

FEDERAL REGISTER: 45 FR 64961 (October 1, 1980)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 732

Procedures and Criteria for Approval or Disapproval of State Program Submissions

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining is proposing to amend 30 CFR Part 732 which sets forth the regulations regarding procedures and criteria for approval or disapproval of State Program Submission, to all States to enact laws and regulations after the deadline set for resubmission of an initially disapproved program provided that laws or regulations have been or can be subjected by the Director to a public comment period of at least ten days prior to the Secretary's decision on the resubmission.

DATES: Written comments on the proposed rule must be received at the address below by 5:00 p.m. on October 31, 1980.

A public hearing on the proposed rule has been scheduled for the Office of Surface Mining, Room 251, Interior South Bldg., 1951 Constitution Ave., N.W. Washington D.C., 20240, on October 21, 1980, at 9:00 a.m. Any person interested in making a written or oral presentation at the hearing should contact Carl C. Close at the address and phone number listed below under the contact for further information by October 16, 1980. If no person by this date has so expressed an interest in participating in the hearing, the hearing will be cancelled. A notice announcing any cancellation will be published in the Federal Register.

ADDRESSES: Written comments must be mailed to the Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., N.W., Attn: Andy Caraker, Room 264, Washington, D.C. 20240, or be hand delivered to the Office of Surface Mining, Andy Caraker, Room 264, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240, (202) 343-4225.

SUPPLEMENTARY INFORMATION:

On March 13, 1979, the Secretary promulgated final rules for the permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act). The rules, among other things, established requirements and procedures for the development, review and approval of programs submitted by States for the purpose of obtaining primary jurisdiction under the Act to regulate surface coal mining and reclamation operations on non-Federal and non-Indian lands within their respective borders. Certain provisions of the rules establish requirements with respect to dates by which States must submit enacted laws and regulations

Section 732.11(d), as amended, provides that the Secretary will initially disapprove a program submission if it does "* * * not contain all required and fully enacted laws and regulations by 104 days from the date of submission * * *." Similarly, the rules subject a State program submission to final disapproval if the State fails to submit all necessary and enacted laws and regulations within 60 days of an initial decision disapproving its program submission (see Section 732.13(f), in conjunction with Sections 732.12(b)(2), 732.13(g), and the preamble at 44 FR 14958-59). These provisions preclude consideration by the Secretary in his decisions of any law or regulation which has not been enacted and submitted by the deadline.

Experience has shown that such a requirement with respect to program resubmissions is unnecessarily stringent in that it limits a State's ability to make the changes in its laws and regulations identified as necessary during Departmental and public review of its program. The Secretary believes that it would be appropriate and beneficial to establish a later deadline for enactment of necessary laws and regulations. The Secretary also believes that such a later deadline can be accomplished within the time for decision established by the Act and with public review.

Accordingly, Section 732.13 is proposed to be amended by adding provisions to allow enactment of laws and regulations up to the date established for the Secretary to make the final decision on a State's revised program, provided that the law or regulation is submitted to the Regional Director at least fifteen days prior to that date in the exact form in which it has been or will be enacted. Provision for a public comment period of at least ten days is also made in the proposed amendment.

A further change, for purpose of greater clarity, is proposed in Section 732.13 to redesignate as a separate section the last two sentences of Section 732.13(f) relating to announcement and effect of the Secretary's final decision on a State's program submission.

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rule.

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

Primary author of this document is Andy Caraker, Division of State Programs, Office of Surface Mining.

Dated: September 19, 1980.

Joan M. Davenport,
Assistant Secretary, Energy and Minerals.

TEXT OF PROPOSED AMENDMENT:

SECTION 732.13 [AMENDED]

1. 30 CFR 732.13(i) is proposed to be amended by redesignating it as Section 732.13(k).

SECTION 732.13 [AMENDED]

2. 30 CFR 732.13(h) is proposed to be amended by redesignating it as Section 732.13(j).

SECTION 732.13 [AMENDED]

3. 30 CFR 732.13(g) is proposed to be amended by redesignating it as Section 732.13(i).

SECTION 732.13 [AMENDED]

4. 30 CFR 732.13(f) is proposed to be amended by designating the last two sentences as Section 732.13(h). New Section 732.13(h) would read: "The Secretary shall either approve or disapprove the revised program within 60 days from the date of submission of the revised program and publish that decision and reasons for the decision in the Federal Register. A decision disapproving the revised program constitutes the final decision by the Department disapproving that program in its entirety."

5. 30 CFR 732.13(f) is proposed to be amended by inserting after the comma in the second sentence "except as provided in Section 732.13(g) and". Amended Section 732.13(f) would read: "If the Secretary disapproves a program, in whole or in part, the State shall have 60 days from the date of publication of the Federal Register notice to submit a revised program to the Regional Director for reconsideration. The procedures of Section 732.12 will then apply to the revised State program, except as provided in Section 732.13(g), and except that the time allowed between publication of notice and the public hearing for public review and comment may be shortened to not less than 15 days."

SECTION 732.13 [AMENDED]

6. 30 CFR 732.13 is proposed to be amended by adding a new Section 732.13(g) to read: "A State may enact laws and regulations at any time up to the date established pursuant to Section 732.13(h) for the Secretary to make his or her decision on the State's revised program, provided that the law or regulation is submitted to the Regional Director at least fifteen days prior to that date in the exact form in which it has been or will be enacted. Any law or regulation submitted pursuant to this section shall be subject to a public comment period of at least ten days prior to the Secretary's decision on the revised program."

[FR Doc. 80-30608 Filed 9-30-80; 8:45 am]

BILLING CODE 4310-05-M