

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,<sup>1</sup> maintenance, and enforcement of a permit system, meeting the requirements of this subchapter for the regulations<sup>1</sup> 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<sup>1</sup>

(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 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 determine 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 provi-