

State, the Federal government, and the coal industry. OSM has initiated a 733 action nine times in its history. We initiated action under part 733 in Oklahoma (1981, 1983, and 1993), Kansas (1983), Tennessee (1983), Montana (1993), Utah (1995), West Virginia (2001), and Missouri (2003). In Montana, Utah, Kansas, West Virginia, and the Oklahoma actions in 1981 and 1993, the issues were resolved without Federal takeover of any part of the State program. In three cases, OSM did take over partial enforcement of a State program—Oklahoma (1984), Tennessee (1984), and Missouri (2003). In Oklahoma, the State took action to address the deficiencies, and full authority was later returned to the State. In Tennessee, the State chose instead to terminate its approved program and repealed the Tennessee Coal Surface Mining Act and its implementing regulations. OSM promulgated a Federal program for that State in 1984. After implementing the Federal program, we were required under section 504(d) of SMCRA to review all the permits issued by the State of Tennessee under the standards of the new Federal program. The substitution of Federal enforcement in Tennessee resulted in delays in processing and issuing new coal permits in the State. While the Tennessee situation was an extreme example, disruption always occurs when there is a substitution of Federal enforcement for all or part of an approved State program.

The most recent 733 action in Missouri is still unresolved. On July 21, 2003, the Governor of Missouri notified us that the State of Missouri is experiencing difficult budget and revenue shortfalls. As a result of the situation, the Governor requested assistance with permit reviews, inspection activities, and general oversight of the active coal mining operations in the State. The Governor indicated that he was hopeful his request would be temporary and that he would continue to work with the legislature in an attempt to assure adequate funding for all responsibilities.

On August 4, 2003, we notified the Governor that we were obligated, in accordance with 30 CFR 733.12(e), to substitute Federal enforcement for those portions of the Missouri program that were not fully funded and staffed. We cited problems with the State's implementation of the Missouri program in several areas including inspection, enforcement, permitting, and bonding activities. As a result of substituting Federal enforcement, we became responsible for, among other things, approximately 40 permitting actions, 24

inspectable units, and an unsuitability petition filed on October 20, 2003. For more details on the Missouri 733 action, see 68 FR 50944, August 22, 2003.

#### *Why Are We Revising Our Regulations?*

As previously mentioned, our regulations at 30 CFR 732.17(f)(2) require us to begin proceedings against a State under 30 CFR part 733 when the State fails to submit and obtain approval of a required program amendment within the time allowed. While there may be circumstances in which the substance of a required State program amendment is such that the State's failure or inability to submit it to OSM and obtain approval warrants action under part 733, in most instances this is not the case. There are far more amendments being processed than originally anticipated when the State program provisions were enacted in 1977, and they typically involve a single issue and/or pertain to minor program revisions. Usually, the substance of the required State program amendment is such that the State's failure or inability to submit it to OSM and obtain approval does not jeopardize the overall effectiveness of the approved State program.

For example, in 1999, we required the State of Iowa to submit certain program amendments pertaining to revegetation success standards by May 25, 2000. See 64 FR 66385; November 26, 1999. The State submitted the required amendment on August 17, 2001—fifteen months after it was due—and we approved it on December 27, 2001. See 66 FR 66743; December 27, 2001. The delay in submitting the program amendment did not jeopardize the overall effectiveness of the approved State program and it did not result in harm to the environment. Iowa had not produced a single ton of coal during the three years prior to receiving our notice of the required amendment. Nevertheless, even in such situations, our existing regulations automatically require us to begin proceedings under part 733—proceedings that are costly and disruptive to both OSM and the affected State, and sometimes completely unnecessary. Because of limited staff and resources, and due to the need to direct our efforts to higher priorities, Iowa was able to complete the amendment process before we could initiate proceedings under part 733.

#### *What Revisions Are We Making?*

This proposed rule would provide discretion to the Director by allowing consideration of the State's overall effectiveness in implementing, administering, maintaining, or enforcing

its approved program before determining that proceedings under part 733 are warranted because of a delinquent State program amendment. This is the standard currently found in 30 CFR 733.12(b) which applies in most situations. However, the provisions in 30 CFR 732.17(f)(2) by-pass those in 30 CFR 733.12(b) by automatically assuming that the failure to submit or obtain approval of a State program amendment is an indication that the State is *not* effectively implementing, administering, maintaining, or enforcing its approved program. A State's failure to submit an amendment and obtain approval by OSM may be the result of other factors such as the failure of the State legislature to enact required legislation, reluctance to submit an amendment "no less effective" than an OSM regulation that is currently being litigated, or timely submission of an amendment that the State thought was "no less effective" than the Secretary's regulations, but OSM found to be deficient.

We believe that, in situations where the State has not submitted and obtained approval of a required amendment, a less disruptive and more effective way to obtain the required amendment is to work with the State at the staff level to discuss problems and resolve issues rather than automatically begin formal proceedings under part 733. To automatically begin proceedings under part 733, as currently required by 30 CFR 732.17(f)(2), damages the working relationship we have with a State that has voluntarily agreed to work in partnership with OSM to implement and administer the provisions of Title V of SMCRA. For these reasons, we are proposing the following revisions.

#### *30 CFR 732.17(f)(2)*

Under the existing regulation in 30 CFR 732.17(f)(2), the Director is required to begin proceedings to either enforce that part of the State program affected or withdraw approval, in whole or in part, and implement a Federal program under the following situations. The Director is required to begin proceedings if the State regulatory authority does not (1) submit a proposed amendment or a description of an amendment and the timetable for enactment within 60 days from the receipt of the notice from OSM, or (2) does not subsequently comply with the submitted timetable, or if the amendment is not approved by OSM.

We propose to revise this requirement by inserting the words "if the Director finds that such action is warranted because the State is not effectively implementing, administering,