farming, the taxpayer will be considered to be using the land in farming at the time that such expenditures are made, if the use which is made by the taxpayer of the land from the time of its acquisition by him is substantially a continuation of its use in farming, whether for the same farming use as that of the taxpayer's predecessor or for one of the other uses specified in paragraph (a)(1) of this section.

(b) *Examples.* The provisions of paragraph (a) of this section may be illustrated by the following examples:

Example (1). A purchases an operating farm from B in the autumn after B has harvested his crops. Prior to spring plowing and planting when the land is idle because of the season, A makes certain soil and water conservation expenditures on this farm. At the time such expenditures are made the land is considered to be used by A in farming, and A may deduct such expenditures under section 175, subject to the other requisite conditions of such section.

Example (2). C acquires uncultivated land, not previously used in farming, which he intends to develop for farming. Prior to putting this land into production it is necessary for C to clear brush, construct earthen terraces and ponds, and make other soil and water conservation expenditures. The land is not used in farming at the same time that such expenditures are made. Therefore, C may not deduct such expenditures under section 175.

Example (3). D acquires several tracts of land from persons who had used such land immediately prior to D's acquisition for grazing cattle. D intends to use the land for growing grapes. In order to make the land suitable for this use, D constructs earthen terraces, builds drainage ditches and irrigation ditches, extensively treats the soil, and makes other soil and water conservation expenditures. The land is considered to be used in farming by D at the time he makes such expenditures, even though it is being prepared for a different type of farming activity than that engaged in by D's predecessors. Therefore, D may deduct such expenditures under section 175, subject to the other requisite conditions of such section.

(c) *Cross reference.* For rules relating to the allocation of expenditures that benefit both land used in farming and other land of the taxpayer, see § 1.175–7.

Par. 4. The following new section is added immediately after § 1.175–6:

§ 1.175–7 Allocation of expenditures in certain circumstances.

(a) *General rule.* If at the time the taxpayer paid or incurred expenditures for the purpose of soil or water conservation, or for the prevention of erosion of land, it was reasonable to believe that such expenditures would directly and substantially benefit land of the taxpayer which does not qualify as "land used in farming," as defined in § 1.175–4, as well as land of the taxpayer which does so qualify, then, for purposes of section 175, only a part of the taxpayer's total expenditures is in respect of "land used in farming."

(b) *Method of allocation.* The part of expenditures allocable to "land used in farming" generally equals the amount which bears the same proportion to the total amount of such expenditures as the area of land of the taxpayer used in farming which it was reasonable to believe would be directly and substantially benefited as a result of the expenditures bears to the total area of land of the taxpayer which it was reasonable to believe would be so benefited. If it is established by clear and convincing evidence that, in the light of all the facts and circumstances, another method of allocation is more reasonable than the method provided in the preceding sentence, the taxpayer may allocate the expenditures under that other method. For purposes of this section, the term "land of the taxpayer" means land with respect to which the taxpayer has title, leasehold, or some other substantial interest.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). A owns a 200-acre tract of land, 80 acres of which qualify as "land used in farming." A makes expenditures for the purpose of soil and water conservation which can reasonably be expected to directly and substantially benefit the entire 200-acre tract. In the absence of clear and convincing evidence that a different allocation is more reasonable, A may deduct 40 percent (80/200) of such expenditures under section 175. The same result would obtain if A had made the expenditures after newly acquiring the tract from a person who had used 80 of the 200 acres in farming immediately prior to A's acquisition.

Example (2). Assume the same facts as in example (1), except that A's expenditures for the purpose of soil and water conservation can reasonably be expected to directly and substantially benefit only the 80 acres which qualify as land used in farming; any benefit to the other 120 acres would be minor and incidental. A may deduct all of such expenditures under section 175.

Example (3). Assume the same facts as in example (1), except that A's expenditures for the purpose of soil and water conservation can reasonably be expected to directly and substantially benefit only the 120 acres which do not qualify as land used in farming. A may not deduct any of such expenditures under section 175. The same result would obtain even if A had leased the 200-acre tract to B in the expectation that B would farm the entire tract.

[FR Doc. 80–36926 Filed 11–21–80; 4:36 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Approval of Program Amendments From the State of Texas Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: The State of Texas has proposed to alter the Texas permanent program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) by amending two regulations relating to the designation of areas as unsuitable for surface coal mining. Part 943 is hereby amended to reflect the approval of these amendments to the Texas permanent program.

DATE: The approval of these amendments is effective on November 26, 1980.

ADDRESSES: Copies of the full text of the Texas program, including the amendments, are available for inspection during regular business hours at the OSM Headquarters Office and the Region IV Office and the central office and field offices of the Texas Railroad Commission at the addresses listed below:

U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, Room 153, South Interior Building, Washington, D.C. 20240;
Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106;
Texas Railroad Commission, Surface Mining and Reclamation Division, 1124 S. Inter-Regional Highway, Austin, Texas 78704;
Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, Woodgate Office Park, Suite 125, 1121 East SW. Loop 323, Tyler, Texas 75703;
Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, Shank Office Building, 1419 3rd Street, Floresville, Texas 78114.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343–4225.

SUPPLEMENTARY INFORMATION:

Background on Texas Program Submission and the Secretary's Approval

On July 20, 1979, OSM received a proposed regulatory program from the State of Texas. The program was submitted by the Texas Railroad Commission, the State regulatory authority. The Texas permanent program was approved conditionally, effective February 16, 1980, in accordance with 30 CFR 732.13(i). The conditional approval was published under 30 CFR 943.11, on February 27, 1980, (45 FR 13008). The Texas program was subsequently amended to satisfy the condition of the approval and 30 CFR 943.11 was amended to reflect the approval of the Texas program without condition on June 18, 1980 (45 FR 41136–41137).

Submission of Amendments

On March 27, 1980, OSM received a proposal from the Texas Railroad Commission containing three amendments to the state regulations. One of the three related to the award of costs, including attorneys' fees in administrative proceedings, and satisfied the condition of the approval of the Texas program. On June 18, 1980, the Secretary approved this amendment (to Texas Rule 051.07.04.023) and removed the condition of the approval of the Texas program (45 FR 41136–41137).

The remaining two amendments contained in the March 27, 1980, letter pertained to Texas Rule 051.07.04.070 concerning the State process for designating areas unsuitable for mining and are the subject of this notice. The amendments affect the provisions that interpret "valid existing rights" and "the close of public comment period" relative to petitions to designate areas unsuitable for mining. The procedures for review of proposed permanent program amendments are contained in 30 CFR 732.17 (44 FR 15328, March 13, 1979).

Discussion of Amendments

(a) "Valid existing rights" provision:

Texas has proposed an amendment to its definition of "valid existing rights" by adding a new subsection to that definition in Texas Rule 051.07.04.070, relating to the interpretation of the document used to establish valid existing rights.

On February 6, 1980 (45 FR 8244), OSM proposed to amend subsection (c) of the definition of valid existing rights in 30 CFR 761.5, to add the option of relying upon applicable state case law concerning interpretation of documents that convey mineral rights.

In the preamble to that proposed rule, OSM stated:

> In order to implement what the Secretary believes is Congress' intent that state case law on the subject not be overruled, the Secretary is proposing that Subsection (c) of Part 761.5 be changed to provide an alternative basis for valid existing rights determinations. Where a state has case law establishing some other standard for interpreting documents which convey mineral rights, this law will be used to interpret documents executed in that state.

The Texas program that was approved conditionally on February 16, 1980, did not contain a provision similar to 30 CFR 761.5(c) relating to the interpretation of the terms of the document relied upon to establish valid existing rights.

The Secretary determined that the absence of this provision did not prevent the approval of the Texas program; however, OSM did advise Texas that this aspect of its program could be improved by adding a provision similar to 30 CFR 761.5(c). Accordingly, Texas proposed such a program amendment. The proposed amendment is consistent with OSM's proposed rule (*See* 45 FR 8244). Texas added a new subsection (c) to Rule 051.07.04.070, and the original subsection (c) has been re-designated subsection (d).

The proposed Texas amendment reads as follows:

"Rule 051.07.04.070 is supplemented by the following language after paragraph (b)(2) under *valid existing rights.*

(c) "Interpretation of the terms of the document relied upon to establish valid existing rights shall be based upon Texas case law concerning the interpretation of documents conveying mining rights. When no Texas case law exists, interpretation shall be based upon the usage and custom at the time and place where the document came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right.

(d) "Valid existing rights does *not* mean mere expectation of a right to conduct surface coal mining. (Examples of rights that alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a State or Federal permit.)"

(b) "Close of public comment period" provision:

During the review of the Texas program, prior to the Secretary's conditional approval on February 16, 1980, OSM advised Texas that its Rule 051.07.04.070 could lead to confusion as to when the public comment period actually closes during the process for designating lands unsuitable for coal mining because of the ambiguous language of the regulation. Although this was determined not to be a significant problem that would prevent approval of the Texas program, OSM did suggest that Texas clarify this language at some future time. Texas agreed that the language of Rule 051.07.04.070 could have been clearer and has accordingly proposed to amend that language by adopting the following regulation:

"Rule 051.07.04.070 is amended as follows:

"Close of public comment period means the close of a public hearing on a surface mining permit application. When no public hearing is held, this time shall be 30 days after the last publication of the newspaper notice required by section .207(a)."

Background on Approval Process

On July 2, 1980, the regional director published notice in the Federal Register announcing receipt of the program amendments (45 FR 44967–44969). The notice announced a public comment period through July 30, 1980, and that a public hearing would be held if requested of the regional director by July 15, 1980, and contained the full text of the program amendments.

The regional director did not receive any requests for a public hearing, so none was held. The one written comment was considered by OSM and is addressed below under the section entitled "Disposition of Comment."

On September 17, 1980, the regional director recommended to the Director of OSM that the program amendments be approved

Director's Findings

Pursuant to 30 CFR 732.15(b)(9) and 732.17(f)(2), the Director finds that the proposed program amendments are consistent with SMCRA and the provisions of 30 CFR Chapter VII, Subchapter F, for the designation of areas as unsuitable for surface coal mining.

Disposition of Comment

The Heritage Conservation and Recreation Service (HCRS) suggested that upon completion, the Memorandum of Agreement between OSM and the Advisory Council on Historic Preservation be made part of the Texas program.

The HCRS comment did not specifically address the two proposed amendments to the Texas program; however, a copy of the completed memorandum will be provided to Texas.

Approval of Amendments

The amendments to the Texas permanent program are hereby approved. A new section 30 CFR 943.15 is added to include approved amendments to the Texas program. 30 CFR 943.15(a), specifically, is added to include the approval of the two amendments of March 27, 1980, and is effective on November 26, 1980.

Additional Findings

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this approval.

This document is not a significant rule under Executive Order 12044 or 43 CFR part 14, and no regulatory analysis is being prepared on this approval.

This approval does not require the concurrence of the Administrator of the Environmental Protection Agency. On January 28, 1980, the Administrator of the Environmental Protection Agency transmitted written concurrence on the Texas permanent program. The amended regulatory provisions approved in this document are not aspects of the Texas permanent program that relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1151–1175), and the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*).

The effective date of the conditional approval of the Texas permanent program (February 16, 1980) shall be used to compute any time requirements that commence with program approval.

Dated: November 20, 1980.

Walter N. Heine,

Director, Office of Surface Mining.

PART 943—TEXAS

A new section, 30 CFR 943.15, is added to read as follows:

§ 943.15 Approval of Regulatory Program Amendments.

(a) The Texas permanent regulatory program amendments received by OSM on March 27, 1980, are approved effective November 26, 1980.

[FR Doc. 80-36941 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 950

Conditional Approval of the Permanent Program Submission From the State of Wyoming Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: On August 15, 1979, the State of Wyoming submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). After opportunity for public comment and thorough review of the initial program submission, the Secretary of the Interior determined that certain parts of the Wyoming program met the minimum requirements of SMCRA and the Federal permanent program regulations and others did not. Accordingly, the Secretary of the Interior approved the Wyoming program in part on February 15, 1980. Notice of that decision and the Secretary's findings were published in the **Federal Register** on March 31, 1980 (45 FR 20930–20982). The State of Wyoming resubmitted its program for approval by the Secretary on May 30, 1980. The resubmitted program included those portions of the initial submission not approved by the Secretary on February 15, 1980. After opportunity for public comment and thorough review of the program resubmission, the Secretary of the Interior determined that the Wyoming program, including the resubmission, does, with minor exceptions, meet the requirements of SMCRA and the Federal permanent program regulations. Accordingly, the Secretary of the Interior has conditionally approved the Wyoming program.

EFFECTIVE DATE: November 26, 1980.

ADDRESSES: Copies of the Wyoming program submission and the administrative record on the Wyoming program submission are available for public inspection and copying during business hours at:

Wyoming Department of Environmental Quality, Land Quality Division, Hathaway Building, Cheyenne, Wyoming 82002.

Wyoming Department of Environmental Quality, Land Quality Division, Field Office, 30 East Grinnell Street, Sheridan, Wyoming 82801.

Wyoming Department of Environmental Quality, Land Quality Division, Field Office, 933 Main Street, Lander, Wyoming 82520.

Office of Surface Mining Reclamation and Enforcement, Region V, Brooks Towers, 1020 15th Street, Denver, Colorado 80202.

Office of Surface Mining, Room 153, Interior South Building, 1951 Constitution Avenue, Washington, DC 20240, Telephone (202) 343–4728.

FOR FURTHER INFORMATION CONTACT:

Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, DC 20240; telephone (202) 343–4225.

Mr. Donald Crane, Regional Director, Region V, Office of Surface Mining, Brooks Tower, 1020 15th Street, Denver, Colorado 80202; telephone (303) 837–5421.

SUPPLEMENTARY INFORMATION:

Introduction

This notice is organized to assist understanding of the findings underlying the Secretary's decision. It is divided into six major parts:

A. General Background on the Permanent Program
B. General Background on the State Program Approval Process
C. General Background on the Wyoming Program
D. Secretary's Findings
E. Explanation of the Secretary's Findings
F. Approval

Part A sets forth the statutory and regulatory framework of the Surface Mining Control and Reclamation Act of 1977 (SCMRA).

Part B sets forth the general statutory and regulatory scheme applicable to all States which wish to obtain primary jurisdiction to implement the permanent program within their borders.

Part C summarizes the steps undertaken by Wyoming and officials of the Department of the Interior, beginning with Wyoming's initial program submission and its program resubmission, and leading to the decision being announced today.

Part D contains the findings the Secretary has made with respect to each of the thirty (30) criteria for evaluation of a State program found in SMCRA and the Secretary's regulations.

Part E contains the reasons for each finding in Part D and the disposition of comments from the public and governmental agencies. For most findings, only the significant differences between Federal laws and rules and resubmitted portions of the Wyoming program are discussed and evaluated. Part E omits detailed discussions of

differences between Federal laws and rules and the Wyoming program, and detailed analysis of relevant public comments, which were discussed and approved in the Secretary's partial approval of the initial program submission as published in the **Federal Register** on March 31, 1980 (45 FR 20930–20982).

Part F identifies those parts of the Wyoming program which are conditionally approved.

It should be noted that these findings are an important part of the record for use as future indicators as to why Wyoming's program was deemed equivalent to SMCRA and consistent with applicable Federal regulations.

It should also be noted that Wyoming's program does not yet apply on Federal lands. Numerous mines in Wyoming conduct operations, in whole or in part, on "Federal lands" containing Federal mineral rights, surface rights, or both. Section 523(c) of SMCRA provides that a State may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State. Pursuant to this authority, Wyoming has submitted a proposed cooperative agreement, which was published in the **Federal Register** on July 8, 1980 (45 FR 45927–45931), and public comment was invited. On October 1, 1980, OSM published a notice of proposed rulemaking (45 FR 64971). A public hearing was held in Cheyenne, Wyoming on October 30, 1980, and the public comment period expired on November 7, 1980. A final rule concerning the proposed Wyoming cooperative agreement is forthcoming. Because it is not yet final, however, this conditional approval does not include the cooperative agreement, which is subject to a separate rulemaking.

A. General Background on the Permanent Program

The environmental protection provisions of SMCRA are being implemented in two phases—the initial program and the permanent program—in accordance with Sections 501–503 of SMCRA (30 U.S.C. 1251–1253). The initial program has been in effect since December 13, 1977, when the Secretary of the Interior promulgated initial program rules, 30 CFR Parts 710–725, 42 FR 62639.

The permanent program will become effective in each State upon the approval of a State program by the Secretary of the Interior or implementation of a Federal program within the State. If a State program is approved in full, the State will be the primary regulator of activities on non-Federal and non-Indian lands subject to SMCRA, rather than the Federal government.

The Federal rules for the permanent program, including procedures for States to follow in submitting State programs and minimum standards the State programs must meet to be eligible for approval, are found in 30 CFR Parts 700–797 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064). Parts 795 and 865 (originally Part 860) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published March 13, 1979 (44 FR 15312–15463). Errata notices were published March 14, 1979 (44 FR 15484), August 24, 1979 (44 FR 49673–49687), September 14, 1979 (44 FR 53507–53509), November 19, 1979 (44 FR 66195), April 16, 1980 (45 FR 2600), June 5, 1980 (45 FR 37818), and July 15, 1980 (45 FR 47424). Amendments to the rules have been published October 22, 1979 (44 FR 60969), as corrected December 19, 1979 (44 FR 75143), December 19, 1979 (44 FR 75302), December 31, 1979 (44 FR 77440–77447), January 11, 1980 (45 FR 2626–2629) and August 6, 1980 (45 FR 52306–52324). Portions of these rules have been suspended, pending further rulemaking, on November 27, 1979 (44 FR 67942), December 31, 1979 (44 FR 77447–77454), December 31, 1979 (44 FR 77454–77455), January 30, 1980 (45 FR 6913), and August 4, 1980 (45 FR 51547–51550).

B. General Background on State Program Approval Process

Any State wishing to assume primary jurisdiction over the regulation of coal mining within its borders may submit a program for consideration. The Secretary of the Interior has the responsibility to approve or disapprove the submission.

The Federal rules governing State program submissions are found at 30 CFR Parts 730–732. After review of the submission by OSM and other agencies, opportunity for the State to add to or modify the program, and opportunity for public comment, the Secretary may approve the program unconditionally, approve it conditioned upon minor deficiencies being corrected in accordance with the timetable set by the Secretary, or disapprove the program in whole or in part. If any parts of the program are disapproved, the State may submit a revision correcting the items which did not meet the requirements of SMCRA and applicable Federal regulations. If any of these revised program parts are also disapproved, SMCRA requires the Secretary of the Interior to establish a Federal program in that State. The State may again request approval to assume primary jurisdiction after the Secretary implements the Federal program. A State may not assume primary jurisdiction until all parts of its program have been approved.

Different criteria apply to various elements of a State program for the purpose of determining whether they can be approved by the Department. The three categories of potential program elements, each with its own standard of review, are discussed in the March 31, 1980, **Federal Register** (45 FR 20930 et seq.).

The special requirements under SMCRA and 30 CFR Chapter VII for anthracite mines in Pennsylvania are not applicable in Wyoming.

Before Wyoming made its initial program submission and subsequent resubmission, challenges to the Secretary's permanent program regulations were brought by representatives of industry, two States, and several environmental groups in the U.S. District Court for the District of Columbia. These suits were consolidated and heard in a single lawsuit, *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144).

The Secretary, in reviewing State programs, is complying with the provisions of Section 503 of SMCRA, 30 U.S.C. 1253, and 30 CFR 732.15. In reviewing the Wyoming program, the Secretary has adhered to the Federal rules as cited in "General Background on the Permanent Program," above, and as affected by the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation.*

In response to the arguments raised in the challenges, the Secretary voluntarily suspended several of the permanent program regulations. These suspensions were announced in the **Federal Register** on November 7, 1979 (44 FR 67942), December 31, 1979 (44 FR 77447) and January 30, 1980 (45 FR 6913).

Because of the litigation's complexity, the court has issued its decision in two "rounds." The Round I opinion, dated February 26, 1980, denied several generic attacks on the permanent program regulations, but suspended or remanded all or part of twenty-two specific regulations. The Round II opinion, dated May 16, 1980, denied additional generic attacks on the regulations, but suspended or remanded some forty additional parts, sections or subsections of the regulations. A listing of all the suspended and remanded regulations was published in the **Federal Register** on July 7, 1980 (45 FR 45604–45609).

The court also ordered the Secretary to "affirmatively disapprove, under Section 503 of SMCRA, those segments of a state program that incorporate a suspended or remanded regulation" (Mem. Op., May 16, 1980, p. 49). However, on August 15, 1980, the court stayed this portion of its opinion. One effect of this stay is to allow the Secretary, when requested by a State, to allow the inclusion in the State program of provisions equivalent to remanded or suspended Federal provisions. In making its resubmission, Wyoming was aware of the regulations suspended by the Secretary and the regulations remanded by the court and made modifications to several of its regulations in light of the suspensions and remands. (See the May 28, 1980, Memorandum from Nancy Wood to the Environmental Quality Council in the Wyoming resubmission (Vol. 3A).) Governor Herschler has requested that the Secretary not disapprove such provisions in the Wyoming program. (See Administrative Record Document Nos. WY–220 and WY–233.) Accordingly, the Secretary is approving provisions which, though they contain language from suspended and remanded Federal regulations, are otherwise acceptable.

In view of the three court decisions, the Secretary is applying the following standards to the review of State program submissions:

1. The Secretary need not affirmatively disapprove State provisions similar to those Federal regulations which have been suspended or remanded by the district court where the State has adopted such provisions in a rulemaking or legislative proceeding which occurred either (1) before the enactment of SMCRA, or (2) after the date of the Round II district court decision, since such State regulations clearly are not based solely upon the suspended or remanded Federal regulations. The Secretary also need not affirmatively disapprove provisions based upon suspended or remanded Federal rules if a responsible State official has requested the Secretary to approve them.

2. The Secretary will affirmatively disapprove all provisions of a State program which incorporate suspended or remanded Federal rules and which do not fall into one of the three categories in paragraph one, above. The Secretary believes that the effect of his "affirmative disapproval" of a State provision is that the requirements of that provision are not enforceable in the permanent program at the Federal level to the extent they have been disapproved. That is, no cause of action for enforcement of the provisions, to the extent disapproved, exists in the Federal courts, and no Federal inspection will result in notices of violation or cessation orders based upon the "affirmatively disapproved" provisions. The Secretary takes no position as to whether the affirmatively disapproved provisions are enforceable under State law and in State courts. Accordingly, these provisions are not being pre-empted or suspended, although the Secretary may have the power to do so under Section 504(g) of SMCRA and 30 CFR 730.11.

3. A State program need not contain provisions to implement a suspended or remanded regulation and no State program will be disapproved for failure to contain a suspended or remanded regulation.

4. Nonetheless, a State must have authority to implement all permanent program provisions of SMCRA, including those provisions of SMCRA upon which the Secretary based remanded or suspended regulations.

5. A State program may not contain any provision which is inconsistent with a provision of SMCRA.

6. Programs will be evaluated only on the basis of provisions other than those that must be disapproved because of the court's order. The remaining provisions will be unconditionally approved, conditionally approved, or disapproved in whole or in part, in accordance with 30 CFR 732.13.

7. Upon promulgation of new regulations to replace those that have been suspended or remanded, the Secretary will afford States that have approved or conditionally approved programs a reasonable opportunity to amend their programs as appropriate. In general, the Secretary expects that 30 CFR 732.17, concerning State program amendments, will govern this process.

On July 10, 1980, the United States Court of Appeals for the District of Columbia Circuit ruled that State programs need not contain minimum permit application requirements beyond those specified in sections 507 and 508 of SMCRA.

(*In re: Permanent Surface Mining Regulation Litigation*, No. 80–1308). On August 25, 1980, that court agreed to rehear the case, and vacated its earlier opinion. Accordingly, that decision presently has no effect on the Secretary's conditional approval of the Wyoming program.

To codify decisions on State programs, Federal programs, and other matters affecting individual states, OSM has established Subchapter T of 30 CFR Chapter VII. Subchapter T will consist of Parts 900 through 950. Provisions relating to Wyoming's program are found in 30 CFR Part 950.

C. Background on the Wyoming Program Submission

Initial Submission

On August 15, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Wyoming. Notice of receipt of the submission initiating the program review was published in the August 22, 1979, **Federal Register** (44 FR 49313–49314) and in newspapers of general circulation within the State. The announcement invited public participation in the initial phase of the review process relating to the regional director's determination of whether the submission was complete.

On September 10, 1979, a public review meeting on the Wyoming program was conducted by the Governor of Wyoming in Cheyenne. A transcript of this meeting was placed in the administrative record on September 20, 1979 (Administrative Record No. WY–17).

On September 20, 1979, a public review meeting on the program and its completeness was held by the regional director in Cheyenne, Wyoming; September 20 was also the close of the public comment period on completeness (Administrative Record No. WY–24). On October 24, 1979, the regional director published notice in the **Federal Register** (44 FR 61266–61267) that he had determined the program submission to be complete.

On October 26, 1979, the Wyoming Department of Environmental Quality submitted an amendment to its program submission, containing a **Federal Register** notice and a letter relating to the regional director's finding of completeness (Administrative Record No. WY–36).

On December 11, 1979, the regional director published notice in the **Federal Register** (44 FR 71798–71799) and in newspapers of general circulation within the State setting forth procedures for the public hearing and comment period on the substance of the Wyoming program. The public comment period was scheduled to close January 7, 1980. On January 7, 1980, a public hearing on the Wyoming submission was held in Cheyenne, Wyoming, by the regional director.

During the period from January 2 through January 21, 1980, various meetings were held between the Secretary and his representatives, on one hand, and the Governor of Wyoming and various other State officials, on the other, concerning draft

amendments to the Wyoming program. Minutes and notes of these meetings are in the public record and were the subject of a **Federal Register** notice on January 15, 1980, (45 FR 2912) and public comment period. None of those draft materials was made an official part of the initial submission. Discussion of those items in the March 31, 1980, **Federal Register** (45 FR 20930–20982) was for general guidance to both the State and the public and did not bind the Secretary in making the decision announced today. Discussions of the draft materials and their location in the administrative record may be found in Part C of the March 31, 1980, **Federal Register** (45 FR 20933–20934).

On January 28, 1980, the regional director submitted to the Director of OSM his analysis of the Wyoming program, noting numerous differences between the program and the Federal regulations, and copies of the transcript of the public meeting and the public hearing, written presentations, exhibits, copies of all public comments received, and other documents comprising the administrative record. The regional director recommended to the Director that the Wyoming program be approved in part.

On February 14, 1980, OSM published in the **Federal Register** (45 FR 10046–10047) a notice of the availability of the views on the Wyoming program submitted by the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed State program.

On February 15, 1980, the Administrator of the Environmental Protection Agency transmitted his written concurrence with the Secretary's approval of those parts of the Wyoming program approved in the initial decision.

On February 15, 1980, the Director of OSM recommended to the Secretary that the Wyoming program be partially approved. The Secretary accepted that recommendation and approved the Wyoming program, in part.

The Secretary informed the State of his decision in a letter to Governor Herschler on February 15, 1980, which included the Secretary's findings on both the approved and disapproved parts of the formal Wyoming program. The public announcement of the decision was published in the **Federal Register** on March 31, 1980 (45 FR 20930–20982). A copy of the letter to Governor Herschler is available for review in the administrative record. The February 15, 1980, decision was based on the formal submission of August 15, 1979, (Administrative Record No. WY–3), as amended on October 26, 1979.

Resubmission

On May 30, 1980, Wyoming resubmitted for approval by the Secretary those portions of its program that were not approved by the Secretary on February 15, 1980. Notice of receipt of the resubmission and notice of a public hearing were published in the **Federal Register** on June 4, 1980 (45 FR 37697–37699). A public hearing was held in Cheyenne, Wyoming, on June 19, 1980, and the record was open for public comment until June 24, 1980.

On July 9, 1980, OSM officials discussed eighteen issues raised during review of the Wyoming resubmission with Wyoming officials by telephone (Administrative Record No. WY–204). On July 25, 1980, notice was published in the **Federal Register** (45 FR 49595–49599) that the record on the Wyoming resubmission was being reopened to allow the public to comment on the eighteen issues and on the provisions of the Wyoming regulations which tentatively had been identified as containing suspended or remanded Federal regulations, as discussed in "General Background on State Program Approval Process," above. The record remained open for comment until August 8, 1980.

On August 5, 1980, the State provided OSM with a letter responding to the eighteen issues discussed by telephone on July 9, 1980 (Administrative Record No. 220). Those responses are referred to, where appropriate, in the findings under Parts D and E of this notice.

The regional director submitted to the Director of OSM his analysis of the Wyoming program resubmission, together with copies of the transcript of the public hearing, written presentations, exhibits, copies of all public comments received, and other documents comprising the administrative record. On August 29, 1980, the regional director recommended to the Director that the Wyoming program be conditionally approved.

On August 21, 1980, OSM published in the **Federal Register** (45 FR 55767–55768) a notice of the availability of the views on the Wyoming program resubmission submitted by the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies.

On August 4, 1980, the Administrator of the Environmental Protection Agency transmitted his written concurrence with the Secretary's conditional approval of the Wyoming program.

On September 3, 1980, the Director recommended to the Secretary that the Wyoming program be conditionally approved. The Secretary accepted that recommendation and conditionally approved the Wyoming program on September 18, 1980. A copy of the letter to Governor Herschler announcing that decision is available for review in the administrative record.

Throughout the Wyoming State program review process, the Secretary and OSM have had frequent contact with the Governor of Wyoming and the staff of the Wyoming Land Quality Division. Discussions of the State program submission and resubmission were held among various State and Federal officials. Minutes or notes of these discussions were placed in the administrative record and made available for public review and comment.

All contacts between officials and staff of the Interior Department and the State of Wyoming have been conducted in accordance with the Department's guidelines for such contacts published September 19, 1979 (44 FR 54444.54445).

D. Secretary's Findings

In accordance with Section 503(a) of SMCRA, the Secretary finds that Wyoming has the capability to carry out the provisions of SMCRA and to meet its purposes, in the ways and to the extent set forth in Findings 1 through 7 below:

1. The Wyoming Environmental Quality Act (EQA), the regulations adopted thereunder, and the Wyoming Administrative Procedures Act, provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in Wyoming in accordance with Section 503(a)(1) of SMCRA;

2. The Wyoming EQA provides sanctions for violations of Wyoming laws, regulations or conditions of permits concerning surface coal mining and reclamation operations, and these sanctions meet the requirements of Sections 503(a)(2), 517, 518 and 521 of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the Land Quality Division or its inspectors;

3. The Wyoming Land Quality Division has sufficient administrative and technical personnel and sufficient funds to regulate surface coal mining and reclamation operations, in accordance with the requirements of Section 503(a)(3) of SMCRA;

4. Wyoming law provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of Sections 506,

507, and 508 of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within Wyoming;

5. Wyoming has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA;

6. Wyoming has established, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other Federal and State permit processes applicable to the proposed operations. This finding corresponds to Section 503(a)(6) of SMCRA;

7. Wyoming has enacted regulations consistent with regulations issued pursuant to SMCRA except for those minor inconsistencies discussed below.

As required by Section 503(b)(1)–(3) of SMCRA, 30 USC 1253(b)(1)–(3), and 30 CFR 732.11–732.13, the Secretary has, through OSM, fulfilled the requirements set forth in Findings 8 through 10 below:

8. Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Wyoming program;

9. Obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those parts of the Wyoming program being approved which relate to air or water quality standards promulgated under the authority of the Federal Clean Water Act, as amended (33 USC 1151–1175), and the Clean Air Act, as amended (42 USC 7401 *et seq.*); and

10. Held a public review meeting in Cheyenne, Wyoming, on September 20, 1979, to discuss the initial Wyoming program submission and its completeness and held public hearings in Cheyenne, Wyoming, on January 7, 1980, on the substance of the initial submission and June 19, 1980, on the substance of the resubmission;

11. In accordance with Section 503(b)(4) of SMCRA, 30 USC 1253(b)(4), the Secretary finds that the State of Wyoming has the legal authority and sufficient qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII.

In accordance with 30 CFR 732.15, the Secretary makes Findings 12 through 30, below, on the basis of information in the Wyoming program submission, including the side-by-side comparison of the Wyoming law and regulations with SMCRA and 30 CFR Chapter VII, the Wyoming program resubmission, public comments, testimony and written presentations at the public hearings, and other relevant information. Specific references to State rules and more detailed discussions of the "State window" alternatives may be found in Part E.

12. The Wyoming program provides for Wyoming to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII through certain provisions of the State program which, as alternatives to certain Federal regulatory requirements, are in accordance with the applicable portions of SMCRA and are consistent with the regulations. Pursuant to 30 CFR 731.13, The Secretary makes Findings 12.1 through 12.15 below with respect to Wyoming's proposed alternative approaches ("State window" items) to the requirements of 30 CFR Chapter VII.

12.1 Wyoming's alternative approach to 30 CFR 780.23 (description of postmining land use contained in reclamation plans) is in accordance with the provisions of SMCRA and is consistent with 30 CFR Chapter VII.

12.2 Wyoming's alternative approach to 30 CFR 785.14 and Part 824 (special requirements for mountaintop removal operations) is in accordance with the provisions of SMCRA and consistent with 30 CFR Chapter VII.

12.3 Wyoming's alternative approach to 30 CFR 785.15, 785.16, and Part 826 (special provisions for operations on steep slopes) is in accordance with SMCRA and consistent with 30 CFR Chapter VII. See discussion in Part E, Findings 12.3 and 13.S.

12.4 Wyoming's alternative approach to 30 CFR 785.19(c), (d), and (e) (identification of alluvial valley floors and evaluation of the effect that mining on alluvial valley floors has on farming) is in accordance with the provisions of SMCRA and is consistent with 30 CFR Chapter VII.

12.5 Wyoming's alternative approach to 30 CFR 816.22 (identification of topsoil to be removed) is in accordance with the provisions of SMCRA and is consistent with 30 CFR Chapter VII.

12.6 Wyoming's alternative approach to 30 CFR 816.44(d) (requirements for permanent diversions and reconstruction of channels temporarily diverted) is in accordance with the provisions of SMCRA and is consistent with 30 CFR Chapter VII.

12.7 Wyoming's alternative approach to 30 CFR 816.57 (identification of streams for which authorization is necessary to mine within 100 feet) is in accordance with the requirements of SMCRA and is consistent with 30 CFR Chapter VII, based on clarification of Wyoming's intent to measure aquatic systems, wherever they support fish, provided on August 5, 1980 (Administrative Record No. WY–220). See discussion in Part E, Finding 12.7.

12.8 Wyoming's alternative approach to 30 CFR 816.72 (valley fill requirements) is in accordance with the requirements of SMCRA and is consistent with 30 CFR Chapter VII.

12.9 Wyoming's alternative approach to 30 CFR 816.73 (head-of-hollow fill requirements) is in accordance with the provisions of SMCRA and is consistent with 30 CFR Chapter VII.

12.10 Wyoming's alternative approach to 30 CFR 816.74 (requirements for durable rock fills) is in accordance with the requirements of SMCRA and is consistent with 30 CFR Chapter VII.

12.11 Wyoming's alternative approach to 30 CFR 816.104 (restoration of contour where thin overburden exists) is in accordance with SMCRA and is consistent with 30 CFR Chapter VII.

12.12 Wyoming's alternative approach to 30 CFR 816.105 (provisions for restoration of contour where thick overburden exists) is in accordance with SMCRA and is consistent with 30 CFR Chapter VII.

12.13 Wyoming's alternative approach to 30 CFR 816.42(a)(2) and 816.46(u) (removal of sedimentation ponds when revegetation has met the liability period—usually 10 years in Wyoming) is in accordance with SMCRA and is consistent with 30 CFR Chapter VII. The program did not clearly show that baseline water quality data and data comparison techniques will be adequate to ensure accurate and proper decisions by the regulatory authority. By letter dated August 5, 1980 (Administrative Record No. WY–220), the State provided acceptable assurances that the data will be required. See discussion in Part E, Finding 12.13.

12.14 Wyoming's alternative approach to 30 CFR 701.5 and 816.150—816.176 (road classification) is in accordance with the technical requirements of SMCRA.

12.15 Wyoming's alternative approach to exploration activities is addressed in Finding 15.B since it was not presented with the other "State window" alternatives and was not proposed pursuant to 30 CFR 731.13.

13. The Land Quality Division has the authority under Wyoming laws and regulations to implement, administer, and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K (performance standards), and the Wyoming program includes provisions adequate to do so, except for the minor inconsistencies discussed in Part E, Finding 13.

14. The Land Quality Division has the authority under Wyoming laws and regulations and the Wyoming program includes adequate provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G (permits), except for those minor deficiencies discussed in detail in Part E, Finding 14.

15. The Land Quality Division has the authority to regulate coal exploration consistent with 30 CFR Parts 776 and 815 (coal exploration) and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815, and the Wyoming program includes provisions adequate to do so.

16. The Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to require that persons extracting coal incidental to government-financed construction maintain information on site, consistent with 30 CFR Part 707.

17. The Land Quality Division has the authority, and the Wyoming program includes provisions to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal land within Wyoming, consistent with the requirements of Section 517 of SMCRA (inspections and monitoring) and 30 CFR Chapter VII, Subchapter L (inspection and enforcement).

18. The Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to implement, administer, and enforce a system of performance bonds and liability insurance, or other equivalent guarantees consistent with 30 CFR Chapter VII, Subchapter J (performance bonds), with the exception of the minor deficiency discussed in Part E, Finding 18.

19. The Land Quality Division has the authority under Wyoming laws and the Wyoming program provides for civil and criminal sanctions for violations of Wyoming law, regulations and conditions of permits and exploration approvals including civil and criminal penalties, in accordance with Section 518 of SMCRA (penalties) and consistent with 30 CFR 845 (civil penalties), including the same or similar procedural requirements.

20. The Land Quality Division has the authority under Wyoming laws and the Wyoming program contains provisions to issue, modify, terminate and enforce notices of violations, cessation orders and show-cause orders in accordance with Section 521 of SMCRA (enforcement) and consistent with 30 CFR Chapter VII, Subchapter L (inspection and enforcement), including the same or similar procedural requirements.

21. The Land Quality Division has the authority under Wyoming laws and the Wyoming program contains provisions to designate areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F (designation of lands unsuitable for mining).

22. The Land Quality Division has the authority under Wyoming laws and the Wyoming program provides for public participation in the development, revision and enforcement of Wyoming laws and regulations and the Wyoming program, consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII, with the exception of the minor deficiencies discussed in Part E, Finding 22.

23. The Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Land Quality Division consistent with 30 CFR Part 705 (restrictions on financial interests of State employees).

24. The Land Quality Division has the authority under Wyoming laws and the program includes provisions to require the training, examination, and certification of persons engaged in, or responsible for, blasting and the use of explosives in accordance with Section 719 of SMCRA, to the extent required for approval of its program.

25. The Land Quality Division has the authority under Wyoming laws and the Wyoming program provides for small operator assistance consistent with 30 CFR Part 795.

26. The Land Quality Division has the authority under Wyoming laws and the Wyoming program provides for protection of employees of the Land Quality Division in accordance with the protection afforded Federal employees under Section 704 of SMCRA.

27. Wyoming has the authority under its laws and the Wyoming program provides for administrative and judicial review of State program actions in accordance with Sections 525 and 526 of SMCRA (review of decisions) and 30 CFR Chapter VII, Subchapter L (inspection and enforcement).

28. The Land Quality Division has the authority under Wyoming laws and the Wyoming program contains provisions to cooperate and coordinate with, and provide documents and other information to, the Office of Surface Mining under the provisions of 30 CFR Chapter VII.

29. The Wyoming EQA and Wyoming Land Quality Rules and Regulations, as currently in effect, contain no provisions which would interfere with or preclude implementation of SMCRA and 30 CFR Chapter VII. The Wyoming Administrative Procedures Act, Wyoming Water Quality Rules and Regulations, Wyoming Air Quality Rules and Regulations, Wyoming Water Laws, Wyoming State Engineer Regulations and Instructions, Department of Environmental Quality Rules of Informational Practices, Wyoming Public Records Law, Wyoming Open Meeting Law and other laws and regulations of Wyoming do not contain provisions which would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII.

30. The Land Quality Division and other agencies having a role in the program will have sufficient legal, technical, and administrative personnel and sufficient funds to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(b) (program requirements), and other applicable State and Federal laws.

E. Explanation of the Secretary's Findings

The discussion in this section is based on a review of the Wyoming program resubmission of May 30, 1980, supplemented by comments received on the resubmission and information submitted by the State on August 5, 1980 (Administrative Record No. WY–220). Throughout, the discussion also refers to materials considered by the Secretary in making his February 15, 1980, decision as published in the **Federal Register** on March 31, 1980 (45 FR 20930 *et seq.*). The discussion in Part E of the Secretary's findings of March 31, 1980, was based on a review of the Wyoming program submitted August 15, 1979, and amended October 26, 1979, as well as material Wyoming subsequently made available to the Department, described in Part C of the March 31, 1980, **Federal Register** notice (45 FR 20930 *et seq.*). The program submission and material subsequently added by the State included enacted laws and regulations and various proposed amendments to those laws and regulations. None of the amendments had been enacted at the time of Departmental review. In accordance with 30 CFR 732.11(d), the failure to have all necessary laws and regulations fully enacted required that the Secretary not approve the program in full or conditionally at that time.

Two versions of the Land Quality Rules and Regulations were contained

in Wyoming's initial program submission. After review of these two versions by OSM, other governmental agencies and members of the public, Wyoming discussed a third version of rules. This third version was presented to the Department of the Interior in the form of a "Regulatory Memorandum" (Administrative Record No. WY-99). It was modified after discussions on January 2-5, 1980, between representatives of the Department of the Interior and the State of Wyoming. The modifications were incorporated into the fourth version of the rules, given to the Department of the Interior on January 9, 1980 (Administrative Record No. WY-119).

Because the Land Quality Division proposed to make extensive modifications in its rules, the Secretary disapproved the entire body of rules. Accordingly, a set of fully enacted Land Quality Rules and Regulations was made part of Wyoming's resubmission on May 30, 1980.

The discussion of particular issues in the March 31, 1980, findings (45 FR 20930 *et seq.*) reflected a review of all four versions of rules which were before the Department of the Interior and the public during the period of consideration of Wyoming's initial program submission. Comments by other Federal agencies and the public were based on review of the first two versions of the rules. Analysis and disposition of those comments reflected, where appropriate, later versions of Wyoming's rules. In the discussion of specific findings in the March 31, 1980, notice (45 FR 20930 *et seq.*), references to particular rules were, for the most part, to the January 9, 1980, proposed rules.

Any indication in the Secretary's March 31, 1980, findings (45 FR 20930 *et seq.*) of the adequacy or inadequacy of those portions of Wyoming's initial program submission that were not approved was tentative and subject to modification upon further review by the Department, the public, and other agencies in the program resubmission review process. The discussions below reflect the results of the Department's final review and consideration of public comments on both the program submission and resubmission.

In addition, only sections of the Wyoming EQA which were in accordance with SMCRA and which were fully enacted were approved in the Secretary's February 15, 1980, decision. Discussions of proposed amendments to the EQA were included in the March 31, 1980, findings (45 FR 20930 *et seq.*) as guidance for Wyoming, other government agencies, and the public in the development and review of Wyoming's resubmission. The conclusions expressed with respect to such amendments were not necessarily final.

Part E is divided into two sections. The first section is entitled "Department's Findings." The second section is entitled "Disposition of Comments Received." In the March 31, 1980, notice (45 FR 20930 *et seq.*), the comments of other governmental agencies and the public were integrated with the Department's analysis. To maintain clarity and avoid redundancy, the Department's discussions of the resubmission and comments on the resubmission are now separated, with cross-references provided where necessary.

Where the detailed findings are numerous and complex, they are divided into two general categories. The first category includes those findings on statutes enacted and rules promulgated by Wyoming in close or exact accordance with the Secretary's tentative findings in the March 31, 1980, notice (45 FR 20930 *et seq.*). The basis for the Secretary's tentative findings was discussed under Part E of that notice (45 FR 20936 *et seq.*). The Secretary's tentative findings were compared with the program resubmission to assure that the State had enacted or promulgated the same language that was considered by the Secretary in making the tentative findings and that the resubmission had been subject to an opportunity for review and comment by government agencies and the public.

The Department has evaluated the provisions in the resubmission, assured that the enacted or promulgated language is essentially the same as that considered in the tentative findings, and considered comments by government agencies and the public. Where Wyoming did enact or promulgate the same language and where the Secretary has not changed his tentative finding on the basis of government agency or public comments, the final approval of those provisions is included in this notice. This notice does not, however, repeat the bases upon which the Secretary found these provisions approvable. These may be found in the March 31, 1980, notice (45 FR 20936 *et seq.*) and the finding number is cited below in this notice to facilitate reference to the March 31, 1980, notice.

The second category includes the Secretary's findings for the remaining provisions of the resubmission that differ from the initial submission and from documents described in Part C of this notice that were subsequently submitted. This category includes findings for materials submitted by Wyoming in response to requests for additional information or findings of unacceptability made in the March 31, 1980, notice (45 FR 20930 *et seq.*); findings on provisions where Wyoming enacted or promulgated language different from that which the Secretary tentatively found acceptable in the March 31, 1980, notice; and findings on any new provisions included in the resubmission. Additional analyses of the resubmission of issues which had not been discussed in the March 31, 1980, notice, but which required detailed discussion in these findings, are also included. Findings in the second category generally required more analysis than did those in the first category. The findings under this category are organized by the general finding number followed by a letter. Where applicable, the finding number from the March 31, 1980, notice is also included in the discussion to facilitate reference to discussions in that earlier notice. Unless otherwise noted, all references to the EQA are to that Act as amended by the 1980 Wyoming legislature, and as it appears in Exhibit A.1. of the resubmission.

For Findings 13 (environmental performance standards), 14 (permit system), and 15 (coal exploration), a brief description is provided of the provisions being approved under this category. The description is provided because citations were changed by the State during the process of enacting the statutory provisions and promulgating the regulations.

Department's Findings

Finding 1

The Secretary finds that the Wyoming Environmental Quality Act (EQA), the regulations and guidelines adopted thereunder, the Wyoming Administrative Procedures Act, and the State Engineer's regulations provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in Wyoming in accordance with SMCRA, subject to the discussions in Findings 13.F, 13.P, 14.A, 14.C, 18.A, 22.C and 22.D, below. This finding corresponds to Section 503(a)(1) of SMCRA, 30 U.S.C. 1253(a)(1). An analysis of the issues underlying this finding is found in the detailed discussions of Findings 6 and 12 through 30, below.

Finding 2

The Secretary finds that the Wyoming EQA provides sanctions for violations of Wyoming laws, regulations or conditions of permits concerning surface

coal mining and reclamation operations, and these sanctions meet the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the Land Quality Division or its inspectors. This finding corresponds to Section 503(a)(2) of SMCRA (30 U.S.C. 1253(a)(2)). An analysis of the issues underlying this finding is found in the detailed discussions of Findings 18, 19 and 20, below.

Finding 3

The Secretary finds that the Land Quality Division has sufficient administrative and technical personnel and sufficient funds to enable Wyoming to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. This finding corresponds to Section 503(a)(3) of SMCRA (30 U.S.C. 1253(a)(3)). An analysis of the issues underlying this finding is found in the detailed discussion of Finding 30, below.

Finding 4

The Secretary finds that Wyoming law provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within Wyoming, subject to the discussions in Findings 14.A and 14.C below. This finding corresponds to Section 503(a)(4) of SMCRA (30 U.S.C. 1253(a)(4)). An analysis of the issues underlying this finding is found in the detailed discussion of Finding 14, below.

Finding 5

The Secretary finds that Wyoming has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA. This finding corresponds to Section 503(a)(5) of SMCRA (30 U.S.C. 1253(a)(5)). An analysis of the issues underlying this finding is found in the detailed discussion of Finding 21, below.

Finding 6

The Secretary finds that Wyoming has established, for the purpose of avoiding duplication, a process for coordinating and reviewing permit applications with other governmental agencies. This finding corresponds to Section 503(a)(6) of SMCRA. In addition to the following paragraphs in this finding, discussion of the analysis underlying this finding is found in Findings 13 and 14, below.

Wyoming has identified in its program submission seven State agencies having related responsibilities for elements of permitting and inspection of surface and underground coal mining operations. These are the Land, Air, and Water Quality Divisions of the Department of Environmental Quality, the State Engineer, the Recreation Commission, the Game and Fish Department, and the Wyoming State Inspector of Mines. The related responsibilities are coordinated through five Memoranda of Understanding (MOUs). In these MOUs, the agencies agree to review elements of applications, provide technical assistance to the principal agency (the Land Quality Division, which serves as the "regulatory authority"), and to apply certain environmental protection performance standards to permit applications (Exhibits F–1 through F–5 of resubmission).

The MOUs between the three divisions of the Department of Environmental Quality and the MOU between the Land Quality Division and the State Engineer contain certain standards and require plans to meet certain engineering and environmental requirements. This information is required to be in permit applications for surface (or underground) coal mining operations pursuant to promulgated Rule II 3a(5) of the resubmitted program. A permit can be approved only with this information included; otherwise the requirements of Rule II 3a(5) and W.S. 35–11–406(n)(i) (complete application) would not be met. Once a permit is approved, the permittee must comply with the measures in the application. Thus, the requirements of the Water Quality and Air Quality Divisions, and the requirements of the State Engineer, are enforceable under the provisions of Wyoming's program.

The MOUs divide important functions among the Land, Air, and Water Divisions of the Department of Environmental Quality and provide a strong vehicle for addressing their respective concerns. The MOUs reached with other entities such as the State Engineer and the Game and Fish Department also establish protocols and identify authorities. While coordination will require on-going attention, the Land Quality Division staff has worked under the MOUs successfully and should provide proper coordination. Use of guidelines is discussed further in Finding 14.22 in this notice.

6.1 The MOU between the three divisions of the Department of Environmental Quality (Exhibit F.1) has been resubmitted with some changes. The exhibit was signed by all participants and approved as to form and execution by the Attorney General on April 18, 1980. The changes are in all sections, but principally reflect editorial rather than substantive changes. Exceptions are (1) a change in the Water Quality Division's effluent limits for total suspended solids, (2) additional provisions allowing separate, but conditional, inspections by the various divisions, and (3) identification of W.S. 35–11–437 as the sole enforceable basis for the permit conditions, Article IV, and the Land Quality Division's rules.

The first change is addressed under Finding 13.C (13.14) in this notice, which contains an explanation by the State that the Secretary finds acceptable. The second change in the MOU is acceptable since it minimizes duplicative inspections, and yet allows the regulatory authority to conduct independent inspections. The third change, that of relying on W.S. 35–11–437 as the limiting mechanism to identify the scope of enforcement authority by the Land Quality Division in matters involving other divisions' rules, is logical since that section of the statute contains the enforcement authority for surface coal mining operations.

Accordingly, the Secretary finds the Department of Environmental Quality MOU (Exhibit F–1) to be acceptable.

6.2 The MOU between the Wyoming State Engineer and the Department of Environmental Quality regarding reservoirs (Exhibit F.4) has been modified in the resubmission. The MOU is signed by all parties and was approved by the Wyoming Attorney General as to form and execution on March 4, 1980. The MOU contained in the resubmission is accompanied by an "Appendix A" which is titled "Proposed Regulations for Surface Coal Mining Operations." Thus the MOU contains materials which do not appear to be in effect through the authority of the MOU. Further, the material in "Appendix A" includes requirements previously found by the Department to be inconsistent with SMCRA. (See Finding 13.28.) By letter dated August 5, 1980 (Administrative Record No. WY–220), the State indicated that the Appendix A attached to the MOU is the wrong appendix and that Appendix A attached to the State Engineer's regulations in Volume 5, Exhibit B.9, is the correct appendix. The Appendix A in Exhibit B.9 corrects the deficiencies discussed in Figure 13.28 and is acceptable.

The other changes in the MOU relate to administrative procedures designed to enhance coordination between the two State agencies and are acceptable.

Included with Exhibit F.4. is an MOU between the State Engineer and the Department of Environmental Quality which addresses "wells." This MOU was approved by the Attorney General on May 25, 1980. The resubmission contains only editorial changes and is acceptable.

6.3 The resubmission contains a new Wildlife Guideline (No. 5, exhibit not labeled in the resubmission, but should be Exhibit G.1.e.). Criteria identical to the Federal requirements of 30 CFR 816.97(c) (powerline construction) have been added to Section VI of the guideline; this is briefly discussed in Finding 13.64. Other changes include designation of the study area as including the permit area and the adjacent area, addition of requirements for collection of surface water quality data, reduction of the time period for trapping small mammals, adding walking transect observations to methods of assessing the presence of predators, and addition of a requirement to include wildlife monitoring data in the annual report. Appendices 1 and 2 and the references in the guideline have also been enhanced to improve black-footed ferret surveys and data presentation.

The Secretary finds Guideline No. 5 for wildlife acceptable as consistent with similar Federal requirements. (For further explanation see Finding 12.7, below.)

6.4 The resubmission contains a new Hydrology Guideline (No. 8, Exhibit G.1.g). Important changes to the guideline as resubmitted are (1) the addition of a part describing the hydrologic data to be provided in the annual report, (2) change of term "ground water recharge rates" to "ground water recharge areas," (3) change of terminology in Part IV to include more descriptive geologic and hydrologic terms, (4) recommendation of three-day pump tests and expansion of the description of the pumping tests, (5) specification of water quality analysis including requiring a major cation-major anion balance, (6) requirement for supporting geophysical or lithological logs, (7) addition of water rights information, (8) identification of proposed results of the monitoring program, (9) a discussion of complementary computer modeling, and (10) the addition of Appendix 2 which lists water quality parameters for hydrologic investigations. The Secretary finds this guideline acceptable as consistent with Federal requirements.

6.5 The resubmission contains a new Alluvial Valley Floor Guideline (No. 9, Exhibit G.1.h.). The changes in the resubmitted guideline are (1) modification of the term "adjacent area" to correspond to Rule I 2(3), (2) deletion of the term "agricultural activities," (3) redefinition of the term "alluvial saturated zone" to include hydrologic principles, (4) inclusion of a standard definition of "animal unit," (5) modification of the term "essential hydrologic functions" to correspond to Rule I 2(24), (6) addition of the Rule I 2(48) definition of "natural damage to the quantity or quality of water," (7) addition of the Rule I 2(89) definition of "subirrigation or flood irrigation agricultural activities," (8) expansion of the term "unconsolidated stream laid deposits" to include terrace and flood plain deposits consonant with Rule I 2(101), (9) inclusion of the Rule I 2(104) definition of "undeveloped rangeland," (10) addition of the Rule I 2(105) definition of "upland areas," (11) editing of subirrigation and flood irrigation criteria in Section II, (12) addition of the requirement to map unconsolidated, stream laid deposits, (13) addition of aerial imaginery and diurnal fluctuations of water table as indicators of subirrigation, (14) addition of flood frequency to determinants of the suitability of periodic flood flows for enhanced plant production, (15) modification of the procedures for evaluating artificial flood irrigation and irrigation potential, (16) addition of subirrigation or flood irrigation agricultural activities to the alluvial valley floor identification criteria, (17) reduction in the time period for which changes in ownership/tenancy and management practices are to be provided in the application, (18) deletion of authority to permit landowner/tenant to claim confidentiality for land use and other data, (19) restriction in the use of the "importance to agriculture" formula to agree with Rule III 2d, (20) restriction of the determination of natural drainage to areas important to farming consistent with the district court ruling, (21) addition of a requirement for a cumulative assessment of surface and ground water changes and the effects on the productive capability of off-site alluvial valley floors, (22) requirement to assess the capability to re-establish essential hydrologic functions of off-site affected alluvial valley floors and (23) numerous editorial changes.

The Secretary finds the Alluvial Valley Floor Guideline consistent with 30 CFR 785.19 and that Wyoming has established methods for identifying, evaluating, and protecting alluvial valley floors.

Finding 7

The Secretary finds that Wyoming has enacted regulations consistent with regulations issued pursuant to SMCRA, subject to the discussions in Findings 13.F, 13.P, 14.A, 14.C, 18.A, 22.C, and 22.D, below.

Finding 8

The Secretary has, through OSM, solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Wyoming program. This finding corresponds to Section 503(b)(1) of SMCRA (30 U.S.C. 1253(b)(1)). This finding is based upon the facts set forth in the two **Federal Register** notices inviting and announcing public availability of these comments. See 45 FR 10046–10047 and 45 FR 55767–55768.

Finding 9

The Secretary has, through OSM, obtained the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to those parts of the Wyoming program approved on February 15, 1980, and those parts for which this notice announces approval which relate to the air or water quality standards promulgated under the authority of the Federal Clean Water Act, as amended (33 U.S.C. 1151–1175), and the Clean Air Act, as amended (42 CFR 7401 *et seq.*). This finding corresponds to Section 503(b)(2) of SMCRA (30 U.S.C. 1253(b)(2)). The finding is based on the two letters transmitted by the Administrator of EPA to the Secretary. A copy of each letter has been placed in the Administrative Record.

Finding 10

The Secretary, through the OSM regional director for Region V, held a public review meeting in Cheyenne, Wyoming, on September 20, 1979, to discuss the Wyoming program submission and its completeness and held public hearings in Cheyenne, Wyoming, on January 7 and June 19, 1980, on the substance of the Wyoming program submission and resubmission. This finding corresponds to Section 503(b)(3) of SMCRA (30 U.S.C. 1253(b)(3)).

Finding 11

The Secretary finds that the State of Wyoming has the legal authority and has sufficient qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII. This finding corresponds to Section 503(b)(4) of SMCRA (30 U.S.C. 1253(b)(4)).

Finding 12

The Secretary finds that the Wyoming program provides for Wyoming to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII, subject to the discussions in Findings 13.F, 13.P, 14.A, 14.C, 18.A, 22.C, and 22.D below. This finding corresponds to the first half of 30 CFR 732.12(a); it is based on Findings 1 through 11 and 12.1 through 30. Analyses of the issues underlying those findings are found throughout this section.

12.1–12.15 Wyoming proposed in its resubmission a total of fourteen alternative approaches to Federal regulations (termed "State windows") pursuant to 30 CFR 731.13. These are presented in Exhibit G.6 of the resubmission. The Secretary found, in the Federal Register publication of March 31, 1980, that one of the items, relating to mountaintop removal, was acceptable as presented. (See Finding 12.2.)

The resubmission includes two additional "State window" items, one dealing with timing and criteria for removing sedimentation ponds, and the other addressing certain light-use classifications of roads. The resubmission also includes a fifteenth item, a discussion of coal exploration requirements which, while submitted in Exhibit G.6 with the other "State windows," was cited in the resubmission as not being based on 30 CFR 731.13 (the "State window" provisions of the Federal regulations). That particular element of the resubmission is addressed briefly in Finding 12.15. Each of the "State window" items is discussed and the Secretary's findings described in Findings 12.1 through 12.15, below.

12.1 Wyoming has promulgated Rule II 3b(12)(b) to require a discussion of postmining land use only when the proposed postmining land use is different from the premining use. Wyoming chooses to rely on discussions of the existing (premining) land use required by Rules II 2a(1) and II 2a(1)(a) and Rule II 3a(6)(d) which, using the last-cited rule as an example, requires such information as (1) a thorough discussion of major past and present uses of the permit and adjacent areas, (2) an analysis of the capability of the land to support a variety of uses, and (3) any land use classification existing in the permit and adjacent areas.

The lack of exact equivalents in the resubmission to the Federal requirements of 30 CFR 780.23 applicable where there is no change in land use is considered to be an administrative modification that eliminates having to discuss the postmining land use twice: once as the existing land use and a second time as the proposed postmining land use. Duplicative discussion would occur whenever all the pre- and postmining land uses were the same.

Wyoming has also enacted W.S. 35–11–406(b)(xi) and (xii) to require owner consent or order from the Environmental Quality Board in lieu of consent, and promulgated Rule II 3b(12)(iii)(A) to require, where applicable, concurrence of the owner of record with changes in land use. Rule XIII 1a(2)(b) requires sending notices to governmental agencies. Thus, the postmining land use will be subjected to analysis and approved by the regulatory authority coordinated with other affected parties. The Secretary finds Wyoming's alternative provisions for describing postmining land use to be consistent with the Federal requirements of 30 CFR 780.23 in the context of 30 CFR 731.13.

12.2 Wyoming has neither defined mountaintop mining nor promulgated regulations for variances from approximate original contour requirements for mountaintop mining operations. Conditions for mountaintop mining are non-existent in the major known coal resource areas of Wyoming. The Secretary has found this alternative approach consistant with SMCRA and acceptable since the Wyoming program does not provide a variance and is, as a result, more stringent than the Federal permanent regulatory program. Under Section 515(c) of SMCRA, implementation of mountaintop removal provisions is optional, and a State program need not include them.

12.3 Wyoming has enacted W.S. 35–11–103(e)(xxi) to define "steep slope surface coal mining operation" and has promulgated Rule I 2(86) to define steep slopes. The Secretary finds that Wyoming will ban mining on steep slopes until the Wyoming Environmental Quality Council has promulgated rules and regulations establishing steep slope mining performance standards. This is discussed more fully in Findings 13.S (13.126), below.

12.4 Wyoming has promulgated rules that include special permit information requirements and performance requirements for alluvial valley floors (Rules III 2 and V 2, respectively). The alternative rules to the Federal regulations in the State program resubmission use comprehensive terms to summarize the requirements listed in more detail in the Federal regulations. Wyoming has promulgated Rule III 2a(4) to require "such other information that the administrator shall require to identify whether an alluvial valley floor exists within the permit area or adjacent areas and its extent, if any." This permits the regulatory authority to detail the information requirements to a greater degree than exist in Rule III 2, when necessary. This same authority is provided in newly-promulgated Rule III 2b(11) and Rule III 2c(5).

Wyoming has promulgated Rule III 2 with somewhat different language from that used in the original submission. In particular, in Rule III 2a, requiring affirmative demonstration of the premining absence of an alluvial valley floor, the term "alluvial valley floors" apparently has been limited to "alluvial valley floors containing areas of subirrigation or flood irrigation agricultural activities." In Rule III 2a(3) the requirement for written views of the local conservation district regarding flood irrigation potential has become a discretionary element. No explanation of these changes is offered.

These changes have the potential of being important with respect to identification of *potential* alluvial valley floors in that they could eliminate investigations of areas with a potential for flood irrigation. However, the Secretary finds that the State program will comply with the requirements of 30 CFR 785.19(c)(2)(ii) (A) and (B) to identify historical flood irrigation and future flood irrigation potential because Guideline No. 9 of the resubmission requires identification of potential flood irrigated alluvial valley floors (Part II.C.2.b of the guideline). Accordingly, the changes cited above do not result in provisions which are inconsistent with SMCRA and 30 CFR Chapter VII, when the entire body of alluvial valley floor identification provisions in the Wyoming program is considered.

Wyoming has deleted the requirement for water quality data over one year and substituted the requirement for such data to show seasonal variations (Rule III 2b(6)). This change is consistent with the district court's ruling of February 26, 1980, p. 50. See discussion above under "General Background."

In a manner similar to that used in Rule III 2a, Wyoming has added to Rule III 2c the qualifying phrase discussed above regarding subirrigation and flood irrigation and further added the phrase "which are important to farming." Since Rule III 2c(2) addresses only material damage subject to Section 510(b)(5) of SMCRA, this change is also consistent with the district court ruling (*Id.* at 52–53).

Wyoming has added requirements to Rule III 2c for a monitoring plan in accordance with Rule V 2e and, by letter dated August 4, 1980, has clarified its intent to monitor all affected alluvial

valley floors (Administrative Record No. WY-220).

Wyoming modified Rules V 2c and d(1) to apply the criteria of material damage and interruption, discontinuance and preclusion to alluvial valley floors "of importance to farming." This is also in accordance with the district court rulings. Rule V 2d(3) has been added by Wyoming to provide the grandfather clause contained in 30 CFR 785.19(e)(1)(i).

Additional elements of Wyoming's alluvial valley floor provisions are discussed in Finding 13.116.

The Secretary finds, based on the above discussion, that Wyoming's alternative provisions for identifying alluvial valley floors are consistent with the Federal requirements.

12.5 Wyoming has promulgated Rules I 2(79) (defining "soil horizons"), I 2(97) (defining "topsoil"), and IV 2c and IV 3b (performance standards for removing, protecting and replacing soils). Wyoming has promulgated the cited rules to provide for automatic consideration of all soils present at a site as potentially suitable plant growth media rather than initially restricting the analysis to the A horizon as could occur pursuant to 30 CFR 816.22(b). The Wyoming alternative provides the same assurance of suitable plant growth media as contained in 30 CFR 816.22(e). Wyoming has also promulgated Rule IV 3b(1) which requires the A or more organic horizons of topsoil to be segregated from the B and C horizons where such practice would enhance revegetation. This is equivalent to 30 CFR 816.22(d).

Wyoming has proposed the alternatives to take into account the highly variable soil at most Wyoming mine sites. The Secretary finds that these soil protection provisions are consistent with the Federal requirements of 30 CFR 816.22.

The definition of topsoil is also addressed in Findings 13.3, 13.5 and 13.6. Segregation of soil horizons is discussed in Finding 13.4.

12.6 Wyoming has promulgated Rule IV 3e(2)(b) to require that permanent diversions or stream channels be constructed to establish or restore stream characteristics to approximate premining stream channel characteristics and to establish and restore erosionally stable stream channels and flood plains. This is a substitute for the Federal requirements to establish the stream to its naturally meandering slope of an environmentally-acceptable gradient, and to establish or restore a longitudinal profile and cross-section that approximates premining stream channel characteristics (30 CFR 816.44(d)).

The resubmission takes into account that there are numerous variables in stream flow systems and that the topographic and geomorphic changes attendant to mining require careful analysis to achieve proper erosional balances in postmining surface water systems. The Secretary finds that the alternative standards incorporate the Federal requirements to restore a naturally stable channel and flood plain and that the alternative will result in streams and diversions being restored properly, considering topography, soils, and watersheds in the region of the mine.

12.7 Wyoming has promulgated Rule IV 3p(2) to apply the buffer zone concept of 30 CFR 816.57(a) to perennial and intermittent streams as opposed to perennial streams and streams with biological communities meeting the criteria of 30 CFR 816.57(c). Wyoming perceives problems with enforcing a provision based on an assessment of the biological community. Therefore, it has selected, as the criteria for considering buffer zones, the hydrologic definition of those streams that are likely to support aquatic biologic systems to some degree. Thus perennial and intermittent streams would automatically receive close scrutiny regarding the need for buffer zones.

Concern has arisen as to whether the elimination of biological communities as a determinant for buffer zones would weaken protection of the aquatic ecosystem. This is also discussed in Finding 13.39 below. To counter this concern, the Wyoming program contains several provisions to assure protection of the aquatic ecosystem: Rule II 3a(6)(e), which requires studies of fish and their habitats, at the level of detail required after consultation with State and Federal game and fish agencies; Rule II 3b(4), which requires a plan to minimize adverse impacts to fish and related environmental values, including wildlife and fish habitats of high value; the Wildlife Guideline (No. 5), which requires surveys and evaluations of water quality and aquatic (fish) habitat and standard procedures for assessing fish and fish habitat using measurements of the biological community in the same manner as 30 CFR 816.57; and Rule IV 3p(2), which includes the two types of streams supporting biological communities defined in 30 CFR 816.87(c). (See Finding 13.G below.)

The Secretary finds the substitution of intermittent and perennial streams for buffer zone requirements to provide equivalent protection of stream biota, considering the other provisions of the Wyoming program which require definition and protection of the aquatic system and the assurance provided by the State on August 5, 1980. The State gave assurance that premining studies, as described in Guideline 5, will be conducted on streams within or adjacent to the permit area which are expected to be important to fisheries (Administrative Record WY-220). The Secretary assumes that the phrase "important to fisheries" includes streams that support biological communities as defined in 30 CFR 816.57(c), whether or not the streams support fish populations. Based on that assumption, the Secretary finds the State's explanation acceptable.

12.8 Wyoming has promulgated Rule IV 3c(1)(b), which prohibits placement of excess spoil in areas (1) with an overall slope of 20 degrees or (2) in areas of springs, seeps, or drainages. This, excess spoil cannot be placed in an area which would qualify as a "valley fill," "head-of-hollow fill," or "durable rock fill" as defined in 30 CFR 701.5. ("Durable rock fill" is a variant of valley or head-of-hollow fills.) The prohibition of Rule IV 3c(1)(b)(ii) also eliminates the need for underdrains (see Finding 13.46).

Since coal resource areas conducive to surface mining operations in Wyoming are conducted on relatively flat terrain, adequate room exists to place any excess spoil out of drainages and steep slope valleys. As discussed in Finding 12.3 above, Wyoming currently plans to prohibit mining on steep slope areas, thus prohibiting placement of excess spoil in steep slope areas.

The Secretary finds the Wyoming rules will achieve more stringent environmental protection than the Federal regulations, since they prohibit construction of valley fills.

12.9 Wyoming has, as discussed in Finding 12.8 above, prohibited placement of excess spoil in topographic locations which, as a result of steepness, require construction as "head-of-hollow fills" (see 30 CFR 816.73). Thus, the Secretary finds the proposal to prohibit construction of head-of-hollow fills to be acceptable as providing more stringent environmental protection than the Federal regulations.

12.10 As discussed in Findings 12.8 and 12.9 above, Wyoming prohibited placement of excess spoil in "valley fills" or "head-of-hollow fills." "Durable rock fills" permitted by the Federal regulations (30 CFR 816.74) are prohibited in the State program resubmission since these are essentially "valley" or "head-of-hollow" fills containing durable rock and designed to alternative standards. The Secretary

finds the prohibition of durable rock fills by the Wyoming program to be acceptable as providing more stringent environmental protection than the comparable Federal regulations.

12.11 Wyoming has promulgated Rule IV 3a(5) to define "thin overburden" as existing where (1) operations are carried out continuously in the same limited permit area for more than one year and (2) the volume of all available spoil and suitable waste material over the life of the mine is demonstrated not to be sufficient to achieve the approximate original contour. The second part of the definition differs from that of 30 CFR 816.104 in that it does not use a numerical ratio. The alternative language in the Wyoming rule is essentially the same as that in Section 515(b)(3) of SMCRA.

Wyoming considers the single ratio to neglect site-specific considerations where all material should be returned to the mined area to achieve approximate original contour regardless of whether the dimensional criterion of 30 CFR 816.104 is met. The Secretary finds the alternative rule to be consistent with SMCRA and acceptable as an alternative to 30 CFR 816.104 because it requires that all material be returned to the pit regardless of the numercial factor to assure that the land is returned to approximate original contour consistent with the approved postmining land use.

12.12 Wyoming has promulgated Rule IV 3a(6) to apply to situations addressed in 30 CFR 816.105 as "thick overburden." This rule requires that spoil demonstrated to be in excess of that necessary to achieve approximate original contour be disposed of in accordance with the State rule for "excess spoil" (Rule IV 3c(1)). The language of the rule approaches the language of Section 515(b)(3) of SMCRA, but does not use the numerical criterion provided in 30 CFR 816.105.

Wyoming reasons that bulking ratios for spoil are not constant and that natural compaction processes occurring after grading are not well understood. Therefore, Wyoming considers that a standard ratio is not sufficiently flexible to account for geologic variability in the coal resource areas of Wyoming. When evaluating proposed postmining topography on a site-specific basis, Wyoming considers the suitability of the topography for promoting revegetation and hydrologic stability. Evaluations of approximate original contour are based on support of the postmining land use, revegetation, and hydrologic stability. The Secretary assumes that only that spoil which, if placed back on the mined area, would lead to hydrologic instability or revegetation problems or both would be determined to be excess. Based on that assumption, the Secretary finds the alternative rule to be consistent with SMCRA and acceptable as an alternative to 30 CFR 816.105, since it encourages emphasis on achieving hydrologic stability and supporting vegetation when considering postmining topography in the coal resource areas of Wyoming.

12.13 Wyoming has also promulgated Rule IV 3g(1) to require retention of sedimentation ponds or sedimentation control devices until the affected lands have been restored and until the untreated drainage from such lands will not degrade the quality of receiving water. While this was proposed by Wyoming as an alternative to the requirements of 30 CFR 816.42(a)(2) and 816.46(u), the Secretary finds it consistent with the Federal requirements without consideration of the "State window" alternatives procedure. However, even if 30 CFR 816.42(a)(2) and 816.46(u) were interpreted to require retention of sediment ponds throughout the entire period for measuring revegetation success (i.e., 10-years in arid areas like Wyoming), the Wyoming proposal for earlier removal is approved under the "State window" criteria. The need to preserve water and avoid the evaporation loss resulting from sediment ponds in Wyoming justifies pond removal whenever the background level of sediment discharges has been achieved without regard to complete revegetation success. This is also discussed in Finding 13.B (13.13, 13.25), below.

In response to the Secretary's initial finding that the word "restored" in Rule IV 3g(1) was identical in meaning to the term "restored and revegetated," the State clarified its intention to, in fact, not require that the revegetation bond period be terminated prior to removal of sediment control facilities but rather to require that facilities be removed when "disturbed land channels are relatively stable and the monitoring of untreated runoff shows that water quality has been reduced to baseline conditions" (Exhibit G.6, counterpart to 30 CFR 816.46(u) of resubmission). The word "restored" is discussed by Wyoming in the resubmission as meaning that the disturbed area is sufficiently stabilized that runoff is restored to background water quality conditions and to projected flow conditions. Once water quality has returned to baseline levels, it could be reasoned that the revegetated area would, in general, have adequate vegetation to control erosion at premining levels (or "baseline conditions").

Wyoming states, in the resubmission, that "[t]his alternative provision is sought on the basis of local requirements, which necessitate that unnecessary detention and evaporation loss of surface runoff be minimized so as to reduce adverse impacts on senior downstream water rights in an environment where surface runoff is limited and demands for this resource are high."

Wyoming states that baseline conditions will be established prior to drainages being disturbed. This is most important since baseline conditions, both water quality and quantity, are highly variable in surface water streams in Wyoming. Wyoming's rules for gathering baseline surface water information (Rule II 3a(6)(h)(i)) did not appear to be implemented in the Hydrology Guideline (No. 8) to the degree necessary to ensure that adequate baseline information will be obtained to allow a quantitative determination by the regulatory authority that runoff from reclaimed lands meets baseline conditions. (See Section III A of Guideline). The State therefore emphasized that it will require baseline data sufficient to characterize seasonal variation on all drainage that will receive runoff from affected lands (Administrative Record No. WY–220). These data will, of course, have to be statistically valid.

The Secretary finds that Wyoming's proposed alternative is acceptable and should be adequate to enforce the requirement to obtain surface water flow and quality data either from reference basins located in the general area, or from the undisturbed drainages of the permit area, and to show what types of comparisons of data will be (1) feasible and (2) necessary to show that "disturbed lands are relatively stable and the type of monitoring of untreated runoff necessary to show that water quality has been [restored] to baseline conditions." The Secretary finds the alternative to achieve the purposes of, and be consistent with, the pertinent Federal requirements.

12.14 Wyoming includes in Rule I 2(71)(c)(ii) in the resubmission, a definition of "non-constructed light use road" for a class of roads or road segments that do not require blading, cutting, or filling and which would be used by light-duty vehicles, but which would be used for more than six months. Wyoming also includes, in Rule IV 3j(3)(d), performance standards for those light-use roads. The Federal regulations for roads were remanded by the district court. (Opinion of May 16, 1980, at 32–36;

see discussion under "General Background," above.) However, the rules for these "non-constructed light use roads" are no less stringent than the performance standards in Sections 515 and 516 of SMCRA.

12.15 Wyoming submitted material describing its program to regulate exploration in Appendix G.6 ("State windows" pursuant to 30 CFR 731.13). However, the explanation indicates the State did not develop its rules for exploration based on the criteria of 30 CFR 731.13. Therefore, this material is discussed under Finding 15 (exploration) rather than under "State windows."

Finding 13

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and regulations to implement, administer, and enforce applicable mining and reclamation requirements consistent with 30 CFR Chapter VII, Subchapter K (performance standards), and that the Wyoming program includes provisions adequate to do so, subject to the discussions in Findings 13.F and 13.P below. This finding is made under 30 CFR 732.15(b)(1).

Wyoming incorporates provisions corresponding to Section 515, 516, 527, 711, and 717 of SMCRA and Subchapter K of 30 CFR Chapter VII in Wyoming Statutes 35–11–103, 401, 402, 404, 406, 407, 411, 415, 428, 429, 430, and 601 and in Wyoming Land Quality Division Rules and Regulations Chapters I, II, III, IV, V, VI, VII, VIII, IX, XXI, XXIII, and other pertinent rules and regulations of other Wyoming State agencies. Volume 1, Part G.8, of the program submission contains a discussion of Wyoming's administrative and enforcement procedures for performance standards.

Discussion of significant issues raised during review of the Wyoming provisions for environmental performance standards follows:

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 13 acceptable subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following findings which have the same numbers as the tentative findings on the same provisions in the March 31, 1980, notice:

13.1 The State has provided adequate regulations for signs in Rules IV 2c(1)(b), IV 2c(1)(d), IV 3m, IV 2c(3)(c), and VI 1(d) as required by 30 CFR 816.11.

13.2 The State has provided for temporary sealing of drilled holes and/or protective devices in Wyoming Statute 35–11–404 and Rules IV 3n and XV 3a(2)(a) as required by 30 CFR 816.13 through 816.15.

13.3 The State has provided a definition of topsoil in Rule I 2(97) which includes all soil horizons suitable as a plant growth medium. This is also discussed and found acceptable under Finding 12.5, since the definition was proposed as part of a "State window" alternative to 30 CFR 816.22(c).

13.4 Rule IV 3b(1) allows the regulatory authority to require segregation of the A horizon or more organic horizon of the topsoil where such practice would enhance revegetation. This satisfies the requirements of 30 CFR 816.22(d).

13.5 The State has promulgated a series of definitions which result in "topsoil" being more restrictively defined than subsoil. These are discussed under Findings 12.5 and 13.3 and are found acceptable.

13.6 The State has provided adequate distinction between subsoil and spoil and for chemical analyses of subsoil and spoil in Rules IV 2c(3), IV 3a, and IV 3c(1), which regulate spoil handling and separation of spoil, subsoil, and topsoil.

13.7 The State has removed the phrase "in accordance with applicable Federal and State air quality standards" from Rule IV 3o. This makes the rules consistent with 30 CFR 816.21 through 816.24 for topsoil protection and air resource protection under applicable regulations since topsoil will be protected even if quantitative "pollutant level" standards are not violated.

13.8 The State has promulgated a rule requiring scarification prior to topsoiling (IV 3b(2)). This is considered preferable to 30 CFR 816.24(a) in consideration of the soil protection provisions of Wyoming's rules and the characteristics of soils in Wyoming where mixing of undersirable spoils and scarce soils should be avoided where possible.

13.9 See Finding 13.A below.

13.10 The State has required that topsoil information be provided in accordance with the standards of the National Cooperative Soil Survey of the U.S. Department of Agriculture (see Rule II 3a(6)(f)) and thus satisfied the comments of the U.S. Forest Service by requiring a soil survey to be conducted and graded in a manner consistent with the Federal requirements.

13.11 The State has promulgated a definition of "hydrologic balance" which includes short-term and long-term changes (Rules I 2(40)). Thus, when used in combination with Rules IV 3c(3)(a), IV 3f(2), IV 3i, and other rules, authority equivalent to that in 30 CFR 816.41(a) is provided to prevent long-term adverse changes to the hydrologic balance.

13.12 The State has promulgated a series of rules to ensure that acid-forming and toxic-forming materials are selectively placed where necessary to control and minimize water pollution. These rules include IV 3c(3)(a), IV 3c(3)(d), and IV 3a(2). In this manner, the requirements of 30 CFR 816.41(d)(2)(vii) are satisfied.

13.13 See Finding 13.B below.

13.14 See Finding 13.C below.

13.15 The State has promulgated Water Quality Division rules which require a detention time for the 10-year 24-hour event (Rule X 8 and Appendix A). Further, the MOU between divisions of the Department of Environmental Quality in the resubmission includes a requirement to design for a minimum 24-hour theoretical detention time for the 10-year 24-hour event. However, the Federal counterpart, 30 CFR 816.46(c), was remanded by the court. See discussion above under "General Background." The rules and MOU are, however, no less stringent than the performance standards of Sections 515 and 516 of SMCRA.

13.16 Rule IV 3i will require ground water monitoring to determine the extent of disturbance to the hydrologic balance. The State has adequate authority to require additional wells when necessary to determine the extent of disturbance. Thus, Rule IV 3i is consistent with 30 CFR 816.52(a)(3).

13.17 W.S. 35–11–406(n)(iii) will require an approvable plan to affirmatively demonstrate that proposed operations are designed to prevent material damage to the hydrologic balance outside the permit area. Further, the requirements of W.S. 35–11–406(b)(xviii) to minimize disturbance to the prevailing hydrologic balance and Rules II 3b(10) and XXIII 2a(1) require the determination of probable hydrologic consequences of mining. Thus, the State program now satisfies the general requirements of 30 CFR 816.42 through 816.53 for protection of the hydrologic balance. The State has also promulgated Rules IV 3e, IV 3g, IV 3c(3), IV 3h, IV 3f, and IV 3i to be consistent with the varied Federal requirements for protection of the hydrologic balance in all activities.

13.18 The State has developed an MOU between the Water Quality and Land Quality Divisions and has promulgated rules for the Water Quality Division which incorporate effluent

limitations for manganese consistent with 30 CFR 816.42(a)(7) (see Section 7 of Wyoming DEQ MOU and Rule X 4a of Water Quality Division Rules and Regulations). Finding 13.18 has been satisfied by incorporation of manganese. See also Finding 13.C (13.14) for a discussion of the quantitative limits for manganese set in the resubmission and additional clarification provided by the State on August 5, 1980 (Administrative Record No. WY–220).

13.19 Rule I 2(1) defines "acid drainage" in terms of both pH and total alkalinity-acidity consistent with the definition in 30 CFR 701.5.

13.20 The State has promulgated rules including ephemeral streams in the requirements for diversions (see Rules IV 3e(1) and IV 2(e)). Thus, the State program is equivalent to 30 CFR 816.43.

13.21 Rule IV 2f(5) will require that permanent diversions and restored stream channels be designed to be erosionally stable and consistent with the role of the fluvial system. This rule provides the same protection as does 30 CFR 816.44(d)(2). This is also discussed in Findings 12.6 and 13.23.

13.22 See Finding 13.D below.

13.23 See Finding 13.21 above.

13.24 Rule IV 3g(7) includes the following as sediment control measures: limiting the extent of disturbed areas and stabilizing, diverting, treating, or "otherwise" controlling runoff. In combination with other rules, such as IV 3d(3) (mulching) and IV 3a(3) (compacting), the requirements of 30 CFR 816.45(b) are met.

13.25 See Finding 13.B below.

13.26 The State has promulgated Water Quality Division rules requiring computations showing the detention time, to include sediment storage, for the 10-year 24-hour precipitation event (Appendix A to Rule X 8). This requirement is repeated in Section 7 of the DEQ MOU. However, the Federal counterpart, 30 CFR 816.46(c), has been remanded by the court. See discussion above under "General Background." The rules and MOU, however, are no less stringent than the performance standards in Sections 515 and 516 of SMCRA.

13.27 The State has promulgated rules requiring that all permanent impoundments meet, at a minimum, the specifications of U.S. Soil Conservation Service Technical Release No. 60 and the SCS Practice Manual No. 378 (Rule IV 3h(2)(f)). Thus, the State requires compliance with Pub. L. 83–566 through such references. The resubmitted State Engineer regulations now also meet the Federal requirement that the crest of the emergency spillway be at least one foot above the crest of the principal spillway (see State Engineer Regulations V 8b(5)). Thus, this portion of the State program is now consistent with 30 CFR 816.46(i).

13.28 The State program resubmission shows that the size of the impoundments requiring special spillway, embankment, barrier, and MSHA specifications was changed from 50 to 20 acre-feet in the Land Quality and State Engineer's rules as required by the Secretary. Thus, the State resubmission is in compliance with 30 CFR 816.46(q) with respect to using the same criteria for more stringent standards. The remaining requirements of 30 CFR 816.46(q) are met by a combination of Rules V 8b(7) and (8) of the State Engineer and Rules IV 3h(2)(f) and IV 3h(2)(e) of the Land Quality Division.

That the requirements of 30 CFR 816.46(t) are assured is included in a statement in the side-by-side analysis which indicates that the "routine inspection" required for the smaller sedimentation ponds by Rule IV 3(h)(2)(d) would be conducted at least quarterly and would be reported annually while larger ponds would be inspected "routinely." The MSHA requirements of 30 CFR 77.216–3 are for inspections each 7 days and these inspections will be required by MSHA in any case. The OSM requirements allow for reduction of inspections of smaller dams to quarterly. The State requirements are considered consistent with Federal requirements in that MSHA inspections are required and all impoundments will be "routinely inspected."

13.29 See Finding 13.E below.

13.30 Rules IV 2c(3)(f), IV 3c(3)(a) and IV 3c(3)(b) ensure proper disposal of spoil that is toxic- or acid-forming or which would prevent adequate reestablishment of vegetation. Thus, the program is consistent with 30 CFR 816.48.

13.31 Rules IV 3h, II 3b(9), II 3b(11), and IV 3h(1), in addition to W.S. 35–11–406(n)(iii), W.S. 41–3–301, 41–3–302, and 35–11–416(b), ensure that water impoundments shall not affect the water of adjacent and surrounding landowners. This is consistent with 30 CFR 816.49(a)(4).

13.32 Rules IV 3c(3)(a) and IV 3c(3)(d) provide controls over acid-forming and toxic materials in terms of ground water pollution in a manner equivalent to the requirements of 30 CFR 816.50(b). These rules are based on W.S. 35–11–406(b)(xviii), which requires a plan to minimize the disturbances to the prevailing hydrologic balance, and W.S. 35–11–406(n)(iii), which requires that permits be approved only if the proposed operations have been designed to prevent material damage to the hydrologic balance outside the mine site.

13.33 Rules II 2b(3)(d), II 3a(5)(a)(ii)(B), and IV 3i, in addition to the Water Quality Division's requirements for monitoring point source discharges, provide an acceptable equivalent to the Federal requirements of 30 CFR 816.52. In addition, Guideline No. 8 provides advice on the design of elements of a hydrologic monitoring program.

13.34 The State has noted that reporting requirements are established in the Water Quality Division's regulations (Chapter X, Section 5), which require reporting at least quarterly. The MOU among the DEQ divisions requires reports such as the NPDES permit report to be furnished to all other appropriate divisions (see Section 10 of MOU). Thus, the requirements of 30 CFR 816.52(b)(iii) will be satisfied.

13.35 Rule IV 3i(1) will require that all hydrologic monitoring be adequate to determine the extent of disturbance to the hydrologic balance and to plan for necessary modifications to the operations. This would include periodic monitoring as required by 30 CFR 816.52(a)(2). Further, Rule II 3b(9) requires a plan to ensure protection of the quantity and quality of, and rights to, surface and ground water. Thus, aquifers will be further protected. Spoil analysis to assess potentials for leaching is required in Rule IV 2c(3)(e). Thus, all requirements of 30 CFR 816.52(a)(2) are met.

13.36 Rule II 3a(5)(iv) incorporates the Wyoming State Engineer's regulations for wells; Rule IV 3n(1) ensures that the transfer of wells does not relieve the mine operator of the responsibility to prevent pollution or the operator's responsibility for capping, sealing, or plugging drill holes during exploration; W.S. 41–3–905 and 41–3–930 require registration of wells and permits for construction of wells.

These rules and statutes provide protection equivalent to that provided by 30 CFR 816.53. W.S. 41–3–930 does exempt small production, non-commercial wells from the State Engineer's permit requirement. Such exempted wells are to be used for stock, household use, or noncommercial irrigation when the area irrigated does not exceed one acre and the flow does not exceed 25 gpm and provided the water right has been correctly filed. However, Rule II 3a(5)(a)(iv) provides the same requirements as 30 CFR 816.53 for removal of water wells, regardless of size.

13.37 Rule IV 3e(3)(c) allows no discharge of surface water into an

underground mine which is more stringent than 30 CFR 816.55, and is therefore acceptable. Rules VII 2a(5) and (b) apply performance standards for hydrologic protection to underground mines. Rule VII 2b(2) requires all underground mining activities to be placed and conducted to prevent or control gravity discharges and that any discharges not violate State or Federal water quality standards. Rule II 3b(11) requires an evaluation of the impact on the hydrologic system for any type of mining. The State does not provide for the water quality "variance" of 30 CFR 817.55(c) for discharges of certain types of wastes.

Discharges from one underground mine to another would have to be evaluated to meet the requirements of Rule II 3b(11), the effluent limits of the Water Quality Division, and Rule IV 3r (MSHA approval of operations within 500 feet of an underground mine), Thus, protection equivalent to that of 30 CFR 817.55 would be afforded. This is also discussed in Finding 13.107.

13.38 Rule IV 3e(2)(c) requires renovation of permanent diversions and streams to approved standards. Similarly, Rule IV 3h(4) requires renovation of all permanent impoundments to approved standards. Thus, the State program resubmission in this regard to equivalent to 30 CFR 816.56.

13.39 See Finding 13.F below.

13.40 Rule IV 3t requires maximum utilization and conservation of the coal resource so as to minimize reaffecting the land. As standard practice, Wyoming requires recovery of rider coal seams wherever possible and requires analysis of mining deeper seams. Thus, the State rules and practice provide the same authority as does 30 CFR 816.59.

13.41 Rule VI 2a requires that properly requested preblasting surveys be conducted by personnel approved by the regulatory authority and that the operator or applicant be responsible for conducting the survey or for having the survey conducted. Rules VI 3a(4) and VI 5a(3) provide for audible warning signals. The State program is consistent with 30 CFR 816.62.

13.42 Rule VI 5a(6) incorporates the Federal permanent program requirements of 30 CFR 816.65(e) for maximum airblast levels.

13.43 Rule VI, performance standards for blasting, is consistent with 30 CFR 816.61 through 816.68.

13.44 Rule VI 5b(5) contains the scaled distance equation required by 30 CFR 816.65(e)(1).

13.45 Rule IV 3c(1)(d)(ii) includes a "long-term static safety factor" of 1.5 for excess spoil piles and is therefore consistent with 30 CFR 816.71(f).

13.46 Rule IV 3c(1)(b)(ii) prohibits placement of excess spoil in areas of springs, seeps, drainages, croplands, or important wildlife habitat. See discussion of prohibition of valley fills, head-of-hollow fills, or durable rock fills in Findings 12.8, 12.9, 12.10.

13.47 Rules IV 3t and XIII 1a(8)(d) restrict the operations to be conducted within 500 feet of an active or abandoned underground mine and require MSHA approval. Rule IV 3t requires minimizing future affects of mining. The State program is thus consistent with 30 CFR 816.79.

13.48 Rule IV 3c(2)(a) prohibits disposal of coal processing wastes in the construction of dams, embankments, or diversion structures. Therefore, the State program is more stringent than the Federal program, and the requirements of 30 CFR 816.91 through 816.93 need not be exactly replicated since coal processing wastes will not be used in dams or embankments. Coal processing wastes are to be disposed of in accordance with excess spoil disposal requirements of the State program plus additional requirements contained in Rule IV 3c(2). Construction of dams and embankments to impound coal processing wastes is regulated by Rule IV 3c(2)(d) of the resubmission. This rule is similar to the requirements of 30 CFR 816.93. However, no coal processing wastes may be used in such a dam or embankment if the structure would be located in a flood plain, channel, or area of seepage. (See Findings 13.50 and 13.51 below and 13.46 above.)

13.49 Rule IV 3c(2)(c)(vii) requires that, if a potential hazard is found to exist at a coal processing waste pile, the regulatory authority shall be immediately notified and that, if no remedial measures can be formulated, the appropriate emergency agencies shall be notified of the hazard to protect the public. The State resubmission is consistent with the requirements of 30 CFR 816.82(b).

13.50 Rule IV 3c(2)(c)(iii) keeps coal processing wastes outside areas of flood plains or seepage. This exclusion is in addition to that of Rule IV 3c(1)(b)(ii) for excess spoils which also applies and prohibits location in areas of springs, seeps, drainages, croplands, or important wildlife habitat. This provides for more stringent controls over placement of coal processing wastes than do the Federal regulations.

13.51 Rule IV 3e(3)(a) controls discharge from coal processing waste dams and embankments (i.e., dams or embankments contructed of native earth materials for the purpose of retaining or supporting coal processing wastes). Discharges are to be controlled to in turn control erosion and minimize disturbance to the hydrologic balance. Further, the State has promulgated rules for sedimentation ponds to control discharges and meet effluent limitations (IV 3g(1)). The State provisions are equivalent to those of 30 CFR 816.83(d).

13.52 Rule IV 3c(2)(c)(i) requires construction of coal processing waste piles in 24-inch layers compacted as necessary to achieve a static safety factor of 1.5 and to prevent spontaneous combustion. The Wyoming rule gives the regulatory authority discretion to set a compaction density minimum of 90 percent of maximum dry density which is required in all cases under 30 CFR 816.85(c)(2).

Wyoming Rule IV 3c(2)(a) prohibits use of coal wastes in the construction of dams, embankments, or diversion structures. Therefore, the provisions of Rule IV 3c(2)(c)(i) apply only to coal waste disposal piles; thus, consideration of protection to the hydrologic balance and public safety is not as critical as that of dams or embankments in determining whether Wyoming's provision is adequate. Rather, consideration of Wyoming's provision is based on the prevention of spontaneous combustion and stability of the piles since the 1.5 static safety factor for stability is required in all cases.

As discussed in Finding 14.120 below, the Secretary is not requiring that the Wyoming program require a pyrite analysis because of the low sulfur content in coal in Wyoming. Pyrite is one primary contributing factor to spontaneous combustion in coal waste piles. (See Administrative Record No. WY-234.) Since the 1.5 static factor is required and the chance of spontaneous combustion is minimal, the Secretary does not believe that it is necessary for Wyoming to achieve the required 90 percent maximum dry density determined by AASHTOT99-74 in all cases. The Secretary assumes, however, that Wyoming will require compaction of coal waste piles to that density or its equivalent in any case where there is a potential for spontaneous combustion or instability.

Rule IV 3c(2)(c)(vii) requires at least quarterly inspections of coal processing waste banks by a registered professional engineer or other qualified person approved by the regulatory authority. Such inspections will facilitate changing density specifications to ensure stability and control of combustion.

The State program resubmission is consistent with 30 CFR 816.85(c), since the appropriate density will be required

wherever necessary to prevent combustion or to achieve mass stability.

13.53 The Secretary found in the March 31, 1980, notice, that the provisions of 30 CFR 816.87 for utilization of burned coal processing wastes were not specifically required in the Wyoming program since coal processing wastes are not now produced in Wyoming and any future piles are to be constructed to prevent combustion. The State has not specifically addressed the Federal requirement for burned coal processing wastes. If such wastes were removed during surface coal mining operations, approval of the regulatory authority would be required to ensure compliance with Wyoming's statutes and rules requiring all mining operations to be planned and approved (W.S. 35–11–401(a)). All coal wastes generated would have to be placed within a permit area. Therefore, their removal would have to be regulated until such time as the performance bond was released. The resubmission remains consistent with the Federal requirements.

13.54 Rule II 3a(5)(a)(iii) requires that a plan for any industrial solid land waste disposal facility be included in the mining and reclamation plan. The State program resubmission contains the DEQ MOU which incorporates Chapter I, Section 11 c of the Land Quality Division's Solid Waste Rules. These rules require approval of coal waste disposal by the Land Quality Division and cover of such material with at least two feet of non-combustible material. Further, no disposal is to take place within 8 feet of any coal outcrop or storage area. The State program submission is consistent with the Federal requirements of 30 CFR 816.89 for disposal of non-coal wastes.

13.55 Rule II 3a(5)(a)(iii) incorporates the requirements of Rule I 11c(1)(c) and (e) of the Solid Waste Rules to apply hydrologic controls in solid waste disposal sites associated with coal mining. Further, Rule II 3b(10) requires an assessment of the probable hydrologic consequences of proposed operations, and W.S. 35–11–406(b)(xviii) requires operations to be conducted to minimize disturbance to the hydrologic balance. The State resubmission is therefore consistent with these specific requirements of 30 CFR 816.89(b).

13.56 Rules IV 3b(3)(c), IV 3c(2)(c)(v), and IV 3o control wind erosion of soils, coal processing wastes, and other disturbed areas. The resubmitted State program includes an MOU between DEQ divisions (Exhibit F.1) which applies to fugitive dust control. However, the Federal counterpart, 30 CFR 816.95, was remanded by the district court to the extent the regulation would control fugitive dust not caused by erosion. See discussion above under "General Background." The rules and MOU are no less stringent than Section 515(b)(4) of SMCRA.

13.57 See Finding 13.56 above.

13.58 See Finding 13.56 above.

13.59 See Finding 13.56 above.

13.60 See Finding 13.56 above.

13.61 See Finding 13.56 above.

13.62 Rule IV 3e(2)(b) requires reestablishment of aquatic habitats and natural riparian vegetation. Rule II 3b(4)(b)(iii) protects or requires reestablishment of habitats of unusually high value for fish and wildlife, such as wetlands. Guideline No. 5 considers aquatic and wildlife habitat. Thus, the State program resubmission is equivalent to 30 CFR 816.97(d)(5).

13.63 Rule II 3b(12)(b)(iii)(h) ensures that wherever postmining land uses are to be changed, approval of measures to prevent or mitigate adverse effects on wildlife or fish will be obtained from appropriate State and Federal fish and wildlife management agencies. Further, Rule IV 3p(1)(f) requires the use of vegetation to enhance interspersion of habitats. The requirements of 30 CFR 816.97(d)(10) and (11) for interspersing wildlife habitat will therefore be enforced by the regulatory authority, under the resubmitted program, as required by State or Federal fish and wildlife management agencies.

13.64 The State program resubmission contains revised Guideline No. 5 for wildlife, which incorporates references to the same two documents incorporated in 30 CFR 816.97(c). (This is also discussed in Finding 6.3) Wyoming has also promulgated Rule II 3b(4)(b)(iii) to protect habitats of high value. Consideration of wildlife in postmining land uses is discussed in Finding 13.63 above. The state program resubmission is consistent with 30 CFR 816.97(c).

13.65 The State has promulgated adequate rules to meet the requirements of 30 CFR 816.97 for protection of fish, wildlife, and related environmental values. Specificity for most wildlife surveys is added in Guideline No. 5 (Wildlife).

13.66 Rule IV 3a(1) requires rough backfilling and grading to follow contour and area strip mining on the time and space schedules identified in 30 CFR 816.101(a)(1) and (3). The State program resubmission therefore is consistent with 30 CFR 816.100 and 816.101(a). Rule IV 1 requires Section 3 of Rule IV to control for surface coal mining operations if a conflict develops between Rules IV 2 and IV 3 for "contemporaneous as practicable" backfilling and grading.

13.67 Rule IV 3a(3) requires backfilling and grading to approximate original contour and Rule I 2(6) defines "approximate original contour" as that configuration which complements the drainage pattern of the surrounding terrain. Thus, the requirements of 30 CFR 816.101(b)(1) to return areas to approximate original contour are met.

13.68 Rule IV 3a(7) requires that all spoil that may result from a permanent impoundment be regraded in accordance with the general backfilling requirements. Thus, such spoil would not automatically be considered excess but would only be considered "excess" if a "thick overburden" existed (see Rule IV 3a(6)). The resubmission is consistent with 30 CFR 816.102.

13.69 Rule IV 3a and, in particular, Rules IV 3a(3) and (4) require backfilling and grading to approximate original contour and elimination of highwalls. Thus, the State has provided authority in rules equivalent to 30 CFR 816.102. The regulation authority is based on W.S. 35–11–415(b)(v) (contouring operations), and the Secretary believes that authority exists to enforce the rules regardless of whether statutes contain the same language. (See Wyoming Attorney General's opinion dated May 19, 1980.) Therefore, the requirements of the Wyoming program rules to backfill and grade to meet approximate original contour requirements, which requirements (and a definition of "approximate original contour") are not contained in Wyoming statutes, have the same authority as the rules would have if the identical language were in the statutes. "Approximate original contour" is suitably defined in Rule I 2(6).

13.70 Rule IV 3a(8) (cut-and-fill terraces) is consistent with the Federal requirements of 30 CFR 816.102(b).

13.71 Rules IV 3a(5) and (6) distinguish between thin and thick overburdens. This is discussed in detail under "State window" Findings 12.11 and 12.12.

13.72 Rule IV 3b(4) requires removal and stabilization of any rills or gullies in excess of 6 inches which are inconsistent with the postmining land use. The resubmission is consistent with and generally more stringent than the 9-inch requirement of 30 CFR 816.106, though the State requirement combines the lesser depth with the allowance for rills and gullies to form under natural non-disruptive conditions where the postmining land use and vegetation are not adversely affected.

13.73 Rule IV 3d(1) requires the operator to establish, on all affected lands, a diverse, permanent vegetative cover consistent with 30 CFR 816.111.

13.74 The State has promulgated a number of rules related to the requirements of 30 CFR 816.112. These include Rules IV 3d and IV 2d. In particular, Rule IV 2d(5) requires field trials to justify more suitable reclamation species. Rule IV 3d(1) requires establishment of species native to the area or which will support the approved postmining land use. Rule IV 3d(2) permits the use of introduced species only to achieve a stabilizing cover for the approved postmining land use. Thus, use of introduced species must be approved based on the demonstrated capability to meet the standards for revegetation.

13.75 Rule IV 3p(1)(f) will ensure that plant species are selected to enhance fish and wildlife habitat consistent with 30 CFR 816.112(c).

13.76 See Finding 13.G below.

13.77 See Finding 13.G below.

13.78 The State has promulgated Rule IV 2d(6) to require sampling at any time a determination of revegetation success is made. Thus, confusion as to whether control areas should be periodically sampled to show trends no longer exists. In fact, such areas will be routinely sampled to show trends and forecast any needs for corrective measures. The resubmission is consistent with 30 CFR 816.116(a).

13.79 See Finding 13.H below.

13.80 Rule IV 2d(6) requires that cover and productivity be at least equal to that existing on the area before mining. Guideline No. 2 provides that information on the statistical significance with which the premining and postmining vegetation communities should be compared. The Wyoming program resubmission provides for determinations of revegetation success in cover and productivity in a manner similar to that of 30 CFR 816.116(b). (See Finding 13.140 for additional discussion.)

13.81 Rule IV 3d(6) includes the 10-year liability period for revegetation success consistent with the Federal requirements for arid and semiarid areas of 30 CFR 816.116(b)(1)(ii). The initiation of the bond liability period is discussed in Findings 13.140, 18.3, and 18.10.

13.82 Rule IV 3d(6)(b) specifies that when the approved postmining land use is to be commercial forest, the standards for measuring success will be established prior to approval of the plan. Thus, no permits approving reforestation may be granted until the State has promulgated rules equivalent to 30 CFR 816.117 and in accordance with State and Department of the Interior procedures under 30 CFR 732.17. It is not expected that any coal mining will occur on commercial forest lands in Wyoming in the near future since most of the commercial forest land is not located in the major coal resource areas.

13.83 Rules IV 2d(5) and IV 3d(2) restrict the use of introduced seed species to those shown to be of superior value through field test plots and, where necessary, to stabilize and control erosion or to achieve the approved postmining land use. As noted in Finding 13.81, Rule IV 3d(6) requires the 10-year bond liability period for revegetation. Thus, the State resubmission is consistent with the requirements of 30 CFR 816.112 and 816.116(b)(ii).

13.84 The Secretary's notice of March 31, 1980, inadvertently skipped the number 13.84 in listing his findings. There is no Finding 13.84.

13.85 See Finding 13.82 above.

13.86 Rule IV 3s requires that, if temporary cessation will extend past 30 days, the operator must submit the equivalent of an annual report (W.S. 35–11–411) to the regulatory authority. The annual report requires an identification of the extent of mining and reclamation operations in acres and the progress of all reclamation work. The report is also to include a revised schedule of operations. Any other information required by the regulatory authority must also be submitted (W.S. 35–11–411(a)(ii)). Thus, the requirements of 30 CFR 816.131 to submit a notice of intent to temporarily suspend operations and to provide other information are fulfilled by the State's requirements.

13.87 Rules IV 2k and IV 21 require removal of structures unless approved as beneficial to the approved postmining land use, and require reclamation to begin within 180 days. Also, Rule IV 3a(1) places time and space constraints on reclamation (backfilling and grading in particular). Thus, in the event of permanent cessation of operations, reclamation must continue under Wyoming's regulatory program. The resubmission is consistent with 30 CFR 816.132.

13.88 See Finding 13.I below.

13.89 Rule II 3b(12)(b)(iii)(H) requires approval of measures to prevent or mitigate adverse effects on wildlife or fish by State and Federal fish and wildlife authorities if the land use is to be changed. The State program submission also included an MOU between the Land Quality Division and the Wyoming Game and Fish Department (Exhibit F.2) which requires the Game and Fish Department to be notified of the need for Land Quality Division (the regulatory authority) assistance in reviewing mining and reclamation plans. Though the time for comments is not specified in the State program as it is in 30 CFR 816.133(c)(8), the State permitting procedures (Rule XIII 1a(2)) and the MOU ensure that Wyoming Game and Fish Department comments will be obtained and that at least 60 days will elapse from receipt of the plan to the time action is taken on it.

The U.S. Fish and Wildlife Service offered consultation services to Wyoming in an undated letter included in the State program submission as Exhibit G.9. The U.S. Fish and Wildlife Service will also have the opportunity to review all plans involving Federal coal lands. This will include most of the coal mines in Wyoming. The Secretary finds the Wyoming provisions adequate in providing the opportunity for agencies with fish and wildlife management responsibilities to review all mining and reclamation plans, including plans proposing changes in land use.

13.90 The State has promulgated a series of rules to provide general provisions for roads consistent with the Federal requirements. However, the Federal counterparts, 30 CFR 816.150–816.176 have been remanded by the district court. See discussion above under "General Background." The Wyoming rules are no less stringent than the performance standards in Sections 515 and 516 of SMCRA.

13.91 See Finding 13.90 above.

13.92 See Finding 13.90 above.

13.93 See Finding 13.90 above.

13.94 See Finding 13.90 above.

13.95 See Finding 13.90 above.

13.96 The State has promulgated Rule IV 3g(1) which requires all surface drainage to be passed through a sedimentation pond unless the drainage comes from sediment pond areas themselves, diversion ditch areas themselves, or road disturbances. Therefore, as in 30 CFR 816.42(a)(4), drainage from roads does not always have to pass through sedimentation ponds to be in compliance with the Wyoming program and the Wyoming program is consistent with Federal requirements.

13.97 See Finding 13.90 above.

13.98 See Finding 13.90 above.

13.99 Rule IV 3j(5)(a)(i) requires control of additional contributions of suspended solids to streams or runoff and damage to fish and wildlife using the best technology currently available, and is thus consistent with 30 CFR 816.180 and 30 CFR 816.181 for railroad and other transportation and mine facilities.

13.100 Rule VII 2 provides performance standards for underground mines in addition to those required for surface mines. These Rule VII 2 standards limit backfilling and grading requirements to those in Rule IV 2b

(reestablish the "contour of the land in a manner consistent with the proposed future use of the land") rather than including Rule IV 3a (requiring sealing and backfilling of shafts and adits, and all subsidence features occurring within 5 years of completion of mining to be appropriately reclaimed). The rule also provides for gravity discharge and subsidence controls. The State has promulgated Rule VII 2(a)(5), which incorporates "all applicable performance standards of Rule IV and W.S. 35–11–101, *et seq.*" into the underground mining and reclamation standards. The resubmission has adopted language to correspond to the district court rulings concerning 30 CFR 817.54, 817.101(b)(1), and 817.102 (Opinion of May 16, 1980, at 36–37, and 17–18). The resubmission is consistent with the remaining Federal requirements for the permanent regulatory program.

13.101 Rule VII 2(b)(3) provides the State with authority to prohibit all types of underground mining as necessary to prevent subsidence, and thus is acceptable as more stringent than 30 CFR 817.121(a).

13.102 Rule VII 2b requires that underground mining activities be planned and conducted to prevent material damage caused by subsidence. Further, Wyoming has clarified its intent to require that all perennial streams and impoundments be evaluated on the basis of detailed subsurface information prior to approving mining beneath them (Administrative Record No. WY–220). Thus, the perennial stream and impoundment criteria of 30 CFR 817.126(a) are accounted for, since mining causing an adverse, permanent effect on streams or impoundments would cause material damage to the land surface. Under both the Federal and State requirements, streams or impoundments can be undermined if there will be no material damage (see 30 CFR 817.126(a)). Rule VII 2b also provides controls on mining under parks, cemeteries, public buildings, acquifers, and in urbanized areas in a manner consistent with 30 CFR 817.126.

13.103 Rule II 3a(5) requires listing of MSHA identification numbers and applicable approvals. Rule VII 2(a) refers both to the U.S. Bureau of Mines and to "appropriate Federal and State laws" in the context of sealing shafts and adits. Thus, MSHA requirements must be met in a manner consistent with the Federal requirements since MSHA enforces Federal requirements. Further, Rule IV 3r requires MSHA approval of any operations within 500 feet of an underground mine. This would also apply to all shaft sealing.

13.104 Rules VII 1a, 1b, 2a(5), and 2b(8) incorporate all applicable portions of the surface mining rules (Chapters II, IV, and V) in the underground mining rules. As a result, Rule III is also incorporated (as required by Rule V). Rule VI would apply to any surface blasting. In effect, a comprehensive set of permit requirements and performance standards for underground mines has been promulgated by Wyoming and thus the State resubmission is consistent with 30 CFR Part 817.

13.105 Rule VII 2a(5) (underground mining) incorporates (1) Rule IV 3g, which requires use of sedimentation ponds, (2) Rule IV 3e, which requires use of diversions, (3) Rule IV 3c(3), which requires special handling of acid-forming and toxic-forming materials, and (4) Rule IV 3d which requires revegetation. Rule VII 1c(3) also requires a subsidence control plan and VII 2b(2) requires prevention or control of gravity discharges. Thus, the requirements of 30 CFR 817.41(d) are included in the resubmission. Further, W.S. 35–11–406(b)(xviii) requires a plan to minimize disturbance to the prevailing hydrologic balance, as in 30 CFR 817.41(b).

13.106 Rule IV 3g(7) requires that appropriate sediment control measures be designed, constructed, and maintained using the best control technology available. This rule is incorporated into underground mining requirements through Rule VII 2a(5). The Wyoming program has authority through these rules to specify that sumps be used to control sediment in underground mining operations in a manner consistent with 30 CFR 817.45(h).

13.107 Rules VII 1c(2) and 2b(2) require a plan that demonstrates prevention or control of potential gravity discharges when such discharges might be in excess of State or Federal water quality standards. 30 CFR 817.50(b) requires that effluent limitations be met by such discharges, including the effluent limitations contained in 30 CFR 817.50(b)(1)(i) and 817.50(b)(2)(ii). This was also discussed in Finding 13.37.

13.108 Rule VII 2b(1) requires that underground development wastes be disposed of in compliance with Rule IV 3c, which governs (1) excess spoil, (2) coal processing wastes, and (3) acid-forming and toxic-materials. Thus, requirements for overburden (spoil) from surface mines and underground development wastes are provided consistent with 30 CFR 817.71 and other Federal requirements for hauling and disposing of development wastes and spoils.

13.109 Rule VII 2a(5) incorporates Rule IV 3p and all fish, wildlife and related standards promulgated for surface mining in the underground mining rules, consistent with the requirements of 30 CFR 817.97.

13.110 Rules III 4 and XIII 1a(7) specify permit processing requirements for concurrent surface and underground mining operations. Rule IV 3r requires maintenance of a 500-foot barrier and Rule V 4 requires that a safe vertical distance be maintained between concurrent surface and underground operations. Thus, requirements of 30 CFR Part 818 are met in the resubmission

13.111 Rules IV 3r and V 4 are consistent with 30 CFR 818.15 (a) and (b) in terms of maintaining 500 feet between concurrent surface and underground operations, unless otherwise approved by MSHA.

13.112 See Finding 13.111 above.

13.113 Rule V 5(c) incorporates dimensional specifications for undisturbed areas of coal to be left after auger mining operations are completed, consistent with 30 CFR 819.11(a).

13.114 Rule V 5b provides authority to limit or prohibit auger mining if environmental impacts cannot be prevented or corrected, which is consistent with 30 CFR 819.11(e).

13.115 Rule V 5d requires plugging of auger holes that discharge water containing acid- or toxic-forming material within 72 hours of completion, consistent with 30 CFR 819.11(c)(1).

13.116 Rule V 2 and guideline provide for protection of alluvial valley floors. See Finding 12.4 for a more detailed discussion regarding the manner in which the State program resubmission provides adequate protection for alluvial valley floors.

13.117 W.S. 35–11–103(e)(xviii) provides a definition of "alluvial valley floors" which is essentially identical to that of Section 701(1) of SMCRA and 30 CFR 701.5.

13.118 See Finding 13.J below.

13.119 Rule V 2d incorporates monitoring requirements for operations in or adjacent to alluvial valley floors, which, with the clarification received (Administrative Record Document WY–220) and as discussed in Finding 13.0 (13.118) below, are consistent with 30 CFR 822.14.

13.120 Rule V(1) provides for regulation of operations on prime farmland consistent with 30 CFR Part 823. Wyoming has also promulgated rules equivalent to those incorporated by reference in Part 823 of 30 CFR and has modified its rules to correspond with the modification of the Federal requirements specified in 44 *FR* 77455 (December 15, 1979). These modifications are discussed in Finding 14.69.

13.121 Rule I 2(39) contains a definition of "history of intensive agricultural use." The term is used in Rule II 3a(6)(g)(i) in the context of identifying prime farmland. The term is more detailed than, but consistent with, the Federal definition of "historically used for cropland" (30 CFR 701.5), and is not related to the time of the lease or lease option for surface coal mining as is the Federal term.

13.122 Rule III 1a(5) requires identification of the moist bulk density of major soil horizons for prime farmland but contains no requirements equivalent to 30 CFR 823.14(c) for use of moist bulk density as a criterion for reconstruction (see Rule V 1a(3)(c)). This is an appropriate change since OSM has suspended the moist bulk density standard for soil compaction (44 *FR* 77455, December 31, 1979). Instead, the Wyoming program resubmission requires soil replacement in a manner that avoids excessive compaction, creates pore spaces favorable for rooting zone, minimizes erosion, and restores available water holding capacity consistent with the premining soil condition. This is consistent with the requirements of 30 CFR 823.14(e).

13.123 See Finding 13.K below.

13.124 See Finding 13.L below.

13.125 See Finding 13.M below.

13.126 See Finding 13.N below.

13.127 W.S. 35–11–401(m) prohibits steep slope mining until State program rules are promulgated. See Finding 13.S (13.126) below for a more detailed discussion of this finding.

13.128 W.S. 35–11–103(e)(xx) defines "surface coal mining operations" as including "leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, and the loading of coal."

There are no distance limits on the inclusion of coal loading. Therefore, all performance standards and permit application requirements are applied to all processing plants and all coal loading facilities. The State program thus fulfills the requirements of 30 CFR Part 827, and is more stringent in that it applies to coal loading facilities located off the mine site.

Wyoming has two distinct sets of regulations governing in situ operations. One set pertains to *all* in situ operations (Rule XXI 2a) and the other pertains only to in situ coal operations (Rule V 3a(5)). Between the two, all requirements of 30 CFR 785.22 and Part 828 are included in the Wyoming program.

Following are the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930, *et seq.*). Also included are findings that have undergone more detailed analysis by the Department.

13.A In Finding 13.9, the Secretary suggested that the Wyoming program resubmission should provide for certification of laboratories for soils analyses. The Federal regulations require that soils tests conducted to determine nutrient levels, chemical constituents, and need for soil amendments should be performed by a qualified laboratory using standard methods approved by the regulatory authority (30 CFR 816.25).

The State has responded that it sees no reason to be in the business of certifying laboratories to conduct soils analyses in Wyoming. Wyoming has included, as part of the program submission, two guidelines addressing, in part, soils (Guidelines No. 1 and No. 3) which provide references or directives for conducting analyses of pH, conductivity, saturation percent, texture class, sodium absorption ratios, $CaCO_3$, selenium, boron, nitrate, organic matter, molybdenum, acid base potential, exchangable sodium, lead, phosphorous, potassium, and arsenic. This is in addition to the guidelines' directions on soil sampling, sample preparation, and presentation of field descriptions.

As represented in Wyoming Administrative Record Document No. WY–99, OSM tentatively acccepted the State's position on the need for soils laboratory certification during the public comment period. Reanalysis of the issue indicates that the Wyoming soils guidelines are expanded to show standard methods for all pertinent measurements. With the guidelines, the program will be adequate in terms of obtaining accurate soils data in practice, since methodologies are standardized, thus eliminating the need for laboratory certification. The pertinent elements of Wyoming's program are acceptable.

13.B In Findings 13.13 and 13.25, the Secretary found that the Wyoming equivalent to 30 CFR 816.42(a)(2) was generally consistent with the Federal requirement since the term "restored" was considered equivalent to meeting the revegetation requirements of 30 CFR 816.111–816.117. However, Wyoming stated in its resubmission that, in fact, they would not require retention of sedimentation ponds until the requirements of 30 CFR 816.111–816.117 have been met if untreated runoff from the restored lands, at the time of considering removal of ponds or other facilities, would not degrade receiving waters. This proposal is submitted as a "State window" pursuant to 30 CFR 731.13 and, thus, is discussed in detail in Finding 12.13 which the Secretary finds acceptable.

13.C In Finding 13.14, the Secretary found that Wyoming's proposed use of the term "daily average" for measuring total suspended solids was consistent with 30 CFR 816.42(a)(7). However, in the State program resubmission, the values for total suspended solids, iron and manganese listed under the heading "Instantaneous Maximum" are incompatible with Footnotes 4 and 6 to the Effluent Limitations Table in the Federal regulations. As presented in the submission, all values are too high to meet the Federal requirements. By letter dated August 5, 1980 (Administrative Record No. WY–220), the State explained that the Wyoming provision was consistent with the Federal requirement because "daily maximum" is considered to be a "representative sample." In addition, the standard for "instantaneous maximum" in the Water Quality Division regulation represents one grab sample, but is not a "representative sample." The State confirmed this interpretation with the Environmental Protection Agency (EPA). Based on this explanation, the Wyoming provision is acceptable.

13.D In Finding 13.22, EPA noted that the initial Wyoming program submission did not discuss the necessity of modifying downstream water treatment facilities once a stream channel diversion protecting the facility was removed. The Wyoming program resubmission indicated that water treatment facilities, of the type contemplated by 30 CFR 816.44(c) and EPA, are not found in the permit area and that protection for offsite areas is provided in Rules IV 3e and IV 3g. Under Rule IV 3e(2)(b)(ii), diversions are to be reclaimed in a manner that reestablishes approximate premining stream channel characteristics. Under Rule IV 3g(1), sedimentation ponds are to be retained until the affected lands have been restored. Thus, it is suggested that the stream drainage system will be reestablished so as not to affect downstream water treatment facilities. However, the rules do not require the specific consideration of downstream water treatment facilities.

On the other hand, Wyoming's Rule II 3b(11) requires evaluation of off-site hydrologic effects, and if there are adverse effects on water supplies or water systems, the application must identify alternative sources of water supply. Thus, downstream water treatment facilities must be considered in the regulatory authority's assessment.

The Secretary finds that Wyoming's statutes (e.g., 35–11–406(n)(iii)) and Rule II 3b(11) ensure consideration and protection of downstream water treatment facilities in a manner consistent with 30 CFR 816.44(c).

13.E As discussed in finding 13.29, the State, in its program resubmission, has explained that substitution of the word "lethal" for the word "detrimental" in the State's definition of "toxic materials" (Rule I 2(98)) was based on the objective of establishing stringent, well defined controls for materials that may be introduced into the environment. The State indicated in the resubmission that protection was also given by Rules IV 2c(3)(e), IV 2c(3)(f), and IV 3a(2) and by W. S. 35–11–415(b)(iv). These provisions address identifying spoil as a source of water pollution, disposal of toxic overburden or spoil, minimizing adverse effects on ground water, and covering or disposing of toxic materials constituting a hazard to health and safety or posing a threat of water pollution. The State thus equates detrimental (adverse effect) to terms such as "water pollution," "adverse effect," or "hazardous to health and safety" and believes the word "lethal" sets more stringent controls than does "detrimental."

The Secretary believes that there is a potential for confusion between State and Federal requirements for protection of biota and water uses unless the State assures that "lethal doses" will actually reflect *all* detrimental effects. By letter dated August 5, 1980 (Administrative Record No. WY–220), the State stated its intent to propose an amendment to the regulation defining "toxic materials" which would substitute "detrimental" for "lethal." Until this rule is promulgated, the Secretary cannot find this Wyoming provision consistent with the Federal requirement, but will make promulgation of the regulation a condition of approval of the Wyoming program.

13.F In Finding 13.39 the Secretary found that the Wyoming program submission appeared to have properly documented the elimination of "biological community" from State rule IV 3p(2), which is otherwise equivalent to 30 CFR 816.57(a). Additional questions have arisen during review of the resubmission. The State has promulgated Rule IV 3p(2) and Rule II 3a(6)(e), which require studies of fish, wildlife, and their habitats in coordination with State and Federal fish and wildlife protection agencies, and Rule IV 3p(1), which requires the operator to use, to the extent possible, the best technology currently available, consistent with the approved postmining land use, to protect, restore, and enhance habitats of high value to fish and wildlife. The State has also promulgated Rule II 3b(4), requiring a plan to minimize impacts to fish and high value habitats, and Rule II 3b(12)(b)(iii)(H), which requires postmining land use plans to obtain approval of mitigation measures to protect fish if the land use is to be changed.

Sections I, E, K, and L of Guideline No. 5 describe techniques to be used to measure fish habitat, benthic invertebrates, and periphyton in systems supporting fish. Recognizing that sampling of biological communities is an essential element of fish and aquatic habitat investigations (see, for example, Hynes, H.B.N., 1970, *The Ecology of Running Waters*, pp. 112–271; Reid and Wood, 1976, *Ecology of Inland Waters and Estuaries*, pp. 337–369; Odum, Eugene P., 1971, *Fundamentals of Ecology* (3rd Ed.), pp. 316–320; and Kendeigh, Charles S., 1961, *Animal Ecology*, pp. 42–58, Administrative Record No. WY–224), the Secretary believes that all streams with a potential to support a biological community will be required to be investigated under the requirements of the resubmitted Wyoming State program and that all such streams and bilogical communities will be appropriately protected. As discussed in Finding 12.7, the State provided assurance on August 5, 1980 (Administrative Record No. WY–220), that makes the Wyoming provision consistent with the Federal requirement.

13.G The State deleted Rule IV 3d(6) and the grazing requirement contained therein in response to the district court ruling concerning 30 CFR 816.115 (Opinion of February 26, 1980, at 58–59). The State resubmission is acceptable for indicating how the range and pasture land will be measured, since the vegetation guideline (No. 2, Part 3) requires specified testing methodology for adequacy of reclamation, including adequate cover for soil protection, suitable species composition for forage or shelter, and adequate productivity for forage.

13.H The State program resubmission responded to the Secretary's question in Finding 13.79 regarding the term "reasonably good husbandry practices" used in Rule IV 2d(6) as follows:

> The State regards only those practices which are characteristic of the land practices normally conducted in the region for unmined lands having uses similar to the approved postmining land use to be "reasonably good husbandry practices."

The Secretary finds this consistent with 30 CFR 809.13(b)(3), which was promulgated on August 4, 1980 (45 *FR* 51547–51550).

13.I In Finding 13.88 the Secretary found that Wyoming's use of the language "previous [land] use which was of greatest economic or social value to the community area; or must have a use which is of more economic or social value than all of the other previous uses" to be a more stringent judgment of "higher and better uses" than in 30 CFR 816.133(a)(2). In the resubmission, the State indicated that the postmining land use would be evaluated on the basis of the feasibility of backfilling, grading, reestablishing a hydrologic system, soils protection and capability to revegetate in support of the postmining land use. Wyoming's statement regarding incorporation of determinations of the feasibility of meeting specific reclamation requirements in the course of making findings of "highest previous use" will provide analyses under the State program consistent with those needed to comply with 30 CFR 816.133(a)(2).

13.J In Finding 13.118, the Secretary found that the State program submission did not provide a "grandfather" clause for the protection requirement of "significant" alluvial valley floors for mining operations approved prior to August 3, 1977, as does 30 CFR 822.12(d) and, therefore, was more stringent.

The State has enacted W.S. 35–11–406(n)(v)(B) which replicates the "grandfather" clause exempting certain mines from consideration necessary under Section 510(b)(5) of SMCRA. Thus, the "grandfather" clause of the State program provides the exemption privileges of Section 510(b)(5) of SMCRA pertaining to alluvial valley floors of significance to farming.

State Rule V 2d(3), however, provides that "[m]onitoring *may be* required in accordance with subsection E of this section." (emphasis added) This appears to make the mandatory requirements of 30 CFR 822.14 discretionary in the Wyoming resubmission. The Secretary notes that monitoring must be required for all mines encountering alluvial valley floors.

While the type and extent of monitoring is to be determined by the regulatory authority based on site-specific considerations, some type of monitoring is required. In fact, the Wyoming program requires surface and ground water monitoring in all operations (Rule IV 3i); thus, the apparent exemption in Rule V 2d(3) seems meaningless.

It would appear that Wyoming intended to limit the objectives of

environmental monitoring in accordance with the "grandfather" clause. That is, operations qualifying for the Section 510(b)(5) (of SMCRA) exemption would not be concerned about interruption, discontinuance, or preclusion of farming on "grandfathered" alluvial valley floors (AVF's) and thus would not have to monitor for such effects on those AVFs. However, if the mine were operating in or adjacent to an alluvial valley floor, monitoring would likely be necessary to ensure that essential hydrologic functions were reestablished.

By letter dated August 5, 1980 (Administrative Record No. WY–220), the State provided assurance that Rules III 2b(9) and c(4) require environmental monitoring for all alluvial valley floors, except for those operations that fall within the "grandfather" clause provided by Section 510(b)(5) of SMCRA. The State also assured that it will require monitoring in accordance with the standard that existing operations restore the essential hydrologic functions where mining on or adjacent to alluvial valley floors occurs. This requirement is through Rule V 2e. This assurance makes the program provisions acceptable.

13.K In Finding 13.123 the Secretary found Wyoming's proposed rule for determining revegetation success on prime farmland (Rule V 1b(3)) adequate, provided the State ensures that the reference area used to determine success for prime farmland will be monitored in terms of estimated yields under a high level of management. However, in apparent response to the district court rulings (Opinion of May 16, 1980, at 4–5), the resubmission indicates the State has promulgated Rule V 1b(2) (which requires revegetation success on prime farmlands) to be based on vegetation on non-mined prime farmlands *"under equivalent levels of management."* (Italic added.)

Complicating the analyses is the appearance of language in the side-by-side of State and Federal provisions (page 154) which reports the same rule (V 1b(2)) as defining success in terms of *"capability* of prime farmlands to support premining productivity." The latter proposal is in concert with the court rulings. The regulations that appear to be promulgated in Rule V do not show the change which corresponds to the district court rulings. The side-by-side language is promulgated in Rule XIII 1a(6)(a) ("the postmining land use of prime farmland will be capable of supporting crop yield equivalent to the surrounding non-mined prime farmland under equivalent levels of management.") This provision is in the permit review regulations and will prevail in actions on permit applications. Rule XVI 6a(2)(b)(ii) specifies that bond release will be at the time soil productivity will have returned to non-mined levels consistent with good management practices. It is apparent that actual performance may still be based on estimated yields, as it must to accurately reflect the capability while soil productivity will be a surrogate basis for bond release. The Secretary finds that, until new Federal requirements are promulgated, Rule V 1b(2) shown in the side-by-side analysis which bases performance on the capability of prime farmlands to support premining productivity, and Rule XIII 1a(6)(a) which bases permit approval on capability, are acceptable.

13.L In Finding 13.124 the Secretary found that further clarification was required in order to evaluate the proposed State rules for special bituminous coal mines. Wyoming has provided a discussion and clarification in the resubmission which is evaluated in Finding 13.M below.

13.M In Finding 13.125 the Secretary found that questions remained regarding the State's intended meaning of the term "new special bituminous coal mines." The resubmission explains that Wyoming intends to classify the Kemmerer Coal Company I-U-D mine permit areas as the only *"existing* special bituminous coal mine" (emphasis added) in Wyoming since only that operation can qualify under the State equivalent to 30 CFR 825.11 (Rule VIII 1a(1)(g)) (i.e., only that operation was in existence prior to January 1, 1972). Wyoming intends to allow separate mine pits within this mine, upon adequate showings of compliance with Rule VIII 1a(1).

The critical criteria for determining qualifications as an existing special bituminous coal mine would include the mining of more than one coal seam (Rule VIII 1a(1)(c)) and production of coal since January 1, 1972 (Rule VIII 1a(1)(g)). Thus, anywhere within the total permit area, as that area is specified when a permit is issued under the permanent regulatory program, any multi-seam pits which have been producing coal since January 1, 1972, may qualify as existing special bituminous coal mines.

Wyoming intends to classify other mines as *"new* special bituminous coal mines" (emphasis added) if the mine permit area is located on lands immediately adjacent to the Kemmerer Coal Company's mine permit area. Again, permit areas would be defined in the permit issued pursuant to the permanent regulatory program. The two permit areas that could, in the opinion of the State, contain new special bituminous coal mines are shown to the south and north of the Kemmerer Mine permit area in the map titled "Map No. 1 Special Bituminous Coal Mines," which is contained in the resubmission.

The State indicates, in the resubmission, that the FMC Skull Point operation will be a "new special bituminous coal mine" as could any plan for mining operations in the location of Rocky Mountain Energy Company's Twin Creek Mine (provided all applicable criteria of Rule VIII 1a(2) were met). No other plans are expected to meet the criteria for new special bituminous coal mines, according to the information provided in the resubmission.

In order to reach the conclusion that Section 527 of SMCRA authorizes the State program provisions for special bituminous coal mines as resubmitted, the Secretary has assumed that the term "special bituminous coal mine" refers to an entire mine permit area which may encounter, in one or more locations within that mine, areas of more than one coal seam dipping more than 15 degrees where the operator chooses to mine those seams in one or more separate mine pits which are to remain open to facilitate mining. In other words, the Wyoming program interprets the term "special bituminous coal mine" to apply to the entire mine permit area, which area could include other types of mining in addition to open pit mining.

Once a permit area is designated a special bituminous coal mine, there can be any number of pits within the permit area which may be exempted from backfilling and grading requirements. The provisions of the Wyoming statutes and rules for special bituminous coal mines apply to any eligible pits within the permit area, but *only* to the pits and, under Wyoming's program, the associated spoil piles. And, a *new* special bituminous coal mine need not be immediately adjacent to a pit; rather it must be adjacent to a mine permit area of the entire operation as far as it may extend during successive permit terms.

The Wyoming program further interprets the term "which may be developed," used in Section 527(b) of SMCRA to identify new special bituminous coal mines, to mean "opening of a new mine, continuing the development of an ongoing operation, or redeveloping an area that has been mined in the past." This becomes important in defining the FMC operation as a new special bituminous coal mine since the pit at that mine was opened after 1972 and before 1977.

The Secretary finds that Wyoming properly interprets the term "special bituminous coal mine" to involve a total mine permit area including one or more pits which specifically qualify for exemptions equivalent to those of Section 527 of SMCRA.

The Secretary also finds that the word "develop" is permissibly used by Wyoming in the resubmission to include both continuation of mining and opening of new pits within the mine permit area designated as a new or existing special bituminous coal mine. This finding is based on common definitions of the word "develop" from *Merriam-Websters Third New World International Dictionary*, Unabridged, 1976, p. 618.

The word "develop" means, in a mining engineering sense, "To open up a coal seam * * * as by sinking shafts and driving drifts, as well as installing the requisite equipment."

(*A Dictionary of Mining, Mineral, and Related Terms*, Bureau of Mines, DOI, 1968, Administrative Record No. 231.) The Internal Revenue Service views development of mineral deposits to involve expenditures made after exploration and before mining. The expenditures would be for "driving shafts, tunnels or galleries and similar operations undertaken to make ore accessible for production (26 CFR 1.616-1a, IRS Code, Administrative Record No. 232). Thus, a difference exists, for tax purposes, between exploration, development, and mining.

The Wyoming resubmission concludes that "develop" includes both "development" and "mining." Again, this is important in determining whether the pit of the existing FMC coal mining operation qualifies the entire FMC permit area as a new special bituminous coal mine and whether that pit is eligible for exemptions.

Based on the Secretary's analysis, there is no evidence that the word "developed" used in Section 527 of SMCRA was used in consideration of the more complex definitions peculiar to mining. It is reasonable to assume that the term "developed" was used as defined in Webster's or other commonly recognized dictionaries. Further, the House Report accompanying H.R. 2 (Conference Report No 95-943, July 12, 1977, page 112) states that "State laws, regulations and decisions made by State regulatory authorities are to be protected" in the issuance, by the Secretary, of regulations. Therefore, the State of Wyoming's considerations are to be protected to the degree consistent with SMCRA. Accordingly, the Secretary finds Wyoming's interpretation of the term "developed" to be suitable and in accordance with SMCRA.

The State resubmission may cause some confusion when trying to distinguish, however, between the words "mine" and "pit." The resubmission provides promulgated rules for backfilling and grading of special bituminous coal mines. Rule VIII 3c indicates that pits not covered under VIII 3a above (*existing* special bituminous coal mines) must comply only with backfilling and grading requirements of Rule IV 2b (as opposed to IV 2b and IV 3a). There is a possibility that operators will interpret this to mean that a variance will be given for any pit within the permit area, regardless of whether it qualifies for an exemption.

It is the Secretary's understanding that Wyoming will first classify mine permit areas as "existing" or "new" and then will apply standards for "existing" special bituminous mines only to qualifying pits within the "existing" mines (and likely will find only one such pit). Standards for "new" special bituminous coal mines will be applied to any eligible pits within a "new " mine and any new pits within an "existing" mine.

Wyoming has promulgated Rule VIII 4a, which requires compliance with all other performance standards to the degree they "do not preclude the benefit intended." The Secretary initially determined that this provision was too extensive since Section 527(c) of SMCRA limited the alternative regulations to standards governing "on site handling of spoils, elimination of depressions capable of collecting water, creation of impoundments, and regrading to the approximate original contour." Thus, all performance standards regarding topsoil, hydrology, wildlife, erosion, revegetation, and certain other performance standards would still apply.

The State has provided evidence that ensures proper compliance with all applicable performance standards and permit requirements (Administrative Record No. WY-220). Wyoming has stated that Section 4 of Chapter VII of the rules applies only if the special bituminous surface coal mine operator affirmatively demonstrates that compliance with a specific performance standard requires utilizing impracticable backfilling and grading, resulting in more stringent standards than described in Chapter VII, Section 3.b. Thus the exemption applies only to backfilling and grading and this portion of the program is consistent with the Federal requirements.

13.N In Finding 13.126, the Secretary found that Wyoming needed to enact a definition of "steep slopes" as well as a ban on mining steep slopes until regulations were prepared. Wyoming has promulgated Rule I 2(86) to define "steep slopes" as any slope of more than 20 degrees or such lesser slopes as may be designated * * *." Wyoming has also promulgated Rule IV 3c(1)(b)(i) to prohibit the placement of excess spoil (i.e., excess of regrading requirements) on an overall slope that exceeds 20 degrees. However, the definition relating to steep slopes within enacted W.S. 35-11-103(e)(xxi) differs in that it defines "steep slope surface coal mining operation" as that occurring on steep slopes generally "exceeding twenty (20) degrees and which, because of the steepness of the terrain, requires special spoil handling procedures." This term, defined in W.S. 35-11-103(e)(xxi), is then used in W.S. 35-11-401(m), which Wyoming has enacted to prohibit mining operations on steep slopes until adequate rules are promulgated.

Under the Wyoming program, Rule IV 3c(1)(b)(i) prevails to prohibit placement of spoil on downslopes exceeding 20 degrees. This is consistent with the special performance standards of 30 CFR 826.12(a)(i) and (d) and thus satisfies the Federal requirements for protecting the environment. In effect, the Wyoming rules do not use the term "steep slope." Rather the rules prohibit excess spoil in steep slope situations. On the other hand, the statute is designed to prohibit steep slope mining gradations themselves, albeit using a different definition of "steep slope." The Secretary finds that Wyoming intends to prohibit steep slope mining until additional rules are promulgated (Exhibit G.6 for sections 785.15 and 826 in resubmission). This issue was also discussed in Finding 12.3.

13.O In Finding 13.142, the Federal requirements for ground water protection in 30 CFR 816.50 are contained in promulgated Rule IV 3c(3)(d) which requires acid or toxic materials used as backfill to be placed to prevent leaching into surface or subsurface waters, and in Rule IV 3a(2) which requires placement of all backfilled materials in a manner which minimizes adverse effects on ground water. These requirements are all reinforced by W.S. 35-11-406(b)(xviii) which requires a plan that minimizes the disturbances to the prevailing hydrologic balance. The State resubmission is consistent with the Federal requirements.

13.P Rule IV 2d(6) will require that a bond be held until the revegetated area

is capable of renewing itself under natural conditions and the productivity is at least equal to that existing prior to mining. The standards of the rule are to be met for two consecutive years. 30 CFR 816.116(b)(1)(ii) requires that the standards be met for "the *last* two consecutive years of the responsibility period." (Italic added.) The State rules do not specify the time during the ten year period that the two years of measurement will take place. An operator could then measure the vegetation at the end of the initial planting and irrigation, when productivity is high, and meet the requirements of the rule and not take into acount decline in cover and productivity that may occur before the end of the bond release period.

Although this difference in the rules could be resolved by an explicit discussion of timing of bond release measurements in Guideline No. 2, a modification to the regulation is preferable. This change has been made a condition of Wyoming program approval.

13.Q Wyoming has promulgated Rule IV 3g(4)(b) to require that one year of sediment storage be designed into ponds. This rule has been changed in response to the district court ruling (May 16, 1980, Opinion, at p. 21). In making the change in the resubmission, Wyoming also eliminated the surface performance standard requirement for removal of stored sediment in 30 CFR 816.42(b). While this oversight in the resubmission does not provide the same language as do the Federal regulations at present, reasonable design of sedimentation ponds under Wyoming's program will automatically require sediment removal. And, in fact, Rule II 3b(9)(b) requires "a plan for sediment removal and disposal."

Removal will occur since, if sediment accumulated in excess of the design amount, a violation of Water Quality Division Rule X, Appendix A, (which requires a "detection time to include storage") would also occur.

The Secretary finds that the current State program provides all necessary requirements for sediment removal necessary to maintain the approved (and safe) pond design in comparison to the Federal regulations currently in effect.

Finding 14

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and regulations and the Wyoming program does include provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G (permits), subject to the discussions in Findings 14.A and 14.C below. This finding is made under 30 CFR 732.15(b)(2).

Wyoming incorporates provisions corresponding to Sections 506, 507, 508, 510, 511 and 513 of SMCRA and Subchapter G of 30 CFR Chapter VII in Wyoming Statute 35–11–103, 401, 402, 405, 406, 408, 409, 410, 426, 427, 428, 429, 601, 801, and 802, and Wyoming Rules I, II, III, IV, VII, VIII, IX, XIII, and XIV. Part G.1 of the first volume of the program submission contains discussions of the systems for (1) mining permit review and approval, (2) amendments, (3) renewals, (4) revisions, (5) transfers and (6) licenses.

Discussion of significant issues raised during the review of the Wyoming permit provisions follows.

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 14 acceptable subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following findings which have the same numbers as the tentative findings on the same provisions in the March 31, 1980, notice.

14.1 See Finding 14.A below.

14.2 W.S. 35–11–406(n)(i) requires that no permit may be issued unless the application is "accurate and complete." W.S. 35–11–406(j) requires that public notice of a "complete" application be given to correspond with 30 CFR 786.11(a). Thus, an incomplete application must be denied consonant with 30 CFR 786.19(a). The exact meaning of the word "complete" in the Wyoming program is discussed in Finding 14.A (14.1) below.

14.3 The State has promulgated Rule XIII 1a(8)(c) to require the coal mining operation to be conducted in compliance with any other applicable State or Federal law. The State program resubmission also contains MOUs for State agencies with designated responsibilities for implementing other acts (see Finding 6). The rules also contain coordination requirements for the Endangered Species Act and Fish and Wildlife Coordination Act (see Rules II 2a(1)(b)(iv), II 3a(6)(e), II 3b(4), and IV 3p).

The Wyoming State program provides for the identification of historic and archeological resources, which would include sites eligible for listing in the National Register of Historic Places. The survey information required by applicants would be evaluated, under the Wyoming program, by the Wyoming State Historic Preservation Officer pursuant to the MOU developed between Wyoming DEQ and the Wyoming Recreation Commission (Exhibit F.3).

Wyoming requires, under Rule XIII 1a(5), that the applicant provide a plan which would demonstrate the capability to mitigate the adverse impacts of mining on areas prohibited for mining pursuant to Section 522(e) of SMCRA (e.g., including sites *listed* on the National Register).

14.4 Finding 14.4 relates to the cooperative agreement under the Federal lands program. See discussion under "Introduction" above.

14.5 Rule II 2a(1)(b)(iv) requires identification of endangered or threatened plant species on any State or Federal list; Rule II 3a(6)(e) requires coordination of fish and wildlife studies; Rule II 3b(4)(b)(i) requires protection of threatened or endangered wildlife species listed pursuant to 16 U.S.C. 1531 *et seq.;* and rule IV 3p(1)(g) requires a report of threatened endangered species and golden eagles. The State rules are consistent with the Federal requirements to protect threatened and endangered plant and wildlife species and golden eagles. See Finding 14.93 for further discussion.

14.6 The State program resubmission shows that Rules XIII 1a(2)(b) and XVIII 3b(1) require applications and petitions to be disseminated to government agencies. Further, public notices of receipt of these are required by W.S. 35–11–406. Thus, Federal agencies will be notified of the permit application and petition process, and the concerns of the National Park Service expressed during review of the original submission are satisfactorily accounted for.

14.7 Rule XIII 1a(2)(b) requires that public notices be sent to Federal agencies with jurisdiction over, or an interest in, the permit area. Rule II 3a(5)(b) requires information for any other permits or approvals pertinent to the proposed operations. Rule II 3b(1)(b)(iv) requires the location and design for diversions, channels, erosion control, and discharge (among other) facilities. Further, Rule XIII 1a(8)(c) requires that operations be conducted in a manner which prevents violation of other applicable laws and, thus, requires an applicant to have obtained the requisite approvals prior to operations. Thus, the State has ensured that dredge and fill operations will be accounted for

both by notification to the Corps of Engineers and by review by the regulatory authority.

14.8 See Finding 14.B below.

14.9 W.S. 35–11–401(d) provides guidance for continued operations after timely submission of a complete application equivalent to that provided by 30 CFR 771.13(b) and thus is consistent with the Federal allowances for continued operations in the event of administrative delays.

14.10 The State included a guideline (No. 6) in its submission which addresses organization of a permit. In Part III, Section II of the guideline, ranges in scales for maps are specified. The map scales range from 1:4800 to 1:24000. Surface and underground mine maps in mine plans for Federal lands in Wyoming are generally 1:4800 or 1:6000 scale. This observation is based on OSM's analysis of mine plans for Federal lands in Wyoming on file in the Region V OSM offices. The State program, therefore, adequately provides the authority to obtain, and in practice the Wyoming regulatory authority does obtain, maps of proper scale to allow site-specific analyses by the regulatory authority, even through the Wyoming rules do not specify the scale (1:6000 or larger) of maps of the permit area as does 30 CFR 771.23(e)(1).

14.11 Rule II 1b requires information in the application to set forth references to technical material as well as the entities responsible for collecting and analyzing data. Rule II 3a(5)(a)(ii)(B) incorporates the Water Quality Division's standards, which, in turn, specifically incorporates EPA's water quality analytical procedures. The State resubmission is consistent with the requirements of 30 CFR 771.23(c) for identification of preparers of technical data and identification of analytical procedures.

14.12 W.S. 35–11–406(a)(xii) establishes a permit fee not to exceed $2,000, which is consistent with 30 CFR 771.25.

14.13 Rule I 2(3) presumptively limits the "adjacent area" to one-half mile of the proposed permit (mine plan) area unless otherwise specified by the regulatory authority. The Secretary finds this consistent with the Federal requirements, since the limitation will be varied according to the potential adverse effects of the proposed operation and is merely used to provide some quantitative indication of the area to be surveyed as early as possible in the environmental monitoring program. It is recognized that the distance will almost always be greater in some direction from the proposed operations for hydrologic effects of mining.

14.14 Rule II 3a(5) includes the Mine Safety and Health Administration (MSHA) identification number and is, therefore, consistent with 30 CFR 778.13(f).

14.15 Rule II 3a(2)(b) and W.S. 35–11–406(a)(xiv) require a listing of "notices of violation *which resulted in enforcement action* of this act, any law, rule, or regulation of the United States * * * pertaining to air and water environmental protection" (italic added). The Secretary understands that the emphasized language is designed to exclude from the listing notices of violation under present State law which are merely informative and do not necessarily require action by the operator (Administrative Record WY–99). Under this interpretation, the State program resubmission is consistent with 30 CFR 778.14(c).

14.16 Rule II 3a(3) requires right-of-entry statements and documents which clearly explain and support the legal rights claimed by the applicant. W.S. 35–11–406(a)(ii) and (b)(xi) requires a sworn statement as to the legal right and power by legal estate to mine and, if the application was filed after March 1, 1975, an instrument of consent from the resident or agricultural landowner granting permission to enter and mine. The State provisions are consistent with 30 CFR 778.15.

14.17 Finding 14.17 relates to the cooperative agreement under the Federal lands program. See discussion under "Introduction" above.

14.18 See Finding 14.16 above.

14.19 Rule II 2b(1)(b) requires a map showing the yearly progression of mining and reclamation during the life of the mine. Rule II 2b(2) requires a time schedule for each major step in the reclamation plan in order to coordinate the reclamation plan with the mining plan. Thus, the State program is consistent with 30 CFR 778.17(a).

14.20 W.S. 35–11–406(a)(xiii) requires a certification that a public liability insurance policy exists or that there is evidence of meeting other State or Federal self-insurance requirements. Rule XIII 2b requires that the liability insurance be adequate prior to permit approval. The State resubmission is consistent with the requirements of 30 CFR 778.18.

14.21 Rule II 3a(5) requires a list of permits or approvals needed and copies or numbers of permits obtained from DEQ or the State Engineer. Thus, the requirements of 30 CFR 778.19 are met since the number and type of permits are adequate for a "description" and since the actual permits can easily be obtained from other State or Federal agencies once the type and number of the permits are identified.

W.S. 35–11–406(d) requires the applicant to file a copy of the permit application for public inspection at the office of the regulatory authority and in the office of the appropriate county clerk. Rule XIII 1b(1)(b) requires evidence of public notice. The public notice must contain information regarding the location of the plan for review (W.S. 35–11–406(j)). Thus, the requirements of 30 CFR 778.20 for identification of the public review office are also met.

The State cannot, under its program, approve an application unless the applicant has complied with W.S. 35–11–406(a)(xv) (has provided "such other information as the administrator deems necessary or as good faith compliance with the provisions of this act require"). Thus, if any other information is required for the analysis, including information contained in other permits, the application must contain that information.

14.22 See Finding 14.C below.

14.23 Rule II 3a(6)(k) requires hydrologic and geologic information for the adjacent and general areas. Rules II 3a(6)(a), (b), (h), and (j) require geologic and hydrologic data on the permit area and other related areas. Rule XXIII 3a addresses the availability of information. The State program does not use the term "mine plan area." Rather, "permit area" is defined (Rule I 2(56)) to include all operations on the entire life of the mine. W.S. 35–11–406 requires information covering the full extent of proposed operations. W.S. 35–11–405(b) specifies that the permit remains in force until the termination of all mining and reclamation operations. (See W.S. also 35–11–103(e)(xi) for definition of "mining permit" covering *all* operations.) The resubmission is consistent with 30 CFR 779.13 and other geologic and hydrologic requirements of the Federal permanent regulatory program.

14.24 See Finding 14.23 above and promulgated Rule XXIII 3.

14.25 Rules II 32b(10) and XXIII 2 require a determination of the probable hydrologic consequences of the proposed operation on the hydrologic regime and an assessment by the regulatory authority of the probable cumulative hydrologic impacts of all anticipated mining in the general area. These requirements are consistent with 30 CFR 780.21(c) and 786.19(c).

14.26 W.S. 35–11–406(n)(i) and (ii) require the regulatory authority to find in writing that an application is complete and that the proposed reclamation can be achieved. Further,

Rule II 3a(6)(b) requires test borings on core samples of overburden. Under Rule XXIII 2a(2), the regulatory authority must find in writing that the test borings and core samples are adequate to characterize the overburden.

14.27 Rule II 3a(6)(h) includes manganese as a water quality parameter for which base line data must be provided. The State program resubmission is consistent with 30 CFR 779.16(b)(2) in terms of including the requirement for baseline manganese data. This effluent limitation for discharges has also been discussed in Finding 13.c (13.14).

14.28 Rules II 2a(1)(j)(i) (listing of all known adjudicated and appropriated water rights), II 2(1)(j)(ii) (listing of wells), and VII 1a (which incorporates permit requirements for surface mines in the underground mining regulations) provide requirements for descriptions of known uses of water consistent with 30 CFR 779.15(a)(3), 779.16, and 779.17.

14.29 Rules II 2a(1)(c) and (d) require the applicant to obtain precipitation and wind data. The State program does not contain a rule equivalent to 30 CFR 779.18(a)(3) for seasonal temperature data. Rather, the State proposes to depend on published temperature records and general knowledge of seasonal temperature ranges. In view of the fact that specific temperature ranges will be obtained from other sources in the Wyoming program, as required, the Secretary finds the resubmission adequate with respect to 30 CFR 779.18(a)(3).

14.30 Rule II 3a(6)(d)(ii) requires a map of vegetation reference areas and a "delineation" of existing vegetation types within the permit and adjacent areas. The State has submitted a vegetation guideline (No. 2) which requires mapping of vegetation (see the "General Procedures" in that guideline) and a permit organization guideline (No. 6) which specifies map scales (1:4800 to 1:7200) for vegetation maps. Thus, the resubmission is consistent with 30 CFR 779.19 in that vegetation maps will be obtained. See Finding 14.10 for additional discussion of map scales. Vegetation maps should correspond to both soils and mining operations maps.

14.31 Rules II 2a(1)(e) and II 3a(6)(e) require adequate wildlife data in the permit application. The State program resubmission also includes a wildlife guideline (No. 5) which provides additional details for the applicant to follow as "good practice." Rule II 3b(4)(b)(i) requires a plan to minimize adverse impacts to threatened or endangered species (Federal-and State-listed species). However, the Federal counterparts, 30 CFR 779.20 and 780.16, have been remanded by the district court. See discussion under "General Background" above. These rules and the guideline, however, are no less stringent than Section 515(b)(24) of SMCRA.

14.32 Rule II 3a(6)(e) requires consultation with State and Federal fish and wildlife management agencies regarding the extent of pre-mining studies. The submission also contains a letter of agreement to contribute expertise from the U.S. Fish and Wildlife Service (Appendix G.9). An MOU between the Wyoming Game and Fish Department and the Land Quality Division identifies administrative coordination procedures to obtain technical reviews and assistance from the State Game and Fish Department. These provisions, along with other rules of the State program, satisfy the requirements of 30 CFR 731.14(g)(10) (consultations with fish and wildlife authorities). See Finding 14.31 above for analysis in light of the district court order.

14.33 Rule II 3a(6)(d)(iii) requires a description of uses of land preceding mining and thus is consistent with 30 CFR 779.22(b)(5).

14.34 Rule II 3b(12)(b)(iii)(D) includes the requirement that proposals for designation of cropland as a new postmining land use shall be supported with a demonstration of a reasonable likelihood of sustaining the cropland. A firm, written commitment is no longer required. This is consistent with the district court's ruling regarding 30 CFR 816.133(c)(9)(i) (Opinion of February 26, 1980, at 63–63).

Rule XVI 6a addresses schedules of bond releases. The bond release schedule in this rule "may" be recommended by the regulatory authority. However, the maximum amounts to be released and the phases of release are mandatory. The discretion lies only in retaining additional amounts of bond or retaining the bond for longer periods. These provisions are consistent with current Federal requirements.

14.35 Rule II 3a(6)(n) requires, in the application, locations of existing man-made features within the permit area. In Rule II 3b(3)(a), the State program requires a blasting plan showing how compliance with Rule VI is to be achieved. In Rule VI 5a(7)(a), the resubmission shows that blasting may be limited in areas within ½ mile (rather than 1,000 feet) of a dwelling. In Rule VI 5a(7)(b), the 500-foot limitation for certain facilities such as flammable facilities and water lines is stated. The resubmission is consistent with 30 CFR 779.24(d) since the information needed to make a finding of compliance with Rule VI must be contained in the application in order to make the application complete and approvable. However, the 1,000-foot and 500-foot requirements of 30 CFR 816.65(f)(1) and (2) were remanded by the district court (opinion of May 16, 1980, at 26). See discussion under "General Background" above. Rule VI 5a(7) is no less stringent than Sections 515(b)(15) and 522 (e)(5) of SMCRA.

14.36 W.S. 35–11–406(n)(iv) covers Section 522(e) of SMCRA and thus the resubmission is consistent with the requirements of the Federal program for analysis of unsuitability. This is also discussed in Finding 21.

14.37 Rule II 2a(1)(k) requires a "description of any significant" artifacts, fossils, or other articles of cultural, historical, archeological, or paleontological value. Thus, the resubmission is consistent with 30 CFR 779.12(b). (See also Finding 14.3.)

14.38 Rule II 3b(3) requires a blasting plan showing, among other requirements, how the applicant intends to comply with Rule VI. The resubmission is consistent with 30 CFR 780.13.

14.39 Rules II 2b and II 3b require various maps. The resubmissions also contains Guideline No. 6 which identifies maps (and map scales) to be used in permit applications. The requirements of 30 CFR 780.14 are included in the State program. The requirement for map scales was discussed in Finding 14.10.

14.40 W.S. 35–11–406(n) requires written findings and Rule II 3b(1)(b)(iv) allows "typical design" for surface water and ground water hydrologic control methods. Thus, conceptual designs for hydrologic control measures may be permissible, provided a written finding of compliance is supported. The Wyoming regulatory authority will, of course, have to ensure that all applications contain adequate information to support a written technical analysis showing that water flow and water quality will be regularly protected. These designs, combined with the findings required by W.S. 35–11–406(n), make the resubmission consistent with Federal requirements.

14.41 Rules II 2b(1)(b) and II 3b(1)(a) require only a reasonable number of maps. Accordingly, the concerns expressed by Kemmerer Coal Company and discussed in Finding 14.41 in the March 31, 1980, **Federal Register** notice (45 *FR* 20959) have been adequately addressed and the Secretary does not believe that the map requirements under Wyoming's program are inconsistent with SMCRA.

14.42 See Finding 14.31 above.

14.43 Rules II 3b(4) and IV 3p(1) require the operator to show the practicality of enhancing, and incorporate measures to enhance, fish and wildlife values. this requirement is consistent with SMCRA. The district court remanded 30 CFR 780.16(a)(2). See Finding 14.31 above for effect of the remand.

14.44 Rules II 2 and II 3, and in particular II 3b(10), which incorporates Rule XXIII 2, require analysis of the probable cumulative hydrologic impacts of all anticipated mining on the hydrologic regime consistent with 30 CFR 780.21.

14.45 Rules II 2b(3)(a), II 3b(7), and IV 3c(3) require a plan to meet standards for handling and controlling acid-forming and toxic materials consistent with 30 CFR 780.18(b)(7).

14.46 Rules II 3b(10) and XXIII 2a(1) require the assessment of probable hydrologic consequences specified in 30 CFR 780.21(c). Rule II 3a(6)(h) requires baseline data describing seasonal fluctuations of water quantity and quality. The State resubmission is consistent with the Federal requirements for such assessments.

14.47 Rule I 2(46) defines "land use" as specific uses or management-related activities consistent with 30 CFR 701.5.

14.48 The State considers it unnecessary to readdress the postmining land use if it is to be the same as the premining land use (Rule II 3b(12)(b)). As discussed under Finding 12.1, this is considered equivalent to the Federal requirements.

14.49 Rules II 2b(3)(b)(iii) and II 3b(1)(b)(iv) for permanent water impoundments are consistent with the requirements of 30 CFR 780.25(a).

14.50 Rule II 3b(1)(h)(iv) requires the maps and cross sections for diversions as specified in 30 CFR 780.29. Rule II 2b(3)(d) also obtains diversion design information in the permit application. The resubmission is consistent with the Federal requirements.

14.51 Rule II 3a(6)(c)(vi) requires identification of locations where mining is prohibited pursuant to Rule XIII 1a(5), and Rule XIII 1a(5)(c) limits mining in public parks and historic places listed in the National Register of Historic Places. The resubmission is consistent with 30 CFR 780.31.

14.52 Rules VII 1a and VII 1b(1) require baseline information on all environmental characteristics required under 30 CFR 783.11 (except overburden to the extent that the requirement was remanded by the district court decision of May 16, 1980, at 12), for areas disturbed either by surface activities related to an underground mine or by subsidence. The Wyoming information requirements for underground mines are the same as those for surface mines but additionally require information on subsidence and other environmental characteristics sensitive or pertinent to the effects of underground mining. This is consistent with 30 CFR 783.11. See discussion above under "General Background" concerning the decision on Wyoming provisions based on remanded Federal provisions. These rules are no less stringent that Sections 507 and 508 of SMCRA.

14.53 W.S. 35–11–415(b)(xii) requires replacement of the water supply of an owner of interest in "accordance with State water law," in order to mesh with State water law. The Secretary finds this combination of administrative and regulatory responsibilities acceptable and consistent with the permanent Federal regulatory program.

14.54 Rules VII 1c(1), VII 1a, amd VII 1b require a general operations plan consistent with 30 CFR 784.11. Rule VII 1c(1) adds mine development wastes to the list of "facilities" to be discussed. All other requirements are met by the incorporation by reference of Rule II into the underground mining rules. The State resubmission is therefore consistent with the Federal requirements.

14.55 Rules VII 1c(2) and VII 2b(1) provide protection equivalent to 30 CFR 784.14(d) against uncontrolled or polluting gravity discharges. This has been discussed previously in Findings 13.37 and 13.107.

14.56 The State has promulgated rules to require that underground mine waste be disposed of in a manner that ensures stability. Rule VII 1c(1) requires a narrative of mine waste disposal methods. Rules VII 1a and VII 1b apply all pertinent parts of Rule II to underground mining. Rule VII 2a(5) applies Rules IV to underground mining. Rule II 2b(3)(b)(v) requires that backfilling and grading plans demonstrate the adequacy of procedures for assuring stability. Rule IV 3c(1)(d)(iv) requires development wastes (excess spoil) to be disposed of in stable structures, which requires geotechnical analysis. The resubmission is consistent with the requirements of 30 CFR 784.19 for design, operation, maintenance and reclamation of underground development of waste piles.

14.57 Rule VII 1c(3) requires a subsidence control plan which includes "measures to be taken in the mine to reduce the likelihood of subsidence, including backfilling of voids and leaving areas in which no coal is removed" (VII 1c(3)(c)). This includes the pertinent requirements of 30 CFR 784.20(b). The remaining requirements of 30 CFR 784.20(b) are included in Rule VII 1c(3)(d).

14.58 Rules VII 1a(1) and VII lb require descriptions of the land and effects of subsidence in compliance with the similar requirements of 30 CFR 784.20. The Wyoming program does not limit analyses to renewable resource lands and therefore could provide more stringent requirements for the lands that may potentially be affected, if any of these lands were not renewable resource lands. It is likely, however, that all lands laying over underground mine workings are renewable resource lands in terms of vegetation and water supplies (see definition of renewable resource lands in 30 CFR 701.5).

14.59 Rule II 3b(13)(b) contains an exclusion from the requirements for hydrologic monitoring (using wells) if backfilled material is placed pneumatically. This is consistent with the requirements of 30 CFR 784.25(e).

14.60 Rules VII 1b and II 3a(5)(a)(i) require an air quality control plan for underground mining operations consistent with 30 CFR 784.26. Air quality controls are also discussed in Finding 13.56.

14.61 Rule VII defines the special case of surface coal mining operations designated "special bituminous coal mines." This special class of mine is subjected to the same procedural requirements, including a written finding, as are all other types of mines (see Rule VIII 2a which requires the application to contain all information required by the Act). The resubmission is consistent with 30 CFR 785.12 in this regard. Performance standards for special bituminous coal mines are addressed in Finding 13.R (13.125).

14.62 See Finding 14.D below.

14.63 Rule IX 2a requires approval of the Director of OSM for any experimental "variance" or practice consistent with 30 CFR 785.13(d).

14.64 The State did not promulgate rules to provide for an "operator window" or variance from the rules, as originally proposed, based on unusually harsh conditions, since such conditions are not a valid basis for variances. Thus, a potential conflict between the State and Federal requirements did not materialize and the resubmission is consistent with Federal requirements.

14.65 Rule IX 1a(2)(b)(i) implements W.S. 35–11–601(q), which limits experimental practice to that number, area or size required to determine effectiveness, and Rule IX 1a(2)(b)(iv), which imposes special monitoring requirements on experimental practices. The resubmission is consistent with the Federal requirements of 30 CFR 785.13(e)(3) and (e)(5).

14.66 The State has addressed steep slope mining as a "State window" and has prohibited coal mining operations on steep slopes. See discussions in Findings 12.3 and 13.S (13.126).

14.67 Rule I 2(86) defines "steep slope" in a manner consistent with 30 CFR 701.5. The resubmission prohibits placement of excess spoil on an overall slope that exceeds 20 degrees (Rule IV 3c(1)(b)(i)). This was also discussed in Finding 13.S (13.126).

14.68 Rules II 3a(6)(g)(i), III 1b, V 1b(3), and XIII 1a(6)(b) specifically include the Department of Agriculture in prime farmland determinations. Rule II 3a(6)(g)(i) requires that negative determinations regarding prime farmland be conducted according to the Soil Conservation Service regulations (7 CFR 657). Rule III 1b states that the Soil Conservation Service is considered to function as the Secretary of Agriculture's representative in accordance with the Memorandum of Understanding between the State Soil Conservation District and the U.S. Department of Agriculture. Rule V 1b(3) includes the Soil Conservation Service in "Small acreage exclusion" determinations. Rule XIII 1a(6)(b) requires adequate consideration of Soil Conservation Service recommendations on soil reconstruction revisions. The resubmission is consistent with 30 CFR 785.17(c) and 785.17(d)(2). This is also discussed below in Finding 14.114.

14.69 Rule V 2b(3) exempts areas permitted prior to August 3, 1977, from prime farmland reconstruction standards in a manner consistent with Section 510(d)(2) of SMCRA. This is also mentioned in Finding 13.120.

The Wyoming program requires prime farmland information in any case where prime farmland soils exist (Rule II 3a(6)(g)) within the permit area. The Wyoming program also requires compliance with performance standards for all prime farmland except where (1) there are small acreages determined to be uneconomical to mine and (2) "where permits were issued prior to August 3, 1977" (Rule I 28). The permit includes all operations conducted during the "entire life of the operation," and thus the areas exempted should include those involving contiguous operations and normal renewals or revisions of existing "permits" in the Federal program.

The Secretary believes that the State has adequately considered the current Federal requirements and that the State program resubmission is consistent with the Federal requirements.

14.70 As noted in Finding 14.68 above, the State has promulgated rules requiring consultation with the U.S. Soil Conservation Service in matters involving prime farmlands. Thus, the types of soil surveys required (see 30 CFR 785.17(b)(1)) will be subject to USDA review. Further, the State incorporated a soils guideline (No. 1) in its submission. This guideline requires, as good practice, soil surveys in accordance with the National Cooperative Soil Survey (USDA Handbooks 436 and 18). The resubmission is consistent with the requirements of 30 CFR 785.17(b)(1) through the use of the guidelines which are an integral part of the program.

14.71 Rule V 4a requires combined surface and underground mines to comply with the requirements of Rules IV and VII. Rules IV 3c(1) (a) and (b) require off-site storage of spoil ("excess spoil") to be in compliance with the State equivalents of 30 CFR 816.71–816.74. The resubmission is consistent with the requirements of 30 CFR 785.18(c)(7) for off-site storage of spoil.

14.72 Rule XIII 1a(7) ensures that the regulatory authority will make appropriate findings regarding variances for delays in contemporaneous reclamation. W.S. 35–11–406(n) requires the regulatory authority to make findings, regarding permit approvals, in writing. The resubmission is consistent with the appropriate parts of 30 CFR 785.18(d).

14.73 W.S. 35–11–403(a)(ii) empowers the regulatory authority to fix bond amounts. The amount of bonds is established pursuant to Rule XIII 2a(1). The bond amount is to be based on all costs expedient or incidental to proper reclamation. W.S 35–11–410(c) requires the regulatory authority to determine the bond amount for the first year and to receive the bond prior to issuing a license to mine. The State resubmission is consistent with 30 CFR 785.18(d)(8).

14.74 W.S. 35–11–411 requires annual reports on the status of mining and reclamation and which should contain reports on the status of variances. Rule IV 2b requires the operator to report the results of special monitoring in the annual report. The resubmission is consistent with 30 CFR 785.18(e).

14.75 Rule XIII 1a(1) identifies the two criteria that will be used to make alluvial valley floor assessments. These two—unconsolidated, streamlaid material and sufficient water for irrigating—are consistent with the Federal requirements of 30 CFR 785.19.

14.76 Rule III 2b(11) requires "such other information which the administrator shall require to determine the importance of the alluvial valley floor to farming and to characterize the essential hydrologic functions." The State program resubmission incorporates Guideline No. 9 ("Alluvial Valley Floors", which also incorporates OSM's draft Alluvial Valley Floor Technical Guidelines dated August 25, 1978). The guidelines are to be used as indicators of "good faith" compliance with Wyoming's Act. The use of guidelines was discussed in Finding 14.22. The resubmission is consistent with 30 CFR 785.19.

14.77 The State has modified Guideline No. 9 (Alluvial Valley Floors) to require "analysis of anticipated changes to suface waters and ground waters * * * (which) should include consideration of the accumulation (sic) effect * * * and also include an estimation of the potential changes that may occur in productivity, soil conditions and availability of water * * *." Wyoming intends this guidance to provide access to, and to require, when appropriate, the "Crop Salt Tolerance" technique reported by Maas and Hoffman (30 CFR 785.19(e)(3)(i)). This approach is consistent with 30 CFR 785.19(e) (ii) and (iii).

14.78 Rule III 2d was modified to limit the use of the equation $p = 3 + 0.0014 x$ to farms with total production of less than 5,000 animal units (or an equivalent measure of capacity) and to use another criterion of 10 percent of the farm's total agricultural production for larger farms. In view of the district court's remand of 30 CFR 785.19(e)(2), (the Federal definition of "significance on farming"), the Wyoming resubmission provides detail not currently in the Federal regulations. The resubmission is more specific than the current Federal regulations and therefore may, on occasion, be more stringent than the Federal requirements. See discussion above under "General Background" concerning remanded Federal regulations. The rule is, however, consistent with Section 510(b)(5) of SMCRA.

14.79 Rules III 5a (1) and (2) require applications for permits to conduct auger mining to contain appropriate technical information on the coal resource and to determine whether the resources have been depleted or are limited in thickness or extent, and compliance with the environmental protection performance standards of Rule V 5, which provides the necessary additional standards. The resubmission is in compliance with 30 CFR 785.20. The Federal requirement for findings to be in writing (30 CFR 785.20(c)) is fulfilled by W.S. 35–11–406(n).

14.80 W.S. 35–11–103(e)(xx) defines surface coal mining operations to include "leaching or other chemical or physical processing, and the cleaning, concentrating or other processing, preparation * * * or coal." Thus, all

applications involving coal processing and support facilities must comply with Rule II 3b(2) and will thus be within a permit area since all operations affecting lands and water must be within the permit area (see Rule I 2(56) for definition of "permit area"). The Wyoming program does not provide a special permit information category for coal processing facilities as in 30 CFR 785.21, but rather requires the same information through the definition of "surface coal mining operations." This rule also incorporates Rule IV 3k requirements (protection of the environment) into the standards for coal processing facilities.

14.81 See Finding 13.129 above.

14.82 Rule XVII 2d(1)(a) defines "willful violation" as proposed in the initial State program submission. The State has not promulgated a definition of "irreparable damage to the environment," nor was such proposed in the original submission. Rather, the common meaning of the term will be used and this meaning is consistent with the Federal definition in 30 CFR 786.5.

14.83 W.S. 35–11–406(j) requires that public notice of a complete application be given for four consecutive weeks, starting within fifteen days of filing the completed application. Based on Wyoming's resubmission, Wyoming is providing a four week notice of the filing of a "complete application." A "complete application" is defined in W.S. 35–11–103(e)(xxii) to mean an application "acceptable for further review rather than approvable" as in 30 CFR 770.5. W.S. 35–11–406(k) provides 30 days after the last (fourth) publication for filing of comments and is consistent with the Federal requirements. These provisions are consistent with the Federal requirements. See Finding 14.A (14.1) for further discussion of the definition of "complete application."

14.84 Rule XIII 1a(2)(b) requires the regulatory authority to send the public notice required by W.S. 35–11–406(j) to Federal agencies with jurisdiction over, or an interest in, the proposed operation or permit area. This rule is consistent with the requirements of 30 CFR 786.11(c)(1). Further, the resubmission specifically requires consultation in the course of scoping fish, wildlife, and habitat studies with State and Federal fish and wildlife agencies (Rule II 3a(6)(e)), which will involve the U.S. Fish and Wildlife Service (when that agency has jurisdiction).

14.85 Rules XIII 1a(2)(b) and II 3a(5) comply with 30 CFR 786.11(c)(4). The State has also provided MOUs between the Land Quality Division and the Water Quality and Air Quality Divisions of the Department of Environmental Quality, the State Engineer, the Wyoming Recreation Commission and the Wyoming Game and Fish Department. These MOUs further ensure coordination. The MOUs were discussed in Finding 6.

14.86 W.S. 35–11–406(n)(iv) ensures that permits will not be issued in conflict with Section 522(e) of SMCRA (Section 522(e) is incorporated by reference in the Wyoming statutes). Rule XIII 1a(5) reiterates this provision. Rule XIII 1a(5)(a) prohibits mining in national parks. Rule II 3a(5), as noted in Finding 14.85 above, requires consultation with permitting and approving authorities such as those responsible for air and water qulaity, while Rule XIII 1a(2)(b) requires notice to be sent to Federal agencies. The resubmission is consistent with SMCRA requirements for notice and coordination with the National Park Service.

14.87 W.S. 35–11–406(k) does not limit filing of written comments on applications to objections but will accept other comments. The State does not intend the term "file written objections" to prohibit the filing of written comments that may not be objections (Vol. 3A of the resubmission, p. 229). This interpretation satisfies the requirements of 30 CFR 786.12 and 786.13, and is consistent with the Federal requirements.

14.88 W.S. 35–11–406(k) allows 30 days for filing comments (Finding 14.87), and is thus consistent with 30 CFR 786.13(a).

14.89 Rule III 1f, in the Department of Environmental Quality's Rules of Practice and Procedure, involves applicability of the rules to, and maintaining a record of, informal conferences. Rule III 3a (Rules of Practice and Procedure) allows the conference to be held at the locality of the operation or at the State capitol and implies, at a minimum, that the requestor may ask to have the informal conferences held at either location. The Federal requirements mandate holding the conference at the mine site if so requested (30 CFR 786.14(b)(1)). Rule III 3a is logically read to require hearings in the locality of the mine site if requested. The Secretary assumes that if a request were made for the hearing to be held in the locality, the regulatory authority would honor the request and this portion of the State program is consistent with pertinent Federal requirements.

14.90 Chapter I, Section 3, of the Wyoming Rules of Practice and Procedure provides that the applicant or any interested person may obtain a hearing.

14.91 Rule I 2(100) defines "trade secrets" consistent with both 30 CFR 786.15, which specifies confidentiality criteria for permit applications, and 30 CFR 776.17(b) criteria for making available information contained in coal exploration applications.

14.92 See Finding 14.E below.

14.93 See Finding 14.F below.

14.94 Rule II 3(b)(10) requires information supporting a determination of probable hydrologic consequences on the hydrologic regime, as was proposed in the initial submission. The State resubmission is consistent with 30 CFR 786.19(c) and 30 CFR 780.21(c).

14.95 Rule XXIII 2a(1) provides guidance to control the effects of the proposed operation on ground and surface water quality and quantity, and Rule I 2(47) defines "material damage to the hydrologic balance" to mean a "long term or permanent adverse change to the hydrologic regime." Thus, the Wyoming provisions are consistent with 30 CFR 786.19(c), concerning prevention of material damage to the hydrologic balance outside the permit area.

14.96 W.S. 35–11–401(d) requires submission of permanent program permit applications within 2 months, consistent with the Federal requirements. Enacted W.S. 35–11–406(e) requires the regulatory authority to make a determination of completeness within sixty days. This time is generally adequate when only a few plans are submitted at any time. The Secretary need make no finding at this time as to whether this schedule would be appropriate for Federal lands where an environmental impact statement or environmental assessment may be required. This issues is being considered in the context of the rulemaking on Wyoming's proposed permanent program cooperative agreement. See discussion above under "Introduction."

14.97 Rule XIII 1a(4) requires that proposed operations be consistent with other surface coal mining and reclamation operations proposed or contemplated in pending or approved mining permits. This is consistent with the requirements of 30 CFR 786.19(j) in that it prohibits partitioning of a mine tract into land ownership segments which, while interdependent, are separated to try to circumvent analysis of cumulative effects.

14.98 Rule II 3b(2) requires a description of existing structures and an explanation of whether they meet the requirements of Rule IV (performance standards). There is no specific requirement for reconstruction to meet environmental protection performance standards. Rather Rule II 3b(2) requires that the structures meet the

environmental performance standards of Rule IV, or removal of the structures, or a plan for modifying the structures to meet the standards. The district court opinion that pre-existing structures which meet performance standards shall be exempted from reconstruction design requirements is complied with in that there is no requirement, in the State program, to modify such structures, unless they do not comply with the standards. The resubmission is in compliance with 30 CFR 786.21 and 701.11.

14.99 This finding is contained in the March 31, 1980, notice at 45 FR 20965.

14.100 Rule XIII 1a(2)(b) requires that the notice of decision concerning a permit application be sent to governmental officials in local jurisdictions and to persons who filed comments. The resubmission is consistent with the requirements of 30 CFR 786.23(e).

14.101 W.S. 35–11–401(d) established the time period for filing permit applications as proposed in Administrative Record Documents WY–99 and WY–119. The statute is equivalent to the Federal requirement. The statutory requirement includes the requirement to file within 2 months of State program approval.

14.102 W.S. 35–11–801(a) allows imposition of necessary conditions in approvals of permits, and Rule XIII 1a(8) implements W.S. 35–11–801(a) and requires right of entry as described by W.S. 35–11–109 as another condition of the permits. In Rule XVII 1c the State has limited the number of persons that may accompany an inspector to "a manageable number of members of that group" as proposed in the original submission. (See 30 CFR 786.27(b)(2) for comparison where "private persons" are permitted to accompany the inspector). The resubmission is consistent with 30 CFR 786.27 since the appropriate permit conditions are to be imposed and since large groups of people are not generally expected and, if they occur, can be subdivided into "manageable groups."

14.103 Rule XIII 1a(8)(d) requires, as a permit condition, that the operator take all possible steps to minimize adverse impact to the environment or public health and safety. The resubmission is therefore consistent with 30 CFR 786.29(a).

14.104 Rule XIII 1a(8)(a) requires the permittee to conduct all activities in compliance with a plan; Rules IV 3c(2)(a) and IV 3c(2)(g) require coal processing wastes to be disposed of in a stable, nonpolluting manner; Rule IV 3c(3) establishes standards for handling of acid-forming and toxic materials; and Rule II 3a(5)(a)(iii) requires information on solid waste land disposal facilities. Thus, the resubmission provides control of solids, sludges, filter backwash, or pollutants removed in the course of treatment or control of emissions equivalent to that required by 30 CFR 786.29(b).

14.105 See Finding 14.G below.

14.106 Rule I 2(57) defines "permit transfer" as a change in ownership or control. Therefore, the program encompasses the requirements of 30 CFR 788.19.

14.107 W.S. 35–11–411 requires an annual report for all operations. W.S. 35–11–411(d) requires the regulatory authority to review the report within 60 days. The resubmission is consistent with the Federal requirements of 30 CFR 788.11.

14.108 W.S. 35–11–405(e) requires that successive renewals be given only if the operation is in compliance with applicable laws and regulations. Since such compliance would include compliance with permit terms and conditions (Rule XIII 1a(8)) and performance standards (W.S. 35–11–406(n)(ii)), the resubmission is consistent with 30 CFR 788.16(a).

14.109 Rule XIV 1a ("permit revisions") incorporates the definition given in Rule I 2(70) for "revised mining or reclamation operations" into the term "permit revisions" used in Rule XIV. Rule XIV 2b defines "significant deviations" in the context of identifying when notice and opportunity for public hearing is required (for all types of mining). However, Rule XIV 6a limits permit revisions for coal mines to incidental boundary changes to the 5-year mining area and requires more significant boundary changes to be processed as new permit applications. The resubmission is consistent with 30 CFR 788.12(a).

14.110 Rule XIII 1b requires "all procedural requirements of the Act and the regulations" for review, public participation, and action on applications to apply to permit renewals. Rule XIII 1b(1) specifies that information equivalent to that listed in 30 CFR 788.14(a) must be provided for permit renewals and that applications for renewals be made at least 120 days prior to expiration of the permit term as does 30 CFR 771.21(b)(2). The State's provisions are consistent with those of the Federal program.

14.111 Rule XIII 1b requires that all procedural requirements of the Act apply to permit revisions, amendments, renewals, and transfers. This then requires all findings to be in writing pursuant to W.S. 35–11–406(n) and thus the resubmission is consistent with 30 CFR 788.16(a).

14.112 Rule XIII 1a(5)(d) reiterates the prohibition of 30 CFR 786.19(d)(4) and the requirements of W.S. 35–11–406(n)(iv) that no mining can be approved within 100 feet of the outside right-of-way of any public road (unless other requirements are first met). The necessary information must be in a plan pursuant to Rules II 3a(6)(c)(vi) and III 1a(5)(d). This is consistent with the requirements of 30 CFR 780.33(a).

14.113 W.S. 35–11–406(b)(vi) requires an estimate of the total cost of reclamation, Rule II 2b requires that the information specified in the statute (Section 406(b)) be in the application, and Rule XIII 2a(1) requires that the bond estimate include all costs necessary, expedient, or incidental to proper reclamation. Thus, Wyoming obtains estimates of the cost of reclamation with the application. The information obtained under the Wyoming program is consistent with the requirements of 30 CFR 780.18(b)(2).

14.114 With respect to 30 CFR 785.17(c) and 785.17(d)(2) (consultation with the Secretary of Agriculture on permits and incorporation in the permit of any suggestions made by the Secretary of Agriculture), the submission does not require direct consultation with the Secretary. Rather the program depends on the Soil Conservation Service (SCS) and the local conservation districts that operate under a Memorandum of Understanding between the Secretary and the Governor of the State. Thus, the Secretary is represented by the SCS in discussions on permits involving lands mapped as prime farmlands using the Department of Agriculture's criteria. See also Findings 14.68 and 14.70.

14.115 W.S. 35–11–410(b)(i) requires that an application for a license to mine contain the name and address of the applicant. W.S. 35–11–406(a)(i) requires an application for a permit to contain the name and address of the applicant and managers, partners and executives responsible for operations. These State program requirements are consistent with 30 CFR 786.11(a)(1) for a business address. (The information is required in the plan pursuant to Rule II 2b and the forms used to obtain the "mailing addresses" are contained in Exhibits G.1.j. and G.1.k. of the program submission.)

14.116 35–11–406(j) identifies the notice to be provided, which is equivalent to that required by 30 CFR 786.11(a). All Federal requirements for the notice are outlined in the Wyoming statute. In addition, rule XIII 1a(2) ensures that the notice will contain detailed location information and that the notice is issued prior to taking action

on the submission. The definition of a "complete application," since that precipitates the notice, is discussed in Finding 14.A (14.1). In general, the State definition is adequate for initial notification of the public but is not adequate for identification of an application that satisfies all State requirements for an application as discussed in Finding 14.A.

14.117 Wyoming does not specify, as an approval criterion, that proof must be submitted indicating that all abandoned mine land reclamation fees have been paid as is required by 30 CFR 786.19(h). The Secretary finds this omission unacceptable and makes promulgation of a State requirement a condition of approval of this program.

14.118 Wyoming requires that any "surface coal mining operations" (as completely defined in W.S. 35–11–103(e)(xx)) be permitted prior to conducting operations, through W.S. 35–11–401(a). Specifically, W.S. 35–11–401(a) states that no mining of solid minerals may take place unless the mining is incidental to government highway construction (see W.S. 35–11–401(e)(ii) for highway construction exemptions) conducted in compliance with Wyoming's statutes. W.S. 35–11–401(d) requires all surface coal mining operators to apply for permits as does SMCRA. Wyoming has no exemptions from the requirements of permits for mining as expressed in 30 CFR 700.11. The Wyoming statute applies, by virtue of 35–11–401(a), to coal mined from any location and thus would include coal mined from a coal waste pile (Rule I 2(94)). Since Wyoming has no authority over coal mining on Indian lands, the State program cannot apply to Indian lands even though the program has no counterpart to 30 CFR 700.11(f). Accordingly, the Wyoming program is consistent with 30 CFR 700.11.

14.119 Wyoming requires the information regarding air and water pollution control facilities specified in 30 CFR 780.11(b)(6) to be submitted with a permit application through Rule II 3b(2) (requiring location and plans for all control facilities to be used), Rule II 3b(1)(b)(i) (requiring water treatment and monitoring facilities), and the MOU between Divisions within the Department of Environmental Quality (see Section 4 of MOU requiring descriptions and other information on locations and duration of proposed operations necessary for evaluations). For example, the Air Quality Division must review all information necessary to find compliance with the standards listed in Section 6 of the MOU, in addition to the requirements of the Clear Air Act. The air and water monitoring requirements and standards apply to all types of "surface coal mining operations" as that term is defined in W.S. 35–11–103(e)(xx).

A question arises as to whether air quality monitoring for in-situ operations pursuant to 30 CFR 785.11 is required by Wyoming. In-situ operations must comply with all requirements of the Wyoming statute for surface coal mining operations pursuant to the statute and promulgated Rule V 3a(5). W.S. 35–11–428(a)(i) specifically requires meteorological information for in-situ operations. Thus baseline air quality and meteorological data would be required for in-situ operations, as would air quality monitoring. The Wyoming program is consistent with the Federal requirements in this regard.

14.120 Wyoming requires, through Rule II 2a(1)(f)(iv), analysis of all mineral seams including the rock or mineral type. Wyoming also requires analyses of the coal seam (Rule II 3a(6)(b)(iv) and the lithological characteristics of each coal seam (in addition to the chemical properties of each stratum within the overburden). Acid-forming and toxic materials must be identified in order to comply with the burial or treating requirements of Rule IV 3c(3), and Rule IV 3c(3)(b) requires covering of coal seams. The Wyoming program also contains a guideline for soils and overburden information which specifies information requirements for a complete plan.

The State program does not contain specific requirements for sulfide mineral analyses of the coal as does 30 CFR 77 9.14(b)(1)(v). The Secretary found the lack of specific requirements for pyrite and marcasite analyses in the Montana program to be acceptable based on the low sulfur content of coals in the region. (See 45 FR 21564.) This general lack of acid-forming conditions in most of the western coal resource areas, including Wyoming (Administrative Record No. WY–230, pp. 2–5 and 2–6), complemented by the authority of the regulatory authority to require sulfide analysis when necessary, make the alternative acceptable.

The State of Wyoming does require analyses of plant growth materials to determine acidity, and requires adequate hydrologic measurements to enable a careful and thorough analysis of the potential effect of mining and reclamation on the hydrologic system through the rules cited above. Since the Wyoming coal resource areas are similar to the coal resources of Montana, that is, the sulfur content of the coal is quite low, the Secretary finds that Wyoming has provided adequate capability for the regulatory authority to obtain the necessary information to identify potential acid problems. The resubmission is therefore consistent with the requirements of 30 CFR 779.14(b)(1)(v).

14.121 W.S. 35–11–406(a)(iv) requires an application to contain the names and addresses of surface and mineral owners of lands on the permit area, while 35–11–406(a)(v) requires the names and addresses of surface owners of land contiguous to the permit area. The Wyoming statute does not specifically require similar identification of mineral owners adjacent to the permit areas as does 30 CFR 778.13(e). However, Part I of Guideline No. 6, Organization of Permit Application, requires the information concerning mineral owners adjacent to the permit area. The Secretary finds this acceptable.

Following are the Secretary's findings on all provisions of the resubmission that differ significantly from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930 *et. seq.*). Also included are findings that have undergone more detailed analysis by the Department:

14.A Finding 14.1 the Secretary discusses the fact that Wyoming had prepared a definition of "complete application" in W.S. 35–11–103(e)(xxii). That definition has now been enacted. It specifies that a complete application "contains all the essential and necessary elements and is acceptable for further review for substance and compliance * * *." In comparison to 30 CFR 770.5, which defines a "complete application" as one containing "all information required under the Act * * * and the regulatory program," the statutory definition for the Wyoming program is not as stringent as the Federal definition. The State resubmission also specifies (W.S. 35–11–406(e)) that a period of 60 days will be used to make a first determination of "completeness," as defined in W.S. 35–11–103(e)(xxi). Then a second determination of completeness is scheduled to comply with W.S. 35–11–406(n)(1). For this second determination, the State has indicated that "complete application" will mean "that the application contains all information required by the Act and Land Quality Division regulations." The Secretary finds this language to be consistent with the Federal permanent program requirements.

However, the resubmission did not provide clear evidence that a definition of "complete application" for the

purpose of W.S. 35–11–406(n)(i) and complying with 30 CFR 770.5 was promulgated. By letter dated August 5, 1980 (Administrative Record No. WY–220), Wyoming indicated its intent to promulgate a definition of "complete application" for purposes of W.S. 35–11–406(n)(i). Therefore, the Secretary cannot approve these provisions of the Wyoming program as resubmitted until that rule is fully promulgated. Promulgation of this rule is being made a condition of approval of this program.

14.B In Finding 14.8, the Secretary disagreed with a commenter's suggestion that the permit application requirements only become operational upon "full" approval of the Wyoming program by the Secretary. The Secretary did determine that the operator "should not be required to review and submit applications until it is clear once and for all that the State has a fully approved program." Although the State has not adopted the commentor's suggestion, W.S. 35–11–401(d) requires "final approval" by the Secretary prior to the requirement for new applications. By letter dated August 5, 1980 (Administrative Record No. WY–220), Wyoming stated that "* * * any approval, conditional or otherwise, would be the final, appealable decision by the Secretary." The State goes on to say that a "* * * *final* decision * * * makes the new law on submitting permit applications effective." Therefore, the two month period for filing new permit applications should begin upon the date the conditional approval of the Wyoming program is effective (i.e., the date this notice is published in the **Federal Register**).

14.C As discussed in Finding 14.22, the State has promulgated a series of rules and enacted W.S. 35–11–406(a)(xv) to require environmental information for the permit area and for other areas that may be affected by operations or which are important in making assessments of the effect of proposed operations. Examples of these rules are Rule II 3a(6)(e) (fish and wildlife in those areas identified by the regulatory authority), Rule II 3a(6)(g)(ii) (surface water for the permit and adjacent areas), Rule II 3a(6)(k) (hydrology and geology in the adjacent and general area), and Rule II 3a(6)(l) (alluvial valley floors in the permit or adjacent areas). The requirements of 30 CFR Parts 779 and 780, particularly for hydrologic data adequate to assess compliance with the performance standards of SMCRA, are met by the State's permanent program resubmission.

The State program is further strengthened by the incorporation of seven guidelines in the program resubmission. These guidelines are intended to specify, for most cases, the types of information and the performance required in support of a good-faith effort on the part of an operator. While departures from the guidelines are allowed, the Wyoming resubmission states that "[d]epartures from the guideline requirements are authorized where the agency could support a similar objective from regulatory requirements."

W.S. 35–11–406(a)(xv) requires applications to contain "such other information as the administrator deems necessary or as good faith compliance with the provisions of this act require." It is therefore pertinent that the Wyoming resubmission states (p. 183, in the analysis of findings) "the application is not complete if it does not contain the information required by good faith compliance with the act." The guidelines represent the State regulatory authority's position on what information should be included in an application for good faith compliance with that Act. Thus, "good reasons for a departure must exist or the Department's decision will be subject to challenge on judicial review as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Once the guideline information is required by the regulatory authority in the course of reviewing and correcting permit applications, the requirements become part of the approved plan and are further enforceable as part of the plan through W.S. 35–11–415(b)(ii), which requires every operator to conduct activities in compliance with the approved plan. The resubmission states that any private person may object to the lack of use of guidelines requirements on the basis that (1) the regulatory authority acted on an incomplete application, or (2) the proposed reclamation cannot be achieved without use of the guideline requirements. Thus the State intends to use the guidelines to specify the contents of the applications.

By letter dated August 5, 1980 (Administrative Record No. WY–220), Wyoming submitted a statement dated August 4, 1980, of the Attorney General's position on the enforceability of guidelines. While the State has explained its intent in using the guidelines, the program still does not contain adequate assurance that the guidelines would be enforceable if an operator or other person sought to attack them. Therefore, the Secretary finds that the State should amend the Land Quality Division's regulations to incorporate a rule based on the Attorney General's statement, and makes promulgation of the regulation a condition of approval of this program.

14.D In Finding 14.62 the Secretary found that Rule IX 1a of the State submission inappropriately extended the experimental practice concept to agricultural land, in contrast to the Federal requirement. Rule IX 1a(2)(a) has been promulgated to make Rule IX (variances for surface coal mining operations) applicable only to "a State standard that is more stringent than the corresponding Federal regulation" or "when the proposal promotes experimental practice" or "allowing a postmining land use in an experimental basis" (IX 1a(2)(b)).

Section 711 of SMCRA and 30 CFR 785.13(e)(2)(ii) specify that the only land uses appropriate for experimental practices are "industrial, commercial, residential, or public use (excluding recreational facilities)." Agricultural use is not included in either SMCRA or the Federal regulations. It would appear that the congressional exclusion was purposeful. The Wyoming program resubmission does not limit the land use in Rule IX 1a(2)(b) as do SMCRA and 30 CFR 785.13(e)(2)(ii). However, the appropriate limitation is reflected in W.S. 35–11–601(q). Therefore, variances are limited to land uses identical to the Federal limits.

The Secretary finds Rule IX 1a(2)(b) to be inconsistent with W.S. 35–11–601(q). Application of the land use criteria of Rule IX 1a(2)(b) is approved only as it is stated in W.S. 35–11–601(q). The implication that Rule IX 1a(2)(b) emcompasses agricultural uses is being preempted and superseded as inconsistent with Federal law under the authority of Section 504(g) of SMCRA. In any event, the Director could not approve any practice for an agricultural use, so none would occur.

14.E In Finding 14.92 the Secretary found that the lack of a State counterpart to 30 CFR 786.17(c)(2) (evidence of a good faith effort to comply) did not appear to reduce the degree of environmental protection or opportunity for public participation, but kept the record open for any additional information. Wyoming provided additional analysis in its resubmission.

Wyoming stated (p. 234 of resubmission) that W.S. 35–11–406(n)(vii) requires that no permit be approved unless "any violation has been or is in the process of being corrected to the satisfaction of the authority, department, or agency which has jurisdiction over the violation." This is the language of 30 CFR 786.17(c)(1). Wyoming does not request, in the rules,

a showing of good faith appeals as does 30 CFR 786.17(c)(2). Thus, the Secretary agrees with Wyoming that the resubmission contains requirements which could be considered more stringent in this case than the Federal regulations, since a showing of good faith is subjected to review by the regulatory authority and cannot stand alone.

14.F Rule II 3b(4)(b)(i) requires a plan for minimizing adverse impacts by protecting or enhancing "threatened or endangered species * * * under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.) and their critical habitat." Rule II 3b(12)(b)(iii)(H) requires a complete application to contain "approval of measures to prevent or mitigate adverse effects on wildlife or fish * * * from appropriate State and Federal fish and wildlife management agencies." W.S. 35–11–406(n)(i) requires that the regulatory authority deny approval of a permit if the application is not complete. Therefore, if an application does not contain a plan to minimize adverse impacts, including a plan to protect or enhance threatened or endangered species and their critical habitats (Rule II 3b(4)(b)(i)), the permit cannot be issued. This was discussed in Finding 14.93 and also in Finding 14.5.

The Federal regulations require the regulatory authority to find that the proposed activities "would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their habitat as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)" (see 30 CFR 786.19(o)) prior to issuing a permit. Again, W.S. 35–11–406(n)(i) requires the regulatory authority to deny approval if the plan is not complete. A complete plan must be judged against all applicable elements of Rule II, including the plan for protecting or enhancing threatened or endangered species and their critical habitat.

Since Rule II 3b(4) requires a plan which includes minimizing adverse impacts, it appears to be less stringent than the Federal requirement, which is directed more to prohibition than minimization. By letter dated August 5, 1980 (Administrative Record No. WY–220), Wyoming stated that the provisions of W.S. 35–11–406(n)(i) and Rule II 3b(4) "* * * are the equivalent of the finding in 30 CFR 786.19(o)." The Secretary finds that the Wyoming provisions are as stringent as the requirement in 30 CFR 786.19(o). This finding is based on Wyoming's statement that the State's counterpart provisions are "equivalent," which the Secretary interprets to mean that the State will not issue any permits for mining operations that would affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat, and the State will make an appropriate written finding for each permit application.

14.G In Finding 14.105 the Secretary found that the State should provide evidence that temporary relief from decisions on permit applications is provided in the State program. The State program resubmission has done so. It contains Rule III 3B (Rules of Practice and Procedures), which provides for the Environmental Quality Council to grant temporary relief identical to 30 CFR 787.11(b)(2), and is thus consistent with the Federal requirements.

14.H The Wyoming regulations appear to contain several inconsistencies concerning timing of review of permit renewals. Under Rule XIII 1b, Wyoming requires 120 days to file a permit renewal application. This deadline could be difficult to meet due to the other requirements found in W.S. 35–11–406(f) and Rule XIII 1a. Rule XIII 1a requires the placement of an advertisement in a newspaper once a week for four consecutive weeks (22 days) commencing within 15 days after filing of an application. W.S. 35–11–406(k) requires that the filing of a request for an informal conference be no later than 30 days after the last publication of a newspaper advertisement, and that information on the date, time and location of the hearing be advertised two weeks prior to the hearing. W.S. 35–11–406(p) requires action within 60 days from the close of the hearing. This could add up to over 127 days, which is a longer period than specified by Wyoming. The Secretary assumes that Wyoming plans to reduce the 60-day period allowed for a decision after an informal conference is held in order to meet the specified time period allowed for a decision, rather than limit the public participation opportunities under W.S. 35–11–406(g), 35–11–406(j), 35–11–406(k), and Rule XIII 1a(2). Therefore, the Wyoming provisions are acceptable.

Finding 15

The Secretary finds that the Land Quality Division has the authority to regulate coal exploration consistent with 30 CFR Parts 776 and 815 (coal exploration) and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815, and the Wyoming program includes provisions adequate to do so. This finding is made under 30 CFR 732.15(b)(3).

The Wyoming program incorporates provisions corresponding to Section 512 of SMCRA and 30 CFR Parts 776 and 815 (as related to coal exploration) in Wyoming Statute 35–11–402 and Wyoming rules Chapters X, XI and IV. Part G.1 of the first volume of the program as resubmitted includes a discussion of the system for exploration license review and approval.

A discussion of significant issues raised in the review of Wyoming's coal exploration provisions follows.

In the March 31, 1980, notice (45 FR 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 15 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following findings which bear the same numbers as the tentative findings on the same subject in the March 31, 1980 notice:

15.1 Rule XI 5k provides for minimizing disturbance to the prevailing hydrologic balance and sediment control in coal exploration activities consistent with 30 CFR 815.15(j).

15.2 Rules XI 5 d and m are consistent with 30 CFR 815.15 (f), (j) and (i) concerning revegetation and facility removal. Rule XI 1b(5) requires coal exploration operations of 250 tons or less to comply with Rule XI 5 when there will be substantial disturbance of the land surface. Rule XI 5 contains the necessary cross-references to other vegetation and sediment control requirements.

15.3 Rule XI 1b(5) does not contain map requirements in coal exploration of 250 tons or less. This is consistent with the district court ruling against requiring a map or evidence of right of entry (Opinion of May 16, 1980, at 54). However, Rule XI 2b(1) for coal exploration hole drilling requires areas to be explored to be shown generally on a 1:24000 map. The exploration drilling rule does not distinguish between operations removing more or less than 250 tons.

15.4 Rule XI 3a requires notices for exploration removing more than 250 tons to be posted in the district office of the regulatory authority, and thus is consistent with 30 CFR 776.12(b).

15.5 Rules I 2(100) and XI 3 are consistent with 30 CFR 776.17(b) concerning confidential information in

that "trade secret" pertains only to certain coal properties or characteristics and privileged communications or financial information relating to competitive rights.

15.6 Rules XI 5m and XI 5k are consistent with 30 CFR 815.15(c)(3)(ii), (f) and (j) concerning facility removal and protection of the hydrologic balance.

15.7 No revision to the State program was required. See Finding 14.3.

15.8 Rule XI 4a(2) provides protection to historic, archeological, or cultural resources consistent with 30 CFR 776.13(b)(3). The rule does not distinguish between "listed sites" and sites "eligible for listing" and thus is not affected by changes made by OSM to delete "eligible for" pursuant to the district court decision (Opinion of February 26, 1980, at 23).

15.10 Rule XI 5 provides for compliance with environmental performance standards consistent with 30 CFR Part 815, which requires application of the performance standards to coal exploration which substantially disturbs the land surface. The requirements of 30 CFR 776.11(b)(6) for a description of environmental protection activities for operations which do not remove more than 250 tons are contained in Rule XI 1b(5).

Following are the Secretary's findings concerning all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above, which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930 *et seq.):*

15.A In Finding 15.9, the Secretary suggested that the definition of coal exploration should be revised to be as inclusive as the Federal definition in 30 CFR 701.5. Wyoming promulgated a new definition in Rule I 2(9) which is consistent with the Federal definition since it includes mapping, geophysical data, and environmental data collection.

15.B Wyoming has promulgated rules to provide less stringent standards for "developmental drilling" operations than for exploration activities. This new element of the program is discussed in Exhibit G.6 of the program submission ("State windows"), but is not proposed as a "State window" according to the discussion. Instead, it is proposed as being no less stringent than the applicable provisions of SMCRA. Rule I 2(18) defines "developmental drilling" as drilling into the lowest coal seam within 500 feet of an active mine pit. Rule I 2(9) exludes developmental drilling from the definition of coal exploration (as well as exploration drilling specifically approved under a permit). Rule II 3b(8) excludes development drilling holes that will be mined through (within one year) from the description of procedures to seal or manage, and rather requires compliance with W.S. 35–11–404 (the rule is mistyped to read 35–11–407). W.S. 35–11–404 requires plugging of artesian flow, sealing with a column of mud if ground water is encountered, capping and backfilling. Rule IV 3n also cites W.S. 35–11–404 for developmental drill holes to be mined through within one year. This rule also requires temporary sealing and use of protective devices, at a minimum, for developmental drill holes.

Developmental drilling comes after exploration and before mining (if mineable coal is found). The bases for the request to allow such drilling under coal standards was that such activity occurs within a developing mine and that notice requirements are not of value and, since the holes will usually be mined through within one year, there is no justification for applying the general abandonment standards. If the drilling exceeds depths equivalent to the deepest coal seam to be mined or extends past 500 feet from the active pit, or is not mined through within one year, or is not included as analyzed in the approved plan, the drilling must be treated as exploratory. Developmental drilling must be described and analyzed to an adequate degree regarding general location, spacing, drilling methods, pollution control methods, data expected to be obtained, and must include measures to comply with W.S. 35–11–404.

The Secretary finds that the concept of developmental drilling requiring less onerous standards is valid, provided the depth, distance, time and plugging (safety and hydrology) constraints are maintained. Thus, the provisions equivalent to portions of 30 CFR 701.5, 780.18(b)(8) and 816.13–816.15 are acceptable.

Finding 16

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to require that persons extracting coal incidental to government-financed construction maintain information on site consistent with 30 CFR Part 707. This finding is made under 30 CFR 732.15(b)(4).

Provisions corresponding to 30 CFR Part 707 (exemptions for coal extraction incidental to government-financed highway and other construction) are found in Wyoming statute W.S. 35–11–401 and Wyoming regulation Chapter I.

Wyoming has promulgated Rule I 3b(3) to require that information be kept on-site as in 30 CFR 707.12. The regulatory authority can demand proof of the exemption and close the operation if the proof is not supplied.

Finding 17

The Secretary finds that the Land Quality Division has the authority and the Wyoming program includes provisions to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal land within Wyoming consistent with the requirements of Section 517 of SMCRA (inspection and monitoring) and 30 CFR Chapter VII, Subchapter L (inspection and enforcement). This finding is made pursuant to 30 CFR 732.15(b)(5).

Provisions corresponding to Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII for inspection and monitoring of operations are found in Wyoming regulations Chapters IV and XVII. Volume I, Part G.4, of the program resubmission contains a description of the inspection program to be carried out by the Land Quality Division.

Discussion of significant issues raised in the review of the Wyoming provisions for inspection and monitoring follows:

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 17 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice: Findings 17.1, 17.3, 17.5, 17.6, 17.8, 17.9, and 17.10.

Following is the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980 notice (45 *FR* 20930 *et seq.*):

17.A In Finding 17.7 the Secretary requested assurance by Wyoming that inspections will be made on an irregular basis, including operations which are open on nights, weekends or holidays. The State has provided this assurance in its comment in the side-by-side to this finding, and the Secretary finds it acceptable.

17.B In Finding 17.4, the Secretary requested that Wyoming provide an explanation that inspectors will conduct

field enforcement for all violations observed. In a letter dated August 5, 1980 (Administrative Record No. WY-220), the State indicates that it will conduct field enforcement for all violations observed. The Secretary finds that inspectors will take all required actions based upon this discussion.

Finding 18

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to implement, administer, and enforce a system of performance bonds and liability insurance, or other equivalent guarantees consistent with 30 CFR Chapter VII, Subchapter J (performance bonds), subject to the discussion in Finding 18.A below. This finding is made under 30 CFR 732.15(b)(6).

Provisions corresponding to Sections 509 and 519 of SMCRA (performance bonds and insurance) and to Subchapter J of 30 CFR Chapter VII are incorporated in Wyoming statute 35-11-406, 410, 411, 417, 418, 421 and 424 and Wyoming rules Chapters XII, XIII, and XVI. Volume 1, Part G.3, of the program submission contains a narrative describing the reclamation performance bond and liability insurance requirements for the State.

Discussion of significant issues raised in the review of Wyoming's bonding and insurance provisions follows.

In the March 31, 1980, notice (45 FR 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 18 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice:

18.3 Rule IV 3d(6) covers the requirements of 30 CFR 805.13 regarding the period of bond liability. The period of liability is to be initiated at the completion of seeding, fertilizing, irrigation, or other work to ensure revegetation. The State program is consistent with the Federal requirements for the period of liability.

18.8 Rule XVI 4a requires inspections and evaluations of mining and reclamation work within 60 days of receipt of notification, "conditions permitting." This ensures that inspections will be conducted when conditions allow the proper information to be gathered. This is consistent with the Federal requirements of 30 CFR 807.11(d), especially in view of the short growing season in Wyoming.

18.11 Under Rule XVI 6a, the bond is released in three phases as provided for by 30 CFR 807.12(b). Somewhat less bond than the Federal amount is released at each phase under the Wyoming program. The full bond is not released until the 10 year liability period has expired and the revegetation and other commitments are met.

Following is the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930 *et seq.*):

18.A In Findings 18.1, 18.5, 18.6 and 18.7 the Secretary found the Wyoming self-bonding provisions as initially proposed probably inconsistent with 30 CFR 806.11 and requested clarification in the resubmission. Of the differences noted in the initial finding, some remained and some were removed in the resubmission. As adjusted, the Secretary approves the Wyoming self-bonding submission under Section 509(c) of SMCRA as an alternative to the Federal system.

The first difference noted in the initial finding is that the Wyoming regulations do not require the operator to grant the right immediately to attach, without foreclosure, any property given as collateral. The Wyoming provisions still do not authorize such attachment. However, the Wyoming Land Quality regulations in Rule XII 2(a)(11) do provide full authority for the regulatory authority to protect its interest in any collateral.

The second difference noted in the initial finding was that under the Wyoming self-bonding provisions the administrator is given discretion to require proof of a mortgagor's possession and title to real property, whereas no such discretion exists in the Federal regulations. This difference still exists. However, the Wyoming regulations provide full authority for the regulatory authority to ascertain the value of any collateral, which would include ascertaining title and possession.

The third difference noted in the initial finding was that, as initially submitted, the Wyoming self-bonding provisions did not specify a ten year history of business operation as a requirement. Wyoming has changed its regulations to make its self-bonding provisions consistent with the ten year requirement of the Federal provisions. See Wyoming Land Quality Rule XII 2(a)(8).

The initial finding also noted that the Wyoming program did not expressly require the operator to submit a statement listing any notices issued by the Securities and Exchange Commission, or a listing of proceedings alleging failure to comply with any public disclosure or reporting requirements under the Federation securities laws. Wyoming adjusted its self-bonding provisions to make them consistent with this Federal provision. See Rule XII 2(a)(10).

The Federal self-bonding provisions at present impose four basic requirements: (1) indemnity by the operator and agency within the State for service of process, (2) a financial statement showing a ten year history of operation and financial solvency, (3) net worth of at least six times the amount of all self-bonds and (4) 100 percent collateral. The Wyoming self-bonding provisions require (1) and (2) above and *either* (3) *or* (4). See Wyoming Land Quality Rules XII and XIII 2a(3).

The Secretary finds that the Wyoming provisions meet the requirements of Section 509(c) of SMCRA and 30 CFR 806.11(c), which provide that the Secretary may approve as part of a State program an alternative bonding system if it will achieve the objectives and purposes of the bonding provisions of the Act. Such alternatives must provide (1) that should the operator fail to complete reclamation there will be sufficient resources for the regulatory authority to complete the reclamation, and (2) a substantial economic incentive for the permittee to comply with all reclamation provisions

As noted in the State program submission and this notice, the Wyoming coal mining industry is, in all but one or two cases, made up of very large mines owned and operated by the largest coal mining and energy companies in the country. Their history of operation and solvency and their assets are clearly sufficient to meet the tests of the statute and regulations. Even the one or two smaller operations are large by national standards. The substantial requirements of the Wyoming self-bonding provision, coupled with the unusual profile of the Wyoming coal mining industry, makes this alternative approvable in Wyoming.

OSM is currently studying its own self-bonding regulations and the economic and regulatory issues of self-bonding. When the study is completed, OSM expects to initiate a rulemaking to adjust its current self-bonding regulations. After doing so and after

close study with Wyoming of the implementation of this alternative, OSM and the State will review Wyoming's alternative system here approved.

18.B The Secretary found, in Finding 18.2, that the language Wyoming proposed in Rule XIII 2a(1) apparently would be consistent with the requirements of 30 CFR 800.11 concerning the bond amount for land which may reasonably be affected prior to filing a renewal bond. Wyoming promulgated language in Rule XIII 2a(1) that was different from that on which the Secretary made the tentative finding. The promulgated language, however, is consistent with the Federal requirements.

18.C The Secretary made several tentative findings in Finding 18.4. W.S. 35–11–417(c) provides for a minimum bond amount of $10,000 consistent with 30 CFR 805.12; Rule IV 3d(6) provides for a minimum 10–year revegetation bond period consistent with 30 CFR 816.116(b)(1). Rule XVI 2b provides procedures to request bond release consistent with 30 CFR 807.11. In promulgating Rule XVI 3a, Wyoming promulgated language different from the January 9, 1980, draft regulations on which the Secretary based his tentative finding. Rule XVI 3a, as promulgated, deletes all provisions for informal conferences on bond releases. This deletion does not make Rule XVI 3a inconsistent with the Federal requirements since 30 CFR 807.11(e) does not require that informal conferences on bond releases be included in the program.

18.D In Finding 18.9, the Secretary asked Wyoming to provide for citizen access to the mine site for informal conferences on proposed bond releases. These informal conferences are described in 30 CFR 807.11(e) and, as therein described, were remanded by the district court to incorporate, in their entirety, the *informal* conference procedures of Section 513(b) of SMCRA (Opinion of February 26, 1980, at 41–42). As discussed in Finding 18.C above, Wyoming has deleted requirements for an informal conference on proposed bond releases from Rule XVI 2b(8). Since 30 CFR 807.11(e) and Section 519(g) give discretionary authority to grant informal conferences, this is in accordance with SMCRA and consistent with the Federal regulations.

Rule XVI 2b(8) permits requests for hearings on bond deposit releases. Wyoming states in the resubmission that informational proceedings pursuant to Rule III 3a of the Department of Environmental Quality's Rules of Practice and Procedure can be held and, if held, that the regulatory authority will grant mine site access in accordance with the court's directive to include such provisions if informal hearings are held. The only difference between the initial submission and the promulgated language is deletion of the reference to informal conferences.

18.E Rule XVI 6a(3) specifies that, where the approved postmining land use is industrial development or residential, release of the bond or deposit can be made when the operator has successfully completed all surface coal mining and reclamation operations in accordance with the operator's responsibilities under the approved plan. This requirement is designed as Wyoming's counterpart to 30 CFR 807.12(d) which, in part, requires the regulatory authority to retain sufficient bond to complete any additional work which would be required to achieve compliance with the general standards for revegetation "in the event the permittee fails to implement the approved postmining land use plan within the two years required by [30 CFR] 816.116(b)(3)(ii)" (the cited section requires a ground cover of living plants not less than that required to control erosion).

While 30 CFR 816.116(b) has been remanded by the district court (Opinion of February 26, 1980, at 55–56), it was remanded because of the requirement for this extended bond liability period to start when the ground cover equals the approved standard rather than starting immediately after the last year of augmented seeding, fertilizing, irrigation or other work and thus 816.116(b)(3)(ii) should not be affected. Wyoming's modified Rule IV 3d(6) is consistent with section 515(b)(20) of SMCRA. Wyoming's requirements would mean that the provisions of Rule IV 3d(5), to stabilize industrial development or residential land or, if development is delayed for more than two years, revegetation in accordance with Rule II, would have to be implemented immediately after the last year of augmented seeding, fertilizing, irrigation or other work. Thus, the State resubmission is consistent with the present Federal program requirements.

18.F In Finding 18.12, the Secretary found the proposed bond forfeiture provisions to appear adequate. Wyoming enacted the statutory provisions which the Secretary tentatively found adequate in Finding 18.12. The statute citations are different from those in Finding 18.12. The Secretary however, finds that W.S. 35–11–401(e)(vii), W.S. 35–11–406(m)(ix), and W.S. 35–11–421(a), as enacted, are consistent with 30 CFR 808.11, regarding bond forfeiture.

18.G In Finding 18.14 the Secretary requested assurance that funds forfeited will be available for reclamation. This assurance is provided in the "Side-by-Side with the Secretary's Findings" (Volume 3A, p. 293) of the resubmission.

There it is stated that all monies are delivered to an interest-bearing trust and agency account and are used solely for reclamation purposes, since these are "earmarked" accounts. The Wyoming statutory provisions cited in Finding 18.14 were enacted and are consistent with 30 CFR 808.14.

Finding 19

The Secretary finds that the Land Quality Division has the authority and the Wyoming program provides for civil and criminal sanctions for violations of Wyoming law, regulations and criminal penalties consistent with Section 518 of SMCRA (penalties) including the same or similar procedural requirements. This finding is made pursuant to 30 CFR 732.15(b)(7).

Provisions corresponding to Section 518 of SMCRA and to 30 CFR Part 845 are incorporated in W.S. 9–2–505 and 35–11–901 and Wyoming Rule XVII. Part G.5 of Volume I of the Wyoming program submission contains descriptions of the methods and procedures by which the State will enforce the administrative civil and criminal sanctions of State laws and regulations.

Discussion of significant issues raised in the review of Wyoming's provisions for civil and criminal sanctions follows.

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 19 acceptable subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative finding in the March 31, 1980, notice: Findings 19.2, 19.5, and 19.6.

Following are the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930 *et seq.*):

19.A In Finding 19.3 the Secretary stated that he would review Wyoming's alternative to the civil penalty system in light of the district court's decision. Additionally, the Secretary stated in Finding 19.10 that he would review the information by the State regarding the assessment of civil penalties. The district court, in its second round decision (see discussion in "General Background on State Program Review Process"), indicated that, while Section 518(i) of the Act requires a State to incorporate the penalties, the four criteria, and the procedures explicated in Section 518, the Secretary does not have authority to require States to adopt a system that will result in penalties at least as stringent as those imposed under OSM's point system.

Based on the district court's ruling, the Secretary finds the Wyoming alternative to the penalty point system acceptable.

19.B In Finding 19.4, the Secretary asked Wyoming to make it clear that an operator may be relieved of an abatement requirement only by a granting of temporary relief pursuant to Rule XVII 2f. In the side-by-side, the State makes this point clear, and because of enactment of W.S. 35–11–901(n) and the promulgation of this rule, the Secretary finds that the Wyoming program is consistent with Section 518(h) of SMCRA.

Finding 20

The Secretary finds that the Land Quality Division has the authority under Wyoming laws, and the Wyoming program contains provisions to issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders consistent with Section 521 of SMCRA (enforcement) and with 30 CFR Chapter VII, Subchapter L (inspection and enforcement), including the same or similar procedural requirements. This finding is made pursuant to 30 CFR 732.15(b)(8).

Provisions corresponding to Section 521 of SMCRA and to Subchapter L of 30 CFR Chapter VII are included in Wyoming Statute W.S. 35–11–901 and 35–11–437 and in Wyoming Rules Chapter XVII. Volume I, Part G.5, of the program submission contains a description of the methods and procedures by which the State will enforce the administrative civil and criminal sanctions of State laws and regulations. Volume I, Part G.6, of the program submission contains a discussion of Wyoming's administrative and enforcement procedures for performance standards.

Discussion of significant issues raised in the review of Wyoming's provisions for notices of violation and cessation orders follows:

In the March 31, 1980, notice (45 FR 20930, *et seq.*), the Secretary tentatively found certain provisions in Finding 20 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice: Findings 20.1, 20.3, 20.7, 20.8, 20.9, 20.10, 20.12, 20.14, 20.15, 20.16, 20.18, and 20.19.

Following are the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930, *et seq.*):

20.A In Finding 20.2, the Secretary asked Wyoming to clarify its provision for immediate issuance of cessation orders. In the side-by-side of Federal and State provisions, the State makes it clear that W.S. 35–11–437(a) and the regulations implementing that statute mandate an immediate issuance of a cessation order in circumstances which are the same as those in Section 521(a)(2) of SMCRA. The Secretary, therefore, finds the Wyoming provision acceptable.

20.B In Finding 20.4, the Secretary stated that W.S. 35–11–437(c) should be changed to replace the term "continued" with the term "affirmed." As enacted, the statute incorporates this change and, therefore, it is clear that the total time for abatement of a violation may not exceed 90 days. The Secretary finds this provision acceptable.

20.C In Finding 20.6, the Secretary states that an Attorney General's memorandum which describes the power of the State Attorney General may be acceptable as consistent with Section 521(c) of SMCRA and 30 CFR 843.19. The Secretary finds that this memorandum reveals that Wyoming has powers which are broader than those of OSM and, therefore, the State program is consistent with Section 521(c) of SMCRA and 30 CFR 843.19.

20.D In Finding 20.11, the Secretary states that he will reexamine Wyoming's provisions for service of notices of violation, cessation orders, and show cause orders upon resubmission of the program. First, the State asserts in the side-by-side that Rule 4 of the Wyoming Rules of Civil Procedure, regarding service, applies to its program. The Secretary finds that this rule, although not exactly the same as 30 CFR 843.14, provides for adequate service and is, therefore, the same or similar to 30 CFR 843.14.

20.E The Secretary notes that the language which he originally considered in Findings 20.16 and 20.19 differs somewhat in its enacted form from that which was proposed. However, the enacted language does satisfy the concerns expressed in these two findings.

The State, however, omits any provision comparable to 30 CFR 843.14(d) by which Wyoming may furnish copies of notices and orders to certain persons. Since the Federal provision is permissive rather than mandatory, the Secretary finds that the State is not required to have such a provision.

20.F Wyoming Rule XVII 2d(1), which defines "willful violation" for purposes of the section of its regulations dealing with suspension or revocation of permits for patterns of violation, provides:

> Willful violation means an act or omission which violates this Act or any regulation, and which is committed or omitted with knowledge or reason to know of its unlawfulness.

The comparable definition in OSM regulations at 30 CFR 843.13(a) is:

> Willful violation means an act or omission which violates the Act, this Chapter, the applicable program * * * committed by a person who intends the result which actually occurs.

The Wyoming definition adds the component "knowledge or reason to know of its unlawfulness."

The Secretary finds these two definitions consistent and determines that the Wyoming definition is a part of a "similiar procedural requirement" within the meaning of Section 521(d) of SMCRA. Under Wyoming law, a person is presumed to know what the law is (*Closson v. Closson*, 215, p. 485, Sup. Ct. Wyom., 1923). Moreover, the permittee and his employees actively engaged in the business of mining have "reason to know" of Wyoming's laws and regulations dealing with coal mining and with the terms of their permit which apply those laws and regulations to the particular mine. The Secretary assumes that these intepretations will prevail in the implementation of the Wyoming program. Because of this assumption, the Secretary finds that the two definitions are consistent.

20.G Section 525(a)(1) of SMCRA provides for administrative review at the request of any person having an interest which is or may be adversely

affected by a notice or order or by any modification, vacation, or termination of such notice or order. The comparable Wyoming provisions are W.S. 35–11–437 (c)(ii) and Chapter XVII. Under the Wyoming language, persons who may be adversely affected by a notice or order may request review. The Wyoming law and rules do not explicitly refer to persons who may be affected by a "modification, vacation or termination of such order."

The Secretary believes that the absence of this specific language does not narrow the circumstances under which any person may request review of an action in connection with a notice or order. The Secretary interprets the language to allow persons who may be adversely affected by any regulatory authority action in connection with a notice or order to apply for review if the permittee could, and that is all the Federal statute and rules require.

Finding 21

The Secretary finds that the Land Quality Division has the authority and the Wyoming Program contains provisions to designate areas as unsuitable for surface coal mining consistent, in part, with 30 CFR Chapter VII, Subchapter F (designations of areas unsuitable for mining). This finding is made under 30 CFR 732.15(b)(9).

Provisions corresponding to Section 522 of SMCRA and to Subchapter F of 30 CFR Chapter VII are included in W.S. 35–11–406 and 425 and Wyoming Rule XVIII. Volume 1, Part G.11, of the program submission describes the system by which petitions for designating areas unsuitable for surface coal mining will be received and processed and the establishment of a data base and inventory system.

A discussion of significant issues raised in the review of Wyoming's provisions for unsuitability designations follows.

In the March 31, 1980, notice (45 *FR* 20930, *et seq.*), the Secretary tentatively found certain provisions in Finding 21 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program submission. The Secretary finds (after considering government agency and public comments) that the language previously considered has been promulgated or enacted and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice: Findings 21.2, 21.3, 21.8, 21.9, 21.10, 21.11, 21.12, 21.13, 21.14, 21.15, 21.16, 21.17, 21.18.

Following are the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 *FR* 20930 *et seq.*):

21.A In Finding 21.1, the Secretary responded to a comment by the Public Lands Institute concerning inclusion of certain definitions equivalent to definitions in 30 CFR 761.5. In that finding, it was concluded that the terms "occupied dwelling," "public building," public park," and "cemetery" are sufficiently common to not require definition in Wyoming's program.

Wyoming's promulgated regulations for another two of those definitions differ from the language upon which Finding 21.1 was based. Those definitions are for "valid existing rights" (Rule I 2(106) and "public roads" (Rule I 2(63). Both definitions were remanded by the district court (Opinion of February 26, 1980, at 20–23). "Valid existing rights" is defined to include a good faith effort to obtain all permits while "public roads" is defined to require use by and maintenance with government funds. The changes are consistent with the court opinion and with SMCRA. See discussion above under "General Background" concerning remanded regulations.

21.B In Finding 21.4, the Secretary requested that the Wyoming program ensure that notice of a petition will be published in the State register. Wyoming does not have a State register. Rule XVIII 3b(2), however, requires that notice will be placed in the offices of the county clerks of the counties in which the area covered by the petition is located. This is acceptable and consistent with 30 CFR 764.15 (b)(2).

21.C. In Finding 21.5, the Secretary asked that the Wyoming program be revised to assure that governmental agencies and persons with other than a "property" interest be given notice of a public hearing on a petition. Rule XVIII 4b requires the notice to be sent to "all petitioners, intervenors, local, State and Federal agencies which may have an interest in the decision on the petition, and persons identified as having interests affected by the proposed designation or termination." This State rule is consistent with 30 CFR 764.17(b), since those with a "property interest" will be included under these with an "interest."

21.D In Finding 21.7 the Secretary found certain requirements for information to be more burdensome for the petitioner than is required by 30 CFR 764.13(b). In the resubmission the State deleted the requirements for information on persons contributing to the expense of the petition. The other requirements, "a precise description of the boundary of the area covered by the criterion or criteria on which the proposed designation rests, allegations of fact which tend to establish the criterion or criteria * * *, and a specific identification of the sources of supporting evidence on which the allegations of fact rest," in Finding 21.7 were retained in Wyoming Rule XVIII 2b, and three of the above requirements were retained in XVIII 2c. Also in Finding 21.7, the requirement that property interests *known to the petitioner* be identified was tentatively found to be consistent with Federal requirements. The Secretary assumes, therefore, that Wyoming will limit informational requirements to that known by or reasonably available to the petitioner, and thus finds these provisions acceptable.

Finding 22

The Secretary finds that the Land Quality Division has the authority under Wyoming laws, and the Wyoming program provides for public participation in the development, revision and enforcement of Wyoming laws and regulations and the Wyoming program is consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII, subject to the discussions in Findings 22.C and 22.D below. This finding is made pursuant to 30 CFR 732.15(b)(10).

Provisions corresponding to public participation requirements in SMCRA and 30 CFR Chapter VII are included throughout Wyoming State statutes and rules submitted as part of the program. Volume 1, Part G.14, of the program submission describes the procedures to ensure that adequate public participation is provided throughout the development and functioning of the State program. Discussion of significant issues raised in the review of Wyoming's public participation provisions follows.

In the March 31, 1980, notice (45 *FR* 20930, *et seq.*), the Secretary tentatively found certain provisions in Finding 22 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in

the following tentative findings in the March 31, 1980, notice: Findings 22.2, 22.3, 22.4, 22.5, 22.6, 22.7, 22.10, 22.11, 22.12, 22.13, 22.14, 22.15, 22.17, and 22.18.

Following are the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 *FR* 20930 *et seq.*):

22.A In Finding 22.1, the Secretary found that Wyoming's provisions for holding informal conferences on permit applications and providing for access to the mine area were not adequate. Rule III 3a of the Rules of Practice and Procedures is consistent with 30 CFR 784.14 concerning informal conferences. Under W.S. 35–11–406(K), an informal conference will be held if the administrator determines that the nature of the complaint or the position of the complainants indicates that an informal conference is preferable to a contested case proceeding.

22.B In Finding 22.8, the Secretary found that the Wyoming program did not contain a provision for prompt citizen complaint inspection. The State has enacted W.S. 35–11–701(b), which calls for a prompt citizen complaint inspection and, therefore, is the same or similar to 30 CFR 842.12(d).

22.C In Finding 22.9, the Secretary found that the State had not proposed or promulgated any rules which are consistent with 43 CFR Part 4 regarding the award of attorneys fees. The State has failed in its resubmission to promulgate any such rules. The Secretary finds this omission unacceptable. However, by letter dated August 5, 1980 (Administrative Record No. WY–220), Wyoming stated its intent to promulgate such rules. Promulgation of these rules is being made a condition of approval of the Wyoming program.

22.D In Finding 22.16, the Secretary found that the Wyoming provisions concerning citizen intervention in administrative proceedings might not be as broad as under Federal regulations. The Wyoming resubmission contains a proposed change to Chapter II, Section 7 of the Department's Rules of Practice and Procedure, which, if promulgated, would provide rights of intervention as broad as those in 43 CFR Section 4.1110. The State, however, failed to promulgate this rule and the Secretary finds this omission unacceptable. By letter dated August 5, 1980 (Administrative Record No. WY–220), Wyoming has stated its intent to promulgate a rule consistent with 43 CFR 4.1110 concerning intervention. Promulgation of this rule is being made a condition of approval.

Finding 23

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Wyoming Land Quality Division consistent with 30 CFR Part 705 (restrictions on financial interests of State employees). This finding is made under 30 CFR 732.15(b)(11).

Provisions corresponding to Section 517(g) of SMCRA and 30 CFR Part 705 are incorporated in the Wyoming program through Wyoming Personnel Rules PPM 3.01. Volume I, Part G.12, of the program submission describes the procedures by which the Department of Environmental Quality will implement provisions for financial interest control. Discussion of the significant issues raised in the review of Wyoming's conflict of interest provisions follows.

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found Wyoming's provisions acceptable subject to review and comment by government agencies and the public. The secretary has reviewed the Wyoming program resubmission, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice: 23.1 and 23.2.

Finding 24

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA, to the extent required for approval of its program. This finding is made pursuant to 30 CFR 732.15(b)(12).

Provisions corresponding to Section 719 of SMCRA are incorporated in W.S. 35–11–415. No regulations are required at this time.

Volume 1, Part G.13, of the program submission contains a description of the cooperative effort between the State Inspector of Mines and the Department of Environmental Quality.

Finding 25

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program provides for small operator assistance consistent with 30 CFR Part 795 (small operator assistance). This finding is made pursuant to 30 CFR 732.15(b)(13).

Provisions granting authority supporting Section 507(c) of SMCRA and 30 CFR Part 795 are incorporated in W.S. 35–11–109 and 110. Volume 1, Part G.16, of the State program submission contains a description of the small operator assistance program within the State.

Discussion of significant issues raised in the review of Wyoming's small operator assistance program follows.

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 25 acceptable subject to promulgation of rules and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative finding in the March 31, 1980, notice: Finding 25.1.

Following is the Secretary's finding on the provision of the resubmission that differed from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 *FR* 20930 *et seq.*):

In Finding 25.2, the Secretary requested a clarification of the phrase "qualified personnel," as it is used at Rule XXIII 3b(6) of Wyoming's Land Quality Division regulations, to assure that OSM, the State regulatory authority, and laboratory personnel would logically be included. The State has provided clarification in its comment in the side-by-side to this finding, and the Secretary finds this clarification acceptable.

Finding 26

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program provides similar protection to that afforded Federal employees under Section 704 of SMCRA. This finding is made pursuant to 30 CFR 732.15(b)(14).

Provisions corresponding to Section 704 of SMCRA are incorporated in W.S. 35–11–901. While there is no specific reference to protection of State employees in the presentation of systems in the State program submission, the Secretary finds that incorporation of the appropriate authority is sufficient.

In Finding 26, published by the Secretary on March 31, 1980, the

Secretary indicated that the enactment of W.S. 35–11–901(m), as proposed, would be acceptable. This statute has been enacted, and the Secretary finds the Wyoming program consistent with Section 704 of SMCRA.

Finding 27

The Secretary finds that Wyoming has the authority under its law and the Wyoming program provides for administrative and judicial review of State program actions in accordance with Sections 525 and 526 of SMCRA (review of decision) and 30 CFR Chapter VIII, Subchapter L (inspection and enforcement). This finding is made pursuant to 30 CFR 732.15(b)(15).

Provisions corresponding to Sections 525 and 526 of SMCRA and to Subchapter L of 30 CFR Chapter VII are incorporated in W.S. 35–11–406 and 437; Wyoming Rules of Civil Procedure, Rule 27.1; Wyoming Department of Environmental Quality Rules of Practice and Procedure, Chapter 2; Wyoming Administrative Procedures Act, W.S. 9–4–107 and 114; and Wyoming rules Chapters XVII and XVIII. Volume 1, Part G.4, of the program submission contains a description of the administrative and judicial procedures which are available for the review of administrative decisions, actions and refusals to act. Additional provisions are included in Volume 1, Part G.4, of the program submission, which sets out administrative and judicial review of inspection and enforcement actions.

Discussion of significant issues raised in the review of Wyoming's administrative and judicial review provisions follows:

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 27 acceptable subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice: Finding 27.1 and 27.2.

The Secretary notes that rather than enacting the language in W.S. 35–11–437(g), discussed in Finding 27.1, the State added the phrase "for other than surface coal mining operations" in enacted W.S. 35–11–701(c), which resolves the concern raised.

Finding 28

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program contains provisions to cooperate and coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. This finding is made pursuant to 30 CFR 732.15(b)(16).

Wyoming Rules XIII, XIV, and XVII were promulgated and, as discussed in the March 31, 1980, **Federal Register** notice, provide for notice of applications for permits and notice of inspection and enforcement activities. In addition, the Wyoming Administrative Procedures Act ensures that information is publicly available.

Finding 29

The Secretary finds that the Wyoming laws and regulations and the Wyoming program do not contain provisions which would interfere with or preclude implementation of those in SMCRA and 30 CFR Chapter VII. That finding was made pursuant to 30 CFR 732.15(c). An analysis of that finding is included in the March 31, 1980, **Federal Register** notice (45 FR 20979).

Finding 30

The Secretary finds that the Land Quality Division and other agencies having a role in the program would have sufficient legal, technical and administrative personnel and would have sufficient funds to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(b) (program requirements), and other applicable State and Federal laws. This finding is made pursuant to 30 CFR 732.15(d).

Volume 1, Parts I and J, contain descriptions of existing and proposed staff, and how such staff will be adequate to carry out the functions for the projected workload to ensure that coal exploration and surface coal mining and reclamation requirements of SMCRA and the Federal regulations are met. Volume 1, Part L, contains a description of the actual capital and operating budget to administer the State program for the prior and current fiscal years, and the projected annual budget for the next two fiscal years.

Wyoming's Land Quality Division has a staff of 38 full-time persons assigned to regulate coal and other minerals. The coal program consumes approximately 16.34 full-time persons from the division and 6.43 full-time persons from other agencies, i.e., Division of Water Quality, Division of Solid Waste, the Attorney General's Office, Wyoming Fish and Game Department, and the Department of Environmental Quality's Administrative Section.

The Department's analysis of Wyoming's initial program submission reflected a total workload requirement of 21.47 full-time equivalents or person-years to implement the program. Resubmission data provided by Wyoming indicate a total program personnel capacity of 22.77 full-time equivalents or person years, which satisfies total program staffing needs as required by 30 CFR 731.14(e), (f), (i), (j).

Government Agency and Public Comments on the Wyoming Program Resubmission

C.1 The Fish and Wildlife Service (FWS) commented that Wyoming's resubmission failed to define the word "person" in its statute in a manner which would give the FWS status afforded to "persons." This word is clearly defined in the State's revised act (WS 35–11–103) to include "an individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility cooperative, municipality, or any other political subdivision of the state, or any interstate body, or any other legal entity." Thus, certainly, the Fish and Wildlife Service is included.

C.2 The Environmental Protection Agency (EPA) notes that Wyoming, in its counterpart to 30 CFR 816.42(a)(7) (see Section 7 of Wyoming DEQ MOU and Rule X 4a of Water Quality Division Rules and Regulations) in its resubmission, has changed its maximum allowable total suspended solids (TSS) effluent limitation from 45 m/l in the original submission to 70 m/l. This change, EPA concludes, makes Wyoming's effluent limitation exceed the legal limitations established by EPA in Title 40.434.22. Wyoming explained these changes in a letter dated August 5, 1980. The explanation is discussed in Finding 13.C.

C.3 It is also noted by EPA that Wyoming, in the resubmission's counterpart to 30 CFR 817.126(a), has changed its regulation as originally submitted so that underground mining activities appear to be permitted beneath or adjacent to any perennial stream regardless of the circumstances. EPA expresses the belief that Wyoming should reinstate its original language which allows such mining *only* if the regulatory authority, on the basis of detailed subsurface information, determines that subsidence will not

cause material damage to streams, water bodies and associated structures.

The Secretary finds that Rule VII 2b(3) promulgated by the State provides authority for protection of all perennial streams and all impoundments consistent with 30 CFR 817.126(a), by requiring that underground mining activities be planned and conducted to prevent subsidence from causing material damage to the land surface (see Finding 13.102).

C.4 The Bureau of Land Management (BLM) was concerned that the size of the staff of the Wyoming Department of Environmental Quality was not sufficient to administer the program in a timely manner. BLM has reviewed the Wyoming resubmission and they now feel that the total staff capability is adequate. A similar conclusion has been reached by the Secretary in Finding 30.

C.5 Concern was expressed by the Fish and Wildlife Service (FWS) that Wyoming, in its analogue to 30 CFR 776.13, fails to clarify whether threatened and endangered species are from the Federal list or a State list.

The resubmission contains Rule II 3b(4)(b)(i), which requires an application, in order to be complete and therefore eligible for approval, to have a plan for minimizing adverse impacts to fish, wildlife and related environmental values within and adjacent to the permit area including "threatened or endangered species of plants or animals listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and their critical habitat." Thus, it is certain that the Federal list will be consulted. This rule requires that these plans must be adhered to and that the regulatory authority must enforce the protection of species and their critical habitats as identified by the Secretary. The FWS citation of the Wyoming rules could not be verified since the page cited in the resubmission related to special permit application requirements for alluvial valleys floors. Apparently, the FWS meant to cite Rule II 2a(1)(e) (i)–(iii) which does refer to an "endangered species list" of the Wyoming Game and Fish Department (page 20 of the Land Quality Division rules). Thus, both the Federal list and the State list must be consulted. This is also discussed in Finding 14.5.

C.6 The FWS stated that Wyoming's resubmission fails to include requirements of 30 CFR 779.20 and 783.20. Specifically, FWS comments that Wyoming's Guideline No. 5 should be required and should include habitat mapping, that the Federal list of threatened and endangered species should be consulted, that consultation on level of study should be sought in Section 2 a(1), that the vegetative type maps in Guideline No. 2 should be a requirement rather than a guideline, and, lastly, that reference to a surface water map is needed.

The Federal rules referred to by the FWS were remanded in the district court's February 26, 1980, opinion, so the State need not include analogous provisions. However, the court also ruled that the State may include these analogous provisions if they so desire. (Civil Action No. 79–1144, August 15, 1980, (Partial Stay Order of May 16, 1980, Memorandum Decision).)

Wyoming's resubmission does contain promulgated Rule II 3a(6)(e) to ensure that studies of fish and wildlife, and their habitats, are developed in consultation with Federal agencies having related responsibilities. It is certain that the FWS will be consulted. Thus, to reiterate requirements in Guideline No. 5 is not required. Wildlife habitat mapping (Rule II 3b(4)(b)(iii)) and vegetation community mapping (Rule II 3b(4)(a)) all ensure vegetation mapping in a manner reflecting wildlife habitat. Wildlife use of surface water is addressed in Rule II 2a(1)(g)(ii)(B). Thus, rules adequate to address the FWS concerns exist.

Guideline No. 5 represents those efforts the applicant should undertake to make the necessary good faith effort to comply with the State statutes (see discussion under Finding 14.C).

Wyoming has agreed to provide equivalent emphasis on investigations of the aquatic habitat in this guideline (see Findings 12.7 and 13.F (13.39)). The guideline appears to provide useful and professional directives on wildlife surveys including habitat mapping (see Section I A3 for vertebrate fauna). This is discussed in Findings 14.30 and 14.31. The Secretary has not identified reasons for further changes in the State program in this regard, since there is nothing inconsistent with SMCRA in these guidelines.

C.7 The FWS indicates that in its resubmission Wyoming's counterpart to 30 CFR 786.11–786.14 fails to provide for fish and wildlife agency notification.

The Federal requirements to notify general governmental agencies, fish and wildlife and historic preservation agencies (30 CFR 786.11(c)(1)) of receipt of a complete application are covered by Rule XIII 1a(2)(b), which requires that public notice be sent to Federal, State and local governmental agencies "with jurisdiction over or an interest in the proposed operation or permit area." While the FWS is not cited by name, if it has jurisdiction, it must be notified. Further, the MOU between the Land Quality Division and the Wyoming Game and Fish Department (Exhibit F.2. in the resubmission) requires the regulatory authority to notify the Wyoming Game and Fish Department of the need for technical assistance in evaluation of the submission.

Further, the resubmission contains correspondence between the regulatory authority and the FWS (Exhibit G.9) which identifies the area manager as the official contact point for all requests. For all Federal lands in Wyoming, FWS is contacted by OSM and OSM will maintain this procedure. This is also discussed in Finding 14.84. The Secretary believes that proper notification will be given to the FWS.

C.8 Concern was expressed by the FWS that Wyoming's analogue to 30 CFR 786.19 (m) and (o) in its resubmission contains no provision to require approval of measures affecting fish, wildlife, environmental values, and threatened or endangered species as provided in 30 CFR 816.133 or 817.133.

The Federal requirements are for (1) postmining land uses to be approved (30 CFR 786.19(m)) and (2) the regulatory authority to find that the activities would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitat (30 CFR 786.19(o)). The resubmission contains the first requirement for approval of measures to prevent or mitigate adverse effects on wildlife or fish from the appropriate State and Federal fish and wildlife management agencies (Rule II 3b(12)(b)(iii)(H)) if there is to be a change in the postmining land use. The Secretary finds this equivalent to 30 CFR 816.133(c)(8). See discussions in Findings 13.89 and 14.84.

Concerning the second requirement, W.S. 35–11–406(n)(i) requires that a plan be complete to be approvable and the rule (II 3b(4)) requires a plan to show how such species and habitat will be protected. By letter dated August 5, 1980 (Administrative Record No. WY–220), Wyoming has provided assurance that it interprets its provisions to be equivalent to 30 CFR 786.19(o). The Secretary finds this consistent with the Federal provisions. See Finding 14.F.

C.9 The FWS pointed out that Wyoming's regulation IV 2a(2), analogous to 30 CFR 816.97, appears to be weakened by a revision which now allows the administrator to determine what restoration is possible on public as well as private lands.

The FWS cited Rule "IV 2(s)(2)." It is presumed they were referring to Rule IV 2a(2), which does not apply to coal lands by virtue of the conflict with Rule IV 3p, which prevails under Rule IV 1

("For surface coal mining operations, if the requirements of Section 2 and Section 3 conflict, Section 3 shall be controlling."). This has been the source of much confusion to reviewers. The end result is that Section 2 of Rule IV applies to mining other than coal in this case. Thus, the program is not affected by the rule change cited by the FWS and the provision has not been weakened. An ancillary issue is discussed in Finding 13.63.

C.10 The FWS stated that Wyoming's Rules IV 2d(5) and IV 3d(2), analogous to 30 CFR 816.112, are still deficient as they appear in the State's resubmission. The State's analogue, FWS believes, neither encourages nor requires the use of native plant species compatible with the plant and animal species of the region.

The FWS' concerns are eliminated by Rule IV 3p which requires selection of plant species and shrubs to enhance the nutritional and cover aspects of fish and wildlife habitat when such habitat is part of the postmining land use, and Rules IV 2d (4) and (5), which team to generally require native species unless more suitable species are shown, by revegetation test plots, to be of superior value for reclamation purposes (which purposes include self-renewing, diverse, productive, and seasonal variety). This is also discussed in Finding 13.83.

C.11 The FWS comments that Wyoming's Rules IV 3d(6), analogous to 30 CFR 816.116, in its resubmission is deficient. The establishment period to measure revegetative success is shorter in the State regulation than it is in the Federal regulation, FWS notes, and the term "populated density" is undefined.

This is discussed in Findings 13.81 and 13.82. The Secretary found the resubmission adequate with respect to these two requirements.

In its comments FWS notes that Wyoming, in its resubmission, has no analogue to 30 CFR 817.97 regarding the protection of fish and wildlife and related environmental values as applicable to underground mining activities.

This is the complex cross-referencing issue that has been discussed in Finding 13.109. As pointed out there, the resubmission contains Rule VII 2a(5) which applies all requirements of Chapter IV to underground operations, and Rules VII 1 a and b, which apply Rule II to underground operations. The States analogue to 30 CFR 817.97 then becomes Rule IV 3p and other portions of Rules II and IV.

C.12 The U.S. Soil Conservation Service (SCS) was concerned by the apparent obligation of local conservation districts and the SCS to review and comment on the issues which involve prime farmland. The SCS further commented that the program is not clear on how the local conservation districts and the SCS will coordinate on prime farmland determinations. The SCS would like to know how much time will be required to carry out their program obligations.

The Wyoming Department of Environmental Quality (DEQ) must notify the local conservation district and the SCS that written determinations on prime farmland subjects are requested. The local conservation district shall make recommendations, suggestions, or decisions only with input and required concurrence of the SCS. The Memorandum of Understanding between the Secretary of Agriculture and the Governor of Wyoming shall determine the procedure the State and Federal conservationists shall follow in making recommendations, suggestions, or decisions. Findings 14.68 and 14.114 give an explanation of how the Department of Agriculture will be included in specific prime farmland determinations.

In regard to time and workload questions posed by the commentor, OSM can only estimate these at this time. Wyoming regulations include the SCS in four facets of review processes. SCS will be involved in the following:

(1) Negative determinations for prime farmland on pre-application investigations of proposed permit areas;

(2) Review of mineplan applications in prime farmland areas for topsoil handling, revegetation techniques, soil moisture bulk density measurements, pre-mining productivity measurements, etc.;

(3) Small acreage exemptions from prime farmland requirements for uneconomical croplands; and

(4) Soil reconstruction methods or requirements included as stipulations to regular mineplan requirements.

The State program projects five new mineplan reviews for 1980 and three mine plan amendment reviews. For 1981, at least three new mine plan reviews are anticipated by DEQ. OSM Region V has made estimates of man-hours needed for mineplan reviews. Subjects dealing with prime farmland take from two to eight hours with an average of four hours for a mineplan completeness review. A technical and environmental analysis takes from two to seven hours with an average of four hours on prime farmland subjects. These estimates are for prime farmland subjects only, while topsoil and revegetation topics require an average of 132 man-hours for a complete mineplan review and environmental analysis. OSM can furnish a more complete table of man-hour estimates by job function on mineplan review upon request.

C.13 The Public Lands Institute (PLI) noted that Wyoming's Rule XVII 1a(1) in the State's resubmission provides for an inspection of every operation "every month, averaging at least one [complete inspection] quarterly." PLI asserts that Section 517(c) of SMCRA and 30 CFR 840.11 require three partial and one complete inspection quarterly. Wyoming explains in Part G.4 that monthly inspections will be conducted during each month *not* covered by a quarterly inspection. The Secretary finds that Wyoming proposes to conduct the requisite number of complete and partial inspections.

C.14 PLI pointed out that the Secretary has stated that, "[a]n explanation * * * is needed to clarify Wyoming's provision that inspectors will conduct field enforcement and will pursue enforcement actions for all violations observed," but that Wyoming, in its side-by-side comparison, only refers to Part G.5 of the narrative. The narrative, the commenter continues, does not clarify this matter but merely restates the statutory provision requiring issuance of citations when the necessary "determination" is made and does not state that inspectors are required to make that determination in the field. Under W.S. 35–11–437, the issuance of notices of violation and cessation orders is mandatory for violations observed by inspectors. Officials of OSM discussed this issue with Wyoming officials by telephone on July 9, 1980, and were provided an oral assurance by the State (Administrative Record No. WY–211). The PLI asserted that such oral assurance was not acceptable. In a letter dated August 5, 1980 (Administrative Record No. WY–220), the State indicates that it will conduct field enforcement. The Secretary finds this written assurance acceptable. See Finding 17.B

C.15 In their comments, PLI, the Environmental Policy Institute (EPI), and the Powder River Basin Resource Council (PRBRC) stated that the Wyoming regulations do not require all inspections *per se* to be unannounced, but permit advance notice "as the representative deems necessary." PLI asserts that Section 517 of the Act and 30 CFR Part 840 absolutely prohibit advance notice, and that Wyoming cannot deviate from this requirement.

In the March 31, 1980, **Federal Register** notice, in Finding 17.5, the Secretary stated that Wyoming regulations require that all inspections be unannounced. Prior notice is to be given only in special circumstances such as during the annual

inspection when all records are made available for complete review. The Secretary, therefore, finds Wyoming Rule XVII 1a(1) to be acceptable.

C.16 PLI indicated that Wyoming has not met its burden of demonstrating that its civil penalty assessment system meets the requirements of SMCRA 503(a) and 518(i), i.e., the State does not demonstrate that civil penalties will be assessed in the same circumstances they would be assessed under Federal law, nor does it guarantee a level of fines as high as would be assessed under Federal law. PLI asserted that the opinion *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144, May 16, 1980), on this matter is incorrect as a matter of law, and that if the decision is reversed, Wyoming will be required to make numerous changes in its civil penalty provisions to meet the requirements of the Act.

The Secretary is convinced that the civil penalty assessment system proposed by Wyoming is consistent with Federal requirements and is acceptable pursuant to the court's decision with which the Secretary is complying (see Finding 19.A).

C.17 It is asserted by PLI that the Wyoming provision for a civil penalty bond, rather than prepayment into escrow, is illegal. The commenter stated that escrow payments are required under Section 518(c) of SMCRA, and pursuant to Section 518(i), the same or similar procedure is required for Wyoming.

The Secretary is convinced that the State's use of a bond, as opposed to placing the amount of the contested penalty in escrow, provides the same degree of certainty that an assessed penalty will eventually be paid by a violator if the State prevails in a contested action. (See Finding 19, above and Finding 19.9 in the March 31, 1980, **Federal Register** notice.)

C.18 PLI expressed concern that Wyoming has combined the discretionary and mandatory show cause orders in 30 CFR 843.13 into one provision, W.S. 35–11–409(c), thereby reducing the range of possible permit suspension and revocation situations. PLI contended that this scheme does not meet the Federal requirement that the State suspension or revocation provision be at least as stringent as the Federal provisions in 30 CFR 843.13 and Section 521(a)(4) of SMCRA.

Wyoming's Rule XVII 2d(2) states that the Director of the Department of Environmental Quality shall explain in writing if he or she fails to issue a show cause order where the director finds that there are violations of the same or related requirements during three or more inspections in any 12-month period. Thus, a presumption is created that the director will find that a pattern of violations exists in such circumstances (See Finding 20.9 in the March 30, 1980, **Federal Register** notice.)

C.19 PLI contended the W.S. 35–11–437(a), which imposes affirmative obligations when "necessary," is not adequate since it does not prescribe when such obligations are necessary as in SMCRA Section 521(a) and 30 CFR Part 843.

The Secretary found in the March 30, 1980, **Federal Register** notice, Finding 20.16, that W.S. 35–11–437(a) and Rules I 2(16) and Rules XVII 2(a) taken together are consistent with Federal requirements because affirmative obligations will be included in a cessation order when they would be required under the Federal standards.

C.20 PLI noted that Wyoming does not provide an automatic right to informal permit conferences, as required by 30 CFR 840.15.

In Finding 22.A, above, the Secretary found that Wyoming's provisions for holding informal conferences on permit applications and for providing access to the mineplan areas are acceptable. Under W.S. 35–11–406(k), an informal conference will be held if the administrator determines that the nature of the complaint or the position of the complainants indicates that an informal conference is preferable to a contested case proceeding. Wyoming has promulgated language in Rule III 3a of the Rules of Practice and Procedure which are consistent with 30 CFR 784.14 concerning informal conferences.

C.21 PLI and EPI noted that Wyoming provides for publication of a "notice of intended action" rather than proposed rules. PLI asserted that this scheme is not in accordance with SMCRA 501, which requires proposed rules to be published, and that this practice will interfere with the public's right to comment on proposed regulations.

Wyoming's notice of intended action is in fact similar to proposed rules in that it sets forth the text or substance of the rulemaking. While Wyoming does not publish a document similar to the **Federal Register**, the State publishes a "notice of intended action" in a newspaper of general circulation, and sends copies of such notices to county clerks and individuals who request such mailings for the purpose of public comment. (See Administration Record No. WY–211.) The Secretary finds the Wyoming practice consistent with Section 501 of SMCRA.

C.22 PLI pointed out that under 30 CFR 842.12(a) a citizen has the right to orally request an inspection which is followed by a written statement. Wyoming, however, allows only written complaints, thus allegedly restricting citizen rights and, in the event of an imminent hazard, endangering the public and the environment.

The Secretary finds Wyoming Rule XVII 1b to be consistent with 30 CFR 842.12(as) as further explained in Finding 22.7 in the March 31, 1980, **Federal Register** notice. Both Federal and State processes require a written statement.

C.23 PLI contended that Wyoming provides only for a "prompt" inspection in response to citizen complaints. PLI stated that an outer time limit of 10 days to inspect and 15 days to deny an inspection should be established as required by 30 CFR 842.12(d), to insure that there is no question of what constitutes a "prompt" response.

The Secretary believes that such time limits need not be set for the Wyoming program to be consistent with the Federal requirements, since it is unlikely that a period longer than 10 or 15 days would be deemed a "prompt" response. In any case, "prompt" may be a more stringent test than 10 days.

C.24 PLI noted that 30 CFR 842.15 and SMCRA 517(h)(1) require that the informal review of citizen complaints results in a written determination with an explanation of the underlying reasons, but that Wyoming provides only that the citizen be informed of the "results" of the review.

The Secretary believes that Wyoming Rule XVII 1c will operate in a manner that is consistent with the Federal requirements in that the citizen will be informed of the results of the inspection and may proceed to appeal, if he or she so desires.

C.25 In its comments, PLI noted that the Secretary has stated that Wyoming's failure to provide implementing regulations consistent with 43 CFR 4.1290 *et seq.*, regarding the award of costs and expenses in administrative proceedings, "may create an inconsistency with the Federal requirements." PLI contended that this failure will result in a serious inconsistency and, to obtain approval, a State program not only must authorize the award of fees, as does Section 525(e) of SMCRA, but also must contain provisions similar to those contained in 43 CFR 4.1290 *et seq.* To date, the comment concludes, Wyoming has made no attempt to promulgate rules consistent with the Federal regulation and, thus, has set *no* standards for the award of such fees.

In Finding 22.9 in 45 FR 20930 (March 31, 1980), the Secretary found that the State had not proposed or promulgated any rules which are consistent with 43 CFR Part 4 regarding the award of attorneys fees. The State has failed in its resubmission to promulgate any such rules. The Secretary found this portion of the resubmission unacceptable, and explains that a correction of this deficiency will be a condition of approval. (See Finding 22.C.)

C.26 PLI indicated that the Wyoming citizen suit provision is deficient in several respects. First, under W.S. 35–11–902, the 60 day notice of intent to sue provision applies not only to suits against the State for failure to enforce (as in SMCRA 520(a)(2)) but also to suits for violations (such as SMCRA 520(a)(1)). Under the Federal scheme, notice of intent to sue is required only in the non-enforcement situation (Section 520(b)), and Wyoming cannot restrict access to State court.

The commenter incorrectly stated that the 60 day notice applies only to Section 520(a)(2) under SMCRA. Section 520(b) applies the 60 day notice period to all citizen actions under Section 520(a), with the exception of an imminent threat to health or safety of the plaintiff or an immediate effect on a legal interest of the plaintiff. W.S. 35–11–902(c)(i) parallels the Federal section and is consistent with it.

Second, PLI contended that the State must make it clear that Wyoming's standing provision, "any person having an interest which is or may be adversely affected," is as broadly interpreted as it is under Federal law.

Neither SMCRA nor the Wyoming statute contains a definition of "person having an interest which is or may be adversely affected." The Wyoming regulatory definition in Rule XVIII 1(5) appears to be as broad as OSM's regulatory definition in 30 CFR 700.5.

Third, PLI and EPI noted that Wyoming must make it clear that attorney's fees can be awarded against citizens or citizen groups only if the action is initiated or pursued in bad faith.

The proposed program, W.S. 35–11–902(e), provides for the award of attorney fees. SMCRA is silent on the circumstances under which attorney fees may be assessed against citizens, and the Secretary has no reason to believe that the State will not award attorneys fees consistent with the Federal standards. As discussed in Finding 22.C, promulgation of rules concerning the award of attorneys fees in administrative hearings is being made a condition of this approval.

Fourth, PLI claimed that Wyoming "impermissibly" restricts the operation of its citizen suit provision to the status of Federal law on August 3, 1977, stating that, as the body of Federal law grows, especially with respect to SMCRA 520, States likewise must be able to grow to conform, if their program is not to become less stringent than required and be subject to withdrawal of approval or repeated amendment. Therefore, PLI concludes, the phrase "only to the extent" should be changed to "at least to the extent."

The Secretary is evaluating the Wyoming program on the basis of what the Federal requirements are today. PLI has indicated no change in the law since August 3, 1977, that would make the Wyoming requirement inconsistent with the Federal requirement.

The Secretary will require appropriate changes in the State provisions if such changes are required by Act of Congress or by other developments.

C.27 The PLI and EPI contended that it should be made clear in Rule II 7b of the DEQ Rules of Practice and Procedure that interest in the "outcome" of the proceeding includes an interest in a significant legal determination which may be reached and which might affect the person's ability to protect his interest in subsequent proceedings (43 FR 34378 (August 3, 1978)). PLI also noted that it should be made clear that intervention at less than full party status is permissible only upon request of the person seeking intervention, at least for mandatory intervention. In the March 31, 1980, **Federal Register** notice, the Secretary found this rule did not provide broad enough rights of intervention in administrative proceedings. As discussed in Finding 22.D, promulgation of rules for intervention is being made a condition of this approval.

C.28 Concern was expressed by PLI that Wyoming permits council members to have a financial interest, direct or indirect, in matters before it. Regardless of the Secretary's regulations on conflict of interest, PLI contended that the Secretary cannot approve any State program which, unlike the Federal program, violates the constitutional due process right to an impartial decisionmaker. Council members with any interest whatsoever in the outcome, or even the appearance of any interest, cannot participate, under prevailing constitutional case law, the comment concluded.

In a letter dated August 5, 1980 (Administrative Record No. WY–220), the State indicates that council members with any interest or the appearance of any interest in the outcome of a proceeding cannot participate in such proceeding.

C.29 It is noted by the EPI and PRBRC that in Rule XVII 2e, a cessation order may be mailed to an operator. PRBRC noted that the State is required to deliver such an order immediately by hand to the operator.

The State has indicated in a letter dated August 5, 1980 (Administrative Record No. WY–220) that it will conduct field enforcement. The Secretary finds that Wyoming will immediately hand-deliver such an order as part of its field enforcement. (See Finding 20.A, above.)

C.30 Regarding Rule I 6 of Wyoming's Rules of Practice and Procedure, PRBRC and EPI expressed the opinion that the Environmental Quality Council should not be permitted to charge an interested citizen for the cost of a hearing transcript. Such an expense, it is contended, effectively dissuades the average citizen from exercising his or her constitutional right to petition the government for redress of grievances.

Nothing in SMCRA (Title V) or the regulations (30 CFR Chapters G or L) would require the State to provide copies of hearing transcripts to interested citizens free of charge. The Secretary notes that States are required under 30 CFR 700.14 to make such transcripts available for public inspection, and the cost of a transcript could be covered under W.S. 35–11–902(e) and W.S. 35–11–437(f) regarding the award of costs.

C.31 EPI asserted that the changes in the narrative on public participation, which Wyoming agreed to in its January 15, 1980, memorandum must be formally incorporated into the State program through a detailed description, as required by 30 CFR 731.14(g)(14), and, where appropriate, through regulatory changes.

Wyoming agreed to send copies of proposed statutory and regulatory changes to all interested parties in response to previous public comments (Administrative Record WY–99 and WY–211). Wyoming promulgated rulemaking procedures in its Rules of Practice and Procedure. The Wyoming program provides all of the citizen access required by the Act in the key areas identified in the preamble at 44 FR 14965. The Secretary believes that Wyoming has adequately provided for public participation in the development and revision of the State regulations and the State program and that it is not necessary for the State to provide a detailed description or make regulatory changes.

C.32 EPI contended that Wyoming should be required to publish in the

State register, a notice of the receipt of a complete petition to designate land unsuitable, as required by 30 CFR 764.15(b)(2).

The Secretary finds that the publication of a notice of a petition in the offices of the county clerks of the counties in which the petition is concerned satisfies the Federal requirements of 30 CFR 764.15(b)(2), since the State does not have a State register and all other public notification requirements meet the Federal requirements.

C.33 It is asserted by EPI that, regarding 30 CFR 764.13(b) (designation of lands unsuitable for coal mining), Wyoming still has not provided adequate assurances that the requirement that a petitioner identify specific sources of supporting evidence on which allegations of fact rest are to apply only to the extent known and that it cannot serve as a basis for the rejection of a petition as incomplete. EPI also contended that XVIII 2d(4), requiring the identification of the criterion on which the proposed designation rests, is more burdensome on the petitioner than the Federal requirements.

As noted above in Finding 21.D of this notice, the Secretary finds that the criteria or criterion and supporting evidence to the criteria, would be limited to the information known to the petitioner.

C.34 EPI argued that Wyoming has not presented adequate justification that their enforcement personnel numbers are sufficient to carry out the projected work load under their State program, as required under 30 CFR 731.14(i) and (j).

Wyoming has resubmitted data which indicates a total program personnel capacity of 22.77 full-time employees. The Secretary found on the basis of this resubmitted data that the total program staffing needs as required by 30 CFR 731.14(e), (f), (i), and (j) are met (see Finding 30).

C.35 PRBRC expressed concern with Wyoming's definition of "adjacent area," which the State limits to one-half mile beyond the proposed permit boundaries. PRBRC commented that groundwater hydrology is unlikely to respect a presumptive limitation of one-half mile and contended that the definition is arbitrary and unjustified.

The Secretary has found Wyoming's definition of "adjacent area" in Rule I 2(3) to be consistent with the Federal definition in 30 CFR 701.5. See Finding 14.13, above. The presumptive limit provides some initial indication of the extent of information-gathering activities. The PRBRC is correct that it is unlikely that all groundwater effects will occur only within the one-half mile limit. However, the effects of mining on groundwater will often extend less than one-half mile (e.g., up gradient along the potentiometric surface). In addition, Wyoming has promulgated Rule II 3a(6)(k) to require hydrologic and geologic information for the adjacent and general areas sufficient to assess the probable hydrologic consequences. The Secretary has found (Findings 14.13 and 14.23) the promulgated rules consistent with the Federal requirements.

C.36 The PRBRC noted that Rule II 2a(1)(j)(ii) of the Wyoming resubmission requires a permit applicant to list all existing water wells, including all wells filed with the State Engineer. PRBRC suggested that the State Engineer's records may not be current, and that applicants should be required to undertake serious research into existing local water wells.

The cited rule requires submission of a list of "all existing water wells on the proposed permit area and adjacent area, including all wells filed with the State Engineer's office three miles or less from the proposed permit area." Thus, any wells that may be affected must be inventoried, regardless of whether they are listed in the State Engineer's records. The Secretary believes that the concerns of the PRBRC have been taken into account.

C.37 Referring to the same section of Wyoming's rules, PRBRC commented that surveys of premining water levels should be mandatory, rather than optional, as provided in the Wyoming resubmission. It is essential that a premining data base be established, the comment contended, in order to assess the cumulative effects of coal surface mining on groundwater hydrology.

Again, Rules II 3b(10) and (11) require adequate information to evaluate the hydrologic impacts of the proposed operations. Wyoming's Guideline No. 8 (hydrology), in Section IV A. 2, requires a description of the potentiometric surface which includes premining surveys of water levels wherever the proposed operations may affect groundwater. The surveys are, therefore, mandatory.

C.38 Concern was expressed by the PRBRC regarding the formula used by Wyoming for determining the importance of an alluvial valley floor to farming. PRBRC expressed the belief that this formula, which appears in Wyoming's analogue to 30 CFR 822.12, is difficult for the layman to understand, is capriciously based on ownership, and fails to consider the maximum productive potential of the alluvial valley floor.

The formula represented in Rule III 2d ($P=3.+0.0014x$) is an alternative measure of the significance of an alluvial valley floor and, as such, considers the maximum productive potential of an alluvial valley floor. The formula is used only on small farms, where the total agricultural production or its equivalent is 5000 animal units or less. On these small farms, the total agricultural units of production represent "x" in the formula. The "P" value represents the maximum number of animal units that could be affected by the removal of an alluvial valley floor by mining and still be considered insignificant. In those cases then where mining would adversely affect the productivity of a small farm (i.e., where the "P" value would be exceeded) mining would be prohibited.

The Federal regulation for determining "significance" (30 CFR 785.19(e)(2)) has been remanded by the district court (Opinion of February 26, 1980, at 51–52). Accordingly, there are no Federal minimum standards with which to compare Wyoming's specific test. The court found that the Federal regulations emasculate the statutory exemption of Section 510(b)(5)(A) of SMCRA, specifically, the "small acreage" exemption, and directed the Secretary to allow mining on an alluvial valley floor that results in a negligible impact on the farm's production. The State program allows mining on alluvial valley floors where the above formula shows a negligible impact consistent with Section 510(b)(5)(A) of SMCRA.

The Wyoming provisions for alluvial valley floors are addressed in Findings 12.4 and 13.116. The Secretary has found these provisions consistent with the Federal requirements.

C.39 The PRBRC asserted that a provision should be added to Wyoming's rules and regulations requiring a permit application to include specific plans for the entire coal surface mining facility, including haul roads, loadout facilities, and waste and refuse areas. PRBRC contended that the State appears to have taken the position that all facilities involved in the mining operation must be permitted, but not necessarily at the same time. Requiring an applicant to present all necessary facilities at once would help to eliminate poorly-planned development and its associated disruptions.

Wyoming has defined the term "permit area" to mean the entire area of land and water affected during the "entire life of the operation" (Rule I 2(56)). Thus, all operations included within the defined term "surface coal mining operation" (W.S. 35–11–

103(e)(xx)) are included within the permit area.

C.40 The PRBRC is concerned that mining operations may be permitted without review of the necessary facilities and cites the Ash Creek mine in Wyoming as an example. According to PRBRC, this mine has been inactive for one and one-half years because it was permitted without any transportation facilities.

W.S. 35–11–405(d) requires termination of a permit if permitted operations have not been initiated within 3 years (unless good cause exists). Rule IV 3s requires a complete plan for reclamation if the operation is ceased for more than 30 days. While Rule IV 3a(1)(c) allows additional time for backfilling and grading, additional time is permissible only if it is demonstrated to be necessary on the basis of mining conditions. Thus, while it is not possible to completely ensure that all mining operations continue to completion, the type of problem described by the commenter would have to be resolved to allow reclamation. The Secretary does not believe Wyoming needs to place an additional requirement in its program.

C.41 The Belle Fourche Pipeline Company (BFPC) contended that Wyoming's resubmission does not adequately insulate lawful surface users, such as oil, gas and water wells, oil, gas and coal slurry pipelines, and various other public interest users from possible damage or expense caused by surface mining operations.

In particular, BFPC contends the State program should define "surface owner" to include one with interests such as easements or tenancies in the surface. The Wyoming rules do require that "all operations be conducted so as to minimize disruption of any services provided by facilities located on, under or through the permit area," unless otherwise approved (Rule IV 3k). The Wyoming statutes also provide for surface owner protection (W.S. 35–11–416). W.S. 35–11–406(b)(xiii) requires the operator to avoid endangering property. Rule II 3a(6)(n) requires a complete application to show the location of man-made features such as pipelines, water, oil or gas wells, and public or private rights-of-way or easements.

Neither the Federal regulations nor the Wyoming program defines "surface owner." Although the commenter cited 30 CFR 742.13, that section of the Federal program pertains to Federal lessee protection on Federal lands only and is not required of the State for non-Federal lands.

The Secretary believes that the concerns of the commenter appear properly addressed by the State program and other applicable laws, and that damage to the property interests described by the commmenter will be avoided or compensated for wherever appropriate.

C.42 The Pittson Coal Company disagrees with Finding 14.18 that W.S. 35–11–406(b)(xi) is similar to Section 510(b)(6) of SMCRA. Although W.S. 35–11–406(b)(xi) is different from the Federal statute, it is not inconsistent with Federal program requirements.

Federal law requires consent of the surface owner to the extraction of coal by surface mining methods only if the owner of the mineral estate does not already have that right by conveyance or operation of State law. Wyoming requires consent of the surface owner to the extraction of coal by surface methods *and* that a mining and reclamation plan be approved before the State may issue a permit, if the landowner meets the definition of "resident or agricultural landowner" in W.S. 35–11–406(xi)(A) and (B). In this case, the Wyoming statutes have included a provision that is additional to the Federal requirements.

Section 505(b) of SMCRA states that any State law which provides for more stringent land use and environmental controls and regulation of surface coal mining and reclamation operations than do the provisions of SMCRA shall not be construed to be inconsistent with the Act. The Wyoming requirement that "resident or agricultural landowners" consent to mining operations on their land is a more stringent land use and environmental control. The Secretary, therefore, finds that W.S. 35–11–406(b)(xi)(A) and (B) are not inconsistent with the Federal requirements.

C.43 The Pittson Coal Company further commented that W.S. 35–11–406(b)(xi), which allows certain landowners to veto mining and reclamation plans, would effectively result in depriving the mineral estate owner of his constitutional protection against a taking of his property without just compensation or due process of law.

The statutes of the Environmental Quality Act that the commenter is questioning became effective in Wyoming on July 1, 1973. The issue raised by the commenter is not a direct result of the passage of SMCRA or of the State program review. The Secretary believes that under Section 505(a) of SMCRA the Wyoming provisions are not inconsistent with the provisions of the Federal Act.

C.44 The Pittson Coal Company also requests clarification on parts of W.S. 35–11–406(b)(xi) and (xii). The company questions (a) whether or not W.S. 35–11–406(b)(xi) is subject in all respects to W.S. 35–11–406(b)(xii), (b) whether or not W.S. 35–11–406(b)(xii)(c) imposes a condition that may override new subsection (E), and (c) whether or not subsection (c) also imposes a condition that may override the legal authority which the mineral estate owner has under the conveyance he holds.

The Secretary suggests that the commenter contact the Wyoming Department of Environmental Quality to obtain clarification on the exact function of W.S. 35–11–406. This comment is not pertinent to the Secretary's approval of Wyoming's program. See comment 43.

C.45 Three Wyoming coal operators, Kerr McGee, Sunedco, and Amax, have asked that the Secretary disapprove portions of the Wyoming program containing provisions remanded or suspended in the district court decisions.

The May 16, 1980, memorandum order *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144) required the Secretary to affirmatively disapprove those segments of a State program that incorporate suspended or remanded regulations. On August 15, 1980, the court stayed its decision to allow the Secretary, upon the voluntary request of a State, to approve a State program which incorporates suspended or remanded regulations. The court also clarified that its May 16 memorandum did not affect the validity of provisions in a State program based on State law adopted prior to the SMCRA or provisions adopted by rulemaking proceedings conducted subsequent to the court's ruling. A State may independently adopt a regulation that the court has ruled the Secretary is without power to require.

In a letter dated August 5, 1980 (Administrative Record No. WY–220), the Governor of Wyoming voluntarily requested that the Secretary not disapprove any of the State's regulations on the basis of the decision in *In re: Permanent Surface Mining Regulation Litigation*. Therefore, pursuant to the stay order, the Secretary will not disapprove any of Wyoming's regulations on the basis that they are counterparts to remanded or suspended Federal regulations.

C.46 The Amax Coal Company states that Section 4 of the 1980 amendment to the Wyoming Environmental Quality Act limits the addition of conditions to the final program approval. Additionally, the commenter states that the use of any such conditions could jeopardize the triggering to the permit application process.

The Secretary disagrees with the commenter's analysis of Section 4 of the 1980 amendment to the Wyoming Environmental Quality Act concerning "final" approval of the State program. Governor Herschler stated, in response to OSM comments, that "any approval, conditional or otherwise, would be the final, appealable decision by the Secretary. Under the recently promulgated statutes governing surface coal mining operations, a *final* decision under Pub. L. 95–87 makes the new law on submitting permit applications effective." (Administrative Record No. WY–220). The Secretary has relied upon this interpretation in conditionally approving the Wyoming program.

C.47 Sunedco comments specifically on the State's adoption of the remanded Federal effluent standards that apply to runoff from reclaimed lands released as point source discharges from required sedimentation ponds. The company believes the State's use of these effluent standards for runoff from reclaimed lands is unjustified in light of the lack of current research data and in light of the district court opinion, *In re: Permanent Surface Mining Regulation Litigation* (May 16, 1980, Opinion at pp. 19–20).

Wyoming has, and will continue to use, these effluent limits as long as point source discharges from sediment ponds exist. This procedure is based on W.S. 35–11–301. However, Wyoming has promulgated Rule IV 3g(1), which will effectively make the effluent limitation applicable until baseline water quality is achieved in runoff from revegetated areas. The Secretary is not required to disapprove this State provision (*In re: Permanent surface Mining Reclamation Litigation, Civil Action No. 79–1144, August 15, 1980 (Partial Stay of May 16, 1980 Opinion)).*

F. Secretary's Decision

Background on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. The Act calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and safety and for the Secretary to assist the States in becoming the primary regulators under the Act. To enable the States to achieve that primacy, the Secretary has undertaken many activities of which several are particularly noteworthy.

The Secretary has worked closely with several State organizations such as the Interstate Mining Compact Commission, the Council of State Governments, the National Governors Association and the Western Interstate Energy Board. Through these groups OSM has frequently met with State regulatory authority personnel to duscuss informally how the Act should be administered, with particular reference to unique circumstances in individual States. Often these meetings have been a way for OSM and the States to test new ideas and for OSM to explain portions of the Federal requirements and how the States might meet them. Alternative State regulatory options, and the "State window" concept, for example, were discussed at several meetings of the Interstate Mining Compact Commission and the National Governors Association.

The Secretary has dispensed over $6.9 million in program development grants and over $37.6 million in initial program grants to help the States to develop their programs, to administer their initial programs, to train their personnel in the new requirements, and to purchase new equipment. In several instances OSM detailed its personnel to States to assist in the preparation of their permanent program submissions. OSM has also met with individual States to determine how best to meet the Act's environmental protection goals.

Equally important, the Secretary structured the State program approval process to assist the States in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each State program to identify needed changes and to allow them to be made without penalty to the State. The Secretary adopted a special policy to insure that communication between him and the States remained open and uninhibited at all times. This policy was critical to avoiding a period of enforced silence with a State after the close of the public comment period on its program and has been a vital part of the program review process (see 44 FR 54444, September 19, 1979).

The Secretary has also developed in his regulations the critical ability to approve conditionally a State program. Under the Secretary's regulations, conditional approval gives full primacy to a State even though there are minor deficiencies in a program. This power is not expressly authorized by the Act; it was adopted through the Secretary's rulemaking authority under 30 U.S.C. 201(c), 502(b), and 503(a)(7).

The Act expressly gives the Secretary only two options—to approve or dissapprove a State program. Read literally, the Secretary would have no flexibility; he would have to approve those programs that are letter-perfect and disapprove all others. To avoid that result and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to approve conditionally a program.

Conditional approval has a vital effect for programs approved in the Secretary's initial decision: It results in the implementation of the permanent program in a State months earlier than might otherwise be anticipated. While this may not be significant in States that already have comprehensive surface mining regulatory programs, in many States that earlier implementation will initiate a much higher degree of environmental protection. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands as unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the State's willingness to make good faith efforts to effect the necessary changes. Without the State's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulations says, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by the Act and these regulations" (44 FR 14961). That is, a State must be able to operate the basic components of the permanent program: the designation process; the permit and coal exploration systems; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be used.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular State in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities through an attorney general's opinion, revised regulations, policy statements, and changes in the narrative or the side-by-side.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow

meaningful public participation in the permitting process. Although this would not render the permit system incomplete because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of the Act that the deficiency would most likely be major.

The use of a conditional approval is not and cannot be a substitute for the adoption of an adequate program. Section 732.13(i) of Title 30 of the regulations gives the Secretary little discretion in terminating programs where the State, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional authority power is to assist States in achieving compliance with SMCRA, and not to excuse them from that responsibility.

Conditional Approval

The Wyoming program is in compliance with and has fulfilled all the requirements of SMCRA and in all other respects meets the criteria for approval, except for those deficiencies listed below.

1. Wyoming has failed to promulgate a definition of "complete application" for purposes of its determination in the permit process that all parts of the application are acceptable and the application is ripe for public notice, public comment and final decision. This definition is important because of its relation to the thoroughness and efficiency of the State review. The necessity of adopting such a definition results from procedural aspects of Wyoming's permit system which the Secretary did not impose. Wyoming's failure to adopt the definition was an oversight on its part. While the absence of this definition should be remedied, it is not so major as to require disapproval because the permit process can proceed for 270 days after program approval without the definition. The State has agreed to conduct rulemaking to promulgate such a rule; it would prefer ordinary but will undertake emergency rulemaking to make the rule effective immediately, if necessary.

2. Wyoming Rule I 2(98) defines toxic materials as those having "lethal" effects, while the Federal rule (30 CFR 701.5) uses the test of "detrimental" effects. This definition is important because it forms the basis for special treatment of various materials uncovered during mining. If the material is toxic then it must be kept away from water and ultimately buried rather than left on or near the surface. If the test is "lethal," there is too great a risk to fish and wildlife. While the difference between the tests merits correction, it is not so major as to require disapproval of the program. In most circumstances the results would be the same and the borderline cases in which the definition would make a difference are not likely to occur before the change is made. The State has agreed to promulgate by ordinary rulemaking an amendment to the Wyoming rule which would make it consistent with the Federal rule.

3. The existing Wyoming rules are inconsistent with the Federal regulations allowing intervention and the awarding of attorneys' fees in administrative proceedings. Both of these Federal regulations implement the strong public participation requirements of the Act. Attorneys' fees are specifically provided for in the Act in both administrative and judicial proceedings. However, this deficiency does not require disapproval; it is very unlikely that any circumstances will arise, before the State makes the correction, that will lead to inconsistent results. The State has agreed to undertake an ordinary rulemaking to promulgate an amendment to the Wyoming rule which would make it consistent with the Federal rule and, prior to final promulgation, to the extent possible, to interpret its existing administrative intervention rules to be consistent with the broad right of intervention in the Federal regulations.

4. Wyoming must require permit applicants to compy with certain portions of its permit application guidelines in order for Wyoming's program to be consistent with portions of the Federal Act and regulations. Without the authority to require compliance with its guidelines, the State could not legally insist on certain permit application information necessary, for instance, to identify fully alluvial valley floors and assure the protection of their hydrological function. The State has failed to demonstrate adequately that it may require compliance with its guidelines. While this deficiency should be corrected, it can be corrected by emergency rulemaking prior to the filing of permit applications and the State has agreed to exercise its discretion to obtain the information in the meantime if the need should arise. Wyoming has also agreed to promulgate a regulation by emergency rulemaking that would demonstrate its authority to require the necessary information.

5. The Wyoming provision for release of bonds at the conclusion of reclamation does not require that the revegetation measurements be made during the last two years of the bond period. This is important because revegetation can sometimes be successful immediately after fertilizing and watering but fail several years later when unaided. Thus, if success were measured in the early rather than last two years, bonds might be released despite revegetation failure. While this should be corrected, it is not so major a deficiency as to require disapproval. There is more than ample time to make the adjustment before any revegetation measurement or bond releases occur. The State has agreed to undertake an ordinary rulemaking to make its rule consistent with the Federal requirement that successful revegetation be measured during the two years immediately preceding bond release.

6. Wyoming has failed to require that, prior to approval of a permit, the applicant demonstrate that all reclamation fees required by 30 CFR Chapter VII, Subchapter R, have been paid. This is necessary to assure that the applicant has paid the tonnage fees on mined coal to the Abandoned Mine Reclamation Fund.

7. Wyoming has no provision governing judicial granting of temporary relief in accordance with Section 526(c) of SMCRA. Title 30 CFR 732.15(b)(15) provides that a State program may be approved only if it "[p]rovides for administrative and judicial review of State program actions, in accordance with sections 525 and 526 of the Act and subchapter L of this chapter." This omission in the State program may be corrected through rulemaking or through a demonstration that applicable State law is in accordance with Sections 525 and 526 of SMCRA.

Given the nature of these deficiencies and their magnitude in relation to all the provisions of the Wyoming program, the Secretary has concluded that they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i) because:

1. The deficiencies are of such a size and nature as to render no part of the Wyoming program incomplete since all other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII and these deficiencies, which will be promptly corrected, will not directly affect environmental performance at coal mines;

2. Wyoming has initiated and is actively proceeding with steps to correct the deficiencies; and

3. Wyoming has agreed, by letter dated September 15, 1980, to correct regulation deficiencies 1, 2, 3, and 5, 6, and 7 within 4 months and deficiency 4 within 30 days.

Accordingly, the Secretary is conditionally approving the Wyoming program. This approval shall terminate

if the seven deficiencies identified are not corrected by the above times.

This approval is effective November 26, 1980. Beginning on that date, the Wyoming Department of Environmental Quality shall be deemed the regulatory authority in Wyoming and all surface coal mining and reclamation operations on non-Federal and non-Indian lands and all coal exploration on non-Federal and non-Indian lands in Wyoming shall be subject to the permanent regulatory program.

On non-Federal and non-Indian lands in Wyoming the permanent regulatory program consists of the State program approved by the Secretary.

On Federal lands, the permanent regulatory program consists of the Federal rules made applicable under 30 CFR Chapter VII, Subchapter D, Parts 740–745. As discussed above under "Introduction," consideration of a Federal/State cooperative agreement for the Federal lands program is the subject of a separate rulemaking.

The Secretary's approval of the Wyoming program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884, Wyoming may submit a State reclamation plan now that its permanent program has been approved. At the time of such a submission, all provisions relating to abandoned mine reclamation will be reviewed by the Secretary.

Additional Findings

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this approval.

The Secretary has determined that this document is not a significant rule under Executive Order 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this approval.

Dated: November 20, 1980.

Joan M. **Davenport,**

Assistant Secretary of the Interior.

A new Part, 30 CFR Part 950, is adopted to read as follows:

PART 950—WYOMING

Sec.

950.1 Scope.

950.10 State program approval.

950.11 Conditions of State program approval.

Authority: Pub. L. 95–87, Section 503 (30 U.S.C. 1253).

§ 950.1 Scope.

This Part contains all rules applicable only within the State of Wyoming which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 950.10 State program approval.

The Wyoming State program, as submitted on August 15, 1979, and resubmitted on May 30, 1980, is approved, effective November 26, 1980. Copies of the approved program are available at:

Wyoming Department of Environmental Quality,
Land Quality Division,
Hathaway Building,
Cheyenne, Wyoming 82002.

Wyoming Department of Environmental Quality, Land Quality Division, Field Office, 30 East Grinnell Street, Sheridan, Wyoming 82801.

Wyoming Department of Environmental Quality, Land Quality Division, Field Office, 933 Main Street, Lander, Wyoming 82520.

Office of Surface Mining, Brooks Tower, 1020 15th Street, Denver, Colorado 80202; telephone: (303) 837–5421.

Office of Surface Mining, Department of the Interior, Room 153, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

§ 950.11 Terms and conditions of State program approval.

The approval of the State program will terminate unless the following conditions are fulfilled by the dates indicated:

(a) On or before four months after November 26, 1980, Wyoming must assure the Secretary that it is implementing a definition of "complete application" for purposes of W.S. 35–11–406, which is consistent with 30 CFR 770.5.

(b) On or before four months after November 26, 1980, Wyoming must promulgate an amendment to its rule defining toxic materials, to require only a showing of "deterimental" effects, or make other changes in its program to achieve the same result.

(c) On or before four months after November 26, 1980, Wyoming must establish requirements which are consistent with the Federal attorneys' fees and intervention regulation in 43 CFR Part 4.

(d) On or before 30 days after November 26, 1980, Wyoming must make its guidelines as enforceable as its rules.

(e) On or before four months after November 26, 1980, Wyoming must require revegetation productivity measurements in the *last* two consecutive years of the responsibility period, consistent with 30 CFR 816.116(b)(1)(ii).

(f) On or before four months after November 26, 1980, Wyoming must require that applicants for a permit demonstrate that all reclamation fees required by 30 CFR Chapter VII, Subchapter R, have been paid.

(g) On or before four months after November 26, 1980, Wyoming must demonstrate that its law and practice is in accordance with Section 526(c) of SMCRA with respect to its judicial grant of temporary relief, or, if it cannot so demonstrate, change its law or regulations to make them in accordance with Section 526(c).

[FR Doc. 80-36780 Filed 11-25-80; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 1680-7]

Approval and Promulgation of Implementation Plans, Ohio

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action revises the Federally promulgated Ohio State Implementation Plan for sulfur dioxide as it applies to the Ohio Edison North Avenue Plant in Mahoning County. This emission limitation revision is based upon ambient monitoring and emissions data provided by the Ohio Environmental Protection Agency and submitted to USEPA by the Ohio Edison Company. The ambient monitoring and emissions data demonstrate that the revised emission limitation will ensure the attainment and maintenance of the National Ambient Air Quality Standards.

EFFECTIVE DATE: December 26, 1980.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 886–6039.

SUPPLEMENTARY INFORMATION: On August 27, 1976 (41 FR 36324), the USEPA promulgated regulations establishing a State Implementation Plan (SIP) for the control of sulfur dioxide (SO_2) in Ohio. This final rule will amend that SIP as is applies to the Ohio Edison North Avenue Plant in Mahoning County.