



U.S. Office of Surface Mining

# News Release



December 15, 2003  
For immediate release

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## **Proposed Rule Increases Flexibility and Efficiency of State Programs**

(Washington) The US Office of Surface Mining is proposing rules intended to add flexibility to the processing of State program amendments. This move would allow OSM to better focus resources on areas that could have the greatest affect on people's lives, safety and health.

By providing OSM with more discretion in resolving matters affecting approved State programs, the agency will have the ability to respond more appropriately to issues based on the extent and nature of the issue. The public has 60 days from date of publication (12/3/2003) to comment on the proposed rule change.

The proposed rule would revise OSM's regulations governing the processing of State program amendments submitted by a State for approval under the Surface Mining Control and Reclamation Act of 1977. On occasion, and for various reasons, such as legislative changes to the provisions of the Surface Mining Act or litigation, OSM must revise its regulations. As a result, all 24 States with approved programs may be required to amend their approved State programs in order to be "no less effective" than the OSM regulatory program. Frequently these states already have approved provisions in place covering the matter litigated or changed, requiring only minor adjustments.

Usually, the substance of the required State program amendment is such that the State's failure or inability to submit it to OSM and obtain approval does not jeopardize the overall effectiveness of the approved State program. When a State with an approved program fails to amend its program as directed, existing regulations require OSM to begin proceedings to either enforce that part of the State program that should have been amended, or withdraw approval of the State program in whole or in part and implement a Federal program. This is commonly called a "733 action", named for the section of the code where it is found.

"This rule change would help us avoid one size fits all remedies that can hinder our ability to focus on high priority issues, while continuing to work with the States to resolve any outstanding problems with their approved programs. We currently don't have that discretion," said Jeff Jarrett, Director of OSM. "This improvement, if adopted, would provide us with the discretion to consider the entire performance of the State in effectively implementing its program before

determining that proceedings leading to Federal enforcement are warranted. We feel this will be a more productive and efficient, results oriented approach.”

While there may be circumstances in which the substance of a required State program amendment is such that the State's failure or inability to submit it to OSM and obtain approval warrants action under OSM's part 733 regulations, in most instances this is not the case. As under the existing regulation, citizens will continue to have the opportunity to petition OSM to initiate a 733 action.

The public has 60 days to comment on the proposed rule change. Interested persons may submit comments on this proposed rule by one of three methods. Comments may be mailed or hand carried to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW, Washington, DC 20240, or may be sent comments via electronic mail to [OSMRULES@OSMRE.GOV](mailto:OSMRULES@OSMRE.GOV). Comments must be received by February 2, 2004.