

FEDERAL REGISTER: 44 FR 60969 (October 22, 1979)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 731

Coal Mining and Reclamation Operations; State Programs

ACTION: Final rules.

SUMMARY: Section 731.12 of OSM's permanent rules is amended to provide an extension of time until March 3, 1980, for the initial submission of a proposed State program for implementing the permanent regulatory program under the Surface Mining Control and Reclamation Act. This action is being taken to implement orders of the U.S. District Court for the District of Columbia.

EFFECTIVE DATE: October 22, 1979.

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

SUPPLEMENTARY INFORMATION:

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

On July 25, 1979 the U.S. District Court for the District of Columbia, in response to a suit filed by the State of Illinois, enjoined the Department of the Interior from requiring the submission of State programs under Section 503(a) of the Act until March 3, 1980. On August 21, 1979, the court ordered that its injunction would remain in effect. The court's orders do not alter the requirement of Section 504(a) of the Act that a final decision by the Secretary on a State program must be made by June 3, 1980. As a result the time period between the court ordered deadline for program submission and the required date for final decision by the Secretary is just 3 months, which may preclude adherence to the review schedule contained in 30 CFR 732.11, 732.12 and 732.3 of the permanent program regulations.

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

The amendment being promulgated today to implement the July 25, 1979, and August 21, 1979, U.S. District Court orders amends Section 731.12(a) to provide for the State to submit a State program no later than March 3, 1980, and adds new Section 731.12(e) specifying that the review schedule of Sections 732.11, 731.12 and 732.13 will not apply to programs submitted after August 3, 1979. Programs submitted by the States for formal review prior to August 3, 1979, will be processed under the schedule set forth in the regulations. Only Texas and Mississippi submitted programs prior to August 3, 1979. There will be insufficient time to utilize this schedule for programs submitted later. Accordingly, adjusted review schedules will be established by the Regional Director on a case-by-case basis for programs submitted after August 3, 1979.

In regard to public notice and comment on this rulemaking, the Department finds that ordinary procedures as provided in 5 USC 553(b)(B) are impracticable, unnecessary and contrary to the public interest. There are several reasons for this expedited procedure. First, the former August 3 deadline has been changed by the court, making the notice and comment period both impracticable and useless. Second, this change in the regulations is necessary to implement a Court-ordered change in the required date of a State program submission.

Third, the public interest in assisting the States to develop a regulatory program which achieves the purposes of the Act, declared by Congress in Section 102(g), far outweighs any individual's interest in having an opportunity to be heard before this extension takes effect. The Department is therefore acting in the best interest of the public by providing this extension.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14, 43 FR 58292, et seq. (December 12, 1978).

The Department of the Interior has determined that this action will not have a significant effect on the human environment and an environmental impact statement will therefore not be prepared. These amendments are effective immediately.

Primary author of this document is Hames Fulton, State Programs Division, Office of Surface Mining.
Text of Amendment

30 CFR Section 731.12(a) is amended by changing the date, August 3, 1979, to March 3, 1980, and new 30 CFR Section 731.12(e) is added to read as set forth below. The language of revised Section 731.12(a) and new Section 731.12(e) is as follows:

SECTION 731.12 – SUBMISSION OF STATE PROGRAMS.

(a) Not later than March 3, 1980, each State that wishes to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within its boundaries shall submit 3 copies of a proposed program to the Regional director for the region in which that State is located.

* * *

(e) If a State does not submit a State program on or before August 3, 1979, the review schedule of Sections 732.11, 732.12 and 732.13 will not apply to the submission. Appropriate adjustments in the timing of the review by the Regional Director, notice and public hearings and decision by the Secretary will be established by the Regional Director for any State program submitted after August 3, 1979, and will apply in lieu of the time schedule of Sections 732.11, 732.12 and 732.13.

(Section 102, 201(c), 501(b) and 503(a) of Pub. L. 95-87.)

Dated: October 16, 1979.

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