

**PART 733--MAINTENANCE OF STATE PROGRAMS AND PROCEDURES FOR
SUBSTITUTING FEDERAL ENFORCEMENT OF STATE PROGRAMS AND
WITHDRAWING APPROVAL OF STATE PROGRAMS**

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

Authority: Secs. 501(b), 503, 504, 517, and 521 of Pub. L. 95-87 (30 U.S.C. 1251(b), 1253, 1254, 1267 and 1271).

Sec. 733.1 Scope.

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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.

Sec. 733.10 Information collection.

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The information-collection requirement contained in Section 733.12(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 the Office to verify the allegations in a citizen request to evaluate a State program and to determine whether an evaluation should be undertaken.

Sec. 733.11 General requirements for maintaining State programs.

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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.

Sec. 733.12 Procedures for substituting Federal enforcement of State programs or withdrawing approval of State programs.

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(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 intent 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 of this Chapter.

(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 Section Part 736 of this Chapter.