FEDERAL REGISTER: 47 FR 26356 (June 17, 1982)

DEPARTMENT OF THE INTERIOR
AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Parts 730, 731, 732, 733 and 736
Amendment of Procedures for Submission, Review, Approval or Disapproval and Maintenance of State Programs and for Substituting Federal Enforcement and Establishing a Federal Program in a State

ACTION: Final rules.

SUMMARY: The Office of Surface Mining (OSM) is amending its rules which set forth the procedures for the submission, review, approval or disapproval, and maintenance of State programs, for substituting Federal enforcement of State programs and for establishing a Federal program in a State. The purpose of these rules is to provide greater editorial clarity and to remove or amend certain burdensome or counter-productive requirements to achieve a more streamlined set of regulations.

EFFECTIVE DATE: June 17, 1982.

ADDRESS: A transcript of the hearing held on January 5, 1982, and copies of all comments received are on file in the OSM Administrative Record located in Room 5315, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Program Operations and Inspection, Office of Surface Mining, Room 210, South Interior Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION:

I. PUBLIC PARTICIPATION

A draft of the proposed rule was made available to State regulatory authorities and groups representing industry and citizens. On December 4, 1981, OSM published proposed rules to amend 30 CFR Parts 730, 731, 732, 733 and 736 *(46 FR 59482-59492).* Public comments were invited for 45 days ending January 18, 1982, and a public hearing was held in Washington, D.C. on January 5, 1982. Three speakers offered testimony at the public hearing and written comments were received from seventeen (17) individuals or groups. All testimony and comments were analyzed.

A transcript of the public hearing and copies of all comments received are on file in the OSM Administrative Record at the address listed above under "ADDRESSES."

II. BACKGROUND

Section 503 of the Surface Mining Control and Reclamation Act of 1977 (the Act) provides for a State to assume primary jurisdiction for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating its capability to do so by submitting a proposed State program to the Secretary of the Interior for approval. Section 504 of the Act directs the Secretary to prepare and implement a Federal program for a State if the State does not elect to submit a program, if the State's submitted or resubmitted program is disapproved, or if the State fails to implement, enforce or maintain its approved State program. To implement the provisions of sections 503 and 504 and to insure a balance among the competing mandates of the Act, the Secretary promulgated Parts 730-736 in the permanent regulatory program *(44 FR 15323-15332,* March 13, 1979). Under the current regulations, a State must submit its proposed permanent program to OSM under procedures contained in 30 CFR Part 731 to assume primary jurisdiction under the Act for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders. OSM reviews the proposal and recommends approval or disapproval to the Secretary of the Interior of each State program according to procedures contained in 30 CFR Part 732. Part 733 establishes requirements for the maintenance of approved State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs. Part 736 establishes standards and procedures for the promulgation, implementation and administration of a Federal program for a State.

Since the current regulations were promulgated in March 1979, twenty-four (24) States have submitted regulatory programs for review. Of that number, seventeen (17) have received full or conditional approval of their programs, and seven (7) are presently undergoing review by the Department.

Based upon its experience in processing these programs and monitoring those that have been approved, and based upon comments and suggestions from the States and others, OSM proposed on December 4, 1981, to modify the existing regulations, streamline the regulations, and make needed changes.

III. AMENDMENTS

The amendments to Parts 730, 731, 732, 733 and 736 will be discussed below by part and section number, together with the relevant public comments on each amendment. Comments on general topics or those not addressed to a specific section, will be discussed last.

PART 730 -- GENERAL REQUIREMENTS

1. SECTION 730.2 - OBJECTIVES and SECTION 730.4 - RESPONSIBILITIES.

These sections and other similar ones are being removed for editorial clarity. These sections contain no substantive requirements and are merely explanatory of requirements which follow. Three commenters, the Appalachian Research and Defense Fund of Kentucky (ARDF), the Tug Valley Recovery Center (TVRC), and the Northern Great Plains Office of the Sierra Club and Friends of the Earth (Sierra Club), objected to removing such sections and recommended retaining them. The Sierra Club stated that there would be no legal effect as a result of removing these sections, and that, therefore, the intent of the deletions must be to provide the appearance of change. OSM agrees that these sections have no legal effect. One of OSM's stated intentions in proposing these amendments was to streamline the rules by removing unnecessary provisions. The other two commenters stated that removing these sections would make the respective obligations of the States and the Federal government less clear. OSM does not agree that removal of these sections would have this effect. The substantive requirements of the regulations delineate with specificity the respective obligations of the States and the Federal government.

2. SECTION 730.5 - DEFINITIONS.

Sections 730.5(b) and 732.15 were amended and Section 731.13 removed in a separate rulemaking action. *46 FR 53376-53384* (October 28, 1981). The Sierra Club asked for additional clarification of those amendments. The rationale for those amendments is discussed at considerable length in the notice of final rulemaking published October 28, 1981 *(46 FR 53376-53384).* Any further discussion of those amendments is outside the scope of this rulemaking.

3. SECTION 730.11 - INCONSISTENT AND MORE STRINGENT STATE LAWS AND REGULATIONS.

Three amendments were proposed to Section 730.11(a), which requires the Director to publish in the Federal Register any State law or regulation determined to be inconsistent with the Act or the provisions of 30 CFR Chapter VII. The first proposed amendment, which is being adopted today, is necessary to make Section 730.11(a) consistent with the change to Section 730.5(b). (See discussion above at Section 730.5.) The amendment incorporates the term "inconsistent with" as used in section 505(a) of the Act. Under amended Section 730.11(a), no State law or regulation would be superseded by any provision of the Act or the regulations, except to the extent that the State law or regulation is inconsistent with the requirements of the Act or Chapter VII of 30 CFR.

The Sierra Club objected to this amendment and asserted the wording is vague. OSM believes that the term "consistent with" was adequately defined in the rulemaking for Section 730.5 (see discussion and references above) and that Section 730.11(a) is written with sufficient clarity.

A second proposed amendment, adopted today with additional changes, would require the Director to provide an opportunity for comment by interested parties prior to a final determination to set aside as inconsistent any State law or regulation. The Commonwealth of Kentucky supported the proposed amendment. The Sierra Club and ARDF objected to the proposed amendment on the grounds that section 505 does not provide for a comment period and that it would

lead to unnecessary delays. ARDF also suggested that if a comment period is provided, that it be for a time certain, in order to avoid delays. While OSM agrees that section 505 does not specifically provide for a comment period, it believes that such a comment period provides a State with the opportunity to explain its provision and would diminish the likelihood of a decision which sets aside a State provision on the basis of a misunderstanding. OSM agrees that the comment period should be for a time certain, and the final rule has been revised to provide that the Director shall publish a notice of proposed action in the Federal Register and provide 30 days for public comment.

The third proposed amendment, which is adopted today, provides that the Director may publish either the complete text or a summary of the State law or regulation. If a summary of the provision is published, the notice will indicate where copies of the complete text will be available for inspection and how copies of it may be obtained free of charge. ARDF objected to the proposed amendment and stated that a summary of the provision is not sufficient to afford interested parties an opportunity to comment. As stated in the preamble to the proposed rule, the Director will publish the complete text when the material to be printed is brief. Only in cases where the material is voluminous will the Director publish a summary, and in those cases the Director will provide free copies of the complete text upon request. The amendment will insure adequate public notice in the most cost-effective manner available.

PART 731 -- SUBMISSION OF STATE PROGRAMS

4. SECTION 731.11 - ELIGIBILITY.

Section 731.11 is being removed for editorial clarity. The rationale for this change is the same as that provided under the preceding discussion of Sections 730.2 and 730.4

5. SECTION 731.12 - SUBMISSION OF STATE PROGRAMS.

Amendments were proposed to Section 731.12 to eliminate any reference to dates by which a State shall submit a State program, and to clarify that a State may submit a proposed program at any time. Although no comments were received which objected to removing the reference to dates, a number of commenters, including ARDF, the Sierra Club, and the Environmental Policy Institute (EPI), objected to the amendment clarifying that a State may submit a proposed program at any time. These commenters argued that section 504 of the Act precludes a State which has failed to obtain approval of its program from submitting another State program until after a Federal program is implemented. OSM believes that these commenters may have misinterpreted the proposed amendment. Sections 731.12 and 732.14 were amended in a final rulemaking action on October 8, 1981 *(46 FR 50018-50019)* to provide that a State whose program has been disapproved by a final decision may submit a proposed program at any time. In that rulemaking notice, OSM disagreed with similar comments regarding the interpretation of section 504(e) of the Act. As the preamble to the October 8, 1981, final rule concluded, OSM interprets the language in section 504(e) to be permissive in that a State may submit a new program after a Federal program is implemented. This issue was disposed of in the October 8, 1981, notice and was never within the scope of the present rulemaking. What the October 8, 1981, final rule did was to amend Section 731.12(b) to provide that:

(b) States may submit a proposed program at any time, if:

(1) By a final decision, the State program submitted under 30 CFR 731.12(a) is disapproved; or

(2) Implementation of a Federal program under 30 CFR Part 736 has been completed; or

(3) There have been no surface coal mining and reclamation operations since August 3, 1977, but coal exploration or surface coal mining operations are anticipated; or

(4) A State program has been enjoined by a court of competent jurisdiction, in which case the requirements of 30 CFR 730.12 shall apply.

The December 4, 1981, notice proposed to further amend the October 8, 1981, final rule to provide simply that a State may submit a proposed program at any time. The purpose of the proposed amendment was to clarify the awkward construction of Section 731.12(b) which makes it appear that there are only four limited categories of States which may submit proposed programs at any time. In reality, these four categories comprise the entire universe of possible situations in which a State could find itself. Since no comments were received on this specific proposed amendment, it is being adopted today without any change from the proposed rule.

Two comments were received on Section 731.12 regarding the December 4 preamble discussion of the consequences if a State chooses not to resubmit (under 30 CFR 732.13(g)), if the resubmitted program is disapproved pursuant to Section 732.13(f), or if an injunction extends beyond the period stipulated in section 503(d) of the Act. Section 502(f) of the Act and Section 771.13(a) of OSM's regulations provide that following the final disapproval of a State program, and prior to promulgation of a Federal program, the interim program of section 502 continues in effect and during this period "no new permits shall be issued by the State whose program has been disapproved" (emphasis added). The preamble to the December 4 proposed rules also put the States on notice that under these circumstances, OSM will take immediate action to develop and implement a Federal program for such a State. Both commenters, the Mining and Reclamation Council of America (MARC) and the Joint NCA/AMC Committee on Surface Mining Regulations (the Joint Committee), expressed concern about the impact on operators who will be unable to continue mining unless renewals, extensions or revisions are made to interim program permits during this period and requested a clarification of the "no new permits" language in section 502(f) of the Act and 30 CFR 771.13(a). Both section 502(f) and 30 CFR 771.13(a) provide that permits which lapse during this period may continue in full force and effect until promulgation of a Federal program. This provision indicates that Congress did not intend for existing operations to cease. Therefore, OSM believes that "new permits" does not include renewals, revisions or extensions of existing interim program permits. "No new permits" does mean, however, that no new operations will be allowed until a Federal program is implemented. The Joint Committee also requested clarification that the "no new permits" language of section 502(f) means that no new permits shall be issued under the interim program of section 502. The Joint Committee pointed out that section 502(b) requires that operations which commence operations on or after six months from the date of enactment of the Act must obtain an interim permit and that operations in existence prior to six months after enactment may operate without interim permits and are not covered by section 502(f). OSM agrees that such operations may continue in effect under applicable State laws (some of which required no permits) as they did before the Act, until a Federal program is implemented.

6. SECTION 731.14 - CONTENT REQUIREMENTS FOR PROGRAM SUBMISSIONS.

A number of changes were proposed to Section 731.14, which establishes content requirements for program submissions, to consolidate or eliminate certain requirements. All of the proposed changes were discussed in the preamble to the December 4 proposed rules. Only those proposed changes which elicited public comment will be discussed further today. Those proposals not discussed are adopted today unchanged from the proposed rules.

The Commonwealth of Kentucky generally supported all the proposed changes. EPI objected to the proposed amendment to Section 731.14(c) which would allow preparation of the section-by-section comparison of the State's laws and regulations with the Act and the Secretary's regulations by some qualified entity other than the State Attorney General. EPI asserted that only the chief legal officer of the State can explain the legal effect of any differences. OSM notes that the existing regulation already allows preparation of the legal opinion by either the Attorney General or the chief legal officer of the State regulatory authority. The intent of the proposed amendment was to relieve the Attorney General of the very time-consuming task of preparing the section-by-section comparison. The legal staff of the regulatory authority may be in a better position to explain the legal differences when an Attorney General's office has not been actively involved in the program. Therefore, the final rule is being adopted as proposed.

ARDF objected to the proposed amendment to Section 731.14(h) which requires statistical information concerning coal mining operations in the State. The amendment, adopted today, eliminates paragraphs (h)(1)-(h)(8) which list suggested types of information which might be included in a State's submission. ARDF asserted that these examples of types of information which may be submitted are helpful to the State and necessary to support a finding of capability on the State's part. OSM agrees that these suggestions might be helpful, but since they are not requirements, it is not appropriate to include them in regulations, and the final rule reflects this.

An amendment was proposed to Section 731.14 to eliminate paragraphs (n), (o) and (p) as duplicative of information already available. These subsections require, respectively, information concerning special environmental performance standards, a brief description of other programs administered by the regulatory authority, and such other information as the director may require.

ARDF and EPI objected to eliminating paragraph (p) and ARDF also objected to eliminating paragraph (n) and (o). The commenters stated that paragraph (p) gives the Director general authority to require additional information and is a necessary catch-all for items that cannot be anticipated. OSM disagrees that this provision is necessary. The Secretary cannot approve a State program unless he finds that the program includes all necessary provisions. It is in the State's best

interest to provide whatever information the Director may require. ARDF objected to the deletion of paragraph (o) regarding other programs administered by the regulatory authority. OSM does not believe this requirement is necessary. Under proposed Section 731.14(e), being adopted today, the State must describe the organization of the regulatory authority and provide a description of how the staffing will be adequate to carry out the functions. In addition, under Section 732.15(d), the Secretary cannot approve a State program unless he finds that the State regulatory authority and other agencies having a role in the State program have sufficient legal, technical and administrative personnel and funding to carry out the provisions of the program. ARDF also objected to the deletion of paragraph (n), but offered no specific argument. Paragraphs (n), (o) and (p) are therefore deleted for the reasons stated above.

PART 732 -- PROCEDURES AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM SUBMISSIONS

7. SECTION 732.4 - RESPONSIBILITY.

Section 732.4 is being removed for editorial clarity. The rationale for this change is the same as that provided under the preceding discussion of Sections 730.2 and 730.4.

8. SECTION 732.11 - REVIEW BY THE REGIONAL DIRECTOR and SECTION 732.12 - NOTICE AND PUBLIC HEARING REQUIREMENTS.

The current regulations provide for two review periods conducted in series, the first one for completeness, including a public meeting, and the second for substantive adequacy, requiring a public hearing. The amendments proposed on December 4 provided instead for a single review period for both completeness and substance, to include just one required public hearing. The proposed rules are being adopted today, but with considerable modification based on the public comments received.

The Joint Committee, MARC and Kentucky supported the proposed rule. Kentucky also suggested clarifying proposed Section 732.11(b)(2) so that additions as well as revisions to the State program may be made. The Office has adopted this suggestion and revised the final rule accordingly.

ARDF, TVRC and EPI did not object to the general concept of the proposed amendments, but did take issue with compressing the time periods available for public review. The Office did not intend by the proposed amendments to shorten the time available for public review and comment. The final rule has been revised to provide that the public hearing will be held no sooner than 40 days following publication of the notice.

The total time allowed for public comment will vary from 45 to 60 days and will be set on a case-by-case basis, depending on the circumstances. The Sierra Club objected to publishing only a summary of the contents of the State program. No amendment was proposed to this provision. The Office has always published a summary of the program and made copies of the full text available to interested persons. Therefore, no change is being made to this provision. EPI suggested that the proposed rules be clarified to require that the Federal Register notice state the specific OSM and State office locations where copies of the program shall be available. The Sierra Club and the State of Illinois suggested that the requirements for maintaining a file of comments for public inspection and sending these comments to the State agency be retained in the final rules. The Office has adopted both of these suggestions in the final rules.

Finally, OSM proposed to amend existing Section 732.12(b)(2) to allow States to submit revisions to State laws and regulations up to the date of the Secretary's decision, provided that adequate notice and an opportunity to comment on the revisions is provided to the public. EPI stated that there was no objection to this procedure so long as it is clear that the public is fully apprized of the specific language of a provision and afforded an opportunity to comment on it. It is the Department's policy to provide full public participation in the review of State programs and the public will be afforded notice and an opportunity to comment on any changes to the State program.

9. SECTION 732.13 - DECISION BY THE SECRETARY.

Section 732.13(f) contains procedures for the submission of a revised program to the Secretary within 60 days following an initial disapproval. This section was proposed to be amended, by reference to proposed Section 732.11(b)(2), to establish the same requirements for enactment of laws and regulations in program resubmissions as were

proposed for program submissions. (See discussion above under Sections 732.11 and 732.12.) This proposal is being adopted today without further changes. Only one comment was received on Section 732.13(f). The Sierra Club objected to the short time period for comment on a resubmitted program. Existing Section 732.13(f) provides for a minimum 15-day public review and comment period. No change was proposed to this requirement. The Office notes that 15 days is the minimum time for comment. This period can be lengthened, and has been expanded when a longer period seemed necessary. Therefore, no change to the time period allowed for public review and comment has been made to Section 732.13(f).

Further changes to Section 732.13 were proposed to redesignate the last two sentences of Section 732.13(f) as Section 732.13(g) and to redesignate existing paragraph (g) as paragraph (h). No comments were received on these proposals and they are being adopted today as proposed.

Section 732.13(h) [proposed to be redesignated Section 732.13(i)] provides that an approved State program becomes effective on the date of publication of the Secretary's decision in the Federal Register. This Section was proposed to be amended to allow the Secretary to specify a different effective date for administrative convenience. The Joint Committee, MARC and Kentucky supported the proposed amendment, and EPI did not object, but requested clarification of two points. First, EPI noted that approvals should not be made retroactive as this would have the effect of invalidating OSM enforcement actions taken under the interim program. Second, EPI suggested that a prospective approval be limited to a short period of time and that during such period until the State program is effective, OSM's authority to inspect and enforce under the interim program must be assured. As to the commenter's first point, no approval will be made retroactive. The effective date will be either the date of publication or a later date. On the second point, the Secretary intends to limit use of this provision to specifying an effective date within one to four months of the date of publication. After the approval and during the period until the program becomes effective, OSM enforcement of the interim program will continue.

Section 732.13(i) (to be redesignated as paragraph (j)) provides that a conditionally approved program terminates if the deficiencies have not been corrected by the dates set forth in the Secretary's decision. This subsection was proposed to be amended to provide that the Director must notify the Secretary that the State has failed to meet the conditions and must take any one or more of three actions available to him. Three commenters objected to the proposed amendment. The Joint Committee objected that the proposed procedures unfairly invade the province of the States by sanctioning Federal enforcement or interference with the State program. TVRC and EPI objected to the proposed amendments, asserting that the proposed procedures violate the intent of section 503 of the Act, are cumbersome, and will invite bureaucratic delays on the part of OSM and the States. These commenters suggested that if despite their objections the proposed amendment is adopted, it should be revised to require the Director to take action within a specific period of time, such as 10 days. OSM has adopted this suggestion and the final rule provides that the Director must initiate some action within 30 days. OSM does not agree with the comment that these procedures constitute unwarranted Federal interference in a State program. The Secretary is required by section 521(b) of the Act to enforce any permit condition and issue permits if after public notice and hearing, he finds that the State has failed to enforce all or part of its program effectively and has not demonstrated its intent and capability to do so. Further discussion of this point is provided under Section 733.12

OSM does not agree that the options available to the Director are cumbersome or will result in delays. The purpose of providing the Director with alternative actions is to allow the flexibility to address a particular set of circumstances and avoid the unnecessarily harsh result of an automatic termination of the State's program. OSM believes that requiring the Director to notify the Secretary and take some action within 30 days assures that OSM is taking seriously its responsibility to see that the deficiencies are corrected promptly. Accordingly, the proposed rule is adopted as final today with the one change of providing a time period within which the Director must act.

10. Section 732.14 Resubmission of State programs.

Section 732.14 was recently amended in a separate rulemaking action *(46 FR 50018-50019,* October 8, 1981) as discussed in the preamble to Section 731.12. As with Section 731.12, OSM is amending Section 732.14 to make it clear that there are no limitations on when a program may be submitted. The rationale for this amendment and response to comments addressing it are provided in the discussion above under Section 731.12.

11. SECTION 732.15 - CRITERIA FOR APPROVAL OF STATE PROGRAMS.

Section 732.15(b)(10) requires that State programs contain provisions for public participation "consistent with the public participation requirements of the Act and this chapter." In the December 4, 1981 proposed rules, OSM proposed to amend this provision so that State programs need not provide for citizen suits in State courts nor require that citizens have the right to accompany State inspectors onto the mine site when the inspection is the result of the citizen's request. These proposed amendments and others dealing with the award of costs were also included in proposed amendments to Subchapter L (Inspection and Enforcement), published on December 1, 1981 *(46 FR 58464-58479).* On April 21, 1982, OSM published a Notice of Intent *(47 FR 17269)* in which it announced its decision (1) to retain without change the citizens' rights provisions of 30 CFR 732.15(b)(10) and the preamble *(44 FR 14965)* to the existing rule, and (2) to defer final rulemaking action on two issues raised as a result of a petition by several western States regarding attorneys' fees. Similarly, OSM decided in that notice not to adopt the corresponding citizens' participation changes proposed for Subchapter L. OSM has decided that the discussion of its decisions and comments received on both sets of proposed amendments concerning citizens' participation are better addressed in the context of the Subchapter L rulemaking. The preamble to the Subchapter L final rule will contain a further explanation of these decisions.

Section 732.15(b)(14) requires that a State "Provide for the protection of State employees of the regulatory authority in accordance with the protection afforded Federal employees under section 704 of the Act." Section 732.15 was proposed to be amended to remove this requirement as section 704 appears to be a requirement which Congress intended to impose only on the Federal government and not on the States. ARDF and EPI objected to removing this requirement from State programs. Both commenters noted that, contrary to OSM's assertion in the December 4 preamble that section 704 on its face addresses only Federal employees, section 704 is entitled "Protection of Government Employees." This, the commenters stated, is meant to apply the requirement in a generic sense to all "government" employees, both State and Federal. Second, the commenters argued that section 503 requires the inclusion in State programs of all provisions of the Act and of sanctions which meet the requirements of the Act, including the sanctions of section 704. On the commenters' first point, OSM disagrees that because section 704 is titled "Protection of Government Employees" it is intended to apply to States as well as the Federal government. Section 704 amends the United States Code to make murder of a Department of Interior employee punishable as a Federal crime and provides for criminal penalties for any person who interferes with the Secretary or any of his agents. The provision is clearly directed at Federal, not State, employees.

In regard to the commenters' second point, section 503(a)(2) requires State programs to provide 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 Act, 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." Section 503 nowhere requires specifically that the State program include a provision similar to section 704. Those sanctions which are required to be included are enumerated in section 503(a)(2) and in section 521. Furthermore, all States have criminal codes which make murder, assault, and battery crimes punishable under State law. OSM believes that it was Congress' intent in enacting section 704 to provide for protection of Federal employees already available to State employees under existing State law. Therefore, the final rule published today removes this requirement.

Section 732.15(b)(15) was proposed to be amended to provide that judicial review of State program actions be in accordance with State law, as provided in section 526(e) of the Act. Four commenters, including ARDF, TVRC and EPI, objected to the proposed amendment. Six commenters, including MARC, Illinois and the Joint Committee, supported the proposed rule on the basis of the plain language of the Act. One of these commenters, the Sierra Club, also suggested that the final rule should specify, as does section 526(e), that judicial review in accordance with State law shall not be construed to limit the operation of the rights established in section 520 of the Act (Citizen suits).

In the preamble to the proposed rule, OSM specifically invited public comment on whether the proposed rule would be inconsistent with the requirement of section 521(d) of the Act that a State program include enforcement provisions which shall "incorporate sanctions no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto." One commenter who supported the proposed rule argued that the correct interpretation of section 521(d) is that it requires State programs to contain the same or similar procedures only for sanctions. Those commenters objecting to the proposed rule did so based on the interpretation that section 526(e) does not act as a limitation on the other substantive judicial review provisions of section 526. Rather, the commenters argued, section 5265(e) was intended simply to preserve the State's authority to designate a court or courts of competent

jurisdiction in accordance with State law to conduct such review. One commenter pointed to the legislative history of the Act, including the words of the primary sponsor, Representative Morris Udall, that the intent of Congress was to establish State programs, including specifications for "enforcement, administrative and judicial review * * *" 123 Cong. Rec. H7585 (1977) (emphasis added).

One commenter noted that this issue has already been considered in the litigation on the permanent program rules. In In re: *Permanent Surface Mining Regulation Litigation, 14 ERC 1083 (D.D.C. 1980),* the court considered a challenge by the Commonwealth of Virginia to the Secretary's rule requiring that States incorporate the judicial review provisions of section 526 into their programs. Specifically, Virginia challenged OSM's statement in the preamble that discourages trial de novo following administrative hearings on penalties and sanctions. Virginia argued that section 526(e) "allows a State to determine the form of judicial review appurtenant to enforcement actions." *14 ERC 1109.* The court noted that section 526(b) requires that judicial review of administrative enforcement proceedings be based "solely on the record," and because section 521(d) requires State enforcement provisions to contain procedural requirements "the same or similar" to the Federal procedures, this language arguably prohibits de novo review. The court found that the Secretary had adopted a reasonable and flexible approach consonant with the Act in that if a State can demonstrate that its trial de novo review procedure does not unduly interfere with expeditious review and other values attendant to the enforcement program, then the Secretary will allow the procedure.

OSM believes that State programs must provide for judicial review of State enforcement actions in accordance with section 526, including review on the record in section 526(b) and the standards for granting temporary relief contained in section 526(c). OSM also believes that State programs are required to provide for judicial review of other State program actions (such as permitting, bonding, etc.) in accordance with State law. Accordingly, the final rule published today provides that judicial review of State program actions shall be in accordance with State law, except that judicial review of State enforcement actions shall be in accordance with section 526 of the Act. The final rule further provides that judicial review in accordance with State law shall not be construed to limit the operation of the "citizen suit" rights established in section 520 of the Act.

12. SECTION 732.17 - STATE PROGRAM AMENDMENTS.

Section 732.17 establishes procedures for amending approved State programs. Existing Section 732.17(f) requires the State regulatory authority to submit a written amendment within 60 days after notification by the Director that an amendment is required. Because of the difficult administrative burden this may impose on the States, Section 732.17(f) was proposed to be amended to allow the State to submit either a proposed written amendment, or in the case of a complex or lengthy amendment, a description of the proposed amendment, together with a timetable for enactment that is consistent with established administrative or legislative procedures in the State. Only one comment, from the State of Illinois, was received on this proposal and it supported the proposed rule. The final rule adopted today is thus unchanged from the proposed rule.

Section 732.17(g) provides that whenever the State wishes to initiate changes to the approved State program, the State shall submit the proposed changes to the Director for approval as an amendment. Several States suggested that this Section be amended to provide for some form of automatic approval if the proposed amendments involve only minor changes to State programs or are in response to changes in the corresponding Federal provisions. The December 4 proposed rule provided that proposed amendments shall be considered approved by the Director unless the Director notifies the State in writing within 60 days of receipt of the amendments that the amendments should be subject to the usual notice and comment procedures for processing State program amendments. Four commenters, the States of Wyoming, Illinois, Texas and Kentucky, supported the proposed rule and two of them suggested further changes. The Joint Committee supported the proposed rule provided it is limited to automatic approval of amendments which correspond to newly amended Federal regulations. Six commenters, including MARC, EPI, the Sierra Club, TVRC and ARDC, objected strenuously to the proposed rule.

Those commenters supporting the proposed rule who suggested further changes stated that 60 days is too long a time for the Director to decide whether the proposed amendments should be subject to the normal procedures. One commenter suggested a limit of 30 days. One of these commenters also suggested that the rule be amended to require the Director to notify the State in all cases whether or not the proposed amendments are minor. This concept was also endorsed by a number of those opposed to the proposed rule who stated that if the proposed rule should be adopted

despite their objections, it should at least provide that all State program amendments must go through the normal process unless the Director affirmatively notifies the State that they are minor (an affirmative waiver process).

Those commenters objecting to the proposed rule did so on the following grounds. First, commenters objected that the proposed rule is contrary to section 503 of the Act which requires affirmative review and approval of State programs. Second, one commenter stated that allowing changes to a State program by means other than an approved program amendment subverts the goal of nationwide uniformity woven throughout the Act. Third, the commenters stated that the proposed rule violates the Act's public participation requirements of notice and an opportunity to comment. One noted that section 102(i) states that one of the chief purposes of the Act is to "assure that appropriate procedures are provided for the public participation in the * * * revision * * * of * * * programs established by * * * any State under this Act." Fourth, the commenters pointed out the ambiguity inherent in the word "minor" and how difficult it would be to define the word and reach any consensus on the definition. Two commenters pointed out that even some "minor amendments" could present issues or problems in a given State or in a particular situation which should be subject to public comment. Some commenters suggested how the word "minor" might be defined. These suggestions included: (1) Typographical errors, (2) tracking the language of a Federal statute or regulation, (3) changes in administrative designations or delegations of authority within a State's program, (4) amendments to the program narrative where there are no corresponding changes in the Act or rules, and (5) changes in the rules which yield the same or similar result as either the existing State or Federal rule. Finally, several commenters asserted that the existing procedures are not burdensome and stated that if the proposed State amendments are truly insignificant, simple notice and comment procedures should take no longer than the 60 days allotted under the proposed rule. These commenters agreed that there will be relatively routine amendments proposed in State programs which may not attract much public interest and for which the full panoply of established procedures may not be necessary. MARC urged that instead of adopting the proposed rule, the Office should consider a modified comment period with a shorter deadline.

OSM has carefully reviewed all of the comments received on this proposed rule and has determined that the public participation requirements of the Act and the rulemaking requirements of the Administrative Procedure Act preclude approval of amendments without some procedure for public notice and comment. OSM is mindful that the States may find the amendment process cumbersome or too lengthy. However, as discussed in the preamble to the proposed rules, Section 732.17 was revised on January 23, 1981 *(46 FR 7906-7909)* to streamline, shorten and simplify the State program amendment process, partly in response to a petition from Governor Ed Herschler of Wyoming. The existing rules require the Office to publish in the Federal Register a notice of receipt of the amendment within ten days after receiving it. The notice must include a schedule for review and action, and provide a minimum public comment period of 30 days, except that a 15-day period may be provided where an amendment concerns changes in State law, regulations or the procedures contained in the approved program that are analogous to changes in the Act or the implementing regulations. The Director must approve or disapprove the amendment request within 30 days after the close of the public comment period and the decision approving or disapproving the program amendments must be published in the Federal Register within 10 days after the date of the Director's decision. This regulation thus provides for amendment processing in 65 to 80 days. OSM believes that these procedures are realistic time-frames for processing amendments given the necessity for public involvement. Accordingly, no amendments are being made to the amendment process in Section 732.17(g).

EPI commented that OSM proposed to amend Section 732.17(h)(6) to require action on an amendment request within 30 days after the close of the public comment period and suggested that OSM clarify that this requirement is a "directory" rather than a "mandatory" provision. No amendment was proposed to Section 732.17(h)(6), except to remove the reference to the Regional Director. Accordingly, no further change is being made today.

PART 733 -- MAINTENANCE OF STATE PROGRAMS AND PROCEDURES FOR SUBSTITUTING FEDERAL ENFORCEMENT OF STATE PROGRAMS AND WITHDRAWING APPROVAL OF STATE PROGRAMS

13. SECTION 733.4 - RESPONSIBILITIES.

Section 733.4 is being removed for editorial clarity. The rationale for this change is the same as that provided under the preceding discussions of Sections 730.2 and 730.4.

14. SECTION 733.12 - PROCEDURES FOR SUBSTITUTING FEDERAL ENFORCEMENT OF STATE PROGRAMS OR WITHDRAWING APPROVAL OF STATE PROGRAMS.

A number of changes were proposed to the procedures for substituting Federal enforcement or withdrawing approval. The proposed regulations provided for:

(1) Inserting the word "any" before the phrase "necessary remedial actions" in Section 733.12(b)(3) to make it clear that remedial action may not always be necessary;

(2) Amending Section 733.12(c) to clarify that the informal conference may be used to discuss both the facts supporting the Director's assertions and the time period provided by the Director for the State to take any necessary remedial actions;

(3) In Section 733.12(c), clarifying that the conference may be requested at any time, but not later than 15 days after the expiration of the time period for any remedial action;

(4) In Section 733.12(d), amending the last line by adding the phrase "or as modified at the informal conference held under paragraph (c) of this section," to allow for possible modification of the time period for the State to complete remedial actions;

(5) Revising the language of Section 733.12(e) to clarify when Federal enforcement of a State program or the withdrawal of approval of a State program becomes necessary;

(6) Further defining the broad use of the word "enforcement" in Section 733.12(f)(2); and

(7) In Section 733.12(f)(2)(ii), specifying that the Office would become the regulatory authority for purposes of administering and implementing the permit requirements of the State program in the event the Director issues new regulations affecting existing or new permits.

The Sierra Club objected to the lack of effective time limits in the existing Section and the possibilities for delay or failure to remedy defects if, as a result of the informal conference, an extension of time is granted. OSM disagrees that specific time limits are necessary and believes that the regulation should provide sufficient flexibility to enable resolution of problems before resorting to the public hearing procedures in Section 733.12(d). The intent of the December 4 proposed amendment to Section 733.12(c) was to clarify the somewhat confusing language concerning when an informal conference may be requested. The preamble to the permanent program rules *(44 FR 14968,* March 13, 1979) provided that an informal conference may be held within 15 days of a receipt of notification and a second informal conference may be held within 15 days after the time period for remedial action expires. The rule which is finalized today provides that an informal conference may be requested at any time after receipt of notification, but in no case later than 15 days after the time period for remedial action expires.

TVRC objected to the clarification of Section 733.12(e) and stated that it impermissibly changes the meaning of the paragraph. The commenter pointed out that under section 521(b) of the Act, the State must demonstrate its capability to enforce and its intent to do so. OSM agrees with this comment and the final rule has been revised to use the language from section 521(b) suggested by the commenter.

TVRC supported the clarification in Section 733.12(f)(2)(ii) of OSM's permitting authority when OSM assumes enforcement of a State program. The Joint Committee, Illinois, and MARC objected to the proposed amendment. The Joint Committee stated that the Office has confused Federal enforcement of a State program with institution of a Federal program for a State, and asserted that the Act distinguishes between Federal enforcement of an adequate and approved State program, and the substitution of a Federal program for a State program which is found to be substantively inadequate during Federal oversight of the State's administration of its program. The commenters contend that for OSM to take over the entire permitting process under the guise of substituting Federal enforcement is in effect an illegal implementation of a Federal program. The commenters also argue that, unless a Federal program is implemented, the Office has no authority to promulgate regulations for an individual State nor does it have the authority to issue permits.

OSM agrees that the Act distinguishes between Federal enforcement of a State program and the withdrawal of approval and substitution of a Federal program. After careful consideration of the points raised by the commenters, OSM has concluded that the proposed amendments do not clarify the language of Section 733.12(f)(2)(ii). Accordingly, the proposed amendments are not being adopted today. OSM believes that the existing regulation provides sufficient clarity in the event of substituted Federal enforcement. Moreover, such enforcement would not be instituted until after completion of the thorough procedures for public notice and hearing and a final determination by the Director pursuant to Section 733.12(b)-(e).

PART 736 -- FEDERAL PROGRAM FOR A STATE

15. SECTION 736.2 - OBJECTIVES, SECTION 736.3 RESPONSIBILITY and SECTION 736.4 - AUTHORITY.

Sections 736.2, 736.3 and 736.4 are being removed for editorial clarity. The rationale for this change is the same as that provided in the discussion above for Sections 730.2 and 730.4.

16. SECTION 736.11 - GENERAL PROCEDURAL REQUIREMENTS.

This Section was proposed to be amended to remove the reference to June 3, 1980, the original date by which the Director was to promulgate a Federal program for a State which had failed to submit a program or resubmit an acceptable program. The Sierra Club objected to the proposed change, stating that it allows the Secretary to indefinitely postpone or abdicate his obligation to implement Federal programs where necessary. OSM disagrees that this is the intent or that such a result will occur. OSM has reiterated on numerous occasions, most recently in the preamble to the December 4 rules (See *46 FR 59484)*, its commitment to timely implementation of the permanent program and its intent to develop and implement Federal programs for States not wishing or failing to assume jurisdiction. Therefore, the proposed rule is adopted today without further change.

17. SECTION 736.12 - PUBLIC NOTICE REQUIREMENTS AND SECTION 736.13 PUBLIC COMMENT.

These Sections were proposed to be amended to provide that for a revision to a Federal program, holding a public hearing would be discretionary. The language of the proposed rule provided that a hearing would be held "if sufficient interest is demonstrated." The preamble to the proposed rule explained that the opportunity to request a public hearing would be provided and if such a request were made, a public hearing would be held.

TVRC and EPI suggested that while the preamble is clear, the wording of the proposed regulation is ambiguous and should be clarified. OSM has adopted this suggestion and the final rule specifies that a public hearing will be held if one is requested.

18. SECTION 736.22 - CONTENTS OF A FEDERAL PROGRAM.

This Section was proposed to be amended to provide that Federal programs covering only coal exploration could be limited to only those provisions necessary for an effective program. Both the Joint Committee and MARC supported the proposed amendment and it is being adopted today without further amendment.

19. SECTION 736.23 - FEDERAL PROGRAM EFFECT ON STATE LAW OR REGULATIONS.

The existing regulation provides that State statutes or regulations shall be preempted and superseded by the Federal program insofar as they are "inconsistent, less stringent or preclude compliance with the Act and the Federal program." This provision, which is based on section 504(g) of the Act, was proposed to be amended to be consistent with changes at Sections 730.5 and 730.11, as discussed above under those Sections. The amendment would reflect the requirement of section 504(g) that State statutes or regulations shall be superseded "insofar as they interfere with the achievement of the purposes and the requirements of the Act and the Federal program."

TVRC and EPI objected to the proposed amendment, with EPI commenting that the proposed language is too vague. EPI asserted that the preamble explanation that the amendment was proposed to make the rules consistent with changes at 30 CFR 730.5 and 730.11 makes no sense, since the new definition of "consistent with" is not reflected in the

proposed change. EPI also questioned why the proposed wording of Section 736.23 is not identical to the proposed wording of Section 730.11.

The language proposed for Section 736.23 exactly tracks the language of section 504(g) of the Act. However, as noted in the preamble to the proposed rule, section 504(g) must be read in light of section 505(a) of the Act which further requires that no State law or regulation be superseded except insofar as the State law or regulation is inconsistent with the provisions of the Act (emphasis added). OSM believes that there is only one standard for superseding a State provision, set forth in section 505(a), and is therefore adopting EPI's suggestion that the language be clarified to apply the "consistent with" standard. The final rule for Section 736.23 provides, as does Section 730.11, that no State law or regulation shall be superseded except to the extent that the law or regulation is inconsistent with the requirements of the Act or this Chapter.

GENERAL COMMENTS.

20. The Illinois South Project (ISP) objected to the proposed deletion of all references to the Regional Director or Regional Office wherever appropriate to reflect the reorganization of OSM ordered by the Secretary on May 20, 1981. ISP contends that such a deletion would be at odds with testimony given by the OSM Deputy Director before the House Subcommittee on Energy and the Environment that the Regional Offices would not be abandoned or eliminated until all the States in a particular region receive primacy. ISP asked the following four specific questions: (1) Regardless of State program approvals, are Regional Offices being closed and reorganization taking place? (2) Does the proposed rule indicate that pending State program submittals have been predisposed as approvable? (3) If the rule becomes final prior to a given State receiving primacy, will the Secretary ignore all comments submitted to and by a Regional Director? and (4) If a State does not receive primacy, will this proposed rule be abandoned so that OSM can comport with the assurances given the House Subcommittee?

OSM has, through timely communications and briefings, kept the Subcommittee and its staff informed of all planned changes well ahead of their execution. The proposed deletion of references to Regional Offices in no way violates the commitments made by OSM during the course of previous hearings.

The purpose of the proposed language changes was to reflect more accurately the organizational structure of OSM set out in the reorganization plan approved by the Secretary and to provide for an orderly transition to the new structure. The plan calls for the establishment of State Offices and the phasing out of Regional Offices. However, a Regional Office will not be abolished until the substantive review of all State programs in that Region is completed. All Regional personnel assigned to review State programs will remain in their current assignments until the review is complete. All comments to and by a Regional Director will be considered by the Director before formulating his recommendation to the Secretary for a final decision. The Secretary is not predisposed to either approve or disapprove any of the seven State programs currently under review. Should a State program be disapproved, the Office is required to develop and implement a Federal program for that State. If the State wishes to submit another program, it may do so under the final rules as amended today.

21. TVRC and EPI commented that these proposed regulations, together with other proposed changes to the permanent program regulations, constitute a major Federal action under the National Environmental Policy Act and section 702(d) of the Act requiring preparation of a new environmental statement or a supplement to the existing statement prepared on the original permanent program regulations in 1979.

OSM has prepared a draft and final environmental assessment (EA) on this rulemaking which concludes that this rule will not significantly affect the quality of the human environment. In addition, OSM is preparing an environmental assessment of the cumulative effects of this rulemaking and other related rulemakings.

IV. PROCEDURAL MATTERS

Federal Paperwork Reduction Act

The information collection requirements in existing 30 CFR Subchapter C were approved by the Office of Management and Budget (OBM) under *44 U.S.C. 3507* and assigned clearance numbers 1029-0022, 1029-0023,

1029-0024 and 1029-0025. Those approvals were identified in "notes" at the introductions to 30 CFR Parts 730, 731, 732 and 733 under the old numbers R0591, R0592, R0593 and R0594 (all under Number B-190462).

OSM is deleting those "notes" and codifying the OMB approvals under a new section 10 in each of those parts that contain the information collection requirements. OSM requested OMB reapproval of the information collection requirements in Parts 732 and 733. OSM did not request reapproval of the information collection requirements in Parts 730 and 731 because the information will not be required of more than 10 respondents.

The information required by 30 CFR Part 732 is needed to afford a State the opportunity to resubmit, modify or amend its State program and will be used by OSM to determine whether the program meets the provisions of the Act. The information required by 30 CFR Part 733 is needed by OSM to verify the allegations in a citizen request to evaluate a State program and to determine whether an evaluation should be undertaken. The obligation to provide the information required by 30 CFR Parts 732 and 733 is mandatory.

National Environmental Policy Act

OSM has prepared a final environmental assessment (EA) on this rule that reaches the conclusion that this rule should not significantly affect the quality of the human environment. The EA and the Finding of No Significant Impact are on file in the OSM Administrative Record Office, at the address listed above under "ADDRESSES." OSM has also prepared an EA on the cumulative impacts on the human environment of this rulemaking and related rulemakings that reaches the same conclusion with respect to this rule.

Executive Order 12291

The Department of the Interior (DOI) has examined these proposed rules according to the criteria of Executive Order 12291 (February 17, 1981). OSM has determined that these are not major rules and do not require a regulatory impact analysis because they are amendments to established procedures that all coal-producing States must follow in submitting State programs that meet certain minimum Federal Standards. The amendments do not significantly change any substantive requirements.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, *5 U.S.C. 601* et seq., that these rules will not have a significant economic impact on a substantial number of small entities. The rules are procedural requirements for submission of State regulatory programs and as such impact only State regulatory agencies and OSM.

Justification for Immediate Effective Date

The Department of the Interior finds, in accordance with section 553(d)(3) of the Administrative Procedure Act *(5 U.S.C. 551* et seq .), that good cause exists to make this final rule effective upon publication. Seven States have resubmitted programs which are currently being reviewed by OSM. OSM wants to avoid any delay in reviewing State programs and these seven States could benefit immediately from the final rules which remove certain requirements and amend others dealing with the review process.

LIST OF SUBJECTS

30 CFR Parts 730, 731, and 736
Coal mining, Intergovernmental relations, Surface mining, Underground mining.

30 CFR Parts 732 and 733
Coal mining, Intergovernmental relations, Reporting requirements, Surface mining, Underground mining.

For the reasons set forth in the preamble, Parts 730, 731, 732, 733 and 736 of Chapter VII, Title 30 of the Code of Federal Regulations are amended as set forth herein.

Dated: June 10, 1982.
Daniel N. Miller, Jr., Assistant Secretary, Energy and Minerals.

PART 730 -- GENERAL REQUIREMENTS

1. The authority for Part 730 is revised to read as follows:

Authority: Sections 501(b), 503, 504, 505 and 521 of Pub. L. 95-87 *(30 U.S.C. 1251*(b), 1253, 1254, 1255 and 1271).

2. Part 730 is amended by removing the "Note" paragraph following the Source note.

SECTION 730.2 [REMOVED]

3. Part 730 is amended by removing Section 730.2.

SECTION 730.4 [REMOVED]

4. Part 730 is amended by removing Section 730.4.

5. Section 730.11 is amended by revising paragraph (a) to read as follows:

SECTION 730.11 - INCONSISTENT AND MORE STRINGENT STATE LAWS AND REGULATIONS.

(a) No State law or regulation shall be superseded by any provision of the Act or the regulations of this chapter, except to the extent that the State law or regulation is inconsistent with, or precludes implementation of, requirements of the Act or this chapter. The Director shall publish a notice of proposed action in the Federal Register setting forth the text or a summary of any State law or regulation initially determined by him to be inconsistent with the Act or this chapter. The notice shall provide 30 days for public comment. Following the close of the public comment period, the Director shall make a final determination which shall be published in the Federal Register.

* * * * *

PART 731 -- SUBMISSION OF STATE PROGRAMS

6. The authority for Part 731 is revised to read as follows:

Authority: Sections 501(b) and 503 of Pub. L. 95-87 *(30 U.S.C. 1251*(b) and 1253).

7. Part 731 is amended by removing the "Note" paragraph following the source note.

SECTION 731.11 [REMOVED]

8. Part 731 is amended by removing Section 731.11.

9. Section 731.12 is revised to read as follows:

SECTION 731.12 SUBMISSION OF STATE PROGRAMS.

Each State that wishes to regulate coal exploration and surface coal mining and reclamation operations on non-Federal

and non-Indian lands within its boundaries shall submit three copies of a proposed program to the Director. A State may submit a proposed program at any time. The State shall retain sufficient copies of the program for public inspection under Section 732.11(a).

10. Section 731.14 is amended by revising paragraphs (c), (e), the introductory text to paragraph (g), paragraphs (g)(16), (h) and (i), and removing paragraphs (j)-(p) to read as follows:

SECTION 731.14 - CONTENT REQUIREMENTS FOR PROGRAM SUBMISSIONS.

* * * * *

(c)(1) A legal opinion from the Attorney General of the State or chief legal officer of the State regulatory authority stating that the State has the legal authority under existing laws and regulations, or will have authority under amendments to laws and regulations which are in the process of enactment, to implement, administer and enforce the program and to regulate coal exploration and surface coal mining and reclamation operations in accordance with the Act and consistent with this chapter.

(2) A section-by-section comparison of the State's law and regulations and amendments which are in the process of enactment with the Act and this chapter, explaining any differences and their legal effect;

* * * * *

(e)(1) A description, including appropriate charts, of the existing and proposed structural organization of the agency designated as the regulatory authority and of other agencies or applicable divisions or departments of those agencies which will have duties in the State program. The description must indicate the coordination system between these agencies and lines of authority and the staffing functions within each agency and between agencies.

(2) A summary table of the existing and proposed State program staff, showing job functions, title and required job experience and training, and a description of how the staffing proposed for the State program will be adequate to carry out the functions, including permitting, inspection and legal actions for the projected workload to ensure that coal exploration and surface coal mining and reclamation operations will be regulated in accordance with the requirements of the Act and this chapter;

* * * * *

(g) Narrative descriptions, flow charts or other appropriate documents of the proposed systems for * * *

(16) Providing a small operator assistance program.

(h) Statistical information describing coal exploration and surface coal mining and reclamation operations in the State, adequate to demonstrate that the provisions of the State program and the resources available to it are sufficient when compared to the current and projected coal mining activities in the State;

(i) A description of the actual capital and operating budget, including source of funds, used or proposed to be used to administer the State program for the prior and current fiscal years, and the projected annual budget for each of the next two fiscal years, assuming supplemental funding pursuant to an approved State program and grants under 30 CFR Part 735; and a description of the existing and proposed physical resources for use in the program.

PART 732 -- PROCEDURE AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM SUBMISSIONS

11. The authority for Part 732 is revised to read as follows:

Authority: Sections 501(b), 503, 504, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 521, and 522 *(30 U.S.C. 1251*(b), 1253, 1254, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1271 and 1272).

12. Part 732 is amended by removing the "Note" paragraph following the Source note.

SECTION 732.4 [REMOVED]

13. Part 732 is amended by removing Section 732.4.

14. Part 732 is amended by adding a new Section 732.10 as follows:

SECTION 732.10 - INFORMATION COLLECTION.

The information collection requirements contained in 30 CFR 732.16(a) and 732.17(b) have been approved by the Office of Management and Budget under *44 U.S.C. 3507* and assigned clearance number 1029-0024. The information is needed to afford a State the opportunity to modify or amend its State program and will be used by OSM to determine whether the amendment meets the provisions of the Act.

15. Section 732.11 is revised to read as follows:

SECTION 732.11 - REVIEW BY THE DIRECTOR.

(a) Immediately upon receipt of a proposed State program, the Director shall publish in the Federal Register and in a newspaper of general circulation in the State a notice meeting the following requirements:

(1) The notice shall include the date of the submission of the program and a summary of the program's contents. It shall also indicate that the full text of the program submission is available for review during regular business hours at the OSM State Office and at the central office and each field office of the State agency responsible for the submission.

(2) The notice shall afford interested persons an opportunity to submit written comments. The comment period shall end on a date following the public hearing scheduled to be held under paragraph (b) of this section and that date shall be specified in the notice.

(3) The notice shall identify the time and location within the State at which the Office will hold the public hearing under paragraph (b) of this section.

(b) A public hearing shall be held by the Director no sooner than 40 days following the publication of the notice required by paragraph (a) of this section. The hearing shall be informal and follow legislative procedures.

(1) The format and the rules of procedure for each hearing shall be determined by the Director and published in the Federal Register notice required by paragraph (a).

(2) When the program is submitted, State laws and regulations must be submitted in their final form or in the form in which they are expected to become final. Should revisions to any of the laws or regulations be necessary during the public comment period or before the Secretary's decision, OSM will give notice and provide an opportunity for review and comment. State laws and regulations must be enacted by the date of program approval.

(c) Copies of written comments shall be available for public inspection and copying at the OSM State Office and the offices of the State agency responsible for submitting the program.

(d) The Director shall consider all relevant information, including information obtained from public hearings and comments, and shall recommend to the Secretary that the program be approved or disapproved, in whole or in part. The recommended decision shall specify the reasons for the recommendation.

SECTION 732.12 [REMOVED]

16. Part 732 is amended by removing Section 732.12.

17. Section 732.13 is amended by revising paragraphs (f), (g), (h), and (i), and adding paragraph (j) to read as follows:

SECTION 732.13 - DECISION BY THE SECRETARY.

* * * * *

(f) If the Secretary disapproves a program, in whole or in part, the State shall have 60 days from the date of publication of the Federal Register notice to submit a revised program to the Director for reconsideration. The procedures of Section 732.11 will then apply to the revised State program, except that the time allowed between publication of notice and the public hearing for public review and comment may be shortened to not less than 15 days.

(g) The Secretary shall either approve or disapprove the revised program within 60 days from the date of submission of the revised program and publish that decision and reasons for the decision in the Federal Register. A decision disapproving the revised program constitutes the final decision by the Department disapproving that program in its entirety.

(h) If a revised State program is not submitted by a State within 60 days of an initial disapproval under paragraph (a) of this section, the Secretary shall disapprove the initial program submission in its entirety. This decision shall constitute the final decision by the Secretary. This decision and the basis for it shall be published in the Federal Register.

(i) A decision by the Secretary approving a program submission establishes a State program for the State which submitted it and constitutes the final decision by the Department. The State program becomes effective on the date of publication of the decision in the Federal Register unless otherwise specified by the Secretary. The Secretary shall not give his approval unless the program submission can be approved in whole, except as provided in paragraph (j) of this section.

(j) The Secretary may conditionally approve a State program where the program is found to have minor deficiencies, provided:

(1) The deficiencies are of such a size and nature so as to render no part of a proposed State program incomplete;

(2) The State has initiated and is actively proceeding with steps to correct the deficiencies;

(3) The State agrees in writing to correct such deficiencies within a time established by the Secretary and stated in the conditional approval; and

(4) If the deficiencies have not been corrected by the date set forth in the Secretary's decision under paragraph (j)(3) of this section, the Director shall notify the Secretary that the deficiencies have not been corrected and shall within 30 days --

(i) Withdraw approval of the State program in whole or in part, and specify the extent to which approval of the State program is being withdrawn;

(ii) Substitute direct Federal enforcement of those portions of the permanent regulatory program that the State has failed to implement;

(iii) Initiate procedures in accordance with Parts 733 and 736 of this chapter to withdraw State program approval and implement a Federal program for the State, including specifying necessary remedial actions to correct continued deficiencies; or

(iv) Take any combination of actions under paragraphs (j)(4) and (i) through (iii) of this section.

18. Section 732.14 is revised to read as follows:

SECTION 732.14 - RESUBMISSION OF STATE PROGRAMS.

If, by a final decision, the program is disapproved, the State may submit another proposed State program to the Director at any time. Resubmitted State programs must meet the requirements of Section 731.14 and will be acted upon pursuant to Sections 732.11-732.16.

19. Section 732.15 is amended by revising paragraphs (b)(14) and (b)(15) to read as follows:

SECTION 732.15 - CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAMS.

* * * * *

(b) * * *

(14) Provide for administrative review of State program actions, in accordance with section 525 of the Act and Subchapter L of this chapter;

(15) Provide for judicial review of State program actions in accordance with State law, as provided in section 526(e) of the Act, except that judicial review of State enforcement actions shall be in accordance with section 526 of the Act. Judicial review in accordance with State law shall not be construed to limit the operation of the rights established in section 520 of the Act, except as provided in that section.

* * * * *

20. Section 732.17 is amended by revising paragraphs (f), (h)(5) and (h)(6) to read as follows:

SECTION 732.17 - STATE PROGRAM AMENDMENTS.

* * * * *

(f)(1) If the Director determines that a State program amendment is required, the State regulatory authority shall, within 60 days after notification of that decision, submit to the Director either a proposed written amendment or a description of an amendment to be proposed that meets the requirements of the Act and this chapter, and a timetable for enactment which is consistent with established administrative or legislative procedures in the State.

(2) If the State regulatory authority does not submit the proposed amendment or description and the timetable for enactment within 60 days from the receipt of the notice, or does not subsequently comply with the submitted timetable, or if the amendment is not approved under this Section, the Director shall begin proceedings under 30 CFR Part 733 to either enforce that part of the State program affected or withdraw approval, in whole or in part, of the State program and implement a Federal program.

* * * * *

(h) * * *

(5) Upon the close of the public comment period, the transcript, written presentations, exhibits and copies of all comments shall be transmitted to the Director.

(6) The Director shall consider all relevant information, including any information obtained from public hearings and comments, and shall approve or disapprove the amendment request within 30 days after the close of the public comment period established in accordance with Section 732.17(h)(3).

* * * * *

PART 733 -- MAINTENANCE OF STATE PROGRAMS AND PROCEDURES FOR SUBSTITUTING FEDERAL ENFORCEMENT OF STATE PROGRAMS AND WITHDRAWING APPROVAL OF STATE PROGRAMS

21. The authority for Part 733 is revised to read as follows:

Authority: Sections 501(b), 503, 504, 517 and 521 of Pub. L. 95-87 *(30 U.S.C. 1251*(b), 1253, 1254, 1267 and 1271).

22. Part 733 is amended by removing the "NOTE" paragraph following the Source note.

SECTION 733.4 [REMOVED]

23. Part 733 is amended by removing Section 733.4.

24. Part 733 is amended by adding a new Section 733.10 as follows:

SECTION 733.10 - INFORMATION COLLECTION.

The information collection requirement contained in 30 CFR 733.12(a)(2) has been approved by the Office of Management and Budget under *44 U.S.C. 3507* and assigned clearance number 1029-0025. The information required is needed by OSM to verify the allegations in a citizen request to evaluate a State program and to determine whether an evaluation should be undertaken.

25. Section 733.12 is amended by revising paragraphs (b)(3), (c), and (d) and the introductory text of paragraph (e) to read as follows:

SECTION 733.12 - PROCEDURES FOR SUBSTITUTING FEDERAL ENFORCEMENT OF STATE PROGRAMS OR WITHDRAWING APPROVAL OF STATE PROGRAMS.

* * * * *

(b) * * *

(3) Specify the time period for the State regulatory authority to accomplish any necessary remedial actions.

(c) The Director shall provide the State regulatory authority an opportunity for an informal conference if the State requests an informal conference within 15 days after the expiration of the time period specified in paragraph (b)(3) of this section. The informal conference may pertain to the facts or the time period for accomplishing remedial actions as specified by the Director's notification.

(d) If an informal conference is not held under paragraph (c) of this section, or if, following such a conference, the Director still has reason to believe that the State is failing to adequately implement, administer, maintain or enforce a part or all of a State program, the Director shall give notice to the State and to the public, specifying the basis for that belief and shall hold a public hearing in the State within 30 days of the expiration of the time period specified in paragraph (b)(3) of this section or as modified at the informal conference held under paragraph (c) of this section.

(e) The State will continue to enforce its approved program unless upon completion of the hearing under paragraph (d) of this section and based upon the review of all available information, including the hearing transcript, written presentations and written comments, the Director finds that the State has failed to implement, administer, maintain or enforce effectively all or part of its approved State program. If the Director finds further that the State has not demonstrated its capability and intent to administer the State program, the Director shall either --

* * * * *

26. Section 733.13 is amended by revising the section heading to read as follows:

SECTION 733.13 - FACTORS TO BE CONSIDERED IN DECIDING WHETHER TO SUBSTITUTE FEDERAL ENFORCEMENT FOR STATE PROGRAMS OR TO WITHDRAW APPROVAL OF STATE PROGRAMS.

* * * * *

PART 736 -- FEDERAL PROGRAM FOR A STATE

27. The authority for Part 736 is revised to read as follows:

Authority: Sections 501, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 521, 522, 525 and 705 of Pub. L. 95-87 *(30 U.S.C. 1251,* 1253-1269, 1271, 1272, 1275 and 1295).

SECTION 736.2 [REMOVED]

28. Part 736 is amended by removing Section 736.2.

SECTION 736.3 [REMOVED]

29. Part 736 is amended by removing Section 736.3.

SECTION 736.4 [REMOVED]

30. Part 736 is amended by removing Section 736.4.

31. Section 736.11 is amended by revising paragraph (a)(1)(i) to read as follows:

SECTION 736.11 - GENERAL PROCEDURAL REQUIREMENTS.

(a) Promulgation.

(1) The Director shall promulgate and, subject to the provisions of this part, implement a Federal program for a State if the Director reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands within the State at any time before June 1985, and the State fails to --

(i) Submit a State program for regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within that State to the Director as provided in 30 CFR 731.12; or

* * * * *

32. Section 736.12 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

SECTION 736.12 - PUBLIC NOTICE REQUIREMENTS.

* * * * *

(a) * * *

(4) The location of the OSM office and the public office in the capital city of the State where the text of the proposed program or revision and any supporting information may be reviewed or copied;

(5) If applicable, the date, time and location in the State where the Office will hold at least one public hearing under the supervision of the Director;

* * * * *

33. Section 736.13 is amended by revising paragraphs (c), (e) and (f) to read as follows:

SECTION 736.13 - PUBLIC COMMENT.

* * * * *

(c) Before promulgation of a Federal program for a State, the Director shall hold at least one public hearing within the State for the purpose of affording interested persons an opportunity to submit data and comments on the proposed Federal program. In the case of a revised Federal program for a State, the opportunity to request a hearing will be provided and if one is requested, a public hearing will be held. The hearings shall follow legislative procedures and include a presentation of the proposed program or revision by the Director and the compilation of an open record of the hearing.

* * * * *

(e) Upon completion of the hearings, the hearing transcripts, exhibits submitted, written presentations and copies of all public comments shall be transmitted to the Director.

(f) Copies of all written comments received and the transcripts of the public hearing shall be made available for public inspection and copying at the appropriate OSM office and at a public office in the capital city of the State.

34. Section 736.22 is amended by revising paragraph (b) to read as follows:

SECTION 736.22 - CONTENTS OF A FEDERAL PROGRAM.

* * * * *

(b)(1) Any Federal program for a State, including appropriate portions of a partial Federal program which is promulgated or revised by the Director, shall provide for Federal regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within the State in accordance with the requirements of the Act and this Chapter, including, at a minimum, the following provisions: Parts 700, 701, 707, 760, 761, 762, 764, 765, 842, 843, 845, Subchapters G, J, K, and M.

(2) An exception to these requirements may be made where there is exploration but no mining in the State. In such a case, the Federal program which is promulgated must regulate coal exploration, but not mining, and shall include, at a minimum, the applicable sections of the following provisions: Parts 700, 701, 761, 762, 764, 770, 776, 787, 815, 842, 843 and 845.

* * * * *

35. Section 736.23 is amended by revising paragraph (a) to read as follows:

SECTION 736.23 - FEDERAL PROGRAM EFFECT ON STATE LAW OR REGULATIONS.

(a) Whenever a Federal program is promulgated or revised for a State, any statutes or regulations of the State regulating coal exploration or surface coal mining and reclamation operations subject to the Act shall be preempted and superseded by the Federal program insofar as they are inconsistent with the requirements of the Act and the Federal program. In promulgating or revising a Federal program for a State, the Director shall set forth in the Federal Register any State statute or regulation which is preempted and superseded by the Federal program.

* * * * *

Sections 732.13, 732.17, and 736.13 [Amended]

36. Parts 732 and 736 are amended by removing the words "Regional Director" and inserting in their place the word "Director" in the following paragraphs:

(a) Section 732.13(d);

(b) Section 732.17(h)(1), (h)(2) and (h)(4);

(c) Section 736.13 (b) and (d).

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