

**FEDERAL REGISTER: 45 FR 2804 (January 14, 1980)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 735

Final Rule Change on the Grant Period for Program Development Grants

ACTION: Notice of final rule on grant period for Program Development Grants

**SUMMARY:** OSM is deleting Section 735.11(c) of the final initial regulatory program rules as published in the Federal Register on December 13, 1977 (42 FR 62707), relating to the maximum number of months during which a State may receive a Program Development Grant. In addition, a new Section 735.15(a)(3) is added to provide continued grant assistance. This action is to allow a State to receive a Program Development Grant during the period of time when it does not have an approved State Regulatory Program and is necessitated by the decision of the U.S. District Court for the District of Columbia extending the submission date of a State Regulatory Program to March 3, 1980.

EFFECTIVE DATE: January 14, 1980.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, 1951 Constitution Avenue, NW, Washington, D.C. 20240, 202-343-4225.

**SUPPLEMENTARY INFORMATION:**

On December 13, 1977, the Secretary of the Interior promulgated the final rules for the initial regulatory program under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq. (The Act). The rules implement Section 705(a) of the Act which provides for financial assistance to States in developing administering and enforcing State regulatory programs. The Act authorizes grants not to exceed 80 per centum of the total costs incurred during the first year, and 60 per centum of the total costs incurred during the second year, and 50 per centum of the total costs incurred during each year thereafter. Section 735.11(c) limits program development grants to a maximum period of 24 months. This restriction was in accord with the requirement that proposed State regulatory programs be submitted by August 3, 1979. OSM's rules relating to State program submissions 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 continue.

The State of North Dakota has received two one-year program development grants. The first was for the period December 1, 1977, to November 30, 1978, and the second is for the period December 1, 1978 to November 30, 1979. As a result of the extended time to prepare submissions provided by the court order, the State of North Dakota decided to use the extension to develop its proposed regulatory program. For that extra period the State desires to extend its current program development grant at the applicable Federal cost sharing percentage authorized by Section 705(a) of the Act. Due to the time restriction imposed by Section 735.11(c), however, the extension would be possible. Several other States may also encounter the same problem in the near future.

The amendment promulgated today deletes Section 735.11(c) and enables a State to continue obtaining program development grant assistance during the period which it may prepare its State Program. It also adds a new Section 735.15(a)(3) which specifies that for the third and following years of a program development grant, the Regional Director shall approve grants for not more than 50 percent of the total costs, pursuant to the cost-sharing restrictions of Section 705 of the Act.

While 5 U.S.C. 553(a) exempts from public comment rules which deal with grants, the Department's policy has been to provide notice and opportunity for public comment. However, in this case, the Department has determined that the ordinary procedures are impracticable, unnecessary and contrary to the public interest. There are several reasons first this expedited procedure. First, this change in regulations is necessary in light of a court-ordered change in the required date of a State program submission. Second, the Act does not distinguish between program development activities and permanent program implementation activities insofar as establishing time periods and providing financial assistance. The regulations were developed with the August 3, 1979 program submission deadline in effect. That deadline no longer is applicable. 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 comment before this rule change takes effect. The department is therefore acting in the best interest of the public by enabling a State to obtain program development grants during any period for which it does not have an approved State program.

In order to continue to support the program development effort of North Dakota and other States in the future, this rule must be effective immediately. Additionally, the rule change removes restrictions imposed by the regulations as originally promulgated and thus will not adversely affect any State.

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 Gene K. Krueger, State Programs Division, Office of Surface Mining.

Dated: January 7, 1980

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

#### **AMENDMENT**

#### **SECTION 735.11 [Amended]**

1. Accordingly, 30 CFR 735.11(c) is deleted in its entirety.
2. 30 CFR 735.15(a)(3) is added to read as follows:

#### **SECTION 735.15 [Amended]**

\* \* \* \* \*

(a) \* \* \*

(3) For the third year and each following year of a program development grant, the Regional Director shall approve grants for not more than 50 percent of the total agreed upon costs pursuant to Section 735.14(a).

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