

(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 min-

ing 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 program 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.<sup>1</sup>

(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;<sup>2</sup>

**(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-

<sup>1</sup> So in original. The period probably should be a semicolon.

<sup>2</sup> So in original. The semicolon probably should be a period.

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<sup>1</sup> 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,<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 au-

thority 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.)

### **Editorial Notes**

#### 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

<sup>1</sup> So in original.