

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 732**

RIN 1029-AC06

Revisions to the State Program Amendment Process**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Proposed rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), propose to revise our regulations governing the processing of State program amendments submitted by a State for approval under the Surface Mining Control and Reclamation Act of 1977. When a State with an approved program fails to amend its program as directed, our existing regulations require us to begin proceedings to either enforce that part of the State program that should have been amended, or withdraw approval in whole or in part and implement a Federal program. This rule would provide us with the discretion to consider the entire performance of the State in effectively implementing its program before determining that proceedings leading to Federal enforcement are warranted.

DATES: *Written comments:* We will accept written comments on the proposed rule until 5 p.m., Eastern Time, on February 2, 2004.

Public hearings: Upon request, we will hold a public hearing on the proposed rule at a date, time, and location to be announced in the **Federal Register** before the hearing. We will accept requests for a public hearing until 5 p.m., Eastern Time, on December 24, 2003.

ADDRESSES: If you wish to comment, you may submit your comments on this proposed rule by any one of three methods. You may mail or hand carry comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue NW., Washington, DC 20240. You may also submit your comment via the Internet to OSM's Administrative Record at: osmrules@osmre.gov.

You may submit a request for a public hearing orally or in writing to the person specified under **FOR FURTHER INFORMATION CONTACT**. We will announce the address, date, and time for any public hearing before the hearing. Any disabled individual who requires special accommodation to attend a

public hearing should also contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., MS-210-SIB, Washington, DC 20240; Telephone: (202) 208-2701. E-mail: adevito@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Why Are We Revising Our Regulations?
- II. How Do I Submit Comments on the Proposed Rule?
- III. What are the Procedural Matters and Required Determinations for this Rule?

I. Why Are We Revising Our Regulations?

We propose to revise our regulations governing the processing of State program amendments submitted by a State for approval under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) in order to provide OSM with more discretion in resolving issues affecting approved State programs and the State program amendment process.

What Is an Approved State Program?

In SMCRA, section 503 of Title V grants each State in which there are or may be surface coal mining operations conducted on non-Federal lands the right to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations. To do so, the State must submit to the Secretary of the Interior for approval, a State program that demonstrates that the State has the capability of carrying out the provisions of SMCRA. Since its enactment in 1977, 24 States have chosen to exercise such responsibility and have programs approved by us. The implementing regulations at 30 CFR part 732 provide the criteria and procedures for decisions to approve or disapprove submissions of State programs.

What Is a State Program Amendment?

Although not expressly provided for in SMCRA, OSM also, by regulation at 30 CFR 732.17, provides criteria and processes for amending State programs in anticipation of a need to modify or update them as conditions or national rules change. Occasionally, for various reasons such as legislative changes to the provisions of SMCRA or litigation resulting in adverse court decisions, we revise our regulations. As a result, all 24 States with approved programs may be required to amend their approved State programs in order to be "no less effective" than the OSM regulatory program. Also, States may decide to

amend their programs on their own initiative.

If we determine that a State program amendment is required, we notify the State regulatory authority of the need to amend its approved program. Within 60 days after notification, the State must submit (1) a proposed written amendment, or (2) a description of an amendment to be proposed that meets the requirements of SMCRA and OSM's implementing regulations, and a timetable for enactment that is consistent with established administrative or legislative procedures in the State. If the State regulatory authority does not submit the proposed amendment or a description and timetable within 60 days from the receipt of the notice, or does not subsequently comply with the submitted timetable, or if the amendment is not approved, then pursuant to 30 CFR 732.17(f)(2), the Director of OSM (Director) must begin proceedings under 30 CFR part 733.

What Is a 733 Proceeding?

Under 30 CFR part 733, which is based on sections 504(b)-(d) and 521(b) of SMCRA, if the Director has reason to believe that a State is not effectively implementing, administering, maintaining, or enforcing any part of its approved State program, then the Director must promptly notify the State regulatory authority in writing. The notification must provide sufficient information to allow the State to determine what portions of the program the Director believes are not being effectively implemented, administered, maintained, or enforced; provide the reasons for such belief; and specify the time period for the State to accomplish any necessary remedial actions. If, after certain hearing procedures, the Director finds that (1) the State has failed to implement, administer, maintain, or effectively enforce all or part of its approved State program, and (2) that the State has not demonstrated its capability and intent to administer the State program, then the Director must take one of the following actions. The Director must either (1) initiate direct Federal enforcement of all or part of the State program; or (2) recommend to the Secretary of the Interior that he or she withdraw approval of the State program, in whole or in part, and establish a Federal program for the State.

What Are the Consequences of a 733 Action?

The substitution of Federal enforcement under 30 CFR 733.12 for all or part of an approved State program results in substantial disruption to the