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DEPARTMENT OF THE INTERIOR

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

30 CFR Chapter VII: Subchapter C – Permanent Regulatory Program in States: Parts 730, 731, 732, 733, 736
Surface Coal Mining and Reclamation Operations Permanent Regulatory Program

ACTION: Proposed rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement is seeking comments on these proposed rules which would implement a nationwide permanent program for the regulation of surface and underground mining operations by the States and the Federal Government as required by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These proposed rules are intended to strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy.

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{Preamble: 43 FR 41673}

SUBCHAPTER C -- PERMANENT REGULATORY PROGRAM IN STATES

Subchapter C proposes requirements for permanent regulatory programs in States. State and Federal Programs for States are grouped together in this subchapter in order to identify the required progression from the initial program established by Section 502 to a permanent Federal or State program. Subchapter C identifies procedures for the States and Office to follow in order to submit, review, approve or disapprove, maintain, revise and amend permanent State programs. Subchapter C also identifies procedures for the Office to follow to evaluate State programs and to Federally enforce State programs or withdraw approval of State programs and implement Federal programs in their place. The grant procedures available to develop and maintain programs are included here and remain unchanged from those previously adopted by the Secretary (42 F.R. 62639; December 13, 1977).

PART 730 – GENERAL REQUIREMENTS FOR REGULATORY PROGRAMS IN STATES

SECTION 730.3 - RESPONSIBILITY

Section 730.3 proposes general responsibilities for permanent regulatory programs as implemented by the States, the Regional Director, the Director and the Secretary. Submission, review and approval responsibilities are discussed as well as responsibility to maintain programs and to revise and change programs.

SECTION 730.5 - DEFINITIONS

Section 730.5 contains definitions of key terms which are used throughout the sections concerning State programs. Section 730.5(a) defines "'consistent with" to mean that rules and regulations adopted by the State to implement the provisions of the Act must be the same as or similar to the regulations promulgated under the Act and must achieve the same regulatory result. Consistent with is used in the State program regulation to indicate areas where the State program regulations may vary from those of the Secretary but must still meet the standard prescribed in the Act and the Secretary's regulations. Section 730.5(b) defines "'in accordance with" to mean that State laws to implement the provisions of the Act shall be in agreement with and no less stringent than equivalent provisions of the Act. The proposed regulations use "'in accordance with" to require that certain areas of State programs duplicate both the standard and the method of achieving the standard as prescribed in the Act and Secretary's regulations. These definitions are used specifically in Part 733 to establish criteria for approval or disapproval of State programs.

Section 504(a) of the Act requires the Secretary to implement a Federal program in a State no later than June 3, 1980 should the State fail to establish a State program. Proposed Section 730.12 requires that a State or Federal program be adopted no later than June 3, 1980 when surface coal mining and reclamation operation are carried out in a State. The Office is aware of several States in which mining is not now occurring but likely to occur in the near future. The Office encourages those States with extractable coal reserves that are not presently being mined to determine whether mining is likely in the

near future and, if so, to propose a State program early enough so that the program can be established prior to mining. Proposed Sections 730.12 and 731.12(c) allow States to submit programs at a later date as they become aware of proposed mining operations, or, in the alternative, to insure that a Federal program for such States will be implemented.

PART 731 – SUBMISSION OF STATE PROGRAMS {41674}

Part 731 is intended to establish procedures and requirements for the States to follow in order to submit a State program. State programs will not include regulation of mining on Indian lands. Part 731 also details the content requirements for a program submission.

SECTION 731.12 - SUBMISSION OF STATE PROGRAMS

Section 731.12(a) requires that States submit 3 copies of the proposed program to the Regional Director on or before February 3, 1979. Three copies are required, one for the Office in Washington, one for the Regional office and one to be made available for public inspection. February 3, 1979 is established in Section 503(a) of the Act and program submissions must be made by that date. Earlier versions of the regulations required States to submit programs in a form acceptable to the Office. That requirement was deleted from the proposed regulations. However, there will be a need to reproduce copies of the submission and States should prepare the submission in a reproducible form.

States may petition for an extension of time beyond February 3, 1979 under Section 731.12(b) of the proposed regulations if it is necessary that their legislature act to allow them to submit a proposed State program. This requirement is authorized by Section 504(a) of the Act. The States are required to petition for assumption of responsibility following State's legislative process towards adopting the necessary statutes and regulations under section 731.12(c).

The States are required under Section 731.12(d) to keep sufficient copies of the program to permit public inspection under Section 732.12(a).

SECTION 731.13 - ALTERNATIVE PROCEDURES AND PERFORMANCE STANDARDS

Proposed Section 731.13 is proposed to permit the States to request variations from the regulations of this Chapter in order to develop regulatory programs to fit the specific circumstances of each State. This section was developed in response to comments on the draft regulations which showed a need to clarify the extent of variation to be allowed. Variation from the Secretary's methods of achieving standards as contained in the regulations will be acceptable both for achieving performance standards pursuant to Subchapter K and in the systems and procedures that make up the program. With regard to performance standards, variation will be approved for the method of achieving the actual standard. Systems and procedures include such areas of a program as permitting, bonding, and inspection. However, no leeway will be permitted in achieving the results and standards specified in the Secretary's regulations. With regard to program systems and procedures, criteria for acceptable variances are closely tied to the requirements contained in the Act. In all cases, variances in the methods of meeting the purposes of the Act will be compared to the regulations developed by the Secretary. The variance proposed must be at least as effective in meeting the purposes of the Act as the approach contained within the Secretary's regulations. The variances must be based on characteristics of a particular State. No variance will be approved unless the State also submits detailed information and analysis that will enable the Office to determine that comparable effectiveness can be achieved.

SECTION 731.14 - CONTENT REQUIREMENTS FOR PROGRAM SUBMISSIONS

The proposed regulations under Section 731.14 require all information specifically mentioned under Section 503(a) (1) through (7) of the Act and in addition require that supplemental program information be included in a program submission. The Office believes that the supplemental information is necessary to satisfy Section 503(a) of the Act which requires that the State demonstrate its capability to carry out the provisions of the Act. The Act specifies additional criteria in section 503(b)(4), for approval of a State program, including findings that the State has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards.

Alternatives to requiring the level of detail requested in proposed Section 731.14 range from requiring nothing more than that required in Section 503(a) of the Act to requiring States to undertake costly studies that project future mining demands for the State. Such studies might prove useful in documenting future program needs. Another alternative considered was to require States to obtain a program management analysis to document program efficiency and program structure.

Section 731.14 as it is proposed should provide the Regional Director, Director and the Secretary sufficient information to make the decision to approve or disapprove the program submission as required under Section 732.13. The drafters of this regulation feel that the detail required provides no more information than needed to approve, or disapprove based on criteria listed in the Act.

Sections 731.14 (a) and (b) require State program submissions to include copies of State laws and regulations. The laws and regulations should address each applicable segment of the Act and the regulations of the Secretary. In reviewing the State's laws and regulations the Office will establish a cross index to be sure that each provision of the Act and the Federal regulations is addressed in the State program.

731.14(c) requires the States to submit copies of other laws and regulations directly affecting coal surface mining. Inclusion of other laws and regulations should alert the Office and the State to potentially conflicting State laws and regulations which may cause problems during enforcement of a State program. The Office has encountered several instances of this problem during the initial regulatory program.

The State is required under proposed 731.14(d) to submit a legal opinion of the State Attorney General addressing the State's legal authority to carry out the program. An alternative to this requirement would be to rely on Interior's Solicitors to determine the State's authority. The Office feels that the State Attorney General is in a better position to render this opinion. Proposed Section 731.14(d) also requires the State Attorney General to explain differences between the State laws and regulations and the Act and Secretary's regulations. This requirement should assist the Office in evaluating the State's authority.

Proposed Section 731.14(e) requires the state to submit a copy of the order or statute that authorizes the State to carry out the State program and to administer program grants. Such a designation is required under the grants section of the regulations in Part 735 (previously issued as Part 740). In most cases a grant under Part 735 will directly follow approval of a State program. The designation has, therefore, been required along with the State program submission.

A chart or table of organization of the regulatory agency and other agencies involved in the State program is required under proposed Section 731.14(f). A chart is necessary for the Director to evaluate the mode of operation of the program and thus to assist the Secretary in determining whether to approve or disapprove the program. The chart will be especially useful for the Director and Secretary to determine adequacy of the program in meeting all aspects of the Act in terms of projected workload and time constraints imposed by the Act.

Copies of supporting agreements between the regulatory authority and any other agencies which the regulatory authority must depend on are required in proposed Section 731.14(g). The Office must be assured that roles to be played by other agencies are firmly established and are adequate to the extent relied upon to implement the intent of the Act. {41675}

Proposed Section 731.14(h) asks the States to submit narrative descriptions and flow charts for each of the required systems and processes that make up the State program. These descriptions and flow charts will enable the Office to determine the State's capability to implement, administer and enforce the Act. An alternative to requiring detailed descriptions and flow charts would be to require a statement by the State that the State had the systems and procedures necessary to implement, administer and enforce the Act. The Secretary must evaluate the applicability and efficiency of the State systems proposed to be used before he can approve the Program. Without detailed descriptions, such evaluation would not have an adequate foundation and the Secretary's final determination would amount to little more than a subjective belief in a certain State's ability or inability to manage the program.

Proposed Section 731.14(i) requires the States to submit statistical information describing coal mining operations in the State. This information is necessary in order to determine the actual regulatory demand placed on the proposed State program. Past mining statistics are required in order that the Office and the State establish a relationship between program size and number, and size of operations. As an alternative the Office could obtain this data on its own. However, it is important that the State establish mining trends in the State for use in projecting future program needs. Future projections are requested only if they are available through existing studies. The Office does not intend that a State undertake costly new studies to comply with this requirement.

Proposed Section 731.14(j) asks the State for a summary table of existing and proposed program staff. The table should include the entire program staff showing job functions, titles and job experience and training for professional and technical positions. This table will assist the Office in evaluating the overall program. No information is requested for and no assessment will be made of individual employees.

Proposed Section 731.14(k) requires the State to describe how the staffing for the proposed program will be adequate to carry out the projected workloads. The State should address timeliness of required functions under the Act. Descriptions should be included of how the staff inspectors will perform the required number of inspections and how the permitting and technical staff will process and evaluate anticipated applications for permits.

A map showing office locations for the regulatory authority and other involved agencies is required under proposed Section 731.14(l). The State program should be accessible to mine operations and the public affected by mining.

Proposed Section 731.14(m) asks for an explanation of projected use, if any of professional and technical personnel available to the regulatory authority from other agencies. The Office does not promote State programs that are made up with staff from many different agencies. However, in some States with small programs, it will be reasonable for the regulatory authority to employ certain professional and technical personnel from other agencies for functions under the State program. This is especially necessary for States that do not project sufficient workloads to justify full-time personnel in technical areas. The Office does not envision approval of a State program if the functions of inspection and enforcement are handled by staff other than the regulatory authority staff. Inspection and enforcement must be incorporated within the regulatory authority.

The States are required in proposed Section 731.14(n) to describe the budget for the past year, the present year and the projected budget under an approved State program for the next two years. Budget projections at this stage should allow the Office to properly allocate proposed Federal grants. Physical resources including vehicles, office space, laboratories and equipment must be described pursuant to proposed Section 731.14(o). Physical resources will make up an important part of a State program and will provide the Office and the Secretary with information to be used in evaluating the adequacy of the proposed program.

The State is required under proposed Section 731.14(p) to describe, in a narrative form, actions which over the past three years regulated surface coal mining, including a description of the type of enforcement actions available to the regulatory authority and how those actions were utilized. The narrative should also demonstrate actions toward implementing the initial regulatory program under the Act. The reason for requiring this information is inherent in the Act that establishment of a permanent program in a State be considered a two-part process. The initial program as provided in the Act precedes the permanent program and offers the State an opportunity to demonstrate its effectiveness and capabilities in implementing and administering certain provisions of the Act. The Office does not intend to use this information regarding initial program experience in a negative manner but rather to determine a trend towards effective implementation of the requirements affecting surface coal mining and reclamation operations.

Proposed Section 731.14(q) requires a description of special environmental protection performance standards of the State for regulation of anthracite coal mining. Section 529 of the Act provides for separate regulations for anthracite coal mining in a State if the State was regulating anthracite mining on August 3, 1977.

731.14(r) asks the State to describe other programs administered by the regulatory authority. Other programs could be those that interfere with effective implementation and administration and enforcement of the State program. Another reason for identifying other programs of the regulatory authority is so that staff with duties in addition to duties under the Act or program can be properly apportioned in order to meet the requirements of grants pursuant to Section 735. States should attempt to avoid assigning other functions to those assigned to implement and enforcement of the State program under this Act. The Secretary will not approve proposed programs that do not provide the State with sufficient staffing to carry out the provisions of the program. The State submitting a proposed State program should utilize the requirements under Part 731 to provide the Office with a complete picture and description of the State staff and State procedures that will enable the State to regulate coal exploration operations and coal surface mining and reclamation operations in the State according to the Act. Each State program will be different in order to reflect the size and number of mining operations and regional variations and differences.

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

SECTION 732.11 - REVIEW BY THE DIRECTOR

Proposed Section 732.11 provides for a review of the program submission by the Regional Director to determine whether the submission is complete. "Complete" is defined to mean that the submission contains all the elements required by Section 731.14 of the regulations. If the Regional Director determines that one or more elements are missing he will be directed to identify the missing elements and return the program to the State. This early review is intended to prevent OSM from performing lengthy and time consuming reviews of incomplete submissions. Incomplete submissions will not be eligible for approval by the Secretary.

Proposed Section 732.11 also requires the Regional Director to publish notice in the Federal Register that he has received a program submission and that the process of review for completeness is open for public participation. These more formal public review procedures during the review for completeness announce an end to the period of informal discussions between the State and the Office concerning the development of the program which will occur during State program development. From the time of submission on, the process leading to approval or disapproval proposed in the regulations shall be open to all parties and preclude ex parte communication. {41676}

The Office intends to meet with States early and assist them in developing and submitting complete and adequate programs. These early sessions should assist States in that effort. The proposed procedures stem from the fact that the review and subsequent approval of a State program is considered Federal rulemaking.

Section 732.11(c) provides the State 30 days in which to make changes and additions to submissions which have been returned as incomplete. The States may return the submission to the Regional Director for review. Earlier drafts provided the State 60 days to respond. However, this period is not provided in the Act and seriously affects the State and Office's ability to implement a program as required on or before June 3, 1980. The States should be aware however that Sections 504(a) and 503(c) of the Act, requires the Secretary to implement a Federal program should the State fail to resubmit a State program that has been disapproved. Incomplete submissions once rejected must be considered the same as disapproved programs and the State must resubmit within 30 days in order to keep the Office from initiating a Federal program. The Office recognizes that some incomplete submissions will lack only minor items. These may be submitted after the 30 days allowed up to February 3, 1979 or August 3, 1979, if time for submission is extended under Section 731.12(b) of this subchapter. The Office is interested in comments from the States regarding the provision of an early determination by the Regional Director for completeness of a program submission and the provision for public participation in that review process.

SECTION 732.12 - NOTICE AND PUBLIC HEARING REQUIREMENTS

Proposed Section 732.12 requires the Regional Director to hold a public hearing on the submitted program. The public hearing is required by Section 503(b)(3) of the Act.

Section 732.12(b)(1) proposes that the public hearing format and rules of procedure be determined by the Director. Section 732.12 also provides for public review of the submitted program and for public comment period. Section 732.12(c) requires the Director to compile written comments, hearing transcripts and exhibits and forward them to the Secretary along with a recommendation that the Secretary approve or disapprove the State program. The objective of this proposed rule is to insure meaningful public participation in the development of a State program. The Office believes that such public participation is a clear intent of Congress.

Section 503(b) of the Act requires the Secretary to render a decision approving or disapproving the program submission. The Secretary is required under proposed Section 732.13 to consider all relevant information including information obtained from the public hearing and public comments. Section 732.13(b) establishes that approval shall not be granted until the Secretary has obtained concurrence from the Administrator of EPA and until he has solicited and disclosed the views of the EPA and the Department of Agriculture. These requirements follow Section 503(b) (1) and (2) of the Act.

SECTION 732.13 - DECISION BY THE SECRETARY

Proposed Section 732.13(a) allows the Secretary to approve or disapprove the program in whole or in part as provided in Section 503(b) of the Act. However, approval in part by the Secretary does not establish a State program for the part approved. Approval in part simply provides assurance to the State that part of the State program is determined acceptable and need not be revised or altered. The remainder of the program must be completed or revised and approved before authority to regulate surface coal mining under the Act is transferred to the State.

Section 732.13(c) requires the Secretary to include findings for his decision and to transmit the findings to the State. This requirement is taken from Section 503(b)(4) of the Act which requires a finding for a portion of the decision. In addition, in the case of disapproval by the Secretary findings are required under Section 503(c) of the Act.

Section 732.13(d) requires the Secretary to issue his decision within 180 days from the date that the Regional Director received a complete program submission. The Act in Section 503(b) allows 6 months for the review after the date that the program was submitted.

The Secretary is required under proposed Section 732.13(e) to publish all decisions approving or disapproving a program in the Federal Register. Public notice is required because the process of approving a State program is considered a Federal rulemaking process and this requirement assures that the public is provided notice of the Secretary's decision.

Proposed Section 732.13(f) provides that a State whose program is disapproved in whole or in part shall have 60 days to submit a revised program. The Secretary is given 60 days in which to approve or disapprove the revised program submission. The revised program is submitted to the Director. Proposed Section 732.13(f) requires the Director to publish the revised submission contents in the Federal Register and provide time for comments. The Director evaluates the revised program submitted and considers comments received and recommends approval or disapproval to the Secretary. The Secretary then issues his decision and publishes it in the Federal Register .

The decision disapproving this revised program is considered the final decision by the Department regarding the State program. If the State program is not approved, Section 504(a) (2) of the Act requires implementation of a Federal program. Proposed Section 732.14 does not provide for another submission until a Federal program has been implemented. Section 732.13 does not provide for the establishment of partial State programs. Section 503(6) and (c) of the Act does provide for the Secretary to render approval of part of the State program. However, Section 503(c) of the Act also requires the State to revise and resubmit the portion of the program not approved. The Office interprets this to mean that partial State programs were not intended to provide the State with primary regulatory responsibility and a State program. The language of Section 503 of the Act and the definition of State program in Section 701(26) of the Act require that a State be primarily responsible for jurisdiction over most aspects of the Act.

The alternative to providing for complete programs at the initial stage of the permanent program is to allow for enforcement of a permanent program partially by the State and partially by the Office. This alternative would create problems with title IV funding as well as manifest confusion as to which agency was the regulatory authority for what purposes. The proposed regulations therefore require States to assume jurisdiction over regulation of all surface coal mining and reclamation operations. The concept of shared State and Federal regulation and jurisdiction is considered a remedial concept and occurs after a program has been approved in whole and the Secretary finds that the State is not effectively implementing and administering the program. This remedial action is intended for extreme circumstances. These provisions are discussed more fully under the portion of the preamble which addresses Section 733.12 of this subchapter. {41677}

Section 732.13(g) provides that a decision by the Secretary approving a program officially establishes a State program in that State. Section 732.13(g) also establishes that program submissions shall not be finally approved unless they can be approved in whole.

SECTION 732.14 - RESUBMISSION OF STATE PROGRAMS

Proposed Section 732.14 implements Section 504(a) (2) of the Act and states that once a program submission is disapproved under a final decision by the Secretary pursuant to Section 732.13(f), the State may not submit another program until a Federal program has been implemented in that State. After implementation of a Federal program resubmission of State programs must be made pursuant to Sections 731 and 732 of the regulations.

SECTION 732.15 - CRITERIA FOR APPROVAL OR DISAPPROVAL OF PROGRAMS

The criteria upon which the Secretary must base his decision for approval or disapproval of programs is provided in proposed Section 732.15. Criteria for approval of State programs is found in Section 503(a) and (b) of the Act. Other criteria for approval are located elsewhere in the Act. Criteria regarding acceptable enforcement of State programs are found in Section 521(d) of the Act and criteria for State program designation of lands unsuitable are found in Section 522 of the Act. Criteria regarding acceptable variations in State programs are listed under proposed regulation 731.13 and discussed in the preamble which addresses Part 731.

The Secretary is required in proposed Section 732.15(a) to base his decision on information contained in the program submission, public comments received and testimony presented at the public hearing, written comments and other relevant information. The Secretary may not approve the program unless he finds that the program provides for the State to carry out the provisions and meet the purposes of the Act and regulations of the Secretary as provided by Section 503(a).

Under proposed Section 732.15(a)(1) the Secretary is required to find that the State demonstrated a good faith effort under the initial program. This judgement will be made objectively to the extent possible. The Office can compare State inspection reports with Federal inspection reports. State enforcement actions for violations of the initial performance standards can be analyzed. An effort will also be made to evaluate actual success in achieving reclamation under the interim performance standards. The Office must utilize the initial program as an opportunity to judge the capability of a State for assuming jurisdiction over the regulation of surface coal mining and reclamation operations.

Proposed Section 732.15(a)(3) establishes that on the date of the submission the State must have the authority required to implement the Act and program. The alternative to this requirement is to allow the States to develop authority after submission of the State program but prior to the Secretary's decision. Another alternative is to allow the States to develop authority after approval of the State program. Neither of these alternatives would be consistent with Section 503 of the Act and the definition of State program. The Office feels that the Act intended that the permanent program be fully developed and ready for implementation before final approval of a State program. A program development grant covering up to 80% of the costs of developing a program is available under Section 735 of the regulations.

Proposed Section 732.15(a)(3)(i) through (xii) establish specific requirements for a State program. No program can be approved unless the State has authority to impose each requirement. Proposed Section 732.15(a)(3)(vii) requires that a State have the authority to issue enforcement orders in accordance with the Act and consistent with the Secretary's regulations. The provision also requires that State inspectors have the same authority. The Office feels that authority to issue orders at the inspector's level is most important. Too much time is lost in States where official orders must originate from the State capital. The Office believes that the intent of the Act is to establish programs that immediately mitigate the safety and environmental hazards caused by surface mining and reclamation operations.

Generally, each provision with the exception of Section 732.15(a)(3)(xii) is specifically required by the Act to be included in a State program. Proposed Section 732.15(a)(3)(xii) requires a State to have authority to monitor, review and enforce the prohibition against indirect or direct financial interests consistent with Part 705 of these regulations. Section 517(g) of the Act requires that no employee of the State regulatory authority performing any function or duty under the Act shall have a direct or indirect financial interest in any underground or surface coal mining operation. Under the initial regulatory program States were not required to have authority to enforce 517(g) of the Act. They were, however, required to comply with the provision. The Office feels that the intent of Congress in 517(g) was to require States to have authority to enforce the prohibition against conflict of interest should it occur. If a State did not have authority to enforce 517(g) it is doubtful that the requirements of the Act could be fulfilled.

The Secretary is required in proposed Section 732.15(a)(4) to find that the State has and will continue to have sufficient personnel and funding to implement, administer, and enforce the provisions of the program and the requirements of the regulations. This provision implements Section 503 (a)(3) and (b)(4) of the Act. In reviewing program submissions the Office will evaluate program personnel against program functions to ensure that the requirements of the Act can be met. This review will include an analysis of the numbers and types of personnel to ensure that the performance standards in Subsection K can be incorporated into permits and enforced. Many of the performance standards are highly technical in nature. This requires that a State program include sufficient technical personnel to understand the requirements and ensure incorporation of the requirements in all permits. At a minimum the proposed staff should include capability to deal with the land use, engineering, hydrologic, geologic, agronomic and administrative requirements of the Act and regulations. The program should also include provisions to apply and enforce regulations dealing with more specialized areas such as blasting.

Proposed Section 732.15(a)(5) requires the Secretary to find that the State has a State law and regulations in effect that fulfill the requirements of the Act by specifically prescribing some conduct and requiring other under the State law.

Section 102(i) of the Act establishes that it is a purpose of the Act to assure that appropriate procedures are provided for public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this Act. Proposed Section 732.15(a)(5)(v) requires the State to have a system providing for public participation in the development, revision, and enforcement of State regulations and the State program. The regulations do not establish specific public participation procedures but approval by the Secretary will depend on whether the resulting participation at the State level is consistent with the level of participation designed into procedures at the Federal level pursuant to the regulations of this Chapter. {41678}

Proposed Section 732.15(a)(5)(vi) requires the Secretary to find that State law provides an administrative review of program actions. Review must be available to persons who may be adversely affected by the action and at a minimum should be available for enforcement actions in accordance with Section 525 of the Act.

Proposed Section 732.15(a)(5)(vii) requires that the State not have laws or other provisions which are not consistent with the Act or regulations.

Under proposed Section 732.15(b) the Director may establish other criteria pursuant to the regulations to determine whether a State program should be approved. This is considered necessary so that the Office may require that State programs address regional differences and variations.

SECTION 732.16 - TERMS AND CONDITIONS FOR STATE PROGRAMS

Proposed Section 732.16(a) provides that the Director may establish terms and conditions for State programs. These terms and conditions are the bases for providing the Office with up to date information on the program in a State.

SECTION 732.17 - STATE PROGRAM AMENDMENTS

Under proposed Section 732.17(a) (1) (3) the Director may require State consultation with the Office and require the State to provide the Office with access to books and records. These terms and conditions are necessary to allow the Director to evaluate the administration of an approved State program as required under proposed Section 733.12 of the regulations.

The Director may modify State program terms and conditions to reflect changes in the regulations which support the Act and to reflect changes in the conduct of the program. The Director is required to give notice to the State and hold an informal conference before any terms or conditions are modified. This ability to modify a program is necessary in order to meet unexpected or administrative changes and to allow the Director to adjust the program for smoother coordination with the Office. More significant changes will be processed as an amendment to the State program.

Proposed Section 732.17 provides for the State program to be amended for specific reasons. Amendments may be initiated by the State or by the Office. Amendments under this proposed Section are available so that a program can be adjusted to meet changes in staffing, budgets, and resources of the State regulatory authority and to meet changes in the number or size of State mining operations. Amendments are not intended for use by the Office to address inadequate implementation, administration or enforcement of State programs. Before the amendment process may be utilized, proposed Section 732.17 requires Amendments will not be necessary to address every minor change within a State. Proposed Section 732.17 also provides approval or disapproval procedures for program amendments. The Act does not specifically provide for State program amendments. However, the Office feels that amendment provisions must be included to allow programs to be adjusted to meet changing requirements and needs.

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

SECTION 733.11 - GENERAL REQUIREMENTS FOR MAINTAINING STATE PROGRAMS

Proposed Section 504(a)(3) of the Act requires the Secretary to implement a Federal program if the State fails to implement, enforce or maintain its approved State program. In addition the Act in Sections 504(b) and 521(b) require the Secretary to provide enforcement of that part of a State program not being enforced by the State. It is from these requirements that Section 733.11 has been drafted requiring the States to implement, administer, enforce and maintain their approved State program or invite Federal involvement.

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

Procedures for substituting Federal enforcement for a State program or withdrawing approval of a State program are contained in Section 733.12. This Section establishes two options for the Secretary to use in dealing with improper administration and enforcement of a State program by a State.

The Director is required in proposed Section 733.12(a) to evaluate at least annually the effectiveness of the administration of a State program. He must also make an evaluation in response to a citizen report that a State is not maintaining its approved program. The proposed regulation requires prompt written notice to States if the evaluation shows ineffective administration of the program. The regulation requires the Director to hold an informal conference with the State if requested. The purpose of the informal conference is to allow the State to explain its position regarding allegations of ineffective administration. If, following the informal conference the Director still believes that the program is not being effectively administered he shall hold a public hearing in order to make a determination whether the State is effectively administering and enforcing the State program. Section 521(b) of the Act provides for this public hearing. The informal conference between the Office and the State is an attempt to solve problems of State administration without first going to a public hearing. However, if the State cannot show at the informal conference that enforcement of the program is actually effective the Director must hold a public hearing on the matter. Although not specifically stated in the regulations this and other informal conferences between the Office and the State will be open to the public.

Upon completion of the public hearing proposed Section 733.12(c) instructs the Regional Director to submit the available information and a recommendation to the Director. If on the basis of information following the hearing the Director finds that there are violations resulting from failure of the State to administer part or all of the State program effectively, the Director has two options:

- (1) Substitute direct Federal enforcement of the State program; or
- (2) Withdraw approval of the State program in whole or in part.

The first option, substituting Federal enforcement of the State program, implements Section 521(b) of the Act. This section provides for Federal enforcement of State programs that have been implemented and operated past June 3, 1980. Enforcement of all or any part of a State program by the Office under 521(b) of the Act is interpreted to include administration and enforcement of the whole program. Under this option a new permanent program would not be implemented. Instead, the Office would simply run all or part of the approved State program.

The second option under this Part allows the Director to withdraw approval of the State program for reasons listed in proposed Section 733.12. Under this option the Director shall propose, promulgate and implement a Federal program in the same manner as provided in Part 736 of the regulations. Withdrawal under this option can be for all or part of the program. The second option allows the Director to withdraw approval any time following implementation of the program by the State. The Office relies on Section 504(a)(3) of the Act and Senate Report No. 93-402 as an indication that Congress intended that the Secretary to ultimately promulgate and implement a Federal program rather than enforce specific areas of the program if necessary. Section 504(a)(3) requires that a Federal program be implemented no later than June 3, 1980 if a State fails to implement, maintain or enforce its State program. The time deadline is viewed as the initial date that either a Federal or State program must be effective, not as a limitation on the authority of the Secretary or the Office to withdraw approval of a State program and replace it with a Federal program.

Withdrawing approval is designed to be the remedial action available to the Director for extreme cases of ineffective program administration by a State. Enforcement of all or part of a State program by the Director under the first option will be the preferred remedial measure and will be adequate to deal with less extreme cases of ineffective program administration.

SECTION 733.13 - CRITERIA FOR SUBSTITUTING FEDERAL ENFORCEMENT FOR A STATE PROGRAM OR WITHDRAWING APPROVAL OF STATE PROGRAMS {41679}

In evaluating the administration of State programs as required in proposed Section 733 the Director shall base his decision to substitute Federal enforcement or withdraw approval on the adequacy of program resources and processes as enumerated in Section 733.13. The decision will also be based on the adequacy of the program permitting process, program inspection process, adequacy, and enforcement and the overall adequacy of the entire program. These criteria have been established to provide a rational basis for proper evaluation of a State program. In evaluating the program the Regional Director and Director shall, to the extent possible, attempt to quantify program effectiveness or failures

PART 736 – FEDERAL PROGRAMS ON STATE LANDS

The regulations in Part 736 establish the procedural requirements governing Federal programs on State lands. These procedures are necessary where the Office of Surface Mining assumes primary regulatory jurisdiction within a State when that State fails to submit an approved State program or fails to administer or enforce its approved program effectively.

In addition, the regulations specify procedures for terminating a Federal program when primary regulatory jurisdiction is returned to a State under an approved State program.

The intent of these regulations is to provide:

- (1) The necessary criteria for implementing jurisdictional transfers;
- (2) The procedural steps necessary to ensure orderly jurisdictional transfers; and
- (3) The opportunities for public participation required by the Act.

SECTION 736.3 - RESPONSIBILITY.

Section 736.3 assigns the responsibility of a Federal program for a State to the Director and allows him to delegate this responsibility to the Regional Director. The alternatives are to leave all authority under this Section exclusively with the Director, to give all the authority to the Regional Director, and to allow the Regional Director to delegate his authority to a subordinate. Allowing the authority to remain with the Director could be cumbersome. Currently, it is not known how many States will require a Federal program. In the event that there are a large number of States requiring a Federal program for a State, this delegation is a realistic method for administering the responsibility designated under Sections 201(c) and 504 of the Act. The promulgation, revision and termination provisions shall remain exclusively with the Director to maintain consistency among the Federal programs. Allowing the Regional Director to delegate all the responsibility under this Section places much responsibility at too low a level in OSM and makes it difficult to achieve consistent application of the requirements of the Act on a national basis.

SECTION 736.4 - AUTHORITY.

(1) Section 736.4(a) provides the Director with exclusive jurisdiction for the regulation and control of all coal exploration and surface coal mining and reclamation operations taking place on non-Federal and non-Indian lands within such State, as provided in Section 504 of the Act.

(2) Section 736.4(b) vests the Director with the exclusive jurisdiction for the regulation and control of the promulgation, implementation and maintenance of a partial Federal program for a State. This Section provides that the

Director will be the regulatory authority for any part of a State program found not to be enforced effectively, while the State regulates only those aspects of the State program not affected by a partial Federal program.

(3) Section 736.4(c) is written in accordance with Section 502(f) of the Act.

SECTION 736.5 - DEFINITIONS.

(1) Section 736.5(e) gives a definition of the "termination of a Federal program for a State," as provided for in Section 504(e) of the Act. This term identifies the legal mechanism for returning primary jurisdiction to the State under an approved State program or for returning jurisdiction to a State whose program was withdrawn in part.

SECTION 736.11 - GENERAL PROCEDURAL REQUIREMENTS.

(1) Section 736.11(a)(1) discusses the promulgation of a complete Federal program based on Sections 504(a)(1) and (2) of the Act.

(2) Section 736.11(a)(2) specifies that, as provided for in Sections 201 and 504(a)(3) of the Act, the Director shall promulgate a Federal program upon the withdrawal of approval of a State program. Public participation is encouraged in the development and revision of a Federal program, in accordance with Section 102(i) of the Act. The establishment of a complete or partial Federal program allows for such input.

The procedures established for promulgation of a Federal program are to be distinguished from those for substituted Federal enforcement of a State program. A Federal program requires more specific procedures and opportunity for public input, as provided for in Section 102(i) of this Act, while the substituted Federal enforcement of a State program is a more expedited procedure. One alternative considered was to allow the public to petition for the promulgation of a Federal program. However, the State withdrawal procedures in Section 733 provide criteria for the Director's evaluation of a State program. Consequently, the Director will consider public comment, as provided in Section 733.

(3) Section 736.11(b) provides for the revision of a Federal program, based on Sections 102, 501(b) and 504 of the Act. This provision allows the Office to continue to update any Federal program due to changing circumstances from physical conditions, new technology, new national requirements under the Act or new awareness of environmental affects of coal mining. Also this provision is in keeping with the charge of Section 102(i) for public participation in the process.

(4) Section 736.11(c) provides for the termination of appropriate portions of a Federal program for a State, based on Sections 102, 201, 501(b) and 504 of the Act. The Director may withdraw a Federal program when a State is considered to have the capability to carry out the appropriate provisions of the Act and this Chapter under Part 732. The alternative is to allow partial termination of a Federal program. Such an alternative may not provide enough incentive to the State to obtain an approved State program.

SECTION 736.12 - PUBLIC NOTICE REQUIREMENTS.

(1) Based on the authority of Section 102(i) and 504(b) of the Act, Section 736.12(a) requires the Director to publish notice in the Federal Register at least 60 days in advance of the public hearing. Publishing in the Federal Register allows for a wide dissemination of information concerning the Federal program. The sixty day time period provides greater opportunity for public examination than the alternative of thirty days.

(2) Section 736.12(b) provides for public notice in at least one newspaper of general circulation in the coal mining area(s) of the State. Publishing notice in the newspaper(s) allows a wider distribution of information concerning the Federal program or revision and, together with Section 736.14, gives a wider opportunity for public comment. The basis for this authority includes Sections 504(c) and 102(i) of the Act.

SECTION 736.13 - PUBLIC COMMENT.

Publication in the newspaper three times within 30 days of the hearing provides notification close enough to the hearing to remind interested persons of the opportunity to attend. {41680}

(1) Section 736.13 provides for public comment in the promulgation and revisions of Federal program from the solicitation of comments from other agencies, the publication of notice in the Federal Register and newspapers, public participation in a public hearing, possible extension of the comment period and availability of information concerning the contents of the program and public response to it. Individually and collectively, these Sections derive their authority from Sections 102(i), 201, and 504 of the Act.

(2) Section 736.13(c) provides for a public hearing, as required by 504(c) of the Act.

(3) Section 736.13(c)(1)(i) provides for legislative procedures at the public hearing. The legislative procedures allow for comments from a broadly affected category of persons, whereas the alternative of adjudicatory procedures encompasses a more limited format on who may speak and what they may say. At the legislative hearing, all related information may be considered in any decision concerning the Federal program or revision. All relevant information needs to be elicited for the contents of a Federal program.

As the Office interprets Section 504(b) of the Act, only a legislative hearing is required. See *Vermont Yankee Nuclear Power Commission v. NRDC* U.S. (April 3, 1978); *South Terminal Corporation v. EPA*, 504 F.2d 646 (1st Cir., 1974).

(4) Section 736.13(c)(1)(i) provides that the Regional Director or his designee shall present the contents of the proposed program or revision. This requirement is considered important in keeping the public informed of the contents, so that interested persons can respond accordingly.

(5) Sections 736.13(c)(1)(iii) and (2) are based on Section 102(i) of the Act.

(6) Section 736.13(c)(3) requires that the Regional Director submit all the evidence and recommendations for and against a Federal program or revision and any proposed contents to the Director. The Director, as provided in Section 736.15, thus makes the final decision concerning the program. The alternative is to allow the Regional Director to make the final decision; but, as discussed earlier in this Preamble, the promulgation of a Federal program or revision would require the supervision of the Director to insure some consistency in Federal programs for a State, while allowing the Regional Director to make recommendations in line with the State's relevant physical conditions.

SECTION 736.14 - DIRECTOR'S DECISION.

Based on the authority of Sections 102, 201, 501(b) and 504 of the Act, the Director determines whether to promulgate or revise a Federal program and publishes any rules for such program.

SECTION 736.15 - IMPLEMENTATION, ENFORCEMENT AND MAINTENANCE OF A FEDERAL PROGRAM.

(1) Section 736.15(a) deals with the number of days for the Director to implement, maintain and enforce the provisions of the Federal program. Prior to the promulgation of any proposed Federal program, the Secretary will have provided adequate public notice and will have held a public hearing in the affected State. The need for the Federal program will have been established. Consequently, it was felt that a 30 day time limit would be preferable to other alternatives such as 60 days, 90 days or no time limit at all. The exceptions to the year limitation for designating lands unsuitable in a Federal program are areas so designated by Congress the implementation of a partial Federal program to administer such provisions.

The intent regarding the unsuitability for surface coal mining operations is known for those lands which Congress has already designated, and there is no need for a time delay in such designation. Also, to wait a year for the Federal program to administer the very provisions the State program was not administering would not be consistent with other provisions of the Act. One such provision is Section 102(m), which states that the purpose of the Act is to insure the protection of the public interest through effective control of surface coal mining operations. Impeding the implementation of a designation process and not implementing the intentions of Congress would not seem to protect the public interest.

(2) 736.16(b) allows the permittee to submit the sections of a new application that the Director determines to be relevant, rather than requiring the submission of an entire new application. The additional paper work probably would not produce meaningful results.

SECTION 736.16 - TERMINATION PROCEDURES.

This Section determines the procedure through which a Federal program is terminated. Section 504(e) is the basis of this authority.

SECTION 736.17 - CONSOLIDATION OF PROCEDURES.

Section 736.17 allows the Director to consolidate, as appropriate, public notices and hearings. This procedure avoids duplication when appropriate.

SECTION 736.21 - GENERAL REQUIREMENTS OF A FEDERAL PROGRAM.

Section 736.21 identifies the difference in the general requirements of a complete or partial Federal program. The authority for this Section is derived from Sections 102(a), (b), (c), (d), (e), (m); 201(c); 501(b); 503(a); 504(a); 504(b) and 505.

SECTION 736.22 - CONTENTS OF A FEDERAL PROGRAM.

(1) Section 736.22(a)(1) requires the Director to take into consideration the State's chemical, geological, hydrological, agronomic and relevant physical conditions. All of the specified physical conditions are considered significant and should be thought about in the promulgation or revision of a Federal program for a State. This authority is derived from Sections 201(c)(9) and 504(a) of the Act.

(2) Section 736.22(a)(2) requires the consideration of relevant Federal laws imposing duties on the Secretary. The reference to four laws is to call attention to these specific laws, but this reference is not intended to exclude other relevant laws. The authority for this Section is derived from Section 102(a) of the Act.

(3) Section 736.22(a)(3) requires more stringent performance standards than those otherwise provided when the State law or regulation is more stringent in land use and environmental control and regulations than the Act or this Chapter.

(3) Section 736.22(b) identifies the minimum provisions for a complete Federal program and appropriate provisions for inclusion in a partial Federal program. This Section, contents of a Federal program, provides the basic guidelines for a Federal program for a State. The alternative considered is to provide detailed regulations delineating as many specific requirements as possible. These regulations are skeletal in design and do not enumerate the specific requirements of a Federal program for a State, since such a Federal program must consider the nature of the individual State's relevant physical conditions and local environmental and agricultural conditions, according to Sections 504(a) and 201(c)(9) of the Act. The authority for Section 736.22(b) is derived from the following Sections: Section 102(a), (b), (c), (d), (e), (i), (m); 201; 501(b); 502(d) and (f) 503(a); 504, 506 519, 521, 522(e) 524, 525, 526(f), 527, 529, 701(28), 702, 711, 713, 716, 717 and 719.

(4) Section 736.22(b)(2) derives its authority from Sections 504(h); 702(a), (b), (c); 713 of the Act and the National Environmental Protection Act. This Section identifies three Acts requiring permits which need to be coordinated with the Act and these regulations. Others could probably be listed here, but the Acts have an important impact on surface coal mining and reclamation operations. {41681}

SECTION 736.23 - EFFECT ON STATE LAW OR REGULATIONS.

The authority for this Section is Section 504(g) and 505 of the Act.

Section 736.24 emphasizes provisions in other parts of the regulations concerning the effect of a Federal program on State findings, such as Sections 884.14, 884.16, 886.18 and 740.12 of this Chapter.

* * *

{Regulations: 43 FR 41809}

SUBCHAPTER C – PERMANENT REGULATORY PROGRAMS IN STATES

PART 730 – GENERAL REQUIREMENTS FOR REGULATORY PROGRAMS IN STATES

Section

730.1	Scope.
730.2	Objectives.
730.4	Responsibilities.
730.5	Definitions.
730.11	Inconsistent or more stringent State laws and regulations.
730.12	Requirement for regulatory programs in States.

Authority : Sections 102, 201(c), 501(b), 503, 504, 505, and 521 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 471, 473, and 504 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1255, 1271).

SECTION 730.1 - SCOPE.

This Subchapter sets forth standards and procedures for the submission, review, approval or disapproval of State programs, including criteria and procedures for amending approved programs, substituting Federal enforcement for State enforcement of the State program or withdrawing approval for those programs not adequately implemented or maintained. Also included are regulations for State program grants and the adoption of a Federal regulatory program in a State which does not have a State program or which has failed to implement, enforce or maintain its approved program consistent with the regulations of this Subchapter.

SECTION 730.2 - OBJECTIVES.

The objectives of this Subchapter include:

- (a) Establishing criteria and procedures for a State to follow in preparing and submitting a program or program amendment;
- (b) Establishing procedures and criteria for the review and approval or disapproval of program submissions and amendments;
- (c) Establishing criteria and procedures for substituting Federal enforcement of a State program and withdrawing approval of State programs;
- (d) Establishing a grants program to assist States in developing and administering and enforcing State programs; and
- (e) Establishing criteria and procedures for the promulgation, review, implementation, administration, and withdrawal of Federal programs.

SECTION 730.4 - RESPONSIBILITIES.

- (a) Each State that wishes to regulate coal exploration and surface coal mining and reclamation operations within its boundaries on non-Federal and non-Indian lands shall submit to the Director a proposed State program under Part 731 of this Subchapter.
- (b) Each State that wishes to receive a program development or an administration and enforcement grant shall submit its request to the Regional Director in whose region the State is located under Part 735 of this Subchapter.

- (c) The Regional Director shall also receive and review amendments to an approved State program and shall recommend approval or disapproval of such amendments to the Director.
- (d) The Director shall review each proposed State program and shall recommend approval or disapproval of a State program to the Secretary.
- (e) The Secretary shall approve or disapprove a proposed State program.
- (f) The Director shall approve or disapprove amendments to a State program.
- (g) The Director shall also either substitute Federal enforcement for a State program or withdraw approval of a State program that is not properly administered, maintained or enforced.
- (h) Each State having an approved State program shall implement, administer and enforce it in accordance with the Act, the provisions of the State program as approved by the Secretary, and consistent with the regulations of this Chapter.
- (i) The Director shall promulgate and implement a Federal program under Part 736 of this Subchapter for a State that does not have an approved State program or where he has withdrawn approval of a State program that has not been properly administered, maintained or enforced.

SECTION 730.5 - DEFINITIONS.

As used in this Subchapter_

- (a) CONSISTENT WITH means that a rule or regulation adopted by the State to carry out the provisions of the Act must be the same as or similar to the regulations promulgated under the Act and must achieve the same regulatory result. {41810}
- (b) IN ACCORDANCE WITH means that a State law regulating coal exploration and surface coal mining and reclamation operations shall be in agreement with and no less stringent than applicable provisions of the Act.

SECTION 730.11 - INCONSISTENT OR 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 the State law or regulation is less stringent than or precludes implementation of procedures or requirements of the Act or the regulations of this Chapter. The Director shall publish in the Federal Register any State law or regulation which he determines to be inconsistent with the Act or regulations of this Chapter.
- (b) Any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of the Act and this Chapter, or which provides for the control and regulation of coal exploration and surface coal mining and reclamation for which no provision is contained in the Act or this Chapter, shall not be construed to be inconsistent with the Act or this Chapter.

SECTION 730.12 - REQUIREMENT FOR REGULATORY PROGRAMS IN STATES.

Not later than June 3, 1980, each State in which there are or may be conducted coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian land shall have in place either a State program or a Federal program adopted under this Subchapter. States in which no coal exploration or surface coal mining and reclamation operations are in existence or planned on June 3, 1980, but in which such operations may occur at some later date, shall have a State or Federal program adopted and in place to regulate those operations prior to the commencement of any such operations. {41810}

PART 731 – SUBMISSION OF STATE PROGRAMS

Section

731.1	Scope.
731.6	Eligibility.
731.12	Submission of State programs.
731.13	Alternative procedures and performance standards.
731.14	Content requirements for program submissions

Authority : Sections 102, 201(c), 501(b) and 503(a), Pub. L. 95-87, 91 Stat. 448, 449, 468, 470 (30 U.S.C. 1202, 1211, 1251, 1253).

SECTION 731.1 - SCOPE.

This Part establishes standards and procedures for the preparation and submission of State programs.

SECTION 731.11 - ELIGIBILITY.

Any State in which coal exploration and surface coal mining and reclamation operations are conducted or may be conducted may submit a proposed State program to the Regional Director in whose region the State is located.

SECTION 731.12 - SUBMISSION OF STATE PROGRAM.

(a) Each State that wishes to regulate coal exploration and surface coal mining and reclamation operations within its boundaries on non-Federal and non-Indian lands shall submit 3 copies of a proposed program to the Regional Director for the region in which that State is located on or before February 3, 1979.

(b) If an act of the State legislature is necessary before a State may submit a proposed program which includes the necessary State laws and regulations, the Director may extend the date for the initial submission to August 3, 1979, or any earlier date determined to be appropriate by the Director. States seeking such an extension shall submit a written request, including a justification, to the Director no later than February 3, 1979.

(c) States may also submit a proposed program at any time later than June 3, 1980, when:

- (1) Implementation of a Federal program under 30 CFR Part 736 has been completed; or
- (2) States without prior surface coal mining under the Act become aware of potential new surface coal mining operations.

(d) The State shall retain sufficient copies of the program for public inspection under 30 CFR 732.12(a).

SECTION 731.13 - ALTERNATIVE PROCEDURES AND PERFORMANCE STANDARDS.

As part of its program submission, a State may request approval for alternatives to the requirements for permitting, bonding, inspection, enforcement and performance standards established in this Chapter where geologic, topographic, climatic, hydrologic and other regional conditions support alternative approaches. For each requirement for which the State proposes an alternative, the State shall:

(a) Describe the requirement from which the variation is requested and the reason for the request;

(b) Describe the alternative approach recommended and provide statutory or regulatory language to be used to implement the alternative, and

(c) Explain how the alternative approach is consistent with this Chapter, including supporting data which demonstrate that use of the proposed alternative will achieve the same or more stringent regulatory results as required by this Chapter.

SECTION 731.14 - CONTENT REQUIREMENTS FOR PROGRAM SUBMISSIONS.

The program shall demonstrate that the State has the capability of carrying out the provisions of the Act and achieving its purposes by providing a complete description of the system for implementing, administering and enforcing a State program including, at a minimum:

- (a) A copy of the State laws in effect at the time of submission of the program which regulate coal exploration and surface coal mining and reclamation operations;
- (b) A copy of any State regulations promulgated to implement and enforce State laws which regulate coal exploration and surface coal mining and reclamation operations;
- (c) Copies of (1) other State laws directly affecting the regulation of coal exploration and surface coal mining and reclamation operations, and (2) amendments to existing laws or regulations regulating coal exploration and surface coal mining and reclamation operations which are being considered or are pending;
- (d) A legal opinion from the Attorney General of the State stating that the State has the legal authority 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. The opinion shall include a section by section comparison of the State's laws and regulations with the Act and this Chapter, explaining any differences and their legal effect;
- (e) A copy of the legal document which designates one State agency as the regulatory authority and authorizes that agency to implement, administer and enforce a State program and to submit grant applications, and to receive and administer grants under this Subchapter;
- (f) A chart describing the existing and proposed structural organization of the agency designated as the regulatory authority and other agencies or applicable divisions or departments of other agencies which will have a role in the State program and indicating coordination between agencies and lines of authority and staffing functions within each agency and between agencies; {41811}
- (g) A copy of supporting agreements between agencies which will have a role in the State program;
- (h) Narrative descriptions and flow charts, indexed according to sections or subsections of the Act and this Chapter, of the proposed systems and processes for:
 - (1) Receiving applications for new or revised permits, reviewing, approving or disapproving permits or revisions to permits for surface coal mining and reclamation operations, and numbering permits according to a uniform permit numbering system adopted by the Office;
 - (2) Assessment of fees for permit applications, provided that:
 - (i) Fees shall not exceed the actual or anticipated costs of reviewing permit applications and administration and enforcement of such permits; and
 - (ii) Fees shall not exceed the average estimated costs of the review, administration and enforcement of the permit.
 - (3) Posting, release and forfeiture of performance bonds, or other equivalent sureties;
 - (4) Inspecting and monitoring coal exploration and surface coal mining and reclamation operations, including provisions for public participation in the process;
 - (5) Enforcing the administrative, civil and criminal sanctions of State laws for violation of any requirement relating to the regulation of coal exploration and surface coal mining and reclamation operations;
 - (6) Enforcing the permanent performance standards consistent with subchapter K of this Chapter;
 - (7) Assessing civil penalties;
 - (8) Issuing public notices and holding public hearings;
 - (9) Coordinating issuance of permits with other State, Federal and local agencies;
 - (10) Consulting with State and Federal agencies having responsibility for protection or management of endangered or threatened species, historic, cultural, and other environmental values;
 - (11) Designating lands unsuitable for surface coal mining operations, including provisions for terminating such designations and for public participation in the designation process;
 - (12) Monitoring, reviewing and enforcing restrictions against direct and indirect financial interests of State employees;

- (13) Training, examination and certification of blasters consistent with Subchapter M of this Chapter;
- (14) Regulating coal exploration operations;
- (15) Providing for public participation in the development, revision and enforcement of State regulations, the State program and the issuance of permits under the State program; and
- (16) Providing administrative review of program enforcement actions.

(i) Statistical information describing coal exploration and surface coal mining and reclamation operations in the State, including:

- (1) Tonnage of coal produced annually for each of the most recent three years for both underground and surface coal mining operations, according to type of mining, such as contour, area, or mountaintop, and giving the source of the data;
- (2) Number of mines producing coal during each of the most recent three years for both underground and surface coal mining operations according to the type of coal produced, i.e., bituminous, anthracite, or lignite;
- (3) Acreage permitted by coal exploration and underground and surface coal mining operations during each of the most recent three years;
- (4) A map showing the geographic distribution by county of existing underground and surface coal mining and reclamation operations for the period just preceding submission of the program;
- (5) Number of applications for permits, revisions, and renewals of permits for surface coal mining and reclamation operations or for coal exploration received annually for each of the most recent three years;
- (6) Frequency of State inspections for each permit during the initial regulatory program;
- (7) Number of coal exploration and underground and surface coal mining operations under permit being explored or actively mined, the number of operations under permit being actively reclaimed, and the number of permits on which reclamation operations are virtually complete (except for growth of required vegetation at the end of the month preceding submission); and
- (8) Projections, if available from existing studies, of the projected annual coal production and geographic distribution of coal exploration and surface coal mining and reclamation operations for the next 5 years or the period encompassed by existing studies, according to tonnage, type of coal produced, and whether production will be by underground or surface mining.

(j) A summary table of existing and proposed program staff showing job functions and titles and required job experience and training;

(k) A description of how the staffing proposed for the State program will be adequate to carry out the functions including permitting and inspection for the work-load projected to ensure that coal exploration and surface coal mining and reclamation operations will be regulated in accordance with the requirements of the Act;

(l) A map showing the office locations of the regulatory authority and other agencies involved in the State program including the number of employees and job functions at each location;

(m) An explanation of projected use, if any, of professional and technical personnel that are available to the regulatory authority from other agencies, including the information required in Section 731.12(i);

(n) A description of the actual budget, including income and expenses used or to be used to administer the regulatory program for the current fiscal year and the prior fiscal year, 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 Part 735 of this Subchapter;

(o) A description of the existing and proposed physical resources for use in the program such as office and laboratory space, vehicles and equipment;

(p) A narrative description of the history and progress of regulation in the State and other information as appropriate which would tend to demonstrate the State's capability to administer a permanent regulatory program;

(q) A description of special environmental protection standards and performance bond provisions, if any, of the State for the purpose of regulating anthracite coal mining as provided in Section 529 of the Act;

(r) A brief description of the other programs administered by the regulatory authority; and

(s) Such other information as the Director may require. {41811}

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

Section

732.1	Scope.
732.4	Responsibility.
732.11	Review by the Regional Director.
732.12	Notice and public hearing requirements.
732.13	Decision by the Secretary.
732.14	Resubmission of State programs.
732.15	Criteria for approval or disapproval of programs.
732.16	Terms and conditions for State programs.
732.17	State program amendments.

Authority : Sections 102, 201(c), 501(b), 503, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 521, and 522, Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 473, 474, 478, 479, 480, 483, 484, 485, 486, 495, 498, 499, 501, 504, and 507 (30 U.S.C. 1202, 1211, 1251, 1253, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1271, and 1272). {41812}

SECTION 732.1 - SCOPE.

This Part sets forth policy and procedures governing decisions approving or disapproving State program submissions and program amendments, including requirements for public participation.

SECTION 732.4 - RESPONSIBILITY.

(a) The Regional Director and the Director shall review program submissions, receive public comments, hold public hearings, and the Director shall recommend approval or disapproval of programs to the Secretary. The Secretary shall approve or disapprove programs.

(b) The Regional Director shall review program amendments and recommend approval or disapproval to the Director. The Director shall approve or disapprove program amendments.

SECTION 732.11 - REVIEW BY THE REGIONAL DIRECTOR.

(a) Immediately upon receipt of a program, the Regional 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, a summary of its contents and indicate that it is available for review during regular business hours at the office of the Regional Director and that a public file for comments received will be established and open for review.

(2) The notice shall indicate that a review is being performed by the Regional Director to determine whether the program is complete and that the review will be completed 30 days from the date of the submission.

(3) The notice shall afford interested persons and groups 15 days from the date of publication of the notice to submit written comments or to request a public meeting with the Regional Director to discuss the completeness of the program.

(b) Within 30 days after receipt of a program, the Regional Director, after considering written comments and relevant information, shall determine whether the submission contains all of the elements required by Section 731.14 and shall publish his decision in the Federal Register . If the program contains the required elements, the submission is complete.

(c) If one or more required elements are missing, the Regional Director shall identify the missing elements and return the program submission as incomplete.

(d) If the program is returned as incomplete, the State shall have 30 days to make appropriate changes in its submission and return it to the Regional Director for review pursuant to procedures in paragraphs (a) and (b) of this Section. If at the expiration of the 30 day period the State has failed to submit a complete program, the Director shall initiate the process to promulgate and implement a Federal program for that State under Part 736 of this Subchapter. Initiation of this process does not preclude the State from making appropriate changes in its submission and returning it to the Regional Director for review.

SECTION 732.12 - NOTICE AND PUBLIC HEARING REQUIREMENTS.

(a) Upon determination that a program submission is complete, the Regional 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 submission of the program, a summary of its contents and indicate that it is available for inspection during regular business hours at the office of the Regional Director and at the central office and each field office of the State agency responsible for the submission. The notice in the Federal Register shall include the complete text of State statutes and regulations.

(2) The notice shall afford interested persons and groups an opportunity to submit, in writing, data and comments on the program. The comment period shall end on a date following the last public hearing held under paragraph (b) of this Section. The date on which the comment period ends shall be in the Federal Register notice.

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

(b) A public hearing shall be held by the Regional Director no sooner than 60 days following the publication of the notice required by paragraph (a) of this Section. The hearing shall be informal and legislative in type.

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

(2) Additional hearings or additional time in which comments may be submitted may be allowed by the Regional Director, if either or both is deemed necessary or appropriate and proper notice is given as provided in paragraph (a) of this Section.

(c) Copies of written comments received shall be available for public inspection and copying at the offices of the Regional Director and the State agency responsible for submission.

(d) Upon completion of the hearing or hearings, the transcript, written presentations, exhibits and any post-hearing comments shall be transmitted by the Regional Director to the Director, together with a recommended decision from the Regional Director.

(e) Upon receipt of the recommendation of the Regional Director, the Director shall consider all relevant information including information obtained from all public hearings and comments, and shall recommend to the Secretary that he approve or disapprove the program in whole or in part. The recommended decision shall include findings which specify the reasons for the recommendation.

SECTION 732.13 - DECISION BY THE SECRETARY.

(a) After consideration of all relevant information, including information obtained from all public hearings and comments, and, after consideration of the Director's recommendation and findings, the Secretary shall issue a decision in writing either approving or disapproving the program, in whole or in part.

(b) The Secretary shall not approve a program 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 relevant to the program as proposed; and

(2) Obtained written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1151-1175), or the Clean Air Act, as amended (42 U.S.C. Section 1857 et seq.).

(c) The decision shall include the findings upon which the decision is based. The decision and findings shall be mailed to the State.

(d) The Secretary shall issue his decision within 180 days of the Regional Director's receipt of a complete program submission under Section 732.11.

(e) All decisions approving or disapproving a program, in whole or in part, shall be published in the Federal Register , indicating, in the event of disapproval, that the State has 60 days to submit a revised program for consideration.

(f) If the Secretary disapproves a program, in whole or in part, the State shall have 60 days from the date of notification to submit a revised program to the Director for reconsideration. The Director shall publish in the Federal Register the contents of the revision and give notice providing a 30-day opportunity for comments. The Director shall consider the revised program and the comments received and recommend to the Secretary approval or disapproval of the program in whole or in part. The Secretary shall then either approve or disapprove the revised program in whole or in part within 60 days from the date of submission and publish the decision in the Federal Register . A decision disapproving the revised program either in whole or in part constitutes the final decision by the Department disapproving that program submission in its entirety.

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(g) 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. A program submission shall not be finally approved unless it can be approved in whole.

SECTION 732.14 - RESUBMISSION OF STATE PROGRAMS.

If, by a final decision, the program is disapproved, the State may submit another program to the Regional Director at any time after implementation of a Federal program for that State under Part 736 of this Subchapter. Resubmission of State programs shall be made and acted upon pursuant to Sections 732.11, 732.12, 732.13, 732.15 and 732.16.

SECTION 732.15 - CRITERIA FOR APPROVAL OR DISAPPROVAL OF PROGRAMS.

(a) The Secretary shall not approve the program unless, on the basis of the information obtained from the program submission, comments, testimony at the hearings, written presentations, and other relevant information, he finds that:

(1) The State demonstrated a good faith effort in implementing, administering and enforcing the initial program pursuant to the Act;

(2) The program provides for the State to carry out the provisions and meet the purposes of the Act and regulations of this Chapter to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within the State and that alternative approaches proposed pursuant to Section 731.13 of this Subchapter achieve the same or more stringent regulatory results as the regulations of this Chapter;

(3) The State regulatory authority has, on the date of the complete program submission, the authority under State laws and regulations which regulate coal exploration and surface coal mining and reclamation operations_

(i) To implement, administer, and enforce environmental protection performance standards consistent with Subchapter K of this Chapter;

(ii) To implement, administer, and enforce a permit system consistent with the regulations of Subchapter G of this Chapter and to require permit fees with each application such that the approximate costs of review, administration and enforcement of such permits are recovered;

(iii) To control coal mining incidental to government financed construction consistent with Part 707 of this Chapter;

(iv) To regulate coal exploration operations consistent with Parts 776 and 815 of this Chapter;

(v) To implement, administer, and enforce a system of performance bonds and liability insurance, or other equivalent guarantees, consistent with the requirements of Subchapter J of this Chapter;

(vi) To enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal land within the State consistent with the requirements of Subchapter L of this Chapter;

(vii) To issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders in accordance with Section 521 of the Act and consistent with the requirements of Subchapter L of this Chapter, including the same or similar procedural requirements and including authority for State inspectors to take the issue actions of this paragraph;

(viii) To impose civil penalties for violations of the State law, regulations, or terms and conditions of permits in accordance with Section 518 of the Act and consistent with Part 845 of this Chapter, including the same or similar procedural requirements;

(ix) To designate areas as unsuitable for surface coal mining consistent with Subchapter F of this Chapter;

(x) To cooperate and coordinate with and to provide documents and other information to the Office under the provisions of this Chapter;

(xi) To require the training, examination and certification of persons engaged in or responsible for blasting consistent with Subchapter M of this Chapter; and

(xii) To monitor, review and enforce the prohibition against indirect or direct financial interests consistent with Part 705 of this Chapter;

(4) The State regulatory authority and other agencies having a role in the State program have and will continue to have sufficient technical and administrative personnel and sufficient funding to implement, administer and enforce the provisions of the program, the requirements of paragraph (a) of this Section and other applicable State and Federal laws; and

(5) The State law and regulations in effect at the time of a complete program submission:

(i) Prohibit surface coal mining and reclamation operations without a permit issued by the regulatory authority;

(ii) Provide for civil and criminal sanctions for violation of the State law, regulations, or conditions of permits, including civil and criminal penalties, forfeiture of bonds, suspension or revocation of permits, and the issuance of cease and desist orders by the State regulatory authority and its inspectors;

(iii) Prohibit indirect or direct financial interests in coal mining operations by employees of the State regulatory authority consistent with Part 705 of this Chapter;

(iv) Provide for protection of State employees of the regulatory authority in accordance with the protection afforded Federal employees under Section 704 of the Act;

(v) Provide for public participation in the development, revision and enforcement of State regulations and the State program consistent with public participation required in the Act and regulations of this Subchapter;

(vi) Provide administrative review of program enforcement actions in accordance with Section 525 of the Act; and

(vii) Do not contain provisions inconsistent with those in the Act and the regulations of this Chapter.

(b) The Director may provide for other criteria necessary to meet the provisions of this Chapter in order to determine whether a State has the capability to carry out the provisions of the Act and this Chapter.

SECTION 732.16 - TERMS AND CONDITIONS FOR STATE PROGRAMS.

(a) The Director may establish terms and conditions for the administration and operation of an approved State program as he deems necessary, including but not limited to:

(1) Establishing a system for regularly reporting information collected by the State regulatory authority in the conduct of the State program;

(2) Requiring consultation with the Office on a regular basis with regard to the overall conduct of the State program; and

(3) Providing the Office with access to books and records of the regulatory authority upon request.

(b) The Director may modify the terms and conditions of the State program from time to time after notice to the State and after holding an informal conference, if requested, to reflect changes in the regulations of this Chapter, the conduct of the program or the coordination with the Office.

SECTION 732.17 - STATE PROGRAM AMENDMENTS.

(a) A State program amendment is a written alteration of the provisions, terms or conditions of an approved State program whether accomplished on the initiative of the State regulatory authority or the Regional Director. {41814}

(b) The State regulatory authority shall promptly notify the Regional Director in writing of any significant events or proposed changes which affect the implementation, administration or enforcement of the approved State program. The Regional Director shall promptly notify the State regulatory authority if, in his opinion, any event or proposed changes in State law, regulations promulgated thereunder or changes in this Chapter or in the conduct of the program, may impair the

implementation, administration or enforcement of the approved State program. At a minimum, notification shall be given either the State regulatory authority or the Regional Director regarding:

- (1) Changes in the scope or objectives of the State program;
- (2) Changes in the authority of the regulatory authority to implement, administer and enforce the approved program;
- (3) Changes in the State law and regulations from those contained in the approved State program;
- (4) Changes in staffing and resources of the regulatory authority and applicable divisions or departments of other agencies which have a role in approved State program;
- (5) Changes in agreements between the regulatory authority and other agencies which have a role in the approved State program;
- (6) Changes in funding or budgeting relative to the approved State program; and
- (7) Significant changes in the number or size of coal exploration or surface coal mining and reclamation operations in the State.

(c) Within 30 days of receipt of notification in writing of events or proposed changes that may require a State program amendment, or whenever the Regional Director becomes aware of conditions described in this Subsection, the Regional Director shall determine whether a State program amendment is required and notify the State regulatory authority of his decision.

(d) State program amendments may be required:

- (1) Whenever changes in the Act or regulations of this Chapter affect the State's authority or ability to implement, administer and enforce the approved program;
- (2) Whenever conditions or events change that affect the conduct of the State program, or whenever such conditions or events indicate that the approved State program no longer meets the requirements of the Act or the regulations of this Chapter; or
- (3) Whenever State laws or regulations contained in an approved State program are changed by legislative, administrative or judicial action so as to render any regulatory requirement or performance standard less stringent than that contained in the approved State program.

(e) If the Regional Director determines that a State program amendment is required, the State regulatory authority shall, within 10 days after notification of that decision, submit to the Regional Director a written amendment designed to re-establish a State program that meets the requirements of the Act and this Chapter.

(1) If the State regulatory authority does not propose an amendment within 10 days from the receipt of the notice, or the amendment is not approved under this paragraph, the Director shall begin proceedings under Part 733 of this Subchapter 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.

(2) The procedures and criteria for approval or disapproval of an amendment shall be the same procedures and criteria as required in Sections 732.12, 732.13 and 732.15 for approval or disapproval of a State program except that the Regional Director shall publish the required notice, hold the public hearing and recommend approval or disapproval to the Director and the Director shall approve or disapprove the amendment. {41814}

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

Section

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|--------|--|
| 733.1 | Scope. |
| 733.4 | Responsibilities. |
| 733.11 | General requirements for maintaining State programs. |
| 733.12 | Procedures for substituting Federal enforcement for a State program or withdrawing approval of State programs. |
| 733.13 | Criteria for substituting Federal enforcement for a State program, or withdrawing approval of State programs. |

Authority : Sections 102, 201, 501(b), 503, 504, 517, and 521 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 471, 498, and 504 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1267, and 1271).

SECTION 733.1 - SCOPE.

This Part establishes requirements for the maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs.

SECTION 733.4 - RESPONSIBILITIES.

- (a) The State regulatory authority is responsible for implementing, enforcing and maintaining an approved State program, except where the Secretary has assumed, by substitution, this responsibility.
- (b) The Regional Director is responsible for monitoring State program maintenance. The Director is responsible for Federally enforcing and maintaining State programs or withdrawing approval of State programs not maintained as provided in the Act or the regulations of this subchapter.

SECTION 733.11 - GENERAL REQUIREMENT FOR MAINTAINING A STATE PROGRAM.

Each State with an approved State program shall administer, implement, enforce and maintain it in accordance with the Act, this Chapter and the provisions of the State program as approved by the Secretary.

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

- (a) The Regional Director shall evaluate the administration of each State program at least annually and when any person reports that a State is not maintaining its approved State program.
- (b) If the Regional Director has reason to believe that a State is not effectively administering any part of its approved State program, he shall promptly notify the State regulatory authority in writing. The Regional Director shall provide sufficient information to allow the State regulatory authority to determine what portions of the program he believes are not being effectively administered and specify the time period for accomplishing remedial actions necessary for effective administration of the State program.
 - (1) The Regional Director shall provide the State regulatory authority an opportunity for an informal conference if requested within 15 days of receipt of the notification.
 - (2) If an informal conference is not held or if, following the conference, the Regional Director still has reason to believe, on the basis of information available to him, that the State is failing to administer effectively a part or all of a State program, he shall give notice to the State and to the public specifying the basis for his belief and shall hold a public hearing in the State within 30 days of the notice.
- (c) Upon completion of the hearing, the Regional Director shall transmit the information available to him including the hearing transcript, written presentations and written comments to the Director along with a recommendation from the Regional Director to either continue the State program as approved or take action prescribed in either paragraph (d) (1) or (2) of this Section. {41815}
- (d) If, on the basis of information available to the Office, including the results of the hearing, the Director finds that the State has failed to administer effectively part or all of its approved State program, and that the State has not adequately demonstrated its capability and intent to administer the State program, the Director shall either:
 - (1) Substitute for the State regulatory authority direct Federal enforcement of all or part of the State program in accordance with paragraph (e) of this Section; or
 - (2) Withdraw approval of the State program, in whole or in part, in accordance with paragraph (f) of this Section.
- (e) Substituted Federal enforcement.
 - (1) The Director shall give public notice of a finding under paragraph (c) of this Section and specify the extent to which he is instituting direct Federal enforcement of a State program.

(2) During the period beginning with such public notice and ending when the State satisfies the Director that it will enforce the State program effectively, the Director shall enforce and adopt additional regulations as may be required to the extent he has assumed direct Federal enforcement of the State program by_

(i) Enforcement of any permit condition required under the Act;

(ii) Issuance of any new or revised permit pursuant to any additional regulation that the Director may promulgate at the time of assumed enforcement; and

(iii) Conducting inspections and issuance of such notice, orders and assessments of penalties that are necessary for compliance with those permit conditions, the Act, and the State program in accordance with Subchapter L.

(3) In the case of a State permittee who has met his obligations under an existing State permit and who did not willfully secure the issuance of such permit through fraud or collusion, the Director shall give the permittee reasonable time to conform ongoing surface mining and reclamation operations to the requirements of the Act before suspending or revoking the State permit.

(f) Withdrawing approval of State program.

The Director shall give public notice of a finding under paragraph (c) of this Section, specifying the extent to which he is withdrawing approval of a State program. Not later than the issuance of such notice, the Director shall propose promulgation of, and thereafter promulgate and implement a Federal program for the affected State, in accordance with Part 736 of this Subchapter.

SECTION 733.13 - CRITERIA FOR SUBSTITUTING FEDERAL ENFORCEMENT FOR STATE PROGRAMS OR WITHDRAWING APPROVAL OF STATE PROGRAMS. {41815}

In evaluating the maintenance, administration or enforcement of a State program for purposes of determining whether to substitute direct Federal enforcement of the State program or to withdraw approval of part or all of the program, the Director shall consider the record of the State in fulfilling the conditions of the original approval or adjusting to new circumstances in accordance with requirements of the Act and this Chapter.

PART 736 – FEDERAL PROGRAM FOR A STATE

Section

736.1	Scope.
736.2	Objectives.
736.3	Responsibility.
736.4	Authority.
736.11	General procedural requirements.
736.12	Public notice requirements.
736.13	Public comment.
736.14	Director's decision.
736.15	Implementation, enforcement and maintenance of Federal program.
736.16	Termination procedures.
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736.21	General requirements of a Federal program.
736.22	Contents of a Federal program.
736.23	Federal program effect on State law or regulations.
736.24	Federal program effect on State funding.

Authority : Sections 102, 201, 405, 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, 91 Stat. 448, 449, 459, 468, 470, 471, 473, 474, 478, 479, 480, 483, 484, 485, 486, 495, 498, 499, 501, 504, 507, 511, and 520 (30 U.S.C. 1202, 1211, 1235, 1251, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1271, 1272, 1275, and 1294).

SECTION 736.1 - SCOPE.

This Part establishes standards and procedures for the promulgation, implementation, revision and withdrawal of a Federal program for a State on non-Federal and non-Indian lands.

SECTION 736.2 - OBJECTIVES.

The objectives of this Part are to provide standards and procedures for the Director to follow in the promulgation, implementation, revision and withdrawal of a Federal program on non-Federal and non-Indian lands and to provide maximum public participation in these processes to ensure that the requirements of the Act are met.

SECTION 736.3 - RESPONSIBILITY.

The Director has the responsibility to promulgate, implement, enforce, maintain, revise and withdraw Federal programs on non-Federal and non-Indian lands in accordance with this Part and Section 504 of the Act.

SECTION 736.4 - AUTHORITY.

(a) Promulgation and implementation of a complete Federal program for a State vests the Director with exclusive jurisdiction and makes him the regulatory authority for the regulation and control of all coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within such State.

(b) Promulgation and implementation of a partial Federal program for a State vests the Director with exclusive jurisdiction and makes him the regulator authority for the regulation and control of those aspects of coal exploration and surface coal mining and reclamation operations covered by such Federal program and on non-Federal and non-Indian lands within such State.

(c) Following the final disapproval of a State program under 30 CFR Part 732, and prior to the promulgation of a complete Federal program for a State under 30 CFR 736.11(a), including judicial review of such Federal program, existing surface coal mining and reclamation operations may continue pursuant to the provisions of Section 502 of the Act and 30 CFR Parts 710, 715, 716, 717, 720, 721, 722, and 723. During this period, no new permits for surface coal mining and reclamation operations shall be issued by the State whose program has been disapproved. Permits which lapse during this period may continue in full force and effect within the specified permit area until promulgation of a Federal program for the State whose program has been disapproved.

SECTION 736.11 - GENERAL PROCEDURAL REQUIREMENTS.

(a) Promulgation

(1) Not later than June 3, 1980, the Director shall promulgate and, subject to the provisions of this Part, implement a Federal program for a State if the Director reasonably expects surface coal mining to exist in a State by June 1985, and the State fails to:

(i) Submit a State program covering surface coal mining and reclamation operations to the appropriate Regional Director within the time provided in 30 CFR Part 731; or

(ii) Resubmit an acceptable State program within 30 days of a notice of incompleteness under 30 CFR 732.11 or within 60 days of a notice of a State program disapproval pursuant to 30 CFR 732.13(f). The Director shall not promulgate a Federal program prior to the expiration of the initial period allowed for submission of a State program as provided in 30 CFR 731.11.

(2) The Director shall promulgate a complete Federal program for a State upon the withdrawal of approval of an entire State program.

(3) The Director shall promulgate a partial Federal program for a State upon the withdrawal of approval of part of a State program. {41816}

(b) Revision. The Secretary may revise a Federal program for a State if necessary to further the purposes of the Act and the regulations adopted under the Act.

(c) Termination. The Director shall terminate appropriate portions of a Federal program for a State upon

(1) Approval of a State program under 30 CFR Parts 731 and 732 that replaces a complete Federal program for that State; or

(2) Approval of a partial State program under 30 CFR Part 733 that replaces a partial Federal program.

SECTION 736.12 - PUBLIC NOTICE REQUIREMENTS.

Prior to the promulgation or revision of a Federal program, the Director shall give public notice as follows:

(a) Notice shall be published in the Federal Register T1 at least 60 days before the date of the hearing required under Section 736.13 and shall include:

(1) A statement of the basis and purposes of the proposed program or revision;

(2) The proposed regulations of the program or revision;

(3) The proposed effective date of the program or revision;

(4) The location of the Regional Office and State Office in the capital city where the text of the proposed program or revision and any supporting evidence may be reviewed or copied;

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

(6) A summary of the format and the rules of procedure of the public hearing, as required under 30 CFR 736.13.

(b) The Regional Director shall publish notice at least once a week for three weeks within the 30 days before the hearing in at least one newspaper of general circulation in the coal mining area of the affected State. This notice shall be identical to the notice required under paragraph (a) of this Section, except that a brief description of the contents of the proposed program or revision may be substituted for the proposed regulations of the program or revision.

SECTION 736.13 - PUBLIC COMMENT.

(a) Comments shall be solicited by the Director from the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the heads of other Federal agencies concerned with or having special expertise relevant to the proposed promulgation or revision of the program.

(b) The Regional Director shall provide an opportunity for interested persons to submit, in writing, data and comments on the proposed promulgation or revision of a Federal program within 60 days after publication of the notice in the Federal Register .

(c) Before promulgation or revision of a Federal program for a State, the Regional 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 for the State.

(1) The hearings shall consist of:

(i) Procedures that are legislative in type, which include the compilation of an open record of the hearing,

and

(ii) Presentation by the Regional Director or his designee of the contents of the proposed program or

revision.

(2) Additional hearings or additional time for submitting comments after the hearing may be allowed by the Regional Director as deemed necessary or appropriate.

(3) Upon completion of the hearing or hearings, the Regional Director shall transmit to the Director the hearing transcript, the written presentations, exhibits submitted, public comments and his recommendation concerning the promulgation of a Federal program and any proposed regulations.

(d) Copies of all written comments received under this Section and the transcript of the public hearing shall be made available for public inspection and copying at the office of the appropriate Regional Director and at the State office in the capital city of the State.

SECTION 736.14 - DIRECTOR'S DECISION.

(a) After considering all available relevant information, including information obtained from the public hearings and written comments, the Director shall decide whether to promulgate or revise a Federal program for the State.

(b) The Director shall publish notice of his decision in the Federal Register , including a statement of the basis and purpose for such decision, the regulations of the Federal program for the State or revision thereof, and the effective date of the program or revision.

SECTION 736.15 - IMPLEMENTATION, ENFORCEMENT AND MAINTENANCE OF A FEDERAL PROGRAM.

(a) The Director shall implement, maintain and enforce the provisions of a Federal program or any revision not later than 30 days after the Federal program is promulgated or revised. The provisions of the Federal program for designation of lands as unsuitable, under 30 CFR Part 765 shall not apply for a period of one year following the promulgation or revision unless the provisions for designation are promulgated because of a State's failure to administer adequately a process for designation of lands in a State program under 30 CFR Part 764, and to the extent that a Federal program is implemented under requirements of 30 CFR 761.8.

(b) Permits issued pursuant to a previously approved State program shall be valid but reviewable under a Federal program. Immediately following promulgation of a Federal program, the Director shall review these permits to determine that the requirements of the Act and this Chapter are not violated. If the Director determines that any permit was granted contrary to the requirements of this Act, he shall:

(1) Inform the permittee,

(2) Provide the permittee an opportunity for a hearing,

(3) Provide the permittee a reasonable opportunity to submit that portion of the permit application which the Director determines to be relevant, and

(4) Provide the permittee a reasonable time to conform ongoing surface mining and reclamation operations to the requirements of the Federal program, as prescribed in the Federal program for the State.

SECTION 736.16 - FEDERAL PROGRAM TERMINATION PROCEDURES.

Withdrawal of a Federal program shall be accomplished through the procedures for approval of a State program under 30 CFR Part 732.

SECTION 736.18 - CONSOLIDATION OF PROCEDURES.

The Director may consolidate public notices and hearings for the promulgation or revision of a Federal program for a State under this Part, with public notices and hearings for the approval, disapproval or withdrawal of a State program under 30 CFR Parts 732 733.

SECTION 736.21 - GENERAL REQUIREMENTS.

(a) Any complete Federal program promulgated or revised by the Director shall include the contents identified in 30 CFR 736.22.

(b) Any partial Federal program shall include all of the contents identified in 30 CFR 736.22 for all aspects of coal exploration and surface coal mining and reclamation operations within the State which are regulated under the partial program.

SECTION 736.22 - CONTENTS OF A FEDERAL PROGRAM.

(a) In promulgating or revising any Federal program for a State, the Director shall:

(1) Consider the nature of that State's soils, topography, terrain, climate and biological, chemical, geological, hydrological, agronomic and other relevant physical conditions; {41817}

(2) Include any provisions that are necessary to implement the requirements of the Endangered Species Act of 1973 (16 U.S.C. 531 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661 666c), the National Historic and Preservation Act of 1966 (16 U.S.C. 470), the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a) and other relevant Federal laws imposing duties upon the Secretary; and

(3) Include, if required pursuant to 30 CFR 736.23, any performance standards for the regulation of coal exploration and surface coal mining and reclamation operations more stringent than those otherwise provided in this Chapter and the Act.

(b) 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 lands within the State in accordance with the requirements of the Act, including at a minimum the following provisions: 30 CFR Parts 700, 701 and 707; 30 CFR Parts 760, 761, 762 and 765; Subchapter G; Subchapter J; Subchapter K; 30 CFR Parts 842, 843 and 845; and Subchapter M of this Chapter.

(c) For the purpose of avoiding duplication, the Federal program shall include a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations under the Federal program with any other Federal, State or local planning or permit process applicable to such operations in the jurisdiction involved, including but not limited to:

(1) Permit requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), Clean Water Act (30 U.S.C. 1251 et seq.), and the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 3251 3259);

(2) the applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4332); and

(3) plans approved by the Administrator of the U.S. Environmental Protection Agency under Sections 208 or 303(c) of the Clean Water Act, (33 U.S.C. Section 1288, 1313(c)).

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 mining and reclamation operations subject to the Act shall be pre-empted and superseded by the Federal program insofar as they are inconsistent, less stringent or preclude compliance with the purposes and requirements of the Act and the Federal program. In promulgating or revising a Federal program for a State, the Director shall set forth any State law or regulation which is pre-empted and superseded by the Federal program.

(b) The provision of any State law or regulation which provides for more stringent land use and environmental control and regulation of coal exploration or surface coal mining and reclamation operations than do the provisions of the Act or any regulation issued under the Act shall not be pre-empted and superseded by the Secretary and shall be incorporated into the Federal program for the State.

SECTION 736.24 - FEDERAL PROGRAM EFFECT ON STATE FUNDING.

(a) Upon the withdrawal of a State program and the promulgation and implementation of a complete Federal program for a State, the Director shall not:

(1) Approve, fund or continue to fund a State abandoned mine reclamation program, in accordance with Section 405(c) of the Act and 30 CFR 884.14, 884.16 and 886.18, and

(2) Make any grants to assist the State in administering and enforcing State programs under the Act and 30 CFR 725.11 and 735.12.

(b) Upon the withdrawal of a State program in part and the promulgation and implementation of a partial Federal program for a State, the Director shall not:

(1) Approve, fund or continue to fund a State abandoned mine reclamation program, in accordance with Section 405(c) of the Act and 30 CFR 884.14, 884.16 and 886.18, unless the Director finds in writing that discontinuation of funding would not be consistent with achieving the purpose of the Act, and

(2) Make any grants to assist the State in administering and enforcing State programs under the Act and 30 CFR 725.11 and 735.12, unless the Director finds in writing that discontinuation of funding would not be consistent with achieving the purposes of the act.

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