

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

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

SOURCE: 44 FR 15328, Mar. 13, 1979, unless otherwise noted.

§ 733.1 Scope.

This part establishes requirements for the maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs.

§ 733.5 Definitions.

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

Action plan means a detailed plan that the Office of Surface Mining Reclamation and Enforcement (OSMRE) prepares to resolve a State regulatory program issue identified during OSMRE's oversight of a State regulatory program 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. State regulatory program issues will be considered as possible violations and will initially proceed, and may be resolved, under part 842 of this chapter.

[89 FR 24734, Apr. 9, 2024]

§ 733.10 Information collection.

The information collection requirement contained in § 733.13(a)(2) has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0025. The information required is needed by OSMRE to verify the allegations in a citizen request to evaluate a State program and to determine whether an evaluation should be undertaken.

[85 FR 75189, Nov. 24, 2020]

§ 733.11 General requirements for maintaining State programs.

States with an approved State program shall implement, administer, enforce and maintain it in accordance with the Act, this chapter and the provisions of the approved State program.

§ 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 complainant.

(2) If the Director concludes 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 initiate procedures to substitute Federal enforcement of a State regulatory program or withdraw approval of a State regulatory program, in accordance with § 733.13.

(b) For each State regulatory program issue, the Director or their designee, in consultation with the State regulatory authority, will develop and approve an action plan within 60 days of identification of a State regulatory program issue. Within 10 business days of OSMRE's determination that a State regulatory program issue exists, OSMRE and the State regulatory authority may identify interim remedial measures that may abate the existing condition or issue. The requirements of an action plan are as follows:

(1) An action plan will be written with specificity to identify the State regulatory program issue and identify an effective mechanism for timely correction. The State regulatory authority must complete all identified actions contained within an action plan within 365 days from when OSMRE sends the action plan to the relevant State regulatory authority.

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

(3) An OSMRE approved action plan must 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 violation will be achieved;

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

(v) A detailed 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 initiated.

(4) Once all items in paragraphs (b)(1) through (3) of this section are satisfactorily addressed, OSMRE will approve the action plan. If the State regulatory authority does not cooperate with OSMRE in developing the action plan, OSMRE will develop the action plan within the guidelines listed in paragraphs (b)(1) through (3) of this section and require the State regulatory authority to comply with the action plan.

(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 additional appropriate oversight enforcement action.

[89 FR 24734, Apr. 9, 2024]

§ 733.13 Procedures for substituting Federal enforcement of State programs or withdrawing approval of State programs.

(a) *Evaluation.* (1) The Director shall evaluate the administration of each state program at least annually.

(2) Any interested person may request the Director to evaluate a State program. The request shall set forth a concise statement of the facts which the person believes establishes the need for evaluation. The Director shall verify the allegations and determine within 60 days whether or not the evaluation shall be made and mail a written decision to the requestor.

(b) If the Director has reason to believe that a State is not effectively implementing, administering, maintaining or enforcing any part of its approved State program, the Director shall promptly notify the State regulatory authority in writing. The Director's notice shall—

(1) Provide sufficient information to allow the State regulatory authority to determine what portions of the program the Director believes are not being effectively implemented, administered, maintained, or enforced;

(2) State the reasons for such belief; and

(3) Specify the time period for the State regulatory authority to accomplish any necessary remedial actions.

(c) The Director shall provide the State regulatory authority an opportunity for an informal conference if the State requests an informal conference within 15 days after the expiration of the time period specified in paragraph (b)(3) of this section. The informal conference may pertain to the facts or the time period for accomplishing remedial actions as specified by the Director's notification.

(d) If an informal conference is not held under paragraph (c) of this section, or if, following such a conference, the Director still has reason to believe that the State is failing to adequately implement, administer, maintain or enforce a part or all of a State program, the Director shall give notice to the State and to the public, specifying the basis for that belief and shall hold a public hearing in the State within 30 days of the expiration of the time period specified in paragraph (b)(3) of this section or as modified at the informal conference held under paragraph (c) of this section.

(e) The State will continue to enforce its approved program unless upon completion of the hearing under paragraph (d) of this section and based upon the review of all available information, including the hearing transcript, written presentations and written comments, the Director finds that the State has failed to implement, administer, maintain or enforce effectively all or part of its approved State program. If the Director finds further that the State has not demonstrated its capability and in-

tent to administer the State program, the Director shall either—

(1) Substitute for the State regulatory authority direct Federal enforcement of all or part of the State program in accordance with paragraph (f) of this section; or

(2) Recommend to the Secretary that he or she withdraw approval of the State program, in whole or in part, in accordance with paragraph (g) of this section. The recommendation shall be accompanied by all relevant information and shall include the reasons for the recommendation.

(f) *Substituted Federal enforcement.* (1) The Director shall give public notice of a finding under paragraph (e) of this section and specify the extent to which the Director is instituting direct Federal enforcement of a State program.

(2) During the period beginning with the public notice and ending when the State satisfies the Director that it will enforce the State program effectively, the Director shall enforce those portions of the State program and any additional regulations that the Office has adopted as necessary to enable the Director to perform his or her duties. To the extent the Director has assumed direct Federal enforcement of the State program, the Director shall—

(i) Enforce any permit condition required under the Act;

(ii) Issue any new or revised permit pursuant to any additional regulation that the Director may promulgate at the time of assumed enforcement; and

(iii) Conduct inspections and issue notices, orders and assessments of penalties as may be necessary for compliance with those permit conditions, the Act and the State program in accordance with subchapter L.

(3) In the case of a State permittee who has met his or her obligations under an existing State permit and who did not willfully secure the issuance of that permit through fraud or collusion, the Director shall give the permittee a reasonable time to conform ongoing surface mining and reclamation operations to the requirements of the Act, before suspending or revoking the State permit.

(g) *Withdrawing approval of State program.* (1) Upon recommending withdrawal of approval of a State program

to the Secretary, the Director shall institute direct Federal enforcement in accordance with the requirements of paragraph (f) of this section.

(2) Upon receipt of the Director's recommendation and accompanying information under paragraph (e)(2) of this section the Secretary shall either—

(i) Withdraw approval of the State program in whole or in part if the Secretary finds that failure by the State to administer or enforce part or all of its State program cannot effectively be remedied by substitution of direct Federal enforcement for all or part of the State program, or

(ii) Instruct the Director to continue direct Federal enforcement in accordance with paragraph (f) of this section.

(3) The Secretary shall give public notice of a finding under paragraph (g)(2)(i) of this section, and specify the extent to which approval of a State program is being withdrawn. Not later than the issuance of the notice, the Director shall propose promulgation of, and thereafter promulgate and implement a Federal program for the affected State, in accordance with 30 CFR part 736.

[44 FR 15328, Mar. 13, 1979, as amended at 47 FR 26366, June 17, 1982. Redesignated at 85 FR 75189, Nov. 24, 2020]

§733.14 Factors to be considered in deciding whether to substitute Federal enforcement for State programs or to withdraw approval of State programs.

The record of the State in fulfilling the conditions of the original approval or adjusting to new circumstances, in accordance with requirements of the Act and this chapter, the hearings transcripts, written presentations and comments shall be considered in evaluating the maintenance, administration, or enforcement of a State program for purposes of determining whether to substitute direct Federal enforcement of the State program or to withdraw approval of part or all of the program.

[44 FR 15328, Mar. 13, 1979, as amended at 47 FR 26366, June 17, 1982. Redesignated at 85 FR 75189, Nov. 24, 2020]

PART 735—GRANTS FOR PROGRAM DEVELOPMENT AND ADMINISTRATION AND ENFORCEMENT

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AUTHORITY: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62706, Dec. 13, 1977, unless otherwise noted. Redesignated at 44 FR 15312, Mar. 13, 1979.

§735.1 Scope.

This part sets forth policies and procedures for grants to States to—

(a) Develop State programs for the regulation and control of surface coal mining and reclamation operations;

(b) Administer and enforce State programs for the regulation and control of surface coal mining and reclamation operations; and

(c) Administer cooperative agreements for State regulation of surface coal mining and reclamation operations on Federal lands.

(d) Fund the Small Operator Assistance Program established under section 507(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) and described in part 795 of this chapter.

[42 FR 62706, Dec. 13, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979 and amended at 47 FR 38491, Aug. 31, 1982]