z) of the Atomic Energy Act of 1954, as amended, which is classified to section 2014(z) of Title 42.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

### § 505. "Mineral leasing laws" defined

As used in this chapter ''mineral leasing laws'' shall mean the Act of October 20, 1914 (38 Stat.

741); the Act of February 25, 1920 (41 Stat. 437) [30 U.S.C. 181 et seq.]; the Act of April 17, 1926 (44 Stat. 301) [30 U.S.C. 271 et seq.]; the Act of February 7, 1927 (44 Stat. 1057) [30 U.S.C. 281 et seq.] and all Acts heretofore or hereafter enacted which are amendatory of or supplementary to any of the foregoing Acts.

(Aug. 12, 1953, ch. 405, § 5, 67 Stat. 540.)

REFERENCES IN TEXT

Act of October 20, 1914, referred to in text, is act Oct. 20, 1914, ch. 330, 38 Stat. 741, known as the Alaska Coal Lands Act, which was repealed by Pub. L. 86–252, § 1, Sept. 9, 1959, 73 Stat. 490. The subject matter of this Act is generally covered by subchapters I to VII (§ 181 et seq.) of chapter 3A of this title. For complete classification of this Act to the Code prior to repeal, see Tables.

Act of February 25, 1920, referred to in text, is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, known as the Mineral Leasing Act, which is classified generally to chapter 3A (§ 181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

Act of April 17, 1926, referred to in text, is act Apr. 17, 1926, ch. 158, 44 Stat. 301, as amended, which is classified generally to subchapter VIII (§ 271 et seq.) of chapter 3A of this title. For complete classification of this Act to the Code, see Tables.

Act of February 7, 1927, referred to in text, is act Feb. 7, 1927, ch. 66, 44 Stat. 1057, as amended, which enacted subchapter IX (§ 281 et seq.) of chapter 3A of this title, amended sections 181 and 193 of this title, and repealed subchapter VII (§ 141 et seq.) of chapter 3 of this title. For complete classification of this Act to the Code, see Tables.

## CHAPTER 12—MULTIPLE MINERAL DEVELOPMENT OF THE SAME TRACTS

Sec.
521. Mineral leasing claims.
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### § 521. Mineral leasing claims

#### (a) Preference categories

Subject to the conditions and provisions of this chapter and to any valid intervening rights acquired under the laws of the United States, any mining claim located under the mining laws of the United States subsequent to July 31, 1939, and prior to February 10, 1954, on lands of the United States, which at the time of location were—

(1) included in a permit or lease issued under the mineral leasing laws; or

(2) covered by an application or offer for a permit or lease which had been filed under the mineral leasing laws; or

(3) known to be valuable for minerals subject to disposition under the mineral leasing laws,

shall be effective to the same extent in all respects as if such lands at the time of location, and at all times thereafter, had not been so included or covered or known: *Provided, however*, That, in order to be entitled to the benefits of this chapter, the owner of any such mining claim located prior to January 1, 1953, must have posted and filed for record, within the time allowed by the provisions of chapter 11 of this title, an amended notice of location as to such mining claim, stating that such notice was filed pursuant to the provisions of said chapter 11 and for the purpose of obtaining the benefits thereof: *And provided further*, That in order to obtain the benefits of this chapter, the owner of any such mining claim located subsequent to December 31, 1952, and prior to February 10, 1954, not later than one hundred and twenty days after August 13, 1954, must post on such claim in the manner required for posting notice of location of mining claims and file for record in the office where the notice or certificate of location of such claim is of record an amended notice of location for such claim, stating that such notice is filed pursuant to the provisions of this chapter and for the purpose of obtaining the benefits thereof and, within said one hundred and twenty day period, if such owner shall have filed a uranium lease application as to the tract covered by such mining claim, must file with the Atomic Energy Commission a withdrawal of such uranium lease application or, if a uranium lease shall have issued pursuant thereto, a release of such lease, and must record a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall have been filed for record.

#### (b) Labor and improvements

Labor performed or improvements made after the original location of and upon or for the benefit of any mining claim which shall be entitled to the benefits of this chapter under the provisions of subsection (a) of this section, shall be recognized as applicable to such mining claim for all purposes to the same extent as if the validity of such mining claim were in no respect dependent upon the provisions of this chapter.

#### (c) Withdrawal or reservation of lands

As to any land covered by any mining claim which is entitled to the benefits of this chapter under the provisions of subsection (a) of this section, any withdrawal or reservation of lands made after the original location of such mining claim is hereby modified and amended so that the effect thereof upon such mining claim shall be the same as if such mining claim had been located upon lands of the United States which, subsequent to July 31, 1939, and prior to the date of such withdrawal or reservation, were subject to location under the mining laws of the United States.

(Aug. 13, 1954, ch. 730, § 1, 68 Stat. 708.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in subsecs. (a) and (c), are classified generally to this title.

For definition of ''mineral leasing laws'', referred to in subsec. (a)(1) to (3), see section 530 of this title.

SHORT TITLE

Act Aug. 13, 1954, which enacted this chapter, amended section 1805 of Title 42, The Public Health and Welfare, and enacted provisions formerly set out as a note under section 1805 of Title 42, is popularly known as the Multiple Mineral Development Act.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

SEPARABILITY

Section 13 of act Aug. 13, 1954, provided that: ''If any provision of this Act [enacting this chapter], or the application of such provision to any person or circumstances, is held unconstitutional, invalid, or unenforcible [sic], the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held unconstitutional, invalid, or unenforcible [sic], shall not be affected thereby.''

### § 522. Conflicting periods of location of claims

(a) If any mining claim which shall have been located subsequent to December 31, 1952, and prior to December 11, 1953, and which shall be entitled to the benefits of this chapter, shall cover any lands embraced within any mining claim which shall have been located prior to January 1, 1953, and which shall be entitled to the benefits of this chapter, then as to such area of conflict said mining claim so located subsequent to December 31, 1952, shall be deemed to have been located December 11, 1953.

(b) If any mining claim hereafter located shall cover any lands embraced within any mining claim which shall have been located prior to February 10, 1954, and which shall be entitled to the benefits of this chapter, then as to such area of conflict said mining claim hereafter located shall be deemed to have been located one hundred and twenty-one days after August 13, 1954.

(Aug. 13, 1954, ch. 730, § 2, 68 Stat. 709.)

### § 523. Uranium leases

#### (a) Right to locate mining claims

Subject to the conditions and provisions of this chapter and to any valid prior rights acquired under the laws of the United States, the owner of any pending uranium lease application or of any uranium lease shall have, for a period of one hundred and twenty days after August 13, 1954, as limited in subsection (b) of this section, the right to locate mining claims upon the lands covered by said application or lease.

#### (b) Priorities and conflicting rights; termination of rights

Any rights under any such mining claim so hereafter located pursuant to the provisions of subsection (a) of this section shall be subject to any rights of the owner of any mining claim which was located prior to February 10, 1954, and which was valid on August 13, 1954 or which may acquire validity under the provisions of this chapter. As to any lands covered by a uranium lease and also by a pending uranium lease application, the right of mining location under this section, as between the owner of said lease and the owner of said application, shall be deemed as to such conflict area to be vested in the owner of said lease. As to any lands embraced in more than one such pending uranium lease application, such right of mining location, as between the owners of such conflicting applications, shall be deemed to be vested in the owner of the prior application. Priority of such an application shall be determined by the time of posting on a tract then available for such leasing of a notice of lease application in accordance with paragraph (c) of the Atomic Energy Commission's Domestic Uranium Program Circular 7 (10 C.F.R. 60.7 (c)) provided there shall have been timely compliance with the other provisions of said paragraph (c) or, if there shall not have been such timely compliance, then by the time of the filing of the uranium lease application with the Atomic Energy Commission. Any rights under any mining claim located under the provisions of this section shall terminate at the expiration of thirty days after the filing for record of the notice or certificate of location of such mining claim unless, within said thirty-day period, the owner of the uranium lease application or uranium lease upon which the location of such mining claim was predicated shall have filed with the Atomic Energy Commission a withdrawal of said application or a release of said lease and shall have recorded a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall be of record.

#### (c) Future claims on lands covered by application or lease

Except as otherwise provided in subsections (a) and (b) of this section, no mining claim hereafter located shall be valid as to any lands which at the time of such location were covered by a uranium lease application or a uranium lease. Any tract upon which a notice of lease application has been posted in accordance with said paragraph (c) of said Circular 7 shall be deemed to have been included in a uranium lease application from and after the time of the posting of such notice of lease application: *Provided*, That there shall have been timely compliance with the other provisions of said paragraph (c) or, if there shall not have been such timely compliance, then from and after the time of the filing of a uranium lease application with the Atomic Energy Commission.

(Aug. 13, 1954, ch. 730, § 3, 68 Stat. 709.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

### § 524. Reservation of minerals to United States

Every mining claim or millsite—

(1) heretofore located under the mining laws of the United States which shall be entitled to benefits under sections 521 to 523 of this title; or

(2) located under the mining laws of the United States after August 13, 1954 shall be subject, prior to issuance of a patent therefor, to a reservation to the United States of all Leasing Act minerals and of the right (as limited in section 526 of this title) of the United States, its lessees, permittees, and licensees to enter upon the land covered by such mining claim or millsite and to prospect for, drill for, mine, treat, store, transport, and remove Leasing Act minerals and to use so much of the surface and subsurface of such mining

claim or millsite as may be necessary for such purposes, and whenever reasonably necessary, for the purpose of prospecting for, drilling for, mining, treating, storing, transporting, and removing Leasing Act minerals on and from other lands; and any patent issued for any such mining claim or millsite shall contain such reservation as to, but only as to, such lands covered thereby which at the time of the issuance of such patent were—

(a) included in a permit or lease issued under the mineral leasing laws; or

(b) covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) known to be valuable for minerals subject to disposition under the mineral leasing laws.

(Aug. 13, 1954, ch. 730, § 4, 68 Stat. 710.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in text, are classified generally to this title.

For definitions of ''Leasing Act minerals'' and ''mineral leasing laws'', referred to in par. (2), see section 530 of this title.

### § 525. Future location of claims on mineral lands

Subject to the conditions and provisions of this chapter, mining claims and millsites may hereafter be located under the mining laws of the United States on lands of the United States which at the time of location are—

(a) included in a permit or lease issued under the mineral leasing laws; or

(b) covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) known to be valuable for minerals subject to disposition under the mineral leasing laws;

to the same extent in all respects as if such lands were not so included or covered or known.

(Aug. 13, 1954, ch. 730, § 5, 68 Stat. 710.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in text, are classified generally to this title.

For definition of ''mineral leasing laws'', referred to in cls. (a) to (c), see section 530 of this title.

### § 526. Mining and Leasing Act operations

**(a) Multiple use**

Where the same lands are being utilized for mining operations and Leasing Act operations, each of such operations shall be conducted, so far as reasonably practicable, in a manner compatible with such multiple use.

**(b) Mining operations to avoid damage to mineral deposits and interference with mineral operations**

Any mining operations pursuant to rights under any unpatented or patented mining claim or millsite which shall be subject to a reservation to the United States of Leasing Act minerals as provided in this chapter, shall be conducted, so far as reasonably practicable, in a manner which will avoid damage to any known deposit of any Leasing Act mineral. Subject to the provisions of subsection (d) of this section, mining operations shall be so conducted as not to endanger or materially interfere with any existing surface or underground improvements, workings, or facilities which may have been made for the purpose of Leasing Act operations, or with the utilization of such improvements, workings, or facilities.

**(c) Leasing Act operations to avoid damage to mineral deposits and interference with mining operations**

Any Leasing Act operations on lands covered by an unpatented or patented mining claim or millsite which shall be subject to a reservation to the United States of Leasing Act minerals as provided in this chapter shall be conducted, so far as reasonably practicable, in a manner which will avoid damage to any known deposit of any mineral not so reserved from such mining claim or millsite. Subject to the provisions of subsection (d) of this section, Leasing Act operations shall be so conducted as not to endanger or materially interfere with any existing surface or underground improvements, workings, or facilities which may have been made for the purpose of mining operations, or with the utilization of such improvements, workings, or facilities.

**(d) Damage or interference permitted by court**

If, upon petition of either the mining operator or the Leasing Act operator, any court of competent jurisdiction shall find that a particular use in connection with one of such operations cannot be reasonably and properly conducted without endangering or materially interfering with the then existing improvements, workings, or facilities of the other of such operations or with the utilization thereof, and shall find that under the conditions and circumstances, as they then appear, the injury or damage which would result from denial of such particular use would outweigh the injury or damage which would result to such then existing improvements, workings, or facilities or from interference with the utilization thereof if that particular use were allowed, then and in such event such court may permit such use upon payment (or upon furnishing of security determined by the court to be adequate to secure payment) to the party or parties who would be thus injured or damaged, of an amount to be fixed by the court as constituting fair compensation for the then reasonably contemplated injury or damage which would result to such then existing improvements, workings, or facilities or from interference with the utilization thereof by reason of the allowance of such particular use.

**(e) Information regarding operations to be furnished on request**

Where the same lands are being utilized for mining operations and Leasing Act operations, then upon request of the party conducting either of said operations, the party conducting the other of said operations shall furnish to and at the expense of such requesting party copies of any information which said other party may have, as to the situs of any improvements, workings, or facilities theretofore made upon such lands, and upon like request, shall permit such

requesting party, at the risk of such requesting party, to have access at reasonable times to any such improvements, workings, or facilities for the purpose of surveying and checking or determining the situs thereof. If damage to or material interference with a party's improvements, workings, facilities, or with the utilization thereof shall result from such party's failure, after request, to so furnish to the requesting party such information or from denial of such access, such failure or denial shall relieve the requesting party of any liability for the damage or interference resulting by reason of such failure or denial. Failure of a party to furnish requested information or access shall not impose upon such party any liability to the requesting party other than for such costs of court and attorney's fees as may be allowed to the requesting party in enforcing by court action the obligations of this section as to the furnishing of information and access. The obligation hereunder of any party to furnish requested information shall be limited to map and survey information then available to such party with respect to the situs of improvements, workings, and facilities and the furnishing thereof shall not be deemed to constitute any representation as to the accuracy of such information.

(Aug. 13, 1954, ch. 730, § 6, 68 Stat. 710.)

REFERENCES IN TEXT

For definitions of ''Leasing Act operations'', referred to in subsecs. (a) to (c) and (e); ''Leasing Act minerals'', referred to in subsecs. (b) and (c); and ''Leasing Act operator'', referred to in subsec. (d), see section 530 of this title.

## § 527. Determination of unpatented mining claims

### (a) Filing of notice

Any applicant, offeror, permittee, or lessee under the mineral leasing laws may file in the office of the Secretary of the Interior, or in such office as the Secretary may designate, a request for publication of notice of such application, offer, permit, or lease, provided expressly, that not less than ninety days prior to the filing of such request for publication there shall have been filed for record in the county office of record for the county in which the lands covered thereby are situate a notice of the filing of such application or offer or of the issuance of such permit or lease which notice shall set forth the date of such filing or issuance, the name and address of the applicant, offeror, permittee or lessee and the description of the lands covered by such application, offer, permit or lease, showing the section or sections of the public land surveys which embrace the lands covered by such application, offer, permit, or lease, or if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public lands surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

The filing of such request for publication shall be accompanied by a certified copy of such recorded notice and an affidavit or affidavits of a person or persons over twenty-one years of age setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of such lands or any part thereof, and, if no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof on the date of such examination, setting forth such fact, or, if any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, setting forth the name and address of each such person, unless affiant shall have been unable through reasonable inquiry to obtain information as to the name and address of any such person, in which event the affidavit shall set forth fully the nature and results of such inquiry.

The filing of such request for publication shall also be accompanied by the certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's, abstractor's, or attorney's examination of the instruments affecting the lands involved, of record in the public records of the county in which said lands are situate as shown by the indices of the public records in the county office of record for said county, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim heretofore located, together with the address of such person if disclosed by such instruments of record.

Thereupon the Secretary of the Interior, or his designated representative, at the expense of the requesting person (who, prior to the commencement of publication, must furnish the agreement of the publisher to hold such requesting person alone responsible for charges of publication), shall cause notice of such application, offer, permit, or lease to be published in a newspaper having general circulation in the county in which the lands involved are situate.

Such notice shall describe the lands covered by such application, offer, permit, or lease, as provided heretofore in the notice to be filed in the office of record of the county in which the lands covered are situate, and shall notify whomever it may concern that if any person claiming or asserting under, or by virtue of, any unpatented mining claim heretofore located, any right or interest in Leasing Act minerals as to such lands or any part thereof, shall fail to file in the office where such request for publication was filed (which office shall be specified in such notice) and within one hundred fifty days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim:

(1) The date of location;

(2) The book and page of recordation of the notice or certificate of location;

(3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) Whether such claimant is a locator or purchaser under such location; and

(5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim;

such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and (ii) to constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation specified in section 524 of this title, and (iii) to preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act mineral by reason of such mining claim.

If such notice is published in a daily paper, it shall be published in the Wednesday issue for nine consecutive weeks, or, if in a weekly paper, in nine consecutive issues, or, if in a semiweekly or triweekly paper, in the issue of the same day of each week for nine consecutive weeks.

Within fifteen days after the date of first publication of such notice, the person requesting such publication (1) shall cause a copy of such notice to be personally delivered to or to be mailed by registered mail or by certified mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by an affidavit filed as aforesaid, and to each person who may have filed, as to any lands described in said notice, a request for notices, as provided in subsection (d) of this section, and shall cause a copy of such notice to be mailed by registered mail or by certified mail to each person whose name and address is set forth in the title or abstract company's or title abstractor's or attorney's certificate filed as aforesaid, as having an interest in the lands described in said notice under any unpatented mining claim heretofore located, such notice to be directed to such person's address as set forth in such certificate; and (2) shall file in the office where said request for publication was filed an affidavit showing that copies have been so delivered or mailed.

**(b) Failure to file verified statement**

If any claimant under any unpatented mining claim heretofore located which embraces any of the lands described in any notice published in accordance with the provisions of subsection (a) of this section shall fail to file a verified statement, as above provided, within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed, except as otherwise provided in subsection (e) of this section, (i) to constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and (ii) to constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation specified in section 524 of this title, and (iii) to preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act mineral by reason of such mining claim.

**(c) Hearings**

If any verified statement shall be filed by a mining claimant as provided in subsection (a) of this section, then the Secretary of the Interior or his designated representative shall fix a time and place for a hearing to determine the validity and effectiveness of the mining claimant's asserted right or interest in Leasing Act minerals, which place of hearing shall be in the county where the lands in question or parts thereof are located, unless the mining claimant agrees otherwise. The procedures with respect to notice of such a hearing and the conduct thereof, and in respect to appeals shall follow the then established general procedures and rules of practice of the Department of the Interior in respect to contests or protests affecting public lands of the United States. If, pursuant to such a hearing the final decision rendered in the matter shall affirm the validity and effectiveness of any mining claimant's right or interest under the mining claim as to Leasing Act minerals, then no subsequent proceedings under this section shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim. If at any time prior to a hearing the person requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by that particular published notice.

**(d) Request for copy of notice**

Any person claiming any right in Leasing Act minerals under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice of any application, offer, permit, or lease which may be published as above provided in subsection (a) of this section, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice or certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies and shall also set forth, as to each mining claim under which such person asserts rights in Leasing Act minerals:

(1) the date of location;

(2) the book and page of the recordation of the notice or certificate of location; and

(3) the section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

Other than in respect to the requirements of subsection (a) of this section as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section, no such request for copies of published

notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

**(e) Failure to deliver or mail copy of notice**

If any applicant, offeror, permittee, or lessee shall fail to comply with the requirements of subsection (a) of this section as to the personal delivery or mailing of a copy of notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice, shall in no manner affect, diminish, prejudice or bar any rights of that person.

(Aug. 13, 1954, ch. 730, § 7, 68 Stat. 711; Pub. L. 86–507, § 1(25), June 11, 1960, 74 Stat. 201.)

REFERENCES IN TEXT

For definitions of ''mineral leasing laws'', referred to in first undesignated par. of subsec. (a), and ''Leasing Act minerals'', referred to in fifth undesignated par. of subsec. (a) and subsecs. (b) to (d), see section 530 of this title.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–507 inserted ''or by certified mail'' after ''registered mail'' in two places in last paragraph.

## § 528. Waiver and relinquishment of mineral rights

The owner or owners of any mining claim heretofore located may, at any time prior to issuance of patent therefor, waive and relinquish all rights thereunder to Leasing Act minerals. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter subject to the reservation referred to in section 524 of this title and any patent issued therefor shall contain such a reservation, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

(Aug. 13, 1954, ch. 730, § 8, 68 Stat. 715.)

REFERENCES IN TEXT

For definition of ''Leasing Act minerals'', referred to in text, see section 530 of this title.

## § 529. Helium lands subject to entry

Lands withdrawn from the public domain which are within (a) Helium Reserve Numbered 1, pursuant to Executive orders of March 21, 1924, and January 28, 1926, and (b) Helium Reserve Numbered 2 pursuant to Executive Order 6184 of June 26, 1933, shall be subject to entry and location under the mining laws of the United States, and to permit and lease under the mineral leasing laws, upon determination by the Secretary of the Interior, based upon available geologic and other information, that there is no reasonable probability that operations pursuant to entry or location of the particular lands under the mining laws, or pursuant to a permit or lease of the particular lands under the Mineral Leasing Act [30 U.S.C. 181 et seq.], will result in the extraction or cause loss or waste of the helium-bearing gas in the lands of such reserves: *Provided*, That the lands shall not become subject to entry, location, permit or lease until such time as the Secretary designates in an order published in the Federal Register: *And provided further*, That the Secretary may at any time as a condition to continued mineral operations require the entryman, locator, permittee or lessee to take such measures either above or below the surface of the lands as the Secretary deems necessary to prevent loss or waste of the helium-bearing gas.

(Aug. 13, 1954, ch. 730, § 9, 68 Stat. 715.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in text, are classified generally to this title.

For definition of ''mineral leasing laws'', referred to in text, see section 530 of this title.

The Mineral Leasing Act, referred to in text, is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified generally to chapter 3A (§ 181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

## § 530. Definitions

As used in this chapter ''mineral leasing laws'' shall mean the Act of February 25, 1920 (41 Stat. 437) [30 U.S.C. 181 et seq.]; the Act of April 17, 1926 (44 Stat. 301) [30 U.S.C. 271 et seq.]; the Act of February 7, 1927 (44 Stat. 1057) [30 U.S.C. 281 et seq.]; Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.]; and all Acts heretofore or hereafter enacted which are amendatory of or supplementary to any of the foregoing Acts; ''Leasing Act minerals'' shall mean all minerals which, upon August 13, 1954, are provided in the mineral leasing laws to be disposed of thereunder and all geothermal steam and associated geothermal resources which, upon the effective date of the Geothermal Steam Act of 1970, are provided in that Act to be disposed of thereunder; ''Leasing Act operations'' shall mean operations conducted under a lease, permit, or license issued under the mineral leasing laws in or incidental to prospecting for, drilling for, mining, treating, storing, transporting, or removing Leasing Act minerals; ''mining operations'' shall mean operations under any unpatented or patented mining claim or millsite in or incidental to prospecting for, mining, treating, storing, transporting, or removing minerals other than Leasing Act minerals and any other use under any claim of right or title based upon such mining claim or millsite; ''Leasing Act operator'' shall mean any party who shall conduct Leasing Act operations; ''mining operator'' shall mean any party who shall conduct mining operations; ''Atomic Energy Act'' shall mean the Act of August 1, 1946 (60 Stat. 755), as amended [42 U.S.C. 2011 et seq.]; ''Atomic Energy Commission'' shall mean the United States Atomic Energy Commission established under the Atomic Energy Act or any

amendments thereof; ''fissionable source material'' shall mean uranium, thorium, and all other materials referred to in section 5(b)(1) of the Atomic Energy Act, as amended, as reserved or to be reserved to the United States; ''uranium lease application'' shall mean an application for a uranium lease filed with said Commission with respect to lands which would be open for entry under the mining laws except for their being lands embraced within an offer, application, permit, or lease under the mineral leasing laws or lands known to be valuable for minerals leasable under those laws; ''uranium lease'' shall mean a uranium mining lease issued by said Commission with respect to any such lands; and ''person'' shall mean any individual, corporation, partnership, or other legal entity.

(Aug. 13, 1954, ch. 730, § 11, 68 Stat. 716; Pub. L. 91–581, § 26, Dec. 24, 1970, 84 Stat. 1573; Pub. L. 109–58, title II, § 236(24), Aug. 8, 2005, 119 Stat. 673.)

REFERENCES IN TEXT

Act of February 25, 1920, referred to in text, is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, known as the Mineral Leasing Act, which is classified generally to chapter 3A (§ 181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

Act of April 17, 1926, referred to in text, is act Apr. 17, 1926, ch. 158, 44 Stat. 301, as amended, which is classified generally to subchapter VIII (§ 271 et seq.) of chapter 3A of this title. For complete classification of this Act to the Code, see Tables.

Act of February 7, 1927, referred to in text, is act Feb. 7, 1927, ch. 66, 44 Stat. 1057, as amended, which enacted subchapter IX (§ 281 et seq.) of chapter 3A of this title, amended sections 181 and 193 of this title, and repealed subchapter VII (§ 141 et seq.) of chapter 3 of this title. For complete classification of this Act to the Code, see Tables.

The Geothermal Steam Act of 1970, referred to in text, is Pub. L. 91–581, Dec. 24, 1970, 84 Stat. 1566, which is classified principally to chapter 23 (§ 1001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The effective date of the Geothermal Steam Act of 1970, referred to in text, probably means the date of enactment of Pub. L. 91–581, which was approved Dec. 24, 1970.

The Atomic Energy Act, referred to in text, is a reference to the Atomic Energy Act of 1946 (act Aug. 1, 1946, ch. 724, 60 Stat. 755), prior to its complete amendment and revision by act Aug. 30, 1954, ch. 1073, 68 Stat. 919, which is classified principally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For further details, see Codification note set out under sections 1801 to 1819 of Title 42 and Short Title note set out under section 2011 of Title 42. For complete classification of this Act to the Code, see Tables.

Section 5(b)(1) of the Atomic Energy Act, as amended, referred to in text, was formerly classified to section 1805(b)(1) of Title 42 and defined ''source material''. The term is defined in section 11(z) of the Atomic Energy Act of 1954, as amended, which is classified to section 2014(z) of Title 42.

AMENDMENTS

2005—Pub. L. 109–58 amended directory language of Pub. L. 91–581, § 26. See 1970 Amendment note below.

1970—Pub. L. 91–581, § 26, as amended by Pub. L. 109–58, redefined ''mineral leasing laws'' to exclude ''the Act of October 20, 1914'' and to include ''Geothermal Steam Act of 1970'' and ''Leasing Act minerals'' to include ''all geothermal steam and associated geothermal resources which, upon the effective date of the Geothermal Steam Act of 1970, are provided in that Act to be disposed of thereunder''.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

### § 531. Approval of United States officials

Nothing in this chapter shall be construed to waive, amend, or repeal the requirement of any provision of any law for approval of any official of the United States whose approval prior to prospecting, exploring, or mining would be required.

(Aug. 13, 1954, ch. 730, § 12, 68 Stat. 717.)

## CHAPTER 12A—ENTRY AND LOCATION ON COAL LANDS ON DISCOVERY OF SOURCE MATERIAL

Sec.
541. Entry and location; filing of copy of notice of mining location; report and payment for lignite mined; mineral patents; reservation of minerals to United States.
541a. Claims located prior to May 25, 1955; extralateral rights; amended notice of mining location.
541b. Mining, removal, and disposal of lignite.
541c. Lands where coal deposits have been reserved to the United States.
541d. Location of source materials by holders of coal leases.
541e. Definitions.
541f. Disbursement of moneys.
541g. Rules and regulations.
541h. Savings provisions.
541i. Withdrawal of lands from entry; expiration of claims.

### § 541. Entry and location; filing of copy of notice of mining location; report and payment for lignite mined; mineral patents; reservation of minerals to United States

Subject to the conditions and provisions of this chapter and to any valid intervening rights acquired under the laws of the United States, public lands of the United States classified as or known to be valuable for coal subject to disposition under the mineral leasing laws and which are open to location and entry subject to the conditions and provisions of chapter 12 of this title, unless embraced within a coal prospecting permit or lease, shall also be open to location and entry under the mining laws of the United States upon the discovery of a valuable source material occurring within any seam, bed, or deposit of lignite in such lands: *Provided*, That a copy of the notice of any mining location made for source material occurring in any such bed, seam, or deposit, shall be filed for record in the land office of the Bureau of Land Management for the State in which the claim is situated within ninety days after the date of its location: *Provided further*, That the claimant to any such mining location shall report annually to the Mining Supervisor of the Geological Survey the amount of lignite mined or stripped in the recovery of such valuable source material during each calendar year and tender payment to him

of 10 cents per ton thereon. Any mineral patents issued hereunder shall be made subject to the recording and payment requirements of this section and shall contain a reservation to the United States of all Leasing Act minerals owned by the United States other than lignite containing valuable source material and lignite necessary to be stripped or mined in the recovery of such material. Mining claims located and mineral patents issued under the provisions of this chapter shall not include rights to lignite not containing valuable source material except to the extent it may be necessary to mine or strip such lignite in order to mine the source material and, with respect to lode claims, shall not include extralateral rights. For all purposes of this chapter ''source material'' and ''lignite'' shall have the meanings given in section 541e of this title.

(Aug. 11, 1955, ch. 795, § 1, 69 Stat. 679.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in text, are classified generally to this title.

For definitions of ''mineral leasing laws'' and ''Leasing Act minerals'', referred to in text, see section 541e of this title.

### § 541a. Claims located prior to May 25, 1955; extralateral rights; amended notice of mining location

Any mining claim located in a manner prescribed by the mining laws of the United States upon lands of the character described in section 541 of this title, prior to May 25, 1955, if based upon a discovery of valuable source material contained in lignite shall be effective to the same extent as if such lands at the time of location, and at all times thereafter, had not been classified as or known to be valuable for coal subject to disposition under the mineral leasing laws, subject, however, to the provisions of section 541 of this title: *Provided*, That no extralateral rights shall attach to any mining location validated under this section: *And provided further*, That the locator or locators of such a mining claim shall, not later than one hundred and eighty days from and after August 11, 1955, post on the claim and file for record in the office where the notice or certificate of location is of record, an amended notice of the mining location stating that such amended notice is filed pursuant to the provisions of this chapter and for the purpose of obtaining the benefits thereof; and that a copy of said amended notice is, within the said one-hundred-and-eighty-day period, filed in the land office of the Bureau of Land Management for the State in which the mining location is situated, and the mining locator thereafter complies with the requirements of this chapter.

(Aug. 11, 1955, ch. 795, § 2, 69 Stat. 679.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in text, are classified generally to this title.

For definition of ''mineral leasing laws'', referred to in text, see section 541e of this title.

EXTENSION OF TIME FOR ANNUAL ASSESSMENT WORK

Act June 29, 1956, ch. 478, 70 Stat. 438, as amended by Pub. L. 85–68, June 29, 1957, 71 Stat. 226, provided for extension of time for period commencing July 1, 1955, to 12 o'clock noon July 1, 1958, during which labor must be performed, or improvements made pursuant to section 28 of this title, or any unpatented mining claim validated under this section and for extension of time for period commencing July 1, 1956, to 12 o'clock noon July 1, 1958, during which labor must be performed, or improvements made pursuant to section 28 of this title, on any other unpatented mining claim subject to this chapter.

### § 541b. Mining, removal, and disposal of lignite

Subject to the provisos of section 541a of this title, any mining location made under the mining laws of the United States, including chapter 12 of this title, on lands of the character described in section 541 of this title, except locations made for lands within the exterior boundaries of a prior coal prospecting permit or lease, if based upon a discovery of valuable source material in deposits other than deposits of Leasing Act minerals, shall include the right to mine, remove, and dispose of lignite containing valuable source material and lignite necessary to be stripped or mined in the recovery of source material contained in lignite, subject to the reporting and payment requirements of section 541 of this title, and subject to the provisions of the Atomic Energy Act of 1954 [42 U.S.C. 2011 et. seq.], and upon filing in the land office designated in section 541 of this title, an adequate description of his claim or claims containing such lignite: *Provided*, That nothing in this section shall be construed to limit or restrict the rights acquired by virtue of a mining claim heretofore or hereafter located, under the 1872 Mining Act, as amended, or to impose any additional obligation with respect to the mining and removal of source material which does not occur within any seam, bed, or deposit of lignite.

(Aug. 11, 1955, ch. 795, § 3, 69 Stat. 680.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in text, are classified generally to this title.

For definition of ''Leasing Act minerals'', referred to in text, see section 541e of this title.

The Atomic Energy Act of 1954, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 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 2011 of Title 42 and Tables.

The 1872 Mining Act, as amended, referred to in text, is act May 10, 1872, ch. 152, 17 Stat. 91, as amended. That act was incorporated into the Revised Statutes as R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344, which are classified to sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 42, and 47 of this title. For complete classification of R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344 to the Code, see Tables.

### § 541c. Lands where coal deposits have been reserved to the United States

The entryman or owner of any land or the assignee of rights therein, including lands granted to States, with respect to which the coal deposits have been reserved to the United States pursuant to the provisions of section 81 of this title or sections 83 to 85 of this title, excepting lands embraced within a coal prospecting permit or lease, upon the discovery of valuable source ma-

terial in lignite situated within such entered, granted, or patented lands, who, except for the reservation of coal to the United States would have the right to mine and remove such source material, shall have the exclusive right to mine, remove, and dispose of lignite containing such source material and lignite necessary to be stripped or mined in the recovery of such material, subject to the reporting and payment requirements of section 541 of this title, and subject to the provisions of the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], upon filing in the land office designated in section 541 of this title, an adequate description sufficient to identify the land containing such lignite.

(Aug. 11, 1955, ch. 795, § 4, 69 Stat. 680.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 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 2011 of Title 42 and Tables.

### § 541d. Location of source materials by holders of coal leases

The holders of coal leases issued under the provision of the mineral leasing laws, including chapter 7 of this title, prior to August 11, 1955, or thereafter if based upon a prospecting permit issued prior to that date, upon the discovery during the term of such lease of valuable source material in any bed or deposit of lignite situated within the leased lands, shall have the exclusive right to locate such source material under the provisions of this chapter but the mining and disposal of such source material shall be subject to the operating provisions of the lease and to the provisions of the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]: *Provided*, That the provisions of this section shall not apply to coal prospecting, permits or leases on lands embraced within entered, granted or patented lands described in section 541c of this title.

(Aug. 11, 1955, ch. 795, § 5, 69 Stat. 680.)

REFERENCES IN TEXT

For definition of ''mineral leasing laws'', referred to in text, see section 541e of this title.

The Atomic Energy Act of 1954, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 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 2011 of Title 42 and Tables.

### § 541e. Definitions

As used in this chapter ''mineral leasing laws'' shall mean the Act of October 20, 1914 (38 Stat. 741); the Act of February 25, 1920 (41 Stat. 437) [30 U.S.C. 181 et seq.]; the Act of April 17, 1926 (44 Stat. 301) [30 U.S.C. 271 et seq.]; the Act of February 7, 1927 (44 Stat. 1057) [30 U.S.C. 281 et seq.]; and all Acts heretofore or hereafter enacted which are amendatory of or supplementary to any of the foregoing Acts; ''Leasing Act minerals'' shall mean all minerals which, upon August 11, 1955, are provided in the mineral leasing laws to be disposed of thereunder; ''lignite'' shall mean coal classified as ASTM designation: D 388–38, according to the standards established in the American Society for Testing Materials on Coal and Coke under standard specifications for Classification of Coals by Rank, contained in public-land deposits considered as valuable under the coal-land classification standards established by the Secretary of the Interior and prescribed in section 30, Code of Federal Regulations, part 201; and ''source material'' shall mean uranium, thorium, or any other material which is determined by the Atomic Energy Commission pursuant to the provisions of section 2091 of title 42 to be source material.

(Aug. 11, 1955, ch. 795, § 6, 69 Stat. 680.)

REFERENCES IN TEXT

Act of October 20, 1914, referred to in text, is act Oct. 20, 1914, ch. 330, 38 Stat. 741, known as the Alaska Coal Lands Act, which was repealed by Pub. L. 86–252, § 1, Sept. 9, 1959, 73 Stat. 490. The subject matter of this Act is generally covered by subchapters I to VII (§ 181 et seq.) of chapter 3A of this title. For complete classification of this Act to the Code prior to repeal, see Tables.

Act of February 25, 1920, referred to in text, is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, known as the Mineral Leasing Act, which is classified generally to chapter 3A (§ 181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

Act of April 17, 1926, referred to in text, is act Apr. 17, 1926, ch. 158, 44 Stat. 301, as amended, which is classified generally to subchapter VIII (§ 271 et seq.) of chapter 3A of this title. For complete classification of this Act to the Code, see Tables.

Act of February 7, 1927, referred to in text, is act Feb. 7, 1927, ch. 66, 44 Stat. 1057, as amended, which enacted subchapter IX (§ 281 et seq.) of chapter 3A of this title, amended sections 181 and 193 of this title, and repealed subchapter VII (§ 141 et seq.) of chapter 3 of this title. For complete classification of this Act to the Code, see Tables.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

### § 541f. Disbursement of moneys

All moneys received under the provisions of this chapter shall be paid into the Treasury of the United States and distributed in the same manner as provided in section 191 of this title and sections 437, 438, and 439[1] of title 48.

(Aug. 11, 1955, ch. 795, § 7, 69 Stat. 681.)

REFERENCES IN TEXT

Sections 437, 438, and 439 of title 48, referred to in text, were repealed by Pub. L. 86–252, § 1, Sept. 9, 1959, 73 Stat. 490.

### § 541g. Rules and regulations

The Secretary of the Interior is authorized to issue such rules and regulations as may be necessary or appropriate to effectuate the purposes of this chapter.

(Aug. 11, 1955, ch. 795, § 8, 69 Stat. 681.)

[1] See References in Text note below.

### § 541h. Savings provision

Nothing in this chapter shall be deemed to amend or repeal any provisions of chapter 12 of this title, or any right granted thereunder.

(Aug. 11, 1955, ch. 795, § 9, 69 Stat. 681.)

### § 541i. Withdrawal of lands from entry; expiration of claims

Twenty years after August 11, 1955, all lands subject to the provisions of section 541 of this title shall be withdrawn from all forms of entry under this chapter. All claims made pursuant to the provisions of this chapter shall expire at that time, except for (1) claims for which patent has already been issued, and (2) claims on which application for patent has already been made and on which patent is subsequently issued: *Provided*, That, if the President shall so provide by Executive order, the provisions of this section shall not become effective until thirty years after August 11, 1955.

(Aug. 11, 1955, ch. 795, § 10, 69 Stat. 681.)

## CHAPTER 13—CONTROL OF COAL-MINE FIRES

Sec.
551. Declaration of policy.
552. Definitions.
553. Duties of Secretary; surveys, research, etc.; projects.
554. Lands subject to chapter.
555. Conditions precedent for aid to non-Federal lands.
556. Administration.
557. Rules and regulations.
558. Authorization of appropriations.

### § 551. Declaration of policy

It is recognized that outcrop and underground fires in coal formations involve serious wastage of the fuel resources of the Nation, and constitute a menace to the health and safety of the public and to surface property. It is therefore declared to be the policy of the Congress to provide for the control and extinguishment of outcrop and underground coal fires and thereby to prevent injuries and loss of life, protect public health, conserve natural resources, and to preserve public and private surface property.

(Aug. 31, 1954, ch. 1156, § 1, 68 Stat. 1009.)

COAL FORMATIONS

Pub. L. 102–486, title XXV, § 2504(d)(1), (2), Oct. 24, 1992, 106 Stat. 3105, 3106, provided that:

''(1) In furtherance of the purposes of the Act of August 31, 1954 (30 U.S.C. 551–558) the Secretary of the Interior, acting through the Director of the Office of Surface Mining Reclamation and Enforcement, shall, upon application by a State, enter into a cooperative agreement with any such State that has an approved abandoned mine reclamation program pursuant to section 405 of the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1235] to undertake the activities referred to in section 3(b) of the Act of August 31, 1954 (30 U.S.C. 553(b)). The Secretary shall immediately enter into such cooperative agreement upon application by a State. Any such cooperative agreement shall not be subject to review or approval by the Appalachian Regional Development Commission.

''(2) For the purposes of the cooperative agreements entered into pursuant to paragraph (1), the requirements of section 5 of the Act of August 31, 1954 (30 U.S.C. 555) are hereby waived.''

### § 552. Definitions

As used in this chapter:

''Coal'' means any of the recognized classifications and ranks of coal, including anthracite, bituminous, semibituminous, subbituminous, and lignite.

''Outcrop'' means any place where a formation is visible or substantially exposed at the surface.

''Formation'' means any vein, seam, stratum, bed, or other naturally occurring deposit.

''Coal mine'' means any underground, surface, or strip mine from which coal is obtained.

''State'' means any State or Territory of the United States, or any political subdivision thereof.

''Person'' means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(Aug. 31, 1954, ch. 1156, § 2, 68 Stat. 1009.)

### § 553. Duties of Secretary; surveys, research, etc.; projects

The Secretary of the Interior, in order to effectuate the policy declared in section 551 of this title, is hereby authorized—

(a) to conduct surveys, investigations, and research relating to the causes and extent of outcrop and underground fires in coal formations and the methods for control or extinguishment of such fires; to publish the results of any such surveys, investigations, and researches; and to disseminate information concerning such method; and

(b) to plan and execute projects for control or extinguishment of fires in coal formations.

(Aug. 31, 1954, ch. 1156, § 3, 68 Stat. 1009.)

### § 554. Lands subject to chapter

The acts authorized in section 553 of this title may be performed—

(a) on lands owned or controlled by the United States or any of its agencies, with the cooperation of the agency having jurisdiction thereof; and

(b) on any other lands, upon obtaining proper consent or the necessary rights or interests in such lands: *Provided*, *however*, That expenditure of Federal funds for this purpose in any privately owned operating coal mine shall be limited to the acts authorized in section 553(a) of this title.

(Aug. 31, 1954, ch. 1156, § 4, 68 Stat. 1009.)

### § 555. Conditions precedent for aid to non-Federal lands

#### (a) Enactment of local laws; agreements

As a condition to the extending of any benefits under section 553(b) of this title to any lands not owned or controlled by the United States or any of its agencies, except where such action is necessary for the protection of lands or other property owned or controlled by the United States or any of its agencies, the Secretary of the Interior may require—

(1) the enactment of State or local laws providing for the control and extinguishment of outcrop and underground fires in coal formations on State or privately owned land and the cooperation of State or local authorities in the work; and

(2) agreements or covenants as to the performance and maintenance of the work required to control or extinguish such fires.

**(b) Contributions**

The Secretary of the Interior shall require in connection with any project for the control or extinguishment of fires in any inactive coal mine on any lands not owned or controlled by the United States or any of its agencies, except where such project is necessary for the protection of lands or other property owned or controlled by the United States or any of its agencies, (1) that the State or person owning or controlling such lands contribute on a matching basis 50 per centum of the cost of planning and executing such project, or (2), if such State or person furnishes evidence satisfactory to the Secretary of the Interior of an inability to make the matching contribution herein provided for, that such State or person pay to the Government, within such period of time as the Secretary of the Interior shall determine, an amount equal to 50 per centum of the cost of planning and executing such project. At least 75 per centum of the funds expended in any fiscal year, from any appropriation available to carry out the purposes of this chapter, in connection with projects for the control or extinguishment of fires in inactive coal mines where such action is not necessary for the protection of lands or other property owned or controlled by the United States or any of its agencies, shall be expended in conformity with clause (1) of this subsection.

(Aug. 31, 1954, ch. 1156, § 5, 68 Stat. 1010.)

### § 556. Administration

In carrying out the provisions of section 553 of this title the Secretary of the Interior is authorized—

**(a) Employment of personnel**

to secure, by contract or otherwise, and without regard to the civil service laws and chapter 51 and subchapter III of chapter 53 of title 5, for work of a temporary, intermittent, or emergency character, such personal services as may be deemed necessary for the efficient and economical performance of the work;

**(b) Employment of equipment**

to hire, with or without personal services, work animals and animal-drawn and motor-propelled vehicles and equipment, at rates to be approved by the Secretary of the Interior and without regard to the provisions of section 5 of title 41;

**(c) Contractual authority**

to procure all or any part of the surveys, investigations, and control or extinguishment work by contracts with engineers, contractors, or firms or corporations thereof;

**(d) Acquisition of lands, etc.**

to acquire lands or rights and interests therein, including improvements, by purchase, lease, gift, exchange, condemnation, or otherwise, whenever necessary for the purposes of this chapter;

**(e) Property restoration**

to repair, restore, or replace private property damaged or destroyed as a result of, or incident to, operations under this chapter; and

**(f) Contributions; cooperation with other agencies; disposition of moneys**

to receive and accept money and property, real or personal, or interests therein, as a gift, bequest, or contribution, for use in any of the activities authorized under this chapter; and to conduct any of the activities authorized under this chapter in cooperation with any person or agency, Federal, State, or private. Any money so received shall be deposited in the Treasury of the United States in an available trust fund to be disbursed by the Secretary of the Treasury upon certification by the Secretary of the Interior in accordance with the terms of the grant, and shall remain available until expended for the purposes for which received and accepted.

(Aug. 31, 1954, ch. 1156, § 6, 68 Stat. 1010.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

In subsec. (a), ''chapter 51 and subchapter III of chapter 53 of title 5'' substituted for ''the Classification Act of 1949, as amended'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

### § 557. Rules and regulations

The Secretary of the Interior may issue rules and regulations to effectuate the purposes of this chapter.

(Aug. 31, 1954, ch. 1156, § 7, 68 Stat. 1011.)

### § 558. Authorization of appropriations

There are hereby authorized to be appropriated such sums,[1] as may be necessary to carry out the provisions and purposes of this chapter.

(Aug. 31, 1954, ch. 1156, § 8, 68 Stat. 1011; Pub. L. 102–486, title XXV, § 2504(d)(3), Oct. 24, 1992, 106 Stat. 3106.)

AMENDMENTS

1992—Pub. L. 102–486 struck out ''not to exceed $500,000 annually,'' after ''such sums,''.

## CHAPTER 14—ANTHRACITE MINE DRAINAGE AND FLOOD CONTROL

Sec.
571. Declaration of policy.

[1] So in original. The comma probably should not appear.

Sec.
572. United States contributions to Pennsylvania: authority, conditions, limitations.
573. Statement by Commonwealth for Secretary.
574. Hearings; withholding payments.
575. Repealed.
576. Authorization of appropriations.

### § 571. Declaration of policy

It is hereby recognized that the presence of large volumes of water in anthracite coal formations involves serious wastage of the fuel resources of the Nation, and constitutes a menace to health and safety and national security. It is therefore declared to be the policy of the Congress to provide for the control and drainage of water in the anthracite coal formations and thereby conserve natural resources, promote national security, prevent injuries and loss of life, and preserve public and private property, and to seal abandoned coal mines and to fill voids in abandoned coal mines, in those instances where such work is in the interest of the public health or safety.

(July 15, 1955, ch. 369, § 1, 69 Stat. 352; Pub. L. 87–818, § 1(1), Oct. 15, 1962, 76 Stat. 934.)

AMENDMENTS

1962—Pub. L. 87–818 declared it to be the policy of the Congress ''to seal abandoned coal mines and to fill voids in abandoned coal mines, in those instances where such work is in the interest of the public health or safety''.

### § 572. United States contributions to Pennsylvania: authority, conditions, limitations

The Secretary of the Interior is authorized, in order to carry out the purposes mentioned in section 571 of this title, to make financial contributions on the basis of programs or projects approved by the Secretary to the Commonwealth of Pennsylvania (hereinafter designated as the ''Commonwealth'') to seal abandoned coal mines and to fill voids in abandoned coal mines, in those instances where such work is in the interest of the public health or safety, and for control and drainage of water which, if not so controlled or drained, will cause the flooding of anthracite coal formations, said contributions to be applied to the cost of drainage works, pumping plants, and related facilities but subject, however, to the following conditions and limitations:

**(a) Contributions to be matched by Commonwealth**

The amounts authorized to be contributed by the Secretary of the Interior to the Commonwealth shall be equally matched by the Commonwealth;

**(b) Amount of contributions authorized**

The total amount of contributions by the Secretary of the Interior under the authority of this chapter shall not exceed $8,500,000, of which $1,500,000 of the unexpended balance remaining as of July 31, 1962, shall be reserved for the control and drainage of water;

**(c) Limitation on use of contribution**

The amounts contributed by the Secretary of the Interior under the authority of this chapter and the equally matched amounts contributed by the Commonwealth shall not be used for operating and maintaining projects constructed pursuant to this chapter or for the purchase of culm, rock, or spoil banks;

**(d) Commonwealth responsible for installation and operation of projects**

The Commonwealth shall have full responsibility for installing, operating, and maintaining projects constructed pursuant to this chapter, and shall give evidence, satisfactory to the Secretary of the Interior, that it will enforce effective installation, operation, and maintenance safeguards;

**(e) Location and operation of projects**

Projects constructed pursuant to this chapter shall be so located, operated, and maintained as to provide the maximum conservation of anthracite coal resources or, in those instances where such work would be in the interest of the public health or safety, to seal abandoned coal mines and to fill voids in abandoned coal mines, and, where possible, to avoid creating inequities among those mines which may be affected by the waters to be controlled thereby; and

**(f) Economic justification for abandoned coal mine projects**

Projects for the sealing of abandoned coal mines or the filling of voids in abandoned coal mines shall be determined by the Secretary of the Interior to be economically justified. The Secretary shall not find any project to be economically justified unless the potential benefits are estimated by him to exceed the estimated cost of the project.

(July 15, 1955, ch. 369, § 2, 69 Stat. 353; Pub. L. 87–818, § 1(2)–(7), Oct. 15, 1962, 76 Stat. 934.)

AMENDMENTS

1962—Pub. L. 87–818, § 1(2), authorized the Secretary of the Interior, in the preamble clause, to seal abandoned coal mines and to fill voids in abandoned coal mines, in those instances where such work is in the interest of the public health or safety.

Subsec. (b). Pub. L. 87–818, § 1(3), reserved $1,500,000 of the unexpended balance remaining as of July 31, 1962, for the control and drainage of water.

Subsec. (c). Pub. L. 87–818, § 1(4), prohibited the use of contributions for the purchase of culm, rock, or spoil banks.

Subsec. (d). Pub. L. 87–818, § 1(5), struck out ''and'' after the semicolon.

Subsec. (e). Pub. L. 87–818, § 1(6), prescribed that projects be so located, operated, and maintained as to seal abandoned coal mines and to fill voids in abandoned coal mines in those instances where such work would be in the interest of the public health or safety.

Subsec. (f). Pub. L. 87–818, § 1(7), added subsec. (f).

### § 573. Statement by Commonwealth for Secretary

The Commonwealth shall furnish to the Secretary of the Interior a statement with respect to the project showing work done, the status of the project, expenditures and amounts obligated, at such times and in such detail as the Secretary of the Interior shall require for the purposes of this chapter.

(July 15, 1955, ch. 369, § 3, 69 Stat. 353.)

### § 574. Hearings; withholding payments

Whenever the Secretary of the Interior, after reasonable notice and opportunity for hearing,

finds that there is a failure to expend funds in accordance with the terms and conditions governing the Federal contribution for such approved projects, he shall notify the Commonwealth that further payments will not be made to the Commonwealth from appropriations under this chapter until he is satisfied that there will no longer be any such failure. Until he is so satisfied the Secretary of the Interior shall withhold the payment of any financial contributions to the Commonwealth.

(July 15, 1955, ch. 369, § 4, 69 Stat. 353.)

### § 575. Repealed. Pub. L. 105–362, title IX, § 901(i)(1), Nov. 10, 1998, 112 Stat. 3290

Section, acts July 15, 1955, ch. 369, § 5, 69 Stat. 353; Pub. L. 87–818, § 1(8), Oct. 15, 1962, 76 Stat. 935, related to annual reports to Congress by Secretary of the Interior on anthracite mine drainage and flood control program.

### § 576. Authorization of appropriations

There is hereby authorized to be appropriated such amounts as may be necessary to carry out the provisions of this chapter.

(July 15, 1955, ch. 369, § 5, formerly § 6, 69 Stat. 353; renumbered § 5, Pub. L. 105–362, title IX, § 901(i)(2), Nov. 10, 1998, 112 Stat. 3290.)

PRIOR PROVISIONS

A prior section 5 of act July 15, 1955, ch. 369, was classified to section 575 of this title, prior to repeal by Pub. L. 105–362, § 901(i)(1).

## CHAPTER 15—SURFACE RESOURCES

SUBCHAPTER I—DISPOSAL OF MATERIALS ON PUBLIC LANDS

Sec.
601. Rules and regulations governing disposal of materials; payment; removal without charge; lands excluded.
602. Bidding; advertising and other notice; conditions for negotiation of contract.
603. Disposition of moneys from disposal of materials.
604. Disposal of sand, peat moss, etc., in Alaska; contracts.

SUBCHAPTER II—MINING LOCATIONS

611. Common varieties of sand, stone, gravel, pumice, pumicite, or cinders, and petrified wood.
612. Unpatented mining claims.
613. Procedure for determining title uncertainties.
614. Waiver of rights.
615. Limitation of existing rights.

## SUBCHAPTER I—DISPOSAL OF MATERIALS ON PUBLIC LANDS

### § 601. Rules and regulations governing disposal of materials; payment; removal without charge; lands excluded

The Secretary, under such rules and regulations as he may prescribe, may dispose of mineral materials (including but not limited to common varieties of the following: sand, stone, gravel, pumice, pumicite, cinders, and clay) and vegetative materials (including but not limited to yucca, manzanita, mesquite, cactus, and timber or other forest products) on public lands of the United States, including, for the purposes of this subchapter, land described in subchapter V of chapter 28 of title 43, if the disposal of such mineral or vegetative materials (1) is not otherwise expressly authorized by law, including, but not limited to, subchapter I of chapter 8A of title 43, and the United States mining laws, and (2) is not expressly prohibited by laws of the United States, and (3) would not be detrimental to the public interest. Such materials may be disposed of only in accordance with the provisions of this subchapter and upon the payment of adequate compensation therefor, to be determined by the Secretary: *Provided, however*, That, to the extent not otherwise authorized by law, the Secretary is authorized in his discretion to permit any Federal, State, or Territorial agency, unit or subdivision, including municipalities, or any association or corporation not organized for profit, to take and remove, without charge, materials and resources subject to this subchapter, for use other than for commercial or industrial purposes or resale. Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the department headed by the Secretary or of a State, Territory, county, municipality, water district or other local governmental subdivision or agency, the Secretary may make disposals under this subchapter only with the consent of such other Federal department or agency or of such State, Territory, or local governmental unit. Nothing in this subchapter shall be construed to apply to lands in any national park, or national monument or to any Indian lands, or lands set aside or held for the use or benefit of Indians, including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians. As used in this subchapter, the word ''Secretary'' means the Secretary of the Interior except that it means the Secretary of Agriculture where the lands involved are administered by him for national forest purposes or for the purposes of title III of the Bankhead-Jones Farm Tenant Act [7 U.S.C. 1010 et seq.] or where withdrawn for the purpose of any other function of the Department of Agriculture.

(July 31, 1947, ch. 406, § 1, 61 Stat. 681; July 23, 1955, ch. 375, § 1, 69 Stat. 367.)

REFERENCES IN TEXT

Subchapter V (§ 1181a et seq.) of chapter 28 of title 43, referred to in text, was in the original a reference to the Acts of Aug. 28, 1937 (50 Stat. 874), and June 24, 1954 (68 Stat. 270), as amended. For complete classification of these Acts to the Code, see Tables.

Subchapter I (§ 315 et seq.) of chapter 8A of title 43, referred to in text, was in the original a reference to the Act of June 28, 1934 (48 Stat. 1269), as amended, known as the Taylor Grazing Act. For complete classification of this Act to the Code, see Short Title note set out under section 315 of Title 43 and Tables.

The United States mining laws, referred to in text, are classified generally to this title.

The Bankhead-Jones Farm Tenant Act, referred to in text, is act July 22, 1937, ch. 517, 50 Stat. 522, as amended. Title III of such Act is classified generally to subchapter III (§ 1010 et seq.) of chapter 33 of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1000 of Title 7 and Tables.

AMENDMENTS

1955—Act July 23, 1955, required disposal under this subchapter of common varieties of sand, stone, gravel, pumice, pumicite, and cinders, and gave the Secretary of Agriculture the same authority as to lands under his jurisdiction as the Secretary of Interior possesses as to lands under his jurisdiction in the disposal of mining and vegetative materials.

SHORT TITLE

Act July 31, 1947, ch. 406, 61 Stat. 681, as amended, which is classified to this subchapter, is popularly known as the ''Materials Act of 1947''.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior related to compliance with materials sales contracts under this subchapter and removal permits issued under this subchapter and enforcement functions of Secretary or other official in Department of Agriculture insofar as they involve lands and programs under jurisdiction of that Department related to compliance with removal of materials under this subchapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(e), (f), 203(a), eff. July 1, 1979, 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

## § 602. Bidding; advertising and other notice; conditions for negotiation of contract

(a) The Secretary shall dispose of materials under this subchapter to the highest responsible qualified bidder after formal advertising and such other public notice as he deems appropriate: *Provided, however*, That the Secretary may authorize negotiation of a contract for the disposal of materials if—

(1) the contract is for the sale of less than two hundred fifty thousand board-feet of timber; or, if

(2) the contract is for the disposal of materials to be used in connection with a public works improvement program on behalf of a Federal, State or local governmental agency and the public exigency will not permit the delay incident to advertising; or, if

(3) the contract is for the disposal of property for which it is impracticable to obtain competition.

(b) Repealed. Pub. L. 96–470, title I, §102(a), Oct. 19, 1980, 94 Stat. 2237.

(July 31, 1947, ch. 406, §2, 61 Stat. 681; Pub. L. 87–689, §1, Sept. 25, 1962, 76 Stat. 587; Pub. L. 94–273, §20, Apr. 21, 1976, 90 Stat. 379; Pub. L. 96–470, title I, §102(a), Oct. 19, 1980, 94 Stat. 2237.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–470 struck out subsec. (b) which required a report to be made to Congress on Apr. 1 and Oct. 1 of each year of the contracts made under subsec. (a)(2) and (3) during the period since the date of the last report, which report was to name each purchaser, furnish the appraised value of the material involved, state the amount of each contract, and describe the circumstances leading to the determination that the contract should be entered into by negotiation instead of competitive bidding after formal advertising.

1976—Subsec. (b). Pub. L. 94–273 substituted ''April'' for ''January'' and ''October'' for ''July''.

1962—Pub. L. 87–689 designated existing provisions as subsec. (a), substituted therein provisions requiring the Secretary to dispose of materials after formal advertising and such other public notice as he deems appropriate, and authorizing negotiation of a contract for the sale of less than 250,000 board-feet of timber, or for materials to be used in connection with public works improvement program for a Federal, State, or local governmental agency where the public exigency will not permit the delay of advertising, or for property for which it is impracticable to obtain competition, for provisions requiring publication of notice once a week for 4 consecutive weeks in a newspaper of general circulation, and competitive bidding, in cases where the value was in excess of $1,000, and permitting disposal upon such notice and in such manner as he prescribed where the value was $1,000 or less, and added subsec. (b).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other appropriate officer or entity in Departments of Agriculture and the Interior under this subchapter to Federal Inspector of Office of Federal Inspector for Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 601 of this title.

## § 603. Disposition of moneys from disposal of materials

All moneys received from the disposal of materials under this subchapter shall be disposed of in the same manner as moneys received from the sale of public lands, except that moneys received from the disposal of materials by the Secretary of Agriculture shall be disposed of in the same manner as other moneys received by the Department of Agriculture from the administration of the lands from which the disposal of materials is made, and except that revenues from the lands described in subchapter V of chapter 28 of title 43, shall be disposed of in accordance with said sections and except that moneys received from the disposal of materials from school section lands in Alaska, reserved under section 1 of the Act of March 4, 1915 (38 Stat. 1214), shall be set apart as separate and permanent funds in the Territorial Treasury, as provided for income derived from said school section lands pursuant to said Act.

(July 31, 1947, ch. 406, §3, 61 Stat. 681; Aug. 31, 1950, ch. 830, 64 Stat. 571; July 23, 1955, ch. 375, §2, 69 Stat. 368.)

REFERENCES IN TEXT

Subchapter V (§1181a et seq.) of chapter 28 of title 43, referred to in text, was in the original a reference to the Acts of Aug. 28, 1937 (50 Stat. 874), and June 24, 1954 (68 Stat. 270), as amended. For complete classification of these Acts to the Code, see Tables.

Act of March 4, 1915 (38 Stat. 1214), referred to in text, is act Mar. 4, 1915, ch. 181, 38 Stat. 1214, as amended. Section 1 of that Act, which made reservation of cer-

tain Alaska lands for educational purposes, covered disposition of proceeds or income derived from reserved lands, and set out the exclusion of certain lands, was classified to section 353 of Title 48, Territories and Insular Possessions, and was repealed by Pub. L. 85–508, § 6(k), July 7, 1958, 72 Stat. 343. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1955—Act July 23, 1955, provided for the disposal of moneys received by the Secretary of Agriculture, and for the disposal of revenues from the lands described in sections 1181a to 1181j of title 43.

1950—Act Aug. 31, 1950, provided for setting apart as separate and permanent funds in the Territorial Treasury moneys received from disposal of materials from school section lands in Alaska.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other appropriate officer or entity in Departments of Agriculture and the Interior under this subchapter to Federal Inspector of Office of Federal Inspector for Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 601 of this title.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

### § 604. Disposal of sand, peat moss, etc., in Alaska; contracts

Subject to the provisions of this subchapter, the Secretary may dispose of sand, stone, gravel, and vegetative materials located below high-water mark of navigable waters of the Territory of Alaska. Any contract, unexecuted in whole or in part, for the disposal under this subchapter of materials from land, title to which is transferred to a future State upon its admission to the Union, and which is situated within its boundaries, may be terminated or adopted by such State.

(July 31, 1947, ch. 406, § 4, as added Aug. 31, 1950, ch. 830, 64 Stat. 572.)

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other appropriate officer or entity in Departments of Agriculture and the Interior under this subchapter to Federal Inspector of Office of Federal Inspector for Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 601 of this title.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

## SUBCHAPTER II—MINING LOCATIONS

### § 611. Common varieties of sand, stone, gravel, pumice, pumicite, or cinders, and petrified wood

No deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders and no deposit of petrified wood shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws: *Provided, however*, That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. ''Common varieties'' as used in this subchapter and sections 601 and 603 of this title does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called ''block pumice'' which occurs in nature in pieces having one dimension of two inches or more. ''Petrified wood'' as used in this subchapter and sections 601 and 603 of this title means agatized, opalized, petrified, or silicified wood, or any material formed by the replacement of wood by silica or other matter.

(July 23, 1955, ch. 375, § 3, 69 Stat. 368; Pub. L. 87–713, § 1, Sept. 28, 1962, 76 Stat. 652.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in text, are classified generally to this title.

AMENDMENTS

1962—Pub. L. 87–713 defined ''petrified wood'', and provided that no deposit of petrified wood shall be deemed a valuable mineral deposit within the mining laws of the United States.

REGULATIONS FOR REMOVAL OF LIMITED QUANTITIES OF PETRIFIED WOOD

Section 2 of Pub. L. 87–713 provided that: ''The Secretary of the Interior shall provide by regulation that limited quantities of petrified wood may be removed without charge from those public lands which he shall specify.''

### § 612. Unpatented mining claims

#### (a) Prospecting, mining or processing operations

Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.

#### (b) Reservations in the United States to use of the surface and surface resources

Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees,

and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: *Provided, however*, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto: *Provided further*, That if at any time the locator requires more timber for his mining operations than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed of from the claim: *Provided further*, That nothing in this subchapter and sections 601 and 603 of this title shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.

**(c) Severance or removal of timber**

Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove, or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under subsection (b) of this section. Any severance or removal of timber which is permitted under the exceptions of the preceding sentence, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management.

(July 23, 1955, ch. 375, §4, 69 Stat. 368.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in text, are classified generally to this title.

**§613. Procedure for determining title uncertainties**

**(a) Notice to mining claimants; request; publication; service**

The head of a Federal department or agency which has the responsibility for administering surface resources of any lands belonging to the United States may file as to such lands in the office of the Secretary of the Interior, or in such office as the Secretary of the Interior may designate, a request for publication of notice to mining claimants, for determination of surface rights, which request shall contain a description of the lands covered thereby, showing the section or sections of the public land surveys which embrace the lands covered by such request, or if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

The filing of such request for publication shall be accompanied by an affidavit or affidavits of a person or persons over twenty-one years of age setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of such lands or any part thereof, and, if no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof on the date of such examination, setting forth such fact, or, if any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, setting forth the name and address of each such person, unless affiant shall have been unable through reasonable inquiry to obtain information as to the name and address of any such person, in which event the affidavit shall set forth fully the nature and results of such inquiry.

The filing of such request for publication shall also be accompanied by the certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's abstractor's, or attorney's examination of those instruments which are shown by the tract indexes in the county office of record as affecting the lands described in said request, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim heretofore located, together with the address of such person if such address is disclosed by such instruments of record. ''Tract indexes'' as used herein shall mean those indexes, if any, as to surveyed lands identifying instruments as affecting a particular legal subdivision of the public land surveys, and as to unsurveyed lands identifying instruments as affecting a particular probable legal subdivision according to a projected extension of the public land surveys.

Thereupon the Secretary of the Interior, at the expense of the requesting department or agency, shall cause notice to mining claimants to be published in a newspaper having general circulation in the county in which the lands involved are situate.

Such notice shall describe the lands covered by such request, as provided heretofore, and shall notify whomever it may concern that if any person claiming or asserting under, or by virtue of, any unpatented mining claim heretofore located, rights as to such lands or any part thereof, shall fail to file in the office where such request for publication was filed (which office shall be specified in such notice) and within one hundred and fifty days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim—

(1) the date of location;

(2) the book and page of recordation of the notice or certificate of location;

(3) the section or sections of the public land surveys which embrace such mining claims; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) whether such claimant is a locator or purchaser under such location; and

(5) the name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim;

such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any right, title, or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 612 of this title as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 612 of this title as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 612 of this title as to hereafter located unpatented mining claims.

If such notice is published in a daily paper, it shall be published in the Wednesday issue for nine consecutive weeks, or, if in a weekly paper, in nine consecutive issues, or if in a semiweekly or triweekly paper, in the issue of the same day of each week for nine consecutive weeks.

Within fifteen days after the date of first publication of such notice, the department or agency requesting such publication (1) shall cause a copy of such notice to be personally delivered to or to be mailed by registered mail or by certified mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by an affidavit filed as aforesaid, and to each person who may have filed, as to any lands described in said notice, a request for notices, as provided in subsection (d) of this section, and shall cause a copy of such notice to be mailed by registered mail or by certified mail to each person whose name and address is set forth in the title or abstract company's or title abstractor's or attorney's certificate filed as aforesaid, as having an interest in the lands described in said notice under any unpatented mining claim heretofore located, such notice to be directed to such person's address as set forth in such certificate; and (2) shall file in the office where said request for publication was filed an affidavit showing that copies have been so delivered or mailed.

**(b) Failure to file verified statement**

If any claimant under any unpatented mining claim heretofore located which embraces any of the lands described in any notice published in accordance with the provisions of subsection (a) of this section, shall fail to file a verified statement, as provided in such subsection (a), within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed, except as otherwise provided in subsection (e) of this section, (i) to constitute a waiver and relinquishment by such mining claimant of any right, title, or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 612 of this title as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 612 of this title as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 612 of this title as to hereafter located unpatented mining claims.

**(c) Hearings**

If any verified statement shall be filed by a mining claimant as provided in subsection (a) of this section, then the Secretary of Interior shall fix a time and place for a hearing to determine the validity and effectiveness of any right or title to, or interest in or under such mining claim, which the mining claimant may assert contrary to or in conflict with the limitations and restrictions specified in section 612 of this title as to hereafter located unpatented mining claims, which place of hearing shall be in the county where the lands in question or parts thereof are located, unless the mining claimant agrees otherwise. Where verified statements are filed asserting rights to an aggregate of more than twenty mining claims, any single hearing shall be limited to a maximum of twenty mining claims unless the parties affected shall otherwise stipulate and as many separate hearing[1] shall be set as shall be necessary to comply with this provision. The procedures with respect to notice of such a hearing and the conduct thereof, and in respect to appeals shall follow the then established general procedures and rules of practice of the Department of the Interior in respect to contests or protests affecting public lands of the United States. If, pursuant to such a hearing the final decision rendered in the matter shall affirm the validity and effectiveness of any mining claimant's so asserted right or interest under the mining claim, then no subsequent proceedings under this section shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim. If at any time prior to a hearing the department or agency requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified

[1] So in original. Probably should be ''hearings''.

statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by that particular published notice.

**(d) Request for copy of notice**

Any person claiming any right under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice to mining claimants which may be published as provided in subsection (a) of this section, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice or certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies and shall also set forth, as to each heretofore located unpatented mining claim under which such person asserts rights—

(1) the date of location;

(2) the book and page of the recordation of the notice or certificate of location; and

(3) the section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

Other than in respect to the requirements of subsection (a) of this section as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

**(e) Failure to deliver or mail copy of notice**

If any department or agency requesting publication shall fail to comply with the requirements of subsection (a) of this section as to the personal delivery or mailing of a copy of notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice, shall in no manner affect, diminish, prejudice or bar any rights of that person.

(July 23, 1955, ch. 375, § 5, 69 Stat. 369; Pub. L. 86–507, § 1(26), June 11, 1960, 74 Stat. 201.)

AMENDMENTS

1960—Subsec. (a). Pub. L. 86–507 inserted ''or by certified mail'' after ''registered mail'' in two places in last paragraph.

### § 614. Waiver of rights

The owner or owners of any unpatented mining claim heretofore located may waive and relinquish all rights thereunder which are contrary to or in conflict with the limitations or restrictions specified in section 612 of this title as to hereafter located unpatented mining claims. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter and prior to issuance of patent subject to the limitations and restrictions in section 612 of this title in all respects as if said mining claim had been located after July 23, 1955, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

(July 23, 1955, ch. 375, § 6, 69 Stat. 372.)

### § 615. Limitation of existing rights

Nothing in this subchapter and sections 601 and 603 of this title shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing rights of any claimant under any valid mining claim heretofore located, except as such rights may be limited or restricted as a result of a proceeding pursuant to section 613 of this title, or as a result of a waiver and relinquishment pursuant to section 614 of this title; and nothing in this subchapter and sections 601 and 603 of this title shall be construed in any manner to authorized inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim heretofore or hereafter located, of any reservation, limitation, or restriction not otherwise authorized by law, or to limit or repeal any existing authority to include any reservation, limitation, or restriction in any such patent, or to limit or restrict any use of the lands covered by any patented or unpatented mining claim by the United States, its lessees, permittees, and licensees which is otherwise authorized by law.

(July 23, 1955, ch. 375, § 7, 69 Stat. 372.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in text, are classified generally to this title.

## CHAPTER 16—MINERAL DEVELOPMENT OF LANDS WITHDRAWN FOR POWER DEVELOPMENT

Sec.
621. Entry to lands reserved for power development.
622. Liability for damage, destruction, or loss of claim.
623. Recording and reporting of unpatented claims; time.
624. Protection of existing valid claims.
625. Prohibition of unspecified use.

### § 621. Entry to lands reserved for power development

**(a) Conditions of entry**

All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims and for mining, develop-

ment, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes: *Provided*, That all power rights to such lands shall be retained by the United States: *Provided further*, That locations made under this chapter within the revested Oregon and California Railroad and reconveyed Coos Bay Wagon grant lands shall also be subject to the provisions of the Act of April 8, 1948, Public Law 477 (Eightieth Congress, second session): *And provided further*, That nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act [16 U.S.C. 791a et seq.] or other Act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Energy Regulatory Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

**(b) Placer claims; notice; hearing; order; rules and regulations**

The locator of a placer claim under this chapter, however, shall conduct no mining operations for a period of sixty days after the filing of a notice of location pursuant to section 623 of this title. If the Secretary of the Interior, within sixty days from the filing of the notice of location, notifies the locator by registered mail or certified mail of the Secretary's intention to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land included within the placer claim, mining operations on that claim shall be further suspended until the Secretary has held the hearing and has issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations; or (3) a general permission to engage in placer mining. No order by the Secretary with respect to such operations shall be valid unless a certified copy is filed in the same State or county office in which the locator's notice of location has been filed in compliance with the United States mining laws.

The Secretary shall establish such rules and regulations as he deems desirable concerning bonds and deposits with respect to the restoration of lands to their condition prior to placer mining operations. Moneys received from any bond or deposit shall be used for the restoration of the surface of the claim involved, and any money received in excess of the amount needed for the restoration of the surface of that claim shall be refunded.

**(c) Validity of withdrawals unaffected**

Nothing in this chapter shall affect the validity of withdrawals or reservations for purposes other than power development.

(Aug. 11, 1955, ch. 797, § 2, 69 Stat. 682; Pub. L. 86–507, § 1(27), June 11, 1960, 74 Stat. 202; Pub. L. 95–91, title IV, § 402(a)(1)(A), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 584, 606, 607.)

REFERENCES IN TEXT

Act of April 8, 1948, referred to in subsec. (a), is act Apr. 8, 1948, ch. 179, 62 Stat. 162, which is not classified to the Code.

The Federal Power Act, referred to in subsec. (a), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

AMENDMENTS

1960—Subsec. (b). Pub. L. 86–507 inserted ''or certified mail'' after ''registered mail''.

SHORT TITLE

Section 1 of act Aug. 11, 1955, provided: ''That this Act [enacting this chapter] may be cited as the 'Mining Claims Rights Restoration Act of 1955'.''

TRANSFER OF FUNCTIONS

''Federal Energy Regulatory Commission'' substituted for ''Federal Power Commission'' in subsec. (a) pursuant to sections 402(a)(1)(A), 703, and 707 of Pub. L. 95–91, which are classified to sections 7172(a)(1)(A), 7293, and 7297 of Title 42, The Public Health and Welfare, and which terminated Federal Power Commission and transferred its functions relating to licensing and permits for dams, reservoirs, or other works for development and improvement of navigation and for development and utilization of power across, along, from, or in navigable waters under part I of Federal Power Act (16 U.S.C. 791a et seq.) to Federal Energy Regulatory Commission.

## § 622. Liability for damage, destruction, or loss of claim

Prospecting and exploration for and the development and utilization of mineral resources authorized in this chapter shall be entered into or continued at the financial risk of the individual party or parties undertaking such work: *Provided*, That the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

(Aug. 11, 1955, ch. 797, § 3, 69 Stat. 682.)

## § 623. Recording and reporting of unpatented claims; time

The owner of any unpatented mining claim located on land described in section 621 of this title shall file for record in the United States district land office of the land district in which the claim is situated (1) within one year after August 11, 1955, as to any or all locations heretofore made, or within sixty days of location as to locations hereafter made, a copy of the notice of location of the claim; (2) within sixty days

after the expiration of any annual assessment year, a statement as to the assessment work done or improvements made during the previous assessment year.

(Aug. 11, 1955, ch. 797, § 4, 69 Stat. 683.)

### § 624. Protection of existing valid claims

Nothing in this chapter contained shall be construed to limit or restrict the rights of the owner or owners of any valid mining claim located prior to the date of withdrawal or reservation: *Provided*, That nothing in this chapter shall be construed to limit or restrict the rights of the owner or owners of any mining claim who are diligently working to make a discovery of valuable minerals at the time any future withdrawal or reservation for power development is made.

(Aug. 11, 1955, ch. 797, § 5, 69 Stat. 683.)

### § 625. Prohibition of unspecified use

Notwithstanding any other provisions of this chapter, all mining claims and mill sites or mineral rights located under the terms of this chapter or otherwise contained on the public lands as described in section 621 of this title shall be used only for the purposes specified in section 621 of this title and no facility or activity shall be erected or conducted thereon for other purposes.

(Aug. 11, 1955, ch. 797, § 6, 69 Stat. 683.)

## CHAPTER 17—EXPLORATION PROGRAM FOR DISCOVERY OF MINERALS

Sec.
641. Establishment and maintenance of program for exploration; financial assistance.
642. Exploration contracts.
643. ''Exploration'' defined.
644. Advice and assistance by Government departments and agencies; expenditure of funds.
645. Repealed.
646. Authorization of appropriations.

### § 641. Establishment and maintenance of program for exploration; financial assistance

The Secretary of the Interior is hereby authorized and directed, in order to provide for discovery of additional domestic mineral reserves, to establish and maintain a program for exploration by private industry within the United States, its Territories and possessions for such minerals, excluding organic fuels, as he shall from time to time designate, and to provide Federal financial assistance on a participating basis for that purpose.

(Pub. L. 85–701, § 1, Aug. 21, 1958, 72 Stat. 700.)

CONGRESSIONAL DECLARATION OF POLICY

The recital clause of Pub. L. 85–701, which preceded section 1, provided: ''That it is declared to be the policy of the Congress to stimulate exploration for minerals within the United States, its Territories and possessions.''

### § 642. Exploration contracts

#### (a) Terms and conditions; interest rates

In order to carry out the purposes of this chapter, and subject to the provisions of this section, the Secretary is authorized to enter into exploration contracts with individuals, partnerships, corporations, or other legal entities which shall provide for such Federal financial participation as he deems in the national interest. Such contracts shall contain terms and conditions as the Secretary deems necessary and appropriate, including terms and conditions for the repayment of the Federal funds made available under any contract together with interest thereon, as a royalty on the value of the production from the area described in the contract. Interest shall be calculated from the date of the loan. Such interest shall be at rates which (1) are not less than the rates of interest which the Secretary of the Treasury shall determine the Department of the Interior would have to pay if it borrowed such funds from the Treasury of the United States, taking into consideration current average yields on outstanding marketable obligations of the United States with maturities comparable to the terms of the particular contracts involved and (2) plus 2 per centum per annum in lieu of recovering the cost of administering the particular contracts.

#### (b) Deposit of royalty payments

Royalty payments received under subsection (a) of this section shall be covered into the miscellaneous receipts of the Treasury.

#### (c) Certification of exploration projects; payment of royalties; time limitation on payment; royalty agreements

When in the opinion of the Secretary an analysis and evaluation of the results of the exploration project disclose that mineral production from the area covered by the contract may be possible he shall so certify within the time specified in the contract. Upon certification, payment of royalties shall be a charge against production for the full period specified in the contract or until the obligation has been discharged, but in no event shall such royalty payments continue for a period of more than twenty-five years from the date of contract. When the Secretary determines not to certify he shall promptly notify the contractor. When the Secretary deems it necessary and in the public interest, he may enter into royalty agreements to provide for royalty payments in the same manner as though the project had been certified.

#### (d) Production

No provision of this chapter, nor any rule or regulation which may be issued by the Secretary shall be construed to require any production from the area described in the contract.

#### (e) Rules and regulations; adjustment of contracts

The Secretary shall establish and promulgate such rules and regulations as may be necessary to carry out the purposes of this chapter: *Provided, however*, That he may modify and adjust the terms and conditions of any contract to reduce the amount and term of any royalty payment when he shall determine that such action is necessary and in the public interest: *Provided further*, That no such single contract shall authorize Government participation in excess of $250,000.

**(f) Availability of funds**

No funds shall be made available under this chapter unless the applicant shall furnish evidence that funds from commercial sources are unavailable on reasonable terms.

(Pub. L. 85–701, § 2, Aug. 21, 1958, 72 Stat. 700.)

### § 643. "Exploration" defined

As used in this chapter, the term ''exploration'' means the search for new or unexplored deposits of minerals, including related development work, within the United States, its Territories and possessions, whether conducted from the surface or underground, using recognized and sound procedures including standard geophysical and geochemical methods for obtaining mineralogical and geological information.

(Pub. L. 85–701, § 3, Aug. 21, 1958, 72 Stat. 701.)

### § 644. Advice and assistance by Government departments and agencies; expenditure of funds

Departments and agencies of the Government are authorized to advise and assist the Secretary of the Interior, upon his request, in carrying out the provisions of this chapter and may expend their funds for such purposes, with or without reimbursement, in accordance with such agreements as may be necessary.

(Pub. L. 85–701, § 4, Aug. 21, 1958, 72 Stat. 701.)

### § 645. Repealed. Pub. L. 93–608, § 1(13), Jan. 2, 1975, 88 Stat. 1969

Section, Pub. L. 85–701, § 5, Aug. 21, 1958, 72 Stat. 701; Pub. L. 89–348, § 2(5), Nov. 8, 1965, 79 Stat. 1312, required Secretary of the Interior to report to Congress on operations of programs authorized pursuant to this chapter.

### § 646. Authorization of appropriations

There are hereby authorized to be appropriated, from any funds in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this chapter.

(Pub. L. 85–701, § 6, Aug. 21, 1958, 72 Stat. 701.)

## CHAPTER 18—COAL RESEARCH AND DEVELOPMENT

Sec.
661. Short title; definitions.
662. Powers and duties of Secretary.
663, 664. Repealed.
665. Sites for conducting research; availability of personnel and facilities.
666. Public-availability requirement; national defense; patent agreements.
667. Repealed.
668. Authorization of appropriations.

### § 661. Short title; definitions

(a) This chapter may be cited as the ''Coal Research and Development Act of 1960''.

(b) In this chapter:

(1) The term ''research'' means scientific, technical, and economic research and the practical application of that research.

(2) The term ''Secretary'' means the Secretary of Energy.

(Pub. L. 86–599, § 1, as added Pub. L. 109–58, title X, § 1009(a)(1)(A), Aug. 8, 2005, 119 Stat. 934.)

PRIOR PROVISIONS

A prior section 661, Pub. L. 86–599, § 1, July 7, 1960, 74 Stat. 336, defined terms for purposes of this chapter, prior to repeal by Pub. L. 109–58, title X, § 1009(a)(1)(A), Aug. 8, 2005, 119 Stat. 934.

### § 662. Powers and duties of Secretary

The Secretary shall—

(1) develop through research, new and more efficient methods of mining, preparing, and utilizing coal;

(2) contract for, sponsor, cosponsor, and promote the coordination of, research with recognized interested groups, including but not limited to, coal trade associations, coal research associations, educational institutions, and agencies of States and political subdivisions of States;

(3) establish technical advisory committees composed of recognized experts in various aspects of coal research to assist in the examination and evaluation of research progress and of all research proposals and contracts and to insure the avoidance of duplication of research; and

(4) cooperate to the fullest extent possible with other departments, agencies, and independent establishments of the Federal Government and with State governments, and with all other interested agencies, governmental and nongovernmental.

(Pub. L. 86–599, § 2, July 7, 1960, 74 Stat. 336; Pub. L. 109–58, title X, § 1009(a)(1)(B), Aug. 8, 2005, 119 Stat. 934.)

AMENDMENTS

2005—Pub. L. 109–58 struck out ''shall establish within the Department of the Interior an Office of Coal Research, and through such Office'' after ''The Secretary'' in introductory provisions.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

### §§ 663, 664. Repealed. Pub. L. 109–58, title X, § 1009(a)(1)(C), Aug. 8, 2005, 119 Stat. 934

Section 663, Pub. L. 86–599, § 3, July 7, 1960, 74 Stat. 336, related to advisory committees appointed under provisions of chapter.

Section 664, Pub. L. 86–599, § 4 (part), July 7, 1960, 74 Stat. 336, related to appointment of Director of Coal Research.

### § 665. Sites for conducting research; availability of personnel and facilities

Research authorized by this chapter may be conducted wherever suitable personnel and facilities are available.

(Pub. L. 86–599, § 3, formerly § 5, July 7, 1960, 74 Stat. 337; renumbered § 3, Pub. L. 109–58, title X, § 1009(a)(1)(D), Aug. 8, 2005, 119 Stat. 934.)

PRIOR PROVISIONS

A prior section 3 of Pub. L. 86–599 was classified to section 663 of this title, prior to repeal by Pub. L. 109–58, § 1009(a)(1)(C).

### § 666. Public-availability requirement; national defense; patent agreements

No research shall be carried out, contracted for, sponsored, cosponsored, or authorized under authority of this chapter, unless all information, uses, products, processes, patents, and other developments resulting from such research will (with such exceptions and limitations, if any, as the Secretary may find to be necessary in the interest of national defense) be available to the general public. Whenever in the estimation of the Secretary the purposes of this chapter would be furthered through the use of patented processes or equipment, the Secretary is authorized to enter into such agreements as he deems necessary for the acquisition or use of such patents on reasonable terms and conditions.

(Pub. L. 86–599, § 4, formerly § 6, July 7, 1960, 74 Stat. 337; renumbered § 4, Pub. L. 109–58, title X, § 1009(a)(1)(D), Aug. 8, 2005, 119 Stat. 934.)

PRIOR PROVISIONS

A prior section 4 of Pub. L. 86–599 was classified to section 664 of this title, prior to repeal by Pub. L. 109–58, § 1009(a)(1)(C).

### § 667. Repealed. Pub. L. 109–58, title X, § 1009(a)(1)(C), Aug. 8, 2005, 119 Stat. 934

Section, Pub. L. 86–599, § 7, July 7, 1960, 74 Stat. 337, related to reports to President and Congress.

### § 668. Authorization of appropriations

#### (a) Fiscal year beginning July 1, 1960

There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to remain available until expended, not to exceed $2,000,000 to be used to carry out the purposes of this chapter for the fiscal year beginning July 1, 1960.

#### (b) Fiscal years beginning after June 30, 1961

There are hereby authorized to be appropriated for each fiscal year beginning after June 30, 1961, such sums as may be necessary to carry out the purposes of this chapter.

#### (c) Availability of sums

Sums appropriated to carry out the purposes of this chapter shall remain available until expended.

(Pub. L. 86–599, § 5, formerly § 8, July 7, 1960, 74 Stat. 337; renumbered § 5, Pub. L. 109–58, title X, § 1009(a)(1)(D), Aug. 8, 2005, 119 Stat. 934.)

PRIOR PROVISIONS

A prior section 5 of Pub. L. 86–599 was renumbered section 3 and is classified to section 665 of this title.

## CHAPTER 19—LEAD AND ZINC STABILIZATION PROGRAM

### §§ 681 to 689. Omitted

CODIFICATION

Section 681, Pub. L. 87–347, § 1, Oct. 3, 1961, 75 Stat. 766, stated purpose of this chapter as establishment and maintenance of a program of stabilization payments (which terminated December 31, 1969) to small domestic producers of lead and zinc ores and concentrates in order to stabilize the mining of lead and zinc by such producers. See note for section 687 below.

Section 682, Pub. L. 87–347, § 2, Oct. 3, 1961, 75 Stat. 766; Pub. L. 89–238, § 1(1), Oct. 5, 1965, 79 Stat. 925, provided for stabilization payments (which terminated December 31, 1969) and conditions and limitations of payments. See note for section 687 below.

Section 683, Pub. L. 87–347, § 3, Oct. 3, 1961, 75 Stat. 767; Pub. L. 89–238, § 1(2), Oct. 5, 1965, 79 Stat. 925, provided for additional limitations on payments which terminated on December 31, 1969. See note for section 687 below.

Section 684, Pub. L. 87–347, § 4, Oct. 3, 1961, 75 Stat. 767, authorized Secretary to promulgate such regulations and require such reports as deemed necessary to carry out program of stabilization payments (which terminated December 31, 1969) under this chapter. See note for section 687 below.

Section 685, Pub. L. 87–347, § 5, Oct. 3, 1961, 75 Stat. 768, authorized Secretary to delegate functions relating to stabilization payments (which terminated December 31, 1969) under this chapter to Administrator of General Services. See note for section 687 below.

Section 686, Pub. L. 87–347, § 6, Oct. 3, 1961, 75 Stat. 768; Pub. L. 88–75, July 25, 1963, 77 Stat. 92; Pub. L. 89–238, § 1(3), Oct. 5, 1965, 79 Stat. 925, defined terms as used in this chapter relating to stabilization payments which terminated December 31, 1969. See note for section 687 below.

Section 687, Pub. L. 87–347, § 7, Oct. 3, 1961, 75 Stat. 768; Pub. L. 89–238, § 1(4), Oct. 5, 1965, 79 Stat. 925, provided that no payment be made under this chapter after Dec. 31, 1969, but permitted authorized payment only if application therefor was filed not later than Mar. 31, 1970.

Section 688, Pub. L. 87–347, § 8, Oct. 3, 1961, 75 Stat. 768, required annual reports to Congress on operations relating to stabilization payments (which terminated December 31, 1969) under this chapter not later than first day of March each year. See note for section 687 above.

Section 689, Pub. L. 87–347, § 9, Oct. 3, 1961, 75 Stat. 768; Pub. L. 89–238, § 1(5), Oct. 5, 1965, 79 Stat. 925, related to penalties for procuring a stabilization payment (which terminated December 31, 1969) not entitled to under this chapter and civil and criminal liability for keeping a payment not entitled to under this chapter. See note for section 687 above.

## CHAPTER 20—CONVEYANCES TO OCCUPANTS OF UNPATENTED MINING CLAIMS

Sec.
701. Authorization to convey; acreage limitations; qualified applicants; payment; ''qualified officer of the United States'' defined.
702. ''Qualified applicant'' defined.
703. Withdrawal of lands in aid of a governmental unit.
704. Purchase of substitute lands; limitations; conditions; payment; conveyance of less than a fee.
705. Purchase price of conveyed interest; installment payments.
706. Liabilities of occupants; trespass; limitations.
707. Reservation of mineral rights.
708. Assignments; succession.
709. Disposition of payments and fees.

**§ 701. Authorization to convey; acreage limitations; qualified applicants; payment; "qualified officer of the United States" defined**

The Secretary of the Interior may convey to any occupant of an unpatented mining claim which is determined by the Secretary to be invalid an interest, up to and including a fee simple, in and to an area within the claim of not more than (a) five acres or (b) the acreage actually occupied by him, whichever is less. The Secretary may make a like conveyance to any occupant of an unpatented mining claim who, after notice from a qualified officer of the United States that the claim is believed to be invalid, relinquishes to the United States all rights in and to such claim which he may have under the mining laws. Any conveyance authorized by this section, however, shall be made only to a qualified applicant, as that term is defined in section 702 of this title, who applies therefor within the period ending June 30, 1971, and upon payment of an amount established in accordance with section 705 of this title.

As used in this section, the term ''qualified officer of the United States'' means the Secretary of the Interior or an employee of the Department of the Interior so designated by him: *Provided*, That the Secretary may delegate his authority to designate qualified officers to the head of any other department or agency of the United States with respect to lands within the administrative jurisdiction of that department or agency.

(Pub. L. 87–851, § 1, Oct. 23, 1962, 76 Stat. 1127; Pub. L. 90–111, § 1, Oct. 23, 1967, 81 Stat. 311.)

REFERENCES IN TEXT

The mining laws, referred to in text, are classified generally to this title.

AMENDMENTS

1967—Pub. L. 90–111 extended from Oct. 23, 1967, to June 30, 1971, the period in which qualified individuals shall apply for conveyances authorized by this section.

**§ 702. "Qualified applicant" defined**

For the purposes of this chapter a qualified applicant is a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962.

(Pub. L. 87–851, § 2, Oct. 23, 1962, 76 Stat. 1127.)

**§ 703. Withdrawal of lands in aid of a governmental unit**

Where the lands for which application is made under section 701 of this title have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may convey an interest therein only with the consent of the head of the governmental unit concerned and under such terms and conditions as said head may deem necessary.

(Pub. L. 87–851, § 3, Oct. 23, 1962, 76 Stat. 1127.)

**§ 704. Purchase of substitute lands; limitations; conditions; payment; conveyance of less than a fee**

(a) If the Secretary of the Interior determines that conveyance of an interest under section 701 of this title is otherwise justified but the consent required by section 703 of this title is not given, he may, in accordance with such procedural rules and regulations as he may prescribe, grant the applicant a right to purchase, for residential use, an interest in another tract of land, five acres or less in area, from tracts made available by him for sale under this chapter (1) from the unappropriated and unreserved lands of the United States, or (2) from lands subject to classification under section 315f of title 43. Said right shall not be granted until arrangements satisfactory to the Secretary have been made for termination of the applicant's occupancy of his unpatented mining claim and for settlement of any liability for the unauthorized use thereof which may have been incurred and shall expire five years from the date on which it was granted unless sooner exercised. The amount to be paid for the interest shall be determined in accordance with section 705 of this title.

(b) Any conveyance of less than a fee made under this chapter shall include provision for removal from the tract of any improvements or other property of the applicant at the close of the period for which the conveyance is made, or if it be an interest terminating on the death of the applicant, within one year thereafter.

(Pub. L. 87–851, § 4, Oct. 23, 1962, 76 Stat. 1127.)

**§ 705. Purchase price of conveyed interest; installment payments**

The Secretary of the Interior, prior to any conveyance under this chapter, shall determine the fair market value of the interest to be conveyed, exclusive of the value of any improvements placed on the lands involved by the applicant or his predecessors in interest. Said value shall be determined as of the date of appraisal. In establishing the purchase price to be paid by the applicant for the interest, the Secretary shall take into consideration any equities of the applicant and his predecessors in interest, including conditions of prior use and occupancy. In any event the purchase price for any interest conveyed shall not exceed its fair market value nor be less than $5 per acre. The Secretary may, in his discretion, allow payment to be made in installments.

(Pub. L. 87–851, § 5, Oct. 23, 1962, 76 Stat. 1128.)

**§ 706. Liabilities of occupants; trespass; limitations**

(a) The execution of a conveyance as authorized by section 701 of this title shall not relieve any occupant of the land conveyed of any liability, existing on the date of said conveyance, to the United States for unauthorized use of the land in and to which an interest is conveyed.

(b) Except where a mining claim embracing land applied for under this chapter by a qualified applicant was located at a time when the

land included therein was withdrawn or otherwise not subject to such location, no trespass charges shall be sought or collected by the United States from any qualified applicant who has filed an application for land in the mining claim pursuant to this chapter, based upon occupancy of such claim, whether residential or otherwise, for any period preceding the final administrative determination of the invalidity of the mining claim by the Secretary of the Interior or the voluntary relinquishment of the mining claim, whichever occurs earlier. Nothing contained in this chapter shall be construed as creating any liability for trespass to the United States which would not exist in the absence of this chapter. Relief under this section shall be limited to persons who file applications for conveyances pursuant to section 701 of this title within the period ending June 30, 1971.

(Pub. L. 87–851, § 6, Oct. 23, 1962, 76 Stat. 1128; Pub. L. 90–111, § 2, Oct. 23, 1967, 81 Stat. 311.)

AMENDMENTS

1967—Subsec. (b). Pub. L. 90–111 extended from Oct. 23, 1967 to June 30, 1971, the period in which relief shall be accorded under this section to individuals who apply for conveyances pursuant to section 701 of this title.

### § 707. Reservation of mineral rights

In any conveyance under this chapter the mineral interests of the United States in the lands conveyed are reserved for the term of the estate conveyed. Minerals locatable under the mining laws or disposable under subchapter I of chapter 15 of this title, are withdrawn from all forms of entry and appropriation for the term of the estate. The underlying oil, gas, and other leasable minerals of the United States are reserved for exploration and development purposes, but without the right of surface ingress and egress, and may be leased by the Secretary under the mineral leasing laws.

(Pub. L. 87–851, § 7, Oct. 23, 1962, 76 Stat. 1128.)

REFERENCES IN TEXT

The mining laws and the mineral leasing laws, referred to in text, are classified generally to this title.

### § 708. Assignments; succession

Rights and privileges to qualify as an applicant under this chapter shall not be assignable, but may pass through devise or descent.

(Pub. L. 87–851, § 8, Oct. 23, 1962, 76 Stat. 1128.)

### § 709. Disposition of payments and fees

Payments of filing fees and survey costs, and the payments of the purchase price for patents in fee shall be disposed of by the Secretary of the Interior as are such fees, costs, and purchase prices in the disposition of public lands. All payments and fees for occupancy in conveyances of less than the fee, or for permits for life or shorter periods, shall be disposed of by the administering department or agency as are other receipts for the use of the lands involved.

(Pub. L. 87–851, § 9, Oct. 23, 1962, 76 Stat. 1128.)

## CHAPTER 21—METAL AND NONMETALLIC MINE SAFETY

### §§ 721 to 740. Repealed. Pub. L. 95–164, title III, § 306(a), Nov. 9, 1977, 91 Stat. 1322

This chapter, covering the operation of only metal and nonmetallic mines, is covered by section 801 et seq. of this title following the enactment of Pub. L. 95–164 which brought the operation of all coal and other mines under a single legislative canopy.

Section 721, Pub. L. 89–577, § 2, Sept. 16, 1966, 80 Stat. 772, defined ''commerce'', ''mine'', ''operator'', ''Secretary'', and ''Board''. See section 802 of this title.

Section 722, Pub. L. 89–577, § 3, Sept. 16, 1966, 80 Stat. 773, described mines to be covered and empowered Secretary of the Interior to decline jurisdiction if effect of the mine on commerce was not sufficiently substantial. See section 801 et seq. of this title.

Section 723, Pub. L. 89–577, § 4, Sept. 16, 1966, 80 Stat. 773, related to investigations of metal and nonmetallic mines to obtain information relating to health and safety conditions. See section 811 of this title.

Section 724, Pub. L. 89–577, § 5, Sept. 16, 1966, 80 Stat. 773, related to admission of investigators to mines. See section 813 of this title.

Section 725, Pub. L. 89–577, § 6, Sept. 16, 1966, 80 Stat. 774, related to development of health and safety standards. See section 811 of this title.

Section 726, Pub. L. 89–577, § 7, Sept. 16, 1966, 80 Stat. 775, related to advisory committees. See section 812 of this title.

Section 727, Pub. L. 89–577, § 8, Sept. 16, 1966, 80 Stat. 775, related to findings and orders. See section 814 of this title.

Section 728, Pub. L. 89–577, § 9, Sept. 16, 1966, 80 Stat. 777, related to review of orders by Secretary of the Interior. See section 815 of this title.

Section 729, Pub. L. 89–577, § 10, Sept. 16, 1966, 80 Stat. 778, created Federal Metal and Nonmetallic Mine Safety Board of Review. See section 823 of this title.

Section 730, Pub. L. 89–577, § 11, Sept. 16, 1966, 80 Stat. 779, related to review functions of Federal Metal and Nonmetallic Mine Safety Board of Review. See section 823 of this title.

Section 731, Pub. L. 89–577, § 12, Sept. 16, 1966, 80 Stat. 781, related to judicial review of final orders of Federal Metal and Nonmetallic Mine Safety Board of Review. See section 816 of this title.

Section 732, Pub. L. 89–577, § 13, Sept. 16, 1966, 80 Stat. 782, related to accident and related reports to Secretary of the Interior. See section 813 of this title.

Section 733, Pub. L. 89–577, § 14, Sept. 16, 1966, 80 Stat. 782, related to penalties to be imposed for violations of the chapter. See section 820 of this title.

Section 734, Pub. L. 89–577, § 15, Sept. 16, 1966, 80 Stat. 782, related to programs of education and training for employers and employees. See section 825 of this title.

Section 735, Pub. L. 89–577, § 16, Sept. 16, 1966, 80 Stat. 782, related to State plans and cooperation with State agencies. See section 811 of this title.

Section 736, Pub. L. 89–577, § 17, Sept. 16, 1966, 80 Stat. 783, related to administration of chapter by Bureau of Mines of Department of the Interior. See section 557a of Title 29, Labor.

Section 737, Pub. L. 89–577, § 18, Sept. 16, 1966, 80 Stat. 784, related to non-applicability of Administrative Procedure Act to proceedings under chapter. See section 815 of this title.

Section 738, Pub. L. 89–577, § 19, Sept. 16, 1966, 80 Stat. 784, related to effect of chapter on State laws. See section 811 of this title.

Section 739, Pub. L. 89–577, § 20, Sept. 16, 1966, 80 Stat. 784, related to annual report of Secretary of the Interior to Congress. See section 557a of Title 29, Labor.

Section 740, Pub. L. 89–577, § 21, Sept. 16, 1966, 80 Stat. 784, authorized appropriations necessary to carry out chapter. See section 824 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 120 days after Nov. 9, 1977, see section 307 of Pub. L. 95–164, set out as an Effective Date of 1977 Amendment note under section 801 of this title.

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802. Definitions.
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### § 801. Congressional findings and declaration of purpose

Congress declares that—

(a) the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner;

(b) deaths and serious injuries from unsafe and unhealthful conditions and practices in the coal or other mines cause grief and suffering to the miners and to their families;

(c) there is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines in order to prevent death and serious physical harm, and in order to prevent occupational diseases originating in such mines;

(d) the existence of unsafe and unhealthful conditions and practices in the Nation's coal or other mines is a serious impediment to the future growth of the coal or other mining industry and cannot be tolerated;

(e) the operators of such mines with the assistance of the miners have the primary responsibility to prevent the existence of such conditions and practices in such mines;

(f) the disruption of production and the loss of income to operators and miners as a result of coal or other mine accidents or occupationally caused diseases unduly impedes and burdens commerce; and

(g) it is the purpose of this chapter (1) to establish interim mandatory health and safety standards and to direct the Secretary of Health and Human Services and the Secretary of Labor to develop and promulgate improved mandatory health or safety standards to protect the health and safety of the Nation's coal or other miners; (2) to require that each operator of a coal or other mine and every miner in such mine comply with such standards; (3) to cooperate with, and provide assistance to, the States in the development and enforcement of effective State coal or other mine health and safety programs; and (4) to improve and expand, in cooperation with the States and the coal or other mining industry, research and development and training programs aimed at preventing coal or other mine accidents and occupationally caused diseases in the industry.

(Pub. L. 91–173, §2, Dec. 30, 1969, 83 Stat. 742; Pub. L. 95–164, title I, §102(a), Nov. 9, 1977, 91 Stat. 1290; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

This chapter, referred to in par. (g), was in the original ''this Act'', meaning Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, known as the Federal Mine Safety and Health Act of 1977, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1977—Pars. (a) to (d), (f). Pub. L. 95–164, §102(a)(1), inserted ''or other'' after ''coal'' wherever appearing.

Par. (g). Pub. L. 95–164, §102(a)(1), (2), inserted ''or other'' after ''coal'' wherever appearing and substituted ''Secretary of Labor'' for ''Secretary of the Interior''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in par. (g) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 307 of Pub. L. 95–164 provided that: ''Except as otherwise provided, this Act and the amendments made by this Act [see Short Title of 1977 Amendment note below] shall take effect 120 days after the date of enactment of this Act [Nov. 9, 1977]. The Secretary of Labor and the Secretary of the Interior are authorized to establish such rules and regulations as may be necessary for the efficient transfer of functions provided under this Act. The amendment to the Federal Coal Mine Health and Safety Act of 1969 made by section 202 of this Act [amending section 842(e) of this title and repealing subsec. (k) of section 878 of this title] shall be effective on the date of enactment [Nov. 9, 1977].''

EFFECTIVE DATE

Section 509 of Pub. L. 91–173 provided that: ''Except to the extent an earlier date is specifically provided in this Act [see Short Title note below], the provisions of titles I and III of this Act [subchapters I and III of this chapter] shall become operative ninety days after the date of enactment of this Act [Dec. 30, 1969], and the provisions of title II of this Act [subchapter II of this chapter] shall become operative six months after the date of enactment of this Act. The provisions of the Federal Coal Mine Safety Act, as amended [section 451 et seq. of this title], are repealed on the operative date of titles I and III of this Act except that such provisions shall continue to apply to any order, notice, decision, or finding issued under that Act prior to such operative date and to any proceedings related to such order, notice, decision or findings. All other provisions of this Act, shall be effective on the date of enactment of this Act [Dec. 30, 1969].''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–236, §1, June 15, 2006, 120 Stat. 493, provided that: ''This Act [enacting sections 826 and 963 to 965 of this title, amending sections 813, 818, 820, 825, and 876 of this title and section 671 of Title 29, Labor, and enacting provisions set out as notes under this section and sections 811 and 820 of this title] may be cited as the 'Mine Improvement and New Emergency Response Act of 2006' or the 'MINER Act'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–275, §1, Nov. 2, 2002, 116 Stat. 1925, provided that: ''This Act [amending sections 902, 921 to 924, 925, 932a, and 936 of this title, repealing sections 904, 924a, and 945 of this title, and enacting provisions set out as notes under sections 902 and 921 of this title] may be cited as the 'Black Lung Consolidation of Administrative Responsibility Act'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–119, title II, §201(a), Dec. 29, 1981, 95 Stat. 1643, provided that: ''This title [amending sections 901, 902, 921 to 923, 932, and 940 of this title and enacting provisions set out as notes under section 901 of this title] may be cited as the 'Black Lung Benefits Amendments of 1981'.''

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–239, §1, Mar. 1, 1978, 92 Stat. 95, provided that: ''This Act [enacting sections 903, 904, 924a, and 942 to 945 of this title, amending sections 901, 902, 921 to 924, 931, 932, 933, 937, 940, and 941 of this title, and enacting provisions set out as notes under sections 901, 932a, and 934a of this title, section 4121 of Title 26, Internal Revenue Code, and section 675 of Title 29, Labor] may be cited as the 'Black Lung Benefits Reform Act of 1977'.''

SHORT TITLE OF 1977 AMENDMENT

Section 1 of Pub. L. 95–164 provided: ''That this Act [enacting sections 822 to 825 and 961 of this title and

section 557a of Title 29, Labor, amending this section, sections 802 to 804, 811 to 821, 842, 861, 878, 951 to 955, 958, and 959 of this title, and sections 5314 and 5315 of Title 5, Government Organization and Employees, repealing sections 721 to 740 of this title and section 1456a of Title 43, Public Lands, and enacting provisions set out as notes under this section, section 954 of this title and section 11 of former Title 31, Money and Finance] may be cited as the 'Federal Mine Safety and Health Amendments Act of 1977'.''

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92–303, §1(a), May 19, 1972, 86 Stat. 150, provided: ''That this Act [enacting sections 925 and 937 to 941 of this title, amending sections 901, 902, 921 to 924, 931, 932, 933, 934, and 936 of this title, and enacting provisions set out as notes under sections 921 to 923 of this title] may be cited as the 'Black Lung Benefits Act of 1972'.''

SHORT TITLE

Section 1 of Pub. L. 91–173, as amended by Pub. L. 95–164, title I, §101, Nov. 9, 1977, 91 Stat. 1290, provided: ''That this Act [which was known as the Federal Coal Mine Health and Safety Act of 1969 prior to the amendment by Pub. L. 95–164 and which enacted this chapter, amended sections 633 and 636 of Title 15, Commerce and Trade, repealed sections 451 to 460 and 471 to 483 of this title, and enacted provisions set out as notes under this section and section 636 of Title 15] may be cited as the 'Federal Mine Safety and Health Act of 1977'.''

For short title of subchapter IV of this chapter as the ''Black Lung Benefits Act'', see section 901(b) of this title.

SEPARABILITY

Section 510 of Pub. L. 91–173 provided that: ''If any provision of this Act [see Short Title note set out above], or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.''

REQUIREMENT CONCERNING FAMILY LIAISONS

Pub. L. 109–236, §7, June 15, 2006, 120 Stat. 500, provided that: ''The Secretary of Labor shall establish a policy that—

''(1) requires the temporary assignment of an individual Department of Labor official to be a liaison between the Department and the families of victims of mine tragedies involving multiple deaths;

''(2) requires the Mine Safety and Health Administration to be as responsive as possible to requests from the families of mine accident victims for information relating to mine accidents; and

''(3) requires that in such accidents, that the Mine Safety and Health Administration shall serve as the primary communicator with the operator, miners' families, the press and the public.''

## § 802. Definitions

For the purpose of this chapter, the term—

(a) ''Secretary'' means the Secretary of Labor or his delegate;

(b) ''commerce'' means trade, traffic, commerce, transportation, or communication among the several States, or between a place in a State and any place outside thereof, or within the District of Columbia or a possession of the United States, or between points in the same State but through a point outside thereof;

(c) ''State'' includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands;

(d) ''operator'' means any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine;

(e) ''agent'' means any person charged with responsibility for the operation of all or a part of a coal or other mine or the supervision of the miners in a coal or other mine;

(f) ''person'' means any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization;

(g) ''miner'' means any individual working in a coal or other mine;

(h)(1) ''coal or other mine'' means (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities. In making a determination of what constitutes mineral milling for purposes of this chapter, the Secretary shall give due consideration to the convenience of administration resulting from the delegation to one Assistant Secretary of all authority with respect to the health and safety of miners employed at one physical establishment;

(2) For purposes of subchapters II, III, and IV of this chapter, ''coal mine'' means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities;

(i) ''work of preparing the coal'' means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous coal, lignite, or anthracite, and such other work of preparing such coal as is usually done by the operator of the coal mine;

(j) ''imminent danger'' means the existence of any condition or practice in a coal or other mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated;

(k) ''accident'' includes a mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of, any person;

(*l*) ''mandatory health or safety standard'' means the interim mandatory health or safety

standards established by subchapters II and III of this chapter, and the standards promulgated pursuant to subchapter I of this chapter;

(m) ''Panel'' means the Interim Compliance Panel established by this chapter; and

(n) ''Administration'' means the Mine Safety and Health Administration in the Department of Labor.

(*o*) ''Commission'' means the Federal Mine Safety and Health Review Commission.

(Pub. L. 91–173, § 3, Dec. 30, 1969, 83 Stat. 743; Pub. L. 95–164, title I, § 102(b), Nov. 9, 1977, 91 Stat. 1290.)

AMENDMENTS

1977—Par. (a). Pub. L. 95–164, § 102(b)(1), substituted ''Secretary of Labor'' for ''Secretary of the Interior''.

Par. (d). Pub. L. 95–164, § 102(b)(2), (4), substituted ''supervises a coal or other mine or any independent contractor performing services or construction at such mine'' for ''supervises a coal mine''.

Pars. (e), (g). Pub. L. 95–164, § 102(b)(4), inserted ''or other'' after ''coal'' wherever appearing.

Par. (h). Pub. L. 95–164, § 102(b)(3), added subpar. (1), designated existing provisions as subpar. (2), and inserted ''For purposes of subchapters II, III, and IV of this chapter,'' after ''(2)''.

Par. (j). Pub. L. 95–164, § 102(b)(4), inserted ''or other'' after ''coal''.

Pars. (n), (*o*). Pub. L. 95–164, § 102(b)(5), added pars. (n) and (*o*).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

### § 803. Mines subject to coverage

Each coal or other mine, the products of which enter commerce, or the operations or products of which affect commerce, and each operator of such mine, and every miner in such mine shall be subject to the provisions of this chapter.

(Pub. L. 91–173, § 4, Dec. 30, 1969, 83 Stat. 744; Pub. L. 95–164, title I, § 102(c), Nov. 9, 1977, 91 Stat. 1291.)

AMENDMENTS

1977—Pub. L. 95–164 inserted ''or other'' after ''coal''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

### § 804. Interim Compliance Panel

#### (a) Establishment; composition

There is hereby established the Interim Compliance Panel, which shall be composed of five members as follows:

(1) Assistant Secretary of Labor for Labor Standards, Department of Labor, or his delegate;

(2) Director of the National Institute of Standards and Technology, Department of Commerce, or his delegate;

(3) Administrator of Consumer Protection and Environmental Health Service, Department of Health and Human Services, or his delegate;

(4) Director of the United States Bureau of Mines, Department of the Interior, or his delegate; and

(5) Director of the National Science Foundation, or his delegate.

#### (b) Compensation; travel and subsistence expenses

Members of the Panel shall serve without compensation in addition to that received in their regular employment, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of duties vested in the Panel.

#### (c) Cooperation of Federal agencies

Notwithstanding any other provision of law, the Secretary of Health and Human Services, the Secretary of Commerce, the Secretary of the Interior, and the Secretary shall, upon request of the Panel, provide the Panel such personnel and other assistance as the Panel determines necessary to enable it to carry out its functions under this chapter.

#### (d) Quorum; voting; selection of chairman

Three members of the Panel shall constitute a quorum for doing business. All decisions of the Panel shall be by majority vote. The chairman of the Panel shall be selected by the members from among the membership thereof.

#### (e) Appointment of administrative law judges; provisions applicable

The Panel is authorized to appoint as many administrative law judges as are necessary for proceedings required to be conducted in accordance with the provisions of this chapter. The provisions applicable to administrative law judges appointed under section 3105 of title 5 shall be applicable to administrative law judges appointed pursuant to this subsection.

#### (f) Functions; hearings; notice and review; termination; annual report

(1) It shall be the function of the Panel to carry out the duties imposed on it pursuant to this chapter and to provide an opportunity for a public hearing, after notice, at the request of an operator of the affected coal mine or the representative of the miners of such mine. Any operator or representative of miners aggrieved by a final decision of the Panel may file a petition for review of such decision under section 816 of this title. The provisions of this section shall terminate upon completion of the Panel's functions as set forth under this chapter. Any hearing held pursuant to this subsection shall be of record and the Panel shall make findings of fact and shall issue a written decision incorporating its findings therein in accordance with section 554 of title 5.

(2) The Panel shall make an annual report, in writing, to the Secretary for transmittal by him to the Congress concerning the achievement of its purposes, and any other relevant information (including any recommendations) which it deems appropriate.

(Pub. L. 91–173, § 5, Dec. 30, 1969, 83 Stat. 744; Pub. L. 95–164, title I, § 102(d), Nov. 9, 1977, 91 Stat.

1291; Pub. L. 95–251, § 2(a)(9), Mar. 27, 1978, 92 Stat. 183; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''Bureau of Standards''.

1978—Subsec. (e). Pub. L. 95–251 substituted ''administrative law judges'' for ''hearing examiners'' wherever appearing.

1977—Subsec. (c). Pub. L. 95–164 substituted ''Secretary of the Interior'' for ''Secretary of Labor''.

CHANGE OF NAME

''United States Bureau of Mines'' substituted for ''Bureau of Mines'' in subsec. (a)(4) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

''Department of Health and Human Services'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (a) and ''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (c) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (f)(2) of this section relating to transmitting annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 114 of House Document No. 103–7.

## SUBCHAPTER I—GENERAL

### § 811. Mandatory safety and health standards

#### (a) Development, promulgation, and revision

The Secretary shall by rule in accordance with procedures set forth in this section and in accordance with section 553 of title 5 (without regard to any reference in such section to sections 556 and 557 of such title), develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health and Human Services, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this chapter, the Secretary may request the recommendation of an advisory committee appointed under section 812(c) of this title. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health and Human Services, together with all pertinent factual information developed by the Secretary or the Secretary of Health and Human Services, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within 60 days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than 180 days. When the Secretary receives a recommendation, accompanied by appropriate criteria, from the National Institute for Occupational Safety and Health that a rule be promulgated, modified, or revoked, the Secretary must, within 60 days after receipt thereof, refer such recommendation to an advisory committee pursuant to this paragraph, or publish such as a proposed rule pursuant to paragraph (2), or publish in the Federal Register his determination not to do so, and his reasons therefor. The Secretary shall be required to request the recommendations of an advisory committee appointed under section 812(c) of this title if the rule to be promulgated is, in the discretion of the Secretary which shall be final, new in effect or application and has significant economic impact.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking a mandatory health or safety standard in the Federal Register. If the Secretary determines that a rule should be proposed and in connection therewith has appointed an advisory committee as provided by paragraph (1), the Secretary shall publish a proposed rule, or the reasons for his determination not to publish such rule, within 60 days following the submission of the advisory committee's recommendation or the expiration of the period of time prescribed by the Secretary in such submission. In either event, the Secretary shall afford interested persons a period of 30 days after any such publication to submit written data or comments on the proposed rule. Such comment period may be extended by the Secretary upon a finding of good cause, which the Secretary shall publish in the Federal Register. Publication shall include the text of such rules proposed in their entirety, a comparative text of the proposed changes in existing rules, and shall include a comprehensive index to the rules, cross-referenced by subject matter.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed mandatory health or safety standard, stating the grounds therefor and requesting a public hearing on such objections. Within 60 days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the mandatory health or safety standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing. Any hearing under this subsection for the purpose of hearing relevant information shall commence within 60 days after the date of publication of the notice of hearing. Hearings re-

quired by this subsection shall be conducted by the Secretary, who may prescribe rules and make rulings concerning procedures in such hearings to avoid unnecessary cost or delay. Subject to the need to avoid undue delay, the Secretary shall provide for procedures that will afford interested parties the right to participate in the hearing, including the right to present oral statements and to offer written comments and data. The Secretary may require by subpoena the attendance of witnesses and the production of evidence in connection with any proceeding initiated under this section. If a person refuses to obey a subpoena under this subsection, a United States district court within the jurisdiction of which a proceeding under this subsection is conducted may, upon petition by the Secretary, issue an order requiring compliance with such subpoena. A transcript shall be taken of any such hearing and shall be available to the public.

(4)(A) Within 90 days after certification of the record of the hearing held pursuant to paragraph (3), the Secretary shall by rule promulgate, modify, or revoke such mandatory health or safety standards, and publish his reasons therefor.

(B) In the case of a proposed mandatory health or safety standard to which objections requesting a public hearing have not been filed, the Secretary, within 90 days after the period for filing such objections has expired, shall by rule promulgate, modify, or revoke such mandatory standards, and publish his reasons therefor.

(C) In the event the Secretary determines that a proposed mandatory health or safety standard should not be promulgated he shall, within the times specified in subparagraphs (A) and (B) publish his reasons for his determination.

(5) Any mandatory health or safety standard promulgated as a final rule under this section shall be effective upon publication in the Federal Register unless the Secretary specifies a later date.

(6)(A) The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life. Development of mandatory standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the miner, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the mandatory health or safety standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(B) The Secretary of Health and Human Services, as soon as possible after November 9, 1977, but in no event later than 18 months after such date and on a continuing basis thereafter, shall, for each toxic material or harmful physical agent which is used or found in a mine, determine whether such material or agent is potentially toxic at the concentrations in which it is used or found in a mine. The Secretary of Health and Human Services shall submit such determinations with respect to such toxic substances or harmful physical agents to the Secretary. Thereafter, the Secretary of Health and Human Services shall submit to the Secretary all pertinent criteria regarding any such substances determined to be toxic or any such harmful agents as such criteria are developed. Within 60 days after receiving any criteria in accordance with the preceding sentence relating to a toxic material or harmful physical agent which is not adequately covered by a mandatory health or safety standard promulgated under this section, the Secretary shall either appoint an advisory committee to make recommendations with respect to a mandatory health or safety standard covering such material or agent in accordance with paragraph (1), or publish a proposed rule promulgating such a mandatory health or safety standard in accordance with paragraph (2), or shall publish his determination not to do so.

(7) Any mandatory health or safety standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that miners are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such mandatory standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring miner exposure at such locations and intervals, and in such manner so as to assure the maximum protection of miners. In addition, where appropriate, any such mandatory standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the operator at his cost, to miners exposed to such hazards in order to most effectively determine whether the health of such miners is adversely affected by such exposure. Where appropriate, the mandatory standard shall provide that where a determination is made that a miner may suffer material impairment of health or functional capacity by reason of exposure to the hazard covered by such mandatory standard, that miner shall be removed from such exposure and reassigned. Any miner transferred as a result of such exposure shall continue to receive compensation for such work at no less than the regular rate of pay for miners in the classification such miner held immediately prior to his transfer. In the event of the transfer of a miner pursuant to the preceding sentence, increases in wages of the transferred miner shall be based upon the new work classification. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health and Human Services, such examinations may be furnished at the expense of the Secretary of Health and Human Services. The results of examinations or tests made pursuant to the preceding sentence shall be furnished only

to the Secretary or the Secretary of Health and Human Services, and, at the request of the miner, to his designated physician.

(8) The Secretary shall, to the extent practicable, promulgate separate mandatory health or safety standards applicable to mine construction activity on the surface.

(9) No mandatory health or safety standard promulgated under this subchapter shall reduce the protection afforded miners by an existing mandatory health or safety standard.

**(b) Emergency temporary mandatory standards**

(1) The Secretary shall provide, without regard to the requirements of chapter 5 of title 5 for an emergency temporary mandatory health or safety standard to take immediate effect upon publication in the Federal Register if he determines (A) that miners are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful, or to other hazards, and (B) that such emergency standard is necessary to protect miners from such danger.

(2) A temporary mandatory health or safety standard shall be effective until superseded by a mandatory standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register, the Secretary shall commence a proceeding in accordance with subsection (a) of this section, and the standards as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a mandatory health or safety standard under this paragraph no later than nine months after publication of the emergency temporary standard as provided in paragraph (2).

**(c) Modification of standards**

Upon petition by the operator or the representative of miners, the Secretary may modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard, or that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. Upon receipt of such petition the Secretary shall publish notice thereof and give notice to the operator or the representative of miners in the affected mine, as appropriate, and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of such operator or representative or other interested party, to enable the operator or the representative of miners in such mine or other interested party to present information relating to the modification of such standard. Before granting any exception to a mandatory safety standard, the findings of the Secretary or his authorized representative shall be made public and shall be available to the representative of the miners at the affected mine. The Secretary shall issue a decision incorporating his findings of fact therein, and send a copy thereof to the operator or the representative of the miners, as appropriate. Any such hearing shall be of record and shall be subject to section 554 of title 5.

**(d) Judicial review**

Any person who may be adversely affected by a mandatory health or safety standard promulgated under this section may, at any time prior to the sixtieth day after such standard is promulgated, file a petition challenging the validity of such mandatory standard with the United States Court of Appeals for the District of Columbia Circuit or the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. No objection that has not been urged before the Secretary shall be considered by the court, unless the failure or neglect to urge such objection shall be excused for good cause shown. The validity of any mandatory health or safety standard shall not be subject to challenge on the grounds that any of the time limitations in this section have been exceeded. The procedures of this subsection shall be the exclusive means of challenging the validity of a mandatory health or safety standard.

**(e) Distribution of copies of proposed standards or regulations**

The Secretary shall send a copy of every proposed mandatory health or safety standard or regulation at the time of publication in the Federal Register to the operator of each coal or other mine and the representative of the miners at such mine and such copy shall be immediately posted on the bulletin board of the mine by the operator or his agent, but failure to receive such notice shall not relieve anyone of the obligation to comply with such standard or regulation.

(Pub. L. 91–173, title I, § 101, Dec. 30, 1969, 83 Stat. 745; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1291; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–164 substituted provisions revising and setting out in detail the procedures to be followed by the Secretary of Labor in developing, promulgating, and revising mandatory health and safety standards covering coal and other mines for provisions which had charged the Secretary of the Interior with the responsibility of developing standards for the protection of life and the prevention of injuries in coal mines.

Subsec. (b). Pub. L. 95–164 substituted provisions relating to emergency temporary mandatory standards for provisions requiring that improved standards not reduce the previously existing level of health and safety in coal mines.

Subsec. (c). Pub. L. 95–164 substituted provisions relating to the modification of standards for provisions covering the consultative and research steps in the promulgation of safety standards.

Subsec. (d). Pub. L. 95–164 substituted provisions relating to judicial review of standards for provisions covering the consultative and research steps in the promulgation of health standards.

Subsec. (e). Pub. L. 95–164 redesignated subsec. (k) as (e) and substituted ''proposed mandatory health or

safety standard or regulation'' for ''proposed standard or regulation'' and ''coal or other mine'' for ''coal mine''.

Subsecs. (f) to (j). Pub. L. 95–164 struck out subsecs. (f) to (j) which had related to the submission of objections to proposed standards, hearings, the effective date of standards, mandatory standards for surface coal mines, and the publication of pre-existing consistent regulations in the Federal Register and the continuing effectiveness of those regulations until modified or superseded, and incorporated those provisions, as altered to apply to coal and other mines and as otherwise revised, into subsec. (a).

Subsec. (k). Pub. L. 95–164 redesignated subsec. (k) as (e).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(1), (6)(B), and (7) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

EFFECTIVE DATE

Subchapter operative 90 days after Dec. 30, 1969, except to the extent an earlier date is specifically provided for in Pub. L. 91–173, see section 509 of Pub. L. 91–173, set out as a note under section 801 of this title.

SEALING OF ABANDONED AREAS

Pub. L. 109–236, § 10, June 15, 2006, 120 Stat. 501, provided that:''Not later than 18 months after the issuance by the Mine Safety and Health Administration of a final report on the Sago Mine accident or the date of enactment of the Mine Improvement and New Emergency Response Act of 2006 [June 15, 2006], whichever occurs earlier, the Secretary of Labor shall finalize mandatory heath and safety standards relating to the sealing of abandoned areas in underground coal mines. Such health and safety standards shall provide for an increase in the 20 psi standard currently set forth in section 75.335(a)(2) of title 30, Code of Federal Regulations.''

## § 812. Advisory committees

### (a) Committee on coal or other mine safety research; establishment; membership; chairman; functions; conflicts of interest

(1) The Secretary of the Interior shall appoint an advisory committee on coal or other mine safety research composed of—

(A) the Director of the Office of Science and Technology or his delegate, with the consent of the Director;

(B) the Director of the National Institute of Standards and Technology, Department of Commerce, or his delegate, with the consent of the Director;

(C) the Director of the National Science Foundation, or his delegate, with the consent of the Director; and

(D) such other persons as the Secretary of the Interior may appoint who are knowledgeable in the field of coal or other mine safety research.

The Secretary of the Interior shall designate the chairman of the committee.

(2) The advisory committee shall consult with, and make recommendations to, the Secretary of the Interior on matters involving or relating to coal or other mine safety research. The Secretary of the Interior shall consult with, and consider the recommendations of, such committee in the conduct of such research, the making of any grants, and the entering into of contracts for such research.

(3) The chairman of the committee and a majority of the persons appointed by the Secretary of the Interior pursuant to paragraph (1)(D) shall be individuals who have no economic interests in the coal or other mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

### (b) Committee on coal or other mine health research; establishment; membership; chairman; functions; conflicts of interest

(1) The Secretary of Health and Human Services shall appoint an advisory committee on coal or other mine health research composed of—

(A) the Director, United States Bureau of Mines, or his delegate, with the consent of the Director;

(B) the Director of the National Science Foundation, or his delegate, with the consent of the Director;

(C) the Director of the National Institutes of Health, or his delegate, with the consent of the Director; and

(D) such other persons as the Secretary of Health and Human Services may appoint who are knowledgeable in the field of coal or other mine health research.

The Secretary of Health and Human Services shall designate the chairman of the committee.

(2) The advisory committee shall consult with, and make recommendations to, the Secretary of Health and Human Services on matters involving or relating to coal or other mine health research. The Secretary of Health and Human Services shall consult with, and consider the recommendations of, such committee in the conduct of such research, the making of any grants, and the entering into of contracts for such research.

(3) The chairman of the committee and a majority of the persons appointed by the Secretary of Health and Human Services pursuant to paragraph (1)(D) shall be individuals who have no economic interests in the coal or other mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

### (c) Additional advisory committees; chairman; conflicts of interest

The Secretary or the Secretary of Health and Human Services may appoint other advisory committees as he deems appropriate to advise him in carrying out the provisions of this chapter. The Secretary or the Secretary of Health and Human Services, as the case may be, shall appoint the chairman of each such committee. A majority of the members (including the chairman) of any such advisory committee appointed pursuant to this subsection shall be composed of individuals who have no economic interests in the coal or other mining industry, and who are

not operators, miners, or officers or employees of the Federal Government or any State or local government.

**(d) Compensation; travel and subsistence expenses**

Advisory committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including traveltime) during which they are performing committee business, entitled to receive compensation at a rate fixed by the appropriate Secretary but not in excess of the maximum rate of pay for grade GS–18 as provided in the General Schedule under section 5332 of title 5, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5, be fully reimbursed for travel, subsistence, and related expenses.

(Pub. L. 91–173, title I, § 102, Dec. 30, 1969, 83 Stat. 747; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1295; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

AMENDMENTS

1988—Subsec. (a)(1)(B). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

1977—Subsec. (a). Pub. L. 95–164 expanded the area of coverage for the committee on mine safety research from ''coal mines'' to ''coal or other mines''.

Subsec. (b). Pub. L. 95–164 expanded the area of coverage for the advisory committee on mine health research from ''coal mines'' to ''coal or other mines''.

Subsec. (c). Pub. L. 95–164 struck out '', who shall be an individual who has no economic interest in the coal mining industry, and who is not an operator, miner, or an officer or employee of the Federal Government or any State or local government'' after ''chairman of each such committee'' and inserted ''(including the chairman)'' after ''A majority of the members''.

Subsec. (d). Pub. L. 95–164 reenacted subsec. (d) without change.

CHANGE OF NAME

''United States Bureau of Mines'' substituted for ''Bureau of Mines'' in subsec. (b)(1)(A) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsecs. (b) and (c) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

TRANSFER OF FUNCTIONS

Functions vested by law in Office of Science and Technology and in Director or Deputy Director of Office of Science and Technology transferred to Director of National Science Foundation, and Office of Science and Technology, including offices of Director and Deputy Director, provided for by sections 1 and 2 of Reorg. Plan No. 2, of 1962, eff. June 8, 1962, 27 F.R. 5419, 76 Stat. 1253, abolished by sections 2 and 3(a)(5) of Reorg. Plan No. 1 of 1973, eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, both set out in the Appendix to Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

## § 813. Inspections, investigations, and recordkeeping

**(a) Purposes; advance notice; frequency; guidelines; right of access**

Authorized representatives of the Secretary or the Secretary of Health and Human Services shall make frequent inspections and investigations in coal or other mines each year for the purpose of (1) obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of accidents, and the causes of diseases and physical impairments originating in such mines, (2) gathering information with respect to mandatory health or safety standards, (3) determining whether an imminent danger exists, and (4) determining whether there is compliance with the mandatory health or safety standards or with any citation, order, or decision issued under this subchapter or other requirements of this chapter. In carrying out the requirements of this subsection, no advance notice of an inspection shall be provided to any person, except that in carrying out the requirements of clauses (1) and (2) of this subsection, the Secretary of Health and Human Services may give advance notice of inspections. In carrying out the requirements of clauses (3) and (4) of this subsection, the Secretary shall make inspections of each underground coal or other mine in its entirety at least four times a year, and of each surface coal or other mine in its entirety at least two times a year. The Secretary shall develop guidelines for additional inspections of mines based on criteria including, but not limited to, the hazards found in mines subject to this chapter, and his experience under this chapter and other health and safety laws. For the purpose of making any inspection or investigation under this chapter, the Secretary, or the Secretary of Health and Human Services, with respect to fulfilling his responsibilities under this chapter, or any au-

thorized representative of the Secretary or the Secretary of Health and Human Services, shall have a right of entry to, upon, or through any coal or other mine.

**(b) Notice and hearing; subpoenas; witnesses; contempt**

For the purpose of making any investigation of any accident or other occurrence relating to health or safety in a coal or other mine, the Secretary may, after notice, hold public hearings, and may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

**(c) Records of employee exposure to toxic materials or harmful physical agents; undue exposure**

The Secretary, in cooperation with the Secretary of Health and Human Services, shall issue regulations requiring operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable mandatory health or safety standard promulgated under this chapter. Such regulations shall provide miners or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each miner or former miner to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each operator shall promptly notify any miner who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable mandatory health or safety standard promulgated under section 811 of this title, or mandated under subchapter II of this chapter, and shall inform any miner who is being thus exposed of the corrective action being taken.

**(d) Accident investigations; records**

All accidents, including unintentional roof falls (except in any abandoned panels or in areas which are inaccessible or unsafe for inspections), shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such accidents and investigations shall be kept and the information shall be made available to the Secretary or his authorized representative and the appropriate State agency. Such records shall be open for inspection by interested persons. Such records shall include man-hours worked and shall be reported at a frequency determined by the Secretary, but at least annually.

**(e) Collecting information without unreasonable burden on operators**

Any information obtained by the Secretary or by the Secretary of Health and Human Services under this chapter shall be obtained in such a manner as not to impose an unreasonable burden upon operators, especially those operating small businesses, consistent with the underlying purposes of this chapter. Unnecessary duplication of effort in obtaining information shall be reduced to the maximum extent feasible.

**(f) Participation of representatives of operators and miners in inspections**

Subject to regulations issued by the Secretary, a representative of the operator and a representative authorized by his miners shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any coal or other mine made pursuant to the provisions of subsection (a) of this section, for the purpose of aiding such inspection and to participate in pre- or post-inspection conferences held at the mine. Where there is no authorized miner representative, the Secretary or his authorized representative shall consult with a reasonable number of miners concerning matters of health and safety in such mine. Such representative of miners who is also an employee of the operator shall suffer no loss of pay during the period of his participation in the inspection made under this subsection. To the extent that the Secretary or authorized representative of the Secretary determines that more than one representative from each party would further aid the inspection, he can permit each party to have an equal number of such additional representatives. However, only one such representative of miners who is an employee of the operator shall be entitled to suffer no loss of pay during the period of such participation under the provisions of this subsection. Compliance with this subsection shall not be a jurisdictional prerequisite to the enforcement of any provision of this chapter.

**(g) Immediate inspection; notice of violation or danger; determination**

(1) Whenever a repersentative[1] of the miners or a miner in the case of a coal or other mine where there is no such representative has reasonable grounds to believe that a violation of this chapter or a mandatory health or safety standard exists, or an imminent danger exists, such miner or representative shall have a right to obtain an immediate inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, signed by the representative of the miners or by the miner, and a copy shall be provided the operator or his agent no later than at the time of inspection, except that the operator or his agent shall be notified forthwith if the complaint indicates that an imminent danger exists. The name of

[1] So in original. Probably should be ''representative''.

the person giving such notice and the names of individual miners referred to therein shall not appear in such copy or notification. Upon receipt of such notification, a special inspection shall be made as soon as possible to determine if such violation or danger exists in accordance with the provisions of this subchapter. If the Secretary determines that a violation or danger does not exist, he shall notify the miner or representative of the miners in writing of such determination.

(2) Prior to or during any inspection of a coal or other mine, any representative of miners or a miner in the case of a coal or other mine where there is no such representative, may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this chapter or of any imminent danger which he has reason to believe exists in such mine. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation or order with respect to such danger and shall furnish the representative of miners or miner requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

**(h) Records and reports; compilation and publication; availability**

In addition to such records as are specifically required by this chapter, every operator of a coal or other mine shall establish and maintain such records, make such reports, and provide such information, as the Secretary or the Secretary of Health and Human Services may reasonably require from time to time to enable him to perform his functions under this chapter. The Secretary or the Secretary of Health and Human Services is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by this chapter, all records, information, reports, findings, citations, notices, orders, or decisions required or issued pursuant to or under this chapter may be published from time to time, may be released to any interested person, and shall be made available for public inspection.

**(i) Spot inspections**

Whenever the Secretary finds that a coal or other mine liberates excessive quantities of methane or other explosive gases during its operations, or that a methane or other gas ignition or explosion has occurred in such mine which resulted in death or serious injury at any time during the previous five years, or that there exists in such mine some other especially hazardous condition, he shall provide a minimum of one spot inspection by his authorized representative of all or part of such mine during every five working days at irregular intervals. For purposes of this subsection, ''liberation of excessive quantities of methane or other explosive gases'' shall mean liberation of more than one million cubic feet of methane or other explosive gases during a 24-hour period. When the Secretary finds that a coal or other mine liberates more than five hundred thousand cubic feet of methane or other explosive gases during a 24-hour period, he shall provide a minimum of one spot inspection by his authorized representative of all or part of such mine every 10 working days at irregular intervals. When the Secretary finds that a coal or other mine liberates more than two hundred thousand cubic feet of methane or other explosive gases during a 24-hour period, he shall provide a minimum of one spot inspection by his authorized representative of all or part of such mine every 15 working days at irregular intervals.

**(j) Accident notification; rescue and recovery activities**

In the event of any accident occurring in any coal or other mine, the operator shall notify the Secretary thereof and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. For purposes of the preceding sentence, the notification required shall be provided by the operator within 15 minutes of the time at which the operator realizes that the death of an individual at the mine, or an injury or entrapment of an individual at the mine which has a reasonable potential to cause death, has occurred. In the event of any accident occurring in a coal or other mine, where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activities in such mine.

**(k) Safety orders; recovery plans**

In the event of any accident occurring in a coal or other mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the coal or other mine, and the operator of such mine shall obtain the approval of such representative, in consultation with appropriate State representatives, when feasible, of any plan to recover any person in such mine or to recover the coal or other mine or return affected areas of such mine to normal.

(Pub. L. 91–173, title I, § 103, Dec. 30, 1969, 83 Stat. 749; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1297; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 109–236, § 5(a), June 15, 2006, 120 Stat. 498.)

AMENDMENTS

2006—Subsec. (j). Pub. L. 109–236 inserted second sentence.

1977—Subsec. (a). Pub. L. 95–164 inserted provisions authorizing representatives of the Secretary of Health, Education, and Welfare to make inspections, expanded the area of inspection and investigation to include mines other than coal mines, inserted provisions requiring the inspection of surface mines at least two times a year, inserted provisions requiring the development of guidelines for additional inspections of mines, and inserted provisions, formerly contained in subsec. (b), authorizing the entry to, upon, or through, any coal or other mine for the purpose of making inspection or investigation.

Subsec. (b). Pub. L. 95–164 redesignated subsec. (d) as (b) and substituted ''coal or other mine'' for ''coal mine''. Provisions of former subsec. (b) were incorporated into subsec. (a).

Subsecs. (c) to (e). Pub. L. 95–164 added subsecs. (c) to (e), struck out former subsec. (c) which provided for the

utilization of facilities and personnel of other Federal agencies, and redesignated former subsecs. (d) and (e) as (b) and (j), respectively.

Subsec. (f). Pub. L. 95–164 redesignated subsec. (h) as (f), inserted provision for a representative of the operator to accompany the Secretary or his representative in the physical inspection of a mine, extended the provisions to cover mines other than coal mines, and inserted provisions relating to the choice of the authorized representative of the miners, the representative's duties, and the choice of more than one representative. Former subsec. (f) redesignated (k).

Subsec. (g). Pub. L. 95–164 designated existing provisions as par. (1), inserted provisions to par. (1) as so designated which extended the right to an immediate inspection to individual miners when there is no representative of the miners, provided for immediate notification to the mine operator or his agent if the complaint indicates that the danger is imminent, kept the name of the person giving the notice and the names of the individual miners off the copy or notification, and required the Secretary to notify the miners or their representatives if he determines that a violation or danger does not exist, and added par. (2).

Subsec. (h). Pub. L. 95–164 added subsec. (h). The provisions of former subsec. (h), relating to the right of the miners' representative to accompany the authorized representative of the Secretary on the inspection, were incorporated into subsec. (f).

Subsec. (i). Pub. L. 95–164 inserted definition of ''liberation of excessive quantities of methane or other explosive gases'' and inserted provisions for a reduced schedule of one spot inspections in mines with liberation rates for methane or other explosive gases lower than that required to qualify as ''excessive''.

Subsecs. (j), (k). Pub. L. 95–164 redesignated former subsecs. (e) and (f) as (j) and (k), respectively.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsecs. (a), (c), (e), and (h) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

## §814. Citations and orders

### (a) Issuance and form of citations; prompt issuance

If, upon inspection or investigation, the Secretary or his authorized representative believes that an operator of a coal or other mine subject to this chapter has violated this chapter, or any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this chapter, he shall, with reasonable promptness, issue a citation to the operator. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the chapter, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The requirement for the issuance of a citation with reasonable promptness shall not be a jurisdictional prerequisite to the enforcement of any provision of this chapter.

### (b) Follow-up inspections; findings

If, upon any follow-up inspection of a coal or other mine, an authorized representative of the Secretary finds (1) that a violation described in a citation issued pursuant to subsection (a) of this section has not been totally abated within the period of time as originally fixed therein or as subsequently extended, and (2) that the period of time for the abatement should not be further extended, he shall determine the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to immediately cause all persons, except those persons referred to in subsection (c) of this section, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

### (c) Exempt persons

The following persons shall not be required to be withdrawn from, or prohibited from entering, any area of the coal or other mine subject to an order issued under this section:

(1) any person whose presence in such area is necessary, in the judgment of the operator or an authorized representative of the Secretary, to eliminate the condition described in the order;

(2) any public official whose official duties require him to enter such area;

(3) any representative of the miners in such mine who is, in the judgment of the operator or an authorized representative of the Secretary, qualified to make such mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the conditions described in the order; and

(4) any consultant to any of the foregoing.

### (d) Findings of violations; withdrawal order

(1) If, upon any inspection of a coal or other mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard, and if he also finds that, while the conditions created by such violation do not cause imminent danger, such violation is of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health or safety standards, he shall include such finding in any citation given to the operator under this chapter. If, during the same inspection or any subsequent inspection of such mine within 90 days after the issuance of such citation, an authorized representative of the Secretary finds another violation of any mandatory health or safety standard and finds such violation to be also caused by an unwarrantable failure of such operator to so comply, he shall forthwith issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c) of this section to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(2) If a withdrawal order with respect to any area in a coal or other mine has been issued pursuant to paragraph (1), a withdrawal order shall

promptly be issued by an authorized representative of the Secretary who finds upon any subsequent inspection the existence in such mine of violations similar to those that resulted in the issuance of the withdrawal order under paragraph (1) until such time as an inspection of such mine discloses no similar violations. Following an inspection of such mine which discloses no similar violations, the provisions of paragraph (1) shall again be applicable to that mine.

**(e) Pattern of violations; abatement; termination of pattern**

(1) If an operator has a pattern of violations of mandatory health or safety standards in the coal or other mine which are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards, he shall be given written notice that such pattern exists. If, upon any inspection within 90 days after the issuance of such notice, an authorized representative of the Secretary finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, the authorized representative shall issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c) of this section, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(2) If a withdrawal order with respect to any area in a coal or other mine has been issued pursuant to paragraph (1), a withdrawal order shall be issued by an authorized representative of the Secretary who finds upon any subsequent inspection the existence in such mine of any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a coal or other mine health or safety hazard. The withdrawal order shall remain in effect until an authorized representative of the Secretary determines that such violation has been abated.

(3) If, upon an inspection of the entire coal or other mine, an authorized representative of the Secretary finds no violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine health and safety hazard, the pattern of violations that resulted in the issuance of a notice under paragraph (1) shall be deemed to be terminated and the provisions of paragraphs (1) and (2) shall no longer apply. However, if as a result of subsequent violations, the operator reestablishes a pattern of violations, paragraphs (1) and (2) shall again be applicable to such operator.

(4) The Secretary shall make such rules as he deems necessary to establish criteria for determining when a pattern of violations of mandatory health or safety standards exists.

**(f) Respirable dust concentrations; dust control person or team**

If, based upon samples taken, analyzed, and recorded pursuant to section 842(a) of this title, or samples taken during an inspection by an authorized representative of the Secretary, the applicable limit on the concentration of respirable dust required to be maintained under this chapter is exceeded and thereby violated, the Secretary or his authorized representative shall issue a citation fixing a reasonable time for the abatement of the violation. During such time, the operator of the mine shall cause samples described in section 842(a) of this title to be taken of the affected area during each production shift. If, upon the expiration of the period of time as originally fixed or subsequently extended, the Secretary or his authorized representative finds that the period of time should not be further extended, he shall determine the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to cause immediately all persons, except those referred to in subsection (c) of this section, to be withdrawn from, and to be prohibited from entering, such area until the Secretary or his authorized representative has reason to believe, based on actions taken by the operator, that such limit will be complied with upon the resumption of production in such mine. As soon as possible after an order is issued, the Secretary, upon request of the operator, shall dispatch to the mine involved a person, or team of persons, to the extent such persons are available, who are knowledgeable in the methods and means of controlling and reducing respirable dust. Such person or team of persons shall remain at the mine involved for such time as they shall deem appropriate to assist the operator in reducing respirable dust concentrations. While at the mine, such persons may require the operator to take such actions as they deem appropriate to insure the health of any person in the coal or other mine.

**(g) Untrained miners**

(1) If, upon any inspection or investigation pursuant to section 813 of this title, the Secretary or an authorized representative shall find employed at a coal or other mine a miner who has not received the requisite safety training as determined under section 825 of this title, the Secretary or an authorized representative shall issue an order under this section which declares such miner to be a hazard to himself and to others, and requiring that such miner be immediately withdrawn from the coal or other mine, and be prohibited from entering such mine until an authorized representative of the Secretary determines that such miner has received the training required by section 825 of this title.

(2) No miner who is ordered withdrawn from a coal or other mine under paragraph (1) shall be discharged or otherwise discriminated against because of such order; and no miner who is ordered withdrawn from a coal or other mine under paragraph (1) shall suffer a loss of compensation during the period necessary for such miner to receive such training and for an authorized representative of the Secretary to determine that such miner has received the requisite training.

**(h) Duration of citations and orders**

Any citation or order issued under this section shall remain in effect until modified, terminated

or vacated by the Secretary or his authorized representative, or modified, terminated or vacated by the Commission or the courts pursuant to section 815 or 816 of this title.

(Pub. L. 91–173, title I, §104, Dec. 30, 1969, 83 Stat. 750; Pub. L. 95–164, title II, §201, Nov. 9, 1977, 91 Stat. 1300.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–164 substituted provisions directing the Secretary to issue a citation to the operator based upon the belief of the Secretary or his authorized representative, after inspection or investigation, that there has been a violation of this chapter or any mandatory health or safety standard, rule, order, or regulation for provisions that had related to the issuance of a withdrawal order upon a finding that an imminent danger existed.

Subsec. (b). Pub. L. 95–164 substituted provisions setting out the steps to be taken if, upon any follow-up inspection of a coal or other mine, the authorized representative of the Secretary finds that a citation violation has not been abated and that the time for abatement should not be extended for provisions that had set out the steps to be taken in the case of a violation that did not create an imminent danger.

Subsec. (c). Pub. L. 95–164 redesignated subsec. (d) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 95–164 redesignated subsec. (c) as (d) and substituted reference to ''citation'' for reference to ''notice''. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 95–164 substituted provisions relating to the steps to be taken if an operator has a pattern of violations of mandatory health or safety standards for provisions setting out the requisites of notices and orders issued pursuant to this section.

Subsec. (f). Pub. L. 95–164 redesignated subsec. (i) as (f). Former subsec. (f), relating to the delivery of notices and orders issued under this section, was incorporated into subsec. (a).

Subsec. (g). Pub. L. 95–164 added subsec. (g). Former subsec. (g), relating to the modification and termination of notice, was incorporated into subsec. (h).

Subsec. (h). Pub. L. 95–164 added subsec. (h). Provisions of former subsec. (h), which related to steps to be taken when a condition existed which could not be abated through the use of existing technology, were covered in the general revision of subsecs. (d) and (e).

Subsec. (i). Pub. L. 95–164 redesignated subsec. (i) as (f).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

## §815. Procedure for enforcement

### (a) Notification of civil penalty; contest

If, after an inspection or investigation, the Secretary issues a citation or order under section 814 of this title, he shall, within a reasonable time after the termination of such inspection or investigation, notify the operator by certified mail of the civil penalty proposed to be assessed under section 820(a) of this title for the violation cited and that the operator has 30 days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. A copy of such notification shall be sent by mail to the representative of miners in such mine. If, within 30 days from the receipt of the notification issued by the Secretary, the operator fails to notify the Secretary that he intends to contest the citation or the proposed assessment of penalty, and no notice is filed by any miner or representative of miners under subsection (d) of this section within such time, the citation and the proposed assessment of penalty shall be deemed a final order of the Commission and not subject to review by any court or agency. Refusal by the operator or his agent to accept certified mail containing a citation and proposed assessment of penalty under this subsection shall constitute receipt thereof within the meaning of this subsection.

### (b) Failure of operator to correct violation; notification; contest; temporary relief

(1)(A) If the Secretary has reason to believe that an operator has failed to correct a violation for which a citation has been issued within the period permitted for its correction, the Secretary shall notify the operator by certified mail of such failure and of the penalty proposed to be assessed under section 820(b) of this title by reason of such failure and that the operator has 30 days within which to notify the Secretary that he wishes to contest the Secretary's notification of the proposed assessment of penalty. A copy of such notification of the proposed assessment of penalty shall at the same time be sent by mail to the representative of the mine employees. If, within 30 days from the receipt of notification of proposed assessment of penalty issued by the Secretary, the operator fails to notify the Secretary that he intends to contest the notification of proposed assessment of penalty, such notification shall be deemed a final order of the Commission and not subject to review by any court or agency. Refusal by the operator or his agent to accept certified mail containing a notification of proposed assessment of penalty issued under this subsection shall constitute receipt thereof within the meaning of this subsection.

(B) In determining whether to propose a penalty to be assessed under section 820(b) of this title, the Secretary shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

(2) An applicant may file with the Commission a written request that the Commission grant temporary relief from any modification or termination of any order or from any order issued under section 814 of this title together with a detailed statement giving the reasons for granting such relief. The Commission may grant such relief under such conditions as it may prescribe, if—

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

(B) the applicant shows that there is substantial likelihood that the findings of the Commission will be favorable to the applicant; and

(C) such relief will not adversely affect the health and safety of miners.

No temporary relief shall be granted in the case of a citation issued under subsection (a) or (f) of

section 814 of this title. The Commission shall provide a procedure for expedited consideration of applications for temporary relief under this paragraph.

**(c) Discrimination or interference prohibited; complaint; investigation; determination; hearing**

(1) No person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners or applicant for employment in any coal or other mine subject to this chapter because such miner, representative of miners or applicant for employment has filed or made a complaint under or related to this chapter, including a complaint notifying the operator or the operator's agent, or the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine, or because such miner, representative of miners or applicant for employment is the subject of medical evaluations and potential transfer under a standard published pursuant to section 811 of this title or because such miner, representative of miners or applicant for employment has instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding, or because of the exercise by such miner, representative of miners or applicant for employment on behalf of himself or others of any statutory right afforded by this chapter.

(2) Any miner or applicant for employment or representative of miners who believes that he has been discharged, interfered with, or otherwise discriminated against by any person in violation of this subsection may, within 60 days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall forward a copy of the complaint to the respondent and shall cause such investigation to be made as he deems appropriate. Such investigation shall commence within 15 days of the Secretary's receipt of the complaint, and if the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate reinstatement of the miner pending final order on the complaint. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall immediately file a complaint with the Commission, with service upon the alleged violator and the miner, applicant for employment, or representative of miners alleging such discrimination or interference and propose an order granting appropriate relief. The Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5 but without regard to subsection (a)(3) of such section) and thereafter shall issue an order, based upon findings of fact, affirming, modifying, or vacating the Secretary's proposed order, or directing other appropriate relief. Such order shall become final 30 days after its issuance. The Commission shall have authority in such proceedings to require a person committing a violation of this subsection to take such affirmative action to abate the violation as the Commission deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay and interest. The complaining miner, applicant, or representative of miners may present additional evidence on his own behalf during any hearing held pursuant to his[1] paragraph.

(3) Within 90 days of the receipt of a complaint filed under paragraph (2), the Secretary shall notify, in writing, the miner, applicant for employment, or representative of miners of his determination whether a violation has occurred. If the Secretary, upon investigation, determines that the provisions of this subsection have not been violated, the complainant shall have the right, within 30 days of notice of the Secretary's determination, to file an action in his own behalf before the Commission, charging discrimination or interference in violation of paragraph (1). The Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5 but without regard to subsection (a)(3) of such section), and thereafter shall issue an order, based upon findings of fact, dismissing or sustaining the complainant's charges and, if the charges are sustained, granting such relief as it deems appropriate, including, but not limited to, an order requiring the rehiring or reinstatement of the miner to his former position with back pay and interest or such remedy as may be appropriate. Such order shall become final 30 days after its issuance. Whenever an order is issued sustaining the complainant's charges under this subsection, a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) as determined by the Commission to have been reasonably incurred by the miner, applicant for employment or representative of miners for, or in connection with, the institution and prosecution of such proceedings shall be assessed against the person committing such violation. Proceedings under this section shall be expedited by the Secretary and the Commission. Any order issued by the Commission under this paragraph shall be subject to judicial review in accordance with section 816 of this title. Violations by any person of paragraph (1) shall be subject to the provisions of sections 818 and 820(a) of this title.

**(d) Contest proceedings; hearing; findings of fact; affirmance, modification, or vacatur of citation, order, or proposed penalty; procedure before Commission**

If, within 30 days of receipt thereof, an operator of a coal or other mine notifies the Secretary that he intends to contest the issuance or modification of an order issued under section 814 of this title, or citation or a notification of proposed assessment of a penalty issued under subsection (a) or (b) of this section, or the reasonableness of the length of abatement time fixed in a citation or modification thereof issued under section 814 of this title, or any miner or representative of miners notifies the Secretary of an intention to contest the issuance, modification, or termination of any order issued

[1] So in original. Probably should be "this".

under section 814 of this title, or the reasonableness of the length of time set for abatement by a citation or modification thereof issued under section 814 of this title, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, but without regard to subsection (a)(3) of such section), and thereafter shall issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation, order, or proposed penalty, or directing other appropriate relief. Such order shall become final 30 days after its issuance. The rules of procedure prescribed by the Commission shall provide affected miners or representatives of affected miners an opportunity to participate as parties to hearings under this section. The Commission shall take whatever action is necessary to expedite proceedings for hearing appeals of orders issued under section 814 of this title.

(Pub. L. 91–173, title I, §105, Dec. 30, 1969, 83 Stat. 753; Pub. L. 95–164, title II, §201, Nov. 9, 1977, 91 Stat. 1303.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–164 substituted provisions under which the Secretary must notify the operator of the civil penalty he proposes to assess following the issuance of a citation or order and the operator must give notice that he will contest the citation or proposed assessment for provisions under which an operator was required to apply for review of an order issued under section 814 of this title and under which an investigation was made, hearings held, and information presented.

Subsec. (b). Pub. L. 95–164 substituted provisions relating to the steps to be taken following the failure of the operator to correct violations, including provisions relating to temporary relief formerly contained in subsec. (d), for provisions requiring the Secretary to make findings of fact and to issue a written decision upon receiving the report of an investigation.

Subsec. (c). Pub. L. 95–164 added subsec. (c). Former subsec. (c), directing the Secretary to take action under this section as promptly as possible, was incorporated into a part of par. (3).

Subsec. (d). Pub. L. 95–164 added subsec. (d). Former subsec. (d) redesignated (b)(2).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

### §816. Judicial review of Commission orders

#### (a) Petition by person adversely affected or aggrieved; temporary relief

(1) Any person adversely affected or aggrieved by an order of the Commission issued under this chapter may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or in the United States Court of Appeals for the District of Columbia Circuit, by filing in such court within 30 days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have exclusive jurisdiction of the proceeding and of the questions determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside, in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Commission may modify or set aside its original order by reason of such modified or new findings of fact. Upon the filing of the record after such remand proceedings, the jurisdiction of the court shall be exclusive and its judgment and degree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(2) In the case of a proceeding to review any order or decision issued by the Commission under this chapter, except an order or decision pertaining to an order issued under section 817(a) of this title or an order or decision pertaining to a citation issued under section 814(a) or (f) of this title, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding, if—

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

(B) 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

(C) such relief will not adversely affect the health and safety of miners in the coal or other mine.

(3) In the case of a proceeding to review any order or decision issued by the Panel under this chapter, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding, if—

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

(B) 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.

**(b) Petition by Secretary for review or enforcement of final Commission orders**

The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in the Court of Appeals for the District of Columbia Circuit, and the provisions of subsection (a) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a) of this section, is filed within 30 days after issuance of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such 30-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 815 of this title, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the operator named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a) of this section, the court of appeals may assess the penalties provided in section 820 of this title, in addition to invoking any other available remedies.

**(c) Stay of order or decision of Commission or Panel**

The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the Commission or the Panel.

(Pub. L. 91–173, title I, § 106, Dec. 30, 1969, 83 Stat. 754; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1306; Pub. L. 98–620, title IV, § 402(34), Nov. 8, 1984, 98 Stat. 3360.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–620 struck out provision that petitions filed under this subsection had to be heard expeditiously.

1977—Subsec. (a)(1). Pub. L. 95–164 added subsec. (a)(1) consisting of a revision of the provisions of former subsecs. (a), (b), (d), and (f) with additions to cover the proceedings in the reviewing court.

Subsec. (a)(2). Pub. L. 95–164 redesignated subsec. (c)(1) as (a)(2) and substituted "issued by the Commission" for "issued by the Secretary" and "under section 817(a) of this title or an order or decision pertaining to a citation issued under section 814(a) or (f) of this title" for "under section 814(a) of this title or an order or decision pertaining to a notice issued under section 814(b) or (i) of this title" in the provisions preceding subpar. (A).

Subsec. (a)(3). Pub. L. 95–164 redesignated subsec. (c)(2) as (a)(3).

Subsec. (b). Pub. L. 95–164 added subsec. (b). Provisions of former subsec. (b) were incorporated as revised into subsec. (a)(1).

Subsec. (c). Pub. L. 95–164 redesignated subsec. (e) as (c). Former subsec. (c), which consisted of pars. (1) and (2), redesignated (a)(2) and (3).

Subsec. (d). Pub. L. 95–164 struck out subsec. (d) and incorporated its provisions, relating to review by the Supreme Court, into subsec. (a)(1).

Subsec. (e). Pub. L. 95–164 redesignated subsec. (e) as (c).

Subsec. (f). Pub. L. 95–164 struck out subsec. (f) which related to the appointment of attorneys by the Secretary to represent him in proceedings instituted under this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

## § 817. Procedures to counteract dangerous conditions

**(a) Withdrawal orders**

If, upon any inspection or investigation of a coal or other mine which is subject to this chapter, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the extent of the area of such mine throughout which the danger exists, and issue an order requiring the operator of such mine to cause all persons, except those referred to in section 814(c) of this title, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such imminent danger and the conditions or practices which caused such imminent danger no longer exist. The issuance of an order under this subsection shall not preclude the issuance of a citation under section 814 of this title or the proposing of a penalty under section 820 of this title.

**(b) Notice to mine operators; further investigation; findings and decision by Secretary**

(1) If, upon any inspection of a coal or other mine, an authorized representative of the Secretary finds (A) that conditions exist therein which have not yet resulted in an imminent danger, (B) that such conditions cannot be effectively abated through the use of existing technology, and (C) that reasonable assurance cannot be provided that the continuance of mining operations under such conditions will not result in an imminent danger, he shall determine the area throughout which such conditions exist, and thereupon issue a notice to the operator of the mine or his agent of such conditions, and shall file a copy thereof, incorporating his findings therein, with the Secretary and with the representative of the miners of such mine. Upon receipt of such copy, the Secretary shall cause such further investigation to be made as he deems appropriate, including an opportunity for the operator or a representative of the miners to present information relating to such notice.

(2) Upon the conclusion of an investigation pursuant to paragraph (1), and an opportunity for a public hearing upon request by any interested party, the Secretary shall make findings of fact, and shall by decision incorporating such

findings therein, either cancel the notice issued under this subsection or issue an order requiring the operator of such mine to cause all persons in the area affected, except those persons referred to in subsection (c) of section 814 of this title to be withdrawn from, and be prohibited from entering, such area until the Secretary, after a public hearing affording all interested persons an opportunity to present their views, determines that such conditions have been abated. Any hearing under this paragraph shall be of record and shall be subject to section 554 of title 5.

**(c) Form and content of orders**

Orders issued pursuant to subsection (a) of this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger and a description of the area of the coal or other mine from which persons must be withdrawn and prohibited from entering.

**(d) Findings; duration of orders**

Each finding made and order issued under this section shall be given promptly to the operator of the coal or other mine to which it pertains by the person making such finding or order, and all of such findings and orders shall be in writing, and shall be signed by the person making them. Any order issued pursuant to subsection (a) of this section may be modified or terminated by an authorized representative of the Secretary. Any order issued under subsection (a) or (b) of this section shall remain in effect until vacated, modified, or terminated by the Secretary, or modified or vacated by the Commission pursuant to subsection (e) of this section, or by the courts pursuant to section 816(a) of this title.

**(e) Reinstatement, modification, and vacatur of orders**

(1) Any operator notified of an order under this section or any representative of miners notified of the issuance, modification, or termination of such an order may apply to the Commission within 30 days of such notification for reinstatement, modification or vacation of such order. The Commission shall forthwith afford an opportunity for a hearing (in accordance with section 554 of title 5 but without regard to subsection (a)(3) of such section) and thereafter shall issue an order, based upon findings of fact, vacating, affirming, modifying, or terminating the Secretary's order. The Commission and the courts may not grant temporary relief from the issuance of any order under subsection (a) of this section.

(2) The Commission shall take whatever action is necessary to expedite proceedings under this subsection.

(Pub. L. 91–173, title I, §107, Dec. 30, 1969, 83 Stat. 755; Pub. L. 95–164, title II, §201, Nov. 9, 1977, 91 Stat. 1307.)

AMENDMENTS

1977—Pub. L. 95–164 substituted provisions relating to the procedures to be followed to counteract dangerous conditions in coal or other mines for provisions relating to the posting of notices, orders, and decisions at coal mines, see section 819 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

## §818. Injunctions

**(a) Civil action by Secretary**

(1) The Secretary may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which a coal or other mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent—

(A) violates or fails or refuses to comply with any order or decision issued under this chapter, or fails or refuses to comply with any order or decision, including a civil penalty assessment order, that is issued under this chapter,

(B) interferes with, hinders, or delays the Secretary or his authorized representative, or the Secretary of Health and Human Services or his authorized representative, in carrying out the provisions of this chapter,

(C) refuses to admit such representatives to the coal or other mine,

(D) refuses to permit the inspection of the coal or other mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine,

(E) refuses to furnish any information or report requested by the Secretary or the Secretary of Health and Human Services in furtherance of the provisions of this chapter, or

(F) refuses to permit access to, and copying of, such records as the Secretary or the Secretary of Health and Human Services determines necessary in carrying out the provisions of this chapter.

(2) The Secretary may institute a civil action for relief, including permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the coal or other mine is located or in which the operator of such mine has his principal office whenever the Secretary believes that the operator of a coal or other mine is engaged in a pattern of violation of the mandatory health or safety standards of this chapter, which in the judgment of the Secretary constitutes a continuing hazard to the health or safety of miners.

**(b) Jurisdiction; relief; findings of Commission or Secretary**

In any action brought under subsection (a) of this section, the court shall have jurisdiction to provide such relief as may be appropriate. In the case of an action under subsection (a)(2) of this section, the court shall in its order require such assurance or affirmative steps as it deems necessary to assure itself that the protection afforded to miners under this chapter shall be provided by the operator. Temporary restraining orders shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure, as amended, except that the time limit in such or-

ders, when issued without notice, shall be seven days from the date of entry. Except as otherwise provided herein, any relief granted by the court to enforce any order under paragraph (1) of subsection (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this subchapter, unless prior thereto, the district court granting such relief sets it aside or modifies it. In any action instituted under this section to enforce an order or decision issued by the Commission or the Secretary after a public hearing in accordance with section 554 of title 5, the findings of the Commission or the Secretary, as the case may be, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(Pub. L. 91–173, title I, § 108, Dec. 30, 1969, 83 Stat. 756; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1309; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 109–236, § 9, June 15, 2006, 120 Stat. 501.)

REFERENCES IN TEXT

Rule 65 of the Federal Rules of Civil Procedure, referred to in subsec. (b), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2006—Subsec. (a)(1)(A). Pub. L. 109–236 inserted before comma at end ‘‘, or fails or refuses to comply with any order or decision, including a civil penalty assessment order, that is issued under this chapter’’.

1977—Pub. L. 95–164 redesignated existing provisions as subsecs. (a)(1) and (b), added subsec. (a)(2), and in the redesignated provisions inserted references to findings of the Commission, inserted requirement that in actions brought under subsec. (a)(2) the courts require such assurances or affirmative action as they deem necessary to assure that the protections offered by this chapter to the miners be provided by the operator, and struck out provisions relating to the appointment of attorneys by the Secretary to represent him in actions under this section.

CHANGE OF NAME

‘‘Secretary of Health and Human Services’’ substituted for ‘‘Secretary of Health, Education, and Welfare’’ in subsec. (a)(1)(B), (F) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

## § 819. Posting of orders and decisions

### (a) Mine office; bulletin board

At each coal or other mine there shall be maintained an office with a conspicuous sign designating it as the office of such mine. There shall be a bulletin board at such office or located at a conspicuous place near an entrance of such mine, in such manner that orders, citations, notices and decisions required by law or regulation to be posted, may be posted thereon, and be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any order, citation, notice or decision required by this chapter to be given to an operator shall be delivered to the office of the affected mine, and a copy shall be immediately posted on the bulletin board of such mine by the operator or his agent.

### (b) Distribution of orders, citations, notices, and decisions

The Secretary shall (1) cause a copy of any order, citation, notice, or decision required by this chapter to be given to an operator to be mailed immediately to a representative of the miners in the affected coal or other mine, and (2) cause a copy thereof to be mailed to the public official or agency of the State charged with administering State laws, if any, relating to health or safety in such mine. Such notice, order, citation, or decision shall be available for public inspection.

### (c) Compliance

In order to insure prompt compliance with any notice, order, citation, or decision issued under this chapter, the authorized representative of the Secretary may deliver such notice, order, citation, or decision to an agent of the operator, and such agent shall immediately take appropriate measures to insure compliance with such notice, order, citation, or decision.

### (d) Filing; designation of health and safety officers

Each operator of a coal or other mine subject to this chapter shall file with the Secretary the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the Secretary. Each operator of a coal or other mine subject to this chapter shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine, and such official shall receive a copy of any notice, order, citation, or decision issued under this chapter affecting such mine. In any case where the mine is subject to the control of any person not directly involved in the daily operations of the coal or other mine, there shall be filed with the Secretary the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any coal or other mine subject to the control of such person, and such official shall receive a copy of any notice, order, citation, or decision issued affecting any such mine. The mere designation of a health and safety official under this subsection shall not be construed as making such official subject to any penalty under this chapter.

(Pub. L. 91–173, title I, § 109, Dec. 30, 1969, 83 Stat. 756; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1310.)

AMENDMENTS

1977—Pub. L. 95–164 substituted provisions relating to the posting of orders and decisions for provisions setting out an enumeration of penalties, which provisions, as revised, were transferred to section 820 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section

307 of Pub. L. 95–164, set out as a note under section 801 of this title.

## § 820. Penalties

### (a) Civil penalty for violation of mandatory health or safety standards

(1) The operator of a coal or other mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of this chapter, shall be assessed a civil penalty by the Secretary which penalty shall not be more than $50,000 for each such violation. Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense.

(2) The operator of a coal or other mine who fails to provide timely notification to the Secretary as required under section 813(j) of this title (relating to the 15 minute requirement) shall be assessed a civil penalty by the Secretary of not less than $5,000 and not more than $60,000.

(3)(A) The minimum penalty for any citation or order issued under section 814(d)(1) of this title shall be $2,000.

(B) The minimum penalty for any order issued under section 814(d)(2) of this title shall be $4,000.

(4) Nothing in this subsection shall be construed to prevent an operator from obtaining a review, in accordance with section 816 of this title, of an order imposing a penalty described in this subsection. If a court, in making such review, sustains the order, the court shall apply at least the minimum penalties required under this subsection.

### (b) Civil penalty for failure to correct violation for which citation has been issued

(1) Any operator who fails to correct a violation for which a citation has been issued under section 814(a) of this title within the period permitted for its correction may be assessed a civil penalty of not more than $$5,000[1] for each day during which such failure or violation continues.

(2) Violations under this section that are deemed to be flagrant may be assessed a civil penalty of not more than $220,000. For purposes of the preceding sentence, the term ''flagrant'' with respect to a violation means a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury.

### (c) Liability of corporate directors, officers, and agents

Whenever a corporate operator violates a mandatory health or safety standard or knowingly violates or fails or refuses to comply with any order issued under this chapter or any order incorporated in a final decision issued under this chapter, except an order incorporated in a decision issued under subsection (a) of this section or section 815(c) of this title, any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (d) of this section.

### (d) Criminal penalties

Any operator who willfully violates a mandatory health or safety standard, or knowingly violates or fails or refuses to comply with any order issued under section 814 of this title and section 817 of this title, or any order incorporated in a final decision issued under this subchapter, except an order incorporated in a decision under subsection (a)(1) or section 815(c) of this title, shall, upon conviction, be punished by a fine of not more than $250,000, or by imprisonment for not more than one year, or by both, except that if the conviction is for a violation committed after the first conviction of such operator under this chapter, punishment shall be by a fine of not more than $500,000, or by imprisonment for not more than five years, or both.

### (e) Unauthorized advance notice of inspections

Unless otherwise authorized by this chapter, any person who gives advance notice of any inspection to be conducted under this chapter shall, upon conviction, be punished by a fine of not more than $1,000 or by imprisonment for not more than six months, or both.

### (f) False statements, representations, or certifications

Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than five years, or both.

### (g) Violation by miners of safety standards relating to smoking

Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty assessed by the Commission, which penalty shall not be more than $250 for each occurrence of such violation.

### (h) Equipment falsely represented as complying with statute, specification, or regulations

Whoever knowingly distributes, sells, offers for sale, introduces, or delivers in commerce any equipment for use in a coal or other mine, including, but not limited to, components and accessories of such equipment, which is represented as complying with the provisions of this chapter, or with any specification or regulation of the Secretary applicable to such equipment, and which does not so comply, shall, upon conviction, be subject to the same fine and imprisonment that may be imposed upon a person under subsection (f) of this section.

### (i) Authority to assess civil penalties

The Commission shall have authority to assess all civil penalties provided in this chapter. In assessing civil monetary penalties, the Commission shall consider the operator's history of

[1] So in original.

previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. In proposing civil penalties under this chapter, the Secretary may rely upon a summary review of the information available to him and shall not be required to make findings of fact concerning the above factors.

**(j) Payment of penalties; interest**

Civil penalties owed under this chapter shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation occurred or where the operator has its principal office. Interest at the rate of 8 percent per annum shall be charged against a person on any final order of the Commission, or the court. Interest shall begin to accrue 30 days after the issuance of such order.

**(k) Compromise, mitigation, and settlement of penalty**

No proposed penalty which has been contested before the Commission under section 815(a) of this title shall be compromised, mitigated, or settled except with the approval of the Commission. No penalty assessment which has become a final order of the Commission shall be compromised, mitigated, or settled except with the approval of the court.

**(*l*) Inapplicability to black lung benefit provisions**

The provisions of this section shall not be applicable with respect to subchapter IV of this chapter.

(Pub. L. 91–173, title I, § 110, Dec. 30, 1969, 83 Stat. 758; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1311; Pub. L. 101–508, title III, § 3102, Nov. 5, 1990, 104 Stat. 1388–29; Pub. L. 109–236, § 5(b), § 8(a), June 15, 2006, 120 Stat. 498, 500; Pub. L. 109–280, title XIII, § 1301, Aug. 17, 2006, 120 Stat. 1108.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–280, § 1301(2), substituted ''(1) The operator'' for ''(1)(1) The operator'' in par. (1), substituted ''subsection (a)(1)'' for ''paragraph (1)'' in par. (2), relating to criminal penalties, and redesignated that par. as subsec. (d).

Pub. L. 109–236, § 8(a)(1), inserted ''(1)'' after subsec. heading, added par. (2), relating to criminal penalties, and added pars. (3) and (4).

Pub. L. 109–236, § 5(b), designated existing provisions as par. (1) and added par. (2), relating to civil penalties.

Subsec. (b). Pub. L. 109–280, § 1301(3), inserted par. (1) and (2) designations.

Pub. L. 109–236, § 8(a)(2), inserted at end ''Violations under this section that are deemed to be flagrant may be assessed a civil penalty of not more than $220,000. For purposes of the preceding sentence, the term 'flagrant' with respect to a violation means a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury.''

Subsec. (d). Pub. L. 109–280, § 1301(2)(B)(ii), redesignated subsec. (a)(2), relating to criminal penalties, as (d).

Pub. L. 109–280, § 1301(1), struck out subsec. (d) which read as follows: ''Any operator who willfully violates a mandatory health or safety standard, or knowingly violates or fails or refuses to comply with any order issued under section 814 of this title and section 817 of this title, or any order incorporated in a final decision issued under this subchapter, except an order incorporated in a decision under subsection (a) of this section or section 815(c) of this title, shall, upon conviction, be punished by a fine of not more than $25,000, or by imprisonment for not more than one year, or by both, except that if the conviction is for a violation committed after the first conviction of such operator under this chapter, punishment shall be by a fine of not more than $50,000, or by imprisonment for not more than five years, or both.''

1990—Subsec. (a). Pub. L. 101–508, § 3102(1), substituted ''$50,000'' for ''$10,000''.

Subsec. (b). Pub. L. 101–508, § 3102(2), substituted ''$5,000'' for ''1,000''.

1977—Pub. L. 95–164 substituted provisions setting the civil and criminal penalties with regard to violations of this chapter for provisions relating to claims of idled miners, which provisions, as revised, were transferred to section 821 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

REGULATIONS

Pub. L. 109–236, § 8(b), June 15, 2006, 120 Stat. 501, provided that: ''Not later than December 30, 2006, the Secretary of Labor shall promulgate final regulations with respect to penalties.''

## § 821. Entitlement of miners to full compensation

If a coal or other mine or area of such mine is closed by an order issued under section 813 of this title, section 814 of this title, or section 817 of this title, all miners working during the shift when such order was issued who are idled by such order shall be entitled, regardless of the result of any review of such order, to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift. If a coal or other mine or area of such mine is closed by an order issued under section 814 of this title or section 817 of this title for a failure of the operator to comply with any mandatory health or safety standards, all miners who are idled due to such order shall be fully compensated after all interested parties are given an opportunity for a public hearing, which shall be expedited in such cases, and after such order is final, by the operator for lost time at their regular rates of pay for such time as the miners are idled by such closing, or for one week, whichever is the lesser. Whenever an operator violates or fails or refuses to comply with any order issued under section 813 of this title, section 814 of this title, or sec-

tion 817 of this title, all miners employed at the affected mine who would have been withdrawn from, or prevented from entering, such mine or area thereof as a result of such order shall be entitled to full compensation by the operator at their regular rates of pay, in addition to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated. The Commission shall have authority to order compensation due under this section upon the filing of a complaint by a miner or his representative and after opportunity for hearing subject to section 554 of title 5.

(Pub. L. 91–173, title I, § 111, Dec. 30, 1969, 83 Stat. 759; Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1312.)

AMENDMENTS

1977—Pub. L. 95–164 substituted provisions relating to the entitlement of miners to their full compensation when they are idled as the result of the operation of this chapter for provisions relating to the maintenance of records, which provisions, as revised, were transferred to section 813 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

### § 822. Representation of Secretary in civil litigation by Solicitor of Labor

Except as provided in section 518(a) of title 28, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this chapter but all such litigation shall be subject to the direction and control of the Attorney General.

(Pub. L. 91–173, title I, § 112, as added Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1313.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 816(f) of this title prior to the amendment of this subchapter by Pub. L. 95–164.

EFFECTIVE DATE

Section effective 120 days after Nov. 9, 1977, see section 307 of Pub. L. 95–164, set out as an Effective Date of 1977 Amendment note under section 801 of this title.

### § 823. Federal Mine Safety and Health Review Commission

#### (a) Establishment; membership; chairman

The Federal Mine Safety and Health Review Commission is hereby established. The Commission shall consist of five members, appointed by the President by and with the advice and consent of the Senate, from among persons who by reason of training, education, or experience are qualified to carry out the functions of the Commission under this chapter. The President shall designate one of the members of the Commission to serve as Chairman.

#### (b) Terms; personnel; administrative law judges

(1) The terms of the members of the Commission shall be six years, except that—

(A) members of the Commission first taking office after November 9, 1977, shall serve, as designated by the President at the time of appointment, one for a term of two years, two for a term of four years and two for a term of six years; and

(B) a vacancy caused by the death, resignation, or removal of any member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term.

Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(2) The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission. The Commission shall appoint such employees as it deems necessary to assist in the performance of the Commission's functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and general pay rates. Upon the effective date of the Federal Mine Safety and Health Amendments Act of 1977, the administrative law judges assigned to the Arlington, Virginia, facility of the Office of Hearings and Appeals, United States Department of the Interior, shall be automatically transferred in grade and position to the Federal Mine Safety and Health Review Commission. Notwithstanding the provisions of section 559 of title 5, the incumbent Chief Administrative Law Judge of the Office of Hearings and Appeals of the Department of the Interior assigned to the Arlington, Virginia facility shall have the option, on the effective date of the Federal Mine Safety and Health Amendments Act of 1977, of transferring to the Commission as an administrative law judge, in the same grade and position as the other administrative law judges. The administrative law judges (except those presiding over Indian Probate Matters) assigned to the Western facilities of the Office of Hearings and Appeals of the Department of the Interior shall remain with that Department at their present grade and position or they shall have the right to transfer on an equivalent basis to that extended in this paragraph to the Arlington, Virginia administrative law judges in accordance with procedures established by the Director of the Office of Personnel Management. The Commission shall appoint such additional administrative law judges as it deems necessary to carry out the functions of the Commission. Assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5362 and 7521 of title 5.

#### (c) Delegation of powers

The Commission is authorized to delegate to any group of three or more members any or all of the powers of the Commission, except that two members shall constitute a quorum of any group designated pursuant to this paragraph.

#### (d) Proceedings before administrative law judge; administrative review

(1) An administrative law judge appointed by the Commission to hear matters under this chapter shall hear, and make a determination

upon, any proceeding instituted before the Commission and any motion in connection therewith, assigned to such administrative law judge by the chief administrative law judge of the Commission or by the Commission, and shall make a decision which constitutes his final disposition of the proceedings. The decision of the administrative law judge of the Commission shall become the final decision of the Commission 40 days after its issuance unless within such period the Commission has directed that such decision shall be reviewed by the Commission in accordance with paragraph (2). An administrative law judge shall not be assigned to prepare a recommended decision under this chapter.

(2) The Commission shall prescribe rules of procedure for its review of the decisions of administrative law judges in cases under this chapter which shall meet the following standards for review:

(A)(i) Any person adversely affected or aggrieved by a decision of an administrative law judge, may file and serve a petition for discretionary review by the Commission of such decision within 30 days after the issuance of such decision. Review by the Commission shall not be a matter of right but of the sound discretion of the Commission.

(ii) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(I) A finding or conclusion of material fact is not supported by substantial evidence.

(II) A necessary legal conclusion is erroneous.

(III) The decision is contrary to law or to the duly promulgated rules or decisions of the Commission.

(IV) A substantial question of law, policy or discretion is involved.

(V) A prejudicial error of procedure was committed.

(iii) Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations, or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the administrative law judge had not been afforded an opportunity to pass. Review by the Commission shall be granted only by affirmative vote of two of the Commissioners present and voting. If granted, review shall be limited to the questions raised by the petition.

(B) At any time within 30 days after the issuance of a decision of an administrative law judge, the Commission may in its discretion (by affirmative vote of two of the Commissioners present and voting) order the case before it for review but only upon the ground that the decision may be contrary to law or Commission policy, or that a novel question of policy has been presented. The Commission shall state in such order the specific issue of law, Commission policy, or novel question of policy involved. If a party's petition for discretionary review has been granted, the Commission shall not raise or consider additional issues in such review proceedings except in compliance with the requirements of this paragraph.

(C) For the purpose of review by the Commission under paragraph (A) or (B) of this subsection, the record shall include: (i) all matters constituting the record upon which the decision of the administrative law judge was based; (ii) the rulings upon proposed findings and conclusions; (iii) the decision of the administrative law judge; (iv) the petition or petitions for discretionary review, responses thereto, and the Commission's order for review; and (v) briefs filed on review. No other material shall be considered by the Commission upon review. The Commission either may remand the case to the administrative law judge for further proceedings as it may direct or it may affirm, set aside, or modify the decision or order of the administrative law judge in conformity with the record. If the Commission determines that further evidence is necessary on an issue of fact it shall remand the case for further proceedings before the administrative law judge.

(The provisions of section 557(b) of title 5 with regard to the review authority of the Commission are expressly superseded to the extent that they are inconsistent with the provisions of subparagraphs (A), (B), and (C) of this paragraph.)

**(e) Witnesses and evidence; subpoenas; contempt**

In connection with hearings before the Commission or its administrative law judges under this chapter, the Commission and its administrative law judges may compel the attendance and testimony of witnesses and the production of books, papers, or documents, or objects, and order testimony to be taken by deposition at any stage of the proceedings before them. Any person may be compelled to appear and depose and produce similar documentary or physical evidence, in the same manner as witnesses may be compelled to appear and produce evidence before the Commission and its administrative law judges. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States and at depositions ordered by such courts. In case of contumacy, failure, or refusal of any person to obey a subpoena or order of the Commission or an administrative law judge, respectively, to appear, to testify, or to produce documentary or physical evidence, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides, or transacts business, shall, upon the application of the Commission, or the administrative law judge, respectively, have jurisdiction to issue to such person an order requiring such person to appear, to testify, or to produce evidence as ordered by the Commission or the administrative law judge, respectively, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(Pub. L. 91–173, title I, § 113, as added Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1313; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

For the effective date of the Federal Mine Safety and Health Amendments Act of 1977, referred to in subsec. (b)(2), see section 307 of Pub. L. 95–164, set out as an Ef-

fective Date of 1977 Amendment note under section 801 of this title.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 729 of this title prior to its repeal by Pub. L. 95–164.

EFFECTIVE DATE

Section effective 120 days after Nov. 9, 1977, see section 307 of Pub. L. 95–164, set out as an Effective Date of 1977 Amendment note under section 801 of this title.

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''Civil Service Commission'' in subsec. (b)(2) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

### § 823a. Principal office in District of Columbia; proceedings held elsewhere

The principal office of the Commission shall be in the District of Columbia. Whenever the Commission deems that convenience of the public or the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place.

(Pub. L. 95–164, title III, § 302(d), Nov. 9, 1977, 91 Stat. 1320.)

CODIFICATION

Section was enacted as part of Pub. L. 95–164, known as the Federal Mine Safety and Health Amendments Act of 1977, and not as part of Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, known as the Federal Mine Safety and Health Act of 1977 which comprises this chapter.

EFFECTIVE DATE

Section effective 120 days after Nov. 9, 1977, see section 307 of Pub. L. 95–164, set out as an Effective Date of 1977 Amendment note under section 801 of this title.

### § 824. Authorization of appropriations

There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 91–173, title I, § 114, as added Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1315.)

EFFECTIVE DATE

Section effective 120 days after Nov. 9, 1977, see section 307 of Pub. L. 95–164, set out as an Effective Date of 1977 Amendment note under section 801 of this title.

### § 825. Mandatory health and safety training

#### (a) Approved program; regulations

Each operator of a coal or other mine shall have a health and safety training program which shall be approved by the Secretary. The Secretary shall promulgate regulations with respect to such health and safety training programs not more than 180 days after the effective date of the Federal Mine Safety and Health Amendments Act of 1977. Each training program approved by the Secretary shall provide as a minimum that—

(1) new miners having no underground mining experience shall receive no less than 40 hours of training if they are to work underground. Such training shall include instruction in the statutory rights of miners and their representatives under this chapter, use of the self-rescue device and use of respiratory devices, hazard recognition, escapeways, walk around training, emergency procedures, basic ventilation, basic roof control, electrical hazards, first aid, and the health and safety aspects of the task to which he will be assigned;

(2) new miners having no surface mining experience shall receive no less than 24 hours of training if they are to work on the surface. Such training shall include instruction in the statutory rights of miners and their representatives under this chapter, use of the self-rescue device where appropriate and use of respiratory devices where appropriate, hazard recognition, emergency procedures, electrical hazards, first aid, walk around training and the health and safety aspects of the task to which he will be assigned;

(3) all miners shall receive no less than eight hours of refresher training no less frequently than once each 12 months, except that miners already employed on the effective date of the Federal Mine Safety and Health Amendments Act of 1977 shall receive this refresher training no more than 90 days after the date of approval of the training plan required by this section;

(4) any miner who is reassigned to a new task in which he has had no previous work experience shall receive training in accordance with a training plan approved by the Secretary under this subsection in the safety and health aspects specific to that task prior to performing that task;

(5) any training required by paragraphs (1), (2) or (4) shall include a period of training as closely related as is practicable to the work in which the miner is to be engaged.

#### (b) Training compensation

Any health and safety training provided under subsection (a) of this section shall be provided during normal working hours. Miners shall be paid at their normal rate of compensation while they take such training, and new miners shall be paid at their starting wage rate when they take the new miner training. If such training shall be given at a location other than the normal place of work, miners shall also be compensated for the additional costs they may incur in attending such training sessions.

#### (c) Certificate

Upon completion of each training program, each operator shall certify, on a form approved by the Secretary, that the miner has received the specified training in each subject area of the approved health and safety training plan. A certificate for each miner shall be maintained by the operator, and shall be available for inspection at the mine site, and a copy thereof shall be given to each miner at the completion of such training. When a miner leaves the operator's employ, he shall be entitled to a copy of his

health and safety training certificates. False certification by an operator that training was given shall be punishable under section 820(a) and (f) of this title; and each health and safety training certificate shall indicate on its face, in bold letters, printed in a conspicuous manner the fact that such false certification is so punishable.

**(d) Standards**

The Secretary shall promulgate appropriate standards for safety and health training for coal or other mine construction workers.

**(e) Proposed regulations**

(1) Within 180 days after the effective date of the Federal Mine Safety and Health Amendments Act of 1977, the Secretary shall publish proposed regulations which shall provide that mine rescue teams shall be available for rescue and recovery work to each underground coal or other mine in the event of an emergency. The costs of making advance arrangements for such teams shall be borne by the operator of each such mine.

(2)(A) The Secretary shall issue regulations with regard to mine rescue teams which shall be finalized and in effect not later than 18 months after June 15, 2006.

(B) Such regulations shall provide for the following:

(i) That such regulations shall not be construed to waive operator training requirements applicable to existing mine rescue teams.

(ii) That the Mine Safety and Health Administration shall establish, and update every 5 years thereafter, criteria to certify the qualifications of mine rescue teams.

(iii)(I) That the operator of each underground coal mine with more than 36 employees—

(aa) have an employee knowledgeable in mine emergency response who is employed at the mine on each shift at each underground mine; and

(bb) make available two certified mine rescue teams whose members—

(AA) are familiar with the operations of such coal mine;

(BB) participate at least annually in two local mine rescue contests;

(CC) participate at least annually in mine rescue training at the underground coal mine covered by the mine rescue team; and

(DD) are available at the mine within one hour ground travel time from the mine rescue station.

(II)(aa) For the purpose of complying with subclause (I), an operator shall employ one team that is either an individual mine site mine rescue team or a composite team as provided for in item (bb)(BB).

(bb) The following options may be used by an operator to comply with the requirements of item (aa):

(AA) An individual mine-site mine rescue team.

(BB) A multi-employer composite team that is made up of team members who are knowledgeable about the operations and ventilation of the covered mines and who train on a semi-annual basis at the covered underground coal mine—

(aaa) which provides coverage for multiple operators that have team members which include at least two active employees from each of the covered mines;

(bbb) which provides coverage for multiple mines owned by the same operator which members include at least two active employees from each mine; or

(ccc) which is a State-sponsored mine rescue team comprised of at least two active employees from each of the covered mines.

(CC) A commercial mine rescue team provided by contract through a third-party vendor or mine rescue team provided by another coal company, if such team—

(aaa) trains on a quarterly basis at covered underground coal mines;

(bbb) is knowledgeable about the operations and ventilation of the covered mines; and

(ccc) is comprised of individuals with a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team.

(DD) A State-sponsored team made up of State employees.

(iv) That the operator of each underground coal mine with 36 or less employees shall—

(I) have an employee on each shift who is knowledgeable in mine emergency responses; and

(II) make available two certified mine rescue teams whose members—

(aa) are familiar with the operations of such coal mine;

(bb) participate at least annually in two local mine rescue contests;

(cc) participate at least semi-annually in mine rescue training at the underground coal mine covered by the mine rescue team;

(dd) are available at the mine within one hour ground travel time from the mine rescue station;

(ee) are knowledgeable about the operations and ventilation of the covered mines; and

(ff) are comprised of individuals with a minimum of 3 years underground coal mine experience that shall have occurred within the 10-year period preceding their employment on the contract mine rescue team.

(Pub. L. 91–173, title I, § 115, as added Pub. L. 95–164, title II, § 201, Nov. 9, 1977, 91 Stat. 1315; amended Pub. L. 109–236, § 4, June 15, 2006, 120 Stat. 497.)

REFERENCES IN TEXT

For the effective date of the Federal Mine Safety and Health Amendments Act of 1977, referred to in subsecs. (a) and (e)(1), see section 307 of Pub. L. 95–164, set out as an Effective Date of 1977 Amendment note under section 801 of this title.

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–236 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE

Section effective 120 days after Nov. 9, 1977, see section 307 of Pub. L. 95–164, set out as an Effective Date of 1977 Amendment note under section 801 of this title.

### § 826. Limitation on certain liability for rescue operations

**(a) In general**

No person shall bring an action against any covered individual or his or her regular employer for property damage or an injury (or death) sustained as a result of carrying out activities relating to mine accident rescue or recovery operations. This subsection shall not apply where the action that is alleged to result in the property damages or injury (or death) was the result of gross negligence, reckless conduct, or illegal conduct or, where the regular employer (as such term is used in this chapter) is the operator of the mine at which the rescue activity takes place. Nothing in this section shall be construed to preempt State workers' compensation laws.

**(b) Covered individual**

For purposes of subsection (a), the term ''covered individual'' means an individual—

(1) who is a member of a mine rescue team or who is otherwise a volunteer with respect to a mine accident; and

(2) who is carrying out activities relating to mine accident rescue or recovery operations.

**(c) Regular employer**

For purposes of subsection (a), the term ''regular employer'' means the entity that is the covered employee's legal or statutory employer pursuant to applicable State law.

(Pub. L. 91–173, title I, § 116, as added Pub. L. 109–236, § 3, June 15, 2006, 120 Stat. 496.)

## SUBCHAPTER II—INTERIM MANDATORY HEALTH STANDARDS

### § 841. Mandatory health standards for underground mines; enforcement; review; purpose

(a) The provisions of sections 842 through 846 of this title and the applicable provisions of section 878 of this title shall be interim mandatory health standards applicable to all underground coal mines until superseded in whole or in part by improved mandatory health standards promulgated by the Secretary under the provisions of section 811 of this title, and shall be enforced in the same manner and to the same extent as any mandatory health standard promulgated under the provisions of section 811 of this title. Any orders issued in the enforcement of the interim standards set forth in this subchapter shall be subject to review as provided in subchapter I of this chapter.

(b) Among other things, it is the purpose of this subchapter to provide, to the greatest extent possible, that the working conditions in each underground coal mine are sufficiently free of respirable dust concentrations in the mine atmosphere to permit each miner the opportunity to work underground during the period of his entire adult working life without incurring any disability from pneumoconiosis or any other occupation-related disease during or at the end of such period.

(Pub. L. 91–173, title II, § 201, Dec. 30, 1969, 83 Stat. 760.)

EFFECTIVE DATE

Subchapter operative six months after Dec. 30, 1969, except to the extent an earlier date is specifically provided for in Pub. L. 91–173, see section 509 of Pub. L. 91–173, set out as a note under section 801 of this title.

### § 842. Dust concentration and respiratory equipment

**(a) Samples; procedures; transmittal; notice of excess concentration; periodic reports to Secretary; contents**

Each operator of a coal mine shall take accurate samples of the amount of respirable dust in the mine atmosphere to which each miner in the active workings of such mine is exposed. Such samples shall be taken by any device approved by the Secretary and the Secretary of Health and Human Services and in accordance with such methods, at such locations, at such intervals, and in such manner as the Secretaries shall prescribe in the Federal Register within sixty days from December 30, 1969 and from time to time thereafter. Such samples shall be transmitted to the Secretary in a manner established by him, and analyzed and recorded by him in a manner that will assure application of the provisions of section 814(i) of this title when the applicable limit on the concentration of respirable dust required to be maintained under this section is exceeded. The results of such samples shall also be made available to the operator. Each operator shall report and certify to the Secretary at such intervals as the Secretary may require as to the conditions in the active workings of the coal mine, including, but not limited to, the average number of working hours worked during each shift, the quantity and velocity of air regularly reaching the working faces, the method of mining, the amount and pressure of the water, if any, reaching the working faces, and the number, location, and type of sprays, if any, used.

**(b) Standards; noncompliance permit; renewal; procedures; limitations; extension period**

Except as otherwise provided in this subsection—

(1) Effective on the operative date of this subchapter, each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 3.0 milligrams of respirable dust per cubic meter of air.

(2) Effective three years after December 30, 1969, each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air.

(3) Any operator who determines that he will be unable, using available technology, to comply with the provisions of paragraph (1) of this subsection, or the provisions of paragraph (2) of this subsection, as appropriate, may file with the Panel, no later than sixty days prior to the effective date of the applicable respirable dust standard established by such paragraphs, an application for a permit for noncompliance. If, in the case of an application for a permit for noncompliance with the 3.0 milligram standard established by paragraph (1) of this subsection, the application satisfies the requirements of subsection (c) of this section, the Panel shall issue a permit for noncompliance to the operator. If, in the case of an application for a permit for noncompliance with the 2.0 milligram standard established by paragraph (2) of this subsection, the application satisfies the requirements of subsection (c) of this section and the Panel determines that the applicant will be unable to comply with such standard, the Panel shall issue to the operator a permit for noncompliance.

(4) In any case in which an operator, who has been issued a permit (including a renewal permit) for noncompliance under this section, determines, not more than ninety days prior to the expiration date of such permit, that he still is unable to comply with the standard established by paragraph (1) of this subsection or the standard established by paragraph (2) of this subsection, as appropriate, he may file with the Panel an application for renewal of the permit. Upon receipt of such application, the Panel, if it determines, after all interested persons have been notified and given an opportunity for a public hearing under section 804 of this title, that the application is in compliance with the provisions of subsection (c) of this section, and that the applicant will be unable to comply with such standard, may renew the permit.

(5) Any such permit or renewal thereof so issued shall be in effect for a period not to exceed one year and shall entitle the permittee during such period to maintain continuously the average concentration of respirable dust in the mine atmosphere during each shift in the working places of such mine to which the permit applies at a level specified by the Panel, which shall be at the lowest level which the application shows the conditions, technology applicable to such mine, and other available and effective control techniques and methods will permit, but in no event shall such level exceed 4.5 milligrams of dust per cubic meter of air during the period when the 3.0 milligram standard is in effect, or 3.0 milligrams of dust per cubic meter of air during the period when the 2.0 milligram standard is in effect.

(6) No permit or renewal thereof for noncompliance shall entitle any operator to an extension of time beyond eighteen months from December 30, 1969 to comply with the 3.0 milligram standard established by paragraph (1) of this subsection, or beyond seventy-two months from December 30, 1969 to comply with the 2.0 milligram standard established by paragraph (2) of this subsection.

**(c) Applications for noncompliance; contents**

Any application for an initial or renewal permit made pursuant to this section shall contain—

(1) a representation by the applicant and the engineer conducting the survey referred to in paragraph (2) of this subsection that the applicant is unable to comply with the standard applicable under subsection (b)(1) or (b)(2) of this section at specified working places because the technology for reducing the concentration of respirable dust at such places is not available, or because of the lack of other effective control techniques or methods, or because of any combination of such reasons;

(2) an identification of the working places in such mine for which the permit is requested; the results of an engineering survey by a certified engineer of the respirable dust conditions of each working place of the mine with respect to which such application is filed and the ability to reduce such dust to the level required to be maintained in such place under this section; a description of the ventilation system of the mine and its capacity; the quantity and velocity of air regularly reaching the working faces; the method of mining; the amount and pressure of the water, if any, reaching the working faces; the number, location, and type of sprays, if any; action taken to reduce such dust; and such other information as the Panel may require; and

(3) statements by the applicant and the engineer conducting such survey, of the means and methods to be employed to achieve compliance with the applicable standard, the progress made toward achieving compliance, and an estimate of when compliance can be achieved.

**(d) Promulgation of new standards; procedures**

Beginning six months after the operative date of this subchapter and from time to time thereafter, the Secretary of Health and Human Services shall establish, in accordance with the provisions of section 811 of this title, a schedule reducing the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed below the levels established in this section to a level of personal exposure which will prevent new incidences of respiratory disease and the further development of such disease in any person. Such schedule shall specify the minimum time necessary to achieve such levels taking into consideration present and future advancements in technology to reach these levels.

**(e) Concentration of respirable dust**

References to concentrations of respirable dust in this subchapter mean the average concentration of respirable dust measured with a device approved by the Secretary and the Secretary of Health and Human Services.

**(f) Average concentration**

For the purpose of this subchapter, the term ''average concentration'' means a determination which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed (1) as measured, during the 18

month period following December 30, 1969, over a number of continuous production shifts to be determined by the Secretary and the Secretary of Health and Human Services, and (2) as measured thereafter, over a single shift only, unless the Secretary and the Secretary of Health and Human Services find, in accordance with the provisions of section 811 of this title, that such single shift measurement will not, after applying valid statistical techniques to such measurement, accurately represent such atmospheric conditions during such shift.

**(g) Compliance inspections**

The Secretary shall cause to be made such frequent spot inspections as he deems appropriate of the active workings of coal mines for the purpose of obtaining compliance with the provisions of this subchapter.

**(h) Maintenance of respiratory equipment; substitutes for environmental controls**

Respiratory equipment approved by the Secretary and the Secretary of Health and Human Services shall be made available to all persons whenever exposed to concentrations of respirable dust in excess of the levels required to be maintained under this chapter. Use of respirators shall not be substituted for environmental control measures in the active workings. Each operator shall maintain a supply of respiratory equipment adequate to deal with occurrences of concentrations of respirable dust in the mine atmosphere in excess of the levels required to be maintained under this chapter.

(Pub. L. 91–173, title II, § 202, Dec. 30, 1969, 83 Stat. 760; Pub. L. 95–164, title II, § 202(a), Nov. 9, 1977, 91 Stat. 1317; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsecs. (b)(1) and (d), see section 509 of Pub. L. 91–173, set out as a note under section 801 of this title.

AMENDMENTS

1977—Subsec. (e). Pub. L. 95–164 substituted a general reference to an ''approved device'' used to measure the average concentration of respirable dust for provisions which had referred to a specific device known as an ''MRE instrument''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsecs. (a), (d) to (f), and (h) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective Nov. 9, 1977, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

## § 843. Medical examinations

**(a) Chest roentgenogram; availability; periodic intervals; other tests; transmittal of results; advice of rights**

The operator of a coal mine shall cooperate with the Secretary of Health and Human Services in making available to each miner working in a coal mine the opportunity to have a chest roentgenogram within eighteen months after December 30, 1969, a second chest roentgenogram within three years thereafter, and subsequent chest roentgenograms at such intervals thereafter of not to exceed five years as the Secretary of Health and Human Services prescribes. Each worker who begins work in a coal mine for the first time shall be given, as soon as possible after commencement of his employment, and again three years later if he is still engaged in coal mining, a chest roentgenogram; and in the event the second such chest roentgenogram shows evidence of the development of pneumoconiosis the worker shall be given, two years later if he is still engaged in coal mining, an additional chest roentgenogram. All chest roentgenograms shall be given in accordance with specifications prescribed by the Secretary of Health and Human Services and shall be supplemented by such other tests as the Secretary of Health and Human Services deems necessary. The films shall be read and classified in a manner to be prescribed by the Secretary of Health and Human Services, and the results of each reading on each such person and of such tests shall be submitted to the Secretary and to the Secretary of Health and Human Services, and, at the request of the miner, to his physician. The Secretary shall also submit such results to such miner and advise him of his rights under this chapter related thereto. Such specifications, readings, classifications, and tests shall, to the greatest degree possible, be uniform for all coal mines and miners in such mines.

**(b) Evidence of pneumoconiosis; option to transfer; wages**

(1) On and after the operative date of this subchapter, any miner who, in the judgment of the Secretary of Health and Human Services based upon such reading or other medical examinations, shows evidence of the development of pneumoconiosis shall be afforded the option of transferring from his position to another position in any area of the mine, for such period or periods as may be necessary to prevent further development of such disease, where the concentration of respirable dust in the mine atmosphere is not more than 2.0 milligrams of dust per cubic meter of air.

(2) Effective three years after December 30, 1969, any miner who, in the judgment of the Secretary of Health and Human Services based upon such reading or other medical examinations, shows evidence of the development of pneumoconiosis shall be afforded the option of transferring from his position to another position in any area of the mine, for such period or periods as may be necessary to prevent further development of such disease, where the concentration of respirable dust in the mine atmosphere is not more than 1.0 millograms[1] of dust per cubic meter of air, or if such level is not attainable in such mine, to a position in such mine where the concentration of respirable dust is the lowest attainable below 2.0 milligrams per cubic meter of air.

(3) Any miner so transferred shall receive compensation for such work at not less than the reg-

[1] So in original. Probably should be ''milligrams''.

ular rate of pay received by him immediately prior to his transfer.

**(c) Costs of examinations and tests**

No payment may be required of any miner in connection with any examination or test given him pursuant to this subchapter. Where such examinations or tests cannot be given, due to the lack of adequate medical or other necessary facilities or personnel, in the locality where the miner resides, arrangements shall be made to have them conducted, in accordance with the provisions of this subchapter, in such locality by the Secretary of Health and Human Services, or by an appropriate person, agency, or institution, public or private, under an agreement or arrangement between the Secretary of Health and Human Services and such person, agency, or institution. The operator of the mine shall reimburse the Secretary of Health and Human Services, or such person, agency, or institution, as the case may be, for the cost of conducting each examination or test made, in accordance with this subchapter, and shall pay whatever other costs are necessary to enable the miner to take such examinations or tests.

**(d) Autopsies**

If the death of any active miner occurs in any coal mine, or if the death of any active or inactive miner occurs in any other place, the Secretary of Health and Human Services is authorized to provide for an autopsy to be performed on such miner, with the consent of his surviving widow or, if he has no such widow, then with the consent of his surviving next of kin. The results of such autopsy shall be submitted to the Secretary of Health and Human Services and, with the consent of such survivor, to the miner's physician or other interested person. Such autopsy shall be paid for by the Secretary of Health and Human Services.

(Pub. L. 91–173, title II, § 203, Dec. 30, 1969, 83 Stat. 763; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

For operative date of this subchapter, referred to in subsec. (b)(1), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

### § 844. Rock dust and gas hazards; controls

The dust resulting from drilling in rock shall be controlled by the use of permissible dust collectors, or by water or water with a wetting agent, or by ventilation, or by any other method or device approved by the Secretary which is at least as effective in controlling such dust. Respiratory equipment approved by the Secretary and the Secretary of Health and Human Services shall be provided persons exposed for short periods to inhalation hazards from gas, dusts, fumes, or mist. When the exposure is for prolonged periods, other measures to protect such persons or to reduce the hazard shall be taken.

(Pub. L. 91–173, title II, § 204, Dec. 30, 1969, 83 Stat. 764; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

### § 845. Dust standards in presence of quartz

In coal mining operations where the concentration of respirable dust in the mine atmosphere of any working place contains more than 5 per centum quartz, the Secretary of Health and Human Services shall prescribe an appropriate formula for determining the applicable respirable dust standard under this subchapter for such working place and the Secretary shall apply such formula in carrying out his duties under this subchapter.

(Pub. L. 91–173, title II, § 205, Dec. 30, 1969, 83 Stat. 765; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

### § 846. Noise standards; promulgation of new standards; tests; procedures; protective devices

On and after the operative date of this subchapter, the standards on noise prescribed under the Walsh-Healey Public Contracts Act, as amended [41 U.S.C. 35 et seq.], in effect October 1, 1969, shall be applicable to each coal mine and each operator of such mine shall comply with them. Within six months after December 30, 1969, the Secretary of Health and Human Services shall establish, and the Secretary shall publish, as provided in section 811 of this title, proposed mandatory health standards establishing maximum noise exposure levels for all underground coal mines. Beginning six months after the operative date of this subchapter, and at intervals of at least every six months thereafter, the operator of each coal mine shall conduct, in a manner prescribed by the Secretary of Health and Human Services, tests by a qualified person of the noise level at the mine and report and certify the results to the Secretary and the Secretary of Health and Human Services. In meeting such standard under this section, the operator shall not require the use of any protective device or system, including personal devices, which the Secretary or his authorized representative finds to be hazardous or cause a hazard to the miners in such mine.

(Pub. L. 91–173, title II, § 206, Dec. 30, 1969, 83 Stat. 765; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in text, see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

The Walsh-Healey Public Contracts Act, as amended, referred to in text, probably means act June 30, 1936, ch. 881, 49 Stat. 2036, as amended, known as the Walsh-Healey Act, which is classified generally to sections 35 to 45 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 35 of Title 41 and Tables. See also section 262 of Title 29, Labor.

CHANGE OF NAME

"Secretary of Health and Human Services" substituted in text for "Secretary of Health, Education, and Welfare" pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

## SUBCHAPTER III—INTERIM MANDATORY SAFETY STANDARDS FOR UNDERGROUND COAL MINES

### § 861. Mandatory safety standards for underground mines

#### (a) Coverage; enforcement; review

The provisions of sections 862 through 878 of this title shall be interim mandatory safety standards applicable to all underground coal mines until superseded in whole or in part by improved mandatory safety standards promulgated by the Secretary under the provisions of section 811 of this title, and shall be enforced in the same manner and to the same extent as any mandatory safety standard promulgated under section 811 of this title. Any orders issued in the enforcement of the interim standards set forth in this subchapter shall be subject to review as provided in subchapter I of this chapter.

#### (b) Purpose; initiation of studies and research

The purpose of this subchapter is to provide for the immediate application of mandatory safety standards developed on the basis of experience and advances in technology and to prevent newly created hazards resulting from new technology in coal mining. The Secretary of the Interior in coordination with the Secretary shall immediately initiate studies, investigations, and research to further upgrade such standards and to develop and promulgate new and improved standards promptly that will provide increased protection to the miners, particularly in connection with hazards from trolley wires, trolley feeder wires, and signal wires, the splicing and use of trailing cables, and in connection with improvements in vulcanizing of electric conductors, improvement in roof control measures, methane drainage in advance of mining, improved methods of measuring methane and other explosive gases and oxygen concentrations, and the use of improved underground equipment and other sources of power for such equipment.

(Pub. L. 91–173, title III, § 301, Dec. 30, 1969, 83 Stat. 765; Pub. L. 95–164, title II, § 203, Nov. 9, 1977, 91 Stat. 1317.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95–164, § 203(a), substituted "The Secretary of the Interior in coordination with the Secretary shall immediately initiate studies" for "The Secretary shall immediately initiate studies".

Subsecs. (c), (d). Pub. L. 95–164, § 203(b), struck out subsec. (c) which related to the modification of standards, and subsec. (d) which related to the applicability of section 553 of title 5 in cases where the provisions of sections 862 to 878 of this title had provided that certain actions, conditions, or requirements be carried out as prescribed by the Secretary or the Secretary of Health, Education, and Welfare.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

EFFECTIVE DATE

Subchapter operative 90 days after Dec. 30, 1969, except to the extent an earlier date is specifically provided for in Pub. L. 91–173, see section 509 of Pub. L. 91–173, set out as a note under section 801 of this title.

### § 862. Roof support

#### (a) Roof control plan; contents; review; availability

Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine and approved by the Secretary shall be adopted and set out in printed form within sixty days after the operative date of this subchapter. The plan shall show the type of support and spacing approved by the Secretary. Such plan shall be reviewed periodically, at least every six months by the Secretary, taking into consideration any falls of roof or ribs or inadequacy of support of roof or ribs. No person shall proceed beyond the last permanent support unless adequate temporary support is provided or unless such temporary support is not required under the approved roof control plan and the absence of such support will not pose a hazard to the miners. A copy of the plan shall be furnished the Secretary or his authorized representative and shall be available to the miners and their representatives.

#### (b) Creation of dangers by roof falls

The method of mining followed in any coal mine shall not expose the miner to unusual dangers from roof falls caused by excessive widths of rooms and entries or faulty pillar recovery methods.

#### (c) Location and supply of roof support material; safety devices for roof work

The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mine as the Secretary may prescribe an ample supply of suitable materials of proper size with which to secure the roof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt- holes are being drilled, roof bolts are being installed, and in such other circumstances as may be appropriate. Loose roof and overhanging or loose

faces and ribs shall be taken down or supported. Except in the case of recovery work, supports knocked out shall be replaced promptly.

**(d) Roof bolts**

When installation of roof bolts is permitted, such roof bolts shall be tested in accordance with the approved roof control plan.

**(e) Recovery of roof bolts**

Roof bolts shall not be recovered where complete extractions of pillars are attempted, where adjacent to clay veins, or at the locations of other irregularities, whether natural or otherwise, that induce abnormal hazards. Where roof bolt recovery is permitted, it shall be conducted only in accordance with methods prescribed in the approved roof control plan, and shall be conducted by experienced miners and only where adequate temporary support is provided.

**(f) Safety inspections; correction of dangerous conditions**

Where miners are exposed to danger from falls of roof, face, and ribs the operator shall examine and test the roof, face, and ribs before any work or machine is started, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately.

(Pub. L. 91–173, title III, § 302, Dec. 30, 1969, 83 Stat. 766.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsec. (a), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

**§ 863. Ventilation**

**(a) Equipment; approval; daily examinations**

All coal mines shall be ventilated by mechanical ventilation equipment installed and operated in a manner approved by an authorized representative of the Secretary and such equipment shall be examined daily and a record shall be kept of such examination.

**(b) Standards for air in work areas**

All active workings shall be ventilated by a current of air containing not less than 19.5 volume per centum of oxygen, not more than 0.5 volume per centum of carbon dioxide, and no harmful quantities of other noxious or poisonous gases; and the volume and velocity of the current of air shall be sufficient to dilute, render harmless, and to carry away, flammable, explosive, noxious, and harmful gases, and dust, and smoke and explosive fumes. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms shall be nine thousand cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line shall be nine thousand cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be three thousand cubic feet a minute. Within three months after the operative date of this subchapter, the Secretary shall prescribe the minimum velocity and quantity of air reaching each working face of each coal mine in order to render harmless and carry away methane and other explosive gases and to reduce the level of respirable dust to the lowest attainable level. The authorized representative of the Secretary may require in any coal mine a greater quantity and velocity of air when he finds it necessary to protect the health or safety of miners. Within one year after the operative date of this subchapter, the Secretary or his authorized representative shall prescribe the maximum respirable dust level in the intake aircourses in each coal mine in order to reduce such level to the lowest attainable level. In robbing areas of anthracite mines, where the air currents cannot be controlled and measurements of the air cannot be obtained, the air shall have perceptible movement.

**(c) Line brattice; functions; exceptions; repairs; flame resistant material**

(1) Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove flammable, explosive, and noxious gases, dust, and explosive fumes, unless the Secretary or his authorized representative permits an exception to this requirement, where such exception will not pose a hazard to the miners. When damaged by falls or otherwise, such line brattice or other devices shall be repaired immediately.

(2) The space between the line brattice or other approved device and the rib shall be large enough to permit the flow of a sufficient volume and velocity of air to keep the working face clear of flammable, explosive, and noxious gases, dust, and explosive fumes.

(3) Brattice cloth used underground shall be of flame-resistant material.

**(d) Pre-shift examinations and tests; scope; violations of mandatory standards; notification; posting of "DANGER" signs; restriction of entry; records; re-entry**

(1) Within three hours immediately preceding the beginning of any shift, and before any miner in such shift enters the active workings of a coal mine, certified persons designated by the operator of the mine shall examine such workings and any other underground area of the mine designated by the Secretary or his authorized representative. Each such examiner shall examine every working section in such workings and shall make tests in each such working section for accumulations of methane with means approved by the Secretary for detecting methane and shall make tests for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary; examine seals and doors to determine whether they are functioning properly; examine and test the roof, face, and rib conditions in such working section; examine active roadways, travelways, and belt conveyors on which men are carried, approaches to abandoned areas, and accessible falls in such section for hazards; test by means of an anemometer or other device approved by the Secretary to determine whether the air in each split is traveling in its proper course and in normal volume and velocity; and examine for such other hazards and violations of the mandatory health or safety

standards, as an authorized representative of the Secretary may from time to time require. Belt conveyors on which coal is carried shall be examined after each coal-producing shift has begun. Such mine examiner shall place his initials and the date and time at all places he examines. If such mine examiner finds a condition which constitutes a violation of a mandatory health or safety standard or any condition which is hazardous to persons who may enter or be in such area, he shall indicate such hazardous place by posting a ''DANGER'' sign conspiciously[1] at all points which persons entering such hazardous place would be required to pass, and shall notify the operator of the mine. No person, other than an authorized representative of the Secretary or a State mine inspector or persons authorized by the operator to enter such place for the purpose of eliminating the hazardous condition therein, shall enter such place while such sign is so posted. Upon completing his examination, such mine examiner shall report the results of his examination to a person, designated by the operator to receive such reports at a designated station on the surface of the mine, before other persons enter the underground areas of such mine to work in such shift. Each such mine examiner shall also record the results of his examination with ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

(2) No person (other than certified persons designated under this subsection) shall enter any underground area, except during any shift, unless an examination of such area as prescribed in this subsection has been made within eight hours immediately preceding his entrance into such area.

**(e) Daily examinations and tests; scope; imminent danger; withdrawal of persons; abatement of danger**

At least once during each coal-producing shift, or more often if necessary for safety, each working section shall be examined for hazardous conditions by certified persons designated by the operator to do so. Any such condition shall be corrected immediately. If such condition creates an imminent danger, the operator shall withdraw all persons from the area affected by such condition to a safe area, except those persons referred to in section 814(d) of this title, until the danger is abated. Such examination shall include tests for methane with a means approved by the Secretary for detecting methane and for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary.

**(f) Weekly examination for hazardous conditions; scope; notification; repairs; imminent danger; withdrawal of persons; abatement; records**

In addition to the pre-shift and daily examinations required by this section, examinations for hazardous conditions, including tests for methane, and for compliance with the mandatory health or safety standards, shall be made at least once each week by a certified person designated by the operator in the return of each split of air where it enters the main return, on pillar falls, at seals, in the main return, at least one entry of each intake and return aircourse in its entirety, idle workings, and, insofar as safety considerations permit, abandoned areas. Such weekly examination need not be made during any week in which the mine is idle for the entire week, except that such examination shall be made before any other miner returns to the mine. The person making such examinations and tests shall place his initials and the date and time at the places examined, and if any hazardous condition is found, such condition shall be reported to the operator promptly. Any hazardous condition shall be corrected immediately. If such condition creates an imminent danger, the operator shall withdraw all persons from the area affected by such condition to a safe area, except those persons referred to in section 814(d) of this title, until such danger is abated. A record of these examinations, tests, and actions taken shall be recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

**(g) Weekly ventilation examinations; scope; records**

At least once each week, a qualified person shall measure the volume of air entering the main intakes and leaving the main returns, the volume passing through the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms, the volume and, when the Secretary so prescribes, the velocity reaching each working face, the volume being delivered to the intake end of each pillar line, and the volume at the intake and return of each split of air. A record of such measurements shall be recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the coal mine chosen by the operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

**(h) Methane examinations at working place; periodic intervals; standards; procedures for different air contents of methane**

(1) At the start of each shift, tests for methane shall be made at each working place immediately before electrically operated equipment is energized. Such tests shall be made by qualified persons. If 1.0 volume per centum or more of methane is detected, electrical equipment shall not be energized, taken into, or operated in, such working place until the air therein contains less than 1.0 volume per centum of methane. Examinations for methane shall be made during the operation of such equipment at intervals of not more than twenty minutes during each shift, unless more frequent examinations are required by an authorized representative of the Secretary. In conducting such tests, such

[1] So in original. Probably should be ''conspicuously''.

person shall use means approved by the Secretary for detecting methane.

(2) If at any time the air at any working place, when tested at a point not less than twelve inches from the roof, face, or rib, contains 1.0 volume per centum or more of methane, changes or adjustments shall be made at once in the ventilation in such mine so that such air shall contain less than 1.0 volume per centum of methane. While such changes or adjustments are underway and until they have been achieved, power to electric face equipment located in such place shall be cut off, no other work shall be permitted in such place, and due precautions shall be carried out under the direction of the operator or his agent so as not to endanger other areas of the mine. If at any time such air contains 1.5 volume per centum or more of methane, all persons, except those referred to in section 814(d) of this title, shall be withdrawn from the area of the mine endangered thereby to a safe area, and all electric power shall be cut off from the endangered area of the mine, until the air in such working place shall contain less than 1.0 volume per centum of methane.

**(i) Methane examination of air returning from working section; periodic intervals; standards; procedures for different air contents; virgin territory**

(1) If, when tested, a split of air returning from any working section contains 1.0 volume per centum or more of methane, changes or adjustments shall be made at once in the ventilation in the mine so that such returning air shall contain less than 1.0 volume per centum of methane. Tests under this paragraph and paragraph (2) of this subsection shall be made at four-hour intervals during each shift by a qualified person designated by the operator of the mine. In making such tests, such person shall use means approved by the Secretary for detecting methane.

(2) If, when tested, a split of air returning from any working section contains 1.5 volume per centum or more of methane, all persons, except those persons referred to in section 814(d) of this title, shall be withdrawn from the area of the mine endangered thereby to a safe area and all electric power shall be cut off from the endangered area of the mine, until the air in such split shall contain less than 1.0 volume per centum of methane.

(3) In virgin territory, if the quantity of air in a split ventilating the active workings in such territory equals or exceeds twice the minimum volume of air prescribed in subsection (b) of this section for the last open crosscut, if the air in the split returning from such workings does not pass over trolley wires or trolley feeder wires, and if a certified person designated by the operator is continually testing the methane content of the air in such split during mining operations in such workings, it shall be necessary to withdraw all persons, except those referred to in section 814(d) of this title, from the area of the mine endangered thereby to a safe area and all electric power shall be cut off from the endangered area only when the air returning from such workings contains 2.0 volume per centum or more of methane.

**(j) Abandoned area air; pre-shift examination**

Air which has passed by an opening of any abandoned area shall not be used to ventilate any working place in the coal mine if such air contains 0.25 volume per centum or more of methane. Examinations of such air shall be made during the pre-shift examination required by subsection (d) of this section. In making such tests, a certified person designated by the operator shall use means approved by the Secretary for detecting methane. For the purposes of this subsection, an area within a panel shall not be deemed to be abandoned until such panel is abandoned.

**(k) Abandoned area air; inaccessible or unsafe for inspection; air from where pillars have been removed**

Air that has passed through an abandoned area or an area which is inaccessible or unsafe for inspection shall not be used to ventilate any working place in any mine. No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any working place in a mine, except that such air, if it does not contain 0.25 volume per centum or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries.

**(*l*) Methane monitors; required equipment; maintenance; warnings; deenergizing of equipment**

The Secretary or his authorized representative shall require, as an additional device for detecting concentrations of methane, that a methane monitor, approved as reliable by the Secretary after the operative date of this subchapter, be installed, when available, on any electric face cutting equipment, continuous miner, longwall face equipment, and loading machine, except that no monitor shall be required to be installed on any such equipment prior to the date on which such equipment is required to be permissible under section 865(a) of this title. When installed on any such equipment, such monitor shall be kept operative and properly maintained and frequently tested as prescribed by the Secretary. The sensing device of such monitor shall be installed as close to the working face as practicable. Such monitor shall be set to deenergize automatically such equipment when such monitor is not operating properly and to give a warning automatically when the concentration of methane reaches a maximum percentage determined by an authorized representative of the Secretary which shall not be more than 1.0 volume per centum of methane. An authorized representative of the Secretary shall require such monitor to deenergize automatically equipment on which it is installed when the concentration of methane reaches a maximum percentage determined by such representative which shall not be more than 2.0 volume per centum of methane.

**(m) Idle area inspections; authorized inspectors**

Idle and abandoned areas shall be inspected for methane and for oxygen deficiency and other dangerous conditions by a certified person with means approved by the Secretary as soon as pos-

sible but not more than three hours before other persons are permitted to enter or work in such areas. Persons, such as pumpmen, who are required regularly to enter such areas in the performance of their duties, and who are trained and qualified in the use of means approved by the Secretary for detecting methane and in the use of a permissible flame safety lamp or other means approved by the Secretary for detecting oxygen deficiency are authorized to make such examinations for themselves, and each such person shall be properly equipped and shall make such examinations upon entering any such area.

**(n) Intentional roof falls; prior inspections; safeguards**

Immediately before an intentional roof fall is made, pillar workings shall be examined by a qualified person designated by the operator to ascertain whether methane is present. Such person shall use means approved by the Secretary for detecting methane. If in such examination methane is found in amounts of 1.0 volume per centum or more, such roof fall shall not be made until changes or adjustments are made in the ventilation so that the air shall contain less than 1.0 volume per centum of methane.

**(*o*) Methane and dust control plans; contents**

A ventilation system and methane and dust control plan and revisions thereof suitable to the conditions and the mining system of the coal mine and approved by the Secretary shall be adopted by the operator and set out in printed form within ninety days after the operative date of this subchapter. The plan shall show the type and location of mechanical ventilation equipment installed and operated in the mine, such additional or improved equipment as the Secretary may require, the quantity and velocity of air reaching each working face, and such other information as the Secretary may require. Such plan shall be reviewed by the operator and the Secretary at least every six months.

**(p) Devices for detection of methane and oxygen deficiency; maintenance**

Each operator shall provide for the proper maintenance and care of the permissible flame safety lamp or any other approved device for detecting methane and oxygen deficiency by a person trained in such maintenance, and, before each shift, care shall be taken to insure that such lamp or other device is in a permissible condition.

**(q) Pillar recovery; areas without bleeder systems**

Where areas are being pillared on the operative date of this subchapter without bleeder entries, or without bleeder systems or an equivalent means, pillar recovery may be completed in the area, to the extent approved by an authorized representative of the Secretary, if the edges of pillar lines adjacent to active workings are ventilated with sufficient air to keep the air in open areas along the pillar lines below 1.0 volume per centum of methane.

**(r) Overcast and undercast intake air split requirements; time extension**

Each mechanized mining section shall be ventilated with a separate split of intake air directed by overcasts, undercasts, or the equivalent, except an extension of time, not in excess of nine months, may be permitted by the Secretary, under such conditions as he may prescribe, whenever he determines that this subsection cannot be complied with on the operative date of this subchapter.

**(s) Blasting; prior and subsequent examinations for methane**

In all underground areas of a coal mine, immediately before firing each shot or group of multiple shots and after blasting is completed, examinations for methane shall be made by a qualified person with means approved by the Secretary for detecting methane. If methane is found in amounts of 1.0 volume per centum or more, changes or adjustments shall be made at once in the ventilation so that the air shall contain less than 1.0 volume per centum of methane. No shots shall be fired until the air contains less than 1.0 volume per centum of methane.

**(t) Mine fan stop plans; requisites**

Each operator shall adopt a plan within sixty days after the operative date of this subchapter which shall provide that when any mine fan stops, immediate action shall be taken by the operator or his agent (1) to withdraw all persons from the working sections, (2) to cut off the power in the mine in a timely manner, (3) to provide for restoration of power and resumption of work if ventilation is restored within a reasonable period as set forth in the plan after the working places and other active workings where methane is likely to accumulate are reexamined by a certified person to determine if methane in amounts of 1.0 volume per centum or more exists therein, and (4) to provide for withdrawal of all persons from the mine if ventilation cannot be restored within such reasonable time. The plan and revisions thereof approved by the Secretary shall be set out in printed form and a copy shall be furnished to the Secretary or his authorized representative.

**(u) Modifications affecting main air current or any split; withdrawal of personnel; removal of power**

Changes in ventilation which materially affect the main air current or any split thereof and which may affect the safety of persons in the coal mine shall be made only when the mine is idle. Only those persons engaged in making such changes shall be permitted in the mine during the change. Power shall be removed from the areas affected by the change before work starts to make the change and shall not be restored until the effect of the change has been ascertained and the affected areas determined to be safe by a certified person.

**(v) Reading and countersigning of daily and weekly reports; foreman; superintendent**

The mine foreman shall read and countersign promptly the daily reports of the pre-shift examiner and assistant mine foremen, and he shall read and countersign promptly the weekly report covering the examinations for hazardous conditions. Where such reports disclose hazardous conditions, they shall be corrected prompt-

ly. If such conditions create an imminent danger, the operator shall withdraw all persons from, or prevent any person from entering, as the case may be, the area affected by such conditions, except those persons referred to in section 814(d) of this title, until such danger is abated. The mine superintendent or assistant superintendent of the mine shall also read and countersign the daily and weekly reports of such persons.

**(w) Daily mine condition reports; requisites; signatures**

Each day, the mine foreman and each of his assistants shall enter plainly and sign with ink or indelible pencil in a book approved by the Secretary provided for that purpose a report of the condition of the mine or portion thereof under his supervision, which report shall state clearly the location and nature of any hazardous condition observed by him or reported to him during the day and what action was taken to remedy such condition. Such book shall be kept in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard, and shall be open for inspection by interested persons.

**(x) Reopening of abandoned or declared inactive mine; notification; inspection**

Before a coal mine is reopened after having been abandoned or declared inactive by the operator, the Secretary shall be notified, and an inspection shall be made of the entire mine by an authorized representative of the Secretary before mining operations commence.

**(y) Separation of intake and return aircourses from belt haulage entries; standards**

(1) In any coal mine opened after the operative date of this subchapter, the entries used as intake and return aircourses shall be separated from belt haulage entries, and each operator of such mine shall limit the velocity of the air coursed through belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of methane, and such air shall not be used to ventilate active working places. Whenever an authorized representative of the Secretary finds, in the case of any coal mine opened on or prior to the operative date of this subchapter which has been developed with more than two entries, that the conditions in the entries, other than belt haulage entries, are such as to permit adequately the coursing of intake or return air through such entries, (1) the belt haulage entries shall not be used to ventilate, unless such entries are necessary to ventilate, active working places, and (2) when the belt haulage entries are not necessary to ventilate the active working places, the operator of such mine shall limit the velocity of the air coursed through the belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of methane.

(2) In any coal mine opened on or after the operative date of this subchapter, or, in the case of a coal mine opened prior to such date, in any new working section of such mine, where trolley haulage systems are maintained and where trolley wires or trolley feeder wires are installed, an authorized representative of the Secretary shall require a sufficient number of entries or rooms as intake aircourses in order to limit, as prescribed by the Secretary, the velocity of air currents on such haulageways for the purpose of minimizing the hazards associated with fires and dust explosions in such haulageways.

**(z) Pillar extractions; bleeder systems and sealing requirements; standards**

(1) While pillars are being extracted in any area of a coal mine, such area shall be ventilated in the manner prescribed by this section.

(2) Within nine months after the operative date of this subchapter, all areas from which pillars have been wholly or partially extracted and abandoned areas, as determined by the Secretary or his authorized representative, shall be ventilated by bleeder entries or by bleeder systems or equivalent means, or be sealed, as determined by the Secretary or his authorized representative. When ventilation of such areas is required, such ventilation shall be maintained so as continuously to dilute, render harmless, and carry away methane and other explosive gases within such areas and to protect the active workings of the mine from the hazards of such methane and other explosive gases. Air coursed through underground areas from which pillars have been wholly or partially extracted which enters another split of air shall not contain more than 2.0 volume per centum of methane, when tested at the point it enters such other split. When sealing is required, such seals shall be made in an approved manner so as to isolate with explosion-proof bulkheads such areas from the active workings of the mine.

(3) In the case of mines opened on or after the operative date of this subchapter, or in the case of working sections opened on or after such date in mines opened prior to such date, the mining system shall be designed in accordance with a plan and revisions thereof approved by the Secretary and adopted by such operator so that, as each working section of the mine is abandoned, it can be isolated from the active workings of the mine with explosion-proof seals or bulkheads.

(Pub. L. 91–173, title III, § 303, Dec. 30, 1969, 83 Stat. 767.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsecs. (b), (*l*), (*o*), (q), (r), (t), (y), and (z)(2), (3), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

**§ 864. Combustible materials and rock dusting**

**(a) Accumulations; maintenance**

Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings, or on electric equipment therein.

**(b) Abatement of hazards in active working areas**

Where underground mining operations in active workings create or raise excessive amounts

of dust, water or water with a wetting agent added to it, or other no less effective methods approved by the Secretary or his authorized representative, shall be used to abate such dust. In working places, particularly in distances less than forty feet from the face, water, with or without a wetting agent, or other no less effective methods approved by the Secretary or his authorized representative, shall be applied to coal dust on the ribs, roof, and floor to reduce dispersibility and to minimize the explosion hazard.

**(c) Rock dusting of all areas of underground mines; exceptions**

All underground areas of a coal mine, except those areas in which the dust is too wet or too high in incombustible content to propagate an explosion, shall be rock dusted to within forty feet of all working faces, unless such areas are inaccessible or unsafe to enter or unless the Secretary or his authorized representative permits an exception upon his finding that such exception will not pose a hazard to the miners. All crosscuts that are less than forty feet from a working face shall also be rock dusted.

**(d) Distribution of rock dust; places, quantities**

Where rock dust is required to be applied, it shall be distributed upon the top, floor, and sides of all underground areas of a coal mine and maintained in such quantities that the incombustible content of the combined coal dust, rock dust, and other dust shall be not less than 65 per centum, but the incombustible content in the return aircourses shall be no less than 80 per centum. Where methane is present in any ventilating current, the per centum of incombustible content of such combined dusts shall be increased 1.0 and 0.4 per centum for each 0.1 per centum of methane where 65 and 80 per centum, respectively, of incombustibles are required.

**(e) Limitation of applicability**

Subsections (b) through (d) of this section shall not apply to underground anthracite mines.

(Pub. L. 91–173, title III, § 304, Dec. 30, 1969, 83 Stat. 774.)

**§ 865. Electrical equipment**

**(a) Allowable equipment; replacements; maintenance; permits for noncompliance; renewals; limitations; list of electric face equipment; survey of new and rebuilt equipment; publication of results**

(1) Effective one year after the operative date of this subchapter—

(A) all junction or distribution boxes used for making multiple power connections inby the last open crosscut shall be permissible;

(B) all handheld electric drills, blower and exhaust fans, electric pumps, and such other low horsepower electric face equipment as the Secretary may designate within two months after the operative date of this subchapter which are taken into or used inby the last open crosscut of any coal mine shall be permissible;

(C) all electric face equipment which is taken into or used inby the last open crosscut of any coal mine classified under any provision of law as gassy prior to the operative date of this subchapter shall be permissible; and

(D) all other electric face equipment which is taken into or used inby the last crosscut of any coal mine, except a coal mine referred to in paragraph (2) of this subsection, which has not been classified under any provision of law as a gassy mine prior to the operative date of this subchapter shall be permissible.

(2) Effective four years after the operative date of this subchapter, all electric face equipment, other than equipment referred to in paragraph (1)(B) of this subsection, which is taken into or used inby the last open crosscut of any coal mine which is operated entirely in coal seams located above the watertable and which has not been classified under any provision of law as a gassy mine prior to the operative date of this subchapter and in which one or more openings were made prior to December 30, 1969, shall be permissible, except that any operator of such mine who is unable to comply with the provisions of this paragraph on such effective date may file with the Panel an application for a permit for noncompliance ninety days prior to such date. If the Panel determines, after notice to all interested persons and an opportunity for a public hearing under section 804 of this title, that such application satisfies the provisions of paragraph (10) of this subsection and that such operator, despite his diligent efforts, will be unable to comply with such provisions, the Panel may issue to such operator such a permit. Such permit shall entitle the permittee to an additional extension of time to comply with the provisions of this paragraph of not to exceed twenty-four months, as determined by the Panel, from such effective date.

(3) The operator of each coal mine shall maintain in permissible condition all electric face equipment required by this subsection to be permissible which is taken into or used inby the last open crosscut of any such mine.

(4) Each operator of a coal mine shall, within two months after the operative date of this subchapter, file with the Secretary a statement listing all electric face equipment by type and manufacturer being used by such operator in connection with mining operations in such mine as of the date of such filing, and stating whether such equipment is permissible and maintained in permissible condition or is nonpermissible on such date of filing, and, if nonpermissible, whether such nonpermissible equipment has ever been rated as permissible, and such other information as the Secretary may require.

(5) The Secretary shall promptly conduct a survey as to the total availability of new or rebuilt permissible electric face equipment and replacement parts for such equipment and, within six months after the operative date of this subchapter, publish the results of such survey.

(6) Any operator of a coal mine who is unable to comply with the provisions of paragraph (1)(D) of this subsection within one year after the operative date of this subchapter may file with the Panel an application for a permit for noncompliance. If the Panel determines that such application satisfies the provisions of paragraph (10) of this subsection, the Panel shall

issue to such operator a permit for noncompliance. Such permit shall entitle the permittee to an extension of time to comply with such provisions of paragraph (1)(D) of not to exceed twelve months, as determined by the Panel, from the date that compliance with the provisions of paragraph (1)(D) of this subsection is required.

(7) Any operator of a coal mine issued a permit under paragraph (6) of this subsection who, ninety days prior to the termination of such permit, or renewal thereof, determines that he will be unable to comply with the provisions of paragraph (1)(D) of this subsection upon the expiration of such permit may file with the Panel an application for renewal thereof. Upon receipt of such application, the Panel, if it determines, after notice to all interested persons and an opportunity for a public hearing under section 804 of this title, that such application satisfies the provisions of paragraph (10) of this subsection and that such operator, despite his diligent efforts, will be unable to comply with the provisions of paragraph (1)(D), may renew the permit for a period not exceeding twelve months.

(8) Any permit or renewal thereof issued pursuant to this subsection shall entitle the permittee to use such nonpermissible electric face equipment specified in the permit during the term of such permit.

(9) Permits for noncompliance issued under paragraphs (6) or (7) of this subsection shall, in the aggregate, not extend the period of noncompliance more than forty-eight months after December 30, 1969.

(10) Any application for a permit of noncompliance filed under this subsection shall contain a statement by the operator—

(A) that he is unable to comply with paragraph (1)(D) or paragraph (2) of this subsection, as appropriate, within the time prescribed;

(B) listing the nonpermissible electric face equipment being used by such operator in connection with mining operations in such mine on the operative date of this subchapter and the date of the application by type and manufacturer for which a noncompliance permit is requested and whether such equipment had ever been rated as permissible;

(C) setting forth the actions taken from and after the operative date of this subchapter to comply with paragraph (1)(D) or paragraph (2) of this subsection, as appropriate, together with a plan setting forth a schedule of compliance with said paragraphs for each such equipment referred to in such paragraphs and being used by the operator in connection with mining operations in such mine with respect to which such permit is requested and the means and measures to be employed to achieve compliance; and

(D) including such other information as the Panel may require.

(11) No permit for noncompliance shall be issued under this subsection for any nonpermissible electric face equipment, unless such equipment was being used by an operator in connection with the mining operations in a coal mine on the operative date of this subchapter.

(12) Effective one year after the operative date of this subchapter, all replacement equipment acquired for use in any mine referred to in this subsection shall be permissible and shall be maintained in a permissible condition, and in the event of any major overhaul of any item of equipment in use one year from the operative date of this subchapter such equipment shall be put in, and thereafter maintained in, a permissible condition, unless, in the opinion of the Secretary, such equipment or necessary replacement parts are not available.

**(b) Notification of permits**

A copy of any permit granted under this section shall be mailed immediately to a representative of the miners of the mine to which it pertains, and to the public official or agency of the State charged with administering State laws relating to coal mine health and safety in such mine.

**(c) Gassy mines; maintenance of equipment**

Any coal mine which, prior to the operative date of this subchapter, was classed gassy under any provision of law and was required to use permissible electric face equipment and to maintain such equipment in a permissible condition shall continue to use such equipment and to maintain such equipment in such condition.

**(d) Location of nonpermissible power connection units**

All power-connection points, except where permissible power connection units are used, outby the last open crosscut shall be in intake air.

**(e) Mine map; contents; modifications**

The location and the electrical rating of all stationary electric apparatus in connection with the mine electric system, including permanent cables, switchgear, rectifying substations, transformers, permanent pumps and trolley wires and trolley feeder wires, and settings of all direct-current circuit breakers protecting underground trolley circuits, shall be shown on a mine map. Any changes made in a location, electric rating, or setting shall be promptly shown on the map when the change is made. Such map shall be available to an authorized representative of the Secretary and to the miners in such mine.

**(f) Repairs; deenergizing of equipment; authorized personnel; locking out of disconnection devices**

All power circuits and electric equipment shall be deenergized before work is done on such circuits and equipment, except when necessary for trouble shooting or testing. In addition, energized trolley wires may be repaired only by a person trained to perform electrical work and to maintain electrical equipment and the operator of such mine shall require that such person wear approved and tested insulated shoes and wireman's gloves. No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the persons who performed such work, except that, in cases where locking out is not possible, such devices shall be opened and suitably tagged by such per-

sons. Locks or tags shall be removed only by the persons who installed them or, if such persons are unavailable, by persons authorized by the operator or his agent.

**(g) Periodic examinations; maintenance; records; accessibility**

All electric equipment shall be frequently examined, tested, and properly maintained by a qualified person to assure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected. A record of such examinations shall be kept and made available to an authorized representative of the Secretary and to the miners in such mine.

**(h) Electrical conductors**

All electric conductors shall be sufficient in size and have adequate current-carrying capacity and be of such construction that a rise in temperature resulting from normal operation will not damage the insulating materials.

**(i) Electrical connections**

All electrical connections or splices in conductors shall be mechanically and electrically efficient, and suitable connectors shall be used. All electrical connections or splices in insulated wire shall be reinsulated at least to the same degree of protection as the remainder of the wire.

**(j) Cables and wires; entry through metal frames**

Cables shall enter metal frames of motors, splice boxes, and electric compartments only through proper fittings. When insulated wires other than cables pass through metal frames the holes shall be substantially bushed with insulated bushings.

**(k) Support of power wires**

All power wires (except trailing cables on mobile equipment, specially designed cables conducting high-voltage power to underground rectifying equipment or transformers, or bare or insulated ground and return wires) shall be supported on well-insulated insulators and shall not contact combustible material, roof, or ribs.

**(*l*) Insulation of power wires; exceptions**

Power wires and cables, except trolley wires, trolley feeder wires, and bare signal wires, shall be insulated adequately and fully protected.

**(m) Circuit breakers; overload protection for three-phase motors**

Automatic circuit-breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and circuits against short circuit and overloads. Three-phase motors on all electric equipment shall be provided with overload protection that will deenergize all three phases in the event that any phase is overloaded.

**(n) Disconnecting switches for main power circuits; location and installation**

In all main power circuits, disconnecting switches shall be installed underground within five hundred feet of the bottoms of shafts and boreholes through which main power circuits enter the underground area of the mine and within five hundred feet of all other places where main power circuits enter the underground area of the mine.

**(*o*) Switches**

All electric equipment shall be provided with switches or other controls that are safely designed, constructed, and installed.

**(p) Lightning arresters**

Each ungrounded, exposed power conductor that leads underground shall be equipped with suitable lightning arresters of approved type within one hundred feet of the point where the circuit enters the mine. Lightning arresters shall be connected to a low resistance grounding medium on the surface which shall be separated from neutral grounds by a distance of not less than twenty-five feet.

**(q) Nonapproved devices**

No device for the purpose of lighting any coal mine which has not been approved by the Secretary or his authorized representative shall be permitted in such mine.

**(r) Deenergizing of electric face equipment**

An authorized representative of the Secretary may require in any mine that electric face equipment be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency.

(Pub. L. 91–173, title III, § 305, Dec. 30, 1969, 83 Stat. 775.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsecs. (a)(1), (2), (4) to (6), (10)(B), (C), (11), (12), and (c), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

## § 866. Trailing cables

**(a) Requirements established for flame resistant cables**

Trailing cables used in coal mines shall meet the requirements established by the Secretary for flame-resistant cables.

**(b) Circuit breakers; markings and visual observation of position of disconnection devices**

Short-circuit protection for trailing cables shall be provided by an automatic circuit breaker or other no less effective device approved by the Secretary of adequate current-interrupting capacity in each ungrounded conductor. Disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected.

**(c) Distribution center junctions; safety connections**

When two or more trailing cables junction to the same distribution center, means shall be provided to assure against connecting a trailing cable to the wrong size circuit breaker.

**(d) Temporary splices; usable period; exceptions; quality**

One temporary splice may be made in any trailing cable. Such trailing cable may only be used for the next twenty-four hour period. No

temporary splice shall be made in a trailing cable within twenty-five feet of the machine, except cable reel equipment. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat or spark under load shall not be used. As used in this subsection, the term ''splice'' means the mechanical joining of one or more conductors that have been severed.

**(e) Permanent splices; quality**

When permanent splices in trailing cables are made, they shall be—

(1) mechanically strong with adequate electrical conductivity and flexibility;

(2) effectively insulated and sealed so as to exclude moisture; and

(3) vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket.

**(f) Clamping of cables**

Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections. Trailing cables shall be adequately protected to prevent damage by mobile equipment.

**(g) Making and breaking of connections to junction boxes**

Trailing cable and power cable connections to junction boxes shall not be made or broken under load.

(Pub. L. 91–173, title III, § 306, Dec. 30, 1969, 83 Stat. 779.)

**§ 867. Grounding of equipment**

**(a) Metallic enclosed power conductors; metallic frames and other equipment; methods**

All metallic sheaths, armors, and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded by methods approved by an authorized representative of the Secretary. Metallic frames, casings, and other enclosures of electric equipment that can become ''alive'' through failure of insulation or by contact with energized parts shall be grounded by methods approved by an authorized representative of the Secretary. Methods other than grounding which provide no less effective protection may be permitted by the Secretary or his authorized representative.

**(b) Frames of offtrack direct current machines; enclosures of related detached components**

The frames of all offtrack direct current machines and the enclosures of related detached components shall be effectively grounded, or otherwise maintained at no less safe voltages, by methods approved by an authorized representative of the Secretary.

**(c) Stationary high-voltage equipment powered by underground delta systems**

The frames of all stationary high-voltage equipment receiving power from ungrounded delta systems shall be grounded by methods approved by an authorized representative of the Secretary.

**(d) Repairs of high-voltage lines; exceptions**

High-voltage lines, both on the surface and underground, shall be deenergized and grounded before work is performed on them, except that repairs may be permitted, in the case of energized surface high-voltage lines, if such repairs are made by a qualified person in accordance with procedures and safeguards, including, but not limited to a requirement that the operator of such mine provide, test, and maintain protective devices in making such repairs, to be prescribed by the Secretary prior to the operative date of this subchapter.

**(e) Deenergizing of underground power circuits on idle days; exceptions**

When not in use, power circuits underground shall be deenergized on idle days and idle shifts, except that rectifiers and transformers may remain energized.

(Pub. L. 91–173, title III, § 307, Dec. 30, 1969, 83 Stat. 780.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsec. (d), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

**§ 868. Underground high-voltage distribution**

**(a) Circuits entering underground areas of mines; circuit breakers**

High-voltage circuits entering the underground area of any coal mine shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the Secretary. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and overcurrent.

**(b) Circuits extending underground and supplying equipment; direct neutral grounds; ground conductors for frames, exceptions; location of disconnection devices, exceptions**

High-voltage circuits extending underground and supplying portable, mobile, or stationary high-voltage equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all high-voltage equipment supplied power from that circuit, except that the Secretary or his authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electrical equipment if such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length, and upon his finding that such exception does not pose a hazard to the miners. Within one hundred feet of the point on the surface where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the Secretary or his authorized representative may permit such devices to be installed at a greater dis-

tance from such area of the mine if he determines, based on existing physical conditions, that such installation will be more accessible at a greater distance and will not pose any hazard to the miners.

**(c) Grounding resistors**

The grounding resistor, where required, shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than 100 volts under fault conditions. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

**(d) Inclusion of fail safe ground check circuits in resistance grounded systems; operative functions; time extension**

Six months after the operative date of this subchapter, high-voltage, resistance grounded systems shall include a fail safe ground check circuit to monitor continuously the grounding circuit to assure continuity and the fail safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the Secretary or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months, may be permitted by the Secretary on a mine-by-mine basis if he determines that such equipment is not available.

**(e) Underground cables used in resistance grounded systems; metallic shields for power conductors; standards; splices**

(1) Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor, with one or more ground conductors having a total cross-sectional area of not less than one-half the power conductor, and with an insulated internal or external conductor not smaller than No. 8 (AWG) for the ground continuity check circuit.

(2) All such cables shall be adequate for the intended current and voltage. Splices made in such cables shall provide continuity of all components.

**(f) Couplers for power circuits; guidelines for construction**

Couplers that are used with medium-voltage or high-voltage power circuits shall be of the three-phase type with a full metallic shell, except that the Secretary may permit, under such guidelines as he may prescribe, no less effective couplers constructed of materials other than metal. Couplers shall be adequate for the voltage and current expected. All exposed metal on the metallic couplers shall be grounded to the ground conductor in the cable. The coupler shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

**(g) Connections of single-phase loads**

Single-phase loads, such as transformer primaries, shall be connected phase to phase.

**(h) Installation of underground transmission cables**

All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work or pass under them unless they are six and one-half feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with trolley wires and other low-voltage circuits.

**(i) Disconnection devices; location; visual observation of position of switch**

Disconnecting devices shall be installed at the beginning of branch lines in high-voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when the switches are open.

**(j) Circuit breakers and disconnection devices; markings**

Circuit breakers and disconnecting switches underground shall be marked for identification.

**(k) Splices in cables used as trailing cables; terminations and splices in other cables**

In the case of high-voltage cables used as trailing cables, temporary splices shall not be used and all permanent splices shall be made in accordance with section 866(e) of this title. Terminations and splices in all other high-voltage cables shall be made in accordance with the manufacturer's specifications.

**(*l*) Grounding of frames of underground equipment**

Frames, supporting structures, and enclosures of stationary, portable, or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment receiving power from resistance grounded systems shall be effectively grounded to the high-voltage ground.

**(m) Moving of power centers, transformers, and cables; deenergizing; exceptions; safety guidelines; record of examinations**

Power centers and portable transformers shall be deenergized before they are moved from one location to another, except that, when equipment powered by sources other than such centers or transformers is not available, the Secretary may permit such centers and transformers to be moved while energized, if he determines that another equivalent or greater hazard may otherwise be created, and if they are moved under the supervision of a qualified person, and if such centers and transformers are examined prior to such movement by such person and found to be grounded by methods approved by an authorized representative of the Secretary and otherwise protected from hazards to the miner. A record shall be kept of such examinations. High-voltage cables, other than trailing cables, shall not be moved or handled at any time while energized, except that, when such centers and transformers are moved while energized as permitted under this subsection, energized high-

voltage cables attached to such centers and transformers may be moved only by a qualified person and the operator of such mine shall require that such person wear approved and tested insulated wireman's gloves.

(Pub. L. 91–173, title III, § 308, Dec. 30, 1969, 83 Stat. 780.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsec. (d), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

### § 869. Underground low- and medium-voltage alternating current circuits

#### (a) Circuits providing power for three-phase equipment; circuit breakers

Low- and medium-voltage power circuits serving three-phase alternating current equipment shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the Secretary. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and over-current.

#### (b) Circuits used underground; direct neutral grounds; ground conductors for frames; exceptions; grounding resistors

Low- and medium-voltage three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all the electrical equipment supplied power from that circuit, except that the Secretary or his authorized representative may permit ungrounded low- and medium-voltage circuits to be used underground to feed such stationary electrical equipment if such circuits are either steel armored or installed in grounded rigid steel conduit throughout their entire length. The grounding resistor, where required, shall be of the proper ohmic value to limit the ground fault current to 25 amperes. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

#### (c) Inclusion of fail safe ground check circuits in resistance ground systems; operative functions; time extension; couplers for power circuits; guidelines for construction

Six months after the operative date of this subchapter, low- and medium-voltage resistance grounded systems shall include a fail safe ground check circuit to monitor continuously the grounding circuit to assure continuity which ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the Secretary or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months, may be permitted by the Secretary on a mine-by-mine basis if he determines that such equipment is not available. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

#### (d) Disconnecting devices installed in conjunction with circuit breakers; purpose; trailing cables for mobile equipment; guidelines for construction; time extension; splices

Disconnecting devices shall be installed in conjunction with the circuit breaker to provide visual evidence that the power is disconnected. Trailing cables for mobile equipment shall contain one or more ground conductors having a cross sectional area of not less than one-half the power conductor, and, six months after the operative date of this subchapter, an insulated conductor for the ground continuity check circuit or other no less effective device approved by the Secretary or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months may be permitted by the Secretary on a mine-by-mine basis if he determines that such equipment is not available. Splices made in the cables shall provide continuity of all components.

#### (e) Connections of single phase loads

Single phase loads shall be connected phase to phase.

#### (f) Circuit breakers; markings

Circuit breakers shall be marked for identification.

#### (g) Trailing cables for medium voltage circuits; guidelines for construction

Trailing cables for medium voltage circuits shall include grounding conductors, a ground check conductor, and ground metallic shields around each power conductor or a grounded metallic shield over the assembly, except that on equipment employing cable reels, cables without shields may be used if the insulation is rated 2,000 volts or more.

(Pub. L. 91–173, title III, § 309, Dec. 30, 1969, 83 Stat. 782.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsecs. (c) and (d), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

### § 870. Trolley wires and trolley feeder wires

#### (a) Intervals for cutoff switches

Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than 2,000 feet and near the beginning of all branch lines.

#### (b) Overcurrent protection devices

Trolley wires and trolley feeder wires shall be provided with overcurrent protection.

#### (c) Location of wires

Trolley wires and trolley feeder wires, high-voltage cables and transformers shall not be located inby the last open crosscut and shall be kept at least 150 feet from pillar workings.

**(d) Adequate insulation and guard devices; promulgation of safety guidelines**

Trolley wires, trolley feeder wires, and bare signal wires shall be insulated adequately where they pass through doors and stoppings, and where they cross other power wires and cables. Trolley wires and trolley feeder wires shall be guarded adequately (1) at all points where men are required to work or pass regularly under the wires; (2) on both sides of all doors and stoppings; and (3) at man-trip stations. The Secretary or his authorized representatives shall specify other conditions where trolley wires and trolley feeder wires shall be adequately protected to prevent contact by any person, or shall require the use of improved methods to prevent such contact. Temporary guards shall be provided where trackmen and other persons work in proximity to trolley wires and trolley feeder wires.

(Pub. L. 91–173, title III, § 310, Dec. 30, 1969, 83 Stat. 783.)

**§ 871. Fire protection**

**(a) Firefighting equipment; promulgation of minimum requirements for equipment; existing requirements; examinations after blasting**

Each coal mine shall be provided with suitable firefighting equipment adapted for the size and conditions of the mine. The Secretary shall establish minimum requirements for the type, quality, and quantity of such equipment, and the interpretations of the Secretary or the Director of the United States Bureau of Mines relating to such equipment in effect on the operative date of this subchapter shall continue in effect until modified or superseded by the Secretary. After every blasting operation, an examination shall be made to determine whether fires have been started.

**(b) Underground storage areas for lubricating oils and greases; construction; exceptions**

Underground storage places for lubricating oil and grease shall be of fireproof construction. Except for specially prepared materials approved by the Secretary, lubricating oil and grease kept in all underground areas in a coal mine shall be in fireproof, closed metal containers or other no less effective containers approved by the Secretary.

**(c) Housing of underground structures, stations, shops, and pumps; construction; ventilation**

Underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps shall be housed in fireproof structures or areas. Air currents used to ventilate structures or areas enclosing electrical installations shall be coursed directly into the return. Other underground structures installed in a coal mine as the Secretary may prescribe shall be of fireproof construction.

**(d) Use of arc or flame in underground mines; fireproof enclosures; operations outside fireproof enclosures; procedures; standards**

All welding, cutting, or soldering with arc or flame in all underground areas of a coal mine shall, whenever practicable, be conducted in fireproof enclosures. Welding, cutting or soldering with arc or flame in other than a fireproof enclosure shall be done under the supervision of a qualified person who shall make a diligent search for fire during and after such operations and shall, immediately before and during such operations, continuously test for methane with means approved by the Secretary for detecting methane. Welding, cutting, or soldering shall not be conducted in air that contains 1.0 volume per centum or more of methane. Rock dust or suitable fire extinguishers shall be immediately available during such welding, cutting, or soldering.

**(e) Installation of fire suppression devices on unattended underground equipment; flame-resistant hydraulic fluids**

Within one year after the operative date of this subchapter, fire suppression devices meeting specifications prescribed by the Secretary shall be installed on unattended underground equipment and suitable fire-resistant hydraulic fluids approved by the Secretary shall be used in the hydraulic systems of such equipment. Such fluids shall be used in the hydraulic systems of other underground equipment unless fire suppression devices meeting specifications prescribed by the Secretary are installed on such equipment.

**(f) Deluge-type water sprays at main and secondary drives**

Deluge-type water sprays or foam generators automatically actuated by rise in temperature, or other no less effective means approved by the Secretary of controlling fire, shall be installed at main and secondary belt-conveyor drives. Where sprays or foam generators are used they shall supply a sufficient quantity of water or foam to control fires.

**(g) Installation of slippage and sequence switches on belt conveyors; fire suppression devices on belt haulageways**

Underground belt conveyors shall be equipped with slippage and sequence switches. The Secretary shall, within sixty days after the operative date of this subchapter, require that devices be installed on all such belts which will give a warning automatically when a fire occurs on or near such belt. The Secretary shall prescribe a schedule for installing fire suppression devices on belt haulageways.

**(h) Flame-resistant conveyor belt**

On and after the operative date of this subchapter, all conveyor belts acquired for use underground shall meet the requirements to be established by the Secretary for flame-resistant conveyor belts.

(Pub. L. 91–173, title III, § 311, Dec. 30, 1969, 83 Stat. 783; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to subsecs. (a), (e), (g), and (h), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

CHANGE OF NAME

''United States Bureau of Mines'' substituted for ''Bureau of Mines'' in subsec. (a) pursuant to section

10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

### § 872. Maps

#### (a) Fireproof repository; contents; certification

The operator of a coal mine shall have in a fireproof repository located in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, an accurate and up-to-date map of such mine drawn on scale. Such map shall show the active workings, all pillared, worked out, and abandoned areas, except as provided in this section, entries and aircourses with the direction of airflow indicated by arrows, contour lines of all elevations, elevations of all main and cross or side entries, dip of the coalbed, escapeways, adjacent mine workings within one thousand feet, mines above or below, water pools above, and either producing or abandoned oil and gas wells located within five hundred feet of such mine and any underground area of such mine, and such other information as the Secretary may require. Such map shall identify those areas of the mine which have been pillared, worked out, or abandoned which are inaccessible or cannot be entered safely and on which no information is available. Such map shall be made or certified by a registered engineer or a registered surveyor of the State in which the mine is located. Such map shall be kept up to date by temporary notations and such map shall be revised and supplemented at intervals prescribed by the Secretary on the basis of a survey made or certified by such engineer or surveyor.

#### (b) Availability for inspection; confidential copies

The coal mine map and any revision and supplement thereof shall be available for inspection by the Secretary or his authorized representative, by coal mine inspectors of the State in which the mine is located, by miners in the mine and their representatives and by operators of adjacent coal mines and by persons owning, leasing, or residing on surface areas of such mines or areas adjacent to such mines. The operator shall furnish to the Secretary or his authorized representative and to the Secretary of Housing and Urban Development, upon request, one or more copies of such map and any revision and supplement thereof. Such map or revision and supplement thereof shall be kept confidential and its contents shall not be divulged to any other person, except to the extent necessary to carry out the provisions of this chapter and in connection with the functions and responsibilities of the Secretary of Housing and Urban Development.

#### (c) Notification of mine closures; filing of revised and supplemental map; certification

Whenever an operator permanently closes or abandons a coal mine, or temporarily closes a coal mine for a period of more than ninety days, he shall promptly notify the Secretary of such closure. Within sixty days of the permanent closure or abandonment of the mine, or, when the mine is temporarily closed, upon the expiration of a period of ninety days from the date of closure, the operator shall file with the Secretary a copy of the mine map revised and supplemented to the date of the closure. Such copy of the mine map shall be certified by a registered surveyor or registered engineer of the State in which the mine is located and shall be available for public inspection.

(Pub. L. 91–173, title III, § 312, Dec. 30, 1969, 83 Stat. 785.)

### § 873. Blasting and explosives

#### (a) Limitations on storage and use of black powder and mudcaps

Black blasting powder shall not be stored or used underground. Mudcaps (adobes) or other unconfined shots shall not be fired underground.

#### (b) Storage of explosives and detonators; mudcaps in anthracite mines; restrictions; tests

Explosives and detonators shall be kept in separate containers until immediately before blasting. In underground anthracite mines, (1) mudcaps or other open, unconfined shake shots may be fired, if restricted to battery starting when methane or a fire hazard is not present, and if it is otherwise impracticable to start the battery; (2) open, unconfined shake shots in pitching veins may be fired, when no methane or fire hazard is present, if the taking down of loose hanging coal by other means is too hazardous; and (3) tests for methane shall be made immediately before such shots are fired and if 1.0 volume per centum or more of methane is present, when tested, such shot shall not be made until the methane content is reduced below 1.0 volume per centum.

#### (c) Permissible explosives, detonators, and devices; firing; stem boreholes; nonpermissible explosives; compressed air blasting

Except as provided in this subsection, in all underground areas of a coal mine only permissible explosives, electric detonators of proper strength, and permissible blasting devices shall be used and all explosives and blasting devices shall be used in a permissible manner. Permissible explosives shall be fired only with permissible shot firing units. Only incombustible materials shall be used for stemming boreholes. The Secretary may, under such safeguards as he may prescribe, permit the firing of more than twenty shots and allow the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock. Nothing in this section shall prohibit the use of compressed air blasting.

#### (d) Container construction for carrying explosives or detonators in underground mines

Explosives or detonators carried anywhere underground in a coal mine by any person shall be in containers constructed of nonconductive material, maintained in good condition, and kept closed.

#### (e) Transportation of explosives or detonators in underground mines

Explosives or detonators shall be transported in special closed containers (1) in cars moved by means of a locomotive or rope, (2) on belts, (3) in

shuttle cars, or (4) in equipment designed especially to transport such explosives or detonators.

**(f) Storage of explosives and detonators in working sections of underground mines; containers; locations**

When supplies of explosives and detonators for use in one or more working sections are stored underground, they shall be kept in section boxes or magazines of substantial construction with no metal exposed on the inside, located at least twenty-five feet from roadways and power wires, and in a dry, well rock-dusted location protected from falls of roof, except in pitching beds, where it is not possible to comply with the location requirement, such boxes shall be placed in niches cut into the solid coal or rock.

**(g) Location of explosive and detonator containers in working places of underground mines**

Explosives and detonators stored in the working places shall be kept in separate closed containers which shall be located out of the line of blast and not less than fifty feet from the working face and fifteen feet from any pipeline, powerline, rail, or conveyor, except that, if kept in niches in the rib, the distance from any pipeline, powerline, rail, or conveyor shall be at least five feet. Such explosives and detonators, when stored, shall be separated by a distance of at least five feet.

(Pub. L. 91–173, title III, § 313, Dec. 30, 1969, 83 Stat. 785.)

## § 874. Hoisting and mantrips

**(a) Transporting of persons; required equipment and capabilities; safety catches; daily examinations; operators**

Every hoist used to transport persons at a coal mine shall be equipped with overspeed, overwind, and automatic stop controls. Every hoist handling platforms, cages, or other devices used to transport persons shall be equipped with brakes capable of stopping the fully loaded platform, cage, or other device; with hoisting cable adequately strong to sustain the fully loaded platform, cage, or other device; and have a proper margin of safety. Cages, platforms, or other devices which are used to transport persons in shafts and slopes shall be equipped with safety catches or other no less effective devices approved by the Secretary that act quickly and effectively in an emergency, and such catches shall be tested at least once every two months. Hoisting equipment, including automatic elevators, that is used to transport persons shall be examined daily. Where persons are transported into, or out of, a coal mine by hoists, a qualified hoisting engineer shall be on duty while any person is underground, except that no such engineer shall be required for automatically operated cages, platforms, or elevators.

**(b) Promulgation of other safeguards**

Other safeguards adequate, in the judgment of an authorized representative of the Secretary, to minimize hazards with respect to transportation of men and materials shall be provided.

**(c) Rated capacities; indicator for position of cage**

Hoists shall have rated capacities consistent with the loads handled and the recommended safety factors of the ropes used. An accurate and reliable indicator of the position of the cage, platform, skip, bucket, or cars shall be provided.

**(d) Methods for signaling between shaft stations and hoist rooms**

There shall be at least two effective methods approved by the Secretary of signaling between each of the shaft stations and the hoist room, one of which shall be a telephone or speaking tube.

**(e) Braking equipment for haulage cars used in underground mines**

Each locomotive and haulage car used in an underground coal mine shall be equipped with automatic brakes, where space permits. Where space does not permit automatic brakes, locomotives and haulage cars shall be subject to speed reduction gear, or other similar devices approved by the Secretary which are designed to stop the locomotives and haulage cars with the proper margin of safety.

**(f) Automatic couplers for haulage equipment**

All haulage equipment acquired by an operator of a coal mine on or after one year after the operative date of this subchapter shall be equipped with automatic couplers which couple by impact and uncouple without the necessity of persons going between the ends of such equipment. All haulage equipment without automatic couplers in use in a mine on the operative date of this subchapter shall also be so equipped within four years after the operative date of this subchapter.

(Pub. L. 91–173, title III, § 314, Dec. 30, 1969, 83 Stat. 786.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsec. (f), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

## § 875. Emergency shelters; construction; contents; implementation plans

The Secretary or an authorized representative of the Secretary may prescribe in any coal mine that rescue chambers, properly sealed and ventilated, be erected at suitable locations in the mine to which persons may go in case of an emergency for protection against hazards. Such chambers shall be properly equipped with first aid materials, an adequate supply of air and self-contained breathing equipment, an independent communication system to the surface, and proper accommodations for the persons while awaiting rescue, and such other equipment as the Secretary may require. A plan for the erection, maintenance, and revisions of such chambers and the training of the miners in their proper use shall be submitted by the operator to the Secretary for his approval.

(Pub. L. 91–173, title III, § 315, Dec. 30, 1969, 83 Stat. 787.)

**§ 876. Communication facilities; locations and emergency response plans**

**(a) In general**

Telephone service or equivalent two-way communication facilities, approved by the Secretary or his authorized representative, shall be provided between the surface and each landing of main shafts and slopes and between the surface and each working section of any coal mine that is more than one hundred feet from a portal.

**(b) Accident preparedness and response**

**(1) In general**

Each underground coal mine operator shall carry out on a continuing basis a program to improve accident preparedness and response at each mine.

**(2) Response and preparedness plan**

**(A) In general**

Not later than 60 days after June 15, 2006, each underground coal mine operator shall develop and adopt a written accident response plan that complies with this subsection with respect to each mine of the operator, and periodically update such plans to reflect changes in operations in the mine, advances in technology, or other relevant considerations. Each such operator shall make the accident response plan available to the miners and the miners' representatives.

**(B) Plan requirements**

An accident response plan under subparagraph (A) shall—

(i) provide for the evacuation of all individuals endangered by an emergency; and

(ii) provide for the maintenance of individuals trapped underground in the event that miners are not able to evacuate the mine.

**(C) Plan approval**

The accident response plan under subparagraph (A) shall be subject to review and approval by the Secretary. In determining whether to approve a particular plan the Secretary shall take into consideration all comments submitted by miners or their representatives. Approved plans shall—

(i) afford miners a level of safety protection at least consistent with the existing standards, including standards mandated by law and regulation;

(ii) reflect the most recent credible scientific research;

(iii) be technologically feasible, make use of current commercially available technology, and account for the specific physical characteristics of the mine; and

(iv) reflect the improvements in mine safety gained from experience under this chapter and other worker safety and health laws.

**(D) Plan review**

The accident response plan under subparagraph (A) shall be reviewed periodically, but at least every 6 months, by the Secretary. In such periodic reviews, the Secretary shall consider all comments submitted by miners or miners' representatives and intervening advancements in science and technology that could be implemented to enhance miners' ability to evacuate or otherwise survive in an emergency.

**(E) Plan content-general requirements**

To be approved under subparagraph (C), an accident response plan shall include the following:

**(i) Post-accident communications**

The plan shall provide for a redundant means of communication with the surface for persons underground, such as secondary telephone or equivalent two-way communication.

**(ii) Post-accident tracking**

Consistent with commercially available technology and with the physical constraints, if any, of the mine, the plan shall provide for above ground personnel to determine the current, or immediately pre-accident, location of all underground personnel. Any system so utilized shall be functional, reliable, and calculated to remain serviceable in a post-accident setting.

**(iii) Post-accident breathable air**

The plan shall provide for—

(I) emergency supplies of breathable air for individuals trapped underground sufficient to maintain such individuals for a sustained period of time;

(II) in addition to the 2 hours of breathable air per miner required by law under the emergency temporary standard as of the day before June 15, 2006, caches of self-rescuers providing in the aggregate not less than 2 hours per miner to be kept in escapeways from the deepest work area to the surface at a distance of no further than an average miner could walk in 30 minutes;

(III) a maintenance schedule for checking the reliability of self rescuers, retiring older self-rescuers first, and introducing new self-rescuer technology, such as units with interchangeable air or oxygen cylinders not requiring doffing to replenish airflow and units with supplies of greater than 60 minutes, as they are approved by the Administration and become available on the market; and

(IV) training for each miner in proper procedures for donning self-rescuers, switching from one unit to another, and ensuring a proper fit.

**(iv) Post-accident lifelines**

The plan shall provide for the use of flame-resistant directional lifelines or equivalent systems in escapeways to enable evacuation. The flame-resistance requirement of this clause shall apply upon the replacement of existing lifelines, or, in the case of lifelines in working sections, upon the earlier of the replacement of such lifelines or 3 years after June 15, 2006.

**(v) Training**

The plan shall provide a training program for emergency procedures described

in the plan which will not diminish the requirements for mandatory health and safety training currently required under section 825 of this title.

**(vi) Local coordination**

The plan shall set out procedures for coordination and communication between the operator, mine rescue teams, and local emergency response personnel and make provisions for familiarizing local rescue personnel with surface functions that may be required in the course of mine rescue work.

**(F) Plan content-specific requirements**

**(i) In general**

In addition to the content requirements contained in subparagraph (E), and subject to the considerations contained in subparagraph (C), the Secretary may make additional plan requirements with respect to any of the content matters.

**(ii) Post accident communications**

Not later than 3 years after June 15, 2006, a plan shall, to be approved, provide for post accident communication between underground and surface personnel via a wireless two-way medium, and provide for an electronic tracking system permitting surface personnel to determine the location of any persons trapped underground or set forth within the plan the reasons such provisions can not be adopted. Where such plan sets forth the reasons such provisions can not be adopted, the plan shall also set forth the operator's alternative means of compliance. Such alternative shall approximate, as closely as possible, the degree of functional utility and safety protection provided by the wireless two-way medium and tracking system referred to in this subpart.[1]

**(G) Plan dispute resolution**

**(i) In general**

Any dispute between the Secretary and an operator with respect to the content of the operator's plan or any refusal by the Secretary to approve such a plan shall be resolved on an expedited basis.

**(ii) Disputes**

In the event of a dispute or refusal described in clause (i), the Secretary shall issue a citation which shall be immediately referred to a Commission Administrative Law Judge. The Secretary and the operator shall submit all relevant material regarding the dispute to the Administrative Law Judge within 15 days of the date of the referral. The Administrative Law Judge shall render his or her decision with respect to the plan content dispute within 15 days of the receipt of the submission.

**(iii) Further appeals**

A party adversely affected by a decision under clause (ii) may pursue all further available appeal rights with respect to the citation involved, except that inclusion of the disputed provision in the plan will not be limited by such appeal unless such relief is requested by the operator and permitted by the Administrative Law Judge.

**(H) Maintaining protections for miners**

Notwithstanding any other provision of this chapter, nothing in this section, and no response and preparedness plan developed under this section, shall be approved if it reduces the protection afforded miners by an existing mandatory health or safety standard.

(Pub. L. 91–173, title III, § 316, Dec. 30, 1969, 83 Stat. 787; Pub. L. 109–236, § 2, June 15, 2006, 120 Stat. 493.)

AMENDMENTS

2006—Pub. L. 109–236 inserted ''and emergency response plans'' after ''locations'' in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

## § 877. General safety provisions

**(a) Location of oil and gas wells; establishment and maintenance of barriers; minimum requisites; exceptions**

Each operator of a coal mine shall take reasonable measures to locate oil and gas wells penetrating coalbeds or any underground area of a coal mine. When located, such operator shall establish and maintain barriers around such oil and gas wells in accordance with State laws and regulations, except that such barriers shall not be less than three hundred feet in diameter, unless the Secretary or his authorized representative permits a lesser barrier consistent with the applicable State laws and regulations where such lesser barrier will be adequate to protect against hazards from such wells to the miners in such mine, or unless the Secretary or his authorized representative requires a greater barrier where the depth of the mine, other geologic conditions, or other factors warrant such a greater barrier.

**(b) Boreholes in advance of work face; distance in advance of work face; distance between boreholes**

Whenever any working place approaches within fifty feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within two hundred feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within two hundred feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least twenty feet in advance of the working face of such working place and shall be continually maintained to a distance of at least ten feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled not more than eight feet apart in the rib of such

[1] So in original. Probably should be ''subparagraph''.

working place to a distance of at least twenty feet and at an angle of forty-five degrees. Such rib holes shall be drilled in one or both ribs of such working place as may be necessary for adequate protection of miners in such place.

**(c) Prohibition against smoking; implementation programs**

No person shall smoke, carry smoking materials, matches, or lighters underground, or smoke in or around oil houses, explosives magazines, or other surface areas where such practice may cause a fire or explosion. The operator shall institute a program, approved by the Secretary, to insure that any person entering the underground area of the mine does not carry smoking materials, matches, or lighters.

**(d) Portable electric lamps; exceptions**

Persons underground shall use only permissible electric lamps approved by the Secretary for portable illumination. No open flame shall be permitted in the underground area of any coal mine, except as permitted under section 871(d) of this title.

**(e) Promulgation of lighting standards**

Within nine months after the operative date of this subchapter, the Secretary shall propose the standards under which all working places in a mine shall be illuminated by permissible lighting, within eighteen months after the promulgation of such standards, while persons are working in such places.

**(f) Escapeways; ventilation; maintenance; tests of passageways; protection of entrance; connection between mine openings**

(1) Except as provided in paragraphs (2) and (3) of this subsection, at least two separate and distinct travelable passageways which are maintained to insure passage at all times of any person, including disabled persons, and which are to be designated as escapeways, at least one of which is ventilated with intake air, shall be provided from each working section continuous to the surface escape drift opening, or continuous to the escape shaft or slope facilities to the surface, as appropriate, and shall be maintained in safe condition and properly marked. Mine openings shall be adequately protected to prevent the entrance into the underground area of the mine of surface fires, fumes, smoke, and flood water. Escape facilities approved by the Secretary or his authorized representative, properly maintained and frequently tested, shall be present at or in each escape shaft or slope to allow all persons, including disabled persons, to escape quickly to the surface in the event of an emergency.

(2) When new coal mines are opened, not more than twenty miners shall be allowed at any one time in any mine until a connection has been made between the two mine openings, and such connections shall be made as soon as possible.

(3) When only one mine opening is available, owing to final mining of pillars, not more than twenty miners shall be allowed in such mine at any one time, and the distance between the mine opening and working face shall not exceed five hundred feet.

(4) In the case of all coal mines opened on or after the operative date of this subchapter, and in the case of all new working sections opened on or after such date in mines opened prior to such date, the escapeway required by this section to be ventilated with intake air shall be separated from the belt and trolley haulage entries of the mine for the entire length of such entries to the beginning of each working section, except that the Secretary or his authorized representative may permit such separation to be extended for a greater or lesser distance so long as such extension does not pose a hazard to the miners.

**(g) Erection of fireproof structures; prior existing structures; fire doors; monthly tests; records; availability**

After the operative date of this subchapter, all structures erected on the surface within one hundred feet of any mine opening shall be of fireproof construction. Unless structures existing on or prior to such date which are located within one hundred feet of any mine opening are of such construction, fire doors shall be erected at effective points in mine openings to prevent smoke or fire from outside sources endangering miners underground. These doors shall be tested at least monthly to insure effective operation. A record of such tests shall be kept in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard and shall be available for inspection by interested persons.

**(h) Prevention of accumulations of coal dust and methane gas; surface coal-handling facilities; air-intake openings**

Adequate measures shall be taken to prevent methane and coal dust from accumulating in excessive concentrations in or on surface coal-handling facilities, but in no event shall methane be permitted to accumulate in concentrations in or on surface coal-handling facilities in excess of limits established for methane by the Secretary within one year after the operative date of this subchapter. Where coal is dumped at or near air-intake openings, provisions shall be made to avoid dust from entering the mine.

**(i) Training programs**

Every operator of a coal mine shall provide a program, approved by the Secretary, of training and retraining of both qualified and certified persons needed to carry out functions prescribed in this chapter.

**(j) Electric face equipment; installation of canopies**

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies or cabs to protect the miners operating such equipment from roof falls and from rib and face rolls.

**(k) Mine entrances; sealing; prevention of entry by unauthorized personnel**

On and after the operative date of this subchapter, the opening of any coal mine that is declared inactive by its operator or is permanently closed or abandoned for more than ninety days, shall be sealed by the operator in a manner prescribed by the Secretary. Openings of all other

mines shall be adequately protected in a manner prescribed by the Secretary to prevent entrance by unauthorized persons.

**(*l*) Facilities for changing and storing clothes; toilet and bathing facilities**

The Secretary may require any operator to provide adequate facilities for the miners to change from the clothes worn underground, to provide for the storing of such clothes from shift to shift, and to provide sanitary and bathing facilities. Sanitary toilet facilities shall be provided in the active workings of the mine when such surface facilities are not readily accessible to the active workings.

**(m) Emergency medical assistance preparations; locations for medical equipment; filing of implementation plans**

Each operator shall make arrangements in advance for obtaining emergency medical assistance and transportation for injured persons. Emergency communications shall be provided to the nearest point of assistance. Selected agents of the operator shall be trained in first aid and first aid training shall be made available to all miners. Each coal mine shall have an adequate supply of first aid equipment located on the surface, at the bottom of shafts and slopes, and at other strategic locations near the working faces. In fulfilling each of the requirements of this subsection, the operator shall meet at least minimum requirements prescribed by the Secretary of Health and Human Services. Within two months after the operative date of this subchapter, each operator shall file with the Secretary a plan setting forth in such detail as the Secretary may require the manner in which such operator has fulfilled the requirements in this subsection.

**(n) Self-rescue device; training of personnel**

A self-rescue device approved by the Secretary shall be made available to each miner by the operator which shall be adequate to protect such miner for one hour or longer. Each operator shall train each miner in the use of such device.

**(*o*) Methods of eliminating oxygen deficiencies**

The Secretary shall prescribe improved methods of assuring that miners are not exposed to atmospheres that are deficient in oxygen.

**(p) Identification check system; records**

Each operator of a coal mine shall establish a check-in and check-out system which will provide positive identification of every person underground, and will provide an accurate record of the persons in the mine kept on the surface in a place chosen to minimize the danger of destruction by fire or other hazard. Such record shall bear a number identical to an identification check that is securely fastened to the lamp belt worn by the person underground. The identification check shall be made of a rust resistant metal of not less than sixteen gauge.

**(q) Installation of devices to prevent and suppress ignition on electric cutting face equipment**

The Secretary shall require, when technologically feasible, that devices to prevent and suppress ignitions be installed on electric face cutting equipment.

**(r) Tunnelling under water; permits; contents; necessity; safety zones; restrictions**

Whenever an operator mines coal from a coal mine opened after the operative date of this subchapter, or from any new working section of a mine opened prior to such date, in a manner that requires the construction, operation, and maintenance of tunnels under any river, stream, lake, or other body of water, that is, in the judgment of the Secretary, sufficiently large to constitute a hazard to miners, such operator shall obtain a permit from the Secretary which shall include such terms and conditions as he deems appropriate to protect the safety of miners working or passing through such tunnels from cave-ins and other hazards. Such permits shall require, in accordance with a plan to be approved by the Secretary, that a safety zone be established beneath and adjacent to such body of water. No plan shall be approved unless there is a minimum of cover to be determined by the Secretary, based on test holes drilled by the operator in a manner to be prescribed by the Secretary. No such permit shall be required in the case of any new working section of a mine which is located under any water resource reservoir being constructed by a Federal agency on December 30, 1969, the operator of which is required by such agency to operate in a manner that adequately protects the safety of miners working in such section from cave-ins and other hazards.

**(s) Drinking water**

An adequate supply of potable water shall be provided for drinking purposes in the active workings of the mine, and such water shall be carried, stored, and otherwise protected in sanitary containers.

**(t) Standards for prevention of explosions from nonmethane gases and for testing for accumulations**

Within one year after the operative date of this subchapter, the Secretary shall propose standards for preventing explosions from explosive gases other than methane and for testing for accumulations of such gases.

(Pub. L. 91–173, title III, § 317, Dec. 30, 1969, 83 Stat. 787; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in subsecs. (e), (f)(4), (g), (h), (k), (m), (r), and (t), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (m) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

## § 878. Definitions

For the purpose of this subchapter and subchapter II of this chapter, the term—

(a) ''certified'' or ''registered'' as applied to any person means a person certified or registered by the State in which the coal mine is located to perform duties prescribed by such subchapters, except that, in a State where no

program of certification or registration is provided or where the program does not meet at least minimum Federal standards established by the Secretary, such certification or registration shall be by the Secretary;

(b) ''qualified person'' means, as the context requires,

(1) an individual deemed qualified by the Secretary and designated by the operator to make tests and examinations required by this chapter; and

(2) an individual deemed, in accordance with minimum requirements to be established by the Secretary, qualified by training, education, and experience, to perform electrical work, to maintain electrical equipment, and to conduct examinations and tests of all electrical equipment;

(c) ''permissible'' as applied to—

(1) equipment used in the operation of a coal mine, means equipment, other than permissible electric face equipment, to which an approval plate, label, or other device is attached as authorized by the Secretary and which meets specifications which are prescribed by the Secretary for the construction and maintenance of such equipment and are designed to assure that such equipment will not cause a mine explosion or a mine fire,

(2) explosives, shot firing units, or blasting devices used in such mine, means explosives, shot firing units, or blasting devices which meet specifications which are prescribed by the Secretary, and

(3) the manner of use of equipment or explosives, shot firing units, and blasting devices, means the manner of use prescribed by the Secretary;

(d) ''rock dust'' means pulverized limestone, dolomite, gypsum, anhydrite, shale, adobe, or other inert material, preferably light colored, 100 per centum of which will pass through a sieve having twenty meshes per linear inch and 70 per centum or more of which will pass through a sieve having two hundred meshes per linear inch; the particles of which when wetted and dried will not cohere to form a cake which will not be dispersed into separate particles by a light blast of air; and which does not contain more than 5 per centum of combustible matter or more than a total of 4 per centum of free and combined silica ($SiO_2$), or, where the Secretary finds that such silica concentrations are not available, which does not contain more than 5 per centum of free and combined silica;

(e) ''anthracite'' means coals with a volatile ratio equal to 0.12 or less;

(f) ''volatile ratio'' means volatile matter content divided by the volatile matter plus the fixed carbon;

(g)(1) ''working face'' means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle,

(2) ''working place'' means the area of a coal mine inby the last open crosscut,

(3) ''working section'' means all areas of the coal mine from the loading point of the section to and including the working faces,

(4) ''active workings'' means any place in a coal mine where miners are normally required to work or travel;

(h) ''abandoned areas'' means sections, panels, and other areas that are not ventilated and examined in the manner required for working places under section 863 of this title;

(i) ''permissible'' as applied to electric face equipment means all electrically operated equipment taken into or used inby the last open crosscut of an entry or a room of any coal mine the electrical parts of which, including, but not limited to, associated electrical equipment, components, and accessories, are designed, constructed, and installed, in accordance with the specifications of the Secretary, to assure that such equipment will not cause a mine explosion or mine fire, and the other features of which are designed and constructed, in accordance with the specifications of the Secretary, to prevent, to the greatest extent possible, other accidents in the use of such equipment; and the regulations of the Secretary or the Director of the United States Bureau of Mines in effect on the operative date of this subchapter relating to the requirements for investigation, testing, approval, certification, and acceptance of such equipment as permissible shall continue in effect until modified or superseded by the Secretary, except that the Secretary shall provide procedures, including, where feasible, testing, approval, certification, and acceptance in the field by an authorized representative of the Secretary, to facilitate compliance by an operator with the requirements of section 865(a) of this title within the periods prescribed therein;

(j) ''low voltage'' means up to and including 660 volts; ''medium voltage'' means voltages from 661 to 1,000 volts; and ''high voltage'' means more than 1,000 volts;

(k) Repealed. Pub. L. 95–164, title II, § 202(b), Nov. 9, 1977, 91 Stat. 1317.

(*l*) ''coal mine'' includes areas of adjoining mines connected underground.

(Pub. L. 91–173, title III, § 318, Dec. 30, 1969, 83 Stat. 791; Pub. L. 95–164, title II, § 202(b), Nov. 9, 1977, 91 Stat. 1317; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

REFERENCES IN TEXT

For the operative date of this subchapter, referred to in par. (i), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

AMENDMENTS

1977—Par. (k). Pub. L. 95–164 struck out par. (k) which defined ''respirable dust'' as dust particles 5 microns or less in size.

CHANGE OF NAME

''United States Bureau of Mines'' substituted for ''Bureau of Mines'' in par. (i) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective Nov. 9, 1977, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

## SUBCHAPTER IV—BLACK LUNG BENEFITS

### PART A—GENERAL PROVISIONS

### § 901. Congressional findings and declaration of purpose; short title

(a) Congress finds and declares that there are a significant number of coal miners living today who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's coal mines; that there are a number of survivors of coal miners whose deaths were due to this disease; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents. It is, therefore, the purpose of this subchapter to provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such disease; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis.

(b) This subchapter may be cited as the ''Black Lung Benefits Act''.

(Pub. L. 91–173, title IV, § 401, Dec. 30, 1969, 83 Stat. 792; Pub. L. 92–303, §§ 3(a), 4(b)(2), May 19, 1972, 86 Stat. 153, 154; Pub. L. 95–239, § 16, Mar. 1, 1978, 92 Stat. 105; Pub. L. 97–119, title II, § 203(a)(4), Dec. 29, 1981, 95 Stat. 1644.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–119 struck out ''or who were totally disabled by this disease at the time of their deaths'' after ''due to this disease'' and ''due to such disease''.

1978—Pub. L. 95–239 designated existing provisions as subsec. (a) and added subsec. (b).

1972—Pub. L. 92–303, § 3(a), inserted ''or who were totally disabled by this disease at the time of their deaths'' after ''disease'' the first and third times it appeared and struck out ''underground'' before ''coal mines''.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 206(a) of title II of Pub. L. 97–119 provided that: ''Except as otherwise provided, the provisions of this title [see Short Title of 1981 Amendment note set out under section 801 of this title] shall take effect on January 1, 1982.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 20(a) of Pub. L. 95–239 provided that: ''The provisions of this Act [see Short Title of 1978 Amendment note set out under section 801 of this title] shall take effect on the date of enactment of this Act [Mar. 1, 1978].''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3(c) of Pub. L. 92–303 provided that: ''The amendments made by this section [amending this section and sections 902, 921, 932, and 933 of this title] shall be effective as of December 30, 1969.''

Amendment by section 4(b)(2) of Pub. L. 92–303 effective Dec. 30, 1969, see section 4(g) of Pub. L. 92–303, set out as a note under section 921 of this title.

EFFECTIVE DATE

Subchapter effective Dec. 30, 1969, see section 509 of Pub. L. 91–173, set out as a note under section 801 of this title.

SEPARABILITY

Section 206(b) of title II of Pub. L. 97–119 provided that: ''If any provision of this title [see Short Title of 1981 Amendment note, set out under section 801 of this title], or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this title, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.''

SPECIAL BENEFITS FOR DISABLED COAL MINERS

Pub. L. 102–394, title II, Oct. 6, 1992, 106 Stat. 1806, provided that: ''For carrying out title IV of the Federal Mine Safety and Health Act of 1977 [30 U.S.C. 901 et seq.], including for fiscal year 1993 and thereafter the payment of travel expenses on an actual cost or commuted basis, to an individual, for travel incident to medical examinations, and when travel of more than 75 miles is required, to parties, their representatives, and all reasonably necessary witnesses for travel within the United States, Puerto Rico and the Virgin Islands, to reconsideration interviews and to proceedings before administrative law judges, $601,313,000, to remain available until expended: *Provided*, That monthly benefit payments for fiscal year 1993 and thereafter shall be paid consistent with section 215(g) of the Social Security Act [42 U.S.C. 415(g)].''

STUDY OF CURRENT MEDICAL METHODS FOR DIAGNOSIS OF PNEUMOCONIOSIS AND NATURE AND EXTENT OF IMPAIRMENT ATTRIBUTABLE TO SIMPLE AND COMPLICATED PNEUMOCONIOSIS; REPORT TO CONGRESS

Section 202(e) of Pub. L. 97–119 directed Secretary of Labor, in consultation with Secretary of Health and Human Services, to undertake a study of current medical methods for diagnosis of pneumoconiosis, and of nature and extent of impairment and disability that are attributable to the existence of both simple and complicated pneumoconiosis, with study, together with appropriate recommendations, to be transmitted to Congress no later than eighteen months after Jan. 1, 1982.

STUDY OF BENEFITS UNDER THIS SUBCHAPTER, OTHER BENEFITS RECEIVED, AND BENEFITS IF STATE WORKERS' COMPENSATION PROGRAMS APPLICABLE; REPORT TO CONGRESS

Section 203(c) of Pub. L. 97–119 directed Secretary of Labor to undertake a study of the benefits provided by this subchapter, other benefits received by individuals who receive benefits under this subchapter, and benefits which would be received were State workers' compensation programs applicable in lieu of benefits under this subchapter, with study, together with appropriate recommendations, to be transmitted to Congress no later than eighteen months after Jan. 1, 1982.

### § 902. Definitions

For purposes of this subchapter—

(a) The term ''dependent'' means—

(1) a child as defined in subsection (g) of this section without regard to subparagraph (2)(B)(ii) thereof; or

(2) a wife who is a member of the same household as the miner, or is receiving regular contributions from the miner for her support, or whose husband is a miner who has been ordered by a court to contribute to her support, or who meets the requirements of section 416(b)(1) or (2) of title 42. The determination of an individual's status as the ''wife'' of a miner shall be made in accordance with section 416(h)(1) of title 42 as if such miner were the ''insured individual'' referred to therein. The term ''wife'' also includes a ''divorced wife'' as defined in section 416(d)(1) of title 42 who is receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or is receiving substantial contributions from the

miner (pursuant to a written agreement), or there is in effect a court order for substantial contributions to her support from such miner.

(b) The term ''pneumoconiosis'' means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment.

(c) The term ''Secretary'', except where expressly otherwise provided, means the Secretary of Labor.

(d) The term ''miner'' means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. Such term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment.

(e) The term ''widow'' includes the wife living with or dependent for support on the miner at the time of his death, or living apart for reasonable cause or because of his desertion, or who meets the requirements of section 416(c)(1), (2), (3), (4), or (5),[1] and section 416(k) of title 42, who is not married. The determination of an individual's status as the ''widow'' of a miner shall be made in accordance with section 416(h)(1) of title 42 as if such miner were the ''insured individual'' referred to therein. Such term also includes a ''surviving divorced wife'' as defined in section 416(d)(2) of title 42 who for the month preceding the month in which the miner died, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or was receiving substantial contributions from the miner (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support from the miner at the time of his death.

(f)(1) The term ''total disability'' has the meaning given it by regulations of the Secretary of Health and Human Services, which were in effect on November 2, 2002, for claims under part B of this subchapter, and by regulations of the Secretary of Labor for claims under part C of this subchapter, subject to the relevant provisions of subsections (b) and (d) of section 923 of this title, except that—

(A) in the case of a living miner, such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him or her from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity and over a substantial period of time;

(B) such regulations shall provide that (i) a deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled; and (ii) in the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her usual coal mine work, such miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled;

(C) such regulations shall not provide more restrictive criteria than those applicable under section 423(d) of title 42; and

(D) the Secretary of Labor, in consultation with the Director of the National Institute for Occupational Safety and Health, shall establish criteria for all appropriate medical tests under this subsection which accurately reflect total disability in coal miners as defined in subparagraph (A).

(2) Criteria applied by the Secretary of Labor in the case of—

(A) any claim arising under part B of this subchapter or subject to a determination by the Secretary of Labor under section 945(a)[1] of this title;

(B) any claim which is subject to review by the Secretary of Labor under section 945(b)[1] of this title; and

(C) any claim filed on or before the effective date of regulations promulgated under this subsection by the Secretary of Labor;

shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, whether or not the final disposition of any such claim occurs after the date of such promulgation of regulations by the Secretary of Labor.

(g) The term ''child'' means a child or a stepchild who is—

(1) unmarried; and

(2)(A) under eighteen years of age, or

(B)(i) under a disability as defined in section 423(d) of title 42,

(ii) which began before the age specified in section 402(d)(1)(B)(ii) of title 42, or, in the case of a student, before he ceased to be a student; or

(C) a student.

The term ''student'' means a ''full-time student'' as defined in section 402(d)(7) of title 42, or a ''student'' as defined in section 8101(17) of title 5. The determination of an individual's status as the ''child'' of the miner or widow, as the case may be, shall be made in accordance with section 416(h)(2) or (3) of title 42 as if such miner or widow were the ''insured individual'' referred to therein.

(h) The term ''fund'' means the Black Lung Disability Trust Fund established by section 9501 of title 26.

(i) For the purposes of subsections (c) and (j) of section 932 of this title, and for the purposes of paragraph (7) of subsection (d) of section 9501 of title 26, the term ''claim denied'' means a claim—

(1) for benefits under part B of this subchapter that was denied by the official responsible for administration of such part; or

(2) in which (A) the claimant was notified by the Department of Labor of an administrative or informal denial more than 1 year prior to March 1, 1978, and did not, within 1 year from the date of notification of such denial, request a hearing, present additional evidence or indicate an intention to present additional evidence, or (B) the claim was denied under the law in effect prior to March 1, 1978, following a formal hearing or administrative or judicial review proceeding.

[1] See References in Text note below.

(Pub. L. 91–173, title IV, §402, Dec. 30, 1969, 83 Stat. 792; Pub. L. 92–303, §§1(c)(2)–(4), 3(b), 4(a), May 19, 1972, 86 Stat. 151–153; Pub. L. 95–239, §2, Mar. 1, 1978, 92 Stat. 95; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–119, title I, §104(b)(1), title II, §205(b), Dec. 29, 1981, 95 Stat. 1639, 1645; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–296, title I, §108(i)(1), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 107–275, §2(b)(1), Nov. 2, 2002, 116 Stat. 1925.)

REFERENCES IN TEXT

Section 416(c)(1), (2), (3), (4), or (5) of title 42, referred to in subsec. (e), was redesignated section 416(c)(1)(A), (B), (C), (D), and (E) by Pub. L. 108–203, title IV, §414(a)(2), (4), Mar. 2, 2004, 118 Stat. 529.

Section 945 of this title, referred to in subsec. (f)(2)(A), (B), was repealed by Pub. L. 107–275, §2(c)(1), Nov. 2, 2002, 116 Stat. 1926.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–275, §2(b)(1)(A), substituted ", except where expressly otherwise provided," for "where used in part C".

Subsec. (f)(1). Pub. L. 107–275, §2(b)(1)(B), inserted ", which were in effect on November 2, 2002," after "Secretary of Health and Human Services".

Subsec. (f)(2)(A). Pub. L. 107–275, §2(b)(1)(C)(ii), struck out comma after "Secretary of Labor".

Pub. L. 107–275, §2(b)(1)(C)(i), substituted "arising under part B of this subchapter" for "which is subject to review by the Secretary of Health and Human Services,".

Subsec. (i)(1). Pub. L. 107–275, §2(b)(1)(D), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "denied by the Social Security Administration; or".

1994—Subsec. (c). Pub. L. 103–296 substituted "where used in part C means the Secretary of Labor" for "where used in part B means the Secretary of Health, Education, and Welfare, and where used in part C means the Secretary of Labor".

1986—Subsecs. (h), (i). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1981—Subsec. (h). Pub. L. 97–119, §104(b)(1), substituted "by section 9501 of title 26" for "in section 934a(a)(1) of this title".

Subsec. (i). Pub. L. 97–119, §205(b), added subsec. (i).

1978—Subsec. (b). Pub. L. 95–239, §2(a), substituted "a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment" for "a chronic dust disease of the lung arising out of employment in a coal mine".

Subsec. (d). Pub. L. 95–239, §2(b), substituted "any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal" for "any individual who is or was employed in a coal mine" and inserted provisions that extended to definition of the term "miner" so as to include also an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent that such individual was exposed to coal dust as a result of such employment.

Subsec. (f). Pub. L. 95–239, §2(c), designated existing provisions as pars. (1)(A) and (1)(C), inserted references in the provisions preceding par. (1)(A) to regulations promulgated by the Secretary of Labor for claims under part C of this subchapter and to the relevant provisions of subsecs. (b) and (d) of section 923 of this title, and added pars. (1)(B), (1)(D), and (2).

Subsec. (h). Pub. L. 95–239, §2(d), added subsec. (h).

1972—Subsec. (a). Pub. L. 92–303, §1(c)(2), expanded definition of "dependent" to include children and wife without reference to section 8110 of title 5.

Subsecs. (b), (d). Pub. L. 92–303, §3(b), substituted "a coal mine" for "an underground coal mine".

Subsec. (e). Pub. L. 92–303, §1(c)(3), expanded definition of "widow" by reference to title 42 and provided procedure for the determination of the status.

Subsec. (f). Pub. L. 92–303, §4(a), expanded definition of "total disability" to include a miner prevented from engaging in gainful employment by pneumoconiosis.

Subsec. (g). Pub. L. 92–303, §1(c)(4), added subsec. (g).

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsec. (f) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–275, §4, Nov. 2, 2002, 116 Stat. 1928, provided that: "This Act [amending this section and sections 921 to 924, 925, 932a, and 936 of this title, repealing sections 904, 924a, and 945 of this title, and enacting provisions set out as notes under sections 801 and 921 of this title], and the amendments made by this Act, shall take effect 90 days after the date of enactment of this Act [Nov. 2, 2002]."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 205(b) of Pub. L. 97–119 effective Jan. 1, 1982, except as otherwise provided, see section 206(a) of Pub. L. 97–119, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 3(b) of Pub. L. 92–303 effective Dec. 30, 1969, see section 3(c) of Pub. L. 92–303, set out as a note under section 901 of this title.

Amendment by section 4(a) of Pub. L. 92–303 effective Dec. 30, 1969, see section 4(g) of Pub. L. 92–303, set out as a note under section 921 of this title.

## §903. Field offices

(a) The Secretary of Labor shall establish and operate such field offices as may be necessary to assist miners and survivors of miners in the filing and processing of claims under this subchapter. Such field offices shall, to the extent feasible, be reasonably accessible to such miners and survivors. The Secretary, in connection with the establishment and operation of field offices, may enter into arrangements with other Federal departments and agencies, and with State agencies, for the use of existing facilities operated by such departments and agencies. Where the establishment of separate facilities is not feasible the Secretary may enter into such arrangements as he deems necessary with the heads of Federal departments, agencies, and instrumentalities and with State agencies for the use of existing facilities and personnel under their control.

(b) There are authorized to be appropriated for the purposes of subsection (a) of this section such sums as may be necessary.

(Pub. L. 95–239, § 18, Mar. 1, 1978, 92 Stat. 105.)

CODIFICATION

Section was enacted as part of the Black Lung Benefits Reform Act of 1977, and not as part of the Federal Mine Safety and Health Act of 1977 which comprises this chapter or the Black Lung Benefits Act which comprises this subchapter.

EFFECTIVE DATE

Section effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as an Effective Date of 1978 Amendment note under section 901 of this title.

### § 904. Repealed. Pub. L. 107–275, § 2(c)(2), Nov. 2, 2002, 116 Stat. 1926

Section, Pub. L. 95–239, § 19, Mar. 1, 1978, 92 Stat. 106, related to providing information to potential beneficiaries of changes made by Black Lung Benefits Reform Act of 1977.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as an Effective Date of 2002 Amendment note under section 902 of this title.

## PART B—CLAIMS FOR BENEFITS FILED ON OR BEFORE DECEMBER 31, 1973

### § 921. Regulations and presumptions

#### (a) Promulgation; payment of benefits

The Secretary shall, in accordance with the provisions of this part, and the regulations promulgated by him under this part, make payments of benefits in respect of total disability of any miner due to pneumoconiosis, and in respect of the death of any miner whose death was due to pneumoconiosis or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981, who at the time of his death was totally disabled by pneumoconiosis.

#### (b) Promulgation of standards determining total disability

The Secretary shall by regulation prescribe standards for determining for purposes of subsection (a) of this section whether a miner is totally disabled due to pneumoconiosis and for determining whether the death of a miner was due to pneumoconiosis. Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after December 30, 1969, and in no event later than the end of the third month following December 1969. Final regulations required for implementation of any amendments to this subchapter shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the fourth month following the month in which such amendments are enacted. Such regulations may be modified or additional regulations promulgated from time to time thereafter.

#### (c) Presumptions

For purposes of this section—

(1) If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment.

(2) If a deceased miner was employed for ten years or more in one or more coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis. The provisions of this paragraph shall not apply with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981.

(3) If a miner is suffering or suffered from a chronic dust disease of the lung which (A) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (C) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (A) or (B) if diagnosis had been made in the manner prescribed in clause (A) or (B), then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis.[1] as the case may be.

(4) if[2] a miner was employed for fifteen years or more in one or more underground coal mines, and if there is a chest roentgenogram submitted in connection with such miner's, his widow's, his child's, his parent's, his brother's, his sister's, or his dependent's claim under this subchapter and it is interpreted as negative with respect to the requirements of paragraph (3) of this subsection, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis. In the case of a living miner, a wife's affidavit may not be used by itself to establish the presumption. The Secretary shall not apply all or a portion of the requirement of this paragraph that the miner work in an underground mine where he determines that conditions of a miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine. The Secretary may rebut such presumption only by establishing that (A) such miner does not, or did not, have pneumoconiosis, or that (B) his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine. The provisions of this paragraph shall not apply with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981.

(5) In the case of a miner who dies on or before March 1, 1978, who was employed for 25

[1] So in original. The period probably should be a comma.

[2] So in original. Probably should be capitalized.

years or more in one or more coal mines before June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, at the rate applicable under section 922(a)(2) of this title, unless it is established that at the time of his or her death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Secretary, furnish such evidence as is available with respect to the health of the miner at the time of his or her death. The provisions of this paragraph shall not apply with respect to claims filed on or after the day that is 180 days after the effective date of the Black Lung Benefits Amendments of 1981.

**(d) Applicability of presumptions**

Nothing in subsection (c) of this section shall be deemed to affect the applicability of subsection (a) of this section in the case of a claim where the presumptions provided for therein are inapplicable.

(Pub. L. 91–173, title IV, §411, Dec. 30, 1969, 83 Stat. 793; Pub. L. 92–303, §§3(a), 4(b)(1), (3), (c), (d), May 19, 1972, 86 Stat. 153, 154; Pub. L. 95–239, §3(a), Mar. 1, 1978, 92 Stat. 96; Pub. L. 97–119, title II, §§202(b), 203(a)(5), Dec. 29, 1981, 95 Stat. 1643, 1644; Pub. L. 103–296, title I, §108(i)(2), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 107–275, §2(a), Nov. 2, 2002, 116 Stat. 1925.)

REFERENCES IN TEXT

The effective date of the Black Lung Benefits Amendments of 1981, referred to in subsecs. (a) and (c)(2), (4), (5), is Jan. 1, 1982, except as otherwise provided. See section 206(a) of Pub. L. 97–119, set out as an Effective Date of 1981 Amendment note under section 901 of this title.

AMENDMENTS

2002—Subsecs. (a), (b), (c)(4), (5). Pub. L. 107–275 substituted ''Secretary'' for ''Commissioner of Social Security'' wherever appearing.

1994—Subsecs. (a), (b), (c)(4), (5). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1981—Subsec. (a). Pub. L. 97–119, §203(a)(5), inserted '', except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981,'' after ''pneumoconiosis or''.

Subsec. (c)(2), (4). Pub. L. 97–119, §202(b)(1), inserted provision that this paragraph not apply with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981.

Subsec. (c)(5). Pub. L. 97–119, §202(b)(2), inserted provision that this paragraph not apply with respect to claims filed on or after the day that is 180 days after the effective date of the Black Lung Benefits Amendments of 1981.

1978—Subsec. (c). Pub. L. 95–239 capitalized and repunctuated the existing paragraphs to change their construction from that of uncapitalized clauses to complete sentences, and added par. (5).

1972—Subsec. (a). Pub. L. 92–303, §4(b)(1), substituted ''pneumoconiosis or who at the time of his death was totally disabled by pneumoconiosis'' for ''pneumoconiosis''.

Subsec. (b). Pub. L. 92–303, §4(d), inserted provision for the promulgation and publication in the Federal Register of final regulations and their amendments and for time limits for publication.

Subsec. (c)(1), (2). Pub. L. 92–303, §3(a), substituted ''coal mines'' for ''underground coal mines''.

Subsec. (c)(3). Pub. L. 92–303, §4(b)(3), inserted presumption that at the time of death the miner was totally disabled by pneumoconiosis.

Subsec. (c)(4). Pub. L. 92–303, §4(c), added par. (4).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–119 effective Jan. 1, 1982, except as otherwise provided, see section 206(a) of Pub. L. 97–119, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 3(a) of Pub. L. 92–303 effective Dec. 30, 1969, see section 3(c) of Pub. L. 92–303, set out as a note under section 901 of this title.

Section 4(g) of Pub. L. 92–303 provided that: ''The amendments made by this section [amending this section and sections 901, 902, 923, and 931 of this title] shall be effective as of December 30, 1969.''

TRANSITIONAL PROVISIONS

Pub. L. 107–275, §3, Nov. 2, 2002, 116 Stat. 1926, provided that:

''(a) APPLICABILITY.—This section shall apply to the transfer of all functions relating to the administration of part B of subchapter IV (30 U.S.C. 901 et seq.) [probably means 30 U.S.C. 921 et seq.] from the Commissioner of Social Security (hereinafter in this section referred to as the 'Commissioner') to the Secretary of Labor, as provided by this Act [see Short Title of 2002 Amendment note set out under section 801 of this title].

''(b) TRANSFER OF ASSETS, LIABILITIES, ETC.—

''(1) The Commissioner shall transfer to the Secretary of Labor all property and records that the Director of the Office of Management and Budget determines relate to the functions transferred to the Secretary of Labor by this Act or amendments made by this Act.

''(2) Section 1531 of title 31, United States Code, shall apply in carrying out this Act and amendments made by this Act, except that, for purposes of carrying out this Act and amendments made by this Act, the functions of the President under section 1531(b) shall be performed by the Director of the Office of Management and Budget unless otherwise directed by the President.

''(c) CONTINUATION OF ORDERS, DETERMINATIONS, ETC.—

''(1) This Act shall not affect the validity of any order, determination, rule, regulation, operating procedure (to the extent applicable to the Secretary of Labor), or contract that—

''(A) relates to a function transferred by this Act; and

''(B) is in effect on the date this Act takes effect [see Effective Date of 2002 Amendment note set out under section 902 of this title].

''(2) Any order, determination, rule, regulation, operating procedure, or contract described in paragraph (1) shall—

''(A) apply on and after the effective date of this Act to the Secretary of Labor; and

''(B) continue in effect, according to its terms, until it is modified, superseded, terminated, or otherwise deprived of legal effect by the Secretary of Labor, a court of competent jurisdiction, or operation of law.

''(d) CONTINUATION OF ADMINISTRATIVE PROCEEDINGS.—

''(1) Any proceeding before the Commissioner involving the functions transferred by this Act that is pending on the date this Act takes effect shall continue before the Secretary of Labor, except as provided in paragraph (2).

''(2) Any proceeding pending before an Administrative Law Judge or the Appeals Council pursuant to part B and the applicable regulations of the Secretary of Health and Human Services shall continue before the Commissioner consistent with the following provisions:

''(A) Any proceeding described in this paragraph shall continue as if this Act had not been enacted, and shall include all rights to hearing, administrative review, and judicial review available under part B and the applicable regulations of the Secretary of Health and Human Services.

''(B) Any decision, order, or other determination issued in any proceeding described in this subsection shall apply to the Secretary of Labor and continue in effect, according to its terms, until it is modified, superseded, terminated, or otherwise deprived of legal effect by the Secretary of Labor, a court of competent jurisdiction, or operation of law.

''(C) Nothing in this paragraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

''(3) Any proceeding before the Secretary of Labor involving the functions transferred by this Act shall be subject to the statutory requirements for notice, hearing, action upon the record, administrative review, and judicial review that apply to similar proceedings before the Commissioner conducted prior to the enactment of this Act.

''(e) CONTINUATION OF ACTIONS AND CAUSES OF ACTION.—

''(1) Except as provided in paragraphs (2) and (3), this Act shall not abrogate, terminate, or otherwise affect any action or cause of action, that—

''(A) relates to a function transferred by this Act; and

''(B) is pending or otherwise in existence on the date this Act takes effect [see Effective Date of 2002 Amendment note set out under section 902 of this title].

''(2) Any action pending before the Commissioner or any court on the date this Act takes effect that involves a function transferred by this Act shall continue before the Commissioner or court consistent with the following provisions:

''(A) Any proceeding described in this paragraph shall continue as if this Act had not been enacted.

''(B) Any decision, order, or other determination issued in any proceeding subject to this paragraph shall apply to the Secretary of Labor and continue in effect, according to its terms, until it is modified, superseded, terminated, or otherwise deprived of legal effect by the Secretary of Labor, a court of competent jurisdiction, or operation of law.

''(3) Any cause of action by or against the Commissioner that exists on the date this Act takes effect and involves any function transferred by this Act may be asserted by or against the Secretary of Labor or the United States.

''(f) CONTINUATION OF ACTIONS AGAINST OFFICERS.—No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Social Security Administration, and relating to a function transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against the Social Security Administration, or by or against any officer thereof in his official capacity, relating to a function transferred by this Act, shall abate by reason of enactment of this Act.

''(g) PRESERVATION OF PENALTIES, ETC.—The transfer of functions under this Act shall not release or extinguish any penalty, forfeiture, liability, prosecution, investigation, or right to initiate a future investigation or prosecution involving any function transferred by this Act.''

## § 922. Payment of benefits

### (a) Schedules

Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Secretary under this part as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at a rate equal to 37½ per centum of the monthly pay rate for Federal employees in grade GS–2, step 1.

(2) In the case of death of a miner due to pneumoconiosis or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

(3) In the case of the child or children of a miner whose death is due to pneumoconiosis or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner who is receiving benefits under this part at the time of his death or who was totally disabled by pneumoconiosis at the time of his death, in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, and in the case of any child or children entitled to the payment of benefits under paragraph (5) of section 921(c) of this title, benefits shall be paid to such child or children as follows: If there is one such child, he shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three such children, and by 100 per centum of such rate if there are more than three such children: *Provided*, That benefits shall only be paid to a child for so long as he meets the criteria for the term ''child'' contained in section 902(g) of this title: *And provided further*, That no entitlement to benefits as a child shall be established under this paragraph (3) for any month for which entitlement to benefits as a widow is established under paragraph (2).

(4) In the case of an individual entitled to benefit payments under clause (1) or (2) of this subsection who has one or more dependents, the benefit payments shall be increased at the rate of 50 per centum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

(5) In the case of the dependent parent or parents of a miner whose death is due to pneumoconiosis, or, except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner who is receiving benefits under this part at the time of his death or who was totally disabled by pneumoconiosis at the time of death, and who is not survived at the time of his death by a widow or a child, in the case of the dependent surviving brother(s) or sister(s) of such a miner who is not survived at the time of his death by a widow, child, or parent, in the case of the dependent parent or parents of a miner (who is not survived at the time of his or her death by a widow or a child) who are entitled to the payment of benefits under paragraph (5) of section 921(c) of this title, or in the case of the dependent surviving brother(s) or sister(s) of a miner (who is not survived at the time of his or her death by a widow, child, or parent) who are entitled to the payment of benefits under paragraph (5) of section 921(c) of this title, benefits shall be paid under this part to such parent(s), or to such brother(s), or sister(s), at the rate specified in paragraph (3) (as if such parent(s) or such brother(s) or sister(s), were the children of such miner). In determining for purposes of this paragraph whether a claimant bears the relationship as the miner's parent, brother, or sister, the Secretary shall apply legal standards consistent with those applicable to relationship determination under title II of the Social Security Act [42 U.S.C. 401 et seq.]. No benefits to a sister or brother shall be payable under this paragraph for any month beginning with the month in which he or she receives support from his or her spouse, or marries. Benefits shall be payable under this paragraph to a brother only if he is—

(1)(A) under eighteen years of age, or

(B) under a disability as defined in section 223(d) of the Social Security Act [42 U.S.C. 423(d)] which began before the age specified in section 202(d)(1)(B)(ii) of such Act [42 U.S.C. 402(d)(1)(B)(ii)], or in the case of a student, before he ceased to be a student, or

(C) a student as defined in section 902(g) of this title; or

(2) who is, at the time of the miner's death, disabled as determined in accordance with section 223(d) of the Social Security Act [42 U.S.C. 423(d)], during such disability. Any benefit under this paragraph for a month prior to the month in which a claim for such benefit is filed shall be reduced to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior months. As used in this paragraph, ''dependent'' means that during the one year period prior to and ending with such miner's death, such parent, brother, or sister was living in the miner's household, and was, during such period, totally dependent on the miner for support. Proof of such support shall be filed by such claimant within two years after May 1972, or within two years after the miner's death, whichever is the later. Any such proof which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof within such period. The determination of what constitutes ''living in the miner's household'', ''totally dependent upon the miner for support,'' and ''good cause,'' shall for purposes of this paragraph be made in accordance with regulations of the Secretary. Benefit payments under this paragraph to a parent, brother, or sister, shall be reduced by the amount by which such payments would be reduced on account of excess earnings of such parent, brother, or sister, respectively, under section 203(b)–(*l*) of the Social Security Act [42 U.S.C. 403(b)–(*l*)], as if the benefit under this paragraph were a benefit under section 202 of such Act [42 U.S.C. 402].

(6) If an individual's benefits would be increased under paragraph (4) of this subsection because he or she has one or more dependents, and it appears to the Secretary that it would be in the interest of any such dependent to have the amount of such increase in benefits (to the extent attributable to such dependent) certified to a person other than such individual, then the Secretary may, under regulations prescribed by him, certify the amount of such increase in benefits (to the extent so attributable) not to such individual but directly to such dependent or to another person for the use and benefit of such dependent; and any payment made under this clause, if otherwise valid under this subchapter, shall be a complete settlement and satisfaction of all claims, rights, and interests in and to such payment.

**(b) Reduction of benefits**

Notwithstanding subsection (a) of this section, benefit payments under this section to a miner or his widow, child, parent, brother, or sister shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such miner or his widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner due to pneumoconiosis, and the amount by which such payment would be reduced on account of excess earnings of such miner under section 203(b) through (*l*) of the Social Security Act [42 U.S.C. 403(b) to (*l*)] if the amount paid were a benefit payable under section 202 of such Act [42 U.S.C. 402]. This part shall not be considered a workmen's compensation law or plan for purposes of section 224 of such Act [42 U.S.C. 424a].

**(c) Reporting of income**

Benefits payable under this part shall be deemed not to be income for purposes of the Internal Revenue Code of 1986.

(Pub. L. 91–173, title IV, §412, Dec. 30, 1969, 83 Stat. 794; Pub. L. 92–303, §§1(b)(1), (2), (c)(1), 2(a), May 19, 1972, 86 Stat. 150, 151, 153; Pub. L. 95–239, §§3(b)(1), 4, Mar. 1, 1978, 92 Stat. 96, 97; Pub. L. 97–119, title II, §203(a)(1)–(3), (d), Dec. 29, 1981, 95 Stat. 1643, 1644; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–296, title I, §108(i)(2), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 107–275, §2(a), Nov. 2, 2002, 116 Stat. 1925.)

REFERENCES IN TEXT

Grade GS–2, referred to in subsec. (a)(1), is contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

The effective date of the Black Lung Benefits Amendments of 1981, referred to in subsec. (a)(2), (3), and (5), is Jan. 1, 1982, except as otherwise provided. See section 206(a) of Pub. L. 97–119, set out as an Effective Date of 1981 Amendment note under section 901 of this title.

The Social Security Act, referred to in subsec. (a)(5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of that Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (c), is classified to Title 26, Internal Revenue Code.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–275 substituted ''Secretary'' for ''Commissioner of Social Security'' wherever appearing.

1994—Subsec. (a). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1986—Subsec. (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1981—Subsec. (a)(1). Pub. L. 97–119, § 203(d), substituted ''37½ per centum of the monthly pay rate for Federal employees in grade GS–2, step 1'' for ''50 per centum of the minimum monthly payment to which a Federal employee in grade GS–2, who is totally disabled, is entitled at the time of payment under chapter 81 of title 5''.

Subsec. (a)(2). Pub. L. 97–119, § 203(a)(1), inserted '', except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Amendments of 1981,'' after ''pneumoconiosis or''.

Subsec. (a)(3). Pub. L. 97–119, § 203(a)(2), inserted '', except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981,'' after ''pneumoconiosis or'' and substituted ''time of his death or'' for ''time of his death, or''.

Subsec. (a)(5). Pub. L. 97–119, § 203(a)(3), inserted '', except with respect to a claim filed under part C of this subchapter on or after the effective date of the Black Lung Benefits Amendments of 1981,'' after ''pneumoconiosis, or'' and substituted ''time of his death or who was totally'' for ''time of his death, or of a miner who was totally''.

1978—Subsec. (a)(3). Pub. L. 95–239, § 3(b)(1)(A), inserted reference to any child or children entitled to the payment of benefits under paragraph (5) of section 921(c) of this title.

Subsec. (a)(5). Pub. L. 95–239, § 3(b)(1)(B), inserted references to the payment of benefits under par. (5) of section 921(c) of this title.

Subsec. (b). Pub. L. 95–239, § 4, substituted ''on account of the disability of such miner due to pneumoconiosis'' for ''on account of the disability of such miner''.

1972—Subsec. (a)(3), (4). Pub. L. 92–303, § 1(b)(1), added par. (3) and redesignated former par. (3) as par. (4).

Subsec. (a)(5), (6). Pub. L. 92–303, § 1(b)(2), added pars. (5) and (6).

Subsec. (b). Pub. L. 92–303, §§ 1(c)(1), 2(a), substituted ''widow, child, parent, brother, or sister'' for ''widow'' wherever appearing, and inserted provision that this part would not be considered as a workmen's compensation law or plan for purposes of section 224 of such Act.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–119 effective Jan. 1, 1982, except as otherwise provided, see section 206(a) of Pub. L. 97–119, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 2(b) of Pub. L. 92–303 provided that: ''The amendment made by this section [amending this section] shall be effective as of December 30, 1969.''

CALCULATION OF MONTHLY BENEFIT PAYMENTS

Pub. L. 103–333, title V, § 512, Sept. 30, 1994, 108 Stat. 2573, provided that: ''Notwithstanding any other provision of law, monthly benefit rates during fiscal year 1995 and thereafter under part B or part C of the Black Lung Benefits Act [30 U.S.C. 921 et seq., 931 et seq.] shall continue to be based on the benefit rates in effect in September, 1994 and be paid in accordance with the Act, until exceeded by the benefit rate specified in section 412(a)(1) of the Act [30 U.S.C. 922(a)(1)].''

Pub. L. 103–112, title V, § 508(a), Oct. 21, 1993, 107 Stat. 1113, provided that: ''Notwithstanding any other provision of law, monthly benefit payments under part B or part C of the Black Lung Benefits Act [30 U.S.C. 921 et seq., 931 et seq.] for months after December 1993 and before October 1994 shall be calculated as though the provisions of Federal law prescribing pay rates for Federal employees continued in effect, without amendment to or limitation of such provisions, after January 1993.''

## § 923. Filing of notice of claim

### (a) Promulgation of regulations; time requirement

Except as otherwise provided in section 924 of this title, no payment of benefits shall be made under this part except pursuant to a claim filed therefor on or before December 31, 1973, in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe.

### (b) Utilization of personnel and procedures; evidence required to establish claim; medical evidence; affidavits; autopsy reports; reimbursement of expenses

No claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram. In determining the validity of claims under this part, all relevant evidence shall be considered, including, where relevant, medical tests such as blood gas studies, X-ray examination, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the claimant's physician, or his wife's affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the miner's physical condition, and other supportive materials. Where there is no medical or other relevant evidence in the case of a deceased miner, such affidavits, from persons not eligible for benefits in such

case with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981, shall be considered to be sufficient to establish that the miner was totally disabled due to pneumoconiosis or that his or her death was due to pneumoconiosis. In any case, other than that involving a claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981, in which there is other evidence that a miner has a pulmonary or respiratory impairment, the Secretary shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram which is of a quality sufficient to demonstrate the presence of pneumoconiosis submitted in support of a claim for benefits under this subchapter if such roentgenogram has been taken by a radiologist or qualified technician, except where the Secretary has reason to believe that the claim has been fraudulently represented. In order to insure that any such roentgenogram is of adequate quality to demonstrate the presence of pneumoconiosis, and in order to provide for uniform quality in the roentgenograms, the Secretary of Labor may, by regulation, establish specific requirements for the techniques used to take roentgenograms of the chest. Unless the Secretary has good cause to believe that an autopsy report is not accurate, or that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such autopsy report concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis. Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. For purposes of determining total disability under this part, the provisions of subsections (a), (b), (c), (d), and (g) of section 221 of such Act [42 U.S.C. 421(a) to (d), (g)] shall be applicable. The provisions of sections 204, 205(a), (b), (d), (e), (g), (h), (j), (k), (*l*), and (n), 206, 207, and 208 of the Social Security Act [42 U.S.C. 404, 405(a), (b), (d), (e), (g), (h), (j), (k), (*l*), and (n), 406, 407, 408] shall be applicable under this part with respect to a miner, widow, child, parent, brother, sister, or dependent, as if benefits under this part were benefits under title II of such Act [42 U.S.C. 401 et seq.]. Each miner who files a claim for benefits under this subchapter shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.

**(c) Filing of claim for workmen's compensation; necessity; exceptions**

No claim for benefits under this section shall be considered unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time his claim was filed for benefits under this section; except that the foregoing provisions of this paragraph shall not apply in any case in which the filing of a claim under such law would clearly be futile because the period within which such a claim may be filed thereunder has expired or because pneumoconiosis is not compensable under such law, or in any other situation in which, in the opinion of the Secretary, the filing of a claim would clearly be futile.

**(d) Employment termination and benefits entitlement**

No miner who is engaged in coal mine employment shall (except as provided in section 921(c)(3) of this title) be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his or her employment terminates within one year after the date such determination becomes final.

(Pub. L. 91–173, title IV, §413, Dec. 30, 1969, 83 Stat. 794; Pub. L. 92–303, §§1(c)(5)(A), 4(f), 5(2), May 19, 1972, 86 Stat. 152, 154, 155; Pub. L. 95–239, §5, Mar. 1, 1978, 92 Stat. 97; Pub. L. 97–119, title II, §202(a), (c), Dec. 29, 1981, 95 Stat. 1643; Pub. L. 103–296, title I, §108(i)(2), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 107–275, §2(a), (b)(2), Nov. 2, 2002, 116 Stat. 1925.)

REFERENCES IN TEXT

The effective date of the Black Lung Benefits Amendments of 1981, referred to in subsec. (b), is Jan. 1, 1982, except as otherwise provided. See section 206(a) of Pub. L. 97–119, set out as an Effective Date of 1981 Amendment note under section 901 of this title.

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of this Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–275, §2(a), substituted ''Secretary'' for ''Commissioner of Social Security''.

Subsec. (b). Pub. L. 107–275, §2(b)(2), substituted ''No'' for ''In carrying out the provisions of this part, the Commissioner of Social Security shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the personnel and procedures he uses in determining entitlement to disability insurance benefit payments under section 223 of the Social Security Act, but no''.

Pub. L. 107–275, §2(a), substituted ''Secretary has'' for ''Commissioner of Social Security has'' in two places and ''Secretary shall'' for ''Commissioner of Social Security shall'' in two places.

Subsec. (c). Pub. L. 107–275, §2(a), substituted ''Secretary'' for ''Commissioner of Social Security''.

1994—Subsecs. (a) to (c). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, except in reference to Secretary of Labor.

1981—Subsec. (b). Pub. L. 97–119, §202(a), (c), inserted '', from persons not eligible for benefits in such case with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981,'' after ''such affidavits'' and '', other than that involving a claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981,'' after ''In any case''.

1978—Subsec. (b). Pub. L. 95–239, §5(a), (b), (c), provided that, in the case of a deceased miner where there is no medical or other relevant evidence, the affidavits be considered sufficient to establish that the miner was totally disabled due to pneumoconiosis or that death was due to pneumoconiosis, directed the Secretary to accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram in cases in which there is other evidence that a miner has a pulmonary or respiratory impairment, provided for regulations covering roentgenogram techniques, provided for acceptance by the Secretary of an autopsy report concerning the presence of pneumoconiosis and the stage

of advancement of that pneumoconiosis, directed that each miner who files a claim for benefits under this subchapter be provided upon request an opportunity to substantiate the claim by means of a complete pulmonary evaluation, and, in the reference to the various subsections of section 405 of Title 42, struck out reference to subsec. (f) and inserted reference to subsec. (n).

Subsec. (d). Pub. L. 95–239, § 5(d), added subsec. (d).

1972—Subsec. (a). Pub. L. 92–303, § 5(2), substituted ''1973'' for ''1972''.

Subsec. (b). Pub. L. 92–303, §§ 1(c)(5)(A), 4(f), inserted provisions making sections 404 to 408 of title 42 applicable, and for a more liberal consideration of claims for benefits.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendments by Pub. L. 107–275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–119 effective Jan. 1, 1982, except as otherwise provided, see section 206(a) of Pub. L. 97–119, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 4(f) of Pub. L. 92–303 effective Dec. 30, 1969, see section 4(g) of Pub. L. 92–303, set out as a note under section 921 of this title.

EFFECTIVE DATE FOR THE APPLICATION OF SECTION 405 OF TITLE 42

Section 1(c)(5)(B) of Pub. L. 92–303 provided that: ''Only section 205(b), (g), and (h) of those sections of the Social Security Act [section 405(b), (g), and (h) of Title 42, The Public Health and Welfare] recited in subparagraph (A) of this paragraph [amending this section] shall be effective as of the date provided in subsection (d) of this section.''

[There is no subsec. (d) in section 1 of Pub. L. 92–303 as it was enacted. However, Senate Report No. 92–743, at page 30, refers to such a subsec. (d) applying the provisions of section of Pub. L. 92–303 retroactively to Dec. 30, 1969.]

## § 924. Time for filing claims

### (a) Claims filed before December 31, 1973

(1) No claim for benefits under this part on account of total disability of a miner shall be considered unless it is filed on or before December 31, 1973, or, in the case of a claimant who is a widow, within six months after the death of her husband or by December 31, 1973, whichever is the later.

(2) In the case of a claim by a child this paragraph shall apply, notwithstanding any other provision of this part.

(A) If such claim is filed within six months following May 1972, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 922(a)(3) of this title been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from December 30, 1969, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

(B) If such claim is filed after six months following May 1972, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from a date twelve months preceding the date such claim is filed, or from the date such child would have been first eligible for such benefit payments had section 922(a)(3) of this title been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

(C) No claim for benefits under this part, in the case of a claimant who is a child, shall be considered unless it is filed within six months after the death of his father or mother (whichever last occurred) or by December 31, 1973, whichever is the later.

(D) Any benefit under subparagraph (A) or (B) for a month prior to the month in which a claim is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior month.

(3) No claim for benefits under this part, in the case of a claimant who is a parent, brother, or sister shall be considered unless it is filed within six months after the death of the miner or by December 31, 1973, whichever is the later.

### (b) Filing of claims after June 30, 1973

No benefits shall be paid under this part after December 31, 1973, if the claim therefor was filed after June 30, 1973.

### (c) Effective date of claims

No benefits under this part shall be payable for any period prior to the date a claim therefor is filed.

### (d) Reduction of State benefits

No benefits shall be paid under this part to the residents of any State which, after December 30, 1969, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

### (e) Conditions upon payment

No benefits shall be payable to a widow, child, parent, brother, or sister under this part on account of the death of a miner unless (1) benefits under this part were being paid to such miner with respect to disability due to pneumoconiosis

prior to his death, (2) the death of such miner occurred prior to January 1, 1974, or (3) any such individual is entitled to benefits under paragraph (5) of section 921(c) of this title.

(Pub. L. 91–173, title IV, §414, Dec. 30, 1969, 83 Stat. 795; Pub. L. 92–303, §§1(c)(1), (6), 5(1)–(3), May 19, 1972, 86 Stat. 151, 152, 155; Pub. L. 95–239, §3(b)(2), Mar. 1, 1978, 92 Stat. 97; Pub. L. 103–296, title I, §108(i)(2), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 107–275, §2(a), Nov. 2, 2002, 116 Stat. 1925.)

AMENDMENTS

2002—Subsec. (a)(2)(D). Pub. L. 107–275 substituted ''Secretary'' for ''Commissioner of Social Security''.

1994—Subsec. (a)(2)(D). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

1978—Subsec. (e). Pub. L. 95–239 added cl. (3) relating to individuals entitled to benefits under par. (5) of section 921(c) of this title.

1972—Subsec. (a). Pub. L. 92–303, §§1(c)(6), 5(2), designated existing provisions as par. (1) and added pars. (2) and (3), and in par. (1) substituted ''1973'' for ''1972'' wherever appearing.

Subsec. (b). Pub. L. 92–303, §§5(1), (2), substituted ''June 30, 1973'' for ''December 31, 1971'' and ''December 31, 1973'' for ''December 31, 1971''.

Subsec. (e). Pub. L. 92–303, §§1(c)(1), 5(3), substituted ''widow, child, parent, brother, or sister'' for ''widow'' and ''1974'' for ''1973''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

### §924a. Repealed. Pub. L. 107–275, §2(c)(2), Nov. 2, 2002, 116 Stat. 1926

Section, Pub. L. 95–239, §11, Mar. 1, 1978, 92 Stat. 101, related to notification to miners of eligibility for medical services and supplies and the period for filing a claim.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as an Effective Date of 2002 Amendment note under section 902 of this title.

### §925. Procedure for the determination of claims during transition period

(a) Notwithstanding any other provision in this subchapter, for the purpose of assuring the uninterrupted receipt of benefits by claimants at such time as responsibility for administration of the benefits program is assumed by either a State workmen's compensation agency or the Secretary of Labor, any claim for benefits under this part filed during the period from July 1, 1973 to December 31, 1973, shall be considered and determined in accordance with the procedures of this section. With respect to any such claim—

(1) Such claim shall be determined and, where appropriate under this part or section 9501(d) of title 26, benefits shall be paid with respect to such claim by the Secretary of Labor.

(2) The Secretary of Labor shall promptly notify any operator who he believes, on the basis of information contained in the claim, or any other information available to him, may be liable to pay benefits to the claimant under part C of this subchapter for any month after December 31, 1973.

(3) In determining such claims, the Secretary of Labor shall, to the extent appropriate, follow the procedures described in subsections (b), (c), and (d) of section 919 of title 33.

(4) Any operator who has been notified of the pendency of a claim under paragraph (2) of this subsection shall be bound by the determination of the Secretary of Labor on such claim as if the claim had been filed pursuant to part C of this subchapter and section 932 of this title had been applicable to such operator. Nothing in this paragraph shall require any operator to pay any benefits for any month prior to January 1, 1974.

(b) The Secretary of Labor may issue such regulations as are necessary or appropriate to carry out the purpose of this section.

(Pub. L. 91–173, title IV, §415, as added Pub. L. 92–303, §7, May 19, 1972, 86 Stat. 156; amended Pub. L. 97–119, title I, §104(b)(2), Dec. 29, 1981, 95 Stat. 1639; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–296, title I, §108(i)(2), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 107–275, §2(b)(3), Nov. 2, 2002, 116 Stat. 1925.)

AMENDMENTS

2002—Subsec. (a)(2) to (5). Pub. L. 107–275, §2(b)(3)(A), redesignated pars. (3) to (5) as (2) to (4), respectively, substituted ''paragraph (2)'' for ''paragraph 4'' in par. (4), and struck out former par. (2) which read as follows: ''The manner and place of filing such claim shall be in accordance with regulations issued jointly by the Commissioner of Social Security and the Secretary of Labor, which regulations shall provide, among other things, that such claims may be filed in district offices of the Social Security Administration and thereafter transferred to the jurisdiction of the Department of Labor for further consideration.''

Subsec. (b). Pub. L. 107–275, §2(b)(3)(B), struck out '', after consultation with the Commissioner of Social Security,'' after ''Secretary of Labor''.

1994—Subsecs. (a)(2), (b). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary of Health, Education, and Welfare''.

1986—Subsec. (a)(1). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1981—Subsec. (a)(1). Pub. L. 97–119 substituted ''section 9501(d) of title 26'' for ''section 934 of this title''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

PART C—CLAIMS FOR BENEFITS AFTER DECEMBER 31, 1973

### § 931. Benefits under State workmen's compensation laws

**(a) Filing**

On and after January 1, 1974, any claim for benefits for death or total disability due to pneumoconiosis shall be filed pursuant to the applicable State workmen's compensation law, except that during any period when miners or their surviving widows, children, parents, brothers, or sisters, as the case may be, are not covered by a State workmen's compensation law which provides adequate coverage for pneumoconiosis, and in any case in which benefits based upon eligibility under paragraph (5) of section 921(c) of this title are involved.[1] they shall be entitled to claim benefits under this part.

**(b) Adequacy of compensation; listing of States providing adequate compensation; requisites for listing**

(1) For purposes of this section, a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws found by the Secretary to provide such adequate coverage during such period. The Secretary shall, no later than October 1, 1972, publish in the Federal Register a list of State workmen's compensation laws which provide adequate coverage for pneumoconiosis and shall revise and republish in the Federal Register such list from time to time, as may be appropriate to reflect changes in such State laws due to legislation or judicial or administrative interpretation.

(2) The Secretary shall include a State workmen's compensation law on such list during any period only if he finds that during such period under such law—

(A) benefits must be paid for total disability or death of a miner due to pneumoconiosis, except that (i) such law shall not be required to provide such benefits where the miner's last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section; and (ii) each operator of a coal mine shall secure the payment of benefits pursuant to section 933 of this title with respect to any miner whose last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section;

(B) the amount of such cash benefits is substantially equivalent to or greater than the amount of benefits prescribed by section 922(a) of this title;

(C) the standards for determining death or total disability due to pneumoconiosis are substantially equivalent to section 902(f) of this title and to those standards established under this part, and by the regulations of the Secretary promulgated under this part;

(D) any claim for benefits on account of total disability of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years after a medical determination of total disability due to pneumoconiosis;

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 932(i) of this title; and

(F) there are applicable such other provisions, regulations or interpretations, which are consistent with the provisions contained in Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended [33 U.S.C. 901 et seq.], which are applicable under section 932(a) of this title, but are not inconsistent with any of the criteria set forth in subparagraphs (A) through (E) of this paragraph, as the Secretary, in accordance with regulations promulgated by him, determines to be necessary or appropriate to assure adequate compensation for total disability or death due to pneumoconiosis.

The action of the Secretary in including or failing to include any State workmen's compensation law on such list shall be subject to judicial review exclusively in the United States court of appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia.

**(c) Publication in Federal Register; review of listings**

Final regulations required for implementation of any amendments to this part shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the sixth month following the month in which such amendments are enacted.

(Pub. L. 91–173, title IV, § 421, Dec. 30, 1969, 83 Stat. 795; Pub. L. 92–303, §§ 1(c)(1), 4(e), 5(3), (5), May 19, 1972, 86 Stat. 151, 154, 155; Pub. L. 95–239, §§ 3(b)(3), 6, Mar. 1, 1978, 92 Stat. 97, 98.)

REFERENCES IN TEXT

Public Law 803, 69th Congress, referred to in subsec. (b)(2)(F), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, popularly known as the Longshore and Harbor Workers' Compensation Act, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–239, § 3(b)(3), inserted reference to cases in which benefits based upon eligibility under par. (5) of section 921(c) of this title are involved.

Subsec. (b)(2)(A). Pub. L. 95–239, § 6(a), added the exceptions set out in cls. (i) and (ii).

Subsec. (b)(2)(C). Pub. L. 95–239, § 6(b), substituted "established under this part, and by the regulations of the Secretary promulgated under this part" for "established under part B of this subchapter, and by the regulations of the Secretary of Health, Education, and Welfare promulgated thereunder".

Subsec. (b)(2)(D). Pub. L. 95–239, § 6(c), substituted "total disability of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years after a medical determination of total disability due to pneumoconiosis" for "total disability or death of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years of the discovery of total disability due to pneumoconiosis, or the date of such death, as the case may be".

[1] So in original. The period probably should be a comma.

1972—Subsec. (a). Pub. L. 92–303, §§1(c)(1), 5(3), substituted ''widows, children, parents, brothers, or sisters, as the case may be,'' for ''widows'' and ''1974'' for ''1973''.

Subsec. (b)(2)(C). Pub. L. 92–303, §4(e), substituted ''section 902(f) of this title and to those standards established under part B of this subchapter'' for ''those established by section 921 of this title''.

Subsec. (c). Pub. L. 92–303, §5(5), added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 4(e) of Pub. L. 92–303 effective Dec. 30, 1969, see section 4(g) of Pub. L. 92–303, set out as a note under section 921 of this title.

## §932. Failure to meet workmen's compensation requirements

### (a) Benefits; applicability of Longshore and Harbor Workers' Compensation Act; promulgation of regulations

Subject to section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, during any period after December 31, 1973, in which a State workmen's compensation law is not included on the list published by the Secretary under section 931(b) of this title, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended [33 U.S.C. 901 et seq.], and as it may be amended from time to time (other than the provisions contained in sections 1, 2, 3, 4,,[1] 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof) [33 U.S.C. 901, 902, 903, 904, 908, 909, 910, 912, 913, 929, 930, 931, 932, 933, 937, 938, 941, 943, 944, 945, 946, 947, 948, 948a, 949, 950], shall (except as otherwise provided in this subsection or by regulations of the Secretary and except that references in such Act to the employer shall be considered to refer to the trustees of the fund, as the Secretary considers appropriate and as is consistent with the provisions of section 9501(d) of title 26), be applicable to each operator of a coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) of section 921(c) of this title. In administering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

### (b) Liability of operators

During any such period each such operator shall be liable for and shall secure the payment of benefits, as provided in this section and section 933 of this title. An employer, other than an operator of a coal mine, shall not be required to secure the payment of such benefits with respect to any employee of such employer to the extent such employee is engaged in the transportation of coal or in coal mine construction. Upon determination by the Secretary of the eligibility of the employee, the Secretary may require such employer to secure a bond or otherwise guarantee the payment of such benefits to the employee.

### (c) Persons entitled to benefits

Benefits shall be paid during such period by each such operator under this section to the categories of persons entitled to benefits under section 922(a) of this title in accordance with the regulations of the Secretary applicable under this section: *Provided*, That, except as provided in subsection (i) of this section, no benefit shall be payable by any operator on account of death or total disability due to pneumoconiosis (1) which did not arise, at least in part, out of employment in a mine during a period after December 31, 1969, when it was operated by such operator; or (2) which was the subject of a claim denied before March 1, 1978, and which is or has been approved in accordance with the provisions of section 945[2] of this title.

### (d) Monthly payments; amounts; accrual of interest

Benefits payable under this section shall be paid on a monthly basis and, except as otherwise provided in this section, such payments shall be equal to the amounts specified in section 922(a) of this title. If payment is not made within the time required, interest shall accrue to such amounts at the rates set forth in section 934(b)(5) of this title for interest owed to the fund. With respect to payments withheld pending final adjudication of liability, in the case of claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981, such interest shall commence to accumulate 30 days after the date of the determination that such an award should be made.

### (e) Conditions upon payment

No payment of benefits shall be required under this section:

(1) except pursuant to a claim filed therefor in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe; or

(2) for any period prior to January 1, 1974.

### (f) Limitation on filing of claims

Any claim for benefits by a miner under this section shall be filed within three years after whichever of the following occurs later—

(1) a medical determination of total disability due to pneumoconiosis; or

(2) March 1, 1978.

### (g) Reduction of monthly benefits

The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis. In addition, the amount of benefits payable under this section with respect to any claim filed on or after the effective date of the Black Lung Bene-

[1] So in original.

[2] See References in Text note below.

fits Amendments of 1981 shall be reduced, on a monthly or other appropriate basis, by the amount by which such benefits would be reduced on account of excess earnings of such miner under section 403(b) through (*l*) of title 42 if the amount paid were a benefit payable under section 402 of title 42.

**(h) Promulgation of regulations**

The Secretary of Labor shall by regulation establish standards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular coal mine or mines. The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator, where such apportionment is appropriate.

**(i) Subsequent operators' liability for benefit payments**

(1) During any period in which this section is applicable to the operator of a coal mine who on or after January 1, 1970, acquired such mine or substantially all the assets thereof, from a person (hereinafter in this subsection referred to as a ''prior operator'') who was an operator of such mine, or owner of such assets on or after January 1, 1970, such operator shall be liable for and shall, in accordance with section 933 of this title, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners previously employed by such prior operator as if the acquisition had not occurred and the prior operator had continued to be an operator of a coal mine.

(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

(3)(A) For purposes of paragraph (1) of this subsection, the provisions of this paragraph shall apply to corporate reorganizations, liquidations, and such other transactions as are specified in this paragraph.

(B) If an operator ceases to exist by reason of a reorganization or other transaction or series of transactions which involves a change in identity, form, or place of business or organization, however effected, the successor operator or other corporate or business entity resulting from such reorganization or other change shall be treated as the operator to whom this section applies.

(C) If an operator ceases to exist by reason of a liquidation into a parent or successor corporation, the parent or successor corporation shall be treated as the operator to whom this section applies.

(D) If an operator ceases to exist by reason of a sale of substantially all his or her assets, or as the result of a merger, consolidation, or division, the successor operator, corporation, or other business entity shall be treated as the operator to whom this section applies.

(4) In any case in which there is a determination under section 9501(d) of title 26 that no operator is liable for the payment of benefits to a claimant, nothing in this subsection may be construed to require the payment of benefits to a claimant by or on behalf of any operator.

**(j) Failure of operators to secure benefits**

Notwithstanding the provisions of this section, section 9501 of title 26 shall govern the payment of benefits in cases—

(1) described in section 9501(d)(1) of title 26;

(2) in which the miner's last coal mine employment was before January 1, 1970; or

(3) in which there was a claim denied before March 1, 1978, and such claim is or has been approved in accordance with the provisions of section 945[2] of this title.

**(k) Secretary as party in claim proceedings**

The Secretary shall be a party in any proceeding relative to a claim for benefits under this part.

**(*l*) Filing of new claims or refiling or revalidation of claims of miners already determined eligible at time of death**

In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this subchapter at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner, except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981,.[3]

(Pub. L. 91–173, title IV, § 422, Dec. 30, 1969, 83 Stat. 796; Pub. L. 92–303, §§ 3(a), (b), 5(2)–(4), (9), 8, May 19, 1972, 86 Stat. 153, 155–157; Pub. L. 95–239, §§ 3(b)(4), 7(a)–(h), Mar. 1, 1978, 92 Stat. 97–99; Pub. L. 97–119, title I, § 104(b)(3)–(5), title II, §§ 203(a)(6), (b), 204, 205(a), Dec. 29, 1981, 95 Stat. 1639, 1644, 1645; Pub. L. 98–426, § 28(h)(2), Sept. 28, 1984, 98 Stat. 1655; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

Section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, referred to in subsec. (a), is section 28(h)(1) of Pub. L. 98–426, which is set out as a note under section 907 of Title 33, Navigation and Navigable Waters.

Public Law 803, 69th Congress, referred to in subsec. (a), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, popularly known as the Longshore and Harbor Workers' Compensation Act, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

Section 42 of Public Law 803, referred to in subsec. (a), was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 647.

Section 43 of Public Law 803, referred to in subsec. (a), was repealed by Pub. L. 89-348, § 1(15), Nov. 8, 1965, 79 Stat. 1311.

Sections 45, 46, and 47 of Public Law 803, referred to in subsec. (a), were repealed by Pub. L. 98–426, § 25, Sept. 28, 1984, 98 Stat. 1654.

Section 945 of this title, referred to in subsecs. (c), (j)(3), was repealed by Pub. L. 107–275, § 2(c)(1), Nov. 2, 2002, 116. Stat. 1926.

The effective date of the Black Lung Benefits Amendments of 1981, referred to in subsecs. (d), (g), and (*l*), is Jan. 1, 1982, except as otherwise provided. See section 206(a) of Pub. L. 97–119, set out as an Effective Date of 1981 Amendment note under section 901 of this title.

AMENDMENTS

1986—Subsecs. (a), (i)(4), (j). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue

[3] So in original.

Code of 1954'' wherever appearing, which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1984—Subsec. (a). Pub. L. 98–426 substituted ''Subject to section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, during'' for ''During''.

1981—Subsec. (a). Pub. L. 97–119, § 104(b)(3), substituted ''section 9501(d) of title 26'' for ''section 934 of this title''.

Subsec. (c). Pub. L. 97–119, § 205(a)(1), substituted ''due to pneumoconiosis (1)'' for ''due to pneumoconiosis'' and added cl. (2).

Subsec. (d). Pub. L. 97–119, § 204, inserted provision relating to accrual of interest if payment is not made within the time required and accumulation of interest with respect to payments withheld pending final adjudication of liability in the case of claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981.

Subsec. (g). Pub. L. 97–119, § 203(b), inserted provision reducing the amount of benefits payable under this section with respect to any claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981.

Subsec. (i)(4). Pub. L. 97–119, § 104(b)(4), substituted ''section 9501(d) of title 26'' for ''section 934 of this title''.

Subsec. (j). Pub. L. 97–119, §§ 104(b)(5), 205(a)(2), substituted in provision preceding par. (1) ''section 9501 of title 26'' for ''section 934 of this title'' and in par. (1) ''section 9501(d)(1) of title 26'' for ''section 934(a)(1) of this title'' and added par. (3).

Subsec. (*l*). Pub. L. 97–119, § 203(a)(6), inserted before period at end '', except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981,''.

1978—Subsec. (a). Pub. L. 95–239, §§ 3(b)(4), 7(a), inserted '', and as it may be amended from time to time'' after ''as amended'', inserted a comma after ''and 51 thereof)'', substituted ''or by regulations of the Secretary and except that references in such Act to the employer shall be considered to refer to the trustees of the fund, as the Secretary considers appropriate and as is consistent with the provisions of section 934 of this title)'' for ''and except as the Secretary shall by regulation otherwise provide)'', and inserted '', or with respect to entitlements established in paragraph (5) of section 921(c) of this title'' after ''with respect to death or total disability due to pneumoconiosis arising out of employment in such mine''.

Subsec. (b). Pub. L. 95–239, § 7(b), provided that an employer, other than an operator of a coal mine, shall not be required to secure the payment of benefits with respect to any employee of that employer to the extent that the employee is engaged in the transportation of coal or in coal mine construction and authorized the Secretary to require an employer to secure a bond or otherwise guarantee the payment of benefits.

Subsec. (c). Pub. L. 95–239, § 7(c), struck out reference to regulations of the Secretary of Health, Education, and Welfare and substituted ''employment in a mine during a period after December 31, 1969, when it was operated'' for ''employment in a mine during the period when it was operated''.

Subsec. (e)(3). Pub. L. 95–239, § 7(d), struck out par. (3) which had provided that no payment of benefits could be required under this section for any period after twelve years after Dec. 30, 1969.

Subsec. (f). Pub. L. 95–239, § 7(e), provided that any claim for benefits by a miner under this section be filed within three years after the later of either a medical determination of total disability due to pneumoconiosis or March 1, 1978, and struck out provisions which had set special limitations on the filing of a claim by a widow.

Subsec. (h). Pub. L. 95–239, § 7(f), struck out provision under which the regulations of the Secretary of Health, Education, and Welfare promulgated under section 921 of this title had also been applicable to claims under this section.

Subsec. (i)(1). Pub. L. 95–239, § 7(g), imposed claim liability on operators who acquired a mine from a prior operator on or after Jan. 1, 1970, with respect to benefits to miners previously employed by a prior operator, as if the acquisition had not occurred.

Subsec. (i)(2). Pub. L. 95–239, § 7(g), reenacted par. (2) without change.

Subsec. (i)(3), (4). Pub. L. 95–239, § 7(g), added pars. (3) and (4).

Subsecs. (j) to (*l*). Pub. L. 95–239, § 7(h), added subsecs. (j) to (*l*).

1972—Subsec. (a). Pub. L. 92–303, §§ 3(b), 5(2), (9), substituted ''a coal mine'' for ''an underground coal mine'', ''1973'' for ''1972'' and struck out reference to section 7 of Pub. L. 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), respectively,

Subsec. (e)(2). Pub. L. 92–303, § 5(3), substituted ''January 1, 1974'' for ''January 1, 1973''.

Subsec. (e)(3). Pub. L. 92–303, § 5(4), substituted ''twelve years'' for ''seven years''.

Subsec. (f). Pub. L. 92–303, § 8, designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 92–303, § 3(a), substituted ''coal mine'' for ''underground coal mine''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–426 effective Sept. 28, 1984, and applicable both with respect to claims filed after such date and to claims pending on such date, see section 28(a) of Pub. L. 98–426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 203(a)(6), (b), 204, 205(a) of Pub. L. 97–119 effective Jan. 1, 1982, except as otherwise provided, see section 206(a) of Pub. L. 97–119, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 3(a), (b) of Pub. L. 92–303 effective Dec. 30, 1969, see section 3(c) of Pub. L. 92–303, set out as a note under section 901 of this title.

## § 932a. Appointment of qualified individuals to hear and determine claims for benefits

Qualified individuals appointed by the Secretary of Labor may hear and determine claims for benefits under part B or part C of title IV of the Federal Coal Mine Health and Safety Act of 1969[1] [30 U.S.C. 921 et seq., 931 et seq.] and under section 415 of such Act [30 U.S.C. 925]. For purposes of this section, the term ''qualified individual'' means such an individual, regardless of whether that individual is a hearing examiner appointed under section 3105 of title 5. Nothing in this section shall be deemed to imply that there is or is not in effect any authority for such individuals to hear and determine such claims under any provision of law other than this section.

(Pub. L. 94–504, Oct. 15, 1976, 90 Stat. 2428; Pub. L. 107–275, § 2(b)(5), Nov. 2, 2002, 116 Stat. 1926.)

REFERENCES IN TEXT

The Federal Coal Mine Health and Safety Act of 1969, referred to in text, is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended, which was renamed the Federal Mine Safety and Health Act of 1977 by Pub. L. 95–164,

[1] See References in Text note below.

title I, § 101, Nov. 9, 1977, 91 Stat. 1290. Parts B and C of title IV of the Federal Mine Safety and Health Act of 1977 are classified generally to part B (§ 921 et seq.) of this subchapter and to this part (§ 931 et seq.), respectively. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Federal Mine Safety and Health Act of 1977 which comprises this chapter or the Black Lung Benefits Act which comprises this subchapter.

AMENDMENTS

2002—Pub. L. 107–275 substituted ''under part B or part C'' for ''under part C''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as a note under section 902 of this title.

EXTENSION OF ADJUDICATION PERIOD THROUGH MARCH 1, 1979

Pub. L. 95–239, § 7(i), Mar. 1, 1978, 92 Stat. 100, authorized individuals appointed to hear and determine claims for benefits under this part and under section 925 of this title pursuant to this section, notwithstanding the provisions of section 932(a) of this title, to continue to adjudicate such claims during the one-year period following Mar. 1, 1978.

## § 933. Duties of operators in States not qualifying under workmen's compensation laws

### (a) Securing of benefits for miners; self-insurers; mutual companies

During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 931(b) of this title each operator of a coal mine in such State shall secure the payment of benefits for which he is liable under section 932 of this title by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

### (b) Required provisions of insurance contracts

In order to meet the requirements of clause (2) of subsection (a) of this section, every policy or contract of insurance must contain—

(1) a provision to pay benefits required under section 932 of this title, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments;

(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments; and

(3) such other provisions as the Secretary, by regulation, may require.

### (c) Cancellation of insurance contracts

No policy or contract of insurance issued by a carrier to comply with the requirements of clause (2) of subsection (a) of this subsection[1] shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

### (d) Penalties for failure to secure payment of benefits

(1) Any employer required to secure the payment of benefits under this section who fails to secure such benefits shall be subject to a civil penalty assessed by the Secretary of not more than $1,000 for each day during which such failure occurs. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable to such civil penalty as provided in this subsection for the failure of such corporation to secure the payment of benefits. Such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any benefit which may accrue under this subchapter in respect to any disability which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by this section.

(2) Any employer of a miner who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secrets,[2] or destroys any property belonging to such employer, after any miner employed by such employer has filed a claim under this subchapter, and with intent to avoid the payment of benefits under this subchapter to such miner or his or her dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable for such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(3) This subsection shall not affect any other liability of the employer under this part.

(Pub. L. 91–173, title IV, § 423, Dec. 30, 1969, 83 Stat. 797; Pub. L. 92–303, § 3(b), May 19, 1972, 86 Stat. 153; Pub. L. 95–239, § 8, Mar. 1, 1978, 92 Stat. 100.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95–239 added subsec. (d).

1972—Subsec. (a). Pub. L. 92–303 substituted ''a coal mine'' for ''an underground coal mine''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–303 effective Dec. 30, 1969, see section 3(c) of Pub. L. 92–303, set out as a note under section 901 of this title.

[1] So in original. Probably should be ''section''.

[2] So in original. Probably should be ''secretes,''.

**§934. "Fund" defined; liability of operators to United States for repayments to fund; procedures applicable; rate of interest**

(a) For purposes of this section, the term ''fund'' has the meaning set forth in section 902(h) of this title.

(b)(1) If—

(A) an amount is paid out of the fund to an individual entitled to benefits under section 932 of this title, and

(B) the Secretary determines, under the provisions of sections 932 and 933 of this title, that an operator was required to secure the payment of all or a portion of such benefits,

then the operator is liable to the United States for repayment to the fund of the amount of such benefits the payment of which is properly attributed to him plus interest thereon. No operator or representative of operators may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits to be paid by the fund, except that nothing in this section shall affect the rights, duties, or liabilities of any operator in proceedings under section 932 or section 933 of this title. In a case where no operator responsibility is assigned pursuant to sections 932 and 933 of this title, a determination by the Secretary that the fund is liable for the payment of benefits shall be final.

(2) If any operator liable to the fund under paragraph (1) refuses to pay, after demand, the amount of such liability (including interest), then there shall be a lien in favor of the United States for such amount upon all property and rights to property, whether real or personal, belonging to such operator. The lien arises on the date on which such liability is finally determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

(3)(A) Except as otherwise provided under this subsection, the priority of the lien shall be determined in the same manner as under section 6323 of title 26. That section shall be applied for such purposes—

(i) by substituting ''lien imposed by section 424(b)(2) of the Federal Mine Safety and Health Act of 1977'' for ''lien imposed by section 6321''; ''operator liability lien'' for ''tax lien''; ''operator'' for ''taxpayer''; ''lien arising under section 424(b)(2) of the Federal Mine Safety and Health Act of 1977'' for ''assessment of the tax''; ''payment of the liability is made to the Black Lung Disability Trust Fund'' for ''satisfaction of a levy pursuant to section 6332(b)''; and ''satisfaction of operator liability'' for ''collection of any tax under this title'' each place such terms appear; and

(ii) by treating all references to the ''Secretary'' as references to the Secretary of Labor.

(B) In the case of a bankruptcy or insolvency proceeding, the lien imposed under paragraph (2) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the Bankruptcy Act or section 3713(a) of title 31.

(C) For purposes of applying section 6323(a) of title 26 to determine the priority between the lien imposed under paragraph (2) and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(D) For purposes of this subsection, notice of the lien imposed under paragraph (2) shall be filed in the same manner as under subsections (f) and (g) of section 6323 of title 26.

(4)(A) In any case where there has been a refusal or neglect to pay the liability imposed under paragraph (2), the Secretary may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator, or in which he has any right, title, or interest, to the payment of such liability.

(B) The liability imposed by paragraph (1) may be collected at a proceeding in court if the proceeding is commenced within 6 years after the date on which the liability was finally determined, or before the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such 6-year period. The running of the period of limitation provided under this subparagraph shall be suspended for any period during which the assets of the operator are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for 6 months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least 6 months.

(5) The rate of interest under this subsection—

(A) for any period during calendar year 1982, shall be 15 percent, and

(B) for any period after calendar year 1982, shall be the rate established by section 6621 of title 26 which is in effect for such period.

(Pub. L. 91–173, title IV, §424, Dec. 30, 1969, 83 Stat. 798; Pub. L. 92–303, §1(c)(1), May 19, 1972, 86 Stat. 151; Pub. L. 95–227, §3(d), Feb. 10, 1978, 92 Stat. 13; Pub. L. 96–222, title I, §108(b)(2)(A), Apr. 1, 1980, 94 Stat. 226; Pub. L. 97–119, title I, §104(a)(1), (2), (b)(6), Dec. 29, 1981, 95 Stat. 1639; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

Section 424(b)(2) of the Federal Mine Safety and Health Act of 1977, referred to in subsec. (b)(3)(A)(i), is subsec. (b)(2) of this section.

Section 6321, referred to in subsec. (b)(3)(A)(i), means section 6321 of Title 26, Internal Revenue Code.

Section 6332(b), referred to in subsec. (b)(3)(A)(i), means section 6332(b) of Title 26.

The Bankruptcy Act, referred to in subsec. (b)(3)(B), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

CODIFICATION

In subsec. (b)(3)(B), ''section 3713(a) of title 31'' substituted for ''section 3466 of the Revised Statutes (31 U.S.C. 191)'' on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1986—Subsec. (b)(3)(A), (C), (D), (5)(B). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codi-

fication was translated as ''title 26'' thus requiring no change in text.

1981—Subsec. (a). Pub. L. 97–119, § 104(b)(6), substituted provision defining ''fund'' as used in this section for provision specifying payments, repayments, and reimbursements which funds from the Black Lung Disability Trust Fund would be available to pay.

Subsec. (b)(1). Pub. L. 97–119, § 104(a)(2), inserted ''plus interest thereon'' after ''attributed to him''.

Subsec. (b)(5). Pub. L. 97–119, § 104(a)(1), added par. (5).

1980—Subsec. (b)(3)(A)(i). Pub. L. 96–222 substituted ''Federal Mine Safety and Health Act of 1977'' for ''Federal Coal Mine Health and Safety Act of 1969''.

1978—Pub. L. 95–227 added subsec. (a), redesignated existing provisions constituting entire section as subsec. (b) and expanded applicability and set out procedures for enforcement of rights of United States against operators liable to the Fund.

1972—Pub. L. 92–303 substituted ''widow, child, parent, brother, or sister'' for ''widow'' wherever appearing.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 104(a)(3) of Pub. L. 97–119 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1982, and shall apply to amounts outstanding on such date or arising thereafter.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective as if included in the provisions of Pub. L. 95–227, which amended this section effective Apr. 1, 1978, see section 108(b)(4) of Pub. L. 96–222, set out as a note under section 192 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 3(e) of Pub. L. 95–227 provided that: ''This section [enacting section 934a of this title and amending this section] shall take effect on April 1, 1978.''

### § 934a. Repealed. Pub. L. 97–119, title I, § 103(b), Dec. 29, 1981, 95 Stat. 1638

Section, Pub. L. 95–227, § 3(a)–(c), Feb. 10, 1978, 92 Stat. 12; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 96–222, title I, § 108(b)(2)(A), (3)(A), Apr. 1, 1980, 94 Stat. 226, established a Black Lung Disability Trust Fund, designated trustees for the fund, and provided for operation of the fund. See section 9501 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1982, see section 103(d)(1) of Pub. L. 97–119, set out as an Effective Date note under section 9501 of Title 26, Internal Revenue Code.

PROVISIONS RELATING TO PAYMENT OF BENEFITS TO MINERS AND ELIGIBLE SURVIVORS OF MINERS TO TAKE EFFECT AS RULES AND REGULATIONS OF SECRETARY OF LABOR

Pub. L. 95–239, § 20(b), Mar. 1, 1978, 92 Stat. 106, provided that in the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Trust Fund established by section 3(a) of the Black Lung Benefits Revenue Act of 1977 [former subsec. (a) of this section], the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect immediately before the date of the enactment of this Act [Mar. 1, 1978], shall take effect, as rules and regulations of the Secretary of Labor until such provisions are revoked, amended, or revised by law, and that the Secretary of Labor may promulgate additional rules and regulations to carry out such provisions and shall make benefit payments to miners and to eligible survivors of miners in accordance with such provisions.

### § 935. Utilization of services of State and local agencies

With the consent and cooperation of State agencies charged with administration of State workmen's compensation laws, the Secretary may, for the purpose of carrying out his functions and duties under section 932 of this title, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may advance funds to or reimburse such State and local agencies and their employees for services rendered for such purposes.

(Pub. L. 91–173, title IV, § 425, Dec. 30, 1969, 83 Stat. 798.)

### § 936. Regulations and reports

**(a) Promulgation; applicability of section 553 of title 5**

The Secretary of Labor and the Secretary of Health and Human Services are authorized to issue such regulations as each deems appropriate to carry out the provisions of this subchapter. Such regulations shall be issued in conformity with section 553 of title 5, notwithstanding subsection (a) thereof.

**(b) Annual reports to Congress**

At the end of fiscal year 2003 and each succeeding fiscal year, the Secretary of Labor shall submit to the Congress an annual report on the subject matter of this part and part B of this subchapter. Each such report shall be prepared and submitted to Congress in accordance with the requirement with respect to submission under section 942 of title 33.

**(c) Compliance with State workmen's compensation laws; conflicts between State and Federal provisions**

Nothing in this subchapter shall relieve any operator of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this subchapter and the Secretary by regulation, so prescribes. The provisions of any State workmen's compensation law which provide greater benefits than the benefits payable under this subchapter shall not thereby be construed or held to be in conflict with the provisions of this subchapter.

(Pub. L. 91–173, title IV, § 426, Dec. 30, 1969, 83 Stat. 798; Pub. L. 92–303, § 5(3), May 19, 1972, 86 Stat. 155; Pub. L. 103–296, title I, § 108(i)(3), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 104–66, title I, § 1102(b)(2), Dec. 21, 1995, 109 Stat. 723; Pub. L. 107–275, § 2(b)(4), Nov. 2, 2002, 116 Stat. 1926.)

REFERENCES IN TEXT

Section 942 of title 33, referred to in subsec. (b), was in the original ''section 42 of the Longshore Harbor Worker's Compensation Act'' and was translated as reading ''section 42 of the Longshore and Harbor Workers' Compensation Act'' to reflect the probable intent of Congress.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–275, § 2(b)(4)(A), struck out '', the Commissioner of Social Security,'' after ''The Secretary of Labor''.

Subsec. (b). Pub. L. 107–275, § 2(b)(4)(B), amended first sentence generally. Prior to amendment, first sentence

read as follows: ''At the end of each fiscal year, the Commissioner of Social Security shall submit to the Congress an annual report upon the subject matter of part B of this subchapter, and, after January 1, 1974, the Secretary of Labor shall also submit such a report upon the subject matter of this part.''

1995—Subsec. (b). Pub. L. 104–66 substituted ''At the end of each fiscal year, the'' for ''Within 120 days following the convening of each session of Congress the'' and inserted at end ''Each such report shall be prepared and submitted to Congress in accordance with the requirement with respect to submission under section 942 of title 33.''

1994—Subsec. (a). Pub. L. 103–296, §108(i)(3)(A), substituted '', the Commissioner of Social Security, and the Secretary of Health and Human Services'' for ''and the Secretary of Health, Education, and Welfare''.

Subsec. (b). Pub. L. 103–296, §108(i)(3)(B), substituted ''Commissioner of Social Security'' for ''Secretary of Health, Education, and Welfare''.

1972—Subsec. (b). Pub. L. 92–303 substituted ''January 1, 1974'' for ''January 1, 1973''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

### §937. Contracts and grants

#### (a) Construction, purchase, and operation of fixed-site and mobile clinical facilities

The Secretary of Health and Human Services is authorized to enter into contracts with, and make grants to, public and private agencies and organizations and individuals for the construction, purchase, and operation of fixed-site and mobile clinical facilities for the analysis, examination, and treatment of respiratory and pulmonary impairments in active and inactive coal miners. The Secretary shall coordinate the making of such contracts and grants with the Appalachian Regional Commission.

#### (b) Research activities

The Secretary of Health and Human Services shall initiate research within the National Institute for Occupational Safety and Health, and is authorized to make research grants to public and private agencies and organizations and individuals for the purpose of devising simple and effective tests to measure, detect, and treat respiratory and pulmonary impairments in active and inactive coal miners. Any grant made pursuant to this subsection shall be conditioned upon all information, uses, products, processes, patents, and other developments resulting from such research being available to the general public, except to the extent of such exceptions and limitations as the Secretary of Health and Human Services may deem necessary in the public interest.

#### (c) Authorization of appropriations

There is hereby authorized to be appropriated for the purpose of subsection (a) of this section $10,000,000 for each fiscal year. There are hereby authorized to be appropriated for the purposes of subsection (b) of this section such sums as are necessary.

(Pub. L. 91–173, title IV, §427, as added Pub. L. 92–303, §5(6), May 19, 1972, 86 Stat. 155; amended Pub. L. 95–239, §9, Mar. 1, 1978, 92 Stat. 100; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95–239 substituted ''$10,000,000 for each fiscal year'' for ''$10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsecs. (a) and (b) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

### §938. Miners suffering from pneumoconiosis; discrimination prohibited

#### (a) Mine operators

No operator shall discharge or in any other way discriminate against any miner employed by him by reason of the fact that such miner is suffering from pneumoconiosis. No person shall cause or attempt to cause an operator to violate this section. For the purposes of this subsection the term ''miner'' shall not include any person who has been found to be totally disabled.

#### (b) Determination by Secretary; procedure

Any miner who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section, or any representative of such miner may, within ninety days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Each administrative law judge presiding under this section and under the provisions of subchapters I, II and III of this chapter shall receive compensation at a rate determined under section 5372 of title 5. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein.

**(c) Costs and penalties**

Whenever an order is issued under this subsection granting relief to a miner at the request of such miner, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by such miner for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing the violation.

(Pub. L. 91–173, title IV, § 428, as added Pub. L. 92–303, § 5(7), May 19, 1972, 86 Stat. 155; amended Pub. L. 95–251, § 2(a)(9), Mar. 27, 1978, 92 Stat. 183; Pub. L. 101–509, title V, § 529 [title I, § 104(d)(3)], Nov. 5, 1990, 104 Stat. 1427, 1447.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–509 amended seventh sentence generally, substituting ''determined under section 5372 of title 5'' for ''not less than that prescribed for GS–16 under section 5332 of title 5''.

1978—Subsec. (b). Pub. L. 95–251 substituted ''administrative law judge'' for ''hearing examiner''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of Title 5, Government Organization and Employees.

**§ 939. Authorization of appropriations**

There is authorized to be appropriated to the Secretary of Labor such sums as may be necessary to carry out his responsibilities under this subchapter. Such sums shall remain available until expended.

(Pub. L. 91–173, title IV, § 429, as added Pub. L. 92–303, § 5(8), May 19, 1972, 86 Stat. 156.)

**§ 940. Applicability of amendments to part B of this subchapter to this part**

The amendments made by the Black Lung Benefits Act of 1972, the Black Lung Benefits Reform Act of 1977 and the Black Lung Benefits Amendments of 1981 to part B of this subchapter shall, to the extent appropriate, also apply to this part.

(Pub. L. 91–173, title IV, § 430, as added Pub. L. 92–303, § 5(10), May 19, 1972, 86 Stat. 156; amended Pub. L. 95–239, § 10, Mar. 1, 1978, 92 Stat. 100; Pub. L. 97–119, title II, § 202(d), Dec. 29, 1981, 95 Stat. 1643.)

REFERENCES IN TEXT

The Black Lung Benefits Act of 1972, referred to in text, is Pub. L. 92–303, May 19, 1972, 86 Stat. 150, as amended, which is classified generally to sections 901, 902, 921 to 925, 931 to 934, and 936 to 941 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 901 of this title and Tables.

The Black Lung Benefits Reform Act of 1977, referred to in text, is Pub. L. 95–239, Mar. 1, 1978, 92 Stat. 95. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 801 of this title and Tables.

The Black Lung Benefits Amendments of 1981, referred to in text, is Pub. L. 97–119, title II, Dec. 29, 1981, 95 Stat. 1643, which amended this section and sections 901, 902, 921, 922, 923, and 932 of this title and enacted provisions set out as notes under section 901 of this title. For complete classification of this Act to the Code, see Short Title of 1981 Amendment note set out under section 801 of this title and Tables.

AMENDMENTS

1981—Pub. L. 97–119 inserted ''and the Black Lung Benefits Amendments of 1981''.

1978—Pub. L. 95–239 inserted reference to amendments made by the Black Lung Benefits Reform Act of 1977 and struck out provision that, for the purpose of determining the applicability of the presumption established by 921(c)(4) of this title to claims filed under this part, no period of employment after June 30, 1971, could be considered in determining whether a miner was employed at least fifteen years in one or more underground mines.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–119 effective Jan. 1, 1982, except as otherwise provided, see section 206(a) of Pub. L. 97–119, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

**§ 941. Penalty for false statements or representations**

Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this subchapter shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both.

(Pub. L. 91–173, title IV, § 431, as added Pub. L. 92–303, § 6, May 19, 1972, 86 Stat. 156; amended Pub. L. 95–239, § 12(a), Mar. 1, 1978, 92 Stat. 101.)

AMENDMENTS

1978—Pub. L. 95–239 substituted provisions setting the penalty for making false or misleading statements or representations for the purpose of obtaining benefits or payments for provisions relating to the Secretary's duty to disseminate to all persons who filed claims under this subchapter prior to May 19, 1972, information on the review provisions under the Black Lung Benefits Act of 1972.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as a note under section 901 of this title.

**§ 942. Miner benefit entitlement reports; penalty for failure or refusal to file**

(a) The Secretary may by regulation require employers to file reports concerning miners who may be or are entitled to benefits under this part, including the date of commencement and cessation of benefits and the amount of such benefits. Any such report shall not be evidence of any fact stated therein in any proceeding relating to death or total disability due to pneumoconiosis of any miner to which such report relates.

(b) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty of not more than $500 for each such failure or refusal.

(Pub. L. 91–173, title IV, § 432, as added Pub. L. 95–239, § 12(b), Mar. 1, 1978, 92 Stat. 101.)

EFFECTIVE DATE

Section effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as an Effective Date of 1978 Amendment note under section 901 of this title.

## § 943. Black lung insurance program

### (a) Authorization to establish and carry out

The Secretary is authorized to establish and carry out a black lung insurance program which will enable operators of coal mines to purchase insurance covering their obligations under section 932 of this title.

### (b) Non-availability of other insurance coverage

The Secretary may exercise his or her authority under this section only if, and to the extent that, insurance coverage is not otherwise available, at reasonable cost, to operators of coal mines.

### (c) Agreements with coal mine operators; reinsurance agreements

(1) The Secretary may enter into agreements with operators of coal mines who may be liable for the payment of benefits under section 932 of this title, under which the Black Lung Compensation Insurance Fund established under subsection (a) of this section (hereinafter in this section referred to as the ''insurance fund'') shall assume all or part of the liability of such operator in return for the payment of premiums to the insurance fund, and on such terms and conditions as will fully protect the financial solvency of the insurance fund. During any period in which such agreement is in effect the operator shall be deemed in compliance with the requirements of section 933 of this title with respect to the risks covered by such agreement.

(2) The Secretary may also enter into reinsurance agreements with one or more insurers or pools of insurers under which, in return for the payment of premiums to the insurance fund, and on such terms and conditions as will fully protect the financial solvency of the insurance fund, the insurance fund shall provide reinsurance coverage for benefits required to be paid under section 932 of this title.

### (d) Terms and conditions of insurability

The Secretary may by regulation provide for general terms and conditions of insurability as applicable to operators of coal mines or insurers eligible for insurance or reinsurance under this section, including—

(1) the types, classes, and locations of operators or facilities which shall be eligible for such insurance or reinsurance;

(2) the classification, limitation, and rejection of any operator or facility which may be advisable;

(3) appropriate premiums for different classifications of operators or facilities;

(4) appropriate loss deductibles;

(5) experience rating; and

(6) any other terms and conditions relating to insurance or reinsurance coverage or exclusion which may be appropriate to carry out the purposes of this section.

### (e) Premium schedule studies and investigations

The Secretary may undertake and carry out such studies and investigations, and receive or exchange such information, as may be necessary to formulate a premium schedule which will enable the insurance and reinsurance authorized by this section to be provided on a basis which is (1) in accordance with accepted actuarial principles; and (2) fair and equitable.

### (f) Regulations relating to premium rates

(1) On the basis of estimates made by the Secretary in formulating a premium schedule under subsection (e) of this section, and such other information as may be available, the Secretary shall from time to time prescribe by regulation the chargeable premium rates for types and classes of insurers, operators of coal mines, and facilities for which insurance or reinsurance coverage shall be available under this section and the terms and conditions under which, and the area within which, such insurance or reinsurance shall be available and such rates shall apply.

(2) Such premium rates shall be (A) based on a consideration of the risks involved, taking into account differences, if any, in risks based on location, type of operations, facilities, type of coal, experience, and any other matter which may be considered under accepted actuarial principles; and (B) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses.

(3) All premiums received by the Secretary shall be paid into the insurance fund.

### (g) Black Lung Compensation Insurance Fund

(1) The Secretary may establish in the Department of Labor a Black Lung Compensation Insurance Fund which shall be available, without fiscal year limitation—

(A) to pay claims of miners for benefits covered by insurance or reinsurance issued under this section;

(B) to pay the administrative expenses of carrying out the black lung compensation insurance program under this section; and

(C) to repay to the Secretary of the Treasury such sums as may be borrowed in accordance with the authority provided in subsection (i) of this section.

(2) The insurance fund shall be credited with—

(A) premiums, fees, or other charges which may be collected in connection with insurance or reinsurance coverage provided under this section;

(B) such amounts as may be advanced to the insurance fund from appropriations in order to maintain the insurance fund in an operative condition adequate to meet its liabilities; and

(C) income which may be earned on investments of the insurance fund pursuant to paragraph (3).

(3) If, after all outstanding current obligations of the insurance fund have been liquidated and any outstanding amounts which may have been advanced to the insurance fund from appropriations authorized under subsection (i) of this section have been credited to the appropriation from which advanced, the Secretary determines that the moneys of the insurance fund are in excess of current needs, he or she may request the investment of such amounts as he or she deems advisable by the Secretary of the Treasury in

public debt securities with maturities suitable for the needs of the insurance fund and bearing interest at prevailing market rates.

**(h) Omitted**

**(i) Authorization of appropriations**

There are authorized to be appropriated to the insurance fund, as repayable advances, such sums as may be necessary to meet obligations incurred under subsection (g) of this section. All such sums shall remain available without fiscal year limitation. Advances made pursuant to this subsection shall be repaid, with interest, to the general fund of the Treasury when the Secretary determines that moneys are available in the insurance fund for such repayments. Interest on such advances shall be computed in the same manner as provided in subsection (b)(2) of section 934a[1] of this title.

(Pub. L. 91–173, title IV, § 433, as added Pub. L. 95–239, § 13, Mar. 1, 1978, 92 Stat. 101.)

REFERENCES IN TEXT

Section 934a of this title, referred to in subsec. (i), was repealed by Pub. L. 97–119, title I, § 103(b), Dec. 29, 1981, 95 Stat. 1638. See section 9501(c) of Title 26, Internal Revenue Code.

CODIFICATION

Subsec. (h) of this section, which required the Secretary to report to Congress not later than April 1 of each year on the financial condition and operation of the insurance 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 124 of House Document No. 103–7.

EFFECTIVE DATE

Section effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as an Effective Date of 1978 Amendment note under section 901 of this title.

**§ 944. Statement of reasons for denial of claim**

Any individual whose claim for benefits under this subchapter is denied shall receive from the Secretary a written statement of the reasons for denial of such claim, and a summary of the administrative hearing record or, upon good cause shown, a copy of any transcript thereof.

(Pub. L. 91–173, title IV, § 434, as added Pub. L. 95–239, § 14, Mar. 1, 1978, 92 Stat. 103.)

EFFECTIVE DATE

Section effective Mar. 1, 1978, see section 20(a) of Pub. L. 95–239, set out as an Effective Date of 1978 Amendment note under section 901 of this title.

**§ 945. Repealed. Pub. L. 107–275, § 2(c)(1), Nov. 2, 2002, 116 Stat. 1926**

Section, Pub. L. 91–173, title IV, § 435, as added Pub. L. 95–239, § 15, Mar. 1, 1978, 92 Stat. 103; amended Pub. L. 103–296, title I, § 108(i)(4), Aug. 15, 1994, 108 Stat. 1488, related to review of claims pending on, or denied on or before, Mar. 1, 1978.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107–275, set out as an Effective Date of 2002 Amendment note under section 902 of this title.

[1] See References in Text note below.

SUBCHAPTER V—ADMINISTRATIVE PROVISIONS

**§ 951. Studies and research**

**(a) Appropriate projects**

The Secretary of the Interior and the Secretary of Health and Human Services, as appropriate, shall conduct such studies, research, experiments, and demonstrations as may be appropriate—

(1) to improve working conditions and practices in coal or other mines, and to prevent accidents and occupational diseases originating in the coal or other mining industry;

(2) to develop new or improved methods of recovering persons in coal or other mines after an accident;

(3) to develop new or improved means and methods of communication from the surface to the underground area of a coal or other mine;

(4) to develop new or improved means and methods of reducing concentrations of respirable dust in the mine atmosphere of active workings of the coal or other mine;

(5) to develop epidemiological information to (A) identify and define positive factors involved in occupational diseases of miners, (B) provide information on the incidence and prevalence of pneumoconiosis and other respiratory ailments of miners, and (C) improve mandatory health standards;

(6) to develop techniques for the prevention and control of occupational diseases of miners, including tests for hypersusceptibility and early detection;

(7) to evaluate the effect on bodily impairment and occupational disability of miners afflicted with an occupational disease;

(8) to prepare and publish from time to time, reports on all significant aspects of occupational diseases of miners as well as on the medical aspects of injuries, other than diseases, which are revealed by the research carried on pursuant to this subsection;

(9) to study the relationship between coal or other mine environments and occupational diseases of miners;

(10) to develop new and improved underground equipment and other sources of power for such equipment which will provide greater safety;

(11) to determine, upon the written request by any operator or authorized representative of miners, specifying with reasonable particularity the grounds upon which such request is made, whether any substance normally found in a coal or other mine has potentially toxic effects in the concentrations normally found in the coal or other mine or whether any physical agents or equipment found or used in a coal or other mine has potentially hazardous effects, and shall submit such determinations to both the operators and miners as soon as possible; and

(12) for such other purposes as they deem necessary to carry out the purposes of this chapter.

**(b) Responsibility for carrying out prescribed activities**

Activities under this section in the field of coal or other mine health shall be carried out by

the Secretary of Health and Human Services through the National Institute for Occupational Safety and Health established under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], and activities under this section in the field of coal or other mine safety shall be carried out by the Secretary of the Interior in coordination with the Secretary.

**(c) Contracting with and grants to public and private agencies; availability of information; exceptions**

In carrying out the provisions for research, demonstrations, experiments, studies, training, and education under this section and sections 861(b) and 952(a) of this title, the Secretary of the Interior and the Secretary of Health and Human Services in coordination with the Secretary may enter into contracts with, and make grants to, public and private agencies and organizations and individuals. No research, demonstrations, or experiments shall be carried out, contracted for, sponsored, cosponsored, or authorized under authority of this chapter, unless all information, uses, products, processes, patents, and other developments resulting from such research, demonstrations, or experiments will (with such exception and limitation, if any, as the Secretary of the Interior or the Secretary of Health and Human Services in coordination with the Secretary may find to be necessary in the public interest) be available to the general public.

**(d) Prevention of diseases affecting persons working with mine products**

The Secretary of Health and Human Services shall also conduct studies and research into matters involving the protection of life and the prevention of diseases in connection with persons, who although not miners, work with, or around the products of, coal or other mines in areas outside of such mines and under conditions which may adversely affect the health and well-being of such persons.

**(e) Authorization of appropriations**

There is authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to carry out his responsibilities under this section and section 861(b) of this title at an annual rate of not to exceed $20,000,000 for the fiscal year ending June 30, 1970, $25,000,000 for the fiscal year ending June 30, 1971, and $60,000,000 for the fiscal year ending June 30, 1972, and for each succeeding fiscal year thereafter. There is authorized to be appropriated annually to the Secretary of Health and Human Services such sums as may be necessary to carry out his responsibilities under this chapter. Such sums shall remain available until expended.

**(f) Exceptions to mandatory health and safety standards for improving techniques and equipment**

The Secretary is authorized to grant on a mine-by-mine basis an exception to any mandatory health or safety standard under this chapter for the purpose of permitting, under such terms and conditions as he may prescribe, accredited educational institutions the opportunity for experimenting with new and improved techniques and equipment to improve the health and safety of miners. No such exception shall be granted unless the Secretary finds that the granting of the exception will not adversely affect the health and safety of miners and publishes his findings.

**(g) Grants for research and development of respiratory equipment**

The Secretary of Health and Human Services is authorized to make grants to any public or private agency, institution, or organization, and operators or individuals for research and experiments to develop effective respiratory equipment.

(Pub. L. 91–173, title V, §501, Dec. 30, 1969, 83 Stat. 798; Pub. L. 95–164, title III, §303(a), Nov. 9, 1977, 91 Stat. 1320; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (b), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–164, §303(a)(1), (2), (6), substituted ''The Secretary of the Interior and'' for ''The Secretary and'' in provisions preceding par. (1), inserted references to mines and mining other than coal mines and coal mining in pars. (1), (2), (3), (4), and (9), added par. (11), and redesignated former par. (11) as (12).

Subsec. (b). Pub. L. 95–164, §303(a)(1), (3), inserted references to mines other than coal mines, inserted ''through the National Institute for Occupational Safety and Health established under the Occupational Safety and Health Act of 1970'' after ''Secretary of Health, Education, and Welfare'', and substituted ''carried out by the Secretary of the Interior in coordination with the Secretary'' for ''carried out by the Secretary''.

Subsec. (c). Pub. L. 95–164, §303(a)(4), substituted ''the Secretary of the Interior and the Secretary of Health, Education, and Welfare in coordination with the Secretary'' for ''the Secretary and the Secretary of Health, Education, and Welfare'' and ''the Secretary of the Interior or the Secretary of Health, Education, and Welfare in coordination with the Secretary'' for ''the Secretary or the Secretary of Health, Education, and Welfare''.

Subsec. (d). Pub. L. 95–164, §303(a)(1), inserted reference to mines other than coal mines.

Subsec. (e). Pub. L. 95–164, §303(a)(5), substituted ''Secretary of the Interior'' for ''Secretary'' and ''$60,000,000'' for ''$30,000,000''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsecs. (a) to (e) and (g) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

EFFECTIVE DATE

Subchapter effective Dec. 30, 1969, see section 509 of Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, set out as a note under section 801 of this title.

### § 951a. Health, Safety, and Mining Technology Research program

#### (a) Health, Safety, and Mining Technology Research Plan

(1) Every 5 years, the Secretary of the Interior, acting through the Director of the Bureau of Mines (hereinafter in this section referred to as the ''Director''), shall develop a Plan for Health, Safety, and Mining Technology Research (hereinafter in this subsection referred to as the ''Plan'').

(2) The Plan shall identify the goals and objectives of the Health, Safety, and Mining Technology program of the Bureau of Mines, and shall guide research and technology development under such program, over each 5-year period.

(3) In preparing the proposed Plan referred to in paragraph (1), the Director shall solicit suggestions, comments and proposals for research and technology development projects from the mining industry, labor, academia and other concerned groups and individuals.

#### (b) Technical amendment

For the purposes of section 951(b) of this title, as amended, activities in the field of coal or other mine health under such section shall also be carried out by the Secretary of the Interior acting through the Director of the Bureau of Mines. Nothing in this subsection is intended to preclude or duplicate the ongoing research activities of the Bureau of Mines on health hazards safety technology or research conducted by the National Institute of Occupational Safety and Health on coal mine safety and health effects.

(Pub. L. 102–486, title XXV, § 2512, Oct. 24, 1992, 106 Stat. 3111.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Federal Mine Safety and Health Act of 1977 which comprises this chapter.

CHANGE OF NAME

Bureau of Mines redesignated United States Bureau of Mines by section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

### § 952. Training and education

#### (a) Programs for operators, agents, and miners

The Secretary shall expand programs for the education and training of operators and agents thereof, and miners in—

(1) the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in coal or other mines; and

(2) in the use of flame safety lamps, permissible methane detectors, and other means approved by the Secretary for detecting methane and other explosive gases accurately.

#### (b) Technical assistance to operators

The Secretary shall, to the greatest extent possible, provide technical assistance to operators in meeting the requirements of this chapter and in further improving the health and safety conditions and practices in coal or other mines.

#### (c) National Mine Health and Safety Academy

(1) The National Mine Health and Safety Academy shall be maintained as an agency of the Department of Labor. The Academy shall be responsible for the training of mine safety and health inspectors under section 954 of this title, and in training of technical support personnel of the Mine Safety and Health Administration established under section 557a of title 29; and for any other training programs for mine inspectors, mining personnel, or other persons as the Secretary of Labor shall designate. In performing this function, the Academy shall have the authority to enter into cooperative educational and training agreements with educational institutions, State governments, labor organizations, and mine operators and related industries. Such training shall be conducted by the Academy in accordance with curriculum needs and assignment of instructional personnel established by the user.

(2) Repealed. Pub. L. 96–38, title I, § 100, July 25, 1979, 93 Stat. 111.

(3) The Secretary of the Interior shall conduct his safety research responsibilities under section 951 of this title in coordination with the Secretary of Labor, and the Secretaries of Labor and the Interior are authorized to enter into contractual or other agreements for the performance of such safety related research.

(Pub. L. 91–173, title V, § 502, Dec. 30, 1969, 83 Stat. 800; Pub. L. 95–164, title III, § 303(b), (h), Nov. 9, 1977, 91 Stat. 1320, 1321; Pub. L. 96–38, title I, § 100, July 25, 1979, 93 Stat. 111.)

AMENDMENTS

1979—Subsec. (c)(1). Pub. L. 96–38 substituted ''Department of Labor'' for ''Department of the Interior'' and ''Secretary of Labor'' for ''Secretaries of Labor and the Interior''.

Subsec. (c)(2). Pub. L. 96–38 struck out par. (2) which directed that the National Mine Health and Safety Academy use the facilities and personnel of the Department of the Interior and that the Secretary of the Interior appoint or assign to the Academy necessary officers and employees.

1977—Subsecs. (a), (b). Pub. L. 95–164, § 303(b), inserted references to mines other than coal mines.

Subsec. (c). Pub. L. 95–164, § 303(h), added subsec. (c).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

### § 953. Assistance to States

#### (a) Development and enforcement of health and safety regulations; improvement of workmen's compensation and occupational disease laws; promotion of Federal-State coordination in mine safety

The Secretary, in coordination with the Secretary of Health and Human Services and the Secretary of the Interior, is authorized to make grants in accordance with an application approved under this section to any State in which coal or other mining takes place—

(1) to assist such State in developing and enforcing effective coal or other mine health and safety laws and regulations consistent with the provisions of section 955 of this title;

(2) to improve State workmen's compensation and occupational disease laws and programs related to coal or other mine employment; and

(3) to promote Federal-State coordination and cooperation in improving the health and safety conditions in the coal or other mines.

**(b) Application for grants; contents**

The Secretary shall approve any application or any modification thereof, submitted under this section by a State, through its official coal or other mine inspection or safety agency, which—

(1) sets forth the programs, policies, and methods to be followed in carrying out the application in accordance with the purposes of subsection (a) of this section;

(2) provides research and planning studies to carry out plans designed to improve State workmen's compensation and occupational disease laws and programs, as they relate to compensation to miners for occupationally caused diseases and injuries arising out of employment in any coal or other mine;

(3) designates such State coal or other mine inspection or safety agency as the sole agency responsible for administering grants under this section throughout the State, and contains satisfactory evidence that such agency will have the authority to carry out the purposes of this section;

(4) gives assurances that such agency has or will employ an adequate and competent staff of trained inspectors qualified under the laws of such State to make coal or other mine inspections within such State;

(5) provides for the extension and improvement of the State program for the improvement of coal or other mine health and safety in the State, and provides that no advance notice of an inspection will be provided anyone;

(6) provides such fiscal control and fund accounting procedures as may be appropriate to assure proper disbursement and accounting of grants made to the States under this section;

(7) provides that the designated agency will make such reports to the Secretary in such form and containing such information as the Secretary may from time to time require;

(8) contains assurances that grants provided under this section will supplement, not supplant, existing State coal or other mine health and safety programs; and

(9) meets additional conditions which the Secretary may prescribe in furtherance of, and consistent with, the purposes of this section.

**(c) Approval by Secretary; notice and hearing**

The Secretary shall not finally disapprove any State application or modification thereof without first affording the State agency reasonable notice and opportunity for a public hearing.

**(d) Review by Court of Appeals; conclusiveness of findings of Secretary; filing of petition**

Any State aggrieved by a decision of the Secretary under subsection (b) or (c) of this section may file within thirty days from the date of such decision with the United States Court of Appeals for the District of Columbia a petition praying that such action be modified or set aside in whole or in part. The court shall hear such appeal on the record made before the Secretary. The decision of the Secretary incorporating his findings of fact therein, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or remand the proceedings to the Secretary for such further action as it directs. The filing of a petition under this subsection shall not stay the application of the decision of the Secretary, unless the court so orders. The provisions of section 816(a), (b), and (c) of this title shall not be applicable to this section.

**(e) Programs to train State inspectors**

Any State application or modification thereof submitted to the Secretary under this section may include a program to train State inspectors.

**(f) Cooperation in implementation of programs; exchange of reports between States**

The Secretary shall cooperate with such State in carrying out the application or modification thereof and shall, as appropriate, develop and, where appropriate, construct facilities for, and finance a program of, training of Federal and State inspectors jointly. The Secretary shall also cooperate with such State in establishing a system by which State and Federal inspection reports of coal or other mines located in the State are exchanged for the purpose of improving health and safety conditions in such mines.

**(g) Limitation on grants**

The amount granted to any coal or other mining State for a fiscal year under this section shall not exceed 80 per centum of the amount expended by such State in such year for carrying out such application.

**(h) Authorization of appropriations**

There is authorized to be appropriated $3,000,000 for fiscal year 1970, and $10,000,000 annually in each succeeding fiscal year to carry out the provisions of this section, which shall remain available until expended. The Secretary shall provide for an equitable distribution of sums appropriated for grants under this section to the States where there is an approved application, except that no less than one-half of such sum shall be allocated to coal-producing States.

(Pub. L. 91–173, title V, §503, Dec. 30, 1969, 83 Stat. 800; Pub. L. 95–164, title III, §303(c), Nov. 9, 1977, 91 Stat. 1320; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–164, §303(c)(1), inserted reference to mines and mining other than coal mines and coal mining and substituted ''Secretary of the Interior'' for ''Secretary of Labor''.

Subsecs. (b), (f), (g). Pub. L. 95–164, §303(c)(1), inserted references to mines and mining other than coal mines and coal mining.

Subsec. (h). Pub. L. 95–164, §303(c)(2), substituted ''$10,000,000'' for ''$5,000,000'' and inserted requirement that no less than one-half of sums appropriated for grants be allocated to coal-producing States.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Wel-

fare'' in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

## § 954. Appointment of administrative personnel and inspectors; qualifications; training programs

The Secretary may, subject to the civil service laws, appoint such employees as he deems requisite for the administration of this chapter and prescribe their duties. Persons appointed as authorized representatives of the Secretary shall be qualified by practical experience in mining or by experience as a practical mining engineer or by education: *Provided*, *however*, That, to the maximum extent feasible, in the selection of persons for appointment as mine inspectors, no person shall be so selected unless he has the basic qualification of at least five years practical mining experience and in assigning mine inspectors to the inspection and investigation of individual mines, due consideration shall be given to the extent possible to their previous experience in the particular type of mining operation where such inspections are to be made. Persons appointed to assist such representatives in the taking of samples of respirable dust for the purpose of enforcing subchapter II of this chapter shall be qualified by training, experience, or education. The provisions of section 201 of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251, 270) shall not apply with respect to the appointment of such authorized representatives of the Secretary or to persons appointed to assist such representatives and to carry out the provisions of this chapter, and, in applying the provisions of such section to other agencies under the Secretary and to other agencies of the Government, such appointed persons shall not be taken into account. Such persons shall be adequately trained by the Secretary. The Secretary shall develop programs with educational institutions and operators designed to enable persons to qualify for positions in the administration of this chapter. In selecting persons and training and retraining persons to carry out the provisions of this chapter, the Secretary shall work with appropriate educational institutions, operators, and representatives of miners in developing and maintaining adequate programs for the training and continuing education of persons, particularly inspectors, and where appropriate, the Secretary shall cooperate with such institutions in carrying out the provisions of this section by providing financial and technical assistance to such institutions.

(Pub. L. 91–173, title V, § 505, Dec. 30, 1969, 83 Stat. 802; Pub. L. 95–164, title III, § 303(d), Nov. 9, 1977, 91 Stat. 1320.)

REFERENCES IN TEXT

The civil service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5, Government Organization and Employees.

Section 201 of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251, 270), referred to in text, is section 201 of Pub. L. 90–364, title II, June 28, 1968, 82 Stat. 270, which was set out as a note under section 3101 of Title 5 and was repealed by Pub. L. 91–47, title V, § 503, July 22, 1969, 83 Stat. 83.

AMENDMENTS

1977—Pub. L. 95–164 substituted ''practical experience in mining'' for ''practical experience in the mining of coal'' and inserted provision requiring that mine inspectors, to the maximum feasible extent, be persons with at least five years practical mining experience and that in assigning inspectors due consideration be given to previous experience in the particular type mining operations where inspections are to be made.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

NUMBER OF INSPECTORS

Section 304 of Pub. L. 95–164 provided that: ''Nothing contained in this Act [see Short Title of 1977 Amendment note under section 801 of this title] or any amendment made by this Act shall be construed to reduce the number of inspectors engaged in enforcement of the Federal Coal Mine Health and Safety Act of 1969 [this chapter] and the Federal Metal and Nonmetallic Mine Safety Act [section 721 et seq. of this title] as in effect prior to the effective date of this Act [120 days after Nov. 9, 1977] or to reduce the number of inspectors engaged in the enforcement of the Occupational Safety and Health Act of 1970 [section 651 et seq. of Title 29, Labor].''

## § 955. State laws

(a) No State law in effect on December 30, 1969 or which may become effective thereafter shall be superseded by any provision of this chapter or order issued or any mandatory health or safety standard, except insofar as such State law is in conflict with this chapter or with any order issued or any mandatory health or safety standard.

(b) The provisions of any State law or regulation in effect upon the operative date of this chapter, or which may become effective thereafter, which provide for more stringent health and safety standards applicable to coal or other mines than do the provisions of this chapter or any order issued or any mandatory health or safety standard shall not thereby be construed or held to be in conflict with this chapter. The provisions of any State law or regulation in effect December 30, 1969, or which may become effective thereafter, which provide for health and safety standards applicable to coal or other mines for which no provision is contained in this chapter or in any order issued or any mandatory health or safety standard, shall not be held to be in conflict with this chapter.

(Pub. L. 91–173, title V, § 506, Dec. 30, 1969, 83 Stat. 803; Pub. L. 95–164, title III, § 303(e), Nov. 9, 1977, 91 Stat. 1321.)

REFERENCES IN TEXT

For the operative date of this chapter, referred to in subsec. (b), see section 509 of Pub. L. 91–173, set out as an Effective Date note under section 801 of this title.

AMENDMENTS

1977—Subsec. (b). Pub. L. 95–164 inserted reference to mines other than coal mines.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

### §956. Applicability of administrative procedure provisions

Except as otherwise provided in this chapter, the provisions of sections 551 to 559 and sections 701 to 706 of title 5 shall not apply to the making of any order, notice, or decision made pursuant to this chapter, or to any proceeding for the review thereof.

(Pub. L. 91–173, title V, §507, Dec. 30, 1969, 83 Stat. 803.)

### §957. Promulgation of regulations

The Secretary, the Secretary of Health and Human Services, the Commissioner of Social Security, and the Panel are authorized to issue such regulations as each deems appropriate to carry out any provision of this chapter.

(Pub. L. 91–173, title V, §508, Dec. 30, 1969, 83 Stat. 803; Pub. L. 103–296, title I, §108(i)(5), Aug. 15, 1994, 108 Stat. 1488.)

AMENDMENTS

1994—Pub. L. 103–296 substituted ''Secretary of Health and Human Services, the Commissioner of Social Security'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

### §958. Annual reports to Congress; contents

(a) Within one hundred and twenty days following the convening of each session of Congress the Secretary shall submit through the President to the Congress and to the Office of Science and Technology an annual report upon the subject matter of this chapter, the progress concerning the achievement of its purposes, the needs and requirements in the field of coal or other mine health and safety, the amount and status of each loan made pursuant to this chapter, a description and the anticipated cost of each project and program he has undertaken under sections 861(b) and 951 of this title, and any other relevant information, including any recommendations he deems appropriate.

(b) Repealed. Pub. L. 96–470, title I, §106(f), Oct. 19, 1980, 94 Stat. 2238.

(Pub. L. 91–173, title V, §511, Dec. 30, 1969, 83 Stat. 803; Pub. L. 95–164, title III, §303(f), Nov. 9, 1977, 91 Stat. 1321; Pub. L. 96–470, title I, §106(f), Oct. 19, 1980, 94 Stat. 2238.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–470 struck out subsec. (b) which provided that within 120 days following the convening of each session of Congress, the Secretary of Health, Education, and Welfare submit through the President to the Congress and to the Office of Science and Technology an annual report on health matters covered by this chapter.

1977—Subsecs. (a), (b). Pub. L. 95–164 inserted references to mines other than coal mines.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section relating to requirement to submit annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 124 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

Functions vested by law in Office of Science and Technology and in Director or Deputy Director of Office of Science and Technology transferred to Director of National Science Foundation, and Office of Science and Technology, including offices of Director and Deputy Director, provided for by sections 1 and 2 of Reorg. Plan No. 2 of 1962, eff. June 8, 1962, 27 F.R. 5419, 76 Stat. 1253, was abolished by sections 2 and 3(a)(5) of Reorg. Plan No. 1 of 1973, eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, set out in the Appendix to Title 5, Government Organization and Employees.

### §959. Study of coordination of Federal and State activities; report

(a) The Secretary shall make a study to determine the best manner to coordinate Federal and State activities in the field of coal or other mine health and safety so as to achieve (1) maximum health and safety protection for miners, (2) an avoidance of duplication of effort, (3) maximum effectiveness, (4) a reduction of delay to a minimum, and (5) most effective use of Federal inspectors.

(b) The Secretary shall make a report of the results of his study to the Congress as soon as practicable after December 30, 1969.

(Pub. L. 91–173, title V, §512, Dec. 30, 1969, 83 Stat. 804; Pub. L. 95–164, title III, §303(g), Nov. 9, 1977, 91 Stat. 1321.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–164 inserted reference to mines other than coal mines.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of this title.

### §960. Limitation on issuance of temporary restraining order or preliminary injunction

In any proceeding in which the validity of any interim mandatory health or safety standard set forth in subchapters II and III of this chapter is in issue, no justice, judge, or court of the United States shall issue any temporary restraining order or preliminary injunction restraining the enforcement of such standard pending a determination of such issue on its merits.

(Pub. L. 91–173, title V, §513, Dec. 30, 1969, 83 Stat. 804.)

**§ 961. Functions transferred under 1977 amendments**

**(a) Transfer of functions to Secretary of Labor**

Except with respect to the functions assigned to the Secretary of the Interior pursuant to section 501 of the Federal Coal Mine Health and Safety Act of 1969 [30 U.S.C. 951], the functions of the Secretary of the Interior under the Federal Coal Mine Health and Safety Act of 1969, as amended [30 U.S.C. 801 et seq.], and the Federal Metal and Nonmetallic Mine Safety Act [30 U.S.C. 721 et seq.] are transferred to the Secretary of Labor, except those which are expressly transferred to the Commission by this Act. Effective on the date of enactment of this Act, Health[1] and Safety Academy is transferred to the Secretary of Labor.

**(b) Existing mandatory standards; review by advisory committee; recommendations**

(1) The mandatory standards relating to mines, issued by the Secretary of the Interior under the Federal Metal and Nonmetallic Mine Safety Act [30 U.S.C. 721 et seq.] and standards and regulations under the Federal Coal Mine Health and Safety Act of 1969 [30 U.S.C. 801 et seq.] which are in effect on November 9, 1977, shall remain in effect as mandatory health or safety standards applicable to metal and nonmetallic mines and to coal mines respectively under the Federal Mine Safety and Health Act of 1977 [30 U.S.C. 801 et seq.] until such time as the Secretary of Labor shall issue new or revised mandatory health or safety standards applicable to metal and nonmetallic mines and new or revised mandatory health or safety standards applicable to coal mines.

(2) Within 60 days after November 9, 1977, the Secretary of Labor in consultation with the Secretary of the Interior shall establish an advisory committee under section 102 of the Federal Mine Safety and Health Act of 1977 [30 U.S.C. 812] which shall, within 180 days after the date of the establishment of such advisory committee, review the advisory health and safety standards issued by the Secretary of the Interior under the Federal Metal and Nonmetallic Mine Safety Act and recommend to the Secretary of Labor which of those standards (or any modifications of such standards which do not substantially diminish the health and safety of miners) should be promulgated as mandatory health or safety standards. The Secretary of Labor shall publish, within 60 days after any recommendations of the advisory committee under this paragraph, each of the standards so recommended for adoption with or without modifications as a proposed mandatory health or safety standard under this section by publication of such standard in the Federal Register, and afford interested persons a period of 25 days after publication to submit written data or comment. Within 30 days after the close of the comment period specified in the preceding sentence, the Secretary of Labor shall promulgate by publication in the Federal Register mandatory health or safety standards based upon the advisory committee recommendation with or without modification, and the data and comments received thereon, unless the Secretary of Labor determines that such standards will not promote the health and safety of miners and publishes an explanation of that determination in the Federal Register.

**(c) Unexpended appropriations; personnel; property; records; obligations; commitments; savings provisions; pending proceedings and suits**

(1) All unexpended balances of appropriations, personnel, property, records, obligations, and commitments which are used primarily with respect to any functions transferred under the provisions of subsection (a) of this section to the Secretary of Labor shall be transferred to the Department of Labor or the Commission, as appropriate. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for one year after such transfer, except that the Secretary of Labor shall have full authority to assign personnel during such one-year period in order to efficiently carry out functions transferred to him under this Act.

(2) All orders, decisions, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges (A) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and (B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, revoked, or repealed by the Secretary of Labor, the Federal Mine Safety and Health Review Commission or other authorized officials, by any court of competent jurisdiction, or by operation of law.

(3) The provisions of this section shall not affect any proceedings pending at the time this section takes effect before any department, agency, or component thereof, functions of which are transferred by this section, except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Secretary of Labor or the Federal Mine Safety and Health Review Commission. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, revoked, or repealed by the Secretary of Labor, the Federal Mine Safety and Health Review Commission, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued if this section had not been enacted.

(4) The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted; except that if before the date on which this section takes ef-

[1] So in original. Probably should be ''the Health''.

fect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Secretary, then such suit shall be continued by the Secretary of Labor. No cause of action, and no suit, action, or other proceeding, by or against any department or agency (or officer thereof in his official capacity) functions of which are transferred by this section, shall abate by reason of the enactment of this section. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Secretary as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

**(d) "Function" defined**

For purposes of this section, (1) the term ''function'' includes power and duty, and (2) the transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any officer[2] or officer of such agency or department.

**(e) Determinations by Director of Office of Management and Budget**

The Director of the Office of Management and Budget in consultation with the Secretary of Labor and the Secretary of the Interior is authorized and directed to make such determinations as may be necessary with regard to the dispositions of personnel, personnel positions, property, records, assets, liabilities, contracts, obligations, commitments, unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, in connection with the functions transferred by this Act as he may deem necessary to accomplish the purposes of this Act.

(Pub. L. 95–164, title III, §301, Nov. 9, 1977, 91 Stat. 1317; Pub. L. 96–38, title I, §100, July 25, 1979, 93 Stat. 111.)

REFERENCES IN TEXT

The Federal Coal Mine Health and Safety Act of 1969, referred to in subsecs. (a) and (b)(1), is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended, which was redesignated the Federal Mine Safety and Health Act of 1977 by Pub. L. 95–164, title I, §101, Nov. 9, 1977, 91 Stat. 1290, and is classified principally to this chapter (§801 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

The Federal Metal and Nonmetallic Mine Safety Act, referred to in subsecs. (a) and (b), is Pub. L. 89–577, Sept. 16, 1966, 80 Stat. 772, which was classified generally to chapter 21 (§721 et seq.) of this title and was repealed by Pub. L. 95–164, title III, §306(a), Nov. 9, 1977, 91 Stat. 1322.

This Act, referred to in subsecs. (a), (c)(1), and (e), means Pub. L. 95–164, Nov. 9, 1977, 91 Stat. 1290, known as the Federal Mine Safety and Health Amendments Act of 1977, which enacted sections 822 to 825 and 961 of this title and section 557a of Title 29, Labor, amended sections 801 to 804, 811 to 821, 842, 861, 878, 951 to 955, 958, and 959 of this title and sections 5314 and 5315 of Title 5, Government Organization and Employees, repealed sections 721 to 740 of this title and section 1456a of Title 43, Public Lands, and enacted provisions set out as notes under sections 801 and 954 of this title and section 11 of former Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 801 of this title and Tables.

The date of enactment of this Act, referred to in subsec. (a), is the date of enactment of Pub. L. 95–164, which was approved Nov. 9, 1977.

The Health and Safety Academy, referred to in subsec. (a), probably means the National Mine Health and Safety Academy. See section 952(c) of this title.

The Federal Mine Safety and Health Act of 1977, referred to in subsec. (b)(1), is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended by Pub. L. 95–164, title I, §101, Nov. 9, 1977, 91 Stat. 1290, which is classified principally to this chapter (§801 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

For the time this section takes effect, referred to in subsec. (c)(2) and (4), see Effective Date of 1977 Amendment note set out under section 801 of this title.

CODIFICATION

Section was enacted as part of Pub. L. 95–164, known as the Federal Mine Safety and Health Amendments Act of 1977, and not as part of Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, known as the Federal Mine Safety and Health Act of 1977 which comprises this chapter.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–38 inserted provision transferring the Health and Safety Academy to the Secretary of Labor.

EFFECTIVE DATE

For the effective date of this section, see section 307 of Pub. L. 95–164, set out as an Effective Date of 1977 Amendment note under section 801 of this title.

## §962. Acceptance of contributions and prosecution of projects; cooperative programs to promote health and safety education and training; recognition and funding of Joseph A. Holmes Safety Association; use of funds for costs of mine rescue and survival operations

The Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, or private; the Mine Safety and Health Administration is authorized to promote health and safety education and training in the mining community through cooperative programs with States, industry, and safety associations; the Secretary is authorized to recognize the Joseph A. Holmes Safety Association as a principal safety association and, notwithstanding any other provision of law, may provide funds and, with or without reimbursement, personnel, including service of Mine Safety and Health Administration officials as officers in local chapters or in the national organization; and any funds available to the department may be used, with the approval of the Secretary, to provide for the costs of mine rescue and survival operations in the event of a major disaster.

(Pub. L. 109–149, title I, Dec. 30, 2005, 119 Stat. 2841.)

CODIFICATION

Section was enacted as part of the appropriation act cited as the credit to this section, and not as part of

[2] So in original. Probably should be ''office''.

the Federal Mine Safety and Health Act of 1977 which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. F, title I, Dec. 8, 2004, 118 Stat. 3120.

Pub. L. 108–199, div. E, title I, Jan. 23, 2004, 118 Stat. 233.

Pub. L. 108–7, div. G, title I, Feb. 20, 2003, 117 Stat. 305.

Pub. L. 107–116, title I, Jan. 10, 2002, 115 Stat. 2183.

Pub. L. 106–554, § 1(a)(1) [title I], Dec. 21, 2000, 114 Stat. 2763, 2763A–9.

Pub. L. 106–113, div. B, § 1000(a)(4) [title I], Nov. 29, 1999, 113 Stat. 1535, 1501A–223.

Pub. L. 105–277, div. A, § 101(f) [title I], Oct. 21, 1998, 112 Stat. 2681–337, 2681–344.

Pub. L. 105–78, title I, Nov. 13, 1997, 111 Stat. 1475.

Pub. L. 104–208, div. A, title I, § 101(e) [title I], Sept. 30, 1996, 110 Stat. 3009–233, 3009–240.

Pub. L. 104–134, title I, § 101(d) [title I], Apr. 26, 1996, 110 Stat. 1321–211, 1321–218; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 103–333, title I, Sept. 30, 1994, 108 Stat. 2545.

Pub. L. 103–112, title I, Oct. 21, 1993, 107 Stat. 1088.

Pub. L. 102–394, title I, Oct. 6, 1992, 106 Stat. 1797.

Pub. L. 102–170, title I, Nov. 26, 1991, 105 Stat. 1112.

Pub. L. 101–517, title I, Nov. 5, 1990, 104 Stat. 2195.

Pub. L. 101–166, title I, Nov. 21, 1989, 103 Stat. 1164.

Pub. L. 100–436, title I, Sept. 20, 1988, 102 Stat. 1686.

Pub. L. 100–202, § 101(h) [title I], Dec. 22, 1987, 101 Stat. 1329–256, 1329–262.

Pub. L. 99–500, § 101(i) [H.R. 5233, title I], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, § 101(i) [H.R. 5233, title I], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title I, Dec. 12, 1985, 99 Stat. 1107.

Pub. L. 98–619, title I, Nov. 8, 1984, 98 Stat. 3310.

Pub. L. 98–139, title I, Oct. 31, 1983, 97 Stat. 876.

Pub. L. 97–377, title I, § 101(e)(1) [title I], Dec. 21, 1982, 96 Stat. 1878, 1883.

Pub. L. 97–92, § 101(a) [H.R. 4560, title I], Dec. 15, 1981, 95 Stat. 1183.

Pub. L. 96–536, § 101(a) [incorporating H.R. 4389, title I, for FY 1980], Dec. 16, 1980, 94 Stat. 3166.

Pub. L. 96–123, § 101(g) [H.R. 4389, title I], Nov. 20, 1979, 93 Stat. 925.

Pub. L. 95–480, title I, Oct. 18, 1978, 92 Stat. 1570.

Pub. L. 95–355, title I, Sept. 8, 1978, 92 Stat. 529.

## § 963. Technical Study Panel

### (a) Establishment

There is established a Technical Study Panel (referred to in this section as the ''Panel'') which shall provide independent scientific and engineering review and recommendations with respect to the utilization of belt air and the composition and fire retardant properties of belt materials in underground coal mining.

### (b) Membership

The Panel shall be composed of—

(1) two individuals to be appointed by the Secretary of Health and Human Services, in consultation with the Director of the National Institute for Occupational Safety and Health and the Associate Director of the Office of Mine Safety;

(2) two individuals to be appointed by the Secretary of Labor, in consultation with the Assistant Secretary for Mine Safety and Health; and

(3) two individuals, one to be appointed jointly by the majority leaders of the Senate and House of Representatives and one to be appointed jointly by the minority leader of the Senate and House of Representatives, each to be appointed prior to the sine die adjournment of the second session of the 109th Congress.

### (c) Qualifications

Four of the six individuals appointed to the Panel under subsection (b) shall possess a masters or doctoral level degree in mining engineering or another scientific field demonstrably related to the subject of the report. No individual appointed to the Panel shall be an employee of any coal or other mine, or of any labor organization, or of any State or Federal agency primarily responsible for regulating the mining industry.

### (d) Report

#### (1) In general

Not later than 1 year after the date on which all members of the Panel are appointed under subsection (b), the Panel shall prepare and submit to the Secretary of Labor, the Secretary of Health and Human Services, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Education and the Workforce of the House of Representatives a report concerning the utilization of belt air and the composition and fire retardant properties of belt materials in underground coal mining.

#### (2) Response by Secretary

Not later than 180 days after the receipt of the report under paragraph (1), the Secretary of Labor shall provide a response to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives containing a description of the actions, if any, that the Secretary intends to take based upon the report, including proposing regulatory changes, and the reasons for such actions.

### (e) Compensation

Members appointed to the Panel, while carrying out the duties of the Panel shall be entitled to receive compensation, per diem in lieu of subsistence, and travel expenses in the same manner and under the same conditions as that prescribed under section 210(c) of title 42.

(Pub. L. 91–173, title V, § 514, as added Pub. L. 109–236, § 11, June 15, 2006, 120 Stat. 501.)

## § 964. Scholarships

### (a) Establishment

The Secretary of Education (referred to in this section as the ''Secretary''), in consultation with the Secretary of Labor and the Secretary of Health and Human Services, shall establish a program to provide scholarships to eligible individuals to increase the skilled workforce for both private sector coal mine operators and mine safety inspectors and other regulatory personnel for the Mine Safety and Health Administration.

### (b) Fundamental skills scholarships

#### (1) In general

Under the program under subsection (a), the Secretary may award scholarship to fully or

partially pay the tuition costs of eligible individuals enrolled in 2-year associate's degree programs at community colleges or other colleges and universities that focus on providing the fundamental skills and training that is of immediate use to a beginning coal miner.

**(2) Skills**

The skills described in paragraph (1) shall include basic math, basic health and safety, business principles, management and supervisory skills, skills related to electric circuitry, skills related to heavy equipment operations, and skills related to communications.

**(3) Eligibility**

To be eligible to receive a scholarship under this subsection an individual shall—

(A) have a high school diploma or a GED;

(B) have at least 2 years experience in full-time employment in mining or mining-related activities;

(C) submit to the Secretary an application at such time, in such manner, and containing such information; and

(D) demonstrate an interest in working in the field of mining and performing an internship with the Mine Safety and Health Administration or the National Institute for Occupational Safety and Health Office of Mine Safety.

**(c) Mine safety inspector scholarships**

**(1) In general**

Under the program under subsection (a), the Secretary may award scholarship to fully or partially pay the tuition costs of eligible individuals enrolled in undergraduate bachelor's degree programs at accredited colleges or universities that provide the skills needed to become mine safety inspectors.

**(2) Skills**

The skills described in paragraph (1) include skills developed through programs leading to a degree in mining engineering, civil engineering, mechanical engineering, electrical engineering, industrial engineering, environmental engineering, industrial hygiene, occupational health and safety, geology, chemistry, or other fields of study related to mine safety and health work.

**(3) Eligibility**

To be eligible to receive a scholarship under this subsection an individual shall—

(A) have a high school diploma or a GED;

(B) have at least 5 years experience in full-time employment in mining or mining-related activities;

(C) submit to the Secretary an application at such time, in such manner, and containing such information; and

(D) agree to be employed for a period of at least 5 years at the Mine Safety and Health Administration or, to repay, on a pro-rated basis, the funds received under this program, plus interest, at a rate established by the Secretary upon the issuance of the scholarship.

**(d) Advanced research scholarships**

**(1) In general**

Under the program under subsection (a), the Secretary may award scholarships to fully or partially pay the tuition costs of eligible individuals enrolled in undergraduate bachelor's degree, masters degree, and Ph.D. degree programs at accredited colleges or universities that provide the skills needed to augment and advance research in mine safety and to broaden, improve, and expand the universe of candidates for mine safety inspector and other regulatory positions in the Mine Safety and Health Administration.

**(2) Skills**

The skills described in paragraph (1) include skills developed through programs leading to a degree in mining engineering, civil engineering, mechanical engineering, electrical engineering, industrial engineering, environmental engineering, industrial hygiene, occupational health and safety, geology, chemistry, or other fields of study related to mine safety and health work.

**(3) Eligibility**

To be eligible to receive a scholarship under this subsection an individual shall—

(A) have a bachelor's degree or equivalent from an accredited 4-year institution;

(B) have at least 5 years experience in full-time employment in underground mining or mining-related activities; and

(C) submit to the Secretary an application at such time, in such manner, and containing such information.

**(e) Authorization of appropriations**

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 91–173, title V, § 515, as added Pub. L. 109–236, § 12, June 15, 2006, 120 Stat. 502.)

### § 965. Brookwood-Sago Mine Safety Grants

**(a) In general**

The Secretary of Labor shall establish a program to award competitive grants for education and training, to be known as Brookwood-Sago Mine Safety Grants, to carry out the purposes of this section.

**(b) Purposes**

It is the purpose of this section,[1] to provide for the funding of education and training programs to better identify, avoid, and prevent unsafe working conditions in and around mines.

**(c) Eligibility**

To be eligible to receive a grant under this section, an entity shall—

(1) be a public or private nonprofit entity; and

(2) submit to the Secretary of Labor an application at such time, in such manner, and containing such information as the Secretary may require.

**(d) Use of funds**

Amounts received under a grant under this section shall be used to establish and implement education and training programs, or to develop training materials for employers and miners,

[1] So in original. The comma probably should not appear.

concerning safety and health topics in mines, as determined appropriate by the Mine Safety and Health Administration.

**(e) Awarding of grants**

**(1) Annual basis**

Grants under this section shall be awarded on an annual basis.

**(2) Special emphasis**

In awarding grants under this section, the Secretary of Labor shall give special emphasis to programs and materials that target workers in smaller mines, including training miners and employers about new Mine Safety and Health Administration standards, high risk activities, or hazards identified by such Administration.

**(3) Priority**

In awarding grants under this section, the Secretary of Labor shall give priority to the funding of pilot and demonstration projects that the Secretary determines will provide opportunities for broad applicability for mine safety.

**(f) Evaluation**

The Secretary of Labor shall use not less than 1 percent of the funds made available to carry out this section in a fiscal year to conduct evaluations of the projects funded under grants under this section.

**(g) Authorization of appropriations**

There are authorized to be appropriated for each fiscal year, such sums as may be necessary to carry out this section.

(Pub. L. 109–236, § 14, June 15, 2006, 120 Stat. 504.)

CODIFICATION

Section was enacted as part of the Mine Improvement and New Emergency Response Act of 2006, also known as the MINER Act, and not as part of the Federal Mine Safety and Health Act of 1977 which comprises this chapter.

## CHAPTER 23—GEOTHERMAL RESOURCES

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### § 1001. Definitions

As used in this chapter, the term—

(a) ''Secretary'' means the Secretary of the Interior;

(b) ''geothermal lease'' means a lease issued under authority of this chapter;

(c) ''geothermal resources'' means (i) all products of geothermal processes, embracing indigenous steam, hot water and hot brines; (ii) steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (iii) heat or other associated energy found in geothermal formations; and (iv) any byproduct derived from them;

(d) ''byproduct'' means any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium) which are found in solution or in association with geothermal steam and which have a value of less than 75 per centum of the value of the geothermal steam or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves;

(e) ''known geothermal resources area'' means an area in which the geology, nearby discoveries, competitive interests, or other indicia would, in the opinion of the Secretary, engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

(f) ''Significant[1] thermal features within units of the National Park System'' shall include, but not be limited to, the following:

(1) Thermal features within units of the National Park System listed in Section[1] 1026(a)(1) of this title and designated as significant in the Federal Register notice of August 3, 1987 (Vol. 52, No. 148 Fed. Reg. 28790).

(2) Crater Lake National Park.

(3) Thermal features within Big Bend National Park and Lake Mead National Recreation Area proposed as significant in the Federal Register notice of February 13, 1987 (Vol. 52, No. 30 Fed. Reg. 4700).

(4) Thermal features within units of the National Park System added to the significant thermal features list pursuant to section 1026(a)(2) of this title.

(g) ''direct use'' means utilization of geothermal resources for commercial, residential, agricultural, public facilities, or other energy needs other than the commercial production of electricity; and[2]

[1] So in original. Probably should not be capitalized.

[2] So in original. Probably should end with a period instead of ''; and''.

(Pub. L. 91–581, § 2, Dec. 24, 1970, 84 Stat. 1566; Pub. L. 100–443, § 2(a), Sept. 22, 1988, 102 Stat. 1766; Pub. L. 109–58, title II, § 236(1), (2), (5), Aug. 8, 2005, 119 Stat. 671.)

AMENDMENTS

2005—Pub. L. 109–58, § 236(5), inserted section catchline.

Par. (c). Pub. L. 109–58, § 236(1), substituted ''geothermal resources'' for ''geothermal steam and associated geothermal resources''.

Par. (g). Pub. L. 109–58, § 236(2), added par. (g).

1988—Par. (f). Pub. L. 100–443 added par. (f).

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–58, title II, § 221, Aug. 8, 2005, 119 Stat. 660, provided that: ''This subtitle [subtitle B (§§ 221–237) of title II of Pub. L. 109–58, enacting part B (§ 15871 et seq.) of subchapter II of chapter 149 of Title 42, The Public Health and Welfare, amending this section and sections 530 and 1002 to 1027 of this title, enacting provisions set out as notes under section 1004 of this title, and amending provisions set out as a note under this section] may be cited as the 'John Rishel Geothermal Steam Act Amendments of 2005'.''

SHORT TITLE OF 1988 AMENDMENT

Section 1 of Pub. L. 100–443 provided that: ''This Act [enacting sections 1026 and 1027 of this title, amending this section and sections 191, 226–3, 1005, 1017, and 1019 of this title, and enacting provisions set out as notes under sections 1005 and 1026 of this title] may be known as the 'Geothermal Steam Act Amendments of 1988'.''

SHORT TITLE

Pub. L. 91–581, § 1, Dec. 24, 1970, 84 Stat. 1566, as amended by Pub. L. 109–58, title II, § 236(4), Aug. 8, 2005, 119 Stat. 671, provided that: ''This Act [enacting this chapter and amending section 530 of this title] may be cited as the 'Geothermal Steam Act of 1970'.''

## § 1002. Lands subject to geothermal leasing

Subject to the provisions of section 1014 of this title, the Secretary of the Interior may issue leases for the development and utilization of geothermal resources (1) in lands administered by him, including public, withdrawn, and acquired lands, (2) in any national forest or other lands administered by the Department of Agriculture through the Forest Service, including public, withdrawn, and acquired lands, and (3) in lands which have been conveyed by the United States subject to a reservation to the United States of the geothermal resources therein.

(Pub. L. 91–581, § 3, Dec. 24, 1970, 84 Stat. 1566; Pub. L. 109–58, title II, § 236(1), (6), Aug. 8, 2005, 119 Stat. 671, 672.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline and substituted ''geothermal resources'' for ''geothermal steam and associated geothermal resources'' in two places in text.

## § 1002a. Repealed. Pub. L. 97–214, § 7(16), July 12, 1982, 96 Stat. 174

Section, Pub. L. 95–356, title VIII, § 803(a), (b), Sept. 8, 1978, 92 Stat. 585; Pub. L. 96–125, title VIII, § 802(2), Nov. 26, 1979, 93 Stat. 948; Pub. L. 97–99, title IX, § 908, Dec. 23, 1981, 95 Stat. 1385, related to development of geothermal energy sources on military lands, contracts for provision and operation of production facilities and energy purchases, and terms, conditions and prerequisites of such contracts. See sections 2917 and 2922a of Title 10, Armed Forces.

Section 803(c) of Pub. L. 95–356, which provided that this section take effect Oct. 1, 1978, was repealed by Pub. L. 97–214, § 7(16), July 12, 1982, 96 Stat. 174.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of Title 10, Armed Forces.

## § 1003. Leasing procedures

### (a) Nominations

The Secretary shall accept nominations of land to be leased at any time from qualified companies and individuals under this chapter.

### (b) Competitive lease sale required

#### (1) In general

Except as otherwise specifically provided by this chapter, all land to be leased that is not subject to leasing under subsection (c) of this section shall be leased as provided in this subsection to the highest responsible qualified bidder, as determined by the Secretary.

#### (2) Competitive lease sales

The Secretary shall hold a competitive lease sale at least once every 2 years for land in a State that has nominations pending under subsection (a) of this section if the land is otherwise available for leasing.

#### (3) Lands subject to mining claims

Lands that are subject to a mining claim for which a plan of operations has been approved by the relevant Federal land management agency may be available for noncompetitive leasing under this section to the mining claim holder.

### (c) Noncompetitive leasing

The Secretary shall make available for a period of 2 years for noncompetitive leasing any tract for which a competitive lease sale is held, but for which the Secretary does not receive any bids in a competitive lease sale.

### (d) Pending lease applications

#### (1) In general

It shall be a priority for the Secretary, and for the Secretary of Agriculture with respect to National Forest Systems land, to ensure timely completion of administrative actions, including amendments to applicable forest plans and resource management plans, necessary to process applications for geothermal leasing pending on August 8, 2005.[1] All future forest plans and resource management plans for areas with high geothermal resource potential shall consider geothermal leasing and development.

#### (2) Administration

An application described in paragraph (1) and any lease issued pursuant to the application—

(A) except as provided in subparagraph (B), shall be subject to this section as in effect on the day before August 8, 2005; or

[1] See Codification note below.

(B) at the election of the applicant, shall be subject to this section as in effect on August 8, 2005.

**(e) Leases sold as a block**

If information is available to the Secretary indicating a geothermal resource that could be produced as 1 unit can reasonably be expected to underlie more than 1 parcel to be offered in a competitive lease sale, the parcels for such a resource may be offered for bidding as a block in the competitive lease sale.

**(f) Leasing for direct use of geothermal resources**

Notwithstanding subsection (b) of this section, the Secretary may identify areas in which the land to be leased under this chapter exclusively for direct use of geothermal resources, without sale for purposes other than commercial generation of electricity, may be leased to any qualified applicant that first applies for such a lease under regulations issued by the Secretary, if the Secretary—

(1) publishes a notice of the land proposed for leasing not later than 90 days before the date of the issuance of the lease;

(2) does not receive during the 90-day period beginning on the date of the publication any nomination to include the land concerned in the next competitive lease sale; and

(3) determines there is no competitive interest in the geothermal resources in the land to be leased.

**(g) Area subject to lease for direct use**

**(1) In general**

Subject to paragraph (2), a geothermal lease for the direct use of geothermal resources shall cover not more than the quantity of acreage determined by the Secretary to be reasonably necessary for the proposed use.

**(2) Limitations**

The quantity of acreage covered by the lease shall not exceed the limitations established under section 1006 of this title.

(Pub. L. 91–581, § 4, Dec. 24, 1970, 84 Stat. 1566; Pub. L. 109–58, title II, §§ 222, 223(b), Aug. 8, 2005, 119 Stat. 660, 662.)

CODIFICATION

August 8, 2005, referred to in subsec. (d)(1), was in the original ''the date of enactment of this subsection'' which was translated as meaning the date of enactment of Pub. L. 109–58, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2005—Pub. L. 109–58, § 222, inserted section catchline and amended text generally. Prior to amendment, text related to competitive bidding requirements, conversion of prior leases to geothermal leases, conflicting land interests, conversion of prior applications, acreage limitation, regulations, and time for payment.

Subsecs. (f), (g). Pub. L. 109–58, § 223(b), added subsecs. (f) and (g).

## § 1004. Rents and royalties

**(a) In general**

Geothermal leases shall provide for—

(1) a royalty on electricity produced using geothermal resources, other than direct use of geothermal resources, that shall be—

(A) not less than 1 percent and not more than 2.5 percent of the gross proceeds from the sale of electricity produced from such resources during the first 10 years of production under the lease; and

(B) not less than 2 and not more than 5 percent of the gross proceeds from the sale of electricity produced from such resources during each year after such 10-year period;

(2) a royalty on any byproduct that is a mineral specified in the first section of the Mineral Leasing Act (30 U.S.C. 181), and that is derived from production under the lease, at the rate of the royalty that applies under that Act [30 U.S.C. 181 et seq.] to production of the mineral under a lease under that Act; and

(3) payment in advance of an annual rental of not less than—

(A) for each of the 1st through 10th years of the lease—

(i) in the case of a lease awarded in a noncompetitive lease sale, $1 per acre or fraction thereof; or

(ii) in the case of a lease awarded in a competitive lease sale, $2 per acre or fraction thereof for the 1st year and $3 per acre or fraction thereof for each of the 2nd through 10th years; and

(B) for each year after the 10th year of the lease, $5 per acre or fraction thereof; [1]

**(b) Direct use**

**(1) In general**

Notwithstanding subsection (a)(1) of this section, the Secretary shall establish a schedule of fees, in lieu of royalties for geothermal resources, that a lessee or its affiliate—

(A) uses for a purpose other than the commercial generation of electricity; and

(B) does not sell.

**(2) Schedule of fees**

The schedule of fees—

(A) may be based on the quantity or thermal content, or both, of geothermal resources used;

(B) shall ensure a fair return to the United States for use of the resource; and

(C) shall encourage development of the resource.

**(3) State, tribal, or local governments**

If a State, tribal, or local government is the lessee and uses geothermal resources without sale and for public purposes other than commercial generation of electricity, the Secretary shall charge only a nominal fee for use of the resource.

**(4) Final regulation**

In issuing any final regulation establishing a schedule of fees under this subsection, the Secretary shall seek—

(A) to provide lessees with a simplified administrative system;

(B) to facilitate development of direct use of geothermal resources; and

(C) to contribute to sustainable economic development opportunities in the area.

[1] So in original. The semicolon probably should be a period.

**(c) Final regulation establishing royalty rates**

In issuing any final regulation establishing royalty rates under this section, the Secretary shall seek—

(1) to provide lessees a simplified administrative system;

(2) to encourage new development; and

(3) to achieve the same level of royalty revenues over a 10-year period as the regulation in effect on August 8, 2005.

**(d) Credits for in-kind payments of electricity**

The Secretary may provide to a lessee a credit against royalties owed under this chapter, in an amount equal to the value of electricity provided under contract to a State or county government that is entitled to a portion of such royalties under section 1019 of this title, section 35 of the Mineral Leasing Act (30 U.S.C. 191), except as otherwise provided by this section, or section 355 of this title, if—

(1) the Secretary has approved in advance the contract between the lessee and the State or county government for such in-kind payments;

(2) the contract establishes a specific methodology to determine the value of such credits; and

(3) the maximum credit will be equal to the royalty value owed to the State or county that is a party to the contract and the electricity received will serve as the royalty payment from the Federal Government to that entity.

**(e) Crediting of rental toward royalty**

Any annual rental under this section that is paid with respect to a lease before the first day of the year for which the annual rental is owed shall be credited to the amount of royalty that is required to be paid under the lease for that year.

**(f) Advanced royalties required for cessation of production**

**(1) In general**

Subject to paragraphs (2) and (3), if, at any time after commercial production under a lease is achieved, production ceases for any reason, the lease shall remain in full force and effect for a period of not more than an aggregate number of 10 years beginning on the date production ceases, if, during the period in which production is ceased, the lessee pays royalties in advance at the monthly average rate at which the royalty was paid during the period of production.

**(2) Reduction**

The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advanced royalties paid under the lease to the extent that the advance royalties have not been used to reduce production royalties for a prior year.

**(3) Exceptions**

Paragraph (1) shall not apply if the cessation in production is required or otherwise caused by—

(A) the Secretary;

(B) the Secretary of the Air Force;

(C) the Secretary of the Army;

(D) the Secretary of the Navy;

(E) a State or a political subdivision of a State; or

(F) a force majeure.

**(g) Termination of lease for failure to pay rental**

**(1) In general**

The Secretary shall terminate any lease with respect to which rental is not paid in accordance with this chapter and the terms of the lease under which the rental is required, on the expiration of the 45-day period beginning on the date of the failure to pay the rental.

**(2) Notification**

The Secretary shall promptly notify a lessee that has not paid rental required under the lease that the lease will be terminated at the end of the period referred to in paragraph (1).

**(3) Reinstatement**

A lease that would otherwise terminate under paragraph (1) shall not terminate under that paragraph if the lessee pays to the Secretary, before the end of the period referred to in paragraph (1), the amount of rental due plus a late fee equal to 10 percent of the amount.

(Pub. L. 91–581, §5, Dec. 24, 1970, 84 Stat. 1567; Pub. L. 109–58, title II, §§223(a), 224(a), 228, 230, 232, 233, 236(7), Aug. 8, 2005, 119 Stat. 661, 662, 667–670, 672.)

REFERENCES IN TEXT

The Mineral Leasing Act, referred to in subsec. (a)(2), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified generally to chapter 3A (§181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

AMENDMENTS

2005—Pub. L. 109–58, §§223(a)(1)–(3), 224(a)(1), 228, 230(1)–(3), 233(a), 236(7), inserted section catchline, designated existing provisions as subsec. (a) and inserted heading, redesignated subpars. (1) and (2) of par. (c) as subpars. (A) and (B), respectively, redesignated pars. (a) to (d) as pars. (1) to (4), respectively, of subsec. (a), added new pars. (1) to (3) of subsec. (a) and struck out former pars. (1) to (4) of subsec. (a) which related to royalties for amount or value of steam or other form of heat energy, royalty for value of byproducts, payment of annual rental, and royalties in lieu of rentals.

Subsec. (b). Pub. L. 109–58, §223(a)(4), added subsec. (b).

Subsecs. (c), (d). Pub. L. 109–58, §224(a)(2), added subsecs. (c) and (d).

Subsec. (e). Pub. L. 109–58, §230(4), added subsec. (e).

Subsec. (f). Pub. L. 109–58, §232, added subsec. (f).

Subsec. (g). Pub. L. 109–58, §233(b), added subsec. (g).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title II, §223(c), Aug. 8, 2005, 119 Stat. 662, provided that: ''The schedule of fees established under the amendment made by subsection (a)(4) [amending this section] shall apply with respect to payments under a lease converted under this subsection that are due and owing, and have been paid, on or after July 16, 2003. This subsection shall not require the refund of royalties paid to a State under section 20 of the Geothermal Steam Act of 1970 (30 U.S.C. 1019) prior to the date of enactment of this Act [Aug. 8, 2005].''

INCENTIVES AND ROYALTIES FOR EXISTING LEASES

Pub. L. 109–58, title II, §224(c)–(e), Aug. 8, 2005, 119 Stat. 663, 664, provided that:

''(c) NEAR-TERM PRODUCTION INCENTIVE FOR EXISTING LEASES.—

''(1) IN GENERAL.—Notwithstanding section 5(a) of the Geothermal Steam Act of 1970 [30 U.S.C. 1004(a)], the royalty required to be paid shall be 50 percent of the amount of the royalty otherwise required, on any lease issued before the date of enactment of this Act [Aug. 8, 2005] that does not convert to new royalty terms under subsection (e)—

''(A) with respect to commercial production of energy from a facility that begins such production in the 6-year period beginning on the date of enactment of this Act; or

''(B) on qualified expansion geothermal energy.

''(2) 4-YEAR APPLICATION.—Paragraph (1) applies only to new commercial production of energy from a facility in the first 4 years of such production.

''(d) DEFINITION OF QUALIFIED EXPANSION GEOTHERMAL ENERGY.—In this section [amending this section and section 1019 of this title and enacting provisions set out as a note under this section], the term 'qualified expansion geothermal energy' means geothermal energy produced from a generation facility for which—

''(1) the production is increased by more than 10 percent as a result of expansion of the facility carried out in the 6-year period beginning on the date of enactment of this Act [Aug. 8, 2005]; and

''(2) such production increase is greater than 10 percent of the average production by the facility during the 5-year period preceding the expansion of the facility (as such average is adjusted to reflect any trend in changes in production during that period).

''(e) ROYALTY UNDER EXISTING LEASES.—

''(1) IN GENERAL.—Any lessee under a lease issued under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) before the date of enactment of this Act [Aug. 8, 2005] may, within the time period specified in paragraph (2), submit to the Secretary of the Interior a request to modify the terms of the lease relating to payment of royalties to provide—

''(A) in the case of a lease that meets the requirements of subsection (b) of section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004) (as amended by section 223), that royalties be based on the schedule of fees established under that section; and

''(B) in the case of any other lease, that royalties be computed on a percentage of the gross proceeds from the sale of electricity, at a royalty rate that is expected to yield total royalty payments equivalent to payments that would have been received for comparable production under the royalty rate in effect for the lease before the date of enactment of this subsection.

''(2) TIMING.—A request for a modification under paragraph (1) shall be submitted to the Secretary of the Interior by the date that is not later than—

''(A) in the case of a lease for direct use, 18 months after the effective date of the schedule of fees established by the Secretary of the Interior under section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004); or

''(B) in the case of any other lease, 18 months after the effective date of the final regulation issued under subsection (a) [amending this section].

''(3) APPLICATION OF MODIFICATION.—If the lessee requests modification of a lease under paragraph (1)—

''(A) the Secretary of the Interior shall, within 180 days after the receipt of the request for modification, modify the lease to comply with—

''(i) in the case of a lease for direct use, the schedule of fees established by the Secretary under section 5 of the Geothermal Steam Act of 1970 (30 U.S.C. 1004); or

''(ii) in the case of any other lease, the royalty for the lease established under paragraph (1)(B); and

''(B) the modification shall apply to any use of geothermal resources to which subsection (a) [amending this section] applies that occurs after the date of the modification.

''(4) CONSULTATION.—The Secretary of the Interior shall consult with the State and local governments affected by any proposed changes in lease royalty terms under this subsection.''

## § 1005. Lease term and work commitment requirements

### (a) In general

#### (1) Primary term

A geothermal lease shall be for a primary term of 10 years.

#### (2) Initial extension

The Secretary shall extend the primary term of a geothermal lease for 5 years if, for each year after the 10th year of the lease—

(A) the Secretary determined under subsection (b) of this section that the lessee satisfied the work commitment requirements that applied to the lease for that year; or

(B) the lessee paid in annual payments accordance with subsection (c) of this section.

#### (3) Additional extension

The Secretary shall extend the primary term of a geothermal lease (after an initial extension under paragraph (2)) for an additional 5 years if, for each year of the initial extension under paragraph (2), the Secretary determined under subsection (b) of this section that the lessee satisfied the minimum work requirements that applied to the lease for that year.

### (b) Requirement to satisfy annual minimum work requirement

#### (1) In general

The lessee for a geothermal lease shall, for each year after the 10th year of the lease, satisfy minimum work requirements prescribed by the Secretary that apply to the lease for that year.

#### (2) Prescription of minimum work requirements

The Secretary shall issue regulations prescribing minimum work requirements for geothermal leases, that—

(A) establish a geothermal potential; and

(B) if a geothermal potential has been established, confirm the existence of producible geothermal resources.

### (c) Payments in lieu of minimum work requirements

In lieu of the minimum work requirements set forth in subsection (b)(2) of this section, the Secretary shall by regulation establish minimum annual payments which may be made by the lessee for a limited number of years that the Secretary determines will not impair achieving diligent development of the geothermal resource, but in no event shall the number of years exceed the duration of the extension period provided in subsection (a) of this section.

### (d) Transition rules for leases issued prior to August 8, 2005

The Secretary shall by regulation establish transition rules for leases issued before August 8, 2005, including terms under which a lease that is near the end of its term on August 8, 2005, may be extended for up to 2 years—

(1) to allow achievement of production under the lease; or

(2) to allow the lease to be included in a producing unit.

**(e) Geothermal lease overlying mining claim**

**(1) Exemption**

The lessee for a geothermal lease of an area overlying an area subject to a mining claim for which a plan of operations has been approved by the relevant Federal land management agency is exempt from annual work requirements established under this chapter, if development of the geothermal resource subject to the lease would interfere with the mining operations under such claim.

**(2) Termination of exemption**

An exemption under this paragraph expires upon the termination of the mining operations.

**(f) Termination of application of requirements**

Minimum work requirements prescribed under this section shall not apply to a geothermal lease after the date on which the geothermal resource is utilized under the lease in commercial quantities.

**(g) Cooperative or unit plan for drilling operations; extension of term; renewal**

Any lease for land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for five years and so long thereafter, but not more than thirty-five years, as geothermal steam is produced or utilized in commercial quantities. If, at the end of such extended term, steam is being produced or utilized in commercial quantities and the lands are not needed for other purposes, the lessee shall have a preferential right to a renewal of such lease for a second term in accordance with such terms and conditions as the Secretary deems appropriate.

**(h) "Produced or utilized in commercial quantities" defined**

Except as otherwise provided for in this section, for purposes of this section the term "produced or utilized in commercial quantities" means the completion of a well producing geothermal steam in commercial quantities. Such term shall also include the completion of a well capable of producing geothermal steam in commercial quantities so long as the Secretary determines that diligent efforts are being made toward the utilization of the geothermal steam.

**(i) Principles for location of minerals under mining laws when minerals are not associated with geothermal resources**

Minerals locatable under the mining laws of the United States in lands subject to a geothermal lease issued under the provisions of this chapter which are not associated with the geothermal resources of such lands as defined in section 1001(c) of this title shall be locatable under said mining laws in accordance with the principles of the Multiple Mineral Development Act (68 Stat. 708; found in 30 U.S.C. 521 et seq.).

(Pub. L. 91–581, §6, Dec. 24, 1970, 84 Stat. 1568; Pub. L. 100–443, §§2(b), 3, Sept. 22, 1988, 102 Stat. 1766; Pub. L. 109–58, title II, §§231, 236(1), Aug. 8, 2005, 119 Stat. 668, 671.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in subsec. (i), are classified generally to this title.

The Multiple Mineral Development Act, referred to in subsec. (i), is act Aug. 13, 1954, ch. 730, 68 Stat. 708, as amended, which is classified principally to chapter 12 (§521 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 521 of this title and Tables.

CODIFICATION

August 8, 2005, referred to in introductory provisions of subsec. (d), was in the original "the date of the enactment of this subsection" and "the date of enactment of this subsection", which was translated as meaning the date of enactment of Pub. L. 109–58, which substantially amended this section, to reflect the probable intent of Congress.

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline, added subsecs. (a) to (f), redesignated former subsecs. (c), (d), and (f) as (g), (h), and (i), respectively, substituted "geothermal resources" for "geothermal steam and associated geothermal resources" in subsec. (i), and struck out former subsecs. (a), (b), (e), and (g) to (j), which related to primary and continuation terms, renewals, conversions to mineral leases, five-year extensions, bona fide effort requirement for extensions, payments in lieu of commercial quantities production, and significant expenditure, respectively.

1988—Subsec. (d). Pub. L. 100–443, §2(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "For purposes of subsection (a) of this section, production or utilization of geothermal steam in commercial quantities shall be deemed to include the completion of one or more wells producing or capable of producing geothermal steam in commercial quantities and a bona fide sale of such geothermal steam for delivery to or utilization by a facility or facilities not yet installed but scheduled for installation not later than fifteen years from the date of commencement of the primary term of the lease."

Subsecs. (g) to (j). Pub. L. 100–443, §3, added subsecs. (g) to (j).

CONSISTENCY PROVISION

Section 9 of Pub. L. 100–443 provided that: "To the extent that any provision in this Act [see Short Title of 1988 Amendment note set out under section 1001 of this title] is inconsistent with the provisions of section 115(2) of title I of section 101(h) of Public Law 99–591 (100 Stat. 3341–264 through 100 Stat. 3341–266) [set out below], this Act shall be deemed to supersede the provisions of such section."

EXTENSION OF LEASE; LISTING, MONITORING AND PROTECTION OF SIGNIFICANT THERMAL FEATURES IN NATIONAL PARK SYSTEM; FACTORS CONSIDERED IN ISSUING OR DENYING LEASES; EFFECT ON OTHER PROVISIONS

Pub. L. 99–500, §101(h) [title I, §115], Oct. 18, 1986, 100 Stat. 1783–242, 1783–264, and Pub. L. 99–591, §101(h) [title I, §115], Oct. 30, 1986, 100 Stat. 3341–242, 3341–264, as amended by Pub. L. 106–510, §3(a)(2), (b)(2), Nov. 13, 2000, 114 Stat. 2363, provided that:

"(1) The primary term of any geothermal lease in effect as of July 27, 1984, issued pursuant to the Geothermal [Steam] Act of 1970 (Public Law 91–581, 84 Stat. 1566, 30 U.S.C. 1001–1025) is hereby extended to December 31, 1988, if the Secretary of the Interior finds that—

"(a) a bona fide sale of the geothermal resource, from a well capable of production, for delivery to or

utilization by a facility or facilities, has not been completed (1) due to administrative delays by government entities, beyond the control of the lessee, or (2) such sale would be uneconomic;

''(b) substantial investment in the development of or for the benefit of the lease has been made; and

''(c) the lease would otherwise expire prior to December 31, 1988.

''(2)(a) The Secretary of the Interior (hereinafter in this section referred to as 'the Secretary' shall publish for public comment in the Federal Register within 120 days after the date of enactment of this section [Oct. 18, 1986] a proposed list of significant thermal features within the following units of the National Park System:

''Mount Rainier National Park;
''Lassen Volcanic National Park;
''Yellowstone National Park;
''Bering Land Bridge National Preserve;
''Gates of the Arctic National Park and Preserve;
''Yukon-Charley Rivers National Preserve;
''Katmai National Park;
''Aniakchak National Monument and Preserve;
''Wrangell-St. Elias National Park and Preserve;
''Glacier Bay National Park and Preserve;
''Denali National Park and Preserve;
''Lake Clark National Park and Preserve;
''Hot Springs National Park;
''Sequoia National Park;
''Hawai`i Volcanoes National Park;
''Lake Mead National Recreation Area;
''Big Bend National Park;
''Olympic National Park;
''Grand Teton National Park;
''John D. Rockefeller, Jr. Memorial Parkway;
''Haleakalā National Park; and
''Crater Lake National Park.

The Secretary shall include with such list the basis for his determination with respect to each thermal feature on the list. Based on public comment on such list, the Secretary is authorized to make additions to or deletions from the list. Not later than the 60th day from the date on which the proposed list was published in the Federal Register, the Secretary shall transmit the list to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives together with copies of all public comments which he has received and indicating any additions to or deletions from the list with a statement of the reasons therefor and the basis for inclusion of each thermal feature on the list. The Secretary shall consider the following criteria in determining the significance of thermal features:

''(1) size, extent, and uniqueness;

''(2) scientific and geologic significance;

''(3) the extent to which such features remain in a natural, undisturbed condition; and

''(4) significance of thermal features to the authorized purposes for which the National Park System unit was created.

The Secretary shall not issue any geothermal lease pursuant to the Geothermal Steam Act of 1970 (Public Law 91–581, 84 Stat. 1566), as amended [30 U.S.C. 1001 et seq.], until such time as the Secretary has transmitted the list to the Committees of Congress as provided in this section.

''(b) The Secretary shall maintain a monitoring program for those significant thermal features listed pursuant to subsection (a) of this section.

''(c) Upon receipt of an application for a geothermal lease the Secretary shall determine on the basis of scientific evidence if exploration, development, or utilization of the lands subject to the geothermal lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section. Such determination shall be subject to notice and public comment. If the Secretary determines on the basis of scientific evidence that the exploration, development, or utilization of the land subject to the geothermal lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section, the Secretary shall not issue such geothermal lease. In addition, the Secretary shall withdraw from leasing under the Geothermal Steam Act of 1970, as amended, those lands, or portion thereof, subject to the application for geothermal lease, the exploration, development, or utilization of which is reasonably likely to result, based on the Secretary's determination, in a significant adverse effect on a significant thermal feature listed pursuant to subsection (a) of this section.

''(d) With respect to all geothermal leases issued after the date of enactment of this section [Oct. 18, 1986] the Secretary shall include stipulations in leases necessary to protect significant thermal features listed pursuant to subsection (a) of this section where a determination is made based on scientific evidence that the exploration, development, or utilization of the lands subject to the lease is reasonably likely to adversely affect such significant features. Such stipulations shall include, but are not limited to:

''(1) requiring the lessee to reinject geothermal fluids into the rock formations from which they originate;

''(2) requiring the lessee to report annually to the Secretary on its activities;

''(3) requiring the lessee to continuously monitor geothermal production and injection wells; and

''(4) requiring the lessee to suspend activity, temporarily or permanently, on the lease if the Secretary determines that ongoing exploration, development, or utilization activities are having a significant adverse effect on significant thermal features listed pursuant to subsection (a) of this section until such time as the significant adverse effect is eliminated.

''(e) The Secretary of Agriculture shall consider the effects on significant thermal features of those units of the National Park System identified in subsection (a) of this section in determining whether to consent to leasing under the Geothermal Steam Act of 1970, as amended, on national forest or other lands administered by the Department of Agriculture available for leasing under the Geothermal Steam Act of 1970, as amended, including public, withdrawn, and acquired lands.

''(f) Nothing contained in this section shall affect the ban on leasing under the Geothermal Steam Act of 1970, as amended, with respect to the Island Park Known Geothermal Resources Area, as provided for in Public Law 98–473 (98 Stat. 1837) [see Tables for classification] and Public Law 99–190 (99 Stat. 1267) [see Tables for classification].

''(g) Except as provided herein, nothing contained in this section shall affect or modify the authorities or responsibilities of the Secretary under the Geothermal Steam Act of 1970, as amended, or any other provision of law.

''(h) The provisions of this section shall remain in effect until Congress determines otherwise.''

### § 1006. Acreage limitations

A geothermal lease shall embrace a reasonably compact area of not more than 5,120 acres, except where a departure therefrom is occasioned by an irregular subdivision or subdivisions. No person, association, or corporation, except as otherwise provided in this chapter, shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this chapter or otherwise, any direct or indirect interest in Federal geothermal leases in any one State exceeding 51,200 acres, including leases acquired under the provisions of section 1003 of this title.

(Pub. L. 91–581, § 7, Dec. 24, 1970, 84 Stat. 1569; Pub. L. 109–58, title II, § 235, Aug. 8, 2005, 119 Stat. 671.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline, substituted ''5,120 acres'' for ''two thousand five hundred and sixty acres'' and ''51,200 acres'' for ''twenty thousand four hundred and eighty acres'' in text, and struck out second par. which read as follows: ''At any time after fifteen years from December 24, 1970, the Secretary, after public hearings, may increase this maximum holding in any one State by regulation, not to exceed fifty-one thousand two hundred acres.''

### § 1007. Readjustment of lease terms and conditions

#### (a) Initial readjustment; periodic intervals; notice; objections, relinquishment, and termination

The Secretary may readjust the terms and conditions, except as otherwise provided herein, of any geothermal lease issued under this chapter at not less than ten-year intervals beginning ten years after the date the geothermal steam is produced, as determined by the Secretary. Each geothermal lease issued under this chapter shall provide for such readjustment. The Secretary shall give notice of any proposed readjustment of terms and conditions, and, unless the lessee files with the Secretary objection to the proposed terms or relinquishes the lease within thirty days after receipt of such notice, the lessee shall conclusively be deemed to have agreed with such terms and conditions. If the lessee files objections, and no agreement can be reached between the Secretary and the lessee within a period of not less than sixty days, the lease may be terminated by either party.

#### (b) Rentals and royalties; initial readjustment; periodic intervals; limitation on increases and on royalties; notice; objections, relinquishment, and termination

The Secretary may readjust the rentals and royalties of any geothermal lease issued under this chapter at not less than twenty-year intervals beginning thirty-five years after the date geothermal steam is produced, as determined by the Secretary. In the event of any such readjustment neither the rental nor royalty may be increased by more than 50 per centum over the rental or royalty paid during the preceding period. Each geothermal lease issue[1] under this chapter shall provide for such readjustment. The Secretary shall give notice of any proposed readjustment of rentals and royalties, and, unless the lessee files with the Secretary objection to the proposed rentals and royalties or relinquishes the lease within thirty days after receipt of such notice, the lessee shall conclusively be deemed to have agreed with such terms and conditions. If the lessee files objections, and no agreement can be reached between the Secretary and the lessee within a period of not less than sixty days, the lease may be terminated by either party.

#### (c) Surface use, protection, or restoration of lands withdrawn or acquired for Federal agency; notice; approval of agency

Any readjustment of the terms and conditions as to use, protection, or restoration of the surface of any lease of lands withdrawn or acquired in aid of a function of a Federal department or agency other than the Department of the Interior may be made only upon notice to, and with the approval of, such department or agency.

(Pub. L. 91–581, § 8, Dec. 24, 1970, 84 Stat. 1569; Pub. L. 109–58, title II, §§ 229, 236(8), Aug. 8, 2005, 119 Stat. 668, 672.)

AMENDMENTS

2005—Pub. L. 109–58, § 236(8), inserted section catchline.

Subsec. (b). Pub. L. 109–58, § 229, substituted ''period'' for ''period, and in no event shall the royalty payable exceed 22½ per centum'' in second sentence.

### § 1008. Byproducts

If the production, use, or conversion of geothermal steam is susceptible of producing a valuable byproduct or byproducts, including commercially demineralized water for beneficial uses in accordance with applicable State water laws, the Secretary shall require substantial beneficial production or use thereof unless, in individual circumstances he modifies or waives this requirement in the interest of conservation of natural resources or for other reasons satisfactory to him. However, the production or use of such byproducts shall be subject to the rights of the holders of preexisting leases, claims, or permits covering the same land or the same minerals, if any.

(Pub. L. 91–581, § 9, Dec. 24, 1970, 84 Stat. 1570; Pub. L. 109–58, title II, § 236(9), Aug. 8, 2005, 119 Stat. 672.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline.

### § 1009. Relinquishment of geothermal rights

The holder of any geothermal lease at any time may make and file in the appropriate land office a written relinquishment of all rights under such lease or of any legal subdivision of the area covered by such lease. Such relinquishment shall be effective as of the date of its filing. Thereupon the lessee shall be released of all obligations thereafter accruing under said lease with respect to the lands relinquished, but no such relinquishment shall release such lessee, or his surety or bond, from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of the relinquishment, or from the continued obligation, in accordance with the applicable lease terms and regulations, (1) to make payment of all accrued rentals and royalties, (2) to place all wells on the relinquished lands in condition for suspension or abandonment, and (3) to protect or restore substantially the surface and surface resources.

(Pub. L. 91–581, § 10, Dec. 24, 1970, 84 Stat. 1570; Pub. L. 109–58, title II, § 236(10), Aug. 8, 2005, 119 Stat. 672.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline.

### § 1010. Suspension of operations and production

The Secretary, upon application by the lessee, may authorize the lessee to suspend operations

[1] So in original. Probably should be ''issued''.

and production on a producing lease and he may, on his own motion, in the interest of conservation suspend operations on any lease but in either case he may extend the lease term for the period of any suspension, and he may waive, suspend, or reduce the rental or royalty required in such lease.

(Pub. L. 91–581, § 11, Dec. 24, 1970, 84 Stat. 1570; Pub. L. 109–58, title II, § 236(11), Aug. 8, 2005, 119 Stat. 672.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline.

### § 1011. Termination of leases

Leases may be terminated by the Secretary for any violation of the regulations or lease terms after thirty days notice provided that such violation is not corrected within the notice period, or in the event the violation is such that it cannot be corrected within the notice period then provided that lessee has not commenced in good faith within said notice period to correct such violation and thereafter to proceed diligently to correct such violation. Lessee shall be entitled to a hearing on the matter of such claimed violation or proposed termination of lease if request for a hearing is made to the Secretary within the thirty-day period after notice. The period for correction of violation or commencement to correct such violation of regulations or of lease terms, as aforesaid, shall be extended to thirty days after the Secretary's decision after such hearing if the Secretary shall find that a violation exists.

(Pub. L. 91–581, § 12, Dec. 24, 1970, 84 Stat. 1570; Pub. L. 109–58, title II, § 236(12), Aug. 8, 2005, 119 Stat. 672.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline.

### § 1012. Waiver, suspension, or reduction of rental or royalty

The Secretary may waive, suspend, or reduce the rental or royalty for any lease or portion thereof in the interests of conservation and to encourage the greatest ultimate recovery of geothermal resources, if he determines that this is necessary to promote development or that the lease cannot be successfully operated under the lease terms.

(Pub. L. 91–581, § 13, Dec. 24, 1970, 84 Stat. 1570; Pub. L. 109–58, title II, § 236(13), Aug. 8, 2005, 119 Stat. 672.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline.

### § 1013. Surface land use

Subject to the other provisions of this chapter, a lessee shall be entitled to use so much of the surface of the land covered by his geothermal lease as may be found by the Secretary to be necessary for the production, utilization, and conservation of geothermal resources.

(Pub. L. 91–581, § 14, Dec. 24, 1970, 84 Stat. 1571; Pub. L. 109–58, title II, § 236(14), Aug. 8, 2005, 119 Stat. 672.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline.

### § 1014. Lands subject to geothermal leasing

#### (a) Terms and conditions for lands withdrawn or acquired for Department of the Interior

Geothermal leases for lands withdrawn or acquired in aid of functions of the Department of the Interior may be issued only under such terms and conditions as the Secretary may prescribe to insure adequate utilization of the lands for the purposes for which they were withdrawn or acquired.

#### (b) Consent and terms and conditions for lands withdrawn or acquired for Department of Agriculture or for lands for power and related purposes

Geothermal leases for lands withdrawn or acquired in aid of functions of the Department of Agriculture may be issued only with the consent of, and subject to such terms and conditions as may be prescribed by, the head of that Department to insure adequate utilization of the lands for the purposes for which they were withdrawn or acquired. Geothermal leases for lands to which section 818 of title 16 is applicable, may be issued only with the consent of, and subject to, such terms and conditions as the Secretary of Energy may prescribe to insure adequate utilization of such lands for power and related purposes.

#### (c) Exemption of certain Federal lands

Geothermal leases under this chapter shall not be issued for lands administered in accordance with (1) sections 1, 2, 3, and 4 of title 16, as amended or supplemented, (2) for lands within a national recreation area, (3) for lands in a fish hatchery administered by the Secretary, wildlife refuge, wildlife range, game range, wildlife management area, waterfowl production area, or for lands acquired or reserved for the protection and conservation of fish and wildlife that are threatened with extinction, (4) for tribally or individually owned Indian trust or restricted lands, within or without the boundaries of Indian reservations.

(Pub. L. 91–581, § 15, Dec. 24, 1970, 84 Stat. 1571; Pub. L. 95–91, title III, § 301(b), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 578, 606, 607; Pub. L. 109–58, title II, § 236(15), Aug. 8, 2005, 119 Stat. 672.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted for ''Federal Power Commission'' in subsec. (b) pursuant to sections 301(b), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(b), 7293, and 7297 of Title 42, The Public Health and Welfare, and which terminated Federal Power Commission and transferred its functions (with certain exceptions) to Secretary of Energy.

### § 1015. Requirement for lessees

Leases under this chapter may be issued only to citizens of the United States, associations of such citizens, corporations organized under the laws of the United States or of any State or the

District of Columbia, or governmental units, including, without limitation, municipalities.

(Pub. L. 91–581, § 16, Dec. 24, 1970, 84 Stat. 1571; Pub. L. 109–58, title II, § 236(16), Aug. 8, 2005, 119 Stat. 672.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline.

### § 1016. Administration

Administration of this chapter shall be under the principles of multiple use of lands and resources, and geothermal leases shall, insofar as feasible, allow for coexistence of other leases of the same lands for deposits of minerals under the laws applicable to them, for the location and production of claims under the mining laws, and for other uses of the areas covered by them. Operations under such other leases or for such other uses, however, shall not unreasonably interfere with or endanger operations under any lease issued pursuant to this chapter, nor shall operations under leases so issued unreasonably interfere with or endanger operations under any lease, license, claim, or permit issued pursuant to the provisions of any other Act.

(Pub. L. 91–581, § 17, Dec. 24, 1970, 84 Stat. 1571; Pub. L. 109–58, title II, § 236(17), Aug. 8, 2005, 119 Stat. 672.)

REFERENCES IN TEXT

The mining laws, referred to in text, are classified generally to this title.

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline.

### § 1017. Unit and communitization agreements

**(a) Adoption of units by lessees**

**(1) In general**

For the purpose of more properly conserving the natural resources of any geothermal reservoir, field, or like area, or any part thereof (whether or not any part of the geothermal reservoir, field, or like area, is subject to any cooperative plan of development or operation (referred to in this section as a ''unit agreement'')), lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit agreement for the reservoir, field, or like area, or any part thereof, including direct use resources, if determined and certified by the Secretary to be necessary or advisable in the public interest.

**(2) Majority interest of single leases**

A majority interest of owners of any single lease shall have the authority to commit the lease to a unit agreement.

**(3) Initiative of Secretary**

The Secretary may also initiate the formation of a unit agreement, or require an existing Federal lease to commit to a unit agreement, if in the public interest.

**(4) Modification of lease requirements by Secretary**

**(A) In general**

The Secretary may, in the discretion of the Secretary and with the consent of the holders of leases involved, establish, alter, change, or revoke rates of operations (including drilling, operations, production, and other requirements) of the leases and make conditions with respect to the leases, with the consent of the lessees, in connection with the creation and operation of any such unit agreement as the Secretary may consider necessary or advisable to secure the protection of the public interest.

**(B) Unlike terms or rates**

Leases with unlike lease terms or royalty rates shall not be required to be modified to be in the same unit.

**(b) Requirement of plans under new leases**

The Secretary may—

(1) provide that geothermal leases issued under this chapter shall contain a provision requiring the lessee to operate under a unit agreement; and

(2) prescribe the unit agreement under which the lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States.

**(c) Modification of rate of prospecting, development, and production**

The Secretary may require that any unit agreement authorized by this section that applies to land owned by the United States contain a provision under which authority is vested in the Secretary, or any person, committee, or State or Federal officer or agency as may be designated in the unit agreement to alter or modify, from time to time, the rate of prospecting and development and the quantity and rate of production under the unit agreement.

**(d) Exclusion from determination of holding or control**

Any land that is subject to a unit agreement approved or prescribed by the Secretary under this section shall not be considered in determining holdings or control under section 1006 of this title.

**(e) Pooling of certain land**

If separate tracts of land cannot be independently developed and operated to use geothermal resources pursuant to any section of this chapter—

(1) the land, or a portion of the land, may be pooled with other land, whether or not owned by the United States, for purposes of development and operation under a communitization agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the production unit, if the pooling is determined by the Secretary to be in the public interest; and

(2) operation or production pursuant to the communitization agreement shall be treated as operation or production with respect to each tract of land that is subject to the communitization agreement.

**(f) Unit agreement review**

**(1) In general**

Not later than 5 years after the date of approval of any unit agreement and at least every 5 years thereafter, the Secretary shall—

(A) review each unit agreement; and

(B) after notice and opportunity for comment, eliminate from inclusion in the unit agreement any land that the Secretary determines is not reasonably necessary for unit operations under the unit agreement.

**(2) Basis for elimination**

The elimination shall—

(A) be based on scientific evidence; and

(B) occur only if the elimination is determined by the Secretary to be for the purpose of conserving and properly managing the geothermal resource.

**(3) Extension**

Any land eliminated under this subsection shall be eligible for an extension under section 1005(g) of this title if the land meets the requirements for the extension.

**(g) Drilling or development contracts**

**(1) In general**

The Secretary may, on such conditions as the Secretary may prescribe, approve drilling or development contracts made by one or more lessees of geothermal leases, with one or more persons, associations, or corporations if, in the discretion of the Secretary, the conservation of natural resources or the public convenience or necessity may require or the interests of the United States may be best served by the approval.

**(2) Holdings or control**

Each lease operated under an approved drilling or development contract, and interest under the contract, shall be excepted in determining holdings or control under section 1006 of this title.

**(h) Coordination with State governments**

The Secretary shall coordinate unitization and pooling activities with appropriate State agencies.

(Pub. L. 91–581, § 18, Dec. 24, 1970, 84 Stat. 1571; Pub. L. 100–443, § 4, Sept. 22, 1988, 102 Stat. 1768; Pub. L. 109–58, title II, § 227, Aug. 8, 2005, 119 Stat. 666.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline and amended text generally. Prior to amendment, text related to cooperative or unit plan of development or operation of geothermal pool, field, or like area, public interest, determination and certification, regulations, protection of parties in interest, authority respecting rate of prospecting, development, and production, five year review, and leases excepted from control for purposes of State acreage limitation.

1988—Pub. L. 100–443, § 4, inserted provisions relating to five year review of plans and elimination of leases from plans.

## § 1018. Data from Federal agencies

Upon request of the Secretary, other Federal departments and agencies shall furnish him with any relevant data then in their possession or knowledge concerning or having bearing upon fair and adequate charges to be made for geothermal steam produced or to be produced for conversion to electric power or other purposes. Data given to any department or agency as confidential under law shall not be furnished in any fashion which identifies or tends to identify the business entity whose activities are the subject of such data or the person or persons who furnished such information.

(Pub. L. 91–581, § 19, Dec. 24, 1970, 84 Stat. 1572; Pub. L. 109–58, title II, § 236(18), Aug. 8, 2005, 119 Stat. 673.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline.

## § 1019. Disposal of moneys from sales, bonuses, rentals, and royalties

**(a) In general**

Except with respect to lands in the State of Alaska, all monies received by the United States from sales, bonuses, rentals, and royalties under this chapter shall be paid into the Treasury of the United States. Of amounts deposited under this subsection, subject to the provisions of subsection (b) of section 191 of this title and section 1004(a)(2) of this title—

(1) 50 percent shall be paid to the State within the boundaries of which the leased lands or geothermal resources are or were located; and

(2) 25 percent shall be paid to the county within the boundaries of which the leased lands or geothermal resources are or were located.

**(b) Use of payments**

Amounts paid to a State or county under subsection (a) of this section shall be used consistent with the terms of section 191 of this title.

(Pub. L. 91–581, § 20, Dec. 24, 1970, 84 Stat. 1572; Pub. L. 100–443, § 5(a), Sept. 22, 1988, 102 Stat. 1768; Pub. L. 103–66, title X, § 10202(b), Aug. 10, 1993, 107 Stat. 408; Pub. L. 109–58, title II, § 224(b), Aug. 8, 2005, 119 Stat. 663.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline and amended text generally. Prior to amendment, text read as follows: ''Subject to the provisions of section 191(b) of this title, all moneys received from the sales, bonuses, royalties and rentals under the provisions of this chapter, including the payments referred to in section 1005(i) of this title, shall be disposed of in the same manner as such moneys received pursuant to section 191 of this title or pursuant to section 355 of this title, as the case may be.''

1993—Pub. L. 103–66 substituted ''Subject to the provisions of section 191(b) of this title, all moneys'' for ''All moneys''.

1988—Pub. L. 100–443 amended section generally. Prior to amendment, section read as follows: ''All moneys received under this chapter from public lands under the jurisdiction of the Secretary shall be disposed of in the same manner as moneys received from the sale of public lands. Moneys received under this chapter from other lands shall be disposed of in the same manner as other receipts from such lands.''

## § 1020. Publication in Federal Register; reservation of mineral rights

Geothermal resources in lands the surface of which has passed from Federal ownership but in which the minerals have been reserved to the United States shall not be developed or produced except under geothermal leases made pursuant to this chapter. If the Secretary of the Interior

finds that such development is imminent, or that production from a well heretofore drilled on such lands is imminent, he shall so report to the Attorney General, and the Attorney General is authorized and directed to institute an appropriate proceeding in the United States district court of the district in which such lands are located, to quiet the title of the United States in such resources, and if the court determines that the reservation of minerals to the United States in the lands involved included the geothermal resources, to enjoin their production otherwise than under the terms of this chapter: *Provided*, That upon an authoritative judicial determination that Federal mineral reservation does not include geothermal resources the duties of the Secretary of the Interior to report and of the Attorney General to institute proceedings, as hereinbefore set forth, shall cease.

(Pub. L. 91–581, § 21, Dec. 24, 1970, 84 Stat. 1572; Pub. L. 109–58, title II, § 236(1), (3), (19), Aug. 8, 2005, 119 Stat. 671, 673.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline, struck out ''(b)'' before ''Geothermal'', substituted ''does not include geothermal resources'' for ''does not include geothermal steam and associated geothermal resources'', and struck out subsec. (a) which read as follows: ''Within one hundred and twenty days after December 24, 1970, the Secretary shall cause to be published in the Federal Register a determination of all lands which were included within any known geothermal resources area on December 24, 1970. He shall likewise publish in the Federal Register from time to time his determination of other known geothermal resources areas specifying in each case the date the lands were included in such area; and''.

### § 1021. Federal exemption from State water laws

Nothing in this chapter shall constitute an express or implied claim or denial on the part of the Federal Government as to its exemption from State water laws.

(Pub. L. 91–581, § 22, Dec. 24, 1970, 84 Stat. 1573; Pub. L. 109–58, title II, § 236(20), Aug. 8, 2005, 119 Stat. 673.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline.

### § 1022. Prevention of waste; exclusivity

(a) All leases under this chapter shall be subject to the condition that the lessee will, in conducting his exploration, development, and producing operations, use all reasonable precautions to prevent waste of geothermal resources developed in the lands leased.

(b) Rights to develop and utilize geothermal resources underlying lands owned by the United States may be acquired solely in accordance with the provisions of this chapter.

(Pub. L. 91–581, § 23, Dec. 24, 1970, 84 Stat. 1573; Pub. L. 109–58, title II, § 236(1), (21), Aug. 8, 2005, 119 Stat. 671, 673.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline and substituted ''geothermal resources'' for ''geothermal steam and associated geothermal resources'' in subsecs. (a) and (b).

### § 1023. Rules and regulations

The Secretary shall prescribe such rules and regulations as he may deem appropriate to carry out the provisions of this chapter. Such regulations may include, without limitation, provisions for (a) the prevention of waste, (b) development and conservation of geothermal and other natural resources, (c) the protection of the public interest, (d) assignment, segregation, extension of terms, relinquishment of leases, development contracts, unitization, pooling, and drilling agreements, (e) compensatory royalty agreements, suspension of operations or production, and suspension or reduction of rentals or royalties, (f) the filing of surety bonds to assure compliance with the terms of the lease and to protect surface use and resources, (g) use of the surface by a lessee of the lands embraced in his lease, (h) the maintenance by the lessee of an active development program, and (i) protection of water quality and other environmental qualities.

(Pub. L. 91–581, § 24, Dec. 24, 1970, 84 Stat. 1573; Pub. L. 109–58, title II, § 236(22), Aug. 8, 2005, 119 Stat. 673.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Interior to promulgate regulations under this chapter relating to fostering of competition for Federal leases, implementation of alternative bidding systems authorized for award of Federal leases, establishment of diligence requirements for operations conducted on Federal leases, setting of rates for production of Federal leases, and specifying of procedures, terms, and conditions for acquisition and disposition of Federal royalty interests taken in kind, transferred to Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare. Section 7152(b) of Title 42 was repealed by Pub. L. 97–100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and functions of Secretary of Energy returned to Secretary of the Interior. See House Report No. 97–315, pp. 25, 26, Nov. 5, 1981.

### § 1024. Inclusion of geothermal leasing under certain other laws

As to any land subject to geothermal leasing under section 1002 of this title, all laws which either (a) provide for the disposal of land by patent or other form of conveyance or by grant or by operation of law subject to a reservation of any mineral or (b) prevent or restrict the disposal of such land because of the mineral character of the land, shall hereafter be deemed to embrace geothermal resources as a substance which either must be reserved or must prevent or restrict the disposal of such land, as the case may be. This section shall not be construed to affect grants, patents, or other forms of conveyances made prior to December 24, 1970.

(Pub. L. 91–581, § 25, Dec. 24, 1970, 84 Stat. 1573; Pub. L. 109–58, title II, § 236(1), (23), Aug. 8, 2005, 119 Stat. 671, 673.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline and substituted ''geothermal resources'' for ''geothermal steam and associated geothermal resources'' in text.

### § 1025. Federal reservation of certain mineral rights

The United States reserves the ownership of and the right to extract under such rules and regulations as the Secretary may prescribe oil, hydrocarbon gas, and helium from all geothermal resources produced from lands leased under this chapter in accordance with presently applicable laws: *Provided*, That whenever the right to extract oil, hydrocarbon gas, and helium from geothermal resources produced from such lands is exercised pursuant to this section, it shall be exercised so as to cause no substantial interference with the production of geothermal resources from such lands.

(Pub. L. 91–581, § 27, Dec. 24, 1970, 84 Stat. 1574; Pub. L. 109–58, title II, § 236(1), (25), Aug. 8, 2005, 119 Stat. 671, 673.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline and substituted ''geothermal resources'' for ''geothermal steam and associated geothermal resources'' wherever appearing in text.

### § 1026. Significant thermal features

**(a) Units of National Park System**

(1) The Secretary shall maintain a list of significant thermal features, as defined in section 1001(f) of this title, within units of the National Park System, including but not limited to the following units:

(A) Mount Rainier National Park.

(B) Crater Lake National Park.

(C) Yellowstone National Park.

(D) John D. Rockefeller, Jr. Memorial Parkway.

(E) Bering Land Bridge National Preserve.

(F) Gates of the Arctic National Park and Preserve.

(G) Katmai National Park.

(H) Aniakchak National Monument and Preserve.

(I) Wrangell-St. Elias National Park and Preserve.

(J) Lake Clark National Park and Preserve.

(K) Hot Springs National Park.

(L) Big Bend National Park (including that portion of the Rio Grande National Wild Scenic River within the boundaries of Big Bend National Park).

(M) Lassen Volcanic National Park.

(N) Hawai`i Volcanoes National Park.

(O) Haleakalā National Park.

(P) Lake Mead National Recreation Area.

(2) The Secretary may, after notice and public comment, add significant thermal features within units of the National Park System to the significant thermal features list.

(3) The Secretary shall consider the following criteria in determining the significance of thermal features:

(A) Size, extent and uniqueness.

(B) Scientific and geologic significance.

(C) The extent to which such features remain in a natural, undisturbed condition.

(D) Significance of thermal features to the authorized purposes for which the National Park System unit was established.

**(b) Monitoring program**

(1) The Secretary shall maintain a monitoring program for significant thermal features within units of the National Park System.

(2) As part of the monitoring program required by paragraph (1), the Secretary shall establish a research program to collect and assess data on the geothermal resources within units of the National Park System with significant thermal features. Such program shall be carried out by the National Park Service in cooperation with the U.S. Geological Survey and shall begin with the collection and assessment of data for significant thermal features near current or proposed geothermal development and shall also include such features near areas of potential geothermal development.

**(c) Lease application; adverse effect**

(1) Upon receipt of an application for a lease under this chapter, the Secretary shall determine on the basis of scientific evidence if exploration, development or utilization of the lands subject to the lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature within a unit of the National Park System. Such determination shall be subject to notice and public comment.

(2) If the Secretary determines that the exploration, development or utilization of the land subject to the lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature within a unit of the National Park System, the Secretary shall not issue such lease.

(3) The Secretary shall not issue any lease under this chapter for those lands, or portions thereof, which are the subject of a determination made pursuant to subparagraph (2).

**(d) Lease stipulations**

With respect to all leases or drilling permits issued, extended, renewed or modified under this chapter, the Secretary shall include stipulations in such leases and permits necessary to protect significant thermal features within units of the National Park System where the Secretary determines that, based on scientific evidence, the exploration, development or utilization of the land subject to the lease or drilling permit is reasonably likely to adversely affect any such significant thermal feature. Stipulations shall include, but not be limited to—

(1) requiring the lessee to reinject geothermal fluids into the rock formations from which they originate;

(2) requiring the lessee to report annually to the Secretary on activities taken on the lease;

(3) requiring the lessee to continuously monitor geothermal resources production and injection wells; and

(4) requiring the lessee to suspend activity on the lease if the Secretary determines that ongoing exploration, development or utilization activities are having a significant adverse effect on a significant thermal feature within a unit of the National Park System until such time as the significant adverse effect is eliminated. The stipulation shall provide for the termination of the lease by the Secretary if the significant adverse effect cannot be eliminated within a reasonable period of time.

**(e) Lands administered by Department of Agriculture**

The Secretary of Agriculture shall consider the effects on significant thermal features within units of the National Park System in determining whether to consent to leasing under this chapter on national forest lands or other lands administered by the Department of Agriculture available for leasing under this chapter, including public, withdrawn, and acquired lands.

**(f) Prohibition**

Nothing in this chapter shall affect the ban on leasing under this chapter with respect to the Island Park Geothermal Area, as designated by the map in the ''Final Environmental Impact Statement of the Island Park Geothermal Area'' (January 15, 1980, p. XI), and provided for in Public Law 98–473.

(Pub. L. 91–581, § 28, as added Pub. L. 100–443, § 6, Sept. 22, 1988, 102 Stat. 1769; amended Pub. L. 106–510, § 3(a)(2), (b)(2), Nov. 13, 2000, 114 Stat. 2363; Pub. L. 109–58, title II, § 236(1), (26), Aug. 8, 2005, 119 Stat. 671, 673.)

REFERENCES IN TEXT

Public Law 98–473, referred to in subsec. (f), is Pub. L. 98–473, Oct. 12, 1984, 98 Stat. 1837, as amended. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2005—Pub. L. 109–58, § 236(26), inserted section catchline.

Subsec. (d)(3). Pub. L. 109–58, § 236(1), substituted ''geothermal resources'' for ''geothermal steam and associated geothermal resources''.

2000—Subsec. (a)(1)(N). Pub. L. 106–510, § 3(a)(2), substituted ''Hawai'i Volcanoes National Park'' for ''Hawaii Volcanoes National Park''.

Subsec. (a)(1)(O). Pub. L. 106–510, § 3(b)(2), substituted ''Haleakalā National Park'' for ''Haleakala National Park''.

CORWIN SPRINGS KNOWN GEOTHERMAL RESOURCE AREA STUDY

Section 8 of Pub. L. 100–443 provided that:

''(a) The United States Geological Survey, in consultation with the National Park Service, shall conduct a study on the impact of present and potential geothermal development in the vicinity of Yellowstone National Park on the thermal features within the park. The area to be studied shall be the lands within the Corwin Springs Known Geothermal Resource Area as designated in the July 22, 1975, Federal Register (Fed. Reg. Vol. 40, No. 141). The study shall be transmitted to Congress no later than December 1, 1990.

''(b) Any production from existing geothermal wells or any development of new geothermal wells or other facilities related to geothermal production is prohibited in the Corwin Springs Known Geothermal Resource Area until 180 days after the receipt by Congress of the study provided for in subsection (a) of this section.

''(c) The Secretary may not issue, extend, renew or modify any geothermal lease or drilling permit pursuant to the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025) in the Corwin Springs Known Geothermal Resource Area until 180 days after the receipt by Congress of the study provided for in section 8(a) of this Act. This section shall not be construed as requiring such leasing activities subsequent to the 180 days after study submittal.

''(d) If the Secretary determines that geothermal drilling and related activities within the area studied pursuant to subsection (a) of this section may adversely affect the thermal features of Yellowstone National Park, the Secretary shall include in the study required under subsection (a) of this section recommendations regarding the acquisition of the geothermal rights necessary to protect such thermal resources and features.''

## § 1027. Land subject to prohibition on leasing

The Secretary shall not issue any lease under this chapter on those lands subject to the prohibition provided under section 226–3 of this title.

(Pub. L. 91–581, § 29, as added Pub. L. 100–443, § 5(d), Sept. 22, 1988, 102 Stat. 1769; amended Pub. L. 109–58, title II, § 236(27), Aug. 8, 2005, 119 Stat. 673.)

AMENDMENTS

2005—Pub. L. 109–58 inserted section catchline.

## § 1028. Hot dry rock geothermal energy

**(a) USGS program**

The Secretary of the Interior, acting through the United States Geological Survey, and in consultation with the Secretary of Energy, shall establish a cooperative Government-private sector program with respect to hot dry rock geothermal energy resources on public lands (as such term is defined in section 1702(e) of title 43) and lands managed by the Department of Agriculture, other than any such public or other lands that are withdrawn from geothermal leasing. Such program shall include, but shall not be limited to, activities to identify, select, and classify those areas throughout the United States that have a high potential for hot dry rock geothermal energy production and activities to develop and disseminate information regarding the utilization of such areas for hot dry rock energy production. Such information may include information regarding field test processes and techniques for assuring that hot dry rock geothermal energy development projects are developed in an economically feasible manner without adverse environmental consequences. Utilizing the information developed by the Secretary, together with information developed in connection with other related programs carried out by other Federal agencies, the Secretary, acting through the United States Geological Survey, may also enter into contracts and cooperative agreements with any public or private entity to provide assistance to any such entity to enable such entity to carry out additional projects with respect to the utilization of hot dry rock geothermal energy resources which will further the purposes of this section.

**(b) Authorization of appropriations**

There are authorized to be appropriated such sums as may be necesary[1] to carry out this section.

(Pub. L. 102–486, title XXV, § 2501, Oct. 24, 1992, 106 Stat. 3101.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Geothermal Steam Act of 1970 which comprises this chapter.

[1] So in original. Probably should be ''necessary''.

## CHAPTER 24—GEOTHERMAL ENERGY RESEARCH, DEVELOPMENT, AND DEMONSTRATION

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### § 1101. Congressional findings

The Congress hereby finds that—

(1) the Nation is currently suffering a critical shortage of environmentally acceptable forms of energy;

(2) the inadequate organizational structures and levels of funding for energy research have limited the Nation's current and future options for meeting energy needs;

(3) electric energy is a clean and convenient form of energy at the location of its use and is the only practicable form of energy in some modern applications, but the demand for electric energy in every region of the United States is taxing all of the alternative energy sources presently available and is projected to increase; some of the sources available for electric power generation are already in short supply, and the development and use of other sources presently involve undesirable environmental impacts;

(4) the Nation's critical energy problems can be solved only if a national commitment is made to dedicate the necessary financial resources, and enlist the cooperation of the private and public sectors, in developing geothermal resources and other nonconventional sources of energy;

(5) the conventional geothermal resources which are presently being used have limited total potential; but geothermal resources which are different from those presently being used, and which have extremely large energy content, are known to exist;

(6) some geothermal resources contain energy in forms other than heat; examples are methane and extremely high pressures available upon release as kinetic energy;

(7) some geothermal resources contain valuable byproducts such as potable water and mineral compounds which should be processed and recovered as national resources;

(8) technologies are not presently available for the development of most of these geothermal resources, but technologies for the generation of electric energy from geothermal resources are potentially economical and environmentally desirable, and the development of geothermal resources offers possibilities of process energy and other nonelectric applications;

(9) much of the known geothermal resources exist on the public lands;

(10) Federal financial assistance is necessary to encourage the extensive exploration, research, and development in geothermal resources which will bring these technologies to the point of commercial application;

(11) the advancement of technology with the cooperation of private industry for the production of useful forms of energy from geothermal resources is important with respect to the Federal responsibility for the general welfare, to facilitate commerce, to encourage productive harmony between man and his environment, and to protect the public interest; and

(12) the Federal Government should encourage and assist private industry through Federal assistance for the development and demonstration of practicable means to produce useful energy from geothermal resources with environmentally acceptable processes.

(Pub. L. 93–410, § 2, Sept. 3, 1974, 88 Stat. 1079.)

SHORT TITLE

Section 1 of Pub. L. 93–410 provided that: ''This Act [enacting this chapter] may be cited as the 'Geothermal Energy Research, Development, and Demonstration Act of 1974'.''

### § 1102. Definitions

For the purposes of this chapter—

(1) the term ''geothermal resources'' means (A) all products of geothermal processes, embracing indigenous steam, hot water, and brines, (B) steam and other gases, hot water and hot brines, resulting from water, gas, or other fluids artificially introduced into geothermal formations, and (C) any byproduct derived from them;

(2) the term ''byproduct'' means any mineral or minerals which are found in solution or in association with geothermal resources and which have a value of less than 75 percent of the value of the geothermal steam and associated geothermal resources or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves;

(3) ''pilot plant'' means an experimental unit of small size used for early evaluation and development of new or improved processes and to obtain technical, engineering, and cost data;

(4) ''demonstration plant'' means a complete facility which produces electricity, heat energy, or useful byproducts for commercial disposal from geothermal resources and which

will make a significant contribution to the knowledge of full-size technology, plant operation, and process economics;

(5) the term ''Project'' means the Geothermal Energy Coordination and Management Project established by section 1121(a) of this title;

(6) the term ''fund'' means the Geothermal Resources Development Fund established by section 1144(a) of this title; and

(7) the term ''Chairman'' means the Chairman of the Project.

(Pub. L. 93–410, § 3, Sept. 3, 1974, 88 Stat. 1080.)

SUBCHAPTER I—GEOTHERMAL ENERGY COORDINATION AND MANAGEMENT PROJECT

### § 1121. Formation of Project

#### (a) Establishment

There is hereby established the Geothermal Energy Coordination and Management Project.

#### (b) Composition; members and chairman

(1) The Project shall be composed of six members as follows:

(A) one appointed by the President;

(B) an Assistant Director of the National Science Foundation;

(C) an Assistant Secretary of the Department of the Interior;

(D) an Associate Administrator of the National Aeronautics and Space Administration;

(E) the Assistant Administrator of the Energy Research and Development Administration for Solar, Geothermal, and Advanced Energy Systems;

(F) an Assistant Administrator of the Federal Energy Administration;

(G) an Assistant Administrator of the Environmental Protection Agency;

(H) an Assistant Secretary of Treasury; and

(I) an Assistant Secretary of Agriculture.

(2) The President shall designate the Assistant Administrator of the Energy Research and Development Administration for Solar, Geothermal, and Advanced Energy Systems to serve as Chairman of the Project.

(3) If the individual appointed under paragraph (1)(A) of this subsection is an officer or employee of the Federal Government, he shall receive no additional pay on account of his service as a member of the Project. If such individual is not an officer or employee of the Federal Government, he shall be entitled to receive the daily equivalent of the annual rate of basic pay in effect for level IV of the Executive Schedule (5 U.S.C. 5315) for each day (including travel-time) during which he is engaged in the actual performance of duties vested in the Project.

#### (c) Responsibility for geothermal energy research, development, and demonstration program

The Project shall have overall responsibility for the provision of effective management and coordination with respect to a national geothermal energy research, development, and demonstration program. Such program shall include—

(1) the determination and evaluation of the resource base;

(2) research and development with respect to exploration, extraction, and utilization technologies;

(3) the demonstration of appropriate technologies; and

(4) the loan guaranty program under subchapter II of this chapter.

#### (d) Allocation of functions to certain agencies; loaning of personnel

(1) The Project shall carry out its responsibilities under this section acting through the following Federal agencies:

(A) the Department of the Interior, the responsibilities of which shall include evaluation and assessment of the resource base, including development of exploration technologies;

(B) the National Aeronautics and Space Administration, the responsibilities of which shall include the provision of contract management capability, evaluation and assessment of the resource base, and the development of technologies pursuant to section 1122(b) of this title;

(C) the Atomic Energy Commission, the responsibilities of which shall include the development of technologies; and

(D) the National Science Foundation, the responsibilities of which shall include basic and applied research.

(2) Upon request of the Project, the head of any such agency is authorized to detail or assign, on a reimbursable basis or otherwise, any of the personnel of such agency to the Project to assist it in carrying out its responsibilities under this chapter.

#### (e) Exclusive authority of the Project

The Project shall have exclusive authority with respect to the establishment or approval of programs or projects initiated under this chapter, except that the agency involved in any particular program or project shall be responsible for the operation and administration of such program or project.

(Pub. L. 93–410, title I, § 101, Sept. 3, 1974, 88 Stat. 1080; Pub. L. 95–238, title V, § 502, Feb. 25, 1978, 92 Stat. 86.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95–238, § 502(1)–(3), in subpar. (E) substituted ''Assistant Administrator of the Energy Research and Development Administration for Solar, Geothermal, and Advanced Energy Systems;'' for ''General Manager of the Atomic Energy Commission; and'', and added subpars. (G) to (I).

Subsec. (b)(2). Pub. L. 95–238, § 502(4), substituted ''the Assistant Administrator of the Energy Research and Development Administration for Solar, Geothermal, and Advanced Energy Systems'' for ''one member of the Project''.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42. See,

also, Transfer of Functions notes set out under those sections.

Federal Energy Administration terminated and all functions transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

### § 1122. Program definition

(a)(1) The Chairman, acting through the Administrator of the National Aeronautics and Space Administration, is authorized and directed to prepare a comprehensive program definition of an integrated effort and commitment for effectively developing geothermal energy resources. Such Administrator, in preparing such comprehensive program definition, is authorized to consult with other Federal agencies and non-Federal entities.

(2) The Chairman shall transmit such comprehensive program definition to the President and to each House of the Congress. Interim reports shall be transmitted not later than November 30, 1974, and not later than January 31, 1975. Such comprehensive program definition shall be transmitted as soon as possible thereafter, but in any case not later than August 31, 1975.

(3) As part of the comprehensive program definition required by paragraph (1) of this subsection, the Chairman, acting through the United States Geological Survey, shall transmit to the President and to each House of the Congress a schedule and objectives for the inventorying of geothermal resources.

(b) The National Aeronautics and Space Administration is authorized to undertake and carry out those programs assigned to it by the Project.

(Pub. L. 93–410, title I, § 102, Sept. 3, 1974, 88 Stat. 1081; Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1000.)

CHANGE OF NAME

''United States Geological Survey'' substituted for ''Geological Survey'' in subsec. (a)(3) pursuant to provision of title I of Pub. L. 102–154, set out as a note under section 31 of Title 43, Public Lands.

### § 1123. Resource inventory and assessment program

(a) The Chairman shall initiate a resource inventory and assessment program with the objective of making regional and national appraisals of all types of geothermal resources, including identification of promising target areas for industrial exploration and development. The specific goals shall include—

(1) the improvement of geophysical, geochemical, geological, and hydrological techniques necessary for locating and evaluating geothermal resources;

(2) the development of better methods for predicting the power potential and longevity of geothermal reservoirs;

(3) the determination and assessment of the nature and power potential of the deeper unexplored parts of high temperature geothermal convection systems; and

(4) the survey and assessment of regional and national geothermal resources of all types.

(b) The Chairman, acting through the United States Geological Survey and other appropriate agencies, shall—

(1) develop and carry out a general plan for the orderly inventorying of all forms of geothermal resources of the Federal lands and, where consistent with property rights and determined by the Chairman to be in the national interest, of non-Federal lands;

(2) conduct regional surveys, based upon such a general plan, using innovative geological, geophysical, geochemical, and stratagraphic drilling techniques, which will lead to a national inventory of geothermal resources in the United States;

(3) publish and make available maps, reports, and other documents developed from such surveys to encourage and facilitate the commercial development of geothermal resources for beneficial use and consistent with the national interest;

(4) make such recommendations for legislation or administrative regulations as may from time to time appear to be necessary to make Federal leasing, environmental and taxing policy for geothermal resources consistent with known inventories of various resource types, with the current state of technologies for geothermal energy development, and with current evaluations of the environmental impacts of such development; and

(5) participate with appropriate Federal agencies and non-Federal entities in research to develop, improve, and test technologies for the discovery and evaluation of all forms of geothermal resources, and conduct research into the principles controlling the location, occurrence, size, temperature, energy content, producibility, and economic lifetimes of geothermal reservoirs.

(Pub. L. 93–410, title I, § 103, Sept. 3, 1974, 88 Stat. 1082; Pub. L. 95–238, title V, § 503, Feb. 25, 1978, 92 Stat. 86; Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1000.)

AMENDMENTS

1978—Subsec. (b)(4). Pub. L. 95–238 inserted ''or administrative regulations'' after ''legislation'' and '', environmental and taxing'' after ''leasing''.

CHANGE OF NAME

''United States Geological Survey'' substituted for ''Geological Survey'' in subsec. (b) pursuant to provision of title I of Pub. L. 102–154, set out as a note under section 31 of Title 43, Public Lands.

### § 1124. Research and development

(a) The Chairman, acting through the appropriate Federal agencies and in cooperation with non-Federal entities, shall initiate a research and development program for the purpose of resolving all major technical problems inhibiting the fullest possible commercial utilization of geothermal resources in the United States. The specific goals of such programs shall include—

(1) the development of effective and efficient drilling methods to operate at high temperatures in formations of geothermal interest;

(2) the development of reliable predictive methods and control techniques for the production of geothermal resources from reservoirs;

(3) the exploitation of new concepts for fracturing rock to permit recovery of contained heat reserves;

(4) the improvement of equipment and technology for the extraction of geothermal resources from reservoirs;

(5) the development of improved methods for converting geothermal resources and byproducts to useful forms;

(6) the development of improved methods for controlling emissions and wastes from geothermal utilization facilities, including new monitoring methods to any extent necessary;

(7) the development and evaluation of waste disposal control technologies and the evaluation of surface and subsurface environmental effects of geothermal development;

(8) the improvement of the technical capability to predict environmental impacts resulting from the development of geothermal resources, the preparation of environmental impact statements, and the assuring of compliance with applicable standards and criteria;

(9) the identification of social, legal, and economic problems associated with geothermal development (both locally and regionally) for the purpose of developing policy and providing a framework of policy alternatives for the commercial utilization of geothermal resources;

(10) the provision for an adequate supply of scientists to perform required geothermal research and development activities; and

(11) the establishment of a program to encourage States to establish and maintain geothermal resources clearinghouses, which shall serve to (A) provide geothermal resources developers with information with respect to applicable local, State, and Federal laws, rules, and regulations, (B) coordinate the processing of permit applications, impact statements, and other information which geothermal resources developers are required to provide, (C) encourage uniformity with respect to local and State laws, rules, and regulations with respect to geothermal resources development, and (D) encourage establishment of land use plans, which would include zoning for geothermal resources development and which would assure that geothermal resources developers will be able to carry out development programs to the production stage.

(b) The Chairman, acting through the appropriate Federal agencies and in cooperation with non-Federal entities, shall implement a coordinated program of research and development in order to demonstrate the technical means for the extraction and utilization of the resource base, including any by-products of such base, and in order to accomplish the goals established by subsection (a) of this section. Research authorized by this chapter having potential applications in matters other than geothermal energy may be pursued to the extent that the findings of such research can be published in a form for utilization by others.

(Pub. L. 93–410, title I, § 104, Sept. 3, 1974, 88 Stat. 1083.)

## § 1125. Geothermal demonstration plants and projects

### (a) Design and construction

The Chairman, acting through the appropriate Federal agencies and in cooperation with non-Federal entities, shall initiate a program to design and construct geothermal demonstration plants. The specific goals of such program shall include—

(1) the development of economical geothermal resources production systems and components which meet environmental standards;

(2) the design of plants to produce electric power and, where appropriate, the large-scale production and utilization of any useful byproducts;

(3) the involvement of engineers, analysts, technicians, and managers from industry field and powerplant development, which shall lead to the early industrial exploitation of advanced geothermal resources;

(4) the provision for an adequate supply of trained geothermal engineers and technicians;

(5) the provision of experimental test beds for component testing an evaluation by laboratories operated by the Federal Government, industry, or institutions of higher education;

(6) the construction and operation of pilot plants; and

(7) the construction and operation of demonstration plants.

### (b) Establishment of demonstration projects

In carrying out his responsibilities under this section, the Chairman, acting through the appropriate Federal agencies, and in cooperation with non-Federal entities, may provide for the establishment of one or more demonstration projects utilizing each geothermal resource base involved, which shall include, as appropriate, all of the exploration, siting, drilling, pilot plant construction and operation, demonstration plant construction and operation, and other facilities and activities which may be necessary for the generation of electric energy and the utilization of geothermal resource byproducts.

### (c) Agreements for the cooperative development of facilities for demonstration

The Chairman, acting through the appropriate Federal agencies, is authorized to investigate and enter into agreements for the cooperative development of facilities to demonstrate the production of energy from geothermal resources. The responsible Federal agency may consider—

(1) cooperative agreements with utilities and non-Federal governmental entities for construction of facilities to produce energy for commercial disposition; and

(2) cooperative agreements with other Federal agencies for the construction and operation of facilities to produce energy for direct Federal consumption.

### (d) Construction of demonstration projects without entering into agreements

The responsible Federal agency is authorized to investigate the feasibility of, construct, and operate, demonstration projects without enter-

ing into cooperative agreements with respect to such projects, if the Chairman finds that—

(1) the nature of the resource, the geographical location, the scale and engineering design of the facilities, the techniques of production, or any other significant factor of the proposal offers opportunities to make important contributions to the general knowledge of geothermal resources, the techniques of its development, or public confidence in the technology; and

(2) there is no opportunity for cooperative agreements with any utility or non-Federal governmental entity willing and able to cooperate in the demonstration project under subsection (c)(1) of this section, and there is no opportunity for cooperative agreements with other Federal agencies under subsection (c)(2) of this section.

**(e) Factors considered for entry into agreements**

Before favorably considering proposals under subsection (c) of this section, the responsible Federal agency must find that—

(1) the nature of the resource, the geographical location, the scale and engineering design of the facilities, the techniques of production, or any other significant factor of the proposal offers opportunities to make important contributions to the general knowledge of geothermal resources, the techniques of its development, or public confidence in the technology;

(2) the development of the practical benefits as set forth in paragraph (1) of this subsection are unlikely to be accomplished without such cooperative development; and

(3) where non-Federal participants are involved, the proposal is not eligible for adequate Federal assistance under the loan guaranty provisions of subchapter II of this chapter or such assistance would not be adequate to satisfy the goals and requirements of the demonstration program under this section.

**(f) Limits on project costs**

If the estimate of the Federal investment with respect to construction and operation costs of any demonstration project proposed to be established under this section exceeds $10,000,000, no amount may be appropriated for such project except as specifically authorized by legislation hereafter enacted by the Congress.

**(g) Disposal of Federal property interests and resource byproducts**

(1) At the conclusion of the program under this section or as soon thereafter as may be practicable, the responsible Federal agencies shall, by sale, lease, or otherwise, dispose of all Federal property interests which they have acquired pursuant to this section (including mineral rights) in accordance with existing law and the terms of the cooperative agreements involved.

(2) The agency involved shall, under appropriate agreements or other arrangements, provide for the disposition of geothermal resource byproducts of the project administered by such agency.

(Pub. L. 93–410, title I, § 105, Sept. 3, 1974, 88 Stat. 1084; Pub. L. 95–238, title V, § 504, Feb. 25, 1978, 92 Stat. 86.)

AMENDMENTS

1978—Subsec. (e)(3). Pub. L. 95–238 inserted provisions relating to goals and requirements of the demonstration program.

**§ 1126. Scientific and technical education**

**(a) Congressional declaration of policy**

It is the policy of the Congress to encourage the development and maintenance of programs through which there may be provided the necessary trained personnel to perform required geothermal research, development, and demonstration activities under sections 1123, 1124, and 1125 of this title.

**(b) Support of educational programs in science and engineering**

The National Science Foundation is authorized to support programs of education in the sciences and engineering to carry out the policy of subsection (a) of this section. Such support may include fellowships, traineeships, technical training programs, technologist training programs, and summer institute programs.

**(c) Selection of programs of education; coordination with National Science Foundation**

The National Science Foundation is authorized and directed to coordinate its actions, to the maximum extent practicable, with the Project or any permanent Federal organization or agency having jurisdiction over the energy research and development functions of the United States, in determining the optimal selection of programs of education to carry out the policy of subsection (a) of this section.

**(d) International participation and cooperation**

The National Science Foundation is authorized to encourage, to the maximum extent practicable international participation and cooperation in the development and maintenance of programs of education to carrying out the policy of subsection (a) of this section.

(Pub. L. 93–410, title I, § 106, Sept. 3, 1974, 88 Stat. 1085.)

TRANSFER OF FUNCTIONS

Functions of National Science Foundation relating to geothermal power development transferred to Administrator of Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of Title 42, The Public Health and Welfare. Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

## SUBCHAPTER II—LOAN GUARANTIES

**§ 1141. Establishment of loan guaranty program**

**(a) Congressional declaration of policy**

It is the policy of the Congress to encourage and assist in the commercial development of practicable means to produce useful energy from geothermal resources with environmentally acceptable processes. Accordingly, it is the policy of the Congress to facilitate such commercial development by authorizing the Chairman of the Project to designate an appropriate Federal agency to guarantee loans for such purposes.

**(b) Authorization of heads of designated agencies to guarantee loans**

In order to encourage the commercial production of energy from geothermal resources, the head of the designated agency is authorized to, in consultation with the Secretary of the Treasury, guarantee, and to enter into commitments to guarantee, lenders against loss of principal or interest on loans made by such lenders to qualified borrowers for the purposes of—

(1) the determination and evaluation of the resource base;

(2) research and development with respect to extraction and utilization technologies;

(3) acquiring rights in geothermal resources;

(4) development, construction, and operation of facilities for the demonstration or commercial production of energy using geothermal resources; or

(5) construction and operation of a new commercial, agricultural, or industrial structure or facility or modification and operation of an existing commercial, agricultural, or industrial structure or facility, when geothermal hot water or steam is to be used within or by such structure or facility, or modification thereto, for the purposes of space heating or cooling, industrial or agricultural processes, onsite generation of electricity for use other than for sale or resale in commerce, other commercial applications, or combinations of applications separately eligible under this subchapter for loan guarantee assistance.

**(c) Extent of guarantee**

Any guaranty under this subchapter shall apply only to so much of the principal amount of any loan as does not exceed 75 percent of the aggregate cost of the project with respect to which the loan is made, except that any guarantee made for a loan to an electric, housing, or other cooperative, or to a municipality (as defined in section 796(7) of title 16), may apply to so much of the principal amount of the loan as does not exceed 90 percent of the aggregate cost of the project. In determining the aggregate cost of a project for purposes of the preceding sentence, there shall be excluded the cost of constructing electrical transmission lines to the extent that the cost of constructing such lines exceeds 25 percent of the aggregate cost of the project (as determined without regard to this sentence); except that the Secretary may waive or limit the application of this sentence with respect to any project located in the State of Hawaii upon a finding that such project is remote from the area of primary consumption, that a transmission line is required before the geothermal reservoir can be developed, and that the particular transmission line involved will be used for more than the plant which is the subject of the loan guarantee. In the case of a guaranty for the purposes specified in subsection (b)(5) of this section, the aggregate cost of the project shall be deemed to be that portion of the total cost of construction and operation which is directly related to the utilization of geothermal energy within the structure or facility in question, except that the aggregate cost of the project with respect to which the loan is made may be the total cost including construction and operation in cases where the facility or structure has been located near a geothermal energy resource predominantly for the purpose of utilizing geothermal energy, or as determined by the Secretary of Energy the economic viability of the project is substantially dependent upon the performance of the geothermal reservoir.

**(d) Terms and conditions of guaranties**

Loan guaranties under this subchapter shall be on such terms and conditions as the head of the designated agency determines, except that a guaranty shall be made under this subchapter only if—

(1) the loan bears interest at a rate not to exceed such annual per centum on the principal obligation outstanding as the head of the designated agency determines to be reasonable, taking into account the range of interest rates prevailing in the private sector for similar loans and risks by the United States;

(2) the terms of such loan require full repayment over a period not to exceed thirty years, or the useful life of any physical asset to be financed by such loan, whichever is less (as determined by the head of the designated agency);

(3) in the judgment of the head of the designated agency, the amount of the loan (when combined with amounts available to the qualified borrower from other sources) will be sufficient to carry out the project; and

(4) in the judgment of the head of the designated agency, there is reasonable assurance of repayment of the loan by the qualified borrower of the guaranteed indebtedness.

**(e) Limitations on amount of guaranty; exceptions; procedures applicable**

The amount of the guaranty for any loan for a project shall not exceed $100,000,000: *Provided*, That in the case of a guaranty under subsection (b)(5) of this section, the amount of the guaranty for any loan for a project shall not exceed $50,000,000 and the amount of the guaranty for any combination of loans for any single qualified borrower shall not exceed $200,000,000, unless the Secretary of Energy determines in writing that a guaranty in excess of these amounts is in the national interest. Any such determination shall be submitted to the Speaker of the House and the Committee on Science, Space, and Technology of the House of Representatives, and to the President of the Senate and the Committee on Energy and Natural Resources of the Senate, accompanied by a full and complete report on the proposed project and guaranty. The proposed guaranty or commitment to guarantee shall not be finalized under authority granted by this chapter prior to the expiration of thirty calendar days (not including any date on which either House of Congress is not in session) from the date on which such report is received by the Speaker of the House and the President of the Senate.

**(f) "Qualified borrower" defined**

As used in this subchapter, the term ''qualified borrower'' means any public or private agency, institution, association, partnership, corporation, political subdivision, or other legal

entity which (as determined by the head of the designated agency) has presented satisfactory evidence of an interest in geothermal resources and is capable of performing research or completing the development and production of energy in an acceptable manner.

**(g) Payment of interest; criteria**

With respect to any guaranty which is issued after February 25, 1978, by, or in behalf of, any State, political subdivision, or Indian tribe and which is either guaranteed under, or supported by taxes levied by said issuer which are guaranteed under this subchapter and for which the interest paid on such obligation and received by the purchaser thereof is included in gross income for the purposes of chapter 1 of title 26, the Secretary of Energy shall pay to such issuer out of the fund established by this subchapter such portion of the interest on such obligations, as determined by the Secretary of Energy, in consultation with the Secretary of the Treasury, to be appropriated after taking into account current market yields (1) on obligations of such issuer, if any, or (2) on other obligations with similar terms and conditions, the interest on which is not so included in gross income for purposes of chapter 1 of title 26, and in accordance with such terms and conditions as the Secretary of Energy shall require in consultation with the Secretary of the Treasury.

**(h) Pledge of full faith and credit of United States to guaranties**

The full faith and credit of the United States is pledged to the payment of all guaranties issued under this subchapter with respect to principal and interest.

**(i) Fees for guaranties; amount, collection, etc.**

The Secretary of Energy shall charge and collect fees for guaranties in amounts sufficient in his judgment to cover applicable administrative costs and probable losses on guaranteed obligations, but in any event not to exceed 1 per centum per annum of the outstanding indebtedness covered by each guaranty. Fees collected under this subsection shall be deposited in the fund established by this subchapter.

**(j) Minimization of capital market impact of guaranties**

The Secretary of the Treasury shall insure to the maximum extent feasible that the timing, interest rate, and substantial terms and conditions of any guaranty exceeding $25,000,000 will have the minimum possible impact on the capital markets of the United States, taking into account other Federal direct and indirect commercial securities activities.

(Pub. L. 93–410, title II, § 201, Sept. 3, 1974, 88 Stat. 1086; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95–238, title V, §§ 505–509, Feb. 25, 1978, 92 Stat. 86, 87; Pub. L. 96–294, title VI, § 641(1), June 30, 1980, 94 Stat. 768; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–437, § 11(b), Nov. 2, 1994, 108 Stat. 4589.)

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–437 substituted ''Science, Space, and Technology'' for ''Science and Technology''.

1986—Subsec. (g). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1980—Subsec. (c). Pub. L. 96–294 inserted provisions relating to guarantees for loans to an electric, housing, or other cooperative, or to a municipality (as defined in section 796(7) of title 16).

1978—Subsec. (b)(4). Pub. L. 95–238, § 506, substituted ''using'' for ''from''.

Subsec. (b)(5). Pub. L. 95–238, § 505, added par. (5).

Subsec. (c). Pub. L. 95–238, § 507, inserted provisions relating to guarantees for the purposes specified in subsec. (b)(5) of this section.

Subsec. (e). Pub. L. 95–238, § 508, inserted proviso relating to guaranty under subsec. (b)(5) of this section, and provisions relating to exceptions to limitations on amounts guaranteed and procedures applicable to implementation of greater amounts, and substituted ''$100,000,000'' for ''$25,000,000'' and ''$200,000,000'' for ''$50,000,000''.

Subsecs. (g) to (j). Pub. L. 95–238, § 509, added subsecs. (g) to (j).

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted for ''Administrator'' (meaning Administrator of Energy Research and Development Administration, see section 501(2) of Pub. L. 95–238, title V, Feb. 25, 1978, 92 Stat. 86) in subsecs. (c), (e), (g), and (i), pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of Title 42, The Public Health and Welfare, and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

## § 1142. Payment of guaranteed obligation by Secretary of Energy

**(a) Default by borrower and demand by holder of obligation of unpaid amount; amount of payment by Secretary of Energy; defenses available; forebearance by holder of obligation**

If there is a default by the borrower, as defined in regulations promulgated by the Secretary of Energy and set forth in the guarantee contract, the holder of the obligation shall have the right to demand payment of the unpaid amount from the Secretary of Energy. Within such period as may be specified in the guarantee or related agreements, the Secretary of Energy shall pay to the holder of the obligation the unpaid interest on, and unpaid principal of the guaranteed obligation as to which the borrower has defaulted, unless the Secretary of Energy finds that there was no default by the borrower in the payment of interest or principal or that such default has been remedied. Nothing in this section shall be construed to preclude any forebearance by the holder of the obligation for the benefit of the borrower which may be agreed upon by the parties to the guaranteed obligation and approved by the Secretary of Energy.

**(b) Rights and authorities of Secretary of Energy upon payment**

If the Secretary of Energy makes a payment under subsection (a) of this subsection,[1] the Sec-

[1] So in original. Probably should be ''this section,''.

retary of Energy shall be subrogated to the rights of the recipient of such payment as specified in the guarantee or related agreements including, where appropriate, the authority (notwithstanding any other provision of law) to complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such guarantee or related agreements, or to permit the borrower, pursuant to an agreement with the Secretary of Energy, to continue to pursue the purposes of the project if the Secretary of Energy determines this to be in the public interest. The rights of the Secretary of Energy with respect to any property acquired pursuant to such guarantee or related agreements, shall be superior to the rights of any other person with respect to such property.

**(c) Rights and authorities of Attorney General upon default on any guarantee**

In the event of a default on any guarantee under this subchapter, the Secretary of Energy shall notify the Attorney General, who shall take such action as may be appropriate to recover the amounts of any payments made under subsection (a) of this section, including any payment of principal and interest under subsection (d) of this section, from such assets of the defaulting borrower as are associated with the project, or from any other security included in the terms of the guarantee.

**(d) Contracts to pay, and payment, from Geothermal Resources Development Fund of principal and interest of unpaid balance of obligation; preconditions**

With respect to any obligation guaranteed under this subchapter, the Secretary of Energy is authorized to enter into a contract to pay, and to pay, holders of the obligation, for and on behalf of the borrower, from the Geothermal Resources Development Fund, the principal and interest payments which become due and payable on the unpaid balance of such obligation if the Secretary of Energy finds that—

(1) the borrower is unable to meet such payments and is not in default; it is in the public interest to permit the borrower to continue to pursue the purposes of such project; and the probable net benefit to the Federal Government in paying such principal and interest will be greater than that which would result in the event of a default;

(2) the amount of such payment which the Secretary of Energy is authorized to pay shall be no greater than the amount of principal and interest which the borrower is obligated to pay under the loan agreement; and

(3) the borrower agrees to reimburse the Secretary of Energy for such payment on terms and conditions, including interest, which are satisfactory to the Secretary of Energy.

(Pub. L. 93–410, title II, § 202, Sept. 3, 1974, 88 Stat. 1087; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95–238, title V, § 510, Feb. 25, 1978, 92 Stat. 88.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–238 substituted provisions relating to default by the borrower and payment by the Administrator of the guaranteed amount remaining unpaid upon demand by the holder of the obligation, for provisions relating to contracts to pay, and payment, by the head of the designated agency to the lender on behalf of the borrower of interest charges on the unpaid balance of any guaranteed loan where the borrower is unable to meet the interest charges and the amount payable is the same as the amount the borrower would be required to pay.

Subsec. (b). Pub. L. 95–238 substituted provisions relating to rights and authorities of the Administrator subsequent to making a payment under subsec. (a) of this section, for provisions relating to rights and authorities of the head of the designated agency and the Attorney General upon payment of the guaranty subsequent to default on a guaranteed loan.

Subsecs. (c), (d). Pub. L. 95–238 added subsecs. (c) and (d).

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted in text for ''Administrator'' (meaning Administrator of Energy Research and Development Administration, see section 501(2) of Pub. L. 95–238, title V, Feb. 25, 1978, 92 Stat. 86), pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of Title 42, The Public Health and Welfare, and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

## § 1143. Period of guaranties and interest assistance

No loan guaranties shall be made, or interest assistance contract entered into, pursuant to this subchapter, after the expiration of fiscal year 1993.

(Pub. L. 93–410, title II, § 203, Sept. 3, 1974, 88 Stat. 1087; Pub. L. 96–294, title VI, § 641(2), June 30, 1980, 94 Stat. 769; Pub. L. 102–558, title III, § 301, Oct. 28, 1992, 106 Stat. 4224.)

AMENDMENTS

1992—Pub. L. 102–558 substituted ''1993'' for ''1990''.

1980—Pub. L. 96–294 substituted reference to fiscal year 1990, for reference to the ten-calendar-year period following Sept. 3, 1974.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102–558, set out as a note under section 2062 of the Appendix to Title 50, War and National Defense.

## § 1144. Geothermal Resources Development Fund

**(a) Establishment; purposes for which Fund moneys may be expended**

There is established in the Treasury of the United States a Geothermal Resources Development Fund, which shall be available to the head of the designated agency for carrying out the loan guaranty and interest assistance program authorized by this subchapter, including the payment of administrative expenses incurred in connection therewith. Moneys in the fund not needed for current operations may, with the approval of the Secretary of the Treasury, be invested in bonds or other obligations of, or guaranteed by, the United States.

**(b) Deposits into the Fund**

There shall be paid into the fund the amounts appropriated pursuant to section 1164(c) of this

title and such amounts as may be returned to the United States pursuant to section 1142(b) of this title, and the amounts in the fund shall remain available until expended, except that after the expiration of the ten-year period established by section 1143 of this title, such amounts in the fund which are not required to secure outstanding guaranty obligations shall be paid into the general fund of the Treasury.

**(c) Borrowing authority of Secretary of Energy**

If at any time the moneys available in the fund are insufficient to enable the Secretary of Energy to discharge his responsibilities under this subchapter, he shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. This borrowing authority shall be effective only to such extent or in such amounts as are specified in appropriation Acts. Such authorizations may be without fiscal year limitations. Redemption of such notes or obligations shall be made by the Secretary of Energy from appropriations or other moneys available under this section. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall not be less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include any purchase of such notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

**(d) Omitted**

(Pub. L. 93–410, title II, § 204, Sept. 3, 1974, 88 Stat. 1087; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95–238, title V, § 511, Feb. 25, 1978, 92 Stat. 89.)

CODIFICATION

In subsec. (c), ''chapter 31 of title 31'' and ''that chapter'' substituted for ''the Second Liberty Bond Act, as amended'' and ''that Act'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Subsec. (d) of this section, which required the head of the designated agency to submit annual reports to Congress on the operations 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 90 of House Document No. 103–7.

AMENDMENTS

1978—Subsecs. (c), (d). Pub. L. 95–238 added subsec. (c) and redesignated former subsec. (c) as (d).

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted in subsec. (c) for ''Administrator'' (meaning Administrator of Energy Research and Development Administration, see section 501(2) of Pub. L. 95–238, title V, Feb. 25, 1978, 92 Stat. 86), pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of Title 42, The Public Health and Welfare, and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

## § 1145. Community impact assistance functions of Secretary of Energy

**(a) Determination of adequacy of community planning and development financing in covered project localities; review of State and local actions and sufficiency of available financing for projects on leased Federal lands**

The Secretary of Energy, for any project which has a guarantee under this subchapter of not less than $50,000,000 and which will have an intended operating life of not less than five years to satisfy the purposes under this subchapter for which the guarantee has been made, shall endeavor to insure that, taking into consideration appropriate local community action and all reasonably available forms of assistance under this section and other Federal and State statutes, that[1] the impacts resulting from the proposed project have been fully evaluated by the borrower, the Secretary of Energy, and the Governor of the affected State, and that effective steps have been taken or will be taken in a timely manner to finance community planning and development costs resulting from such project under this section, if applicable under other provisions of law, or by other means. When the project will be located on leased Federal lands, the Secretary of Energy shall specifically review State and local actions under section 9(a) of the Mineral Leasing Act Amendments of 1976 (Public Law 94–377) and insure that any funds made available to the State pursuant to such section 9(a) are used to finance such planning and development costs before any Federal assistance under subsection (c) of this section is considered or authorized.

**(b) Discretionary activities for communities with projects not subject to coverage**

The Secretary of Energy, for projects not included under subsection (a) of this section, may in his discretion consider the community impacts which may result from such projects, and may take such actions, under authority directly available to him under other statutes or in coordination with other Federal agencies or the State, as he considers necessary and appropriate to insure timely and effective planning and financing for such community impacts.

**(c) Guarantees, commitments to guarantee, direct loans, and grants; scope, terms and conditions, amount, etc.**

(1) In order to discharge his responsibilities under subsection (a) of this section, and in accordance with such rules and regulations as the

[1] So in original. The second ''that'' appearing in this sentence probably should not appear.

Secretary of Energy in consultation with the Secretary of the Treasury shall prescribe, and subject to such terms and conditions as he deems appropriate, the Secretary of Energy is authorized, for the purposes of financing essential community development and planning which directly result from, or are necessitated by, a project under subsection (a) of this section, to—

(A) guarantee and make commitments to guarantee the payment of interest on, and the principal balance of, obligations for such financing issued by eligible States, political subdivisions, or Indian tribes,

(B) guarantee and make commitments to guarantee the payment of taxes imposed on such project by eligible non-Federal taxing authorities which taxes are earmarked by such authorities to support the payment of interest and principal on obligations for such financing, and

(C) require that the qualified borrower receiving assistance for a project under this section advance sums to eligible States, political subdivisions, and Indian tribes to pay for the financing of such development and planning: *Provided*, That the State, political subdivision, or Indian tribe agrees to provide tax abatement credits over the life of the project for such payments by such applicant.

(2) No guarantee or commitment to guarantee under paragraph (1) of this subsection shall exceed $1,000,000.

(3) In the event of any default by the borrower in the payment of taxes guaranteed by the Secretary of Energy under this section, the Secretary of Energy shall pay out of the fund established by this subchapter such taxes at the time or times they may fall due, and shall have by reason of such payment a claim against the borrower for all sums paid plus interest.

(4) If after consultation with[2] State, political subdivision, or Indian tribe, the Secretary of Energy finds that the financial assistance programs of paragraph (1) of this section will not result in sufficient funds to carry out the purposes of this subsection, then the Secretary of Energy may—

(A) make direct loans to the eligible States, political subdivisions, or Indian tribes for such purposes: *Provided*, That such loans shall be made on such reasonable terms and conditions as the Secretary of Energy shall prescribe: *Provided further*, That the Secretary of Energy may waive repayment of all or part of a loan made under this paragraph, including interest, if the State or political subdivision or Indian tribe involved demonstrates to the satisfaction of the Secretary of Energy that due to a change in circumstances there will be net adverse impacts resulting from such project that would probably cause such State, subdivision, or tribe to default on the loan; or

(B) require that any community development and planning costs which are associated with, or result from, such project, and which are determined by the Secretary of Energy to be appropriate for such inclusion, shall be included in the aggregate costs of the project.

[2] So in original. Probably should be followed by ''the''.

(5) The Secretary of Energy is further authorized to make grants to States, political subdivisions, or Indian tribes for studying and planning for the potential economic, environmental, and social consequences of projects and for establishing related management expertise.

(6) At any time the Secretary of Energy may, in consultation with the Secretary of the Treasury, redeem, in whole or in part, out of the fund established by this section, the debt obligations guaranteed or the debt obligations for which tax payments are guaranteed under this subsection.

(7) When one or more States, political subdivisions, or Indian tribes would be eligible for assistance under this subsection, but for the fact that construction and operation of the project occurs outside its jurisdiction, the Secretary of Energy is authorized to provide, to the greatest extent possible, arrangements for equitable sharing of such assistance.

(8) Such amounts as may be necessary for direct loans and grants pursuant to this subsection shall be available as provided in annual authorization Acts.

(9) The Secretary of Energy, if appropriate, shall provide assistance in the financing of up to 100 per centum of the costs of the required community development and planning pursuant to this section.

(10) In carrying out the provisions of this section, the Secretary of Energy shall provide that title to any facility receiving financial assistance under this section shall vest in the applicable State, political subdivision, or Indian tribe, as appropriate, and in the case of default by the borrower on a loan guarantee made or committed under subsection (b) of this section, such facility shall not be considered a project asset for the purposes of section 1142 of this title.

(11) The Secretary of Energy shall not use his authority under this subsection to provide Federal assistance unless any Federal funds transferred pursuant to section 9(a) of the Mineral Leasing Act Amendments of 1976 (Public Law 94–377) to the State from the lease of Federal land for or associated with the project have been or, with assurance, will be committed, to the maximum extent allowable under Federal statutes, to financing such essential community development or planning directly resulting from, or necessitated by, a project on leased Federal lands.

(Pub. L. 93–410, title II, §205, as added Pub. L. 95–238, title V, §512, Feb. 25, 1978, 92 Stat. 89; amended Pub. L. 95–91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

REFERENCES IN TEXT

Section 9(a) of the Mineral Leasing Act Amendments of 1976 (Public Law 94–377), referred to in subsecs. (a) and (c)(11), probably means the Federal Coal Leasing Amendments Act of 1976, Pub. L. 94–377, §9(a), Aug. 4, 1976, 90 Stat. 1090, as amended, which amended section 191 of this title.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted in text for ''Administrator'' (meaning Administrator of Energy Research and Development Administration, see section 501(2) of Pub. L. 95–238, title V, Feb. 25, 1978, 92 Stat. 86), pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, and 7297 of

Title 42, The Public Health and Welfare, and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

### § 1146. Approval or disapproval of loan guarantee applications

The Secretary, within sixty days after June 30, 1980, shall establish and implement procedures providing for a final decision on any loan guarantee application within four months of the date of filing. To the maximum extent practical, an applicant should be advised (prior to the submission of the application) of all information which will be required of the applicant in processing the application; and the date of filing shall be considered to be the date when all of such information has been submitted by the applicant. Any application proposed and filed as of June 30, 1980, shall be subject to final decision within not more than four months after such date.

(Pub. L. 93–410, title II, § 206, as added Pub. L. 96–294, title VI, § 641(3), June 30, 1980, 94 Stat. 769.)

### § 1147. Application of national environmental policy provisions

The Secretary shall ensure, to the maximum extent possible, that any action undertaken pursuant to section 4332(2)(C) of title 42 which is associated with the granting of a loan guarantee under this subchapter takes the maximum cognizance allowable under law of any other action theretofore undertaken pursuant to such section 4332(2)(C) of title 42 with respect to the project which is the subject of such loan guarantee, and that no such action associated with the loan guarantee shall duplicate any action theretofore undertaken under such section 4332(2)(C) of title 42 in connection with such project, so long as all of the requirements which are applicable to such project under such section 4332(2)(C) of title 42 will have been satisfied.

(Pub. L. 93–410, title II, § 207, as added Pub. L. 96–294, title VI, § 641(3), June 30, 1980, 94 Stat. 769.)

## SUBCHAPTER III—GENERAL PROVISIONS

### § 1161. Protection of environment

In the conduct of its activities, the Project and any participating public or private persons or agencies shall place particular emphasis upon the objective of assuring that the environment and the safety of persons or property are effectively protected; and the program under subchapter I of this chapter shall include such special research and development as may be necessary for the achievement of that objective.

(Pub. L. 93–410, title III, § 301, Sept. 3, 1974, 88 Stat. 1088.)

### § 1162. Final report to President and Congress on terminated projects

(a) Repealed. Pub. L. 104–66, title I, § 1051(m), Dec. 21, 1995, 109 Stat. 717.

(b) No later than one year after the termination of each demonstration project under section 1125 of this title, the Chairman of the Project shall submit to the President and the Congress a final report on the activities of the Project related to each project, including his recommendations with respect to any further legislative, administrative, and other actions which should be taken in support of the objectives of this chapter.

(Pub. L. 93–410, title III, § 302, Sept. 3, 1974, 88 Stat. 1088; Pub. L. 104–66, title I, § 1051(m), Dec. 21, 1995, 109 Stat. 717.)

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–66 struck out subsec. (a) which read as follows: "The Chairman of the Project shall submit to the President and the Congress full and complete annual reports of the activities of the Project, including such projections and estimates as may be necessary to evaluate the progress of the national geothermal energy research, development and demonstration program and to provide the basis for as accurate a judgment as is possible concerning the extent to which the objectives of this chapter will have been achieved by June 30, 1980."

### § 1163. Transfer of functions

(a) Within sixty days after the effective date of the law creating a permanent Federal organization or agency having jurisdiction over the energy research and development functions of the United States (or within sixty days after September 3, 1974, if the effective date of such law occurs prior to September 3, 1974), all of the research, development, and demonstration functions (including the loan guaranty program) vested in the Project under this chapter, along with related records, documents, personnel, obligations, and other items to the extent necessary or appropriate, shall, in accordance with regulations prescribed by the Office of Management and Budget, be transferred to and vested in such organization or agency.

(b) Upon the establishment of a permanent Federal organization or agency having jurisdiction over the energy research and development functions of the United States, and when all research and development (and other) functions of the Project are transferred, the members of the Project may provide advice and counsel to the head of such organization or agency, in accordance with arrangements made at that time.

(Pub. L. 93–410, title III, § 303, Sept. 3, 1974, 88 Stat. 1088.)

### § 1164. Authorization of appropriations

**(a) Fiscal years ending June 30, 1976, and September 30, 1977, through September 30, 1980**

For the fiscal years ending June 30, 1976, and September 30, 1977, 1978, 1979, and 1980, only such sums may be appropriated as the Congress may hereafter authorize by law.

**(b) Fiscal year ending June 30, 1975**

There are authorized to be appropriated to the National Aeronautics and Space Administration not to exceed $2,500,000 for the fiscal year ending June 30, 1975, for the purpose of preparing the program definition under section 1122(a) of this title.

**(c) Additional sums for Project**

In addition to sums authorized to be appropriated by subsection (b) of this section, there

are authorized to be appropriated to the fund not to exceed $50,000,000 annually, such sums to carry out the provisions of the loan guaranty program by the Project under subchapter II of this chapter.

(Pub. L. 93–410, title III, § 304, Sept. 3, 1974, 88 Stat. 1089.)

## CHAPTER 25—SURFACE MINING CONTROL AND RECLAMATION

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## SUBCHAPTER I—STATEMENT OF FINDINGS AND POLICY

### § 1201. Congressional findings

The Congress finds and declares that—

(a) extraction of coal and other minerals from the earth can be accomplished by various methods of mining, including surface mining;

(b) coal mining operations presently contribute significantly to the Nation's energy requirements; surface coal mining constitutes one method of extraction of the resource; the overwhelming percentage of the Nation's coal reserves can only be extracted by underground mining methods, and it is, therefore, essential to the national interest to insure the existence of an expanding and economically healthy underground coal mining industry;

(c) many surface mining operations result in disturbances of surface areas that burden and adversely affect commerce and the public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes, by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitats, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources;

(d) the expansion of coal mining to meet the Nation's energy needs makes even more urgent the establishment of appropriate standards to minimize damage to the environment and to productivity of the soil and to protect the health and safety of the public.[1]

(e) surface mining and reclamation technology are now developed so that effective and reasonable regulation of surface coal mining operations by the States and by the Federal Government in accordance with the requirements of this chapter is an appropriate and necessary means to minimize so far as practicable the adverse social, economic, and environmental effects of such mining operations;

(f) because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this chapter should rest with the States;

(g) surface mining and reclamation standards are essential in order to insure that competition in interstate commerce among sellers of coal produced in different States will not be used to undermine the ability of the several States to improve and maintain adequate standards on coal mining operations within their borders;

(h) there are a substantial number of acres of land throughout major regions of the United States disturbed by surface and underground coal on which little or no reclamation was conducted, and the impacts from these unreclaimed lands impose social and economic costs on residents in nearby and adjoining areas as well as continuing to impair environmental quality;

(i) while there is a need to regulate surface mining operations for minerals other than coal, more data and analyses are needed to serve as a basis for effective and reasonable regulation of such operations;

(j) surface and underground coal mining operations affect interstate commerce, contribute to the economic well-being, security, and general welfare of the Nation and should be conducted in an environmentally sound manner; and

(k) the cooperative effort established by this chapter is necessary to prevent or mitigate adverse environmental effects of present and future surface coal mining operations.

(Pub. L. 95–87, title I, § 101, Aug. 3, 1977, 91 Stat. 447.)

REFERENCES IN TEXT

This chapter, referred to in pars. (e), (f), and (k), was in the original ''this Act'', meaning Pub. L. 95–87, Aug. 3, 1977, 91 Stat. 445, as amended, which enacted this chapter and amended section 1114 of Title 18, Crimes and Criminal Procedure. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–432, div. C, title II, § 200, Dec. 20, 2006, 120 Stat. 3006, provided that: ''This title [enacting section 1244 of this title, amending sections 1231 to 1233, 1236, 1238, 1240a, 1260, 1300, and 1302 of this title and sections 9701, 9702, 9704 to 9707, 9711, 9712, and 9721 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under section 1232 of this title and sections 9701, 9704, and 9712 of Title 26] may be cited as the 'Surface Mining Control and Reclamation Act Amendments of 2006'.''

SHORT TITLE OF 1990 AMENDMENTS

Pub. L. 101–508, title VI, § 6001, Nov. 5, 1990, 104 Stat. 1388–289, provided that: ''This subtitle [subtitle A (§§ 6001–6014) of title VI of Pub. L. 101–508, enacting section 1240a of this title, amending sections 1231 to 1237, 1239, 1257, and 1302 of this title, and enacting provisions set out as notes under section 1231 of this title] may be cited as the 'Abandoned Mine Reclamation Act of 1990'.''

Pub. L. 101–498, § 1, Nov. 2, 1990, 104 Stat. 1207, provided that: ''This Act [enacting section 1230a of this title] may be cited as the 'Strategic and Critical Minerals Act of 1990'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–483, § 13, Oct. 12, 1988, 102 Stat. 2341, provided that: ''This Act [amending sections 1221, 1222, 1224, 1226, 1229, and 1230 of this title and enacting provisions set out as notes under this section and section 1229 of this title] may be cited as the Mining and Mineral Resources Research Institute Amendments of 1988.''

SHORT TITLE

Section 1 of Pub. L. 95–87 provided: ''That this Act [enacting this chapter and amending section 1114 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Surface Mining Control and Reclamation Act of 1977'.''

Pub. L. 98–409, § 11, as added by Pub. L. 100–483, § 12, Oct. 12, 1988, 102 Stat. 2341; amended by Pub. L. 104–312, § 1(b), Oct. 19, 1996, 110 Stat. 3819, provided that: ''This Act [enacting subchapter III of this chapter] may be cited as the 'Mining and Mineral Resources Institutes Act'.''

## § 1202. Statement of purpose

It is the purpose of this chapter to—

[1] So in original. The period probably should be a semicolon.

(a) establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations;

(b) assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from such operations;

(c) assure that surface mining operations are not conducted where reclamation as required by this chapter is not feasible;

(d) assure that surface coal mining operations are so conducted as to protect the environment;

(e) assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations;

(f) assure that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy;

(g) assist the States in developing and implementing a program to achieve the purposes of this chapter;

(h) promote the reclamation of mined areas left without adequate reclamation prior to August 3, 1977, and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public;

(i) assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this chapter;

(j) provide a means for development of the data and analyses necessary to establish effective and reasonable regulation of surface mining operations for other minerals;

(k) encourage the full utilization of coal resources through the development and application of underground extraction technologies;

(*l*) stimulate, sponsor, provide for and/or supplement present programs for the conduct of research investigations, experiments, and demonstrations, in the exploration, extraction, processing, development, and production of minerals and the training of mineral engineers and scientists in the field of mining, minerals resources, and technology, and the establishment of an appropriate research and training center in various States; and

(m) wherever necessary, exercise the full reach of Federal constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations.

(Pub. L. 95–87, title I, § 102, Aug. 3, 1977, 91 Stat. 448.)

## SUBCHAPTER II—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

### § 1211. Office of Surface Mining Reclamation and Enforcement

**(a) Establishment**

There is established in the Department of the Interior, the Office of Surface Mining Reclamation and Enforcement (hereinafter referred to as the ''Office'').

**(b) Appointment, compensation, duties, etc., of Director; employees**

The Office shall have a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level V of the Executive Schedule under section 5315[1] of title 5, and such other employees as may be required. Pursuant to section 5108 of title 5, and after consultation with the Secretary, the Director of the Office of Personnel Management shall determine the necessary number of positions in general schedule employees in grade 16, 17, and 18 to perform functions of this subchapter and shall allocate such positions to the Secretary. The Director shall have the responsibilities provided under subsection (c) of this section and those duties and responsibilities relating to the functions of the Office which the Secretary may assign, consistent with this chapter. Employees of the Office shall be recruited on the basis of their professional competence and capacity to administer the provisions of this chapter. The Office may use, on a reimbursable basis when appropriate, employees of the Department and other Federal agencies to administer the provisions of this chapter, providing that no legal authority, program, or function in any Federal agency which has as its purpose promoting the development or use of coal or other mineral resources or regulating the health and safety of miners under provisions of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742) [30 U.S.C. 801 et seq.], shall be transferred to the Office.

**(c) Duties of Secretary**

The Secretary, acting through the Office, shall—

(1) administer the programs for controlling surface coal mining operations which are required by this chapter; review and approve or disapprove State programs for controlling surface coal mining operations and reclaiming abandoned mined lands; make those investigations and inspections necessary to insure compliance with this chapter; conduct hearings, administer oaths, issue subpenas, and compel the attendance of witnesses and production of written or printed material as provided for in this chapter; issue cease-and-desist orders; review and vacate or modify or approve orders and decisions; and order the suspension, revocation, or withholding of any permit for failure to comply with any of the provisions of this chapter or any rules and regulations adopted pursuant thereto;

[1] So in original. Probably should be section ''5316''.

(2) publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this chapter;

(3) administer the State grant-in-aid program for the development of State programs for surface and mining and reclamation operations provided for in subchapter V of this chapter;

(4) administer the program for the purchase and reclamation of abandoned and unreclaimed mined areas pursuant to subchapter IV of this chapter;

(5) administer the surface mining and reclamation research and demonstration project authority provided for in this chapter;

(6) consult with other agencies of the Federal Government having expertise in the control and reclamation of surface mining operations and assist States, local governments, and other eligible agencies in the coordination of such programs;

(7) maintain a continuing study of surface mining and reclamation operations in the United States;

(8) develop and maintain an Information and Data Center on Surface Coal Mining, Reclamation, and Surface Impacts of Underground Mining, which will make such data available to the public and the Federal, regional, State, and local agencies conducting or concerned with land use planning and agencies concerned with surface and underground mining and reclamation operations;

(9) assist the States in the development of State programs for surface coal mining and reclamation operations which meet the requirements of this chapter, and at the same time, reflect local requirements and local environmental and agricultural conditions;

(10) assist the States in developing objective scientific criteria and appropriate procedures and institutions for determining those areas of a State to be designated unsuitable for all or certain types of surface coal mining pursuant to section 1272 of this title;

(11) monitor all Federal and State research programs dealing with coal extraction and use and recommend to Congress the research and demonstration projects and necessary changes in public policy which are designated to (A) improve feasibility of underground coal mining, and (B) improve surface mining and reclamation techniques directed at eliminating adverse environmental and social impacts;

(12) cooperate with other Federal agencies and State regulatory authorities to minimize duplication of inspections, enforcement, and administration of this chapter; and

(13) perform such other duties as may be provided by law and relate to the purposes of this chapter.

**(d) Restriction on use of Federal coal mine health and safety inspectors**

The Director shall not use either permanently or temporarily any person charged with responsibility of inspecting coal mines under the Federal Coal Mine Health and Safety Act of 1969 [30 U.S.C. 801 et seq.], unless he finds and publishes such finding in the Federal Register, that such activities would not interfere with such inspections under the 1969 Act.

**(e) Repealed. Pub. L. 96–511, § 4(b), Dec. 11, 1980, 94 Stat. 2826**

**(f) Conflict of interest; penalties; rules and regulations; report to Congress**

No employee of the Office or any other Federal employee performing any function or duty under this chapter shall have a direct or indirect financial interest in underground or surface coal mining operations. Whoever knowingly violates the provisions of the above sentence shall, upon conviction, be punished by a fine of not more than $2,500, or by imprisonment for not more than one year, or both. The Director shall (1) within sixty days after August 3, 1977, publish regulations, in accordance with section 553 of title 5, to establish the methods by which the provisions of this subsection will be monitored and enforced, including appropriate provisions for the filing by such employees and the review of statements and supplements thereto concerning their financial interests which may be affected by this subsection, and (2) report to the Congress as part of the annual report (section 1296 of this title) on the actions taken and not taken during the preceding calendar year under this subsection.

**(g) Petition for issuance, amendment, or repeal of rule; filing; hearing or investigation; notice of denial**

(1) After the Secretary has adopted the regulations required by section 1251 of this title, any person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of a rule under this chapter.

(2) Such petitions shall be filed in the principal office of the Director and shall set forth the facts which it is claimed established that it is necessary to issue, amend, or repeal a rule under this chapter.

(3) The Director may hold a public hearing or may conduct such investigation or proceeding as the Director deems appropriate in order to determine whether or not such petition should be granted.

(4) Within ninety days after filing of a petition described in paragraph (1), the Director shall either grant or deny the petition. If the Director grants such petition, the Director shall promptly commence an appropriate proceeding in accordance with the provisions of this chapter. If the Director denies such petition, the Director shall so notify the petitioner in writing setting forth the reasons for such denial.

(Pub. L. 95–87, title II, § 201, Aug. 3, 1977, 91 Stat. 449; Pub. L. 95–240, title I, § 100, Mar. 7, 1978, 92 Stat. 109; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 96–511, § 4(b), Dec. 11, 1980, 94 Stat. 2826.)

REFERENCES IN TEXT

The Federal Coal Mine Health and Safety Act of 1969, referred to in subsecs. (b) and (d), is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended, which was redesignated the Federal Mine Safety and Health Act of 1977 by Pub. L. 95–164, title I, § 101, Nov. 9, 1977, 91 Stat. 1290, and is classified principally to chapter 22 (§ 801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

AMENDMENTS

1980—Subsec. (e). Pub. L. 96–511 struck subsec. (e) which provided for consideration of Office of Surface Mining Reclamation and Enforcement as an independent Federal regulatory agency. See section 3502(10) of Title 44, Public Printing and Documents.

1978—Subsec. (b). Pub. L. 95–240 substituted ''V'' for ''IV''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–511 effective Apr. 1, 1981, see section 5 of Pub. L. 96–511, set out as a note under section 2904 of Title 44, Public Printing and Documents.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (f) of this section relating to requirement to report to Congress on actions taken and not taken under subsec. (f), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 109 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

''The Director of the Office of Personnel Management'' substituted for ''a majority of members of the Civil Service Commission'' in subsec. (b) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

TRAVEL AND PER DIEM EXPENSES

Pub. L. 100–446, title I, Sept. 27, 1988, 102 Stat. 1793, provided: ''That notwithstanding any other provisions of law, appropriations for the Office of Surface Mining Reclamation and Enforcement may, hereafter, provide for the travel and per diem expenses of State and tribal personnel attending OSMRE sponsored training''.

Similar provisions were contained in the following appropriations acts:

Pub. L. 109–54, title I, Aug. 2, 2005, 119 Stat. 512.

Pub. L. 108–447, div. E, title I, Dec. 8, 2004, 118 Stat. 3054.

Pub. L. 108–108, title I, Nov. 10, 2003, 117 Stat. 1256.

Pub. L. 108–7, div. F, title I, Feb. 20, 2003, 117 Stat. 230.

Pub. L. 107–63, title I, Nov. 5, 2001, 115 Stat. 429.

Pub. L. 106–291, title I, Oct. 11, 2000, 114 Stat. 933.

Pub. L. 106–113, div. B, § 1000(a)(3) [title I], Nov. 29, 1999, 113 Stat. 1535, 1501A–147.

Pub. L. 105–277, div. A, § 101(e) [title I], Oct. 21, 1998, 112 Stat. 2681–231, 2681–244.

Pub. L. 105–83, title I, Nov. 14, 1997, 111 Stat. 1553.

Pub. L. 104–208, div. A, title I, § 101(d) [title I], Sept. 30, 1996, 110 Stat. 3009–181, 3009–191.

Pub. L. 104–134, title I, § 101(c) [title I], Apr. 26, 1996, 110 Stat. 1321–156, 1321–168; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 103–332, title I, Sept. 30, 1994, 108 Stat. 2510.

Pub. L. 103–138, title I, Nov. 11, 1993, 107 Stat. 1389.

Pub. L. 102–381, title I, Oct. 5, 1992, 106 Stat. 1387.

Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1002.

Pub. L. 101–512, title I, Nov. 5, 1990, 104 Stat. 1927.

Pub. L. 101–121, title I, Oct. 23, 1989, 103 Stat. 712.

## SUBCHAPTER III—STATE MINING AND MINERAL RESOURCES RESEARCH INSTITUTES

CODIFICATION

Subchapter was not enacted as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

### § 1221. Authorization of State allotments to institutes

(a)(1) There are authorized to be appropriated to the Secretary of the Interior (hereafter in this subchapter referred to as the ''Secretary'') funds adequate to provide for each participating State $400,000 for each of the fiscal years ending September 30, 1990, through September 30, 1994, to assist the States in carrying on the work of a competent and qualified mining and mineral resources research institute or center (hereafter in this subchapter referred to as the ''institute'') at one public college or university in the State which meets the eligibility criteria established in section 1230 of this title.

(2)(A) Funds appropriated under this section shall be made available for grants to be matched on a basis of no less than 2 non-Federal dollars for each Federal dollar.

(B) If there is more than one such eligible college or university in a State, funds appropriated under this subchapter shall, in the absence of a designation to the contrary by act of the legislature of the State, be granted to one such college or university designated by the Governor of the State.

(C) Where a State does not have a public college or university eligible under section 1230 of this title, the Committee on Mining and Mineral Resources Research established in section 1229 of this title (hereafter in this subchapter referred to as the ''Committee'') may allocate the State's allotment to one private college or university which it determines to be eligible under such section.

(b) It shall be the duty of each institute to plan and conduct, or arrange for a component or components of the college or university with which it is affiliated to conduct research, investigations, demonstrations, and experiments of either, or both, a basic or practical nature in relation to mining and mineral resources, and to provide for the training of mineral engineers and scientists through such research, investigations, demonstrations, and experiments. The subject of such research, investigation, demonstration, experiment, and training may include exploration; extraction; processing; development; production of fuel and nonfuel mineral resources; mining and mineral technology; supply and demand for minerals; conservation and best use of available supplies of minerals; the economic, legal, social, engineering, recreational, biological, geographic, ecological, and other aspects of mining, mineral resources, and mineral reclamation. Such research, investigation, demonstration, experiment and training shall consider the interrelationship with the natural environment, the varying conditions and needs of the respective States, and mining

and mineral resources research projects being conducted by agencies of the Federal and State governments and other institutes.

(Pub. L. 98–409, § 1, Aug. 29, 1984, 98 Stat. 1536; Pub. L. 100–483, §§ 2–4, Oct. 12, 1988, 102 Stat. 2339.)

CODIFICATION

Section was enacted as part of the Mining and Mineral Resources Research Institute Act of 1984, and not as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1221, Pub. L. 95–87, title III, § 301, Aug. 3, 1977, 91 Stat. 451, contained provisions similar to this section covering fiscal years 1978 through 1984.

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–483, § 2, substituted "$400,000 for each of the fiscal years ending September 30, 1990, through September 30, 1994" for "$300,000 for the fiscal year ending September 30, 1985, and $400,000 to each participating State for each fiscal year thereafter for a total of five years".

Subsec. (a)(2)(A). Pub. L. 100–483, § 3, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "Funds appropriated under this section shall be made available for grants to be matched on a basis of no less than one and one-half non-Federal dollars for each Federal dollar during the fiscal years ending September 30, 1985, and September 30, 1986, and no less than two non-Federal dollars for each Federal dollar during the fiscal years ending September 30, 1987, September 30, 1988, and September 30, 1989."

Subsec. (b). Pub. L. 100–483, § 4, substituted "production of fuel and nonfuel mineral resources" for "production of mineral resources".

SHORT TITLE

For short title of Pub. L. 98–409, which enacted this subchapter, as the Mining and Mineral Resources Institutes Act, see section 11 of Pub. L. 98–409, as amended, set out as a note under section 1201 of this title.

## § 1222. Research funds to institutes

### (a) Authorization of appropriations

There is authorized to be appropriated to the Secretary not more than $15,000,000 for each of the fiscal years ending September 30, 1990, through September 30, 1994, which shall remain available until expended. Such funds when appropriated shall be made available to an institute or to institutes participating in a generic mineral technology center to meet the necessary expenses for purposes of—

(1) specific mineral research and demonstration projects of broad application, which could not otherwise be undertaken, including the expenses of planning and coordinating regional mining and mineral resources research projects by two or more institutes; and

(2) research into any aspects of mining and mineral resources problems related to the mission of the Department of the Interior, which are deemed by the Committee to be desirable and are not otherwise being studied.

There is authorized to be appropriated to the Secretary not more than $1,800,000 for each of the fiscal years after fiscal year 1996 to be made available by the Secretary to an institute or institutes experienced in investigating the continental shelf regions of the United States, the deep seabed and near shore environments of islands, and the Arctic and cold water regions as a source for nonfuel minerals. Such funds are to be used by the institute or institutes to assist in developing domestic technological capabilities required for the location of, and the efficient and environmentally sound recovery of, minerals (other than oil and gas) from the Nation's shallow and deep seabed.

### (b) Application for funds; contents

Each application for funds under subsection (a) of this section shall state, among other things, the nature of the project to be undertaken; the period during which it will be pursued; the qualifications of the personnel who will direct and conduct it; the estimated costs; the importance of the project to the Nation, region, or State concerned; its relation to other known research projects theretofore pursued or being pursued; the extent to which the proposed project will provide opportunity for the training of mining and mineral engineers and scientists; and the extent of participation by nongovernmental sources in the project.

### (c) Research facilities; selection of institutes; designation of funds for scholarships and fellowships

The Committee shall review all such funding applications and recommend to the Secretary the use of the institutes, insofar as practicable, to perform special research. Recommendations shall be made without regard to the race, religion, or sex of the personnel who will conduct and direct the research, and on the basis of the facilities available in relation to the particular needs of the research project; special geographic, geologic, or climatic conditions within the immediate vicinity of the institute; any other special requirements of the research project; and the extent to which such project will provide an opportunity for training individuals as mineral engineers and scientists. The Committee shall recommend to the Secretary the designation and utilization of such portions of the funds authorized to be appropriated by this section as it deems appropriate for the purpose of providing scholarships, graduate fellowships, and postdoctoral fellowships.

### (d) Requirements for receipt of funds

No funds shall be made available under subsection (a) of this section except for a project approved by the Secretary and all funds shall be made available upon the basis of merit of the project, the need for the knowledge which it is expected to produce when completed, and the opportunity it provides for the training of individuals as mineral engineers and scientists.

### (e) Restriction on application of funds

No funds made available under this section shall be applied to the acquisition by purchase or lease of any land or interests therein, or the rental, purchase, construction, preservation, or repair of any building.

(Pub. L. 98–409, § 2, Aug. 29, 1984, 98 Stat. 1537; Pub. L. 100–483, § 5, Oct. 12, 1988, 102 Stat. 2339; Pub. L. 104–312, § 1(a), Oct. 19, 1996, 110 Stat. 3819.)

CODIFICATION

Section was enacted as part of the Mining and Mineral Resources Research Institute Act of 1984, and not as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1222, Pub. L. 95–87, title III, § 302, Aug. 3, 1977, 91 Stat. 452, contained provisions similar to this section covering fiscal years 1978 through 1984.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–312 inserted at end ''There is authorized to be appropriated to the Secretary not more than $1,800,000 for each of the fiscal years after fiscal year 1996 to be made available by the Secretary to an institute or institutes experienced in investigating the continental shelf regions of the United States, the deep seabed and near shore environments of islands, and the Arctic and cold water regions as a source for nonfuel minerals. Such funds are to be used by the institute or institutes to assist in developing domestic technological capabilities required for the location of, and the efficient and environmentally sound recovery of, minerals (other than oil and gas) from the Nation's shallow and deep seabed.''

1988—Subsec. (a). Pub. L. 100–483, in introductory provisions, substituted ''not more than $15,000,000 for each of the fiscal years ending September 30, 1990, through September 30, 1994'' for ''$10,000,000 for the fiscal year ending September 30, 1985. This amount shall be increased by $1,000,000 for each fiscal year thereafter for four additional years'' and ''an institute or to institutes participating in a generic mineral technology center'' for ''institutes''.

## § 1223. Funding criteria

(a) Funds available to institutes under sections 1221 and 1222 of this title shall be paid at such times and in such amounts during each fiscal year as determined by the Secretary, and upon vouchers approved by him. Each institute shall—

(1) set forth its plan to provide for the training of individuals as mineral engineers and scientists under a curriculum appropriate to the field of mineral resources and mineral engineering and related fields;

(2) set forth policies and procedures which assure that Federal funds made available under this subchapter for any fiscal year will supplement and, to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available for purposes of this subchapter, and in no case supplant such funds; and

(3) have an officer appointed by its governing authority who shall receive and account for all funds paid under the provisions of this subchapter and shall make an annual report to the Secretary on or before the first day of September of each year, on work accomplished and the status of projects underway, together with a detailed statement of the amounts received under any provisions of this subchapter during the preceding fiscal year, and of its disbursements on schedules prescribed by the Secretary.

If any of the funds received by the authorized receiving officer of any institute under the provisions of this subchapter shall by any action or contingency be found by the Secretary to have been improperly diminished, lost, or misapplied, such funds shall be replaced by the State concerned and until so replaced no subsequent appropriation shall be allotted or paid to any institute of such State.

(b) The institutes are authorized and encouraged to plan and conduct programs under this subchapter in cooperation with each other and with such other agencies and individuals as may contribute to the solution of the mining and mineral resources problems involved. Moneys appropriated pursuant to this subchapter shall be available for paying the necessary expenses of planning, coordinating, and conducting such cooperative research.

(Pub. L. 98–409, § 3, Aug. 29, 1984, 98 Stat. 1538.)

CODIFICATION

Section was enacted as part of the Mining and Mineral Resources Research Institute Act of 1984, and not as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1223, Pub. L. 95–87, title III, § 303, Aug. 3, 1977, 91 Stat. 453, contained provisions similar to this section covering fiscal years 1978 through 1984.

## § 1224. Duties of Secretary

### (a) Consulting with other agencies; prescribing rules and regulations; furnishing advice and assistance; coordinating research

The Secretary, acting through the Director of the United States Bureau of Mines, shall administer this subchapter and, after full consultation with other interested Federal agencies, shall prescribe such rules and regulations as may be necessary to carry out its provisions. The Secretary shall furnish such advice and assistance as will best promote the purposes of this subchapter, shall participate in coordinating research initiated under this subchapter by the institutes, shall indicate to them such lines of inquiry that seem most important, and shall encourage and assist in the establishment and maintenance of cooperation by and between the institutes and between them and other research organizations, the United States Department of the Interior, and other Federal establishments.

### (b) Annual ascertainment of compliance

On or before the first day of July in each year beginning after August 29, 1984, the Secretary shall ascertain whether the requirements of section 1223(a) of this title have been met as to each institute and State.

(Pub. L. 98–409, § 4, Aug. 29, 1984, 98 Stat. 1538; Pub. L. 100–483, § 6, Oct. 12, 1988, 102 Stat. 2340; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

CODIFICATION

Subsec. (c) of this section, which required the Secretary to make an annual report to Congress on the receipts, expenditures, and work of the institutes in all States under the provisions of this subchapter, 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.

Section was enacted as part of the Mining and Mineral Resources Research Institute Act of 1984, and not as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1224, Pub. L. 95–87, title III, § 304, Aug. 3, 1977, 91 Stat. 454, contained provisions similar to this section covering fiscal years 1978 through 1984.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–483 inserted ", acting through the Director of the Bureau of Mines," after "The Secretary".

CHANGE OF NAME

"United States Bureau of Mines" substituted for "Bureau of Mines" in subsec. (a) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

### § 1225. Effect on colleges and universities

Nothing in this subchapter shall be construed to impair or modify the legal relationship existing between any of the colleges or universities under whose direction an institute is established and the government of the State in which it is located, and nothing in this subchapter shall in any way be construed to authorize Federal control or direction of education at any college or university.

(Pub. L. 98–409, § 5, Aug. 29, 1984, 98 Stat. 1539.)

CODIFICATION

Section was enacted as part of the Mining and Mineral Resources Research Institute Act of 1984, and not as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1225, Pub. L. 95–87, title III, § 305, Aug. 3, 1977, 91 Stat. 454, contained provisions similar to this section covering fiscal years 1978 through 1984.

### § 1226. Research

#### (a) Coordination with existing programs; availability of information to public

The Secretary shall obtain the continuing advice and cooperation of all agencies of the Federal Government concerned with mining and mineral resources, of State and local governments, and of private institutions and individuals to assure that the programs authorized by this subchapter will supplement and not be redundant with respect to established mining and minerals research programs, and to stimulate research in otherwise neglected areas, and to contribute to a comprehensive nationwide program of mining and minerals research, with due regard for the protection and conservation of the environment. The Secretary shall make generally available information and reports on projects completed, in progress, or planned under the provisions of this subchapter, in addition to any direct publication of information by the institutes themselves.

#### (b) Effect on Federal agencies

Nothing in this subchapter is intended to give or shall be construed as giving the Secretary any authority over mining and mineral resources research conducted by any agency of the Federal Government, or as repealing or diminishing existing authorities or responsibilities of any agency of the Federal Government to plan and conduct, contract for, or assist in research in its area of responsibility and concern with regard to mining and mineral resources.

#### (c) Availability of results to public

No research, demonstration, or experiment shall be carried out under this subchapter by an institute financed by grants under this subchapter, unless all uses, products, processes, patents, and other developments resulting therefrom, with such exception or limitation, if any, as the Secretary may find necessary in the public interest, are made available promptly to the general public. Patentable inventions shall be governed by the provisions of Public Law 96–517. Nothing contained in this section shall deprive the owner of any background patent relating to any such activities of any rights which that owner may have under that patent.

#### (d) Authorization of appropriations

(1) There is authorized to be appropriated to the Secretary $450,000 for each of the fiscal years ending September 30, 1990, through September 30, 1994, to administer this subchapter. No funds may be withheld by the Secretary for administrative expenses from those authorized to be appropriated by sections 1221 and 1222 of this title.

(2) There are authorized to be appropriated to the Secretary such sums as are necessary for the printing and publishing of the results of activities carried out by institutes and generic mineral technology centers under this subchapter, but such appropriations shall not exceed $550,000 in any single fiscal year.

(Pub. L. 98–409, § 6, Aug. 29, 1984, 98 Stat. 1539; Pub. L. 100–483, § 7, Oct. 12, 1988, 102 Stat. 2340.)

REFERENCES IN TEXT

Public Law 96–517, referred to in subsec. (c), is Pub. L. 96–517, Dec. 12, 1980, 94 Stat. 3015. Section 6(a) of Pub. L. 96–517, relating to patent rights in inventions made with Federal assistance, is classified to chapter 18 (§ 200 et seq.) of Title 35, Patents. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Mining and Mineral Resources Research Institute Act of 1984, and not as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1226, Pub. L. 95–87, title III, § 306, Aug. 3, 1977, 91 Stat. 454, contained provisions similar to this section covering fiscal years 1978 through 1984.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–483 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "There are authorized to be appropriated after September 30, 1984, such sums as are necessary for the printing and publishing of the results of activities carried out by institutes under this subchapter and for administrative planning and direction, but such appropriations shall not exceed $1,000,000 in any single fiscal year."

### § 1227. Center for cataloging

The Secretary shall establish a center for cataloging current and projected scientific research in all fields of mining and mineral resources.

Each Federal agency doing mining and mineral resources research shall cooperate by providing the cataloging center with information on work underway or scheduled by it. The cataloging center shall classify and maintain for public use a catalog of mining and mineral resources research and investigation projects in progress or scheduled by all Federal agencies and by such non-Federal agencies of government, colleges, universities, private institutions, firms, and individuals as may make such information available.

(Pub. L. 98–409, § 7, Aug. 29, 1984, 98 Stat. 1540.)

CODIFICATION

Section was enacted as part of the Mining and Mineral Resources Research Institute Act of 1984, and not as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1227, Pub. L. 95–87, title III, § 307, Aug. 3, 1977, 91 Stat. 455, contained provisions similar to this section covering fiscal years 1978 through 1984.

### § 1228. Interagency cooperation

The President shall, by such means as he deems appropriate, clarify agency responsibility for Federal mining and mineral resources research and provide for interagency coordination of such research, including the research authorized by this subchapter. Such coordination shall include—

(1) continuing review of the adequacy of the Government-wide program in mining and mineral resources research;

(2) identification and elimination of duplication and overlap between agency programs;

(3) identification of technical needs in various mining and mineral resources research categories;

(4) recommendations with respect to allocation of technical effort among Federal agencies;

(5) review of technical manpower needs, and findings concerning management policies to improve the quality of the Government-wide research effort; and

(6) actions to facilitate interagency communication at management levels.

(Pub. L. 98–409, § 8, Aug. 29, 1984, 98 Stat. 1540.)

CODIFICATION

Section was enacted as part of the Mining and Mineral Resources Research Institute Act of 1984, and not as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1228, Pub. L. 95–87, title III, § 308, Aug. 3, 1977, 91 Stat. 455, contained provisions similar to this section covering fiscal years 1978 through 1984.

### § 1229. Committee on Mining and Mineral Resources Research

#### (a) Appointment; composition

The Secretary shall appoint a Committee on Mining and Mineral Resources Research composed of—

(1) the Assistant Secretary of the Interior responsible for minerals and mining research, or his delegate;

(2) the Director, United States Bureau of Mines, or his delegate;

(3) the Director, United States Geological Survey, or his delegate;

(4) the Director of the National Science Foundation, or his delegate;

(5) the President, National Academy of Sciences, or his delegate;

(6) the President, National Academy of Engineering, or his delegate; and

(7) not more than 7 other persons who are knowledgeable in the fields of mining and mineral resources research, including two university administrators involved in the conduct of programs authorized by this subchapter, 3 representatives from the mining industry, a working miner, and a representative from the conservation community. In making these 7 appointments, the Secretary shall consult with interested groups.

#### (b) Consultation and recommendations

The Committee shall consult with, and make recommendations to, the Secretary on all matters relating to mining and mineral resources research and the determinations that are required to be made under this subchapter. The Secretary shall consult with, and consider recommendations of, such Committee in such matters.

#### (c) Compensation, travel, subsistence and related expenses

Committee members, other than officers or employees of Federal, State, or local governments, shall be, for each day (including travel-time) during which they are performing Committee business, paid at a rate fixed by the Secretary but not[1] excess of the daily equivalent of the maximum rate of pay for grade GS–18 of the General Schedule under section 5332 of title 5, and shall be fully reimbursed for travel, subsistence, and related expenses.

#### (d) Chairmanship of Committee

The Committee shall be jointly chaired by the Assistant Secretary of the Interior responsible for minerals and mining and a person to be elected by the Committee from among the members referred to in paragraphs (5), (6), and (7) of subsection (a) of this section.

#### (e) National plan for research

The Committee shall develop a national plan for research in mining and mineral resources, considering ongoing efforts in the universities, the Federal Government, and the private sector, and shall formulate and recommend a program to implement the plan utilizing resources provided for under this subchapter. The Committee shall submit such plan to the Secretary, the President, and the Congress on or before March 1, 1986, and shall submit an annual update of such plan by January 15 of each calendar year.

#### (f) Application of Federal Advisory Committee Act

Section 10 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Committee.

(Pub. L. 98–409, § 9, Aug. 29, 1984, 98 Stat. 1540; Pub. L. 100–483, §§ 8, 9, Oct. 12, 1988, 102 Stat. 2340;

[1] So in original. Probably should be followed by ''in''.

Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

REFERENCES IN TEXT

Section 10 of the Federal Advisory Committee Act, referred to in subsec. (f), is section 10 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was enacted as part of the Mining and Mineral Resources Research Institute Act of 1984, and not as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1229, Pub. L. 95–87, title III, § 309, Aug. 3, 1977, 91 Stat. 455, contained provisions similar to this section covering fiscal years 1978 through 1984.

AMENDMENTS

1988—Subsec. (a)(7). Pub. L. 100–483, § 8, substituted ''7 other persons'' for ''six other persons'', ''this subchapter, 3'' for ''section 301 of the Surface Mining Control and Reclamation Act of 1977, two'', and ''7 appointments'' for ''six appointments''.

Subsec. (e). Pub. L. 100–483, § 9, substituted ''submit an annual update of such plan by January 15 of each calendar year'' for ''update the plan annually thereafter''.

CHANGE OF NAME

''United States Bureau of Mines'' substituted for ''Bureau of Mines'' in subsec. (a)(2) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e) of this section relating to the requirement to submit annual updates of the national plan to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 157 of House Document No. 103–7.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

REPORTS

Section 11 of Pub. L. 100–483 directed Committee on Mining and Mineral Resources Research to submit a report to Congress by Jan. 15, 1992, on programs established under this subchapter, including reviews of activities of the institutes and generic mineral technology centers established under this subchapter, each institute's and center's eligibility pursuant to section 1230 of this title, and recommendations on establishing new generic mineral technology centers, as well as phasing out or consolidating existing centers, and further directed Committee to submit to Congress, by Jan. 15, 1990, a proposal to establish a Generic Mineral Technology Center on Strategic and Critical Minerals.

## § 1230. Eligibility criteria

(a) The Committee shall determine the eligibility of a college or university to participate as a mining and mineral resources research institute under this subchapter using criteria which include—

(1) the presence of a substantial program of graduate instruction and research in mining or mineral extraction or closely related fields which has a demonstrated history of achievement;

(2) evidence of institutional commitment for the purposes of this subchapter;

(3) evidence that such institution has or can obtain significant industrial cooperation in activities within the scope of this subchapter; and

(4) the presence of an engineering program in mining or minerals extraction that is accredited by the Accreditation Board for Engineering and Technology, or evidence of equivalent institutional capability as determined by the Committee.

(b)(1) Notwithstanding the provisions of subsection (a) of this section, those colleges or universities which, on October 12, 1988, have a mining or mineral resources research institute program which has been found to be eligible pursuant to this subchapter shall continue to be eligible subject to review at least once during the period authorized by the Mining and Mineral Resources Research Institute Amendments of 1988, under the provisions of subsection (a) of this section. The results of such review shall be submitted by January 15, 1992, pursuant to section 11(a)(2) of the Mining and Mineral Resources Research Institute Amendments of 1988.

(2) Generic mineral technology centers established by the Secretary under this subchapter are to be composed of institutes eligible pursuant to subsection (a) of this section. Existing generic mineral technology centers shall continue to be eligible under this subchapter subject to at least one review prior to January 15, 1992, pursuant to section 11(a)(3) of the Mining and Mineral Resources Research Institute Amendments of 1988.

(Pub. L. 98–409, § 10, Aug. 29, 1984, 98 Stat. 1541; Pub. L. 100–483, § 10, Oct. 12, 1988, 102 Stat. 2340.)

REFERENCES IN TEXT

The Mining and Mineral Resources Research Institute Amendments of 1988, referred to in subsec. (b), is Pub. L. 100–483, Oct. 12, 1988, 102 Stat. 2339. Section 11(a)(2) and (3) of the Mining and Mineral Resources Research Institute Amendments of 1988 is set out as a note under section 1229 of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Mining and Mineral Resources Research Institute Act of 1984, and not as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–483 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Notwithstanding the provisions of subsection (a) of this section, those colleges or universities which, on August 29, 1984, have a mining or mineral resources research institute program which has been found to be eligible pursuant to title III of the Surface Mining Control and Reclamation Act of 1977 (91 Stat. 445) shall

continue to be eligible pursuant to this subchapter for a period of four fiscal years beginning October 1, 1984.''

### § 1230a. Strategic Resources Generic Mineral Technology Center

**(a) Establishment**

The Secretary of[1] Interior is authorized and directed to establish a Strategic Resources Mineral Technology Center (hereinafter referred to as the ''center'') for the purpose of improving existing, and developing new, technologies that will decrease the dependence of the United States on supplies of strategic and critical minerals.

**(b) Functions**

The center shall—

(1) provide for studies and technology development in the areas of mineral extraction and refining processes, product substitution and conservation of mineral resources through recycling and advanced processing and fabrication methods;

(2) identify new deposits of strategic and critical mineral resources; and

(3) facilitate the transfer of information, studies, and technologies developed by the center to the private sector.

**(c) Criteria**

The Secretary shall establish the center referred to in subsection (a) of this section at a university that—

(1) does not currently host a generic mineral technology center;

(2) has established advanced degree programs in geology and geological engineering, and metallurgical and mining engineering;

(3) has expertise in materials and advanced processing research; and

(4) is located west of the 100th meridian.

**(d) Authorization of appropriations**

There is authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 98–409, § 12, as added Pub. L. 101–498, § 2, Nov. 2, 1990, 104 Stat. 1207.)

CODIFICATION

Section was enacted as part of the Mining and Mineral Resources Research Institute Act of 1984, and not as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

## SUBCHAPTER IV—ABANDONED MINE RECLAMATIONS

### § 1231. Abandoned Mine Reclamation Fund

**(a) Establishment; administration; State funds**

There is created on the books of the Treasury of the United States a trust fund to be known as the Abandoned Mine Reclamation Fund (hereinafter referred to as the ''fund'') which shall be administered by the Secretary of the Interior. State abandoned mine reclamation funds (State funds) generated by grants from this subchapter shall be established by each State pursuant to an approved State program.

[1] So in original. Probably should be ''of the''.

**(b) Sources of deposits to fund**

The fund shall consist of amounts deposited in the fund, from time to time derived from—

(1) the reclamation fees levied under section 1232 of this title;

(2) any user charge imposed on or for land reclaimed pursuant to this subchapter after expenditures for maintenance have been deducted;

(3) donations by persons, corporations, associations, and foundations for the purposes of this subchapter;

(4) recovered moneys as provided for in this subchapter; and

(5) interest credited to the fund under subsection (e) of this section.

**(c) Use of moneys**

Moneys in the fund may be used for the following purposes:

(1) reclamation and restoration of land and water resources adversely affected by past coal mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas, and abandoned coal refuse disposal areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by coal mine drainage including restoration of stream beds, and construction and operation of water treatment plants; prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ; prevention, abatement, and control of coal mine subsidence; and establishment of self-sustaining, individual State administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining in those States which have reclamation plans approved in accordance with section 1253 of this title: *Provided*, That funds used for this purpose shall not exceed $3,000,000 of the funds made available to any State under section 1232(g)(1) of this title;

(2) acquisition and filling of voids and sealing of tunnels, shafts, and entryways under section 1239 of this title;

(3) acquisition of land as provided for in this subchapter;

(4) enforcement and collection of the reclamation fee provided for in section 1232 of this title;

(5) restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining which constitutes an emergency as provided for in this subchapter;

(6) grants to the States to accomplish the purposes of this subchapter;

(7) administrative expenses of the United States and each State to accomplish the purposes of this subchapter;

(8) for use under section 1240a of this title;

(9) for the purpose of section 1257(c) of this title, except that not more than $10,000,000 shall annually be available for such purpose;

(10) for the purpose described in section 1232(h) of this title; and

(11) all other necessary expenses to accomplish the purposes of this subchapter.

**(d) Availability of moneys; no fiscal year limitation**

**(1) In general**

Moneys from the fund for expenditures under subparagraphs (A) through (D) of section 1232(g)(3) of this title shall be available only when appropriated for those subparagraphs.

**(2) No fiscal year limitation**

Appropriations described in paragraph (1) shall be made without fiscal year limitation.

**(3) Other purposes**

Moneys from the fund shall be available for all other purposes of this subchapter without prior appropriation as provided in subsection (f).

**(e) Interest**

The Secretary of the Interior shall notify the Secretary of the Treasury as to what portion of the fund is not, in his judgment, required to meet current withdrawals. The Secretary of the Treasury shall invest such portion of the fund in public debt securities with maturities suitable for achieving the purposes of the transfers under section 1232(h) of this title and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to, and form a part of, the fund for the purpose of the transfers under section 1232(h) of this title.

**(f) General limitation on obligation authority**

**(1) In general**

From amounts deposited into the fund under subsection (b), the Secretary shall distribute during each fiscal year beginning after September 30, 2007, an amount determined under paragraph (2).

**(2) Amounts**

**(A) For fiscal years 2008 through 2022**

For each of fiscal years 2008 through 2022, the amount distributed by the Secretary under this subsection shall be equal to—

(i) the amounts deposited into the fund under paragraphs (1), (2), and (4) of subsection (b) for the preceding fiscal year that were allocated under paragraphs (1) and (5) of section 1232(g) of this title; plus

(ii) the amount needed for the adjustment under section 1232(g)(8) of this title for the current fiscal year.

**(B) Fiscal years 2023 and thereafter**

For fiscal year 2023 and each fiscal year thereafter, to the extent that funds are available, the Secretary shall distribute an amount equal to the amount distributed under subparagraph (A) during fiscal year 2022.

**(3) Distribution**

**(A) In general**

Except as provided in subparagraph (B), for each fiscal year, of the amount to be distributed to States and Indian tribes pursuant to paragraph (2), the Secretary shall distribute—

(i) the amounts allocated under paragraph (1) of section 1232(g) of this title, the amounts allocated under paragraph (5) of section 1232(g) of this title, and any amount reallocated under section 1240a(h)(3) of this title in accordance with section 1240a(h)(2) of this title, for grants to States and Indian tribes under section 1232(g)(5) of this title; and

(ii) the amounts allocated under section 1232(g)(8) of this title.

**(B) Exclusion**

Beginning on October 1, 2007, certified States shall be ineligible to receive amounts under section 1232(g)(1) of this title.

**(4) Availability**

Amounts in the fund available to the Secretary for obligation under this subsection shall be available until expended.

**(5) Addition**

**(A) In general**

Subject to subparagraph (B), the amount distributed under this subsection for each fiscal year shall be in addition to the amount appropriated from the fund during the fiscal year.

**(B) Exceptions**

Notwithstanding paragraph (3), the amount distributed under this subsection for the first 4 fiscal years beginning on and after October 1, 2007, shall be equal to the following percentage of the amount otherwise required to be distributed:

(i) 50 percent in fiscal year 2008.

(ii) 50 percent in fiscal year 2009.

(iii) 75 percent in fiscal year 2010.

(iv) 75 percent in fiscal year 2011.

(Pub. L. 95–87, title IV, § 401, Aug. 3, 1977, 91 Stat. 456; Pub. L. 98–473, title I, § 101(c) [title III, § 324], Oct. 12, 1984, 98 Stat. 1837, 1875; Pub. L. 101–508, title VI, § 6002, Nov. 5, 1990, 104 Stat. 1388–289; Pub. L. 102–486, title XIX, § 19143(b)(3)(A), title XXV, § 2504(c)(1), Oct. 24, 1992, 106 Stat. 3056, 3105; Pub. L. 109–432, div. C, title II, § 201(a), Dec. 20, 2006, 120 Stat. 3006.)

AMENDMENTS

2006—Subsec. (c)(2) to (13). Pub. L. 109–432, § 201(a)(1), redesignated pars. (3) to (5) and (7) to (13) as (2) to (4) and (5) to (11), respectively, and struck out former pars. (2) and (6) which read as follows:

''(2) for transfer on an annual basis to the Secretary of Agriculture for use under section 1236 of this title;'' and

''(6) studies, research, and demonstration projects by the Department of the Interior to such extent or in such amounts as are provided in appropriation Acts with public and private organizations conducted in accordance with section 3501 of the Omnibus Budget Reconciliation Act of 1986, conducted for the purposes of this subchapter;''.

Subsec. (d). Pub. L. 109–432, § 201(a)(2), added subsec. (d) and struck out former subsec. (d) which read as follows: ''Moneys from the fund shall be available for the purposes of this subchapter, only when appropriated therefor, and such appropriations shall be made without fiscal year limitations.''

Subsec. (e). Pub. L. 109–432, § 201(a)(3), in second sentence, substituted ''achieving the purposes of the trans-

fers under section 1232(h) of this title'' for ''the needs of such fund'' and, in third sentence, inserted ''for the purpose of the transfers under section 1232(h) of this title'' before period at end.

Subsec. (f). Pub. L. 109–432, § 201(a)(4), added subsec. (f).

1992—Subsec. (c)(6). Pub. L. 102–486, § 2504(c)(1), substituted ''studies, research, and demonstration projects'' for ''studies'' and struck out ''to provide information, advice, and technical assistance, including research and demonstration projects'' after ''private organizations''.

Subsec. (c)(12), (13). Pub. L. 102–486, § 19143(b)(3)(A), added par. (12) and redesignated former par. (12) as (13).

1990—Subsec. (b)(1). Pub. L. 101–508, § 6002(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the reclamation fees levied under section 1232 of this title: *Provided*, That an amount not to exceed 10 per centum of such reclamation fees collected for any calendar quarter shall be reserved beginning in the first calendar year in which the fee is imposed and continuing for the remainder of that fiscal year and for the period in which such fee is imposed by law, for the purpose of section 1257(c) of this title, subject to appropriation pursuant to authorization under section 1302 of this title: *Provided further*, That not more than $10,000,000 shall be available for such purposes;''.

Subsec. (b)(5). Pub. L. 101–508, § 6002(a)(2), added par. (5).

Subsec. (c)(1). Pub. L. 101–508, § 6002(b)(1), substituted ''section 1232(g)(1)'' for ''section 1232(g)(2)''.

Subsec. (c)(2). Pub. L. 101–508, § 6002(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''for use under section 1236 of this title, by the Secretary of Agriculture, of up to one-fifth of the money deposited in the funds annually and transferred by the Secretary of the Interior to the Secretary of Agriculture for such purposes;''.

Subsec. (c)(6). Pub. L. 101–508, § 6002(b)(3), struck out ''by contract'' after ''Department of the Interior'' and inserted ''conducted in accordance with section 3501 of the Omnibus Budget Reconciliation Act of 1986'' after ''projects''.

Subsec. (c)(10) to (12). Pub. L. 101–508, § 6002(b)(5), added pars. (10) and (11) and redesignated former par. (10) as (12).

Subsec. (e). Pub. L. 101–508, § 6002(c), added subsec. (e).

1984—Subsec. (c)(1). Pub. L. 98–473 inserted at end ''and establishment of self-sustaining, individual State administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining in those States which have reclamation plans approved in accordance with section 1253 of this title: *Provided*, That funds used for this purpose shall not exceed $3,000,000 of the funds made available to any State under section 1232(g)(2) of this title;''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 6014 of Pub. L. 101–508 provided that: ''The amendments made by this subtitle [subtitle A (§§ 6001–6014) of title VI of Pub. L. 101–508, enacting section 1240a of this title and amending this section and sections 1232 to 1237, 1239, 1257, and 1302 of this title] shall take effect at the beginning of the first fiscal year [Oct. 1, 1991] immediately following the fiscal year in which this subtitle is enacted.''

SAVINGS PROVISION

Section 6013 of Pub. L. 101–508 provided that: ''Nothing in this subtitle [subtitle A (§§ 6001–6014) of title VI of Pub. L. 101–508, see Short Title of 1990 Amendment note set out under section 1201 of this title] shall be construed to affect the certifications made by the State of Wyoming, the State of Montana, and the State of Louisiana to the Secretary of the Interior prior to the date of enactment of this subtitle [Nov. 5, 1990] that such State has completed the reclamation of eligible abandoned coal mine lands.''

ABANDONED MINE RECLAMATION FUND; DEPOSIT AND EXPENDITURE OF CERTAIN DONATIONS

Pub. L. 105–277, div. A, § 101(e) [title I], Oct. 21, 1998, 112 Stat. 2681–231, 2681–245, provided in part: ''That hereafter, donations received to support projects under the Appalachian Clean Streams Initiative and under the Western Mine Lands Restoration Partnerships Initiative, pursuant to 30 U.S.C. 1231, shall be credited to this account and remain available until expended without further appropriation for projects sponsored under these initiatives, directly through agreements with other Federal agencies, or through grants to States, and funding to local governments, or tax exempt private entities.''

ABANDONED MINE RECLAMATION RESEARCH AND DEVELOPMENT

Pub. L. 99–509, title III, § 3501, Oct. 21, 1986, 100 Stat. 1891, as amended by Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172, provided that after enactment of Pub. L. 99–509, the research and demonstration authorities of the Department of the Interior under former subsec. (c)(6) of this section were to be transferred to, and carried out by, the Director of the United States Bureau of Mines.

## § 1232. Reclamation fee

### (a) Payment; rate

All operators of coal mining operations subject to the provisions of this chapter shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of 31.5 cents per ton of coal produced by surface coal mining and 13.5 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine, as determined by the Secretary, whichever is less, except that the reclamation fee for lignite coal shall be at a rate of 2 per centum of the value of the coal at the mine, or 9 cents per ton, whichever is less.

### (b) Due date

Such fee shall be paid no later than thirty days after the end of each calendar quarter beginning with the first calendar quarter occurring after August 3, 1977, and ending September 30, 2021.

### (c) Submission of statement

Together with such reclamation fee, all operators of coal mine operations shall submit a statement of the amount of coal produced during the calendar quarter, the method of coal removal and the type of coal, the accuracy of which shall be sworn to by the operator and notarized. Such statement shall include an identification of the permittee of the surface coal mining operation, any operator in addition to the permittee, the owner of the coal, the preparation plant, tripple,[1] or loading point for the coal, and the person purchasing the coal from the operator. The report shall also specify the number of the permit required under section 1256 of this title and the mine safety and health identification number. Each quarterly report shall contain a notification of any changes in the information required by this subsection since the date of the preceding quarterly report. The information contained in the quarterly re-

[1] So in original. Probably should be ''tipple,''.

ports under this subsection shall be maintained by the Secretary in a computerized database.

**(d) Penalty**

(1) Any person, corporate officer, agent or director, on behalf of a coal mine operator, who knowingly makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification required in this section shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than one year, or both.

(2) The Secretary shall conduct such audits of coal production and the payment of fees under this subchapter as may be necessary to ensure full compliance with the provisions of this subchapter. For purposes of performing such audits the Secretary (or any duly designated officer, employee, or representative of the Secretary) shall, at all reasonable times, upon request, have access to, and may copy, all books, papers, and other documents of any person subject to the provisions of this subchapter. The Secretary may at any time conduct audits of any surface coal mining and reclamation operation, including without limitation, tipples and preparation plants, as may be necessary in the judgment of the Secretary to ensure full and complete payment of the fees under this subchapter.

**(e) Civil action to recover fee**

Any portion of the reclamation fee not properly or promptly paid pursuant to this section shall be recoverable, with statutory interest, from coal mine operators, in any court of competent jurisdiction in any action at law to compel payment of debts.

**(f) Cooperation from other agencies**

All Federal and State agencies shall fully cooperate with the Secretary of the Interior in the enforcement of this section. Whenever the Secretary believes that any person has not paid the full amount of the fee payable under subsection (a) of this section the Secretary shall notify the Federal agency responsible for ensuring compliance with the provisions of section 4121 of title 26.

**(g) Allocation of funds**

(1) Except as provided in subsection (h) of this section, moneys deposited into the fund shall be allocated by the Secretary to accomplish the purposes of this subchapter as follows:

(A) 50 percent of the reclamation fees collected annually in any State (other than fees collected with respect to Indian lands) shall be allocated annually by the Secretary to the State, subject to such State having each of the following:

(i) An approved abandoned mine reclamation program pursuant to section 1235 of this title.

(ii) Lands and waters which are eligible pursuant to section 1234 of this title (in the case of a State not certified under section 1240a(a) of this title) or pursuant to section 1240a(b) of this title (in the case of a State certified under section 1240a(a) of this title).

(B) 50 percent of the reclamation fees collected annually with respect to Indian lands shall be allocated annually by the Secretary to the Indian tribe having jurisdiction over such lands, subject to such tribe having each of the following:

(i) an[2] approved abandoned mine reclamation program pursuant to section 1235 of this title.

(ii) Lands and waters which are eligible pursuant to section 1234 of this title (in the case of an Indian tribe not certified under section 1240a(a) of this title) or pursuant to section 1240a(b) of this title (in the case of a tribe certified under section 1240a(a) of this title).

(C) The funds allocated by the Secretary under this paragraph to States and Indian tribes shall only be used for annual reclamation project construction and program administration grants.

(D) To the extent not expended within 3 years after the date of any grant award under this paragraph (except for grants awarded during fiscal years 2008, 2009, and 2010 to the extent not expended within 5 years), such grant shall be available for expenditure by the Secretary under paragraph (5).

(2) In making the grants referred to in paragraph (1)(C) and the grants referred to in paragraph (5), the Secretary shall ensure strict compliance by the States and Indian tribes with the priorities described in section 1233(a) of this title until a certification is made under section 1240a(a) of this title.

(3) Amounts available in the fund which are not allocated to States and Indian tribes under paragraph (1) or allocated under paragraph (5) are authorized to be expended by the Secretary for any of the following:

(A) For the purpose of section 1257(c) of this title, either directly or through grants to the States, subject to the limitation contained in section 1231(c)(9) of this title.

(B) For the purpose of section 1240 of this title (relating to emergencies).

(C) For the purpose of meeting the objectives of the fund set forth in section 1233(a) of this title for eligible lands and waters pursuant to section 1234 of this title in States and on Indian lands where the State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 1235 of this title.

(D) For the administration of this subchapter by the Secretary.

(E) For the purpose of paragraph (8).

(4)(A) Amounts available in the fund which are not allocated under paragraphs (1), (2), and (5) or expended under paragraph (3) in any fiscal year are authorized to be expended by the Secretary under this paragraph for the reclamation or drainage abatement of lands and waters within unreclaimed sites which are mined for coal or which were affected by such mining, wastebanks, coal processing or other coal mining processes and left in an inadequate reclamation status.

(B) Funds made available under this paragraph may be used for reclamation or drainage abate-

[2] So in original. Probably should be capitalized.

ment at a site referred to in subparagraph (A) if the Secretary makes either of the following findings:

(i) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before the date on which the Secretary approved a State program pursuant to section 1253 of this title for a State in which the site is located, and that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site.

(ii) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before November 5, 1990, and that the surety of such mining operator became insolvent during such period, and as of November 5, 1990, funds immediately available from proceedings relating to such insolvency, or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

(C) In determining which sites to reclaim pursuant to this paragraph, the Secretary shall follow the priorities stated in paragraphs (1) and (2) of section 1233(a) of this title. The Secretary shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a local community.

(D) Amounts collected from the assessment of civil penalties under section 1268 of this title are authorized to be appropriated to carry out this paragraph.

(E) Any State may expend grants made available under paragraphs (1) and (5) for reclamation and abatement of any site referred to in subparagraph (A) if the State, with the concurrence of the Secretary, makes either of the findings referred to in clause (i) or (ii) of subparagraph (B) and if the State determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for eligible lands and waters pursuant to section 1234 of this title under the priorities stated in paragraphs (1) and (2) of section 1233(a) of this title.

(F) For the purposes of the certification referred to in section 1240a(a) of this title, sites referred to in subparagraph (A) of this paragraph shall be considered as having the same priorities as those stated in section 1233(a) of this title for eligible lands and waters pursuant to section 1234 of this title. All sites referred to in subparagraph (A) of this paragraph within any State shall be reclaimed prior to such State making the certification referred to in section 1240a(a) of this title.

(5)(A) The Secretary shall allocate 60 percent of the amount in the fund after making the allocation referred to in paragraph (1) for making additional annual grants to States and Indian tribes which are not certified under section 1240a(a) of this title to supplement grants received by such States and Indian tribes pursuant to paragraph (1)(C) until the priorities stated in paragraphs (1) and (2) of section 1233(a) of this title have been achieved by such State or Indian tribe. The allocation of such funds for the purpose of making such expenditures shall be through a formula based on the amount of coal historically produced in the State or from the Indian lands concerned prior to August 3, 1977. Funds made available under paragraph (3) or (4) of this subsection for any State or Indian tribe shall not be deducted against any allocation of funds to the State or Indian tribe under paragraph (1) or under this paragraph.

(B) Any amount that is reallocated and available under section 1240a(h)(3) of this title shall be in addition to amounts that are allocated under subparagraph (A).

(6)(A) Any State with an approved abandoned mine reclamation program pursuant to section 1235 of this title may receive and retain, without regard to the 3-year limitation referred to in paragraph (1)(D), up to 30 percent of the total of the grants made annually to the State under paragraphs (1) and (5) if those amounts are deposited into an acid mine drainage abatement and treatment fund established under State law, from which amounts (together with all interest earned on the amounts) are expended by the State for the abatement of the causes and the treatment of the effects of acid mine drainage in a comprehensive manner within qualified hydrologic units affected by coal mining practices.

(B) In this paragraph, the term ''qualified hydrologic unit'' means a hydrologic unit—

(i) in which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner that adversely impacts biological resources; and

(ii) that contains land and water that are—

(I) eligible pursuant to section 1234 of this title and include any of the priorities described in section 1233(a) of this title; and

(II) the subject of expenditures by the State from the forfeiture of bonds required under section 1259 of this title or from other States sources to abate and treat acid mine drainage.

(7) In complying with the priorities described in section 1233(a) of this title, any State or Indian tribe may use amounts available in grants made annually to the State or tribe under paragraphs (1) and (5) for the reclamation of eligible land and water described in section 1233(a)(3) of this title before the completion of reclamation projects under paragraphs (1) and (2) of section 1233(a) of this title only if the expenditure of funds for the reclamation is done in conjunction with the expenditure before, on, or after December 20, 2006, of funds for reclamation projects under paragraphs (1) and (2) of section 1233(a) of this title.

(8)(A) In making funds available under this subchapter, the Secretary shall ensure that the grant awards total not less than $3,000,000 annually to each State and each Indian tribe having an approved abandoned mine reclamation program pursuant to section 1235 of this title and eligible land and water pursuant to section 1234 of this title, so long as an allocation of funds to the State or tribe is necessary to achieve the priorities stated in paragraphs (1) and (2) of section 1233(a) of this title.

(B) Notwithstanding any other provision of law, this paragraph applies to the States of Tennessee and Missouri.

**(h) Transfers of interest earned by Fund**

**(1) In general**

**(A) Transfers to Combined Benefit Fund**

As soon as practicable after the beginning of fiscal year 2007 and each fiscal year thereafter, and before making any allocation with respect to the fiscal year under subsection (g), the Secretary shall use an amount not to exceed the amount of interest that the Secretary estimates will be earned and paid to the fund during the fiscal year to transfer to the Combined Benefit Fund such amounts as are estimated by the trustees of such fund to offset the amount of any deficit in net assets in the Combined Benefit Fund as of October 1, 2006, and to make the transfer described in paragraph (2)(A).

**(B) Transfers to 1992 and 1993 plans**

As soon as practicable after the beginning of fiscal year 2008 and each fiscal year thereafter, and before making any allocation with respect to the fiscal year under subsection (g), the Secretary shall use an amount not to exceed the amount of interest that the Secretary estimates will be earned and paid to the fund during the fiscal year (reduced by the amount used under subparagraph (A)) to make the transfers described in paragraphs (2)(B) and (2)(C).

**(2) Transfers described**

The transfers referred to in paragraph (1) are the following:

**(A) United Mine Workers of America Combined Benefit Fund**

A transfer to the United Mine Workers of America Combined Benefit Fund equal to the amount that the trustees of the Combined Benefit Fund estimate will be expended from the fund for the fiscal year in which the transfer is made, reduced by—

(i) the amount the trustees of the Combined Benefit Fund estimate the Combined Benefit Fund will receive during the fiscal year in—

(I) required premiums; and

(II) payments paid by Federal agencies in connection with benefits provided by the Combined Benefit Fund; and

(ii) the amount the trustees of the Combined Benefit Fund estimate will be expended during the fiscal year to provide health benefits to beneficiaries who are unassigned beneficiaries solely as a result of the application of section 9706(h)(1) of title 26, but only to the extent that such amount does not exceed the amounts described in subsection (i)(1)(A) that the Secretary estimates will be available to pay such estimated expenditures.

**(B) United Mine Workers of America 1992 Benefit Plan**

A transfer to the United Mine Workers of America 1992 Benefit Plan, in an amount equal to the difference between—

(i) the amount that the trustees of the 1992 UMWA Benefit Plan estimate will be expended from the 1992 UMWA Benefit Plan during the next calendar year to provide the benefits required by the 1992 UMWA Benefit Plan on December 20, 2006; minus

(ii) the amount that the trustees of the 1992 UMWA Benefit Plan estimate the 1992 UMWA Benefit Plan will receive during the next calendar year in—

(I) required monthly per beneficiary premiums, including the amount of any security provided to the 1992 UMWA Benefit Plan that is available for use in the provision of benefits; and

(II) payments paid by Federal agencies in connection with benefits provided by the 1992 UMWA Benefit Plan.

**(C) Multiemployer Health Benefit Plan**

A transfer to the Multiemployer Health Benefit Plan established after July 20, 1992, by the parties that are the settlors of the 1992 UMWA Benefit Plan referred to in subparagraph (B) (referred to in this subparagraph and subparagraph (D) as ''the Plan''), in an amount equal to the excess (if any) of—

(i) the amount that the trustees of the Plan estimate will be expended from the Plan during the next calendar year, to provide benefits no greater than those provided by the Plan as of December 31, 2006; over

(ii) the amount that the trustees estimated the Plan will receive during the next calendar year in payments paid by Federal agencies in connection with benefits provided by the Plan.

Such excess shall be calculated by taking into account only those beneficiaries actually enrolled in the Plan as of December 31, 2006, who are eligible to receive benefits under the Plan on the first day of the calendar year for which the transfer is made.

**(D) Individuals considered enrolled**

For purposes of subparagraph (C), any individual who was eligible to receive benefits from the Plan as of December 20, 2006, even though benefits were being provided to the individual pursuant to a settlement agreement approved by order of a bankruptcy court entered on or before September 30, 2004, will be considered to be actually enrolled in the Plan and shall receive benefits from the Plan beginning on December 31, 2006.

**(3) Adjustment**

If, for any fiscal year, the amount of a transfer under subparagraph (A), (B), or (C) of paragraph (2) is more or less than the amount required to be transferred under that subparagraph, the Secretary shall appropriately adjust the amount transferred under that subparagraph for the next fiscal year.

**(4) Additional amounts**

**(A) Previously credited interest**

Notwithstanding any other provision of law, any interest credited to the fund that has not previously been transferred to the Combined Benefit Fund referred to in paragraph (2)(A) under this section—

(i) shall be held in reserve by the Secretary until such time as necessary to make the payments under subparagraphs (A) and (B) of subsection (i)(1), as described in clause (ii); and

(ii) in the event that the amounts described in subsection (i)(1) are insufficient to make the maximum payments described in subparagraphs (A) and (B) of subsection (i)(1), shall be used by the Secretary to supplement the payments so that the maximum amount permitted under those paragraphs is paid.

**(B) Previously allocated amounts**

All amounts allocated under subsection (g)(2) before December 20, 2006, for the program described in section 1236 of this title, but not appropriated before December 20, 2006, shall be available to the Secretary to make the transfers described in paragraph (2).

**(C) Adequacy of previously credited interest**

The Secretary shall—

(i) consult with the trustees of the plans described in paragraph (2) at reasonable intervals; and

(ii) notify Congress if a determination is made that the amounts held in reserve under subparagraph (A) are insufficient to meet future requirements under subparagraph (A)(ii).

**(D) Additional reserve amounts**

In addition to amounts held in reserve under subparagraph (A), there is authorized to be appropriated such sums as may be necessary for transfer to the fund to carry out the purposes of subparagraph (A)(ii).

**(E) Inapplicability of cap**

The limitation described in subsection (i)(3)(A) shall not apply to payments made from the reserve fund under this paragraph.

**(5) Limitations**

**(A) Availability of funds for next fiscal year**

The Secretary may make transfers under subparagraphs (B) and (C) of paragraph (2) for a calendar year only if the Secretary determines, using actuarial projections provided by the trustees of the Combined Benefit Fund referred to in paragraph (2)(A), that amounts will be available under paragraph (1), after the transfer, for the next fiscal year for making the transfer under paragraph (2)(A).

**(B) Rate of contributions of obligors**

**(i) In general**

**(I) Rate**

A transfer under paragraph (2)(C) shall not be made for a calendar year unless the persons that are obligated to contribute to the plan referred to in paragraph (2)(C) on the date of the transfer are obligated to make the contributions at rates that are no less than those in effect on the date which is 30 days before December 20, 2006.

**(II) Application**

The contributions described in subclause (I) shall be applied first to the provision of benefits to those plan beneficiaries who are not described in paragraph (2)(C)(ii).

**(ii) Initial contributions**

**(I) In general**

From December 20, 2006, through December 31, 2010, the persons that, on December 20, 2006, are obligated to contribute to the plan referred to in paragraph (2)(C) shall be obligated, collectively, to make contributions equal to the amount described in paragraph (2)(C), less the amount actually transferred due to the operation of subparagraph (C).

**(II) First calendar year**

Calendar year 2006 is the first calendar year for which contributions are required under this clause.

**(III) Amount of contribution for 2006**

Except as provided in subclause (IV), the amount described in paragraph (2)(C) for calendar year 2006 shall be calculated as if paragraph (2)(C) had been in effect during 2005.

**(IV) Limitation**

The contributions required under this clause for calendar year 2006 shall not exceed the amount necessary for solvency of the plan described in paragraph (2)(C), measured as of December 31, 2006, and taking into account all assets held by the plan as of that date.

**(iii) Division**

The collective annual contribution obligation required under clause (ii) shall be divided among the persons subject to the obligation, and applied uniformly, based on the hours worked for which contributions referred to in clause (i) would be owed.

**(C) Phase-in of transfers**

For each of calendar years 2008 through 2010, the transfers required under subparagraphs (B) and (C) of paragraph (2) shall equal the following amounts:

(i) For calendar year 2008, the Secretary shall make transfers equal to 25 percent of the amounts that would otherwise be required under subparagraphs (B) and (C) of paragraph (2).

(ii) For calendar year 2009, the Secretary shall make transfers equal to 50 percent of the amounts that would otherwise be required under subparagraphs (B) and (C) of paragraph (2).

(iii) For calendar year 2010, the Secretary shall make transfers equal to 75 percent of the amounts that would otherwise be required under subparagraphs (B) and (C) of paragraph (2).

**(i) Funding**

**(1) In general**

Subject to paragraph (3), out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the plans described in subsection (h)(2) such sums as are necessary to pay the following amounts:

(A) To the Combined Fund (as defined in section 9701(a)(5) of title 26 and referred to in this paragraph as the ''Combined Fund''), the amount that the trustees of the Combined Fund estimate will be expended from premium accounts maintained by the Combined Fund for the fiscal year to provide benefits for beneficiaries who are unassigned beneficiaries solely as a result of the application of section 9706(h)(1) of title 26, subject to the following limitations:

(i) For fiscal year 2008, the amount paid under this subparagraph shall equal—

(I) the amount described in subparagraph (A); minus

(II) the amounts required under section 9706(h)(3)(A) of title 26.

(ii) For fiscal year 2009, the amount paid under this subparagraph shall equal—

(I) the amount described in subparagraph (A); minus

(II) the amounts required under section 9706(h)(3)(B) of title 26.

(iii) For fiscal year 2010, the amount paid under this subparagraph shall equal—

(I) the amount described in subparagraph (A); minus

(II) the amounts required under section 9706(h)(3)(C) of title 26.

(B) On certification by the trustees of any plan described in subsection (h)(2) that the amount available for transfer by the Secretary pursuant to this section (determined after application of any limitation under subsection (h)(5)) is less than the amount required to be transferred, to the plan the amount necessary to meet the requirement of subsection (h)(2).

(C) To the Combined Fund, $9,000,000 on October 1, 2007, $9,000,000 on October 1, 2008, and $9,000,000 on October 1, 2009 (which amounts shall not be exceeded) to provide a refund of any premium (as described in section 9704(a) of title 26) paid on or before September 7, 2000, to the Combined Fund, plus interest on the premium calculated at the rate of 7.5 percent per year, on a proportional basis and to be paid not later than 60 days after the date on which each payment is received by the Combined Fund, to those signatory operators (to the extent that the Combined Fund has not previously returned the premium amounts to the operators), or any related persons to the operators (as defined in section 9701(c) of title 26), or their heirs, successors, or assigns who have been denied the refunds as the result of final judgments or settlements if—

(i) prior to December 20, 2006, the signatory operator (or any related person to the operator)—

(I) had all of its beneficiary assignments made under section 9706 of title 26 voided by the Commissioner of the Social Security Administration; and

(II) was subject to a final judgment or final settlement of litigation adverse to a claim by the operator that the assignment of beneficiaries under section 9706 of title 26 was unconstitutional as applied to the operator; and

(ii) on or before September 7, 2000, the signatory operator (or any related person to the operator) had paid to the Combined Fund any premium amount that had not been refunded.

**(2) Payments to States and Indian tribes**

Subject to paragraph (3), out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of the Interior for distribution to States and Indian tribes such sums as are necessary to pay amounts described in paragraphs (1)(A) and (2)(A) of section 1240a(h) of this title.

**(3) Limitations**

**(A) Cap**

The total amount transferred under this subsection for any fiscal year shall not exceed $490,000,000.

**(B) Insufficient amounts**

In a case in which the amount required to be transferred without regard to this paragraph exceeds the maximum annual limitation in subparagraph (A), the Secretary shall adjust the transfers of funds so that—

(i) each transfer for the fiscal year is a percentage of the amount described;

(ii) the amount is determined without regard to subsection (h)(5)(A); and

(iii) the percentage transferred is the same for all transfers made under this subsection for the fiscal year.

**(4) Availability of funds**

Funds shall be transferred under paragraphs (1) and (2) beginning in fiscal year 2008 and each fiscal year thereafter, and shall remain available until expended.

(Pub. L. 95–87, title IV, § 402, Aug. 3, 1977, 91 Stat. 457; Pub. L. 100–34, title I, § 101, May 7, 1987, 101 Stat. 300; Pub. L. 101–508, title VI, §§ 6003, 6004, Nov. 5, 1990, 104 Stat. 1388–290, 1388–291; Pub. L. 102–486, title XIX, § 19143(b)(1), (2), (3)(B), title XXV, § 2515, Oct. 24, 1992, 106 Stat. 3056, 3113; Pub. L. 108–447, div. E, title I, § 135(a), Dec. 8, 2004, 118 Stat. 3068; Pub. L. 109–13, div. A, title VI, § 6035, May 11, 2005, 119 Stat. 289; Pub. L. 109–54, title I, § 129, Aug. 2, 2005, 119 Stat. 525; Pub. L. 109–234, title VII, § 7007, June 15, 2006, 120 Stat. 483; Pub. L. 109–432, div. C, title II, § 202, Dec. 20, 2006, 120 Stat. 3008.)

AMENDMENT OF SUBSECTION (a)

*Pub. L. 109–432, div. C, title II, § 202(a)(2), Dec. 20, 2006, 120 Stat. 3008, provided that, effective Oct. 1, 2012, subsection (a) of this section is amended by substituting ''28'' for ''31.5'', ''12'' for ''13.5'', and ''8 cents'' for ''9 cents''.*

CODIFICATION

November 5, 1990, referred to in subsec. (g)(4)(B)(ii), was in the original ''the date of enactment of this paragraph'', which was translated as meaning the date of enactment of Pub. L. 101–508, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–432, § 202(a)(1), substituted ''31.5'' for ''35'', ''13.5'' for ''15'', and ''9 cents'' for ''10 cents''.

Subsec. (b). Pub. L. 109–432, § 202(b), substituted ''September 30, 2021'' for ''September 30, 2007, after which time the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h) of this section''.

Pub. L. 109–234 substituted ''September 30, 2007'' for ''June 30, 2006''.

Subsec. (g)(1)(D). Pub. L. 109–432, § 202(c)(1), inserted ''(except for grants awarded during fiscal years 2008, 2009, and 2010 to the extent not expended within 5 years)'' after ''this paragraph'' and substituted ''under paragraph (5)'' for ''in any area under paragraph (2), (3), (4), or (5)''.

Subsec. (g)(2). Pub. L. 109–432, § 202(c)(2), added par. (2) and struck out former par. (2) which read as follows: ''20 percent of the amounts available in the fund in any fiscal year which are not allocated under paragraph (1) in that fiscal year (including that interest accruing as provided in section 1231(e) of this title and including funds available for reallocation pursuant to paragraph (1)(D)), shall be allocated to the Secretary only for the purpose of making the annual transfer to the Secretary of Agriculture under section 1231(c)(2) of this title.''

Subsec. (g)(3). Pub. L. 109–432, § 202(c)(3)(A), substituted ''paragraph (5)'' for ''paragraphs (2) and (5)'' in introductory provisions.

Subsec. (g)(3)(A). Pub. L. 109–432, § 202(c)(3)(B), substituted ''1231(c)(9)'' for ''1231(c)(11)''.

Subsec. (g)(3)(E). Pub. L. 109–432, § 202(c)(3)(C), added subpar. (E).

Subsec. (g)(5). Pub. L. 109–432, § 202(c)(4), designated existing provisions as subpar. (A), in first sentence, substituted ''60'' for ''40'', in last sentence, subtituted ''Funds made available under paragraph (3) or (4)'' for ''Funds allocated or expended by the Secretary under paragraphs (2), (3), or (4)'', and added subpar. (B).

Subsec. (g)(6) to (8). Pub. L. 109–432, § 202(c)(5), added pars. (6) to (8) and struck out former pars. (6) to (8) which related to authority of any State to receive and retain up to 10 percent of the total of grants, State authority to establish an acid mine drainage abatement and treatment fund and to implement plans for acid mine drainage abatement and treatment, and allocation of not less than $2,000,000 annually for expenditure in each State and for each Indian tribe, having an approved reclamation program and eligible lands and waters.

Subsecs. (h), (i). Pub. L. 109–432, § 202(d), added subsecs. (h) and (i) and struck out former subsec. (h) which related to transfer of funds to the United Mine Workers of America Combined Benefit Fund.

2005—Subsec. (b). Pub. L. 109–54 substituted ''June 30, 2006'' for ''September 30, 2005''.

Pub. L. 109–13 substituted ''September 30, 2005'' for ''June 30, 2005''.

2004—Subsec. (b). Pub. L. 108–447 substituted ''June 30, 2005'' for ''September 30, 2004''.

1992—Subsec. (b). Pub. L. 102–486, § 2515, which directed that subsec. (b) be amended by substituting ''2004, after which time the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h) of this section'' for ''1995'', was executed by inserting '', after which time the fee shall be established at a rate to continue to provide for the deposit referred to in subsection (h) of this section'' after ''2004'', to reflect the probable intent of Congress and the intervening amendment by Pub. L. 102–486, § 19143(b)(1). See below.

Pub. L. 102–486, § 19143(b)(1), substituted ''2004'' for ''1995'' before period at end.

Subsec. (g)(1). Pub. L. 102–486, § 19143(b)(3)(B), substituted ''Except as provided in subsection (h) of this section, moneys'' for ''Moneys''.

Subsec. (h). Pub. L. 102–486, § 19143(b)(2), added subsec. (h).

1990—Subsec. (b). Pub. L. 101–508, § 6003(a), substituted ''ending September 30, 1995'' for ''ending fifteen years after August 3, 1977, unless extended by an Act of Congress''.

Subsec. (c). Pub. L. 101–508, § 6003(b), inserted at end ''Such statement shall include an identification of the permittee of the surface coal mining operation, any operator in addition to the permittee, the owner of the coal, the preparation plant, tripple, or loading point for the coal, and the person purchasing the coal from the operator. The report shall also specify the number of the permit required under section 1256 of this title and the mine safety and health identification number. Each quarterly report shall contain a notification of any changes in the information required by this subsection since the date of the preceding quarterly report. The information contained in the quarterly reports under this subsection shall be maintained by the Secretary in a computerized database.''

Subsec. (d). Pub. L. 101–508, § 6003(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (f). Pub. L. 101–508, § 6003(d), inserted at end ''Whenever the Secretary believes that any person has not paid the full amount of the fee payable under subsection (a) of this section the Secretary shall notify the Federal agency responsible for ensuring compliance with the provisions of section 4121 of title 26.''

Subsec. (g). Pub. L. 101–508, § 6004, amended subsec. (g) generally, substituting present provisions for provisions relating to geographic allocation of expenditures from the fund, providing for allocation of 50 percent of funds collected annually in any State or Indian reservation to that State or Indian reservation pursuant to approved reclamation program, providing for special State set-aside for future expenditure, and authorizing expenditure of balance of funds collected at discretion of Secretary in order to meet the purposes of this subchapter.

1987—Subsec. (g)(3), (4). Pub. L. 100–34 added par. (3) and redesignated former par. (3) as (4).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. C, title II, § 202(a)(1), Dec. 20, 2006, 120 Stat. 3008, provided that the amendment made by section 202(a)(1) [amending this section] is effective Oct. 1, 2007.

Pub. L. 109–432, div. C, title II, § 202(a)(2), Dec. 20, 2006, 120 Stat. 3008, provided that the amendment made by section 202(a)(2) [amending this section] is effective Oct. 1, 2012.

Pub. L. 109–432, div. C, title II, § 202(b), Dec. 20, 2006, 120 Stat. 3008, provided that the amendment made by section 202(b) [amending this section] is effective Sept. 30, 2007.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101–508 set out as a note under section 1231 of this title.

## § 1233. Objectives of fund

### (a) Priorities

Expenditure of moneys from the fund on lands and water eligible pursuant to section 1234 of this title for the purposes of this subchapter, except as provided for under section 1240a of this title, shall reflect the following priorities in the order stated:

(1)(A) the protection;[1] of public health, safety, and property from extreme danger of adverse effects of coal mining practices;

(B) the restoration of land and water resources and the environment that—

(i) have been degraded by the adverse effects of coal mining practices; and

(ii) are adjacent to a site that has been or will be remediated under subparagraph (A);

(2)(A) the protection of public health and safety from adverse effects of coal mining practices;

[1] So in original.

(B) the restoration of land and water resources and the environment that—

(i) have been degraded by the adverse effects of coal mining practices; and

(ii) are adjacent to a site that has been or will be remediated under subparagraph (A); and

(3) the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity.

**(b) Water supply restoration**

(1) Any State or Indian tribe not certified under section 1240a(a) of this title may expend funds allocated to such State or Indian tribe in any year through the grants made available under paragraphs (1) and (5) of section 1232(g) of this title for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

(2) If the adverse effect on water supplies referred to in this subsection occurred both prior to and after August 3, 1977, or as the case may be, the dates (and under the criteria) set forth under section 1232(g)(4)(B) of this title, section 1234 of this title shall not be construed to prohibit a State or Indian tribe referred to in paragraph (1) from using funds referred to in such paragraph for the purposes of this subsection if the State or Indian tribe determines that such adverse effects occurred predominantly prior to August 3, 1977, or as the case may be, the dates (and under the criteria) set forth under section 1232(g)(4)(B) of this title.

**(c) Inventory**

For the purposes of assisting in the planning and evaluation of reclamation projects pursuant to section 1235 of this title, and assisting in making the certification referred to in section 1240a(a) of this title, the Secretary shall maintain an inventory of eligible lands and waters pursuant to section 1234 of this title which meet the priorities stated in paragraphs (1) and (2) of subsection (a) of this section. Under standardized procedures established by the Secretary, States and Indian tribes with approved abandoned mine reclamation programs pursuant to section 1235 of this title may offer amendments, subject to the approval of the Secretary, to update the inventory as it applies to eligible lands and waters under the jurisdiction of such States or tribes. The Secretary shall provide such States and tribes with the financial and technical assistance necessary for the purpose of making inventory amendments. The Secretary shall compile and maintain an inventory for States and Indian lands in the case when a State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 1235 of this title. On a regular basis, but not less than annually, the projects completed under this subchapter shall be so noted on the inventory under standardized procedures established by the Secretary.

(Pub. L. 95–87, title IV, § 403, Aug. 3, 1977, 91 Stat. 458; Pub. L. 101–508, title VI, § 6005, Nov. 5, 1990, 104 Stat. 1388–294; Pub. L. 102–486, title XXV, § 2504(c)(2), (e), Oct. 24, 1992, 106 Stat. 3105, 3106; Pub. L. 109–432, div. C, title II, § 203, Dec. 20, 2006, 120 Stat. 3015.)

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–432, § 203(1)(A), designated existing provisions as subpar. (A), inserted semicolon after ''protection'', struck out ''general welfare,'' after ''safety,'', and added subpar. (B).

Subsec. (a)(2). Pub. L. 109–432, § 203(1)(B), designated existing provisions as subpar. (A), substituted ''health and safety'' for ''health, safety, and general welfare'', and added subpar. (B).

Subsec. (a)(3). Pub. L. 109–432, § 203(1)(C), which directed that a period be substituted for the semicolon at end, could not be executed because a period already appeared at end.

Subsec. (a)(4), (5). Pub. L. 109–432, § 203(1)(D), struck out pars. (4) and (5) which read as follows:

''(4) the protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices;

''(5) the development of publicly owned land adversely affected by coal mining practices including land acquired as provided in this subchapter for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.''

Subsec. (b). Pub. L. 109–432, § 203(2)(A), substituted ''Water supply restoration'' for ''Utilities and other facilities'' in heading.

Subsec. (b)(1). Pub. L. 109–432, § 203(2)(B), struck out ''up to 30 percent of the'' before ''funds''.

Subsec. (c). Pub. L. 109–432, § 203(3), inserted '', subject to the approval of the Secretary,'' after ''amendments'' in second sentence.

1992—Subsec. (a)(4) to (6). Pub. L. 102–486, § 2504(c)(2), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4) which read as follows: ''research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques;''.

Subsec. (b)(2). Pub. L. 102–486, § 2504(e), inserted '', or as the case may be, the dates (and under the criteria) set forth under section 1232(g)(4)(B) of this title'' after ''1977'' in two places.

1990—Pub. L. 101–508 designated existing provisions as subsec. (a), inserted heading and '', except as provided for under section 1240a of this title,'' after ''subchapter'', and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101–508 set out as a note under section 1231 of this title.

## § 1234. Eligible lands and water

Lands and water eligible for reclamation or drainage abatement expenditures under this subchapter are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes, except as provided for under section 1240a of this title, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws. For other provisions relating to lands and waters eligible for such expenditures, see section 1232(g)(4) of this title, section 1233(b)(1) of this title, and section 1239 of this

title. Surface coal mining operations on lands eligible for remining shall not affect the eligibility of such lands for reclamation and restoration under this subchapter after the release of the bond or deposit for any such operation as provided under section 1269 of this title. In the event the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under this subchapter may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant the Secretary shall immediately exercise his authority under section 1240 of this title.

(Pub. L. 95–87, title IV, § 404, Aug. 3, 1977, 91 Stat. 459; Pub. L. 101–508, title VI, § 6006, Nov. 5, 1990, 104 Stat. 1388–295; Pub. L. 102–486, title XXV, § 2503(d), Oct. 24, 1992, 106 Stat. 3103.)

AMENDMENTS

1992—Pub. L. 102–486 inserted at end ''Surface coal mining operations on lands eligible for remining shall not affect the eligibility of such lands for reclamation and restoration under this subchapter after the release of the bond or deposit for any such operation as provided under section 1269 of this title. In the event the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under this subchapter may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant the Secretary shall immediately exercise his authority under section 1240 of this title.''

1990—Pub. L. 101–508 inserted '', except as provided for under section 1240a of this title'' after ''processes'' and inserted at end ''For other provisions relating to lands and waters eligible for such expenditures, see section 1232(g)(4) of this title, section 1233(b)(1) of this title, and section 1239 of this title.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101–508 set out as a note under section 1231 of this title.

### § 1235. State reclamation program

#### (a) Promulgation of regulations

Not later than the end of the one hundred and eighty-day period immediately following August 3, 1977, the Secretary shall promulgate and publish in the Federal Register regulations covering implementation of an abandoned mine reclamation program incorporating the provisions of this subchapter and establishing procedures and requirements for preparation, submission, and approval of State programs consisting of the plan and annual submissions of projects.

#### (b) Submission of State Reclamation Plan and annual projects

Each State having within its borders coal mined lands eligible for reclamation under this subchapter, may submit to the Secretary a State Reclamation Plan and annual projects to carry out the purposes of this subchapter.

#### (c) Restriction

The Secretary shall not approve, fund, or continue to fund a State abandoned mine reclamation program unless that State has an approved State regulatory program pursuant to section 1253 of this title.

#### (d) Approval of State program; withdrawal

If the Secretary determines that a State has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State legislation to implement the provisions of this subchapter, sections 1232 and 1240 of this title excepted, the Secretary shall approve such State program and shall grant to the State exclusive responsibility and authority to implement the provisions of the approved program: *Provided*, That the Secretary shall withdraw such approval and authorization if he determines upon the basis of information provided under this section that the State program is not in compliance with the procedures, guidelines, and requirements established under subsection (a) of this section.

#### (e) Contents of State Reclamation Plan

Each State Reclamation Plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work in conformance with the provisions of this subchapter.

#### (f) Annual application for support; contents

On an annual basis, each State having an approved State Reclamation Plan may submit to the Secretary an application for the support of the State program and implementation of specific reclamation projects. Such annual requests shall include such information as may be requested by the Secretary including:

(1) a general description of each proposed project;

(2) a priority evaluation of each proposed project;

(3) a statement of the estimated benefits in such terms as: number of acres restored, miles of stream improved, acres of surface lands protected from subsidence, population protected from subsidence, air pollution, hazards of mine and coal refuse disposal area fires;

(4) an estimate of the cost for each proposed project;

(5) in the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;

(6) an identification of lands or interest therein to be acquired and the estimated cost; and

(7) in each year after the first in which a plan is filed under this subchapter, an inventory of each project funded under the previous year's grant: which inventory shall include details of financial expenditures on such project together with a brief description of each such project, including project locations, landowner's name, acreage, type of reclamation performed.

#### (g) Costs

The costs for each proposed project under this section shall include: actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering

costs, construction inspection costs, and other necessary administrative expenses.

**(h) Grant of funds**

Upon approval of State Reclamation Plan by the Secretary and of the surface mine regulatory program pursuant to section 1253 of this title, the Secretary shall grant, on an annual basis, funds to be expended in such State pursuant to section 1232(g) of this title and which are necessary to implement the State reclamation program as approved by the Secretary.

**(i) Program monitorship**

The Secretary, through his designated agents, will monitor the progress and quality of the program. The States shall not be required at the start of any project to submit complete copies of plans and specifications.

**(j) Annual report to Secretary**

The Secretary shall require annual and other reports as may be necessary to be submitted by each State administering the approved State reclamation program with funds provided under this subchapter. Such reports shall include that information which the Secretary deems necessary to fulfill his responsibilities under this subchapter.

**(k) Eligible lands of Indian tribes**

Indian tribes having within their jurisdiction eligible lands pursuant to section 1234 of this title or from which coal is produced, shall be considered as a ''State'' for the purposes of this subchapter except for purposes of subsection (c) of this section with respect to the Navajo, Hopi and Crow Indian Tribes.

**(*l*) State liability**

No State shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out a State abandoned mine reclamation plan approved under this section. This subsection shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the State. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(Pub. L. 95–87, title IV, § 405, Aug. 3, 1977, 91 Stat. 459; Pub. L. 100–71, title I, July 11, 1987, 101 Stat. 416; Pub. L. 101–508, title VI, §§ 6007, 6012(d)(1), (2), Nov. 5, 1990, 104 Stat. 1388–295, 1388–298.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–508, § 6012(d)(1), substituted ''preparation'' for ''perparation''.

Subsec. (h). Pub. L. 101–508, § 6012(d)(2), substituted ''Upon approval'' for ''Upon approved''.

Subsec. (*l*). Pub. L. 101–508, § 6007, added subsec. (*l*).

1987—Subsec. (k). Pub. L. 100–71 inserted ''except for purposes of subsection (c) of this section with respect to the Navajo, Hopi and Crow Indian Tribes'' before period.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101–508 set out as a note under section 1231 of this title.

GRANT OF FUNDS TO STATES UNDER SURFACE MINING CONTROL AND RECLAMATION ACT

Pub. L. 97–377, title I, § 150, Dec. 21, 1982, 96 Stat. 1918, provided that: ''Within 60 days of receipt of a complete abandoned mine reclamation fund grant application from any eligible State under the provisions of the Surface Mining Control and Reclamation Act (91 Stat. 460) [Pub. L. 95–87, see Short Title note set out under section 1201 of this title] the Secretary of Interior shall grant to such State any and all funds available for such purposes in the applicable appropriations Act.''

## § 1236. Reclamation of rural lands

**(a) Agreements with landowners for conservation treatment**

In order to provide for the control and prevention of erosion and sediment damages from unreclaimed mined lands, and to promote the conservation and development of soil and water resources of unreclaimed mined lands and lands affected by mining, the Secretary of Agriculture is authorized to enter into agreements of not more than ten years with landowners (including owners of water rights), residents, and tenants, and individually or collectively, determined by him to have control for the period of the agreement of lands in question therein, providing for land stabilization, erosion, and sediment control, and reclamation through conservation treatment, including measures for the conservation and development of soil, water (excluding stream channelization), woodland, wildlife, and recreation resources, and agricultural productivity of such lands. Such agreements shall be made by the Secretary with the owners, including owners of water rights, residents, or tenants (collectively or individually) of the lands in question.

**(b) Conservation and development plans**

The landowner, including the owner of water rights, resident, or tenant shall furnish to the Secretary of Agriculture a conservation and development plan setting forth the proposed land uses and conservation treatment which shall be mutually agreed by the Secretary of Agriculture and the landowner, including owner of water rights, resident, or tenant to be needed on the lands for which the plan was prepared. In those instances where it is determined that the water rights or water supply of a tenant, landowner, including owner of water rights, resident, or tenant have been adversely affected by a surface or underground coal mine operation which has removed or disturbed a stratum so as to significantly affect the hydrologic balance, such plan may include proposed measures to enhance water quality or quantity by means of joint action with other affected landowners, including owner of water rights, residents, or tenants in consultation with appropriate State and Federal agencies.

**(c) Agreement to effect plan**

Such plan shall be incorporated in an agreement under which the landowner, including owner of water rights, resident, or tenant shall agree with the Secretary of Agriculture to effect the land uses and conservation treatment provided for in such plan on the lands described in the agreement in accordance with the terms and conditions thereof.

**(d) Financial and other assistance; determination by Secretary**

In return for such agreement by the landowner, including owner of water rights, resident,

or tenant, the Secretary of Agriculture is authorized to furnish financial and other assistance to such landowner, including owner of water rights, resident, or tenant, in such amounts and subject to such conditions as the Secretary of Agriculture determines are appropriate in the public interest for carrying out the land use and conservation treatment set forth in the agreement. Grants made under this section, depending on the income-producing potential of the land after reclaiming, shall provide up to 80 per centum of the cost of carrying out such land uses and conservation treatment on not more than one hundred and twenty acres of land occupied by such owner, including water rights owners, resident, or tenant, or on not more than one hundred and twenty acres of land which has been purchased jointly by such landowners, including water rights owners, residents, or tenants, under an agreement for the enhancement of water quality or quantity or on land which has been acquired by an appropriate State or local agency for the purpose of implementing such agreement; except the Secretary may reduce the matching cost share where he determines that (1) the main benefits to be derived from the project are related to improving offsite water quality, offsite esthetic values, or other offsite benefits, and (2) the matching share requirement would place a burden on the landowner which would probably prevent him from participating in the program: *Provided, however*, That the Secretary of Agriculture may allow for land use and conservation treatment on such lands occupied by any such owner in excess of such one hundred and twenty acre limitation up to three hundred and twenty acres, but in such event the amount of the grant to such landowner to carry out such reclamation on such lands shall be reduced proportionately. Notwithstanding any other provision of this section with regard to acreage limitations, the Secretary of Agriculture may carry out reclamation treatment projects to control erosion and improve water quality on all lands within a hydrologic unit, consisting of not more than 25,000 acres, if the Secretary determines that treatment of such lands as a hydrologic unit will achieve greater reduction in the adverse effects of past surface mining practices than would be achieved if reclamation was done on individual parcels of land.

**(e) Termination of agreements**

The Secretary of Agriculture may terminate any agreement with a landowner including water rights owners, operator, or occupier by mutual agreement if the Secretary of Agriculture determines that such termination would be in the public interest, and may agree to such modification of agreements previously entered into hereunder as he deems desirable to carry out the purposes of this section or to facilitate the practical administration of the program authorized herein.

**(f) Preservation and surrender of history and allotments**

Notwithstanding any other provision of law, the Secretary of Agriculture, to the extent he deems it desirable to carry out the purposes of this section, may provide in any agreement hereinunder for (1) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland, crop acreage, and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation on the production of such crop; or (2) surrender of any such history and allotments.

**(g) Rules and regulations**

The Secretary of Agriculture shall be authorized to issue such rules and regulations as he determines are necessary to carry out the provisions of this section.

**(h) Utilization of Natural Resources Conservation Service**

In carrying out the provisions of this section, the Secretary of Agriculture shall utilize the services of the Natural Resources Conservation Service.

**(i) Authorization of appropriations**

There are authorized to be appropriated to the Secretary of Agriculture, from amounts in the Treasury other than amounts in the fund, such sums as may be necessary to carry out this section.

(Pub. L. 95–87, title IV, §406, Aug. 3, 1977, 91 Stat. 460; Pub. L. 97–98, title XV, §1551, Dec. 22, 1981, 95 Stat. 1344; Pub. L. 101–508, title VI, §§6008, 6012(c), (d)(3), Nov. 5, 1990, 104 Stat. 1388–295, 1388–298; Pub. L. 109–432, div. C, title II, §204, Dec. 20, 2006, 120 Stat. 3016.)

AMENDMENTS

2006—Subsec. (h). Pub. L. 109–432, §204(a), substituted ''Natural Resources Conservation Service'' for ''Soil Conservation Service''.

Subsec. (i). Pub. L. 109–432, §204(b), added subsec. (i).

1990—Subsec. (a). Pub. L. 101–508, §6012(d)(3), which directed the substitution of ''(including owners'' for ''including owners'' was executed the first time that phrase appeared to reflect the probable intent of Congress, because the parenthetical statement concluding with ''water rights)'' was enacted without an opening parenthesis.

Subsec. (d). Pub. L. 101–508, §6008, struck out ''experimental'' before ''reclamation treatment projects'' in last sentence.

Subsec. (i). Pub. L. 101–508, §6012(c), repealed subsec. (i) which read as follows: ''Funds shall be made available to the Secretary of Agriculture for the purposes of this section, as provided in section 1231 of this title.''

1981—Subsec. (d). Pub. L. 97–98 inserted provisions that notwithstanding any other provision of this section with regard to acreage limitations, the Secretary may carry out experimental reclamation treatment projects to control erosion and improve water quality on all lands within a hydrologic unit, consisting of not more than 25,000 acres, if the Secretary determines that treatment of such lands as a hydrologic unit will achieve greater reduction in the adverse effects of past surface mining practices than would be achieved if reclamation was done on individual parcels of land.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101–508 set out as a note under section 1231 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–98 effective Dec. 22, 1981, see section 1801 of Pub. L. 97–98, set out as an Effective Date note under section 4301 of Title 7, Agriculture.

**§ 1237. Acquisition and reclamation of land adversely affected by past coal mining practices**

**(a) Findings of fact; notice; right of entry**

If the Secretary or the State pursuant to an approved State program, makes a finding of fact that—

(1) land or water resources have been adversely affected by past coal mining practices; and

(2) the adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(3) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily available; or

(4) the owners will not give permission for the United States, the States, political subdivisions, their agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices;

then, upon giving notice by mail to the owners if known or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the municipality in which the land lies, the Secretary, his agents, employees, or contractors, or the State pursuant to an approved State program, shall have the right to enter upon the property adversely affected by past coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. 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.

**(b) Studies or exploratory work**

The Secretary, his agents, employees, or contractors or the State pursuant to an approved State program, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

**(c) Requirements for acquisition of affected land**

The Secretary or the State pursuant to an approved State program, may acquire any land, by purchase, donation, or condemnation, which is adversely affected by past coal mining practices if the Secretary determines that acquisition of such land is necessary to successful reclamation and that—

(1) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open space benefits; and

(2) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

(3) acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this subchapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

**(d) Title to affected land; value**

Title to all lands acquired pursuant to this section shall be in the name of the United States or, if acquired by a State pursuant to an approved program, title shall be in the name of the State. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

**(e) State participation; grants**

States are encouraged as part of their approved State programs, to reclaim abandoned and unreclaimed mined lands within their boundaries and, if necessary, to acquire or to transfer such lands to the Secretary or the appropriate State regulatory authority under appropriate Federal regulations. The Secretary is authorized to make grants on a matching basis to States in such amounts as he deems appropriate for the purpose of carrying out the provisions of this subchapter but in no event shall any grant exceed 90 per centum of the cost of acquisition of the lands for which the grant is made. When a State has made any such land available to the Federal Government under this subchapter, such State shall have a preference right to purchase such lands after reclamation at fair market value less the State portion of the original acquisition price. Notwithstanding the provisions of paragraph (1) of subsection (c) of this section, reclaimed land may be sold to the State or local government in which it is located at a price less than fair market value, which in no case shall be less than the cost to the United States of the purchase and reclamation of the land, as negotiated by the Secretary, to be used for a valid public purpose. If any land sold to a State or local government under this paragraph is not used for a valid public purpose as specified by the Secretary in the terms of the sales agreement then all right, title, and interest in such land shall revert to the United States. Money received from such sale shall be deposited in the fund.

**(f) Rules and regulations**

The Secretary, in formulating regulations for making grants to the States to acquire land pur-

suant to this section, shall specify that acquired land meet the criteria provided for in subsections (c) and (d) of this section. The Secretary may provide by regulation that money derived from the lease, rental, or user charges of such acquired land and facilities thereon will be deposited in the fund.

**(g) Public sale; notice and hearing**

(1) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential, or recreational development, the Secretary may sell or authorize the States to sell such land by public sale under a system of competitive bidding, at not less than fair market value and under such other regulations promulgated to insure that such lands are put to proper use consistent with local and State land use plans, if any, as determined by the Secretary.

(2) The Secretary or the State pursuant to an approved State program, when requested after appropriate public notice shall hold a public hearing, with the appropriate notice, in the county or counties or the appropriate subdivisions of the State in which lands acquired pursuant to this section are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

**(h) Construction or rehabilitation of housing for disabled, displaced, or dislocated persons; grants**

In addition to the authority to acquire land under subsection (d) of this section the Secretary is authorized to use money in the fund to acquire land by purchase, donation, or condemnation, and to reclaim and transfer acquired land to any State or to a political subdivision thereof, or to any person, firm, association, or corporation, if he determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency as provided in section 1240 of this title or persons dislocated as the result of natural disasters or catastrophic failures from any cause. Such activities shall be accomplished under such terms and conditions as the Secretary shall require, which may include transfers of land with or without monetary consideration: *Provided*, That, to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association, or corporation. No part of the funds provided under this subchapter may be used to pay the actual construction costs of housing. The Secretary may carry out the purposes of this subsection directly or he may make grants and commitments for grants, and may advance money under such terms and conditions as he may require to any State, or any department, agency, or instrumentality of a State, or any public body or nonprofit organization designated by a State.

(Pub. L. 95–87, title IV, § 407, Aug. 3, 1977, 91 Stat. 462; Pub. L. 101–508, title VI, § 6012(d)(4)–(7), Nov. 5, 1990, 104 Stat. 1388–298.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–508, § 6012(d)(4), (5), substituted a semicolon for the period at end of par. (4) and ''then, upon giving notice'' for ''Then, upon giving notice'' in concluding provisions.

Subsec. (e). Pub. L. 101–508, § 6012(d)(6), substituted ''paragraph (1) of subsection (c) of this section'' for ''paragraph (1), of this subsection''.

Subsec. (g)(2). Pub. L. 101–508, § 6012(d)(7), substituted ''use or'' for ''use of'' before ''disposition''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101–508 set out as a note under section 1231 of this title.

## § 1238. Liens

**(a) Filing of statement and appraisal**

Within six months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned land, the Secretary or the State, pursuant to an approved State program, shall itemize the moneys so expended and may file a statement thereof in the office of the county in which the land lies which has the responsibility under local law for the recording of judgments against land, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices if the moneys so expended shall result in a significant increase in property value. Such statement shall constitute a lien upon the said land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. No lien shall be filed against the property of any person, in accordance with this subsection, who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

**(b) Petition**

The landowner may proceed as provided by local law to petition within sixty days of the filing of the lien, to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by local law.

**(c) Recordation**

The lien provided in this section shall be entered in the county office in which the land lies

and which has responsibility under local law for the recording of judgments against land. Such statement shall constitute a lien upon the said land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon said land.

(Pub. L. 95–87, title IV, § 408, Aug. 3, 1977, 91 Stat. 465; Pub. L. 109–432, div. C, title II, § 205, Dec. 20, 2006, 120 Stat. 3016.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–432 struck out ''who owned the surface prior to May 2, 1977, and'' after ''this subsection,'' in last sentence.

### § 1239. Filling voids and sealing tunnels

#### (a) Congressional declaration of hazardous conditions

The Congress declares that voids, and open and abandoned tunnels, shafts, and entryways resulting from any previous mining operation, constitute a hazard to the public health or safety and that surface impacts of any underground or surface mining operation may degrade the environment. The Secretary, at the request of the Governor of any State, or the the[1] governing body of an Indian tribe, is authorized to fill such voids, seal such abandoned tunnels, shafts, and entryways, and reclaim surface impacts of underground or surface mines which the Secretary determines could endanger life and property, constitute a hazard to the public health and safety, or degrade the environment. State regulatory authorities are authorized to carry out such work pursuant to an approved abandoned mine reclamation program.

#### (b) Limitation on funds

Funds available for use in carrying out the purpose of this section shall be limited to those funds which must be allocated to the respective States or Indian tribes under the provisions of paragraphs (1) and (5) of section 1232(g) of this title.

#### (c) Limitation on expenditures

(1) The Secretary may make expenditures and carry out the purposes of this section in such States where requests are made by the Governor or governing body of an Indian tribe for those reclamation projects which meet the priorities stated in section 1233(a)(1) of this title, except that for the purposes of this section the reference to coal in section 1233(a)(1) of this title shall not apply.

(2) The provisions of section 1234 of this title shall apply to this section, with the exception that such mined lands need not have been mined for coal.

(3) The Secretary shall not make any expenditures for the purposes of this section in those States which have made the certification referred to in section 1240a(a) of this title.

#### (d) Disposal of mine wastes

In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from such operations by filling voids and sealing tunnels may be eligible for funding providing that the disposal of these wastes meets the purposes of this section.

#### (e) Land acquisition

The Secretary may acquire by purchase, donation, easement, or otherwise such interest in land as he determines necessary to carry out the provisions of this section.

(Pub. L. 95–87, title IV, § 409, Aug. 3, 1977, 91 Stat. 465; Pub. L. 101–508, title VI, § 6009, Nov. 5, 1990, 104 Stat. 1388–296.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–508, § 6009(1), substituted ''the governing body of an Indian tribe'' for ''chairman of any tribe''.

Subsec. (b). Pub. L. 101–508, § 6009(2), substituted ''Indian tribes under the provisions of paragraphs (1) and (5) of section 1232(g) of this title'' for ''Indian reservations under the provisions of subsection 1232(g) of this title''.

Subsec. (c). Pub. L. 101–508, § 6009(3), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Secretary may make expenditures and carry out the purposes of this section without regard to provisions of section 1234 of this title in such States or Indian reservations where requests are made by the Governor or tribal chairman and only after all reclamation with respect to abandoned coal lands or coal development impacts have been met, except for those reclamation projects relating to the protection of the public health or safety.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Oct. 1, 1991, see section 6014 of Pub. L. 101–508 set out as a note under section 1231 of this title.

### § 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 in-

[1] So in original.

tended 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) of this section, for purposes 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) of this section 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) of this section.

#### (f) Public facilities related to coal or minerals industry

Notwithstanding subsection (e) of this section, where the Secretary has concurred in the certification referenced in subsection (a) of this section 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 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.

**(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.

(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.)

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

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. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

PRIOR PROVISIONS

A prior section 413 of Pub. L. 95–87 was renumbered section 414 and is classified to section 1243 of this title.

**§ 1243. Interagency cooperation**

All departments, boards, commissioners, and agencies of the United States of America shall cooperate with the Secretary by providing technical expertise, personnel, equipment, materials, and supplies to implement and administer the provisions of this subchapter.

(Pub. L. 95–87, title IV, § 414, formerly § 413, Aug. 3, 1977, 91 Stat. 467, renumbered § 414, Pub. L. 101–508, title VI, § 6010(1), Nov. 5, 1990, 104 Stat. 1388–296.)

**§ 1244. Remining incentives**

**(a) In general**

Notwithstanding any other provision of this chapter, the Secretary may, after opportunity for public comment, promulgate regulations that describe conditions under which amounts in the fund may be used to provide incentives to promote remining of eligible land under section 1234 of this title in a manner that leverages the use of amounts from the fund to achieve more reclamation with respect to the eligible land than would be achieved without the incentives.

**(b) Requirements**

Any regulations promulgated under subsection (a) shall specify that the incentives shall apply only if the Secretary determines, with the concurrence of the State regulatory authority referred to in subchapter V, that, without the incentives, the eligible land would not be likely to be remined and reclaimed.

**(c) Incentives**

**(1) In general**

Incentives that may be considered for inclusion in the regulations promulgated under subsection (a) include, but are not limited to—

(A) a rebate or waiver of the reclamation fees required under section 1232(a) of this title; and

(B) the use of amounts in the fund to provide financial assurance for remining operations in lieu of all or a portion of the performance bonds required under section 1259 of this title.

**(2) Limitations**

**(A) Use**

A rebate or waiver under paragraph (1)(A) shall be used only for operations that—

(i) remove or reprocess abandoned coal mine waste; or

(ii) conduct remining activities that meet the priorities specified in paragraph (1) or (2) of section 1233(a) of this title.

**(B) Amount**

The amount of a rebate or waiver provided as an incentive under paragraph (1)(A) to remine or reclaim eligible land shall not exceed the estimated cost of reclaiming the eligible land under this section.

(Pub. L. 95–87, title IV, § 415, as added Pub. L. 109–432, div. C, title II, § 207, Dec. 20, 2006, 120 Stat. 3018.)

SUBCHAPTER V—CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING

### § 1251. Environmental protection standards

(a) Not later than the end of the ninety-day period immediately following August 3, 1977, the Secretary shall promulgate and publish in the Federal Register regulations covering an interim regulatory procedure for surface coal mining and reclamation operations setting mining and reclamation performance standards based on and incorporating the provisions set out in section 1252(c) of this title. The issuance of the interim regulations shall be deemed not to be a major Federal action within the meaning of section 4332(2)(c)[1] of title 42. Such regulations, which shall be concise and written in plain, understandable language shall not be promulgated and published by the Secretary until he has—

(A) published proposed regulations in the Federal Register and afforded interested persons and State and local governments a period of not less than thirty days after such publication to submit written comments thereon;

(B) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those regulations promulgated under this section which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.]; and the Clean Air Act, as amended [42 U.S.C. 7401 et seq.]; and

(C) held at least one public hearing on the proposed regulations.

The date, time, and place of any hearing held on the proposed regulations shall be set out in the publication of the proposed regulations. The Secretary shall consider all comments and relevant data presented at such hearing before final promulgation and publication of the regulations.

(b) Not later than one year after August 3, 1977, the Secretary shall promulgate and publish in the Federal Register regulations covering a permanent regulatory procedure for surface coal mining and reclamation operations performance standards based on and conforming to the provisions of this subchapter and establishing procedures and requirements for preparation, submission, and approval of State programs; and development and implementation of Federal programs under the subchapter. The Secretary shall promulgate these regulations, which shall be concise and written in plain, understandable language in accordance with the procedures in subsection (a) of this section.

(Pub. L. 95–87, title V, § 501, Aug. 3, 1977, 91 Stat. 467.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (a)(B), is act June 30, 1948, ch. 758, 62 Stat. 1155, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, referred to in subsec. (a)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 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 7401 of Title 42 and Tables.

[1] So in original. Probably should be "4332(2)(C)".

### § 1251a. Abandoned coal refuse sites

(1) Notwithstanding any other provision of the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.] to the contrary, the Secretary of the Interior shall, within one year after October 24, 1992, publish proposed regulations in the Federal Register, and after opportunity for public comment publish final regulations, establishing environmental protection performance and reclamation standards, and separate permit systems applicable to operations for the on-site reprocessing of abandoned coal refuse and operations for the removal of abandoned coal refuse on lands that would otherwise be eligible for expenditure under section 404 and section 402(g)(4) of the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1234, 1232(g)(4)].

(2) The standards and permit systems referred to in paragraph (1) shall distinguish between those operations which reprocess abandoned coal refuse on-site, and those operations which completely remove abandoned coal refuse from a site for the direct use of such coal refuse, or for the reprocessing of such coal refuse, at another location. Such standards and permit systems shall be premised on the distinct differences between operations for the on-site reprocessing, and operations for the removal, of abandoned coal refuse and other types of surface coal mining operations.

(3) The Secretary of the Interior may devise a different standard than any of those set forth in section 515 and section 516 of the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1265, 1266], and devise a separate permit system, if he determines, on a standard-by-standard basis, that a different standard may facilitate the on-site reprocessing, or the removal, of abandoned coal refuse in a manner that would provide the same level of environmental protection as under section 515 and section 516.

(4) Not later than 30 days prior to the publication of the proposed regulations referred to in this section, the Secretary shall submit a report to the Committee on Interior and Insular Affairs of the United States House of Representatives, and the Committee on Energy and Natural Resources of the United States Senate containing a detailed description of any environmental protection performance and reclamation standards, and separate permit systems, devised pursuant to this section.

(Pub. L. 102–486, title XXV, § 2503(e), Oct. 24, 1992, 106 Stat. 3103.)

REFERENCES IN TEXT

The Surface Mining Control and Reclamation Act of 1977, referred to in par. (1), is Pub. L. 95–87, Aug. 3, 1977, 91 Stat. 445, as amended, which is classified generally to this chapter (§ 1201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

CHANGE OF NAME

Committee on Interior and Insular Affairs of House of Representatives changed to Committee on Natural Resources of House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress. Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

## § 1252. Initial regulatory procedures

### (a) State regulation

No person shall open or develop any new or previously mined or abandoned site for surface coal mining operations on lands on which such operations are regulated by a State unless such person has obtained a permit from the State's regulatory authority.

### (b) Interim standards

All surface coal mining operations on lands on which such operations are regulated by a State which commence operations pursuant to a permit issued on or after six months from August 3, 1977, shall comply, and such permits shall contain terms requiring compliance with, the provisions set out in subsection (c) of this section. Prior to final disapproval of a State program or prior to promulgation of a Federal program or a Federal lands program pursuant to this chapter, a State may issue such permits.

### (c) Full compliance with environmental protection performance standards

On and after nine months from August 3, 1977, all surface coal mining operations on lands on which such operations are regulated by a State shall comply with the provisions of subsections (b)(2), (b)(3), (b)(5), (b)(10), (b)(13), (b)(15), (b)(19), and (d) of section 1265 of this title or, where a surface coal mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, such operation shall comply with the requirements of section 1265(c)(4) and (5) of this title without regard to the requirements of section 1265(b)(3) or (d)(2) and (3) of this title, with respect to lands from which overburden and the coal seam being mined have not been removed: *Provided, however*, That surface coal mining operations in operation pursuant to a permit issued by a State before August 3, 1977, issued to a person as defined in section 1291(19) of this title in existence prior to May 2, 1977 and operated by a person whose total annual production of coal from surface and underground coal mining operations does not exceed one hundred thousand tons shall not be subject to the provisions of this subsection except with reference to the provision of section 1265(d)(1) of this title until January 1, 1979.

### (d) Permit application

Not later than two months following the approval of a State program pursuant to section 1253 of this title or the implementation of a Federal program pursuant to section 1254 of this title, regardless of litigation contesting that approval or implementation, all operators of surface coal mines in expectation of operating such mines after the expiration of eight months from the approval of a State program or the implementation of a Federal program, shall file an application for a permit with the regulatory authority. Such application shall cover those lands to be mined after the expiration of eight months from the approval of a State program or the implementation of a Federal program. The regulatory authority shall process such applications and grant or deny a permit within eight months after the date of approval of the State program or the implementation of the Federal program, unless specially enjoined by a court of competent jurisdiction, but in no case later than forty-two months from August 3, 1977.

### (e) Federal enforcement program

Within six months after August 3, 1977, the Secretary shall implement a Federal enforcement program which shall remain in effect in each State as surface coal mining operations are required to comply with the provisions of this chapter, until the State program has been approved pursuant to this chapter or until a Federal program has been implemented pursuant to this chapter. The enforcement program shall—

(1) include inspections of surface coal mine sites which may be made (but at least one inspection for every site every six months), without advance notice to the mine operator and for the purpose of ascertaining compliance with the standards of subsections (b) and (c) above. The Secretary shall order any necessary enforcement action to be implemented pursuant to the Federal enforcement provision of this subchapter to correct violations identified at the inspections;

(2) provide that upon receipt of inspection reports indicating that any surface coal mining operation has been found in violation of subsections (b) and (c) above, during not less than two consecutive State inspections or upon receipt by the Secretary of information which would give rise to reasonable belief that such standards are being violated by any surface coal mining operation, the Secretary shall order the immediate inspection of such operation by Federal inspectors and the necessary enforcement actions, if any, to be implemented pursuant to the Federal enforcement provisions of this subchapter. When the Federal inspection results from information provided to the Secretary by any person, the Secretary shall notify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection;

(3) provide that the State regulatory agency file with the Secretary and with a designated Federal office centrally located in the county or area in which the inspected surface coal mine is located copies of inspection reports made;

(4) provide that moneys authorized by section 1302 of this title shall be available to the Secretary prior to the approval of a State pro-

gram pursuant to this chapter to reimburse the State for conducting those inspections in which the standards of this chapter are enforced and for the administration of this section.[1]

(5) for purposes of this section, the term ''Federal inspector'' means personnel of the Office of Surface Mining Reclamation and Enforcement and such additional personnel of the United States Geological Survey, Bureau of Land Management, or of the Mining Enforcement and Safety Administration so designated by the Secretary, or such other personnel of the Forest Service, Soil Conservation Service, or the Agricultural Stabilization and Conservation Service as arranged by appropriate agreement with the Secretary on a reimbursable or other basis;[2]

**(f) Interim period**

Following the final disapproval of a State program, and prior to promulgation of a Federal program or a Federal lands program pursuant to this chapter, including judicial review of such a program, existing surface coal mining operations may continue surface mining operations pursuant to the provisions of this section. During such period no new permits shall be issued by the State whose program has been disapproved. Permits which lapse during such period may continue in full force and effect until promulgation of a Federal program or a Federal lands program.

(Pub. L. 95–87, title V, § 502, Aug. 3, 1977, 91 Stat. 468.)

**§ 1253. State programs**

**(a) Regulation of surface coal mining and reclamation operations; submittal to Secretary; time limit; demonstration of effectiveness**

Each State in which there are or may be conducted surface coal mining operations on non-Federal lands, and which wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, except as provided in sections 1271 and 1273 of this title and subchapter IV of this chapter, shall submit to the Secretary, by the end of the eighteenth-month[1] period beginning on August 3, 1977, a State program which demonstrates that such State has the capability of carrying out the provisions of this chapter and meeting its purposes through—

(1) a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this chapter;

(2) a State law which provides sanctions for violations of State laws, regulations, or conditions of permits concerning surface coal mining and reclamation operations, which sanctions shall meet the minimum requirements of this chapter, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the State regulatory authority or its inspectors;

(3) a State regulatory authority with sufficient administrative and technical personnel, and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of this chapter;

(4) a State law which provides for the effective implementations,[1] maintenance, and enforcement of a permit system, meeting the requirements of this subchapter for the regulations[1] of surface coal mining and reclamation operations for coal on lands within the State;

(5) establishment of a process for the designation of areas as unsuitable for surface coal mining in accordance with section 1272 of this title provided that the designation of Federal lands unsuitable for mining shall be performed exclusively by the Secretary after consultation with the State; and[1]

(6) establishment for the purposes of avoiding duplication, of a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other Federal or State permit process applicable to the proposed operations; and

(7) rules and regulations consistent with regulations issued by the Secretary pursuant to this chapter.

**(b) Approval of program**

The Secretary shall not approve any State program submitted under this section until he has—

(1) solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed State program;

(2) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.], and the Clean Air Act, as amended [42 U.S.C. 7401 et seq.];

(3) held at least one public hearing on the State program within the State; and

(4) found that the State has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards.

The Secretary shall approve or disapprove a State program, in whole or in part, within six full calendar months after the date such State program was submitted to him.

**(c) Notice of disapproval**

If the Secretary disapproves any proposed State program in whole or in part, he shall notify the State in writing of his decision and set forth in detail the reasons therefor. The State shall have sixty days in which to resubmit a revised State program or portion thereof. The Secretary shall approve or disapprove the resubmitted State program or portion thereof within sixty days from the date of resubmission.

**(d) Inability of State to take action**

For the purposes of this section and section 1254 of this title, the inability of a State to take

[1] So in original. The period probably should be a semicolon.

[2] So in original. The semicolon probably should be a period.

[1] So in original.

any action the purpose of which is to prepare, submit or enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result in a loss of eligibility for financial assistance under subchapters IV and VII of this chapter or in the imposition of a Federal program. Regulation of the surface coal mining and reclamation operations covered or to be covered by the State program subject to the injunction shall be conducted by the State pursuant to section 1252 of this title, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of this section and section 1254 of this title shall again be fully applicable.

(Pub. L. 95–87, title V, § 503, Aug. 3, 1977, 91 Stat. 470.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (b)(2), is act June 30, 1948, ch. 758, 62 Stat. 1155, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, referred to in subsec. (b)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 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 7401 of Title 42 and Tables.

## § 1254. Federal programs

### (a) Promulgation and implementation by Secretary for State

The Secretary shall prepare and, subject to the provisions of this section, promulgate and implement a Federal program for a State no later than thirty-four months after August 3, 1977, if such State—

(1) fails to submit a State program covering surface coal mining and reclamation operations by the end of the eighteen-month period beginning on August 3, 1977;

(2) fails to resubmit an acceptable State program within sixty days of disapproval of a proposed State program: *Provided*, That the Secretary shall not implement a Federal program prior to the expiration of the initial period allowed for submission of a State program as provided for in clause (1) of this subsection; or

(3) fails to implement, enforce, or maintain its approved State program as provided for in this chapter.

If State compliance with clause (1) of this subsection requires an act of the State legislature, the Secretary may extend the period of submission of a State program up to an additional six months. Promulgation and implementation of a Federal program vests the Secretary with exclusive jurisdiction for the regulation and control of surface coal mining and reclamation operations taking place on lands within any State not in compliance with this chapter. After promulgation and implementation of a Federal program the Secretary shall be the regulatory authority. If a Federal program is implemented for a State, section 1272(a), (c), and (d) of this title shall not apply for a period of one year following the date of such implementation. In promulgating and implementing a Federal program for a particular State the Secretary shall take into consideration the nature of that State's terrain, climate, biological, chemical, and other relevant physical conditions.

### (b) Federal enforcement of State program

In the event that a State has a State program for surface coal mining, and is not enforcing any part of such program, the Secretary may provide for the Federal enforcement, under the provisions of section 1271 of this title, of that part of the State program not being enforced by such State.

### (c) Notice and hearing

Prior to promulgation and implementation of any proposed Federal program, the Secretary shall give adequate public notice and hold a public hearing in the affected State.

### (d) Review of permits

Permits issued pursuant to a previously approved State program shall be valid but reviewable under a Federal program. Immediately following promulgation of a Federal program, the Secretary shall undertake to review such permits to determine that the requirements of this chapter are not violated. If the Secretary determines any permit to have been granted contrary to the requirements of this chapter, he shall so advise the permittee and provide him an opportunity for hearing and a reasonable opportunity for submission of a new application and reasonable time, within a time limit prescribed in regulations promulgated pursuant to section 1251(b) of this title, to conform ongoing surface mining and reclamation operations to the requirements of the Federal program.

### (e) Submission of State program after implementation of Federal program

A State which has failed to obtain the approval of a State program prior to implementation of a Federal program may submit a State program at any time after such implementation. Upon the submission of such a program, the Secretary shall follow the procedures set forth in section 1253(b) of this title and shall approve or disapprove the State program within six months after its submittal. Approval of a State program shall be based on the determination that the State has the capability of carrying out the provisions of this chapter and meeting its purposes through the criteria set forth in section 1253(a)(1) through (6) of this title. Until a State program is approved as provided under this section, the Federal program shall remain in effect and all actions taken by the Secretary pursuant to such Federal program, including the terms and conditions of any permit issued thereunder shall remain in effect.

### (f) Validity of Federal program permits under superseding State program

Permits issued pursuant to the Federal program shall be valid under any superseding State program: *Provided*, That the Federal permittee shall have the right to apply for a State permit to supersede his Federal permit. The State regulatory authority may review such permits to de-

termine that the requirements of this chapter and the approved State program are not violated. Should the State program contain additional requirements not contained in the Federal program, the permittee will be provided opportunity for hearing and a reasonable time, within a time limit prescribed in regulations promulgated pursuant to section 1251 of this title, to conform ongoing surface mining and reclamation operations to the additional State requirements.

**(g) Preemption of State statutes or regulations**

Whenever a Federal program is promulgated for a State pursuant to this chapter, any statutes or regulations of such State which are in effect to regulate surface mining and reclamation operations subject to this chapter shall, insofar as they interfere with the achievement of the purposes and the requirements of this chapter and the Federal program, be preempted and superseded by the Federal program. The Secretary shall set forth any State law or regulation which is preempted and superseded by the Federal program.

**(h) Coordination of issuance and review of Federal program permits with any other Federal or State permit process**

Any Federal program shall include a process for coordinating the review and issuance of permits for surface mining and reclamation operations with any other Federal or State permit process applicable to the proposed operation.

(Pub. L. 95–87, title V, § 504, Aug. 3, 1977, 91 Stat. 471.)

**§ 1255. State laws**

(a) No State law or regulation in effect on August 3, 1977, or which may become effective thereafter, shall be superseded by any provision of this chapter or any regulation issued pursuant thereto, except insofar as such State law or regulation is inconsistent with the provisions of this chapter.

(b) Any provision of any State law or regulation in effect upon August 3, 1977, or which may become effective thereafter, which provides for more stringent land use and environmental controls and regulations of surface coal mining and reclamation operation than do the provisions of this chapter or any regulation issued pursuant thereto shall not be construed to be inconsistent with this chapter. The Secretary shall set forth any State law or regulation which is construed to be inconsistent with this chapter. Any provision of any State law or regulation in effect on August 3, 1977, or which may become effective thereafter, which provides for the control and regulation of surface mining and reclamation operations for which no provision is contained in this chapter shall not be construed to be inconsistent with this chapter.

(Pub. L. 95–87, title V, § 505, Aug. 3, 1977, 91 Stat. 473.)

**§ 1256. Permits**

**(a) Persons engaged in surface coal mining within State; time limit; exception**

No later than eight months from the date on which a State program is approved by the Secretary, pursuant to section 1253 of this title, or no later than eight months from the date on which the Secretary has promulgated a Federal program for a State not having a State program pursuant to section 1254 of this title, no person shall engage in or carry out on lands within a State any surface coal mining operations unless such person has first obtained a permit issued by such State pursuant to an approved State program or by the Secretary pursuant to a Federal program; except a person conducting surface coal mining operations under a permit from the State regulatory authority, issued in accordance with the provisions of section 1252 of this title, may conduct such operations beyond such period if an application for a permit has been filed in accordance with the provisions of this chapter, but the initial administrative decision has not been rendered.

**(b) Term**

All permits issued pursuant to the requirements of this chapter shall be issued for a term not to exceed five years: *Provided*, That if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for such specified longer term, the regulatory authority may grant a permit for such longer term. A successor in interest to a permittee who applies for a new permit within thirty days of succeeding to such interest and who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

**(c) Termination**

A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by such permit within three years of the issuance of the permit: *Provided*, That the regulatory authority may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding such commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee: *Provided further*, That in the case of a coal lease issued under the Federal Mineral Leasing Act, as amended [30 U.S.C. 181 et seq.], extensions of time may not extend beyond the period allowed for diligent development in accordance with section 7 of that Act [30 U.S.C. 207]: *Provided further*, That with respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

**(d) Renewal**

(1) Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for re-

newal and such renewal shall be issued (provided that on application for renewal the burden shall be on the opponents of renewal), subsequent to fulfillment of the public notice requirements of sections 1263 and 1264 of this title unless it is established that and written findings by the regulatory authority are made that—

(A) the terms and conditions of the existing permit are not being satisfactorily met;

(B) the present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter and the approved State plan or Federal program pursuant to this chapter; or

(C) the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

(D) the operator has not provided evidence that the performance bond in effect for said operation will continue in full force and effect for any renewal requested in such application as well as any additional bond the regulatory authority might require pursuant to section 1259 of this title; or

(E) any additional revised or updated information required by the regulatory authority has not been provided. Prior to the approval of any renewal of permit the regulatory authority shall provide notice to the appropriate public authorities.

(2) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new applications under this chapter: *Provided, however*, That if the surface coal mining operations authorized by a permit issued pursuant to this chapter were not subject to the standards contained in section 1260(b)(5)(A) and (B) of this title by reason of complying with the proviso of section 1260(b)(5) of this title, then the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan submitted pursuant to section 1258 of this title shall not be subject to the standards contained in section 1260(b)(5)(A) and (B) of this title.

(3) Any permit renewal shall be for a term not to exceed the period of the original permit established by this chapter. Application for permit renewal shall be made at least one hundred and twenty days prior to the expiration of the valid permit.

(Pub. L. 95–87, title V, § 506, Aug. 3, 1977, 91 Stat. 473.)

REFERENCES IN TEXT

The Federal Mineral Leasing Act, as amended, referred to in subsec. (c), probably means act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, known as the Mineral Leasing Act, which is classified generally to chapter 3A (§ 181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

### § 1257. Application requirements

#### (a) Fee

Each application for a surface coal mining and reclamation permit pursuant to an approved State program or a Federal program under the provisions of this chapter shall be accompanied by a fee as determined by the regulatory authority. Such fee may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to a State or Federal program. The regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit.

#### (b) Submittal; contents

The permit application shall be submitted in a manner satisfactory to the regulatory authority and shall contain, among other things—

(1) the names and addresses of (A) the permit applicant; (B) every legal owner of record of the property (surface and mineral), to be mined; (C) the holders of record of any leasehold interest in the property; (D) any purchaser of record of the property under a real estate contract; and (E) the operator if he is a person different from the applicant; and (F) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent;

(2) the names and addresses of the owners of record of all surface and subsurface areas adjacent to any part of the permit area;

(3) a statement of any current or previous surface coal mining permits in the United States held by the applicant and the permit identification and each pending application;

(4) if the applicant is a partnership, corporation, association, or other business entity, the following where applicable: the names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, together with the name and address of any person owning, of record 10 per centum or more of any class of voting stock of the applicant and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation within the United States within the five-year period preceding the date of submission of the application;

(5) a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, has ever held a Federal or State mining permit which in the five-year period prior to the date of submission of the application has been suspended or revoked or has had a mining bond or similar security deposited in lieu of bond forefeited[1] and, if so, a brief explanation of the facts involved;

(6) a copy of the applicant's advertisement to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks, and which includes the ownership, a description of the exact location and boundaries of the proposed site sufficient so that the proposed operation is readily locatable by local residents, and the location of where the application is available for public inspection;

(7) a description of the type and method of coal mining operation that exists or is pro-

[1] So in original. Probably should be "forfeited".

posed, the engineering techniques proposed or used, and the equipment used or proposed to be used;

(8) the anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;

(9) the applicant shall file with the regulatory authority on an accurate map or plan, to an appropriate scale, clearly showing the land to be affected as of the date of the application, the area of land within the permit area upon which the applicant has the legal right to enter and commence surface mining operations and shall provide to the regulatory authority a statement of those documents upon which the applicant bases his legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation: *Provided*, That nothing in this chapter shall be construed as vesting in the regulatory authority the jurisdiction to adjudicate property title disputes.[2]

(10) the name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged;

(11) a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the regulatory authority of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability: *Provided*, *however*, That this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate Federal or State agency: *Provided further*, That the permit shall not be approved until such information is available and is incorporated into the application;

(12) when requested by the regulatory authority, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges;

(13) accurate maps to an appropriate scale clearly showing (A) the land to be affected as of the date of application and (B) all types of information set forth on topographical maps of the United States Geological Survey of a scale of 1:24,000 or 1:25,000 or larger, including all manmade features and significant known archeological sites existing on the date of application. Such a map or plan shall among other things specified by the regulatory authority show all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas abutting the permit area, and the location of all buildings within one thousand feet of the permit area;

(14) cross-section maps or plans of the land to be affected including the actual area to be mined, prepared by or under the direction of and certified by a qualified registered professional engineer, or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting the following information: the nature and depth of the various strata of overburden; the location of subsurface water, if encountered, and its quality; the nature and thickness of any coal or rider seam above the coal seam to be mined; the nature of the stratum immediately beneath the coal seam to be mined; all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; existing or previous surface mining limits; the location and extent of known workings of any underground mines, including mine openings to the surface; the location of aquifers; the estimated elevation of the water table; the location of spoil, waste, or refuse areas and top-soil preservation areas; the location of all impoundments for waste or erosion control; any settling or water treatment facility; constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan;

(15) a statement of the result of test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam found, an analysis of the chemical properties of such coal; the sulfur content of any coal seam; chemical analysis of potentially acid or toxic forming sections of the overburden; and chemical analysis of the stratum lying immediately underneath the coal to be mined except that the provisions of this paragraph (15) may be waived by the regulatory authority with respect to the specific application by a written determination that such requirements are unnecessary;

(16) for those lands in the permit application which a reconnaissance inspection suggests may be prime farm lands, a soil survey shall be made or obtained according to standards established by the Secretary of Agriculture in order to confirm the exact location of such prime farm lands, if any; and

(17) information pertaining to coal seams, test borings, core samplings, or soil samples as required by this section shall be made available to any person with an interest which is or may be adversely affected: *Provided*, That information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record.

[2] So in original. The period probably should be a semicolon.

**(c) Assistance to small coal operators**

(1) If the regulatory authority finds that the probable total annual production at all locations of a coal surface mining operator will not exceed 300,000 tons, the cost of the following activities, which shall be performed by a qualified public or private laboratory or such other public or private qualified entity designated by the regulatory authority, shall be assumed by the regulatory authority upon the written request of the operator in connection with a permit application:

(A) The determination of probable hydrologic consequences required by subsection (b)(11) of this section, including the engineering analyses and designs necessary for the determination.

(B) The development of cross-section maps and plans required by subsection (b)(14) of this section.

(C) The geologic drilling and statement of results of test borings and core samplings required by subsection (b)(15) of this section.

(D) The collection of archaeological information required by subsection (b)(13) of this section and any other archaeological and historical information required by the regulatory authority, and the preparation of plans necessitated thereby.

(E) Pre-blast surveys required by section 1265(b)(15)(E) of this title.

(F) The collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the regulatory authority under this chapter.

(2) The Secretary shall provide or assume the cost of training coal operators that meet the qualifications stated in paragraph (1) concerning the preparation of permit applications and compliance with the regulatory program, and shall ensure that qualified coal operators are aware of the assistance available under this subsection.

**(d) Reclamation plan**

Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a reclamation plan which shall meet the requirements of this chapter.

**(e) Public inspection**

Each applicant for a surface coal mining and reclamation permit shall file a copy of his application for public inspection with the recorder at the courthouse of the county or an appropriate public office approved by the regulatory authority where the mining is proposed to occur, except for that information pertaining to the coal seam itself.

**(f) Insurance certificate**

Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought, or evidence that the applicant has satisfied other State or Federal self-insurance requirements. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations including use of explosives and entitled to compensation under the applicable provisions of State law. Such policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

**(g) Blasting plan**

Each applicant for a surface coal mining and reclamation permit shall submit to the regulatory authority as part of the permit application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of section 1265(b)(15) of this title.

**(h) Reimbursement of costs**

A coal operator that has received assistance pursuant to subsection (c)(1) or (2) of this section shall reimburse the regulatory authority for the cost of the services rendered if the program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

(Pub. L. 95–87, title V, § 507, Aug. 3, 1977, 91 Stat. 474; Pub. L. 101–508, title VI, § 6011, Nov. 5, 1990, 104 Stat. 1388–297; Pub. L. 102–486, title XXV, § 2513, Oct. 24, 1992, 106 Stat. 3112.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–486, § 2513(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''If the regulatory authority finds that the probable total annual production at all locations of any coal surface mining operator will not exceed 300,000 tons, the determination of probable hydrologic consequences required by subsection (b)(11) of this section and the statement of the result of test borings or core samplings required by subsection (b)(15) of this section shall, upon the written request of the operator be performed by a qualified public or private laboratory designated by the regulatory authority and the cost of the preparation of such determination and statement shall be assumed by the regulatory authority.''

Subsec. (h). Pub. L. 102–486, § 2513(b), added subsec. (h).

1990—Subsec. (c). Pub. L. 101–508 substituted ''300,000'' for ''100,000''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508, effective Oct. 1, 1991, see section 6014 of Pub. L. 101–508 set out as a note under section 1231 of this title.

PREPARATION OF CROSS-SECTIONS, MAPS, AND PLANS OF LAND BY OR UNDER DIRECTION OF QUALIFIED REGISTERED PROFESSIONAL ENGINEERS, GEOLOGISTS, OR LAND SURVEYORS

Pub. L. 98–146, title I, § 115, Nov. 4, 1983, 97 Stat. 938, provided that: ''Notwithstanding section 507(b)(14) of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95–87) [subsec. (b)(14) of this section], cross-sections, maps or plans of land to be affected by an application for a surface mining and reclamation permit shall be prepared by or under the direction of a qualified registered professional engineer or geologist, or qualified registered professional land surveyor in

any State which authorizes land surveyors to prepare and certify such maps or plans.''

### § 1258. Reclamation plan requirements

(a) Each reclamation plan submitted as part of a permit application pursuant to any approved State program or a Federal program under the provisions of this chapter shall include, in the degree of detail necessary to demonstrate that reclamation required by the State or Federal program can be accomplished, a statement of:

(1) the identification of the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought;

(2) the condition of the land to be covered by the permit prior to any mining including:

(A) the uses existing at the time of the application, and if the land has a history of previous mining, the uses which preceded any mining; and

(B) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover, and, if applicable, a soil survey prepared pursuant to section 1257(b)(16) of this title; and

(C) the productivity of the land prior to mining, including appropriate classification as prime farm lands, as well as the average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management;

(3) the use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface, State and local governments or agencies thereof which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation;

(4) a detailed description of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(5) the engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan, where appropriate, for backfilling, soil stabilization, and compacting, grading, and appropriate revegetation; a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in section 1265(b)(7)(A), (B), (C), and (D) of this title, for those food, forage, and forest lands identified in section 1265(b)(7) of this title; an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in section 1265 of this title;

(6) the consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized;

(7) a detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(8) the consideration which has been given to making the surface mining and reclamation operations consistent with surface owner plans, and applicable State and local land use plans and programs;

(9) the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

(10) the consideration which has been given to developing the reclamation plan in a manner consistent with local physical environmental, and climatological conditions;

(11) all lands, interests in lands, or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(12) the results of test boring which the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the regulatory authority, including the location of subsurface water, and an analysis of the chemical properties including acid forming properties of the mineral and overburden: *Provided*, That information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental contents which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record;

(13) a detailed description of the measures to be taken during the mining and reclamation process to assure the protection of:

(A) the quality of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process;

(B) the rights of present users to such water; and

(C) the quantity of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process or to provide alternative sources of water where such protection of quantity cannot be assured;

(14) such other requirements as the regulatory authority shall prescribe by regulations.

(b) Any information required by this section which is not on public file pursuant to State law shall be held in confidence by the regulatory authority.

(Pub. L. 95–87, title V, § 508, Aug. 3, 1977, 91 Stat. 478.)

### § 1259. Performance bonds

#### (a) Filing with regulatory authority; scope; number and amount

After a surface coal mining and reclamation permit application has been approved but before

such a permit is issued, the applicant shall file with the regulatory authority, on a form prescribed and furnished by the regulatory authority, a bond for performance payable, as appropriate, to the United States or to the State, and conditional upon faithful performance of all the requirements of this chapter and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the regulatory authority an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the regulatory authority. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than $10,000.

**(b) Liability period; execution**

Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with operator's responsibility for revegetation requirements in section 1265 of this title. The bond shall be executed by the operator and a corporate surety licensed to do business in the State where such operation is located, except that the operator may elect to deposit cash, negotiable bonds of the United States Government or such State, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

**(c) Bond of applicant without separate surety; alternate system**

The regulatory authority may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the regulatory authority the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount or in lieu of the establishment of a bonding program, as set forth in this section, the Secretary may approve as part of a State or Federal program an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section.

**(d) Deposit of cash or securities**

Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable certificate of deposit.

**(e) Adjustments**

The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the regulatory authority from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

(Pub. L. 95–87, title V, § 509, Aug. 3, 1977, 91 Stat. 479.)

**§ 1260. Permit approval or denial**

**(a) Basis for decision; notification of applicant and local government officials; burden of proof**

Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by this chapter and pursuant to an approved State program or Federal program under the provisions of this chapter, including public notification and an opportunity for a public hearing as required by section 1263 of this title, the regulatory authority shall grant, require modification of, or deny the application for a permit in a reasonable time set by the regulatory authority and notify the applicant in writing. The applicant for a permit, or revision of a permit, shall have the burden of establishing that his application is in compliance with all the requirements of the applicable State or Federal program. Within ten days after the granting of a permit, the regulatory authority shall notify the local governmental officials in the local political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

**(b) Requirements for approval**

No permit or revision application shall be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval, and made available to the applicant, that—

(1) the permit application is accurate and complete and that all the requirements of this chapter and the State or Federal program have been complied with;

(2) the applicant has demonstrated that reclamation as required by this chapter and the State or Federal program can be accomplished under the reclamation plan contained in the permit application;

(3) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in section 1257(b) of this title has been made by the regulatory authority and the proposed operation thereof has been designed to prevent material damage to hydrologic balance outside permit area;

(4) the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to section 1272 of this title or is not within an area under study for such designation in an administrative proceeding commenced pursuant to section 1272(a)(4)(D) or section 1272(c) of this title

(unless in such an area as to which an administrative proceeding has commenced pursuant to section 1272(a)(4)(D) of this title, the operator making the permit application demonstrates that, prior to January 1, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit);

(5) the proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would—

(A) not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, but, excluding undeveloped range lands which are not significant to farming on said alluvial valley floors and those lands as to which the regulatory authority finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production, or

(B) not materially damage the quantity or quality of water in surface or underground water systems that supply these valley floors in (A) of subsection (b)(5) of this section:

*Provided*, That this paragraph (5) shall not affect those surface coal mining operations which in the year preceding August 3, 1977, (I) produced coal in commercial quantities, and were located within or adjacent to alluvial valley floors or (II) had obtained specific permit approval by the State regulatory authority to conduct surface coal mining operations within said alluvial valley floors.

With respect to such surface mining operations which would have been within the purview of the foregoing proviso but for the fact that no coal was so produced in commercial quantities and no such specific permit approval was so received, the Secretary, if he determines that substantial financial and legal commitments were made by an operator prior to January 1, 1977, in connection with any such operation, is authorized, in accordance with such regulations as the Secretary may prescribe, to enter into an agreement with that operator pursuant to which the Secretary may, notwithstanding any other provision of law, lease other Federal coal deposits to such operator in exchange for the relinquishment by such operator of his Federal lease covering coal deposits involving such mining operations, or pursuant to section 1716 of title 43, convey to the fee holder of any such coal deposits involving such mining operations the fee title to other available Federal coal deposits in exchange for the fee title to such deposits so involving such mining operations. It is the policy of the Congress that the Secretary shall develop and carry out a coal exchange program to acquire private fee coal precluded from being mined by the restrictions of this paragraph (5) in exchange for Federal coal which is not so precluded. Such exchanges shall be made under section 1716 of title 43;

(6) in cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the regulatory authority—

(A) the written consent of the surface owner to the extraction of coal by surface mining methods; or

(B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(C) if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with State law: *Provided*, That nothing in this chapter shall be construed to authorize the regulatory authority to adjudicate property rights disputes.

**(c) Schedule of violations**

The applicant shall file with his permit application a schedule listing any and all notices of violations of this chapter and any law, rule, or regulation of the United States, or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation. Where the schedule or other information available to the regulatory authority indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this chapter or such other laws referred to[1] this subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation and no permit shall be issued to an applicant after a finding by the regulatory authority, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this chapter.

**(d) Prime farmland mining permit**

(1) In addition to finding the application in compliance with subsection (b) of this section, if the area proposed to be mined contains prime farmland pursuant to section 1257(b)(16) of this title, the regulatory authority shall, after consultation with the Secretary of Agriculture, and pursuant to regulations issued hereunder by the Secretary of[2] Interior with the concurrence of the Secretary of Agriculture, grant a permit to mine on prime farmland if the regulatory authority finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in section 1265(b)(7) of this title. Except for compliance with subsection (b) of this section, the requirements of this para-

[1] So in original. Probably should be followed by ''in''.

[2] So in original. Probably should be ''of the''.

graph (1) shall apply to all permits issued after August 3, 1977.

(2) Nothing in this subsection shall apply to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to August 3, 1977.

**(e) Modification of prohibition**

After October 24, 1992, the prohibition of subsection (c) of this section shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making such application. As used in this subsection, the term ''violation'' has the same meaning as such term has under subsection (c) of this section.

(Pub. L. 95–87, title V, § 510, Aug. 3, 1977, 91 Stat. 480; Pub. L. 102–486, title XXV, § 2503(a), Oct. 24, 1992, 106 Stat. 3102; Pub. L. 109–432, div. C, title II, § 208, Dec. 20, 2006, 120 Stat. 3019.)

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–432 struck out at end ''The authority of this subsection and section 1265(b)(20)(B) of this title shall terminate on September 30, 2004.''

1992—Subsec. (e). Pub. L. 102–486 added subsec. (e).

**§ 1261. Revision of permits**

**(a) Application and revised reclamation plan; requirements; extensions to area covered**

(1) During the term of the permit the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the regulatory authority.

(2) An application for a revision of a permit shall not be approved unless the regulatory authority finds that reclamation as required by this chapter and the State or Federal program can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within a period of time established by the State or Federal program. The regulatory authority shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply: *Provided*, That any revisions which propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

(3) Any extensions to the area covered by the permit except incidental boundary revisions must be made by application for another permit.

**(b) Transfer, assignment, or sale of rights under permit**

No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this chapter shall be made without the written approval of the regulatory authority.

**(c) Review of outstanding permits**

The regulatory authority shall within a time limit prescribed in regulations promulgated by the regulatory authority, review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of such permit: *Provided*, That such revision or modification shall be based upon a written finding and subject to notice and hearing requirements established by the State or Federal program.

(Pub. L. 95–87, title V, § 511, Aug. 3, 1977, 91 Stat. 483.)

**§ 1262. Coal exploration permits**

**(a) Regulations; contents**

Each State or Federal program shall include a requirement that coal exploration operations which substantially disturb the natural land surface be conducted in accordance with exploration regulations issued by the regulatory authority. Such regulations shall include, at a minimum (1) the requirement that prior to conducting any exploration under this section, any person must file with the regulatory authority notice of intention to explore and such notice shall include a description of the exploration area and the period of supposed exploration and (2) provisions for reclamation in accordance with the performance standards in section 1265 of this title of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

**(b) Confidential information**

Information submitted to the regulatory authority pursuant to this subsection as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intended to explore the described area shall not be available for public examination.

**(c) Penalties**

Any person who conducts any coal exploration activities which substantially disturb the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the provisions of section 1268 of this title.

**(d) Limitation on removal of coal**

No operator shall remove more than two hundred and fifty tons of coal pursuant to an exploration permit without the specific written approval of the regulatory authority.

**(e) Law governing exploration of Federal lands**

Coal exploration on Federal lands shall be governed by section 4 of the Federal Coal Leasing Amendments Act of 1975 (90 Stat. 1085).

(Pub. L. 95–87, title V, § 512, Aug. 3, 1977, 91 Stat. 483.)

REFERENCES IN TEXT

Section 4 of the Federal Coal Leasing Amendments Act of 1975 (90 Stat. 1085), referred to in subsec. (e), is section 4 of Pub. L. 94–377, Aug. 4, 1976, 90 Stat. 1085, redesignated the Federal Coal Leasing Amendments Act of 1976, which amended section 201(b) of this title.

**§ 1263. Public notice and public hearings**

**(a) Submittal of advertisement to regulatory authority; notification of local governmental bodies**

At the time of submission of an application for a surface coal mining and reclamation permit,

or revision of an existing permit, pursuant to the provisions of this chapter or an approved State program, the applicant shall submit to the regulatory authority a copy of his advertisement of the ownership, precise location, and boundaries of the land to be affected. At the time of submission such advertisement shall be placed by the applicant in a local newspaper of general circulation in the locality of the proposed surface mine at least once a week for four consecutive weeks. The regulatory authority shall notify various local governmental bodies, planning agencies, and sewage and water treatment authorities, of[1] water companies in the locality in which the proposed surface mining will take place, notifying them of the operator's intention to surface mine a particularly described tract of land and indicating the application's permit number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities, or companies may submit written comments within a reasonable period established by the regulatory authority on the mining applications with respect to the effect of the proposed operation on the environment which are within their area of responsibility. Such comments shall immediately be transmitted to the applicant by the regulatory authority and shall be made available to the public at the same locations as are the mining applications.

**(b) Objections to permit applications; informal conference; record**

Any person having an interest which is or may be adversely affected or the officer or head of any Federal, State, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operation with the regulatory authority within thirty days after the last publication of the above notice. Such objections shall immediately be transmitted to the applicant by the regulatory authority and shall be made available to the public. If written objections are filed and an informal conference requested, the regulatory authority shall then hold an informal conference in the locality of the proposed mining, if requested within a reasonable time of the receipt of such objections or request. The date, time and location of such informal conference shall be advertised by the regulatory authority in a newspaper of general circulation in the locality at least two weeks prior to the scheduled conference date. The regulatory authority may arrange with the applicant upon request by any party to the administrative proceeding access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding, unless waived by all parties. Such record shall be maintained and shall be accessible to the parties until final release of the applicant's performance bond. In the event all parties requesting the informal conference stipulate agreement prior to the requested informal conference and withdraw their request, such informal conference need not be held.

[1] So in original. Probably should be ''or''.

**(c) Prior Federal coal lease hearing as evidence**

Where the lands included in an application for a permit are the subject of a Federal coal lease in connection with which hearings were held and determinations were made under section 201(a)(3)(A), (B) and (C) of this title, such hearings shall be deemed as to the matters covered to satisfy the requirements of this section and section 1264 of this title and such determinations shall be deemed to be a part of the record and conclusive for purposes of sections 1260, 1264 of this title and this section.

(Pub. L. 95–87, title V, § 513, Aug. 3, 1977, 91 Stat. 484.)

**§ 1264. Decisions of regulatory authority and appeals**

**(a) Issuance of findings within 60 days after informal conference**

If an informal conference has been held pursuant to section 1263(b) of this title, the regulatory authority shall issue and furnish the applicant for a permit and persons who are parties to the administrative proceedings with the written finding of the regulatory authority, granting or denying the permit in whole or in part and stating the reasons therefor, within the sixty days of said hearings.

**(b) Decision without informal conference; notification within a reasonable time**

If there has been no informal conference held pursuant to section 1263(b) of this title, the regulatory authority shall notify the applicant for a permit within a reasonable time as determined by the regulatory authority and set forth in regulations, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and whether or not written objection to the application has been filed, whether the application has been approved or disapproved in whole or part.

**(c) Request for rehearing on reasons for final determination; time; issuance of decision**

If the application is approved, the permit shall be issued. If the application is disapproved, specific reasons therefor must be set forth in the notification. Within thirty days after the applicant is notified of the final decision of the regulatory authority on the permit application, the applicant or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final determination. The regulatory authority shall hold a hearing within thirty days of such request and provide notification to all interested parties at the time that the applicant is so notified. If the Secretary is the regulatory authority the hearing shall be of record and governed by section 554 of title 5. Where the regulatory authority is the State, such hearing shall be of record, adjudicatory in nature and no person who presided at a conference under section 1263(b) of this title shall either preside at the hearing or participate in this decision thereon or in any administrative appeal therefrom. Within thirty days after the hearing the regulatory authority shall issue and furnish the applicant, and all persons who participated in the hearing, with the written deci-

sion of the regulatory authority granting or denying the permit in whole or in part and stating the reasons therefor.

**(d) Temporary relief**

Where a hearing is requested pursuant to subsection (c) of this section, the Secretary, where the Secretary is the regulatory authority, or the State hearing authority 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.

**(e) Power of regulatory authority with respect to rehearing**

For the purpose of such hearing, the regulatory authority may administer oaths, subpoena witnesses, or written or printed materials, compel attendance of the witness, or production of the materials, and take evidence including but not limited to site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim record of each public hearing required by this chapter shall be made, and a transcript made available on the motion of any party or by order of the regulatory authority.

**(f) Right to appeal in accordance with section 1276 of this title**

Any applicant or any person with an interest which is or may be adversely affected who has participated in the administrative proceedings as an objector, and who is aggrieved by the decision of the regulatory authority, or if the regulatory authority fails to act within the time limits specified in this chapter shall have the right to appeal in accordance with section 1276 of this title.

(Pub. L. 95–87, title V, § 514, Aug. 3, 1977, 91 Stat. 485.)

## § 1265. Environmental protection performance standards

**(a) Permit requirement**

Any permit issued under any approved State or Federal program pursuant to this chapter to conduct surface coal mining operations shall require that such surface coal mining operations will meet all applicable performance standards of this chapter, and such other requirements as the regulatory authority shall promulgate.

**(b) General standards**

General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operation as a minimum to—

(1) conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future through surface coal mining can be minimized;

(2) restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as such use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicants' declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of Federal, State, or local law;

(3) except as provided in subsection (c) of this section with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this chapter): *Provided, however*, That in surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region: *And provided further*, That in surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in

accordance with the requirements of this chapter;

(4) stabilize and protect all surface areas including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution;

(5) remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner such other strata which is best able to support vegetation;

(6) restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) for all prime farm lands as identified in section 1257(b)(16) of this title to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction shall be established by the Secretary of Agriculture, and the operator shall, as a minimum, be required to—

(A) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(C) replace and regrade the root zone material described in (B) above with proper compaction and uniform depth over the regraded spoil material; and

(D) redistribute and grade in a uniform manner the surface soil horizon described in subparagraph (A);

(8) create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that—

(A) the size of the impoundment is adequate for its intended purposes;

(B) the impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83–566 (16 U.S.C. 1006);

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable Federal and State law in the receiving stream;

(D) the level of water will be reasonably stable;

(E) final grading will provide adequate safety and access for proposed water users; and

(F) such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial[1] recreational, or domestic uses;

(9) conducting[2] any augering operation associated with surface mining in a manner to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete; and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the regulatory authority determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health or safety: *Provided*, That the permitting authority may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the solid fuel resources or to protect against adverse water quality impacts;

(10) minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by—

(A) avoiding acid or other toxic mine drainage by such measures as, but not limited to—

(i) preventing or removing water from contact with toxic producing deposits;

(ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells and keep[3] acid or other toxic drainage from entering ground and surface waters;

(B)(i) conducting surface coal mining operations so as to prevent, to the extent pos-

[1] So in original. Probably should be followed by a comma.

[2] So in original. Probably should be ''conduct''.

[3] So in original. Probably should be ''keeping''.

sible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable State or Federal law;

(ii) constructing any siltation structures pursuant to subparagraph (B)(i) of this subsection prior to commencement of surface coal mining operations, such structures to be certified by a qualified registered engineer or a qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans to be constructed as designed and as approved in the reclamation plan;

(C) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized; and depositing the silt and debris at a site and in a manner approved by the regulatory authority;

(D) restoring recharge capacity of the mined area to approximate premining conditions;

(E) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(F) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(G) such other actions as the regulatory authority may prescribe;

(11) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter;

(12) refrain from surface coal mining within five hundred feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: *Provided*, That the regulatory authority shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if (A) the nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the regulatory authorities concerned with surface mine regulation and the health and safety of underground miners, and (B) such operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public;

(13) design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to subsection (f) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(14) insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion;

(15) insure that explosives are used only in accordance with existing State and Federal law and the regulations promulgated by the regulatory authority, which shall include provisions to—

(A) provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site and by providing daily notice to resident/occupiers in such areas prior to any blasting;

(B) maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(C) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent (i) injury to persons, (ii) damage to public and private property outside the permit area, (iii) adverse impacts on any underground mine, and (iv) change in the course, channel, or availability of ground or surface water outside the permit area;

(D) require that all blasting operations be conducted by trained and competent persons as certified by the regulatory authority;

(E) provide that upon the request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area the applicant or permittee shall conduct a pre-blasting survey of such structures and submit the survey to the regulatory authority and a copy to the resident or owner making the request. The area of the survey shall be decided by the regulatory authority and shall include such provisions as the Secretary shall promulgate.

(16) insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations: *Provided, however*, That where the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the mineral resources, the regulatory authority may grant a variance for specific areas within the reclamation plan from the requirement that reclama-

tion efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) if the regulatory authority finds in writing that:

(i) the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(iii) the applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) the areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) no substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this chapter;

(vi) provisions for the off-site storage of spoil will comply with paragraph (22);

(B) if the Secretary has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of this subsection and section 1251 of this title, and has imposed such additional requirements as he deems necessary;

(C) if variances granted under the provisions of this subsection are to be reviewed by the regulatory authority not more than three years from the date of issuance of the permit; and

(D) if liability under the bond filed by the applicant with the regulatory authority pursuant to section 1259(b) of this title shall be for the duration of the underground mining operations and until the requirements of this subsection and section 1269 of this title have been fully complied with.[4]

(17) insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property;

(18) refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(19) establish on the regraded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except, that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan;

(20)(A) assume the responsibility for successful revegetation, as required by paragraph (19) above, for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with paragraph (19) above, except in those areas or regions of the country where the annual average precipitation is twenty-six inches or less, then the operator's assumption of responsibility and liability will extend for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work: *Provided*, That when the regulatory authority approves a long-term intensive agricultural postmining land use, the applicable five- or ten-year period of responsibility for revegetation shall commence at the date of initial planting for such long-term intensive agricultural postmining land use: *Provided further*, That when the regulatory authority issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan, the authority may grant exception to the provisions of paragraph (19) above;

(B) on lands eligible for remining assume the responsibility for successful revegetation for a period of two full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards, except in those areas or regions of the country where the annual average precipitation is twenty-six inches or less, then the operator's assumption of responsibility and liability will be extended for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards.[5]

(21) protect offsite areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

(22) place all excess spoil material resulting from coal surface mining and reclamation activities in such a manner that—

(A) spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement;

(B) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;

(C) appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;

(D) the disposal area does not contain springs, natural water courses or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented;

[4] So in original. The period probably should be a semicolon.

[5] So in original. The period probably should be a semicolon.

(E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the regulatory authority, the spoil could be placed in compliance with all the requirements of this chapter, and shall be placed, where possible, upon, or above, a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement;

(F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed;

(G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

(H) design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and

(I) all other provisions of this chapter are met.[6]

(23) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this chapter, taking into consideration the physical, climatological, and other characteristics of the site; and[7]

(24) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable;

(25) provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as the regulatory authority shall determine shall be retained in place as a barrier to slides and erosion.

**(c) Procedures; exception to original contour restoration requirements**

(1) Each State program may and each Federal program shall include procedures pursuant to which the regulatory authority may permit surface mining operations for the purposes set forth in paragraph (3) of this subsection.

(2) Where an applicant meets the requirements of paragraphs (3) and (4) of this subsection a permit without regard to the requirement to restore to approximate original contour set forth in subsection (b)(3) or (d)(2) and (3) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in subsection (c)(4)(A) hereof) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this subsection.

(3) In cases where an industrial, commercial, agricultural, residential or public facility (including recreational facilities) use is proposed or[8] the postmining use of the affected land, the regulatory authority may grant a permit for a surface mining operation of the nature described in subsection (c)(2) of this section where—

(A) after consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use;

(B) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be—

(i) compatible with adjacent land uses;

(ii) obtainable according to data regarding expected need and market;

(iii) assured of investment in necessary public facilities;

(iv) supported by commitments from public agencies where appropriate;

(v) practicable with respect to private financial capability for completion of the proposed use;

(vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(vii) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(C) the proposed use would be consistent with adjacent land uses, and existing State and local land use plans and programs;

(D) the regulatory authority provides the governing body of the unit of general-purpose government in which the land is located and any State or Federal agency which the regulatory agency, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use;

(E) all other requirements of this chapter will be met.

(4) In granting any permit pursuant to this subsection the regulatory authority shall require that—

(A) the toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

(B) the reclaimed area is stable;

(C) the resulting plateau or rolling contour drains inward from the outslopes except at specified points;

(D) no damage will be done to natural watercourses;

(E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use: *Provided*, That all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subsection (b)(22) of this section;

(F) insure stability of the spoil retained on the mountaintop and meet the other requirements of this chapter;[9]

(5) The regulatory authority shall promulgate specific regulations to govern the granting of permits in accord with the provisions of this

[6] So in original. The period probably should be a semicolon.

[7] So in original. The word ''and'' probably should appear at end of par. (24).

[8] So in original. Probably should be ''for''.

[9] So in original. The semicolon probably should be a period.

subsection, and may impose such additional requirements as he deems to be necessary.

(6) All permits granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

**(d) Steep-slope surface coal mining standards**

The following performance standards shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required by this section: *Provided*, *however*, That the provisions of this subsection (d) shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area or where an operator is in compliance with provisions of subsection (c) hereof:

(1) Insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or mining cut: *Provided*, That spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of subsection (b)(3) or (d)(2) of this section shall be permanently stored pursuant to subsection (b)(22) of this section.

(2) Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the appropriate original contour, which material will maintain stability following mining and reclamation.

(3) The operator may not disturb land above the top of the highwall unless the regulatory authority finds that such disturbance will facilitate compliance with the environmental protection standards of this section: *Provided*, *however*, That the land disturbed above the highwall shall be limited to that amount necessary to facilitate said compliance.

(4) For the purposes of this subsection (d), the term ''steep slope'' is any slope above twenty degrees or such lesser slope as may be defined by the regulatory authority after consideration of soil, climate, and other characteristics of a region or State.

**(e) Variances to original contour restoration requirements**

(1) Each State program may and each Federal program shall include procedures pursuant to which the regulatory authority may permit variances for the purposes set forth in paragraph (3) of this subsection, provided that the watershed control of the area is improved; and further provided complete backfilling with spoil material shall be required to cover completely the highwall which material will maintain stability following mining and reclamation.

(2) Where an applicant meets the requirements of paragraphs (3) and (4) of this subsection a variance from the requirement to restore to approximate original contour set forth in subsection (d)(2) of this section may be granted for the surface mining of coal where the owner of the surface knowingly requests in writing, as a part of the permit application that such a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities) in accord with the further provisions of (3) and (4) of this subsection.

(3)(A) After consultation with the appropriate land use planning agencies, if any, the potential use of the affected land is deemed to constitute an equal or better economic or public use;

(B) is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site; and

(C) after approval of the appropriate State environmental agencies, the watershed of the affected land is deemed to be improved.

(4) In granting a variance pursuant to this subsection the regulatory authority shall require that only such amount of spoil will be placed off the mine bench as is necessary to achieve the planned postmining land use, insure stability of the spoil retained on the bench, meet all other requirements of this chapter, and all spoil placement off the mine bench must comply with subsection (b)(22) of this section.

(5) The regulatory authority shall promulgate specific regulations to govern the granting of variances in accord with the provisions of this subsection, and may impose such additional requirements as he deems to be necessary.

(6) All exceptions granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

**(f) Standards and criteria for coal mine waste piles**

The Secretary, with the written concurrence of the Chief of Engineers, shall establish within one hundred and thirty-five days from August 3, 1977, standards and criteria regulating the design, location, construction, operation, maintenance, enlargement, modification, removal, and abandonment of new and existing coal mine waste piles referred to in subsection (b)(13) of this section and section 1266(b)(5) of this title. Such standards and criteria shall conform to the standards and criteria used by the Chief of Engineers to insure that flood control structures are safe and effectively perform their intended function. In addition to engineering and other technical specifications the standards and criteria developed pursuant to this subsection must include provisions for: review and approval of plans and specifications prior to construction, enlargement, modification, removal, or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices for required remedial or maintenance work.

(Pub. L. 95–87, title V, § 515, Aug. 3, 1977, 91 Stat. 486; Pub. L. 99–500, § 101(h) [title I, § 123], Oct. 18, 1986, 100 Stat. 1783–242, 1783–267, and Pub. L.

99–591, § 101(h) [title I, § 123], Oct. 30, 1986, 100 Stat. 3341–242, 3341–267; Pub. L. 102–486, title XXV, § 2503(b), Oct. 24, 1992, 106 Stat. 3102.)

REFERENCES IN TEXT

Public Law 83–566, referred to in subsec. (b)(8)(B), is act Aug. 4, 1954, ch. 656, 68 Stat. 666, as amended, known as the Watershed Protection and Flood Prevention Act, which is classified generally to chapter 18 (§ 1001 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 16 and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1992—Subsec. (b)(20). Pub. L. 102–486 designated existing provisions as subpar. (A) and added subpar. (B).

1986—Subsec. (b)(10)(B)(ii). Pub. L. 99–500 and Pub. L. 99–591 inserted ''or a qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans''.

## § 1266. Surface effects of underground coal mining operations

### (a) Rules and regulations

The Secretary shall promulgate rules and regulations directed toward the surface effects of underground coal mining operations, embodying the following requirements and in accordance with the procedures established under section 1251 of this title: *Provided*, *however*, That in adopting any rules and regulations the Secretary shall consider the distinct difference between surface coal mining and underground coal mining. Such rules and regulations shall not conflict with nor supersede any provision of the Federal Coal Mine Health and Safety Act of 1969 [30 U.S.C. 801 et seq.] nor any regulation issued pursuant thereto, and shall not be promulgated until the Secretary has obtained the written concurrence of the head of the department which administers such Act.

### (b) Permit requirements

Each permit issued under any approved State or Federal program pursuant to this chapter and relating to underground coal mining shall require the operator to—

(1) adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: *Provided*, That nothing in this subsection shall be construed to prohibit the standard method of room and pillar mining;

(2) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations;

(3) fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations;

(4) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure that the leachate will not degrade below water quality standards established pursuant to applicable Federal and State law surface or ground waters and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(5) design, locate, construct, operate, maintain, enlarge, modify, and remove, or abandon, in accordance with the standards and criteria developed pursuant to section 1265(f) of this title, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(6) establish on regraded areas and all other lands affected, a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area;

(7) protect offsite areas from damages which may result from such mining operations;

(8) eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) minimize the disturbances of the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quantity of water in surface ground water systems both during and after coal mining operations and during reclamation by—

(A) avoiding acid or other toxic mine drainage by such measures as, but not limited to—

(i) preventing or removing water from contact with toxic producing deposits;

(ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters; and

(B) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area (but in no event shall such contributions be in excess of requirements set by applicable State or Federal law), and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(10) with respect to other surface impacts not specified in this subsection including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair

areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under section 1265 of this title for such effects which result from surface coal mining operations: *Provided*, That the Secretary shall make such modifications in the requirements imposed by this paragraph as are necessary to accommodate the distinct difference between surface and underground coal mining;

(11) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable;

(12) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

**(c) Suspension of underground coal mining operations in urbanized areas**

In order to protect the stability of the land, the regulatory authority shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

**(d) Applicability of this subchapter to surface operations and surface impacts incident to underground coal mining operations**

The provisions of this subchapter relating to State and Federal programs, permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The Secretary shall promulgate such modifications in accordance with the rulemaking procedure established in section 1251 of this title.

(Pub. L. 95–87, title V, § 516, Aug. 3, 1977, 91 Stat. 495.)

REFERENCES IN TEXT

The Federal Coal Mine Health and Safety Act of 1969, referred to in subsec. (a), is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended, which was redesignated the Federal Mine Safety and Health Act of 1977 by Pub. L. 95–164, title I, § 101, Nov. 9, 1977, 91 Stat. 1290, and is classified principally to chapter 22 (§ 801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

## § 1267. Inspections and monitoring

**(a) Inspections of surface coal mining and reclamation operations**

The Secretary shall cause to be made such inspections of any surface coal mining and reclamation operations as are necessary to evaluate the administration of approved State programs, or to develop or enforce any Federal program, and for such purposes authorized representatives of the Secretary shall have a right of entry to, upon, or through any surface coal mining and reclamation operations.

**(b) Records and reports; monitoring systems; evaluation of results**

For the purpose of developing or assisting in the development, administration, and enforcement of any approved State or Federal program under this chapter or in the administration and enforcement of any permit under this chapter, or of determining whether any person is in violation of any requirement of any such State or Federal program or any other requirement of this chapter—

(1) the regulatory authority shall require any permittee to (A) establish and maintain appropriate records, (B) make monthly reports to the regulatory authority, (C) install, use, and maintain any necessary monitoring equipment or methods, (D) evaluate results in accordance with such methods, at such locations, intervals, and in such manner as a regulatory authority shall prescribe, and (E) provide such other information relative to surface coal mining and reclamation operations as the regulatory authority deems reasonable and necessary;

(2) for those surface coal mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the regulatory authority shall specify those—

(A) monitoring sites to record the quantity and quality of surface drainage above and below the minesite as well as in the potential zone of influence;

(B) monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the lowermost (deepest) coal seam to be mined;

(C) records of well logs and borehole data to be maintained; and

(D) monitoring sites to record precipitation.

The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the regulatory authority in order to assure their reliability and validity; and

(3) the authorized representatives of the regulatory authority, without advance notice and upon presentation of appropriate credentials (A) shall have the right of entry to, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under paragraph (1) of this subsection are located; and (B) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this chapter.

**(c) Inspection intervals**

The inspections by the regulatory authority shall (1) occur on an irregular basis averaging

not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit; (2) occur without prior notice to the permittee or his agents or employees except for necessary onsite meetings with the permittee; and (3) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this chapter.

**(d) Maintenance of sign**

Each permittee shall conspicuously maintain at the entrances to the surface coal mining and reclamation operations a clearly visible sign which sets forth the name, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

**(e) Violations**

Each inspector, upon detection of each violation of any requirement of any State or Federal program or of this chapter, shall forthwith inform the operator in writing, and shall report in writing any such violation to the regulatory authority.

**(f) Availability of information to public**

Copies of any records, reports, inspection materials, or information obtained under this subchapter by the regulatory authority shall be made immediately available to the public at central and sufficient locations in the county, multicounty, and State area of mining so that they are conveniently available to residents in the areas of mining.

**(g) Conflict of interest; penalty; publication of regulations; report to Congress**

No employee of the State regulatory authority performing any function or duty under this chapter shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than $2,500, or by imprisonment of not more than one year, or by both. The Secretary shall (1) within sixty days after August 3, 1977, publish in the Federal Register, in accordance with section 553 of title 5, regulations to establish methods by which the provisions of this subsection will be monitored and enforced by the Secretary and such State regulatory authority, including appropriate provisions for the filing by such employees and the review of statements and supplements thereto concerning any financial interest which may be affected by this subsection, and (2) report to the Congress as part of the Annual Report (section 1296 of this title) on actions taken and not taken during the preceding year under this subsection.

**(h) Review; procedures for inspections**

(1) Any person who is or may be adversely affected by a surface mining operation may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this chapter which he has reason to believe exists at the surface mining site. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation. The Secretary shall furnish such persons requesting the review a written statement of the reasons for the Secretary's final disposition of the case.

(2) The Secretary shall also, by regulation, establish procedures to insure that adequate and complete inspections are made. Any such person may notify the Secretary of any failure to make such inspections, after which the Secretary shall determine whether adequate and complete inspections have been made. The Secretary shall furnish such persons a written statement of the reasons for the Secretary's determination that adequate and complete inspections have or have not been conducted.

(Pub. L. 95–87, title V, § 517, Aug. 3, 1977, 91 Stat. 498.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (g) of this section relating to requirement to report to Congress on actions taken and not taken under subsec. (g), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 109 of House Document No. 103–7.

## § 1268. Penalties

**(a) Civil penalties for violations of permit conditions and provisions of this subchapter**

In the enforcement of a Federal program or Federal lands program, or during Federal enforcement pursuant to section 1252 of this title or during Federal enforcement of a State program pursuant to section 1271 of this title, any permittee who violates any permit condition or who violates any other provision of this subchapter, may be assessed a civil penalty by the Secretary, except that if such violation leads to the issuance of a cessation order under section 1271 of this title, the civil penalty shall be assessed. Such penalty shall not exceed $5,000 for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

**(b) Hearing**

A civil penalty shall be assessed by the Secretary only after the person charged with a violation described under subsection (a) of this section has been given an opportunity for a public hearing. Where such a public hearing has been held, the Secretary shall make findings of fact, and he shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Secretary shall consolidate such hearings with

other proceedings under section 1271 of this title. Any hearing under this section shall be of record and shall be subject to section 554 of title 5. Where the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Secretary after the Secretary has determined that a violation did occur, and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid.

**(c) Notice of violation; action required of violator; waiver of legal rights**

Upon the issuance of a notice or order charging that a violation of this chapter has occurred, the Secretary shall inform the operator within thirty days of the proposed amount of said penalty. The person charged with the penalty shall then have thirty days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Secretary for placement in an escrow account. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the Secretary shall within thirty days remit the appropriate amount to the person, with interest at the rate of 6 percent, or at the prevailing Department of the Treasury rate, whichever is greater. Failure to forward the money to the Secretary within thirty days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

**(d) Civil action to recover civil penalties**

Civil penalties owed under this chapter, may be recovered in a civil action brought by the Attorney General at the request of the Secretary in any appropriate district court of the United States.

**(e) Willful violations**

Any person who willfully and knowingly violates a condition of a permit issued pursuant to a Federal program, a Federal lands program or Federal enforcement pursuant to section 1252 of this title or during Federal enforcement of a State program pursuant to section 1271 of this title or fails or refuses to comply with any order issued under section 1271 or section 1276 of this title, or any order incorporated in a final decision issued by the Secretary under this chapter, except an order incorporated in a decision issued under subsection (b) of this section or section 1294 of this title, shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than one year or both.

**(f) Corporate violations**

Whenever a corporate permittee violates a condition of a permit issued pursuant to a Federal program, a Federal lands program or Federal enforcement pursuant to section 1252 of this title or Federal enforcement of a State program pursuant to section 1271 of this title or fails or refuses to comply with any order issued under section 1271 of this title, or any order incorporated in a final decision issued by the Secretary under this chapter except an order incorporated in a decision issued under subsection (b) of this section or section 1293 of this title, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (e) of this section.

**(g) False statements, representations, or certifications**

Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plant, or other document filed or required to be maintained pursuant to a Federal program or a Federal lands program or any order of decision issued by the Secretary under this chapter, shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than one year or both.

**(h) Failure to correct violation**

Any operator who fails to correct a violation for which a citation has been issued under section 1271(a) of this title within the period permitted for its correction (which period shall not end until the entry of a final order by the Secretary, in the case of any review proceedings under section 1275 of this title initiated by the operator wherein the Secretary orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings under section 1276 of this title initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation), shall be assessed a civil penalty of not less than $750 for each day during which such failure or violation continues.

**(i) Effect on additional enforcement right or procedure available under State law**

As a condition of approval of any State program submitted pursuant to section 1253 of this title, the civil and criminal penalty provisions thereof shall, at a minimum, incorporate penalties no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto. Nothing herein shall be construed so as to eliminate any additional enforcement right or procedures which are available under State law to a State regulatory authority but which are not specifically enumerated herein.

(Pub. L. 95–87, title V, § 518, Aug. 3, 1977, 91 Stat. 499.)

**§ 1269. Release of performance bonds or deposits**

**(a) Filing of request; submittal of copy of advertisement; notification by letter of intent to seek release**

The permittee may file a request with the regulatory authority for the release of all or part of a performance bond or deposit. Within thirty days after any application for bond or deposit

release has been filed with the regulatory authority, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. Such advertisement shall be considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, and the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the operator's approved reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the surface coal mining and reclamation activities took place, notifying them of his intention to seek release from the bond.

**(b) Inspection and evaluation; notification of decision**

Upon receipt of the notification and request, the regulatory authority shall within thirty days conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution, and the estimated cost of abating such pollution. The regulatory authority shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond or deposit within sixty days from the filing of the request, if no public hearing is held pursuant to subsection (f) of this section, and if there has been a public hearing held pursuant to subsection (f) of this section, within thirty days thereafter.

**(c) Requirements for release**

The regulatory authority may release in whole or in part said bond or deposit if the authority is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this chapter according to the following schedule:

(1) When the operator completes the backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the release of 60 per centum of the bond or collateral for the applicable permit area.

(2) After revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the regulatory authority shall retain that amount of bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility in section 1265 of this title of reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 1265(b)(10) of this title or until soil productivity for prime farm lands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 1257(b)(16) of this title. Where a silt dam is to be retained as a permanent impoundment pursuant to section 1265(b)(8) of this title, the portion of bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the regulatory authority.

(3) When the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in section 1265 of this title: *Provided, however*, That no bond shall be fully released until all reclamation requirements of this chapter are fully met.

**(d) Notice of disapproval**

If the regulatory authority disapproves the application for release of the bond or portion thereof, the authority shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and allowing opportunity for a public hearing.

**(e) Notice to municipality**

When any application for total or partial bond release is filed with the regulatory authority, the regulatory authority shall notify the municipality in which a surface coal mining operation is located by certified mail at least thirty days prior to the release of all or a portion of the bond.

**(f) Objections to release; hearing**

Any person with a valid legal interest which might be adversely affected by release of the bond or the responsible officer or head of any Federal, State, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations shall have the right to file written objections to the proposed release from bond to the regulatory authority within thirty days after the last publication of the above notice. If written objections are filed, and a hearing requested, the regulatory authority shall inform all the interested parties, of the time and place of the hearing, and hold a public hearing in the locality of the surface coal mining operation proposed for bond release within thirty days of the request for such hearing. The date, time, and location of such public hearings shall be advertised by the regulatory authority in a newspaper of general circulation in the locality for two consecutive weeks, and shall hold a public hear-

ing in the locality of the surface coal mining operation proposed for bond release or at the State capital at the option of the objector, within thirty days of the request for such hearing.

**(g) Informal conference**

Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the regulatory authority pursuant to this section, the regulatory authority may establish an informal conference as provided in section 1263 of this title to resolve such written objections.

**(h) Power of regulatory authority with respect to informal conference**

For the purpose of such hearing the regulatory authority shall have the authority and is hereby empowered to administer oaths, subpena witnesses, or written or printed materials, compel the attendance of witnesses, or production of the materials, and take evidence including but not limited to inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this chapter shall be made, and a transcript made available on the motion of any party or by order of the regulatory authority.

(Pub. L. 95–87, title V, § 519, Aug. 3, 1977, 91 Stat. 501.)

**§ 1270. Citizens suits**

**(a) Civil action to compel compliance with this chapter**

Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this chapter—

(1) against the United States or any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution which is alleged to be in violation of the provisions of this chapter or of any rule, regulation, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter; or

(2) against the Secretary or the appropriate State regulatory authority to the extent permitted by the eleventh amendment to the Constitution where there is alleged a failure of the Secretary or the appropriate State regulatory authority to perform any act or duty under this chapter which is not discretionary with the Secretary or with the appropriate State regulatory authority.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties.

**(b) Limitation on bringing of action**

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice in writing of the violation (i) to the Secretary, (ii) to the State in which the violation occurs, and (iii) to any alleged violator; or

(B) if the Secretary or the State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the provisions of this chapter, or any rule, regulation, order, or permit issued pursuant to this chapter, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice in writing of such action to the Secretary, in such manner as the Secretary shall by regulation prescribe, or to the appropriate State regulatory authority, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

**(c) Venue; intervention**

(1) Any action respecting a violation of this chapter or the regulations thereunder may be brought only in the judicial district in which the surface coal mining operation complained of is located.

(2) In such action under this section, the Secretary, or the State regulatory authority, if not a party, may intervene as a matter of right.

**(d) Costs; filing of bonds**

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

**(e) Effect on other enforcement methods**

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any of the provisions of this chapter and the regulations thereunder, or to seek any other relief (including relief against the Secretary or the appropriate State regulatory authority).

**(f) Action for damages**

Any person who is injured in his person or property through the violation by any operator of any rule, regulation, order, or permit issued pursuant to this chapter may bring an action for damages (including reasonable attorney and expert witness fees) only in the judicial district in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under State Workmen's Compensation laws.

(Pub. L. 95–87, title V, § 520, Aug. 3, 1977, 91 Stat. 503.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

**§ 1271. Enforcement**

**(a) Notice of violation; Federal inspection; waiver of notification period; cessation order; affirmative obligation on operator; suspension or revocation of permits; contents of notices and orders**

(1) Whenever, on the basis of any information available to him, including receipt of information from any person, the Secretary has reason to believe that any person is in violation of any requirement of this chapter or any permit condition required by this chapter, the Secretary shall notify the State regulatory authority, if one exists, in the State in which such violation exists. If no such State authority exists or the State regulatory authority fails within ten days after notification to take appropriate action to cause said violation to be corrected or to show good cause for such failure and transmit notification of its action to the Secretary, the Secretary shall immediately order Federal inspection of the surface coal mining operation at which the alleged violation is occurring unless the information available to the Secretary is a result of a previous Federal inspection of such surface coal mining operation. The ten-day notification period shall be waived when the person informing the Secretary provides adequate proof that an imminent danger of significant environmental harm exists and that the State has failed to take appropriate action. When the Federal inspection results from information provided to the Secretary by any person, the Secretary shall notify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection.

(2) When, on the basis of any Federal inspection, the Secretary or his authorized representative determines that any condition or practices exist, or that any permittee is in violation of any requirement of this chapter or any permit condition required by this chapter, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the Secretary or his authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the Secretary or his authorized representative pursuant to paragraph (5) of this subsection. Where the Secretary finds that the ordered cessation of surface coal mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the Secretary shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him to take whatever steps the Secretary deems necessary to abate the imminent danger or the significant environmental harm.

(3) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program or a Federal lands program, Federal inspection pursuant to section 1252, or section 1254(b) of this title, or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that any permittee is in violation of any requirement of this chapter or any permit condition required by this chapter; but such violation does not create an imminent danger to the health or safety of the public, or cannot be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the Secretary or authorized representative shall issue a notice to the permittee or his agent fixing a reasonable time but not more than ninety days for the abatement of the violation and providing opportunity for public hearing.

If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the Secretary or his authorized representative, the Secretary or his authorized representative finds that the violation has not been abated, he shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the violation has been abated, or until modified, vacated, or terminated by the Secretary or his authorized representative pursuant to paragraph (5) of this subsection. In the order of cessation issued by the Secretary under this subsection, the Secretary shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order.

(4) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program or a Federal lands program, Federal inspection pursuant to section 1252 or section 1254 of this title or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that a pattern of violations of any requirements of this chapter or any permit conditions required by this chapter exists or has existed, and if the Secretary or his authorized representative also find that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this chapter or any permit conditions, or that such violations are willfully caused by the permittee, the Secretary or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested the Secretary shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the Secretary or his authorized representative shall forthwith suspend or revoke the permit.

(5) Notices and orders issued pursuant to this section shall set forth with reasonable specific-

ity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the Secretary or his authorized representative who issues such notice or order, and all such notices and orders shall be in writing and shall be signed by such authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the Secretary or his authorized representative. A copy of any such order or notice shall be sent to the State regulatory authority in the State in which the violation occurs: *Provided*, That any notice or order issued pursuant to this section which requires cessation of mining by the operator shall expire within thirty days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

**(b) Inadequate State enforcement; notice and hearing**

Whenever on the basis of information available to him, the Secretary has reason to believe that violations of all or any part of an approved State program result from a failure of the State to enforce such State program or any part thereof effectively, he shall after public notice and notice to the State, hold a hearing thereon in the State within thirty days of such notice. If as a result of said hearing the Secretary finds that there are violations and such violations result from a failure of the State to enforce all or any part of the State program effectively, and if he further finds that the State has not adequately demonstrated its capability and intent to enforce such State program, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Secretary that it will enforce this chapter, the Secretary shall enforce, in the manner provided by this chapter, any permit condition required under this chapter, shall issue new or revised permits in accordance with requirements of this chapter, and may issue such notices and orders as are necessary for compliance therewith: *Provided*, That in the case of a State permittee who has met his obligations under such permit and who did not willfully secure the issuance of such permit through fraud or collusion, the Secretary shall give the permittee a reasonable time to conform ongoing surface mining and reclamation to the requirements of this chapter before suspending or revoking the State permit.

**(c) Civil action for relief**

The Secretary may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the surface coal mining and reclamation operation is located or in which the permittee thereof has his principal office, whenever such permittee or his agent (A) violates or fails or refuses to comply with any order or decision issued by the Secretary under this chapter, or (B) interferes with, hinders, or delays the Secretary or his authorized representatives in carrying out the provisions of this chapter, or (C) refuses to admit such authorized representative to the mine, or (D) refuses to permit inspection of the mine by such authorized representative, or (E) refuses to furnish any information or report requested by the Secretary in furtherance of the provisions of this chapter, or (F) refuses to permit access to, and copying of, such records as the Secretary determines necessary in carrying out the provisions of this chapter. Such court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure, as amended. Any relief granted by the court to enforce an order under clause (A) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this subchapter, unless, prior thereto, the district court granting such relief sets it aside or modifies it.

**(d) Sanctions; effect on additional enforcement rights under State law**

As a condition of approval of any State program submitted pursuant to section 1253 of this title, the enforcement provisions thereof shall, at a minimum, incorporate sanctions no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto. Nothing herein shall be construed so as to eliminate any additional enforcement rights or procedures which are available under State law to a State regulatory authority but which are not specifically enumerated herein.

(Pub. L. 95–87, title V, § 521, Aug. 3, 1977, 91 Stat. 504.)

REFERENCES IN TEXT

Rule 65 of the Federal Rules of Civil Procedure, referred to in subsec. (c), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

**§ 1272. Designating areas unsuitable for surface coal mining**

**(a) Establishment of State planning process; standards; State process requirements; integration with present and future land use planning and regulation processes; savings provisions**

(1) To be eligible to assume primary regulatory authority pursuant to section 1253 of this title, each State shall establish a planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of a State are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in paragraphs (2) and (3) of this subsection but such designation shall not prevent the mineral exploration pursuant to the chapter of any area so designated.

(2) Upon petition pursuant to subsection (c) of this section, the State regulatory authority shall designate an area as unsuitable for all or certain types of surface coal mining operations

if the State regulatory authority determines that reclamation pursuant to the requirements of this chapter is not technologically and economically feasible.

(3) Upon petition pursuant to subsection (c) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will—

(A) be incompatible with existing State or local land use plans or programs; or

(B) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or

(C) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

(D) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

(4) To comply with this section, a State must demonstrate it has developed or is developing a process which includes—

(A) a State agency responsible for surface coal mining lands review;

(B) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State to support and permit reclamation of surface coal mining operations;

(C) a method or methods for implementing land use planning decisions concerning surface coal mining operations; and

(D) proper notice, opportunities for public participation, including a public hearing prior to making any designation or redesignation, pursuant to this section.

(5) Determinations of the unsuitability of land for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the Federal, State, and local levels.

(6) The requirements of this section shall not apply to lands on which surface coal mining operations are being conducted on August 3, 1977, or under a permit issued pursuant to this chapter, or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.

**(b) Review of Federal lands**

The Secretary shall conduct a review of the Federal lands to determine, pursuant to the standards set forth in paragraphs (2) and (3) of subsection (a) of this section, whether there are areas on Federal lands which are unsuitable for all or certain types of surface coal mining operations: *Provided, however*, That the Secretary may permit surface coal mining on Federal lands prior to the completion of this review. When the Secretary determines an area on Federal lands to be unsuitable for all or certain types of surface coal mining operations, he shall withdraw such area or condition any mineral leasing or mineral entries in a manner so as to limit surface coal mining operations on such area. Where a Federal program has been implemented in a State pursuant to section 1254 of this title, the Secretary shall implement a process for designation of areas unsuitable for surface coal mining for non-Federal lands within such State and such process shall incorporate the standards and procedures of this section. Prior to designating Federal lands unsuitable for such mining, the Secretary shall consult with the appropriate State and local agencies.

**(c) Petition; intervention; decision**

Any person having an interest which is or may be adversely affected shall have the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the regulatory authority shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty days after such hearing, the regulatory authority shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefore.[1] In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.

**(d) Statement**

Prior to designating any land areas as unsuitable for surface coal mining operations, the regulatory authority shall prepare a detailed statement on (i) the potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy, and the supply of coal.

**(e) Prohibition on certain Federal public and private surface coal mining operations**

After August 3, 1977, and subject to valid existing rights no surface coal mining operations except those which exist on August 3, 1977, shall be permitted—

(1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 1276(a) of title 16 and National Recreation Areas designated by Act of Congress;

(2) on any Federal lands within the boundaries of any national forest: *Provided, however*, That surface coal mining operations may be

[1] So in original. Probably should be ''therefor.''

permitted on such lands if the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations and—

(A) surface operations and impacts are incident to an underground coal mine; or

(B) where the Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within those national forests west of the 100th meridian, that surface mining is in compliance with the Multiple-Use Sustained-Yield Act of 1960 [16 U.S.C. 528–531], the Federal Coal Leasing Amendments Act of 1975, the National Forest Management Act of 1976, and the provisions of this chapter: *And provided further*, That no surface coal mining operations may be permitted within the boundaries of the Custer National Forest;

(3) which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site;

(4) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the regulatory authority may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

(5) within three hundred feet from any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building, school, church, community, or institutional building, public park, or within one hundred feet of a cemetery.

(Pub. L. 95–87, title V, § 522, Aug. 3, 1977, 91 Stat. 507.)

REFERENCES IN TEXT

The Multiple-Use Sustained-Yield Act of 1960, referred to in subsec. (e)(2)(B), is Pub. L. 86–517, June 12, 1960, 74 Stat. 215, as amended, which is classified generally to sections 528 to 531 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 528 of Title 16 and Tables.

The Federal Coal Leasing Amendments Act of 1975, referred to in subsec. (e)(2)(B), is Pub. L. 94–377, Aug. 4, 1976, 90 Stat. 1083, which was redesignated the Federal Coal Leasing Amendments Act of 1976 by Pub. L. 95–554, § 8, Oct. 30, 1978, 92 Stat. 2075, and which enacted sections 202a, 208–1, and 208–2 of this title, amended sections 184, 191, 201, 203, 207, 209, and 352 of this title, repealed sections 201–1 and 204 of this title, and enacted provisions set out as notes under sections 181, 184, 201, 201–1, 203, and 204 of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 181 of this title and Tables.

The National Forest Management Act of 1976, referred to in subsec. (e)(2)(B), is Pub. L. 94–588, Oct. 22, 1976, 90 Stat. 2949, as amended, which enacted sections 472a, 521b, 1600, and 1611 to 1614 of Title 16, Conservation, amended sections 500, 515, 516, 518, 576b, 581h, and 1601 to 1610 of Title 16, repealed sections 476, 513, and 514 of Title 16, enacted provisions set out as notes under sections 476, 513, 528, 594–2, and 1600 of Title 16. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 1600 of Title 16 and Tables.

## § 1273. Federal lands

### (a) Promulgation and implementation of Federal lands program

No later than one year after August 3, 1977, the Secretary shall promulgate and implement a Federal lands program which shall be applicable to all surface coal mining and reclamation operations taking place pursuant to any Federal law on any Federal lands: *Provided*, That except as provided in section 1300 of this title the provisions of this chapter shall not be applicable to Indian lands. The Federal lands program shall, at a minimum, incorporate all of the requirements of this chapter and shall take into consideration the diverse physical, climatological, and other unique characteristics of the Federal lands in question. Where Federal lands in a State with an approved State program are involved, the Federal lands program shall, at a minimum, include the requirements of the approved State program: *Provided*, That the Secretary shall retain his duties under sections 201(a), (2)(B)[1] and 201(a)(3) of this title, and shall continue to be responsible for designation of Federal lands as unsuitable for mining in accordance with section 1272(b) of this title.

### (b) Incorporation of requirements into any lease, permit, or contract issued by Secretary which may involve surface coal mining and reclamation operations

The requirements of this chapter and the Federal lands program or an approved State program for State regulation of surface coal mining on Federal lands under subsection (c) of this section, whichever is applicable, shall be incorporated by reference or otherwise in any Federal mineral lease, permit, or contract issued by the Secretary which may involve surface coal mining and reclamation operations. Incorporation of such requirements shall not, however, limit in any way the authority of the Secretary to subsequently issue new regulations, revise the Federal lands program to deal with changing conditions or changed technology, and to require any surface mining and reclamation operations to conform with the requirements of this chapter and the regulations issued pursuant to this chapter.

### (c) State cooperative agreements

Any State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provision of this chapter. States with cooperative agreements existing on August 3, 1977, may elect to continue regulation on Federal lands within the

[1] So in original. Probably should be "201(a)(2)(B)".

State, prior to approval by the Secretary of their State program, or imposition of a Federal program, provided that such existing cooperative agreement is modified to fully comply with the initial regulatory procedures set forth in section 1252 of this title. Nothing in this subsection shall be construed as authorizing the Secretary to delegate to the States his duty to approve mining plans on Federal lands, to designate certain Federal lands as unsuitable for surface coal mining pursuant to section 1272 of this title, or to regulate other activities taking place on Federal lands.

**(d) Development of program to assure no unreasonable denial to any class of coal purchasers**

The Secretary shall develop a program to assure that with respect to the granting of permits, leases, or contracts for coal owned by the United States, that no class of purchasers of the mined coal shall be unreasonably denied purchase thereof.

(Pub. L. 95–87, title V, § 523, Aug. 3, 1977, 91 Stat. 510.)

**§ 1274. Public agencies, public utilities, and public corporations**

Any agency, unit, or instrumentality of Federal, State, or local government, including any publicly owned utility or publicly owned corporation of Federal, State, or local government, which proposes to engage in surface coal mining operations which are subject to the requirements of this chapter shall comply with the provisions of this subchapter.

(Pub. L. 95–87, title V, § 524, Aug. 3, 1977, 91 Stat. 511.)

**§ 1275. Review by Secretary**

**(a) Application for review of order or notice; investigation; hearing; notice**

(1) A permittee issued a notice or order by the Secretary pursuant to the provisions of paragraphs (2) and (3) of subsection (a) of section 1271 of this title, or pursuant to a Federal program or the Federal lands program or any person having an interest which is or may be adversely affected by such notice or order or by any modification, vacation, or termination of such notice or order, may apply to the Secretary for review of the notice or order within thirty days of receipt thereof or within thirty days of its modification, vacation, or termination. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

(2) The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior thereto. Any such hearing shall be of record and shall be subject to section 554 of title 5.

**(b) Findings of fact; issuance of decision**

Upon receiving the report of such investigation, the Secretary shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the notice or order, or the modification, vacation, or termination of such notice or order complained of and incorporate his findings therein. Where the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to the provisions of paragraph (2) or (3) of subsection (a) of section 1271 of this title, the Secretary shall issue the written decision within thirty days of the receipt of the application for review, unless temporary relief has been granted by the Secretary pursuant to subsection (c) of this section or by the court pursuant to subsection (c) of section 1276 of this title.

**(c) Temporary relief; issuance of order or decision granting or denying relief**

Pending completion of the investigation and hearing required by this section, the applicant may file with the Secretary a written request that the Secretary grant temporary relief from any notice or order issued under section 1271 of this title, a Federal program or the Federal lands program together with a detailed statement giving reasons for granting such relief. The Secretary shall issue an order or decision granting or denying such relief expeditiously: *Provided*, That where the applicant requests relief from an order for cessation of coal mining and reclamation operations issued pursuant to paragraph (2) or (3) of subsection (a) of section 1271 of this title, the order or decision on such a request shall be issued within five days of its receipt. The Secretary may grant such relief, under such conditions as he may prescribe, if—

(1) a hearing has been held in the locality of the permit area on the request for temporary relief 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 Secretary will be favorable to him; and

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

**(d) Notice and hearing with respect to section 1271 order to show cause**

Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to section 1271 of this title, the Secretary shall hold a public hearing after giving written notice of the time, place, and date thereof. Any such hearing shall be of record and shall be subject to section 554 of title 5. Within sixty days following the public hearing, the Secretary shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. If the Secretary revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall

complete reclamation within a period specified by the Secretary, or the Secretary shall declare as forfeited the performance bonds for the operation.

**(e) Costs**

Whenever an order is issued under this section, or as a result of any administrative proceeding 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) of this section, the findings of the Secretary if supported by substantial 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) of this section 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

Section 201(b)–(e) of Pub. L. 100–34 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 pro-

grams 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) of this section. 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) of this section, 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.)

## SUBCHAPTER VII—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

### § 1291. Definitions

For the purposes of this chapter—

(1) ''alluvial valley floors'' means the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits;

(2) ''approximate original contour'' means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where

the regulatory authority determines that they are in compliance with section 1265(b)(8) of this title;

(3) ''commerce'' means trade, traffic, commerce, transportation, transmission, or communication among the several States, or between a State and any other place outside thereof, or between points in the same State which directly or indirectly affect interstate commerce;

(4) ''Federal lands'' means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian lands: *Provided*, That for the purposes of this chapter lands or mineral interests east of the one hundredth meridian west longitude owned by the United States and entrusted to or managed by the Tennessee Valley Authority shall not be subject to sections 1304 (Surface Owner Protection) and 1305 (Federal Lessee Protection) of this title.[1]

(5) ''Federal lands program'' means a program established by the Secretary pursuant to section 1273 of this title to regulate surface coal mining and reclamation operations on Federal lands;

(6) ''Federal program'' means a program established by the Secretary pursuant to section 1254 of this title to regulate surface coal mining and reclamation operations on lands within a State in accordance with the requirements of this chapter;

(7) ''fund'' means the Abandoned Mine Reclamation Fund established pursuant to section 1231 of this title;

(8) ''imminent danger to the health and safety of the public'' means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement;

(9) ''Indian lands'' means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe;

(10) ''Indian tribe'' means any Indian tribe, band, group, or community having a governing body recognized by the Secretary;

(11) ''lands within any State'' or ''lands within such State'' means all lands within a State other than Federal lands and Indian lands;

(12) ''Office'' means the Office of Surface Mining Reclamation and Enforcement established pursuant to subchapter II;

(13) ''operator'' means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than two hundred and fifty tons of coal from the earth by coal mining within twelve consecutive calendar months in any one location;

(14) ''other minerals'' means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form;

(15) ''permit'' means a permit to conduct surface coal mining and reclamation operations issued by the State regulatory authority pursuant to a State program or by the Secretary pursuant to a Federal program;

(16) ''permit applicant'' or ''applicant'' means a person applying for a permit;

(17) ''permit area'' means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by section 1259 of this title and shall be readily identifiable by appropriate markers on the site;

(18) ''permittee'' means a person holding a permit;

(19) ''person'' means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization;

(20) the term ''prime farmland'' shall have the same meaning as that previously prescribed by the Secretary of Agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics, and which historically have been used for intensive agricultural purposes, and as published in the Federal Register.[2]

(21) ''reclamation plan'' means a plan submitted by an applicant for a permit under a State program or Federal program which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to section 1258 of this title;

(22) ''regulatory authority'' means the State regulatory authority where the State is administering this chapter under an approved State program or the Secretary where the Secretary is administering this chapter under a Federal program;

(23) ''Secretary'' means the Secretary of the Interior, except where otherwise described;

(24) ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(25) ''State program'' means a program established by a State pursuant to section 1253 of this title to regulate surface coal mining and reclamation operations, on lands within such State in accord with the requirements of

[1] So in original. The period probably should be a semicolon.

[2] So in original. The period probably should be a semicolon.

this chapter and regulations issued by the Secretary pursuant to this chapter;

(26) ''State regulatory authority'' means the department or agency in each State which has primary responsibility at the State level for administering this chapter;

(27) ''surface coal mining and reclamation operations'' means surface mining operations and all activities necessary and incident to the reclamation of such operations after August 3, 1977;

(28) ''surface coal mining operations'' means—

(A) activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of section 1266 of this title surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: *Provided, however*, That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to section 1262 of this title; and

(B) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities; and[3]

(29) ''unwarranted failure to comply'' means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the chapter due to indifference, lack of diligence, or lack of reasonable care;

(30) ''lignite coal'' means consolidated lignitic coal having less than 8,300 British thermal units per pound, moist and mineral matter free;

(31) the term ''coal laboratory'', as used in subchapter VIII, means a university coal research laboratory established and operated pursuant to a designation made under section 1311 of this title;

(32) the term ''institution of higher education'' as used in subchapters VIII and IX, means any such institution as defined by section 1001 of title 20;

(33) the term ''unanticipated event or condition'' as used in section 1260(e) of this title means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit; and

(34) the term ''lands eligible for remining'' means those lands that would otherwise be eligible for expenditures under section 1234 of this title or under section 1232(g)(4) of this title.

(Pub. L. 95–87, title VII, § 701, Aug. 5, 1977, 91 Stat. 516; Pub. L. 102–486, title XXV, § 2503(c), Oct. 24, 1992, 106 Stat. 3103; Pub. L. 105–244, title I, § 102(a)(10), Oct. 7, 1998, 112 Stat. 1620.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 95–87, Aug. 3, 1977, 91 Stat. 445, which enacted this chapter and amended section 1114 of Title 18, Crimes and Criminal Procedure. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of this title and Tables.

AMENDMENTS

1998—Par. (32). Pub. L. 105–244 substituted ''section 1001'' for ''section 1141(a)''.

1992—Pars. (33), (34). Pub. L. 102–486 added pars. (33) and (34).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

## § 1292. Other Federal laws

### (a) Construction of chapter as superseding, amending, modifying, or repealing certain laws

Nothing in this chapter shall be construed as superseding, amending, modifying, or repealing the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), the National Environmental Policy Act of 1969 (42 U.S.C. 4321–47), or any of the following Acts or with any rule or regulation promulgated thereunder, including, but not limited to—

(1) The Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721–740).

(2) The Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742) [30 U.S.C. 801 et seq.].

(3) The Federal Water Pollution Control Act (79 Stat. 903), as amended [33 U.S.C. 1251 et seq.], the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality.

(4) The Clean Air Act, as amended [42 U.S.C. 7401 et seq.].

(5) The Solid Waste Disposal Act [42 U.S.C. 6901 et seq.].

(6) The Refuse Act of 1899 (33 U.S.C. 407).

[3] So in original. The word ''and'' probably should not appear.

(7) The Fish and Wildlife Coordination Act of 1934 (16 U.S.C. 661–666c).

(8) The Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

**(b) Effect on authority of Secretary or heads of other Federal agencies**

Nothing in this chapter shall affect in any way the authority of the Secretary or the heads of other Federal agencies under other provisions of law to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface coal mining and reclamation operations on land under their jurisdiction.

**(c) Cooperation**

To the greatest extent practicable each Federal agency shall cooperate with the Secretary and the States in carrying out the provisions of this chapter.

**(d) Major Federal action**

Approval of the State programs, pursuant to section 1253(b) of this title, promulgation of Federal programs, pursuant to section 1254 of this title, and implementation of the Federal lands programs, pursuant to section 1273 of this title, shall not constitute a major action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Adoption of regulations under section 1251(b) of this title shall constitute a major action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(Pub. L. 95–87, title VII, § 702, Aug. 3, 1977, 91 Stat. 519.)

REFERENCES IN TEXT

The Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), referred to in subsec. (a), is Pub. L. 91–631, Dec. 31, 1970, 84 Stat. 1876, which enacted section 21a of this title and provisions set out as a note under section 21a of this title. For complete classification of this Act to the Code, see Short Title note set out under section 21a of this title and Tables.

The National Environmental Policy Act of 1969 (42 U.S.C. 4321–47), referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 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 4321 of Title 42 and Tables.

The Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721–740), referred to in subsec. (a)(1), is Pub. L. 89–577, Sept. 16, 1966, 80 Stat. 772, which was classified generally to chapter 21 (§ 721 et seq.) of this title and was repealed by Pub. L. 95–164, title III, § 306(a), Nov. 9, 1977, 91 Stat. 1322.

The Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742), referred to in subsec. (a)(2), is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended, which was redesignated the Federal Mine Safety and Health Act of 1977 by Pub. L. 95–164, title I, § 101, Nov. 9, 1977, 91 Stat. 1290, and is classified principally to chapter 22 (§ 801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

The Federal Water Pollution Control Act (79 Stat. 903), referred to in subsec. (a)(3), is act June 30, 1948, ch. 758, 62 Stat. 1155, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, referred to in subsec. (a)(4), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 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 7401 of Title 42 and Tables.

The Solid Waste Disposal Act (42 U.S.C. 3251–3259), referred to in subsec. (a)(5), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

The Refuse Act of 1899 (33 U.S.C. 407), referred to in subsec. (a)(6), probably means act Mar. 3, 1899, ch. 425, § 13, 30 Stat. 1152, which enacted section 407 of Title 33, Navigation and Navigable Waters.

The Fish and Wildlife Coordination Act of 1934 (16 U.S.C. 661–666c), referred to in subsec. (a)(7), is act Mar. 10, 1934, ch. 55, 48 Stat. 401, as amended, known as the Fish and Wildlife Coordination Act, which is classified generally to sections 661 to 666c of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 16 and Tables.

The Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.), referred to in subsec. (a)(8), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, known as the Mineral Leasing Act, which is classified generally to chapter 3A (§ 181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

## § 1293. Employee protection

**(a) Retaliatory practices prohibited**

No person shall discharge, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

**(b) Review by Secretary; investigation; notice; hearing; findings of fact; judicial review**

Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary for a review of such firing or alleged discrimination. A copy of the application shall be sent to the person or operator who will be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to the alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation the Secretary shall make findings of fact. If he finds that a violation did occur, he shall issue a decision incorporating therein his findings and an order requiring the party com-

mitting the violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no violation, he will issue a finding. Orders issued by the Secretary under this subsection shall be subject to judicial review in the same manner as orders and decisions of the Secretary are subject to judicial review under this chapter.

**(c) Costs**

Whenever an order is issued under this section to abate any violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the persons committing the violation.

(Pub. L. 95–87, title VII, § 703, Aug. 3, 1977, 91 Stat. 520.)

### § 1294. Penalty

Any person who shall, except as permitted by law, willfully resist, prevent, impede, or interfere with the Secretary or any of his agents in the performance of duties pursuant to this chapter shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

(Pub. L. 95–87, title VII, § 704, Aug. 3, 1977, 91 Stat. 520.)

CODIFICATION

Section 704 of Pub. L. 95–87 also amended section 1114 of Title 18, Crimes and Criminal Procedure.

### § 1295. Grants to States

**(a) Assisting any State in development, administration, and enforcement of State programs under this chapter**

The Secretary is authorized to make annual grants to any State for the purpose of assisting such State in developing, administering, and enforcing State programs under this chapter. Except as provided in subsection (c) of this section, such grants shall not exceed 80 per centum of the total costs incurred during the first year, 60 per centum of total costs incurred during the second year, and 50 per centum of the total costs incurred during each year thereafter.

**(b) Assisting any State in development, administration, and enforcement of its State programs**

The Secretary is authorized to cooperate with and provide assistance to any State for the purpose of assisting it in the development, administration, and enforcement of its State programs. Such cooperation and assistance shall include—

(1) technical assistance and training including provision of necessary curricular and instruction materials, in the development, administration, and enforcement of the State programs; and

(2) assistance in preparing and maintaining a continuing inventory of information on surface coal mining and reclamation operations for each State for the purposes of evaluating the effectiveness of the State programs. Such assistance shall include all Federal departments and agencies making available data relevant to surface coal mining and reclamation operations and to the development, administration, and enforcement of State programs concerning such operations.

**(c) Increases in annual grants**

If, in accordance with section 1273(d) of this title, a State elects to regulate surface coal mining and reclamation operations on Federal lands, the Secretary may increase the amount of the annual grants under subsection (a) of this section by an amount which he determines is approximately equal to the amount the Federal Government would have expended for such regulation if the State had not made such election.

(Pub. L. 95–87, title VII, § 705, Aug. 3, 1977, 91 Stat. 520.)

### § 1296. Annual report to President and Congress

The Secretary shall submit annually to the President and the Congress a report concerning activities conducted by him, the Federal Government, and the States pursuant to this chapter. Among other matters, the Secretary shall include in such report recommendations for additional administrative or legislative action as he deems necessary and desirable to accomplish the purposes of this chapter.

(Pub. L. 95–87, title VII, § 706, Aug. 3, 1977, 91 Stat. 521.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to requirement to submit a report annually to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 109 of House Document No. 103–7.

### § 1297. Separability

If any provision of this chapter or the applicability thereof to any person or circumstances is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Pub. L. 95–87, title VII, § 707, Aug. 3, 1977, 91 Stat. 521.)

### § 1298. Alaskan surface coal mine study

**(a) Contract with National Academy of Sciences-National Academy of Engineering**

The Secretary is directed to contract to such extent or in such amounts as are provided in advance in appropriation Acts with the National Academy of Sciences-National Academy of Engineering for an in-depth study of surface coal mining conditions in the State of Alaska in order to determine which, if any, of the provisions of this chapter should be modified with respect to surface coal mining operations in Alaska.

**(b) Report to President and Congress**

The Secretary shall report on the findings of the study to the President and Congress no later than two years after August 3, 1977.

**(c) Draft of legislation**

The Secretary shall include in his report a draft of legislation to implement any changes recommended to this chapter.

**(d) Modification of applicability of environmental protection provisions of this chapter to surface coal mining operations in Alaska; publication in Federal Register; hearing**

Until one year after the Secretary has made this report to the President and Congress, or three years after August 3, 1977, whichever comes first, the Secretary is authorized to modify the applicability of any environmental protection provision of this chapter, or any regulation issued pursuant thereto, to any surface coal mining operation in Alaska from which coal has been mined during the year preceding August 3, 1977, if he determines that it is necessary to insure the continued operation of such surface coal mining operation. The Secretary may exercise this authority only after he has (1) published notice of proposed modification in the Federal Register and in a newspaper of general circulation in the area of Alaska in which the affected surface coal mining operation is located, and (2) held a public hearing on the proposed modification in Alaska.

**(e) Interim regulations**

In order to allow new mines in Alaska to continue orderly development, the Secretary is authorized to issue interim regulations pursuant to section 1251(b) of this title including those modifications to the environmental standards as required based on the special physical, hydrological and climatic conditions in Alaska but with the purpose of protecting the environment to an extent equivalent to those standards for the other coal regions.

**(f) Authorization of appropriations**

There is authorized to be appropriated for the purpose of this section $250,000: *Provided*, That no new budget authority is authorized to be appropriated for fiscal year 1977.

(Pub. L. 95–87, title VII, § 708, Aug. 3, 1977, 91 Stat. 521.)

## § 1299. Study of reclamation standards for surface mining of other minerals

**(a) Contract with National Academy of Sciences-National Academy of Engineering; requirements**

The Chairman of the Council on Environmental Quality is directed to contract to such extent or in such amounts as are provided in appropriation Acts with the National Academy of Sciences-National Academy of Engineering, other Government agencies or private groups as appropriate, for an in-depth study of current and developing technology for surface and open pit mining and reclamation for minerals other than coal designed to assist in the establishment of effective and reasonable regulation of surface and open pit mining and reclamation for minerals other than coal. The study shall—

(1) assess the degree to which the requirements of this chapter can be met by such technology and the costs involved;

(2) identify areas where the requirements of this chapter cannot be met by current and developing technology;

(3) in those instances describe requirements most comparable to those of this chapter which could be met, the costs involved, and the differences in reclamation results between these requirements and those of this chapter; and

(4) discuss alternative regulatory mechanisms designed to insure the achievement of the most beneficial postmining land use for areas affected by surface and open pit mining.

**(b) Submittal of study with legislative recommendation to President and Congress**

The study together with specific legislative recommendations shall be submitted to the President and the Congress no later than eighteen months after August 3, 1977: *Provided*, That, with respect to surface or open pit mining for sand and gravel the study shall be submitted no later than twelve months after August 3, 1977: *Provided further*, That with respect to mining for oil shale and tar sands that a preliminary report shall be submitted no later than twelve months after August 3, 1977.

**(c) Authorization of appropriations**

There are authorized to be appropriated for the purpose of this section $500,000: *Provided*, That no new budget authority is authorized to be appropriated for fiscal year 1977.

(Pub. L. 95–87, title VII, § 709, Aug. 3, 1977, 91 Stat. 522.)

## § 1300. Indian lands

**(a) Study of regulation of surface mining; consultation with tribe; proposed legislation**

The Secretary is directed to study the question of the regulation of surface mining on Indian lands which will achieve the purpose of this chapter and recognize the special jurisdictional status of these lands. In carrying out this study the Secretary shall consult with Indian tribes. The study report shall include proposed legislation designed to allow Indian tribes to elect to assume full regulatory authority over the administration and enforcement of regulation of surface mining of coal on Indian lands.

**(b) Submittal of study to Congress**

The study report required by subsection (a) of this section together with drafts of proposed legislation and the view of each Indian tribe which would be affected shall be submitted to the Congress as soon as possible but not later than January 1, 1978.

**(c) Compliance with interim environmental protection standards of this chapter**

On and after one hundred and thirty-five days from August 3, 1977, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by subsections (b)(2), (b)(3), (b)(5), (b)(10), (b)(13), (b)(19), and (d) of section 1265 of this title and the Secretary shall incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

**(d) Compliance with permanent environmental protection standards of this chapter**

On and after thirty months from August 3, 1977, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by sections 1257, 1258, 1259, 1260, 1265, 1266, 1267, and 1269 of this title and the Secretary shall incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

**(e) Inclusion and enforcement of terms and conditions of leases**

With respect to leases issued after August 3, 1977, the Secretary shall include and enforce terms and conditions in addition to those required by subsections (c) and (d) of this section as may be requested by the Indian tribe in such leases.

**(f) Approval of changes in terms and conditions of leases**

Any change required by subsection (c) or (d) of this section in the terms and conditions of any coal lease on Indian lands existing on August 3, 1977, shall require the approval of the Secretary.

**(g) Participation of tribes**

The Secretary shall provide for adequate participation by the various Indian tribes affected in the study authorized in this section and not more than $700,000 of the funds authorized in section 1302(a) of this title shall be reserved for this purpose.

**(h) Jurisdictional status**

The Secretary shall analyze and make recommendations regarding the jurisdictional status of Indian Lands[1] outside the exterior boundaries of Indian reservations: *Provided*, That nothing in this chapter shall change the existing jurisdictional status of Indian Lands.[1]

**(i) Grants**

The Secretary shall make grants to the Navajo, Hopi, Northern Cheyenne, and Crow tribes to assist such tribes in developing regulations and programs for regulating surface coal mining and reclamation operations on Indian lands. Grants made under this subsection shall be used to establish an office of surface mining regulation for each such tribe. Each such office shall—

(1) develop tribal regulations and program policies with respect to surface mining;

(2) assist the Office of Surface Mining Reclamation and Enforcement established by section 1211 of this title in the inspection and enforcement of surface mining activities on Indian lands, including, but not limited to, permitting, mine plan review, and bond release; and

(3) sponsor employment training and education in the area of mining and mineral resources.

**(j) Tribal regulatory authority**

**(1) Tribal regulatory programs**

**(A) In general**

Notwithstanding any other provision of law, an Indian tribe may apply for, and obtain the approval of, a tribal program under section 1253 of this title regulating in whole or in part surface coal mining and reclamation operations on reservation land under the jurisdiction of the Indian tribe using the procedures of section 1254(e) of this title.

**(B) References to State**

For purposes of this subsection and the implementation and administration of a tribal program under subchapter V, any reference to a ''State'' in this chapter shall be considered to be a reference to a ''tribe''.

**(2) Conflicts of interest**

**(A) In general**

The fact that an individual is a member of an Indian tribe does not in itself constitute a violation of section 1211(f) of this title.

**(B) Employees of tribal regulatory authority**

Any employee of a tribal regulatory authority shall not be eligible for a per capita distribution of any proceeds from coal mining operations conducted on Indian reservation lands under this chapter.

**(3) Sovereign immunity**

To receive primary regulatory authority under section 1254(e) of this title, an Indian tribe shall waive sovereign immunity for purposes of section 1270 of this title and paragraph (4).

**(4) Judicial review**

**(A) Civil actions**

**(i) In general**

After exhausting all tribal remedies with respect to a civil action arising under a tribal program approved under section 1254(e) of this title, an interested party may file a petition for judicial review of the civil action in the United States circuit court for the circuit in which the surface coal mining operation named in the petition is located.

**(ii) Scope of review**

**(I) Questions of law**

The United States circuit court shall review de novo any questions of law under clause (i).

**(II) Findings of fact**

The United States circuit court shall review findings of fact under clause (i) using a clearly erroneous standard.

**(B) Criminal actions**

Any criminal action brought under section 1268 of this title with respect to surface coal mining or reclamation operations on Indian reservation lands shall be brought in—

(i) the United States District Court for the District of Columbia; or

(ii) the United States district court in which the criminal activity is alleged to have occurred.

**(5) Grants**

**(A) In general**

Except as provided in subparagraph (B), grants for developing, administering, and en-

[1] So in original. Probably should be ''lands''.

forcing tribal programs approved in accordance with section 1254(e) of this title shall be provided to an Indian tribe in accordance with section 1295 of this title.

**(B) Exception**

Notwithstanding subparagraph (A), the Federal share of the costs of developing, administering, and enforcing an approved tribal program shall be 100 percent.

**(6) Report**

Not later than 18 months after the date on which a tribal program is approved under subsection (e) of section 1254 of this title, the Secretary shall submit to the appropriate committees of Congress a report, developed in cooperation with the applicable Indian tribe, on the tribal program that includes a recommendation of the Secretary on whether primary regulatory authority under that subsection should be expanded to include additional Indian lands.

(Pub. L. 95–87, title VII, § 710, Aug. 3, 1977, 91 Stat. 523; Pub. L. 102–486, title XXV, § 2514, Oct. 24, 1992, 106 Stat. 3112; Pub. L. 109–432, div. C, title II, § 209, Dec. 20, 2006, 120 Stat. 3019.)

AMENDMENTS

2006—Subsec. (i). Pub. L. 109–432, § 209(b), struck out ", except that nothing in this subsection may be construed as providing such tribes with the authorities set forth under section 1253 of this title" after "Indian lands" in introductory provisions.

Subsec. (j). Pub. L. 109–432, § 209(a), added subsec. (j).

1992—Subsec. (i). Pub. L. 102–486 added subsec. (i).

### § 1301. Environmental practices

In order to encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential, or public use (including recreational facilities), the regulatory authority with approval by the Secretary may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under sections 1265 and 1266 of this title. Such departures may be authorized if (i) the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by promulgated standards; (ii) the mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and (iii) the experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

(Pub. L. 95–87, title VII, § 711, Aug. 3, 1977, 91 Stat. 523.)

### § 1302. Authorization of appropriations

There is authorized to be appropriated to the Secretary for the purposes of this chapter the following sums; and all such funds appropriated shall remain available until expended:

(a) For the implementation and funding of sections 1252, 1273, and 1300 of this title, there are authorized to be appropriated to the Secretary of the Interior the sum of $10,000,000 for the fiscal year ending September 30, 1978, $25,000,000 for each of the two succeeding fiscal years, and in such fiscal years such additional amounts as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

(b) For the implementation and funding of section 1257(c) of this title, see the provisions of section 1231(c)(9) of this title.

(c) For the implementation and funding of section 1295 of this title and for the administrative and other purposes of this chapter, except as otherwise provided for in this chapter, authorization is provided for the sum of $20,000,000 for the fiscal year ending September 30, 1978, and $30,000,000 for each of the two succeeding fiscal years and such funds that are required thereafter.

(d) In order that the implementation of the requirements of this chapter may be initiated in a timely and orderly manner, the Secretary is authorized, subject to the approval of the appropriation Committees of the House and of the Senate, to utilize not to exceed $2,000,000 of the appropriations otherwise available to him for the fiscal year ending September 30, 1977, for the administration and other purposes of this chapter.

(Pub. L. 95–87, title VII, § 712, Aug. 3, 1977, 91 Stat. 524; Pub. L. 95–343, § 1, Aug. 11, 1978, 92 Stat. 473; Pub. L. 101–508, title VI, § 6012(b), Nov. 5, 1990, 104 Stat. 1388–298; Pub. L. 109–432, div. C, title II, § 201(b), Dec. 20, 2006, 120 Stat. 3008.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–432 substituted "1231(c)(9)" for "1231(c)(11)".

1990—Subsec. (b). Pub. L. 101–508 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "For the implementation and funding of section 1257(c) of this title there are authorized to be appropriated sums reserved by section 1231(b)(1) of this title for the purposes of section 1257(c) of this title and such additional sums as may be necessary (i) for the fiscal year ending September 30, 1978, to provide an amount not to exceed $10,000,000 to carry out the purposes of section 1257(c) of this title and (ii) for the fiscal years ending September 30, 1979, and September 30, 1980, to provide an amount not to exceed $25,000,000 to carry out the purposes of section 1257(c) of this title."

1978—Subsec. (a). Pub. L. 95–343, § 1(1), increased authorization from $10,000,000 to $25,000,000 for each of the two succeeding fiscal years, and inserted provisions authorizing such necessary additional amounts for increases in salary, etc.

Subsec. (b). Pub. L. 95–343, § 1(2), substituted provisions authorizing appropriations of not to exceed $10,000,000 for fiscal year ending Sept. 30, 1978, and not to exceed $25,000,000 for each of fiscal years ending Sept. 30, 1979, and 1980, for provisions authorizing appropriations of not to exceed $10,000,000 and such additional amounts as are necessary for fiscal year ending Sept. 30, 1978, and for each fiscal year for a period of fifteen fiscal years thereafter.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508, effective Oct. 1, 1991, see section 6014 of Pub. L. 101–508 set out as a note under section 1231 of this title.

CREDITING PERFORMANCE BOND FORFEITURES

Pub. L. 105–277, div. A, § 101(e) [title I], Oct. 21, 1998, 112 Stat. 2681–231, 2681–244, provided in part that: "Not-

withstanding 31 U.S.C. 3302, an additional amount shall be credited to this account, to remain available until expended, from performance bond forfeitures in fiscal year 1999 and thereafter.''

COST-BASED FEES FOR PRODUCTS OF MINE MAP REPOSITORY

Pub. L. 105–277, div. A, § 101(e) [title I], Oct. 21, 1998, 112 Stat. 2681–231, 2681–244, provided in part that: ''Beginning in fiscal year 1999 and thereafter, cost-based fees for the products of the Mine Map Repository shall be established (and revised as needed) in Federal Register Notices, and shall be collected and credited to this account, to be available until expended for the costs of administering this program.''

### § 1303. Coordination of regulatory and inspection activities

(a) The President shall, to the extent appropriate, and in keeping with the particular enforcement requirements of each Act referred to herein, insure the coordination of regulatory and inspection activities among the departments, agencies, and instrumentalities to which such activities are assigned by this chapter, by the Clean Air Act [42 U.S.C. 7401 et seq.], by the Water Pollution Control Act [33 U.S.C. 1251 et seq.], by the Department of Energy Organization Act [42 U.S.C. 7101 et seq.], and by existing or subsequently enacted Federal mine safety and health laws, except that no such coordination shall be required with respect to mine safety and health inspections, advance notice of which is or may be prohibited by existing or subsequently enacted Federal mine safety and health laws.

(b) The President may execute the coordination required by this section by means of an Executive order, or by any other mechanism he determines to be appropriate.

(Pub. L. 95–87, title VII, § 713, Aug. 3, 1977, 91 Stat. 524.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 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 7401 of Title 42 and Tables.

The Water Pollution Control Act, referred to in subsec. (a), probably means act June 30, 1948, ch. 758, 62 Stat. 1155, known as the Federal Water Pollution Control Act, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Department of Energy Organization Act, referred to in subsec. (a), is Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, which is classified principally to chapter 84 (§ 7101 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 7101 of Title 42 and Tables.

### § 1304. Surface owner protection

#### (a) Applicability

The provisions of this section shall apply where coal owned by the United States under land the surface rights to which are owned by a surface owner as defined in this section is to be mined by methods other than underground mining techniques.

#### (b) Lease of coal deposits governed by section 201 of this title

Any coal deposits subject to this section shall be offered for lease pursuant to section 201(a) of this title.

#### (c) Consent to lease by surface owner

The Secretary shall not enter into any lease of Federal coal deposits until the surface owner has given written consent to enter and commence surface mining operations and the Secretary has obtained evidence of such consent. Valid written consent given by any surface owner prior to August 3, 1977, shall be deemed sufficient for the purposes of complying with this section.

#### (d) Preferences

In order to minimize disturbance to surface owners from surface coal mining of Federal coal deposits and to assist in the preparation of comprehensive land-use plans required by section 201(a) of this title, the Secretary shall consult with any surface owner whose land is proposed to be included in a leasing tract and shall ask the surface owner to state his preference for or against the offering of the deposit under his land for lease. The Secretary shall, in his discretion but to the maximum extent practicable, refrain from leasing coal deposits for development by methods other than underground mining techniques in those areas where a significant number of surface owners have stated a preference against the offering of the deposits for lease.

#### (e) "Surface owner" defined

For the purpose of this section the term ''surface owner'' means the natural person or persons (or corporation, the majority stock of which is held by a person or persons who meet the other requirements of this section) who—

(1) hold legal or equitable title to the land surface;

(2) have their principal place of residence on the land; or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface coal mining operations; or receive directly a significant portion of their income, if any, from such farming or ranching operations; and

(3) have met the conditions of paragraphs (1) and (2) for a period of at least three years prior to the granting of the consent.

In computing the three-year period the Secretary may include periods during which title was owned by a relative of such person by blood or marriage during which period such relative would have met the requirements of this subsection.

#### (f) Exception

This section shall not apply to Indian lands.

#### (g) Effect on property rights of United States or any other landowner

Nothing in this section shall be construed as increasing or diminishing any property rights by the United States or by any other landowner.

(Pub. L. 95–87, title VII, § 714, Aug. 3, 1977, 91 Stat. 524.)

### § 1305. Federal lessee protection

In those instances where the coal proposed to be mined by surface coal mining operations is owned by the Federal Government and the surface is subject to a lease or a permit issued by the Federal Government, the application for a permit shall include either:

(1) the written consent of the permittee or lessee of the surface lands involved to enter and commence surface coal mining operations on such land, or in lieu thereof;

(2) evidence of the execution of a bond or undertaking to the United States or the State, whichever is applicable, for the use and benefit of the permittee or lessee of the surface lands involved to secure payment of any damages to the surface estate which the operations will cause to the crops, or to the tangible improvements of the permittee or lessee of the surface lands as may be determined by the parties involved, or as determined and fixed in an action brought against the operator or upon the bond in a court of competent jurisdiction. This bond is in addition to the performance bond required for reclamation under this chapter.

(Pub. L. 95–87, title VII, § 715, Aug. 3, 1977, 91 Stat. 525.)

### § 1306. Effect on rights of owner of coal in Alaska to conduct surface mining operations

Nothing in this chapter shall be construed as increasing or diminishing the rights of any owner of coal in Alaska to conduct or authorize surface coal mining operations for coal which has been or is hereafter conveyed out of Federal ownership to the State of Alaska or pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]: *Provided*, That such surface coal mining operations meet the requirements of this chapter.

(Pub. L. 95–87, title VII, § 716, Aug. 3, 1977, 91 Stat. 526.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in text, is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

### § 1307. Water rights and replacement

(a) Nothing in this chapter shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation.

(b) The operator of a surface coal mine shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from such surface coal mine operation.

(Pub. L. 95–87, title VII, § 717, Aug. 3, 1977, 91 Stat. 526.)

### § 1308. Advance appropriations

Notwithstanding any other provision of this chapter, no authority to make payments under this chapter shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

(Pub. L. 95–87, title VII, § 718, Aug. 3, 1977, 91 Stat. 526.)

### § 1309. Certification and training of blasters

In accordance with this chapter, the Secretary of the Interior (or the approved State regulatory authority as provided for in section 1253 of this title) shall promulgate regulations requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations.

(Pub. L. 95–87, title VII, § 719, Aug. 3, 1977, 91 Stat. 526.)

### § 1309a. Subsidence

**(a) Requirements**

Underground coal mining operations conducted after October 24, 1992, shall comply with each of the following requirements:

(1) Promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and structures related thereto, or non-commercial building due to underground coal mining operations. Repair of damage shall include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and structures related thereto, or non-commercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and structures related thereto or non-commercial building and shall be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy.

(2) Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

Nothing in this section shall be construed to prohibit or interrupt underground coal mining operations.

**(b) Regulations**

Within one year after October 24, 1992, the Secretary shall, after providing notice and opportunity for public comment, promulgate final regulations to implement subsection (a) of this section.

(Pub. L. 95–87, title VII, § 720, as added Pub. L. 102–486, title XXV, § 2504(a)(1), Oct. 24, 1992, 106 Stat. 3104.)

REVIEW OF EXISTING REQUIREMENTS AND REPORT TO CONGRESS

Section 2504(a)(2) of Pub. L. 102–486 directed Secretary of the Interior to review existing requirements related

to underground coal mine subsidence and natural gas and petroleum pipeline safety, submit a report detailing results of review to Committee on Energy and Natural Resources of Senate and Committee on Interior and Insular Affairs of House of Representatives within 18 months of Oct. 24, 1992, and, where appropriate, to commence a rulemaking to address any deficiencies in existing law determined in the review regarding notification, coordination and mitigation.

### § 1309b. Research

The Office of Surface Mining Reclamation and Enforcement is authorized to conduct studies, research and demonstration projects relating to the implementation of, and compliance with, subchapter V of this chapter, and provide technical assistance to states[1] for that purpose. Prior to approving any such studies, research or demonstration projects the Director, Office of Surface Mining Reclamation and Enforcement, shall first consult with the Director, Bureau of Mines, and obtain a determination from such Director that the Bureau of Mines is not already conducting like or similar studies, research or demonstration projects. Studies, research and demonstration projects for the purposes of subchapter IV of this chapter shall only be conducted in accordance with section 1231(c)(6)[2] of this title.

(Pub. L. 95–87, title VII, § 721, as added Pub. L. 102–486, title XXV, § 2504(c)(3), Oct. 24, 1992, 106 Stat. 3105.)

REFERENCES IN TEXT

Section 1231(c)(6) of this title, referred to in text, was repealed and paragraph (8) of section 1231(c) was redesignated (6) by Pub. L. 109–432, div. C, title II, § 201(a)(1), Dec. 20, 2006, 120 Stat. 3006.

CHANGE OF NAME

Bureau of Mines redesignated United States Bureau of Mines by section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

## SUBCHAPTER VIII—UNIVERSITY COAL RESEARCH LABORATORIES

### § 1311. Establishment of university coal research laboratories

#### (a) Designation by Secretary of Energy

The Secretary of Energy, after consultation with the National Academy of Engineering, shall designate thirteen institutions of higher education at which university coal research laboratories will be established and operated. Ten such designations shall be made as provided in subsection (e) of this section and the remaining three shall be made in fiscal year 1980.

#### (b) Criteria

In making designations under this section, the Secretary of Energy shall consider the following criteria:

(1) Those ten institutions of higher education designated as provided in subsection (e) of this section shall be located in a State with abundant coal reserves.

(2) The institution of higher education shall have experience in coal research, expertise in several areas of coal research, and potential or currently active, outstanding programs in coal research.

(3) The institution of higher education has the capacity to establish and operate the coal laboratories to be assisted under this subchapter.

#### (c) Location of coal laboratories

Not more than one coal laboratory established pursuant to this subchapter shall be located in a single State and at least one coal laboratory shall be established within each of the major coal provinces recognized by the United States Bureau of Mines, including Alaska.

#### (d) Period for submission of applications for designation; contents

The Secretary of Energy shall establish a period, not in excess of ninety days after August 3, 1977, for the submission of applications for designation under this section. Any institution of higher education desiring to be designated under this subchapter shall submit an application to the Secretary of Energy in such form, at such time, and containing or accompanied by such information as the Secretary of Energy may reasonably require. Each application shall—

(1) describe the facilities to be established for coal energy resources and conversion research and research on related environmental problems including facilities for interdisciplinary academic research projects by the combined efforts of specialists such as mining engineers, mineral engineers, geochemists, mineralogists, mineral economists, fuel scientists, combustion engineers, mineral preparation engineers, coal petrographers, geologists, chemical engineers, civil engineers, mechanical engineers, and ecologists;

(2) set forth a program for the establishment of a test laboratory for coal characterization which, in addition, may be used as a site for the exchange of coal research activities by representatives of private industry engaged in coal research and characterization;

(3) set forth a program for providing research and development activities for students engaged in advanced study in any discipline which is related to the development of adequate energy supplies in the United States. The research laboratory shall be associated with an ongoing educational and research program on extraction and utilization of coal.

#### (e) Time limit

The Secretary of Energy shall designate the ten institutions of higher education under this section not later than ninety days after the date on which such applications are to be submitted.

(Pub. L. 95–87, title VIII, § 801, Aug. 3, 1977, 91 Stat. 526; Pub. L. 95–617, title VI, § 604(a), (c), Nov. 9, 1978, 92 Stat. 3166, 3167; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–617, § 604(a), substituted "The Secretary of Energy" for "The Administrator, Energy Research and Development Administration (hereafter referred to as 'Administrator' in this sub-

[1] So in original. Probably should be capitalized.

[2] See References in Text note below.

chapter)'' and ''shall designate thirteen institutions'' for ''is authorized and directed to designate ten institutions'' and inserted provision that ten such designations be made as provided in subsection (e) of this section and the remaining three be made in fiscal year 1980.

Subsec. (b). Pub. L. 95–617, § 604(a), (c), substituted in provisions preceding par. (1) ''Secretary of Energy'' for ''Administrator'' and in par. (1) ''Those ten institutions of higher education designated as provided in subsection (e) of this section'' for ''The institution of higher education''.

Subsecs. (d), (e). Pub. L. 95–617, § 604(c), substituted ''Secretary of Energy'' for ''Administrator'' wherever appearing.

CHANGE OF NAME

''United States Bureau of Mines'' substituted for ''Bureau of Mines'' in subsec. (c) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

### § 1312. Financial assistance

(a) The Secretary of Energy is authorized to make grants to any institution of higher education designated under section 1311 of this title to pay the Federal share of the cost of establishing (including the construction of such facilities as may be necessary) and maintaining a coal laboratory.

(b) Each institution of higher education designated pursuant to section 1311 of this title shall submit an application to the Secretary of Energy. Each such application shall—

(1) set forth the program to be conducted at the coal laboratory which includes the purposes set forth in section 1311(d) of this title;

(2) provide assurances that the university will pay from non-Federal sources the remaining costs of carrying out the program set forth;

(3) provide such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for Federal funds received under this subchapter;

(4) provide for making an annual report which shall include a description of the activities conducted at the coal laboratory and an evaluation of the success of such activities, and such other necessary reports in such form and containing such information as the Secretary of Energy may require, and for keeping such records and affording such access thereto as may be necessary to assure the correctness and verification of such reports; and

(5) set forth such policies and procedures as will insure that Federal funds made available under this section for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available for the purposes of the activities described in subsections (d)(1), (2), and (3) of section 1311 of this title, and in no case supplant such funds.

(Pub. L. 95–87, title VIII, § 802, Aug. 3, 1977, 91 Stat. 527; Pub. L. 95–617, title VI, § 604(c), Nov. 9, 1978, 92 Stat. 3167.)

AMENDMENTS

1978—Pub. L. 95–617 substituted ''Secretary of Energy'' for ''Administrator'' wherever appearing.

### § 1313. Limitation on payments

(a) No institutions of higher education may receive more than $4,000,000 for the construction of its coal research laboratory, including initially installed fixed equipment, nor may it receive more than $1,500,000 for initially installed movable equipment, nor may it receive more than $500,000 for new program startup expenses.

(b) No institution of higher education may receive more than $1,500,000 per year from the Federal Government for operating expenses.

(Pub. L. 95–87, title VIII, § 803, Aug. 3, 1977, 91 Stat. 528.)

### § 1314. Payments; Federal share of operating expenses

(a) From the amounts appropriated pursuant to section 1316 of this title, the Secretary of Energy shall pay to each institution of higher education having an application approved under this subchapter an amount equal to the Federal share of the cost of carrying out that application. Such payments may be in installments, by way of reimbursement, or by way of advance with necessary adjustments on account of underpayments or overpayments.

(b) The Federal share of operating expenses for any fiscal year shall not exceed 50 per centum of the cost of the operation of a coal research laboratory.

(Pub. L. 95–87, title VIII, § 804, Aug. 3, 1977, 91 Stat. 528; Pub. L. 95–617, title VI, § 604(c), Nov. 9, 1978, 92 Stat. 3167.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–617 substituted ''Secretary of Energy'' for ''Administrator'' wherever appearing.

### § 1315. Advisory Council on Coal Research

#### (a) Establishment; members

There is established an Advisory Council on Coal Research which shall be composed of—

(1) the Secretary of Energy, who shall be Chairman;

(2) the Director of the United States Bureau of Mines of the Department of the Interior;

(3) the President of the National Academy of Sciences;

(4) the President of the National Academy of Engineering;

(5) the Director of the United States Geological Survey; and

(6) six members appointed by the Secretary of Energy from among individuals who, by virtue of experience or training, are knowledgeable in the field of coal research and mining, and who are representatives of institutions of higher education, industrial users of coal and coal-derived fuels, the coal industry, mine workers, nonindustrial consumer groups, and institutions concerned with the preservation of the environment.

#### (b) Furnishing advice to Secretary of Energy

The Advisory Council shall advise the Secretary of Energy with respect to the general ad-

ministration of this subchapter, and furnish such additional advice as he may request.

**(c) Annual report to President; transmittal to Congress**

The Advisory Council shall make an annual report of its findings and recommendations (including recommendations for changes in the provisions of this subchapter) to the President not later than December 31 of each calendar year. The President shall transmit each such report to the Congress.

**(d) Compensation and travel expenses**

(1) Members of the Council who are not regular officers or employees of the United States Government shall, while serving on business of the Council, be entitled to receive compensation at rates fixed by the Secretary of Energy but not exceeding the daily rate prescribed for GS-18 of the General Schedule under section 5332 of title 5 and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(2) Members of the Council who are officers or employees of the Government shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties on the Council.

**(e) Alternate members**

Whenever a member of the Council appointed under clauses (1) through (5) is unable to attend a meeting, that member shall appoint an appropriate alternate to represent him for that meeting.

(Pub. L. 95–87, title VIII, § 805, Aug. 3, 1977, 91 Stat. 528; Pub. L. 95–617, title VI, § 604(c), Nov. 9, 1978, 92 Stat. 3167; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

AMENDMENTS

1978—Pub. L. 95–617 substituted ''Secretary of Energy'' for ''Administrator'' wherever appearing.

CHANGE OF NAME

''United States Bureau of Mines'' substituted for ''Bureau of Mines'' in subsec. (a)(2) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c) of this section relating to requirement that the President transmit each annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 153 of House Document No. 103–7.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

## § 1316. Authorization of appropriations

(a) For the ten institutions referred to in the last sentence of section 1311(a) of this title, there are authorized to be appropriated not to exceed $30,000,000 for the fiscal year ending September 30, 1979 (including the cost of construction, equipment, and startup expenses), and not to exceed $7,500,000 for the fiscal year 1980 and for each fiscal year thereafter through the fiscal year ending before October 1, 1984, to carry out the provisions of this subchapter.

(b) For the three remaining institutions referred to in the last sentence of section 1311(a) of this title, there are authorized to be appropriated not to exceed $6,500,000 for the fiscal year 1980 (including the cost of construction, equipment, and startup expenses), and not to exceed $2,000,000 for each fiscal year after fiscal year 1980 ending before October 1, 1984, to carry out the provisions of this subchapter.

(Pub. L. 95–87, title VIII, § 806, Aug. 3, 1977, 91 Stat. 529; Pub. L. 95–617, title VI, § 604(b), Nov. 9, 1978, 92 Stat. 3166.)

AMENDMENTS

1978—Pub. L. 95–617 designated existing provisions as subsec. (a), inserted reference to ten institutions referred to in last sentence of section 1311(a) of this title and substituted provisions authorizing appropriations for each fiscal year thereafter through the fiscal year ending before October 1, 1984, for provisions authorizing appropriations each fiscal year thereafter through the fiscal year ending June 30, 1983, and added subsec. (b).

# SUBCHAPTER IX—ENERGY RESOURCE GRADUATE FELLOWSHIPS

## § 1321. Fellowship awards

**(a) Graduate study and research in areas of applied science and engineering relating to production, conservation, and utilization of fuels and energy**

The Secretary of Energy is authorized to award under the provisions of this subchapter not to exceed one thousand fellowships for the fiscal year ending September 30, 1979, and each of the five succeeding fiscal years. Fellowships shall be awarded under the provisions of this subchapter for graduate study and research in those areas of applied science and engineering that are related to the production, conservation, and utilization of fuels and energy. Fellowships shall be awarded to students in programs leading to master's degrees. Such fellowships may be awarded for graduate study and research at any institution of higher education, library, archive, or any other research center approved by the

Secretary of Energy after consultation with the Secretary of Education.

**(b) Term**

Such fellowships shall be awarded for such periods as the Secretary of Energy may determine, but not to exceed two years.

**(c) Replacement awards**

In addition to the number of fellowships authorized to be awarded by subsection (a) of this section, the Secretary of Energy is authorized to award fellowships equal to the number previously awarded during any fiscal year under this subchapter but vacated prior to the end of the period for which they were awarded; except that each fellowship awarded under this subsection shall be for such period of graduate work or research, not in excess of the remainder of the period for which the fellowship which it replaces was awarded as the Secretary of Energy may determine.

(Pub. L. 95–87, title IX, § 901, Aug. 3, 1977, 91 Stat. 529; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

CODIFICATION

In subsec. (a), the words ''(hereafter referred to as 'Administrator' in this subchapter),'' which followed ''Secretary of Energy'' the first time it appears were omitted in view of the substitution of ''Secretary of Energy'' for ''Administrator ERDA'' and ''Administrator'' wherever such terms appear in this subchapter and the fact that the term ''Secretary'' is defined for the purposes of this chapter by section 1291(23) of this title as meaning the Secretary of the Interior. See Transfer of Functions note set out below.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted in text for ''Administrator ERDA'' and ''Administrator'', meaning Administrator of Energy Research and Development Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, 7297 of Title 42, The Public Health and Welfare, and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

''Secretary of Education'' substituted for ''Commissioner of Education'' in subsec. (a), pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

### § 1322. Fellowship recipients

Recipients of fellowships under this subchapter shall be—

(a) persons who have been accepted by an institution of higher education for graduate study leading to an advanced degree or for a professional degree, and

(b) persons who plan a career in the field of energy resources, production, or utilization.

(Pub. L. 95–87, title IX, § 902, Aug. 3, 1977, 91 Stat. 530.)

### § 1323. Distribution of fellowships

In awarding fellowships under the provisions of this subchapter, the Secretary of Energy shall endeavor to provide equitable distribution of such fellowships throughout the Nation, except that the Secretary of Energy shall give special attention to institutions of higher education, libraries, archives, or other research centers which have a demonstrated capacity to offer courses of study or research in the field of energy resources and conservation and conversion and related disciplines. In carrying out his responsibilities under this section, the Secretary of Energy shall take into consideration the projected need for highly trained engineers and scientists in the field of energy sources.

(Pub. L. 95–87, title IX, § 903, Aug. 3, 1977, 91 Stat. 530; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted in text for ''Administrator'', meaning Administrator of Energy Research and Development Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, 7297 of Title 42, The Public Health and Welfare, and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

### § 1324. Stipends and allowances

(a) Each person awarded a fellowship under this subchapter shall receive a stipend of not more than $10,000 for each academic year of study. An additional amount of $500 for each such calendar year of study shall be paid to such person on account of each of his dependents.

(b) In addition to the amount paid to such person pursuant to subsection (a) of this section there shall be paid to the institution of higher education at which each such person is pursuing his course of study, 100 per centum of the amount paid to such person less the amount paid on account of such person's dependents, to such person less any amount charged such person for tuition.

(Pub. L. 95–87, title IX, § 904, Aug. 3, 1977, 91 Stat. 530.)

### § 1325. Limitation on fellowships

No fellowship shall be awarded under this subchapter for study at a school or department of divinity. For the purpose of this section, the term ''school or department of divinity'' means an institution or department or branch of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation or to prepare them to teach theological subjects.

(Pub. L. 95–87, title IX, § 905, Aug. 3, 1977, 91 Stat. 530.)

### § 1326. Fellowship conditions

(a) A person awarded a fellowship under the provisions of this subchapter shall continue to receive the payments provided in section 1324(a) of this title only during such periods as the Secretary of Energy finds that he is maintaining satisfactory proficiency in, and devoting essentially full time to, study or research in the field

in which such fellowship was awarded, in an institution of higher education, and is not engaging in gainful employment other than part-time employment in teaching, research, or similar activities, approved by the Secretary of Energy.

(b) The Secretary of Energy shall require reports containing such information in such forms and to be filed at such times as he determines necessary from each person awarded a fellowship under the provisions of this subchapter. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, library, archive, or other research center approved by the Secretary of Energy, stating that such person is making satisfactory progress in, and is devoting essentially full time to the research for which the fellowship was awarded.

(Pub. L. 95–87, title IX, § 906, Aug. 3, 1977, 91 Stat. 530; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted in text for ''Administrator'', meaning Administrator of Energy Research and Development Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, 7297 of Title 42, The Public Health and Welfare, and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

### § 1327. Authorization of appropriations

There are authorized to be appropriated $11,000,000 for the fiscal year ending September 30, 1979, and for each of the five succeeding fiscal years. For payments for the initial awarding of fellowships awarded under this subchapter, there are authorized to be appropriated for the fiscal year ending September 30, 1979, and for each of the five succeeding fiscal years, such sums as may be necessary in order that fellowships already awarded might be completed.

(Pub. L. 95–87, title IX, § 907, Aug. 3, 1977, 91 Stat. 531.)

### § 1328. Research, development projects, etc., relating to alternative coal mining technologies

#### (a) Authority of Secretary of the Interior to conduct, promote, etc.

The Secretary of the Interior is authorized to conduct and promote the coordination and acceleration of, research, studies, surveys, experiments, demonstration projects, and training relating to—

(1) the development and application of coal mining technologies which provide alternatives to surface disturbance and which maximize the recovery of available coal resources, including the improvement of present underground mining methods, methods for the return of underground mining wastes to the mine void, methods for the underground mining of thick coal seams and very deep seams; and

(2) safety and health in the application of such technologies, methods, and means.

#### (b) Contracts and grants

In conducting the activities authorized by this section, the Secretary of the Interior may enter into contracts with and make grants to qualified institutions, agencies, organizations, and persons.

#### (c) Authorization of appropriations

There are authorized to be appropriated to the Secretary of the Interior, to carry out the purposes of this section, $35,000,000 for each fiscal year beginning with the fiscal year 1979, and for each year thereafter for the next four years.

#### (d) Publication in Federal Register; report to Congress

At least sixty days before any funds are obligated for any research studies, surveys, experiments or demonstration projects to be conducted or financed under this chapter in any fiscal year, the Secretary of the Interior in consultation with the heads of other Federal agencies having the authority to conduct or finance such projects, shall determine and publish such determinations in the Federal Register that such projects are not being conducted or financed by any other Federal agency. On December 31 of each calendar year, the Secretary shall report to the Congress on the research studies, surveys, experiments or demonstration projects, conducted or financed under this chapter, including, but not limited to, a statement of the nature and purpose of each project, the Federal cost thereof, the identity and affiliation of the persons engaged in such projects, the expected completion date of the projects and the relationship of the projects to other such projects of a similar nature.

#### (e) Availability of information to public

Subject to the patent provisions of section 306(d) of this Act,[1] all information and data resulting from any research studies, surveys, experiments, or demonstration projects conducted or financed under this chapter shall be promptly made available to the public.

(Pub. L. 95–87, title IX, § 908, Aug. 3, 1977, 91 Stat. 531; Pub. L. 95–91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 97–257, title I, § 100, Sept. 10, 1982, 96 Stat. 841.)

REFERENCES IN TEXT

Section 306(d) of this Act, referred to in subsec. (e), was classified to section 1226(d) of this title and was omitted from the Code pursuant to the replacement of subchapter III (§ 1221 et seq.) of this chapter by Pub. L. 98–409. See section 1226(c) of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d) of this section relating to requirement that on December 31 of each calendar year, the Secretary report to Congress on research studies, surveys, experiments or demonstration projects, conducted or financed under this chapter, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 109 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

''Secretary of the Interior'' substituted for ''Secretary of Energy'' in subsecs. (a) to (d) pursuant to section 100 of Pub. L. 97–257, which is set out as a note under section 7152 of Title 42, The Public Health and

[1] See References in Text note below.

Welfare, and which transferred to, and vested in, Secretary of the Interior all functions vested in, or delegated to, Secretary of Energy and Department of Energy under this section.

Previously, ''Secretary of Energy'' was substituted for ''Administrator'', meaning Administrator of Energy Research and Development Administration, in subsecs. (a) to (d) pursuant to sections 301(a), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(a), 7293, 7297 of Title 42, and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

## CHAPTER 26—DEEP SEABED HARD MINERAL RESOURCES

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### § 1401. Congressional findings and declaration of purpose

#### (a) Findings

The Congress finds that—

(1) the United States' requirements for hard minerals to satisfy national industrial needs will continue to expand and the demand for such minerals will increasingly exceed the available domestic sources of supply;

(2) in the case of certain hard minerals, the United States is dependent upon foreign sources of supply and the acquisition of such minerals from foreign sources is a significant factor in the national balance-of-payments position;

(3) the present and future national interest of the United States requires the availability of hard mineral resources which is independent of the export policies of foreign nations;

(4) there is an alternate source of supply, which is significant in relation to national needs, of certain hard minerals, including nickel, copper, cobalt, and manganese, contained in the nodules existing in great abundance on the deep seabed;

(5) the nations of the world, including the United States, will benefit if the hard mineral resources of the deep seabed beyond limits of national jurisdiction can be developed and made available for their use;

(6) in particular, future access to the nickel, copper, cobalt, and manganese resources of the deep seabed will be important to the industrial needs of the nations of the world, both developed and developing;

(7) on December 17, 1970, the United States supported (by affirmative vote) the United Nations General Assembly Resolution 2749 (XXV) declaring inter alia the principle that the mineral resources of the deep seabed are the common heritage of mankind, with the expectation that this principle would be legally defined under the terms of a comprehensive international Law of the Sea Treaty yet to be agreed upon;

(8) it is in the national interest of the United States and other nations to encourage a widely acceptable Law of the Sea Treaty, which will provide a new legal order for the oceans covering a broad range of ocean interests, including exploration for and commercial recovery of hard mineral resources of the deep seabed;

(9) the negotiations to conclude such a Treaty and establish the international regime governing the exercise of rights over, and exploration of, the resources of the deep seabed, referred to in General Assembly Resolution 2749 (XXV) are in progress but may not be concluded in the near future;

(10) even if such negotiations are completed promptly, much time will elapse before such an international regime is established and in operation;

(11) development of technology required for the exploration and recovery of hard mineral resources of the deep seabed will require substantial investment for many years before commercial production can occur, and must proceed at this time if deep seabed minerals are to be available when needed;

(12) it is the legal opinion of the United States that exploration for and commercial recovery of hard mineral resources of the deep seabed are freedoms of the high seas subject to a duty of reasonable regard to the interests of other states in their exercise of those and other freedoms recognized by general principles of international law;

(13) pending a Law of the Sea Treaty, and in the absence of agreement among states on applicable principles of international law, the uncertainty among potential investors as to the future legal regime is likely to discourage or prevent the investments necessary to develop deep seabed mining technology;

(14) pending a Law of the Sea Treaty, the protection of the marine environment from damage caused by exploration or recovery of hard mineral resources of the deep seabed depends upon the enactment of suitable interim national legislation;

(15) a Law of the Sea Treaty is likely to establish financial arrangements which obligate the United States or United States citizens to make payments to an international organization with respect to exploration or recovery of the hard mineral resources of the deep seabed; and

(16) legislation is required to establish an interim legal regime under which technology can be developed and the exploration and recovery of the hard mineral resources of the deep seabed can take place until such time as a Law of the Sea Treaty enters into force with respect to the United States.

**(b) Purposes**

The Congress declares that the purposes of this chapter are—

(1) to encourage the successful conclusion of a comprehensive Law of the Sea Treaty, which will give legal definition to the principle that the hard mineral resources of the deep seabed are the common heritage of mankind and which will assure, among other things, nondiscriminatory access to such resources for all nations;

(2) pending the ratification by, and entering into force with respect to, the United States of such a Treaty, to provide for the establishment of an international revenue-sharing fund the proceeds of which shall be used for sharing with the international community pursuant to such Treaty;

(3) to establish, pending the ratification by, and entering into force with respect to, the United States of such a Treaty, an interim program to regulate the exploration for and commercial recovery of hard mineral resources of the deep seabed by United States citizens;

(4) to accelerate the program of environmental assessment of exploration for and commercial recovery of hard mineral resources of the deep seabed and assure that such exploration and recovery activities are conducted in a manner which will encourage the conservation of such resources, protect the quality of the environment, and promote the safety of life and property at sea; and

(5) to encourage the continued development of technology necessary to recover the hard mineral resources of the deep seabed.

(Pub. L. 96–283, § 2, June 28, 1980, 94 Stat. 553.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 96–283, June 28, 1980, 94 Stat. 553, as amended, known as the Deep Seabed Hard Mineral Resources Act, which is classified principally to this chapter (§ 1401 et seq.). For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–507, § 1, Oct. 21, 1986, 100 Stat. 1847, provided that: ''This Act [amending section 1470 of this title] may be cited as the 'Deep Seabed Hard Mineral Resources Reauthorization Act of 1986'.''

SHORT TITLE

Section 1 of Pub. L. 96–283 provided that: ''This Act [enacting this chapter and sections 4495 to 4498 of Title 26, Internal Revenue Code, and enacting a provision set out as a note under section 4495 of Title 26] may be cited as the 'Deep Seabed Hard Mineral Resources Act'.''

## § 1402. International objectives

**(a) Disclaimer of extraterritorial sovereignty**

By the enactment of this chapter, the United States—

(1) exercises its jurisdiction over United States citizens and vessels, and foreign persons and vessels otherwise subject to its jurisdiction, in the exercise of the high seas freedom to engage in exploration for, and commercial recovery of, hard mineral resources of the deep seabed in accordance with generally accepted principles of international law recognized by the United States; but

(2) does not thereby assert sovereignty or sovereign or exclusive rights or jurisdiction over, or the ownership of, any areas or resources in the deep seabed.

**(b) Secretary of State**

(1) The Secretary of State is encouraged to negotiate successfully a comprehensive Law of the Sea Treaty which, among other things, provides assured and nondiscriminatory access to the hard mineral resources of the deep seabed for all nations, gives legal definition to the principle that the resources of the deep seabed are the common heritage of mankind, and provides for the establishment of requirements for the protection of the quality of the environment as stringent as those promulgated pursuant to this chapter.

(2) Until such a Treaty is concluded, the Secretary of State is encouraged to promote any international actions necessary to adequately protect the environment from adverse impacts which may result from any exploration for and commercial recovery of hard mineral resources of the deep seabed carried out by persons not subject to this chapter.

(Pub. L. 96–283, § 3, June 28, 1980, 94 Stat. 555.)

## § 1403. Definitions

For purposes of this chapter, the term—

(1) ''commercial recovery'' means—

(A) any activity engaged in at sea to recover any hard mineral resource at a substantial rate for the primary purpose of mar-

keting or commercially using such resource to earn a net profit, whether or not such net profit is actually earned;

(B) if such recovered hard mineral resource will be processed at sea, such processing; and

(C) if the waste of such activity to recover any hard mineral resource, or of such processing at sea, will be disposed of at sea, such disposal;

(2) ''Continental Shelf'' means—

(A) the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such submarine area; and

(B) the seabed and subsoil of similar submarine areas adjacent to the coast of islands;

(3) ''controlling interest'', for purposes of paragraph 14(C) of this section, means a direct or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

(4) ''deep seabed'' means the seabed, and the subsoil thereof to a depth of ten meters, lying seaward of and outside—

(A) the Continental Shelf of any nation; and

(B) any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States;

(5) ''exploration'' means—

(A) any at-sea observation and evaluation activity which has, as its objective, the establishment and documentation of—

(i) the nature, shape, concentration, location, and tenor of a hard mineral resource; and

(ii) the environmental, technical, and other appropriate factors which must be taken into account to achieve commercial recovery; and

(B) the taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication, and testing of equipment which is intended to be used in the commercial recovery and processing of such resource;

(6) ''hard mineral resource'' means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which include one or more minerals, at least one of which contains manganese, nickel, cobalt, or copper;

(7) ''international agreement'' means a comprehensive agreement concluded through negotiations at the Third United Nations Conference on the Law of the Sea, relating to (among other matters) the exploration for and commercial recovery of hard mineral resources and the establishment of an international regime for the regulation thereof;

(8) ''licensee'' means the holder of a license issued under subchapter I of this chapter to engage in exploration;

(9) ''permittee'' means the holder of a permit issued under subchapter I of this chapter to engage in commercial recovery;

(10) ''person'' means any United States citizen, any individual, and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any nation;

(11) ''reciprocating state'' means any foreign nation designated as such by the Administrator under section 1428 of this title;

(12) ''Administrator'' means the Administrator of the National Oceanic and Atmospheric Administration;

(13) ''United States'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States; and

(14) ''United States citizen'' means—

(A) any individual who is a citizen of the United States;

(B) any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any of the United States; and

(C) any corporation, partnership, joint venture, association, or other entity (whether organized or existing under the laws of any of the United States or a foreign nation) if the controlling interest in such entity is held by an individual or entity described in subparagraph (A) or (B).

(Pub. L. 96–283, § 4, June 28, 1980, 94 Stat. 555.)

## SUBCHAPTER I—REGULATION OF EXPLORATION AND COMMERCIAL RECOVERY BY UNITED STATES CITIZENS

### § 1411. Prohibited activities by United States citizens

#### (a) Prohibited activities and exceptions

(1) No United States citizen may engage in any exploration or commercial recovery unless authorized to do so under—

(A) a license or a permit issued under this subchapter;

(B) a license, permit, or equivalent authorization issued by a reciprocating state; or

(C) an international agreement which is in force with respect to the United States.

(2) The prohibitions of this subsection shall not apply to any of the following activities:

(A) Scientific research, including that concerning hard mineral resources.

(B) Mapping, or the taking of any geophysical, geochemical, oceanographic, or atmospheric measurements or random bottom samplings of the deep seabed, if such taking does not significantly alter the surface or subsurface of the deep seabed or significantly affect the environment.

(C) The design, construction, or testing of equipment and facilities which will or may be used for exploration or commercial recovery, if such design, construction, or testing is con-

ducted on shore, or does not involve the recovery of any but incidental hard mineral resources.

(D) The furnishing of machinery, products, supplies, services, or materials for any exploration or commercial recovery conducted under a license or permit issued under this subchapter, a license or permit or equivalent authorization issued by a reciprocating state, or under an international agreement.

(E) Activities, other than exploration or commercial recovery activities, of the Federal Government.

**(b) Existing exploration**

(1) Subsection (a)(1)(A) of this section shall not be deemed to prohibit any United States citizen who is engaged in exploration before June 28, 1980, from continuing to engage in such exploration—

(A) if such citizen applies for a license under section 1413(a) of this title with respect to such exploration within such reasonable period of time, after the date on which initial regulations to implement section 1413(a) of this title are issued, as the Administrator shall prescribe; and

(B) until such license is issued to such citizen or a final administrative or judicial determination is made affirming the denial of certification of the application for, or issuance of, such license.

(2) Notwithstanding paragraph (1), if the President by Executive order determines that immediate suspension of exploration activities is necessary for the reasons set forth in section 1416(a)(2)(B) of this title or the Administrator determines that immediate suspension of activities is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life and property at sea, the Administrator is authorized, notwithstanding any other requirement of this chapter, to issue an emergency order requiring any United States citizen who is engaged in exploration before June 28, 1980, to immediately suspend exploration activities. The issuance of such emergency order is subject to judicial review as provided in chapter 7 of title 5.

(3) The timely filing of any application for a license under paragraph (1)(A) shall entitle the applicant to priority of right for the issuance of such license under section 1413(b) of this title. In any case in which more than one application referred to in paragraph (1) is filed based on exploration plans required by section 1413(a)(2) of this title which refer to all or part of the same deep seabed area, the Administrator shall, in taking action on such applications, apply principles of equity which take into consideration, among other things, the date on which the applicants or predecessors in interest, or component organizations thereof, commenced exploration activities and the continuity and extent of such exploration and amount of funds expended with respect to such exploration.

**(c) Interference**

No United States citizen may interfere or participate in interference with any activity conducted by any licensee or permittee which is authorized to be undertaken under a license or permit issued by the United States to the licensee or permittee under this chapter or with any activity conducted by the holder of, and authorized to be undertaken under, a license or permit or equivalent authorization issued by a reciprocating state for the exploration or commercial recovery of hard mineral resources. United States citizens shall exercise their rights on the high seas with reasonable regard for the interests of other states in their exercise of the freedoms of the high seas.

(Pub. L. 96–283, title I, § 101, June 28, 1980, 94 Stat. 557.)

**§ 1412. Licenses for exploration and permits for commercial recovery**

**(a) Authority to issue**

Subject to the provisions of this chapter, the Administrator shall issue to applicants who are eligible therefor licenses for exploration and permits for commercial recovery.

**(b) Nature of licenses and permits**

(1) A license or permit issued under this subchapter shall authorize the holder thereof to engage in exploration or commercial recovery, as the case may be, consistent with the provisions of this chapter, the regulations issued by the Administrator to implement the provisions of this chapter, and the specific terms, conditions, and restrictions applied to the license or permit by the Administrator.

(2) Any license or permit issued under this subchapter shall be exclusive with respect to the holder thereof as against any other United States citizen or any citizen, national or governmental agency of, or any legal entity organized or existing under the laws of, any reciprocating state.

(3) A valid existing license shall entitle the holder, if otherwise eligible under the provisions of this chapter and regulations issued under this chapter, to a permit for commercial recovery. Such a permit recognizes the right of the holder to recover hard mineral resources, and to own, transport, use, and sell hard mineral resources recovered, under the permit and in accordance with the requirements of this chapter.

(4) In the event of interference with the exploration or commercial recovery activities of a licensee or permittee by nationals of other states, the Secretary of State shall use all peaceful means to resolve the controversy by negotiation, conciliation, arbitration, or resort to agreed tribunals.

**(c) Restrictions**

(1) The Administrator may not issue—

(A) any license or permit after the date on which an international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of such license or permit is not inconsistent with such agreement;

(B) any license or permit the exploration plan or recovery plan of which, submitted pursuant to section 1413(a)(2) of this title, would apply to an area to which applies, or would conflict with, (i) any exploration plan or recovery plan submitted with any pending appli-

cation to which priority of right for issuance applies under section 1413(b) of this title, (ii) any exploration plan or recovery plan associated with any existing license or permit, or (iii) any equivalent authorization which has been issued, or for which formal notice of application has been submitted, by a reciprocating state prior to the filing date of any relevant application for licenses or permits pursuant to this subchapter;

(C) a permit authorizing commercial recovery within any area of the deep seabed in which exploration is authorized under a valid existing license if such permit is issued to other than the licensee for such area;

(D) any exploration license before July 1, 1981, or any permit which authorizes commercial recovery to commence before January 1, 1988;

(E) any license or permit the exploration plan or recovery plan for which applies to any area of the deep seabed if, within the 3-year period before the date of application for such license or permit, (i) the applicant therefor surrendered or relinquished such area under an exploration plan or recovery plan associated with a previous license or permit issued to such applicant, or (ii) a license or permit previously issued to the applicant had an exploration plan or recovery plan which applied to such area and such license or permit was revoked under section 1416 of this title; or

(F) a license or permit, or approve the transfer of a license or permit, except to a United States citizen.

(2) No permittee may use any vessel for the commercial recovery of hard mineral resources or for the processing at sea of hard mineral resources recovered under the permit issued to the permittee unless the vessel is documented under the laws of the United States.

(3) Each permittee shall use at least one vessel documented under the laws of the United States for the transportation from each mining site of hard mineral resources recovered under the permit issued to the permittee.

(4) For purposes of the shipping laws of the United States, any vessel documented under the laws of the United States and used in the commercial recovery, processing, or transportation from any mining site of hard mineral resources recovered under a permit issued under this subchapter shall be deemed to be used in, and used in an essential service in, the foreign commerce or foreign trade of the United States, as defined in section 109 of title 46, and shall be deemed to be a vessel as defined in section 53701(13) of title 46.

(5) Except as otherwise provided in this paragraph, the processing on land of hard mineral resources recovered pursuant to a permit shall be conducted within the United States: *Provided*, That the President does not determine that such restrictions contravene the overriding national interests of the United States. The Administrator may allow the processing of hard mineral resources at a place other than within the United States if he finds, after opportunity for an agency hearing, that—

(A) the processing of the quantity concerned of such resource at a place other than within the United States is necessary for the economic viability of the commercial recovery activities of a permittee; and

(B) satisfactory assurances have been given by the permittee that such resource, after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use, if the Administrator so requires after determining that the national interest necessitates such return.

(Pub. L. 96–283, title I, § 102, June 28, 1980, 94 Stat. 558.)

CODIFICATION

In subsec. (c)(4), ''section 109 of title 46'' substituted for ''section 905(a) of the Merchant Marine Act, 1936'' and ''section 53701(13) of title 46'' substituted for ''section 1101(b) of that Act'' on authority of Pub. L. 109–304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted sections 109 and 53701 of Title 46, Shipping.

## § 1413. License and permit applications, review, and certification

### (a) Applications

(1) Any United States citizen may apply to the Administrator for the issuance or transfer of a license for exploration or a permit for commercial recovery.

(2)(A) Applications for issuance or transfer of licenses for exploration and permits for commercial recovery shall be made in such form and manner as the Administrator shall prescribe in general and uniform regulations and shall contain such relevant financial, technical, and environmental information as the Administrator may by regulations require as being necessary and appropriate for carrying out the provisions of this subchapter. In accordance with such regulations, each applicant for the issuance of a license shall submit an exploration plan as described in subparagraph (B), and each applicant for a permit shall submit a recovery plan as described in subparagraph (C).

(B) The exploration plan for a license shall set forth the activities proposed to be carried out during the period of the license, describe the area to be explored, and include the intended exploration schedule and methods to be used, the development and testing of systems for commercial recovery to take place under the terms of the license, an estimated schedule of expenditures, measures to protect the environment and to monitor the effectiveness of environmental safeguards and monitoring systems for commercial recovery, and such other information as is necessary and appropriate to carry out the provisions of this subchapter. The area set forth in an exploration plan shall be of sufficient size to allow for intensive exploration.

(C) The recovery plan for a permit shall set forth the activities proposed to be carried out during the period of the permit, and shall include the intended schedule of commercial recovery, environmental safeguards and monitoring systems, details of the area or areas proposed for commercial recovery, a resource assessment thereof, the methods and technology to be used for commercial recovery and processing, the methods to be used for disposal of wastes from recovery and processing, and such other information as is necessary and appro-

priate to carry out the provisions of this subchapter.

(D) The applicant shall select the size and location of the area of the exploration plan or recovery plan, which area shall be approved unless the Administrator finds that—

(i) the area is not a logical mining unit; or

(ii) commercial recovery activities in the proposed location would result in a significant adverse impact on the quality of the environment which cannot be avoided by the imposition of reasonable restrictions.

(E) For purposes of subparagraph (D), ''logical mining unit'' means—

(i) in the case of a license for exploration, an area of the deep seabed which can be explored under the license in an efficient, economical, and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant as set forth in the exploration plan; or

(ii) in the case of a permit, an area of the deep seabed—

(I) in which hard mineral resources can be recovered in sufficient quantities to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit in an efficient, economical, and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant set out in the recovery plan;

(II) which is not larger than is necessary to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit; and

(III) in relation to which the permittee's estimated production requirements are not found by the Administrator to be unreasonable.

**(b) Priority of right for issuance**

Subject to section 1411(b) of this title, priority of right for the issuance of licenses to applicants shall be established on the basis of the chronological order in which license applications which are in substantial compliance with the requirements established under subsection (a)(2) of this section are filed with the Administrator. Priority of right shall not be lost in the case of any application filed which is in substantial but not full compliance with such requirements if the applicant thereafter brings the application into conformity with such requirements within such reasonable period of time as the Administrator shall prescribe in regulations.

**(c) Eligibility for certification**

Before the Administrator may certify any application for issuance or transfer of a license for exploration or permit for commercial recovery, the Administrator must find in writing, after consultation with other departments and agencies pursuant to subsection (e) of this section, that—

(1) the applicant has demonstrated that, upon issuance or transfer of the license or permit, the applicant will be financially responsible to meet all obligations which may be required of a licensee or permittee to engage in the exploration or commercial recovery proposed in the application;

(2) the applicant has demonstrated that, upon issuance or transfer of the license or permit, the applicant will have the technological capability to engage in such exploration or commercial recovery;

(3) the applicant has satisfactorily fulfilled all obligations under any license or permit previously issued or transferred to the applicant under this chapter; and

(4) the proposed exploration plan or recovery plan of the applicant meets the requirements of this chapter and the regulations issued under this chapter.

**(d) Antitrust review**

(1) Whenever the Administrator receives any application for issuance or transfer of a license for exploration or permit for commercial recovery, the Administrator shall transmit promptly a complete copy of such application to the Attorney General of the United States and the Federal Trade Commission.

(2) The Attorney General and the Federal Trade Commission shall conduct such antitrust review of the application as they deem appropriate and shall, if they deem appropriate, advise the Administrator of the likely effects of such issuance or transfer on competition.

(3) The Attorney General and the Federal Trade Commission may make any recommendations they deem advisable to avoid any action upon such application by the Administrator which would create or maintain a situation inconsistent with the antitrust laws. Such recommendations may include, without limitation, the denial of issuance or transfer of the license or permit or issuance or transfer upon such terms and conditions as may be appropriate.

(4) Any advice or recommendation submitted by the Attorney General or the Federal Trade Commission pursuant to this subsection shall be submitted within 90 days after receipt by them of the application. The Administrator shall not issue or transfer the license or permit during that 90-day period, except upon written confirmation by the Attorney General and the Federal Trade Commission that neither intends to submit any further advice or recommendation with respect to the application.

(5) If the Administrator decides to issue or transfer the license or permit with respect to which denial of the issuance or transfer of the license or permit has been recommended by the Attorney General or the Federal Trade Commission, or to issue or transfer the license or permit without imposing those terms and conditions recommended by the Attorney General or the Federal Trade Commission as appropriate to prevent any situation inconsistent with the antitrust laws, the Administrator shall, prior to or upon issuance or transfer of the license or permit, notify the Attorney General and the Federal Trade Commission of the reasons for such decision.

(6) The issuance or transfer of a license or permit under this subchapter shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws.

(7) As used in this subsection, the term ''antitrust laws'' means the Act of July 2, 1890 (commonly known as the Sherman Act; 15 U.S.C. 1–7); sections 73 through 76 of the Act of August 27, 1894 (commonly known as the Wilson Tariff Act; 15 U.S.C. 8–11); the Clayton Act (15 U.S.C. 12 et seq.); the Act of June 19, 1936 (commonly known as the Robinson-Patman Price Discrimination Act; 15 U.S.C. 13–13b and 21a); and the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

**(e) Other Federal agencies**

The Administrator shall provide by regulation for full consultation and cooperation, prior to certification of an application for the issuance or transfer of any license for exploration or permit for commercial recovery and prior to the issuance or transfer of such a license or permit, with other Federal agencies or departments which have programs or activities within their statutory responsibilities which would be affected by the activities proposed in the application for the issuance or transfer of a license or permit. Not later than 30 days after June 28, 1980, the heads of any Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the recovery or processing of hard mineral resources shall transmit to the Administrator written comments as to their expertise or statutory responsibilities pursuant to this chapter or any other Federal law. To the extent possible, such agencies shall cooperate to reduce the number of separate actions required to satisfy the statutory responsibilities of these agencies. The Administrator shall transmit to each such agency or department a complete copy of each application and each such agency or department, based on its legal responsibilities and authorities, may, not later than 60 days after receipt of the application, recommend certification of the application, issuance or transfer of the license or permit, or denial of such certification, issuance, or transfer. In any case in which an agency or department recommends such a denial, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall indicate how the application may be amended, or how terms, conditions, or restrictions might be added to the license or permit, to assure compliance with such law or regulation.

**(f) Review period**

All time periods for the review of an application for issuance or transfer of a license or permit established pursuant to this section shall, to the maximum extent practicable, run concurrently from the date on which the application is received by the Administrator.

**(g) Application certification**

Upon making the applicable determinations and findings required in sections 1411, 1412 of this title, and this section with respect to any applicant for the issuance or transfer of a license or a permit and the exploration or commercial recovery proposed by such applicant, after completion of procedures for receiving the application required by this chapter, and upon payment by the applicant of the fee required under section 1414 of this title, the Administrator shall certify the application for the issuance or transfer of the license or permit. The Administrator, to the maximum extent possible, shall endeavor to complete certification action on the application within 100 days after its submission. If final certification or denial of certification has not occurred within 100 days after submission of the application, the Administrator shall inform the applicant in writing of the then pending unresolved issues, the Administrator's efforts to resolve them, and an estimate of the time required to do so.

(Pub. L. 96–283, title I, § 103, June 28, 1980, 94 Stat. 560; Pub. L. 107–273, div. C, title IV, § 14102(c)(2)(E), Nov. 2, 2002, 116 Stat. 1921.)

REFERENCES IN TEXT

Act of July 2, 1890 (commonly known as the Sherman Act; 15 U.S.C. 1–7), referred to in subsec. (d)(7), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Sections 73 through 76 of the Act of August 27, 1894 (commonly known as the Wilson Tariff Act; 15 U.S.C. 8–11), referred to in subsec. (d)(7), are sections 73 to 76 of act Aug. 27, 1894, ch. 349, 28 Stat. 570, as amended, which enacted sections 8 to 11 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 8 of Title 15 and Tables.

The Clayton Act (15 U.S.C. 12 et seq.), referred to in subsec. (d)(7), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

Act of June 19, 1936 (commonly known as the Robinson-Patman Price Discrimination Act; 15 U.S.C. 13–13b and 21a), referred to in subsec. (d)(7), is act June 19, 1936, ch. 592, 49 Stat. 1526, also known as the Robinson-Patman Antidiscrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.), referred to in subsec. (d)(7), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

AMENDMENTS

2002—Subsec. (d)(7). Pub. L. 107–273 substituted ''76'' for ''77''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective Nov. 2, 2002, and applicable only with respect to cases commenced on or after Nov. 2, 2002, see section 14103 of Pub. L. 107–273, set out as a note under section 3 of Title 15, Commerce and Trade.

**§ 1414. License and permit fees**

No application for the issuance or transfer of a license for exploration or permit for commer-

cial recovery shall be certified unless the applicant pays to the Administrator a reasonable administrative fee which shall be deposited into miscellaneous receipts of the Treasury. The amount of the administrative fee imposed by the Administrator on any applicant shall reflect the reasonable administrative costs incurred in reviewing and processing the application.

(Pub. L. 96–283, title I, § 104, June 28, 1980, 94 Stat. 563.)

### § 1415. License and permit terms, conditions, and restrictions; issuance and transfer of licenses and permits

#### (a) Eligibility for issuance or transfer of license or permit

Before issuing or transferring a license for exploration or permit for commercial recovery, the Administrator must find in writing, after consultation with interested departments and agencies pursuant to section 1413(e) of this title, and upon considering public comments received with respect to the license or permit, that the exploration or commercial recovery proposed in the application—

(1) will not unreasonably interfere with the exercise of the freedoms of the high seas by other states, as recognized under general principles of international law;

(2) will not conflict with any international obligation of the United States established by any treaty or international convention in force with respect to the United States;

(3) will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict;

(4) cannot reasonably be expected to result in a significant adverse effect on the quality of the environment, taking into account the analyses and information in any applicable environmental impact statement prepared pursuant to section 1419(c) or 1419(d) of this title; and

(5) will not pose an inordinate threat to the safety of life and property at sea.

#### (b) Issuance and transfer of licenses and permits with terms, conditions, and restrictions

(1) Within 180 days after certification of any application for the issuance or transfer of a license or permit under section 1413(g) of this title, the Administrator shall propose terms and conditions for, and restrictions on, the exploration or commercial recovery proposed in the application which are consistent with the provisions of this chapter and regulations issued under this chapter. If additional time is needed, the Administrator shall notify the applicant in writing of the reasons for the delay and indicate the approximate date on which the proposed terms, conditions, and restrictions will be completed. The Administrator shall provide to each applicant a written statement of the proposed terms, conditions, and restrictions. Such terms, conditions, and restrictions shall be generally specified in regulations with general criteria and standards to be used in establishing such terms, conditions, and restrictions for a license or permit and shall be uniform in all licenses or permits, except to the extent that differing physical and environmental conditions require the establishment of special terms, conditions, and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea.

(2) After preparation and consideration of the final environmental impact statement pursuant to section 1419(d) of this title on the proposed issuance of a license or permit and subject to the other provisions of this chapter, the Administrator shall issue to the applicant the license or permit with the terms, conditions, and restrictions incorporated therein.

(3) The licensee or permittee to whom a license or permit is issued or transferred shall be deemed to have accepted the terms, conditions, and restrictions in the license or permit if the licensee or permittee does not notify the Administrator within 60 days after receipt of the license or permit of each term, condition, or restriction with which the licensee or permittee takes exception. The licensee or permittee may, in addition to such objections as may be raised under applicable provisions of law, object to any term, condition, or restriction on the ground that the term, condition, or restriction is inconsistent with this chapter or the regulations promulgated thereunder. If, after the Administrator takes final action on these objections, the licensee or permittee demonstrates that a dispute remains on a material issue of fact, the licensee or permittee is entitled to a decision on the record after the opportunity for an agency hearing pursuant to sections 556 and 557 of title 5. Any such decision made by the Administrator shall be subject to judicial review as provided in chapter 7 of title 5.

#### (c) Modification and revision of terms, conditions, and restrictions

(1) After the issuance or transfer of any license or permit under subsection (b) of this section, the Administrator, after consultation with interested agencies and the licensee or permittee, may modify any term, condition, or restriction in such license or permit—

(A) to avoid unreasonable interference with the interests of other states in their exercise of the freedoms of the high seas, as recognized under general principles of international law;

(B) if relevant data and other information (including, but not limited to, data resulting from exploration or commercial recovery activities under the license or permit) indicate that modification is required to protect the quality of the environment or to promote the safety of life and property at sea and if such modification is consistent with the regulations issued to carry out section 1419(b) of this title;

(C) to avoid a conflict with any international obligation of the United States, established by any treaty or convention in force with respect to the United States, as determined in writing by the President; or

(D) to avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict, as determined in writing by the President.

(2) During the term of a license or a permit, the licensee or permittee may submit to the Administrator an application for a revision of the license or permit or the exploration plan or recovery plan associated with the license or permit. The Administrator shall approve such application upon a finding in writing that the revision will comply with the requirements of this chapter and the regulations issued under this chapter.

(3) The Administrator shall establish, by regulation, guidelines for a determination of the scale or extent of a proposed modification or revision for which any or all license or permit application requirements and procedures, including a public hearing, shall apply. Any increase in the size of the area, or any change in the location of an area, to which an exploration plan or a recovery plan applies, except an incidental increase or change, must be made by application for another license or permit.

(4) The procedures set forth in subsection (b)(3) of this section shall apply with respect to any modification under this subsection in the same manner, and to the same extent, as if such modification were an initial term, condition, or restriction proposed by the Administrator.

**(d) Prior consultations**

Prior to making a determination to issue, transfer, modify, or renew a license or permit under this section, the Administrator shall consult with any affected Regional Fishery Management Council established pursuant to section 1852 of title 16, if the activities undertaken pursuant to such license or permit could adversely affect any fishery within the Fishery Conservation Zone, or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond such zone.

(Pub. L. 96–283, title I, § 105, June 28, 1980, 94 Stat. 563; Pub. L. 96–561, title II, § 238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41.)

REFERENCES IN TEXT

The Fishery Conservation Zone, referred to in subsec. (d), probably means the fishery conservation zone established by section 1811 of Title 16, Conservation, which as amended generally by Pub. L. 99–659, title I, § 101(b), Nov. 14, 1986, 100 Stat. 3706, relates to United States sovereign rights and fishery management authority over fish within the exclusive economic zone as defined in section 1802 of Title 16.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–208 made technical amendment to reference in original act which appears in text as reference to section 1852 of title 16.

1980—Subsec. (d). Pub. L. 96–561 made technical amendment to reference in original act which appears in text as reference to section 1852 of title 16.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 238(b) of Pub. L. 96–561 provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

## § 1416. Denial of certification of applications and of issuance, transfer, suspension, and revocation of licenses and permits; suspension and modification of activities

**(a) Denial, suspension, modification, and revocation**

(1) The Administrator may deny certification of an application for the issuance or transfer of, and may deny the issuance or transfer of, a license for exploration or permit for commercial recovery if the Administrator finds that the applicant, or the activities proposed to be undertaken by the applicant, do not meet the requirements set forth in section 1413(c) of this title, section 1415(a) of this title, or in any other provision of this chapter, or any regulation issued under this chapter, for the issuance or transfer of a license or permit.

(2) The Administrator may—

(A) in addition to, or in lieu of, the imposition of any civil penalty under section 1462(a) of this title, or in addition to the imposition of any fine under section 1463 of this title, suspend or revoke any license or permit issued under this chapter, or suspend or modify any particular activities under such a license or permit, if the licensee or permittee, as the case may be, substantially fails to comply with any provision of this chapter, any regulation issued under this chapter, or any term, condition, or restriction of the license or permit; and

(B) suspend or modify particular activities under any license or permit, if the President determines that such suspension or modification is necessary (i) to avoid any conflict with any international obligation of the United States established by any treaty or convention in force with respect to the United States, or (ii) to avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

(3) No action may be taken by the Administrator to deny issuance or transfer of or to revoke any license or permit or, except as provided in subsection (c) of this section, to suspend any license or permit or suspend or modify particular activities under a license or permit, unless the Administrator—

(A) publishes in the Federal Register and gives the applicant, licensee, or permittee, as the case may be, written notice of the intention of the Administrator to deny the issuance or transfer of or to suspend, modify, or revoke the license or permit and the reason therefor; and

(B) if the reason for the proposed denial, suspension, modification, or revocation is a deficiency which the applicant, licensee, or permittee can correct, affords the applicant, licensee, or permittee a reasonable time, but not more than 180 days from the date of the notice or such longer period as the Administrator may establish for good cause shown, to correct such deficiency.

(4) The Administrator shall deny issuance or transfer of, or suspend or revoke, any license or permit or order the suspension or modification

of particular activities under a license or permit—

(A) on the thirtieth day after the date of the notice given to the applicant, licensee, or permittee under paragraph (3)(A) unless before such day the applicant, licensee, or permittee requests a review of the proposed denial, suspension, modification, or revocation; or

(B) on the last day of the period established under paragraph (3)(B) in which the applicant, licensee, or permittee must correct a deficiency, if such correction has not been made before such day.

**(b) Administrative review of proposed denial, suspension, modification, or revocation**

Any applicant, licensee, or permittee, as the case may be, who makes a timely request under subsection (a) of this section for review of a denial of issuance or transfer, or a suspension or revocation, of a license for exploration or permit for commercial recovery, or a suspension or modification of particular activities under such a license or permit, is entitled to an adjudication on the record after an opportunity for an agency hearing with respect to such denial or suspension, revocation, or modification.

**(c) Effect on activities; emergency orders**

The issuance of any notice of proposed suspension or revocation of a license for exploration or permit for commercial recovery or proposed suspension or modification of particular activities under such a license or permit shall not affect the continuation of exploration or commercial recovery activities by the licensee or permittee. The provisions of paragraphs (3) and (4) of subsection (a) of this section and the first sentence of this subsection shall not apply when the President determines by Executive order that an immediate suspension of a license for exploration or permit for commercial recovery, or immediate suspension or modification of particular activities under such a license or permit, is necessary for the reasons set forth in subsection (a)(2)(B) of this section, or the Administrator determines that an immediate suspension of such a license or permit, or immediate suspension or modification of particular activities under such a license or permit, is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life and property at sea, and the Administrator issues an emergency order requiring such immediate suspension.

**(d) Judicial review**

Any determination of the Administrator, after any appropriate administrative review under subsection (b) of this section, to certify or deny certification of an application for the issuance or transfer of, or to issue, deny issuance of, transfer, deny the transfer of, modify, renew, suspend, or revoke any license for exploration or permit for commercial recovery, or suspend or modify particular activities under such a license or permit, or any immediate suspension of such a license or permit, or immediate suspension or modification of particular activities under such a license or permit, pursuant to subsection (c) of this section, is subject to judicial review as provided in chapter 7 of title 5.

(Pub. L. 96–283, title I, § 106, June 28, 1980, 94 Stat. 565.)

**§ 1417. Duration of licenses and permits**

**(a) Duration of a license**

Each license for exploration shall be issued for a period of 10 years. If the licensee has substantially complied with the license and the exploration plan associated therewith and has requested extensions of the license, the Administrator shall extend the license on terms, conditions, and restrictions consistent with this chapter and the regulations issued under this chapter for periods of not more than 5 years each.

**(b) Duration of a permit**

Each permit for commercial recovery shall be issued for a term of 20 years and for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area to which the recovery plan associated with the permit applies. The permit of any permittee who is not recovering hard mineral resources in commercial quantities at the end of 10 years shall be terminated; except that the Administrator shall for good cause shown, including force majeure, adverse economic conditions, unavoidable delays in construction, major unanticipated vessel repairs that prevent the permittee from conducting commercial recovery activities during an annual period, or other circumstances beyond the control of the permittee, extend the 10-year period, but not beyond the initial 20-year term of the permit.

(Pub. L. 96–283, title I, § 107, June 28, 1980, 94 Stat. 567.)

**§ 1418. Diligence requirements**

**(a) In general**

The exploration plan or recovery plan and the terms, conditions, and restrictions of each license and permit issued under this subchapter shall be designed to assure diligent development. Each licensee shall pursue diligently the activities described in the exploration plan of the licensee, and each permittee shall pursue diligently the activities described in the recovery plan of the permittee.

**(b) Expenditures**

Each license shall require such periodic reasonable expenditures for exploration by the licensee as the Administrator shall establish, taking into account the size of the area of the deep seabed to which the exploration plan associated with the license applies and the amount of funds which is estimated by the Administrator to be required for commercial recovery of hard mineral resources to begin within the time limit established by the Administrator. Such required expenditures shall not be established at a level which would discourage exploration by persons with less costly technology than is prevalently in use.

**(c) Commercial recovery**

Once commercial recovery is achieved, the Administrator shall, within reasonable limits and taking into consideration all relevant factors, require the permittee to maintain commercial recovery throughout the period of the permit; except that the Administrator shall for good cause shown, including force majeure, adverse

economic conditions, or other circumstances beyond the control of the permittee, authorize the temporary suspension of commercial recovery activities. The duration of such a suspension shall not exceed one year at any one time, unless the Administrator determines that conditions justify an extension of the suspension.

(Pub. L. 96–283, title I, § 108, June 28, 1980, 94 Stat. 567.)

**§ 1419. Protection of the environment**

**(a) Environmental assessment**

**(1) Deep ocean mining environmental study (DOMES)**

The Administrator shall expand and accelerate the program assessing the effects on the environment from exploration and commercial recovery activities, including seabased processing and the disposal at sea of processing wastes, so as to provide an assessment, as accurate as practicable, of environmental impacts of such activities for the implementation of subsections (b), (c), and (d) of this section.

**(2) Supporting ocean research**

The Administrator also shall conduct a continuing program of ocean research to support environmental assessment activity through the period of exploration and commercial recovery authorized by this chapter. The program shall include the development, acceleration, and expansion, as appropriate, of studies of the ecological, geological, and physical aspects of the deep seabed in general areas of the ocean where exploration and commercial development under the authority of this chapter are likely to occur, including, but not limited to—

(A) natural diversity of the deep seabed biota;

(B) life histories of major benthic, midwater, and surface organisms most likely to be affected by commercial recovery activities;

(C) long- and short-term effects of commercial recovery on the deep seabed biota; and

(D) assessment of the effects of seabased processing activities.

Within 160 days after June 28, 1980, the Administrator shall prepare a plan to carry out the program described in this subsection, including necessary funding levels for the next five fiscal years, and shall submit the plan to the Congress.

**(b) Terms, conditions, and restrictions**

Each license and permit issued under this subchapter shall contain such terms, conditions, and restrictions, established by the Administrator, which prescribe the actions the licensee or permittee shall take in the conduct of exploration and commercial recovery activities to assure protection of the environment. The Administrator shall require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant effect on safety, health, or the environment, except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies. Before establishing such terms, conditions, and restrictions, the Administrator shall consult with the Administrator of the Environmental Protection Agency, the Secretary of State, and the Secretary of the department in which the Coast Guard is operating, concerning such terms, conditions, and restrictions, and the Administrator shall take into account and give due consideration to the information contained in each final environmental impact statement prepared with respect to such license or permit pursuant to subsection (d) of this section.

**(c) Programmatic environmental impact statement**

(1) If the Administrator, in consultation with the Administrator of the Environmental Protection Agency and with the assistance of other appropriate Federal agencies, determines that a programmatic environmental impact statement is required, the Administrator shall, as soon as practicable after June 28, 1980, with respect to the areas of the oceans in which any United States citizen is expected to undertake exploration and commercial recovery under the authority of this chapter—

(A) prepare and publish draft programmatic environmental impact statements which assess the environmental impacts of exploration and commercial recovery in such areas;

(B) afford all interested parties a reasonable time after such dates of publication to submit comments to the Administrator on such draft statements; and

(C) thereafter prepare (giving full consideration to all comments submitted under subparagraph (B)) and publish final programmatic environmental impact statements regarding such areas.

(2) With respect to the area of the oceans in which exploration and commercial recovery by any United States citizen will likely first occur under the authority of this chapter, the Administrator shall prepare a draft and final programmatic environmental impact statement as required under paragraph (1), except that—

(A) the draft programmatic environmental impact statement shall be prepared and published as soon as practicable but not later than 270 days (or such longer period as the Administrator may establish for good cause shown) after June 28, 1980; and

(B) the final programmatic environmental impact statement shall be prepared and published within 180 days (or such longer period as the Administrator may establish for good cause shown) after the date on which the draft statement is published.

**(d) Environmental impact statements on issuance of licenses and permits**

The issuance of, but not the certification of an application for, any license or permit under this subchapter shall be deemed to be a major Federal action significantly affecting the quality of the human environment for purposes of section

4332 of title 42. In preparing an environmental impact statement pursuant to this subsection, the Administrator shall consult with the agency heads referred to in subsection (b) of this section and shall take into account, and give due consideration to, the relevant information contained in any applicable studies and any other environmental impact statement prepared pursuant to this section. Each draft environmental impact statement prepared pursuant to this subsection shall be published, with the terms, conditions, and restrictions proposed pursuant to section 1415(b) of this title, within 180 days (or such longer period as the Administrator may establish for good cause shown in writing) following the date on which the application for the license or permit concerned is certified by the Administrator. Each final environmental impact statement shall be published 180 days (or such longer period as the Administrator may establish for good cause shown in writing) following the date on which the draft environmental impact statement is published.

**(e) Effect on other law**

For the purposes of this chapter, any vessel or other floating craft engaged in commercial recovery or exploration shall not be deemed to be ''a vessel or other floating craft'' under section 502(12)(B) of the Clean Water Act [33 U.S.C. 1362(12)(B)] and any discharge of a pollutant from such vessel or other floating craft shall be subject to the Clean Water Act [33 U.S.C. 1251 et seq.].

**(f) Stable reference areas**

(1) Within one year after June 28, 1980, the Secretary of State shall, in cooperation with the Administrator and as part of the international consultations pursuant to section 1428(f) of this title, negotiate with all nations that are identified in such subsection for the purpose of establishing international stable reference areas in which no mining shall take place: *Provided*, *however*, That this subsection shall not be construed as requiring any substantial withdrawal of deep seabed areas from deep seabed mining authorized by this chapter.

(2) Nothing in this chapter shall be construed as authorizing the United States to unilaterally establish such reference area or areas nor shall the United States recognize the unilateral claim to such reference area or areas by any State.

(3) Within four years after June 28, 1980, the Secretary of State shall submit a report to Congress on the progress of establishing such stable reference areas, including the designation of appropriate zones to insure a representative and stable biota of the deep seabed.

(4) For purposes of this section ''stable reference areas'' shall mean an area or areas of the deep seabed to be used as a reference zone or zones for purposes of resource evaluation and environmental assessment of deep seabed mining in which no mining will occur.

(Pub. L. 96–283, title I, § 109, June 28, 1980, 94 Stat. 568.)

REFERENCES IN TEXT

The Clean Water Act, referred to in subsec. (e), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

## § 1420. Conservation of natural resources

For the purpose of conservation of natural resources, each license and permit issued under this subchapter shall contain, as needed, terms, conditions, and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the area to which the license or permit applies. In establishing these terms, conditions, and restrictions, the Administrator shall consider the state of the technology, the processing system utilized and the value and potential use of any waste, the environmental effects of the exploration or commercial recovery activities, economic and resource data, and the national need for hard mineral resources. As used in this chapter, the term ''conservation of natural resources'' is not intended to grant, imply, or create any inference of production controls or price regulation, in particular those which would affect the volume of production, prices, profits, markets, or the decision of which minerals or metals are to be recovered, except as such effects may be incidental to actions taken pursuant to this section.

(Pub. L. 96–283, title I, § 110, June 28, 1980, 94 Stat. 570.)

## § 1421. Prevention of interference with other uses of the high seas

Each license and permit issued under this subchapter shall include such restrictions as may be necessary and appropriate to ensure that exploration or commercial recovery activities conducted by the licensee or permittee do not unreasonably interfere with the interests of other states in their exercise of the freedoms of the high seas, as recognized under general principles of international law.

(Pub. L. 96–283, title I, § 111, June 28, 1980, 94 Stat. 571.)

## § 1422. Safety of life and property at sea

**(a) Conditions regarding vessels**

The Secretary of the department in which the Coast Guard is operating, in consultation with the Administrator, shall require in any license or permit issued under this subchapter, in conformity with principles of international law, that vessels documented under the laws of the United States and used in activities authorized

under the license or permit comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning, and maintenance relating to vessel and crew safety and the promotion of safety of life and property at sea.

**(b) Applicability of other laws**

Notwithstanding any other provision of law, any vessel described in subsection (a) of this section shall be subject to the provisions of chapter 51 of title 46, and to the provisions of titles 52 and 53 of the Revised Statutes and all Acts amendatory thereof or supplementary thereto.

(Pub. L. 96–283, title I, § 112, June 28, 1980, 94 Stat. 571.)

REFERENCES IN TEXT

Title 52 of the Revised Statutes, referred to in subsec. (b), consisted of R.S. §§ 4399 to 4500, which were classified to sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230 to 234, 239, 240, 361, 362, 364, 371 to 373, 375 to 382, 384, 385, 391, 391a, 392 to 394, 399 to 404, 405 to 416, 435 to 440, 451 to 453, 460, 461 to 463, 464, 466, 467 to 482, and 489 to 498 of former Title 46, Shipping. For complete classification of R.S. §§ 4399 to 4500 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46, Shipping, by Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, see Disposition Table preceding section 101 of Title 46.

Title 53 of the Revised Statutes, referred to in subsec. (b), consisted of R.S. §§ 4501 to 4612, which were classified to sections 541 to 543, 545 to 549, 561, 562, 564 to 571, 574 to 578, 591 to 597, 600, 602 to 605, 621 to 628, 641 to 643, 644, 645, 651 to 660, 661 to 669, 674 to 679, 681 to 687, 701 to 710, and 711 to 713 of former Title 46, Shipping. For complete classification of R.S. §§ 4501 to 4612 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46, Shipping, by Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, see Disposition Table preceding section 101 of Title 46.

CODIFICATION

In subsec. (b), ''chapter 51 of title 46'' substituted for ''the International Voyage Load Line Act of 1973'' on authority of Pub. L. 99–509, title V, § 5103(b), Oct. 21, 1986, 100 Stat. 1927, section 5101 of which enacted parts C and J of subtitle II of Title 46, Shipping.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

## § 1423. Records, audits, and public disclosure

**(a) Records and audits**

(1) Each licensee and permittee shall keep such records, consistent with standard accounting principles, as the Administrator shall by regulation prescribe. Such records shall include information which will fully disclose expenditures for exploration and commercial recovery, including processing, of hard mineral resources, and such other information as will facilitate an effective audit of such expenditures.

(2) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination, to any books, documents, papers, and records of licensees and permittees which are necessary and directly pertinent to verify the expenditures referred to in paragraph (1).

**(b) Submission of data and information**

Each licensee and permittee shall be required to submit to the Administrator such data or other information as the Administrator may reasonably need for purposes of making determinations with respect to the issuance, revocation, modification, or suspension of any license or permit; compliance with the reporting requirement contained in section 1469[1] of this title; and evaluation of the exploration or commercial recovery activities conducted by the licensee or permittee.

**(c) Public disclosure**

Copies of any document, report, communication, or other record maintained or received by the Administrator containing data or information required under this subchapter shall be made available to any person upon any request which (1) reasonably describes such record and (2) is made in accordance with rules adopted by the Administrator stating the time, place, fees (if any, not to exceed the direct cost of the services rendered), and procedures to be followed, except that neither the Administrator nor any other officer or employee of the United States may disclose any data or information knowingly and willingly required under this subchapter the disclosure of which is prohibited by section 1905 of title 18. Any officer or employee of the United States who discloses data or information in violation of this subsection shall be subject to the penalties set forth in section 1463(b) of this title.

(Pub. L. 96–283, title I, § 113, June 28, 1980, 94 Stat. 571.)

REFERENCES IN TEXT

Section 1469 of this title, referred to in subsec. (b), was omitted from the Code.

## § 1424. Monitoring of activities of licensees and permittees

Each license and permit issued under this subchapter shall require the licensee or permittee—

(1) to allow the Administrator to place appropriate Federal officers or employees as observers aboard vessels used by the licensee or permittee in exploration or commercial recovery activities (A) to monitor such activities at such time, and to such extent, as the Administrator deems reasonable and necessary to assess the effectiveness of the terms, conditions, and restrictions of the license or permit, and (B) to report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply with such terms, conditions, and restrictions;

(2) to cooperate with such officers and employees in the performance of monitoring functions; and

[1] See References in Text note below.

(3) to monitor the environmental effects of the exploration and commercial recovery activities in accordance with guidelines issued by the Administrator and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects.

(Pub. L. 96–283, title I, § 114, June 28, 1980, 94 Stat. 572.)

### § 1425. Relinquishment, surrender, and transfer of licenses and permits

**(a) Relinquishment and surrender**

Any licensee or permittee may at any time, without penalty—

(1) surrender to the Administrator a license or a permit issued to the licensee or permittee; or

(2) relinquish to the Administrator, in whole or in part, any right to conduct any exploration or commercial recovery activities authorized by the license or permit.

Any licensee or permittee who surrenders a license or permit, or relinquishes any such right, shall remain liable with respect to all violations and penalties incurred, and damage to persons or property caused, by the licensee or permittee as a result of activities engaged in by the licensee or permittee under such license or permit.

**(b) Transfer**

Any license or permit, upon written request of the licensee or permittee, may be transferred by the Administrator; except that no such transfer may occur unless the proposed transferee is a United States citizen and until the Administrator determines that (1) the proposed transfer is in the public interest, and (2) the proposed transferee and the exploration or commercial recovery activities the transferee proposes to conduct meet the requirements of this chapter and regulations issued under this chapter.

(Pub. L. 96–283, title I, § 115, June 28, 1980, 94 Stat. 572.)

### § 1426. Public notice and hearings

**(a) Required procedures**

The Administrator may issue regulations to carry out this chapter, establish and significantly modify terms, conditions, and restrictions in licenses and permits issued under this subchapter, and issue or transfer licenses and permits under this subchapter, only after public notice and opportunity for comment and hearings in accordance with the following:

(1) The Administrator shall publish in the Federal Register notice of all applications for licenses and permits, all proposals to issue or transfer licenses and permits, all regulations implementing this chapter, all terms, conditions, and restrictions on licenses and permits, and all proposals to significantly modify licenses and permits. Interested persons shall be permitted to examine the materials relevant to any of these actions, and shall have at least 60 days after publication of such notice to submit written comments to the Administrator.

(2) The Administrator shall hold a public hearing in an appropriate location and may employ such additional methods as the Administrator deems appropriate to inform interested persons about each action specified in paragraph (1) and to invite their comments thereon.

**(b) Adjudicatory hearing**

If the Administrator determines that there exists one or more specific and material factual issues which require resolution by formal processes, at least one adjudicatory hearing shall be held in the District of Columbia in accordance with the provisions of section 554 of title 5. The record developed in any such adjudicatory hearing shall be part of the basis for the Administrator's decision to take any action referred to in subsection (a) of this section. Hearings held pursuant to this section shall be consolidated insofar as practicable with hearings held by other agencies.

(Pub. L. 96–283, title I, § 116, June 28, 1980, 94 Stat. 573.)

### § 1427. Civil actions

**(a) Equitable relief**

Except as provided in subsection (b) of this section, any person may commence a civil action for equitable relief on that person's behalf in the United States District Court for the District of Columbia—

(1) against any person who is alleged to be in violation of any provision of this chapter or any condition of a license or permit issued under this subchapter; or

(2) against the Administrator when there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary,

if the person bringing the action has a valid legal interest which is or may be adversely affected by such alleged violation or failure to perform. In suits brought under this subsection, the district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the provisions of this chapter, or any term, condition, or restriction of a license or permit issued under this subchapter, or to order the Administrator to perform such act or duty.

**(b) Notice**

No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator and to any alleged violator; or

(B) if the Administrator or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to the alleged violation in a court of the United States; except that in any such civil action, any person having a valid legal interest which is or may be adversely affected by the alleged violation may intervene; or

(2) under subsection (a)(2) of this section, prior to 60 days after the plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such a manner as the Administrator shall prescribe by regulation.

**(c) Costs and fees**

The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party whenever the court determines that such an award is appropriate.

**(d) Relationship to other law**

Nothing in this section shall restrict the rights which any person or class of persons may have under other law to seek enforcement or to seek any other relief. All vessel safety and environmental requirements of or under this chapter shall be in addition to other requirements of law.

(Pub. L. 96–283, title I, § 117, June 28, 1980, 94 Stat. 573.)

**§ 1428. Reciprocating states**

**(a) Designation**

The Administrator, in consultation with the Secretary of State and the heads of other appropriate departments and agencies, may designate any foreign nation as a reciprocating state if the Secretary of State finds that such foreign nation—

(1) regulates the conduct of its citizens and other persons subject to its jurisdiction engaged in exploration for, and commercial recovery of, hard mineral resources of the deep seabed in a manner compatible with that provided in this chapter and the regulations issued under this chapter, which includes adequate measures for the protection of the environment, the conservation of natural resources, and the safety of life and property at sea, and includes effective enforcement provisions;

(2) recognizes licenses and permits issued under this subchapter to the extent that such nation, under its laws, (A) prohibits any person from engaging in exploration or commercial recovery which conflicts with that authorized under any such license or permit and (B) complies with the date for issuance of licenses and the effective date for permits provided in section 1412(c)(1)(D) of this title;

(3) recognizes, under its procedures, priorities of right, consistent with those provided in this chapter and the regulations issued under this chapter, for applications for licenses for exploration or permits for commercial recovery, which applications are made either under its procedures or under this chapter; and

(4) provides an interim legal framework for exploration and commercial recovery which does not unreasonably interfere with the interests of other states in their exercise of the freedoms of the high seas, as recognized under general principles of international law.

**(b) Effect of designation**

No license or permit shall be issued under this subchapter permitting any exploration or commercial recovery which will conflict with any license, permit, or equivalent authorization issued by any foreign nation which is designated as a reciprocating state under subsection (a) of this section.

**(c) Notification**

Upon receipt of any application for a license or permit under this subchapter, the Administrator shall immediately notify all reciprocating states of such application. The notification shall include those portions of the exploration plan or recovery plan submitted with respect to the application, or a summary thereof, and any other appropriate information not required to be withheld from public disclosure by section 1423(c) of this title.

**(d) Revocation of reciprocating state status**

The Administrator, in consultation with the Secretary of State and the heads of other appropriate departments and agencies, shall revoke the designation of a foreign nation as a reciprocating state if the Secretary of State finds that such foreign nation no longer complies with the requirements of subsection (a) of this section. At the request of any holder of a license, permit, or equivalent authorization of such foreign nation, who obtained the license, permit, or equivalent authorization while such foreign nation was a reciprocating state, the Administrator, in consultation with the Secretary of State, may decide to recognize the license, permit, or equivalent authorization for purposes of subsection (b) of this section.

**(e) Authorization**

The President is authorized to negotiate agreements with foreign nations necessary to implement this section.

**(f) International consultations**

The Administrator, in consultation with the Secretary of State and the heads of other appropriate departments and agencies, shall consult with foreign nations which enact, or are preparing to enact, domestic legislation establishing an interim legal framework for exploration and commercial recovery of hard mineral resources. Such consultations shall be carried out with a view to facilitating the designation of such nations as reciprocating states and, as necessary, the negotiation of agreements with foreign nations authorized by subsection (e) of this section. In addition, the Administrator shall provide such foreign nations with information on environmental impacts of exploration and commercial recovery activities, and shall provide any technical assistance requested in designing regulatory measures to protect the environment.

(Pub. L. 96–283, title I, § 118, June 28, 1980, 94 Stat. 574.)

SUBCHAPTER II—TRANSITION TO INTERNATIONAL AGREEMENT

**§ 1441. Declaration of Congressional intent**

It is the intent of Congress—

(1) that any international agreement to which the United States becomes a party should, in addition to promoting other national oceans objectives—

(A) provide assured and nondiscriminatory access, under reasonable terms and conditions, to the hard mineral resources of the deep seabed for United States citizens, and

(B) provide security of tenure by recognizing the rights of United States citizens who have undertaken exploration or commercial recovery under subchapter I of this chapter before such agreement enters into force with respect to the United States to continue their operations under terms, conditions, and restrictions which do not impose significant new economic burdens upon such citizens with respect to such operations with the effect of preventing the continuation of such operations on a viable economic basis;

(2) that the extent to which any such international agreement conforms to the provisions of paragraph (1) should be determined by the totality of the provisions of such agreement, including, but not limited to, the practical implications for the security of investments of any discretionary powers granted to an international regulatory body, the structures and decisionmaking procedures of such body, the availability of impartial and effective procedures for the settlement of disputes, and any features that tend to discriminate against exploration and commercial recovery activities undertaken by United States citizens; and

(3) that this chapter should be transitional pending—

(A) the adoption of an international agreement at the Third United Nations Conference on the Law of the Sea, and the entering into force of such agreement, or portions thereof, with respect to the United States, or

(B) if such adoption is not forthcoming, the negotiation of a multilateral or other treaty concerning the deep seabed, and the entering into force of such treaty with respect to the United States.

(Pub. L. 96–283, title II, § 201, June 28, 1980, 94 Stat. 575.)

### § 1442. Effect of international agreement

If an international agreement enters into force with respect to the United States, any provision of subchapter I of this chapter, this subchapter, or subchapter III of this chapter, and any regulation issued under any such provision, which is not inconsistent with such international agreement shall continue in effect with respect to United States citizens. In the implementation of such international agreement the Administrator, in consultation with the Secretary of State, shall make every effort, to the maximum extent practicable consistent with the provisions of that agreement, to provide for the continued operation of exploration and commercial recovery activities undertaken by United States citizens prior to entry into force of the agreement. The Administrator shall submit to the Congress, within one year after the date of such entry into force, a report on the actions taken by the Administrator under this section, which report shall include, but not be limited to—

(1) a description of the status of deep seabed mining operations of United States citizens under the international agreement; and

(2) an assessment of whether United States citizens who were engaged in exploration or commercial recovery on the date such agreement entered into force have been permitted to continue their operations.

(Pub. L. 96–283, title II, § 202, June 28, 1980, 94 Stat. 576.)

### § 1443. Protection of interim investments

In order to further the objectives set forth in section 1441 of this title, the Administrator, not more than one year after June 28, 1980—

(1) shall submit to the Congress proposed legislation necessary for the United States to implement a system for the protection of interim investments that has been adopted as part of an international agreement and any resolution relating to such international agreement; or

(2) if a system for the protection of interim investments has not been so adopted, shall report to the Congress on the status of negotiations relating to the establishment of such a system.

(Pub. L. 96–283, title II, § 203, June 28, 1980, 94 Stat. 576.)

### § 1444. Disclaimer of obligation to pay compensation

Sections 1441 and 1442 of this title do not create or express any legal or moral obligation on the part of the United States Government to compensate any person for any impairment of the value of that person's investment in any operation for exploration or commercial recovery under subchapter I of this chapter which might occur in connection with the entering into force of an international agreement with respect to the United States.

(Pub. L. 96–283, title II, § 204, June 28, 1980, 94 Stat. 576.)

## SUBCHAPTER III—ENFORCEMENT AND MISCELLANEOUS PROVISIONS

### § 1461. Prohibited acts

It is unlawful for any person who is a United States citizen, or a foreign national on board a vessel documented or numbered under the laws of the United States, or subject to the jurisdiction of the United States under a reciprocating state agreement negotiated under section 1428(e) of this title—

(1) to violate any provision of this chapter, any regulation issued under this chapter, or any term, condition, or restriction of any license or permit issued to such person under this chapter;

(2) to engage in exploration or commercial recovery after the revocation, or during the period of suspension, of an applicable license or permit issued under this chapter, to engage in a particular exploration or commercial recovery activity during the period such activity has been suspended under this chapter, or to fail to modify a particular exploration or

commercial recovery activity for which modification was required under this chapter;

(3) to refuse to permit any Federal officer or employee authorized to monitor or enforce the provisions of this chapter, as provided in sections 1424 and 1464 of this title, to board a vessel documented or numbered under the laws of the United States, or any vessel for which such boarding is authorized by a treaty or executive agreement, for purposes of conducting any search or inspection in connection with the monitoring or enforcement of this chapter or any regulation, term, condition, or restriction referred to in paragraph (1);

(4) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer or employee in the conduct of any search or inspection described in paragraph (3);

(5) to resist a lawful arrest for any act prohibited by this section;

(6) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any hard mineral resource recovered, processed, or retained in violation of this chapter or any regulation, term, condition, or restriction referred to in paragraph (1); or

(7) to interfere with, delay, or prevent, by any means, the apprehension or arrest of any other person subject to this section knowing that such other person has committed any act prohibited by this section.

(Pub. L. 96–283, title III, § 301, June 28, 1980, 94 Stat. 577.)

### § 1462. Civil penalties

#### (a) Assessment of penalty

Any person subject to section 1461 of this title who is found by the Administrator, after notice and an opportunity for a hearing in accordance with section 554 of title 5, to have committed any act prohibited by section 1461 of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Administrator by written notice. In determining the amount of such penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the prohibited act committed and, with respect to the violator, any history of prior offenses, good faith demonstrated in attempting to achieve timely compliance after being cited for the violation, and such other matters as justice may require.

#### (b) Review of civil penalty

Any person subject to section 1461 of this title against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in an appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which the particular violation was found and such penalty was imposed, as provided in section 2112 of title 28. The findings and order of the Administrator shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2)(E) of title 5.

#### (c) Action upon failure to pay assessment

If any person subject to section 1461 of this title fails to pay a civil penalty assessed against such person after the penalty has become final, or after the appropriate court has entered final judgment in favor of the Administrator, the Administrator shall refer the matter to the Attorney General of the United States, who shall recover the civil penalty assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

#### (d) Compromise or other action by the Administrator

The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section unless an action brought under subsection (b) or (c) of this section is pending in a court of the United States.

(Pub. L. 96–283, title III, § 302, June 28, 1980, 94 Stat. 577.)

### § 1463. Criminal offenses

#### (a) Offense

A person subject to section 1461 of this title is guilty of an offense if such person willfully and knowingly commits any act prohibited by section 1461 of this title.

#### (b) Punishment

Any offense described in paragraphs (1), (2), and (6) of section 1461 of this title is punishable by a fine of not more than $75,000 for each day during which the violation continues. Any offense described in paragraphs (3), (4), (5), and (7) of section 1461 of this title is punishable by a fine of not more than $75,000 or imprisonment for not more than six months, or both. If, in the commission of any offense, the person subject to the jurisdiction of the United States uses a dangerous weapon, engages in conduct that causes bodily injury to any Federal officer or employee, or places any such Federal officer or employee in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000 or imprisonment for not more than ten years, or both.

(Pub. L. 96–283, title III, § 303, June 28, 1980, 94 Stat. 578.)

### § 1464. Enforcement

#### (a) Responsibility

Subject to the other provisions of this subsection, the Administrator shall enforce the provisions of this chapter. The Secretary of the department in which the Coast Guard is operating shall exercise such other enforcement responsibilities with respect to vessels subject to the

provisions of this chapter as are authorized under other provisions of law and may, upon the specific request of the Administrator, assist the Administrator in the enforcement of the provisions of this chapter. The Secretary of the department in which the Coast Guard is operating shall have the exclusive responsibility for enforcement measures which affect the safety of life and property at sea. The Administrator and the Secretary of the department in which the Coast Guard is operating may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment, including aircraft and vessels, and facilities of any other Federal agency or department, and may authorize officers or employees of other departments or agencies to provide assistance as necessary in carrying out subsection (b) of this section. While providing such assistance, these officers and employees shall be under the control, authority, and supervision of the Coast Guard. The Administrator and the Secretary of the department in which the Coast Guard is operating may issue regulations jointly or severally as may be necessary and appropriate to carry out their duties under this section.

**(b) Powers of authorized officers**

To enforce this chapter on board any vessel subject to the provisions of this chapter, any officer who is authorized by the Administrator or by the Secretary of the department in which the Coast Guard is operating may—

(1) board and inspect any vessel which is subject to the provisions of this chapter;

(2) search any such vessel if the officer has reasonable cause to believe that the vessel has been used or employed in the violation of any provision of this chapter;

(3) arrest any person subject to section 1461 of this title if the officer has reasonable cause to believe that the person has committed a criminal offense under section 1463 of this title;

(4) seize any such vessel together with its gear, furniture, appurtenances, stores, and cargo, used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this chapter if such seizure is necessary to prevent evasion of the enforcement of this chapter;

(5) seize any hard mineral resource recovered or processed in violation of any provision of this chapter;

(6) seize any other evidence related to any violation of any provision of this chapter;

(7) execute any warrant or other process issued by any court of competent jurisdiction; and

(8) exercise any other lawful authority.

**(c) Definitions**

For purposes of this section, the term ''provisions of this chapter'' or ''provision of this chapter'' means (1) any provision of subchapter I or II of this chapter or this subchapter, (2) any regulation issued under subchapter I of this chapter, subchapter II of this chapter, or this subchapter, and (3) any term, condition, or restriction of any license or permit issued under subchapter I of this chapter.

**(d) Proprietary information**

Proprietary and privileged information seized or maintained under this subchapter concerning a person or vessel engaged in exploration or commercial recovery shall not be made available for general or public use or inspection. The Administrator and the Secretary of the department in which the Coast Guard is operating shall issue regulations to insure the confidentiality of privileged and proprietary information.

(Pub. L. 96–283, title III, § 304, June 28, 1980, 94 Stat. 578.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**§ 1465. Liability of vessels**

Any vessel documented or numbered under the laws of the United States (except a public vessel engaged in noncommercial activities) which is used in any violation of this chapter, any regulation issued under this chapter, or any term, condition, or restriction of any license or permit issued under subchapter I of this chapter shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof.

(Pub. L. 96–283, title III, § 305, June 28, 1980, 94 Stat. 579.)

**§ 1466. Civil forfeitures**

**(a) In general**

Any vessel subject to the provisions of sections 1464 and 1465 of this title, including its gear, furniture, appurtenances, stores, and cargo, which is used, in any manner, in connection with or as a result of the commission of any act prohibited by section 1461 of this title and any hard mineral resource which is recovered, processed, or retained, in any manner, in connection with or as a result of the commission of any such act, shall be subject to forfeiture to the United States. All or part of such vessel, and all such hard mineral resources, may be forfeited to the United States pursuant to a civil proceeding under this section. All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a vessel or cargo for violation of the customs laws, and the disposition of the vessel, cargo, or proceeds from the sale thereof and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section insofar as such provisions of law are applicable and not inconsistent with this chapter.

**(b) Jurisdiction of courts**

Any district court of the United States which has jurisdiction under section 1467 of this title

shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) of this section and any action provided for under subsection (d) of this section.

**(c) Judgment**

If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States which has not previously been seized pursuant to this chapter or for which security has not previously been obtained under subsection (d) of this section.

**(d) Procedure**

Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 1467 of this title shall stay the execution of such process, or discharge any property seized pursuant to such process, upon the receipt of a satisfactory bond or other security from any person subject to section 1461 of this title claiming such property. Such bond or other security shall be conditioned upon such person (1) delivering such property to the appropriate court upon order thereof, without any impairment of its value; or (2) paying the monetary value of such property pursuant to any order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

**(e) Rebuttable presumption**

For purposes of this section, it shall be a rebuttable presumption that all hard mineral resources found on board a vessel subject to the provisions of sections 1464 and 1465 of this title which is seized in connection with an act prohibited by section 1461 of this title were recovered, processed, or retained in violation of this chapter.

(Pub. L. 96–283, title III, § 306, June 28, 1980, 94 Stat. 580.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (a), are classified generally to Title 19, Customs Duties.

### § 1467. Jurisdiction of courts

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this chapter. These courts may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

(Pub. L. 96–283, title III, § 307, June 28, 1980, 94 Stat. 580.)

### § 1468. Regulations

**(a) Proposed regulations**

Not later than 270 days after June 28, 1980, the Administrator shall solicit the views of the agency heads referred to in section 1419(b) of this title and of interested persons, and issue, in accordance with section 553 of title 5, such proposed regulations as are required by or are necessary and appropriate to implement subchapters I and II of this chapter and this subchapter. The Administrator shall hold at least one public hearing on such proposed regulations.

**(b) Final regulations**

Not later than 180 days after the date on which proposed regulations are issued pursuant to subsection (a) of this section, the Administrator shall solicit the views of the agency heads referred to in section 1419(b) of this title and of interested persons, consider the comments received during the public hearing required in subsection (a) of this section and any written comments on the proposed regulations received by the Administrator, and issue, in accordance with section 553 of title 5, such regulations as are required by or are necessary and appropriate to implement subchapters I and II of this chapter and this subchapter.

**(c) Amendments**

The Administrator may at any time amend regulations issued pursuant to subsection (b) of this section as the Administrator determines to be necessary and appropriate in order to provide for the conservation of natural resources within the meaning of section 1420 of this title, protection of the environment, and the safety of life and property at sea. Such amended regulations shall apply to all exploration or commercial recovery activities conducted under any license or permit issued or maintained pursuant to this chapter; except that any such amended regulations which provide for conservation of natural resources shall apply to exploration or commercial recovery conducted under an existing license or permit during the present term of such license or permit only if the Administrator determines that such amended regulations providing for conservation of natural resources will not impose serious or irreparable economic hardship on the licensee or permittee. Any amendment to regulations under this subsection shall be made on the record after an opportunity for an agency hearing.

**(d) Consistency**

This chapter and the regulations issued under this chapter shall not be deemed to supersede any other Federal laws or treaties or regulations issued thereunder.

(Pub. L. 96–283, title III, § 308, June 28, 1980, 94 Stat. 581.)

### § 1469. Omitted

CODIFICATION

Section, Pub. L. 96–283, title III, § 309, June 28, 1980, 94 Stat. 581, which required the Administrator of the National Oceanic and Atmospheric Administration to submit a biennial report to Congress on the administration of this chapter, 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 54 of House Document No. 103–7.

### § 1470. Authorization of appropriations

There are authorized to be appropriated to the Administrator, for purposes of carrying out the provisions of subchapters I and II of this chapter and this subchapter, such sums as may be necessary for the fiscal years ending September 30, 1981, and September 30, 1982, and $1,469,000 for the fiscal year ending September 30, 1983, $2,150,000 for the fiscal year ending September 30, 1984, $1,500,000 for each of the fiscal years ending September 30, 1985, and September 30, 1986, $1,500,000 for each of the fiscal years ending September 30, 1987, September 30, 1988, and September 30, 1989, and $1,525,000 for each of the fiscal years 1990, 1991, 1992, 1993, and 1994.

(Pub. L. 96–283, title III, § 310, June 28, 1980, 94 Stat. 582; Pub. L. 97–416, Jan. 4, 1983, 96 Stat. 2084; Pub. L. 98–623, title IV, § 403, Nov. 8, 1984, 98 Stat. 3408; Pub. L. 99–507, § 2, Oct. 21, 1986, 100 Stat. 1847; Pub. L. 101–178, § 1, Nov. 28, 1989, 103 Stat. 1297.)

AMENDMENTS

1989—Pub. L. 101–178 inserted provisions authorizing appropriations of $1,525,000 for each of fiscal years 1990, 1991, 1992, 1993, and 1994.

1986—Pub. L. 99–507 inserted provisions authorizing appropriations of $1,500,000 for each of fiscal years ending Sept. 30, 1987, Sept. 30, 1988, and Sept. 30, 1989.

1984—Pub. L. 98–623 inserted provisions authorizing appropriations of $1,500,000 for each of fiscal years ending Sept. 30, 1985, and Sept. 30, 1986.

1983—Pub. L. 97–416 inserted provisions authorizing appropriations of $1,469,000 for fiscal year ending Sept. 30, 1983, and $2,150,000 for fiscal year ending Sept. 30, 1984.

### § 1471. Severability

If any provision of this chapter or any application thereof is held invalid, the validity of the remainder of the chapter, or any other application, shall not be affected thereby.

(Pub. L. 96–283, title III, § 311, June 28, 1980, 94 Stat. 582.)

### § 1472. Deep Seabed Revenue Sharing Trust Fund; establishment

**(a) Creation of Trust Fund**

There is established in the Treasury of the United States a trust fund to be known as the ''Deep Seabed Revenue Sharing Trust Fund'' (hereinafter in this section referred to as the ''Trust Fund''), consisting of such amounts as may be appropriated or credited to the Trust Fund as provided in this section.

**(b) Transfer to Trust Fund of amounts equivalent to certain taxes**

**(1) In general**

There are hereby appropriated to the Trust Fund amounts determined by the Secretary of the Treasury to be equivalent to the amounts of the taxes received in the Treasury under section 4495[1] of title 26.

**(2) Method of transfer**

The amounts appropriated by paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1) received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amount required to be transferred.

**(c) Management of Trust Fund**

**(1) Report**

It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and to report to the Congress for the fiscal year ending September 30, 1980, and each fiscal year thereafter on the financial condition and the results of the operations of the Trust Fund during the preceding year and on its expected condition and operations during the fiscal year and the next five fiscal years after the fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

**(2) Investment**

**(A) In general**

It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired (i) on original issue at the issue price, or (ii) by purchase of outstanding obligations at the market price.

**(B) Sale of obligations**

Any obligation acquired by the Trust Fund may be sold by the Secretary at the market price.

**(C) Interest on certain proceeds**

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

**(d) Expenditures from Trust Fund**

If an international deep seabed treaty is ratified by and in effect with respect to the United States on or before the date ten years after June 28, 1980, amounts in the Trust Fund shall be available, as provided by appropriations Acts, for making contributions required under such treaty for purposes of the sharing among nations of the revenues from deep seabed mining. Nothing in this subsection shall be deemed to authorize any program or other activity not otherwise authorized by law.

**(e) Use of funds**

If an international deep seabed treaty is not in effect with respect to the United States on or before the date ten years after June 28, 1980, amounts in the Trust Fund shall be available for such purposes as Congress may hereafter provide by law.

**(f) International deep seabed treaty**

For purposes of this section, the term ''international deep seabed treaty'' has the meaning given to such term by section 4498(b)[1] of title 26.

[1] See References in Text note below.

(Pub. L. 96–283, title IV, § 403, June 28, 1980, 94 Stat. 584; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

Sections 4495 and 4498 of title 26, referred to in subsecs. (b)(1) and (f), were repealed by Pub. L. 105–34, title XIV, § 1432(b)(1), Aug. 5, 1997, 111 Stat. 1050.

CODIFICATION

Section was enacted as part of title IV of Pub. L. 96–283, and not as part of title III of Pub. L. 96–283, which comprises this subchapter.

AMENDMENTS

1986—Subsec. (b)(1). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(1) of this section relating to the duty of the Secretary of the Treasury to report annually to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 143 of House Document No. 103–7.

### § 1473. Revenue and customs or tariff treatment of deep seabed mining unaffected

Except as otherwise provided in sections 4495 to 4498[1] of title 26, nothing in this chapter shall affect the application of title 26. Nothing in this chapter shall affect the application of the customs or tariff laws of the United States.

(Pub. L. 96–283, title IV, § 404, June 28, 1980, 94 Stat. 586; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

Sections 4495 to 4498 of title 26, referred to in text, were in the original ''section 402'', meaning section 402 of Pub. L. 96–283, title IV, June 28, 1980, 94 Stat. 582, which enacted sections 4495 to 4498 of Title 26, Internal Revenue Code, and enacted a provision set out as a note under section 4495 of Title 26. Sections 4495 to 4498 of title 26 were repealed by Pub. L. 105–34, title XIV, § 1432(b)(1), Aug. 5, 1997, 111 Stat. 1050.

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 96–283, June 28, 1980, 94 Stat. 553, as amended, known as the Deep Seabed Hard Mineral Resources Act, which is classified principally to this chapter (§ 1401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1401 of this title and Tables.

The customs or tariff laws of the United States, referred to in text, are classified generally to Title 19, Customs Duties.

CODIFICATION

Section was enacted as part of title IV of Pub. L. 96–283, and not as part of title III of Pub. L. 96–283 which comprises this subchapter.

AMENDMENTS

1986—Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

## CHAPTER 27—GEOTHERMAL ENERGY

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1501. Congressional statement of findings.

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### § 1501. Congressional statement of findings

The Congress finds that—

(1) domestic geothermal reserves can be developed into regionally significant energy sources promoting the economic health and national security of the Nation;

(2) there are institutional and economic barriers to the commercialization of geothermal technology; and

(3) Federal agencies should consider the use of geothermal energy in the Government's buildings.

(Pub. L. 96–294, title VI, § 602, June 30, 1980, 94 Stat. 763.)

SHORT TITLE

Section 601 of title VI of Pub. L. 96–294 provided that: ''This title [enacting this chapter and sections 1146 and 1147 of this title and amending sections 1141 and 1143 of this title and sections 796, 824a–3, 824i, and 824j of Title 16, Conservation] may be cited as the 'Geothermal Energy Act of 1980'.''

## SUBCHAPTER I—PROJECT LOANS

### § 1511. Loans for geothermal reservoir confirmation

#### (a) Authorization; purposes

The Secretary of Energy (hereafter in this chapter referred to as the ''Secretary'') is authorized to make a loan to any person, from funds appropriated (pursuant to this subchapter) to the Geothermal Resources Development Fund established under section 1144 of this title, to assist such person in undertaking and carrying out a project which (1) is designed to explore for or determine the economic viability of a geothermal reservoir and (2) consists of surface exploration and the drilling of one or more exploratory wells.

#### (b) Repayment rates

Subject to subsection (c) of this section and to section 1513(b) of this title, any loan under subsection (a) of this section shall be repayable out of revenue from production of the geothermal energy reservoir with respect to which the loan was made, at a rate, in any year, not to exceed 20 per centum of the gross revenue from the reservoir in that year; except that if any disposi-

[1] See References in Text note below.

tion of the geothermal rights to the reservoir is made to one or more other persons by the borrower, the full amount of the loan balance outstanding, or so much of the loan balance outstanding as is equal to the full amount of the compensation realized by the borrower upon such disposition, whichever is less, shall be repaid immediately. In any case where the reservoir is confirmed (as determined by the Secretary), the Secretary may impute a reasonable revenue for purposes of determining repayment if—

(1) reasonable efforts are not made to put such reservoir in commercial operation,

(2) the borrower (or any such other person) utilizes the resources of the reservoir without a sale of the energy or geothermal energy resources therefrom, or

(3) a sale of energy or geothermal energy resources from the reservoir is made for an unreasonably low price;

except that no such imputation of revenue shall be made during the three-year period immediately following such reservoir confirmation. In the event of failure to begin production of revenue (or, where no sale of energy or geothermal energy resources is made, to begin production of energy for commercial use) within five years after the date of such reservoir confirmation, the Secretary may take action to recover the value, not to exceed the amount of the unpaid balance of the loan plus any accrued interest thereon, of any assets of the project in question, including resource rights.

**(c) Cancellation of unpaid balance and accrued interest**

The Secretary may at any time cancel the unpaid balance and any accrued interest on any loan made under this section if he determines, on the basis of evidence presented by the loan recipient or otherwise, that the geothermal energy reservoir with respect to which the loan was made has characteristics which make that reservoir economically or technically unacceptable for commercial development.

**(d) "Person" defined**

As used in this subchapter, the term ''person'' includes municipalities, electric cooperatives, industrial development agencies, nonprofit organizations, and Indian tribes, as well as the entities included within such term under section 1 of title 1.

(Pub. L. 96–294, title VI, § 611, June 30, 1980, 94 Stat. 763.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this title'', meaning title VI of Pub. L. 96–294, June 30, 1980, 94 Stat. 763, known as the Geothermal Energy Act of 1980. For complete classification of title VI to the Code, see Short Title note set out under section 1501 of this title and Tables.

### § 1512. Loan size limitation

The amount of any loan made under section 1511(a) of this title with respect to a project described in that section shall not exceed 50 percent of the cost of such project; except that if the loan is made to a person proposing to make application of the resources of the reservoir involved primarily for space heating or cooling or process heat for one or more structures or facilities then existing or under construction, the loan may be in any amount up to 90 per centum of such cost. In any event no loan shall be made in an amount in excess of $3,000,000.

(Pub. L. 96–294, title VI, § 612, June 30, 1980, 94 Stat. 764.)

### § 1513. Loan interest rates; repayment periods

(a) Each loan made under section 1511 of this title shall bear interest at a discount or interest rate equal to the rate in effect (at the time the loan is made) for water resources planning projects under section 80 of the Water Resources Development Act of 1974 (42 U.S.C. 1962(d)–17(a)).[1]

(b) Each such loan shall be for a term which the Secretary deems appropriate, except that no loan term shall exceed twenty years beyond the date on which production of energy or geothermal energy resources begins from the reservoir involved. If revenues are inadequate (as determined by the Secretary) to fully repay the principal and accrued interest within twenty years after production begins, any remaining unpaid amounts shall be forgiven.

(Pub. L. 96–294, title VI, § 613, June 30, 1980, 94 Stat. 764.)

### § 1514. Program termination

No new loans shall be made under this subchapter after September 30, 1986. Amounts repaid on or before September 30, 1986, on loans theretofore made under section 1511 of this title shall be deposited in the Geothermal Resources Development Fund for purposes of this subchapter. Amounts repaid after that date on loans theretofore made under section 1511 of this title, and amounts deposited in the Fund for purposes of this subchapter which remain in the Fund after that date and are not required to secure outstanding obligations under this subchapter, shall be deposited into the United States Treasury as miscellaneous receipts.

(Pub. L. 96–294, title VI, § 614, June 30, 1980, 94 Stat. 764.)

### § 1515. Regulations

The Secretary shall promulgate regulations to carry out this subchapter no later than six months after June 30, 1980.

(Pub. L. 96–294, title VI, § 615, June 30, 1980, 94 Stat. 764.)

### § 1516. Authorizations

There are hereby authorized to be appropriated for loans under this subchapter not to exceed $5,000,000 for fiscal year 1981, and not to exceed $20,000,000 for each of the four succeeding fiscal years. Amounts so appropriated shall be deposited in the Geothermal Resources Development Fund for purposes of this subchapter, and shall remain available for such purposes until expended.

[1] So in original. Should be ''(42 U.S.C. 1962d–17(a)).''

(Pub. L. 96–294, title VI, § 616, June 30, 1980, 94 Stat. 765.)

SUBCHAPTER II—STUDY, ESTABLISHMENT, AND IMPLEMENTATION OF INSURANCE PROGRAM

### § 1521. Reservoir insurance program study

The Secretary shall conduct a detailed study of the need for and feasibility of establishing a reservoir insurance and reinsurance program incorporating the terms, conditions, and provisions set forth in section 1522 of this title, and shall submit to the Congress within one year after June 30, 1980, a report on the results of such study including his findings and recommendations with respect thereto.

(Pub. L. 96–294, title VI, § 621, June 30, 1980, 94 Stat. 765.)

### § 1522. Establishment of program

#### (a) Authorization; requirements; scope

If the report of the Secretary submitted pursuant to section 1521 of this title affirmatively recommends the establishment of the program and the Congress by law (after review of such recommendation) specifically authorizes the establishment of the program, the Secretary shall establish and implement within six months after the date of the enactment of such authorization a program, in cooperation with the insurance and reinsurance industry, to provide reservoir insurance to qualified eligible applicants in accordance with this section.

#### (b) Definitions

For the purpose of this section—

(1) the term ''investment'' means the expenditure of, and any irrevocable legal obligation to expend, funds (together with the reasonable interest costs thereof) for the purchase or construction of machinery, equipment, and facilities manufactured, or for services contracted to be furnished, for the development and utilization of a geothermal resource in the United States to provide energy in the form of heat for direct use or for generation of electricity;

(2) the term ''geothermal resource'' means a resource in the United States including (A) all products of geothermal processes embracing indigenous steam, hot water, and hot brines; (B) steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (C) heat or other associated energy found in geothermal formations; and (D) any byproducts derived from them, where ''byproduct'' means any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium) which are found in solution or in association with other geothermal resources and which have a value of less than 75 per centum of the value of the geothermal steam or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves;

(3) the term ''risk'' means the hazard that a reservoir of geothermal resources will cease to provide sufficient quantities of geothermal resources at minimum conditions required to maintain an economically or technically viable operation for utilization of the geothermal resource;

(4) the term ''reasonable premiums'' means premium amounts determined by the Secretary to be reasonable in light of the amount of investment subject to the risk and premiums charged in similar or analogous situations by private insurers where private insurance is concerned and by insurers or guarantors, both public and private, where public insurance is concerned;

(5) the term ''other insurance'' means any combination of private or public insurance other than investment insurance provided by the Secretary under this section;

(6) the term ''reservoir'' means the physical subsurface geologic structure which forms the natural repository for the undisturbed geothermal resource; and

(7) the term ''person'' means any public or private agency, institution, association, partnership, corporation, political subdivision, or other legal entity which is a United States citizen as determined by application of the test for United States citizenship contained in section 50501 of title 46, or in the first sentence of section 27A of the Merchant Marine Act, 1920 (46 U.S.C. 883–1(a)–(e)).[1]

#### (c) Eligibility for investment insurance

Any person with a total direct investment of not less than $1,000,000 in the development and use, not including exploration and testing, of a geothermal resource associated with a reservoir, and unable to obtain other insurance at reasonable premiums for the amount of the investment subject to risk, as determined by the Secretary under this section, shall be eligible for investment insurance.

#### (d) Application for investment insurance; contents, etc.

Any eligible person seeking investment insurance under this section shall file an application with the Secretary setting forth (1) the total amount of the contemplated investment in a geothermal resource and associated reservoir; (2) the views of the applicant concerning the nature and extent of the risk, including a geologic, engineering, and financial assessment based on site specific results of exploration and testing of the geothermal resource and the reservoir, stated with as much specificity as is possible; (3) the status of all required Federal, State, and local approvals, permits, and leases for the proposed development and utilization operations at the site; (4) the extent to which the applicant has been able to obtain other insurance against the risk; and (5) such other information as the Secretary may require.

#### (e) Determinations respecting application for insurance

Unless the Secretary determines the risk proposed by the applicant is unreasonable, the Secretary, within ninety days after receipt of a satisfactory application, shall determine in writing

[1] See References in Text note below.

and submit to the applicant (1) the risk which may cause loss of investment for the applicant; (2) the total investment subject to the risk; (3) the amount of the other insurance which is available at reasonable premiums for the purpose of indemnifying the applicant against the risk; (4) the amount of investment insurance available pursuant to this section, which shall be the difference between the total investment subject to the risk and the total other insurance determined to be available at reasonable premiums, but not in excess of the lesser of 90 per centum of, or $50,000,000 of, the loss of investment subject to the risk; and (5) any reasonable terms and conditions necessary for the prudent administration of the program, including reasonable premiums for the insurance pursuant to this section (which shall be deposited in the Geothermal Resources Development Fund).

**(f) Certificate of insurance; issuance, etc.**

The Secretary, within ninety days after making and submitting the determinations under subsection (e) of this section, and upon agreement of the applicant to such determinations, shall issue a certificate of insurance containing such terms and conditions as the Secretary shall specify, which shall not be transferrable without the express approval of the Secretary for good cause shown, and shall execute a contract with the applicant setting forth the terms and conditions of the investment insurance and such other provisions as may be necessary to protect the interests of the United States, including provisions with respect to the ownership, use, and disposition of any currency, credits, assets, or investments on account of which payment under such insurance is to be made and any right, title, claim, or course of action existing in relation thereto.

**(g) Compensation payable to holder of certificate of insurance; amount, etc.**

Any holder of a certificate of insurance pursuant to subsection (f) of this section who claims a loss of value of his investment by reason of the specified risk shall receive compensation, to the extent the Secretary determines that the holder is eligible to receive compensation pursuant to the certificate and the contract, in the amount of the loss incurred by the holder which is subject to insurance and for which the holder has not received and will not receive compensation from other insurance.

**(h) Withdrawal and payment of compensation**

Any compensation received by the holder shall be withdrawn from the Geothermal Resources Development Fund. The full faith and credit of the United States is hereby pledged to the payment of any compensation under this section.

**(i) Denial of insurance**

A person shall not be denied insurance pursuant to this section solely because such person is the recipient of other Federal assistance under this or any other Act.

**(j) Appropriations**

There may be appropriated to the Geothermal Resources Development Fund (established pursuant to section 1144 of this title), for purposes of this section, such amounts as are authorized for such purposes in the law referred to in subsection (a) of this section or in other legislation hereafter enacted.

**(k) Reinsurance agreements; procedures applicable; criteria; report to Congress**

The Secretary may enter into agreements to reinsure any private insurer for any risk associated with insurance for the development and utilization of a geothermal resource and associated reservoir, using the procedures set forth in subsections (c) through (i) of this section, to the extent that he deems it appropriate in order to provide an incentive for the participation of the private insurance industry in geothermal development; and he may also use any other available authority to obtain such participation. The Secretary shall submit a report to the Congress, within one year after the enactment of the law referred to in subsection (a) of this section, on the need for any additional authority to obtain such participation.

(Pub. L. 96–294, title VI, § 622, June 30, 1980, 94 Stat. 765.)

REFERENCES IN TEXT

Section 27A of the Merchant Marine Act, 1920, referred to in subsec. (b)(7), is section 27A of ch. 250 of act June 5, 1920, as added Pub. L. 85–902, Sept. 2, 1958, 72 Stat. 1736, which was classified to section 883–1 of the former Appendix to Title 46, Shipping, and was repealed and restated in section 12118 of Title 46, by Pub. L. 109–304, §§ 5, 19, Oct. 6, 2006, 120 Stat. 1491, 1710.

This Act, referred to in subsec. (i), is Pub. L. 96–294, June 30, 1980, 94 Stat. 611, as amended, known as the Energy Security Act. For complete classification of this Act to the Code, see Short Title note set out under section 8801 of Title 42, The Public Health and Welfare, and Tables.

CODIFICATION

In subsec. (b)(7), ''section 50501 of title 46'' substituted for ''section 2(a)–(c) of the Shipping Act, 1916 (46 U.S.C. 802)'' on authority of Pub. L. 109–304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 50501 of Title 46, Shipping.

## SUBCHAPTER III—ESTABLISHMENT OF ASSISTANCE PROGRAM

### § 1531. Feasibility study loan program

**(a) Authorization; purposes**

The Secretary is authorized and directed to establish a program of assistance for the accelerated development of geothermal resources for nonelectric applications by geothermal utility districts, geothermal industrial development districts, and other persons.

**(b) Maximum amount of loan for costs of administration; cancellation of unpaid balance and accrued interest**

(1) In providing assistance under the program established pursuant to subsection (a) of this section, the Secretary is authorized to make a loan to any person to defray up to 90 per centum of the costs of (A) studies to determine the feasibility of any geothermal development described in such subsection, and (B) preparing applications for any necessary licenses or other Federal, State, and local approvals respecting such development.

(2) The Secretary may cancel the unpaid balance and any accrued interest on any loan

granted for a study pursuant to clause (A) of paragraph (1) if he determines, on the basis of the study, that the geothermal development is not technically or economically feasible.

**(c) Maximum amount of loan for costs of construction**

In providing assistance under such program, the Secretary is also authorized to make a loan to any person to defray up to 75 per centum of the costs directly related to the construction of a system or systems for nonelectric geothermal development pursuant to such subsection, where the Secretary finds that—

(1) all necessary licenses and other required Federal, State, and local approvals for construction of such system or systems have been or will be issued,

(2) the project involved will comply with all applicable laws relating to protection of the environment, and

(3) the applicant requires such assistance to undertake and complete the project.

**(d) Interest rate; term**

Each loan made pursuant to this section shall bear interest at a discount or interest rate equal to the rate in effect (at the time the loan is made) for water resources planning projects under section 80 of the Water Resources Development Act of 1974 (42 U.S.C. 1962(d)–17(a)).[1] Each loan shall be for such term as the Secretary deems appropriate, but not in excess of ten years for loans under subsection (b) of this section or thirty years for loans under subsection (c) of this section.

**(e) Funding; deposit of amount repaid**

Loans pursuant to this section shall be made from funds appropriated (pursuant to this subchapter) to the Geothermal Resources Development Fund established under section 1144 of this title; and amounts repaid on such loans shall be deposited in the Geothermal Resources Development Fund for purposes of this subchapter.

**(f) Authorization of appropriations**

For loans under clause (A) of subsection (b)(1) of this section for fiscal year 1981, there is authorized to be appropriated to the Geothermal Resources Development Fund not to exceed $5,000,000, which shall remain available until expended. For loans under such clause (A) for subsequent fiscal years, and for loans under clause (B) of subsection (b)(1) of this section or under subsection (c) of this section (for any such subsequent fiscal year), there may be appropriated to such Fund only such sums as are authorized by legislation hereafter enacted.

**(g) "Person" defined**

As used in this section, the term ''person'' includes municipalities, cooperatives, industrial development agencies, nonprofit organizations, and Indian tribes, as well as the districts referred to in subsection (a) of this section and the other entities included within such term under section 1 of title 1.

(Pub. L. 96–294, title VI, § 631, June 30, 1980, 94 Stat. 767.)

[1] So in original. Should be ''(42 U.S.C. 1962d–17(a)).''

SUBCHAPTER IV—FEDERAL FACILITIES

**§ 1541. Use of geothermal energy in Federal facilities**

The option of using geothermal energy or geothermal energy resources shall be considered fully in any new Federal building, facility, or installation which is located in a geothermal resource area as designated by the Secretary.

(Pub. L. 96–294, title VI, § 642, June 30, 1980, 94 Stat. 769.)

**§ 1542. Regulations**

All regulations made with respect to this subchapter shall be promulgated no later than six months after June 30, 1980.

(Pub. L. 96–294, title VI, § 644, June 30, 1980, 94 Stat. 770.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this subtitle'', meaning subtitle D of title VI of Pub. L. 96–294, June 30, 1980, 94 Stat. 768, which enacted this subchapter and sections 1146 and 1147 of this title and amended sections 1141 and 1143 of this title and sections 796, 824a–3, 824i, and 824j of Title 16, Conservation.

## CHAPTER 28—MATERIALS AND MINERALS POLICY, RESEARCH, AND DEVELOPMENT

Sec.
1601. Congressional statement of findings; ''materials'' defined.
1602. Congressional declaration of policies.
1603. Implementation of policies.
1604. Program administration.
1605. Applicability to other statutory national mining and minerals policies.

**§ 1601. Congressional statement of findings; "materials" defined**

(a) The Congress finds that—

(1) the availability of materials is essential for national security, economic well-being, and industrial production;

(2) the availability of materials is affected by the stability of foreign sources of essential industrial materials, instability of materials markets, international competition and demand for materials, the need for energy and materials conservation, and the enhancement of environmental quality;

(3) extraction, production, processing, use, recycling, and disposal of materials are closely linked with national concerns for energy and the environment;

(4) the United States is strongly interdependent with other nations through international trade in materials and other products;

(5) technological innovation and research and development are important factors which contribute to the availability and use of materials;

(6) the United States lacks a coherent national materials policy and a coordinated program to assure the availability of materials critical for national economic well-being, national defense, and industrial production, including interstate commerce and foreign trade; and

(7) notwithstanding the enactment of section 21a of this title, the United States does not have a coherent national materials and minerals policy.

(b) As used in this chapter, the term ''materials'' means substances, including minerals, of current or potential use that will be needed to supply the industrial, military, and essential civilian needs of the United States in the production of goods or services, including those which are primarily imported or for which there is a prospect of shortages or uncertain supply, or which present opportunities in terms of new physical properties, use, recycling, disposal or substitution, with the exclusion of food and of energy fuels used as such.

(Pub. L. 96–479, § 2, Oct. 21, 1980, 94 Stat. 2305.)

SHORT TITLE

Section 1 of Pub. L. 96–479 provided: ''That this Act [enacting this chapter] may be cited as the 'National Materials and Minerals Policy, Research and Development Act of 1980'.''

### § 1602. Congressional declaration of policies

The Congress declares that it is the continuing policy of the United States to promote an adequate and stable supply of materials necessary to maintain national security, economic well-being and industrial production with appropriate attention to a long-term balance between resource production, energy use, a healthy environment, natural resources conservation, and social needs. The Congress further declares that implementation of this policy requires that the President shall, through the Executive Office of the President, coordinate the responsible departments and agencies to, among other measures—

(1) identify materials needs and assist in the pursuit of measures that would assure the availability of materials critical to commerce, the economy, and national security;

(2) establish a mechanism for the coordination and evaluation of Federal materials programs, including those involving research and development so as to complement related efforts by the private sector as well as other domestic and international agencies and organizations;

(3) establish a long-range assessment capability concerning materials demands, supply and needs, and provide for the policies and programs necessary to meet those needs;

(4) promote a vigorous, comprehensive, and coordinated program of materials research and development consistent with the policies and priorities set forth in the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 et seq.);

(5) promote cooperative research and development programs with other nations for the equitable and frugal use of materials and energy;

(6) promote and encourage private enterprise in the development of economically sound and stable domestic materials industries; and

(7) encourage Federal agencies to facilitate availability and development of domestic resources to meet critical materials needs.

(Pub. L. 96–479, § 3, Oct. 21, 1980, 94 Stat. 2305.)

REFERENCES IN TEXT

The National Science and Technology Policy, Organization, and Priorities Act of 1976, referred to in par. (4), is Pub. L. 94–282, May 11, 1976, 90 Stat. 459, as amended, which is classified principally to chapter 79 (§ 6601 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 6601 of Title 42 and Tables.

### § 1603. Implementation of policies

For the purpose of implementing the policies set forth in section 1602 of this title and the provisions of section 1604 of this title, the Congress declares that the President shall, through the Executive Office of the President, coordinate the responsible departments and agencies, and shall—

(1) direct that the responsible departments and agencies identify, assist, and make recommendations for carrying out appropriate policies and programs to ensure adequate, stable, and economical materials supplies essential to national security, economic well-being, and industrial production;

(2) support basic and applied research and development to provide for, among other objectives—

(A) advanced science and technology for the exploration, discovery, and recovery of nonfuel materials;

(B) enhanced methods or processes for the more efficient production and use of renewable and nonrenewable resources;

(C) improved methods for the extraction, processing, use, recovery, and recycling of materials which encourage the conservation of materials, energy, and the environment; and

(D) improved understanding of current and new materials performance, processing, substitution, and adaptability in engineering designs;

(3) provide for improved collection, analysis, and dissemination of scientific, technical and economic materials information and data from Federal, State, and local governments and other sources as appropriate;

(4) assess the need for and make recommendations concerning the availability and adequacy of supply of technically trained personnel necessary for materials research, development, extraction, harvest and industrial practice, paying particular regard to the problem of attracting and maintaining high quality materials professionals in the Federal service;

(5) establish early warning systems for materials supply problems;

(6) recommend to the Congress appropriate measures to promote industrial innovation in materials and materials technologies;

(7) encourage cooperative materials research and problem-solving by—

(A) private corporations performing the same or related activities in materials industries; and

(B) Federal and State institutions having shared interests or objectives;

(8) assess Federal policies which adversely or positively affect all stages of the materials cycle, from exploration to final product recycling and disposal including but not limited to, financial assistance and tax policies for recycled and virgin sources of materials and make recommendations for equalizing any existing imbalances, or removing any impediments, which may be created by the application of Federal law and regulations to the market for materials; and

(9) assess the opportunities for the United States to promote cooperative multilateral and bilateral agreements for materials development in foreign nations for the purpose of increasing the reliability of materials supplies to the Nation.

(Pub. L. 96–479, § 4, Oct. 21, 1980, 94 Stat. 2306.)

**§ 1604. Program administration**

**(a) President; preparation of plan and submission to Congress of report**

Within 1 year after October 21, 1980, the President shall submit to the Congress—

(1) a program plan to implement such existing or prospective proposals and organizational structures within the executive branch as he finds necessary to carry out the provisions set forth in sections 1602 and 1603 of this title. The plan shall include program and budget proposals and organizational structures providing for the following minimum elements:

(A) policy analysis and decision determination within the Executive Office of the President;

(B) continuing long-range analysis of materials use to meet national security, economic, industrial and social needs; the adequacy and stability of supplies; and the industrial and economic implications of supply shortages or disruptions;

(C) continuing private sector consultation in Federal materials programs; and

(D) interagency coordination at the level of the President's Cabinet;

(2) recommendations for the collection, analysis, and dissemination of information concerning domestic and international long-range materials demand, supply and needs, including consideration of the establishment of a separate materials information agency patterned after the Bureau of Labor Statistics; and

(3) recommendations for legislation and administrative initiatives necessary to reconcile policy conflicts and to establish programs and institutional structures necessary to achieve the goals of a national materials policy.

**(b) Director of Office of Science and Technology Policy; coordination, etc., activities**

In accordance with the provisions of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 et seq.), the Director of the Office of Science and Technology Policy shall:

(1) through the Federal Coordinating Council for Science, Engineering, and Technology coordinate Federal materials research and development and related activities in accordance with the policies and objectives established in this chapter;

(2) place special emphasis on the long-range assessment of national materials needs related to scientific and technological concerns and the research and development, Federal and private, necessary to meet those needs; and

(3) prepare an assessment of national materials needs related to scientific and technological changes over the next five years. Such assessment shall be revised on an annual basis. Where possible, the Director shall extend the assessment in 10- and 25-year increments over the whole expected lifetime of such needs and technologies.

**(c) Secretary of Commerce; consultative, etc., requirements; identification and assessment activities**

The Secretary of Commerce, in consultation with the Federal Emergency Management Administration, the Secretary of the Interior, the Secretary of Defense, the Director of the Central Intelligence Agency, and such other members of the Cabinet as may be appropriate shall—

(1) within 3 months after October 21, 1980, identify and submit to the Congress a specific materials needs case related to national security, economic well-being and industrial production which will be the subject of the report required by paragraph (2) of this subsection;

(2) within 1 year after October 21, 1980, submit to the Congress a report which assesses critical materials needs in the case identified in paragraph (1) of this subsection, and which recommends programs that would assist in meeting such needs, including an assessment of economic stockpiles; and

(3) continually thereafter identify and assess additional cases, as necessary, to ensure an adequate and stable supply of materials to meet national security, economic well-being and industrial production needs.

**(d) Secretary of Defense and other Cabinet members; assessment, etc., activities**

The Secretary of Defense, together with such other members of the Cabinet as are deemed necessary by the President, shall prepare a report assessing critical materials needs related to national security and identifying the steps necessary to meet those needs. The report shall include an assessment of the Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.), and the Strategic and Critical Materials Stock Piling Act (50 U.S.C. App. 98 et seq.) [50 U.S.C. 98 et seq.]. Such report shall be made available to the Congress within 1 year after October 21, 1980, and shall be revised periodically as deemed necessary.

**(e) Secretary of the Interior; initiation of actions; report**

The Secretary of the Interior shall promptly initiate actions to—

(1) improve the capacity of the United States Bureau of Mines to assess international minerals supplies;

(2) increase the level of mining and metallurgical research by the United States Bureau of Mines in critical and strategic minerals; and

(3) improve the availability and analysis of mineral data in Federal land use decision-making.

A report summarizing actions required by this subsection shall be made available to the Congress within 1 year after October 21, 1980.

**(f) Secretary of the Interior; collection, evaluation, and analysis activities concerning information**

In furtherance of the policies of this chapter, the Secretary of the Interior shall collect, evaluate, and analyze information concerning mineral occurrence, production, and use from industry, academia, and Federal and State agencies. Notwithstanding the provisions of section 552 of title 5, data and information provided to the Department by persons or firms engaged in any phase of mineral or mineral-material production or large-scale consumption shall not be disclosed outside of the Department of the Interior in a nonaggregated form so as to disclose data and information supplied by a single person or firm, unless there is no objection to the disclosure of such data and information by the donor: *Provided, however*, That the Secretary may disclose nonaggregated data and information to Federal defense agencies, or to the Congress upon official request for appropriate purposes.

(Pub. L. 96–479, § 5, Oct. 21, 1980, 94 Stat. 2307; Pub. L. 102–285, § 10(b), May 18, 1992, 106 Stat. 172.)

REFERENCES IN TEXT

The National Science and Technology Policy, Organization, and Priorities Act of 1976, referred to in subsec. (b), is Pub. L. 94–282, May 11, 1976, 90 Stat. 459, as amended, which is classified principally to chapter 79 (§ 6601 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 6601 of Title 42 and Tables.

The Defense Production Act of 1950, referred to in subsec. (d), is act Sept. 8, 1950, ch. 932, 64 Stat. 798, as amended, which is classified to section 2061 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 2061 of Title 50, Appendix, and Tables.

The Strategic and Critical Materials Stock Piling Act, referred to in subsec. (d), is act June 7, 1939, ch. 190, as revised generally by Pub. L. 96–41, § 2, July 30, 1979, 93 Stat. 319, which is classified generally to subchapter III (§ 98 et seq.) of chapter 5 of Title 50. For complete classification of this Act to the Code, see section 98 of Title 50 and Tables.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

''United States Bureau of Mines'' substituted for ''Bureau of Mines'' in subsec. (e)(1), (2) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

**§ 1605. Applicability to other statutory national mining and minerals policies**

Nothing in this chapter shall be interpreted as changing in any manner or degree the provisions of and requirements of section 21a of this title. For the purposes of achieving the objectives set forth in section 1602 of this title, the Congress declares that the President shall direct (1) the Secretary of the Interior to act immediately within the Department's statutory authority to attain the goals contained in section 21a of this title and (2) the Executive Office of the President to act immediately to promote the goals contained in section 21a of this title among the various departments and agencies.

(Pub. L. 96–479, § 6, Oct. 21, 1980, 94 Stat. 2309.)

## CHAPTER 29—OIL AND GAS ROYALTY MANAGEMENT

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**§ 1701. Congressional statement of findings and purposes**

(a) Congress finds that—

(1) the Secretary of the Interior should enforce effectively and uniformly existing regulations under the mineral leasing laws providing for the inspection of production activities on lease sites on Federal and Indian lands;

(2) the system of accounting with respect to royalties and other payments due and owing on oil and gas produced from such lease sites is archaic and inadequate;

(3) it is essential that the Secretary initiate procedures to improve methods of accounting for such royalties and payments and to provide for routine inspection of activities related to the production of oil and gas on such lease sites; and

(4) the Secretary should aggressively carry out his trust responsibility in the administration of Indian oil and gas.

(b) It is the purpose of this chapter—

(1) to clarify, reaffirm, expand, and define the responsibilities and obligations of lessees, operators, and other persons involved in transportation or sale of oil and gas from the Federal and Indian lands and the Outer Continental Shelf;

(2) to clarify, reaffirm, expand and define the authorities and responsibilities of the Secretary of the Interior to implement and maintain a royalty management system for oil and gas leases on Federal lands, Indian lands, and the Outer Continental Shelf;

(3) to require the development of enforcement practices that ensure the prompt and proper collection and disbursement of oil and gas revenues owed to the United States and Indian lessors and those inuring to the benefit of States;

(4) to fulfill the trust responsibility of the United States for the administration of Indian oil and gas resources; and

(5) to effectively utilize the capabilities of the States and Indian tribes in developing and maintaining an efficient and effective Federal royalty management system.

(Pub. L. 97–451, § 2, Jan. 12, 1983, 96 Stat. 2448.)

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–185, § 11, Aug. 13, 1996, 110 Stat. 1717, provided that: ''Except as provided by section 115(h) [30 U.S.C. 1724(h)], section 111(h) [30 U.S.C. 1721(h)], section 111(k)(5) [30 U.S.C. 1721(k)(5)], and section 117 [30 U.S.C. 1726] of the Federal Oil and Gas Royalty Management Act of 1982 (as added by this Act), this Act [see Short Title of 1996 Amendment note below], and the amendments made by this Act, shall apply with respect to the production of oil and gas after the first day of the month following the date of the enactment of this Act [Aug. 13, 1996].''

EFFECTIVE DATE

Section 305 of Pub. L. 97–451 provided that: ''The provisions of this Act [enacting this chapter, amending sections 188 and 191 of this title, and enacting provisions set out as notes under this section and sections 1714 and 1752 of this title] shall apply to oil and gas leases issued before, on, or after the date of the enactment of this Act [Jan. 12, 1983], except that in the case of a lease issued before such date, no provision of this Act or any rule or regulation prescribed under this Act shall alter the express and specific provisions of such a lease.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–185, § 1, Aug. 13, 1996, 110 Stat. 1700, provided that: ''This Act [enacting sections 1721a and 1724 to 1726 of this title, amending sections 1702, 1712, 1721, and 1735 of this title, repealing section 1339 of Title 43, Public Lands, and enacting provisions set out as notes under this section, section 1732 of this title, and section 1339 of Title 43] may be cited as the 'Federal Oil and Gas Royalty Simplification and Fairness Act of 1996'.''

SHORT TITLE

Section 1 of Pub. L. 97–451 provided that: ''This Act [enacting this chapter, amending sections 188 and 191 of this title, and enacting provisions set out as notes under this section and sections 1714 and 1752 of this title] may be cited as the 'Federal Oil and Gas Royalty Management Act of 1982'.''

APPLICABILITY OF 1996 AMENDMENT

Pub. L. 104–185, § 9, Aug. 13, 1996, 110 Stat. 1717, provided that: ''The amendments made by this Act [see Short Title of 1996 Amendment note above] shall not apply with respect to Indian lands, and the provisions of the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C. 1701 et seq.] as in effect on the day before the date of enactment of this Act [Aug. 13, 1996] shall continue to apply after such date with respect to Indian lands.''

Pub. L. 104–185, § 10, Aug. 13, 1996, 110 Stat. 1717, provided that: ''This Act [see Short Title of 1996 Amendment note above] shall not apply to any privately owned minerals.''

CONSTRUCTION OF 1996 AMENDMENT

Pub. L. 104–185, § 12, Aug. 13, 1996, 110 Stat. 1717, provided that: ''Nothing in this Act [see Short Title of 1996 Amendment note above] shall be construed to give a State a property right or interest in any Federal lease or land.''

## § 1702. Definitions

For the purposes of this chapter, the term—

(1) ''Federal land'' means all land and interests in land owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate;

(2) ''Indian allottee'' means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation;

(3) ''Indian lands'' means any lands or interest in lands of an Indian tribe or an Indian allottee held in trust by the United States or which is subject to Federal restriction against alienation or which is administered by the United States pursuant to section 1613(g) of title 43, including mineral resources and mineral estates reserved to an Indian tribe or an Indian allottee in the conveyance of a surface or nonmineral estate, except that such term does not include any lands subject to the provisions of section 3 of the Act of June 28, 1906 (34 Stat. 539);

(4) ''Indian tribe'' means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of Annette Island Reserve, for which any land or interest in land is held by the United States in trust or which is subject to Federal restriction against alienation or which is administered by the United States pursuant to section 1613(g) of title 43;

(5) ''lease'' means any contract, profit-share arrangement, joint venture, or other agree-

ment issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas;

(6) ''lease site'' means any lands or submerged lands, including the surface of a severed mineral estate, on which exploration for, or extraction or removal of, oil or gas is authorized pursuant to a lease;

(7) ''lessee'' means any person to whom the United States issues an oil and gas lease or any person to whom operating rights in a lease have been assigned;

(8) ''mineral leasing law'' means any Federal law administered by the Secretary authorizing the disposition under lease of oil or gas;

(9) ''oil or gas'' means any oil or gas originating from, or allocated to, the Outer Continental Shelf, Federal, or Indian lands;

(10) ''Outer Continental Shelf'' has the same meaning as provided in the Outer Continental Shelf Lands Act (Public Law 95–372);

(11) ''operator'' means any person, including a lessee, who has control of, or who manages operations on, an oil and gas lease site on Federal or Indian lands or on the Outer Continental Shelf;

(12) ''person'' means any individual, firm, corporation, association, partnership, consortium, or joint venture;

(13) ''production'' means those activities which take place for the removal of oil or gas, including such removal, field operations, transfer of oil or gas off the lease site, operation monitoring, maintenance, and workover drilling;

(14) ''royalty'' means any payment based on the value or volume of production which is due to the United States or an Indian tribe or an Indian allottee on production of oil or gas from the Outer Continental Shelf, Federal, or Indian lands, or any minimum royalty owed to the United States or an Indian tribe or an Indian allottee under any provision of a lease;

(15) ''Secretary'' means the Secretary of the Interior or his designee;

(16) ''State'' means the several States of the Union, the District of Columbia, Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands;

(17) ''adjustment'' means an amendment to a previously filed report on an obligation, and any additional payment or credit, if any, applicable thereto, to rectify an underpayment or overpayment on an obligation;

(18) ''administrative proceeding'' means any Department of the Interior agency process in which a demand, decision or order issued by the Secretary or a delegated State is subject to appeal or has been appealed;

(19) ''assessment'' means any fee or charge levied or imposed by the Secretary or a delegated State other than—

(A) the principal amount of any royalty, minimum royalty, rental bonus, net profit share or proceed of sale;

(B) any interest; or

(C) any civil or criminal penalty;

(20) ''commence'' means—

(A) with respect to a judicial proceeding, the service of a complaint, petition, counterclaim, cross claim, or other pleading seeking affirmative relief or seeking credit or recoupment: *Provided*, That if the Secretary commences a judicial proceeding against a designee, the Secretary shall give notice of that commencement to the lessee who designated the designee, but the Secretary is not required to give notice to other lessees who may be liable pursuant to section 1712(a) of this title, for the obligation that is the subject of the judicial proceeding; or

(B) with respect to a demand, the receipt by the Secretary or a delegated State or a lessee or its designee (with written notice to the lessee who designated the designee) of the demand;

(21) ''credit'' means the application of an overpayment (in whole or in part) against an obligation which has become due to discharge, cancel or reduce the obligation;

(22) ''delegated State'' means a State which, pursuant to an agreement or agreements under section 1735 of this title, performs authorities, duties, responsibilities, or activities of the Secretary;

(23) ''demand'' means—

(A) an order to pay issued by the Secretary or the applicable delegated State to a lessee or its designee (with written notice to the lessee who designated the designee) that has a reasonable basis to conclude that the obligation in the amount of the demand is due and owing; or

(B) a separate written request by a lessee or its designee which asserts an obligation due the lessee or its designee that provides a reasonable basis to conclude that the obligation in the amount of the demand is due and owing, but does not mean any royalty or production report, or any information contained therein, required by the Secretary or a delegated State;

(24) ''designee'' means the person designated by a lessee pursuant to section 1712(a) of this title, with such written designation effective on the date such designation is received by the Secretary and remaining in effect until the Secretary receives notice in writing that the designation is modified or terminated;

(25) ''obligation'' means—

(A) any duty of the Secretary or, if applicable, a delegated State—

(i) to take oil or gas royalty in kind; or

(ii) to pay, refund, offset, or credit monies including (but not limited to)—

(I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale; or

(II) any interest; and

(B) any duty of a lessee or its designee (subject to the provisions of section 1712(a) of this title)—

(i) to deliver oil or gas royalty in kind; or

(ii) to pay, offset or credit monies including (but not limited to)—

(I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

(II) any interest;

(III) any penalty; or
(IV) any assessment,

which arises from or relates to any lease administered by the Secretary for, or any mineral leasing law related to, the exploration, production and development of oil or gas on Federal lands or the Outer Continental Shelf;

(26) ''order to pay'' means a written order issued by the Secretary or the applicable delegated State to a lessee or its designee (with notice to the lessee who designated the designee) which—

(A) asserts a specific, definite, and quantified obligation claimed to be due, and

(B) specifically identifies the obligation by lease, production month and monetary amount of such obligation claimed to be due and ordered to be paid, as well as the reason or reasons such obligation is claimed to be due, but such term does not include any other communication or action by or on behalf of the Secretary or a delegated State;

(27) ''overpayment'' means any payment by a lessee or its designee in excess of an amount legally required to be paid on an obligation and includes the portion of any estimated payment for a production month that is in excess of the royalties due for that month;

(28) ''payment'' means satisfaction, in whole or in part, of an obligation;

(29) ''penalty'' means a statutorily authorized civil fine levied or imposed for a violation of this chapter, any mineral leasing law, or a term or provision of a lease administered by the Secretary;

(30) ''refund'' means the return of an overpayment;

(31) ''State concerned'' means, with respect to a lease, a State which receives a portion of royalties or other payments under the mineral leasing laws from such lease;

(32) ''underpayment'' means any payment or nonpayment by a lessee or its designee that is less than the amount legally required to be paid on an obligation; and

(33) ''United States'' means the United States Government and any department, agency, or instrumentality thereof, the several States, the District of Columbia, and the territories of the United States.

(Pub. L. 97–451, § 3, Jan. 12, 1983, 96 Stat. 2448; Pub. L. 92–203, § 29(f)(1), as added Pub. L. 100–241, § 15, Feb. 3, 1988, 101 Stat. 1813; Pub. L. 104–185, § 2, Aug. 13, 1996, 110 Stat. 1700; Pub. L. 104–200, § 1(1), Sept. 22, 1996, 110 Stat. 2421.)

REFERENCES IN TEXT

Section 3 of the Act of June 28, 1906 (34 Stat. 539), referred to in par. (3), is not classified to the Code.

''Outer Continental Shelf'' as provided in the Outer Continental Shelf Lands Act (Public Law 95–372), referred to in par. (10), is defined in section 1331(a) of Title 43, Public Lands.

AMENDMENTS

1996—Par. (7). Pub. L. 104–185, § 2(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: '' 'lessee' means any person to whom the United States, an Indian tribe, or an Indian allottee, issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease;''.

Pars. (17) to (25). Pub. L. 104–185, § 2(2), added pars. (17) to (25).

Par. (25)(B). Pub. L. 104–200, substituted ''provisions of section 1712(a)'' for ''provision of section 1712(a)'' in introductory provisions.

Pars. (26) to (33). Pub. L. 104–185, § 2(2), added pars. (26) to (33).

1988—Pars. (3), (4). Pub. L. 92–203 inserted ''or which is administered by the United States pursuant to section 1613(g) of title 43'' after ''alienation''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–185 applicable with respect to production of oil and gas after the first day of the month following Aug. 13, 1996, see section 11 of Pub. L. 104–185, set out as a note under section 1701 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 29(f)(2) of Pub. L. 92–203, as added by Pub. L. 100–241, § 15, Feb. 3, 1988, 101 Stat. 1813, provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if originally included in section 3 of Public Law 97–451 [this section].''

APPLICABILITY OF 1996 AMENDMENT

Amendment by Pub. L. 104–185 not applicable to any privately owned minerals or with respect to Indian lands, see sections 9 and 10 of Pub. L. 104–185, set out as a note under section 1701 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

## SUBCHAPTER I—FEDERAL ROYALTY MANAGEMENT AND ENFORCEMENT

### § 1711. Duties of Secretary

**(a) Establishment of inspection, collection, and accounting and auditing system**

The Secretary shall establish a comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and to collect and account for such amounts in a timely manner.

**(b) Annual inspection of lease sites; training**

The Secretary shall—

(1) establish procedures to ensure that authorized and properly identified representatives of the Secretary will inspect at least once annually each lease site producing or expected to produce significant quantities of oil or gas in any year or which has a history of noncompliance with applicable provisions of law or regulations; and

(2) establish and maintain adequate programs providing for the training of all such authorized representatives in methods and techniques of inspection and accounting that will be used in the implementation of this chapter.

**(c) Audit and reconciliation of lease accounts; contracts with certified public accountants; availability of books, accounts, records, etc., necessary for audit**

(1) The Secretary shall audit and reconcile, to the extent practicable, all current and past lease

accounts for leases of oil or gas and take appropriate actions to make additional collections or refunds as warranted. The Secretary shall conduct audits and reconciliations of lease accounts in conformity with the business practices and recordkeeping systems which were required of the lessee by the Secretary for the period covered by the audit. The Secretary shall give priority to auditing those lease accounts identified by a State or Indian tribe as having significant potential for underpayment. The Secretary may also audit accounts and records of selected lessees and operators.

(2) The Secretary may enter into contracts or other appropriate arrangements with independent certified public accountants to undertake audits of accounts and records of any lessee or operator relating to the lease of oil or gas. Selection of such independent certified public accountants shall be by competitive bidding in accordance with the Federal Property and Administrative Services Act of 1949[1] (41 U.S.C. 252), except that the Secretary may not enter into a contract or other arrangement with any independent certified public accountant to audit any lessee or operator where such lessee or operator is a primary audit client of such certified public accountant.

(3) All books, accounts, financial records, reports, files, and other papers of the Secretary, or used by the Secretary, which are reasonably necessary to facilitate the audits required under this section shall be made available to any person or governmental entity conducting audits under this chapter.

(Pub. L. 97–451, title I, § 101, Jan. 12, 1983, 96 Stat. 2449.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (c)(2), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

## § 1712. Duties of lessees, operators, and motor vehicle transporters

### (a) Liability for royalty payments

In order to increase receipts and achieve effective collections of royalty and other payments, a lessee who is required to make any royalty or other payment under a lease or under the mineral leasing laws, shall make such payments in the time and manner as may be specified by the Secretary or the applicable delegated State. A lessee may designate a person to make all or part of the payments due under a lease on the lessee's behalf and shall notify the Secretary or the applicable delegated State in writing of such designation, in which event said designated person may, in its own name, pay, offset or credit monies, make adjustments, request and receive refunds and submit reports with respect to payments required by the lessee. Notwithstanding any other provision of this chapter to the contrary, a designee shall not be liable for any payment obligation under the lease. The person owning operating rights in a lease shall be primarily liable for its pro rata share of payment obligations under the lease. If the person owning the legal record title in a lease is other than the operating rights owner, the person owning the legal record title shall be secondarily liable for its pro rata share of such payment obligations under the lease.

### (b) Development of and compliance with site security plan and minimum site security measures by operators; notification to Secretary of well production

An operator shall—

(1) develop and comply with a site security plan designed to protect the oil or gas produced or stored on an onshore lease site from theft, which plan shall conform with such minimum standards as the Secretary may prescribe by rule, taking into account the variety of circumstances at lease sites;

(2) develop and comply with such minimum site security measures as the Secretary deems appropriate to protect oil or gas produced or stored on a lease site or on the Outer Continental Shelf from theft; and

(3) not later than the 5th business day after any well begins production anywhere on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off of production for more than 90 days, notify the Secretary, in the manner prescribed by the Secretary, of the date on which such production has begun or resumed.

### (c) Possession of documentation by transporters of oil or gas by motor vehicle or pipeline

(1) Any person engaged in transporting by motor vehicle any oil from any lease site, or allocated to any such lease site, shall carry, on his person, in his vehicle, or in his immediate control, documentation showing, at a minimum, the amount, origin, and intended first destination of the oil.

(2) Any person engaged in transporting any oil or gas by pipeline from any lease site, or allocated to any lease site, on Federal or Indian lands shall maintain documentation showing, at a minimum, amount, origin, and intended first destination of such oil or gas.

(Pub. L. 97–451, title I, § 102, Jan. 12, 1983, 96 Stat. 2450; Pub. L. 104–185, § 6(g), Aug. 13, 1996, 110 Stat. 1715.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–185 inserted heading and amended text generally. Prior to amendment, text read as follows: ''A lessee—

''(1) who is required to make any royalty or other payment under a lease or under the mineral leasing laws, shall make such payments in the time and manner as may be specified by the Secretary; and

''(2) shall notify the Secretary, in the time and manner as may be specified by the Secretary, of any assignment the lessee may have made of the obligation to make any royalty or other payment under a lease or under the mineral leasing laws.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–185 applicable with respect to the production of oil and gas after the first day

[1] See References in Text note below.

of the month following Aug. 13, 1996, see section 11 of Pub. L. 104–185, set out as a note under section 1701 of this title.

APPLICABILITY OF 1996 AMENDMENT

Amendment by Pub. L. 104–185 not applicable to any privately owned minerals or with respect to Indian lands, see sections 9 and 10 of Pub. L. 104–185, set out as a note under section 1701 of this title.

### § 1713. Required recordkeeping

#### (a) Maintenance and availability of records, reports, and information for inspection and duplication

A lessee, operator, or other person directly involved in developing, producing, transporting, purchasing, or selling oil or gas subject to this chapter through the point of first sale or the point of royalty computation, whichever is later, shall establish and maintain any records, make any reports, and provide any information that the Secretary may, by rule, reasonably require for the purposes of implementing this chapter or determining compliance with rules or orders under this chapter. Upon the request of any officer or employee duly designated by the Secretary or any State or Indian tribe conducting an audit or investigation pursuant to this chapter, the appropriate records, reports, or information which may be required by this section shall be made available for inspection and duplication by such officer or employee, State, or Indian tribe.

#### (b) Length of time maintenance required

Records required by the Secretary with respect to oil and gas leases from Federal or Indian lands or the Outer Continental Shelf shall be maintained for 6 years after the records are generated unless the Secretary notifies the record holder that he has initiated an audit or investigation involving such records and that such records must be maintained for a longer period. In any case when an audit or investigation is underway, records shall be maintained until the Secretary releases the record holder of the obligation to maintain such records.

(Pub. L. 97–451, title I, § 103, Jan. 12, 1983, 96 Stat. 2451.)

### § 1714. Deposit of royalty funds to Indian accounts

Deposits of any royalty funds derived from the production of oil or gas from, or allocated to, Indian lands shall be made by the Secretary to the appropriate Indian account at the earliest practicable date after such funds are received by the Secretary but in no case later than the last business day of the month in which such funds are received.

(Pub. L. 97–451, title I, § 104(b), Jan. 12, 1983, 96 Stat. 2452.)

EFFECTIVE DATE

Section 104(c) of Pub. L. 97–451 provided that: "The provisions of this section [enacting this section and amending section 191 of this title] shall apply with respect to payments received by the Secretary after October 1, 1983, unless the Secretary, by rule, prescribes an earlier effective date."

### § 1715. Explanation of payments

#### (a) Description, period, source, etc., of payments to States or Indians

When any payment (including amounts due from receipt of any royalty, bonus, interest charge, fine, or rental) is made by the United States to a State with respect to any oil or gas lease on Federal lands or is deposited in the appropriate Indian account on behalf of an Indian tribe or Indian allottee with respect to any oil and gas lease on Indian lands, there shall be provided, together with such payment, a description of the type of payment being made, the period covered by such payment, the source of such payment, production amounts, the royalty rate, unit value and such other information as may be agreed upon by the Secretary and the recipient State, Indian tribe, or Indian allottee.

#### (b) Effective date

This section shall take effect with respect to payments made after October 1, 1983, unless the Secretary, by rule, prescribes an earlier effective date.

(Pub. L. 97–451, title I, § 105, Jan. 12, 1983, 96 Stat. 2452.)

### § 1716. Liabilities and bonding

A person (including any agent or employee of the United States and any independent contractor) authorized to collect, receive, account for, or otherwise handle any moneys payable to, or received by, the Department of the Interior which are derived from the sale, lease, or other disposal of any oil or gas shall be—

(1) liable to the United States for any losses caused by any intentional or reckless action or inaction of such individual with respect to such moneys; and

(2) in the case of an independent contractor, required as the Secretary deems necessary to maintain a bond commensurate with the amount of money for which such individual could be liable to the United States.

(Pub. L. 97–451, title I, § 106, Jan. 12, 1983, 96 Stat. 2452.)

### § 1717. Hearings and investigations

#### (a) Authorization; affidavits, oaths, subpenas, testimony, and payment of witnesses

In carrying out his duties under this chapter the Secretary may conduct any investigation or other inquiry necessary and appropriate and may conduct, after notice, any hearing or audit, necessary and appropriate to carrying out his duties under this chapter. In connection with any such hearings, inquiry, investigation, or audit, the Secretary is also authorized where reasonably necessary—

(1) to require by special or general order, any person to submit in writing such affidavits and answers to questions as the Secretary may reasonably prescribe, which submission shall be made within such reasonable period and under oath or otherwise, as may be necessary;

(2) to administer oaths;

(3) to require by subpena the attendance and testimony of witnesses and the production of

all books, papers, production and financial records, documents, matter, and materials, as the Secretary may request;

(4) to order testimony to be taken by deposition before any person who is designated by the Secretary and who has the power to administer oaths, and to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection; and

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States.

**(b) Refusal to obey subpena**

In case of refusal to obey a subpena served upon any person under this section, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General at the request of the Secretary and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary. Any failure to obey such order of the court may be punished by such court as contempt thereof and subject to a penalty of up to $10,000 a day.

(Pub. L. 97–451, title I, § 107, Jan. 12, 1983, 96 Stat. 2452.)

## § 1718. Inspections

**(a) Motor vehicles on lease sites; vehicles not on lease site**

(1) On any lease site on Federal or Indian lands, any authorized and properly identified representative of the Secretary may stop and inspect any motor vehicle that he has probable cause to believe is carrying oil from a lease site on Federal or Indian lands or allocated to such a lease site, for the purpose of determining whether the driver of such vehicle has documentation related to such oil as required by law.

(2) Any authorized and properly identified representative of the Secretary, accompanied by any appropriate law enforcement officer, or an appropriate law enforcement officer alone, may stop and inspect any motor vehicle which is not on a lease site if he has probable cause to believe the vehicle is carrying oil from a lease site on Federal or Indian lands or allocated to such a lease site. Such inspection shall be for the purpose of determining whether the driver of such vehicle has the documentation required by law.

**(b) Inspection of lease sites for compliance with mineral leasing laws and this chapter**

Authorized and properly identified representatives of the Secretary may without advance notice, enter upon, travel across and inspect lease sites on Federal or Indian lands and may obtain from the operator immediate access to secured facilities on such lease sites, for the purpose of making any inspection or investigation for determining whether there is compliance with the requirements of the mineral leasing laws and this chapter. The Secretary shall develop guidelines setting forth the coverage and the frequency of such inspections.

**(c) Right of Secretary to enter upon and travel across lease sites**

For the purpose of making any inspection or investigation under this chapter, the Secretary shall have the same right to enter upon or travel across any lease site as the lessee or operator has acquired by purchase, condemnation, or otherwise.

(Pub. L. 97–451, title I, § 108, Jan. 12, 1983, 96 Stat. 2453.)

## § 1719. Civil penalties

**(a) Failure to comply with applicable law, to permit inspection, or to notify Secretary of assignment; exceptions to application of penalty**

Any person who—

(1) after due notice of violation or after such violation has been reported under subparagraph (A), fails or refuses to comply with any requirements of this chapter or any mineral leasing law, any rule or regulation thereunder, or the terms of any lease or permit issued thereunder; or

(2) fails to permit inspection authorized in section 1718 of this title or fails to notify the Secretary of any assignment under section 1712(a)(2)[1] of this title

shall be liable for a penalty of up to $500 per violation for each day such violation continues, dating from the date of such notice or report. A penalty under this subsection may not be applied to any person who is otherwise liable for a violation of paragraph (1) if:

(A) the violation was discovered and reported to the Secretary or his authorized representative by the liable person and corrected within 20 days after such report or such longer time as the Secretary may agree to; or

(B) after the due notice of violation required in paragraph (1) has been given to such person by the Secretary or his authorized representative, such person has corrected the violation within 20 days of such notification or such longer time as the Secretary may agree to.

**(b) Failure to take corrective action**

If corrective action in not taken within 40 days or a longer period as the Secretary may agree to, after due notice or the report referred to in subsection (a)(1) of this section, such person shall be liable for a civil penalty of not more than $5,000 per violation for each day such violation continues, dating from the date of such notice or report.

**(c) Failure to make royalty payment; failure to permit lawful entry, inspection, or audit; failure to notify Secretary of well production**

Any person who—

(1) knowingly or willfully fails to make any royalty payment by the date as specified by statute, regulation, order or terms of the lease;

(2) fails or refuses to permit lawful entry, inspection, or audit; or

(3) knowingly or willfully fails or refuses to comply with section 1712(b)(3) of this title,

[1] See References in Text note below.

shall be liable for a penalty of up to $10,000 per violation for each day such violation continues.

**(d) False information; unauthorized removal, etc., of oil or gas; purchase, sale, etc., of stolen oil or gas**

Any person who—

(1) knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information;

(2) knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any lease site without having valid legal authority to do so; or

(3) purchases, accepts, sells, transports, or conveys to another, any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted,

shall be liable for a penalty of up to $25,000 per violation for each day such violation continues.

**(e) Hearing**

No penalty under this section shall be assessed until the person charged with a violation has been given the opportunity for a hearing on the record.

**(f) Deduction of penalty from sums owed by United States**

The amount of any penalty under this section, as finally determined[2] may be deducted from any sums owing by the United States to the person charged.

**(g) Compromise or reduction of penalties**

On a case-by-case basis the Secretary may compromise or reduce civil penalties under this section.

**(h) Notice**

Notice under subsection (a) of this section shall be by personal service by an authorized representative of the Secretary or by registered mail. Any person may, in the manner prescribed by the Secretary, designate a representative to receive any notice under this subsection.

**(i) Reasons on record for amount of penalty**

In determining the amount of such penalty, or whether it should be remitted or reduced, and in what amount, the Secretary shall state on the record the reasons for his determinations.

**(j) Review**

Any person who has requested a hearing in accordance with subsection (e) of this section within the time the Secretary has prescribed for such a hearing and who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States district court for the judicial district in which the violation allegedly took place. Review by the district court shall be only on the administrative record and not de novo. Such an action shall be barred unless filed within 90 days after the Secretary's final order.

**(k) Failure to pay penalty**

If any person fails to pay an assessment of a civil penalty under this chapter—

(1) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with subsection (j) of this section, or

(2) after a court in an action brought under subsection (j) of this section has entered a final judgment in favor of the Secretary,

the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period referred to in subsection (j) of this section. Judgment by the court shall include an order to pay.

**(*l*) Nonliability for leases automatically terminated**

No person shall be liable for a civil penalty under subsection (a) or (b) of this section for failure to pay any rental for any lease automatically terminated pursuant to section 188 of this title.

(Pub. L. 97–451, title I, § 109, Jan. 12, 1983, 96 Stat. 2454.)

REFERENCES IN TEXT

Section 1712(a) of this title, referred to in subsec. (a)(2), was amended generally by Pub. L. 104–185, § 6(g), Aug. 13, 1996, 110 Stat. 1715, and, as so amended, no longer contains a par. (2). See section 1712(a) of this title.

## § 1720. Criminal penalties

Any person who commits an act for which a civil penalty is provided in section 1719(d) of this title shall, upon conviction, be punished by a fine of not more than $50,000, or by imprisonment for not more than 2 years, or both.

(Pub. L. 97–451, title I, § 110, Jan. 12, 1983, 96 Stat. 2455.)

## § 1721. Royalty terms and conditions, interest, and penalties

**(a) Charge on late royalty payment or royalty payment deficiency**

In the case of oil and gas leases where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments at the rate applicable under section 6621 of title 26. In the case of an underpayment or partial payment, interest shall be computed and charged only on the amount of the deficiency and not on the total amount due.

**(b) Charge on late payment made by Secretary to States**

Any payment made by the Secretary to a State under section 191 of this title and any other payment made by the Secretary to a State from any oil or gas royalty received by the Secretary which is not paid on the date required under section 191 of this title shall include an interest charge computed at the rate applicable under section 6621 of title 26.

**(c) Deposit in royalty accounts of charges on royalties due and owing Indians**

All interest charges collected under this chapter or under other applicable laws because of

[2] So in original. Probably should be followed by a comma.

nonpayment, late payment or underpayment of royalties due and owing an Indian tribe or an Indian allottee shall be deposited to the same account as the royalty with respect to which such interest is paid.

**(d) Charge on late deposit of royalty fund to an Indian account**

Any deposit of royalty funds made by the Secretary to an Indian account which is not made by the date required under section 1714 of this title shall include an interest charge computed at the rate applicable under section 6621 of title 26.

**(e) Nonliability of States for Secretary's failure to comply with the Emergency Petroleum Allocation Act of 1973 or regulations thereunder**

Notwithstanding any other provision of law, no State will be assessed for any interest or penalties found to be due against the Secretary for failure to comply with the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] or regulation of the Secretary of Energy thereunder concerning crude oil certification or pricing with respect to crude oil taken by the Secretary in kind as royalty. Any State share of an overcharge, resulting from such failure to comply, shall be assessed against moneys found to be due and owing to such State as a result of audits of royalty accounts for transactions which took place prior to January 12, 1983, except that if after the completion of such audits, sufficient moneys have not been found due and owing to any State, the State shall be assessed the balance of that State's share of the overcharge.

**(f) Limitation on interest charged**

Interest shall be charged under this section only for the number of days a payment is late.

**(g) Omitted**

**(h) Lessee or designee interest**

Interest shall be allowed and paid or credited on any overpayment, with such interest to accrue from the date such overpayment was made, at the rate obtained by applying the provisions of subparagraphs (A) and (B) of section 6621(a)(1) of title 26, but determined without regard to the sentence following subparagraph (B) of section 6621(a)(1). Interest which has accrued on any overpayment may be applied to reduce an underpayment. This subsection applies to overpayments made later than six months after August 13, 1996, or September 1, 1996, whichever is later. Such interest shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act [30 U.S.C. 181 et seq.], and the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], which are not payable to a State or the Reclamation Fund. The portion of any such interest payment attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any other recipient designated by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.

**(i) Limitation on interest**

Upon a determination by the Secretary that an excessive overpayment (based upon all obligations of a lessee or its designee for a given reporting month) was made for the sole purpose of receiving interest, interest shall not be paid on the excessive amount of such overpayment. For purposes of this chapter, an ''excessive overpayment'' shall be the amount that any overpayment a lessee or its designee pays for a given reporting month (excluding payments for demands for obligations determined to be due as a result of judicial or administrative proceedings or agreed to be paid pursuant to settlement agreements) for the aggregate of all of its Federal leases exceeds 10 percent of the total royalties paid that month for those leases.

**(j) Estimated payment**

A lessee or its designee may make a payment for the approximate amount of royalties (hereinafter in this subsection ''estimated payment'') that would otherwise be due for such lease by the date royalties are due for that lease. When an estimated payment is made, actual royalties are payable at the end of the month following the month in which the estimated payment is made. If the estimated payment was less than the amount of actual royalties due, interest is owed on the underpaid amount. If the estimated payment exceeds the actual royalties due, interest is owed on the overpayment. If the lessee or its designee makes a payment for such actual royalties, the lessee or its designee may apply the estimated payment to future royalties. Any estimated payment may be adjusted, recouped, or reinstated at any time by the lessee or its designee.

**(k) Volume allocation of oil and gas production**

(1) Except as otherwise provided by this subsection—

(A) a lessee or its designee of a lease in a unit or communitization agreement which contains only Federal leases with the same royalty rate and funds distribution shall report and pay royalties on oil and gas production for each production month based on the actual volume of production sold by or on behalf of that lessee;

(B) a lessee or its designee of a lease in any other unit or communitization agreement shall report and pay royalties on oil and gas production for each production month based on the volume of oil and gas produced from such agreement and allocated to the lease in accordance with the terms of the agreement; and

(C) a lessee or its designee of a lease that is not contained in a unit or communitization agreement shall report and pay royalties on oil and gas production for each production month based on the actual volume of production sold by or on behalf of that lessee.

(2) This subsection applies only to requirements for reporting and paying royalties. Nothing in this subsection is intended to alter a lessee's liability for royalties on oil or gas production based on the share of production allocated

to the lease in accordance with the terms of the lease, a unit or communitization agreement, or any other agreement.

(3) For any unit or communitization agreement if all lessees contractually agree to an alternative method of royalty reporting and payment, the lessees may submit such alternative method to the Secretary or the delegated State for approval and make payments in accordance with such approved alternative method so long as such alternative method does not reduce the amount of the royalty obligation.

(4) The Secretary or the delegated State shall grant an exception from the reporting and payment requirements for marginal properties by allowing for any calendar year or portion thereof royalties to be paid each month based on the volume of production sold. Interest shall not accrue on the difference for the entire calendar year or portion thereof between the amount of oil and gas actually sold and the share of production allocated to the lease until the beginning of the month following such calendar year or portion thereof. Any additional royalties due or overpaid royalties and associated interest shall be paid, refunded, or credited within six months after the end of each calendar year in which royalties are paid based on volumes of production sold. For the purpose of this subsection, the term ''marginal property'' means a lease that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 thousand cubic feet of gas per well per day, or a combination thereof, determined by dividing the average daily production of crude oil and natural gas from producing wells on such lease by the number of such wells, unless the Secretary, together with the State concerned, determines that a different production is more appropriate.

(5) Not later than two years after August 13, 1996, the Secretary shall issue any appropriate demand for all outstanding royalty payment disputes regarding who is required to report and pay royalties on production from units and communitization agreements outstanding on August 13, 1996, and collect royalty amounts owed on such production.

**(*l*) Production allocation**

The Secretary shall issue all determinations of allocations of production for units and communitization agreements within 120 days of a request for determination. If the Secretary fails to issue a determination within such 120-day period, the Secretary shall waive interest due on obligations subject to the determination until the end of the month following the month in which the determination is made.

(Pub. L. 97–451, title I, §111, Jan. 12, 1983, 96 Stat. 2455; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104–185, §6(a)–(e), (h)(1), Aug. 13, 1996, 110 Stat. 1712–1715; Pub. L. 104–200, §1(3)–(6), Sept. 22, 1996, 110 Stat. 2421.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (e), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§751 et seq.) of Title 15, Commerce and Trade, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

The Mineral Leasing Act, referred to in subsec. (h), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified generally to chapter 3A (§181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

The Outer Continental Shelf Lands Act, referred to in subsec. (h), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

CODIFICATION

Section is comprised of section 111 of Pub. L. 97–451. Subsec. (g) of section 111 of Pub. L. 97–451 amended section 191(a) of this title.

AMENDMENTS

1996—Pub. L. 104–185, §6(h)(1), substituted ''Royalty terms and conditions, interest, and penalties'' for ''Royalty interest, penalties and payments'' in section catchline.

Subsec. (h). Pub. L. 104–185, §6(a), added subsec. (h).

Subsec. (i). Pub. L. 104–200, §1(3), inserted ''not'' after ''receiving interest, interest shall''.

Pub. L. 104–185, §6(b), added subsec. (i).

Subsec. (j). Pub. L. 104–200, §1(4), (5), substituted ''date royalties are due'' for ''rate royalties are due'', ''interest is owed on the underpaid amount'' for ''interest is owned on the underpaid amount'', and ''interest is owed on the overpayment'' for ''interest is owned on the overpayment''.

Pub. L. 104–185, §6(c), added subsec. (j).

Subsec. (k). Pub. L. 104–185, §6(d), added subsec. (k).

Subsec. (k)(4). Pub. L. 104–200, §1(6), substituted ''additional royalties due'' for ''additional royalties dues''.

Subsec. (*l*). Pub. L. 104–185, §6(e), added subsec. (*l*).

1986—Subsecs. (a), (b), (d). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–185 applicable with respect to production of oil and gas after the first day of the month following Aug. 13, 1996, except as provided by subsecs. (h) and (k)(5) of this section, see section 11 of Pub. L. 104–185, set out as a note under section 1701 of this title.

APPLICABILITY OF 1996 AMENDMENT

Amendment by Pub. L. 104–185 not applicable to any privately owned minerals or with respect to Indian lands, see sections 9 and 10 of Pub. L. 104–185, set out as a note under section 1701 of this title.

PAYMENT OF INTEREST CHARGES FROM CURRENT RECEIPTS

Pub. L. 108–447, div. E, title I, Dec. 8, 2004, 118 Stat. 3053, provided in part: ''That in fiscal year 2005 and thereafter, notwithstanding 30 U.S.C. 191(a) and 43 U.S.C. 1338, the Secretary shall pay amounts owed to States under the provision of 30 U.S.C. 1721(b) from amounts received as current receipts from bonuses, royalties, interest collected from lessees and designees, and rentals of the public lands and the outer continental shelf under provisions of the Mineral Leasing Act (30 U.S.C. 181 et seq.), and the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), which are not payable to a State or the Reclamation Fund.''

### § 1721a. Adjustments and refunds

**(a) Adjustments to royalties paid to Secretary or a delegated State**

(1) If, during the adjustment period, a lessee or its designee determines that an adjustment or refund request is necessary to correct an underpayment or overpayment of an obligation, the lessee or its designee shall make such adjustment or request a refund within a reasonable period of time and only during the adjustment period. The filing of a royalty report which reflects the underpayment or overpayment of an obligation shall constitute prior written notice to the Secretary or the applicable delegated State of an adjustment.

(2)(A) For any adjustment, the lessee or its designee shall calculate and report the interest due attributable to such adjustment at the same time the lessee or its designee adjusts the principle[1] amount of the subject obligation, except as provided by subparagraph (B).

(B) In the case of a lessee or its designee who determines that subparagraph (A) would impose a hardship, the Secretary or such delegated State shall calculate the interest due and notify the lessee or its designee within a reasonable time of the amount of interest due, unless such lessee or its designee elects to calculate and report interest in accordance with subparagraph (A).

(3) An adjustment or a request for a refund for an obligation may be made after the adjustment period only upon written notice to and approval by the Secretary or the applicable delegated State, as appropriate, during an audit of the period which includes the production month for which the adjustment is being made. If an overpayment is identified during an audit, then the Secretary or the applicable delegated State, as appropriate, shall allow a credit or refund in the amount of the overpayment.

(4) For purposes of this section, the adjustment period for any obligation shall be the six-year period following the date on which an obligation became due. The adjustment period shall be suspended, tolled, extended, enlarged, or terminated by the same actions as the limitation period in section 1724 of this title.

**(b) Refunds**

**(1) In general**

A request for refund is sufficient if it—

(A) is made in writing to the Secretary and, for purposes of section 1724 of this title, is specifically identified as a demand;

(B) identifies the person entitled to such refund;

(C) provides the Secretary information that reasonably enables the Secretary to identify the overpayment for which such refund is sought; and

(D) provides the reasons why the payment was an overpayment.

**(2) Payment by Secretary of the Treasury**

The Secretary shall certify the amount of the refund to be paid under paragraph (1) to the Secretary of the Treasury who shall make such refund. Such refund shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act [30 U.S.C. 181 et seq.] and the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], which are not payable to a State or the Reclamation Fund. The portion of any such refund attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any recipient prescribed by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.

**(3) Payment period**

A refund under this subsection shall be paid or denied (with an explanation of the reasons for the denial) within 120 days of the date on which the request for refund is received by the Secretary. Such refund shall be subject to later audit by the Secretary or the applicable delegated State and subject to the provisions of this chapter.

**(4) Prohibition against reduction of refunds or credits**

In no event shall the Secretary or any delegated State directly or indirectly claim or offset any amount or amounts against, or reduce any refund or credit (or interest accrued thereon) by the amount of any obligation the enforcement of which is barred by section 1724 of this title.

(Pub. L. 97–451, title I, § 111A, as added Pub. L. 104–185, § 5(a), Aug. 13, 1996, 110 Stat. 1710.)

REFERENCES IN TEXT

The Mineral Leasing Act, referred to in subsec. (b)(2), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified generally to chapter 3A (§ 181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

The Outer Continental Shelf Lands Act, referred to in subsec. (b)(2), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

EFFECTIVE DATE

Section applicable with respect to production of oil and gas after the first day of the month following Aug. 13, 1996, see section 11 of Pub. L. 104–185, set out as an Effective Date of 1996 Amendment note under section 1701 of this title.

APPLICABILITY

Section not applicable to any privately owned minerals or with respect to Indian lands, see sections 9 and 10 of Pub. L. 104–185, set out as an Applicability of 1996 Amendment note under section 1701 of this title.

### § 1722. Injunction and specific enforcement authority

**(a) Civil action by Attorney General**

In addition to any other remedy under this chapter or any mineral leasing law, the Attor-

[1] So in original. Probably should be ''principal''.

ney General of the United States or his designee may bring a civil action in a district court of the United States, which shall have jurisdiction over such actions—

(1) to restrain any violation of this chapter; or

(2) to compel the taking of any action required by or under this chapter or any mineral leasing law of the United States.

**(b) Venue**

A civil action described in subsection (a) of this section may be brought only in the United States district court for the judicial district wherein the act, omission, or transaction constituting a violation under this chapter or any other mineral leasing law occurred, or wherein the defendant is found or transacts business.

(Pub. L. 97–451, title I, § 112, Jan. 12, 1983, 96 Stat. 2456.)

### § 1723. Rewards

Where amounts representing royalty or other payments owed to the United States with respect to any oil and gas lease on Federal lands or the Outer Continental Shelf are recovered pursuant to any action taken by the Secretary under this chapter as a result of information provided to the Secretary by any person, the Secretary is authorized to pay to such person an amount equal to not more than 10 percent of such recovered amounts. The preceding sentence shall not apply to information provided by an officer or employee of the United States, an officer or employee of a State or Indian tribe acting pursuant to a cooperative agreement or delegation under this chapter, or any person acting pursuant to a contract authorized by this chapter.

(Pub. L. 97–451, title I, § 113, Jan. 12, 1983, 96 Stat. 2456.)

### § 1724. Secretarial and delegated States' actions and limitation periods

**(a) In general**

The respective duties, responsibilities, and activities with respect to a lease shall be performed by the Secretary, delegated States, and lessees or their designees in a timely manner.

**(b) Limitation period**

**(1) In general**

A judicial proceeding or demand which arises from, or relates to an obligation, shall be commenced within seven years from the date on which the obligation becomes due and if not so commenced shall be barred. If commencement of a judicial proceeding or demand for an obligation is barred by this section, the Secretary, a delegated State, or a lessee or its designee (A) shall not take any other or further action regarding that obligation, including (but not limited to) the issuance of any order, request, demand or other communication seeking any document, accounting, determination, calculation, recalculation, payment, principal, interest, assessment, or penalty or the initiation, pursuit or completion of an audit with respect to that obligation; and (B) shall not pursue any other equitable or legal remedy, whether under statute or common law, with respect to an action on or an enforcement of said obligation.

**(2) Rule of construction**

A judicial proceeding or demand that is timely commenced under paragraph (1) against a designee shall be considered timely commenced as to any lessee who is liable pursuant to section 1712(a) of this title for the obligation that is the subject of the judicial proceeding or demand.

**(3) Application of certain limitations**

The limitations set forth in sections 2401, 2415, 2416, and 2462 of title 28 and section 226–2 of this title shall not apply to any obligation to which this chapter applies. Section 3716 of title 31 may be applied to an obligation the enforcement of which is not barred by this chapter, but may not be applied to any obligation the enforcement of which is barred by this chapter.

**(c) Obligation becomes due**

**(1) In general**

For purposes of this chapter, an obligation becomes due when the right to enforce the obligation is fixed.

**(2) Royalty obligations**

The right to enforce any royalty obligation for any given production month for a lease is fixed for purposes of this chapter on the last day of the calendar month following the month in which oil or gas is produced.

**(d) Tolling of limitation period**

The running of the limitation period under subsection (b) of this section shall not be suspended, tolled, extended, or enlarged for any obligation for any reason by any action, including an action by the Secretary or a delegated State, other than the following:

**(1) Tolling agreement**

A written agreement executed during the limitation period between the Secretary or a delegated State and a lessee or its designee (with notice to the lessee who designated the designee) shall toll the limitation period for the amount of time during which the agreement is in effect.

**(2) Subpoena**

(A) The issuance of a subpoena to a lessee or its designee (with notice to the lessee who designated the designee, which notice shall not constitute a subpoena to the lessee) in accordance with the provisions of subparagraph (B)(i) shall toll the limitation period with respect to the obligation which is the subject of a subpoena only for the period beginning on the date the lessee or its designee receives the subpoena and ending on the date on which (i) the lessee or its designee has produced such subpoenaed records for the subject obligation, (ii) the Secretary or a delegated State receives written notice that the subpoenaed records for the subject obligation are not in existence or are not in the lessee's or its designee's possession or control, or (iii) a court has determined

in a final decision that such records are not required to be produced, whichever occurs first.

(B)(i) A subpoena for the purposes of this section which requires a lessee or its designee to produce records necessary to determine the proper reporting and payment of an obligation due the Secretary may be issued only by an Assistant Secretary of the Interior or an Acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations), or the Director or Acting Director of the respective bureau or agency, and may not be delegated to any other person. If a State has been delegated authority pursuant to section 1735 of this title, the State, acting through the highest State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such subpoena, but may not delegate such authority to any other person.

(ii) A subpoena described in clause (i) may only be issued against a lessee or its designee during the limitation period provided in this section and only after the Secretary or a delegated State has in writing requested the records from the lessee or its designee related to the obligation which is the subject of the subpoena and has determined that—

(I) the lessee or its designee has failed to respond within a reasonable period of time to the Secretary's or the applicable delegated State's written request for such records necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or such delegated State's responsibilities under this chapter; or

(II) the lessee or its designee has in writing denied the Secretary's or the applicable delegated State's written request to produce such records in the lessee's or its designee's possession or control necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or such delegated State's responsibilities under this chapter; or

(III) the lessee or its designee has unreasonably delayed in producing records necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or the applicable delegated State's responsibilities under this chapter after the Secretary's or delegated State's written request.

(C) In seeking records, the Secretary or the applicable delegated State shall afford the lessee or its designee a reasonable period of time after a written request by the Secretary or such delegated State in which to provide such records prior to the issuance of any subpoena.

**(3) Misrepresentation or concealment**

The intentional misrepresentation or concealment of a material fact for the purpose of evading the payment of an obligation in which case the limitation period shall be tolled for the period of such misrepresentation or such concealment.

**(4) Order to perform restructured accounting**

(A)(i) The issuance of a notice under subparagraph (D) that the lessee or its designee has not substantially complied with the requirement to perform a restructured accounting shall toll the limitation period with respect to the obligation which is the subject of the notice only for the period beginning on the date the lessee or its designee receives the notice and ending 120 days after the date on which (I) the Secretary or the applicable delegated State receives written notice that the accounting or other requirement has been performed, or (II) a court has determined in a final decision that the lessee is not required to perform the accounting, whichever occurs first.

(ii) If the lessee or its designee initiates an administrative appeal or judicial proceeding to contest an order to perform a restructured accounting issued under subparagraph (B)(i), the limitation period in subsection (b) of this section shall be tolled from the date the lessee or its designee received the order until a final, nonappealable decision is issued in any such proceeding.

(B)(i) The Secretary or the applicable delegated State may issue an order to perform a restructured accounting to a lessee or its designee when the Secretary or such delegated State determines during an audit of a lessee or its designee that the lessee or its designee should recalculate royalty due on an obligation based upon the Secretary's or the delegated State's finding that the lessee or its designee has made identified underpayments or overpayments which are demonstrated by the Secretary or the delegated State to be based upon repeated, systemic reporting errors for a significant number of leases or a single lease for a significant number of reporting months with the same type of error which constitutes a pattern of violations and which are likely to result in either significant underpayments or overpayments.

(ii) The power of the Secretary to issue an order to perform a restructured accounting may not be delegated below the most senior career professional position having responsibility for the royalty management program, which position is currently designated as the ''Associate Director for Royalty Management'', and may not be delegated to any other person. If a State has been delegated authority pursuant to section 1735 of this title, the State, acting through the highest ranking State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such order to perform, which may not be delegated to any other person. An order to perform a restructured accounting shall—

(I) be issued within a reasonable period of time from when the audit identifies the systemic, reporting errors;

(II) specify the reasons and factual bases for such order;

(III) be specifically identified as an ''order to perform a restructured accounting'';

(IV) provide the lessee or its designee a reasonable period of time (but not less than 60 days) within which to perform the restructured accounting; and

(V) provide the lessee or its designee 60 days within which to file an administrative

appeal of the order to perform a restructured accounting.

(C) An order to perform a restructured accounting shall not mean or be construed to include any other action by or on behalf of the Secretary or a delegated State.

(D) If a lessee or its designee fails to substantially comply with the requirement to perform a restructured accounting pursuant to this subsection, a notice shall be issued to the lessee or its designee that the lessee or its designee has not substantially complied with the requirements to perform a restructured accounting. A lessee or its designee shall be given a reasonable time within which to perform the restructured accounting. Such notice may be issued under this section only by an Assistant Secretary of the Interior or an acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations) and may not be delegated to any other person. If a State has been delegated authority pursuant to section 1735 of this title, the State, acting through the highest State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such notice, which may not be delegated to any other person.

**(e) Termination of limitations period**

An action or an enforcement of an obligation by the Secretary or delegated State or a lessee or its designee shall be barred under this section prior to the running of the seven-year period provided in subsection (b) of this section in the event—

(1) the Secretary or a delegated State has notified the lessee or its designee in writing that a time period is closed to further audit; or

(2) the Secretary or a delegated State and a lessee or its designee have so agreed in writing.

For purposes of this subsection, notice to, or an agreement by, the designee shall be binding on any lessee who is liable pursuant to section 1712(a) of this title for obligations that are the subject of the notice or agreement.

**(f) Records required for determining collections**

Records required pursuant to section 1713 of this title by the Secretary or any delegated State for the purpose of determining obligations due and compliance with any applicable mineral leasing law, lease provision, regulation or order with respect to oil and gas leases from Federal lands or the Outer Continental Shelf shall be maintained for the same period of time during which a judicial proceeding or demand may be commenced under subsection (b) of this section. If a judicial proceeding or demand is timely commenced, the record holder shall maintain such records until the final nonappealable decision in such judicial proceeding is made, or with respect to that demand is rendered, unless the Secretary or the applicable delegated State authorizes in writing an earlier release of the requirement to maintain such records. Notwithstanding anything herein to the contrary, under no circumstance shall a record holder be required to maintain or produce any record relating to an obligation for any time period which is barred by the applicable limitation in this section. In connection with any hearing, administrative proceeding, inquiry, investigation, or audit by the Secretary or a delegated State under this chapter, the Secretary or the delegated State shall minimize the submission of multiple or redundant information and make a good faith effort to locate records previously submitted by a lessee or a designee to the Secretary or the delegated State, prior to requiring the lessee or the designee to provide such records.

**(g) Timely collections**

In order to most effectively utilize resources available to the Secretary to maximize the collection of oil and gas receipts from lease obligations to the Treasury within the seven-year period of limitations, and consequently to maximize the State share of such receipts, the Secretary should not perform or require accounting, reporting, or audit activities if the Secretary and the State concerned determine that the cost of conducting or requiring the activity exceeds the expected amount to be collected by the activity, based on the most current 12 months of activity. This subsection shall not provide a defense to a demand or an order to perform a restructured accounting. To the maximum extent possible, the Secretary and delegated States shall reduce costs to the United States Treasury and the States by discontinuing requirements for unnecessary or duplicative data and other information, such as separate allowances and payor information, relating to obligations due. If the Secretary and the State concerned determine that collection will result sooner, the Secretary or the applicable delegated State may waive or forego interest in whole or in part.

**(h) Appeals and final agency action**

**(1) 33-month period**

Demands or orders issued by the Secretary or a delegated State are subject to administrative appeal in accordance with the regulations of the Secretary. No State shall impose any conditions which would hinder a lessee's or its designee's immediate appeal of an order to the Secretary or the Secretary's designee. The Secretary shall issue a final decision in any administrative proceeding, including any administrative proceedings pending on August 13, 1996, within 33 months from the date such proceeding was commenced or 33 months from August 13, 1996, whichever is later. The 33-month period may be extended by any period of time agreed upon in writing by the Secretary and the appellant.

**(2) Effect of failure to issue decision**

If no such decision has been issued by the Secretary within the 33-month period referred to in paragraph (1)—

(A) the Secretary shall be deemed to have issued and granted a decision in favor of the appellant as to any nonmonetary obligation and any monetary obligation the principal amount of which is less than $10,000; and

(B) the Secretary shall be deemed to have issued a final decision in favor of the Sec-

retary, which decision shall be deemed to affirm those issues for which the agency rendered a decision prior to the end of such period, as to any monetary obligation the principal amount of which is $10,000 or more, and the appellant shall have a right to judicial review of such deemed final decision in accordance with title 5.

**(i) Collections of disputed amounts due**

To expedite collections relating to disputed obligations due within the seven-year period beginning on the date the obligation became due, the parties shall hold not less than one settlement consultation and the Secretary and the State concerned may take such action as is appropriate to compromise and settle a disputed obligation, including waiving or reducing interest and allowing offsetting of obligations among leases.

**(j) Enforcement of claim for judicial review**

In the event a demand subject to this section is properly and timely commenced, the obligation which is the subject of the demand may be enforced beyond the seven-year limitations period without being barred by this statute of limitations. In the event a demand subject to this section is properly and timely commenced, a judicial proceeding challenging the final agency action with respect to such demand shall be deemed timely so long as such judicial proceeding is commenced within 180 days from receipt of notice by the lessee or its designee of the final agency action.

**(k) Implementation of final decision**

In the event a judicial proceeding or demand subject to this section is timely commenced and thereafter the limitation period in this section lapses during the pendency of such proceeding, any party to such proceeding shall not be barred from taking such action as is required or necessary to implement a final unappealable judicial or administrative decision, including any action required or necessary to implement such decision by the recovery or recoupment of an underpayment or overpayment by means of refund or credit.

**(*l*) Stay of payment obligation pending review**

Any person ordered by the Secretary or a delegated State to pay any obligation (other than an assessment) shall be entitled to a stay of such payment without bond or other surety instrument pending an administrative or judicial proceeding if the person periodically demonstrates to the satisfaction of the Secretary that such person is financially solvent or otherwise able to pay the obligation. In the event the person is not able to so demonstrate, the Secretary may require a bond or other surety instrument satisfactory to cover the obligation. Any person ordered by the Secretary or a delegated State to pay an assessment shall be entitled to a stay without bond or other surety instrument.

(Pub. L. 97–451, title I, § 115, as added Pub. L. 104–185, § 4(a), Aug. 13, 1996, 110 Stat. 1704; amended Pub. L. 104–200, § 1(2), Sept. 22, 1996, 110 Stat. 2421.)

CODIFICATION

Pub. L. 104–185, § 4(a), which directed the addition of this section after section 114 of the Federal Oil and Gas Royalty Management Act of 1982, Pub. L. 97–451, was executed by adding this section after section 113 to reflect the probable intent of Congress because Pub. L. 97–451 did not contain a section 114.

AMENDMENTS

1996—Subsec. (*l*). Pub. L. 104–200 inserted ''so'' after ''the person is not able to''.

EFFECTIVE DATE

Section applicable with respect to production of oil and gas after the first day of the month following Aug. 13, 1996, except as provided by subsec. (h) of this section, see section 11 of Pub. L. 104–185, set out as an Effective Date of 1996 Amendment note under section 1701 of this title.

APPLICABILITY

Section not applicable to any privately owned minerals or with respect to Indian lands, see sections 9 and 10 of Pub. L. 104–185, set out as an Applicability of 1996 Amendment note under section 1701 of this title.

## § 1725. Assessments

Beginning eighteen months after August 13, 1996, to encourage proper royalty payment the Secretary or the delegated State shall impose assessments on a person who chronically submits erroneous reports under this chapter. Assessments under this chapter may only be issued as provided for in this section.

(Pub. L. 97–451, title I, § 116, as added Pub. L. 104–185, § 6(f)(1), Aug. 13, 1996, 110 Stat. 1714.)

CODIFICATION

Pub. L. 104–185, § 4(a), which directed the addition of this section at the end of the Federal Oil and Gas Royalty Management Act of 1982, was executed by adding this section at the end of title I of that Act to reflect the probable intent of Congress.

EFFECTIVE DATE

Section applicable with respect to production of oil and gas after the first day of the month following Aug. 13, 1996, see section 11 of Pub. L. 104–185, set out as an Effective Date of 1996 Amendment note under section 1701 of this title.

APPLICABILITY

Section not applicable to any privately owned minerals or with respect to Indian lands, see sections 9 and 10 of Pub. L. 104–185, set out as an Applicability of 1996 Amendment note under section 1701 of this title.

## § 1726. Alternatives for marginal properties

**(a) Determination of best interests of State concerned and United States**

The Secretary and the State concerned, acting in the best interests of the United States and the State concerned to promote production, reduce administrative costs, and increase net receipts to the United States and the States, shall jointly determine, on a case by case basis, the amount of what marginal production from a lease or leases or well or wells, or parts thereof, shall be subject to a prepayment under subsection (b) of this section or regulatory relief under subsection (c) of this section. If the State concerned does not consent, such prepayments or regulatory relief shall not be made available under this section for such marginal production: *Provided*, That if royalty payments from a lease or leases, or well or wells are not shared with

any State, such determination shall be made solely by the Secretary.

**(b) Prepayment of royalty**

**(1) In general**

Notwithstanding the provisions of any lease to the contrary, for any lease or leases or well or wells identified by the Secretary and the State concerned pursuant to subsection (a) of this section, the Secretary is authorized to accept a prepayment for royalties in lieu of monthly royalty payments under the lease for the remainder of the lease term if the affected lessee so agrees. Any prepayment agreed to by the Secretary, State concerned and lessee which is less than an average $500 per month in total royalties shall be effectuated under this section not earlier than two years after August 13, 1996, and, any prepayment which is greater than an average $500 per month in total royalties shall be effectuated under this section not earlier than three years after August 13, 1996. The Secretary and the State concerned may condition their acceptance of the prepayment authorized under this section on the lessee's agreeing to such terms and conditions as the Secretary and the State concerned deem appropriate and consistent with the purposes of this chapter. Such terms may—

(A) provide for prepayment that does not result in a loss of revenue to the United States in present value terms;

(B) include provisions for receiving additional prepayments or royalties for developments in the lease or leases or well or wells that deviate significantly from the assumptions and facts on which the valuation is determined; and

(C) require the lessee or its designee to provide such periodic production reports as may be necessary to allow the Secretary and the State concerned to monitor production for the purposes of subparagraph (B).

**(2) State share**

A prepayment under this section shall be shared by the Secretary with any State or other recipient to the same extent as any royalty payment for such lease.

**(3) Satisfaction of obligation**

Except as may be provided in the terms and conditions established by the Secretary under subsection (b) of this section, a lessee or its designee who makes a prepayment under this section shall have satisfied in full the lessee's obligation to pay royalty on the production stream sold from the lease or leases or well or wells.

**(c) Alternative accounting and auditing requirements**

Within one year after August 13, 1996, the Secretary or the delegated State shall provide accounting, reporting, and auditing relief that will encourage lessees to continue to produce and develop properties subject to subsection (a) of this section: *Provided*, That such relief will only be available to lessees in a State that concurs, which concurrence is not required if royalty payments from the lease or leases or well or wells are not shared with any State. Prior to granting such relief, the Secretary and, if appropriate, the State concerned shall agree that the type of marginal wells and relief provided under this paragraph is in the best interest of the United States and, if appropriate, the State concerned.

(Pub. L. 97–451, title I, § 117, as added Pub. L. 104–185, § 7(a), Aug. 13, 1996, 110 Stat. 1715; amended Pub. L. 104–200, § 1(7), Sept. 22, 1996, 110 Stat. 2421.)

CODIFICATION

Pub. L. 104–185, § 4(a), which directed the addition of this section at the end of the Federal Oil and Gas Royalty Management Act of 1982, was executed by adding this section at the end of title I of that Act to reflect the probable intent of Congress.

AMENDMENTS

1996—Subsec. (b)(1)(C). Pub. L. 104–200, § 1(7), substituted ''its designee'' for ''it designee''.

EFFECTIVE DATE

Section applicable with respect to production of oil and gas after the first day of the month following Aug. 13, 1996, except as provided by this section, see section 11 of Pub. L. 104–185, set out as an Effective Date of 1996 Amendment note under section 1701 of this title.

APPLICABILITY

Section not applicable to any privately owned minerals or with respect to Indian lands, see sections 9 and 10 of Pub. L. 104–185, set out as an Applicability of 1996 Amendment note under section 1701 of this title.

## SUBCHAPTER II—STATES AND INDIAN TRIBES

### § 1731. Application of subchapter

This subchapter shall apply only with respect to oil and gas leases on Federal lands or Indian lands. Nothing in this subchapter shall be construed to apply to any lease on the Outer Continental Shelf.

(Pub. L. 97–451, title II, § 201, Jan. 12, 1983, 96 Stat. 2457.)

### § 1731a. Application of subchapter to leases of lands within three miles of seaward boundaries of coastal States

For fiscal year 1990 and each fiscal year thereafter, notwithstanding the provisions of section 1731 of this title, sections 1732 through 1736 of this title shall apply to any lease or portion of a lease subject to section 1337(g) of title 43, which, for purposes of those provisions and for no other purposes, shall be regarded as within the coastal State or States entitled to receive revenues from it under section 1337(g) of title 43.

(Pub. L. 101–121, title I, Oct. 23, 1989, 103 Stat. 711.)

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1990, and not as part of the Federal Oil and Gas Royalty Management Act of 1982 which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in Pub. L. 100–446, title I, Sept. 27, 1988, 102 Stat. 1791.

### § 1732. Cooperative agreements

#### (a) Authorization of Secretary; permission of Indian tribe required for activities on Indian lands

The Secretary is authorized to enter into a cooperative agreement or agreements with any State or Indian tribe to share oil or gas royalty management information, to carry out inspection, auditing, investigation or enforcement (not including the collection of royalties, civil or criminal penalties or other payments) activities under this chapter in cooperation with the Secretary, and to carry out any other activity described in section 1718 of this title. The Secretary shall not enter into any such cooperative agreement with a State with respect to any such activities on Indian lands, except with the permission of the Indian tribe involved.

#### (b) Access to royalty accounting information

Except as provided in section 1733 of this title, and pursuant to a cooperative agreement—

(1) each State shall, upon request, have access to all royalty accounting information in the possession of the Secretary respecting the production, removal, or sale of oil or gas from leases on Federal lands within the State; and

(2) each Indian tribe shall, upon request, have access to all royalty accounting information in the possession of the Secretary respecting the production, removal, or sale of oil or gas from leases on Indian lands under the jurisdiction of such tribe.

Information shall be made available under paragraphs (1) and (2) as soon as practicable after it comes into the possession of the Secretary. Effective October 1, 1983, such information shall be made available under paragraphs (1) and (2) not later than 30 days after such information comes into the possession of the Secretary.

#### (c) Agreements in accordance with chapter 63 of title 31; terms and conditions

Any cooperative agreement entered into pursuant to this section shall be in accordance with the provisions of chapter 63 of title 31, and shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this chapter, including, but not limited to, a limitation on the use of Federal assistance to those costs which are directly required to carry out the agreed upon activities.

(Pub. L. 97–451, title II, § 202, Jan. 12, 1983, 96 Stat. 2457.)

CODIFICATION

In subsec. (c), ''chapter 63 of title 31'' substituted for ''the Federal Grant and Cooperative Agreement Act of 1977 [41 U.S.C. 501 et seq.]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

APPLICABILITY

Pub. L. 104–185, § 8(a), Aug. 13, 1996, 110 Stat. 1717, provided that: ''With respect to Federal lands, sections 202 and 307 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732 and 1755), are no longer applicable. The applicability of those sections to Indian leases is not affected.''

### § 1733. Information

#### (a) Availability of confidential information by Secretary pursuant to cooperative agreements; conditions

Trade secrets, proprietary and other confidential information shall be made available by the Secretary, pursuant to a cooperative agreement, to a State or Indian tribe upon request only if—

(1) such State or Indian tribe consents in writing to restrict the dissemination of the information to those who are directly involved in an audit or investigation under this chapter and who have a need to know;

(2) such State or tribe accepts liability for wrongful disclosure;

(3) in the case of a State, such State demonstrates that such information is essential to the conduct of an audit or investigation or to litigation under section 1734 of this title; and

(4) in the case of an Indian tribe, such tribe demonstrates that such information is essential to the conduct of an audit or investigation and waives sovereign immunity by express consent for wrongful disclosure by such tribe.

#### (b) Nonliability of United States for wrongful disclosure

The United States shall not be liable for the wrongful disclosure by any individual, State, or Indian tribe of any information provided to such individual, State, or Indian tribe pursuant to any cooperative agreement or a delegation, authorized by this chapter.

#### (c) Law governing disclosure

Whenever any individual, State, or Indian tribe has obtained possession of information pursuant to a cooperative agreement authorized by this section, or any individual or State has obtained possession of information pursuant to a delegation under section 1735 of this title, the individual shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to an officer or employee of the United States or of any department or agency thereof and the State or Indian tribe shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to the United States or any department or agency thereof. No State or State officer or employee who receives trade secrets, proprietary information, or other confidential information under this chapter may be required to disclose such information under State law.

(Pub. L. 97–451, title II, § 203, Jan. 12, 1983, 96 Stat. 2458.)

### § 1734. State suits under Federal law

#### (a) Action for royalty, interest, or civil penalty; limitations; notice of suit; award of costs and fees

(1) A State may commence a civil action under this section against any person to recover any royalty, interest, or civil penalty which the State believes is due, based upon credible evidence, with respect to any oil and gas lease on Federal lands located within the State.

(2)(A) No action may be commenced under paragraph (1) prior to 90 days after the State has

given notice in writing to the Secretary of the payment required. Such 90-day limitation may be waived by the Secretary on a case-by-case basis.

(B) If, within the 90-day period specified in subparagraph (A), the Secretary issues a demand for the payment concerned, no action may be commenced under paragraph (1) with respect to such payment during a 45-day period after issuance of such demand. If, during such 45-day period, the Secretary receives payment in full, no action may be commenced under paragraph (1).

(C) If the Secretary refers the case to the Attorney General of the United States within the 45-day period referred to in subparagraph (B) or within 10 business days after the expiration of such 45-day period, no action may be commenced under paragraph (1) if the Attorney General, within 45 days after the date of such referral, commences, and thereafter diligently prosecutes, a civil action in a court of the United States with respect to the payment concerned.

(3) The State shall notify the Secretary and the Attorney General of the United States of any suit filed by the State under this section.

(4) A court in issuing any final order in any action brought under paragraph (1) may award costs of litigation including reasonable attorney and expert witness fees, to any party in such action if the court determines such an award is appropriate.

**(b) Venue; jurisdiction of district court**

An action brought under subsection (a) of this section may be brought only in a United States district court for the judicial district in which the lease site or the leasing activity complained of is located. Such district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to require compliance or order payment in any such action.

**(c) Recovery of civil penalty by State; deposit of rent, royalty, or interest recovery in Treasury of the United States**

(1) Notwithstanding any other provision of law, any civil penalty recovered by a State under subsection (a) of this section shall be retained by the State and may be expended in such manner and for such purposes as the State deems appropriate.

(2) Any rent, royalty, or interest recovered by a State under subsection (a) of this section shall be deposited in the Treasury of the United States in the same manner, and subject to the same requirements, as are applicable in the case of any rent, royalty, or interest collected by an officer or employee of the United States, except that such amounts shall be deposited in the Treasury not later than 10 days after receipt by the State.

(Pub. L. 97–451, title II, § 204, Jan. 12, 1983, 96 Stat. 2458.)

## § 1735. Delegation of royalty collections and related activities

**(a) Authorization of Secretary**

Upon written request of any State, the Secretary is authorized to delegate, in accordance with the provisions of this section, all or part of the authorities and responsibilities of the Secretary under this chapter to:

(1) conduct inspections, audits, and investigations;

(2) receive and process production and financial reports;

(3) correct erroneous report data;

(4) perform automated verification; and

(5) issue demands, subpoenas, and orders to perform restructured accounting, for royalty management enforcement purposes,

to any State with respect to all Federal land within the State.

**(b) Prerequisites**

After notice and opportunity for a hearing, the Secretary is authorized to delegate such authorities and responsibilities granted under this section as the State has requested, if the Secretary finds that—

(1) it is likely that the State will provide adequate resources to achieve the purposes of this chapter;

(2) the State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary under this chapter in accordance with the requirements of subsections (c) and (d) of this section;

(3) such delegation will not create an unreasonable burden on any lessee;

(4) the State agrees to adopt standardized reporting procedures prescribed by the Secretary for royalty and production accounting purposes, unless the State and all affected parties (including the Secretary) otherwise agree;

(5) the State agrees to follow and adhere to regulations and guidelines issued by the Secretary pursuant to the mineral leasing laws regarding valuation of production; and

(6) where necessary for a State to have authority to carry out and enforce a delegated activity, the State agrees to enact such laws and promulgate such regulations as are consistent with relevant Federal laws and regulations

with respect to the Federal lands within the State.

**(c) Ruling as to consistency of State's proposal**

After notice and opportunity for hearing, the Secretary shall issue a ruling as to the consistency of a State's proposal with the provisions of this section and regulations under subsection (d) of this section within 90 days after submission of such proposal. In any unfavorable ruling, the Secretary shall set forth the reasons therefor and state whether the Secretary will agree to delegate to the State if the State meets the conditions set forth in such ruling.

**(d) Promulgation of standards and regulations with respect to delegation**

After consultation with State authorities, the Secretary shall by rule promulgate, within 12 months after August 13, 1996, standards and regulations pertaining to the authorities and responsibilities to be delegated under subsection (a) of this section, including standards and regulations pertaining to—

(1) audits to be performed;

(2) records and accounts to be maintained;

(3) reporting procedures to be required by States under this section;

(4) receipt and processing of production and financial reports;

(5) correction of erroneous report data;

(6) performance of automated verification;

(7) issuance of standards and guidelines in order to avoid duplication of effort;

(8) transmission of report data to the Secretary; and

(9) issuance of demands, subpoenas, and orders to perform restructured accounting, for royalty management enforcement purposes.

Such standards and regulations shall be designed to provide reasonable assurance that a uniform and effective royalty management system will prevail among the States. The records and accounts under paragraph (2) shall be sufficient to allow the Secretary to monitor the performance of any State under this section.

**(e) Revocation; issuance of demand or order by Secretary**

If, after notice and opportunity for a hearing, the Secretary finds that any State to which any authority or responsibility of the Secretary has been delegated under this section is in violation of any requirement of this section or any rule thereunder, or that an affirmative finding by the Secretary under subsection (b) of this section can no longer be made, the Secretary may revoke such delegation. If, after providing written notice to a delegated State and a reasonable opportunity to take corrective action requested by the Secretary, the Secretary determines that the State has failed to issue a demand or order to a Federal lessee within the State, that such failure may result in an underpayment of an obligation due the United States by such lessee, and that such underpayment may be uncollected without Secretarial intervention, the Secretary may issue such demand or order in accordance with the provisions of this chapter prior to or absent the withdrawal of delegated authority.

**(f) Compensation to State for costs of delegation; allocation of costs**

Subject to appropriations, the Secretary shall compensate any State for those costs which may be necessary to carry out the delegated activities under this Section.[1] Payment shall be made no less than every quarter during the fiscal year. Compensation to a State may not exceed the Secretary's reasonably anticipated expenditure for performance of such delegated activities by the Secretary. Such costs shall be allocable for the purposes of section 191(b) of this title to the administration and enforcement of laws providing for the leasing of any onshore lands or interests in land owned by the United States. Any further allocation of costs under section 191(b) of this title made by the Secretary for oil and gas activities, other than those costs to compensate States for delegated activities under this chapter, shall be only those costs associated with onshore oil and gas activities and may not include any duplication of costs allocated pursuant to the previous sentence. Nothing in this section affects the Secretary's authority to make allocations under section 191(b) of this title for non-oil and gas mineral activities. All moneys received from sales, bonuses, rentals, royalties, assessments and interest, including money claimed to be due and owing pursuant to a delegation under this section, shall be payable and paid to the Treasury of the United States.

**(g) Judicial review**

Any action of the Secretary to approve or disapprove a proposal submitted by a State under this section shall be subject to judicial review in the United States district court which includes the capital of the State submitting the proposal.

**(h) Existing delegation**

Any State operating pursuant to a delegation existing on August 13, 1996, may continue to operate under the terms and conditions of the delegation, except to the extent that a revision of the existing agreement is adopted pursuant to this section.

(Pub. L. 97–451, title II, § 205, Jan. 12, 1983, 96 Stat. 2459; Pub. L. 104–185, § 3(a), Aug. 13, 1996, 110 Stat. 1702.)

CODIFICATION

August 13, 1996, referred to in subsec. (d), was in the original ''the date of enactment of this section'', which was translated as meaning the date of enactment of Pub. L. 104–185, which amended this section generally, to reflect the probable intent of Congress.

August 13, 1996, referred to in subsec. (h), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 104–185, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

1996—Pub. L. 104–185 amended section generally, substituting present provisions for provisions which stated in subsec. (a), authorization of Secretary to delegate to States except permission of Indian tribe required with respect to Indian lands; subsec. (b), prerequisites; subsec. (c), promulgation of regulations defining joint functions; subsec. (d), promulgation of standards and regulations with respect to delegation; subsec. (e), revocation; and subsec. (f), compensation to State for costs of delegation.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–185 applicable with respect to production of oil and gas after the first day of the month following Aug. 13, 1996, see section 11 of Pub. L. 104–185, set out as a note under section 1701 of this title.

APPLICABILITY OF 1996 AMENDMENT

Amendment by Pub. L. 104–185 not applicable to any privately owned minerals or with respect to Indian lands, see sections 9 and 10 of Pub. L. 104–185, set out as a note under section 1701 of this title.

## § 1736. Shared civil penalties

An amount equal to 50 per centum of any civil penalty collected by the Federal Government under this chapter resulting from activities conducted by a State or Indian tribe pursuant to a cooperative agreement under section 1732 of this title or a State under a delegation under section 1735 of this title, shall be payable to such State or tribe. Such amount shall be deducted from any compensation due such State or Indian tribe under section 1732 of this title or such State under section 1735 of this title.

[1] So in original. Probably should not be capitalized.

(Pub. L. 97–451, title II, § 206, Jan. 12, 1983, 96 Stat. 2460.)

SUBCHAPTER III—GENERAL PROVISIONS

### § 1751. Secretarial authority

**(a) Prescription of rules and regulations**

The Secretary shall prescribe such rules and regulations as he deems reasonably necessary to carry out this chapter.

**(b) Conformity with rulemaking provisions**

Rules and regulations issued to implement this chapter shall be issued in conformity with section 553 of title 5, notwithstanding section 553(a)(2) of that title.

**(c) Contracts with non-Federal Government inspectors, auditors, etc.; coordination of auditing and enforcement functions**

In addition to entering into cooperative agreements or delegation of authority authorized under this chapter, the Secretary may contract with such non-Federal Government inspectors, auditors, and other persons as he deems necessary to aid in carrying out his functions under this chapter and its implementation. With respect to his auditing and enforcement functions under this chapter, the Secretary shall coordinate such functions so as to avoid to the maximum extent practicable, subjecting lessees, operators, or other persons to audits or investigations of the same subject matter by more than one auditing or investigating entity at the same time.

(Pub. L. 97–451, title III, § 301, Jan. 12, 1983, 96 Stat. 2460.)

### § 1752. Reports

The Secretary shall submit to the Congress an annual report on the implementation of this chapter. The information to be included in the report and the format of the report shall be developed by the Secretary after consulting with the Committees on Natural Resources of the House of Representatives and on Energy and Natural Resources of the Senate. The Secretary shall also report on the progress of the Department in reconciling account balances.

(Pub. L. 97–451, title III, § 302, Jan. 12, 1983, 96 Stat. 2461; Pub. L. 103–437, § 11(a)(2), Nov. 2, 1994, 108 Stat. 4589; Pub. L. 105–362, title IX, § 901(j)(1), Nov. 10, 1998, 112 Stat. 3290.)

AMENDMENTS

1998—Pub. L. 105–362 struck out subsec. (a) designation and struck out subsec. (b) which read as follows: ''Commencing with fiscal year 1984, the Inspector General of the Department of the Interior shall conduct a biennial audit of the Federal royalty management system. The Inspector General shall submit the results of such audit to the Secretary and to the Congress.''

1994—Subsec. (a). Pub. L. 103–437 substituted ''Natural Resources'' for ''Interior and Insular Affairs'' after ''Committees on''.

CHANGE OF NAME

Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under this section is listed on page 111), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

STUDY OF THE ADEQUACY OF ROYALTY MANAGEMENT FOR MINERALS ON FEDERAL AND INDIAN LANDS

Section 303 of Pub. L. 97–451 directed Secretary to study question of adequacy of royalty management for coal, uranium and other energy and nonenergy minerals on Federal and Indian lands, include proposed legislation if Secretary determined that such legislation was necessary to ensure prompt and proper collection of revenues owed to the United States, the States and Indian tribes or Indian allottees from the sale, lease or other disposal of such minerals, with study to be submitted to Congress not later than one year from Jan. 12, 1983.

### § 1753. Relation to other laws

**(a) Supplemental nature of chapter**

The penalties and authorities provided in this chapter are supplemental to, and not in derogation of, any penalties or authorities contained in any other provision of law.

**(b) Responsibilities of Secretary related to minerals on Federal and Indian lands**

Nothing in this chapter shall be construed to reduce the responsibilities of the Secretary to ensure prompt and proper collection of revenues from coal, uranium and other energy and nonenergy minerals on Federal and Indian lands, or to restrain the Secretary from entering into cooperative agreements or other appropriate arrangements with States and Indian tribes to share royalty management responsibilities and activities for such minerals under existing authorities.

**(c) Authority and responsibilities of Inspector General and Comptroller General unaffected**

Nothing in this chapter shall be construed to enlarge, diminish, or otherwise affect the authority or responsibility of the Inspector General of the Department of the Interior or of the Comptroller General of the United States.

**(d) Lands and land interests entrusted to Tennessee Valley Authority unaffected**

No provision of this chapter impairs or affects lands and interests in land entrusted to the Tennessee Valley Authority.

(Pub. L. 97–451, title III, § 304, Jan. 12, 1983, 96 Stat. 2461; Pub. L. 105–362, title IX, § 901(j)(2), Nov. 10, 1998, 112 Stat. 3290.)

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–362 substituted ''Nothing'' for ''Except as expressly provided in section 1752(b) of this title, nothing''.

### § 1754. Funding

Effective October 1, 1983, there are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter, including such sums as may be necessary for the cooperative agreements, contracts, and delegations authorized by this chap-

ter: *Provided*, That nothing in this chapter shall be construed to affect or impair any authority to enter into contracts or make payments under any other provision of law.

(Pub. L. 97–451, title III, § 306, Jan. 12, 1983, 96 Stat. 2462.)

### § 1755. Statute of limitations

Except in the case of fraud, any action to recover penalties under this chapter shall be barred unless the action is commenced within 6 years after the date of the act or omission which is the basis for the action.

(Pub. L. 97–451, title III, § 307, Jan. 12, 1983, 96 Stat. 2462.)

APPLICABILITY

Section no longer applicable with respect to Federal lands, but applicability of section to Indian leases not affected, see section 8(a) of Pub. L. 104–185, set out as a note under section 1732 of this title.

### § 1756. Expanded royalty obligations

Any lessee is liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence on the part of the operator of the lease, or due to the failure to comply with any rule or regulation, order or citation issued under this chapter or any mineral leasing law.

(Pub. L. 97–451, title III, § 308, Jan. 12, 1983, 96 Stat. 2462.)

### § 1757. Severability

If any provision of this chapter or the applicability thereof to any person or circumstances is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Pub. L. 97–451, title III, § 309, Jan. 12, 1983, 96 Stat. 2462.)

### § 1758. Use of royalty-in-kind revenue by Minerals Management Service

That in fiscal year 2006 and thereafter, the MMS may under the royalty-in-kind program, or under its authority to transfer oil to the Strategic Petroleum Reserve, use a portion of the revenues from royalty-in-kind sales, without regard to fiscal year limitation, to pay for transportation to wholesale market centers or upstream pooling points, to process or otherwise dispose of royalty production taken in kind, and to recover MMS transportation costs, salaries, and other administrative costs directly related to the royalty-in-kind program.

(Pub. L. 109–54, title I, Aug. 2, 2005, 119 Stat. 512.)

REFERENCES IN TEXT

MMS, referred to in text, means the Minerals Management Service.

CODIFICATION

Section was enacted as part of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, and not as part of the Federal Oil and Gas Royalty Management Act of 1982 which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. E, title I, Dec. 8, 2004, 118 Stat. 3053.

Pub. L. 108–108, title I, Nov. 10, 2003, 117 Stat. 1255.

Pub. L. 108–7, div. F, title I, Feb. 20, 2003, 117 Stat. 229.

Pub. L. 107–63, title I, Nov. 5, 2001, 115 Stat. 428.

Pub. L. 106–291, title I, Oct. 11, 2000, 114 Stat. 932.

## CHAPTER 30—NATIONAL CRITICAL MATERIALS COUNCIL

Sec.
1801. Congressional findings and declaration of purposes.
1802. Establishment of National Critical Materials Council.
1803. Responsibilities and authorities of Council.
1804. Program and policy for advanced materials research and technology.
1805. Innovation in basic and advanced materials industries.
1806. Compensation of members and reimbursement.
1807. Executive Director.
1808. Responsibilities and duties of Director.
1809. General authority of Council.
1810. Authorization of appropriations.
1811. ''Materials'' defined.

### § 1801. Congressional findings and declaration of purposes

(a) The Congress finds that—

(1) the availability of adequate supplies of strategic and critical industrial minerals and materials continues to be essential for national security, economic well-being, and industrial production;

(2) the United States is increasingly dependent on foreign sources of materials and vulnerable to supply interruption in the case of many of those minerals and materials essential to the Nation's defense and economic well-being;

(3) together with increasing import dependence, the Nation's industrial base, including the capacity to process minerals and materials, is deteriorating—both in terms of facilities and in terms of a trained labor force;

(4) research, development, and technological innovation, especially related to improved materials and new processing technologies, are important factors which affect our long-term capability for economic competitiveness, as well as for adjustment to interruptions in supply of critical minerals and materials;

(5) while other nations have developed and implemented specific long-term research and technology programs to develop high-performance materials, no such policy and program evolution has occurred in the United States;

(6) establishing critical materials reserves, by both the public and private sectors and with proper organization and management, represents one means of responding to the genuine risks to our economy and national defense from dependency on foreign sources;

(7) there exists no single Federal entity with the authority and responsibility for establishing critical materials policy and for coordinating and implementing that policy; and

(8) the importance of materials to national goals requires an organizational means for es-

tablishing responsibilities for materials programs and for the coordination, within and at a suitably high level of the Executive Office of the President, with other existing policies within the Federal Government.

(b) It is the purpose of this chapter—

(1) to establish a National Critical Materials Council under and reporting to the Executive Office of the President which shall—

(A) establish responsibilities for and provide for necessary coordination of critical materials policies, including all facets of research and technology, among the various agencies and departments of the Federal Government, and make recommendations for the implementation of such policies;

(B) bring to the attention of the President, the Congress, and the general public such materials issues and concerns, including research and development, as are deemed critical to the economic and strategic health of the Nation; and

(C) ensure adequate and continuing consultation with the private sector concerning critical materials, materials research and development, use of materials, Federal materials policies, and related matters;

(2) to establish a national Federal program for advanced materials research and technology, including basic phenomena through processing and manufacturing technology; and

(3) to stimulate innovation and technology utilization in basic as well as advanced materials industries.

(Pub. L. 98–373, title II, § 202, July 31, 1984, 98 Stat. 1249.)

SHORT TITLE

Section 201 of Pub. L. 98–373 provided that: ''This title [enacting this chapter] may be cited as the 'National Critical Materials Act of 1984'.''

## § 1802. Establishment of National Critical Materials Council

There is hereby established a National Critical Materials Council (hereinafter referred to as the ''Council'') under and reporting to the Executive Office of the President. The Council shall be composed of three members who shall be appointed by the President and who shall serve at the pleasure of the President. Members so appointed who are not already Senate-confirmed officers of the Government shall be appointed by and with the advice and consent of the Senate. The President shall designate one of the members to serve as Chairman. Each member shall be a person who, as a result of training, experience, and achievement, is qualified to carry out the duties and functions of the Council, with particular emphasis placed on fields relating to materials policy or materials science and engineering. In addition, at least one of the members shall have a background in and understanding of environmentally related issues.

(Pub. L. 98–373, title II, § 203, July 31, 1984, 98 Stat. 1250.)

## § 1803. Responsibilities and authorities of Council

### (a) Primary responsibilities of Council

It shall be the primary responsibility of the Council—

(1) to assist and advise the President in establishing coherent national materials policies consistent with other Federal policies, and making recommendations necessary to implement such policies;

(2) to assist in establishing responsibilities for, and to coordinate, Federal materials-related policies, programs, and research and technology activities, as well as recommending to the Office of Management and Budget budget priorities for materials activities in each of the Federal departments and agencies;

(3) to review and appraise the various programs and activities of the Federal Government in accordance with the policy and directions given in the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601) [30 U.S.C. 1601 et seq.], and to determine the extent to which such programs and activities are contributing to the achievement of such policy and directions;

(4) to monitor and evaluate the critical materials needs of basic and advanced technology industries and the Government, including the critical materials research and development needs of the private and public sectors;

(5) to advise the President of mineral and material[1] trends, both domestic and foreign, the implications thereof for the United States and world economies and the national security, and the probable effects of such trends on domestic industries;

(6) to assess through consultation with the materials academic community the adequacy and quality of materials-related educational institutions and the supply of materials scientists and engineers;

(7) to make or furnish such studies, analyses, reports, and recommendations with respect to matters of materials-related policy and legislation as the President may request;

(8)(A) to prepare a report providing a domestic inventory of critical materials with projections on the prospective needs of Government and industry for these materials, including a long-range assessment, prepared in conjunction with the Office of Science and Technology Policy in accordance with the National Materials and Minerals Policy, Research and Development Act of 1980, and in conjunction with such other Government departments or agencies as may be considered necessary, of the prospective major critical materials problems which the United States is likely to confront in the immediate years ahead and providing advice as to how these problems may best be addressed, with the first such report being due on April 1, 1985, and (B) review and update such report and assessment as appropriate and report thereon to the Congress at least biennially; and

(9) to recommend to the Congress such changes in current policies, activities, and

[1] So in original. Probably should be ''materials''.

regulations of the Federal Government, and such legislation, as may be considered necessary to carry out the intent of this chapter and the National Materials and Minerals Policy, Research and Development Act of 1980.

**(b) Specific authorities of Council**

In carrying out its responsibilities under this section the Council shall have the authority—

(1) to establish such special advisory panels as it considers necessary, with each such panel consisting of representatives of industry, academia, and other members of the private sector, not to exceed ten members, and being limited in scope of subject and duration; and

(2) to establish and convene such Federal interagency committees as it considers necessary in carrying out the intent of this chapter.

**(c) Collaboration and cooperation of Council and Federal agencies with responsibilities related to materials**

In seeking to achieve the goals of this chapter and related Acts, the Council and other Federal departments and agencies with responsibilities or jurisdiction related to materials or materials policy, including the National Security Council, the Council on Environmental Quality, the Office of Management and Budget, and the Office of Science and Technology Policy, shall work collaboratively and in close cooperation.

(Pub. L. 98–373, title II, § 204, July 31, 1984, 98 Stat. 1250.)

REFERENCES IN TEXT

The National Materials and Minerals Policy, Research and Development Act of 1980, referred to in subsec. (a)(3), (8), and (9), is Pub. L. 96–479, Oct. 21, 1980, 94 Stat. 2305, which is classified generally to chapter 28 (§ 1601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

REVIEW OF RESEARCH AND DEVELOPMENT PRIORITIES IN SUPERCONDUCTORS

Pub. L. 100–418, title V, § 5143, Aug. 23, 1988, 102 Stat. 1446, provided that:

''(a) NATIONAL COMMISSION ON SUPERCONDUCTIVITY.—The President shall appoint a National Commission on Superconductivity to review all major policy issues regarding United States applications of recent research advances in superconductors in order to assist the Congress in devising a national strategy, including research and development priorities, the development of which will assure United States leadership in the development and application of superconducting technologies.

''(b) MEMBERSHIP.—The membership of the National Commission on Superconductivity shall include representatives of—

''(1) the National Critical Materials Council, the National Academy of Sciences, the National Academy of Engineering, the National Science Foundation, the National Aeronautics and Space Administration, the Department of Energy, the Department of Justice, the Department of Commerce (including the National Institute of Standards and Technology), the Department of Transportation, the Department of the Treasury, and the Department of Defense;

''(2) organizations whose membership is comprised of physicists, engineers, chemical scientists, or material scientists; and

''(3) industries, universities, and national laboratories engaged in superconductivity research.

''(c) CHAIRMAN.—A representative of the private sector shall be designated as chairman of the Commission.

''(d) COORDINATION.—The National Critical Materials Council shall be the coordinating body of the National Commission on Superconductivity and shall provide staff support for the Commission.

''(e) REPORT.—Within 6 months after the date of the enactment of this Act [Aug. 23, 1988], the National Commission on Superconductivity shall submit a report to the President and the Congress with recommendations regarding methods of enhancing the research, development, and implementation of improved superconductor technologies in all major applications.

''(f) SCOPE OF REVIEW.—In preparing the report required by subsection (e), the Commission shall consider addressing, but need not limit, its review to—

''(1) the state of United States competitiveness in the development of improved superconductors;

''(2) methods to improve and coordinate the collection and dissemination of research data relating to superconductivity;

''(3) methods to improve and coordinate funding of research and development of improved superconductors;

''(4) methods to improve and coordinate the development of viable commercial and military applications of improved superconductors;

''(5) foreign government activities designed to promote research, development, and commercial application of improved superconductors;

''(6) the need to provide increased Federal funding of research and development of improved superconductors;

''(7) the impact on the United States national security if the United States must rely on foreign producers of superconductors;

''(8) the benefit, if any, of granting private companies partial exemptions from United States antitrust laws to allow them to coordinate research, development, and products containing improved superconductors;

''(9) options for providing income tax incentives for encouraging research, development, and production in the United States of products containing improved superconductors; and

''(10) methods to strengthen domestic patent and trademark laws to ensure that qualified superconductivity discoveries receive the fullest protection from infringement.

''(g) SUNSET.—The Commission shall disband within a year of its establishment. Thereafter the National Critical Materials Council may review and update the report required by subsection (e) and make further recommendations as it deems appropriate.''

## § 1804. Program and policy for advanced materials research and technology

**(a) Functions of Council**

In addition to the responsibilities described in section 1803 of this title, the Council shall be responsible for coordination with appropriate agencies and departments of the Federal Government relative to Federal materials research and development policies and programs. Such policies and programs shall be consistent with the policies and goals described in the National Materials and Minerals Policy, Research and Development Act of 1980 [30 U.S.C. 1601 et seq.]. In carrying out this responsibility the Council shall—

(1)(A) establish a national Federal program plan for advanced materials research and development, recommend the designation of the key responsibilities for carrying out such research, and to provide[1] for coordination of

[1] So in original. Probably should be ''and provide''.

this plan with the Office of Science and Technology Policy, the Office of Management and Budget, and such other Federal offices and agencies as may be deemed appropriate, and (B) annually review such plan and report thereon to the Congress;

(2) review annually the materials research, development, and technology authorization requests and budgets of all Federal agencies and departments; and in this activity the Council shall make recommendations, in cooperation with the Office of Science and Technology Policy, the Office of Management and Budget, and all other Federal offices and agencies deemed appropriate, to ensure close coordination of the goals and directions of such programs with the policies determined by the Council; and

(3) assist the Office of Science and Technology Policy in the preparation of such long-range materials assessments and reports as may be required by the National Materials and Minerals Policy, Research and Development Act of 1980, and assist other Federal entities in the preparation of analyses and reporting relating to critical and advanced materials.

**(b) Review by Office of Management and Budget**

The Office of Management and Budget, in reviewing the materials research, development, and technology authorization requests of the various Federal departments and agencies for any fiscal year, and the recommendations of the Council, shall consider all of such requests and recommendations as an integrated, coherent, multiagency request which shall be reviewed by the Office of Management and Budget for its adherence to the national Federal materials program plan in effect for such fiscal year under subsection (a) of this section.

(Pub. L. 98–373, title II, § 205, July 31, 1984, 98 Stat. 1251.)

REFERENCES IN TEXT

The National Materials and Minerals Policy, Research and Development Act of 1980, referred to in subsec. (a), is Pub. L. 96–479, Oct. 21, 1980, 94 Stat. 2305, which is classified generally to chapter 28 (§ 1601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

NATIONAL FEDERAL PROGRAM PLAN FOR ADVANCED MATERIALS RESEARCH AND DEVELOPMENT

Pub. L. 100–418, title V, § 5181, Aug. 23, 1988, 102 Stat. 1454, directed National Critical Materials Council to prepare the national Federal program plan for advanced materials research and development under 30 U.S.C. 1804(a)(1)(A) and to submit such plan to Congress not later than 180 days after Aug. 23, 1988.

## § 1805. Innovation in basic and advanced materials industries

**(a) Centers for Industrial Technology; recommendations for establishment; activities**

(1) In order to promote the use of more cost-effective, advanced technology and other means of providing for innovation and increased productivity within the basic and advanced materials industries, the Council shall evaluate and make recommendations regarding the establishment of Centers for Industrial Technology as provided in Public Law 96–480 (15 U.S.C. 3705).

(2) The activities of such Centers shall focus on, but not be limited to, the following generic materials areas: corrosion; welding and joining of materials; advanced processing and fabrication technologies; microfabrication; and fracture and fatigue.

**(b) Mechanism for dissemination of data; establishment; computerization**

In order to promote better use and innovation of materials in design for improved safety or efficiency, the Council shall establish in cooperation with the appropriate Federal agencies and private industry, an effective mechanism for disseminating materials property data in an efficient and timely manner. In carrying out this responsibility, the Council shall consider, where appropriate, the establishment of a computerized system taking into account, to the maximum extent practicable, existing available resources.

(Pub. L. 98–373, title II, § 206, July 31, 1984, 98 Stat. 1252.)

REFERENCES IN TEXT

Public Law 96–480, referred to in subsec. (a)(1), is Pub. L. 96–480, Oct. 21, 1980, 94 Stat. 2311, known as the Stevenson-Wydler Technology Innovation Act of 1980, which is classified generally to chapter 63 (§ 3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

## § 1806. Compensation of members and reimbursement

**(a) Basic pay for levels II and III of Executive Schedule**

The Chairman of the Council, if not otherwise a paid officer or employee of the Federal Government, shall be paid at the rate not to exceed the rate of basic pay provided for level II of the Executive Schedule. The other members of the Council, if not otherwise paid officers or employees of the Federal Government, shall be paid at a per diem rate comparable to the rate not to exceed the rate of basic pay provided for level III of the Executive Schedule.

**(b) Reimbursement of travel expenses for attendance at meetings**

Subject to existing law and regulations governing conflicts of interest, the Council may accept reimbursement from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, or from any State or local government, for reasonable travel expenses incurred by any member or employee of the Council in connection with such member's or employee's attendance at any conference, seminar, or similar meeting.

(Pub. L. 98–373, title II, § 207, July 31, 1984, 98 Stat. 1252.)

REFERENCES IN TEXT

Levels II and III of the Executive Schedule, referred to in subsec. (a), are set out in sections 5313 and 5314, respectively, of Title 5, Government Organization and Employees.

## § 1807. Executive Director

**(a) Function, appointment, and compensation**

There shall be an Executive Director (hereinafter referred to as the ''Director''), who shall be

chief administrator of the Council. The Director shall be appointed by the Council full time and shall be paid at the rate not to exceed the rate of basic pay provided for level III of the Executive Schedule.

**(b) Personnel and services of experts and consultants; rules and regulations**

The Director is authorized—

(1) to employ such personnel as may be necessary for the Council to carry out its duties and functions under this chapter, but not to exceed twelve compensated employees;

(2) to obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5; and

(3) to develop, subject to approval by the Council, rules and regulations necessary to carry out the purposes of this chapter.

**(c) Consultation with other groups; utilization of public and private services, facilities, and information**

In exercising his responsibilities and duties under this chapter, the Director—

(1) may consult with representatives of academia, industry, labor, State and local governments, and other groups; and

(2) shall utilize to the fullest extent possible the services, facilities, and information (including statistical information) of public and private agencies, organizations, and individuals.

**(d) Utilization of voluntary and uncompensated labor and services**

Notwithstanding section 1342 of title 31, the Council may utilize voluntary and uncompensated labor and services in carrying out its duties and functions.

(Pub. L. 98–373, title II, § 208, July 31, 1984, 98 Stat. 1253.)

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a), is set out in section 5314 of Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (d), ''section 1342 of title 31'' substituted for ''section 367(b) of the Revised Statutes (31 U.S.C. 665(b))'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PERSONNEL MATTERS

Pub. L. 100–418, title V, § 5182, Aug. 23, 1988, 102 Stat. 1454, provided that:

''(a) REQUIREMENT TO INCREASE STAFF.—Not later than 30 days after the date of the enactment of this Act [Aug. 23, 1988], the Executive Director of the National Critical Materials Council shall increase the number of employees of the Council by the equivalent of 5 full-time employees over the number of employees of the Council on the date of the enactment of this Act.

''(b) QUALIFICATIONS OF STAFF.—Not less than the equivalent of 4 full-time employees appointed pursuant to subsection (a) shall be permanent professional employees who have expertise in technical fields that are relevant to the responsibilities of the National Critical Materials Council, such as materials science and engineering, environmental matters, minerals and natural resources, ceramic or composite engineering, metallurgy, and geology.''

**§ 1808. Responsibilities and duties of Director**

In carrying out his functions the Director shall assist and advise the Council on policies and programs of the Federal Government affecting critical and advanced materials by—

(1) providing the professional and administrative staff and support for the Council;

(2) assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, including research and development, which affect critical materials availability and needs;

(3) cataloging, as fully as possible, research and development activities of the Government, private industry, and public and private institutions; and

(4) initiating Government and private studies and analyses, including those to be conducted by or under the auspices of the Council, designed to advance knowledge of critical or advanced materials issues and develop alternative proposals, including research and development, to resolve national critical materials problems.

(Pub. L. 98–373, title II, § 209, July 31, 1984, 98 Stat. 1253.)

**§ 1809. General authority of Council**

The Council is authorized—

(1) to establish such internal rules and regulations as may be necessary for its operation;

(2) to enter into contracts and acquire materials and supplies necessary for its operation to such extent or in such amounts as are provided for in appropriation Acts;

(3) to publish, consistent with title 44, or arrange to publish critical materials information that it deems to be useful to the public and private industry to the extent that such publication is consistent with the national defense and economic interest;

(4) to utilize such services or personnel as may be provided to the Council on a nonreimbursable basis by any agency of the United States; and

(5) to exercise such authorities as may be necessary and incidental to carrying out its responsibilities and duties under this chapter.

(Pub. L. 98–373, title II, § 210, July 31, 1984, 98 Stat. 1253; Pub. L. 100–418, title V, § 5183, Aug. 23, 1988, 102 Stat. 1454.)

AMENDMENTS

1988—Par. (4). Pub. L. 100–418 substituted ''nonreimbursable'' for ''reimbursable''.

**§ 1810. Authorization of appropriations**

There are hereby authorized to be appropriated to carry out the provisions of this chapter a sum not to exceed $500,000 for the fiscal year ending September 30, 1985, and such sums as may be necessary thereafter: *Provided*, That the authority provided for in this chapter shall expire on September 30, 1992, unless otherwise authorized by Congress.

(Pub. L. 98–373, title II, § 211, July 31, 1984, 98 Stat. 1254; Pub. L. 100–418, title V, § 5184, Aug. 23, 1988, 102 Stat. 1454.)

AMENDMENTS

1988—Pub. L. 100–418 substituted ''1992'' for ''1990''.

### § 1811. "Materials" defined

As used in this chapter, the term ''materials'' has the meaning given it by section 1601(b) of this title.

(Pub. L. 98–373, title II, § 212, July 31, 1984, 98 Stat. 1254.)

## CHAPTER 31—MARINE MINERAL RESOURCES RESEARCH

Sec.
1901. Definitions.
1902. Research program.
1903. Grants, contracts, and cooperative agreements.
1904. Marine mineral research centers.
1905. Authorization of appropriations.

### § 1901. Definitions

In this chapter:

(1) The term ''contract'' has the same meaning as ''procurement contract'' in section 6303 of title 31.

(2) The term ''cooperative agreement'' has the same meaning as in section 6305 of title 31.

(3) The term ''eligible entity'' means—

(A) a research or educational entity chartered or incorporated under Federal or State law;

(B) an individual who is a United States citizen; or

(C) a State or regional agency.

(4) The term ''grant'' has the same meaning as ''grant agreement'' in section 6304 of title 31.

(5) The term ''in-kind contribution'' means a noncash contribution provided by a non-Federal entity that directly benefits and is related to a specific project or program. An in-kind contribution may include real property, equipment, supplies, other expendable property, goods, and services.

(6) The term ''marine mineral resource'' means—

(A) sand and aggregates;

(B) placers;

(C) phosphates;

(D) manganese nodules;

(E) cobalt crusts;

(F) metal sulfides;

(G) for purposes of this section and sections 1902 through 1905 of this title only, methane hydrate; and

(H) other marine resources that are not—

(i) oil and gas;

(ii) fisheries; or

(iii) marine mammals.

(7) The term ''methane hydrate'' means—

(A) a methane clathrate that is in the form of a methane-water ice-like crystalline material and is stable and occurs naturally in deep-ocean and permafrost areas; and

(B) other natural gas hydrates found in association with deep-ocean and permafrost deposits of methane hydrate.

(8) The term ''Secretary'' means the Secretary of the Interior.

(Pub. L. 91–631, title II, § 201, as added Pub. L. 104–325, § 2(3), Oct. 19, 1996, 110 Stat. 3994; amended Pub. L. 106–193, § 4, May 2, 2000, 114 Stat. 236.)

AMENDMENTS

2000—Par. (6)(G), (H). Pub. L. 106–193, § 4(1), added subpar. (G) and redesignated former subpar. (G) as (H).

Pars. (7), (8). Pub. L. 106–193, § 4(2), (3), added par. (7) and redesignated former par. (7) as (8).

SHORT TITLE

Section 1 of Pub. L. 104–325 provided that: ''This Act [enacting this chapter] may be cited as the 'Marine Mineral Resources Research Act of 1996'.''

### § 1902. Research program

#### (a) In general

The Secretary shall establish and carry out a program of research on marine mineral resources.

#### (b) Program goal

The goal of the program shall be to—

(1) promote research, identification, assessment, and exploration of marine mineral resources in an environmentally responsible manner;

(2) assist in developing domestic technologies required for efficient and environmentally sound development of marine mineral resources;

(3) coordinate and promote the use of technologies developed with Federal assistance, and the use of available Federal assets, for research, identification, assessment, exploration, and development of marine mineral resources; and

(4) encourage academia and industry to conduct basic and applied research, on a joint basis, through grants, cooperative agreements, or contracts with the Federal Government.

#### (c) Responsibilities of Secretary

In carrying out the program, the Secretary shall—

(1) promote and coordinate partnerships between industry, government, and academia to research, identify, assess, and explore marine mineral resources in an environmentally sound manner;

(2) undertake programs to develop the basic information necessary to the long-term national interest in marine mineral resources (including seabed mapping) and to ensure that data and information are accessible and widely disseminated as needed and appropriate;

(3) identify, and promote cooperation among agency programs that are developing, technologies developed by other Federal programs that may hold promise for facilitating undersea applications related to marine mineral resources, including technologies related to vessels and other platforms, underwater vehicles, survey and mapping systems, remote power sources, data collection and transmission systems, and various seabed research systems; and

(4) foster communication and coordination between Federal and State agencies, universities, and private entities concerning marine mineral research on seabeds of the continental shelf, ocean basins, and arctic and cold water areas.

In carrying out these responsibilities, the Secretary shall ensure the participation of non-Federal users of technologies and data related to marine mineral resources in planning and priority setting.

(Pub. L. 91–631, title II, § 202, as added Pub. L. 104–325, § 2(3), Oct. 19, 1996, 110 Stat. 3995.)

METHANE HYDRATE RESEARCH AND DEVELOPMENT

Pub. L. 106–193, May 2, 2000, 114 Stat. 234, known as the Methane Hydrate Research and Development Act of 2000, which was set out as a note under this section, was amended and transferred to chapter 32 (§ 2001 et seq.) of this title by Pub. L. 109–58, title IX, § 968, Aug. 8, 2005, 119 Stat. 894.

**§ 1903. Grants, contracts, and cooperative agreements**

**(a) Assistance and coordination**

**(1) In general**

The Secretary shall award grants or contracts to, or enter into cooperative agreements with, eligible entities to support research for the development or utilization of—

(A) methods, equipment, systems, and components necessary for the identification, assessment, and exploration of marine mineral resources in an environmentally responsible manner;

(B) methods of detecting, monitoring, and predicting the presence of adverse environmental effects in the marine environment and remediating the environmental effects of marine mineral resource exploration, development, and production; and

(C) education and training material in marine mineral research and resource management.

**(2) Cost-sharing for contracts or cooperative agreements**

**(A) Federal share**

Except as provided in subparagraph (B)(ii), the Federal share of the cost of a contract or cooperative agreement carried out under this subsection shall not be greater than 80 percent of the total cost of the project.

**(B) Non-Federal share**

The remaining non-Federal share of the cost of a project carried out under this section may be—

(i) in the form of cash or in-kind contributions, or both; and

(ii) comprised of funds made available under other Federal programs, except that non-Federal funds shall be used to defray at least 10 percent of the total cost of the project.

**(C) Consultation**

Not later than 180 days after October 19, 1996, the Secretary shall establish, after consultation with other Federal agencies, terms and conditions under which Federal funding will be provided under this subsection that are consistent with the Agreement on Subsidies and Countervailing Measures referred to in section 3511(d)(12) of title 19.

**(b) Competitive review**

**(1) In general**

An entity shall not be eligible to receive a grant or contract, or participate in a cooperative agreement, under subsection (a) of this section unless—

(A) the entity submits a proposal to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require; and

(B) the proposal has been evaluated by a competitive review panel under paragraph (3).

**(2) Competitive review panels**

**(A) Composition**

A competitive review panel shall be chaired by the Secretary or by the Secretary's designee and shall be composed of members who meet the following criteria:

**(i) Appointment**

The members shall be appointed by the Secretary.

**(ii) Experience**

Not less than 50 percent of the members shall represent or be employed by private marine resource companies that are involved in exploration of the marine environment or development of marine mineral resources.

**(iii) Interest**

None of the members may have an interest in a grant, contract, or cooperative agreement being evaluated by the panel.

**(B) No compensation**

A review panel member who is not otherwise a Federal employee shall receive no compensation for performing duties under this section, except that, while engaged in the performance of duties away from the home or regular place of business of the member, the member may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as a person employed intermittently in the Government service under section 5703 of title 5.

**(3) Evaluation**

A competitive review panel shall base an evaluation of a proposal on criteria developed by the Secretary that shall include—

(A) the merits of the proposal;

(B) the research methodology and costs of the proposal;

(C) the capability of the entity submitting the proposal and any other participating entity to perform the proposed work and provide in-kind contributions;

(D) the amount of matching funds provided by the entity submitting the proposal or provided by other Federal, State, or private entities;

(E) the extent of collaboration with other Federal, State, or private entities;

(F) in the case of a noncommercial entity, the existence of a cooperative agreement with a commercial entity that provides for collaboration in the proposed research;

(G) whether the proposal promotes responsible environmental stewardship; and

(H) such other factors as the Secretary considers appropriate.

**(c) Limitations**

**(1) Administrative expenses**

Not more than 10 percent of the amount made available to carry out this section during a fiscal year may be used by the Secretary for expenses associated with administration of the program authorized by this section.

**(2) Construction costs**

None of the funds made available under this section may be used for the construction of a new building or the acquisition, expansion, remodeling, or alteration of an existing building (including site grading and improvement and architect fees).

**(d) Reports**

An eligible entity that receives a grant or contract or enters into a cooperative agreement under this section shall submit an annual progress report and a final technical report to the Secretary that—

(1) describes project activities, implications of the project, the significance of the project to marine mineral research, identification, assessment, and exploration, and potential commercial and economic benefits and effects of the project; and

(2) in the case of an annual progress report, includes a project plan for the subsequent year.

(Pub. L. 91–631, title II, § 203, as added Pub. L. 104–325, § 2(3), Oct. 19, 1996, 110 Stat. 3995.)

CODIFICATION

October 19, 1996, referred to in subsec. (a)(2)(C), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 104–135, which enacted this chapter, to reflect the probable intent of Congress.

**§ 1904. Marine mineral research centers**

**(a) In general**

No later than 90 days after October 19, 1996, the Secretary shall designate 3 centers for marine mineral research and related activities.

**(b) Concentration**

One center shall concentrate primarily on research in the continental shelf regions of the United States, 1 center shall concentrate primarily on research in deep seabed and nearshore environments of islands, and 1 center shall concentrate primarily on research in arctic and cold water regions.

**(c) Criteria**

In designating a center under this section, the Secretary shall give priority to a university that—

(1) administers a federally funded center for marine minerals research;

(2) matriculates students for advanced degrees in marine geological sciences, nonenergy natural resources, and related fields of science and engineering;

(3) is a United States university with established programs and facilities that primarily focus on marine mineral resources;

(4) has engaged in collaboration and cooperation with industry, governmental agencies, and other universities in the field of marine mineral resources;

(5) has demonstrated significant engineering, development, and design experience in two or more of the following areas;[1]

(A) seabed exploration systems;

(B) marine mining systems; and

(C) marine mineral processing systems; and

(6) has been designated by the Secretary as a State Mining and Mineral Resources Research Institute.

**(d) Center activities**

A center shall—

(1) provide technical assistance to the Secretary concerning marine mineral resources;

(2) advise the Secretary on pertinent international activities in marine mineral resources development;

(3) engage in research, training, and education transfer associated with the characterization and utilization of marine mineral resources; and

(4) promote the efficient identification, assessment, exploration, and management of marine mineral resources in an environmentally sound manner.

**(e) Allocation of funds**

In distributing funds to the centers designated under subsection (a) of this section, the Secretary shall, to the extent practicable, allocate an equal amount to each center.

**(f) Limitations**

**(1) Administrative expenses**

Not more than 5 percent of the amount made available to carry out this section during a fiscal year may be used by the Secretary for expenses associated with administration of the program authorized by this section.

**(2) Construction costs**

None of the funds made available under this section may be used for the construction of a new building or the acquisition, expansion, remodeling, or alteration of an existing building (including site grading and improvement and architect fees).

(Pub. L. 91–631, title II, § 204, as added Pub. L. 104–325, § 2(3), Oct. 19, 1996, 110 Stat. 3998.)

**§ 1905. Authorization of appropriations**

There is authorized to be appropriated such sums as are necessary to carry out this chapter.

(Pub. L. 91–631, title II, § 205, as added Pub. L. 104–325, § 2(3), Oct. 19, 1996, 110 Stat. 3999.)

## CHAPTER 32—METHANE HYDRATE RESEARCH AND DEVELOPMENT

Sec.
2001. Findings.
2002. Definitions.
2003. Methane hydrate research and development program.
2004. National Research Council study.
2005. Reports and studies for Congress.
2006. Authorization of appropriations.

[1] So in original. The semicolon probably should be a colon.

CODIFICATION

This chapter is comprised of Pub. L. 106–193, as amended generally by Pub. L. 109–58, title IX, § 968(a), Aug. 8, 2005, 119 Stat. 894, known as the Methane Hydrate Research and Development Act of 2000, which was formerly set out as a note under section 1902 of this title.

## § 2001. Findings

Congress finds that—

(1) in order to promote energy independence and meet the increasing demand for energy, the United States will require a diversified portfolio of substantially increased quantities of electricity, natural gas, and transportation fuels;

(2) according to the report submitted to Congress by the National Research Council entitled ''Charting the Future of Methane Hydrate Research in the United States'', the total United States resources of gas hydrates have been estimated to be on the order of 200,000 trillion cubic feet;

(3) according to the report of the National Commission on Energy Policy entitled ''Ending the Energy Stalemate—A Bipartisan Strategy to Meet America's Energy Challenge'', and dated December 2004, the United States may be endowed with over one-fourth of the methane hydrate deposits in the world;

(4) according to the Energy Information Administration, a shortfall in natural gas supply from conventional and unconventional sources is expected to occur in or about 2020; and

(5) the National Academy of Sciences states that methane hydrate may have the potential to alleviate the projected shortfall in the natural gas supply.

(Pub. L. 106–193, § 2, as added Pub. L. 109–58, title IX, § 968(a), Aug. 8, 2005, 119 Stat. 894.)

PRIOR PROVISIONS

A prior section 2 of Pub. L. 106–193 was set out in a note under section 1902 of this title prior to the general amendment of Pub. L. 106–193 by Pub. L. 109–58.

SHORT TITLE

Pub. L. 106–193, § 1, as added by Pub. L. 109–58, title IX, § 968(a), Aug. 8, 2005, 119 Stat. 894, provided that: ''This Act [enacting this chapter] may be cited as the 'Methane Hydrate Research and Development Act of 2000'.''

RECLASSIFICATION

Pub. L. 109–58, title IX, § 968(b), Aug. 8, 2005, 119 Stat. 898, provided that: ''The Law Revision Counsel shall reclassify the Methane Hydrate Research and Development Act of 2000 (30 U.S.C. 1902 note; Public Law 106–193) to a new chapter at the end of title 30, United States Code.''

## § 2002. Definitions

In this chapter:

**(1) Contract**

The term ''contract'' means a procurement contract within the meaning of section 6303 of title 31.

**(2) Cooperative agreement**

The term ''cooperative agreement'' means a cooperative agreement within the meaning of section 6305 of title 31.

**(3) Director**

The term ''Director'' means the Director of the National Science Foundation.

**(4) Grant**

The term ''grant'' means a grant awarded under a grant agreement (within the meaning of section 6304 of title 31).

**(5) Industrial enterprise**

The term ''industrial enterprise'' means a private, nongovernmental enterprise that has an expertise or capability that relates to methane hydrate research and development.

**(6) Institution of higher education**

The term ''institution of higher education'' means an institution of higher education (as defined in section 1002 of title 20).

**(7) Secretary**

The term ''Secretary'' means the Secretary of Energy, acting through the Assistant Secretary for Fossil Energy.

**(8) Secretary of Commerce**

The term ''Secretary of Commerce'' means the Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration.

**(9) Secretary of Defense**

The term ''Secretary of Defense'' means the Secretary of Defense, acting through the Secretary of the Navy.

**(10) Secretary of the Interior**

The term ''Secretary of the Interior'' means the Secretary of the Interior, acting through the Director of the United States Geological Survey, the Director of the Bureau of Land Management, and the Director of the Minerals Management Service.

(Pub. L. 106–193, § 3, as added Pub. L. 109–58, title IX, § 968(a), Aug. 8, 2005, 119 Stat. 895.)

PRIOR PROVISIONS

A prior section 3 of Pub. L. 106–193 was set out in a note under section 1902 of this title prior to the general amendment of Pub. L. 106–193 by Pub. L. 109–58.

## § 2003. Methane hydrate research and development program

**(a) In general**

**(1) Commencement of program**

Not later than 90 days after August 8, 2005, the Secretary, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of the Interior, and the Director, shall commence a program of methane hydrate research and development in accordance with this section.

**(2) Designations**

The Secretary, the Secretary of Commerce, the Secretary of Defense, the Secretary of the Interior, and the Director shall designate individuals to carry out this section.

**(3) Coordination**

The individual designated by the Secretary shall coordinate all activities within the Department of Energy relating to methane hydrate research and development.

**(4) Meetings**

The individuals designated under paragraph (2) shall meet not later than 180 days after August 8, 2005, and not less frequently than every 180 days thereafter to—

(A) review the progress of the program under paragraph (1); and

(B) coordinate interagency research and partnership efforts in carrying out the program.

**(b) Grants, contracts, cooperative agreements, interagency funds transfer agreements, and field work proposals**

**(1) Assistance and coordination**

In carrying out the program of methane hydrate research and development authorized by this section, the Secretary may award grants to, or enter into contracts or cooperative agreements with, institutions of higher education, oceanographic institutions, and industrial enterprises to—

(A) conduct basic and applied research to identify, explore, assess, and develop methane hydrate as a commercially viable source of energy;

(B) identify methane hydrate resources through remote sensing;

(C) acquire and reprocess seismic data suitable for characterizing methane hydrate accumulations;

(D) assist in developing technologies required for efficient and environmentally sound development of methane hydrate resources;

(E) promote education and training in methane hydrate resource research and resource development through fellowships or other means for graduate education and training;

(F) conduct basic and applied research to assess and mitigate the environmental impact of hydrate degassing (including both natural degassing and degassing associated with commercial development);

(G) develop technologies to reduce the risks of drilling through methane hydrates; and

(H) conduct exploratory drilling, well testing, and production testing operations on permafrost and non-permafrost gas hydrates in support of the activities authorized by this paragraph, including drilling of one or more full-scale production test wells.

**(2) Competitive peer review**

Funds made available under paragraph (1) shall be made available based on a competitive process using external scientific peer review of proposed research.

**(c) Methane hydrates advisory panel**

**(1) In general**

The Secretary shall establish an advisory panel (including the hiring of appropriate staff) consisting of representatives of industrial enterprises, institutions of higher education, oceanographic institutions, State agencies, and environmental organizations with knowledge and expertise in the natural gas hydrates field, to—

(A) assist in developing recommendations and broad programmatic priorities for the methane hydrate research and development program carried out under subsection (a)(1);

(B) provide scientific oversight for the methane hydrates program, including assessing progress toward program goals, evaluating program balance, and providing recommendations to enhance the quality of the program over time; and

(C) not later than 2 years after August 8, 2005, and at such later dates as the panel considers advisable, submit to Congress—

(i) an assessment of the methane hydrate research program; and

(ii) an assessment of the 5-year research plan of the Department of Energy.

**(2) Conflicts of interest**

In appointing each member of the advisory panel established under paragraph (1), the Secretary shall ensure, to the maximum extent practicable, that the appointment of the member does not pose a conflict of interest with respect to the duties of the member under this chapter.

**(3) Meetings**

The advisory panel shall—

(A) hold the initial meeting of the advisory panel not later than 180 days after the date of establishment of the advisory panel; and

(B) meet biennially thereafter.

**(4) Coordination**

The advisory panel shall coordinate activities of the advisory panel with program managers of the Department of Energy at appropriate National Laboratories.

**(d) Construction costs**

None of the funds made available to carry out this section may be used for the construction of a new building or the acquisition, expansion, remodeling, or alteration of an existing building (including site grading and improvement and architect fees).

**(e) Responsibilities of the Secretary**

In carrying out subsection (b)(1), the Secretary shall—

(1) facilitate and develop partnerships among government, industrial enterprises, and institutions of higher education to research, identify, assess, and explore methane hydrate resources;

(2) undertake programs to develop basic information necessary for promoting long-term interest in methane hydrate resources as an energy source;

(3) ensure that the data and information developed through the program are accessible and widely disseminated as needed and appropriate;

(4) promote cooperation among agencies that are developing technologies that may hold promise for methane hydrate resource development;

(5) report annually to Congress on the results of actions taken to carry out this chapter; and

(6) ensure, to the maximum extent practicable, greater participation by the Depart-

ment of Energy in international cooperative efforts.

(Pub. L. 106–193, § 4, as added Pub. L. 109–58, title IX, § 968(a), Aug. 8, 2005, 119 Stat. 895.)

PRIOR PROVISIONS

A prior section 4 of Pub. L. 106–193 was set out in a note under section 1902 of this title prior to the general amendment of Pub. L. 106–193 by Pub. L. 109–58.

### § 2004. National Research Council study

#### (a) Agreement for Study

The Secretary shall offer to enter into an agreement with the National Research Council under which the National Research Council shall—

(1) conduct a study of the progress made under the methane hydrate research and development program implemented under this chapter; and

(2) make recommendations for future methane hydrate research and development needs.

#### (b) Report

Not later than September 30, 2009, the Secretary shall submit to Congress a report containing the findings and recommendations of the National Research Council under this section.

(Pub. L. 106–193, § 5, as added Pub. L. 109–58, title IX, § 968(a), Aug. 8, 2005, 119 Stat. 898.)

PRIOR PROVISIONS

A prior section 5 of Pub. L. 106–193 was set out in a note under section 1902 of this title prior to the general amendment of Pub. L. 106–193 by Pub. L. 109–58.

### § 2005. Reports and studies for Congress

The Secretary shall provide to the Committee on Science of the House of Representatives and the Committee on Energy and Natural Resources of the Senate copies of any report or study that the Department of Energy prepares at the direction of any committee of Congress relating to the methane hydrate research and development program implemented under this chapter.

(Pub. L. 106–193, § 6, as added Pub. L. 109–58, title IX, § 968(a), Aug. 8, 2005, 119 Stat. 898.)

PRIOR PROVISIONS

A prior section 6 of Pub. L. 106–193 was set out in a note under section 1902 of this title prior to the general amendment of Pub. L. 106–193 by Pub. L. 109–58.

### § 2006. Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this chapter, to remain available until expended—

(1) $15,000,000 for fiscal year 2006;

(2) $20,000,000 for fiscal year 2007;

(3) $30,000,000 for fiscal year 2008;

(4) $40,000,000 for fiscal year 2009; and

(5) $50,000,000 for fiscal year 2010.

(Pub. L. 106–193, § 7, as added Pub. L. 109–58, title IX, § 968(a), Aug. 8, 2005, 119 Stat. 898.)

PRIOR PROVISIONS

A prior section 7 of Pub. L. 106–193 was set out in a note under section 1902 of this title prior to the general amendment of Pub. L. 106–193 by Pub. L. 109–58.