



U.S. DEPARTMENT OF THE  
INTERIOR

OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
DIRECTIVES SYSTEM

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Subject: Processing of Request to Evaluate a State Program under 30 CFR 733.12(a)

Approval:

Title:

Director

1. **PURPOSE.** This directive establishes procedures for processing a request made under 30 CFR 733.12(a) for the Office of Surface Mining Reclamation and Enforcement (OSM) to evaluate a State program and to verify allegations that there is a reason to believe that a State is not properly implementing, administering, maintaining or enforcing its approved program.

2. **SUMMARY.** This directive delineates roles and responsibilities; requires OSM to maintain communications with the "interested party" and the State throughout the process; establishes decision milestones to maximize the efficient use of agency resources; and places the overall responsibility at the regional level.

3. **DEFINITIONS.**

a. **Verification Process.** A process to examine the validity of evidence and statement of facts submitted by an interested party under 30 CFR 733.12(a)(2) to decide if sufficient evidence exists to warrant a State program evaluation. The process includes: (1) examining the allegation to decide whether the alleged failure to perform a requirement of the State program actually involves an existing requirement of the approved State program or a requirement that should have been incorporated to maintain the State program within the time frames agreed to by OSM and the State regulatory authority under 30 CFR 732.17(f)(1); and (2) checking the accuracy of the evidence provided by the interested party and assessing the weight of this evidence to support further evaluation in light of other information that may be available.

b. **State Program Evaluation.** A comprehensive review of an aspect of a State program to decide whether a systemic failure exists on the part the State to implement, administer, maintain or enforce a part of the approved program.

4. POLICY/PROCEDURES.

a. Responsibilities.

The procedures place the overall responsibility at the regional level. Due to the variation in complexity, subject matter, etc. of each request, the Regional Director has the flexibility to appoint a "733-Coordinator". The 733-Coordinator will establish a verification team and coordinate with the Assistant Director, Program Support, the Field Solicitor and others, as necessary.

b. Procedures.

**Preliminary Step** - The Federal regulations at 30 CFR 733.12(a)(2) state that *any interested person* may request the Director to evaluate a State program. The request will set forth a concise statement of facts that the person believes establishes the need for evaluation.

If OSM receives a written statement that we can construe to be a 733 request, but does not specifically request that OSM conduct an evaluation of a State program under 30 CFR 733.12(a)(2), the receiving office will contact the interested party by telephone (if a telephone number is available) or by mail to clarify if the person is making a 733 request. If the interested party acknowledges his or her intent to request a 733.12 evaluation, the receiving office should advise the interested party to provide the information required by 30 CFR 733.12(a)(2). The receiving office also should inform the interested party that he or she has the initial burden of proof of the allegation. To decide whether to proceed with the 733 process, OSM will depend heavily on the information provided by the party. Thus, it is important that the party provide ample evidence to support his or her allegations that the State is systemically failing to implement the approved State program. In addition, the contacting OSM office should advise the requestor of alternative means of resolving the concerns. If the requestor elects an alternative process, OSM must take appropriate actions. Minimally, the receiving office must prepare a telephone conversation record to document the conversation and forward all information to the Regional Director.

*Time Frame: Steps 1 through 5 should be completed within 15 days.*

**Step 1.** - When OSM receives a request to evaluate a State program under 30 CFR 733.12, the request must be immediately date-stamped "RECEIVED," and forwarded immediately to the Regional Director by either overnight mail or telefax. The receiving office must inform the applicable staff responsible for OSM's correspondence control tracking system. The receiving office also will send copies of the request to: 1) the Director; 2) the appropriate Field Office Director or equivalent official; 3) the Regional Solicitor; and 4) the appropriate State agency.

**Step 2.** - Immediately upon receipt, the Regional Director will contact the interested party to acknowledge receipt of the request and explain the plan for reviewing the request. The Regional Director should consider appointing a "733-Coordinator" to perform these duties and to compile a team report as explained in Step 7. The coordinator will be assigned on a case-by-case basis to the appropriate Regional or Headquarters manager.

**Step 3. - The 733-Coordinator will hold a conference call at the completion of Step 2. Representatives of the Regional Office, Headquarters, the appropriate Field Office, and the Office of Solicitor will participate in the conference call. The Regional Office will arrange and coordinate this call. The Field Office will call the State regulatory authority before the conference call to solicit information pertinent to the 733 allegation. The purpose of the call is twofold: (1) to decide to accept or reject the request based on the completeness of the request<sup>1</sup> and current or previous OSM oversight actions<sup>2</sup>, and (2) to discuss the strategy for subsequent actions. The basis for the initial decision to accept/reject a request will be carefully documented and forwarded to the interested party and State.**

**Step 4.A. - If all conference call participants concur that the request is unacceptable, the Regional Director will send a letter to the interested party with a copy to the State agency stating that the Regional Director denies the request and the reasons for the denial. The letter also should inform the party of the right to submit subsequent requests with additional supporting information. OSM or the State agency warrants no further actions. OSM will treat subsequent requests with additional supporting information as new requests.**

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As required by 30 CFR 732.12, to be complete, the requester must provide a concise statement of facts which the person believes establishes the need for evaluation. As stated in the March 13, 1979, Federal Register (44 FR 14967-14968), "Section 733.12(a) has added the requirement that all persons requesting evaluations set forth a concise statement of the facts in their request. To avoid frivolous complaints, the Director must verify these facts prior to making an evaluation decision."

In addition to the supporting evidence provided by the requestor, OSM must also verify that the allegations involve subjects that are covered by the approved program, or which should have been included under the timeframe set forth under 30 CFR 732.17(f)(1).

<sup>2</sup> The requestor is required to submit facts to support his/her allegations that indicate that the State is failing or is unable to perform a part of the approved program. However, the decision to accept or reject a request from a completeness standpoint does place the burden completely on the requestor to affirmatively demonstrate that the State regulatory authority is not effectively implementing, administering, maintaining, or enforcing a part of the approved State program. In addition to the facts presented by the requestor, the group must consider the factors listed below when considering whether to accept or reject the interested parties request:

- The weight of evidence provided by the interested party;
- The relevancy of past oversight studies for a similar area of concern (the age and specific criteria of the study must be considered in determining its relevancy);
- The number of State responses to Ten-Day Notices deemed appropriate and inappropriate relevant to allegations and/or statement of facts;
- The status of action plans relative to allegations (on going or overdue);
- Previous discussions with the State through quarterly meetings or any other communication carried on with the State relevant to the issues;
- Information supplied by the State relevant to the allegations;
- Personal knowledge of the State's performance that can be documented;
- Initial assessment whether allegations pertain to matters that are subject to regulation (e.g., governed by regulation) under the State program or SMCRA or if the allegations pertain to matters that should be included in the approved State program if the program were properly maintained (e.g., Part 732 letter issues, required amendments, and program conditions resolved and approved language promulgated by the State in a timely manner or within established and approved schedules that were unaffected by factors outside the control of the State);
- Whether methods other than 733 may more effectively allay the requester's concerns.

Step 4.B. - If all conference call participants concur that the request is acceptable and warrants further consideration, the Regional Director will establish a "Verification Team" and possibly other sub-teams according to the strategy agreed to during the conference call (see Step 3). The verification team(s) will verify the validity of evidence provided by the interested party to support his or her request.

For example, verify through inspections or inspection reports that alleged violations of performance standards are true; or through a comparative review of the State program to the Federal regulations, or Administrative Record, etc., that program maintenance is behind schedule if so alleged.

The overall strategy (plan) may require the creation of other sub-teams such as a "program team" to review the requirements of the approved State program to decide if requirements of the Federal program are omitted and should have been incorporated, or an "oversight team" to decide whether the allegation raised was recently or is currently a subject of evaluation under oversight and if so, determine the status of OSM's findings and the programmatic nature of the issue(s). In any case, this plan delineates the number of teams and the responsibilities for the various allegations under consideration.

Step 5. - The 733-Coordinator will contact the interested party and the State regulatory authority after the plan for teams and time frames are set. The 733-Coordinator will inform the interested party and the State regulatory authority as to the expected times for verification if the standard 60 days for verification cannot be met. The 733-Coordinator also will advise the interested party and the State regulatory authority why an extension is necessary and indicate what additional time is necessary to complete the verification process.

*Time frame: Step 6 should be completed within 30 days.*

Step 6. - Teams will conduct their applicable reviews concurrently whenever feasible. Each team will complete its analysis and draft findings and send a copy of the draft team report to the 733 Coordinator within 30 days. Each team report should address in detail each allegation it is responsible for under Step 4.B. If any team expects to exceed the 30-day time frame, the team leader must contact the 733-Coordinator when possible to obtain additional assistance or to extend the time frames. The State may elect during this period to provide additional information relevant to a determination regarding this request.

*Time frame: Steps 7 through 10 should be completed within 15 days.*

Step 7. - The 733-Coordinator will compile the team reports and prepare an executive summary. The 733-Coordinator will distribute the executive summary along with the compilation of the team report(s) to all persons identified in Step 3 and applicable team leaders. The 733-Coordinator will inform each team leader when they will hold the conference to discuss the findings and complete the report.

**Step 8.** - The 733-Coordinator will arrange for a conference call among the Headquarters designee, the 733-Coordinator, the Field Office Director, the Regional Solicitor, and all review team leaders. The 733-Coordinator in consultation with the team leaders will recommend a course of action. [Three actions are possible: (1) Proceed with an evaluation of the State program; (2) notify the interested party that OSM needs an extension of time to complete the verification; or (3) notify the interested party that OSM will take no further action under 30 CFR Part 733.] The group should reach a consensus during the conference call and select one of these options and identify subsequent actions.

**Step 9.** - The 733-Coordinator is responsible for drafting a response for the Regional Director's signature. The 733-Coordinator should send a letter by certified mail to the interested party with copies to the Headquarters designee, the appropriate Field Office Director, the Regional Solicitor, team leaders, and the State regulatory authority. Three actions may result from the review:

(1) If they agree to conduct an evaluation of the State program, the response letter should state that based on information supplied by the interested party, the Director has verified the requestor's allegations and determined that a State program evaluation is warranted regarding the issues raised by the allegations. Consequently, OSM will perform an evaluation of the State program. This letter should clearly specify which allegations OSM will evaluate and advise the requester that OSM will provide a comprehensive evaluation schedule with all major tasks identified.

(2) If they agree that they need additional time to verify the interested party's allegations, the interim response letter should clearly specify the reasons for the extension of time and should contain a revised schedule for the completion of the verification process. The process continues with return to Step 6.

(3) If they agree that no further action pursuant to the Part 733 process is warranted, the letter should clearly explain to the interested party the reasons behind this decision. The letter also should offer the requestor the opportunity to meet to discuss this action. No further action pursuant to Part 733 will occur.

**Step 10.** - If an evaluation of the State program occurs and from that evaluation, the Director 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 will so notify the State and proceed with actions in accordance with 30 CFR 733.12(b).

5. REPORTING REQUIREMENTS. None.

6. EFFECT ON OTHER DOCUMENTS. None.

7. **REFERENCES.** None.
8. **EFFECTIVE DATE.** Upon Issuance.
9. **CONTACT.** Assistant Director, Program Support, (202) 208-4264.
10. **KEYWORDS.** State program, interested party, allegation.
11. **APPENDICES.** None.