

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

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Authority: 30 U.S.C. 1201 et seq. and 16 U.S.C. 470 et seq.

Sec. 732.1 Scope.

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This Part sets forth criteria and procedures for decisions to approve or disapprove submissions of State programs and program amendments, including requirements for public participation in the process of approval or disapproval.

Sec. 732.10 Information collection.

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The information-collection requirements contained in Section 732.16(a) and 732.17(b) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0024. The information is needed to afford a State the opportunity to modify or amend its State program and will be used by OSM to determine whether the amendment meets the provisions of the Act.

Sec. 732.11 Review by the Director.

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(a) Immediately upon receipt of a proposed State program, the Director shall publish in the Federal Register and in a newspaper of general circulation in the State a notice meeting the following requirements:

(1) The notice shall include the date of the submission of the program and a summary of the program's contents. It shall also indicate that the full text of the program submission is available for review during regular business hours at the OSM State Office and at the central office and each field office of the State agency responsible for the submission.

(2) The notice shall afford interested persons an opportunity to submit written comments. The comment period shall end on a date following the public hearing scheduled to be held under Paragraph (b) of this Section and that date shall be specified in the notice.

(3) The notice shall identify the time and location within the State at which the Office will hold the public hearing under Paragraph (b) of this Section.

(b) A public hearing shall be held by the Director no sooner than 40 days following the publication of the notice required by Paragraph (a) of this Section. The hearing shall be informal and follow legislative procedures.

(1) The format and the rules of procedure for each hearing shall be determined by the Director and published in the Federal Register notice required by Paragraph (a).

(2) When the program is submitted, State laws and regulations must be submitted in their final form or in the form in which they are expected to become final. Should revisions to any of the laws or regulations be necessary during the public comment period or before the Secretary's decision, OSM will give notice and provide an opportunity for review and comment. State laws and regulations must be enacted by the date of program approval.

(c) Copies of written comments shall be available for public inspection and copying at the OSM State Office and the offices of the State agency responsible for submitting the program.

(d) The Director shall consider all relevant information, including information obtained from public hearings and comments, and shall recommend to the Secretary that the program be approved or disapproved, in whole or in part. The recommended decision shall specify the reasons for the recommendation.

Sec. 732.13 Decision by the Secretary.

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(a) After consideration of the information accompanying the Director's recommendation and the Director's recommendation and findings, the Secretary shall issue to the State, in writing, either a decision approving or an initial decision disapproving the State program, in whole or in part.

(b) A program shall not be approved until the Secretary has--

(1) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program as proposed; and

(2) Obtained written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.), or the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

(c) The Secretary's decision shall include the findings upon which it is based and shall be mailed to the State.

(d) The Secretary shall issue his decision within 6 months of the Director's receipt of a program submission.

(e) All decisions approving or disapproving a program, in whole or in part, shall be published in the Federal Register, indicating, in the event of disapproval, that the State has 60 days to submit a revised program for consideration.

(f) If the Secretary disapproves a program, in whole or in part, the State shall have 60 days from the date of publication of the Federal Register notice to submit a revised program to the Director for reconsideration. The procedures of Section 732.11 will then apply to the revised State program, except that the time allowed between publication of notice and the public hearing for public review and comment may be shortened to not less than 15 days.

(g) The Secretary shall either approve or disapprove the revised program within 60 days from the date of submission of the revised program and publish that decision and reasons for the decision in the Federal Register. A decision disapproving the revised program constitutes the final decision by the Department disapproving that program in its entirety.

(h) If a revised State program is not submitted by a State within 60 days of an initial disapproval under Paragraph (a) of this Section, the Secretary shall disapprove the initial program submission in its entirety. This decision shall constitute the final decision by the Secretary. This decision and the basis for it shall be published in the Federal Register.

(i) A decision by the Secretary approving a program submission establishes a State program for the State which submitted it and constitutes the final decision by the Department. The State program becomes effective on the date of publication of the decision in the Federal Register unless otherwise specified by the Secretary. The Secretary shall not give his approval unless the program submission can be approved in whole, except as provided in Paragraph (j) of this Section.

(j) The Secretary may conditionally approve a State program where the program is found to have minor deficiencies, provided:

(1) The deficiencies are of such a size and nature so as to render no part of a proposed State program incomplete;

- (2) The State has initiated and is actively proceeding with steps to correct the deficiencies;
- (3) The State agrees in writing to correct such deficiencies within a time established by the Secretary and stated in the conditional approval; and
- (4) If the deficiencies have not been corrected by the date set forth in the Secretary's decision under Paragraph (j) (3) of this Section, the Director shall notify the Secretary that the deficiencies have not been corrected and shall within 30 days--
 - (1) Withdraw approval of the State program in whole or in part, and specify the extent to which approval of the State program is being withdrawn;
 - (ii) Substitute direct Federal enforcement of those portions of the permanent regulatory program that the State has failed to implement;
 - (iii) Initiate procedures in accordance with Parts 733 and 736 of this Chapter to withdraw State program approval and implement a Federal program for the State, including specifying necessary remedial actions to correct continued deficiencies; or
 - (iv) Take any combination of actions under Paragraphs (j)(4) and (i) through (iii) of this Section.

Sec. 732.14 Resubmission of State programs.

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If, by a final decision, the program is disapproved, the State may submit another proposed State program to the Director at any time. Resubmitted State programs must meet the requirements of Section 731.14 of this Chapter and will be acted upon pursuant to Sections 732.11-732.16.

Sec. 732.15 Criteria for approval or disapproval of State programs.

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The Secretary shall not approve a State program unless, on the basis of information contained in the program submission, comments, testimony, and written presentations at the public hearings, and other relevant information, the Secretary finds that--

- (a) The program provides for the State to carry out the provisions and meet the purposes of the Act and this Chapter within the State and that the State's laws and regulations are in accordance with the provisions of the Act and consistent with the requirements of the Chapter.
- (b) The State regulatory authority has the authority under State laws and regulations pertaining to coal exploration and surface coal mining and reclamation operations and the State program includes provisions to--
 - (1) Implement, administer, and enforce all applicable requirements consistent with Subchapter K of this Chapter;
 - (2) Implement, administer, and enforce a permit system consistent with the regulations of Subchapter G of this Chapter and prohibit surface coal mining and reclamation operations without a permit issued by the regulatory authority;
 - (3) Regulate coal exploration consistent with Parts 772 and 815 of this Chapter and prohibit coal exploration that does not comply with Parts 772 and 815 of this Chapter;
 - (4) Require that persons extracting coal incidental to government-financed construction maintain information on site consistent with Section 707;
 - (5) Enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal land within the State consistent with the requirements of Section 517 of the Act and Subchapter L of this Chapter;
 - (6) Implement, administer, and enforce a system of performance bonds and liability insurance, or other equivalent guarantees, consistent with the requirements of Subchapter J of this Chapter;

(7) Provide for civil and criminal sanctions for violations of the State law, regulations and conditions of permits and exploration approvals including civil and criminal penalties in accordance with Section 518 of the Act and consistent with Part 845 of this Chapter, including the same or similar procedural requirements;

(8) Issue, modify, terminate, and enforce notices of violation, cessation orders, and show-cause orders in accordance with Section 521 of the Act and consistent with the requirements of Subchapter L of this Chapter, including the same or similar procedural requirements;

(9) Designate areas as unsuitable for surface coal mining consistent with Subchapter F of this Chapter;

(10) Provide for public participation in the development, revision, and enforcement of State regulations and the State program, consistent with public participation requirements of the Act and this Chapter;

(11) Monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the State regulatory authority, consistent with Part 705 of this Chapter;

(12) Require the training, examination and certification of persons engaged in or responsible for blasting and the use of explosives consistent with regulations issued by the Secretary, except that no State program is required to implement this provision until 6 months after Federal regulations for this provision have been promulgated;

(13) Provide for small operator assistance;

(14) Provide for administrative review of State program actions, in accordance with Section 525 of the Act and Subchapter L of this Chapter;

(15) Provide for judicial review of State program actions in accordance with State law, as provided in Section 526(e) of the Act, except that judicial review of State enforcement actions shall be in accordance with Section 526 of the Act. Judicial review in accordance with State law shall not be construed to limit the operation of the rights established in Section 520 of the Act, except as provided in that Section; and

(16) Cooperate and coordinate with and provide documents and other information to the Office under the provisions of this Chapter.

(c) The State laws and regulations and the State program do not contain provisions which would interfere with or preclude implementation of those in the Act and this Chapter.

(d) The State regulatory authority and other agencies having a role in the State program have sufficient legal, technical and administrative personnel and sufficient funding to implement, administer, and enforce the provisions of the program, the requirements of Paragraph (b) of this Section, and other applicable State and Federal laws.

Sec. 732.16 Terms and conditions for State programs.

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Terms and conditions for the implementation, administration, and operation of a State program may be established by the Director as necessary, including, but not limited to--

(a) Establishing a system for regularly reporting to the Office information collected by the State regulatory authority in the conduct of the State program; and

(b) Providing the Office with access to books and records of the regulatory authority upon request.

Sec. 732.17 State program amendments.

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(a) This Section applies to any alteration of an approved State program whether accomplished on the initiative of the State regulatory authority or the Director. Such alterations are referred to in this Section as "amendments."

(b) The State regulatory authority shall promptly notify the Director, in writing, of any significant events or proposed changes which affect the implementation, administration, or enforcement of the approved State program. At a minimum, notification shall be required for--

(1) Changes in the provisions, scope, or objectives of the State program;

(2) Changes in the authority of the regulatory authority to implement, administer, or enforce the approved program;

- (3) Changes in the State law and regulations from those contained in the approved State program;
- (4) Significant changes in staffing and resources of the regulatory authority and divisions or departments of other agencies with duties in the approved program;
- (5) Changes in agreements between the regulatory authority and other agencies which have duties in the approved program;
- (6) Significant changes in funding or budgeting relative to the approved program; and
- (7) Significant changes in the number or size of coal exploration or surface coal mining and reclamation operations in the State.

(c) Within 30 days of receipt of notification, in writing, of events or proposed changes that may require a State program amendment, or whenever the Director becomes aware of conditions described in Paragraph (e) of this Section, the Director shall determine whether a State program amendment is required and notify the State regulatory authority of the decision.

(d) The Director shall promptly notify the State regulatory authority of all changes in the Act and the Secretary's regulations which will require an amendment to the State program.

(e) State program amendments may be required when--

(1) As a result of changes in the Act or regulations of this Chapter, the approved State program no longer meets the requirements of the Act or this Chapter; or

(2) Conditions or events change the implementation, administration, or enforcement of the State program; or

(3) Conditions or events indicate that the approved State program no longer meets the requirements of the Act or this Chapter.

(f)(1) If the Director determines that a State program amendment is required, the State regulatory authority shall, within 60 days after notification of that decision, submit to the Director either a proposed written amendment or a description of an amendment to be proposed that meets the requirements of the Act and this Chapter, and a timetable for enactment which is consistent with established administrative or legislative procedures in the State.

(2) If the State regulatory authority does not submit the proposed amendment or description and the timetable for enactment within 60 days from the receipt of the notice, or does not subsequently comply with the submitted timetable, or if the amendment is not approved under this Section, the Director shall begin proceedings under Part 733 of this Chapter to either enforce that part of the State program affected or withdraw approval, in whole or in part, of the State program and implement a Federal program.

(g) Whenever changes to laws or regulations that make up the approved State program are proposed by the State, the State shall immediately submit the proposed changes to the Director as an amendment. No such change to laws or regulations shall take effect for purposes of a State program until approved as an amendment.

(h) The following procedures, time schedules, and criteria for approval and disapproval shall apply to State program amendments.

(1) Within 10 days after receipt of a State program amendment from a state regulatory authority, the Director will publish a notice of receipt of the amendment in the Federal Register.

(2) The Federal Register notice announcing the receipt of the amendment will indicate that the amendment(s) is being reviewed by the Director and will include the following:

(i) The text or a summary of the amendment(s) proposed by the regulatory authority;

(ii) Addresses where copies of the proposed amendment(s) may be obtained if the text is not included in the Federal Register notice and that each requestor may receive, free of charge, one single copy of proposed amendment(s) from the Director.

(iii) Date(s) of public comment period(s) and addresses where public comments should be directed;

(iv) Dates and locations of public hearing(s) and/or meetings(s) if public hearing(s) and/or meeting(s) are to be held; and

(v) A schedule for review and action on the amendment(s).

(3) A minimum public comment period of 30 days will be provided for each proposed State program amendment, except a 15 day public comment period may be provided where an amendment concerns changes in State law, regulations, or the procedures contained in the approved program that are analogous to changes in SMCRA and/or implementing regulations: Provided, That the notice of receipt published in the Federal Register includes the full text of the proposed amendment: And provided, That all applicable provisions of 43 CFR Part 14 are complied with.

(4) All State program amendments which may have an effect on historic properties shall be provided to the State Historic Preservation Officer and to the Advisory Council on Historic Preservation for comment.

(5) Public hearings may be provided at the discretion of the Director and shall be held no sooner than 5 days before the close of the public comment period. The comment period shall end on a date following any public hearing scheduled to be held. Public hearing plans will be announced in the notice of receipt of the amendment published in the Federal Register. In determining whether to hold a public hearing, the Director will consider the subject of the amendment, its complexity, and public hearing and meetings conducted by the State regulatory authority prior to submission of the amendment for OSM approval. When State regulatory authority public hearings or meetings are accepted in lieu of an OSM hearing, the State regulatory authority shall provide to the Director a complete record of any hearings or meetings including transcripts, written presentations, exhibits, and copies of all comments. Hearings shall be informal and follow legislative procedures. The format and the rules of procedure for each hearing shall be determined by the Director and published in the notice required by Paragraph (h)(1) of this Section.

(6) Upon the close of the public comment period, the transcript, written presentations, exhibits, and copies of all comments shall be transmitted to the Director.

(7) The Director shall consider all relevant information, including any information obtained from public hearings and comments, and shall approve or disapprove the amendment request within 30 days after the close of the public comment period established in accordance with Section 732.17(h)(3).

(8) If the Director disapproves the amendment request, the State regulatory authority will have 30 days after publication of the Director's decision to resubmit a revised amendment request for consideration by the Director.

(9) The Director will approve or disapprove amendment resubmissions within 30 days after receipt. There shall be a public comment period of not less than 15 days from the date of publication of the notice of receipt of the revised amendment. If the scope of the amendment has been expanded beyond that of the initial amendment request the Director may approve/disapprove portions of the initial amendment request and subject the remainder to review and approval procedures outlined in this subSection or treat the entire amendment request as a new request and initiate the review procedures of this Section.

(10) The applicable criteria for approval or disapproval of State programs set forth in Section 732.15 shall be utilized by the Director in approving or disapproving State program amendments.

(11) State program amendments shall not be approved until the Director has--

(i) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program amendment(s) as proposed; and

(ii) Obtained written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program amendment(s) which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 et seq.), and the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

(12) All decisions approving or disapproving program amendments shall be published in the Federal Register and shall be effective upon publication unless the notice specifies a different effective date. The decision approving or disapproving program amendments will be published in the Federal Register within 10 days after the date of the Director's decision.

(13) The Director shall complete actions on amendment requests in accordance with the schedule developed under Section 732.17(h)(2)(v); However, Final action on all amendment requests must be completed within 6 months after receipt of the proposed amendments from the State.