FEDERAL REGISTER: 46 FR 50018 (October 8, 1981)

DEPARTMENT OF THE INTERIOR
AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Parts 731 and 732
Surface Coal Mining and Reclamation Operations; Procedures for State Programs

ACTION: Final rules.

SUMMARY: The Secretary of the Interior is amending 30 CFR Parts 731 and 732 to provide that a State which has not received approval of a State program by a final decision of the Secretary may resubmit a State program at any time after that decision, rather than waiting until a Federal program is implemented, as presently required.

EFFECTIVE DATE: November 9, 1981.

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, telephone: (202) 343-4225.

SUPPLEMENTARY INFORMATION:

On March 13, 1979 *(44 FR 15311-15463)*, 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 when States may resubmit programs following a final decision of the Secretary to disapprove a State program.

Section 731.12(b)(1) provides that States may submit a proposed program at any time later than June 3, 1980, if "implementation of a Federal program under 30 CFR Part 736 has been completed. . . . " Similarly, Section 732.14 provides that after a final decision disapproving a State program, the State may submit another proposed State program at any time after implementation of a Federal program.

On January 22, 1981, the Secretary published proposed rules amending Sections 731.12 and 732.14 to provide that a State which has not received approval of its State program by a final decision of the Secretary may resubmit a State program at any time after that decision rather than waiting until a Federal program is implemented *(46 FR 6997-6998)*. Public comments were invited for 30 days ending February 23, 1981, and two comments were received. The final rules being published today contain no substantive differences from the proposed rules. One additional editorial change has been made to delete any reference to the date by which a State shall submit a State program. As it has already passed, the date of June 3, 1980, is of historical interest only.

As stated in the preamble to the proposed rules *(46 FR 6997-6998*, January 22, 1981), existing Sections 731.12(b)(1) and 731.14 preclude a State which has not received approval of its program from submitting another program until after a Federal program has been implemented in the State. These Sections are based in part on the express language of section 504(e) of the Act, which provides that a "State which has failed to obtain approval of a State program prior to implementation of a Federal program may submit a State program at any time after such implementation" (emphasis supplied). A re-examination of Section 504(e) of the Act indicates that while it authorizes Sections 731.12 and 732.14, it does not mandate the restriction on resubmission of proposed State programs. The language in section 504(e) is permissive in that it states that a State may submit a new program after the Federal program is implemented. By this permissive language it is clear that Congress intended that the implementation of a Federal program would not end the chance for resubmission of a proposed State program.

Section 101(f) supports this interpretation. It asserts that the States are better suited to regulate the surface mining of coal because of the diversity of physical conditions among the various States *(30 U.S.C. 1201*(f)). In accordance with this finding Congress established as one of the purposes of the Act (section 102(g)) "to assist the States in developing and implementing a program to achieve the purposes of this Act". The States should, therefore, in order to gain primacy, be able to submit proposed

programs as often and as early in the regulatory scheme as they wish. This would provide the additional benefit of eliminating wasteful expenditure of Federal resources in developing and implementing Federal programs that are not needed because a State has a new program ready to submit soon after the Secretary's final decision on the original decision. This would be the situation in a case in which much of a State's original program submission has been approved.

Two comments were received in response to the Federal Register notice of proposed rulemaking. One commenter supported the proposed rules and urged their adoption as final rules. One commenter disagreed with the proposed changes and recommended that they be rejected. The latter commenter supported the existing regulations, pointing out that Congress has explicitly established in section 504(e) that the Act be fully implemented by a date certain. The commenter, although agreeing that one of the purposes of section 504(e) is to provide for a smooth transition from Federal to State regulation, asserted that section 504(e) also requires that the permanent regulations be implemented in a timely manner to protect the rights of citizens. The commenter also stated that OSM would not have the financial or human resources to work on both a State and Federal program simultaneously and noted the hardship imposed on States, industry, individuals and citizen groups who would have difficulty commenting responsibly if a State and Federal program are developed at the same time.

The Secretary has carefully considered the commenter's points and agrees that section 504(e) was intended to provide that the permanent program regulations be implemented in a timely manner. The Secretary, however, believes that the proposed rule changes will not frustrate this purpose and would in many cases provide for earlier implementation of the permanent regulatory program in a State. Allowing a State to resubmit its program before a Federal program is implemented, particularly if much of the State program was approved earlier, could result in a shortened rulemaking period and an earlier implementation of the permanent regulatory program in that State. A Federal program, by contrast, involves publishing both proposed and final rules and could take considerably longer to be implemented.

Regarding the commenter's second point that OSM does not have the resources available to work on both a State and a Federal program, the Secretary is committed to implementing the Act and the permanent regulatory program. Sufficient resources are available to OSM and will be used to the full extent necessary. While State primacy is clearly anticipated by the Act, citizen rights and environmental safeguards will not be sacrificed.

It should also be noted that although the States, industry and citizen groups may be asked to comment on both a State and a Federal program, a Federal program for a State must consider and incorporate where appropriate the State laws and regulations. Thus, there should not be such a burden on commenters since much of the programs will duplicate each other.

Note. -- I have determined that, pursuant to 702(d) of the Act, *30 U.S.C. 1292*(d), no environmental impact statement need be prepared on these rules. I have also determined that these rules are not major rules under Executive Order 12291 and have further certified that the rules will not have a significant economic effect on a substantial number of small entities as the rules are essentially a procedural change with no direct or indirect impact on small entities.

Date: September 23, 1981.
Daniel N. Miller, Jr., Assistant Secretary, Energy and Minerals.

For the reasons set out in the preamble, Subchapter C, Chapter VII of Title 30, Code of Federal Regulations, is amended as set forth below.

PART 731 -- SUBMISSION OF STATE PROGRAMS

1. 30 CFR 731.12 is amended by redesignating paragraphs (b)(1), (b)(2) and (b)(3) as (b)(2), (b)(3) and (b)(4) and adding a new paragraph (b)(1) to read as follows:

SECTION 731.12 - SUBMISSION OF STATE PROGRAMS.

* * * * *

(b) States may submit a proposed program at any time, if:

(1) By a final decision, the State program submitted under 30 CFR 731.12(a) is disapproved; or

(2) Implementation of a Federal program under 30 CFR Part 736 has been completed; or

(3) There have been no surface coal mining and reclamation operations since August 3, 1977, but coal exploration or surface coal mining operations are anticipated; or

(4) A State program has been enjoined by a court of competent jurisdiction, in which case the requirements of 30 CFR 730.12 shall apply.

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

2. 30 CFR 732.14 is revised to read as follows:

SECTION 732.14 - RESUBMISSION OF STATE PROGRAMS.

If, by a final decision, the program is disapproved, the State may submit another proposed State program to the Regional Director at any time after the date of the final decision, or at any time after implementation of a Federal program for that State under 30 CFR Part 736. Resubmitted State programs must meet the requirements of 30 CFR 731.14 and will be acted upon pursuant to 30 CFR 732.12-732.16.

(30 U.S.C. 1253)

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