PART 102—RULES AND REGULATIONS, SERIES 8

■ 1. The authority citation for part 102 continues to read as follows:

Authority: 29 U.S.C. 151, 156. Section 102.117 also issued under 5 U.S.C. 552(a)(4)(A), and § 102.119 also issued under 5 U.S.C. 552a(j) and (k). Sections 102.143 through 102.155 also issued under 5 U.S.C. 504(c)(1).

■ 2. Amend § 102.119 by:

■ a. Removing and reserving paragraphs (k) and (l);

■ b. Revising paragraph (m); and

■ c. Revising the second sentences of paragraphs (n)(4) and (6).

The revisions read as follows:

§ 102.119 Privacy Act Regulations: Notification as to whether a system of records contains records pertaining to requesting individuals; requests for access to records, amendment of such records, or accounting of disclosures; time limits for response; appeal from denial of requests; fees for document duplication; files and records exempted from certain Privacy Act requirements.

* * * * *

(m) Pursuant to 5 U.S.C. 552a(k)(2), investigatory material compiled for law enforcement purposes that is contained in the Next Generation Case Management System (NxGen) (NLRB–33), are exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(n) * * *

(4) * * * Because certain information from this system of records is exempt from subsection (d) of the Act concerning access to records, and consequently, from subsection (f) of the Act concerning Agency rules governing access, these requirements are inapplicable to that information.

* * * * *

(6) * * * Because certain information from this system is exempt from subsection (d) of the Act, the requirements of subsection (f) of the Act are inapplicable to that information.

* * * * *

Dated: April 2, 2024, Washington, DC.

By direction of the Board.

Roxanne L. Rothschild,

Executive Secretary, National Labor Relations Board.

[FR Doc. 2024–07323 Filed 4–8–24; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 733 and 842

[Docket ID: OSM–2022–0009; S1D1SSS08011000SX064A000245S180110; S2D2S SS08011000SX064A0024XS501520]

RIN 1029–AC81

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

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

ACTION: Final rule.

SUMMARY: The Department of the Interior is amending its regulations related to the Office of Surface Mining Reclamation and Enforcement's (OSMRE's) notifications to a State regulatory authority of a possible violation of any requirement of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The final rule also amends the Federal regulations regarding corrective actions for State regulatory program issues. Together, the updates to these two areas of the Federal regulations amend the overall ''ten-day notice'' (TDN) process and OSMRE's oversight process.

DATES: This rule is effective May 9, 2024.

FOR FURTHER INFORMATION CONTACT: William R. Winters, (865) 545–4103, ext. 170, *bwinters@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

In addition to the explanations in this preamble, OSMRE directs the reader to the preamble for the proposed rule, 88 FR 24944 (April 25, 2023), because the Department is adopting the regulatory provisions as proposed with one exception.

A. Primary Provisions of SMCRA Supporting the Final Rule

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]'').

As explained in the preamble to the proposed rule, two provisions of SMCRA primarily govern OSMRE's

oversight and enforcement of State regulatory programs: sections 521(a) and (b), 30 U.S.C. 1271(a) and (b). Section 521(a)(1) requires OSMRE to notify a State regulatory authority (SRA) when OSMRE has ''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. That OSMRE notification of a possible violation is known as a ten-day notice (TDN) because the SRA must respond to OSMRE within ten days by either taking ''appropriate action'' to cause the possible violation to be corrected or showing ''good cause'' for not taking action. In general, if the SRA fails to respond within ten days or the response is arbitrary, capricious, or an abuse of discretion, OSMRE must immediately order a Federal inspection of the surface coal mining operation where the alleged violation is occurring and take appropriate enforcement action.

Section 521(b) of SMCRA describes the Secretary's oversight and enforcement obligations when an SRA fails 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 and are administered by OSMRE. The 2020 TDN Rule revised provisions in 30 CFR parts 733 and 842 to address State regulatory program issues before they rose to the level that would require OSMRE to take over administration of all or part of an approved State program under section 521(b). *See* 85 FR 75150 (Nov. 24, 2020). This final rule retains the basic structure of the 2020 TDN Rule but amends 30 CFR 733.5 and 733.12 to comply more fully with SMCRA's statutory requirements.

B. Key Regulatory Provisions of the Final Rule and Their Purposes

i. Information Used for ''Reason To Believe'' Determinations

In the 2020 TDN Rule, OSMRE modified the regulations at 30 CFR 842.11(b)(1)(i) so that when OSMRE received a citizen complaint, OSMRE could consider ''any information readily available [ ], from any source, including any information a citizen complainant or the relevant State regulatory authority submits'' when determining whether OSMRE had reason to believe a violation existed. Existing §§ 842.11(b)(2) (TDN process) and 842.12(a) (requests for Federal inspections) contain similar ''information readily available'' and ''readily available information'' language. Providing for consideration of information from the SRA was an attempt to allow OSMRE to consider the latest, most accurate information when determining if it had reason to believe a violation existed.

Since publishing the 2020 TDN Rule, OSMRE has observed instances in which requesting and considering information from an SRA resulted in delay because the process extended the time periods for OSMRE to receive the information from the SRA. OSMRE generally interpreted the 2020 TDN Rule to require the consideration of all readily available information, including information that could be obtained from an SRA, when determining whether OSMRE has reason to believe a violation exists. In some instances, it took up to 30 days for the SRA to send OSMRE information that OSMRE could consider in determining if it had reason to believe a violation existed. This extended period is not consistent with the text or spirit of the statutory language. SMCRA's ''reason to believe'' standard does not require that OSMRE determine whether a violation actually exists; rather it only requires that OSMRE determine that a possible violation could exist.

To that end, this final rule limits the sources of information that OSMRE will need to consider in determining whether it has reason to believe a possible violation exists. In this final rule, after careful review of the statutory language, OSMRE's experience implementing the 2020 TDN Rule, and the public comments received on the proposed rule, OSMRE has removed the direction to consider ''readily available information'' and has, instead, in the final rule, as in the proposed rule, limited the scope of information it will consider before determining whether it has reason to believe ''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.'' § 842.11(b)(1)(i). OSMRE also made similar changes to final §§ 842.11(b)(2) and 842.12(a). With these sources of information, OSMRE believes it meets the text, intent, and spirit of SMCRA's ''reason to believe'' standard while also allowing OSMRE to consider enough information in a timely manner to firmly establish whether OSMRE has reason to believe a violation exists. Notably, this is not simply a reversion to the pre-2020 TDN regulations; this final rule also provides for OSMRE's consideration of ''publicly available electronic information,'' which often fills in any gaps in a citizen complaint, but with information that can be obtained in a more timely manner than waiting for a response from an SRA. Importantly, SMCRA's legislative history indicates that Congress ''anticipated that 'reasonable belief' could be established by a snapshot of an operation in violation or other simple and effective documentation of a violation.'' H. Rept. No. 95–218, at 129 (April 22, 1977). This illustrates that in § 521(a)(1) of SMCRA, Congress intended that OSMRE could form ''reason to believe'' well short of proving an actual violation before issuing a TDN to an SRA. Thus, the simpler test for the ''reason to believe'' standard in this final rule is fully consistent with SMCRA and supported by its legislative history. In its response to a TDN, an SRA can include information that attempts to definitively disprove the existence of a violation; this approach is consistent with SMCRA for the stage at which OSMRE is determining whether a State has taken appropriate action or demonstrated good cause for not doing so in response to a TDN.

ii. Types of Possible Violations

This final rule revises the 2020 TDN Rule with respect to what is considered a ''violation'' for TDN purposes. As in the proposed rule, the final rule treats all violations the same, regardless of their genesis (*i.e.,* whether they result from an operator's or permittee's failure to conduct surface coal mining operations consistently with the approved State program, or whether they result from an SRA's issuance of a permit that allows mining that would be inconsistent with the approved State program). As such, under 30 CFR 842.11, OSMRE will issue a TDN for any possible violation after forming reason to believe a violation exists.

OSMRE considered language in existing 30 CFR 733.12(d) that allowed OSMRE to issue a TDN for a previously identified State regulatory program issue that results in or may imminently result in a violation of the approved State program. In this final rule, however, as in the proposed rule, OSMRE modifies § 733.12(d) such that OSMRE will not wait for evidence of an imminent or actual on the-ground violation before issuing a TDN. It makes little sense to wait for mining to occur under a defective permit or a violation to occur on-the-ground before issuing a TDN for an inconsistency with the approved permit, approved State program, or SMCRA. It will no longer be the case that a possible violation could bypass 30 CFR part 842 and proceed

initially as a State regulatory program issue under 30 CFR part 733. Instead, under this final rule, all possible violations, excluding imminent harm situations, will initially be considered under part 842.

In the preamble to the proposed rule, OSMRE used the example of issuing a TDN for failure to submit a required certification or monitoring report. This type of violation is not ''on-the-ground,'' but OSMRE may nonetheless issue a TDN in such instances. As first described in the preamble to the proposed rule and now reflected in the final rule, OSMRE will issue TDNs for all violations, including those committed by a permittee or those that result from an SRA issuing a defective permit (*i.e.,* 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 program). As stated in the preamble to the proposed rule, the term ''permit defect'' is not in the statute or regulations, and it has never been officially defined. OSMRE has used the phrase in internal guidance documents through the years and considers a permit defect to be a deficiency in a permit-related action taken by an SRA, such as when an SRA has issued a permit with a provision that is contrary to the approved State program or that, as explained above, would allow mining that is not authorized by the State program. After careful review and consideration of the public comments received on the proposed rule, OSMRE concludes that this change to apply the TDN process to all violations, including permit defects, more closely adheres to SMCRA's language in 30 U.S.C. 1271(a)(1) by treating all violations the same and preventing the perception that there are two classes of violations: one that is subject to the TDN process and one that is not. Instead, all possible violations, except those that create an imminent harm, will start under 30 CFR part 842 whenever OSMRE has reason to believe that a violation exists. Under this final rule, upon forming reason to believe that a violation exists, OSMRE will generally issue a TDN for all possible violations, including permit defects.

iii. State Regulatory Authorities as ''Any Person'' for TDN Purposes

The issue of who can be in violation of SMCRA or a State program for TDN purposes is related to the issue of permit defects. As OSMRE noted in the preamble to the proposed rule (88 FR at 24949): ''In the preamble to the 2020 TDN Rule, [OSMRE] 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.' '' After OSMRE's review of SMCRA, Congressional intent, and implementation experience through the years on this issue, OSMRE concludes that OSMRE must issue a TDN when it has reason to believe that any person, including an SRA, violates the approved State program, approved permit, or SMCRA. OSMRE will accept a State's response to the TDN unless OSMRE concludes that the action or response is arbitrary, capricious, or an abuse of discretion. 30 CFR 842.11(b)(1)(ii)(B)(*2*).

iv. Definitions

As in the proposed rule, the final rule adopts, for the first time, regulatory definitions of ''ten-day notice'' and ''citizen complaint.'' OSMRE decided to define ''ten-day notice'' because these notices are fundamental to the overall ten-day notice process that is addressed in this final rule. OSMRE has frequently used the term ''ten-day notice'' in its implementing regulations and directives but has never defined the term until now. The concept derives from SMCRA section 521(a)(1), which provides that, after OSMRE notifies an SRA of a possible violation, the State must take ''appropriate action'' or show ''good cause'' for not doing so ''within ten days.'' This final rule creates a new section, 30 CFR 842.5, which defines ''ten-day notice'' as ''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 . . . .'' Importantly, as the definition notes, a ten-day notice is a ''communication mechanism'' between OSMRE and an SRA about a possible violation. Issuance of a TDN, therefore, provides the State with the first opportunity to review and address the possible violation, as necessary, under its approved State program.

SMCRA section 521(a)(1) provides citizens with the right to participate in the SMCRA enforcement process. This right often takes the form of a citizen filing a complaint to OSMRE or the SRA concerning a possible violation. These communications are often questions, formal and informal complaints, or general inquiries about particular surface coal mining and reclamation operations. At times, it has been difficult to ascertain the exact nature of these communications. Consistent with the proposed rule, the final rule defines ''citizen complaint'' at 30 CFR 842.5 to provide clarity and indicate that the purpose of a citizen complaint, in the TDN context, is for citizens to inform OSMRE of a possible violation. The definition of ''citizen complaint'' in this final rule is ''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.'' The definition also provides that the information ''must be provided in writing (or orally, followed up in writing).'' Defining the phrase ''citizen complaint'' provides clarity for the meaning of the phrase and related processes.

v. Time Frames

In this final rule, OSMRE adopts the time frames that it proposed to ensure quicker resolution of outstanding issues. SMCRA section 521(a)(1) requires the SRA to respond within ten days to an OSMRE notification of a possible violation, indicating either that it has taken appropriate action to cause a possible violation to be corrected or that it has good cause for not acting. 30 U.S.C. 1271(a)(1); 30 CFR 842.11(b)(1)(ii)(B). Responding within ten days does not require the possible violation to be fully resolved but does require the SRA to indicate its intended actions to resolve a possible violation. As described in the proposed rule and below, the final rule incorporates several additional time frames in both the TDN process and development of a 30 CFR part 733 corrective action plan to reduce the time between the identification of a violation or State regulatory program issue and final resolution of the identified issue.

a. State Regulatory Program Issues

The 2020 TDN Rule contained no definitive time frames to address a State regulatory program issue, except that, if OSMRE believed the issue would take longer than 180 days to resolve, an action plan would be developed. 30 CFR 733.12(b). There were no interim action items or timelines, no maximum amount of time for an action plan to be completed, and no defined time frames for development of an action plan. Existing § 733.12(b) provided only that OSMRE ''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.* Under this framework, a State regulatory program issue could potentially exist for

a long period of time between identification of the issue and final resolution.

This final rule amends existing 30 CFR 842.11 and 733.12 to address the possibility of delays in resolving State regulatory program issues. To accomplish this objective, under amended 30 CFR 842.11(b)(1)(ii)(B)(*3*), corrective actions developed under 30 CFR part 733 can no longer constitute appropriate action in response to a TDN. However, under this final rule, addressing a possible violation, along with substantially similar possible violations, under a part 733 action plan can constitute ''good cause'' for not acting.

This final rule also removes the 180-day language from 30 CFR 733.12(b) that would trigger development of an action plan. In the final rule, for each State regulatory program issue, § 733.12(b) indicates that OSMRE, ''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.'' The fact that development of an action plan is intended to be a cooperative process between OSMRE and the SRA is also inherent in final § 733.12(b)(4). However, as that section indicates, ''[i]f the State regulatory authority does not cooperate with OSMRE in developing the action plan, OSMRE will develop the action plan . . . and require the State regulatory authority to comply with [it].''

The 2020 TDN Rule, at existing § 733.12(b), did not require interim measures between identification of the State regulatory program issue and implementation of a corrective action plan. The existing regulations simply implied that measures would be developed, noting that OSMRE ''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.* OSMRE concluded that this language could allow a violation to exist for extended periods of time before or during the time in which an action plan was developed and the issue resolved. In final § 733.12(b), OSMRE adds a provision, which it included in the proposed rule, to allow interim remedial measures to be developed. The final provision provides: ''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.''

Section 733.12(b)(1) of the final rule allocates 365 days (one calendar year) for the SRA to complete all identified actions in an action plan. The one year starts on the date on which OSMRE sends the action plan to the SRA. As stated in the preamble to the proposed rule, OSMRE recognizes that final resolution of an issue could exceed one year. 88 FR at 24950. This is particularly true for actions involving multiple parties and/or agencies, State legislative actions, or any requirements imposed by court decisions. OSMRE reiterates that care must be exercised in development of the action plan to ensure that the identified corrective actions can be accomplished within one calendar year. The associated completion criteria must have actions and milestones that are achievable within one calendar year. The goal is to keep violations from going unabated, minimize on-the-ground impacts, and prevent off-site impacts. For example, if a State regulatory program issue requires a State program amendment, it is often not possible for a program amendment to be approved within one calendar year. A more reasonable action plan objective may be to submit to OSMRE a program amendment within one year.

b. Good Cause for Not Taking Action

The existing regulations at 30 CFR 842.11(b)(1)(ii)(B)(*4*)(*ii*) indicated that ''good cause'' for an SRA not taking ''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.'' This language had the potential to allow violations to remain unabated for an open-ended amount of time. As in the proposed rule, the final rule modifies this provision by specifying the time within which the SRA must complete its investigation. The final rule provides 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.'' The final rule caps the maximum amount of time at 90 additional days from when the SRA has satisfied the criteria for good cause for not taking action. Under OSMRE's normal practice, when an SRA requests additional time under this provision, the length of any OSMRE approved additional time will be measured from when OSMRE notifies the SRA that OSMRE has approved an extension. The final rule also requires a reasoned justification for an extended time frame to identify whether a violation exists as indicated in a TDN. As stated in the final rule provision, ''[i]n 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.'' OSMRE retains discretion to approve the requested time extension or establish the length of time, up to 90 additional days, that the SRA has to complete its investigation. These changes are intended to facilitate expedited resolutions of identified issues.

vi. Contacting the SRA Before OSMRE

The 2020 TDN Rule, at 30 CFR 842.12(a) of the existing regulations, required citizens, when requesting a Federal inspection, to provide a statement, including, among other things, the fact that the person has notified the SRA of the existence of the possible violation. OSMRE carefully reviewed the statutory language and Congressional record preceding SMCRA's enactment and determined that no requirement exists for citizens to contact the SRA before contacting OSMRE about a possible violation. This concept first appeared in the preamble to the Permanent Regulatory Program regulations (44 FR 15299 (August 27, 1979)) and was discussed in the comments section of that preamble. There OSMRE concluded that it ''has no authority under [SMCRA] to require a citizen to ask for a State inspection before asking for a Federal inspection.'' *Id.* A few years later, in the preamble to a final rule entitled, ''Permanent Regulatory Program Modifications; Inspections and Enforcement; Civil Penalty Assessments'' (47 FR 35620 (Aug. 16, 1982)), OSMRE took the position that citizens must ''notify the State regulatory authority in writing prior to, or simultaneously with, his or her request to OSM[RE]'' (*id.* at 35628), even though OSMRE had previously acknowledged that this is not a statutory requirement (44 FR 15299). Even under that rule, however, ''the person [was] not required to wait for any action to be taken by the State regulatory authority before requesting a Federal inspection.'' 47 FR at 35628. The State notification requirement was incorporated into section 842.12(a) of the 1982 rule as a measure to allow the SRA the first chance to address an issue identified by a citizen. However, OSMRE is aware of instances where citizens were hesitant to contact the SRA. Based on the foregoing, in this final rule, as in the

proposed rule, OSMRE removed the language in existing section 842.12(a) requiring a citizen to first contact an SRA before they contact OSMRE to report the same possible violation.

vii. Citizen Justification for Possible Violation

As in the proposed rule, OSMRE is removing the existing requirement in section 842.12(a) that a citizen must state the basis for their allegation of a possible violation. After careful consideration of the statute, OSMRE's implementation experience, the regulatory language, and the public comments on the proposed rule, this final rule removes the requirement that a citizen must state the ''basis for the person's assertion that the State regulatory authority has not taken action with respect to the possible violation.'' Citizens are not necessarily well-versed on the text of SMCRA or its implementing regulations; therefore, they should not need to state their allegation in statutory or regulatory language. Conversely, OSMRE and the SRAs are experts in interpreting and implementing SMCRA and are, therefore, best suited to determine if a violation is or is not occurring under the applicable statutory and regulatory provisions. As OSMRE stated in the preamble to the proposed rule, OSMRE continues to believe that if a citizen first contacts the SRA, most possible violations will be resolved without the need for OSMRE to issue a TDN. Therefore, although a citizen is not required to contact the SRA about a possible violation before contacting OSMRE, OSMRE continues to strongly encourage citizens to do so because the SRA should be more acquainted with conditions on the ground for permits that it has issued and is typically in the best position to quickly determine and, if necessary, act on the merits of a citizen complaint.

viii. Citizen Complaints as Requests for Federal Inspections

To better align §§ 842.11(b)(1)(i) and 842.12(a), which both allow citizens to provide information to OSMRE concerning possible violations, the final rule makes both sections consistent with respect to a Federal inspection resulting from information received from a citizen complainant. This revision will reduce a real or perceived barrier to our public participation procedures because, even if a citizen complaint does not specifically request a Federal inspection, the TDN process could ultimately result in a Federal inspection if an SRA does not respond to the TDN or OSMRE determines that the SRA's response is arbitrary, capricious, or an abuse of discretion. As in the proposed rule, the final rule includes language in both §§ 842.11(b)(2) and 842.12(a) stating that all citizen complaints will be considered as requests for a Federal inspection. As stated in the proposed rule, the final rule provides that, if a Federal inspection occurs because of any information received from a citizen complainant, the citizen will be afforded the opportunity to accompany the Federal inspector on the inspection.

ix. Action Plans as Appropriate Action

As in the proposed rule, this final rule modifies the existing regulations by removing 30 CFR part 733 corrective actions associated with a State regulatory program issue as a possible ''appropriate action'' in response to a TDN. 30 CFR 842.11(b)(1)(ii)(B)(*3*). This rule excludes identification of a State regulatory program issue as a possible appropriate action in response to a TDN because, as stated in the preamble to the proposed rule, action plans do not themselves remedy violations. After careful review, while OSMRE will no longer consider an action plan to address a State regulatory program issue to be ''appropriate action'' in response to a TDN, OSMRE concluded that identifying and addressing a 30 CFR part 733 State regulatory program issue can, in certain circumstances, constitute good cause for not taking action within ten days in response to a TDN under 30 CFR 842.11(b)(1)(ii)(B)(*4*). Addressing a part 733 State regulatory program issue and associated action plan demonstrates that the SRA will take actions to abate a violation, even though an action plan likely will not be developed and completed within the ten days allotted for responding to a TDN. The SRA must adhere to the timelines provided for in final 30 CFR 733.12(b) related to action plans.

x. Similar Possible Violations

This final rule also amends § 842.11(b)(1)(ii)(B)(*1*) to reduce the burden on SRAs and OSMRE. This is accomplished by allowing OSMRE to issue a single TDN for substantively similar possible violations. The final rule reads: ''Where appropriate, OSMRE may issue a single ten-day notice for substantively similar possible violations found on two or more permits, including two or more substantively similar possible violations identified in one or more citizen complaints.'' As discussed in more detail in section II of this preamble, OSMRE is removing the words ''involving a single permittee'' after ''two or more permits,'' which represents a change from the proposed rule language.

Additionally, as mentioned above, this final rule amends § 842.11(b)(1)(ii)(B)(*4*)(*iii*) so that good cause in response to a TDN includes situations in which ''OSMRE has identified substantively similar possible violations on separate permits and considers the possible violations as a single State regulatory program issue . . . .'' As stated in the preamble to the proposed rule, the phrase ''substantively similar possible violations'' is meant to indicate issues or possible violations that have a common basis or theme; that are similar, or even identical, in nature; and that are subject to the same statutory or regulatory provisions. 88 FR at 24951. Issuing separate and distinct TDNs for substantively similar possible violations would be redundant and not an efficient use of OSMRE or State resources when the underlying issue can be more efficiently addressed through a single TDN or State regulatory program issue and associated corrective action plan for a group of similar possible violations. This is discussed further in section II of this preamble. OSMRE believes that the presence of similar or identical violations on several approved permits may indicate a systemic issue with implementation of an SRA's program and that combining substantively similar violations into a single State regulatory program issue and addressing the similar violations through implementation of an action plan is an efficient means of addressing the underlying issue. Treating these possible violations as an overarching State regulatory program issue will allow an SRA and OSMRE to focus on the larger context and make sure that the underlying issue is efficiently resolved and properly addressed going forward.

As mentioned above, final section 842.11(b)(1)(ii)(B)(*4*)(*iii*) also provides that ''good cause'' includes when ''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.'' It is appropriate to consider a State regulatory program issue and associated action plan as ''good cause'' because proper completion of the action plan will resolve the underlying issue. After reconsidering the 2020 TDN Rule, the existing regulations, and comments on the proposed rule, OSMRE determined that an action plan is not ''appropriate action'' because creation of the action plan itself does not resolve or correct the underlying issue. Instead, as

its name suggests, it is only a ''plan'' to correct the underlying issue.

The changes in this final rule enhance efficiency and effectiveness of the TDN process, while honoring State primacy, and they more closely adhere to the language, spirit, and intent of SMCRA's statutory requirements. OSMRE will continue to honor State primacy and perform its statutorily mandated oversight to ensure adequate SMCRA implementation in the primacy States. In addition, OSMRE will continue to work with citizens to ensure that their voices are heard and that their legitimate concerns are properly addressed as SMCRA intended. In summary, this final rule eases burdens on citizens filing complaints, makes the TDN process more effective and efficient, and provides more structure to the identification of State regulatory program issues and associated action plan processes. As such, the final rule reduces burdens on both OSMRE and SRAs and increases the overall effectiveness of the SMCRA programs.

II. Summary of Changes From the Proposed Rule

As mentioned in section I.B.x of this preamble, in this final rule, OSMRE made only one change from the proposed regulatory provisions. OSMRE removed the phrase ''involving a single permittee'' after ''two or more permits'' from the proposed revisions at 30 CFR 842.11(b)(1)(ii)(B)(*1*). All other provisions that OSMRE included in the proposed rule are reflected in this final rule. The final rule language enables OSMRE to incorporate substantively similar violations into a single TDN without writing a separate TDN for each permittee. This will allow OSMRE to group the possible violations together, which will alert the SRA that the identified permits have possible violations involving a substantively similar issue and relieve OSMRE of having to write numerous TDNs for each identified permittee. Without this approach, an SRA could receive multiple TDNs for substantively similar issues, which would take undue time and effort for the SRA to evaluate before identifying the commonality.

III. General Public Comments and Responses

OSMRE published the proposed rule on April 25, 2023 (88 FR 24944), soliciting public comments for 60 days. During the comment period, OSMRE received over 5,000 sets of comments from members of the public, State governments, trade associations, environmental advocacy groups, and private companies. Each public comment was considered in the development of the final rule. Many comments were supportive of the proposed rule, with some expressing support for reverting the regulations to the pre-2020 rule, which provided for looking only at the allegations of the citizen complaint before issuing a TDN. OSMRE also received comments that were critical of the proposed rule. Some of these comments expressed concern about revising these regulatory provisions so soon after the 2020 TDN Rule became effective and alleged that the proposed rule would infringe on State primacy.

Comments received that are similar in nature have been categorized by subject and, in some instances, have been combined with related comments.

A. Rule Basis and Justification

Comment: Some commenters asserted that the proposed rule conflicts with various provisions of SMCRA, especially as it pertains to the roles and responsibilities of SRAs and OSMRE in primacy states, such as 30 U.S.C. 1201(f), 1253, and 1271. These comments suggested that the proposed rule should be withdrawn.

Response: As discussed more fully in the preamble of the proposed rule at 88 FR at 24947–24948 and throughout this preamble, this rule is fully consistent with the text, legislative history, and purposes of SMCRA. OSMRE reviewed SMCRA and its legislative history and found no discrepancy between the statute and the revisions to the regulations that OSMRE is finalizing in this rule. As the commenters stated, over the years, several court opinions and the Department have discussed SMCRA's cooperative federalism structure. In this rule, OSMRE is committed to ensuring that SRA's maintain their ''exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, *except as provided in [30 U.S.C. 1271 and 1273].*'' 30 U.S.C. 1253(a) (emphasis added). The TDN process, which is the focus of this rule, is set forth in 30 U.S.C. 1271(a) and is part of OSMRE's oversight and enforcement role. Because SMCRA specifically exempts the TDN process from a State's exclusive jurisdiction, this rule is not inconsistent with SMCRA or any binding legal precedent on this topic.

Comment: One commenter asserted that the proposed rule fails to acknowledge the 1988 TDN rule and the decades of regulatory policy established by that rule, such as the limited Federal role in primacy States and the handling of disagreements between OSMRE and SRAs.

Response: One of the policies established by the 1988 TDN Rule (53 FR 26728) was a uniform standard by which OSMRE would evaluate State responses to a TDN. The 1988 preamble states that ''OSMRE will accept a state regulatory authority's response to such a notice, called a ten-day notice, as constituting appropriate action to cause a possible violation to be corrected or showing good cause for failure to act unless OSMRE makes a written determination that the state's response was arbitrary, capricious, or an abuse of discretion under the state program.'' 53 FR at 26728. The 1988 rule clearly delineated the roles of the State and OSMRE with respect to SMCRA implementation once a State acquires primacy. In the same preamble, OSMRE also stated: ''In primacy states, a mine operator's compliance is measured against the approved state program, rather than directly against the Act. As the court explained in *In re: Permanent Surface Mining Regulation Litigation* (*In re: PSMRL*), 'it is with an approved state law and with state regulations consistent with the Secretary's that surface mine operators must comply.' 653 F.2d at 519.'' With respect to OSMRE's role once a State has an approved State program, OSMRE has stated that '' 'the state regulatory agency plays the major role, with its greater manpower and familiarity with local conditions. It exercises front-line supervision, and the Secretary will not intervene unless its discretion is abused.' '' 53 FR at 26729 (quoting *In re: PSMRL,* 653 F.2d at 523).

This final rule is consistent with the legal authorities that OSMRE cited in support of the 1988 rule. Nothing in this final rule changes OSMRE's long-standing position not to intervene in a State's SMCRA implementation unless a State is not properly implementing its SMCRA program as approved. Likewise, OSMRE will continue not to intervene in a State's enforcement actions unless the State acts inconsistently with an approved State program. Nothing in this final rule is inconsistent with these long-standing principles.

Comment: Some commenters stated that the rule lacks any concrete justification or the legal or factual explanation for changing the 2020 TDN Rule.

Response: OSMRE disagrees. In the preambles to both the proposed and final rules, OSMRE has demonstrated sufficient legal and factual reasons for the revisions. This demonstration includes a closer adherence to SMCRA's statutory requirements, which OSMRE discussed in detail in the preamble to the proposed rule. Additionally,

OSMRE observed instances while implementing the 2020 TDN Rule, as discussed in section I.B of this preamble, where the TDN process was delayed as OSMRE sought and considered information from SRAs before issuing a TDN or otherwise disposing of the citizen complaint.

Comment: Some commenters asserted that OSMRE did not have sufficient experience (at most one year) implementing the 2020 TDN Rule to support the rule changes. The commenters requested examples, data, and facts to justify the rule, including specifically how the 2020 TDN Rule compromised public protections, created delays for OSMRE's consideration of some possible violations, caused communication breakdown between OSMRE and SRAs, and created burdens by having the complainant notify the SRA simultaneously with or before notifying OSMRE of any potential violations. These commenters also asked for identification of any material delays discussed in post-2020 OSMRE reports, including State Oversight Reports, OSMRE Annual Reports, and budget justifications.

Response: OSMRE has an independent duty to enforce SMCRA in order to ''assure appropriate procedures are provided for public participation in . . . the programs established by the Secretary or any State under this Act . . . .'' 30 U.S.C. 1202(i), 1211(c)(2). Since the 2020 TDN Rule's promulgation, citizen groups have raised legal and practical issues about it with OSMRE, specifically about actual and perceived barriers to filing citizen complaints, the length of time it takes for OSMRE to issue TDNs, and the overall time it takes for possible violations to be addressed under the 2020 TDN Rule. Regardless of the time that the 2020 TDN Rule has been in effect, OSMRE has an obligation to seriously consider whether it caused delays or other unintended effects and was the best interpretation of SMCRA.

Notably, the commenters do not identify any specific data that is needed to understand the justification for the rule but instead suggest, for example, that OSMRE should have sought data from the States to support this rule. OSMRE did not request any specific data from SRAs because OSMRE already had all of the information it needed to review the amount of time it took under the 2020 TDN Rule to issue a TDN or otherwise address a citizen complaint. OSMRE has been monitoring implementation of the 2020 TDN Rule from the outset and has observed that there is often a lag time of a month or more between the time OSMRE receives a citizen complaint and when a TDN is issued or the citizen complaint is otherwise resolved. Moreover, one commenter noted that it was aware of an instance where it took OSMRE almost 60 days to issue a TDN after receiving a citizen complaint. OSMRE notes there have been additional instances when there have been several month lags between the time OSMRE receives a citizen complaint and the time it notifies the citizen complainant that it does not have reason to believe a violation exists. OSMRE believes the 2020 TDN Rule would have continued to lead to enforcement delays. The documented instances of delay demonstrate how the 2020 TDN Rule is contrary to the immediate process set forth in 30 U.S.C. 1271(a). To address this issue, this final rule eliminates the 2020 TDN Rule's potential for an open-ended, information gathering process—including obtaining information from an SRA—before OSMRE determines whether it has reason to believe a violation exists.

Comment: One commenter asserted the proposed rule was generated by OSMRE Headquarters staff without meaningful consultation with OSMRE's regional or field office staff.

Response: This comment is not accurate. OSMRE field staff, along with Headquarters staff, participated in the rule development team since its inception. OSMRE developed this rule with proper input from qualified staff.

B. Burden Reduction and Duplication of Work

Comment: One commenter agreed with OSMRE that citizens are burdened by the existing TDN process and supported reverting to the pre-2020 rule process.

Response: OSMRE appreciates this comment. This final rule will reduce burdens on citizens to file citizen complaints and otherwise bring concerns to OSMRE's attention. To arrive at this final rule, OSMRE reviewed the statutory and regulatory language as well as implementation of the citizen complaint and TDN processes through the years and incorporated changes that ease the burden on citizens to notify OSMRE of a possible violation.

Comment: Some commenters asserted that the proposed changes to the 2020 TDN Rule would create additional burdens, promote duplication of resources, increase costs, and decrease productivity for SRAs and subvert their jurisdiction.

Response: OSMRE does not agree with these commenters' assertions. While this final rule reduces burdens on citizen complainants and the time it takes to resolve possible violations, it will not simultaneously increase SRA workloads in an appreciable manner and will not lead to duplication of inspections and enforcement efforts between OSMRE and SRAs. As has been the case for many years, after OSMRE issues a TDN to an SRA, the SRA has the first opportunity to address or explain the underlying issue. OSMRE will not second guess an SRA's response to a TDN unless it is arbitrary, capricious, or an abuse of discretion. As this rule is consistent with 30 U.S.C. 1271(a), there is nothing in this rule that infringes upon or subverts an SRA's jurisdiction, obligations, or implementation of its approved State program.

In addition, as specified in § 842.11(b)(1)(i) of the final rule, before issuing a TDN, OSMRE will review only ''information received 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'' and not information from a State when it decides if it has reason to believe a violation exists. As a result, under the final rule, a State need not expend the time and effort to provide OSMRE with a response at the reason-to-believe stage and then again if OSMRE ultimately sends a TDN to a State. This rule ensures that States need only respond to OSMRE about a citizen complaint once—in response to a TDN, if OSMRE determines that it has reason to believe a violation exists. Therefore, OSMRE believes this final rule will not increase the burdens on SRAs and may eliminate duplicative responses from the SRAs.

Comment: One commenter noted that, according to OSMRE, one of the ''[t]he primary goals of this rulemaking [is] to reduce burdens for citizens to engage in the TDN process.'' However, according to this commenter, there is no statutory directive for citizens to participate in the TDN process.

Response: OSMRE disagrees with the tenor of this comment. Section 521 of SMCRA serves as the statutory underpinning for the TDN process. It provides that OSMRE can receive information, in writing, from ''any person'' about a possible SMCRA violation. 30 U.S.C. 1271(a)(1). However, that provision does not exist in a vacuum; 30 U.S.C. 1267(h)(1) provides that ''any person who is or may be adversely affected by a surface mining operation'' may contact OSMRE about ''any violation of this Act which he has reason to believe exists at the

surface mining site.'' These two provisions operate together so that the receipt of information from a citizen under 30 U.S.C. 1267(h)(1) is one way that the TDN process may be initiated.

As the House of Representatives explained in a report preceding SMCRA's enactment, citizens play an important role in the enforcement of SMCRA and approved State programs. The House report states:

> The success or failure of a national coal surface mining regulation program will depend, to a significant extent, on the role played by citizens in the regulatory process. * * * Thus in imposing several provisions which contemplate active citizen involvement, the committee is carrying out its conviction that the participation of private citizens is a vital factor in the regulatory program as established by the act.

H. Rept. No. 95–218, at 88–89 (April 22, 1977); *see also* S. Rept. No. 95–128, at 59 (May 10, 1977). This idea is codified in the purposes of SMCRA at section 102(i) and various statutory sections including section 521(a)(1) of SMCRA, which provides that the TDN process can be initiated upon ''receipt of information from any person.'' 30 U.S.C. 1271(a)(1). One of the primary ways that citizens provide such information to OSMRE is through formal and informal citizen complaints about possible violations. This final rule assures that citizens can easily file citizen complaints with OSMRE about possible violations and play their important role in the implementation and enforcement of SMCRA and approved State programs.

C. Consultation With States Before and During This Rulemaking

Comment: Some commenters asserted that OSMRE did not engage with SRAs in the development of the rule as should be expected with cooperative federalism; accordingly, the commenters urged OSMRE to abandon the rulemaking.

Response: OSMRE disagrees. In drafting this rule, OSMRE followed all legal requirements by seeking feedback from SRAs and other stakeholders through the notice and comment process described in the Administrative Procedure Act.

D. State Primacy

Comment: One commenter stated that the proposed rule attempts to ''federalize'' issues with State permits because, according to the commenter, any disagreement between OSMRE and an SRA over a State permitting decision could be subject to a Federal TDN and potentially other Federal enforcement actions instead of resting solely with the SRA, and OSMRE taking oversight action, if necessary, under 30 CFR 733.13 to substitute Federal enforcement of State programs or withdraw approval of the State program. In addition, this commenter opines that this interpretation transgresses the careful and deliberate statutory allocation of regulatory jurisdiction, violates the specific statutory procedures and deadlines for appealing State permits, and violates the exclusive avenue for administrative and judicial review of all State regulatory program decisions. As support for its position, the commenter cites court decisions, a 2005 letter decision by the Department's Assistant Secretary for Land and Minerals Management (ASLM) (which was attached to the comments), a Departmental 2007 rule preamble, and an OSMRE Director's 2010 memorandum decision.

Response: OSMRE disagrees with this comment. OSMRE has reviewed the documents cited by the commenter and has determined that nothing in this final rule conflicts with SMCRA or relevant case law. While the Department has articulated different positions related to the issuance of TDNs for permitting issues, OSMRE concludes that the positions it takes in this final rule best comport with SMCRA section 521(a)(1).

The 2005 ASLM letter decision rejected an environmental group's request for OSMRE to conduct a Federal inspection of a mine that an SRA had recently permitted. The letter described the request as asking ''OSM to review the permit decision of [the SRA] with which you disagree'' and concluded that ''[a] request for inspection under section 517(h)(1) [of SMCRA] is not an alternative avenue for seeking review of the regulatory authority's decision to issue a permit.'' The letter also explained that the request did not provide ''any basis to conclude that a violation exists at the mine site.'' In addition, the letter referenced the SRA's ''exclusive jurisdiction'' under SMCRA and cited several judicial decisions in support of that proposition: *Bragg* v. *West Virginia Coal Ass'n,* 248 F.3d 275, 293–94 (4th Cir. 2001), *Pa. Fed'n of Sportsmen's Clubs, Inc.* v. *Hess,* 297 F.3d 310, 318 (3rd Cir. 2002), *Haydo* v. *Amerikohl Mining Inc.,* 830 F.2d 494, 497 (3rd Cir. 1987), and *In re: PSMRL,* 653 F.2d at 519. This commenter also cited these and other cases in support of its position.

A close examination of the cases cited in the 2005 ASLM letter decision reveals that they do not address whether OSMRE has oversight and enforcement authority over State permitting decisions under section 521(a) of SMCRA and OSMRE's implementing regulations. In fact, *Bragg* and *Pa. Fed'n of Sportsmen's Clubs* expressly recognize that, despite the asserted exclusivity of a primacy State's jurisdiction, OSMRE retains oversight authority in primacy States. *See Bragg,* 248 F.3d at 289, 294 (primacy State's ''exclusive jurisdiction'' subject to Federal oversight and enforcement under section 521 of SMCRA); *Pa. Fed'n of Sportsmen's Clubs,* 297 F.3d at 317, 325, 328 (OSMRE's ''oversight jurisdiction'' under 30 CFR 843.12(a)(2) includes inspection of specific mines and issuance of notices of violation to State permittees pursuant to the TDN process). Therefore, the position taken in the 2005 letter decision goes beyond the holdings of the cited cases.

Moreover, the 2010 OSMRE Director's guidance (with which the Office of the ASLM officially concurred) analyzed and rejected the rationale set forth in the 2005 ASLM letter. The 2010 Director's guidance ''reaffirm[ed] OSM's historic position on this issue'' and ''clarifie[d] that OSM's TDN and pertinent Federal enforcement regulations at 30 CFR parts 842 and 843 apply to *all* types of violations, including violations of performance standards or permit conditions and violations of permitting requirements.''

The 2007 rule preamble, 72 FR 68000, 68024–26, also does not support the commenter's assertions. That preamble relied in part on the 2005 ASLM letter decision and the judicial decisions cited therein to support the withdrawal of a specific regulatory provision related to ''State-issued permits that may have been improvidently issued based on certain ownership or control relationships,'' which had been previously codified at 30 CFR 843.21. *See* 72 FR at 68024. Before it was removed, that section provided for ''direct Federal inspection and enforcement . . . if, after an initial notice, a State failed to take appropriate action or show good cause for not taking action with respect to an improvidently issued State permit.'' *Id.* When OSMRE withdrew that specific regulatory provision, however, it did not amend the general TDN regulatory provision that this final rule has revised (§ 842.11). Indeed, that preamble did not even mention § 842.11. In any event, the 2007 rule preamble language does not expressly pertain to how OSMRE interpreted § 842.11, and, as mentioned, OSMRE concludes that its positions in this final rule best comport with SMCRA and the relevant implementing regulations. Moreover, as discussed above, in 2010, the OSMRE Director, with the concurrence of the Office of the

ASLM, rejected the rationale in the 2005 ASLM letter decision.

The 2007 rule preamble cited *Nat'l Mining Ass'n* v. *U.S. Dep't of the Interior,* 177 F.3d 1 (D.C. Cir. 1999) (*NMA* v. *DOI II*), in support of rescinding former § 843.21. 72 FR at 68025–26. The better reading of that opinion, however, is the Department's contemporaneous interpretation in the 2000 preamble, *see, e.g.,* 65 FR 79582, 79652. In 2000, the Department explained, among other things, that, in the *NMA* v. *DOI II* decision, ''the court upheld our ability to take remedial action relative to improvidently issued State permits, but found that our previous regulations 'impinge on the ''primacy'' afforded states under SMCRA insofar as they authorize OSM to take remedial actions against operators holding valid state mining permits without complying with the procedural requirements set out in section 521(a)(1) of SMCRA, 30 U.S.C. 1271(a).' '' 65 FR at 79652 (citing *NMA* v. *DOI II,* 177 F.3d at 9). In 2000, the Department revised the regulation to conform with the court's decision. The 2007 rule preamble later set forth an alternative interpretation of the relevant *NMA* v. *DOI II* holding, which the Department no longer supports. *See, e.g.,* 2010 OSMRE Director's memorandum decision.

In addition, under section 503(a) of SMCRA, 30 U.S.C. 1253(a), upon OSMRE's approval of a State program, a State ''assume[s] exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, *except as provided in sections 1271 [SMCRA section 521] and 1273 of this title and subchapter IV of this chapter . . . .*'' (Emphasis added.) This final rule implements section 521 of SMCRA and thus is an exception to a State's otherwise-exclusive jurisdiction. SMCRA also refers to a State's ''primary responsibility.'' *See, e.g.,* 30 U.S.C. 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].''). However, this language is describing which State department or agency will administer SMCRA at the State level and does not remove OSMRE oversight in any way. The final rule is consistent with the State regulatory authority's responsibility to administer SMCRA, which affords the SRA the first opportunity to address the underlying issue identified in a TDN. And OSMRE is prepared to accept a State's response to a TDN unless it is arbitrary, capricious, or an abuse of discretion, which is an appropriately high level of deference.

OSMRE disagrees with the commenter's other assertions about how this rule impinges on State primacy. This final rule does not allow OSMRE to intervene in a State's permitting action while the permit application is under review, nor does it contain any language that circumvents the process for appealing a State's permitting actions. A TDN is appropriate to address situations where a permittee is not mining in accordance with the approved permit or the approved State permit allows the permittee to mine in a manner that is inconsistent with the approved State program.

In sum, this final rule is consistent with SMCRA and binding legal precedent.

E. ''Any Person'' Who Can Be in Violation of SMCRA

Comment: Some commenters asserted that in section 521(a)(1) of SMCRA, ''any person'' who can be in violation of SMCRA or the applicable State program means a permittee, not the SRA.

Response: As explained in section I.B of this preamble, OSMRE concludes that ''any person'' in violation under section 521(a)(1) of SMCRA includes an act or omission by an SRA that is inconsistent with its State program. The relevant SMCRA language refers to ''any person [ ] in violation of any requirement of this Act or any permit condition required by this Act . . . .'' As noted above, the preamble to the 2020 TDN Rule stated that ''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 at 75176; *see also id.* at 75179. However, after careful consideration and review, OSMRE concludes that an SRA is not exempt from the meaning of the phrase ''any person'' in this context. For over four decades, the Federal regulations at 30 CFR 700.5 have defined ''any person'' to include ''any agency, unit, or instrumentality of Federal, State or local government . . . .'' This definition would clearly include an SRA, which is an agency or unit of a State government. OSMRE did not change this general definition in the 2020 TDN Rule even though it excluded an SRA from ''any person'' in the TDN context. OSMRE now concludes that the term ''any person'' in 30 U.S.C. 1271(a)(1) should match this long-standing definition. As a result, a TDN could be issued for a possible violation if the SRA issues a permit that is not in compliance with an approved State program or that authorizes a permittee to mine in a manner that is inconsistent with that program. If an SRA issues such a permit, that would be a violation of a ''requirement of this Act'' or the applicable State program. Thus, under this final rule, if an SRA issues a permit that would allow a permittee to mine in a manner that is inconsistent with the approved permit or the approved State program, or that fails to include one or more required provisions of the approved State program, that will be considered as a possible violation for TDN purposes.

F. Permit Defects

Comment: Some commenters supported the proposed rule, stating that it properly recognized that SMCRA intended ''permit defects'' to be among the types of violations that OSMRE must address under the TDN process as an avenue for citizens to raise concerns with permit-related actions that may impact their lives.

Response: OSMRE appreciates these commenters' support for the proposed change requiring a TDN be sent to an SRA for a possible violation in the form of a permit defect. As outlined in the preamble to the proposed rule and discussed in sections 1.B and III.F of this preamble, OSMRE agrees with these commenters and concludes that a close reading of SMCRA indicates that permit defects, just like all other possible violations, are subject to a TDN. Thus, under this final rule, OSMRE, upon forming reason to believe a violation exists, will consider permit defects under 30 CFR part 842.

Comment: A few commenters asserted that OSMRE should ensure that the regulations make clear that a violation is ''earth bound.'' As support, the commenters noted that, when discussing a Federal inspection, SMCRA section 521(a)(1) refers to alleged violations occurring at a surface coal mining operation and that the last sentence of that provision allows citizen complainants to accompany an inspector on a Federal inspection.

Response: We disagree with the conclusions the commenters reach from the statutory provision cited. In order to determine if a surface coal mining operation is meeting the approved program or any permit condition as required by both the existing and final rule at § 842.11(b)(1)(i), it is sometimes necessary for OSMRE to not just observe a mine site, but also to review and examine the SRA's permitting material. As a result of this review, a violation may be identified in those materials regardless of whether that violation can also be observed at the mine site. Indeed, the existing Federal regulations

require SRAs to make records related to surface coal mining operations available to OSMRE. 30 CFR 840.14(a). Because OSMRE sometimes needs to review the permitting files, OSMRE has historically viewed these files and related materials as items that should be considered during a Federal inspection. OSMRE adheres to that long-standing approach in this final rule.

G. Procedural Determinations

Comment: A few commenters asserted that the 2023 proposed TDN rule would produce ''significant new, unjustified'' exchanges of paper between OSMRE and the SRA, resulting in increased burden.

Response: OSMRE's analysis under the Paperwork Reduction Act indicates that there will be no new OSMRE requests for information as a result of the changes in this final rule. Consequently, the final rule will not increase the regulatory burden. Under this final rule, OMSRE will only consider information contained in a citizen complaint, information already in OSMRE's files at the time of a citizen complaint, and publicly available electronic information to inform whether OSMRE has reason to believe a violation may be present.

OSMRE strives to reduce redundancy particularly when a simple search for publicly available electronic records can often adequately inform the ''reason to believe'' analysis and determination. As such, there is no additional transactional cost or burden created between the SRA and OSMRE when available data from the three identified sources provides sufficient information collection to reach a sound decision on whether OSMRE has reason to believe. Based on OSMRE's experience, it does not believe more TDNs will result from implementing this final rule when viewed in the context of OSMRE's history related to writing TDNs. Additionally, OSMRE estimates that the number of TDNs and associated burden hours will stay the same as what is currently authorized by OMB 1029–0118. Moreover, the SRAs already have a legal responsibility to address underlying possible violations in accordance with their approved State programs. A TDN is OSMRE's mechanism to notify an SRA of a possible violation in accordance with OSMRE's statutorily mandated oversight responsibilities. Even if an increase in TDNs does result in an SRA needing to generate more responses to OSMRE, addressing substantively similar possible violations as a single State regulatory program issue and not requesting information from the SRA at the time OSMRE is determining whether it has reason to believe a violation exists will introduce efficiencies in the process and limit paperwork burdens in those situations.

Comment: Some commenters asserted that the rule ''totally redefines the relationship between itself and the States by essentially eliminating State primacy under SMCRA'' such that OSMRE must prepare a federalism summary impact statement.

Response: OSMRE disagrees. As explained in the responses above, this rule neither makes OSMRE a co-regulator in primacy states nor otherwise deviates from SMCRA's statutorily defined cooperative federalism. SRAs will still retain exclusive jurisdiction subject to OSMRE's oversight and enforcement authority set forth in 30 U.S.C. 1271 and 1273. The final rule focuses on OSMRE's process for handling citizen complaints, issuing TDNs, and OSMRE's oversight responsibilities, all of which are provided for in 30 U.S.C. 1271(a)(1)—an exception to the exclusive jurisdiction of the SRAs. If an SRA receives a TDN from OSMRE, the SRA will continue to have the first opportunity to address possible violations in accordance with their approved State program, which remains codified in its State laws and regulations. While revising the existing regulations governing the TDN process will have a direct effect on the States' and the Federal Government's relationship with the States, this effect will not be significant, as it will neither impose substantial unreimbursed compliance costs on States nor preempt State law. OSMRE also does not believe more Federal inspections and Federal enforcement actions in primacy States will result from this rule. As discussed in the response to the preceding comment, this rule will not significantly increase burdens on SRAs to address and resolve underlying issues. As such, a federalism summary impact statement is not required.

Comment: A few commenters stated that the TDN rule would increase regulatory burdens on SRAs so OSMRE needs to prepare a regulatory flexibility analysis under the Regulatory Flexibility Act.

Response: OSMRE disagrees with these comments because, as discussed in prior responses to comments, the new rule provisions are considered enhancements in aiding more efficient and effective enforcement rather than adding new significant regulatory burden on SRAs.

H. Minor Text Changes and Conforming Edits

Comment: A few commenters stated that changes in the regulatory text that are editorial or introduce plain language changes in the rule text may be interpreted by courts as substantive changes. These commenters suggested that OSMRE should not make any editorial changes so that a court cannot reinterpret the intended meaning.

Response: OSMRE disagrees with the commenters. OSMRE has made certain changes in language pursuant to the Plain Writing Act of 2010 to improve the readability of the rule that do not affect its substance. Any challenges to these minor, non-substantive wording changes would likely withstand legal scrutiny, particularly when OSMRE has noted that it did not intend substantive changes in meaning.

IV. Section-by-Section Summaries of and Responses to Public Comments

This section presents a summary of the final rule revisions, section-by-section, accompanied with summaries of comments and OSMRE's responses to the comments. This section starts with the revisions to 30 CFR part 842, followed by the revisions to 30 CFR part 733, to mirror the sequence of the TDN process (*i.e.,* issuance of a TDN under part 842, followed by possible grouping of substantively similar possible violations into a State regulatory program issue under part 733).

A. 30 CFR 842.5

Summary of final rule provisions at 30 CFR 842.5: The final rule creates a new definitions section at 30 CFR 842.5 that includes definitions for the terms ''citizen complaint'' and ''ten-day notice.'' The definition of ''citizen complaint'' includes the word ''possible'' to modify ''violation,'' indicating that not all complaints need to contain an affirmative allegation of a violation but can still identify a possible violation. The definition of ''ten-day notice'' provides a uniform understanding of the term, emphasizing that a TDN is a communication mechanism that OSMRE uses to inform an SRA of a possible violation of its State regulatory program when OSMRE has reason to believe such a violation exists.

Comment: Some commenters supported the proposed definition of ''ten-day notice'' and the recognition that the TDN is a communications mechanism and not a judgment or determination on the performance of the permittee, operator, or SRA.

Response: OSMRE appreciates the support and again reiterates that a TDN

is not an enforcement action in and of itself and the issuance of a TDN is not a negative reflection on the permittee, operator, or the SRA. It is simply the mechanism that OSMRE uses to inform an SRA about a possible violation so that the SRA can investigate that allegation and take action to abate the violation if the SRA determines a violation exists.

Comment: Some commenters stated that ''citizen complaint'' and ''ten-day notice'' already have sufficient meaning and do not need to be defined.

Response: OSMRE disagrees with these comments. While implementing the SMCRA program, OSMRE has heard various proposed interpretations for both terms from citizens, SRAs, and among its own staff. For example, during TDN implementation, OSMRE has observed a range of references to citizen complaints that characterize the complaints as anything ranging from *any* information received to information that must be ''perfected'' before it would be considered a citizen complaint. These disparate definitions mean that different people may treat information received from citizens differently. For example, one person may consider the information received and start the TDN process whereas another person may review similar information, deem it unperfected, and delay action or forgo issuing a TDN. OSMRE is introducing regulatory certainty by establishing uniform definitions of these common terms.

Comment: One commenter asserted that the proposed changes to the TDN process convert the TDN from a communication tool to an enforcement tool.

Response: OSMRE does not agree with this comment. There are no enforcement provisions associated with a TDN itself, and there is no enforcement downstream of a TDN unless a State does not respond to the TDN or the response is arbitrary, capricious, or an abuse of discretion. That standard is deferential, and, in this regard, this final rule is no different than prior iterations of the rules. As such, a TDN is accurately described as a communication mechanism between OSMRE and an SRA about a possible violation.

Comment: One commenter suggested that OSMRE specify that the definition of ''citizen complaint'' includes ''any information received from any person by the OSMRE of a *condition or practice that might be* a possible violation of the Act . . .'' (emphasis added to identify the commenter's suggested additions to the rule text).

Response: As OSMRE understands the comment, adding this language to the definition of ''citizen complaint'' would not improve the definition of the term or add any clarity because the suggested phrase is encompassed by the definition of the term in this final rule. If a questionable condition or practice is occurring, the key question is whether it constitutes a possible violation of a State program. If OSMRE has reason to believe a possible violation exists, OSMRE will issue a TDN to the relevant SRA for the condition or practice. The proposed language is therefore unnecessary and could imply that other possible violations of a State program are not encompassed by the definition.

Comment: One commenter suggested changing the term ''ten-day notice'' to ''Ten-Day Notification to Respond'' because the proposed rule will create two types of TDNs, one that results from a possible SRA violation and a second that results from a citizen complaint.

Response: OSMRE disagrees that this rule creates two types of TDNs, and it sees no benefit in revising the term or in using two terms to describe a single process. OSMRE determines whether it has reason to believe a violation exists from any source of information concerning a possible violation, including information from a citizen or from an oversight inspection. If it makes such a determination, OSMRE will send the SRA a TDN, regardless of whether that possible violation stems from an action of the permittee or from an SRA issuing a permit that is inconsistent with the approved State program or that would allow a permittee to mine in a manner that is inconsistent with the State program.

B. 30 CFR 842.11(b)(1)(i)

Summary of final rule revisions to 30 CFR 842.11(b)(1)(i): As in the proposed rule, the final rule limits the sources of information that OSMRE reviews when determining whether OSMRE has reason to believe a violation exist. The final rule amends 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.''

Comment: Some commenters asserted that the proposed rule impermissibly raises the bar on Federal action, impermissibly delays notification to the SRAs through the TDN process, and is inconsistent with SMCRA because OSMRE would delay issuance of a TDN until after a records search of all electronic databases, any complaint information, and other information not in the agency's possession when the complaint is received.

Response: OSMRE disagrees with these comments. SMCRA affords OSMRE discretion to establish whether OSMRE has reason to believe a violation exists based on ''any information available.'' 30 U.S.C. 1271(a)(1). OSMRE review of these three sources of information that are available to it at the time the citizen complaint is received neither ''raises the bar'' with respect to information collection nor delays notification to a State of a possible violation because OSMRE must still form the predicate belief in a possible violation. In this rule, OSMRE merely explains the processes it will use to form that belief. Thus, OSMRE will review the citizen complaint and information that OSMRE already has in its files or from publicly available electronic information. In addition, OSMRE, in its expertise, has sufficient knowledge to identify pertinent publicly available electronic information that may be relevant to the citizen complaint and that will help it to determine whether it has reason to believe a violation exists. OSMRE does not envision exhaustive, time-consuming reviews of any of these sources of information.

This final rule eliminates the potential that the 2020 TDN Rule could allow for an open-ended, information gathering process before OSMRE determines whether it has reason to believe a violation exists; however, the final rule retains the 2020 TDN Rule's removal of the ''if true'' standard. Therefore, this final rule will allow OSMRE to proceed more quickly and efficiently than under the 2020 TDN Rule when making a reason to believe determination. At the same time, this final rule will allow OSMRE to exercise its expertise in reviewing citizen complaints to determine whether there is reason to believe a possible violation of SMCRA, the regulations, the State program, or permit condition exists before deciding whether to send the SRA a TDN.

Comment: Some commenters supported OSMRE's limiting of the information it can review when establishing reason to believe to that information found in the complaint, publicly available electronic information, and information OSMRE already possesses.

Response: OSMRE appreciates these comments. Limiting the information to these three sources will result in an expeditious ''reason to believe'' determination while at the same time making the process more efficient.

Comment: Some commenters agreed that the complainant may not understand SMCRA's technical details, but an agency official, trained in interpreting regulations, can determine if a possible violation exists and notify the SRA.

Response: OSMRE agrees with these comments. OSMRE has developed considerable expertise since the enactment of SMCRA in 1977 as it implements SMCRA in Federal program States and on Indian lands across the country and provides oversight of the 24 State programs. As stated above, this final rule allows OSMRE to use this expertise to initially evaluate a citizen complaint along with limited sources of other information, determine if a possible violation exists, and, if so, let the SRA know using a TDN.

Comment: One commenter supported the changes that limit the information OSMRE can consider when evaluating a citizen complaint and restore the requirement that complaints contain ''information'' rather than ''documentation.''

Response: OSMRE appreciates the commenter's support. SMCRA affords citizens with the opportunity to report possible violations to either the SRA or OSMRE. Likewise, it contains a low threshold with respect to OSMRE establishing reason to believe a violation exists and stops short of requiring documentation from a citizen complainant before OSMRE decides whether to send a TDN to the SRA. Thus, in final sections 842.11(b)(1)(i) and 842.11(b)(2), OSMRE will not require a citizen to provide documentation; instead, OSMRE will consider any information that a citizen complainant provides.

Comment: Some commenters asserted that excluding SRA input will result in redundant, duplicative enforcement processes.

Response: OSMRE disagrees. OSMRE's goal is not to exclude SRA input but rather to remove a process that is duplicative of the TDN process itself, which will expedite OSMRE's initial evaluation of the prospective violation. In addition, under SMCRA, the TDN is the communication mechanism that OSMRE sends to the SRA whenever OSMRE has reason to believe a violation exists. As explained above, OSMRE will only take enforcement action if the SRA fails to respond to the TDN or the response is arbitrary, capricious, or an abuse of discretion. Thus, there will not be redundant enforcement processes.

Comment: One commenter stated that State-supplied information should be considered when establishing reason to believe a violation exists.

Response: OSMRE disagrees with the commenter. OSMRE concludes that seeking and considering information from an SRA before making a reason to believe determination is not the best interpretation of section 521(a)(1) of SMCRA and creates a duplicative process within the TDN process. However, publicly available electronic information may include publicly viewable SRA permitting databases, water monitoring and reporting databases, GIS applications, and other easily viewable information.

Comment: A few commenters suggested that OSMRE should develop an internal OSMRE policy on information collection in lieu of this rulemaking.

Response: OSMRE recognizes that it may have been able to use internal policy guidance, such as a directive, to clarify to its own staff what types of information OSMRE could consider when evaluating a citizen complaint to determine if it has reason to believe a violation exists. However, given the indirect impacts on SRAs and the public as well as SMCRA's focus on ''assur[ing] appropriate procedures are provided for public participation[,]'' 30 U.S.C. 1202(i), we concluded that regulations, rather than internal and non-binding policy documents, were the appropriate mechanism because they are more transparent, easily accessible, and create more regulatory certainty than an internal guidance document. OSMRE will continue to employ internal policy documents and directives, as necessary, to ensure that OSMRE staff are properly and consistently implementing the final rule. Therefore, OSMRE intends to revise the relevant policy and guidance documents after this final rule becomes effective to ensure there are no conflicts between the final rule and preexisting guidance.

Comment: Some commenters asserted that delays in the TDN process will result from OSMRE reviewing all information contained in OSMRE files, publicly available electronic information, and information contained in a citizen complaint.

Response: OSMRE recognizes that there may be some small delay as OSMRE reviews information in the citizen complaint, information in OSMRE's files, and publicly available electronic information; however, this delay should be minor compared to the delays that have sometimes occurred under the 2020 TDN Rule as OSMRE sought additional information from an SRA and thoughtfully considered the information that had been received. By allowing OSMRE to consider only these three sources of information available to it at the time it receives the citizen complaint, OSMRE should be able to more expeditiously establish whether reason to believe a possible violation exists, and, if so, send the SRA a TDN so that the SRA can conduct an investigation and respond to OSMRE within ten days. Therefore, while it may be marginally faster for OSMRE to act simply as a pass through for citizen complaints, this process is streamlined in comparison to the existing rule.

Comment: Some commenters assert that the scope of information considered in the proposed rule is inconsistent with SMCRA, which, according to these commenters, requires OSMRE to consider ''all information available.''

Response: OSMRE disagrees with the commenters' assertion that OSMRE must consider ''all information available.'' SMCRA section 521(a)(1) provides that OSMRE should consider ''any information available'' to determine if it has reason to believe a violation exists, not *all* information that tends to disprove the existence of a possible violation. Even in the 2020 TDN Rule, OSMRE recognized that it should not consider ''all information available'' and sought to put sideboards on data collection by basing a reason to believe determination on ''any information readily available.'' 30 CFR 842.11(b)(1)(i) (*see also* § 842.11(b)(2) (referencing ''any information readily available'')). Moreover, the preamble to the 2020 TDN Rule clearly explained that, to ensure the process would proceed quickly and not become ''open-ended,'' OSMRE would only consider ''any information that is accessible without unreasonable delay'' to be ''readily available information.'' 85 FR at 75163.

However, because the 2020 TDN Rule did not limit sources of information it considered to be ''readily available'' as this final rule does, in some instances there have been extensive investigations and data collection *before* issuance of a TDN or before OSMRE determined whether reason to believe existed. This result is contrary to section 521(a)(1), which focuses on correcting possible violations expeditiously.

To reduce any delay, the final rule provides that OSMRE should use its best professional judgment, including any information it has on hand when it receives the citizen complaint, to determine whether it has reason to believe a violation exists. This approach

strikes a balance between collecting all available information, which could include information obtained from any source after the citizen complaint is received, along with the attendant delays in seeking and considering such information, and considering only information in a citizen complaint, which was the case prior to the 2020 TDN Rule. The more limited information that OSMRE will consider under this final rule fully comports with the statutory directive to consider ''any information available'' to determine whether OSMRE has reason to believe a violation exists, as well as the structure of section 521(a)(1), which seeks to resolve possible violations quickly.

Comment: One commenter asked if OSMRE could provide an example of the information that will no longer be used for a reason to believe determination if the objective of the change is to expedite the TDN process.

Response: Under the final rule, OSMRE will only consider information contained in its files at the time it is notified of a possible violation, information contained in a citizen complaint, and publicly available electronic information. All other sources of information will not be considered when OSMRE determines whether it has reason to believe a violation exists. Information excluded could include information provided by an SRA or permittee after OSMRE received the citizen complaint that is not publicly available. These limitations will help to prevent an open-ended investigation of the possible violation before OSMRE determines whether to issue a TDN.

Comment: One commenter noted that the proposed rule suggested that OSMRE will consider verbal allegations when making ''reason to believe'' determinations and recommends removing the option for an oral complaint to prevent inconsistencies between verbal and written complaints.

Response: Accepting a verbal citizen complaint and request for a Federal inspection, followed by submission of the complaint in writing, has been a feature of the regulations for many years. *See* 30 CFR 842.12(a). In order to ensure public participation in the enforcement of SMCRA, especially from those who may not be well-versed in SMCRA or its regulations, as well as comply with the requirements of section 517(h)(1), OSMRE will continue to allow a verbal citizen complaint as long as the oral complaint is followed up in writing.

C. 30 CFR 842.11(b)(1)(ii)

Summary of final rule revisions to 30 CFR 842.11(b)(1)(ii): At 30 CFR 842.11(b)(1)(ii)(B)(*1*), the final rule adds a new sentence at the end of the existing provision. In the final rule, the sentence reads: ''Where appropriate, OSMRE may issue a single ten-day notice for substantively similar possible violations found on two or more permits, including two or more substantively similar possible violations identified in one or more citizen complaints.'' In the proposed rule, OSMRE proposed to include the phrase ''involving a single permittee'' after ''two or more permits.'' The rationale for this change to the proposed rule is discussed in section II of this preamble.

At 30 CFR 842.11(b)(1)(ii)(B)(*3*), this final rule also eliminates the language from the existing regulations that allowed for the possibility that corrective action plans for State regulatory program issues under 30 CFR part 733 could be a form of ''appropriate action'' in response to a TDN. Instead, in appropriate circumstances, under the final rule at new § 842.11(b)(1)(ii)(B)(*4*)(*iii*), State regulatory program issues addressed under final § 773.12, and associated action plans, will be included under the ''good cause'' exception for not acting in response to a TDN, aligning the regulations more closely with statutory requirements. Finally, the good cause provision of the final rule at § 842.11(b)(1)(ii)(B)(*4*)(*ii*) outlines specific time limits for SRAs to request extensions to determine whether a violation exists, with a maximum cap of 90 additional days, emphasizing expeditious resolution.

Comment: Some commenters noted that SMCRA section 521(a)(1) authorizes the issuance of a TDN only when there is reason to believe that a violation—not the plural ''violations''—exists.

Response: To the extent that these commenters are suggesting that OSMRE must issue a separate TDN for each individual possible violation, OSMRE disagrees with the commenters. SMCRA section 521(a)(1) does not limit the number of possible violations that can be included in a TDN. Nor does SMCRA limit the number of substantively similar possible violations that OSMRE can group together as a single State regulatory program issue.

Comment: Some commenters asserted that an action plan should not count as either appropriate action or good cause for not taking such action. The commenters also asserted that an action plan does not replace immediate enforcement action if violations become manifest.

Response: As noted above, we agree with the commenters that development of an action plan does not constitute appropriate action that in and of itself corrects a violation in a manner consistent with SMCRA. As such, OSMRE has concluded that it is not correct to consider development of an action plan as appropriate action in response to a TDN.

We disagree with the commenters, however, that development of an action plan could not be good cause for not taking appropriate action. As noted in this final rule, OSMRE added § 842.11(b)(1)(B)(*4*)(*iii*) to specify that State regulatory program issues addressed through a § 733.12 action plan could constitute good cause. An action plan would ensure the violation is corrected, even if the correction does not occur until after the plan is executed. Allowing a State to invoke good cause for addressing a possible violation through an action plan does not, however, mean that the underlying violation will not be corrected. Instead, it means that the correction of the violation may occur later as the systematic issues are addressed, which could be as late as the implementation of the action plan, but may be sooner. For example, under this final rule at § 733.12(d), even if a possible violation is being addressed as a State regulatory program issue, an SRA can take direct enforcement action under its State regulatory program and OSMRE can take additional appropriate oversight enforcement action. Alternatively, if OSMRE has adequate proof of an imminent harm, OSMRE would immediately conduct a Federal inspection even if OSMRE is also developing a part 733 action plan.

Comment: Some commenters recommended that OSMRE should allow a request for additional time to be considered an appropriate action.

Response: A request for additional time to review a specific situation is not considered an ''appropriate action to cause the said violation to be corrected'' as required by 30 U.S.C. 1271(a)(1), but more appropriately falls under the good cause provision for not acting to correct the violation within ten days. Requesting more time to evaluate a situation can be an appropriate response to a TDN, but it should not be confused with an appropriate action to correct the violation.

Comment: One commenter requested that OSMRE retain the language in the 2020 TDN Rule that allows for a State issuance of a notice of violation (NOV) with appropriate remedial measures and deadlines to be regarded as appropriate action.

Response: The 2020 TDN Rule allowed OSMRE to consider an SRA's response indicating that it had written

an NOV to the permittee for the possible violation contained in a TDN to be an appropriate action in response to a TDN. This final rule does not change that concept.

Comment: Some commenters asserted that use of action plans for violations erases the distinction between SMCRA section 521(a) ''on-the-ground'' violations and section 521(b) State regulatory program issues. The commenters stated that OSMRE must use its Federal substitution regulations when a State regulatory program issue is evident rather than developing an action plan or using the TDN process.

Response: OSMRE disagrees with this assertion. As explained in sections I.B and III.E of this preamble, SMCRA section 521(a) contains the conceptual framework for addressing a violation of ''any person''—either a permittee's violation or a violation stemming from an SRA's improper implementation of its approved program. Addressing on-the-ground violations and State regulatory program issues through the § 842.11 process is consistent with SMCRA and OSMRE's approach in this rule.

Moreover, as we explained in the preamble to the 2020 TDN Rule, the addition of corrective action plans under § 773.12(a)(2) did not ''significantly alter OSMRE's implementation of the SMCRA program'' because OSMRE has used a similar process through guidance documents for years. 85 FR at 75153. The final rule retains the use of the action plan process ''to more easily address, with the cooperation of the State regulatory authority, situations where an alleged violation can be traced to a systemic problem within an existing State regulatory program.'' *Id.* at 75172. OSMRE maintains, as it did in the 2020 TDN Rule, that corrective action plans are ''consistent with SMCRA's cooperative federalism approach, and OSMRE expects to use revised 30 CFR 733.12 more frequently than it has traditionally used its authority to substitute Federal enforcement or withdraw State program approval because it will allow OSMRE to work with a State regulatory authority to cooperatively correct a State regulatory program issue.'' *Id.*

If, at any time, OSMRE is addressing a potential violation that is a State regulatory program issue and later concludes that the SRA is not effectively implementing, administering, enforcing, or maintaining any part of its approved State regulatory program, OSMRE may then also initiate procedures at § 733.13 to substitute Federal enforcement or withdraw approval of the State regulatory program. A State regulatory program issue by itself does not, at least initially, rise to the level of calling for substituting Federal enforcement or withdrawing the State program, especially if the state is working with OSMRE to implement an action plan. Identification of a State regulatory program issue, instead, is intended to provide an efficient process for an SRA to work with OSMRE to ensure it is effectively implementing its program before the State regulatory program issue ''warrant[s] the rare remedies of substitution of Federal enforcement or withdrawal of an approved State program.'' *Id.* at 75175.

Comment: Commenters stated that informal review afforded to an SRA under 30 CFR 842.11(b)(1)(iii) should not interfere with OSMRE's obligation to initiate a Federal inspection and enforcement action, as there is no legal authorization in the text or legislative history of SMCRA for OSMRE to wait for informal review to be complete before conducting a Federal inspection if OSMRE concluded, after receiving an SRA's TDN response, that the State failed to take appropriate action or did not have good cause for doing so.

Response: Existing 30 CFR 842.11(b)(1)(iii)(A) indicates that when OSMRE notifies an SRA that its response to a TDN does not constitute appropriate action or good cause, the State is entitled to seek informal review by OSMRE's Deputy Director. Also, in general, § 842.11(b)(1)(iii)(B) provides that no Federal inspection can be conducted, or corresponding enforcement action taken, until the informal review is completed. OSMRE did not propose to amend its informal review process and declines to make any changes now based on these comments. Because of the importance of these procedures, any such changes should be subject to full notice and comment, especially from the SRAs, who would be most affected by any changes.

Comment: One commenter asserted that actions plans should not be considered ''good cause'' for failing to take appropriate action because an action plan itself is a type of action. Thus, this commenter opined that when an SRA enters into an action plan, it should be considered ''appropriate action.'' Because OSMRE only evaluates whether a State has shown ''good cause'' when the SRA fails to act on a TDN, actions it takes under an action plan should not be part of OSMRE's ''good cause'' determination.

Response: As explained above, OSMRE disagrees. Section 521(a)(1) provides that OSMRE should conduct a Federal inspection if the SRA ''fails within ten days after notification to take appropriate action to cause said violation to be corrected or to show good cause for such failure.'' 30 U.S.C. 1271(a)(1). While we agree with the commenter's overarching point that an action plan will cause the violation to be corrected, that correction did not happen during the ten days in which the SRA responded to OSMRE's TDN. Therefore, it is more consistent with SMCRA to consider action plans as ''good cause'' in response to a TDN.

Comment: One commenter requested clarification on whether, because of OSMRE not allowing action plans to be appropriate action in response to a TDN, a TDN will be considered an open, unresolved enforcement action until the action plan is completed.

Response: A TDN would remain open while an action plan is being used to resolve an underlying violation. Upon successful completion of the action plan, the SRA will be deemed to have taken appropriate action because the underlying violation will have been abated, and the TDN will be resolved. As noted above, the TDN is a communication mechanism and is not itself an enforcement action.

Comment: Some commenters supported the shortened time limits for how much additional time States may request to respond to a TDN. The commenters noted that this will be 30 days in most cases and 60 days in complex cases.

Response: Under this final rule, an SRA must continue to respond to a TDN within ten days. The time frames to which the commenters are referring apply to the good cause provisions under final 30 CFR 842.11(b)(1)(ii)(B)(*4*)(*ii*) after a TDN is issued. Under that provision, good cause includes when ''[t]he 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.'' This additional amount of time may be days or weeks, which is obviously necessary sometimes to develop material to determine whether a violation does exist. As the commenter notes, under this final rule, 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 its investigation.'' Further, ''[t]he sum total of additional time for any one possible violation must not exceed 90 days.'' Under the 2020 TDN Rule, the SRA's investigation could

have been for a ''reasonable, specified amount of time.'' As that provision did not provide concrete time frames to ensure expeditious correction of violations, OSMRE concluded that it was appropriate to include the 30-day and 60-day time frames.

Comment: One commenter requested clarification that the revised action plan process will not be used as a justification for SRA failure to take appropriate action or to show good cause for such failure and requested that OSMRE take immediate inspection and enforcement action to correct on-the-ground violations resulting from programmatic failures.

Response: An action plan will not be used as a ''justification for failure,'' meaning an SRA cannot have an action plan ongoing indefinitely while the underlying violation remains uncorrected. All action plans will have defined timelines, stated objectives, and criteria defining success. This final rule sets concrete timelines on creation and completion of action plans (*see* § 773.12(b)), which will ensure timely resolution of underlying violations. An SRA cannot claim action plan completion without addressing the underlying violation. Moreover, even when OSMRE and a State are pursuing an action plan, final § 733.12(d) allows an SRA to take direct enforcement actions and OSMRE to take appropriate oversight enforcement actions, as necessary. Further, under § 842.11(b)(1)(i), in imminent harm situations OSMRE will proceed directly to a Federal inspection, which ensures that these situations will be handled promptly.

Comment: One commenter stated that existing 30 CFR 842.11(b)(1)(iii)(B) should be rewritten to provide that a request for informal review by an SRA of OSMRE's determination that the SRA has failed to take appropriate action or to show good cause for such failure should not delay or prevent either a Federal inspection or issuance of an enforcement order for the violation.

Response: OSMRE did not propose to modify existing 30 CFR 842.11(b)(1)(iii)(A) regarding informal review afforded to SRAs. As such, that provision, along with § 842.11(b)(1)(iii)(B), is now beyond the scope of this rulemaking. OSMRE declines to make the requested change.

D. 30 CFR 842.11(b)(2)

Summary of final rule revisions to 30 CFR 842.11(b)(2): As in the proposed rule, the final rule adds 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.'' These changes remove the requirement that a citizen specifically request a Federal inspection, which should eliminate any confusion regarding the processes associated with citizen complaints versus requests for Federal inspections. Additionally, and as previously discussed, this final rule also amends § 842.11(b)(2) by revising the information that OSMRE will consider when determining if OSMRE has reason to believe a violation exists. Finally, the final rule removes the existing language providing that OSMRE will have reason to believe a violation exists if facts known to OSMRE ''constitute simple and effective documentation of the alleged violation . . . .'' Instead, the final rule provides that OSMRE will have reason to believe that a violation exists if the facts ''support the existence of a possible violation . . . .''

Comment: Some commenters supported the revisions that restore SMCRA's intent to treat all citizen complaints as requests for Federal inspection. These commenters also supported eliminating the requirement that a citizen first notify the SRA and then explain to OSMRE why the State's response was insufficient.

Response: OSMRE agrees. Treating all citizens complaints as requests for Federal inspections is consistent with SMCRA. OSMRE has revised the implementing regulatory language at §§ 842.11(b)(2) and 842.12(a) to reflect that. In addition, as explained in section I.B of this preamble, allowing citizens to contact OSMRE directly about a possible violation without an express requirement to contact the SRA is consistent with SMCRA and alleviates any tension or stress associated with a citizen contacting the SRA in situations where the citizen is not comfortable with doing so. As also discussed in section I.B of this preamble, OSMRE has explained why it eliminated the requirement at existing § 842.12(a) for a citizen to state the basis for their assertion that the SRA has not acted.

Comment: As explained in the discussion above, one commenter agreed that all citizen complaints should serve as requests for Federal inspections, even if inspections are not specifically requested.

Response: OSMRE appreciates this comment, and as explained elsewhere, has decided to finalize the corresponding regulatory provisions as proposed at §§ 842.11(b)(2) and 842.12(a). If a citizen complaint, whether or not it specifically requests a Federal inspection, gives OSMRE reason to believe there is imminent harm or a violation of SMCRA or the applicable State program that will be addressed through the TDN process, OSMRE could ultimately conduct a Federal inspection. Thus, OSMRE concludes that there is not a sufficient reason to keep the concepts separate in this final rule.

Comment: Some commenters asserted that all citizen complaints should not be considered as requests for a Federal inspection. These commenters were concerned that doing so could lead to a significant increase in the number of Federal inspections, which could drain State resources as SRAs often participate jointly with OSMRE in Federal inspections. These commenters would prefer that OSMRE maintain its discretion in deciding whether a citizen complainant is ''truly requesting an inspection.'' These commenters also noted that the last sentence of § 842.12(a) as revised states that ''*[i]f* 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.'' These commenters indicated that the discretionary nature of ''if'' in that sentence appeared to contradict OSMRE's statements in the preamble to the proposed rule that all citizen complaints will be treated as requests for a Federal inspection.

Response: OSMRE disagrees and has concluded that it is appropriate to consider all citizen complaints as requests for a Federal inspection, even if the citizen does not specifically ask for a Federal inspection. If a citizen brings a possible violation to OSMRE's attention, it is logical to assume that the citizen would also want OSMRE to conduct any corresponding and necessary Federal inspection.

Contrary to the commenters' assertions, OSMRE does not believe that treating all citizen complaints as a request for a Federal inspection will significantly increase the overall number of Federal inspections performed. While OSMRE will treat all citizen complaints as a request for Federal inspection, OSMRE will still evaluate that citizen complaint under 30 CFR 842.11(b)(1) to determine if it has reason to believe a violation exists and, if so, issue a TDN to the State. In a primacy State, a Federal inspection will only be conducted if OSMRE determines that the State's response to a TDN was arbitrary, capricious, or an abuse of discretion. Because SRAs typically provide adequate responses to

TDNs, we expect the number of Federal inspections to remain about the same as under the existing rule.

Furthermore, pursuant to this final rule, the Department requires a citizen complaint or request for Federal inspection to follow the process in § 842.11(b); as a result, OSMRE retains two points of discretion: when determining whether it has reason to believe a violation exists before issuing a TDN, and determining whether an SRA's TDN response is arbitrary, capricious, or an abuse of discretion. If OSMRE either decides that it does not have reason to believe a violation exists or that the State was not arbitrary and capricious in its response, OSMRE will not conduct a Federal inspection; therefore, the regulation correctly includes ''if'' in the last sentence.

Comment: One commenter noted that the proposed rule at § 842.12 states that citizen complaints under § 842.11(b) will be considered requests for a Federal inspection. The commenter noted further that, if the complaint results in a Federal inspection, the complainant will be offered the opportunity to accompany OSMRE on the inspection. The commenter asserted that the rule should be revised to clarify details about the communication mechanism to the citizen, the time frame for OSMRE's decision, OSMRE's notification to the SRA, and opportunity to accompany OSMRE on the inspection.

Response: The final rule does not change the communication mechanism between OSMRE and citizens related to participation on a Federal inspection, the time frames for OSMRE's decision to conduct a Federal inspection, or affording the SRA an opportunity to accompany OSMRE. Under the TDN process, if OSMRE determines that the State did not take appropriate action or show good cause for not doing so in response to a TDN, OSMRE will notify the SRA according to existing 30 CFR 842.11(b)(1)(iii)(A). In accordance with OSMRE's longstanding practice, the authorized representative may inform the SRA of a resulting Federal inspection. Likewise, if a Federal inspection occurs as a result of information provided by a citizen, OSMRE will notify and give the citizen the opportunity to accompany OSMRE on the inspection consistent with existing 30 CFR 842.12(c). If an imminent harm situation exists, there is no requirement for OSMRE to notify the State of a Federal inspection. If OSMRE determines a need exists in the future for more specificity in procedures for citizen involvement or SRA notification, OSMRE will propose such changes.

Comment: One commenter requested clarification of what constitutes an SRA response that is arbitrary, capricious, or an abuse of discretion and at what levels of OSMRE these decisions are made.

Response: Regarding the ''arbitrary, capricious, or an abuse of discretion'' portion of the comment, the Department adopted that standard of review in 1988. 53 FR at 26732. At that time, the Department opted not to adopt the same deference standards that Federal courts accord to the Secretary in developing regulations. *Id.* at 26733. Instead, the Department decided that such language was unnecessary and ''[c]oncerns about future application of those words will best be decided when specific fact situations have arisen and can be evaluated.'' *Id.* The Department did state that ''OSMRE [will] defer to a state's interpretation of its own regulations, as long as that deference occurs within the framework of careful oversight, as provided by the statute. OSMRE will recognize a State's interpretation of its own program as long as it is not inconsistent with the terms of the program approval or any prior state interpretation recognized by the Secretary and as long as the state interpretation is not arbitrary, capricious, or an abuse of discretion.'' *Id.* at 26732.

Regarding the levels at which OSMRE makes decisions such as when ''reason to believe'' exists or whether a TDN response is arbitrary, capricious, or an abuse of discretion: these decisions are made in accordance with OSMRE's internal management structure, but, generally, an OSMRE authorized representative, with the concurrence of the Field Office Director, makes the decision whether an SRA's response to a TDN does or does not meet the standards for appropriate action or good cause.

Comment: One commenter requested clarification as to whether the proposed rule is intended to limit Federal inspections to requests arising from citizen complaints.

Response: This final rule does not limit Federal oversight inspections to those that occur because of citizen complaints. In general, under existing § 842.11(a)(1), OSMRE conducts oversight inspections of surface coal mining and reclamation operations ''as necessary . . . [t]o monitor and evaluate the administration of approved State programs.''

Comment: Similarly, one commenter sought clarification as to whether a citizen-requested Federal inspection would be counted toward the overall number of Federal oversight inspections agreed upon in the agencies' performance agreements.

Response: Under OSMRE's Directive REG–8 (Oversight of State and Tribal Regulatory Programs, *https://www.osmre.gov/sites/default/files/pdfs/directive997.pdf*), when OSMRE conducts a Federal inspection because of a citizen complaint, that inspection will count toward OSMRE's target number of oversight inspections for the relevant State or Tribe for the applicable evaluation year. OSMRE will retain this approach under this final rule. However, if necessary, OSMRE can exceed the target number of oversight inspections in an evaluation year. As mentioned in response to the prior comment, under § 842.11(a)(1), OSMRE will conduct any Federal inspections that are necessary, regardless of the overall amount.

E. 30 CFR 842.12(a)

Summary of final rule revisions to 30 CFR 842.12(a): As in the proposed rule, the final rule changes § 842.12(a) so that 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. Under the final rule, OSMRE will also consider ''any other information the complainant chooses to provide.'' In addition, OSMRE removed the phrase ''readily available'' and added that a reason to believe determination will be based upon information from a citizen complainant, information available in OSMRE files, and publicly available electronic information. Finally, OSMRE added new sentences to clarify that all citizen complaints under § 842.11(b) will be considered as requests for a Federal inspection, and that, if the information a citizen provides leads to a Federal inspection, the citizen will be afforded the opportunity to accompany OSMRE on the inspection.

Comment: One commenter opined that the term ''violation'' is used throughout SMCRA in the context of a permittee or operator.

Response: Although the meaning of this comment is unclear, as explained elsewhere, to the extent the commenter is suggesting that OSMRE should not send a TDN to an SRA for a permit defect, OSMRE disagrees with the comment. As explained above, OSMRE will issue a TDN whenever it has reason

to believe that ''any person'' is in violation of SMCRA or the applicable State program, including not only permittees and operators, but also SRAs.

Comment: One commenter asserted that imposition of an opportunity for the SRA to seek informal review and OSMRE's completion of that review as a prerequisite to conducting a Federal inspection or issuing a Federal notice of violation following issuance of a TDN and a determination by OSMRE that the State did not take appropriate action (or show good cause for such failure) is nowhere provided for in SMCRA. The commenter also asserted that the provision has the effect of allowing extant violations to continue unabated, possibly ripening into avoidable imminent harm situations.

Response: For the reasons explained above, OSMRE declines to make any changes to the final rule based on this comment. Until OSMRE renders a decision on an SRA's request for informal review, OSMRE will be vigilant in monitoring the underlying situation and make every effort to ensure that an underlying violation does not reach the point of imminent harm.

Comment: Some commenters agreed with OSMRE that a citizen should not have to first notify the State when a citizen is requesting a Federal inspection.

Response: As mentioned previously in section I.B of this preamble and in response to other comments, when requesting a Federal inspection, this final rule removes the requirement at § 842.12(a) for a citizen to notify an SRA of a possible violation.

Comment: Some commenters supported continuation of the requirement for a complainant to contact the SRA before OSMRE.

Response: OSMRE explains above why it is removing the requirement for a citizen to notify the SRA when requesting a Federal inspection. The public will still be able to report possible violations directly to the SRA, and OSMRE encourages citizens to do so. The change in this final rule simply removes the requirement that a citizen notify the SRA prior to or simultaneously with OSMRE. As a general matter, OSMRE agrees with the commenters' reasoning that it is typically better for the SRA, which has primary jurisdiction, to address a citizen complaint because the SRA can address them promptly, ''without the delay the ten day notice procedure necessarily involves.'' However, without the regulatory change, if a citizen opted not to contact the SRA first for whatever reason, then under the 2020 TDN Rule, OSMRE could have refused to consider information received from any person—*i.e.,* the citizen—to determine whether it had reason to believe a violation of SMCRA exists. After review, OSMRE determined that such an outcome would be contrary to SMCRA section 521(a)(1), which requires OSMRE to consider ''any information available'' from ''any person'' about the existence of a possible violation and does not require that that person notify the SRA first. Therefore, excluding the requirement for a citizen complainant to contact the SRA first hews more closely to the statutory requirements for public participation under 30 U.S.C. 1271(a)(1).

Comment: One commenter recommended that a citizen's failure to provide information for the basis of the person's assertion should not result in rejecting a citizen complaint.

Response: Under this final rule, as explained in section I.B of this preamble and as stated in the preamble to the proposed rule, a citizen need not state the basis for the assertion that the SRA has not acted with respect to a possible violation.

Comment: Some commenters asserted that OSMRE should not remove the requirement in the 2020 TDN Rule that a citizen provide a basis for their belief that the SRA failed to act. These commenters recognized that there was no mandate that this provision be included, but they stated that such information would be, at a minimum, useful for OSMRE to decide whether a possible violation exists. These commenters also contend that providing a simple explanation would not add a significant burden to the citizen complainant. Further, one commenter noted they are not aware of OSMRE not acting on a citizen complaint, even if the citizen did not provide such information.

Response: As the commenter recognizes, there is no language in SMCRA that requires OSMRE to mandate that a citizen provide a reason why they think the SRA failed to act. Therefore, as with removing the requirement that the SRA be notified first, discussed above, removing this requirement will remove barriers to public participation and make the final rule adhere more closely to the requirements of SMCRA section 521(a)(1). OSMRE does, however, recognize that it will consider all information provided by ''any person'' about the existence of a possible violation in determining whether it has reason to believe a violation exists. Thus, OSMRE encourages, but does not require, citizens to provide it with all pertinent information about the possible violation, which could include information about the SRA's prior response, if any.

F. 30 CFR 733.5

Summary of final rule revisions to 30 CFR 733.5: The changes to 30 CFR 733.5 involve amending the definitions of ''action plan'' and ''State regulatory program issue.'' As explained in the preamble to the proposed rule (88 FR at 24957), the revisions to the ''action plan'' definition in this final rule are non-substantive clarifying changes that enhance its readability. OSMRE changed ''a detailed schedule'' to ''a detailed plan,'' but this change is not substantive because the revised definition also provides that an action plan ''includes a schedule . . . .'' Both the existing and new definitions require an action plan to lead to the resolution of a State regulatory program issue.

OSMRE also revised the definition of ''State regulatory program issue.'' The revisions are chiefly for clarity but also include substantive changes to the definition. Consistent with the discussions of permit defects in the preamble to this final rule, OSMRE changed ''could result in'' to ''may result from'' to indicate that a State regulatory program issue may result from a State regulatory authority's actions. In tandem with this change, the last sentence of the revised definition provides that ''State regulatory program issues will be considered as possible violations and will initially proceed, and may be resolved, under part 842 of this chapter.'' This language makes clear that an SRA's actions could constitute a possible violation for which OSMRE would issue a TDN. *See* discussions of permit defects above and at 88 FR at 24951–24952 and 24957.

Comment: See section III.E. (''Any Person'' Who Can Be in Violation of SMCRA) for comment summary and response.

G. 30 CFR 733.12(a)

Summary of final rule revisions to 30 CFR 733.12(a): Without changing the meaning, the final rule removes ''in order'' before ''to ensure'' as it is unnecessary. In addition, the final rule changes ''escalate into'' to ''become'' to be more concise. In existing § 733.12(a)(1), the final rule adds ''including a citizen complainant'' at the end of the sentence to emphasize that a citizen complainant can be the source of information that leads OSMRE to identify a State regulatory program issue. In existing § 733.12(a)(2), the final rule adds ''initiate procedures to'' before ''substitute Federal enforcement'' and adds ''in accordance with § 733.13'' at the end of the sentence to replace ''as

provided in this part.'' The changes to the last sentence indicate that there is an established process for substituting Federal enforcement or withdrawing approval of a State regulatory program.

Comment: See Section III.H (Minor Text Changes and Conforming Edits) for comment summary and response.

H. 30 CFR 733.12(b)

Summary of final rule revisions to 30 CFR 733.12(b): The final rule modifies existing § 733.12(b) to require OSMRE to develop and approve an action plan for a State regulatory program issue, along with a specific time frame for completing the identified actions. The final rule revises 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.'' Additionally, the final rule adds a new second sentence that would allow OSMRE and the relevant SRA to ''identify [within 10 business days] interim remedial measures that may abate the existing condition or issue.'' The final rule removes the existing language that allows OSMRE to ''employ any number of compliance strategies'' and replaces it with the requirement for OSMRE to develop and approve an action plan for all State regulatory program issues. In addition, the final rule removes the existing second sentence, which includes the requirement for OSMRE to develop and institute an action plan only if OSMRE does not expect the SRA to 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. Instead, the final rule includes a 60-day period for development and approval of an action plan for all State regulatory program issues. These changes also emphasize that State regulatory program issues will start as possible violations under 30 CFR part 842, which is consistent with the revised definition of State regulatory program issue at § 733.5. Finally, the revised provision includes the 10-day interim remedial measure language.

Comment: Some commenters supported the added language to § 733.12(b) that requires OSMRE to develop action plans in consultation with SRAs.

Response: OSMRE appreciates the support for this aspect of the rule. OSMRE recognizes that it is vitally important for an SRA to have input into an action plan that is developed to resolve a violation because the States primarily implement SMCRA on non-Federal, non-Indian lands within their borders, subject to OSMRE's oversight.

Comment: Some commenters asserted that action plan time frames are too short, especially if the SRA needs to develop regulations or seek legislative changes from the State legislature, which may have short legislative sessions, or if there is litigation that affects the resolution of the State regulatory program issue.

Response: OSMRE disagrees. OSMRE thoroughly considered these comments and concludes that the time frames in final § 733.12(b) are sufficient and appropriate for what the action plan requires. As explained in section I.B of this preamble, OSMRE, in general, does not expect that final resolution of an issue could exceed one year. *See also* 88 FR at 24950. Instead, when developing an action plan, OSMRE and the SRA must give careful consideration to objectives that can be completed within the specified time frame, such as proposing a State program amendment (rather than having a State program amendment approved).

Further, regarding the 10 days for interim measures, identification of these measures is not mandatory. The final regulatory language uses the phrase ''*may* identify interim measures that may abate the existing condition or issue.'' (Emphasis added.) If 10 days is not sufficient or feasible, OSMRE and the SRA will not need to develop interim measures. The provision serves the purpose of highlighting and emphasizing the utility of identifying interim measures that may abate a violation as soon as possible. Even if these measures are not identified within 10 days, nothing prevents an SRA from later identifying such measures at any time to ameliorate or resolve an underlying violation or issue.

OSMRE also concludes that 60 days is adequate for development of an action plan, with the understanding that development and approval of an action plan does not mean that any of the requirements of the action plan need to be completed within 60 days.

Comment: One commenter noted that there is no provision for an SRA appeal of an OSMRE-developed action plan.

Response: Under this final rule, OSMRE contemplates that development of an action plan will be a joint effort between OSMRE and an SRA. However, under final § 773.12(b)(4), if the SRA does not cooperate in developing the action plan, OSMRE will develop, and require the State to comply with, the action plan. The Federal regulations provide that any written decision of the Director or their designee may be appealed to the Interior Board of Land Appeals if the decision specifically grants such an appeal. 43 CFR 4.1281. Thus, it will be up to the OSMRE Director or designated official to make a case-by-case determination if the action plan warrants IBLA appeal rights.

Comment: One commenter noted there are no OSMRE time frames required during its action plan development, and violations could remain unabated while OSMRE develops or considers an action plan.

Response: SMCRA does not have concrete time frames for OSMRE to determine whether it has reason to believe a violation exists. In like manner, this final rule does not create time frames for OSMRE to determine that there is a State regulatory program issue. However, the non-mandatory 10-day period for OSMRE and the SRA to develop interim measures in this final rule demonstrates OSMRE's commitment to addressing on-the-ground issues quickly even while the action plan is being developed. OSMRE will, of course, continue to monitor the underlying situation and make every effort to ensure that an underlying violation does not become an imminent harm if it is being addressed through an action plan.

I. 30 CFR 733.12(b)(1) Through (4)

Summary of final rule revisions to 30 CFR 733.12 (b)(1) through (4): In the first sentence of existing 30 CFR 733.12(b)(1), the final rule repeats the word ''identify'' before ''an effective mechanism for timely correction'' for clarity. This is a non-substantive change. The final rule also modifies § 733.12(b)(1) by adding a new second sentence that would require the SRA 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.'' The 365-day requirement is discussed in section I.B of this preamble and in response to other comments in this section. OSMRE also finalized § 733.12(b)(2) as proposed by adding ''upon approval of the action plan'' to the end of the existing section. This change clarifies that an approved action plan will identify any remedial measures that an SRA must take immediately after the action plan is approved. Additional non-substantive changes to 30 CFR 733.12(b)(3) that were presented in the proposed rule are included in this final rule.

Finally, OSMRE introduced in the proposed rule a new § 733.12(b)(4) to enable OSMRE to develop and approve an action plan unilaterally if the SRA does not cooperate in a manner

sufficient to develop such a plan. OSMRE would develop the action plan in accordance with the requirements of § 733.12(b)(1) through (3) and require the State to comply with the action plan. This will ensure timely resolution of violations. Further discussion of the changes to existing 30 CFR 733.12(b) can be found in the preamble to the proposed rule, 88 FR at 24958.

Comment: One commenter asserted that the proposed rule seeks to treat State regulatory program issues as potential violations and resolved under part 842 of this chapter, which aligns with SMCRA and should be finalized.

Response: As discussed, requiring OSMRE to issue TDNs for 30 CFR part 733 State regulatory program issues (*i.e.,* permit defects) more closely aligns with the text of SMCRA and congressional intent regarding TDNs. Consistent with the revised definition of State regulatory program issue at final § 733.5, OSMRE notes that State regulatory program issues will initially be considered as possible violations and will initially proceed, and may be resolved, under 30 CFR part 842. However, OSMRE also notes that while it will consider all possible violations initially under part 842, there may be instances when it makes more sense to handle certain possible violations solely through the part 733 action plan process rather than through the TDN process. Even in these instances, the new action plan time frames and requirements in § 733.12(b) will ensure that these situations do not take any longer than the TDN process, which will lead to timely resolution of underlying issues.

Comment: One commenter noted that the proposed rule acknowledged the need to address programmatic issues with SMCRA implementation by the State regulator through part 733, while also ensuring timely and direct enforcement of permit-related violations.

Response: OSMRE agrees with the commenter that the State regulatory authority is responsible for addressing violations and State regulatory program issues. As acknowledged by the commenter, SMCRA provides mechanisms to address violations and State regulatory program issues. SMCRA section 521(a), as implemented at 30 CFR 842.11, is intended to address all possible violations of SMCRA or a State regulatory program. SMCRA 521(b), as implemented at 30 CFR 733.12, is intended to address issues that arise from a State's implementation of its approved SMCRA program. In this final rule, all possible violations will initially be considered under 30 CFR part 842. Violations that indicate problems with SMCRA implementation may be addressed under the TDN process if the issue is limited in scope and can be successfully resolved within the confines of the TDN process. However, OSMRE believes most systemic issues will be addressed through a State regulatory authority program issue and addressed with a corrective action plan under 30 CFR 733.12.

Comment: One commenter stated that it is not clear how the revisions prevent duplication and confusion when OSMRE receives a citizen complaint related to a State regulatory program issue.

Response: When OSMRE receives a citizen complaint, OSMRE will review the information contained in the complaint, information in its files at the time the complaint is received, and publicly available electronic information to determine if OSMRE has reason to believe a violation exists. If OSMRE has reason to believe a violation exists, it will communicate this possible violation to the SRA via a TDN. There is no redundancy in this process. If the State is already aware of the issue, it can respond to the TDN that there is no violation of the State program, the State has taken appropriate action to abate the issue, the State is in the process of developing an abatement plan, or the State needs additional time to fully consider if the issue is a violation. And, short of an imminent harm scenario, OSMRE would only conduct a Federal inspection and take any corresponding enforcement action if the State does not respond in ten days or its response to the TDN is arbitrary, capricious, or an abuse of discretion.

Comment: Some commenters asserted that the State regulatory program issue process identified in the TDN rule will result in Federal assumption and/or control when a State regulatory program issue is identified.

Response: OSMRE disagrees with these commenters. The only way Federal assumption or control of a State program can occur is through the procedures at existing 30 CFR 733.13, which are not a subject of this final rule. Federal assumption of SMCRA jurisdiction cannot occur through the State regulatory program issue process outlined in this final rule at § 733.12. Issuing a TDN in the first instance for a State regulatory program issue and allowing a part 733 action plan to constitute ''good cause'' in response to the TDN is consistent with SMCRA and State primacy.

Comment: One commenter stated that the regulatory text demonstrating deference to States should be reflective of SMCRA regarding Federal inspections.

Response: As OSMRE understands the comment, the commenter claims that OSMRE should not intervene in SRA inspections. If OSMRE has reason to believe a violation exists, OSMRE will send a TDN to the SRA about the possible violation. OSMRE will conduct a Federal inspection only as directed in SMCRA and the implementing regulations at 30 CFR 842.11 if the SRA does not respond in ten days or its response to the TDN is arbitrary, capricious, or an abuse of its discretion. As previously noted, the arbitrary or capricious standard affords a high level of deference to an SRA, and it is fully consistent with SMCRA.

J. 30 CFR 733.12(c)

Summary of final rule revisions to 30 CFR 733.12(c): The final rule includes non-substantive and grammatical changes to existing § 733.12(c) for clarity. These revisions do not change the meaning of the provision.

Comment: See section III.H. (Minor Text Changes and Conforming Edits) for a general comment summary and response.

K. 30 CFR 733.12(d)

Summary of final rule revisions to 30 CFR 733.12(d): As in the proposed rule, in the final rule at § 733.12(d), OSMRE inserted the word ''additional'' before the phrase ''appropriate oversight enforcement action'' to indicate that any oversight enforcement action that OSMRE takes is in addition to an initial TDN or identification of a State regulatory program issue. The final rule ends the sentence there and deletes the last clause of the existing language. The revised provision reads: ''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.'' OSMRE deleted the remainder of the sentence because, as explained in section I.B of this preamble, under this final rule, it will no longer be the case that a possible violation could proceed initially as a State regulatory program issue that could subsequently transform into a possible violation that warrants the issuance of a TDN. Instead, under this final rule, OSMRE will consider all possible violations initially under 30 CFR part 842, which may result in the issuance of a TDN.

Comment: None.

V. Severability of Provisions in This Final Rule

The changes to the TDN and Federal inspection provisions at 30 CFR part 842 are intended to be severable from the 30 CFR part 733 provisions for State regulatory program issues and associated action plans. Thus, if any of the provisions of this final rule are stayed or invalidated by a reviewing court, the other provisions could operate independently and would be applicable to the relevant provisions of the existing regulations. For example, if a court were to invalidate any portion of the changes to part 842, the provisions at part 733 could still operate independently. Conversely, if a court were to invalidate any of the provisions at part 733, the provisions at part 842 could still operate independently. Likewise, changes to specific sections within these parts are intended to be severable from the changes to other sections.

VI. Procedural Matters and Required Determinations

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

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

Executive Order 12866—Regulatory Planning and Review, Executive Order 13563—Improving Regulation and Regulatory Review, and Executive Order 14094—Modernizing Regulatory Review

Executive Order 12866, as amended by Executive Order 14094, 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 this rule is not significant under Executive Order 12866, as amended.

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. OSMRE has developed this final rule in a manner consistent with these requirements.

Executive Order 12988—Civil Justice Reform

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

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity; and be written to minimize litigation;

(b) Meets the criteria of section 3(b)(2) 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 final rule does 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 final rule does not have a significant effect on the distribution of power and responsibilities among the various levels of government. The final rule would not significantly increase burdens on SRAs 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. OSMRE has evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and determined that it does 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 rule will not impact the regulation of surface coal mining operations on Tribal lands. However, OSMRE coordinated with Tribes to inform them of the rulemaking. OSMRE coordinated with the Navajo Nation, Crow Tribe of Montana, Hopi Tribe of Arizona, Choctaw Nation of Oklahoma, Muscogee (Creek) Nation, and Cherokee Nation and did not receive comments or concerns. None of the Tribes requested consultation.

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

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

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

This final rule is not subject to Executive Order 13045 because it does not meet the criteria of Executive Order 12866 section 3(f)(1), as amended, 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 page 14. This final 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 final rule.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* is not required because the rule is covered by a categorical exclusion. Specifically, OSMRE has determined that the final rule is administrative or procedural in nature in accordance with the Department of the Interior's NEPA

regulations at 43 CFR 46.210(i). OSMRE has also determined that the final 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 rule 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 rule does not impose an information collection burden because OSMRE is not making any changes to the information collection requirements. OSMRE estimates that the number of burden hours associated with TDN processing will stay the same as what is currently authorized by OMB control number 1029–0118.

Regulatory Flexibility Act

OSMRE certifies that this rule will 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.*). OSMRE evaluated the impact of the regulatory changes and determined the rule changes would not induce, cause, or create any unnecessary burdens on the public, SRAs, or small businesses; would not discourage innovation or entrepreneurial enterprises; and would be consistent with SMCRA, from which the regulations draw their implementing authority.

Congressional Review Act

The Congressional Review Act (5 U.S.C. 804(2)) requires certain procedures for ''any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

a. an annual effect on the economy of $100 million or more;

b. a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;

c. significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

OIRA has determined that this rule does not meet those criteria.

Unfunded Mandates Reform Act

This rule does 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 rule does 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.

Steven H. Feldgus,

Principal Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, the Department of the Interior, acting through OSMRE, amends 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 chapter, 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) of this chapter 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 addition 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, 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 of this chapter. 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. Amend § 842.12 by revising paragraph (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 COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 240304–0068; RTID 0648–XD854]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters (m)) length overall using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the A season apportionment of the 2024 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), April 4, 2024, through 2400 hours, (A.l.t.), December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2024 Pacific cod TAC specified for vessels using jig gear in the BSAI is 1,169 metric tons (mt) as established by the final 2024 and 2025 harvest specifications for groundfish in the BSAI (89 FR 17287, March 11, 2024).

The 2024 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear in the BSAI is 2,767 mt as established by final 2024 and 2025 harvest specifications for groundfish in the BSAI (89 FR 17287, March 11, 2024).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that jig vessels will not be able to harvest 1,100 mt of the A season apportionment of the 2024 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*1*). Therefore, in accordance with § 679.20(a)(7)(iv)(C), NMFS apportions 1,100 mt of Pacific cod from the A season jig gear apportionment to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

The harvest specifications for 2024 Pacific cod included in final 2024 and 2025 harvest specifications for groundfish in the BSAI (89 FR 17287, March 11, 2024) are revised as follows: 69 mt to the A season apportionment and 848 mt to the annual amount for vessels using jig gear, and 3,867 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. NMFS was unable to publish a notification providing time for public comment because the most recent, relevant data only became available as of April 3, 2024.