

ANNEX A

CHAPTER 86. SURFACE AND UNDERGROUND COAL
MINING: GENERAL

Subchapter A. GENERAL PROVISIONS

Sec.

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§ 86.6. Extraction of coal incidental to government-financed highway construction or reclamation.

(a) Extraction of coal incidental to government-financed highway construction or government-financed reclamation is exempt from the provisions of the Act and this Chapter as it relates to surface mining activities and operations, and Chapters 87 and 88, if:

(1) The extraction of coal is necessary to enable the construction or reclamation to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, or within the boundaries of the area directly affected by government-financed reclamation, may be considered incidental to that construction or reclamation;

(2) The construction or reclamation is funded by a federal, Commonwealth, county, municipal, or local unit of government, or a department, bureau, agency, or office of the unit which, directly or through another unit of government, finances the construction or reclamation; and

(3) The construction or reclamation is funded 50 percent or more by funds appropriated from the government unit's budget or obtained from general revenue bonds. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation contract or project. Highway construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent or in-kind payments does not qualify as government-financed construction.

(b) Any person extracting coal incidental to government-financed highway construction or reclamation who extracts more than 250 tons of coal or affects more than two acres shall maintain, on the site of the extraction operation and make available for inspection the following:

- (1) A description of the construction or reclamation project;
- (2) The exact location of the construction or reclamation, right-of-way or the boundaries of the area which will be directly affected by the construction or reclamation; and
- (3) The government agency that is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

Subchapter B. PERMITS

GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

§ 86.37. Criteria for permit approval or denial.

(a) A permit or revised permit application will not be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of the information in the application or from information otherwise available, which is documented in the approval, and made available to the applicant, that the following apply:

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(5) The proposed permit area is not one of the following:

(i) Included within an area designated unsuitable for mining under Subchapter D (relating to areas unsuitable for mining). **This prohibition does not preclude the submission of a permit application, which will be processed by the Department as a petition to terminate or modify the existing designation in accordance with Subchapter D.**

(ii) Within an area which has been included in a petition for designation under § 86.124(a)(6) (relating to procedures: initial processing, record keeping and notification requirements).

(iii) On lands subject to the prohibitions or limitations of Subchapter D.

(iv) Within 100 feet (30.48 meters) of the outside right-of-way line of any public road, except as provided for in Subchapter D.

(v) Within 300 feet (91.44 meters) from any occupied dwelling, except as provided for in Subchapter D.

(vi) Within 100 feet (30.48 meters) of a stream, except as provided for in § 86.102 (relating to areas where mining is prohibited or limited).

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Subchapter D. AREAS UNSUITABLE FOR MINING

§ 86.123. Procedures: petitions.

(a) A person who has an interest which is, or may be, adversely affected has the right to petition the Department to have an area designated as unsuitable for surface mining operations or to have an existing designation terminated. **An interested person may file an application for a mining permit for an area designated unsuitable for surface mining operations and the**

Department will process the permit application as a petition to terminate or modify the existing designation.

(b) Under the procedures in this section, the Department may initiate proceedings seeking to have an area designated as unsuitable for surface mining operations or to have the designation terminated.

(c) The petitioner shall provide the following information on forms developed by the Department:

(1) The location and approximate size of the area covered by the petition, utilizing property or boundary lines or landmarks, and including a 7 1/2-minute topographic map published by the United States Geological Survey with the perimeter of the area shown thereon.

(2) Allegations of facts and supporting evidence which would tend to establish that the areas are unsuitable for all or certain types of surface mining operations assuming that contemporary mining practices required under applicable regulatory practices would be followed if the area were to be mined.

(3) A description of how mining of the area has affected or may adversely affect people, land, air, water or other resources.

(4) The petitioner's name, address, telephone number and notarized signature.

(5) Identification of the petitioner's interest which is or may be adversely affected. A person having an interest which is or may be adversely affected shall demonstrate an "injury in fact" by describing the injury to the specific affected interest and demonstrating how they are among the injured.

(d) A person who has an interest which is or may be adversely affected may petition to terminate a designation. The petition shall contain:

(1) The location and size of the area covered by the petition, including a 7 1/2-minute topographic map published by the United States Geologic Survey with the perimeters of the area shown thereon.

(2) Allegations of newly discovered facts, with newly discovered supporting evidence, not contained in the record of the proceeding in which the area was designated unsuitable, and which were unavailable at that time, which evidence would tend to establish the statements or allegations, and which statements or allegations indicate that the designation should be terminated based on one or more of the following:

(i) The nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in § 86.122(b) (relating to criteria for designating lands as unsuitable).

(ii) Reclamation now being technologically and economically feasible, if the designation was based on the criteria found in § 86.122(a)

(iii) The resources or condition not being affected by surface mining operations, or in the case of land use plans, not being incompatible with surface mining operations during and after mining, if the designation was based on the criteria found in § 86.122(b).

(3) The petitioner's name, address and telephone number.

(4) Identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation.