

**§ 736.17 Consolidation of procedures.**

The Director may consolidate public notices, hearings, opportunity for public comment and decisions on the promulgation, revision or termination of a Federal program for a State under this part, with public notices, opportunity for public comment and hearings on the approval, disapproval or withdrawal of a State program under 30 CFR parts 732 through 733.

**§ 736.21 General requirements of a Federal program.**

(a) Any complete Federal program promulgated or revised by the Director shall include the contents identified in 30 CFR 736.22.

(b) Any partial Federal program shall include all of the contents identified in 30 CFR 736.22 to the extent that those aspects of coal exploration and surface coal mining and reclamation operations within the State are to be regulated by the Director under the partial program and are not to be regulated under the remainder of the State program that continues in effect.

**§ 736.22 Contents of a Federal program.**

(a) In promulgating or revising any Federal program for a State, the Director shall—

(1) Consider the nature of that State's soils, topography, climate, and biological, chemical, geological, hydrological, agronomic, and other relevant physical conditions;

(2) Include any provisions that are necessary to implement the requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 531 *et seq.*), the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661-666c), the National Historic and Preservation Act of 1966 (16 U.S.C. 470), the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a), and other relevant Federal laws imposing duties upon the Secretary; and

(3) Include, if required pursuant to 30 CFR 736.23, any performance standards for the regulation of coal exploration and surface coal mining and reclamation operations more stringent than those otherwise provided for by this chapter and the Act.

(b)(1) Any Federal program for a State, including appropriate portions of a partial Federal program which is promulgated or revised by the Director, shall provide for Federal regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within the State in accordance with the requirements of the Act and this Chapter, including, at a minimum, the following provisions: Parts 700, 701, 707, 761, 762, 764, 842, 843, 845, subchapters G, J, K, and M.

(2) An exception to these requirements may be made where there is exploration but no mining in the State. In such a case, the Federal program which is promulgated must regulate coal exploration, but not mining, and shall include, at a minimum, the applicable sections of the following provisions: Parts 700, 701, 761, 762, 764, 772, 773, 775, 815, 842, 843 and 845.

(c) For the purpose of avoiding duplication, the Federal program shall include a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations under the Federal program with any other Federal, State, or local planning or permit process applicable to the operations in the jurisdiction involved, including, but not limited to—

(1) The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*); Clean Water Act, as amended (30 U.S.C. 1251 *et seq.*); Resource Conservation and Recovery Act (42 U.S.C. 3251 *et seq.*); and

(2) Plans approved by the Administrator of the U.S. Environmental Protection Agency under sections 208 or 303(c) of the Clean Water Act, as amended (33 U.S.C. 1288, 1313(c)).

[44 FR 15329, Mar. 13, 1979, as amended at 47 FR 26367, June 17, 1982; 48 FR 44779, Sept. 30, 1983]

**§ 736.23 Federal program effect on State law or regulations.**

(a) Whenever a Federal program is promulgated or revised for a State, any statutes or regulations of the State regulating coal exploration or surface coal mining and reclamation operations subject to the Act shall be preempted and superseded by the Federal program insofar as they are inconsistent with the requirements of the

Act and the Federal program. In promulgating or revising a Federal program for a State, the Director shall set forth in the FEDERAL REGISTER any State statute or regulation which is preempted and superseded by the Federal program.

(b) The provision of any State statute or regulation which provides for more stringent land use and environmental control and regulation of coal exploration or surface coal mining and reclamation operations than do the provisions of the Act or any regulation issued under the Act shall not be preempted and superseded by the Director and shall be incorporated into the Federal program for the State.

[44 FR 15329, Mar. 13, 1979, as amended at 47 FR 26367, June 17, 1982]

#### § 736.24 Federal program effect on State funding.

(a) After the withdrawal of a State program and the promulgation and implementation of a complete Federal program for a State and extending until approval of a new State program, the Director shall not—

(1) Approve, fund or continue to fund a State abandoned mine reclamation program, under section 405(c) of the Act and 30 CFR 884.14, 884.15, 884.16 and 886.18; or,

(2) Make any grants to assist the State in administering and enforcing State programs under the Act and 30 CFR 735.11 and 735.12.

(b) After the withdrawal of a State program in part and the promulgation and implementation of a partial Federal program for a State and extending until the approval of a complete State program the Director shall not—

(1) Approve, fund or continue to fund a State abandoned mine reclamation program, under section 405(c) of the Act and 30 CFR 884.14, 884.15, 884.16 and 886.18, unless the Director finds, in writing, that discontinuation of funding would not be consistent with achieving the purposes of the Act, and

(2) Make any grants to assist the State in administering and enforcing State programs under the Act and 30 CFR 735.12, unless the Director finds in writing that discontinuation of funding would not be consistent with achieving the purposes of the Act.

#### § 736.25 Permit fees.

(a) *Applicability.* An applicant for a new permit to conduct surface coal mining operations under a Federal program shall submit to OSM fees in the amounts set out in paragraph (d) of this section. For applications submitted prior to the effective date of this rule, fees shall apply only for stages of OSM review begun on or after the effective date. The applicant shall either submit all applicable fees with the permit application, or by stage of review as follows:

(1) *Administrative completeness review.* An applicant who pays by stage of review shall submit the administrative completeness review fee with the permit application.

(2) *Technical review.* Following receipt from OSM of a notice of administrative completeness, an applicant who pays by stage of review shall submit the technical review basic fee, plus the per-acre fee for each acre of disturbed area or fraction thereof to be included in the permit area.

(3) *Permit issuance.* Following receipt from OSM of a notice of technical adequacy, an applicant who pays by stage of review shall submit the decision document fee.

(b) *Refund of fees.* (1) Upon receipt of a written request from an applicant, OSM will refund any permit fees paid under this section for a permit application when OSM denies the permit:

(i) On the basis of information concerning endangered or threatened species or their critical habitats or information concerning cultural or historical resources, where such information was not available prior to submission of the permit application;

(ii) Because subsequent to submittal of a permit application, the lands contained in the permit application are declared unsuitable for mining under subchapter F of this chapter; or

(iii) Because subsequent to submittal of a permit application, the applicant is denied valid existing rights to mine under part 761 of this chapter where such rights are required for surface coal mining operations on the lands contained in the permit application.