

FEDERAL REGISTER: 45 FR 33926 (May 20, 1980)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Parts 731 and 732

Surface Coal Mining and Reclamation Operations; State Programs

ACTION: Final rules.

SUMMARY: OSM's permanent rules are amended to provide a ten month period for review and resubmission of State programs following their submission. The amendments revise timing for:

- (1) Review by the Regional Director;
- (2) Notice and public hearing requirements; and
- (3) Decision by the Secretary.

These revisions do not provide more total time for review than the regulations did when adopted March 13, 1979, but reflect a delay of the submission date ordered by a final court decision and subsequent opinion of the Solicitor allowing the required decision date to be likewise delayed.

EFFECTIVE DATE: May 20, 1980.

ADDRESSES: Copies of the December 5, 1979, Solicitor's Opinion (discussed below) are available at: Office of Surface Mining, U.S. Department of the Interior, South Building, Room 153, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, Room 224, South Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone (202) 343-4221.

SUPPLEMENTARY INFORMATION:

On March 13, 1979, the Secretary of the Interior promulgated the final rules for the permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq. (the Act). The rules provided, in accordance with the requirement of Section 503(a) of the Act, that for a State to assume primary jurisdiction under the Act for the regulation of coal mining and reclamation operations on non-Federal and non-Indian lands within its borders, it must submit its proposed permanent program to OSM by August 3, 1979. Section 504(a) of the Act further provided that if no State submission is made by that date a Federal program will be implemented for surface coal mining and reclamation operations within the State. The March 13, 1979, rules also required a final decision on program submissions by the Secretary no later than June 3, 1980. OSM's March 13, 1979, rules relating to State program submission are found in 30 CFR Parts 730-736, 44 FR 15323 et seq.

On July 25, 1979, the U.S. District Court for the District of Columbia, in response to a suit filed by the State of Illinois, preliminarily enjoined the Department of the Interior from requiring the submission of State programs under Section 503(a) of the Act until March 3, 1980.

On August 21, 1979, the court ordered that its injunction remain in effect. The court's order did not explicitly alter, however, the requirement of Section 504(a) of the Act that a final decision by the Secretary on a State program must be made by June 3, 1980. As a result, the time period between the court-ordered deadline for program submission and the date for final decision by the Secretary set forth in the regulations was reduced to just three months, precluding adherence to the review schedule contained in 30 CFR 732.11, and 732.12 and 732.13 of the permanent program regulations. In accordance with the court order, OSM published amendments to Subchapter C on October 22, 1979, (44 FR 60969) extending the latest date for submission of a State program to March 3, 1980, making the review procedures in 732.11, 732.12 and 732.13 inapplicable to programs submitted after August 3, 1979, and requiring the Regional Director to establish appropriate adjustments in the timing of the review, notice and public hearings and decision for each program submission.

Prior to the court-ordered extension of the date for program submission, the Secretary had requested that Congress enact a seven month extension of the statutory dates. On June 25, 1979, a bill (S. 1403) was introduced in the Senate to extend both August 3, 1979, and the June 3, 1980, dates by seven months. 125 Cong. Reg. S. 8411, June 25, 1979. On September 11, 1979, the Senate passed a bill including provisions extending the dates 12 months. To this date the House has not passed the extension of the August 3, 1979, or June 3, 1980, dates.

On December 5, 1979, the Solicitor of the Department of the Interior issued an opinion noting the purpose of Section 503 of the Act, which provides ten months to review and approve or disapprove a State program submission, is to allow the Secretary to consult with and obtain approvals from other Federal agencies, allow for public participation in review of each State program, give the Secretary adequate time to consider the program submission and allow the States to correct any deficiencies in their initial State program submission prior to the imposition of a Federal program. The Solicitor concluded that because each State is now entitled to submit its program no later than March 3, 1980, for those States which submit their programs on or before March 3, the June 3, 1980, deadline for promulgation of a Federal program must be extended as necessary to provide the opportunity for the full ten month review and resubmission period provided in Section 503.

The States' obligation to meet the March 3 deadline remains unchanged, however, and if a State failed to submit a program on or before March 3, a Federal program must be implemented.

Three State programs were submitted on or before August 3, 1979, and review was carried out according to the March 13, 1979, provisions under 30 CFR 732. Twenty-one programs were submitted between August 3, 1979, and March 3, 1980, and OSM made appropriate adjustments to the review procedures in accordance with amended 30 CFR 732 and taking the full 10 months for each program allowed pursuant to the December 5, 1979, Solicitor's opinion.

This amendment revises the sequence of the dates for public hearing and close of public comment in 30 CFR 732.12(a)(3) and (6) to allow five days after the public hearing for comment.

This amendment is being promulgated today without having been initially proposed since notice and public comment are in this case deemed impracticable and unnecessary. The basis for omitting notice and comment on this action is that the amendment merely reestablishes procedures that were originally established through a process that included extensive public review and comment. In addition, the March 3, 1980, deadline for program submissions has already passed and OSM has established review schedules for each of the 24 States. Therefore, the effect of this amendment on the States and the public is minimal.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14, 43 FR 58292, et seq. (December 12, 1979).

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Dated: May 9, 1980.

Walter N. Heine, Director, Office of Surface Mining.

TEXT OF AMENDMENT:

SECTION 730.12 [Amended]

1. 30 CFR 730.12(a) is amended by changing the date June 3, 1980 to January 3, 1981 both times it appears.

SECTION 731.12 [Amended]

2. 30 CFR 731.12(d) is deleted in its entirety.

SECTION 732.11 [Amended]

3. 30 CFR 732.11(d) is amended by changing the date November 15, 1979, to "104 days from the date of submission" both times it appears.

SECTION 732.12 [Amended]

4. 30 CFR 732.12(a) is amended by changing the date November 20, 1979, to "109 days from the date of submission."

5. 30 CFR 732.12(a)(3) is amended by changing "an opportunity" to "30 days from publication of the notice" so that the sentence begins "The notice shall afford interested persons 30 days from publication of the notice to submit * * *."

6. 30 CFR 732.12(b) is amended by changing "30" to "25" to read "25 days."

7. 30 CFR 732.12(b)(2) is amended by changing the date November 15, 1979, to "104 days from the date of submission."

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