recognizes Section 504 obligations are consistent across all recipients of HUD Federal financial assistance, the Department also recognizes the unique relationship between the Federal Government and Tribes and seeks comment from Tribes and Tribal entities in accordance with HUD's Government-to-Government Tribal Consultation Policy.

(*a*) Are there tribal specific circumstances that HUD should consider regarding Tribes and tribal entities, particularly with respect to the construction of accessible facilities?

(*b*) Are there unique types of discrimination members of Tribes with disabilities experience, particularly with respect to non-Tribal grantees or other entities covered by Section 504?

(*c*) Are there unique types of discrimination members of Tribes with disabilities experience with respect to the provision of reasonable accommodations, the provision of appropriate auxiliary aids and services necessary to ensure effective communication, access to accessible facilities, or accessing services and programs in the most integrated setting appropriate to the needs of members of Tribes with disabilities?

*Question for Comment 13:* The Department recognizes that individuals with disabilities who are also members of other protected class groups (*e.g.,* race, color, national origin, sex (including sexual orientation and gender identity), familial status, religion, age, etc.) may be uniquely impacted by revisions to HUD's Section 504 regulations and is interested in receiving public comment on unique considerations related to intersectionality.

(*a*) Are there unique barriers or other forms of discrimination in housing or HUD assisted programs against individuals with disabilities who are also members of other specific protected class groups?

(*b*) In particular, is there information that HUD should consider regarding how disability discrimination affects persons of color, LGBTQ+ persons, families with children, older adults, and individuals with limited English proficiency who also require appropriate auxiliary aids and services necessary to ensure effective communication?

## IV. Findings and Certifications

*Regulatory Review—Executive Orders 12866 and 13563*

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to, ''identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.''

HUD's Section 504 regulations have not been significantly updated since originally published in 1988; whereas significant advances in building practices and assistive technologies have been made during the preceding decades. Additionally, since HUD's Section 504 regulations were first published, the percentage of the U.S. population with disabilities has continued to increase and diversify and, during this time, a larger share of the population has increased in age. Given these changes in the availability and improvement of accessibility design and technologies and the changes in the makeup of the American population that require or benefit from the improvements in accessibility and design and technologies, this ANPRM is necessary to avoid HUD's Section 504 regulations from becoming outmoded, ineffective, and insufficient.

This ANPRM has been reviewed by OMB. As a result of this review, OMB determined that this ANPRM will likely result in a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866 but not an ''economically significant'' action.

**Environmental Review**

This ANPRM sets out nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), it is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321–4347).

**Demetria McCain,**

*Principal Deputy, Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 2023–08464 Filed 4–24–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Parts 733 and 842

**[Docket ID: OSM–2022–0009; S1D1SSS08011000SX064A000201S180110; S2D2S SS08011000SX064A0022XS501520]**

**RIN 1029–AC81**

### Ten-Day Notices and Corrective Action for State Regulatory Program Issues

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) proposes to amend the regulations related to notifying a State regulatory authority of a possible violation of any requirement of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed rule would also amend the Federal regulations regarding corrective actions for State regulatory program issues. Together, the proposed updates to these two areas of the Federal regulations would amend the overall ''ten-day notice'' (TDN) process. Although a final rule covering these topics went into effect in 2020 (2020 TDN Rule), the rule has proven to delay our consideration of some possible SMCRA violations. In 2021, the Department of the Interior undertook a reexamination of the 2020 TDN Rule and decided to engage in this rulemaking effort. The primary goals of this rulemaking are to reduce burdens for citizens to engage in the TDN process, establish procedures for OSMRE to properly evaluate and process citizen allegations about possible SMCRA violations, clearly set forth the regulatory requirements for the TDN process, and continue to minimize the duplication of inspections, enforcement, and administration of SMCRA. In addition, we will continue to afford our State regulatory authority partners due deference during the TDN process to an extent that is appropriate under SMCRA. The proposed rule would ensure that possible SMCRA violations are properly identified and addressed in a timely fashion. When OSMRE obtains adequate proof of an imminent harm, OSMRE would immediately conduct a Federal inspection, outside of the TDN process, as SMCRA requires. Overall, we believe that this proposed rule would align more closely than the 2020 TDN Rule with SMCRA's requirements.

**DATES:** We will accept comments received or postmarked on or before

11:59 p.m. Eastern Daylight Time (EDT), June 26, 2023. We must receive comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) by 11:59 p.m. EDT on the closing date.

Upon request, we will hold a public hearing or a public meeting on the proposed rule at a date, time, and location to be announced in the **Federal Register** before the hearing. We will accept requests for a public hearing or meeting until June 9, 2023.

**ADDRESSES:** You may submit comments, identified by OSM–2022–0009 and RIN 1029–AC81, by any of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the search box, enter the Docket ID listed above. You may submit a comment by clicking on ''Comment''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4550, Main Interior Building, Washington, DC 20240, Attention: Division of Regulatory Support.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comment Procedures, below, for more information).

**FOR FURTHER INFORMATION CONTACT:** William R. Winters, OSMRE, Division of Regulatory Support, 1849 C Street NW, Mail Stop 4550, Washington, DC 20240, telephone number: (202) 208–1908. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at: (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

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## I. Public Comment Procedures

You may submit written comments, identified with OSM–2022–0009 or RIN 1029–AC81, by any of the methods described in the **ADDRESSES** section. Written comments submitted on the proposed rule should be specific, be confined to issues pertinent to the proposed rule, and explain the reason for any recommended change. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The comments and recommendations that will be most useful and likely to influence agency decisions are those that are supported by quantitative information or studies; are based on specific, identifiable experience; and include citations to, and analyses of, the applicable laws and regulations.

Comments received after the close of the comment period (see the **DATES** section) or that are delivered to addresses other than those listed above (see the **ADDRESSES** section) may not be considered or included in the Decision File for the final rule.

Comments, including names and street addresses of respondent commenters, will be available for public review at the address listed under **ADDRESSES** during regular business hours (8 a.m. to 4:30 p.m. ET), Monday through Friday, except holidays.

Please be advised that we may make your entire comment—including your personal identifying information, such as your name, phone number, or email address—publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to grant your request.

## II. Background

### *A. Proposed Rule Summary*

Under SMCRA, each State that wishes to regulate surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders can submit a proposed State regulatory program to the Secretary of the Interior. 30 U.S.C. 1253(a). The Secretary, acting through OSMRE, reviews and approves or disapproves the proposed program. 30 U.S.C. 1211(c)(1), 1253(b). When the Secretary approves a State program, the State assumes exclusive jurisdiction or ''primacy,'' except as provided in sections 521 and 523 and title IV of SMCRA. 30 U.S.C. 1253(a), 1271, 1273, and 1231–1244. Under the exception at 30 U.S.C. 1271(a)(1), in a primacy State that has an approved State regulatory program, OSMRE retains oversight of the State program and some Federal enforcement authority. In this regard, SMCRA sometimes refers to a State regulatory authority as having ''primary'' responsibility. *See, e.g.,* 30 U.S.C. 1201(f) and 1291(26) (defining ''State regulatory authority'' to mean ''the department or agency in each State which has primary responsibility at the State level for administering [SMCRA]'').

This proposed rule concerns the TDN process that derives from section 521(a)(1) of SMCRA, 30 U.S.C. 1271(a)(1), and the provisions for correction of State regulatory program issues, consistent with section 521(b) of SMCRA, 30 U.S.C. 1271(b). Under the TDN process, when the Secretary of the Interior, acting through OSMRE, has ''reason to believe that any person is in violation of any requirement'' of SMCRA, OSMRE notifies the appropriate State regulatory authority. After OSMRE sends the notification to the State, the State has ten days to take ''appropriate action'' to cause the possible violation to be corrected or to demonstrate ''good cause'' for not doing so. If the State regulatory authority fails to respond within ten days, or if we determine that the State's response is arbitrary, capricious, or an abuse of discretion, we will conduct a Federal inspection and take appropriate enforcement action.

Given the ten-day time frame, the notice that OSMRE sends to State regulatory authorities under this provision is referred to as a TDN. While citizens, industry, and regulatory authorities have commonly understood this terminology, we propose to define ''ten-day notice'' for the first time in the Federal regulations so there is a uniform, consistent understanding of the term. Similarly, because possible violations identified in a ''citizen complaint'' are at the heart of this proposed rule, we are also proposing to define that term for the first time in the Federal regulations.

We are proposing that all citizen complaints will be considered as requests for Federal inspections, even if a citizen complaint does not specifically request an inspection. The 2020 TDN Rule requires citizens, when requesting a Federal inspection, to provide a statement that the person has notified the State regulatory authority of the existence of the possible violation. However, the existing regulations for citizen complaints do not explicitly contain a similar requirement. To resolve this issue, we believe it is important to not require citizens, who likely are not experts on SMCRA and the implementing regulations, to use certain words or phrases in their complaint to communicate their requested action to OSMRE. This approach also makes sense because if a citizen brings a possible violation to our attention, and we issue a TDN to the relevant State regulatory authority, that process could ultimately lead to a Federal inspection if the regulatory authority does not take appropriate action or demonstrate good cause for not

doing so in response to the TDN, regardless of whether the citizen initially asked for a Federal inspection to be undertaken.

We are also proposing to amend the regulations at 30 CFR 842.12(a), which relate to requesting a Federal inspection, to make the process easier for citizens by removing the requirement for a citizen to also notify the relevant State regulatory authority when requesting a Federal inspection. SMCRA does not require that a citizen notify the State regulatory authority before filing a citizen complaint with OSMRE. However, we continue to believe that if a citizen contacts the State regulatory authority in the first instance, most possible violations will be resolved without the need for OSMRE to issue a TDN. To that end, we continue to strongly encourage citizens to contact the State regulatory authority about possible violations, as the State regulatory authority should be more acquainted with conditions on the ground for permits that it has issued and is often in the best position to determine the merits of a citizen complaint.

We are also proposing to remove the requirement at existing § 842.12(a) for a citizen, when requesting a Federal inspection,[1] to set forth ''the basis for the person's assertion that the State regulatory authority has not taken action with respect to the possible violation.'' We believe this provision is onerous and cumbersome. For example, if a citizen is filing a complaint with OSMRE, the citizen implicitly believes that there is a violation that the State regulatory authority has not addressed. And again, because citizens are not likely to be experts on the administration of SMCRA and the applicable State regulatory program, it is unduly onerous to require a citizen to cite the applicable requirements for the basis of their assertion. Moreover, citizens will not be in a position to determine a State official's reasoning for the lack of action regarding the possible violation.

Over the years, we have found that while most citizen complaints have merit, many raise issues unrelated to possible violations of SMCRA or the State regulatory program. For that reason, and to reduce duplication of inspection and enforcement efforts between OSMRE and State regulatory authorities, in the 2020 TDN Rule, we expanded the sources of information that OSMRE would consider when determining whether we have reason to believe a violation exists under a State regulatory program. Before 2020, the Federal regulations arguably implied that OSMRE could consider only information contained within the confines of a citizen complaint when determining whether there was reason to believe a violation existed that would necessitate issuance of a TDN to a State regulatory authority. For example, the pre-2020 regulations provided that OSMRE would have reason to believe that a violation exists if the facts alleged in a citizen complaint would, if true, constitute a violation. *See* 30 CFR 842.11(b)(2) (2019). But the pre-2020 regulations also provided that OSMRE should base its reason to believe determination upon ''information available.'' *See id.* at § 842.11(b)(1)(i). In the 2020 TDN Rule, we sought to remove any inconsistencies in the prior regulations by requiring OSMRE to consider ''readily available'' information, including information from a State regulatory authority. Some commenters on the 2020 TDN proposed rule contended that allowing OSMRE to gather information before determining whether it has reason to believe a violation exists implied that OSMRE did not have the information at the time of the citizen complaint. By using the phrase ''readily available'' in the 2020 TDN Rule, we intended to confine OSMRE's information gathering so that we could determine, as quickly as possible, whether a TDN was warranted. *See, e.g.,* 85 FR 75157 (Nov. 24, 2020). In the 2020 TDN Rule, we also explained that when we receive a citizen complaint, we will apply our professional judgment and not merely transmit the citizen complaint to a State regulatory authority without considering whether we have reason to believe a violation exists.

After reexamining the 2020 TDN Rule and SMCRA's legislative history, and based upon our experience implementing the rule for more than two years, we have decided to further clarify OSMRE's evaluation of a citizen complaint: instead of considering all ''readily available information'' when determining whether we have reason to believe a violation exists, we propose to limit the sources of information that we will consider to information received from a citizen complainant, information available in our files at the time that we are notified of the possible violation, and any publicly available electronic information. In implementing this section of the 2020 TDN Rule, we found that the data collection process took longer than expected. We believe that the approach outlined in this proposed rule would continue to reduce any duplication of inspection and enforcement efforts between OSMRE and the relevant State regulatory authority and better align with SMCRA's statutory requirements and legislative history.

We further propose to amend the regulations to return to our longstanding practice of requiring the issuance of a TDN, in the first instance, when we have reason to believe a violation exists in the form of a so-called ''permit defect.'' Although that term is not used in SMCRA and has not been used in the Federal regulations, OSMRE has used the term in guidance documents. We generally consider a permit defect to be a deficiency in a permit-related action taken by a State regulatory authority, such as when a State regulatory authority has issued a permit with a provision that is contrary to the approved State program. We propose to specify that we will issue a TDN for such defects when we form the necessary reason to believe a violation exists.

Existing § 842.11(b)(1)(ii)(B)(*3*) allows a corrective action plan to constitute ''appropriate action'' in response to a TDN. This proposed rule would exclude an action plan from the categories of ''appropriate action'' in response to a TDN because action plans do not themselves remedy violations. *See* § 842.11(b)(1)(ii)(B)(*3*). Instead of allowing the use of these plans to be considered appropriate action, we propose that if we and the relevant State regulatory authority enter into an action plan that includes the possible violation as one of several substantively similar possible violations, such a plan could constitute ''good cause'' for not taking action within ten days. A completed action plan would lead to corrective action on the initial violation, as well as other similar violations.

We have determined that the changes in this proposed rule would enhance the overall administration and enforcement of SMCRA, while continuing to honor State primacy, and correspond more closely to SMCRA's statutory requirements. Once a State has achieved primacy under SMCRA to administer its own State regulatory program, section 201(c)(12) of SMCRA requires us to, among other responsibilities, ''cooperate with . . . State regulatory authorities to minimize duplication of inspections, enforcement, and administration of

[1] It is important to note that, under 30 U.S.C. 1271(a)(1), when a person supplies OSMRE with ''adequate proof that an imminent danger of significant environmental harm exists and that the State has failed to take appropriate action,'' OSMRE will proceed directly to a Federal inspection. This proposed rule pertains only to the TDN process, and not imminent harm situations, which are addressed separately under the SMCRA provision at 30 U.S.C. 1271 and the applicable existing regulations at 30 CFR parts 842 and 843.

[SMCRA].'' 30 U.S.C. 1211(c)(12). To this end, we have worked closely with State regulatory authorities for over 40 years, and we will continue to do so. Equally germane to our intent in this proposed rule, one of the purposes of SMCRA is to ''assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under [SMCRA.]'' 30 U.S.C. 1202(i). With this in mind, this proposed rule would provide a better balance between minimizing duplication of efforts with the State regulatory authorities and affording citizens an appropriate level of involvement in enforcement of SMCRA programs.

*B. Statutory and Regulatory Background*

Two provisions of SMCRA chiefly govern our oversight and enforcement of State regulatory programs. Section 521(a)(1), 30 U.S.C. 1271(a)(1), in context, requires us to notify a State regulatory authority when we have ''reason to believe'' that any person is in violation of any requirement of SMCRA, the approved regulatory program, an approved permit, or a required permit condition. As explained above, when we have reason to believe a violation exists, we issue a TDN to the applicable State regulatory authority. Upon receipt of the TDN, the State regulatory authority has ten days to cause the possible violation to be corrected or show good cause for not taking action and communicate either action to us. In general, if the State regulatory authority fails to respond within ten days, we must immediately order a Federal inspection of the surface coal mining operation where the described violation is alleged to be occurring.

Section 521(b) of SMCRA, 30 U.S.C. 1271(b), addresses the situation of a State regulatory authority failing to effectively implement any part of its approved State program. The relevant existing regulations implementing section 521(b) of SMCRA are found at 30 CFR part 733. The 2020 TDN Rule revised provisions in 30 CFR part 733 in an effort to address State regulatory program issues before they rise to the level that would require us to take over administration of all or part of an approved State program under section 521(b). This proposed rule would retain the basic structure of the 2020 TDN Rule, but would amend 30 CFR 733.5 and 733.12 to comply more fully with SMCRA's statutory requirements.

SMCRA creates a cooperative federalism framework between OSMRE and State regulatory authorities to ensure that SMCRA is properly administered and enforced. As mentioned above, each State desiring to implement SMCRA on non-Federal and non-Indian lands within its borders must submit a proposed SMCRA program to the Secretary of the Interior for review and approval. 30 U.S.C. 1253. Federally recognized Indian Tribes may also obtain primacy over Indian lands within their jurisdiction. *Id.* section 1300(j). SMCRA gives OSMRE the authority to conduct the review for the Secretary. *Id.* section 1211(c)(1). OSMRE must review each proposed program to ensure, among other things, that it is in accordance with the requirements of SMCRA. Once a State or Tribal regulatory authority obtains approval of its SMCRA program, it has achieved ''primacy'' and becomes the primary entity through which SMCRA is implemented and enforced on lands within its jurisdiction. In primacy States, we have an oversight role over approved State regulatory programs, primarily through SMCRA section 521, 30 U.S.C. 1271.

In our oversight role, any time we have reason to believe that any person is in violation of SMCRA, the applicable State regulatory program, or any required permit condition, we inform the State regulatory authority through a TDN. The information that informs our ''reason to believe'' that a violation exists can come from any person, but, most often, we become aware of a possible violation through a Federal oversight inspection or a citizen complaint. If we become aware of a possible violation by means other than through a Federal oversight inspection, we must determine if we have reason to believe a violation of SMCRA or the applicable State regulatory program exists. Neither SMCRA nor the Federal regulations defines the ''reason to believe'' standard. However, the ''reason to believe'' standard that would support issuance of a TDN for a possible violation is a lower standard than ''reason to believe'' when it is coupled with ''adequate proof'' of an imminent harm that would require OSMRE to bypass the TDN process and proceed directly to a Federal inspection.

Once a State receives a TDN, it has ten days to take appropriate action to cause the possible violation to be corrected or show good cause for not taking action and communicate its action to us. A TDN that results from a citizen complaint is not a direct enforcement action, a finding that any form of violation exists, or a determination that the State has acted improperly. Rather, as SMCRA envisioned, a TDN is a communication mechanism between OSMRE and the applicable State regulatory authority indicating that a *possible* violation exists. (Under 30 CFR 843.12(a)(2), however, we also issue a TDN to a State regulatory authority when, on the basis of a Federal oversight inspection, we determine that there is a non-imminent harm violation and we have not previously issued a TDN for the same violation.) The TDN communication mechanism allows the State the first opportunity to investigate and enforce possible non-imminent harm violations. After we send the TDN to the State, we do not take any other action regarding the possible violation during the ten-day period.

Once a State has communicated its action in response to a TDN to us, we review the State's response to determine whether it constitutes appropriate action or good cause. Under 30 CFR 842.11(b)(1)(ii)(B)(*2*), we accept the State's action or response as appropriate action or good cause unless it is arbitrary, capricious, or an abuse of discretion. After receiving the State's response to the TDN, but before a Federal inspection, we determine in writing whether the standards for appropriate action or good cause have been satisfied. *Id.* at § 842.11(b)(1)(ii)(B)(*1*).

If the State regulatory authority does not respond to the TDN within ten days, we make a determination on the TDN and proceed to a Federal inspection. Failure to respond constitutes a waiver of the right to request informal review of the determination under 30 CFR 842.11(b)(1)(iii). *Id.* After a written determination that the State did not take appropriate action or has not shown good cause for not taking action, the State then has an opportunity to seek informal review of the determination within OSMRE. *Id.* § 842.11(b)(1)(iii)(A). In general, subject to the exceptions noted in § 842.11(b)(1)(iii)(B), when a State regulatory authority requests informal review, the informal review process must conclude before we conduct a Federal inspection or issue a Federal notice of violation regarding the TDN. If, during a Federal inspection, we confirm the existence of a violation, we write a Federal notice of violation or, if applicable, a cessation order to the permittee. *Id.* § 843.12(a)(2).

Section 201(c)(2) of SMCRA, 30 U.S.C. 1211(c)(2), requires us to ''publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of [SMCRA].'' Sections 1271(a) and (b) pertain to OSMRE's obligation to conduct oversight of State regulatory

programs and provide any necessary Federal enforcement. We implement the relevant statutory requirements of 30 U.S.C. 1271(a) and (b), discussed above, through the existing regulations at 30 CFR parts 842 and 733.

As mentioned above, immediately prior to the 2020 TDN Rule, the Federal regulations did not specify when OSMRE had ''reason to believe'' a violation exists. On one hand, the pre-2020 regulations at 30 CFR 842.11(b)(1)(i) (2019) referred to OSMRE having ''reason to believe on the basis of information available.'' On the other hand, § 842.11(b)(2) provided that OSMRE would have reason to believe ''if the facts alleged by the informant would, if true, constitute a . . . violation . . . .'' In the 2020 TDN Rule, we sought to remove any confusion by amending § 842.11(b)(1)(i) to refer to ''reason to believe on the basis of any information readily available [to an OSMRE authorized representative], from any source, including any information a citizen complainant or the relevant State regulatory authority submits . . . .'' For consistency, we also amended § 842.11(b)(2) to provide that OSMRE will have reason to believe ''a violation . . . exists if the facts that a complainant alleges, or facts that are otherwise known to the authorized representative, constitute simple and effective documentation of the alleged violation . . . .'' As noted above, and as will be discussed in more detail below, we propose to amend these sections to limit the sources of information that we will consider when we are determining whether we have reason to believe that a violation exists.

While the term ''permit defects'' has never appeared in the regulations, OSMRE, for most of its existence, has issued TDNs to State regulatory authorities for possible ''permit defects,'' that is, allegations that a State regulatory authority has issued a permit with a provision, or lack thereof, that is contrary to the approved State program. The 2020 TDN Rule did not squarely address this issue, but as noted above, the preamble to the 2020 TDN Rule explained that, under 30 U.S.C. 1271(a)(1), ''any person'' who can be in violation of SMCRA or a State regulatory program ''does not include a State regulatory authority, unless it is acting as a permit holder.'' 85 FR 75176. As such, we explained that a permit defect ''will typically be handled as a State regulatory program issue'' under 30 CFR part 733, rather than through the TDN process, ''unless there is an actual or imminent violation of the approved State program.'' *Id.*

This proposed rule would reinstate the practice of issuing TDNs to State regulatory authorities for permit defects. Although a TDN under 30 CFR part 842 would be issued for a permit defect, the proposed regulations would still allow OSMRE and the State regulatory authority to develop an action plan under 30 CFR part 733 to address a State regulatory program issue, and the development of that action plan could, in the appropriate circumstances, constitute ''good cause'' for not taking action in response to the TDN. Thus, this aspect of the proposed revisions to the Federal regulations would incorporate a part 733 action plan, which originates from a citizen complaint, into the TDN process.

Before the 2020 TDN Rule, under internal guidance, OSMRE used ''action plans'' to resolve State ''regulatory program problems.'' OSMRE has used action plans extensively and effectively to address a State regulatory authority's misapplication of its approved State regulatory program. In the 2020 TDN Rule, we incorporated the action plan concept into 30 CFR 733.12 for what we defined in the regulations at § 733.5 as a ''State regulatory program issue.'' In general, a State regulatory program issue, as we propose to amend the definition, is one that we identify during oversight of a State or Tribal regulatory program that may result from a regulatory authority's implementation, administration, enforcement, or maintenance of its State regulatory program. Under the 2020 TDN Rule at § 842.11(b)(1)(ii)(B)(*3*), ''appropriate action'' in response to a TDN could include ''OSMRE and the State regulatory authority immediately and jointly initiating steps to implement corrective action to resolve any issue that [OSMRE] identif[ies] as a State regulatory program issue, as defined in 30 CFR part 733.''

Under this proposed rule, entering into an action plan to address a State regulatory program issue would no longer constitute ''appropriate action'' under the TDN process. However, we propose that, if a possible violation is being addressed in an action plan, along with substantively similar possible violations, that fact would constitute ''good cause'' in response to the TDN. In this regard, OSMRE's treatment of a State regulatory program issue under an action plan would be part of the overall TDN process. (Action plans can be developed to address other aspects of a State regulatory program, such as staff funding, adequate access to public documents, and other similar programmatic issues that may not be part of the TDN process.)

Finally, the 2020 TDN Rule perpetuated the distinction between citizen complaints and citizen requests for Federal inspections. For example, under the existing regulations, the provisions for ''Federal inspections and monitoring'' in 30 CFR 842.11(b)(1) are often triggered by ''citizen complaints,'' yet § 842.12 pertains to ''Requests for Federal inspections.'' As mentioned above, we propose to eliminate any confusion by proposing, at 30 CFR 842.11(b)(2) and 842.12(a), that all citizen complaints would be considered requests for Federal inspections.

## III. Section-by-Section Analysis

### *A. Overview*

To increase efficiency and make it easier for citizens to report possible violations, we propose to simplify the processes for filing a citizen complaint and requesting a Federal inspection. Under this proposed rule at §§ 842.11(b)(2) and 842.12(a), all citizen complaints would be considered as requests for a Federal inspection. After reviewing our experience implementing the citizen complaint process under the 2020 TDN Rule, we are proposing to remove two burdensome and unnecessary provisions from the existing regulations at § 842.12(a): (1) the express requirement for a person requesting a Federal inspection to notify the State regulatory authority of the possible violation and (2) the requirement for a person requesting a Federal inspection to state the basis for their assertion that the State regulatory authority has not taken action with respect to the possible violation. The State regulatory authority is often best positioned to address citizen complaints in the first instance, but, for various reasons, some citizens do not, or will not, contact the State regulatory authority. Under this proposed rule, therefore, a citizen would not be required to notify the State regulatory authority. After receiving a citizen complaint, we would evaluate information from the complainant, information in our files, and publicly available electronic information to determine if we have reason to believe a violation exists.

Prior to the 2020 TDN Rule, we often automatically sent a TDN to the State regulatory authority upon receipt of information from a citizen alleging a violation and without undertaking a ''reason to believe'' analysis. Under this proposed rule, instead of simply forwarding a citizen complaint to the State regulatory authority as a TDN or considering ''readily available information'' under the existing

regulations at 30 CFR 842.11(b)(1)(i) and (b)(2), and 842.12(a), we propose to only issue a TDN to the State regulatory authority after we have undertaken a ''reason to believe'' analysis that considers only information received from a citizen complainant, information available in OSMRE's files at the time we receive the citizen complaint, and publicly available electronic information. This would allow the TDN process to proceed without any undue delays associated with outside research.

As explained above, we consider a TDN to be a communication mechanism between OSMRE and the State regulatory authority. A TDN that results from a citizen complaint is not itself a determination that there is a violation or that the State has failed to address a violation. Rather, consistent with the notion of State primacy, a TDN affords the State the first opportunity to address the underlying issue. A Federal inspection and possible Federal enforcement action occur only if a State regulatory authority fails to respond within ten days or submits a response that is arbitrary, capricious, or an abuse of discretion.

As mentioned above, we are proposing to restrict the sources of information that we review when determining whether we have reason to believe a violation exists to: information received from a citizen complainant, information in our files at the time that we are notified of the possible violation, and publicly available electronic information. The first source of information would include information in the citizen complaint and any other supporting information that the citizen chooses to provide. The second information source would encompass information available in our files at the time that we are notified of the possible violation or at the time that OSMRE receives a request for a Federal inspection. We propose to limit this category to information that we already have when we receive a citizen complaint or a request for a Federal inspection so that we will be able to act expeditiously and will not incur delay by engaging in a larger information gathering effort.

In the 2020 TDN Rule, we sought to place a temporal limitation on the data collection by indicating that the information must be ''readily available.'' Given our experience with that rule and after reexamination, we now conclude that ''readily available'' does not necessarily impose a time limit and could be interpreted to involve a larger information gathering than we envisioned, potentially including information that takes months to gather and analyze, and can unnecessarily delay a ''reason to believe'' determination. Thus, we are proposing to add a clear limitation so that the information that OSMRE will consider is contained in our files at the time that we are notified of a possible violation or receive a request for a Federal inspection.

Given the widespread public availability of electronic information via the internet or similar sources, however, we propose that we may also consider information from a third source: ''publicly available electronic information.'' This would include any and all data that is publicly available in an electronic format. For us to use information not already in our files when determining whether we have reason to believe a violation exists, the information would have to be in an electronic format and be ''publicly available.'' We propose to limit this information to electronic sources to avoid delays associated with trying to locate hard copy files. This information could include electronic permitting information that the relevant regulatory authority or governmental entity makes available to the public. Our goal with these proposed changes is to limit the sources of information that we would consider to ensure an expeditious ''reason to believe'' determination, and thus reduce the amount of time between when we become aware of a possible violation and when we inform the State regulatory authority of the possible violation.

In addition, treating a possible ''permit defect'' as we do any other possible violation and notifying the State regulatory authority through a TDN, rather than treating the issue, in the first instance, as a ''State regulatory program issue'' under 30 CFR 733.12, could save time and allow OSMRE and the State regulatory authorities to begin addressing possible violations more quickly.

Treating all types of possible violations the same would be more consistent with 30 U.S.C. 1271(a)(1), which provides that whenever the Secretary, ''on the basis of any information available to him, including receipt of information from any person,'' has ''reason to believe that any person is in *violation of any requirement of [SMCRA]* or any permit condition required by [SMCRA],'' the Secretary must notify the State regulatory authority. (Emphasis added.) In the preamble to the 2020 TDN Rule, we explained that, under 30 U.S.C. 1271(a)(1), ''any person'' who can be in violation of SMCRA or a State regulatory program ''does not include a State regulatory authority, unless it is acting as a permit holder.'' 85 FR 75176; *see also id.* at 75179. The better reading of that statutory provision is one we have held throughout most of OSMRE's history: that we must issue a TDN when we have reason to believe that *any person,* including a State regulatory authority, is in *violation of any requirement of SMCRA.* If a State has issued a permit that would allow coal mining to occur in a manner that is inconsistent with SMCRA or the applicable State regulatory program, or a permit that does not comply with all requirements to obtain a permit, it makes little sense for us to wait for the permittee or operator to act in accordance with that defective permit before we can issue a TDN. Moreover, States would most likely become aware of a ''permit defect'' issue sooner under the proposed rule and therefore have an earlier opportunity to evaluate and address the issue. As always, if a State disagrees that there is a violation, it can respond to the TDN by explaining its position that a possible violation does not exist under the State regulatory program. 30 CFR 842.11(b)(1)(ii)(B)(*4*)(*i*). We will honor a State's response to the TDN unless we conclude that the action or response is arbitrary, capricious, or an abuse of discretion. *Id.* § 842.11(b)(1)(ii)(B)(*2*).

Within the cooperative federalism framework, citizens have a voice in the form of a citizen complaint. As mentioned, in this proposed rule, we are also proposing to define ''citizen complaint,'' at proposed 30 CFR 842.5, to remove any confusion and clarify that the purpose of a citizen complaint, in the TDN context, is for citizens to inform OSMRE of a possible violation or issue with a State regulatory program. We are proposing to define ''citizen complaint'' as ''any information received from any person notifying the Office of Surface Mining Reclamation and Enforcement (OSMRE) of a possible violation of the Act, this chapter, the applicable State regulatory program, or any condition of a permit or an exploration approval.'' Defining the phrase ''citizen complaint'' would remove any inconsistencies associated with the phrase or related processes.

In addition, in this proposed rule, we intend to remove any confusion concerning the difference between ''citizen complaints'' under § 842.11 and ''requests for Federal inspections'' under existing § 842.12(a). A citizen complaint may or may not expressly request a Federal inspection, and the citizen complaint may result in the issuance of a TDN if we form the requisite reason to believe and there is

no imminent harm. Likewise, ''[r]equests for Federal inspections,'' under 30 CFR 842.12(a), may also result in the issuance of a TDN in non-imminent harm situations.

Under this proposed rule, we also propose to avoid any misunderstanding by removing the requirement for a citizen to contact the applicable State regulatory authority before requesting a Federal inspection. The SMCRA provision governing inspections and monitoring, at 30 U.S.C. 1267(h)(1), states that any person adversely affected by a surface mining operation may notify OSMRE ''in writing, of any violation of [SMCRA] which he has reason to believe exists at the surface mining site.'' This statutory provision does not require a citizen to notify the State regulatory authority when informing us of a possible violation. Likewise, the TDN process at 30 U.S.C. 1271(a)(1) does not require a citizen to notify the State regulatory authority when bringing a possible violation to our attention.

While we have discretion to require citizens to notify the State regulatory authority whether they are filing a citizen complaint under § 842.11 or requesting a Federal inspection under § 842.12, we have decided, consistent with our objective to remove unnecessary hurdles for citizen complainants, to propose to remove the requirement from § 842.12(a) and clarify that there is not a similar requirement for § 842.11(b).

In addition, to improve clarity, we propose to add language in both § 842.11(b)(2) and § 842.12(a) stating that all citizen complaints will also be considered as requests for Federal inspections. Accordingly, if a Federal inspection occurs as a result of any information received from a citizen complainant, the citizen would be afforded the right to accompany the Federal inspector on the inspection.

As we noted in the preamble to the 2020 TDN Rule, there has never been a stringent time frame for determining whether we have reason to believe a violation exists. 85 FR 75158. Notably, neither SMCRA nor the pre-2020 TDN rules contain such a time frame. While SMCRA gives us discretion to determine if and when we have the requisite reason to believe, we intend to make such determinations quickly after receiving a citizen complaint. Our proposed regulatory revision reflects that intention by limiting the sources of information that we will consider when evaluating whether we have reason to believe a violation exists.

In addition, SMCRA and our longstanding TDN regulations provide that a State regulatory authority has ten days to respond to a TDN indicating that it has taken appropriate action to cause the possible violation to be corrected or that it has good cause for not taking action. 30 U.S.C. 1271(a)(1); 30 CFR 842.11(b)(1)(ii)(B)(*1*). These provisions do not require the underlying issue to be fully resolved within ten days. In some instances, in response to a TDN, a State regulatory authority will be able to demonstrate that the possible violation has already been corrected or that the allegation does not amount to a violation of the State regulatory program. However, in many instances, the ultimate resolution of the issue or abatement action occurs after we receive a State's response to a TDN. Whether we agree with the State's proposed action to resolve an issue or disagree and conduct a Federal inspection, ultimate resolution of the underlying issue often occurs well after the initial ten-day period. Many times, the final resolution of an issue occurs days or months after the initial citizen complaint, and, in some circumstances, resolution can take more than a year.

Nonetheless, we propose several steps to reduce the time between the identification of a State regulatory program issue and final resolution of that issue. Under the 2020 TDN Rule, 30 CFR part 733 corrective actions associated with State regulatory program issues may constitute ''appropriate action'' in response to a TDN. 30 CFR 842.11(b)(1)(ii)(B)(*3*). However, the existing regulation provides that we will only develop and institute an action plan if we believe the State regulatory program issue will take longer than 180 days to resolve or if the State regulatory program issue is likely to result in a violation. 30 CFR 733.12(b). In addition, existing § 733.12(b) does not require any specific interim measures between identification of the State regulatory program issue and institution of a corrective action plan; the existing regulations say only that we ''may employ any number of compliance strategies to ensure that the State regulatory authority corrects a State regulatory program issue in a timely and effective manner.'' *Id.* Thus, a possible violation, if addressed under existing 30 CFR part 733 as a State regulatory program issue, could exist for a long period of time before resolution.

To hasten that process, we propose to amend 30 CFR 842.11 and 733.12 to address the possibility of delay. First, under proposed 30 CFR 842.11(b)(1)(ii)(B)(*3*), corrective actions under 30 CFR part 733 could no longer constitute appropriate action in response to a TDN. Second, at 30 CFR 733.12(b), we propose to remove the 180-day language pertaining to development of an action plan. Instead, for each State regulatory program issue, we, in consultation with the applicable State regulatory authority, would ''develop and approve an action plan within 60 days of identification of a State regulatory program issue.'' When crafting a corrective action plan, the proposed rule envisions a collaborative process between OSMRE and the State regulatory authority. In addition, at § 733.12(b), we also propose that, ''[w]ithin 10 business days of OSMRE's determination that a State regulatory program issue exists, OSMRE and the State regulatory authority may identify interim remedial measures that may abate the existing condition or issue.'' Amending these provisions would shorten the time between identification of a State regulatory program issue and the development of measures to address the issue. Thus, the proposed rule would retain the corrective action plan concept but add timeframes to ensure that action is taken expeditiously.

Further, for State regulatory program issues, § 733.12(b)(1) of the proposed rule would allow one calendar year from receipt of an action plan for the State regulatory authority to complete the identified actions in the action plan. We recognize that final resolution of an issue may not occur within the allotted one year, but, under the proposed regulations, the State regulatory authority would need to complete the identified actions within one year. For example, a State regulatory program issue may require an amendment of the approved State regulatory program and gaining approval of a State program amendment may require more than a year. In such circumstances, the action identified in the action plan may be for the State regulatory authority to prepare and submit the proposed State program amendment within the allotted timeframe, with a recognition that there could be additional required State approvals, and that, ultimately, we would need to approve the State program amendment. Thus, when developing a corrective action plan, care must be given to identify required actions and what constitutes ''completion'' of the action plan. Completion criteria would need to set forth actions and milestones that would be achievable within 365 days. The goal is to keep violations from going unabated, minimize on-the-ground impacts, and prevent off-site impacts.

Under the existing regulations at 30 CFR 842.11(b)(1)(ii)(B)(*4*)(*ii*), ''good cause'' for a State regulatory authority not to take ''appropriate action'' in

response to a TDN includes the State's initiation of ''an investigation into a possible violation'' and its resulting determination that it ''requires a reasonable, specified additional amount of time to determine whether a violation exists.'' We propose to amend this provision by specifying the time within which the State regulatory authority must complete its investigation. The proposed rule would provide that ''[t]he State regulatory authority may request up to 30 additional days to complete its investigation of the issue,'' and that, ''in complex situations, the State regulatory authority may request up to an additional 60 days to complete the investigation.''

We are proposing this limit so that a State regulatory authority will not postpone abatement measures while it is engaging in an open-ended investigation of whether a violation exists. In our experience, determining if a violation exists is not an exhaustive or indeterminate process. Under this proposed rule, that process would end in 30 days for most situations and 60 additional days when complex situations arise. The proposed rule would cap the maximum amount of time at 90 days from when we determine that the State regulatory authority has satisfied the criteria for good cause. In addition, when a State regulatory authority is requesting more time to address an identified issue, we would require the State regulatory authority to provide a reasoned justification for the time extension. Under the proposed rule, when we evaluate a State regulatory authority's request for additional time, we would have ''discretion to approve the requested time extension or establish the length of time, up to 90 days, that the State regulatory authority has to complete its investigation.'' This is intended to facilitate faster resolution of identified issues.

At proposed § 842.11(b)(1)(ii)(B)(*1*) and (b)(1)(ii)(B)(4)(*iii*), we propose similar revisions to reduce the burden on State regulatory authorities and OSMRE. In the first provision, (§ 842.11(b)(1)(ii)(B)(*1*)), we propose that ''[w]here appropriate, OSMRE may issue a single ten-day notice for substantively similar possible violations found on two or more permits involving a single permittee, including two or more substantively similar possible violations identified in one or more citizen complaints.'' In the second provision, (§ 842.11(b)(1)(ii)(B)(4)(*iii*)), we propose that good cause in response to a TDN includes OSMRE ''identif[ying] substantively similar possible violations on separate permits and consider[ing] the possible violations as a single State regulatory program issue . . . .'' By the phrase ''substantively similar possible violations,'' we mean issues or possible violations that are similar, or even identical, in that they are subject to the same statutory or regulatory provisions and have a common theme. This provision would allow similar possible violations to be addressed under a single corrective action plan. Issuing separate TDNs on substantively similar possible violations involving the same permittee is redundant and not an efficient use of our or State resources when the underlying issue can be more efficiently addressed simultaneously. Moreover, occurrence of substantively similar issues on separate permits could indicate a systemic issue in the implementation of a State regulatory authority's program, which would be more efficiently addressed as a State regulatory program issue and resolved through implementation of an action plan. It is logical to combine substantively similar issues and possible violations into a single plan of action and address all the issues as a group rather than through a series of individual actions.

On a related topic, the 2020 TDN Rule defined ''State regulatory program issue'' as an issue that could result in a State regulatory authority not effectively implementing, administering, enforcing, or maintaining its State regulatory program, including issues related to the requirement that a State regulatory authority must not approve a permit unless it finds that the application is accurate and complete and complies with all requirements of the Act and the State regulatory program. 30 CFR 733.5. This definition and associated provisions were intended to address issues with a State regulatory authority's implementation of its approved SMCRA program. In the TDN context, these issues often arise as ''permit defects'' that are identified in a citizen complaint. As explained elsewhere, we generally consider a permit defect to be a deficiency in a permit-related action taken by a State regulatory authority, such as issuance of a permit with a provision, or lack thereof, that is contrary to the approved State program. In colloquial terms, a permit defect results in a ''defective permit.''

In the preamble to the 2020 TDN Rule, we explained that a permit defect ''will typically be handled as a State regulatory program issue [rather than through issuance of a TDN], unless there is an actual or imminent violation of the approved State program.'' 85 FR 75176. Under this proposed rule, we would once again issue TDNs for permit defects, as possible violations, when we have the requisite reason to believe a violation exists. An alleged permit defect could be grouped with substantively similar possible violations and addressed as a single State regulatory program issue. Addressing the issue as a State regulatory program issue would constitute ''good cause'' for not taking appropriate action within ten days under the TDN process.

In this proposed rule, we considered proposing a definition of ''permit defect,'' but ultimately determined that it is unnecessary to do so. In general, SMCRA states that we issue a TDN when we have ''reason to believe that any person is in violation of any requirement of [SMCRA] or any permit condition required by [SMCRA].'' 30 U.S.C. 1271(a)(1). A permit defect constitutes a ''violation'' under the common understanding of that term. See Webster's New International Dictionary 2846 (2d ed. 1959). Although the State regulatory authority would not itself be mining in violation of SMCRA or the approved State program, it has issued a State permit or it would allow a permittee to mine in a manner that is not in compliance with the approved State program or SMCRA. In appropriate circumstances, we would issue a TDN even if mining has not started.

As mentioned, under the 2020 TDN Rule, we indicated that ''a so-called 'permit defect' will typically be handled as a State regulatory program issue [under 30 CFR part 733], unless there is an actual or imminent violation of the approved State program.'' 85 FR 75176. As such, the existing regulations provide that nothing in 30 CFR 773.12(d) ''prevents a State regulatory authority from taking direct enforcement action in accordance with its State regulatory program, or OSMRE from taking appropriate oversight enforcement action'' if ''a previously identified State regulatory program issue results in or may imminently result in a violation of the approved State program.'' We had initially proposed that we and the State regulatory authority could take appropriate enforcement actions when ''a previously identified State regulatory program issue results in or may imminently result in an *on-the-ground violation*.'' 85 FR 28916–917 (emphasis added). In the final rule, we substituted ''a violation of the approved State program'' for ''an on-the-ground violation.'' *See, e.g.,* 85 FR 75152, 75174. However, in the preamble to the final rule, we also explained that: ''In OSMRE's experience, a violation of the approved State program often manifests itself as an on-the-ground impact, but

may also manifest by other means, such as a failure to submit a required certification or monitoring report.'' 85 FR 75170; *see also* 85 FR 75174 (''OSMRE recognizes that these violations often manifest as an on-the-ground impact, but OSMRE also recognizes that these violations may manifest by other means.'').

This proposed rule would treat all violations the same, whether they are on-the-ground or otherwise. Thus, under 30 CFR 842.11, we would issue a TDN for any possible violation after forming the requisite reason to believe a violation exists. Proposed 30 CFR 733.12(d) would remove the reference to imminent violations, so that we need not wait for an imminent or actual on-the-ground violation before issuing a TDN. For example, we would be able to issue TDNs for, *e.g.,* failure to submit a required certification or monitoring report after forming reason to believe a violation exists. Our proposal to once again be able to issue TDNs for all violations, including those committed by a permittee and permit defects, would comport more closely with SMCRA's language in 30 U.S.C. 1271(a)(1) by treating all violations the same in the first instance and removing any concern that we have created two classes of violations: one that is subject to the TDN process and another that is not.

The term ''violation'' is defined at 30 CFR 701.5. That definition only applies to ''the permit application information or permit eligibility requirements of sections 507 and 510(c) of [SMCRA] and related regulations'' and thus is not applicable to this proposed rule, which primarily implements section 521 of SMCRA, 30 U.S.C. 1271. Nonetheless, that definition provides a useful comparison. The definition of ''violation'' at 701.5, in the SMCRA context, provides that a violation includes a noncompliance for which OSMRE or a State regulatory authority has provided a notice of violation; a cessation order; a final order, bill, or demand letter pertaining to a delinquent civil penalty; a bill or demand letter pertaining to delinquent reclamation fees; or a notice of bond forfeiture. In the TDN context, a violation could be any ''noncompliance'' for which a State regulatory authority would, or could, issue a notice of violation, cessation order, final order, bill, demand letter, or notice of bond forfeiture. The TDN process is designed to trigger the State regulatory authority to take appropriate action where there is a violation.

Moreover, State programs must be no less stringent than SMCRA and no less effective than the Federal regulations in meeting SMCRA's requirements. *See* 30 CFR 732.15(a) (a State program must be ''in accordance with'' SMCRA and ''consistent with'' the Federal implementing regulations); 30 CFR 730.5 (defining ''[c]onsistent with'' and ''in accordance with''). Under 30 CFR 773.7(a) and State counterparts to that provision, a regulatory authority is required to review permit applications and related information and issue a written decision either granting, requiring modification of, or denying the application. A permit applicant has ''the burden of establishing that [the] application is in compliance with all the requirements of the regulatory program.'' *Id.* at § 773.7(b). Similarly, under 30 CFR 773.15 and State program counterparts, a permit application must affirmatively demonstrate and the regulatory authority must make a written finding that the ''application is accurate and complete and *the applicant has complied with all requirements of [SMCRA]* and the regulatory program.'' 30 CFR 773.15(a) (emphasis added).

In sum, an approved permit that is inconsistent with the approved State program, and by extension the minimum Federal permit application standards at 30 CFR parts 777 through 785, is tantamount to the applicant's noncompliance with the requirements of SMCRA and the State regulatory program. Therefore, such noncompliances are violations that are subject to the TDN process. In some instances, an applicant may provide incomplete or inaccurate information in its permit application, which may lead the State regulatory authority to issue a defective permit. In other circumstances, an applicant may believe it has complied with all of the permitting requirements although it has not, and the State regulatory authority may issue a permit that is not in compliance with the approved program or SMCRA. In such a situation, it makes little sense to wait for the permittee to begin mining activities in accordance with the defective permit before we issue a TDN. Thus, under this proposed rule, we would issue a TDN to a State regulatory authority whenever we have reason to believe that there is a violation, including violations related to defective permits.

In simple terms, an approved permit should not contain any inconsistency with an approved State program, SMCRA, or the Federal regulations. Issuance of a TDN, in appropriate circumstances, would start the process of rectifying the situation. Under this proposed rule, substantively similar possible permit defects could indicate systemic issues that would be best addressed as a single State regulatory program issue under 30 CFR part 733, with a corresponding action plan, which could establish good cause in response to a TDN.

*B. Proposed 30 CFR 842.5—Definitions*

The proposed rule would create a new definitions section at 30 CFR 842.5 that would include definitions for the terms ''citizen complaint'' and ''ten-day notice.'' Both terms have been used for years and were referenced throughout the preamble of the 2020 TDN Rule but have not been defined in the Federal regulations. To remove any uncertainty regarding the meaning and usage of these terms, and to promote consistency and clarity, we propose to define these terms.

In the definition of ''citizen complaint,'' we propose to include the word ''possible'' to modify ''violation,'' rather than ''alleged'' or something similar, to indicate that not all citizen complaints will contain an affirmative allegation of a violation, but the citizen complaint may nonetheless, in substance, identify a possible violation. Including ''possible violation'' in the proposed definition of ''citizen complaint'' would recognize that a citizen may provide information that falls short of a formal allegation but may nonetheless give us reason to believe a violation exists. A more formal allegation would also qualify as a ''possible violation'' under the proposed definition of citizen complaint. Thus, in this preamble, unless context dictates otherwise, references to alleged violations are references to possible violations.

As we explained in a 1982 final rule, we referred to ''possible'' violations at 30 CFR 842.11(b)(1)(ii)(B) because we may form ''reason to believe'' that a violation exists even when there is not an affirmative allegation. 47 FR 35627 (Aug. 16, 1982). Citizens may not be familiar with the intricacies of SMCRA, the Federal regulations, or the relevant State regulatory program. Thus, we propose that a citizen complaint need only identify a possible violation, rather than identifying an alleged violation with particularity, although citizens are encouraged to provide as much legal and factual information as possible in order to assist us in determining whether we have reason to believe a violation exists.

As proposed, information in a ''citizen complaint'' would need to be conveyed to us ''in writing (or orally, followed up in writing).'' Written information could be contained in a

traditional letter, electronic mail, or other electronic means.

Next, as explained above, we are proposing to define the term ''ten-day notice.''

Defining ''ten-day notice'' would provide a uniform understanding of the term. In our experience, many State regulatory authorities believe a TDN is equivalent to an ''enforcement action'' or is otherwise a criticism of the State's enforcement of SMCRA. As a result, some State regulatory authorities have a negative view of our issuance of TDNs. As previously stated, when a TDN results from a citizen complaint (rather than a Federal oversight inspection), the TDN is merely a communication mechanism that we use to notify State regulatory authorities of possible violations of the relevant State regulatory program. A TDN is not an ''enforcement action'' against the State, even though the concept is contained in the enforcement section of SMCRA. 30 U.S.C. 1271. The current State regulatory authorities obtained primacy many years ago and have since been implementing SMCRA via their approved State regulatory programs. In SMCRA, Congress envisioned States as the primary enforcers of SMCRA, with Federal oversight. In this regard, SMCRA provides a cooperative federalism model, with TDNs part of that model. A TDN that results from a citizen complaint simply represents OSMRE's statutory obligation to inform the primary regulators of possible violations of SMCRA or an approved State program. After OSMRE notifies the State regulatory authority, the State might enforce SMCRA against a permittee or operator, or, in rare cases, if we disagree with the State, we might take enforcement action. The proposed definition of ''ten-day notice'' would capture the understanding that a TDN is a communication mechanism that we use to notify a State regulatory authority under §§ 842.11(b)(1)(ii)(B)(*1*) and 843.12(a)(2) whenever an ''OSMRE authorized representative has reason to believe that any permittee and/or operator is in violation'' of the specified provisions ''or when, on the basis of a Federal inspection, OSMRE determines that a person is in violation'' of the specified provisions ''and OSMRE has not issued a previous ten-day notice for the same violation.''

We propose to include in the definition of ''ten-day notice'' a reference to ''this chapter.'' That reference is included in existing § 842.11(b)(1)(i), and, in this context, a violation of the regulations implementing SMCRA is within the scope of the proposed definition of ''ten-day notice.''

Finally, the proposed definition specifies that TDNs are ''used in non-imminent harm situations'' because SMCRA, at 30 U.S.C. 1271(a)(1), specifies that ''the ten-day notification period shall be waived when the person informing the Secretary provides adequate proof that an imminent danger of significant environmental harm exists and that the State has failed to take appropriate action.'' Thus, when we receive adequate proof of an imminent harm and the State regulatory authority has failed to take appropriate action, we do not issue a TDN; rather, we proceed directly to a Federal inspection. 30 CFR 842.11(b)(1)(ii)(C).

*C. Proposed 30 CFR 842.11(b)(1)(i)*

We propose a change to 30 CFR 842.11(b)(1)(i) that would limit the sources of information that we review when determining whether we have reason to believe a violation exists. In the 2020 TDN Rule, we explicitly expanded the scope of information that we could use to determine whether we have reason to believe to include ''any information readily available to [OSMRE], from any source, including any information a citizen complainant or the relevant State regulatory authority submits . . . .'' 30 CFR 842.11(b)(1)(i); *see also id.* §§ 842.11(b)(2) and 842.12(a) (requests for Federal inspections). In the preamble to the 2020 TDN Rule, we explained that ''[a]ny readily available information includes information from any person, including the permittee, and is not limited to information that OSMRE receives from a citizen or State regulatory authority.'' 85 FR 75162. The change was intended to enable us to make a better-informed decision about whether we have reason to believe a violation exists.

Our experience implementing the 2020 TDN led us to reexamine it and SMCRA's statutory underpinnings. The reference to ''receipt of information from *any person*'' (emphasis added) in SMCRA section 1271(a) is best read as referring to ''any person'' who has information about the *existence of a possible violation,* rather than information from other sources that could *disprove the existence of a violation.* While in some cases it might be more efficient to consider information from the State regulatory authority up front, we believe that SMCRA envisions a back-and-forth process with the State regulatory authority during the ten-day period *after* issuance of a TDN. In other words, after we issue a TDN, the State regulatory authority can respond by referring to any information in its possession about the possible violation. We believe that this approach—limiting the sources of information that we review to determine whether we have reason to believe a violation exists—better aligns with SMCRA and would allow us to make a quicker determination and allow any violations to be corrected more quickly. Moreover, using information we have on hand or that is available to the public electronically in addition to information contained in a citizen complaint, will still allow us to make a ''reason to believe'' determination without excessive delay in issuing a TDN in appropriate circumstances. This change would make the process more efficient by reducing the amount of time between receiving information about a possible violation and issuing a TDN to the State under the appropriate circumstances, which would prompt action to correct violations as soon as possible.

To accomplish the changes discussed above, we are proposing to amend the text of § 842.11(b)(1)(i), in pertinent part, to state that the authorized representative determines whether there is ''reason to believe'' that there is a violation based on ''information *received* from a citizen complainant, *information available in OSMRE files at the time that OSMRE is notified of the possible violation* (other than information resulting from a previous Federal inspection), *and publicly available electronic information.*'' In the same provision of the existing regulations, we are proposing to remove the language that would allow us to determine whether we have reason to believe on the basis of ''any'' information ''readily available,'' ''from any source,'' ''including any information . . . the relevant State regulatory authority submits.'' In addition to the deletions noted above, we also propose to make minor, non-substantive changes for readability.

This change would also limit the sources of information we could consider when determining whether to conduct a Federal inspection in areas where OSMRE is the regulatory authority (*i.e.,* States and Tribes without primacy and Federal coal in areas without a State/Federal cooperative agreement). Under the proposed rule, we would consider information received from a citizen complainant, information available in our files at the time that we are notified of the possible violation, and any publicly available electronic information when determining whether we have reason to believe a violation exists in an area where OSMRE is the regulatory authority. Under existing 30 CFR 842.11(b)(1)(ii)(A), if we conclude

we have reason to believe a violation exists, we will conduct a Federal inspection.

*D. Proposed 30 CFR 842.11(b)(1)(ii)*

We propose several changes to the existing regulations at 30 CFR 842.11(b)(1)(ii). At 30 CFR 842.11(b)(1)(ii)(B)(*1*), we are proposing to add a new sentence at the end of the existing provision, which would read: ''Where appropriate, OSMRE may issue a single ten-day notice for substantively similar possible violations found on two or more permits involving a single permittee, including two or more substantively similar possible violations identified in one or more citizen complaints.'' This would enhance administrative efficiency by allowing us to combine substantively similar possible violations by the same permittee involving more than one permit into a single TDN when we determine that doing so is the best course of action to resolve the larger issue expeditiously.

We propose this change for two main reasons: first, to prevent multiple, parallel Federal actions on substantively similar possible violations or citizen complaints, and second, to more efficiently resolve the possible violations. Addressing a single underlying issue on several permits or citizen complaints simultaneously would lead to more expeditious resolution of the underlying issue. In our experience, each individual TDN requires OSMRE and the State regulatory authority to commit resources to resolve the matter. Parallel actions can be inefficient and may lead to actions that are not fully consistent. Combining substantively similar possible violations into a single TDN would remove these inefficiencies and potential inconsistencies, allowing for quicker resolution of the possible violations. In sum, this change would allow us and the State regulatory authority to more efficiently use our limited resources and personnel to resolve underlying issues more quickly.

In proposed § 842.11(b)(1)(ii)(B)(*3*), we would remove the second sentence in the existing provision, which allowed creation and implementation of a corrective action plan under 30 CFR part 733 to constitute ''appropriate action'' in response to a TDN. Pursuing an action plan for a State regulatory program issue under 30 CFR part 733 would no longer constitute ''appropriate action.'' However, as discussed in the following paragraphs, we are proposing that an action plan could constitute ''good cause'' in certain situations for not taking action in response to a TDN. We are also proposing a non-substantive change to the first sentence of the existing section: we propose to add ''regulatory'' between ''State'' and ''program'' so the reference would be to ''State regulatory program.''

Inclusion of an action plan as an appropriate action under 30 CFR 842.11(b)(1)(ii)(B)(*3*) is not fully consistent with SMCRA section 521(a)(1), 30 U.S.C. 1271(a)(1). The statute states that ''appropriate action'' is an action taken by the State regulatory authority within ten days to ''cause said violation to be corrected . . . .'' Developing an action plan, as envisioned in the 2020 rule, generally means that the State regulatory authority cannot cause the violation to be corrected within ten days of receiving a TDN; rather, OSMRE and the State can initiate the action plan process in that ten-day window. Correction of the violation would come later. Therefore, after further review, we find that the action plan process would be better incorporated into the ''good cause'' exception for not taking appropriate action under 30 U.S.C. 1271(a)(1). This proposed change would make the regulations adhere more closely to the statutory text.

As explained above, this proposed rule would provide for the issuance of TDNs for permit defects. Hence, those types of possible violations would no longer automatically be handled under 30 CFR part 733. Instead, we would issue TDNs for any possible violations, including permit defects, when we form the requisite reason to believe a violation exists, and entering into an action plan under part 733 would no longer constitute appropriate action in response to a TDN. When implemented appropriately, however, an action plan could lead to correction of underlying violations. Thus, in appropriate circumstances, an action plan could constitute ''good cause'' for not taking action within ten days of a TDN. In sum, we believe action plans are an important oversight tool to correct State regulatory program issues, but they do not demonstrate appropriate action in response to a TDN.

This proposed rule would also change the examples of State regulatory authority responses to a TDN that may constitute ''good cause'' under 30 CFR 842.11(b)(1)(ii)(B)(*4*). We propose to add a new paragraph (b)(1)(ii)(B)(*4*)(*iii*), which would result in redesignations of existing paragraphs (b)(1)(ii)(B)(*4*)(*iii*) through (*v*) as paragraphs (b)(1)(ii)(B)(*4*)(*iv*) through (*vi*).

Existing § 842.11(b)(1)(ii)(B)(*4*)(*ii*) recognizes that State regulatory authorities are not always able to determine whether a possible violation exists within ten days, especially in complex circumstances. Some circumstances require complex technical and/or legal analysis to determine if there is actually a violation. For example, issues relating to property rights and right of entry may require legal review and analysis. Similarly, possible violations related to groundwater well contamination may require more than ten days to collect water samples, receive certified laboratory analyses, and develop technical expert interpretation of data to determine the possible origin of any contamination. In appropriate circumstances, State regulatory authorities have long been able to show good cause by demonstrating that they require additional time to determine whether a violation exists.

Under the proposed rule, while State regulatory authorities could still request extensions of time to respond to a TDN, we are proposing to limit the length of extensions. In § 842.11(b)(1)(ii)(B)(*4*)(*ii*), we propose to remove ''as a result'' from the first sentence as superfluous and unnecessary. In the same sentence, we propose to remove ''reasonable, specified'' as a modifier for the ''additional amount of time'' that a State regulatory authority can request to respond to a TDN. This language would no longer be necessary because we are proposing specific extension limits. The next sentence would be new and would read: ''The State regulatory authority may request up to 30 additional days to complete its investigation of the issue; in complex situations, the State regulatory authority may request up to an additional 60 days to complete the investigation.'' This new provision would be consistent with our view that, when extenuating circumstances are involved, a State regulatory authority should generally be able determine if a violation exists within 30 days. The provision would also recognize the need for longer time frames in complex situations and, under this proposed rule, we would be able to approve up to an additional 60 days.

The next sentence of the proposed rule would provide: ''In all circumstances, an extension request must be supported by an explanation of the need for, and the measures being undertaken that justify, an extension, along with any relevant documentation.'' While this requirement is implied under the existing regulations, we are proposing to make the requirement explicit. The following sentence would amend the existing second sentence of the provision: ''The authorized

representative has discretion to approve the requested time extension or establish the length of time that the State regulatory authority has to complete its investigation.'' We are proposing to delete the introductory clause of the existing sentence that states: ''When analyzing the State regulatory authority's response for good cause, . . . .'' We are proposing this non-substantive change because the existing language is unnecessary. The remaining changes to this sentence would also be non-substantive. Under this provision, the authorized representative would still have discretion to establish the length of an extension, but, under the following sentence, which would be new, any extension would be capped at 90 days. The proposed provision would set a limit to ensure that all TDNs are addressed expeditiously. Thus, under this proposed revision, we could not grant a State regulatory authority an extension of more than 90 days total to determine if a violation exists. In our experience implementing SMCRA for more than 40 years, we believe a State regulatory authority would not need more than 90 days to determine if there is a violation of SMCRA, the Federal regulations, the relevant State regulatory program, or an approved permit. If a State regulatory authority does not respond by the end of an approved extension period, we will order an immediate Federal inspection and take any appropriate enforcement action. In the last sentence of the existing provision, for grammatical reasons, we are proposing to add a comma between ''response'' and ''including.''

Finally, as discussed above, we propose to add a new paragraph (b)(1)(ii)(B)(*4*)(*iii*), which would incorporate the action plan process as a new example of what could constitute good cause for not taking appropriate action within ten days in response to a TDN. As explained above, we propose this new provision to create efficiencies by treating substantively similar possible violations under the same State regulatory program issue, which would allow similar possible violations to be addressed under a single action plan. As stated, action plans serve an important role as an oversight tool to ensure correction of State regulatory program issues, and this provision would promote uniform and consistent resolution of similar issues.

*E. Proposed 30 CFR 842.11(b)(2)*

There are several proposed changes to the existing regulations at 30 CFR 842.11(b)(2) that would align the section with the changes we propose at § 842.11(b)(1)(i) regarding the sources of information we will consider when making a reason to believe determination.

As explained above, we do not think it is necessary to wait for information from the State regulatory authority when determining whether we have reason to believe a violation exists for TDN purposes. As in § 842.11(b)(1)(i), we propose to limit the information that we consider to information received from a citizen complainant, information available in OSMRE's files at the time that OSMRE is notified of the possible violation, and publicly available electronic information.

In addition, instead of stating that we have reason to believe a violation exists if the facts available to an authorized representative ''constitute simple and effective documentation of the alleged violation, condition, or practice,'' the proposed rule would state that we have reason to believe if the facts ''support the existence of a possible violation, condition, or practice.'' The existing language is confusing. For example, although the first sentence of the existing provision speaks to ''facts that a complainant alleges,'' the phrase ''simple and effective documentation of the alleged violation'' implies that a citizen complainant must provide some form of ''documentation'' rather than only a written statement. However, SMCRA at 30 U.S.C. 1271(a)(1) establishes that we can form ''reason to believe'' on the basis of any ''information,'' a lower threshold that need not depend on supporting documentation. By requiring information to ''support'' the existence of a possible violation, the proposed language would strike a balance between a citizen complainant providing minimal information about the existence of a possible violation and supplying enough information to support ''reason to believe'' a violation exists. It is in all parties' best interest for a citizen to provide as much information as possible, including any documentation that the citizen may have, to assist us in narrowing our focus and more readily identifying possible violations.

Moreover, we continue to believe that citizen complaints require us to engage in some review and analysis rather than simply accepting the facts in a complaint as true and passing the complaint to a State regulatory authority as a TDN. As such, we are also proposing that, in addition to information from a citizen complainant, we could consider ''information available in OSMRE files at the time that OSMRE is notified of the possible violation, and publicly available electronic information.'' Practically speaking, this provision would limit us to considering information that already exists at the time we receive a citizen complaint and make clear that we do not conduct investigations or inspections before we determine whether we have the requisite reason to believe a violation exists to support issuance of a TDN. This approach better aligns with SMCRA's language and legislative history. It attempts to balance the benefit of citizen assistance in implementing SMCRA with our obligation and expertise to determine if we have reason to believe a violation exists.

We are also proposing to add two new sentences to § 842.11(b)(2) specifying that: ''All citizen complaints will be considered as requests for a Federal inspection under § 842.12. If the information supplied by the complainant results in a Federal inspection, the complainant will be offered the opportunity to accompany OSMRE on the Federal inspection.'' This would remove the requirement for a citizen to specifically request a Federal inspection, thus resolving any confusion about the processes associated with citizen complaints versus requests for Federal inspections. A citizen seeking help with a possible SMCRA problem may not appreciate the difference under the 2020 TDN Rule between requesting a Federal inspection and alerting OSMRE to a possible SMCRA problem. We propose to eliminate any hurdles for citizens and simplify the process by specifying that any citizen complaint will be considered as a request for a Federal inspection. This proposed change would make it easier for citizens to engage in the process, as SMCRA envisioned, by not requiring them to use specific terms of art to request a Federal inspection. This clarification is also consistent with the TDN process, which could ultimately result in a Federal inspection regardless of whether the citizen specifically requested that inspection. Finally, under the proposed rule, if information supplied by a citizen complainant results in a Federal inspection, even if the complainant did not specifically request a Federal inspection, the citizen complainant would be offered the opportunity to accompany us on the Federal inspection.

*F. Proposed 30 CFR 842.12(a)*

The final proposed change in part 842 would be to existing 30 CFR 842.12(a). Some of the proposed changes would track our proposed revisions to § 842.11

regarding the information sources we can consider when determining whether we have reason to believe a violation exists. We also propose to add new requirements to this section. The revisions would eliminate several barriers for citizens to file and obtain resolution of their complaints.

The first proposed change would harmonize this section with the changes we propose to § 842.11(b)(1)(i) and (b)(2). Specifically, the first sentence of existing § 842.12(a) refers to OSMRE forming ''reason to believe'' a violation exists based upon information from a person requesting a Federal inspection, ''along with any other readily available information.'' As explained previously regarding the proposed changes to § 842.11(b)(1)(i), we are proposing to remove the language that we consider ''readily available information,'' including information from the State regulatory authority, when we determine whether we have reason to believe a violation exists. We propose a similar change to § 842.12(a) so that we could consider the requester's signed, written statement ''along with any other information the complainant chooses to provide.'' Similar to the proposed revisions to § 842.11(b)(1)(i) and (b)(2), we are also proposing to add a new second sentence in this section that would read: ''In making this determination, the authorized representative will consider information from a citizen complainant, information available in OSMRE files at the time that OSMRE receives the request for a Federal inspection, and publicly available electronic information.'' These proposed changes would better comport with SMCRA. Further, including similar language in the three instances where this concept is addressed (30 CFR 842.11(b)(1)(i), (b)(2), and 842.12(a)) would clarify the Federal regulations.

Next, we propose to delete the second sentence of the existing section. Under the existing regulation, when requesting a Federal inspection, citizens must ''set forth the fact that the person has notified the State regulatory authority, if any, in writing, of the existence of the possible violation, condition, or practice, and the basis for the person's assertion that the State regulatory authority has not taken action with respect to the possible violation.'' We propose to delete this sentence because we believe it is a burdensome requirement and poses a significant hurdle for citizens reporting a possible violation. While we continue to believe that the State regulatory authority is often in the best position to address citizen complaints expeditiously in the first instance, many citizens prefer not to or will not contact the State regulatory authority. In these situations, we do not believe that there should be a mandatory obligation for a citizen to contact the State regulatory authority before we will act on information about a possible violation as contained in a citizen complaint or request for a Federal inspection. SMCRA at 30 U.S.C. 1271(a) allows citizens to bring their concerns about possible SMCRA violations to OSMRE and provides for those complaints to result in issuance of TDNs when we form the requisite ''reason to believe'' a violation exists. Section 1271(a)(1) does not require a citizen to notify the State regulatory authority about a possible violation. In fact, that section provides that ''[w]henever, on the basis of any information available to [us], including receipt of information from any person, [we have] reason to believe that any person is in violation of any requirement of [SMCRA] or any permit condition required by [SMCRA], *[we] shall notify the State regulatory authority,* if one exists, in the State in which such violation exists.'' (Emphasis added.) Under this proposed rule, if the citizen does not notify the State regulatory authority, and we form the requisite reason to believe, we would notify the State regulatory authority through issuance of a TDN, consistent with SMCRA. Furthermore, this process would be consistent with State primacy because the State has the first opportunity to address the situation, and we will accept a State's response to a TDN unless it is arbitrary, capricious, or an abuse of discretion.

We are also proposing to remove the requirement in the existing second sentence of the section for a person requesting a Federal inspection to set forth ''the basis for the person's assertion that the State regulatory authority has not taken action with respect to the possible violation.'' That requirement is overly burdensome and discourages citizens from notifying us of potential SMCRA violations. Implicit in a citizen's submission of a complaint or a request for a Federal inspection is their understanding that there is an issue or violation that the State regulatory authority has not addressed. It is unduly onerous to require a citizen to cite the basis of their allegation with the specificity expected of a SMCRA expert. Likewise, citizens will likely not be in a position to readily ascertain why the relevant State officials have not taken any action regarding the possible violation.

The third and final sentence of the existing section, regarding provision of the person's contact information, would remain essentially the same, with one minor, non-substantive edit: inclusion of the word ''also'' to indicate that it is in addition to previously stated requirements.

We propose to add two new sentences to the end of this section. Similar to the change we propose at § 842.11(b)(2), we propose that ''[a]ll citizen complaints under § 842.11(b) will be considered as requests for a Federal inspection,'' even if a citizen does not specifically request a Federal inspection. There is no legal or pragmatic reason for differentiating between citizen requests for a Federal inspection and citizen complaints that do not specifically request a Federal inspection. In our view, any citizen complaint that, in substance, alleges a violation of SMCRA is tantamount to a request for a Federal inspection because, as stated above, the TDN process could ultimately result in a Federal inspection. Likewise, when a citizen complainant provides adequate proof of an imminent danger of significant environmental harm, and the State has failed to take appropriate action, we would bypass the TDN process and proceed directly to a Federal inspection. Under this proposed rule, because all citizen complaints would be considered as requests for a Federal inspection, the citizen complainant would be afforded additional rights that, under the existing rule, only extend to people who have requested a Federal inspection. Those additional rights include certain confidentiality rights contained in existing § 842.12(b) and the right to seek review of an OSMRE decision not to conduct a Federal inspection or issue an enforcement action as set forth in existing § 842.15.

Finally, we propose to add a new last sentence to the section: ''If the information supplied by the complainant results in a Federal inspection, the complainant will be offered the opportunity to accompany OSMRE on the Federal inspection.'' Similar language is already included at existing § 842.12(c), but we are proposing to also include the language in § 842.12(a) to emphasize this important right, derived from 30 U.S.C. 1271(a)(1).

*G. Overview of 30 CFR Part 733*

The 2020 TDN Rule does not require us to issue a TDN for a ''permit defect.'' This proposed rule would require the issuance of a TDN when we have reason to believe any violation exists, including one in the form of a permit defect. We propose to clarify that we will issue a TDN in these circumstances upon forming the requisite reason to believe a violation exists. In the preamble to the

2020 TDN Rule, we explained that, under 30 U.S.C. 1271(a)(1), ''any person'' who can be in violation of SMCRA or a State regulatory program ''does not include a State regulatory authority, unless it is acting as a permit holder.'' 85 FR 75176. We further stated that a permit defect ''will typically be handled as a State regulatory program issue [rather than through issuance of a TDN], unless there is an actual or imminent violation of the approved State program.'' *Id.* Upon reexamination, we believe that a TDN is appropriate in these circumstances not because the State regulatory authority is in violation of SMCRA or its approved State program, but because it has issued a permit that is not in compliance with the approved State program or that would allow a permittee to mine in a manner that is not authorized by the State regulatory program. We would issue a TDN for possible on-the-ground violations as well as other possible violations of the approved State program, such as noncompliance with the State analogues to the permit application requirements at 30 CFR part 778. In this regard, we would issue TDNs in the appropriate circumstances even if mining under the permit has not started. Our proposed treatment of permit defects would restore our historical practice that was in place before the 2020 TDN Rule.

In the majority of cases, implementing the proposed rule would not result in issuance of a Federal notice of violation to, or any other Federal enforcement action against, a permittee resulting from a State regulatory authority's misapplication of its State regulatory program. State regulatory program issues would be addressed, in the first instance, between us and the relevant State regulatory authority. Upon resolution of the State regulatory program issue, the State regulatory authority may revise an approved permit or take similar action, and we assume that sufficient time would be allotted for the permittee to come into compliance. We believe that this mechanism—resolution of a State regulatory program issue through successful completion of an action plan, coupled with, for example, a required permit revision—should minimize the effects of the process on permittees. However, under the proposed revisions to existing § 733.12(d), even when OSMRE and a State regulatory authority are pursuing an action plan, the State could, in appropriate circumstances, take ''direct enforcement action in accordance with its State regulatory program,'' and we could take ''additional appropriate oversight enforcement action.''

*H. Proposed Section 30 CFR 733.5—Definitions*

As mentioned previously, if, under proposed § 842.11(b)(1)(ii)(B)(*4*)(*iii*), we were to identify ''substantively similar possible violations on separate permits and consider the possible violations as a single State regulatory program issue'' to be addressed through 30 CFR 733.12, that could constitute ''good cause'' for not taking action in response to a TDN. In these situations, the relevant provisions of 30 CFR part 733 would be part of the TDN process. Our first proposed revisions for part 733 concern the definitions of ''action plan'' and ''State regulatory program issue'' at existing 30 CFR 733.5. We propose non-substantive, clarifying changes to the definition of ''action plan'' at 30 CFR 733.5 to enhance its readability. The existing definition provides that an action plan ''means a detailed schedule . . . .'' We propose to change this to indicate that an action plan ''means a detailed plan . . . .'' Both the existing definition and our proposed revised definition would require us to prepare an action plan that would lead to resolution of the State regulatory program issue.

We also propose to revise the definition of ''State regulatory program issue.'' Some of the revisions would be for readability, but we also propose substantive changes to the definition. In the first sentence, we propose to change the language indicating that a State regulatory program issue ''*could result in* a State regulatory authority not effectively implementing, administering, enforcing, or maintaining all or any portion of its State regulatory program'' to ''*may result from* a State regulatory authority's implementation, administration, enforcement, or maintenance of all or any portion of its State regulatory program that is not consistent with the basis for OSMRE's approval of the State program.'' This proposed change is designed to indicate that a ''State regulatory program issue'' could be a possible violation that emanates from a State regulatory authority's actions. We are proposing that a possible violation identified in a TDN could, in the appropriate circumstances, be addressed as a State regulatory program issue under 30 CFR 733.12.

We also propose non-substantive changes to the existing language following ''State regulatory program'' and a new last sentence that would read: ''State regulatory program issues will be considered as possible violations and will initially proceed, and may be resolved, under part 842 of this chapter.'' After review of SMCRA section 521(a)(1), 30 U.S.C. 1271(a)(1), its legislative history, and its intent, and based on our experience implementing the 2020 TDN rule, we determined that any ''noncompliance'' with SMCRA, the Federal implementing regulations, the applicable State regulatory program, or any condition of a permit or exploration approval is a violation under section 521(a)(1). In our experience, the majority of violations result from an operator's or permittee's erroneous implementation of an approved permit. Under this proposed rule, a permit defect would also be considered a possible violation subject to the TDN process and could, in appropriate circumstances, be grouped together with substantively similar possible violations and addressed as a State regulatory program issue under part 733. We propose to consider a ''permit defect''—*i.e.,* a deficiency in a permit-related action taken by a State regulatory authority—to be a possible violation that would start, and may be resolved, under the 30 CFR part 842 TDN process.

*I. Proposed 30 CFR 733.12(a)*

We propose minor, non-substantive revisions to existing 30 CFR 733.12(a). We propose to remove ''in order'' before ''to ensure'' as it is unnecessary. We also propose to change ''escalate into'' to ''become'' to be more concise. These proposed changes would not alter the substance of the existing provisions. In existing § 733.12(a)(1), we propose to add ''including a citizen complainant'' at the end of the sentence to emphasize that a citizen complainant can be a source of information that allows us to identify a State regulatory program issue. In existing § 733.12(a)(2), we proposed to add ''initiate procedures to'' before ''substitute Federal enforcement'' and also to add ''in accordance with § 733.13'' to the end of the sentence to indicate that there is a process for substituting Federal enforcement or withdrawing approval of a State regulatory program.

*J. Proposed 30 CFR 733.12(b)*

We are proposing to modify existing § 733.12(b), to, among other things, require development and approval of an action plan for all State regulatory program issues, along with a specific timeframe for development and approval of such a plan. The first sentence of the existing provision provides that OSMRE's ''Director or his or her delegate may employ any number of compliance strategies to ensure that the State regulatory authority corrects a

State regulatory program issue in a timely and effective manner.'' Under the second sentence of the existing provision, actions plans are only required to be developed and instituted ''if the Director or delegate does not expect that the State regulatory authority will resolve the State regulatory program issue within 180 days after identification or that it is likely to result in a violation of the approved State program . . . .''

The proposed rule would revise the first sentence of 733.12(b) to read: ''For each State regulatory program issue, the Director or their designee, in consultation with the State regulatory authority, *will develop and approve an action plan within 60 days* of identification of a State regulatory program issue.'' (Emphasis added.) Rather than using other strategies to bring the State regulatory authority into compliance, the revised provision would require immediate development of an action plan that prescribes actions and timeframes for correcting State regulatory program issues.

Additionally, we propose to add a new second sentence that would allow us and the relevant State regulatory authority to ''identify [within 10 business days] interim remedial measures that may abate the existing condition or issue.'' We propose to remove the existing second sentence, which includes the 180-day language, and replace it with 60 days for development and approval of an action plan and the 10-day interim remedial measure language. The proposed provisions would ensure that corrective action occurs quickly so that resources are not wasted, and no avoidable environmental harm occurs. These proposed changes would allow us to immediately begin working with a State regulatory authority to develop an action plan to resolve issues rather than waiting up to 180 days, as is provided in the existing rules.

It bears repeating that we propose to remove the requirement for an action plan when a State regulatory program issue ''is likely to result in a violation of the approved State program.'' Under this proposed rule, all State regulatory program issues would begin as possible violations under § 842.11. We also propose the non-substantive substitution of the word ''designee'' for the word ''delegate'' throughout this section. Finally, at the end of the section, we propose to add, ''The requirements of an action plan are as follows:'' to lead into the action plan requirements at 30 CFR 733.12(b)(1) through (4).

*K. Proposed 30 CFR 733.12(b)(1) Through (4)*

In the first sentence of existing 30 CFR 733.12(b)(1), we propose the non-substantive inclusion of the word ''identify'' before ''an effective mechanism for timely correction'' for clarity. We are also proposing to modify § 733.12(b)(1) by adding a new second sentence that would require the State regulatory authority to ''complete *all identified actions* contained within an action plan within 365 days from when OSMRE sends the action plan to the relevant State regulatory authority.'' (Emphasis added.) Action plans should be developed and written so that the actions will be achievable within the 365-day time frame. For example, a State regulatory program issue may require a State program amendment, but the State program amendment process normally exceeds 365 days from start to finish. In this instance, an identified action in the action plan could be submission of a State program amendment or, if State legislative approval is required, submission of a plan to accomplish the program amendment, recognizing that the State program amendment likely would not be finalized within 365 days. However, under proposed § 733.12(d), even when an action plan is in place, we and a State regulatory authority could still take appropriate enforcement actions, such as actions that may be required to abate an imminent harm situation. Further, at 30 CFR 733.12(b)(2), we propose to add ''upon approval of the action plan'' to the end of the existing section to clarify that an approved action plan will identify any remedial measures that a State regulatory authority must take immediately after the action plan is approved.

Existing § 733.12(b)(3) sets forth additional information that an action plan must include. In § 733.12(b)(3)(iii) and (iv), we propose the non-substantive change of replacing the word ''explicit'' with ''specific.'' Also, in existing § 733.12(b)(3)(iii), after the language ''complete resolution,'' we propose to insert ''of the violation,'' which would again indicate that State regulatory program issues would be considered as possible violations under this proposed rule. In existing § 733.12(b)(3)(v), we propose to insert ''detailed'' before ''schedule for completion'' to clarify that each action identified in an action plan and associated completion milestone must be set forth with sufficient detail so that that there is a clear understanding of what is required under the action plan.

Additionally, we propose non-substantive changes to existing 30 CFR 733.12(b)(3)(vi). The existing provision reads: ''A clear explanation that if the action plan, upon completion, does not result in correction of the State regulatory program issue, the provisions of § 733.13 may be triggered.'' We propose minor modifications to this language to read: ''A clear explanation that if, upon completion of the action plan, the State regulatory program issue is not corrected, the provision of § 733.13 may be initiated.'' This language would ensure that if a State regulatory authority does not address the issues identified in an action plan and otherwise fails to complete the action plan within the time designated, we can begin the process under 30 CFR 733.13 for substituting Federal enforcement for, or withdrawing approval of, the relevant State program.

Finally, we propose to add a new paragraph 30 CFR 733.12(b)(4), which would state: ''Once all items in paragraphs (b)(1) through (3) of this section are satisfactorily addressed, OSMRE will approve the action plan. If the State regulatory authority does not cooperate with OSMRE in developing the action plan, OSMRE will develop the action plan within the guidelines listed in paragraphs (b)(1) through (3) of this section and require the State regulatory authority to comply with the action plan.'' We propose to add this provision to ensure that action plans to address State regulatory program issues are always developed, and that we can create and enforce an action plan with or without the State regulatory authority's input to ensure that violations are timely addressed.

*L. Proposed 30 CFR 733.12(c)*

We propose non-substantive and grammatical changes to existing § 733.12(c) for clarity. Among other things, we propose to substitute ''Each'' for ''These'' and ''relevant'' for the second occurrence of ''applicable.''

*M. Proposed 30 CFR 733.12(d)*

In § 733.12(d), we propose to insert ''additional'' before ''appropriate oversight enforcement action'' to indicate that any oversight enforcement action that OSMRE takes is in addition to an initial TDN and corresponding identification of a State regulatory program issue. We propose to end the sentence there and delete the last clause of the existing language, which references appropriate oversight enforcement actions ''in the event that a previously identified State regulatory program issue results in or may imminently result in a violation of the

approved State program.'' We propose this change to comport with the fact that, under this proposed rule, all ''permit defects'' or ''State regulatory program issues'' would be considered possible violations in the first instance, even when they are not on the ground or when mining has not yet started. As explained above, this proposed rule would require us to issue a TDN when we have reason to believe a violation exists, even in the form of a permit defect; thus, the language we propose to delete would no longer be necessary. The revised provision would read: ''Nothing in this section prevents a State regulatory authority from taking direct enforcement action in accordance with its State regulatory program or OSMRE from taking additional appropriate oversight enforcement action.''

## IV. Procedural Matters and Required Determinations

*Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights*

This proposed rule would not result in a taking of private property or otherwise have regulatory takings implications under Executive Order 12630. The proposed rule would primarily concern Federal oversight of approved State programs and enforcement when permittees and operators are not complying with the law. Therefore, the proposed rule would not result in private property being taken for public use without just compensation. A takings implication assessment is not required.

*Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that that this proposed rule is not significant because it would not have a $100 million annual impact on the economy, raise novel legal issues, or create significant impacts.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that agencies must base regulations on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

*Executive Order 12988—Civil Justice Reform*

This proposed rule complies with the requirements of Executive Order 12988. Among other things, this proposed rule:

(a) Satisfies the criteria of section 3(a) requiring that all regulations be reviewed to eliminate drafting errors and ambiguity; be written to minimize litigation; and provide clear legal standards for affected conduct.

(b) Satisfies the criteria of section 3(b) requiring that all regulations be written in clear language and contain clear legal standards.

*Executive Order 13132—Federalism*

Under the criteria in section 1 of Executive Order 13132, this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. While revising the existing regulations governing the TDN process would have a direct effect on the States and the Federal government's relationship with the States, this effect would not be significant, as it would neither impose substantial unreimbursed compliance costs on States nor preempt State law. Furthermore, this proposed rule would not have a significant effect on the distribution of power and responsibilities among the various levels of government. While we may issue more TDNs to State regulatory authorities under this proposed rule, the proposed rule would not significantly increase burdens on State regulatory authorities to address and resolve underlying issues. As such, a federalism summary impact statement is not required.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it would not have substantial direct effects on federally recognized Tribes and that consultation under the Department's tribal consultation policy is not required. Currently, no Tribes have achieved primacy. Thus, this proposed rulemaking would not impact the regulation of surface coal mining on Tribal lands. However, we have coordinated with Tribes to inform them of the proposed rulemaking. We coordinated with the Navajo Nation, Crow Tribe of Montana, Hopi Tribe of Arizona, Choctaw Nation of Oklahoma, Muscogee (Creek) Nation, and Cherokee Nation and have received no comments or concerns. None of the Tribes have requested consultation.

*Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rule that is: (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy; or is designated as a significant energy action by the Office of Management and Budget. Because this proposed rule is not deemed significant under Executive Order 12866, and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks*

This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not concern environmental health or safety risks disproportionately affecting children.

*National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), 15 U.S.C. 3701 *et seq.,* directs Federal agencies to use voluntary consensus standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. OMB Circular A–119 at p. 14. This proposed rule is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would

be inconsistent with SMCRA and is not applicable to this proposed rulemaking.

*National Environmental Policy Act*

We have determined that the proposed changes to the existing regulations are categorically excluded from environmental review under the National Environmental Policy Act (NEPA). 42 U.S.C. 4321 *et seq.* Specifically, we have determined that the proposed rule is administrative or procedural in nature in accordance with the Department of the Interior's NEPA regulations at 43 CFR 46.210(i). The regulation provides a categorical exclusion for ''[p]olicies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis . . . .'' The proposed rule would not change the substantive regulations—whether State or Federal—with which SMCRA permittees must already comply. Rather, it would primarily change the procedure we use to notify a State regulatory authority when we have reason to believe that there is a violation of SMCRA, the Federal regulations, the relevant State regulatory program, or a permit condition. We have also determined that the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

*Paperwork Reduction Act*

This action does not impose any new information collection burden under the Paperwork Reduction Act. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 1029–0118. This action does not impose an information collection burden because OSMRE is not making any changes to the information collection requirements.

*Regulatory Flexibility Act*

We evaluated the impact of the proposed regulatory changes and have determined the rule changes would not induce, cause, or create any unnecessary burdens on the public, State regulatory authorities, or small businesses; would not discourage innovation or entrepreneurial enterprises; and would be consistent with SMCRA, from which the proposed regulations draw their implementing authority. For these reasons, we certify that this proposed rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Regulatory Flexibility Act generally requires Federal agencies to prepare a regulatory flexibility analysis for rules that are subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. *See* 5 U.S.C. 601–612. Congress enacted the Regulatory Flexibility Act to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit entities.

*Congressional Review Act*

This proposed rule is not a major rule under the Congressional Review Act. 5 U.S.C. 804(2). Specifically, the proposed rule: (a) would not have an annual effect on the economy of $100 million or more; (b) would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) would not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

*Unfunded Mandates Reform Act*

This proposed rule would not impose an unfunded mandate on State, local, or Tribal governments, or the private sector, of $100 million or more in any given year. The proposed rule would not have a significant or unique effect on State, local, or Tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

**List of Subjects**

*30 CFR Part 733*

Intergovernmental relations, Surface mining, Underground mining.

*30 CFR Part 842*

Law enforcement, Surface mining, Underground mining.

**Delegation of Signing Authority**

The action taken herein is pursuant to an existing delegation of authority.

**Laura Daniel-Davis,**

*Principal Deputy Assistant Secretary, Land and Minerals Management.*

For the reasons set out in the preamble, the Department of the Interior, acting through OSMRE, proposes to amend 30 CFR parts 733 and 842 as follows:

## PART 733—EARLY IDENTIFICATION OF CORRECTIVE ACTION, MAINTENANCE OF STATE PROGRAMS, PROCEDURES FOR SUBSTITUTING FEDERAL ENFORCEMENT OF STATE PROGRAMS, AND WITHDRAWING APPROVAL OF STATE PROGRAMS

■ 1. The authority citation for part 733 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Revise § 733.5 to read as follows:

### § 733.5 Definitions.

As used in this part, the following terms have the specified meanings:

*Action plan* means a detailed plan that the Office of Surface Mining Reclamation and Enforcement (OSMRE) prepares to resolve a State regulatory program issue identified during OSMRE's oversight of a State regulatory program and that includes a schedule that contains specific requirements that a State regulatory authority must achieve in a timely manner.

*State regulatory program issue* means an issue OSMRE identifies during oversight of a State or Tribal regulatory program that may result from a State regulatory authority's implementation, administration, enforcement, or maintenance of all or any portion of its State regulatory program that is not consistent with the basis for OSMRE's approval of the State program. This may include, but is not limited to, instances when a State regulatory authority has not adopted and implemented program amendments that are required under § 732.17 and subchapter T of this title, and issues related to the requirement in section 510(b) of the Act that a State regulatory authority must not approve a permit or revision to a permit, unless the State regulatory authority finds that the application is accurate and complete and that the application is in compliance with all requirements of the Act and the State regulatory program. State regulatory program issues will be considered as possible violations and will initially proceed, and may be resolved, under part 842 of this chapter.

■ 3. Revise § 733.12 to read as follows:

**§ 733.12 Early identification and corrective action to address State regulatory program issues.**

(a) When the Director identifies a State regulatory program issue, he or she should take action to make sure the identified State regulatory program issue is corrected as soon as possible to ensure that it does not become an issue that would give the Director reason to believe that the State regulatory authority is not effectively implementing, administering, enforcing, or maintaining all or a portion of its State regulatory program.

(1) The Director may become aware of State regulatory program issues through oversight of State regulatory programs or as a result of information received from any source, including a citizen complainant.

(2) If the Director concludes that the State regulatory authority is not effectively implementing, administering, enforcing, or maintaining all or a portion of its State regulatory program, the Director may initiate procedures to substitute Federal enforcement of a State regulatory program or withdraw approval of a State regulatory program, in accordance with § 733.13.

(b) For each State regulatory program issue, the Director or their designee, in consultation with the State regulatory authority, will develop and approve an action plan within 60 days of identification of a State regulatory program issue. Within 10 business days of OSMRE's determination that a State regulatory program issue exists, OSMRE and the State regulatory authority may identify interim remedial measures that may abate the existing condition or issue. The requirements of an action plan are as follows:

(1) An action plan will be written with specificity to identify the State regulatory program issue and identify an effective mechanism for timely correction. The State regulatory authority must complete all identified actions contained within an action plan within 365 days from when OSMRE sends the action plan to the relevant State regulatory authority.

(2) An action plan will identify any necessary technical assistance or other assistance that the Director or his or her designee can provide and remedial measures that a State regulatory authority must take immediately upon approval of the action plan.

(3) An OSMRE approved action plan must also include:

(i) An action plan identification number;

(ii) A concise title and description of the State regulatory program issue;

(iii) Specific criteria for establishing when complete resolution of the violation will be achieved;

(iv) Specific and orderly sequence of actions the State regulatory authority must take to remedy the problem;

(v) A detailed schedule for completion of each action in the sequence; and

(vi) A clear explanation that if, upon completion of the action plan, the State regulatory program issue is not corrected, the provisions of § 733.13 may be initiated.

(4) Once all items in paragraphs (b)(1) through (3) of this section are satisfactorily addressed, OSMRE will approve the action plan. If the State regulatory authority does not cooperate with OSMRE in developing the action plan, OSMRE will develop the action plan within the guidelines listed in paragraphs (b)(1) through (3) of this section and require the State regulatory authority to comply with the action plan.

(c) All identified State regulatory program issues, and any associated action plans, must be tracked and reported in the applicable State regulatory authority's Annual Evaluation Report. Each State regulatory authority Annual Evaluation Report will be accessible through OSMRE's website and at the relevant OSMRE office. Within each report, benchmarks identifying progress related to resolution of the State regulatory program issue must be documented.

(d) Nothing in this section prevents a State regulatory authority from taking direct enforcement action in accordance with its State regulatory program or OSMRE from taking additional appropriate oversight enforcement action.

## PART 842—FEDERAL INSPECTIONS AND MONITORING

■ 4. The authority citation for part 842 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 5. Add § 842.5 to read as follows:

**§ 842.5 Definitions.**

As used in this part, the following terms have the specified meanings:

*Citizen complaint* means any information received from any person notifying the Office of Surface Mining Reclamation and Enforcement (OSMRE) of a possible violation of the Act, this chapter, the applicable State regulatory program, or any condition of a permit or an exploration approval. This information must be provided in writing (or orally, followed up in writing).

*Ten-day notice* means a communication mechanism that OSMRE uses, in non-imminent harm situations, to notify a State regulatory authority under §§ 842.11(b)(l)(ii)(B)(*1*) and 843.12(a)(2) when an OSMRE authorized representative has reason to believe that any permittee and/or operator is in violation of the Act, this chapter, the applicable State regulatory program, or any condition of a permit or an exploration approval or when, on the basis of a Federal inspection, OSMRE determines that a person is in violation of the Act, this chapter, the applicable State regulatory program, or any condition of a permit or an exploration approval and OSMRE has not issued a previous ten-day notice for the same violation.

■ 6. Amend § 842.11 by:

■ a. Revising paragraphs (b)(1)(i), (b)(1)(ii)(B)*(1)* and *(3),* and (b)(1)(ii)(B)(*4*)(*ii*);

■ b. Redesignating paragraphs (b)(1)(ii)(B)(*4*)(*iii*) through (*v*) as paragraphs (b)(1)(ii)(B)(*4*)(*iv*) through (*vi*) respectively;

■ c. Adding a new paragraph (b)(1)(ii)(B)(*4*)(*iii*); and

■ d. Revising paragraph (b)(2).

The revisions and additions read as follows:

**§ 842.11 Federal inspections and monitoring.**

* * * * *

(b)(1) * * *

(i) When the authorized representative has reason to believe on the basis of information received from a citizen complainant, information available in OSMRE files at the time that OSMRE is notified of the possible violation (other than information resulting from a previous Federal inspection), and publicly available electronic information, that there exists a violation of the Act, this chapter, the applicable State regulatory program, or any condition of a permit or an exploration approval, or that there exists any condition, practice, or violation that creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air, or water resources; and

(ii) * * *

(B)(*1*) The authorized representative has notified the State regulatory authority of the possible violation and more than ten days have passed since notification, and the State regulatory authority has not taken appropriate action to cause the violation to be

corrected or to show good cause for not doing so, or the State regulatory authority has not provided the authorized representative with a response. After receiving a response from the State regulatory authority, but before a Federal inspection, the authorized representative will determine in writing whether the standards for appropriate action or good cause have been satisfied. A State regulatory authority's failure to respond within ten days does not prevent the authorized representative from making a determination, and will constitute a waiver of the State regulatory authority's right to request review under paragraph (b)(1)(iii) of this section. Where appropriate, OSMRE may issue a single ten-day notice for substantively similar possible violations found on two or more permits involving a single permittee, including two or more substantively similar possible violations identified in one or more citizen complaints.

* * * * *

(*3*) Appropriate action includes enforcement or other action authorized under the approved State regulatory program to cause the violation to be corrected.

(*4*) * * *

(*ii*) The State regulatory authority has initiated an investigation into a possible violation and has determined that it requires an additional amount of time to determine whether a violation exists. The State regulatory authority may request up to 30 additional days to complete its investigation of the issue; in complex situations, the State regulatory authority may request up to an additional 60 days to complete the investigation. In all circumstances, an extension request must be supported by an explanation of the need for, and the measures being undertaken that justify, an extension, along with any relevant documentation. The authorized representative has discretion to approve the requested time extension or establish the length of time that the State regulatory authority has to complete its investigation. The sum total of additional time for any one possible violation must not exceed 90 days. At the conclusion of the specified additional time, the authorized representative will re-evaluate the State regulatory authority's response, including any additional information provided;

(*iii*) OSMRE has identified substantively similar possible violations on separate permits and considers the possible violations as a single State regulatory program issue addressed through § 733.12. Previously identified possible violations that were the subject of ten-day notices or subsequent, substantively similar violations may be included in the same State regulatory program issue;

* * * * *

(b)(2) An authorized representative will have reason to believe that a violation, condition, or practice referred to in paragraph (b)(1)(i) of this section exists if the facts that a complainant alleges, or facts that are otherwise known to the authorized representative, support the existence of a possible violation, condition, or practice. In making this determination, the authorized representative will consider information from a citizen complainant, information available in OSMRE files at the time that OSMRE is notified of the possible violation, and publicly available electronic information. All citizen complaints will be considered as requests for a Federal inspection under § 842.12. If the information supplied by the complainant results in a Federal inspection, the complainant will be offered the opportunity to accompany OSMRE on the Federal inspection.

* * * * *

■ 7. Revise § 842.12(a) to read as follows:

**§ 842.12 Requests for Federal inspections.**

(a) Any person may request a Federal inspection under § 842.11(b) by providing to an authorized representative a signed, written statement (or an oral report followed by a signed, written statement) setting forth information that, along with any other information the complainant chooses to provide, may give the authorized representative reason to believe that a violation, condition, or practice referred to in § 842.11(b)(1)(i) exists. In making this determination, the authorized representative will consider information from a citizen complainant, information available in OSMRE files at the time that OSMRE receives the request for a Federal inspection, and publicly available electronic information. The statement must also set forth a phone number, address, and, if available, an email address where the person can be contacted. All citizen complaints under § 842.11(b) will be considered as requests for a Federal inspection. If the information supplied by the complainant results in a Federal inspection, the complainant will be offered the opportunity to accompany OSMRE on the Federal inspection.

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### 46 CFR Part 298

**[Docket Number MARAD–2023–0086]**

**RIN 2133–AB98**

## Amendment to the Federal Ship Financing Program Regulations; Financial Requirements

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** This document serves to inform interested parties and the public that the Maritime Administration (MARAD) proposes to amend its regulations implementing the Federal Ship Financing Program's (Title XI Program) financial requirements. This action is necessary to implement statutory changes and update the existing financial requirements imposed on Title XI Program obligors to align with more up-to-date vessel financing and federal credit best practices. MARAD solicits written comments on this rulemaking.

**DATES:** Written comments are requested on or before June 26, 2023.

**ADDRESSES:** Your comments should refer to DOT Docket Number MARAD–2023–0086 and may be submitted by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Search ''MARAD–2023–0086'' and follow the instructions for submitting comments.
- *Email: Rulemakings.MARAD@dot.gov.* Include ''MARAD–2023–0086'' in the subject line of the message.
- *Mail/Hand-Delivery/Courier:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. If you would like to know that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m. E.T., Monday through Friday, except on Federal holidays.

You may view the public comments submitted on this rulemaking at *www.regulations.gov.* When searching for comments, please use the Docket ID: MARAD–2023–0086. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*