DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 733 and 842

[Docket No. OSM–2025–0018; S1D1S SS08011000 SX064A000 256S180110; S2D2S SS08011000 SX064A000 25XS501520]

RIN 1029–AC89

Rescission of the ''Ten-Day Notices and Corrective Action for State Regulatory Program Issues'' Rule, Issued April 9, 2024

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (''OSMRE'' or ''OSM'') is rescinding the ''Ten-Day Notices and Corrective Action for State Regulatory Program Issues'' rule adopted on April 9, 2024 (the ''2024 Rule''), and replacing it, in large part, with the rule titled, ''Clarification of Provisions Related to the Issuance of Ten-Day Notices to State Regulatory Authorities and Enhancement of Corrective Action for State Regulatory Program Issues,'' which was first adopted on November 24, 2020 (the ''2020 Rule''). This final rule does make some minor modifications to the 2020 Rule to further streamline the process for OSM's coordination with State regulatory authorities, minimize duplication of efforts in the administration of the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''), and appropriately recognize that State regulatory authorities are the primary regulatory authorities for non-Federal, non-Indian lands within their borders.

DATES: This rule is effective on March 23, 2026.

FOR FURTHER INFORMATION CONTACT: James Tyree, Chief, Division of Regulatory Support, (202) 208–4479, *jtyree@osmre.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

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I. Statutory and Regulatory Background

SMCRA allows States with federally approved programs to regulate surface coal mining and reclamation operations on non-Federal, non-Indian lands within their borders. See, *e.g.,* 30 U.S.C. 1253. Once a State regulatory program is approved, ''the State's laws and regulations implementing the program become operative for the regulation of surface coal mining, and the State officials administer the program, giving the State 'exclusive jurisdiction over the regulation of surface coal mining' within its borders . . . .'' *Bragg* v. *W. Va. Coal Ass'n,* 248 F.3d 275, 288 (4th Cir. 2001) (internal citations omitted). In general, even after a State receives primary jurisdiction (''primacy'') to administer SMCRA, SMCRA continues to provide the Secretary of the Interior (the Secretary) with oversight authority regarding the State regulatory program and limited ongoing enforcement authority in two separate scenarios: (1) when the Secretary has reason to believe there have been violations of SMCRA, and (2) where the Secretary has reason to believe that violations of an approved State program are due to a State regulatory authority not properly enforcing its State program. 30 U.S.C. 1271(a) and (b).

In the first scenario, for a non-imminent harm situation, the Secretary can issue a notice, known as a ''ten-day notice'' (TDN), to a State regulatory authority if the Secretary has a ''reason to believe'' that ''any *person* is in violation of any requirement of [SMCRA].'' Id. § 1271(a) (emphasis added). SMCRA directs the Secretary to determine whether there is a potential violation ''on the basis of *any information* available to him.'' Id. (emphasis added). If so, SMCRA provides that the Secretary, acting through the Director of OSM, will issue a TDN to the State regulatory authority. A TDN gives the State regulatory authority ten days to respond to OSM to show that it either has taken ''appropriate action'' to ''cause said violation to be corrected'' or to show ''good cause'' for not doing so. Id. Under certain circumstances, such as if the State regulatory authority fails to respond in ten days or if OSM disagrees with the State's response to the TDN, the Secretary is authorized to conduct a Federal inspection. When a person provides adequate proof that an imminent danger of significant environmental harm exists and the State has failed to take appropriate action, the TDN process is waived, and OSM would then conduct a Federal inspection. Id.

In the second scenario, SMCRA provides a separate enforcement process if the Secretary suspects that a violation of an approved State program is due to a failure on the part of the State to properly enforce its approved program. Id. § 1271(b). Here, the Secretary must issue ''public notice'' and ''hold a hearing thereon in the State within thirty days of such notice.'' Id. If the Secretary finds that there are violations stemming from the State's failure to enforce its own State program effectively and the State ''has not adequately demonstrated its capability and intent to enforce such State program,'' the Secretary must take over the enforcement and issuance of permits in that State. Id.; see also 30 U.S.C. 1254(a).

SMCRA requires the Secretary, acting through OSM, to, among other things, ''publish and promulgate such rules and regulations as may be necessary to carry out the provisions of [SMCRA]'' and to ''cooperate with . . . State regulatory authorities to minimize duplication of inspections, enforcement, and administration of [SMCRA].'' 30 U.S.C. 1211(c)(2) and (12). The Secretary first exercised his authority to regulate the TDN process in 1979. See 44 FR 14902 (Mar. 13, 1979). OSM revised this rule in 1982, including by adding a requirement that a person who requests a Federal inspection must also notify the State regulatory authority. See 47 FR 35620, 35628 (Aug. 16, 1982). OSM modified the regulation again in 1988, including to add updated definitions for ''appropriate action'' and ''good cause'' and to recognize that a State regulatory authority could get extensions if necessary to conduct an investigation into a potential violation. 53 FR 26728, 26729, 26736 (July 14, 1988).

In 2020, OSM again revised the TDN Rule for two primary purposes: (1) to enhance the early identification of State regulatory program issues so that they could be corrected programmatically, and (2) to clarify and reduce duplication in the Federal regulations related to OSM's processing of citizen complaints

and the issuance of TDNs to State regulatory authorities. 85 FR 75150 (Nov. 24, 2020). As OSM summarized in 2020: ''The final rule is consistent with SMCRA and will add transparency to OSMRE's oversight responsibilities; promote regulatory certainty for State regulatory authorities, regulated entities, and the public; enhance OSMRE's relationship with the State regulatory authorities; reduce redundancy in inspection and enforcement; and streamline the process for notifying State regulatory authorities of possible violations.'' Id. at 75151.

After its promulgation, several citizen groups challenged the 2020 Rule. See *Citizens Coal Council* v. *De la Vega,* No. 1:21–cv–195 (D.D.C. filed Jan. 22, 2021). However, the court stayed that case in response to a joint motion of the parties after OSM announced in the Fall 2021 Unified Agenda, published by the Regulatory Information Service Center within the General Services Administration, in cooperation with the Office of Information and Regulatory Affairs (OIRA), which is part of the Office of Management and Budget (OMB), that ''OSMRE is re-examining its regulation on ten-day notices that went into effect on December 24, 2020.'' See Joint Motion to Stay Proceedings at paragraph 3, *Citizens Coal Council* v. *De la Vega,* No. 1:21–cv–195 (D.D.C. Nov. 30, 2021).

OSM's re-examination of the 2020 Rule culminated in the publication of the 2024 Rule on April 9, 2024, which amended portions of the 2020 Rule. 89 FR 24714 (Apr. 9, 2024). The 2024 Rule stated that it was further clarifying the 2020 Rule to, among other things, ''increase efficiency and to make it easier for citizens to report possible violations . . . .'' See id. (adopting the rationale in the preamble to the proposed rule) and 88 FR 24944, 24948 (Apr. 25, 2023) (proposed rule). Although the preamble to the proposed rule for the 2024 Rule stated that it would ''afford our State regulatory authority partners due deference during the TDN process to an extent that is appropriate under SMCRA'', 88 FR at 24944, at least 14 States, State agencies, and attorneys general disagreed and almost immediately filed suit challenging the legality of the 2024 Rule. See *Indiana* v. *Haaland,* No. 1:24–cv–1665 (D.D.C. filed June 7, 2024). Among other things, these States alleged that the 2024 Rule improperly usurps SMCRA's deference to States and that it:

> subjects state decisions over which the Act affords States exclusive jurisdiction, such as permitting decisions, to federal oversight through ten-day notices. The Final Rule seeks to make the federal government the regulator of first resort in other ways too. It discards requirements that citizens contact state regulators with concerns before contacting the federal government. It imposes inflexible, arbitrary timelines on States to complete complex investigations without regard for facts on the ground, setting up federal regulators to swoop in. And the Final Rule illogically requires the Secretary to blind herself to information in States' possession in determining whether there is reason to believe that a violation exists, even if that information could establish beyond doubt that none exists.

Complaint at paragraph 4, *Indiana* v. *Haaland,* No. 1:24–cv–1665 (D.D.C. filed June 7, 2024). As part of this ongoing litigation, several States submitted declarations detailing the alleged harms to their interests caused by the 2024 Rule. See, *e.g.,* Exhibits 1–3 of Petitioners' Motion for Summary Judgment and Statement of Material Facts, *Indiana* v. *Haaland,* No. 1:24–cv–1665 (D.D.C. filed Dec. 17, 2024).

Meanwhile, on January 20, 2025, the President declared a national energy emergency and directed agencies, such as OSM, to unleash American energy. See Executive Order (''E.O.'') 14156 ''Declaring a National Energy Emergency'' and E.O. 14154 ''Unleashing American Energy.'' As part of this effort, E.O. 14154 directs OSM to ''ensure that all regulatory requirements related to energy are grounded in clearly applicable law.'' E.O. 14154 § 2(d). In addition, the Secretary identified the 2024 Rule as a regulation to be suspended, repealed, or amended in order to unleash American energy. Secretary's Order 3418 § 4.b. Moreover, on April 8, 2025, the President specifically recognized that ''[o]ur Nation's beautiful clean coal resources will be critical to meeting the rise in electricity demand due to the resurgence of domestic manufacturing and the construction of artificial intelligence data processing centers.'' E.O. 14261 ''Reinvigorating America's Beautiful Clean Coal Industry and Amending Executive Order 14241'' § 1.

As discussed in the preamble to the 2025 proposed rule, OSM is revising the 2024 Rule to align the Federal regulations with clearly applicable law and to ''streamline the process for OSMRE's coordination with State regulatory authorities to minimize duplication of efforts in the administration of SMCRA and appropriately recognize that State regulatory authorities are the primary regulatory authorities of non-Federal, non-Indian lands within their borders.'' 90 FR 25174 (Jun. 16, 2025).

II. Summary of Final Rule Provisions

As explained fully in the preamble to the 2025 proposed rule, the Department of the Interior (''the Department'') proposed to return the Federal regulations back to the 2020 Rule to better align the Federal regulations with the single, best meaning of SMCRA and streamline OSM's coordination with State regulatory authorities to ensure that the goals of SMCRA are achieved while granting the appropriate deference to State regulatory authorities under this cooperative federalism statute. See 90 FR at 25174. As part of this rulemaking process, OSM reviewed the preambles to the proposed and final 2020 Rule, which fully explained its rationale for the regulatory changes resulting in the 2020 Rule, to ensure that the analysis continues to reflect OSM's position, and, except as otherwise stated in the preambles to the 2025 proposed rule and this final rule, OSM adopts them here and directs the reader to those preambles for a more detailed rationale and section-by-section analysis. 85 FR 28904 (May 14, 2020); 85 FR 75150 (Nov. 24, 2020). Moreover, after further consideration and review of the comments received in response to the 2025 proposed rule, the Department is adopting the regulatory provisions as proposed on June 16, 2025, with a few minor changes.

First, OSM is, in large part, retaining the definitions of ''action plan'' and ''State regulatory program issue'' from the 2024 Rule because OSM determined the wording to be clearer than the 2020 Rule. Notably, within the definition of ''action plan,'' OSM added language to make clear that OSM typically works with the State regulatory authority to develop the action plan. The 2024 Rule already included this concept at existing § 733.12(b) but putting it in the definition emphasizes the cooperation between OSM and the State regulatory authority to correct a State regulatory program issue. For ''State regulatory program issue,'' OSM retained the minor non-substantive edits to the first sentence of the definition made by the 2024 Rule, but OSM removed the last sentence, which was not in the 2020 Rule. By removing this sentence, OSM is clarifying that State regulatory program issues may no longer be resolved under part 842.

Second, OSM is retaining the minor editorial changes that the 2024 Rule made to § 733.12(a), which explains what the OSM Director should do once a State regulatory program issue is identified. OSM finds that the 2024 Rule

was clearer in the language in this section than in the proposal and the 2020 Rule.

Third, in response to a comment, OSM is replacing ''concludes'' with ''has reason to believe'' in the final version of § 733.12(a)(2). This change inserts the appropriate standard that the OSM Director will follow when determining whether a State regulatory authority is not effectively implementing, administering, enforcing, or maintaining all or a portion of its approved program. As the commenter noted, ''concludes'' implies that the Director has already made a decision about whether a State regulatory authority is not effectively implementing, administering, enforcing, or maintaining all or a portion of its approved program even though he or she has not followed the procedures set forth in § 733.13 to reach that conclusion. Replacing ''concludes'' with ''has reason to believe'' better aligns the Federal regulations with the statutory structure of SMCRA and the cooperative federalism framework.

Fourth, OSM is retaining some minor editorial changes from the 2024 Rule in §§ 733.12(b)(2) and (3) and 733.12(c). For example, this final rule retains the use of the word ''specific'' from the 2024 Rule, instead of ''explicit'' in §§ 733.12(b)(3)(iii) and (iv). In addition, OSM is retaining the editorial changes from the 2024 Rule in §§ 733.12(b)(3)(iii) and (iv) that more accurately state that a State regulatory program issue, rather than a ''violation'' or a ''problem,'' is what will be corrected by an action plan. To the extent that a State regulatory program issue includes one or more violations of SMCRA, this wording does not prohibit OSM from including corrective actions for violations in the action plan.

Fifth, in § 842.11(b)(1)(ii)(B)(*1*), OSM has decided to retain some language from the 2024 Rule related to the issuance of a single TDN for substantively similar possible violations. In the 2025 proposed rule, OSM specifically requested comments about whether OSM should retain this provision. See 90 FR at 25177. Commenters were overwhelmingly supportive of the policy behind this provision, even if they supported removing the language in furtherance of the deregulatory agenda. For example, one commenter noted that ''OSMRE has always had discretion'' to include multiple similar violations in a single TDN and retention of the provision may not be necessary, but it could be beneficial, particularly in light of websites that facilitate public letter-writing campaigns. Although this provision adds a sentence to the regulations, OSM ultimately decided to retain it so that it would be clear that OSM could include substantively similar possible violations in a single TDN. As stated in the preamble to the 2024 Rule, this grouping will allow OSM to be more efficient because it will not have to write numerous, repetitive TDNs and the State regulatory authority will not have to respond to numerous, repetitive TDNs.

Sixth, OSM is removing proposed § 842.11(b)(1)(ii)(B)(*4*)(*vi*), which was a duplicate of § 842.11(b)(1)(ii)(B)(*4*)(*v*) and erroneously included in the 2025 proposed rule.

Finally, in response to a comment, OSM is adding ''at the surface mining site'' after the word ''exists'' at the end of the first sentence of § 842.12(a). This change will clarify that a citizen request for a Federal inspection under the authority of section 517(h)(1) of SMCRA, 30 U.S.C. 1267(h)(1), must allege a violation at a specific mine. This change better aligns the regulation with the statutory provision. Notably, this provision only applies to a request for a Federal inspection under section 517(h)(1) of SMCRA. This regulation does not limit the Secretary's authority to consider any readily available information when determining whether a reason to believe a potential violation exists under section 521(a) of SMCRA. 30 U.S.C. 1271(a).

III. Public Comments and Responses

A. Overview of Comments

OSM published its proposed rule on June 16, 2025 (90 FR 25174) and solicited public comments for 30 days. During the comment period, OSM received 13 comments from members of the public, State governmental units, trade associations, environmental advocacy groups, and private companies. Eleven commenters were generally supportive of the proposed rule, which proposed to return the regulations to those promulgated in 2020. Some of these commenters suggested further revisions to better align the regulations with SMCRA and its cooperative federalism principles. Only two commenters, including one joint comment from a coalition of citizens groups, opposed the proposed rule; these commenters generally opined that OSM should retain the 2024 Rule and considered the 2025 proposed rule a rollback of citizen protections. OSM considered each public comment in the development of this final rule.

Comments received that are similar in nature have been categorized by subject and, in some instances, have been combined with related comments.

B. Rule Basis and Justification

Comment: Some commenters disputed OSM's assertion in the preamble to the 2025 proposed rule that the 2020 Rule reflected the best reading of the statute. Instead, these commenters opined that the 2024 Rule reflects the best reading of the statute and that the proposed changes are an abuse of discretion by OSM. Other commenters agreed that the 2020 Rule reflects the best reading of the statute.

Response: OSM agrees with the commenters that stated the 2020 Rule reflects the best reading of the statute as a whole. As noted above, SMCRA directs OSM to ''publish and promulgate such rules and regulations as may be necessary to carry out the provisions of [SMCRA]'' and to ''cooperate with . . . State regulatory authorities to minimize duplication of inspections, enforcement, and administration of [SMCRA].'' 30 U.S.C. 1211(c)(2) and (12). The 2020 Rule appropriately interpreted other provisions of SMCRA, such as section 521(a)(1) of SMCRA. 30 U.S.C. 1271(a)(1). For example, it maximized OSM's cooperation with State regulatory authorities by providing, among other things, that OSM can consider all readily available information before deciding whether it has a reason to believe that a violation exists and issuing a TDN to the State regulatory authority. Although a TDN is simply a communication tool between OSM and the State regulatory authority, it triggers administrative obligations for OSM—to issue the TDN and review the State's response—and the State—to respond to OSM within ten days. If OSM can rely on readily available information to determine that there is no reason to believe a violation exists before issuing a TDN, both the additional burden on the State regulatory authority and unnecessary Federal oversight will be avoided.

Comment: Several commenters supported OSM's proposal to return to the 2020 Rule because they considered the 2024 Rule to be burdensome and unnecessary. They also reiterated criticisms they made to the proposed 2024 Rule, which focused on OSM's alleged failure to adequately consult with the State regulatory authorities before promulgating the 2024 Rule. These commenters reiterated that the 2020 Rule best addresses the concerns of the State regulatory authorities and reduces regulatory burdens.

Response: Although OSM followed all required notice and comment

procedures in promulgating the 2024 Rule, as well as this rule and the 2020 Rule, OSM acknowledges that it could have better engaged with the key stakeholders—the State regulatory authorities—particularly about the potential for increased administrative burdens resulting from the 2024 Rule. In response to these and other comments, OSM compared the number of citizen complaints received and the number of citizen complaints resulting in the issuance of one or more TDNs under the 2020 Rule and under the 2024 Rule. OSM found that OSM received more citizen complaints and issued more TDNs to the State regulatory authorities under the 2024 Rule. On average, OSM received approximately 16 citizen complaints per year under the 2020 Rule and issued an average of 3 or fewer TDNs per year. Under the 2024 Rule, OSM received approximately 23 citizen complaints per year and issued an average of 13 TDNs per year. Of the citizen complaints received by OSM under the 2024 Rule and resolved by December 2025, approximately 81 percent either did not provide reason to believe a violation exists, meaning OSM did not issue a TDN, or the State regulatory authority provided sufficient evidence to demonstrate that there was good cause to not take action, usually because the alleged action was not a violation under the State program. Despite a difference in the volume of citizen complaints and TDNs, Federal inspections and enforcement actions as a result of citizen complaints were similar under both rules. These trends support OSM's and the State regulatory authorities' observations that the 2024 Rule led to a greater number of citizen complaints and TDNs. While it was not possible to identify the exact cause of the increase in the number of TDNs issued, some evidence points to the 2024 Rule's restrictions on the types of information that OSM could use to make a reason to believe determination. However, despite issuing more TDNs under the 2024 Rule, in the majority of circumstances for those TDNs resolved before publication of this final rule, OSM found that the State regulatory authorities had already taken appropriate action or there was good cause for not taking action, and there was no comparable increase in Federal inspections or enforcement action. Although OSM recognizes the small sample size, this data indicates that the 2024 Rule may have increased the paperwork for OSM and the State regulatory authorities related to reviewing citizen complaints and issuing and responding to TDNs without any clear indication that it improved enforcement or oversight of SMCRA. In light of the concerns raised by commenters and OSM's experiences implementing both the 2020 and 2024 Rules, and in support of this Administration's focus on removing regulatory burdens (*e.g.,* E.O. 14219 § 3(a)), this final rule will largely revert to the 2020 Rule.

Comment: A commenter reiterated comments first submitted in response to the proposed rule for the 2024 Rule that alleged that OSM did not adequately justify its decision to quickly reverse course from the 2020 Rule. The commenter also contended that the 2024 Rule lacked a reasonable basis and was arbitrary and capricious. As support, the commenter opined that OSM's administrative record for the 2024 Rule was unsupported by data or other evidence to show how the 2020 Rule either delayed consideration of some possible violations or compromised SMCRA's public protections.

Response: OSM understands the commenter's concerns about the justification for the 2024 Rule, but it is not necessary for OSM to revisit that justification in this rulemaking. This rulemaking will rescind almost all of the 2024 Rule that the commenter contended violated the Administrative Procedure Act.

Comment: Several commenters noted that another benefit of returning to the 2020 Rule would be a decreased chance that operators would be subject to differing interpretations of required standards by the State regulatory authority and OSM, which should help with the production of coal.

Response: OSM agrees with these commenters. Replacing the 2024 Rule with a new rule that is substantially similar to the 2020 Rule will help with this Administration's deregulatory efforts by reducing red-tape associated with the TDN process, eliminating unnecessary dual State and Federal regulations, and unleashing American energy to ensure there is a sufficient domestic supply of coal. This coal, in turn, will help strengthen our national security by enhancing supply chains in the United States and for our allies.

C. Removal of the Definitions in Existing § 842.5

As explained in the preamble to the 2025 proposed rule, OSM proposed to remove the definitions of ''citizen complaint'' and ''ten-day notice'' that the 2024 Rule added to 30 CFR 842.5.

Comment: Several commenters expressed support for the removal of the definition of ''citizen complaint'' in § 842.5. These commenters noted that SMCRA does not include the term ''citizen complaint'' and that the definition added by the 2024 Rule was overbroad in light of the language in sections 517(h) and 521(a)(1) of SMCRA. 30 U.S.C. 1267(h) and 1271(a)(1). Specifically, these commenters noted that citizen complaints should be required to pertain to on-the-ground conditions at an actual surface coal mining and reclamation operation. They also stated that a citizen should have to include a request for inspection to both OSM and the State regulatory authority, and the rule should not make a request for inspection automatic, as the 2024 Rule did.

Response: For the first time, the 2024 Rule inserted a regulatory definition of ''citizen complaint'' into a newly created 30 CFR 842.5. In the preamble to the 2024 Rule, OSM stated that it intended for the definition to provide clarity for what would be considered a citizen complaint, which could trigger the TDN process. 89 FR at 24716.

In light of the Federal government's deregulatory initiative and as further explained in the preamble to the 2025 proposed rule (see, *e.g.,* 90 FR at 25175–25176), OSM has determined that this definition is no longer necessary as it is not grounded in clearly applicable law. E.O. 14154, § 2(d). As the commenter noted, the term ''citizen complaint'' is not found in SMCRA, and OSM successfully implemented SMCRA's public participation requirements without such a definition for over 45 years.

Moreover, although OSM promulgated this definition in the 2024 Rule to clarify the meaning of the phrase and clarify that a citizen complaint is intended for citizens to inform OSM of a possible violation (89 FR at 24716), upon review of the statutory language, OSM concludes that the definition improperly conflates the standards of two statutory provisions. Section 517(h)(1) of SMCRA, 30 U.S.C. 1267(h)(1), allows any person who may be adversely affected by an operation to notify OSM in writing if that person has reason to believe a violation exists at a surface mining site. A request under this section has traditionally been considered a ''request for a Federal inspection'' and, by statute, contains appeal rights, *i.e.,* ''procedures for informal review,'' if the person is dissatisfied with OSM's response. Id. at 1267(h)(2). In contrast, section 521(a)(1) of SMCRA, 30 U.S.C. 1271(a)(1)), states that OSM can consider information provided by ''any person'' about a violation of ''any requirement'' of the Act or permit condition. The 2024 Rule essentially adopted the statutory

standard of section 521(a)(1), but then later in § 842.11(b)(2), that rule stated that all citizen complaints would be considered requests for a Federal inspection. This is improper because, pursuant to section 517(h)(1), a request for a Federal inspection can only be for a narrower scope of violations—those that may exist ''at a surface mining site.'' By removing this definition, as well as the additional language in existing §§ 842.11(b)(2) and 842.12(a) that says all citizen complaints will be treated as requests for Federal inspections, the Federal regulations will more closely mirror the statutory requirements and remove unnecessary regulations in the form of definitions that confuse and conflate separate SMCRA requirements.

Comment: Several commenters expressed support for the removal of the definition of ''ten-day notice'' from 30 CFR 842.5 because there has never been any confusion over the use of the term and therefore a definition is unnecessary.

Response: OSM agrees that, as stated in the preamble to the proposed rule (see, *e.g.,* 90 FR at 25175–25176), a definition for the term ''ten-day notice'' is not necessary, only adds to the ''ever-expanding morass of complicated Federal regulations'' (E.O. 14192 ''Unleashing Prosperity Through Deregulation,'' § 1), and should be removed from the regulations. As with the definition of ''citizen complaint,'' ''ten-day notice'' is not defined in SMCRA, and OSM implemented SMCRA without such a definition for over 45 years. Thus, OSM is removing this definition.

D. Information Used for ''Reason To Believe'' Determinations

In the 2025 proposed rule, OSM proposed to return to the 2020 Rule's language at § 842.11(b)(1) describing the types of information OSM can rely on when determining whether there is reason to believe that there exists a violation of SMCRA, the State regulatory program, or any condition of a permit or an exploration approval. 90 FR at 25175. OSM is finalizing this change as proposed, which will allow OSM's authorized representative to consider ''any information readily available to him or her, from any source[,]'' which could include information obtained from a State regulatory authority.

Comment: Several commenters supported OSM's decision to modify the Federal regulations to ensure it can consider all ''readily available'' information regardless of the source of that information when determining if it had a reason to believe a violation exists. These commenters indicated that the 2024 Rule inappropriately narrowed the scope of information that OSM could evaluate when making its determination of whether there was reason to believe a violation exists and prevented OSM from relying on non-publicly available information that the State regulatory authority might have. Commenters in favor of the proposed changes indicated that State regulatory authorities tend to have a better understanding of their programs and permits issued under those programs, making information from the States invaluable to OSM in making a reason to believe determination.

Response: OSM agrees with these commenters that the 2024 Rule unnecessarily narrowed the scope of information that OSM can evaluate when making its determination of whether there is reason to believe a violation exists. In the preamble to the 2024 Rule, OSM explained that the intent of the change was to limit the sources of information that OSM will consider in determining whether it has reason to believe a possible violation exists to avoid excessive delays in making the reason to believe determination. 89 FR at 24715. While OSM remains committed to prompt evaluations of citizen complaints and determinations of whether there is reason to believe a violation exists, OSM's experience in implementing the 2024 Rule has demonstrated that the limits on the types of information available to OSM as a result of the 2024 Rule forced OSM to ignore some types of critical information, such as readily available information from the State regulatory authority, that were not publicly available when making a reason to believe determination. The result is that, starting in May 2024, OSM issued TDNs in response to citizen complaints at times where there would not have been reason to believe a violation exists if OSM had been able to access the information barred by the 2024 Rule. On average, under the 2020 Rule, OSM issued TDNs in response to a citizen complaint less than 17 percent of the time. In comparison, as of December 2025, OSM issued a TDN in response to a citizen complaint over 56 percent of the time under the 2024 Rule. However, as mentioned above, the increased number of TDNs did not have any measurable impact on Federal oversight. For instance, there was no difference in the number of Federal enforcement actions under the two different rules, and OSM determined that either there was no actual violation or the State regulatory authority had taken appropriate action in the majority of the TDNs resolved under the 2024 Rule. Therefore, the 2024 Rule did not actually lead to improved oversight of State regulatory programs, despite aiming for that outcome. Instead, as indicated by the numbers, the 2024 Rule resulted in an increase in the number of citizen complaints received and processed by OSM and the number of TDNs for OSM and States to review and respond to, rather than in an improvement in oversight of State regulatory programs.

The changes finalized today are a commonsense attempt to alleviate this increased unnecessary burden and to make the regulatory text better match the statutory direction that the Secretary, acting through OSM, should make the reason to believe determination based on ''any information available to him.'' Nowhere in section 521(a)(1) of SMCRA, 30 U.S.C. 1271(a)(1), is ''any information'' restricted to information that is publicly available. OSM is not a member of the public and, by virtue of its oversight role, is uniquely able to access ''information available'' from multiple sources to make the best determination of whether there is reason to believe a violation exists. Where the available information makes it clear that there is no violation, OSM and the State regulatory authority can avoid a useless paperwork exercise and unwarranted issuance of a TDN.

OSM agrees that, in general, State regulatory authorities have better site-specific information about the surface coal mining and reclamation operations at issue in citizen complaints and that it is most efficient and effective for OSM to obtain preliminary information from the State regulatory authority before making a reason to believe determination. The 2024 Rule arbitrarily forced OSM to ignore non-public but readily available information, such as State databases, that could allow OSM and the State regulatory authority to avoid the administrative burdens associated with the issuance of an unsupported TDN. The intent of this change is to reduce the number of unnecessary TDNs resulting from citizen complaints that are easily resolved with information readily available to OSM. This reduction will allow OSM and the State regulatory authorities to focus on substantive enforcement issues to ensure full compliance with SMCRA, the applicable State regulatory program, or any condition of a permit or an exploratory approval.

Comment: A commenter alleged that the proposed changes would limit the role of citizens and OSM in oversight and enforcement of violations, which the commenter alleged is contrary to the text and best reading of section 521(a)(1) of SMCRA. 30 U.S.C. 1271(a)(1). This commenter argued that section 521(a)(1) of SMCRA requires that, where information given to the Secretary provides ''reason to believe'' that any person is in violation of SMCRA, OSM must immediately notify the State regulatory authority, starting the ten-day period, and that it would be contrary to SMCRA to allow a new, non-statutory procedural step where OSM contacts a State regulatory authority to consider the State regulatory authority's action before determining if there is reason to believe a violation exists. The commenter noted that creating an additional informal information-gathering process with no enforceable timeline or deadline before OSM makes a ''reason to believe'' determination would be at odds with Congress' clear intent that States have ten days to either correct the violation or provide information about why no action is necessary.

Response: OSM disagrees with the premise of this comment, which is very similar to comments received in response to the 2020 Rule, and OSM directs the commenter to OSM's response in that rulemaking. 85 FR at 75156–62. As OSM explained when these changes were first introduced in 2020, and as OSM reiterates now as those changes are renewed, the proposed rule would not limit the role of citizens or OSM in oversight and enforcement of violations and is not contrary to the text and best reading of section 521(a)(1) of SMCRA. 30 U.S.C. 1271(a)(1). Under the 2025 proposed rule and as finalized today, citizens retain an important role in ensuring that all violations of any requirement of SMCRA or any permit condition are identified and addressed as quickly and efficiently as possible. None of the clarifications to parts 733 and 842 would impair, weaken, or eliminate the ability of the public to report violations directly to OSM or for OSM to issue TDNs when appropriate. OSM intends the changes adopted today to recalibrate the citizen complaint process and the cooperative federalism relationship between OSM and the State regulatory authorities after the 2024 Rule, which prevented OSM from using certain types of readily available information that would have allowed OSM to more easily and accurately determine whether there is reason to believe a violation of SMCRA or a permit condition existed before issuing a TDN. These changes will also reduce unnecessary administrative burdens on both OSM and the State regulatory authorities, consistent with this Administration's priorities. *E.g.,* E.O. 14154 ''Unleashing American Energy,'' E.O. 14192 ''Unleashing Prosperity Through Deregulation,'' and E.O. 14261 ''Reinvigorating America's Beautiful Clean Coal Industry and Amending Executive Order 14241.''

Consistent with OSM's longstanding practice, this final rule requires citizens to provide advance or simultaneous notice to State regulatory authorities when submitting a request for a Federal inspection to OSM. Except for the recent change to the Federal regulations resulting from the 2024 Rule, OSM's practice since 1982 has been to require advance or contemporaneous notice to the State regulatory authority. 47 FR at 35620. This revision is not intended to limit the role of a citizen in the enforcement of regulations, standards, reclamation, plans, or programs established under SMCRA but to recognize that most alleged violations can be expeditiously and effectively resolved by the State regulatory authority, which is in the best position to address any potential issues. As with the 2020 Rule, this final rule provides that, when requesting a Federal inspection, the citizen must indicate that they notified the State regulatory authority before or at the time they notified OSM and the basis for their assertion that the State regulatory authority has not taken action with respect to the possible violation. See, *e.g.,* 85 FR at 75157 (explaining how the 2020 Rule is fundamentally no different than the rule in effect since 1982). This provision encourages, and does not require, citizens to notify the appropriate State regulatory authority before involving OSM in a primacy State's regulatory program and best implements SMCRA's mandate that OSM cooperate with State regulatory authorities to minimize duplication of inspections, enforcement, and administration of SMCRA. 30 U.S.C. 1211(c)(12).

Furthermore, OSM does not agree with the commenter's assertion that the proposed revision creates a new, non-statutory procedural step before the statutory TDN process is started or that allowing OSM to consider all information available before making a reason to believe determination is contrary to section 521(a)(1) of SMCRA. 30 U.S.C. 1211(a)(1). This comment is similar to comments received in response to the 2020 Rule, and OSM directs the commenter to the preamble to that rulemaking for a more detailed response. 85 FR at 75162–75166. Certainly, once OSM has reason to believe that a person is in violation of any requirement of SMCRA or any permit condition, SMCRA requires OSM to notify the State regulatory authority, if one exists, and begin the TDN process. However, SMCRA does not contain a requirement that OSM rush to determine whether there is reason to believe that a violation exists based only on information from a citizen complaint as this commenter suggests. Instead, SMCRA directs that the decision should be based on ''any information available to'' OSM, ''including receipt of information from any person.'' As noted in the preamble to the 2020 Rule, the clarifications finalized here will require that OSM consider all ''readily available information,'' including any information that a State regulatory authority provides, which promotes the goal of ensuring that those regulators with primary jurisdiction over State programs provide OSM with information essential to its assessment of alleged violations.

Finally, the change to § 842.12 requiring that a citizen requesting a Federal inspection provide information about the alleged violation ''at the surface mining site'' is not intended to limit citizen engagement but to ensure that the citizen complaints are actually related to a surface coal mining and reclamation operation. Under the 2024 Rule, OSM received numerous citizen complaints that were not related to any surface coal mining or reclamation operation but were instead related to non-mine activities such as a blocked storm drain on a public road, private property rights disputes, a landfill, and a clay mine. Requiring that a request for an inspection specify that the alleged violation is occurring at a surface mining site should have no impact on citizens with concerns about actual mining operations but should help limit the number of non-mining complaints that are sent to OSM.

Comment: A commenter stated that the phrase ''reason to believe'' is not ambiguous and alleges that the preamble to the 2025 proposed rule failed to provide a reasoned explanation for changing the longstanding interpretation of ''reason to believe'' or identify any examples of OSM, the Interior Board of Land Appeals (IBLA), State regulatory authorities, or any State administrative body having difficulty evaluating a citizen complaint to determine if there was ''reason to believe'' a violation exists. This commenter argued that because agencies are no longer provided deference under

Chevron, USA v. *NRDC,* 467 U.S. 837 (1984), OSM does not have the discretion to interpret ''reason to believe'' differently than the plain meaning of the statute. This commenter pointed to the legislative history, which they claim indicates that ''reason to believe'' is the same as ''reasonable belief'' and ''could be established by a snapshot of an operation in violation or other simple and effective documentation of a violation.'' H.R. Rep. No. 95–218, at 129 (Apr. 22, 1977).

Similarly, the same commenter alleged that allowing an additional fact-finding phase after an individual provides ''reason to believe'' a violation exists but before notifying the State of the possible violation and triggering the ten-day period for the State's response is inconsistent with the plain language of SMCRA, which the commenter alleged requires OSM to first notify the State of the alleged violation and then provide the State with ten days to take appropriate action or show good cause for not taking action. This commenter expressed concern that the proposed changes to allow additional fact-finding before issuing a TDN could allow indefinite administrative delay that is inconsistent with SMCRA, the legislative history of the Act, and OSM's historic interpretation of this provision.

Response: OSM strongly disagrees with this commenter's assertions. As discussed throughout the preamble to the 2020 Rule and reiterated here, due to the complex nature of SMCRA and coal mining in general, ambiguity has arisen about how OSM should perform some of its oversight functions, including how OSM should interpret the ''reason to believe'' standard contained in section 521(a)(1) of SMCRA. See, *e.g.,* 85 FR at 75155. Although the commenter alleged that OSM did not identify any examples where there was difficulty evaluating a citizen complaint to determine if there was ''reason to believe'' a violation exists, this commenter ignored the numerous examples of such situations provided by OSM of the varying interpretations of how to administer section 521(a)(1) of SMCRA and the implementing regulations at 30 CFR part 842. For example, in the preamble to the 2020 Rule, OSM provided as evidence of this confusion the fact that OSM had revised its primary Directive on the TDN process, INE–35, eight times in 33 years attempting to find the right balance between citizen engagement, agency expertise, and cooperative federalism.

Moreover, as described in more detail in section I of this preamble, since OSM provided those examples in the 2020 Rule, the 2020 Rule was judicially challenged, then replaced by the 2024 Rule before there was any ruling on the merits of the case, and then the 2024 Rule was challenged, and there has not been any ruling on the merits in that case either. In these lawsuits, opponents of the 2020 Rule and opponents of the 2024 Rule vigorously argued for opposite outcomes and maintained differing interpretations of section 521(a)(1) of SMCRA. However, we assert that the 2020 Rule, along with the changes offered in this final rule, reflect the best reading of the statute. Instead of retreating to the pre-2020 Rule language, which needed clarification, or retaining the 2024 Rule's approach, OSM approached this rulemaking with the goal of removing ambiguity and formulating a regulatory program that, as a whole, represents the best reading of SMCRA.

After reviewing SMCRA, the legislative history of the Act, OSM's prior regulations and guidance documents, the rulemaking records for the 2020 Rule and the 2024 Rule, all of the comments and submissions in response to this proposed rule, and recent case law (*e.g., Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369 (2024)), OSM is finalizing a rule today, which is substantially similar to the 2020 Rule, because, in OSM's opinion, it reflects the best reading of SMCRA. As the commenter noted, early legislative history from the House of Representatives notes that ''it is anticipated that 'reasonable belief' could be established by a snapshot of an operation in violation or other simple and effective documentation of a violation.'' H.R. Rep. No. 95–218, at 129 (1977). However, Congress did not envision OSM as a mere pass-through entity between citizen complainants and State regulatory authorities. Instead, Congress equipped OSM with the statutory authority, staff, expertise, and resources to deploy limited, but strategic, Federal oversight to ensure that States adequately enforce SMCRA. S. Rep. No. 95–128, at 90 (May 10, 1977). Congress also directed the Secretary, acting through OSM, to ''cooperate with other Federal agencies and State regulatory authorities to minimize duplication of inspections, enforcement, and administration of this Act.'' 30 U.S.C. 1211(c)(12). Limiting OSM's role in determining ''reason to believe'' to simply determining which State regulatory authority to send a TDN to without evaluating the content of a citizen complaint along with any information readily available, including information from a State regulatory authority, would conflict with the mandate in section 201(c)(12) of SMCRA, 30 U.S.C. 1211(c)(12), because it would lead to increased instances of duplicate inspections, enforcement, and administrative burdens with no clear benefit.

The commenter is also incorrect that agencies receive no deference under the new *Loper Bright* standard set by the Supreme Court. While the Supreme Court held that issues of statutory interpretation are for courts to decide under section 706 of the Administrative Procedure Act and, accordingly, agency interpretations are no longer entitled to deference under *Chevron,* agency rules are once again reviewed under the previous framework set forth in *Skidmore* v. *Swift & Co.,* 323 U.S. 134 (1944), which focuses on whether the agency's rule is the ''best reading of the statute.'' OSM's history of implementing SMCRA, including its experience implementing the 2020 Rule and 2024 Rule, provided the agency with recent, on-the-ground experience with the competing approaches to determining ''reason to believe.'' OSM has determined that the ability to have access to any information readily available is invaluable to avoid wasting OSM and State resources pursuing citizen complaints that, on their face, seem to provide ''reason to believe'' that a violation exist but that, after minimal investigation, are found to be meritless. OSM understands that, to the commenter, meritless citizen complaints could be weeded out after a TDN is issued, however, that approach is inefficient and burdens the State to respond to a meritless TDN. Under the 2020 Rule and the rule that OSM is finalizing today, OSM can use readily available information to help understand the citizen complaint before triggering a burden on the State. This approach, therefore, is most efficient and best implements SMCRA as a whole to avoid duplicative enforcement and administrative burdens on OSM and the State regulatory authorities.

Comment: A commenter noted that information not in OSM's possession at the time it receives a citizen complaint, or an oversight inspection is not ''information available'' to the Secretary and should not be considered before making a ''reason to believe'' determination. According to the commenter, for this reason, any information submitted from a State regulatory authority or other party after OSM receives a citizen complaint should not be considered in determining whether OSM has a reason to believe a violation exists.

Response: Section 521(a)(1) of SMCRA, 30 U.S.C. 1271(a)(1), directs that ''[w]henever, on the basis of any information available to him, including receipt of information from any person, the Secretary has reason to believe that any person is in violation of any requirement of this Act or any permit condition required by this Act, the Secretary shall notify the State regulatory authority, if one exists, in the State in which such violation exists.'' Contrary to the assertions of the commenter, SMCRA does not limit OSM to only considering the information from any person, such as a citizen complaint, or freeze OSM's analysis of information available to the moment the citizen complaint is submitted. Instead, SMCRA plainly directs the Secretary, through OSM, to determine whether there is reason to believe that any person is in violation of SMCRA or a permit condition ''on the basis of any information available to him,'' which would include, but is not limited to, information obtained from a citizen and any other information available to OSM before making the ''reason to believe'' determination.

Comment: A commenter stated that SMCRA does not allow OSM to create or revive a procedural barrier in 30 CFR 842.12(a) to start the TDN process found in section 521(a)(1) of SMCRA, 30 U.S.C. 1271(a)(1), by requiring that the complainant assert and demonstrate that the State regulatory authority has first been notified of the potential violation and has failed to take appropriate action.

Response: As fully explained in OSM's response to comments in the preamble to the 2020 Rule, and reiterated here, the rule OSM is finalizing today does not create, or revive, a procedural barrier to a citizen submitting a citizen complaint to OSM or requesting a Federal inspection. The final rule will require a citizen to provide the basis for the person's assertion that the State regulatory authority has not taken action with respect to the possible violation in the context of a request for a Federal inspection under § 842.12, as with the 2020 Rule. However, OSM is not suggesting that the citizen must provide definitive, hard-to-obtain proof that the State regulatory authority has not acted on the possible violation. Instead, the requirement in § 842.12 merely directs the citizen to provide any information they may have about the State regulatory authority's action or inaction. See 85 FR at 75160. Of course, the more detailed a citizen complaint is about a possible violation, the more information OSM will have to consider when determining whether there is a reason to believe. OSM certainly recognizes that citizens have limited access to mine sites, and the final rule does not require any more information than a citizen has available.

Furthermore, this commenter misstates the final rule. The final rule does not require that a citizen demonstrate that the State regulatory authority has first been notified of the potential violation and has failed to take appropriate action. Instead, the final rule reverts to the 2020 Rule language, which, as OSM explained at the time, requires a citizen requesting a Federal inspection to notify the State regulatory authority before, or simultaneously with, reporting violations to OSM. 85 FR at 75157. This provision was part of the Federal regulations from 1982 until the 2024 Rule changed it in the spring of 2024 and reflects OSM's long-held understanding that a State regulatory authority will resolve most alleged violations without intrusion by OSM, as long as the State regulatory authority is made aware of the citizen's concern.

Comment: A commenter asserted that the proposal to modify § 842.11(b)(1)(i) to require that OSM consider information ''readily'' available to the Secretary is inconsistent with SMCRA and OSM's prior practice. The commenter also claimed that OSM's justification for this reversion to the 2020 Rule lacks support. The commenter noted that OSM rejected comments favoring stricter application of the ''reason to believe'' standard in earlier rulemakings as contrary to Congressional intent in section 521(a) of SMCRA, 30 U.S.C. 1271(a), which the commenter alleges imposes a mandatory duty to conduct an inspection when OSM has ''reason to believe'' a violation exists. The commenter asserted that it is not necessary for OSM to have some degree of certainty that the violation exists before issuing a TDN because any Federal inspection that followed the State's response would be when OSM would determine whether a violation actually exists. For support, the commenter points to several administrative and judicial decisions supporting OSM's pre-2020 Rule standard that a TDN would be issued if the possible violation in the citizen complaint, if true, would constitute a SMCRA violation. See, *e.g., W. Va. Highlands Conservancy* (*WVHC I*), 152 IBLA 158, at 186–87 (2000); *Jessica Bier,* 193 IBLA 109, 112 n.8 (2018).

Response: As discussed in greater detail above, considering information readily available to OSM is consistent with SMCRA and represents the best reading of the statute as a whole. OSM also disagrees with the commenter's characterization of the changes in this rulemaking as being a stricter application of ''reason to believe.'' With the changes approved here, OSM is not changing its ''reason to believe'' standard, increasing the standard, or placing any additional obligations on citizens for what they must provide in a citizen complaint. Instead, OSM is merely clarifying that a responsible official can use all readily available information to ensure that they have a full and complete picture of the matter before making its determination of whether there is ''reason to believe'' a violation exists. Further, the final rule does not require a higher level of certainty about whether a violation exists before OSM will issue a TDN. However, where there is readily available information related to a citizen complaint, OSM can use that information to make a better and more informed decision. The following hypothetical example illustrates how the changes do not modify the ''reason to believe'' standard but instead prevents the unnecessary issuance of TDNs by allowing OSM to use available information. For example, if a citizen alleges that a mine site was missing the appropriate signage on January 1, that information alone would arguably be sufficient to support a reason to believe that a violation exists. However, if OSM also had an inspection report that stated a State inspector noted the signage violation during a routine inspection on January 2 and the mine was able to fix the signage issue during the inspection, that would provide OSM with information indicating that there was not reason to believe the violation currently existed and avoid the administrative burden that the TDN process places on OSM and the State regulatory authority. Mine inspection reports are not typically publicly available immediately after an inspection but are readily available to OSM as the agency responsible for oversight of these State programs. Allowing OSM to use this type of information, where it is readily available, does not change the ''reason to believe'' standard and is a common sense approach to implementing the direction in section 201(c)(12) of SMCRA, 30 U.S.C. 1211(c)(12), that OSM should cooperate with State regulatory authorities to minimize duplication of inspections, enforcement, and administration of SMCRA.

With regard to the cases cited by the commenter purporting to mandate the use of an ''if true'' standard for determining reason to believe, OSM

disagrees that these cases require OSM to reach the conclusion that the citizen complaint alone is sufficient information to consider whether there is reason to believe a violation exists under section 521(a)(1) of SMCRA. 30 U.S.C. 1271(a)(1). These decisions do not address the reasonableness of the post-2020 regulations or OSM's interpretation of SMCRA. Instead, the decisions cited by the commenters are applying the pre-2020 regulations, which grafted the ''if true'' standard onto the statutory standard. OSM's rulemaking today does not retroactively vacate or change the outcome of these cases, which were decided under earlier regulations. Moreover, these decisions did not reflect whether those pre-2020 regulations were the best reading of SMCRA as a whole or whether they would, as the 2020 Rule did, remove ambiguity and give effect to OSM's professional judgment by allowing it to consider any readily available information. See 85 FR at 75155–56, 75164–65. Notably, even the 2024 Rule retained the elimination of the ''if true'' standard. See 89 FR at 24724.

Comment: A commenter noted that OSM's 2025 proposed rule, which allows OSM to consider information from a State regulatory authority before determining if there is reason to believe a violation exists, is contrary to OSM's past positions and inconsistent with the regulations because information from a State regulatory authority would be considered by OSM when it looked at the State's TDN response to determine if the State had taken ''appropriate action'' or had ''good cause'' for not doing so. The commenter alleged that OSM's statement that this change is justified because it reduces the potential for duplicate inspections and conserves resources in the event that a State has already begun investigation or correcting an alleged violation is without merit because the regulations already prevent duplicate inspections by giving a State regulatory authority ten days to respond with this type of information after receiving a TDN.

Response: OSM disagrees with the commenter's characterization of this rule. This final rule is neither contrary to OSM's past practices nor inconsistent with the Federal regulations. As revised today, the regulations do not change the nondiscretionary statutory and regulatory requirement that a State regulatory authority must respond to a TDN with good cause for inaction or by taking appropriate action within ten days. 30 CFR 842.11(b)(1)(ii)(B)(1). OSM is, however, reverting to the approach in the 2020 Rule to ensure a more uniform and efficient process when OSM receives a citizen complaint. The revised regulation clarifies the information OSM's authorized representatives should consider when they receive a citizen complaint, which eliminates the possibility that different OSM offices will apply different standards when determining whether to issue a TDN. This revised process also ensures that OSM's authorized representatives can apply their independent, professional judgment to determine whether they have reason to believe a possible violation exists based on all readily available information before them, regardless of the source of that information. Once OSM's authorized representative determines that he or she has a ''reason to believe'' a violation exists, he or she must issue a TDN to the State regulatory authority and the State regulatory authority must respond within ten days. See 30 CFR 843.12(a)(2). Therefore, OSM's oversight of alleged violations is not materially altered.

E. ''Person[s]'' Subject to a TDN

As explained in the preamble to the proposed rule at 90 FR at 25176, based on the Supreme Court's ruling in *Loper Bright* that the regulations should reflect the best reading of the statute, OSM now disagrees with the direction it took in the preamble to the 2024 Rule that announced OSM's intention to treat a State regulatory authority as a ''person,'' who could be in violation of the Act under section 521(a)(1) of SMCRA. 30 U.S.C. 1271(a)(1).

Comment: Some commenters opposed OSM's proposal to return to its prior understanding that a State regulatory authority cannot be found in violation of SMCRA and its implementing regulations for purposes of a TDN, unless the State regulatory authority is acting as a permit holder. These comments claim that OSM did not provide adequate support for this change and opined that site-specific violations should be addressed through the TDN process and programmatic violations should be addressed through the 30 CFR part 733 process.

Response: OSM thoroughly explained its rationale for generally not including a State regulatory authority as a ''person'' for purposes of issuance of a TDN in the preamble to the 2020 Rule. See, *e.g.,* 85 FR at 75176 and 75179. Instead of using the TDN process, OSM will handle any programmatic issues caused by State regulatory authorities as State regulatory program issues under 30 CFR 733.12. Id. As stated in the preamble to the 2020 Rule, ''[o]f course, under finalized 30 CFR 733.12(d), if the State regulatory program issue manifests itself as a violation of the approved State program that often results in an on-the-ground impact, OSM can still take direct enforcement action.'' Id. at 75177.

Comment: In contrast to the previous comment, several commenters supported OSM's proposal to return to OSM's prior position that a State regulatory authority is not a ''person'' that can commit a violation under section 521(a)(1) of SMCRA, 30 U.S.C. 1271(a)(1), unless the State regulatory authority is acting as a permit holder. The commenters asserted that the preamble to the 2024 Rule was inconsistent with SMCRA. In support of their position, they noted that the SMCRA definition of ''person'' at section 701(19) of SMCRA, 30 U.S.C. 1291(19), does not include ''State,'' ''State program,'' or ''State regulatory authority'' among the entities that can be a ''person.''

Response: OSM agrees with the commenter that the best reading of SMCRA as a whole is that a State regulatory authority should not be considered ''any person'' who may be ''in violation of any requirement of this Act'' under section 521(a) of SMCRA unless the State is a permit holder. 30 U.S.C. 1271(a). As OSM noted in the preamble to the proposed rule (90 FR 25176), SMCRA's definition of ''person'' further indicates that the interpretation outlined in the 2020 Rule and reiterated in this final rule is the most consistent with SMCRA.

Comment: A commenter stated that OSM's proposal to clarify that ''any person'' does not include State regulatory authorities is unjustified and contrary to SMCRA. The commenter asserts that Congress's use of ''any'' as a modifier to ''person'' and ''requirement'' in section 521(a)(1) of SMCRA, 30 U.S.C. 1271(a)(1), indicates a statutory intent to broaden the scope of entities that may receive a TDN beyond the business entities identified in section 701(19) of SMCRA. 30 U.S.C. 1291(19). The commenter also notes that because the citizen suit provision in section 520 of SMCRA, 30 U.S.C. 1270, applies to actions ''against the United States or any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution'' it is apparent that Congress intended to include State regulatory authorities in the group of actors capable of violating SMCRA under section 521(a)(1) 30 U.S.C. 1271(a)(1). Finally, the commenter notes that OSM's own regulations at 30 CFR 700.5 define ''person'' as including ''any agency, unit, or instrumentality of Federal, State or local government.'' The

commenter notes that this regulation is binding on OSM and requires that State regulatory authorities be brought within the scope of section 521(a) and that OSM's proposed interpretation would be inconsistent with OSM's own regulations.

Response: OSM disagrees with the commenter's interpretation of SMCRA and the Federal regulations. Although it is true that the regulatory definition of ''person'' at 30 CFR 700.5 includes State agencies, its inclusion of Federal and local government agencies indicates that it is not specifically geared toward State regulatory authorities in the context discussed in this rule (*i.e.,* the agency issuing the surface mining permit). Indeed, in the preamble to the proposed rule that introduced this term, OSM noted that, while the definition expanded on the definition in section 701(19) of SMCRA, 30 U.S.C. 1291(19), it did so to ensure that ''governmental agencies listed in section 524 of SMCRA, 30 U.S.C. 1274, would be included because they are subject to regulation when engaged in surface coal mining and reclamation operations.'' 43 FR 41662, 41666 (Sept. 18, 1978). Likewise, the citizen suit provision at section 520 of SMCRA, 30 U.S.C. 1270(a)(1), cited by the commenter, is also geared toward citizen suits against operators of surface coal mining and reclamation operations. Because section 524 authorizes Federal, State, and local governments to operate surface coal mining and reclamation operations, it only makes sense that the citizen suit provision at section 520(a)(1) would apply to those entities when acting in that specific capacity. This rule does not change that. As OSM noted in the preamble to the 2025 proposed rule, OSM could still issue a TDN to a State agency if the State were acting as an operator of a surface coal mining and reclamation operation or a permit holder. See 90 FR at 25176 (''Properly understood, a State regulatory authority can only be a 'person' that could 'be in violation of any requirement of the Act' in order to trigger a TDN if the State is acting as a business organization of some type, such as a permit holder operating a surface coal mining operation.''). To the extent that OSM determines that the definition of ''person'' in § 700.5 is causing any confusion, OSM will consider subsequent clarifications as part of its deregulation effort.

F. Types of Possible Violations

As discussed in more detail in the preamble to the 2025 proposed rule, 90 FR at 25176, the best reading of section 521(a)(1), 30 U.S.C. 1271(a)(1), and SMCRA as a whole is that the TDN process is not an acceptable way to review the action of a State regulatory authority. Instead, programmatic issues should be addressed under section 521(b) of SMCRA. 30 U.S.C. 1271(b).

Comment: One commenter opined that the 2020 Rule, and thus the proposed rule, correctly excluded matters that are programmatic in nature from the TDN process. The commenter supported OSM's rationale for the 2020 Rule, agreeing that site specific alleged violations should be addressed through the TDN process as governed by section 521(a) of SMCRA, 30 U.S.C. 1271(a), and 30 CFR part 842, but that State regulatory program issues should be corrected through a separate process under section 521(b) of SMCRA, 30 U.S.C. 1271(b), and 30 CFR part 733. This commenter alleged that the 2024 Rule, by allowing OSM to issue notices of violations (NOVs) for State regulatory program issues that are not permit violations, effectively made remedies for State regulatory program issues useless. The commenter further alleged that the part 733 procedures for implementing sections 504(b) of SMCRA, 30 U.S.C.1254, and 521(b) of SMCRA are the only allowable pathways for addressing a situation where a State regulatory authority is failing to maintain and implement its regulatory program effectively.

Response: OSM appreciates the support of this commenter and generally agrees with its analysis. OSM will note, however, that even under the 2024 Rule, OSM still used the part 733 procedures for State regulatory program issues; however, the 2020 Rule better and more clearly distinguished between the two processes under section 521 of SMCRA. 30 U.S.C. 1271. Thus, OSM is reverting, in large part, to that rule.

Comment: Several commenters supported reverting to the 2020 Rule's approach of distinguishing State regulatory program issues, which would be addressed through 30 CFR part 733, from on-the-ground violations, which would be addressed through 30 CFR part 842. Commenters alleged that a ''violation'' under section 521(a) of SMCRA, 30 U.S.C. 1271(a), is limited to actions or omissions by a permittee at a permitted operation and is not broad enough to relate to a State regulatory program issue. These commenters recommended removing permitting matters and programmatic disputes from the TDN process and revising 30 CFR part 842 to define ''violation'' as ''an on-the-ground nonconformance'' or ''an activity condition or practice at a surface coal mining and reclamation operation which does not conform to the permit or applicable regulatory program.'' These commenters also stated that citizen complaints requesting Federal inspections should not be allowed for indirect challenges to State permits or programs.

Response: While OSM generally agrees with these commenters, OSM has declined to adopt their suggestion to expand the list of definitions. As discussed above, OSM drafted this rule with an eye toward reducing Federal regulations. The 2020 Rule, which this final rule largely adopts, sufficiently draws the distinctions advocated by the commenters without additional changes to the regulations.

Comment: Another commenter proposed additional changes to §§ 733.5 and 842.11 to fully exclude programmatic and permitting issues from the definition of ''State regulatory program issue'' in § 733.5 and preclude the issuance of TDNs or Federal inspections for programmatic or permitting issues.

Response: After reviewing the proposed additional changes suggested by the commenter, OSM has declined to adopt them. The 2020 Rule was in effect for over three years, and, in OSM's experience, it struck the correct balance between State primacy and Federal oversight for both on-the-ground or imminent violations and programmatic violations. In addition, OSM's staff found the 2020 Rule to be easy to implement. The changes suggested by the commenter could cause confusion and remove discretion.

Comment: One commenter stated that Congress intended OSM to use TDNs to address site-specific violations by State regulatory authorities when it enacted SMCRA and, as support, cited to SMCRA's legislative history. See S. Rep. No. 95–128 (''Federal standards are to be enforced by the Secretary on a mine-by-mine basis for all or part of the State as necessary without finding that the State regulatory program should be superseded by a Federal permit and enforcement program.''). The commenter opined that the legislative history shows that Congress intended the only limitation on TDNs to be that the alleged violation must be specific to a particular mine and that OSM's proposed interpretation that the permittee must be in violation of the permit to warrant a TDN is unsupported. Further, the commentor alleged that the legislative history indicates that while the 30 CFR part 733 process is an appropriate method for addressing programmatic issues, OSM has the authority to address mine-specific violations that a State regulatory program issue may cause

without a specific finding that the State regulatory authority is not implementing, administering, or enforcing its State program properly.

Response: OSM considered SMCRA's legislative history when it promulgated the 2020 Rule, including the legislative report cited by the commenter. See, *e.g.,* 85 FR at 75155. In the preamble to that rule, OSM noted that over the years, OSM struggled with many issues related to 30 CFR part 842, including ''how to address various types of violations.'' Id. The 2020 Rule represented one interpretation of those regulations, and the 2024 Rule represented another interpretation. After having recent experience implementing both interpretations, OSM is returning to the interpretation in the 2020 Rule because it is more closely aligned with the statutory text of SMCRA as a whole and because it gives full effect to section 521(a) of SMCRA, 30 U.S.C. 1271(a), for mine-specific violations and section 521(b) of SMCRA, 30 U.S.C. 1271(b), for programmatic issues with a State regulatory authority's implementation of its State program. This rule is in accordance with SMCRA, as well as the regulatory provision that the commenters highlighted.

Comment: One commenter pointed to numerous IBLA decisions in support of the position that OSM has a duty under SMCRA to address potential violations by State regulatory authorities, including so called ''permit defects,'' through the TDN process and that ignoring on-the-ground violations to pursue a programmatic action under part 733 is inappropriate. The commenter specifically cited *Mullinax,* 96 IBLA 52 (Feb. 27, 1987), *W.E. Carter,* 116 IBLA 262 (Oct. 18, 1990), *Kuhn,* 120 IBLA 1 (July 3, 1991), and *Molinary,* 134 IBLA 244 (Nov. 30, 1995) in support of this position. The commenter alleges that, contrary to what OSM said in the preamble to the proposed rule, the distinction should not be whether an operator or a State regulatory authority caused the alleged SMCRA violation but whether the violation is permit-specific. Where the violation is permit-specific, regardless of whether it is caused by an operator or the State regulatory authority, the commenter argued that OSM must issue a TDN, and that only where the violation is more general or programmatic is a part 733 procedure alone appropriate. *West Virginia Highlands Conservancy, et al.,* 152 IBLA 158 (Apr. 25, 2000) and *West Virginia Highlands Conservancy,* 166 IBLA 39 (June 9, 2005).

Response: OSM addressed a similar comment in the preamble to the 2020 Rule, and OSM will not repeat that discussion in detail here because the rationale is the same. See, *e.g.,* 85 FR at 75162. Fundamentally, the IBLA cases cited by the commenter are not interpreting SMCRA itself; instead, they are interpreting the pre-2020 Federal regulations, which were ambiguous and led the IBLA to conclude that every citizen complaint should automatically result in a TDN. As stated in the preamble to the 2020 Rule and reiterated in this final rule, this regulatory change is meant to clarify when OSM uses each of the enforcement tools in its toolbelt. Notably, the commenter did not cite to even one example of OSM inappropriately forgoing the part 842 process in favor of the part 733 process during the more than three years the 2020 Rule was in effect.

Comment: A commenter alleged that the proposed rule is a departure from OSM's long-held official policy that TDNs should be used to address violations by a State regulatory authority, including for permit defects. The commenter noted that a prior OSM guidance document, known as a directive, specified that OSM should issue TDNs for permit ''omissions or defects'' identified as a result of individual field inspections. Further, the commenter stated a prior version of Directive INE–35, which OSM issued in 1990 and rescinded in 2006, imposed a mandatory duty on OSM to address violations by State regulatory authorities. Finally, the commenter pointed to a subsequent version of Directive INE–35, which OSM issued in 2011 and rescinded in 2019, to support its contention that OSM's longstanding position has been that the issuance of a TDN is mandatory to address a violation, even a violation that resulted from a permit defect caused by a State regulatory authority.

Response: While OSM does not dispute the references cited by the commenter, the reality, as presented in the 2020 Rule, is far more complex, and the history of OSM's treatment of permit defects shows an agency going back and forth on this issue. See also 85 FR at 75176 (preamble to the 2020 Rule noting OSM's varying positions over the years). After a brief experiment with a different policy reflected in the 2024 Rule, OSM has again decided that the 2020 Rule reflects the best reading of SMCRA as a whole and is an appropriate exercise of OSM's oversight. See also id. It ensures that primacy States have exclusive regulatory jurisdiction over permitting while preserving OSM's oversight and limited backup enforcement authority. It ensures that OSM can correct any programmatic issues through the part 733 process and site-specific issues through the part 842 process. For these reasons, and those set forth in the preamble to the 2020 Rule, OSM is returning to that balanced approach.

Comment: A commenter asserted that it would be inappropriate to exclude violations by a State regulatory authority from the TDN process. The commenter noted that there are a large number of mine-specific violations by a State regulatory authority that would still require OSM oversight, such as the issuance of a defective mining or reclamation plan, extension or renewal of an automatically terminated permit, failure to ensure adequate reclamation bonding, or inappropriate denial of a lands unsuitable petition because these issues have the potential to cause a site-specific, on-the-ground violation of SMCRA. The commenter expressed concern that because an operator would be acting in accordance with a validly issued permit or the nature of the violation may not be apparent until after the close of the public comment period or even when mining begins, it is imperative that OSM retain the ability to issue a TDN directly to a State regulatory authority.

Response: As OSM noted in the preamble to the 2020 Rule: ''Congress intended the section 521(a) TDN process to be limited to violations at a specific site.'' Id. At that time, OSM also noted that OSM ''retain[s] the ability to take Federal enforcement action if any issue being addressed as a State regulatory program issue . . . results in, or may imminently result in, on-the-ground violation.'' Id. This ability, in combination with other Federal regulations, allows OSM to appropriately address the hypotheticals that the commenter raised.

Comment: One commenter contended that OSM's only prior departure from its longstanding policy that TDNs should be used to address violations by State regulatory authorities was a 2005 letter from the Acting Secretary for Land and Minerals Management (the ''Mettiki letter'') and that the Mettiki letter is deeply flawed. The commenter alleged that the Mettiki letter is not based on the plain language of section 521 of SMCRA, 30 U.S.C. 1271, but is instead premised on an unsupported interpretation of SMCRA where OSM lacks jurisdiction over State permitting decisions. Under this interpretation, argued the commenter, the only remedy available to OSM for a mine operating in a manner that has resulted or would result in a mine-specific, on-the-ground violation would be to address the issue programmatically, at the risk of allowing the on-the-ground violation to persist

unabated. The commenter stated that allowing an on-the-ground violation to remain unabated would be contrary to the purpose of SMCRA and its legislative history, which indicate that all permit-specific violations should be addressed, regardless of the source. S. Rept. No. 128, 95th Cong. 1st Sess. 88 (1977). Finally, to highlight the flaws in the Mettiki letter and the proposed rule, the commenter pointed to a case in Oklahoma where the State regulatory authority attempted to prevent OSM from correcting an on-the-ground violation of SMCRA's reclamation standards by claiming that the violation was a permit defect that could only be corrected through programmatic action and not a TDN.

Response: OSM disagrees with the commenter. As noted above, the Letter from Assistant Secretary Rebecca Watson to Joseph M. Lovett, Appalachian Center for the Economy and the Environment (Oct. 21, 2005) (''Watson letter'' or ''Mettiki letter''), is not the only time OSM has espoused this interpretation. For instance, the current Directive INE–35, which has been effective since 2019, does not state that TDNs can be issued for permit defects. Moreover, the 2020 Rule, which this final rule largely adopts, also clarified the distinction between programmatic issues and site-specific violations. In addition, OSM does not agree that this rule is contrary to the legislative history. Instead, it seeks to restore the statutory division that Congress put in place in 1977. In addition, OSM is familiar with Oklahoma's previous arguments related to approximate original contour and whether it was a permit defect that could be corrected through a TDN. In response, OSM notes that this occurred before the promulgation of the 2020 Rule, which would have clarified how programmatic issues are addressed versus how site-specific violations are addressed. Specifically, as stated in the preamble to the 2020 Rule, nothing in that rule ''prevents a State regulatory authority from taking direct enforcement action in accordance with its State regulatory program, or OSMRE from taking appropriate oversight enforcement action, in the event that a previously identified State regulatory program issue results in or may imminently result in a violation of the approved State program.'' 85 FR at 75171. Therefore, it is unclear if or how these arguments would have changed in light of the clarity provided by the 2020 Rule. Regardless of these arguments from the commenters, OSM maintains that the 2020 Rule reflects the best reading of SMCRA as a whole, particularly the distinction between section 521(a) of SMCRA and 521(b) of SMCRA. 30 U.S.C. 1271(a) and (b).

Comment: One commenter warned that requiring all violations by State regulatory authorities to be addressed through the part 733 process, as opposed to the TDN process, would result in absurd outcomes that could delay or even prohibit OSM from correcting on-the-ground violations. The commenter noted that the part 733 process contains numerous steps, some with long deadlines and others with no timeframes attached, that would not facilitate the quick corrective action needed to address a mine-specific violation that has historically been addressed through the TDN process. The commenter also indicated that, in 2005, OSM reported that it had only started ten part 733 proceedings, indicating that there has historically been a very high threshold for State program issues that trigger a part 733 process. The commenter expressed worry that if a permit defect cannot be addressed through a TDN but is not substantial enough to warrant a part 733 proceeding, that the violation may not ever be addressed, or any resolution would occur well after the on-the-ground violation has caused irreparable harm.

Response: OSM disagrees with this commenter's assessment of the proposed rule. The example cited by the commenter predates the changes that the 2020 Rule made to 30 CFR part 733, which were largely unaffected by the 2024 Rule. Before the 2020 Rule, the part 733 process meant sending a letter to a State regulatory authority to begin the process for substituting Federal enforcement or withdrawing approval of all or a part of a State program. The 2020 Rule changed that to include what is now 30 CFR 733.12, which is a codification of the corrective action plan process that had previously been contained in agency guidance documents. The action plan process, as revised in this rule, will ensure that the part 733 process works swiftly to address State regulatory program issues. Indeed, OSM used this process three times in the approximately three years that the 2020 Rule was in effect. OSM's experience was that the action plan worked to resolve the State regulatory program issues identified. In the one instance where OSM's review of the State's compliance with the action plan indicated continuing issues, OSM invoked the procedures in 30 CFR 733.13, and the State swiftly resolved the matter. Thus, OSM's practical experience in implementing the 2020 Rule demonstrates that the scenario presented by the commenter is unlikely to occur.

G. Similar Possible Violations

In the preamble to the proposed rule, OSM specifically requested comments about whether it should retain the changes to § 842.11(b)(1)(ii)(B)(*1*) made by the 2024 Rule, which addressed similar possible violations. 90 FR at 25177. Retaining this language would allow OSM to reduce the paperwork burden on a State regulatory authority by specifically allowing OSM to issue one TDN for multiple similar violations, even if those violations are on different permits.

Comment: Most commenters either supported retention of this provision or indicated they were neutral on its retention because, in their view, OSM had the authority to issue one TDN for similar possible violations even without specific language in the regulations.

Response: While OSM has endeavored to remove unnecessary wording from the regulations as part of OSM's deregulation effort, OSM opts to retain this sentence from the 2024 Rule. As OSM noted then, it intended the change to reduce regulatory burdens on the State regulatory authorities. See 89 FR at 24718. The actual reduction of regulatory burdens outweighs streamlining OSM's regulations; thus, OSM has retained it.

H. Action Plans as Appropriate Action

As discussed in the preamble to the proposed rule, if OSM issues a TDN, a State regulatory authority has ten days to respond. OSM will then determine if that response constitutes ''appropriate action'' to cause the violation to be corrected or if the State regulatory authority has shown ''good cause'' for not doing so. 90 FR at 25177. Under the 2020 Rule, the regulations provided that if a State regulatory authority had entered into an action plan to correct a State regulatory program issue, that would be considered ''appropriate action.'' The 2024 Rule retained that concept but considered an action plan to be ''good cause'' rather than ''appropriate action.'' This rule adopts the proposal to return a corrective action plan to ''appropriate action.'' Notably, however, regardless of whether an action plan is considered good cause or appropriate action, no further Federal enforcement would result from the TDN.

Comment: One commenter alleged that, while SMCRA recognizes that general programmatic violations should be addressed through the part 733 process, the 2025 proposed rule violates

SMCRA by eliminating federal oversight for site-specific violations caused by the State regulatory authority. This commenter cautioned that this approach would fail to provide effective and timely oversight for mine-specific violations, which is contrary to section 521(a) of SMCRA. 30 U.S.C. 1271(a).

Response: OSM disagrees with the commenter about the effect of returning to the 2020 Rule position that an action plan is ''appropriate action.'' As explained in the preamble to the proposed rule, an action plan does cause violations to be corrected, even at specific mine sites. 90 FR at 25177. For example, while the 2020 Rule was in effect, OSM entered into action plans with three State regulatory authorities after determining a State regulatory program issue existed. As part of the action plan, OSM and the States developed a schedule to ensure that the State corrected the State regulatory program issue impacting each permit. These concrete examples demonstrate that action plans do cause site specific issues to be remedied, if they exist, which is why it is more correct for action plans to be considered ''appropriate action'' under revised § 842.11(b)(1)(B)(*3*).

Comment: Other commenters supported reverting to the 2020 Rule language in § 842.11(b)(1)(ii)(B)(*3*) affirming that a programmatic corrective action plan can be considered appropriate action in response to a TDN. These commenters noted that a corrective action plan is a necessary tool for successful collaboration between OSM and State regulatory authorities to expeditiously address program issues.

Response: OSM agrees with these commenters that an action plan should be considered appropriate action and that an action plan is a useful tool to collaborate with the State regulatory authorities to ensure SMCRA is effectively and efficiently enforced.

Comment: Another commenter opposed the proposed amendment to § 842.11(b)(1)(ii)(B)(*3*) and suggested modifying § 842.11(b)(1)(ii)(B)(*4*) to expand ''good cause'' to include a ''response by the [S]tate regulatory authority indicat[ing] that the possible violation identified in the [TDN . . .] constitutes a [S]tate regulatory program issue under Part 733.'' The commenter alleged that these proposed changes are necessary to prevent State regulatory program issues from being subject to Federal enforcement or inspections.

Response: In the 2024 Rule, OSM changed the regulations to provide that action plans correcting State regulatory program issues constituted good cause rather than appropriate action. However, as described above and in the preamble to the proposed rule, OSM is reverting back to the 2020 Rule's approach—that action plans are appropriate action to cause a violation to be corrected—because the action plan will take care of both the underlying problem (*i.e.,* the State regulatory program issue) as well as any manifestations of that issue in a permit. Thus, to more closely align the regulations with the statutory text of section 521(a)(2) of SMCRA, 30 U.S.C. 1271(a)(2), OSM is revising the regulations as proposed and as set forth in the 2020 Rule to allow action plans to be considered appropriate action. State regulatory program issues are addressed under section 521(b) and, thus, are not addressed through Federal enforcement or inspections unless, as noted in § 733.12(d), that State regulatory program issue ''results in or may imminently result in a violation of the approved State program.''

Comment: One commenter stated that programmatic oversight is not an appropriate replacement for TDNs or direct enforcement to correct a violation and would be contrary to SMCRA. The commenter noted that, historically, States had not adequately regulated coal mining and, in enacting SMCRA, Congress sought to address that issue by giving OSM a role in mine-specific enforcement, in addition to programmatic oversight, and that allowing programmatic oversight to replace permit-specific enforcement would prevent timely actions to abate violations and require OSM to use a more disruptive and time-consuming process of partial or complete program withdrawal. The commenter provided an example of a citizen who submitted a citizen complaint to OSM. In response, OSM issued a TDN to the State regulatory authority and, after a Federal inspection, issued a Federal notice of violation to the operator to correct the violation. The citizen also pursued a remedy with the State regulatory authority, but that process took four years (although it was eventually resolved in favor of the citizen). The commenter alleged that OSM's proposal to forego Federal enforcement in favor of programmatic action would result in situations where citizens must wait excessive amounts of time for violations to be abated, if they are abated at all.

Response: While OSM appreciates this commenter's concern, OSM notes that the example provided by the commenter occurred before OSM promulgated the 2020 Rule. Among other things, OSM developed the 2020 Rule to create a more efficient process that would also provide the same level of citizen participation. After a brief experiment with the 2024 Rule, OSM now recognizes that the 2020 Rule, as slightly modified here, strikes the proper balance. Programmatic action is appropriate for programmatic issues, such as State regulatory program issues. As noted repeatedly above, this final rule and the 2020 Rule at § 733.12(d) do not preclude use of the TDN process, even if a State regulatory issue has been identified if the State regulatory program issue ''results in or may imminently result in a violation of the approved State program.''

Comment: One commenter expressed concern that this rule would allow OSM personnel to ignore a violation that is not being abated if a State regulatory authority is not properly interpreting or applying its approved State program. According to this commenter, such an outcome would be contrary to section 517(e) of SMCRA, 30 U.S.C. 1267(e), which requires that ''[e]ach inspector, upon detection of each violation of any requirement of any State or Federal program or this Chapter, shall forthwith inform the operator in writing, and shall report in writing any such violation to the regulatory authority.''

Response: OSM disagrees with the premise of this comment. Nothing in the 2020 Rule or in the rule being finalized today would run afoul of section 517(e) of SMCRA, 30 U.S.C. 1267(e), or allow a Federal inspector to ignore a violation of SMCRA, the Federal regulations, the State program, or a permit condition. To OSM's knowledge, this situation did not occur when the 2020 Rule was in effect, and OSM does not expect it to occur here. If it does, SMCRA contains a citizen suit provision in section 520, 30 U.S.C. 1270(a)(2), that a citizen could use to ensure the Act is enforced.

I. Request for Federal Inspection

Section 842.12 of the Federal regulations sets forth information about a citizen's request for a Federal inspection. For the first time, the 2024 Rule amended existing 30 CFR 842.11(b)(2) and 842.12(a) to deem every citizen complaint to be a request for a Federal inspection. 89 FR at 24718. While this was done to eliminate real or perceived barriers to public participation, this approach is contrary to the best reading of SMCRA as a whole and the cooperative federalism principles that form the bedrock of SMCRA. 90 FR at 25175. In addition, OSM proposed to revert § 842.12 back to the language contained in the 2020 Rule, which as discussed in the responses to comments in section III.D., also requires that, for a request for a

Federal inspection, the citizen provide OSM with information about his or her contact with the State regulatory authority. Except as noted in this preamble, OSM is finalizing the provision as proposed.

Comment: A commenter opposed the proposal to amend § 842.12(a) to require that a citizen include a statement that they have notified the appropriate State regulatory authority of the existence of the possible violation and the reason why the State regulatory authority has not taken action with respect to the possible violation. Their rationale is that this position is contrary to positions OSM took in the 1979 and 1982 rulemakings on this topic and is contrary to the intent that the public is allowed to participate in the enforcement of SMCRA. The commenter noted that OSM's position in 1979 was that OSM lacks the authority to require a citizen to ask a State regulatory authority to inspect a mine before asking for a Federal inspection. The commenter also noted that OSM's position in 1982 was that waiting for a citizen to notify a State regulatory authority would needlessly delay the TDN process.

Response: OSM disagrees with the premise that the proposed amendments to § 842.12(a) are contrary to its historical position in the 1979 and 1982 rulemakings. As noted in 2020 when OSM initially proposed these changes, the clarification adopted in this final rule does very little to change how citizens initiate complaints and requests for Federal inspection with OSM and places no additional burden on the citizen complaint process as compared to the pre-2020 Rule process. 85 FR at 75157. The final regulation at 30 CFR 842.12(a) reconfirms the longstanding requirement that, when requesting a Federal inspection, the citizen must include a statement that the citizen has informed the State regulatory authority of the existence of the possible violation, condition, or practice. The final rule also requires the citizen to provide the basis for the assertion that the State regulatory authority has not taken action with respect to the possible violation. In removing this requirement in the 2024 Rule, OSM stated that citizens should not need to state their allegation in statutory or regulatory language because they are not necessarily well-versed on the text of SMCRA or its implementing regulations. 89 FR at 24718. But the requirement to provide the basis for the assertion that the State regulatory authority has not taken action with respect to the possible violation does not require a statement based in statutory or regulatory language. Instead, it merely requires a statement explaining why the citizen believes the violation has not been corrected. As OSM noted in 2020, this requirement would provide critical information to help OSM more efficiently resolve the alleged violation and recognizes that the State regulatory authority is almost always in the best position to resolve any alleged violations more quickly and efficiently than OSM. 85 FR at 75160.

In addition, OSM's experience implementing the 2024 Rule highlights the need for the clarity and efficiency that the 2020 Rule provided. Since the effective date of the 2024 Rule, OSM has seen an increase in the number of citizen complaints, all of which were, under that rule, considered requests for a Federal inspection. However, this increase in the number of citizen complaints has not corresponded with an increase in enforcement actions taken by OSM in response to a TDN because only one of the citizen complaints received under the 2024 Rule required any follow up action by OSM after investigation. In other words, after completing its investigation of the State regulatory authority responses, OSM found that, after learning of the citizen concern, the State regulatory authority either took appropriate action or adequately explained to OSM why there was good cause for the State regulatory to take no action, often because there was no violation. Unfortunately, the processing of this increased number of citizen complaints and TDNs amounted to a waste of agency resources that could have been used to address other priorities.

For example, OSM received a citizen complaint with accompanying photographic evidence alleging SMCRA violations at an operation. Because the pictures provided reason to believe that a possible violation risking imminent harm existed, OSM conducted a Federal inspection. When OSM arrived at the mine site, two days after receiving the complaint, OSM discovered that all violations depicted in the photographs had already been resolved by the State regulatory authority and that the photos were more than two months old. Although this was an apparent imminent harm violation, which process has not been changed by either the 2020 Rule, the 2024 Rule, or this rule, it shows how a comparable situation could occur in a non-imminent harm situation, and how readily available information from a State regulatory authority could create efficiencies in OSM's oversight process and prevent an unnecessary expenditure of Federal resources.

Comment: Several commenters supported OSM's proposal to repeal the provision in the 2024 Rule that allowed all citizen complaints to be considered requests for Federal inspections because they contended that that provision eroded State primacy and created new regulatory uncertainties. These commenters maintained that the prior interpretation that citizens must independently request a Federal inspection better implements State primacy and is supported by the text of SMCRA.

Response: As explained above and in the preamble to the proposed rule, OSM agrees with these commenters and, as finalized, this rule maintains the statutory distinction between requests for Federal inspections under section 517(h)(1) of SMCRA, 30 U.S.C. 1267(h)(1), and information that could give OSM a reason to believe a violation exists under section 521(a)(1) of SMCRA, 30 U.S.C. 1271(a)(1), which could be from a citizen complaint.

Comment: Some commenters supported reverting to the 2020 Rule language at § 842.12 that required a citizen requesting a Federal inspection to provide the basis for the assertion that the State regulatory authority has not taken action with respect to the possible violation.

Response: OSM agrees with these commenters and, as finalized, § 842.12 contains a sentence that states: ''The statement must also set forth the fact that the person has notified the State regulatory authority, if any, in writing, of the existence of the possible violation, condition, or practice, and the basis for the person's assertion that the State regulatory authority has not taken action with respect to the possible violation.'' OSM notes, however, as OSM did in the preamble to the 2020 Rule that ''if the complainant notifies the State regulatory authority simultaneously with filing a complaint with OSMRE, the basis for the person's assertion could be as simple as restating the allegations in the complaint made to the State regulatory authority, coupled with the action, if any, taken by the State regulatory authority in response.'' 85 FR at 75168. For example, OSM accepted a citizen complaint under the 2020 Rule where a group simultaneously submitted their complaint to OSM and the State regulatory authority. As the basis for asserting that the State regulatory authority had not taken action, the group cited specific instances in the past when the State regulatory authority did not act or did not resolve a previous complaint. OSM still encourages citizens to first contact State regulatory

authorities with any concerns because the State regulatory authorities are often in the best position to correct the action and, when submitting a citizen complaint to OSM, to provide OSM with as much information about the basis for the assertions in the complaint as possible because it will help OSM determine if it has a reason to believe that a violation exists.

Comment: To better align the Federal regulations with section 517(h)(1) of SMCRA, 30 U.S.C. 1267(h)(1), one commenter suggested that OSM further amend § 842.12(a), as proposed, to insert the phrase ''at the surface mining site'' after the word ''exists'' at the end of the first sentence and again at § 842.11(b)(1)(i) after the word ''exists'' and before the phrase ''a violation'' in the middle of the first sentence.

Response: As noted above, OSM agrees with the commenter's suggested change to § 842.12(a) and has amended the final rule to include the phrase ''at the surface mining site'' after the word ''exists'' at the end of the first sentence. OSM did not make the comparable change to § 842.11(b)(1)(i) because that provision implements section 521(a)(1) of SMCRA, 30 U.S.C. 1271(a)(1), which, unlike section 517(h)(1), 30 U.S.C. 1267(h)(1), does not contain that phrase. Thus, the change to § 842.12(a) aligns both sections more closely to the express statutory language.

Comment: One commenter stated that State regulatory authorities are the appropriate entities to make threshold determinations of whether to conduct Federal inspections of alleged violations.

Response: OSM disagrees with this comment. Whether or not OSM should conduct a Federal inspection is a decision that SMCRA leaves to OSM. See 30 U.S.C. 1271(a)(1) (providing that the Secretary, acting through OSM, is the entity responsible for making a reason to believe determination). OSM understands the commenter's point about cooperative federalism and wholeheartedly agrees that a State regulatory authority is in the best position to determine whether a violation exists within its jurisdiction. However, SMCRA provides OSM with oversight in specific instances, including as provided in section 521 of SMCRA. OSM believes this rule, like the 2020 Rule, provides the correct balance as provided in the statute between State primacy and Federal oversight.

Comment: One commenter suggested that OSM revise its regulations further to add a requirement that citizens exhaust State procedures before requesting a Federal inspection in a primacy State, unless the complaint involves imminent danger or significant environmental harm. Similarly, another commenter suggested revisions to § 842.12 that would direct requests for inspections in States with an approved regulatory program to the relevant State regulatory authority, and not OSM, unless there is reason to believe there is an imminent danger to public health or safety or reasonably expected significant, imminent, environmental harm, in which case the citizen would need to reach out to the State regulatory authority and OSM.

Response: OSM appreciates the suggestions made by these commenters, but OSM is not making the suggested changes in the final rule. The 2020 Rule, and the minor modifications to that rule made by this rulemaking, reflect the best reading of statutory provisions in SMCRA. In non-imminent harm situations, SMCRA neither requires exhaustion of State procedures before a Federal inspection nor does it require OSM to direct requests for inspections to States first.

J. Action Plans

The final rule maintains the concept of corrective action plans, as first codified in the 2020 Rule and maintained, in large part, in the 2024 Rule. The final rule, however, generally reverts the substantive language of §§ 733.5 and 733.12 back to the 2020 Rule.

Comment: One commenter suggested modifying 30 CFR part 733 to prioritize the use of programmatic oversight tools before using Federal enforcement to correct permit issues. Similarly, another commenter stated that OSM should revise the Federal regulations to prohibit direct Federal enforcement unless the violation at the mine site constituted an imminent public danger or significant imminent environmental harm. This commenter argued that the Federal regulations should be modified to require that all other concerns, even non-imminent harm violations, should be addressed through the part 733 process.

Response: OSM appreciates the commenters' perspective, but, at this time, OSM has decided to simply return the regulations back to the 2020 Rule, with a few minor revisions. When OSM promulgated the 2020 Rule, OSM considered multiple alternative approaches and decided the 2020 Rule struck the best balance between State primacy and limited Federal oversight as set forth in SMCRA. Although OSM briefly experimented with the 2024 Rule's approach, as discussed in this preamble, it did not reflect the best reading of SMCRA as a whole and did not give appropriate consideration to its cooperative federalism principles. At this time, OSM does not consider the commenters' suggested approach to be as consistent with the balance articulated in SMCRA.

Comment: One commenter suggested that § 733.12(a)(2) should be revised to state that if the OSM Director ''has reason to believe'' that a State regulatory authority is not effectively implementing, administering, enforcing, or maintaining all or a portion of its program, the OSM Director may ''initiate proceedings to'' substitute Federal enforcement of the program or withdraw approval of the program. The commenter explained that the intent of the proposed revisions was to reinforce the flexibility of 30 CFR part 733 and clarify the chronology of a proceeding under part 733.

Response: This commenter made this same comment in response to the 2020 Rule. See 85 FR at 75174. At that time, OSM declined to make this change because OSM was concerned that it would muddy the distinction between the action plan, which is developed before the § 733.13 process is started, and the § 733.13 process itself, which could lead to the substitution of Federal enforcement of the State program or the withdrawal of the State program. *Id.* After reconsideration of this comment, as discussed above in section II, OSM has now decided to make the suggested change to § 733.12(a)(2) by replacing ''concludes'' with ''has reason to believe'' in the first clause. This change better aligns the Federal regulations with the statutory structure of SMCRA and the cooperative federalism framework. Moreover, after working through several action plans under the 2020 Rule, including one that ultimately initiated the § 733.13 process, OSM no longer thinks that it is likely to lead to the confusion that OSM previously noted in 2020.

K. Miscellaneous

Comment: Several commenters recommended removing 30 CFR 843.12(a)(2), which allows OSM to issue notices of violation in primacy states on the basis of ''any federal inspection other than one described in paragraph (a)(1) of this section,'' alleging that this practice is not grounded in SMCRA. These commenters allege that this language inaccurately extends OSM's authority to issue notice of violations to inspections not mentioned in section 521(a)(3) of SMCRA, 30 U.S.C. 1271(a)(3), and, therefore, is not the best reading of SMCRA.

Response: While OSM appreciates the commenters' suggestions, OSM did not

propose any changes to 30 CFR 843.12(a)(2) or the Federal enforcement provisions of the Federal regulations in the proposed rule. Thus, these comments are outside the scope of this rulemaking. Moreover, OSM fully addressed a similar suggestion in the preamble to the 2020 Rule. See 85 FR at 75180. For these reasons, OSM is not adopting the suggestions in this comment.

Comment: Several commenters recommended revising 30 CFR 842.11(b)(1)(ii)(B)(*2*) to specify that a State regulatory authority owed ''considerable'' or ''substantial'' deference when OSM reviews a State regulatory authority's response to a TDN. One commenter suggested that while the current text of § 842.11(b) contains the ''arbitrary, capricious or abuse of discretion'' standard for reviewing a State regulatory authority's response to a TDN issued by OSM, a second sentence stating that ''[t]he authorized representative will accord the State regulatory authority substantial deference in evaluating whether the response is arbitrary capricious or an abuse of discretion under the State program'' was necessary to ensure that a State regulatory authority is granted the appropriate deference by OSM.

Response: These comments are virtually the same as comments received in response to the proposed rule that led to the 2020 Rule, and OSM directs the reader to its more detailed response in that document. 85 FR at 75178. In sum, OSM is still declining to make the proposed changes to § 842.11(b)(1)(ii)(B)(*2*). OSM reiterates that under the ''arbitrary, capricious, or an abuse of discretion'' standard, which was not changed by either the 2020 Rule or the 2024 Rule or proposed to be changed in this rulemaking, OSM already affords the appropriate level of deference to a State regulatory authority, which is consistent with SMCRA's cooperative federalism model.

Comment: One commenter suggested removing 30 CFR 842.15(d), which allows formal appeals to the Office of Hearings and Appeals (OHA) if OSM decides not to undertake a Federal inspection or take appropriate action, arguing that SMCRA only authorizes informal review in such a situation.

Response: OSM disagrees with the suggestion to revise § 842.15 to remove paragraph (d). OSM did not propose any changes to § 842.15 in the proposed rule and removal of this provision would be beyond the scope of this rulemaking. Furthermore, OSM addressed a similar comment in the preamble to the 2020 Rule, and OSM directs the reader to the more detailed discussion of why OSM declined to make that change then. 85 FR at 75180. For the same reasons, OSM declines to make these changes in this rulemaking.

Comment: One commenter suggested a series of additional revisions to 30 CFR part 842 to preclude programmatic and permitting issues from the TDN process. The suite of suggested edits included adding new definitions to § 842.5 for ''State regulatory program issue'' and ''violation'' and defining the first term as it is defined in § 733.5 and the second term as ''an activity, condition or practice at a surface coal mining and reclamation operation which does not conform to the permit or applicable regulatory program.'' In addition the commenter suggested that OSM should not adopt proposed § 842.11(b)(1)(ii)(B)(*3*) and, instead, should amend § 842.11(b)(1)(ii)(B)(*4*) to add that ''good cause'' can include ''(ii) The response by the state regulatory authority indicates that the possible violation identified in the notice provided under paragraph (b)(1)(ii)(B)(1) constituted a State regulatory program issue under Part 733.'' The commenter stated that these proposed changes were needed because the 2020 Rule and, thus, the 2025 proposed rule, would potentially subject operators to Federal inspections or enforcement if a State declines to enter into an action plan. The commenter stated that OSM should instead follow the approach of the 1988 TDN Rulemaking and revise the regulations to reflect that violations of SMCRA cannot be enforceable against an operator until OSM engages in a part 733 process to address the State implementation issues.

Response: OSM declines to accept the suggestions in this comment because they propose substantive changes to §§ 842.5 and 842.11 that were not proposed in the proposed rule. While these suggestions could be considered a logical outgrowth, these proposed changes would significantly alter the careful balance struck in the 2020 Rule that OSM developed to clarify the procedures for addressing violations outlined in section 521(a) of SMCRA, 30 U.S.C. 1271(a), and that are subject to the 30 CFR part 842 TDN process versus programmatic issues outlined in section 521(b) that are subject to 30 CFR part 733. Moreover, contrary to the suggestion from the commenter, OSM has consistently acknowledged that all programmatic and permitting issues should not automatically be precluded from the TDN process because these violations have the potential to manifest in site-specific violations that are appropriately addressed through the TDN process. See 85 FR at 75168, 75184–75185 (''If a citizen complainant makes OSMRE aware of a State regulatory program issue that has not resulted in actual or imminent violation of the approved State program that often manifests as an on-the-ground impact at a specific site, OSMRE will handle the issue initially through the enhancements to the 30 CFR part 733 process adopted in this final rule. However, as noted repeatedly, OSMRE will still initiate an appropriate Federal enforcement action, such as issuance of a TDN, if the State regulatory program issue results in, or may imminently result in, a violation of the approved State program.''). Prohibiting OSM from correcting an on-the-ground violation of SMCRA until OSM completes the part 733 process would impermissibly frustrate the purpose of SMCRA to ''assure that surface coal mining operations are so conducted as to protect the environment'' and ''assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this Act.'' 30 U.S.C. 1202(d) and (i). Furthermore, waiting to correct an on-the-ground violation until OSM and the State complete a part 733 process could significantly delay enforcement of a violation, increase costs to operators to remedy the violation, and potentially impact their ability to correct the violation.

Comment: One commenter supported the added flexibility that the proposed rule would provide for States and OSM to resolve disputes through action plans but noted concern that a lack of timeframes may cause excessive delays in resolving disputes.

Response: OSM appreciates the commenter's support for the rule and the flexibility it provides in tailoring OSM's oversight to the nature of the potential issue. OSM understands the commenter's concern that removing timeframes for designing and implementing action plans has the potential to result in delays in resolving a State regulatory program issue but, after reviewing the proposed language in § 733.12, the text as finalized here appropriately balances the need to resolve State regulatory program issues quickly with OSM's interest in retaining the flexibility to employ any number of compliance strategies, including but not limited to action plans, to ensure that the State regulatory authority corrects a State regulatory program issue in a timely and effective manner. Specifically, OSM was concerned that

the rigid timelines and requirements in § 733.12(b) would leave OSM without sufficient flexibility to work with the States to develop the most appropriate and achievable compliance strategy to ensure that any identified State regulatory program issues are corrected and do not become an issue that would give the Director reason to believe that the State regulatory authority is not effectively implementing, administering, enforcing, or maintaining all or a portion of its State regulatory program. For example, the 2024 Rule required OSM to develop and approve an action plan within 60 days after OSM identified a State regulatory program issue via a TDN and required that each action plan conform to rigid requirements. While some of those requirements reflect common sense documentation and tracking of compliance measures, the prescriptive and rigid requirements created an overly complicated and time-consuming process that was unnecessary and burdensome for all but the most serious State regulatory program issues. The one-size-fits-all approach to addressing State regulatory program issues proved inefficient and unnecessary. Instead, OSM is returning to the more flexible approach of the 2020 Rule where those issues that cannot be resolved within 120 days will require an action plan but issues that can be resolved within that time frame can be managed without an action plan. Further, the approach adopted today still retains the important elements of an action plan and the tracking and monitoring required to ensure the State regulatory program issues are resolved without burdening OSM and State regulatory authorities with unnecessary procedures.

Comment: In response to OSM's invitation to comment on ''whether any portions of the preexisting regulations could be improved to better meet this Administration's objectives'' (90 FR at 25177), one commenter requested that OSM consider removing the provisions of 30 CFR 842.12(b)(1) that allow a State regulatory authority to seek informal review when OSM determines that a State's response to a TDN does not constitute appropriate action or good cause. In support of this recommendation, the commenter stated that nothing in section 521 of SMCRA, 30 U.S.C. 1271, provides for creation of a new right of ''informal review'' for State regulatory authorities in the TDN process. The commenter alleges that delaying a Federal inspection pending resolution of an ''informal review'' after the State regulatory authority has already had full opportunity to take action or to justify inaction, is contrary to the ''best reading'' of SMCRA and, therefore, should be removed.

Response: This commenter made a similar comment in response to the 2024 Rule. See 89 FR at 24727. Then, as now, OSM declines to make the change suggested by the commenter. The informal review procedures raised by the commenter, which are actually located in § 842.11(b)(1)(iii)(A)–(C), are too important to the balance of the cooperative federalism relationship between OSM's State regulatory authority partners and OSM to remove, especially without stakeholder input and full opportunity for notice and comment.

Comment: One commenter alleged that the rationale for the proposed changes was not efficiency or the elimination of duplication but instead was intended to reduce the workload of Federal and State regulatory authorities because of inadequate funding available to implement SMCRA. The commenter opined that the legislative history of SMCRA indicates that Congress passed SMCRA, in part, to address the fact that insufficient funding at the State level had led to inadequate enforcement of State mining laws and that, if inadequate State funding is the issue, it should be addressed programmatically through the part 733 process. Alternatively, the commenter alleged that the proposed changes are improperly designed to protect the coal industry and State regulatory authorities from citizen complaints.

Response: This comment is very similar to a comment received in response to the 2020 Rule. After reviewing OSM's response to that comment at that time and new material related to this rulemaking, OSM reaffirms its disagreement with the commenter and directs the reader to the agency's 2020 response. 85 FR at 75177. As OSM noted before, this commenter provided no evidence that either OSM or the State regulatory authorities have insufficient funding to carry out their obligations under SMCRA. As stated throughout this docket and in the justification for the 2020 Rule, this rulemaking is intended to add transparency to OSM's oversight responsibilities; promote regulatory certainty for State regulatory authorities, regulated entities, and the public; enhance OSM's relationship with the State regulatory authorities; reduce redundancy in inspection and enforcement; and streamline the process for notifying State regulatory authorities of possible violations and other issues. While it is true that States fund a significant portion of the cost to administer State SMCRA programs, Federal regulatory grants, appropriated annually by Congress, are awarded to State regulatory authorities based, in part, on the anticipated workload, such as permitting and inspection, that is necessary for State regulatory authorities to administer and enforce their approved State programs under SMCRA. See 30 CFR part 735.

IV. Severability

The changes to the TDN and Federal inspection provisions at 30 CFR part 842 are intended to be severable from the 30 CFR part 733 provisions for State regulatory program issues and associated action plans. Thus, if any of the provisions of this final rule are stayed or invalidated by a reviewing court, the other provisions could operate independently and would be applicable to the relevant provisions of the existing regulations. For example, if a court were to invalidate any portion of the changes to part 842, the provisions at part 733 could still operate independently. Conversely, if a court were to invalidate any of the provisions at part 733, the provisions at part 842 could still operate independently. Likewise, changes to specific sections within these parts are intended to be severable from the changes to other sections.

V. Procedural Determinations

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This final rule does not result in a taking of private property or otherwise have regulatory takings implications under E.O. 12630. The rule revises a regulation that OSM has determined does not represent the best reading of SMCRA and is inconsistent with principles of cooperative federalism but does not impact any property rights; therefore, the rule will not result in private property being taken for public use without just compensation. A takings implication assessment is not required.

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

E.O. 12866 provides that OIRA within OMB will review all significant rules. OIRA has determined that this final rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the Nation's regulatory system to promote predictability, reduce

uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that agencies must base regulations on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The Department developed this final rule in a manner consistent with these requirements.

Executive Order 12988—Civil Justice Reform

This final rule complies with the requirements of E.O. 12988. Among other things, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation;

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Executive Order 13132—Federalism

Under the criteria of section 1 of E.O. 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. While revising the existing regulations governing the TDN process would have a direct effect on the States and the Federal government's relationship with the States, this effect would not be significant, as it would neither impose substantial unreimbursed compliance costs on States nor preempt State law. Furthermore, this final rule does not have a significant effect on the distribution of power and responsibilities among the various levels of government. The final rule would not increase burdens on State regulatory authorities to address and resolve underlying issues. In fact, OSM anticipates that its changes to more closely align the regulations to SMCRA would result in *de minimis* burden reduction for State regulatory authorities. As such, a federalism summary impact statement is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior (Department) strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. OSM has evaluated this final rule under the Department's consultation policy and under the criteria in E.O. 13175 and determined that it does not have substantial direct effects on Federally recognized Tribes and that consultation under the Department's Tribal consultation policy is not required. Moreover, no Tribes have yet established primacy. Thus, this rule will not impact the regulation of surface coal mining operations on Indian lands as that term is defined under SMCRA.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not a significant energy action as defined in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

National Environmental Policy Act

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* is not required because the rule is covered by a categorical exclusion. Specifically, OSM has determined that the final rule is administrative or procedural in nature in accordance with the Department of the Interior's NEPA regulations at 43 CFR 46.210(i). OSM has also determined that the final rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Paperwork Reduction Act

This final rule does not impose any new information collection burden under the Paperwork Reduction Act. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 1029–0118. This rule does not create any changes in the information collection burden because OSM is not making any changes to the information collection requirements. OSM estimates that the number of burden hours associated with TDN processing will stay the same as what is currently authorized by OMB control number 1029–0118.

Regulatory Flexibility Act

OSM certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). OSM previously evaluated the impact of the regulatory changes at the time that OSM promulgated the 2020 Rule and determined that the rule changes would not place, cause, or create any unnecessary burdens on the public, State regulatory authorities, or small businesses; would not discourage innovation or entrepreneurial enterprises; and would be consistent with SMCRA, from which the regulations draw their implementing authority.

Congressional Review Act

This final rule is not a major rule under the Congressional Review Act, 5 U.S.C. 804(2). Specifically, the direct final rule: (a) will not have an annual effect on the economy of $100 million or more; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector, of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments, or the private sector. The rule merely revises the Federal regulations to eliminate duplication of resources and processes between Federal and State agencies and enhance the cooperation between OSM and State regulatory authorities. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects

30 CFR Part 733

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 842

Law enforcement, Surface mining, Underground mining.

Lanny E. Erdos,

Director, Office of Surface Mining, Reclamation, and Enforcement Exercising the Authority of the Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the Department of the Interior, acting through OSMRE, amends 30 CFR parts 733 and 842 to read as follows:

PART 733—EARLY IDENTIFICATION OF CORRECTIVE ACTION, MAINTENANCE OF STATE PROGRAMS, PROCEDURES FOR SUBSTITUTING FEDERAL ENFORCEMENT OF STATE PROGRAMS, AND WITHDRAWING APPROVAL OF STATE PROGRAMS

■ 1. The authority citation for Part 733 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Revise § 733.5 to read as follows:

§ 733.5 Definitions.

As used in this part, the following terms have the specified meanings:

Action plan means a detailed plan that OSMRE prepares, typically in consultation with the State regulatory authority, to resolve one or more State regulatory program issues and that includes a schedule that contains specific requirements that a State regulatory authority must achieve in a timely manner.

State regulatory program issue means an issue OSMRE identifies during oversight of a State or Tribal regulatory program that may result from a State regulatory authority's implementation, administration, enforcement, or maintenance of all or any portion of its State regulatory program that is not consistent with the basis for OSMRE's approval of the State program. This may include, but is not limited to, instances when a State regulatory authority has not adopted and implemented program amendments that are required under § 732.17 and subchapter T of this chapter, and issues related to the requirement in section 510(b) of the Act that a State regulatory authority must not approve a permit or revision to a permit unless the State regulatory authority finds that the application is accurate and complete and that the application is in compliance with all requirements of the Act and the State regulatory program.

■ 3. Revise § 733.12 to read as follows:

§ 733.12 Early identification and corrective action to address State regulatory program issues.

(a) When the Director identifies a State regulatory program issue, he or she should take action to make sure the identified State regulatory program issue is corrected as soon as possible to ensure that it does not become an issue that would give the Director reason to believe that the State regulatory authority is not effectively implementing, administering, enforcing, or maintaining all or a portion of its State regulatory program.

(1) The Director may become aware of State regulatory program issues through oversight of State regulatory programs or as a result of information received from any source, including a citizen complaint.

(2) If the Director has reason to believe that the State regulatory authority is not effectively implementing, administering, enforcing, or maintaining all or a portion of its State regulatory program, the Director may substitute Federal enforcement of a State regulatory program or withdraw approval of a State regulatory program as provided in this part.

(b) The Director or his or her delegate may employ any number of compliance strategies to ensure that the State regulatory authority corrects a State regulatory program issue in a timely and effective manner. However, if the Director or delegate does not expect that the State regulatory authority will resolve the State regulatory program issue within 180 days after identification or that it is likely to result in a violation of the approved State program, then the Director or delegate will develop and institute an action plan.

(1) An action plan will be written with specificity to identify the State regulatory program issue and an effective mechanism for timely correction.

(2) An action plan will identify any necessary technical or other assistance that the Director or his or her designee can provide and remedial measures that a State regulatory authority must take immediately.

(3) An action plan will also include:

(i) An action plan identification number;

(ii) A concise title and description of the State regulatory program issue;

(iii) Specific criteria for establishing when complete resolution of the State regulatory program issue will be achieved;

(iv) Specific and orderly sequence of actions the State regulatory authority must take to remedy the State regulatory program issue;

(v) A schedule for completion of each action in the sequence; and

(vi) A clear explanation that if, upon completion of the action plan, the State regulatory program issue is not corrected, the provisions of § 733.13 may be triggered.

(c) All identified State regulatory program issues, and any associated action plans, must be tracked and reported in the applicable State regulatory authority's Annual Evaluation Report. Each State regulatory authority Annual Evaluation Report will be accessible through OSMRE's website and at the relevant OSMRE office. Within each report, benchmarks identifying progress related to resolution of the State regulatory program issue must be documented.

(d) Nothing in this section prevents a State regulatory authority from taking direct enforcement action in accordance with its State regulatory program, or OSMRE from taking appropriate oversight enforcement action, in the event that a previously identified State regulatory program issue results in or may imminently result in a violation of the approved State program.

PART 842—FEDERAL INSPECTIONS AND MONITORING

■ 4. The authority citation for part 842 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 842.5 [Removed and Reserved]

■ 5. Remove and reserve § 842.5.

■ 6. Amend § 842.11 by revising paragraph (b) to read as follows:

§ 842.11 Federal inspections and monitoring.

* * * * *

(b)(1) An authorized representative of the Secretary must immediately conduct a Federal inspection:

(i) When the authorized representative has reason to believe on the basis of any information readily available to him or her, from any source, including any information a citizen complainant or the relevant State regulatory authority submits (other than information resulting from a previous Federal inspection), that there exists a violation of the Act, this chapter, the State regulatory program, or any condition of a permit or an exploration approval, or that there exists any condition, practice, or violation that creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent

environmental harm to land, air, or water resources and—

(ii)(A) There is no State regulatory authority or the Office is enforcing the State regulatory program under section 504(b) or 521(b) of the Act and part 733 of this chapter; or

(B)(*1*) The authorized representative has notified the State regulatory authority of the possible violation and more than ten days have passed since notification, and the State regulatory authority has not taken appropriate action to cause the violation to be corrected or to show good cause for not doing so, or the State regulatory authority has not provided the authorized representative with a response. After receiving a response from the State regulatory authority, but before a Federal inspection, the authorized representative will determine in writing whether the standards for appropriate action or good cause have been satisfied. A State regulatory authority's failure to respond within ten days does not prevent the authorized representative from making a determination, and will constitute a waiver of the State regulatory authority's right to request review under paragraph (b)(1)(iii) of this section. Where appropriate, OSMRE may issue a single ten-day notice for substantively similar possible violations found on two or more permits, including two or more substantively similar possible violations identified in one or more citizen complaints.

(*2*) For purposes of this subchapter, an action or response by a State regulatory authority that is not arbitrary, capricious, or an abuse of discretion under the state program shall be considered ''appropriate action'' to cause a violation to be corrected or ''good cause'' for failure to do so.

(*3*) Appropriate action includes enforcement or other action authorized under the approved State program to cause the violation to be corrected. Appropriate action may include OSMRE and the State regulatory authority immediately and jointly initiating steps to implement corrective action to resolve any issue that the authorized representative and applicable Field Office Director identify as a State regulatory program issue, as defined in 30 CFR part 733.

(*4*) Good cause includes:

(*i*) The possible violation does not exist under the State regulatory program;

(*ii*) The State regulatory authority has initiated an investigation into a possible violation and has determined that it requires a reasonable, specified additional amount of time to determine whether a violation exists. When analyzing the State regulatory authority's response for good cause, the authorized representative has discretion to determine how long the State regulatory authority should reasonably be given to complete its investigation of the possible violation and will communicate to the State regulatory authority the date by which the investigation must be completed. At the conclusion of the specified additional time, the authorized representative will re-evaluate the State regulatory authority's response including any additional information provided;

(*iii*) The State regulatory authority demonstrates that it lacks jurisdiction over the possible violation under the State regulatory program;

(*iv*) The State regulatory authority demonstrates that it is precluded from taking action on the possible violation because an administrative review body or court of competent jurisdiction has issued an order concluding that the possible violation does not exist or that the temporary relief standards of the State regulatory program counterparts to section 525(c) or 526(c) of the Act have been satisfied; or

(*v*) Regarding abandoned sites, as defined in 30 CFR 840.11(g), the State regulatory authority is diligently pursuing or has exhausted all appropriate enforcement provisions of the State regulatory program.

(C) The person supplying the information supplies adequate proof that an imminent danger to the public health and safety or a significant, imminent environmental harm to land, air or water resources exists and that the State regulatory authority has failed to take appropriate action.

(iii) (A) The authorized representative shall immediately notify the state regulatory authority in writing when in response to a ten-day notice the state regulatory authority fails to take appropriate action to cause a violation to be corrected or to show good cause for such failure. If the State regulatory authority disagrees with the authorized representative's written determination, it may file a request, in writing, for informal review of that written determination by the Deputy Director. Such a request for informal review may be submitted to the appropriate OSMRE field office or to the office of the Deputy Director in Washington, DC The request must be received by OSMRE within 5 days from receipt of OSMRE's written determination.

(B) Unless a cessation order is required under § 843.11, or unless the state regulatory authority has failed to respond to the ten-day notice, no Federal inspection action shall be taken or notice of violation issued regarding the ten-day notice until the time to request informal review as provided in § 842.11(b)(1)(iii)(A) has expired or, if informal review has been requested, until the Deputy Director has completed such review.

(C) After reviewing the written determination of the authorized representative and the request for informal review submitted by the State regulatory authority, the Deputy Director shall, within 15 days, render a decision on the request for informal review. He shall affirm, reverse, or modify the written determination of the authorized representative. Should the Deputy Director decide that the State regulatory authority did not take appropriate action or show good cause, he shall immediately order a Federal inspection or reinspection. The Deputy Director shall provide to the State regulatory authority and to the permittee a written explanation of his decision, and if the ten-day notice resulted from a request for a Federal inspection under § 842.12 of this part, he shall send written notification of his decision to the person who made the request.

(b) (2) An authorized representative will have reason to believe that a violation, condition, or practice referred to in paragraph (b)(1)(i) of this section exists if the facts that a complainant alleges, or facts that are otherwise known to the authorized representative, constitute simple and effective documentation of the alleged violation, condition, or practice. In making this determination, the authorized representative will consider any information readily available to him or her, from any source, including any information a citizen complainant or the relevant State regulatory authority submits to the authorized representative.

* * * * *

■ 7. Amend § 842.12 by revising paragraph (a) to read as follows:

§ 842.12 Requests for Federal inspections.

(a) Any person may request a Federal inspection under § 842.11(b) by providing to an authorized representative a signed, written statement (or an oral report followed by a signed written statement) setting forth information that, along with any other readily available information, may give the authorized representative reason to believe that a violation, condition, or practice referred to in § 842.11(b)(1)(i) exists at the surface mining site. The statement must also set forth the fact

that the person has notified the State regulatory authority, if any, in writing, of the existence of the possible violation, condition, or practice, and the basis for the person's assertion that the State regulatory authority has not taken action with respect to the possible violation. The statement must set forth a phone number, address, and, if available, an email address where the person can be contacted.

* * * * *

[FR Doc. 2026–03301 Filed 2–18–26; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3500

[Docket No. BLM–2025–0004; A2407–014–004–065516, #O2509–014–004–125222]

RIN 1004–AF18

Rescission of Regulations Regarding Leasing of Solid Minerals Other Than Coal and Oil Shale

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct final rule; response to comments.

SUMMARY: Due to the receipt of a substantive comment on the direct final rule (DFR) rescinding portions of the Bureau of Land Management's (BLM) regulations that address the Leasing of Solid Minerals Other Than Coal and Oil Shale, the Department of the Interior, through the BLM, is issuing a new final rule that responds to the comment.

DATES: The effective date of September 15, 2025, for the direct final rule published on July 17, 2025 (90 FR 33310) is confirmed. This final rule is effective on March 23, 2026.

FOR FURTHER INFORMATION CONTACT: Indra Dahal, Deputy Division Chief, Division of Solid Minerals, telephone: 202–742–0601; email: *idahal@blm.gov.* For technical or regulatory questions, contact Sabry Hanna, Solid Leasable Other Than Coal Program Lead, telephone: 571–458–6644; email: *shanna@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: On July 17, 2025, the BLM published a DFR amending the Code of Federal Regulations by rescinding the statewide acreage limitation for hardrock mineral permits and leases at 43 CFR 3503.37(f) and the provisions for hardrock mineral development contracts at 43 CFR subpart 3517 (90 FR 33310). The BLM stated in the DFR that if significant adverse comments were received by August 18, 2025, the BLM would withdraw the DFR or issue a new final rule that responds to the comments. The BLM received one substantive comment on August 18, 2025. The BLM elects to issue a new final rule that responds to the comment.

In issuing the DFR, the BLM determined that paragraph (f) of 43 CFR 3503.37 should be revised to remove the maximum acreage of hardrock permits and leases in any one State because the acreage limitation for hardrock permits and leases is not mandated by statute and is unnecessary. The BLM also determined that 43 CFR subpart 3517, consisting of §§ 3517.10 through 3517.16, should be rescinded because the purpose of those regulations was to provide an exemption from the statewide acreage limitation for hardrock permits and leases. With the removal of the statewide acreage limitation for hardrock permits and leases in paragraph (f) of 43 CFR 3503.37, the regulations in 43 CFR subpart 3517 are obsolete and no longer needed.

On August 18, 2025, the BLM received a comment from Northeastern Minnesotans for Wilderness, The Wilderness Society, Center for Biological Diversity, and Earthworks opposing the rescission of 43 CFR 3503.37(f) and 43 CFR subpart 3715.

Response to General Assertions

The commenters raised concerns that the DFR will result in large projects and degrade natural resources. Those concerns, however, are speculative and the commenters do not explain how the DFR will lead to those results. The BLM notes that the statewide acreage limitation for hardrock permits and leases did not limit the overall amount of acreage that could be included in hardrock permits or leases in any one State by any number of entities, but rather limited the amount of acreage that any one entity could hold within a State. The purpose of the limitation was not related to any question of degradation of natural resources but was to prevent any one entity from monopolizing access to the mineral resources in a particular State despite the lack of any statutory mandate for the regulatory acreage limitation.

The BLM maintains that it has the authority to amend and rescind regulations pursuant to changing policy so long as such changes are permissible under applicable statutory authority. The statutes governing hardrock permits and leases do not contain any provisions limiting the amount of acreage that any one entity may hold in permits and leases in a State. The inclusion or removal of acreage limitations for hardrock permits and leases in the regulations is therefore within the BLM's discretion. Here, rescinding the statewide acreage limitation for hardrock permits and leases will ease the regulatory burden by allowing any one entity to hold as permits and leases the amount of land needed for hardrock mineral operations without needing to enter into development contracts or processing and milling arrangements under 43 CFR subpart 3517.

Response to Statutory Compliance Assertions

The commenters raise concerns that the DFR will make it more difficult for the BLM and the Forest Service to comply with the National Environmental Policy Act (NEPA), the Federal Water Pollution Control Act, and the Endangered Species Act. In response, the BLM notes that the commenters do not explain how the rescission of the statewide acreage limitation relates to compliance with the listed statutes or explain why the acreage limitation was necessary to ensure compliance with those statutes. The BLM maintains that the DFR is not related to and will have no impact on the BLM's ability to comply with applicable statutes. The DFR does not authorize any mining activities. The BLM will continue to analyze any prospecting permit applications or proposals to lease or develop hardrock minerals under 43 CFR part 3500, as required by those environmental statutes, on a case-by-case basis.

Response to Procedural Comments

The commenters raised procedural concerns for the BLM's consideration. In response, the BLM notes that the Administrative Procedure Act (APA) requires that agencies provide all interested persons with fair notice and an opportunity to comment on the rulemaking. *See* 5 U.S.C. 553(b) and (c). The July 2025 DFR provided the public with notice of the BLM's actions to rescind the statewide acreage limitation for hardrock permits and leases and to rescind the provisions providing for