NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8772-N	DOT-E 8772	Armak Co., Chicago, IL	49 CFR 172.101 column 6(b)	To authorize an increase in the net quantity limitation, not exceeding five gallons per package, for shipment of certain corrosive liquids and flammable liquids that are corrosive, when shipped via cargo-only aircraft. (Mode 4.)
8784-N	DOT-E 8784	Boeing Aircraft Co., Seattle, WA	49 CFR 173.245, 173.346	To authorize use of a DOT Specification 57 steel portable tank for shipment of certain corrosive materials or poison B liquids. (Mode 1.)
8786-N	DOT-E 8786	Gas Spring Corp., Colmar, PA	49 CFR 173.1200(a)(8)(i), 173.306(a)(1), 175.3.	To authorize use of a non-DOT specification cylinder for shipment of limited quantities of compressed gases. (Modes 1, 2, 3, and 4.)
8788-N	DOT-E 8788	Frontier Industries, Santa Maria, CA	49 CFR 173.119, 178.340-7	To authorize manufacture, marking and sale of non-DOT specification cargo tanks similar to DOT Specification MC-312 except for circumferential reinforcement with ring stiffeners, for shipment of crude oil, petroleum, classed as a flammable liquid. (Mode 1.)
8790-N	DOT-E 8790	Rose Industries, Inc., Angleton, TX	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks similar to DOT Specification MC-307/312 except for bottom outlet valve variation for shipment of liquid and semi-solid waste material. (Mode 1.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 8673-X	DOT-E 8673	Alaska International Airline, Anchorage, AK.	49 CFR 172.101(6)(b), 175.30	To authorize limited shipment of inhibited hydrochloric acid solution in a DOT Specification 60 rubber lined portable tank. (Mode 4).
EE 8738-X	DOT-E 8738	Flying Tiger Line, Los Angeles, CA	49 CFR 175.320(a)	To authorize transport of Class A explosives loaded on the same aircraft with Class C explosives and other cargo not presently permitted. (Mode 4).
EE 8746-X	DOT-E 8746	Rich International Airways, Inc., Miami, FL.	49 CFR 172.101, 175.320(a)	To authorize transport of Class A explosives loaded on the same aircraft with Class C explosives. (Mode 4).
EE 8803-N	DOT-E 8803	Resource Technology Services, Inc., Devon, PA.	49 CFR 172.101	To authorize one-time movement of silver picrate in two non-DOT specification glass bottles, packed in removable head metal drums and surrounded therein by vermiculite. (Mode 1).

DENIALS

5200-X Request by E. I. du Pont de Nemours & Company, Inc., Wilmington, DE to authorize use of DOT Specification 105A400W and 114A340W tank car tanks for shipment of flammable and nonflammable dispersant and refrigerant gases and-mixtures denied April 20, 1982, as being unnecessary.

8728-N Request by S.A.Y. Industries Inc., Leominster, MA to authorize shipment of packages of Gasohol Plus (over 99% methyl alcohol), classed as a flammable liquid, without the flammable liquid label thereon denied April 20, 1982.

8771-N Request by Spencer Kellogg, Buffalo, NY to authorize marking of a compartmented cargo tank loaded with both a flammable and a combustible resin solution with only the identification number of the flammable resin solution denied April 20, 1982.

EE 8777-N Request by M&T Chemical Inc., Rahway, NJ to authorize an emergency exemption to ship tin tetrachloride, anhydrousin DOT Specification 6D/2SL packaging denied April 30, 1982.

8796-N Request by Petroplex Acidizing, Inc., Midland, TX to authorize shipment of hydrochloric acid solution in non-DOT specification steel cargo tanks denied April 15, 1982.

Issued in Washington, DC, on May 19, 1982.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 82-14634 Filed 5-28-82; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular; Public Debt Series—No. 14-82]

Interest Rates; F-1987 Series

May 26, 1982.

The Secretary announced on May 25, 1982, that the interest rate on the notes designated Series F-1987, described in Department Circular; Public Debt Series—No. 14-82 dated May 19, 1982, will be 13¾ percent. Interest on the notes will be payable at the rate of 13¾ percent per annum.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-14767 Filed 5-28-82; 8:45 am]

BILLING CODE 4810-40-M

Hazardous Substance Liability Insurance; Feasibility of Private Insurance for Post-Closure Financial Responsibility

AGENCY: Office of Financial Institutions and Capital Markets Policy, Office of the Secretary, Treasury.

ACTION: Cancellation of public hearing.

INFORMATION: The Comprehensive Environmental Response, Compensation and Liability Act of 1980 requires the President to make a determination, after a public hearing, on the feasibility of establishing or qualifying an optional system of private insurance for post-closure financial responsibility for hazardous waste disposal facilities. On May 5, 1982, the Department published a public notice (See 47 FR 19504) stating that a public hearing on this issue would be held on June 2, 1982 in the Main Treasury Building, Washington, D.C., if interested persons wished to make an oral presentation. The Department also stated that it would consider any written data that interested persons may wish to submit in lieu of making a presentation at a hearing.

Since no person has requested to make an oral presentation, there will be no hearing on June 2, 1982. The Department will consider, however, all

written comments that interested persons may wish to submit, provided such comments are received by June 9, 1982.

ADDRESS: All comments should be sent to Gordon Eastburn, Acting Deputy Assistant Secretary, Office of Financial Institutions and Capital Markets Policy, Room 3025, Department of the Treasury, Washington, D.C., 20220.

FOR FURTHER INFORMATION CONTACT: Mark G. Bender, Senior Economist, Office of Financial Institutions and Capital Markets Policy, Room 2206, Department of the Treasury. Telephone (202) 566–2505.

Dated: May 26, 1982.

Gordon Eastburn,

Acting Deputy Assistant Secretary.

[FR Doc. 82–14821 Filed 5–28–82; 8:45 am]

BILLING CODE 4810–28–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 105
Tuesday, June 1, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

INTERNATIONAL TRADE COMMISSION

[USITC SE-82-20]

TIME AND DATE: 3:30 p.m., Tuesday, June 8, 1982.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation 731-TA-93 (Frozen French Fried Potatoes from Canada)—briefing and vote.
6. Investigation 731-TA-94 (Bicycle Tires and Tubes from Taiwan)—vote.
7. Any items left over from previous agenda.

Portions closed to the public:

6. Investigation 731-TA-94 (Bicycle Tires and Tubes from Taiwan)—briefing.

CONTACT PERSON FOR MORE INFORMATION. Kenneth R. Mason, Secretary, (202) 523-0161.

[S-811-82 Filed 5-27-82; 10:14 am]

BILLING CODE 7020-02-M

2

LEGAL SERVICES CORPORATION

(Presidential Search Committee).

TIME AND DATE: 2 p.m.-5 p.m., Tuesday, June 15, 1982. (Continuation of the meeting is planned for June 16, 1982, as time permits)

PLACE: Legal Services Corporation, 733 15th Street, NW., Eighth floor conference room 2, Washington, D.C.

STATUS OF MEETING: Open (Portion of the meeting will be closed to discuss a personnel matter under 45 CFR 1622.5(a) and 1622.5(e)).

MATTERS TO BE CONSIDERED:

1. Status of Presidential Search.
2. Procedures for Final Selection.
3. Personnel Matters (Closed).

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Office of the President, (202) 272-4040.

Dated: May 26, 1982.

Gerald M. Caplan,
Acting President.

[S-810-82 Filed 5-27-82; 10:11 am]

BILLING CODE 6820-35-M

3

LEGAL SERVICES CORPORATION

(Provision of Legal Services Committee)

TIME AND DATE: 10 a.m.-12:30 p.m., Tuesday, June 15, 1982.

PLACE: Legal Services Corporation, 733 15th Street, NW., Eighth floor conference room 2, Washington, D.C.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Alternative Delivery Structure.
2. Private Bar Involvement.
3. Support Centers.
4. Client Representation.

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Office of the President, (202) 272-4040.

Dated: May 26, 1982.

Gerald M. Caplan,
Acting President.

[S-809-82 Filed 5-27-82; 10:11 am]

BILLING CODE 6820-35-M

4

LEGAL SERVICES CORPORATION

(Board of Directors)

TIME AND DATE: June Meeting as required by 45 CFR 1601.15(a) first Friday of June, 10 a.m. "Cancelled."

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Office of the President, (202) 272-4040.

Dated: May 26, 1982.

Gerald M. Caplan,
Acting President.

[S-812-82 Filed 5-27-82; 10:25 am]

BILLING CODE 6820-35-M

federal register

Tuesday
June 1, 1982

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

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

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

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

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

ACTION: Final rule.

SUMMARY: On December 22, 1981, the State of Illinois resubmitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This follows an initial approval in part and disapproval in part of the proposed program which was published in the **Federal Register** on October 31, 1980 (45 FR 72468–72505). The purpose of the resubmission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII. Only those portions of the State's original submission which were not initially approved or which were changed are considered in this decision. This rule grants conditional approval of the Illinois permanent regulatory program.

A new Part 913 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This conditional approval is effective June 1, 1982. This conditional approval will terminate as specified in 30 CFR 913.11 unless the deficiencies identified below have been corrected in accordance with the dates specified in 30 CFR 913.11, adopted below.

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

Office of Surface Mining, Administrative Record, Room 5315, 1100 "L" Street, NW, Washington, D.C., Phone: (202) 343–7896.

Office of Surface Mining, Federal Building and U.S. Courthouse, Fifth Floor, Room 510, 46 East Ohio Street, Indianapolis, Indiana 46204

Illinois Department of Mines and Minerals, Division of Land Reclamation, 227 South 7th Street, Suite 204, Springfield, Illinois 62706

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Abbs, Chief, Division of State Program Assistance, Program Operations and Inspection, Office of Surface Mining, Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW, Washington, D.C. 20240, Phone: (202) 343–5351

SUPPLEMENTARY INFORMATION:

A. General Background

The general background on the permanent program, the program approval process, and the Illinois program submission were discussed in the October 31, 1980 **Federal Register**, (45 FR 72468–72505). Amendments to the Federal permanent program regulations were published December 12, 1980 (45 FR 82084–83100); January 23, 1981 (46 FR 7894 and 7906); July 17, 1981 (46 FR 37232); August 17, 1981 (46 FR 41702); September 29, 1981 (46 FR 47720), October 8, 1981 (46 FR 50018–50019); October 28, 1981 (46 FR 53376), and November 2, 1981 (46 FR 54495). An interpretive rule was published November 7, 1980 (45 FR 73945–73946). Additional regulations were suspended August 19, 1981 (46 FR 42063) and December 7, 1981 (46 FR 59934), pending further rulemaking.

In the October 31, 1980 **Federal Register** notice, the Secretary announced his partial approval and partial disapproval of the Illinois program. The Illinois surface mining legislation was enacted September 22, 1979. The legislative provisions in the State's initial submission were approved with the exceptions noted under the heading "Approval in Part/Disapproval in Part", October 31, 1980 (45 FR 72504–72505). The program narrative portions of the initial submission were approved with the exceptions noted in the individual findings Nos. 14 through 31 in the October 31, 1980 **Federal Register** (45 FR 72468–72505). The proposed rules submitted by Illinois on June 16, 1980, were not fully promulgated by the 104th day following program submission, as required by 30 CFR 732.11(d). Therefore, the October 31, 1980 **Federal Register** notice did not contain findings on the State's regulatory provisions. However, the Illinois regulations were promulgated on September 12, 1980, and amendments subsequent to that time were adopted on January 4, 1982. The regulations become effective on the date of approval of the Illinois program.

B. Background on the Illinois Resubmission

In accordance with the procedures set forth in 30 CFR 732.13(f), the State of Illinois originally had 60 days from the date of publication of the Secretary's partial approval decision on October 31, 1980, to resubmit a revised program for consideration. On December 11, 1980, the Seventh Judicial Circuit Court of Sangamon County, Illinois enjoined the Illinois Department of Mines and Minerals (IDMM) from submitting or resubmitting to the Office of Surface Mining (OSM) the Illinois State program until June 11, 1981. The injunction was later extended for an additional six months, to December 11, 1981. Under the general statement of policy issued by OSM on August 26, 1981 (46 FR 43041–43043), the State had sixty days from the date the injunction was lifted within which to resubmit its program. The State submitted its revised program for consideration on December 22, 1981. Announcement of the Illinois resubmission was made in newspapers of general circulation within the State of Illinois and published in the **Federal Register** on December 24, 1981 (46 FR 62477–62478). That **Federal Register** notice also announced a public comment period extending to January 25, 1982, and a public hearing which was held on January 18, 1982, in Springfield, Illinois. Illinois submitted modifications to the resubmission on April 13, 1982, and a public comment period was opened on these modifications from April 14, through April 29, 1982.

Public disclosure of comments by Federal agencies was made on March 9, 1982 (47 FR 10058). On May 13, 1982 the Administrator of the Environmental Protection Agency transmitted her written concurrence on the Illinois program.

The Regional Director completed his program review on May 10, 1982, and forwarded the public hearing transcripts, written presentations, and copies of all comments to the Director together with a recommendation that the program be conditionally approved.

On May 13, 1982, the Director recommended to the Secretary that the Illinois program be conditionally approved.

The basis and purpose statement for the Secretary's decision to conditionally approve the Illinois program consists of this notice and the October 31, 1980 **Federal Register** notice, announcing the Secretary's initial decision. The Illinois program consists of the formal submission of March 3, 1980 (Administrative Record No. (ARN) ILL–0003), as amended on June 16, 1980, July 30, 1980, December 22, 1981, April 13, 1982, and April 28, 1982 (ARN ILL–0103, 0358, 0384, 0451 and 0465), and as clarified in meetings with Illinois described below.

Throughout the remainder of this notice, "Illinois program" or "Illinois

submission" is used to mean the documents cited above together with those parts of the initial submission partially approved on October 31, 1980. The term "resubmission" only refers to those portions of the Illinois program resubmitted on December 22, 1981 (ARN ILL–0384), as modified on April 13 and 28, 1982 (ARN ILL–0451 and 0465). The term "March 18 and 19, 1982, meeting" refers to a meeting held between OSM and the IDMM (ARN ILL–0443), the purpose of which was to discuss apparent deficiencies which had been found in the Illinois program submission.

On December 19, 1980, the State of Illinois sued OSM and the Department of Interior, alleging that the Secretary's initial decision was procedurally incomplete in that it failed, among other things, to specify those parts of the Illinois submittal which were specifically approved, to consider alternatives submitted, and to include sufficient detail to enable the State to prepare properly a resubmittal. The Secretary determined that his action was procedurally incomplete, as alleged, and a Stipulation for Consent Decree was approved and entered by Judge J. Waldo Ackerman in the U.S. District Court for the Central District of Illinois on August 14, 1981. Under the Consent Decree, the parties agreed to a number of items, including the following:

1. That in the October 31, 1980 initial decision, the Secretary failed to indicate those portions of the Illinois program that were approved, he did not consider as "state windows" the alternatives to the Secretary's regulations submitted by Illinois, and he did not take into account the regulations submitted to OSM on July 30, 1980.

2. The Illinois program submittal should be completely reexamined.

3. In order to provide for the resubmission of Illinois' program, the parties would initiate a series of meetings and discussions to reexamine the program to identify approved portions and review and identify those revised provisions which appear approvable, subject to any public comments or new information brought to OSM's attention during the formal review of Illinois' resubmission.

4. Illinois would resubmit its proposed program to the Secretary as soon as the injunction is lifted.

5. Meetings pursuant to the Consent Decree would be conducted in accordance with the Secretary's guidelines for contacts with Interior Department employees and officials during consideration of State permanent regulatory programs (44 FR 54444–54445, September 19, 1979).

When the Secretary announced his initial decision on the Illinois program, he included with the analysis his findings on the program provisions. During the period from the date of publication of the Secretary's decision (October 31, 1980) to the date of the resubmission (December 22, 1981), OSM and IDMM held several meetings to discuss the Secretary's findings and proposed additions or amendments to the Illinois program. The meetings were held on November 20, 1980, December 9 and 10, 1980, June 30 and July 1, 1981, and August 24 and 25, 1981. These meetings were conducted in accordance with OSM's Guidelines for Postsubmission Contacts Between the Department of the Interior, the States and the Public (44 FR 54444–54445, September 19, 1979). The results of these meetings are documented in the Administrative Record (ARN ILL–0251, 0304, 0305, 0347, and 0360), as are additional letters from OSM to IDMM (ARN ILL–0233, 0338, 0340, 0370, 0378 and 0462) providing comments on the status of the Illinois program. A number of deficiencies cited in the Secretary's initial decision were tentatively resolved at these meetings and except as noted under the heading "Secretary's Findings" below, Illinois has amended its program through its resubmission to correct the remaining deficiencies cited in the notice announcing the Secretary's initial decision. Previous findings such as 14.1 (45 FR 72472) and 15.1 (45 FR 72473) which were positive in nature and did not require further action are not rediscussed in this decision. Where appropriate, the reader is referred to specific findings in the October 31, 1980, **Federal Register** notice for a complete discussion of the issues.

C. Secretary's Findings

In reaching his decision to conditionally approve the Illinois program submission, the Secretary finds, in accordance with Section 503(a) of SMCRA and 30 CFR 732.15, that Illinois has the capability, except as noted below, to carry out the provisions of SMCRA and to meet its purposes in the following ways. Findings made under Section 503(a) (1) through (7) and (b) (1) through (4) are numbered (1) through (11). Findings made under 30 CFR 732.15(a), (b) (1) through (16), (c), and (d) are numbered (12) through (31).

Finding 1

The Illinois Surface Coal Mining Land Conservation and Reclamation Act (Illinois SCMLCRA), and the regulations adopted thereunder provide, except as noted in the findings below, for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands in Illinois in accordance with SMCRA. This finding is based on the requirements of Section 503(a)(1) of SMCRA (30 U.S.C. 1253(a)(1)). The issues underlying this finding are analyzed in Findings 12 through 31, below.

Finding 2

The Illinois SCMLCRA provides, except as noted in the finding below, sanctions for violations of Illinois 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 Illinois Department of Mines and Minerals or its inspectors.

This finding is based on the requirements of Section 503(a)(2) of SMCRA (30 U.S.C. 1253(a)(2)). The issues underlying this finding are analyzed in Finding 21, below.

Finding 3

The Illinois Department of Mines and Minerals has sufficient administrative and technical personnel and sufficient funds to enable Illinois to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. This finding is based on the requirements of Section 503(a)(3) of SMCRA (30 U.S.C. 1253(a)(3)).

Finding 4

Illinois SCMLCRA 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-Federal and non-Indian lands within Illinois.

This finding is based on the requirements of Section 503(a)(4) of SMCRA (30 U.S.C. 1253(a)(4)).

Finding 5

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

This finding is based on the requirements of Section 503(a)(5) of SMCRA (30 U.S.C. 1253(a)(5)). The issues underlying this finding are analyzed in Finding 22, below.

Finding 6

Illinois 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 is based on the requirements of Section 503(a)(6) of SMCRA (30 U.S.C. 1253(a)(6)).

Finding 7

Illinois has, except as noted in the findings below, fully enacted regulations consistent with regulations issued pursuant to SMCRA.

This finding is based on the requirements of Section 503(a)(7) of SMCRA (30 U.S.C. 1253(a)(7)). The issues underlying this finding are analyzed in Findings 14–31, below.

Finding 8

The Secretary has, through OSM, solicited and publicly disclosed on March 9, 1982 (47 FR 10058), 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 Illinois program.

This finding is based on the requirements of Section 503(b)(1) of SMCRA (30 U.S.C. 1253(b)(1)).

Finding 9

The Secretary has obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Illinois program being approved today which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*, and the Clean Air Act, as amended, 42 U.S.C. 1857 *et seq.*

This finding is based on the requirements of Section 503(b)(2) of SMCRA (30 U.S.C. 1253(b)(2)).

Finding 10

The Secretary has, through OSM, held a public review meeting in Springfield, Illinois on April 10, 1980, to discuss the completeness of the Illinois program submission, held public hearings in Springfield, Illinois on July 24, 1980, and Marion, Illinois on July 25, 1980, on the adequacy of the Illinois program submission, and held a public hearing on the resubmission of the Illinois program on Janaury 18, 1982, in Springfield, Illinois.

This finding is based on the requirements of Section 503(b)(3) of SMCRA (30 U.S.C. 1253(b)(3)).

Finding 11

The Secretary finds that the State of Illinois has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII.

This finding is based on the requirements of Section 503(b)(4) of SMCRA (30 U.S.C. 1253(b)(4)).

Finding 12

In accordance with 30 CFR 732.15, the Secretary finds, on the basis of information in the Illinois program submission, including the section-by-section comparison of the Illinois law and the regulations with SMCRA and 30 CFR Chapter VII, public comments, testimony and written presentations at the public hearings, and other relevant information, that the Illinois program provides, except as noted in the findings below, for Illinois to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII. The issues underlying this finding are analyzed in the findings discussed throughout this **Federal Register** notice.

Finding 13

Finding 13 of the October 31, 1980 **Federal Register** notice stated that the Illinois permanent program submission did not contain any proposed "state window" alternative approaches under the provisions of 30 CFR 731.13 (44 FR 15324). However, under the Stipulation for Consent Decree entered into by OSM and Illinois, OSM agreed that it had failed to consider as "state windows" the alternatives to the Secretary's regulations submitted by Illinois. Since that Consent Decree was filed on August 14, 1981, the Federal standards for reviewing State alternatives have been amended. The amended rules (46 FR 53376–53389, October 28, 1981) provide that a State may adopt and the Secretary may approve any provisions which are as effective as the Federal regulations in meeting the requirements of SMCRA. Therefore, any alternative approaches proposed by Illinois have been reviewed under the new standard.

Finding 14

The Secretary finds that the Illinois Department of Mines and Minerals has the authority under Illinois law to implement, administer, and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K, and the Illinois program includes provisions, except as noted below, adequate to do so. Special provisions comparable to 30 CFR Parts 820, 822 and 825 for anthracite mines, alluvial valley floors, and special bituminous mines, are not applicable to or included in Illinois law or regulations. This finding is made under the requirements of 30 CFR 732.15(b)(1). Illinois incorporates provisions corresponding to Sections 515 and 516 of SMCRA in Articles III and IV, Illinois SCMLCRA and in the Illinois State Program Regulations Parts 1816 and 1817. Discussion of significant issues raised during the review of the Illinois environmental performance standards follows.

14.1 In response to findings made in the October 31, 1980 **Federal Register**, the State has changed the narrative discussion or promulgated regulations which are substantially identical to their Federal counterparts. For this reason, the Secretary finds that the problems raised by the following findings from the October 31, 1980 **Federal Register** no longer exist: 14.2, 14.4, 14.6, 14.7, 14.8, 14.10, 14.14, 14.15 and 14.16.

14.2 *Rule 1816.49(c)*—In the regulations concerning proposed permanent impoundments, Illinois provides that perimeter slopes shall be stable and consistent with the intended use and shall not be steeper than the angle of repose. The Federal regulation, 30 CFR 816.49(c), provides that the maximum slope adjacent to a proposed permanent impoundment must be 2h:1v. At the March 18 and 19, 1982 meeting (ARN ILL–0443), Illinois explained that the controlling factors in this rule are that the slopes be stable and consistent with the intended use of the impoundment and that the maximum slope allowed would depend on the use of the impoundment. The Secretary assumes that Illinois would not approve in a permit application any permanent impoundment unless the State made the necessary findings that perimeter slopes would be stable and consistent with the postmining use of the impoundment. Based on this understanding, the Secretary finds that the Illinois rule is as effective as 30 CFR 816.49(c) and therefore consistent with the Federal regulations.

14.3 *Rules 1816.64(a) and 1817.65(a)*—Illinois rule 1816.64(a) requires publication of a blasting schedule before beginning a blasting program in which blasts using more than 25 pounds of explosives are to be detonated. The Federal requirements for surface mines in 30 CFR 816.61(b) and 816.64(a)(1) provide that blasts using more than five pounds of explosive or blasting agent shall be conducted according to the published schedule. Illinois rule 1817.65(a) requires notice to residents before beginning a blasting program in which blasts using more than 25 pounds of explosives are to be

detonated. The Federal requirements for surface effects of underground mines in 30 CFR 817.65(a) provide that residents or owners of any dwelling located within one-half mile of the permit area are to be notified prior to *any* blasting event. Therefore, the Secretary finds the Illinois provisions are inconsistent with the Federal rules. As a condition of approval, Illinois must modify its regulations to: (1) Require publication of a blasting schedule for blasts using more than five pounds of explosives, consistent with 30 CFR 816.64(a); and (2) require notification of residents of *any* surface blasting event, consistent with 30 CFR 817.65(a).

14.4 *Rule 1816.103(a)(1)*—The Illinois regulation concerning cover or treatment of toxic materials and coal seams allows for covering the pit floor and the highest coal seam with a minimum of four feet of water. The Federal regulation, 30 CFR 816.103, does not allow for cover with water. Illinois submitted technical data (ARN ILL–0384, Volume R5) to support its contention that cover with water of final cut pits is an effective method of treatment. Illinois stated that when water covers a coal seam, air, an essential ingredient to acid production, is excluded, and no acid formation will occur. This conclusion is based on principles of pyrite oxidation, an acid producing process, and oxygen diffusion. OSM reviewed the technical reports used by Illinois to support its contention.

The Secretary finds that, while the general concept of covering with water has merit, the average depth of the study lakes used in the technical reports was nine meters or 29½ feet. OSM concurs that thermal stratification is effective in isolating the bottom strata (hypolimnion) from receiving or replenishing oxygen supplies from the upper strata (epilimnion). However, thermal stratification does not occur in fresh-water lakes unless they are approximately ten meters deep. In order to achieve an effective separation between the pyrites and the oxygen required to produce acid, the level of dissolved oxygen must be kept near zero. The most productive aquatic habitat is in shallow water up to a depth of one meter (3.3 feet) and this zone contains the highest levels of dissolved oxygen. Dissolved oxygen levels rise considerably during daylight hours as photosynthesis occurs in these shallow areas. In conclusion, covering with four feet of water is not effective in preventing acid production. At a minimum, the column of water should be about ten meters (33 feet) to assure strong thermal stratification and minimum levels of dissolved oxygen.

OSM conveyed its analysis of this rule in a letter to Illinois dated April 20, 1982 (ARN ILL–0462). Illinois submitted additional information in support of this proposal, dated April 28, 1982 (ARN ILL–0465). This material arrived too late to be made available for public review and comment. However, OSM analyzed this information and concluded that it did not provide adequate technical justification for approving this Illinois provision. Therefore, the Secretary cannot find that the Illinois provision is consistent with the Federal regulations or Section 515(b)(14) of SMCRA. The Secretary, however, has directed OSM to work with Illinois to further analyze the technical literature and provide assistance in developing a proposal consistent with the Act and the Federal regulations. Pending completion of that effort, the Secretary will condition approval of the Illinois program upon revisions to require a minimum cover of ten meters (33 feet) of water or to otherwise make the State program consistent with the Federal rule.

14.5 *Rule 1817.71(g)*—Illinois would allow depressions or impoundments on excess spoil fills when approved by the regulatory authority. The Federal regulations, 30 CFR 817.71(g), prohibit this practice in order to minimize infiltration of surface water into the fill so as to maintain the lowest possible hydrostatic pressure within the fill. Illinois has explained (ARN ILL–0451) that it does not intend to approve any "accidental" impoundments and that the Illinois provision was intended to address a situation where underground development waste is incorporated in the construction of coal processing waste impoundments.

Illinois explained further that the possibility of excess spoil fills in the establishment of an underground mine in Illinois is unlikely. In a situation where mine development waste is incorporated into the construction of coal processing waste impoundments, the requirements of Illinois rules 1817.91–1817.93 must be met, ensuring that safety and environmental concerns will be properly addressed. Illinois rules 1817.91–1817.93 are requirements for design and performance standards for coal processing waste dams and embankments. This approach is consistent with that followed by the Mine Safety and Health Adminstration. Based on this explanation and Illinois' assurance that it does not intend to approve any accidental impoundments, the Secretary finds rule 1817.71(g) no less effective than the Federal regulations.

14.6 *Rule 1816.22*—The Illinois performance standard for topsoil is entitled "Placeland Topsoil." The Illinois term "placeland" is defined as "undisturbed land prior to any mining activity." In order to make it clear that this does not exempt previously mined areas from the topsoil requirements, Illinois submitted a policy statement (ARN ILL–0451) explaining that the words "before any mining activity" are intended to refer only to the mining activity involved in the permit application which would be presently under consideration. Illinois explained that on some older, previously mined lands, topsoil was not required to be replaced and thus topsoil and/or substitute material may not be available. If topsoil and/or substitute material is present on an area that is to be re-mined, it must be removed pursuant to Section 1816.22. Based on this assurance, the Secretary finds the Illinois rule no less effective than the Federal regulations.

14.7 *Rule 1816.46*—Illinois uses the term "siltation structures" in connection with the performance standards for sediment control, and requires that such structures be designed, constructed and maintained in accordance with the "best technology currently available" (BTCA). The Illinois term "siltation structures" includes "sedimentation ponds." The Illinois rule would allow variances from the requirement of a sedimentation pond if an operator demonstrates that BTCA in a given situation is a siltation structure other than a sediment pond. The Federal rules, 30 CFR 816.46 and 817.46, require the use of sedimentation ponds because Section 515(b)(1)(B) requires BTCA for sediment control and at the present time, BTCA for sediment control is sedimentation ponds 44 FR 15159 (March 13, 1979). Illinois has submitted a statement (ARN ILL–0451) that it intends to retain the language currently used in its regulations and should a permit application propose to use a method other than a sediment pond and Illinois determines that this proposal is a better technology than use of a sediment pond, Illinois will submit the proposal to OSM for comment during the permit review process and prior to final action. The Secretary does not find this statement sufficient to assure that the Illinois rule is as effective as the Federal rule in meeting the requirements of Section 515(b)(10). Therefore, approval of the Illinois program is conditioned upon submission of a policy statement to the effect that Illinois understands that, at the present

time, BTCA for sediment control is sedimentation ponds and should Illinois wish to approve anything else, the State will first send the proposal to OSM for review and approval as either an experimental practice or a program amendment. The Secretary has directed OSM to work with Illinois to develop alternative approaches that will meet the requirement to use BTCA for sediment control.

14.8 *Rules 1816.133(c) and 1817.133(c)*—The Illinois rules omit the specific approval criteria for alternative postmining land uses contained in 30 CFR 816.133(c) and 817.133(c). Illinois has submitted a policy statement (ARN ILL–0451) explaining that all the factors in 30 CFR 816.133(c) applicable to area mining are included in the Illinois regulations. Sections 1780.2, 1780.18, 1780.23, 1816.97, 1816.100, 1816.133 (a), (d), and 1817.133 (a), (d). Based on this explanation, and after reviewing the provisions cited by the State, the Secretary finds the Illinois rules consistent with the Federal requirements and Section 515(b)(2) of SMCRA.

Finding 15

The Secretary finds that the Illinois Department of Mines and Minerals has the authority under Illinois law and the Illinois program includes provisions to implement, administer and enforce a permit system consistent with 30 CFR Subchapter G. This finding is made under the requirements of 30 CFR 732.15(b)(2).

Illinois incorporates provisions corresponding to Sections 506, 507, 508, 510, 511 and 513 of SMCRA and Subchapter G of 30 CFR Chapter VII in Article II, Illinois SCMLCRA and in the Illinois Regulations Parts 1770, 1771, 1778, 1779, 1780, 1782, 1783, 1785, 1786, 1787 and 1788.

Discussion of significant issues raised during the review of the Illinois permitting provisions follows.

15.1 In response to findings made in the October 31, 1980 **Federal Register**, the State has changed the narrative discussion or promulgated regulations which are substantially identical to their Federal counterparts. For this reason, the Secretary finds that the problems raised by the following findings from the October 31, 1980 **Federal Register** no longer exist: 15.2, 15.4, 15.8 and 15.9.

15.2 *Rule 1785.23(b)*—Illinois has provided an entirely new permitting category called "minor underground mine facilities not at or adjacent to the processing or preparation facility or area," which includes air shafts, fan and ventilation buildings, small support buildings, access power holes, and other small structures and roads. Illinois explained in its legal opinion (ARN ILL–0384, Volume R5) that this rule was adopted to take into account the distinct differences between surface and underground mining. There is no Federal counterpart to this provision. This category of facilities would be subject to an abbreviated permit application and review period on the basis that these types of structures have a very minimal impact on the land and the environment. The Secretary expressed a concern in the March 18 and 19, 1982 meeting (ARN ILL–0443) that air shafts are often large structures which can cause an extensive amount of surface disturbance and affect the hydrologic balance. Illinois has submitted a policy statement (ARN ILL–0451) explaining that:

(1) Illinois Rule 1785.23(c)(2)(v) requires a description of the measures to be used to comply with the applicable requirements of Section 1817.182; (2) Illinois Rule 1817.182(a) requires application of applicable performance standards of Parts 1817–1828 if such minor facilities significantly affect land, air or water resources; and (3) Illinois Rule 1817.182(k) requires that minor facilities be utilized in a manner which minimizes disturbance of the prevailing hydrologic balance and shall include sediment control measures such as those listed in 1817.45 or siltation structures which comply with 1817.46. Further, the IDMM may specify additional measures to be adopted by the permittee. Thus, should an air shaft be a large structure which may affect the environment, it would not be eligible for treatment under rule 1785.23(b). Based on these assurances, the Secretary finds the Illinois provision consistent with the Federal regulations.

15.3 *Rule 1784.20.* This Illinois rule requires underground permit applications to contain subsidence control information. The Illinois rule, which is virtually identical to its Federal counterpart, 30 CFR 784.20, provides that an application shall include a survey to show whether structures or renewable resource lands exist within the proposed permit and adjacent area and whether subsidence, if it occurred, could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands. If the survey makes this showing, a subsidence control plan is required which describes the measures to be taken to prevent or mitigate such effects.

However, because Illinois does not permit and bond the "shadow area" (the area beyond the permit area in which underground mine workings are located) much of the information required for the permit area under the Federal rule would not be required under the narrower Illinois definition of permit area. In order to accommodate this difference, Illinois adopted subsection (e) to Section 1784.20 which provides that applications for underground mining permits shall include as an appendix to the subsidence control plan "the information required concerning permit areas (also set out elsewhere in the application) together with all such information pertaining to *shadow areas*, described by the following sections: 1782.16(a), 1783.12(b), 1783.13(a), 1783.14(a), 1783.14(a)(2), 1783.15(a), 1783.22(b), 1783.24(e), (i), (j), (k), 1783.25(a), (d), (e), (g), 1784.11, 1784.20 and 1784.23(a)." (Emphasis added) The Illinois rule thus requires information in the subsidence control plan for the permit, shadow and adjacent areas which is consistent with the Federal requirement in 30 CFR 784.20.

At the March 18 and 19, 1982 meeting (ARN ILL–0443), OSM expressed concern that because the Illinois rule requires the survey only for the permit and adjacent areas, the shadow area seemed to be excluded. Thus, although 1784.20(e) would protect the shadow area through the subsidence control plan, the plan is not required unless a survey first shows that subsidence could damage existing resources. Illinois assured OSM that it was its intention to require the survey for the shadow area as well as the permit and adjacent areas, and pointed to the legal opinion (Volume R5) as demonstrating that the survey requirement included the shadow area. Illinois also submitted a policy statement (ARN ILL–0451) assuring OSM that it interprets its rules to require a survey for the shadow area. Specifically, Illinois noted that in adopting 1784.20(e), the State requires all applications to include "information required concerning the permit areas together with all such information pertaining to the shadow areas, described by the following sections: "* * * 1784.20 * * *." Thus, Illinois interprets the provision to require a survey of the shadow area. In addition, Illinois noted that subsidence control plans will probably always be necessary in Illinois, due to the existence of renewable resource lands within the State. Therefore, any permit application claiming that no such lands exist will draw immediate attention and be closely scrutinized.

Based on these assurances, the Secretary finds that Illinois rule 1784.20 has provided for subsidence control as effective as that required by 30 CFR 784.20.

Finding 16

The Secretary finds that Illinois Department of Mines and Minerals has the authority to regulate or prohibit coal exploration consistent with 30 CFR Parts 776 and 815 (coal exploration), and that the Illinois program includes provisions adequate to do so. This finding is made under the requirements of 30 CFR 732.15(o)(3).

The Illinois program incorporates provisions corresponding to Section 512 of SMCRA and 30 CFR Parts 776 and 815 in Article V, Illinois, SCMLCRA, and in the Illinois Regulations Parts 1776 and 1815.

Finding 17

The Secretary finds that the Illinois Department of Mines and Minerals does not have the authority under Illinois law and regulations to require that persons extracting coal incidental to government-financed construction maintain information on site consistent with 30 CFR Part 707.

However, the Illinois program does not contain provisions corresponding to Section 528(3) of SMCRA and 30 CFR Part 707 exempting the extraction of coal which is incidental to government-financed construction from the requirements of its program. Under the Illinios law and regulations, all such operations are subject to the full requirements of the State law and regulations. Therefore, the Illinois program is consistent with SMCRA. This finding is made under the requirements of 30 CFR 732.15(b)(4).

Finding 18

The Secretary finds that the Illinois Department of Mines and Minerals has the authority under Illinois law to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within Illinois consistent with the requirements of Section 517 of SMCRA (inspection and monitoring) and 30 CFR Subchapter L (inspection and enforcement) and that the Illinois program includes provisions adequate to do so. This finding is made under the requirements of 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 are found in Article VIII, Illinois SCMLCRA and in the Illinois Regulations Parts 1840, 1842, 1843, and 1845. Discussion of significant issues raised during review of the Illinois inspection and monitoring provisions follows.

18.1 In response to findings made in the October 31, 1980 **Federal Register**, the State has changed the narrative discussion or promulgated regulations which are substantially identical to their Federal counterparts. For this reason, the Secretary finds that the problems raised by the following findings from the October 31, 1980 **Federal Register** no longer exist: 18.3, 18.4, 18.5, and 18.6.

Finding 19

The Secretary finds that the Illinois Department of Mines and Minerals has the authority under Illinois law and regulations and the Illinois program includes provisions, except as noted below, for implementation, administration and enforcement of a system of performance bonds and liability insurance, or other equivalent guarantees, consistent with 30 CFR Chapter VII, Subchapter J. This finding is made under the requirements of 30 CFR 732.15(b)(6). The performance bond and liability insurance provisions of Sections 507(f), 509, 510 and 519 of SMCRA and 30 CFR Subchapter J are incorporated in Article VI, Illinois SCMLCRA and in the Illinois Regulations Parts 1800, 1801, 1805, 1806, 1807, 1808, and 1810.

Discussion of significant issues raised during the review of the Illinois bonding provisions follows.

19.1 In response to findings made in the October 31, 1980 **Federal Register**, the State has changed the narrative discussion or promulgated regulations which are substantially identical to their Federal counterparts. For this reason, the Secretary finds that the problems raised by the following findings from the October 31, 1980 **Federal Register** no longer exist: 19.2, 19.3, and 19.4.

19.2 *Rule 1807.11(d)*—The Illinois rule provides that written notice of the inspection prior to bond release must be given to the surface owner but does not allow the surface owner to participate in the inspection. This is inconsistent with 30 CFR 807.11(d), which expressly provides that the surface owner may participate in the inspection. This right to participate is important in order for the surface owner to know whether or not to comment, and because under the terms of the lease, the surface owner may not have access to the leased land. Illinois submitted a policy statement (ARN ILL-0451) stating that it believes its Rules 1807.11(a), (c), and (e) provide protection to the landowner similar to that provided by 30 CFR 807.11(d). Under these State rules, the landowner is notified of the application for bond release and by registering a written objection, may require a hearing. The IDMM may then arrange with the applicant for access to the mining area. However, Illinois also stated that there are obvious practical benefits to *expressly* assuring that landowners, their lessees and agents are allowed to accompany the Department during its bond release inspection, and thus the IDMM will amend its rules to add an express provision to this effect. Approval of the Illinois program is conditioned upon a revision to the program to add an express provision allowing the surface owner to accompany the State inspector during the bond release inspection.

Finding 20

The Secretary finds that the Illinois Department of Mines and Minerals has the authority under Illinois law and provides regulations for civil and criminal sanctions for violations of Illinois law, regulations and conditions of permits and exploration approvals, including civil and criminal penalties, in accordance with Section 518 of SMCRA and consistent with 30 CFR Part 845. This finding is made under the requirements of 30 CFR 732.15(b)(7).

The Illinois program incorporates provisions corresponding to Section 518 of SMCRA and 30 CFR Part 845 in Article VIII, Illinois SCMLCRA and in the Illinois Regulations Part 845.

Discussion of significant issues raised during the review of the Illinois bonding provisions follows.

20.1 In response to findings made in the October 31, 1980 **Federal Register**, the State has changed the narrative discussion or promulgated regulations which are substantially identical to their Federal counterparts. For this reason, the Secretary finds that the problems raised by the following findings from the October 31, 1980 **Federal Register** no longer exist: 20.1, 20.5, 20.6, 20.7, 20.8, 20.9, 20.10, 20.11, 20.12, 20.13, 20.14, 20.15, 20.16, and 20.17.

20.2 *Rule 1845.17(b)*—The Federal rule, 30 CFR 845.17(b), provides that where an otherwise properly served assessment is refused, it is still deemed properly served. The Illinois rule is silent on what constitutes proper service under Illinois law. However, Illinois has provided a statement (ARN ILL-0451) explaining that under Illinois law, refusal of registered or certified mail service would not defeat effective service. Also, Illinois notes that Rule 1843.14(a)(2) on service of notices of violation and cessation orders provides that: "Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept." Because the time for contesting facts of a notice of violation, as well as a proposed penalty, runs from the

service of the proposed assessment, 1845.18(b), Illinois concludes that the provisions of Rule 1843.14(a)(2), quoted above, apply to the mailing of the proposed assessment, and that refusal to accept certified mail does not avoid service. Based on this explanation, the Secretary finds that the Illinois provision is consistent with the Federal regulations.

Finding 21

The Secretary finds that the Illinois Department of Mines and Minerals has the authority under Illinois laws to issue, modify, terminate, and enforce notices of violation, cessation orders and show cause orders in accordance with Section 521 of SMCRA and 30 CFR Chapter VII, Subchapter L, and that the Illinois program includes provisions, except as noted below, adequate to do so. This finding is made under the requirements of 30 CFR 732.15(b)(8).

The authority to issue, modify, terminate, and enforce notices of violation, cessation orders and show cause orders is contained in Article VIII, Illinois SCMLCRA and in Illinois Regulations Parts 1840, 1842, 1843, and 1845. Discussion of significant issues raised during review of the Illinois enforcement provisions follows.

21.1 In response to findings made in the October 31, 1980 **Federal Register**, the State has changed the narrative discussion or promulgated regulations which are substantially identical to their Federal counterparts. For this reason, the Secretary finds that the problem raised by Finding 21.1 from the October 31, 1980 **Federal Register** no longer exists.

21.2 *Rule 1843.12(a)(2)*—Illinois rule 1843.12(a)(1) requires an authorized representative of the IDMM to issue a notice of violation if on the basis of a State inspection, he or she finds a violation. Illinois rule 1843.12(a)(2) provides that an authorized representative of IDMM may issue a notice of violation on the basis of a State inspection other than one described in 1843.12(a)(1).

During the meeting of March 18 and 19, 1982, OSM questioned Illinois' need for this provision since the analogous Federal regulation, 30 CFR 843.12(a)(2), seems to be directed at Federal, not State inspections. Illinois has indicated in a policy statement (ARN ILL-0451) that it intends to delete this provision from its regulations to avoid any confusion as to its meaning.

21.3 *Rule 1843.12(f)*—This Illinois rule provides for extensions of time beyond 90 days for abatement of violations where because of the nature of the violation or circumstances beyond the permittee's control, abatement is impossible or would cause greater environmental harm then would abatement at a later date. The Illinois rule was based on the proposed Federal rule published April 22, 1981 (46 FR 22902). However, the final Federal rules published August 17, 1981 (46 FR 41702) were more narrowly drawn than the proposed rules to avoid abuses of the extension.

Illinois rule 1843.12(f)(1) authorizes on extension in any situation where abatement would cause more environmental harm than it would prevent. The Federal rule, 30 CFR 843.12(f)(4), limits this basis for an extension to situations where climatic conditions preclude abatement within 90 days or where, due to climatic conditions, abatement within 90 days clearly: (i) Would cause more environmental harm than it would prevent; or (ii) requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

The final Federal rule, 30 CFR 843.12(j), also requires that no extension may be granted for longer than 90 days without a fresh showing by the operator that the condition that had justified an extension in the first instance remains, and that all other requirements for an extension have been met. The purpose of this rule is to prevent the granting of extensions resulting in inordinate delays and procrastination on the part of operators in abating violations. Illinois has no counterpart to this requirement.

Accordingly, the Secretary finds that the Illinois rule is not consistent with 30 CFR 843.12. Approval of the Illinois program is conditioned on revisions to provide for extensions of the 90-day abatement period consistent with the Federal regulations.

Finding 22

The Secretary finds that the Illinois Department of Mines and Minerals has the authority under Illinois law and regulations to provide for designation of areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F. This finding is made under the requirements of 30 CFR 732.15(b)(9). Illinois incorporates provisions corresponding to Section 522 of SMCRA and 30 CFR Chapter VII, Subchapter F in Article VII, Illinois SCMLCRA and in the Illinois Regulations Parts 1760, 1761, 1762, and 1764. Discussion of significant issues raised during the review of the Illinois provisions to designate areas as unsuitable for surface coal mining follows.

22.1 In response to findings made in the October 31, 1980 **Federal Register**, the State has changed the narrative discussion or promulgated regulations which are substantially indentical to their Federal counterparts. For this reason, the Secretary finds that the problems raised by the following findings from the October 31, 1980 **Federal Register** no longer exist: 22.2, 22.3, and 22.5.

22.2 *Rule 1761.11(h)*—The Illinois rule appears to allow reclamation operations to take place within areas designated by Congress as unsuitable for mining. At the March 18 and 19, 1982 meeting, OSM asked the State to clarify under what circumstances reclamation could take place. The State explained that reclamation operations would be allowed for approved abandoned mine land projects or mandated reclamation of areas previously mined illegally. Based on this explanation, the Secretary finds the Illinois rule consistent with Section 522(e) of SMCRA. The Secretary does not believe that Section 522(e) was intended to prohibit these activities. Therefore, approved reclamation operations are permitted on areas designated as unsuitable for surface coal mining operations.

22.3 *Rule 1764.15(e)*—The Illinois rule contains a subsection not found in the Federal rule which provides that processing of petitions may be deferred as not timely unless the petitioner demonstrates "* * * (i) that there is a serious possibility of an adverse effect on the petitioner's interest from coal mining in the area covered by the petition, and (ii) either that coal mining is being conducted or seriously being contemplated in the vicinity of the area covered by the petition, or that the enjoyment or exercise of the petitioner's interest may be adversely affected if the petition is not processed on a current basis * * *" In addition, Rule 1764.15(e)(2) provides that processing of active (not deferred) petitions may be prioritized by the IDMM to minimize interference between competing interests. Illinois explained in its legal opinion, Volume R5, that these provisions are an internal management system for petitions, consistent with Section 522(c) of SMCRA. Moreover, Illinois stated that since a deferred petition remains "of record" and "under study" under the Illinois statute, no grant of a permit application may be made.

OSM asked Illinois for clarification of both these provisions at the March 18 and 19, 1982 meeting. The State explained that it anticipated that a large number of petitions would be filed as

soon as the State received primacy and it had tried to arrive at a practical solution for processing these petitions in the event that the number of petitions exceeds the available State personnel. The State also assured OSM of its intention to process all petitions as expeditiously as possible. OSM representatives noted that the one-year period for petition processing in Section 522(c) of SMCRA was intended primarily for the operator's benefit so as not to unduly delay mining. Illinois rule 1764.15(e)(1) provides that any person having an interest in coal mining in the area subject to the petition may at any time upon written, certified mail notice to the Department and the petitioner briefly explain its interest in coal mining and request current processing of the petition.

The Secretary finds, based on these explanations and assurances provided by the State, that the Illinois rule is consistent with Section 522 of SMCRA and the Federal rules, and will provide adequate protection to petitioners and others.

22.4 *Rule 1764.17(a)*—In the meetings with Illinois of June 30, 1981 (ARN ILL–0347) and August 24, 1981 (ARN ILL–0360), OSM expressed concern that the entire relevant data base should be incorporated as part of the hearing record, so that for purposes of appeal of the administrative decision, the record would be complete. The Illinois rule provides for all parties to an administrative hearing on a petition to reference and place on the record appropriate portions of the data base. Similarly, the hearing officer would review the data base and place on the record those portions deemed applicable, allowing for comment and challenge by the involved parties. Any subsequent judicial review would then be based on the composite record. Based on discussions with Illinois and further review of Illinois' statute and regulations, that the State's procedure should result in all relevant portions of the data base relating to the allegations in the petition being placed on the record. The Secretary finds this is in accordance with Section 522 of SMCRA and consistent with the Federal regulations.

22.5 *Rule 1764.17*—The Illinois rule provides for quasi-adjudicatory hearings on petitions to designate areas unsuitable for mining. The Federal regulation, 30 CFR 764.17, provides that the hearing shall be legislative and fact-finding in nature, without cross-examination of witnesses. However, this rule is not based on interpreting Section 522 of SMCRA as requiring legislative hearings. Thus, the Secretary may approve State programs providing for quasi-adjudicatory hearings provided they contain adequate safeguards to protect witnesses from intimidation and to ensure that the State procedure is as effective as the Federal rule.

The Illinois rule provides that any party may be represented by counsel, make oral or written arguments, offer testimony and cross-examine witnesses, cause the issuance of subpoenas, or take any combination of such actions. The Illinois rule also provides that the rules of evidence applied in civil practice cases in Illinois courts shall be followed and that irrelevant, immaterial, or unduly repetitious evidence shall be excluded. However, the Illinois rule also provides that "evidence not admissible under such rules of evidence, including without limitation, citizen opinion on whether lands fall within the criteria for unsuitability and should be designated unsuitable, may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." The rule also provides that any part of the evidence may be received in written form.

Thus, the Illinois rule allows, but does not require certain adjudicatory techniques such as cross-examination of witnesses. The parties may elect to use such techniques as appropriate. The Secretary concludes that these adjudicatory techniques are no less effective in making reasonable decisions than the legislative techniques specified in the Federal rule, so long as use of these techniques does not chill the petition process. Therefore, the Secretary finds that the Illinois rule is no less effective than the Federal rule, with the understanding that the State will insure that use of these techniques will not hamper the petition process or place an unfair burden on any party.

Finding 23

The Secretary finds that the Illinois Department of Mines and Minerals has the authority under Illinois law and the Illinois program contains provisions for public participation in the development, revision and enforcement of the Illinois regulations consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. Illinois provides for public participation in the development, revision and enforcement of the Illinois program throughout the Illinois SCMLCRA and Illinois Regulations.

23.1 In response to findings made in the October 31, 1980 **Federal Register**, the State has changed the narrative discussion or promulgated regulations which are substantially identical to their Federal counterparts. For this reason, the Secretary finds that the problems raised by the following findings from the October 31, 1980 **Federal Register** no longer exist: 23.1, 23.2, 23.3, 23.4, 23.5, 23.6, 23.7, 23.8, 23.9, 23.10, 23.11, 23.12, 23.13, 23.14, 23.16, 23.17, 23.18, 23.19, 23.20, 23.21, and 23.22.

Finding 24

The Secretary finds that the Illinois Department of Mines and Minerals has the authority under Illinois law and the Illinois program includes provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Illinois Department of Mines and Minerals consistent with 30 CFR Part 705. This finding is made under the requirements of 30 CFR 732.15(b)(11). Illinois incorporates provisions which prohibit financial interests in coal mining operations in Section 9.06, Illinois SCMLCRA and in the Illinois Regulations Part 1705.

Finding 25

The Secretary finds that the Illinois Department of Mines and Minerals has the authority under Illinois SCMLCRA Section 3.13 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. This finding is made under the requirements of 30 CFR 732.15(b)(12). Under 30 CFR 732.15(b)(12), the State is not required to implement regulations governing such training, examination and certification until six months after Federal regulations for these provisions have been promulgated. Federal regulations were promulgated on December 12, 1980 (45 FR 82084) but were never made effective. However, six months after OSM final rules on this subject become effective, Illinois will be required to have consistent regulations.

Finding 26

The Secretary finds that the Illinois Department of Mines and Minerals has the authority under Illinois law and regulations to provide for a small operator assistance program consistent with Section 507(c) of SMCRA and 30 CFR Part 795. This finding is made under the requirements of 30 CFR 731.15(b)(13). The Illinois program incorporates provisions corresponding to Section 507(c) of SMCRA and 30 CFR Part 795 in Section 2.02, Illinois SCMLCRA and in the Illinois Regulations Part 1795.

26.1 In response findings made in the October 31, 1980 **Federal Register**, the

State has changed the narrative discussion or promulgated regulations which are substantially identical to their Federal counterparts. For this reason, the Secretary finds that the problems raised by the following findings from the October 31, 1980 **Federal Register** no longer exist: 26.1 and 26.2.

Finding 27

The Secretary finds that the Illinois Department of Mines and Minerals has the authority under Illinois law and regulations to provide for protection of its employees in accordance with the protection afforded Federal employees under Section 704 of SMCRA. This finding is made under the requirements of 30 CFR 732.15(b)(14).

The Illinois program does not contain an express provision corresponding to Section 704 of SMCRA. However, in the March 18 and 19, 1982 meeting (ARN ILL–0443), Illinois pointed to the Illinois criminal code which provides criminal penalties for assault, battery, aggravated assault or battery, and intimidation (Ill. Rev. Statutes, Chapter 38, paragraphs 12–1 through 12–4, and 12–6) which should adequately deter violent or offensive physical interference with State employees. Illinois also submitted a statement (ARN ILL–0451) on the penalties for these crimes. Under Illinois law, any battery (including offensive touching) of a Department employee and any assault on a person known as a Department employee is a Class A misdemeanor, punishable by up to one year in jail. A person who threatens a Department employee with physical confinement, restraint, harm to any person or property, or threat of collective action is guilty of a Class 3 felony, punishable by a minimum of one year and up to ten years in the penitentiary. The Secretary thus finds that the Illinois program provides protection for employees of the IDMM consistent with the afforded Federal employees under Section 704 of SMCRA.

Finding 28

The Secretary finds that the Illinois Department of Mines and Minerals has the authority under Illinois law and the Illinois regulations provide for administrative and judicial review of State program actions in accordance with Sections 525 and 526 of SMCRA and 30 CFR Chapter VII, Subchapter L. This finding is made under the requirements of 30 CFR 732.15(b)(15).

The Illinois program incorporates provisions corresponding to Sections 525 and 526 of SMCRA and 30 CFR Chapter VII, Subchapter L in Article VIII, Illinois SCMLCRA; in the Illinois Regulations Parts 1840, 1842, 1843, and 1845; and in the Illinois Administrative Review Act. Discussion of significant issues raised during the review of the Illinois provisions for administrative and judicial review follows.

28.1 In response to findings made in the October 31, 1980 **Federal Register**, the State has changed the narrative discussion or promulgated regulations which are substantially identical to their Federal counterparts. For this reason, the Secretary finds that the problems raised by the following findings from the October 31, 1980 **Federal Register** no longer exist: 28.3 and 28.4.

28.2 *Section 8.06(b), 806(c), 8.07(d), and Rule 1843.17*—Section 526 of SMCRA requires an operator to exhaust administrative remedies before seeking judicial relief. The Illinois statute provides that an operator may seek immediate injunctive relief from enforcement action. Illinois Rule 1843.17 requires operators to first exhaust administrative remedies before seeking judicial relief. The legal opinions submitted by Illinois dated June 13, 1980 and December 22, 1981, conclude that this regulation is valid. The legal opinion (Volume R5) argues that Illinois courts will ordinarily defer to the regulatory provision since it provides a remedy at law, and an injuction is not thus properly issuable. After reviewing the legal opinions, the Secretary finds that the Illinois provisions are consistent with SMCRA.

Finding 29

The Secretary finds that the Illinois Department of Mines and Minerals has the authority under Illinois law and the Illinois 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 under the requirements of 30 CFR 732.15(1)(16). This authority is provided throughout the Illinois SCMLCRA and the Illinois Regulations.

Finding 30

The Secretary finds that the Illinois SCMLCRA and regulations adopted thereunder and other laws and regulations do not contain provisions that would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII, except as noted below. This finding is made under the requirements of 30 CFR 732.15(c). Discussion of significant issues raised during the review of the Illinois provisions follows.

30.1 In response to findings made in the October 31, 1980 **Federal Register**, the State has changed the narrative discussion or promulgated regulations which are substantially identical to their Federal counterparts. For this reason, the Secretary finds that the problems raised by the following findings from the October 31, 1980 **Federal Register** no longer exist: 30.2, 30.3, 30.4, 30.5 and 30.7.

30.2 *Rule 1701.5—Definition of "valid existing rights"*—The Illinois definition of "valid existing rights" (VER) provides that the IDMM may declare that VER exists where it finds that "a judicial finding of a taking or damaging of property would be made * * *" Illinois has provided a policy statement (ARN ILL–0451) explaining that its definition is based on Section 15, Article I of the Illinois Constitution and has submitted an analysis of Illinois court decisions on taking cases. Illinois states that the Illinois courts have consistently applied the test to determine whether a taking or damaging has occurred. The Illinois Constitution requires just compensation when property is taken or damaged. The provision requiring compensation when property is damaged was added in 1870, because prior to that time recovery was not allowed unless there had been a physical injury or possession, even though the property may have been rendered less valuable. The Illinois courts require that a special damage results, not of a kind and character suffered by the public generally. This holding has been affirmed by the Illinois Supreme Court and upheld by the United States Supreme Court. Based on this information, the Secretary finds that the Illinois definition is consistent with the Federal rule.

30.3 *Rule 1700.11(f)*—The Illinois rule provides that the following regulations and statutory provisions will not become applicable until eight months from the date of approval of the Illinois program: Parts 1816, 1817, 1818, 1819, 1823, 1824, 1825, 1826, 1827, and 1828, and Articles III, IV, V, and VII of the SCMLCRA. At the meeting of March 18 and 19, 1982, (ARN ILL–0443) OSM asked for clarification of this provision. OSM's concern was whether a new permanent program permit could be granted in the eight months after program approval if the performance standards of SMCRA are not applicable. Illinois stated that there was no requirement in SMCRA that operators must comply with the permanent program prior to eight months after program approval unless a State program requires such compliance.

OSM agreed at the meeting to review the relevent provisions of SMCRA.

Section 506(a) of SMCRA provides in relevent part that "no later than *eight months* from the date on which a State program is approved by the Secretary, * * * no person shall engage in or carry out on lands within a State any surface coal mining operations unless such person has first obtained a permit issued by such State pursuant to an approved State program * * *" (Emphasis added) Thus, under SMCRA operators need not begin meeting the permanent program performance standards until eight months from this date.

The Illinois rule requires, as do Sections 506(a) and 515(a) of SMCRA, that all permits issued under the approved State program shall require that all surface coal mining operations will meet all applicable performance standards of SMCRA after eight months from the date of approval of the Illinois program. Thus, the Secretary finds the Illinois provision consistent with SMCRA and the Federal regulations.

30.4 In Findings 30.4 and 30.5 of the October 31, 1980 **Federal Register**, the Secretary found that the Illinois definitions of "surface mining operations" and "underground mining operations" did not, when taken together, appear to include the surface impacts of underground coal mining. However, at a meeting held on November 20, 1980 (ARN Ill–0251) Illinois pointed out that the term "mining operations" in the Illinois statute acts as an "umbrella" term that includes both surface and underground mining. Furthermore, Illinois pointed to the defintions in its regulations, which should resolve any uncertainty. For example, the definition in Illinois rule 1701.5 of "surface coal mining operations" or "mining operations" includes "*surface impacts incident to an underground coal mine* * * *." (emphasis added) Similarly, the definition in Illinois rule 1701.5 of "underground mining operations" means "the underground excavation of coal and * * * surface operations incident to the underground extraction of coal * * *." The definition in rule 1701.5 of "underground mining activities" means "a combination of—(a) Surface operations incident to underground extraction of coal or in situ processing * * * and areas upon which materials incident to underground coal mining operations are placed, and (b) Underground operations * * * which affect the surface." Therefore, the Secretary finds that the Illinois statutory and regulatory definitions of these terms, when viewed as a whole, provide jurisdiction consistent with the definition of "surface coal mining operations" in Section 701(28) of SMCRA.

30.5 In Finding 30.1 of the October 31, 1980 **Federal Register** the Secretary found the Illinois definition of "affected land" in Section 1.03(a)(1) of the Illinois statute to be inconsistent with the definition in the Federal rules. Since that time, Illinois has revised a number of the definitions in its rules, including "affected area," "shadow area", "permit area," and "adjacent area". Though different conceptually than the Federal definitions, the Secretary has found that these definitions, taken together, are no less effective than the Federal definitions, for the reasons set forth below.

Illinois rule 1701.5 defines "permit area" as "the area of land and water within the boundaries of the permit which are designated on the permit application maps * * *." The definition of "shadow area" was added to accommodate the distinct differences between underground and surface coal mines in Illinois. Illinois rule 1701.5 defines "shadow area" as "any area beyond the limits of the permit area in which underground mine workings are located. This area includes all resources above and below the coal that are protected by the (Federal) Act that may be adversely impacted by underground mining operations including impacts of subsidence."

Illinois rule 1701.5 defines "affected area" as "with respect to surface mining activities, any land or water upon or in which those activities are conducted or located. With respect to underground mining activities, affected area means: Any water or surface land upon which those activities are conducted or located."

"Adjacent area" is defined in Rule 1701.5 as "land located outside the permit area, or shadow area, depending on the context in which adjacent area is used, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by the (Federal) Act may be adversely impacted by surface coal mining and reclamation operations."

Illinois requires all "affected areas" to be permitted and bounded. Illinois does not require permitting and bonding of the areas overlying underground mine workings, but it does require submission of a subsidence control plant for the shadow area. See Finding 15.3.

Finding 31

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

31.1 In response to findings made in the October 31, 1980 **Federal Register**, the State has changed the narrative discussion or promulgated regulations which are substantially identical to their Federal counterparts. For this reason, the Secretary finds that the problems raised by the following findings from the October 31, 1980 **Federal Register** no longer exist: 31.1, 31.2, 31.3, 31.4, 31.5, and 31.6.

D. Disposition of Agency and Public Comments

The comments received on the Illinois program during the public comment periods described above under "Background on the Illinois Resubmission" raised numerous issues. The Secretary considered these comments carefully in evaluating the Illinois resubmission, as indicated below.

Department of the Interior

1. The Minerals Management Service (MMS) (ARN ILL–0429) offered no comments on the resubmitted Illinois program but requested an opportunity to renew and comment should Illinois submit a separate program for the regulation of surface coal mining on Federal lands. Now that Illinois has assumed primary jurisdiction, the 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. Under 30 CFR 745.11, MMS would have an opportunity to comment on any proposed cooperative agreement.

2. The Fish and Wildlife Service (FWS), in a letter dated February 12, 1982 (ARN ILL–0427), provided a Biological Opinion pursuant to Section 7 of the Endangered Species Act (ESA) that the Illinois program is not likely to jeopardize the continued existence of Federally listed species or destroy or adversely modify their critical habitats. The FWS did express concern about the lack of a defined mechanism to be used to assure the continued existence of listed species and advised that its Biological Opinion extends only to the approval of the program and another Opinion would be needed for oversight of the program.

OSM is presently developing regulations to replace the remanded 30 CFR 779.20 and 780.16, which required

fish and wildlife information and a plan in permit applications, and full promulgation along with subsequent amendment of Illinois' program may eliminate some of the FWS's concern. Pending this revision, OSM will work with Illinois to insure that the State is meeting its responsibilities for protection of endangered and threatened species as set out in the Illinois program. The FWS comments will also be considered in the development of an oversight plan.

3. The FWS (ARN ILL–0410) commented that, in general, the resubmitted program satisfies most fish and wildlife requirements of SMCRA, especially the procedures for coordinating with Federal agencies. However, the FWS suggested that the Illinois program narrative, Volume R2, Tab I, be amended to include the names of several individuals having responsibility for fish and wildlife matters in Illinois. The suggestion has been furnished to the State, but the Federal Act and rules do not require that this be done.

4. The FWS (ARN ILL–0410) commented that the resubmission does not define the mechanisms to be used to assure that the continued existence of a Federally listed threatened or endangered species will not be jeopardized, and to assure compliance with the Migratory Bird Treaty Act, Bald Eagle Protection Act, and other applicable Federal fish and wildlife laws. Specifically, the FWS noted that Illinois Rules 1770.12, 1776.12(a)(3)(i), 1776.13(b)(2), 1786.19, 1784.21 and 1817.44(a)(3) omit references to the ESA and a counterpart to 30 CFR 784.21 is omitted entirely.

The Illinois resubmission at Volume R2, Tabs I and J, describes the mechanism for coordinating with other agencies, including compliance with the ESA. In addition, Rules 1770.12, 1776.12(a)(3)(i), 1776.13(b)(2), 1786.19, and 1817.44(a)(3) are identical to their Federal counterparts. Rule 1786.19(o) specifically requires the IDMM to find, in writing, that issuance of a permit will not "affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973." The Secretary cannot require the State to do more than the Federal regulations require.

Illinois does not have a rule corresponding to 30 CFR 784.21, which required permit applications to contain fish and wildlife reclamation plans. However, 30 CFR 784.21 was suspended, and therefore Illinois is not required to include such a regulation until final Federal rules are promulgated. SMCRA and the Federal regulations do not require State programs to demonstrate specifically how they will comply with the Migratory Bird Treaty Act or the Bald Eagle Protection Act. Thus, the Secretary cannot require Illinois to provide this information. However, the Illinois procedures for coordinating with Federal agencies should provide adequate protection for bald eagles and migratory birds.

5. The FWS (ARN ILL–0410) commented that Illinois rule 1816.133 on determination of postmining land use considers only premining land capability rather than the three criteria in Section 508(a)(2) of SMCRA: (1) Use; (2) capability; and (3) productivity. However, Illinois Rules 1779.22 and 1780.23 require the permit applicant to provide information on the uses, capability and productivity of the land within the proposed permit area. Thus, the Secretary finds that the Illinois rules are consistent with Section 508(a)(2) of SMCRA and 30 CFR 779.22 and 780.23.

6. The FWS (ARN ILL–0410) commented that pages 9, 11, 14 and 34 of Illinois narrative Volume R2, Tab A, should be amended to show Federal agency notification requirements. The Illinois processes requiring coordination and consultation with Federal agencies involved in permit issuance are described in Volume R2, Tabs I and J.

Department of Agriculture

7. The Soil Conservation Service (SCS) (ARN ILL–0408 and 0409) commented that the questions raised by SCS in the review of the original Illinois submission have been satisfactorily addressed. The SCS also stated its position in reference to Illinois Rule 1823.14(a), that no natural soil in Illinois should be exempted from being reconstructed to a minimum depth of 48 inches providing it is formed in 48 inches or more of soil material. The Illinois rule is identical to its Federal counterpart.

Department of Labor

8. The Mine Safety and Health Administration (MSHA) (ARN ILL–0435) commented that the Illinois narrative Volume R2, page 76, requires the operator to attach to the mining plan a certification from MSHA verifying that all such impoundments meet minimum requirements pursuant to Pub. L. 83–566. MSHA notes that it has no jurisdiction under Pub. L. 83–566 and therefore does not issue a certification regarding it. The Illinois requirement to which MSHA refers is an interim permit application requirement, not a permanent program requirement subject to this approval.

9. MSHA (ARN ILL–0435) commented that Illinois narrative Volume R2, page 232 on rule 1816.49(b) requiring a 1.0-foot freeboard to be maintained appears to be in conflict with the OSM regulations which require a 3.0-foot freeboard at all times. The OSM regulations do not require a 3.0 foot freeboard at all times. The Federal requirements in 30 CFR 816.93(a)(1) and 817.93(a) are that design freeboard shall be no less than 3 feet. Illinois rules 1816.93(a)(1) and 1817.93(a)(1) contain an identical 3 foot requirement. Illinois inserts a standard of 1.0-foot freeboard in 1816.49(b) which is not present in 30 CFR 816.49(b). Therefore, Illinois is no less effective than the Federal regulations.

10. MSHA (ARN ILL–0435) commented that Illinois narrative Volume R2, page 288, requires approval of design and construction of dams with a height of 20 feet or more and with a storage of 20 feet or more. MSHA notes that its regulations require plans for an impounding structure with a height of 5 feet or more and a storage volume of 20 acre-feet or more, *or* with a height of 20 feet or more, *or* any impoundment, as determined by MSHA, which presents a hazard to coal miners. The Illinois rule 1816.46(d) is identical to the Federal requirement in 30 CFR 816.46(q), which imposes *additional* requirements for any embankment that is more than 20 feet in height or has a storage volume of 20 acre-feet or more. In suach a situation, the MSHA criteria of 30 CFR 77.216 must also be met.

Environmental Protection Agency

11. The Environmental Protection Agency (EPA) (ARN ILL–0414) commented that a supplemental opinion by the Illinois Attorney General is required to make the resubmission complete. The Federal rule, 30 CFR 731.14(c), provides that the legal opinion may be submitted by either the Attorney General or the chief legal officer of the State regulatory authority. As a part of its resubmission (Volume R5), Illinois submitted a legal opinion from the chief legal officer of the Illinois Department of Mines and Minerals. This opinion fulfills the requirement of 30 CFR 731.14(c).

12. EPA (ARN ILL–0414) commented that a map showing the jurisdictional boundaries of the Army Corps of Engineers would be a helpful addition to the Illinois narrative Volume R2. While such a map is not required, this suggestion has been furnished to the State.

13. EPA (ARN ILL–0414) commented that Illinois rule 1783.15, requiring the permit application to contain information on ground water, including

aquifers, has a provision allowing the applicant to claim that "no significant aquifer" exists. Under the rule, if the applicant makes such a claim, the applicant must state the basis for the determination. This issue was discussed at the March 18 and 19, 1982 meeting (ARN ILL–0443). OSM noted that the Federal performance standard counterpart to this permitting requirement, 30 CFR 816.52(a), requires monitoring "when surface mining activities may affect ground water systems which serve as aquifers which *significantly* ensure the hydrologic balance." (emphasis added) The important criterion is whether surface mining activities will affect significant aquifers, i.e., aquifers which significantly ensure the hydrologic balance. Illinois is free to reject an applicant's claim that no significant aquifer exists and require further information. Based on this provision and the Federal emphasis, the Secretary finds the Illinois rule consistent with the Federal regulations.

14. EPA (ARN ILL–0414) commented that Illinois erroneously omits a counterpart to 30 CFR 816.46(c), which requires sedimentation ponds to provide the required theoretical detention time, on the basis that the Federal rule was suspended. The Federal rule was suspended on December 31, 1979 (44 FR 77451). Therefore, Illinois is not required to include this regulation until final Federal rules are promulgated. However, Illinois rule 1816.46(b) requires that the sediment pond design criteria shall be no less stringent than current criteria of the U.S. Environmental Protection Agency and Office of Surface Mining, which is consistent with the Federal regulations.

15. EPA (ARN ILL–0414) commented that Illinois rules 1816.46(c) and 1816.71(a)(1) refer to the applicable effluent limitations contained in 1816.42, but that 1816.42 has no effluent limitations. Illinois rule 1816.42(a) incorporates by reference the applicable State and Federal effluent limitations and water quality requirements.

16. EPA (ARN ILL–0414) commented that Illinois rule 1817.41(c) qualifies the corresponding Federal provision by adding the phrase "as interpreted by the Agency primarily responsible for the enforcement thereof" to the requirements that "there shall be no violations of Federal and State water quality statutes, regulations, standards or effluent limitations." The Secretary understands this statement to mean as interpreted by the EPA but will suggest to Illinois that this phrase be deleted as unnecessary.

Public Comments

The following acronyms were used to identify commenters: Illinois South Project (ISP), which represented a number of groups; Village of Catlin, Illinois (VOC); Knox County Board (KCB); AMAX Coal Co. (AMAX); and Old Ben Coal Co. (Old Ben).

17. *Rule 1700.11(f).* ISP (ARN ILL–0412) commented that this rule provides that the performance standards shall not be applicable until eight months from the date of Secretarial approval and that this causes a blanket exemption from compliance. The Secretary has reviewed the rule and finds that Illinois is consistent with Section 506(a) of SMCRA which provides that no person shall conduct surface mining operations after eight months from the date of State program approval except under a permit issued pursuant to the permanent program. See Finding 30.3.

18. *Statutes 1.03(a)(1), (11), (24) and (26) and Rule 1701.5.* ISP (ARN ILL–0412) commented that Illinois has introduced confusion into the question of its jurisdiction over various kinds of mining activities because of the use of eight different terms throughout the Illinois law and regulations. The Secretary finds that the use of these different definitions provides greater detail and clarity that takes into account the unique mining conditions in Illinois and has found that the definitions are consistent with the Federal regulations and SMCRA. See Findings 30.4 and 30.5.

19. *Statute 1.03(a)(1) and Rule 1701.5.* ISP (ARN ILL–0412) objected to the Illinois definitions of "affected area" and "coal." The Secretary has addressed the definition of "affected area" in Finding 30.5. The Secretary disagrees that the definition of "coal" is a problem. The Illinois definition of "coal" in rule 1701.5 is identical to the Federal definition of "coal" at 30 CFR 700.5.

20. *Rule 1701.5.* ISP (ARN ILL–0412) commented that the Illinois definition of "intermittent stream" triples the drainage area needed to determine such a stream and thus weakens the application of the stream channel diversion standards at 1816.44 and 1817.44. Illinois explained in its legal opinion (Volume R5) that the preamble to the Federal rule on the definition of "intermittent stream" (44 FR 14932, March 13, 1979) indicates that the one-square mile watershed concept was adopted because at least two States, Alabama and Illinois, have found it easy to administer and apply. Illinois noted, however, that the one square mile rule in Illinois is that of the Illinois Department of Transportation, Division of Water Resources (IDOT/DWR) and is applicable to urban or urbanized areas. Illinois stated that it believed this one square mile rule was inappropriately applied to surface mining because areas to be surface mined are not urban areas. Accordingly, Illinois amended its definition of "intermittent stream" to mean a stream that drains a watershed of at least three square miles or below the local water table for at least some part of the year and obtains its flow from both surface runoff and ground water discharge. The three square mile standard represents middle ground between the six square mile (average annual flow of five cubic feet per second) jurisdiction for a Section 404 permit and the one square mile jurisdiction of IDOT/DWR which is concerned with flood storage capacity in urban areas.

Illinois stated that drainage ways with a watershed of less than three square miles will be treated under the diversion requirements of 1816.43 which should address concerns of how to handle flood volumes generated in these watersheds during the mining and restoration period.

The Secretary therefore finds that Illinois has adopted a reasonable definition of "intermittent stream" that recognizes the specific physical characteristics of Illinois and is no less effective than the Federal definition.

21. *Rules 1701.5 Definition of "permit term"*—KCB (ARN ILL–0402) commented that the definition of "permit term" in the State statute, Section 1.03(a)(18), is not consistent with the definition in the State rules because the rule definition includes "reclamation operations". KCB questioned whether the statutory definition would take precedence over the regulatory definition. The Secretary does not construe the statutory definition as limited to the period during actual mining operations. The Illinois rule is intended to implement the statutory definition and as such may expand upon it so long as it is not contrary to it.

22. *Rule 1701.5—Definition of "person having an interest which is or may be adversely affected or person with a valid legal interest".* KCB (ARN ILL–0402) questioned whether this definition would include as a "person" local units of government. The definition of "person" in 1701.5 includes "any agency, unit or instrumentality of Federal, State or local government * * *" Therefore, the definition questioned by the commenter would clearly include local units of government in the category of "persons" having an interest.

23. *Rule 1701.5.* ISP and VOC (ARN ILL–0412 and 0404) commented that the Illinois definition of "valid existing rights" is defective for the following reasons: (1) One provision would allow an administrative determination of when a judicial finding of a taking or damaging would be required, thus prejudging the constitutionality of the provision, (2) it would allow a final judicial order of a "taking" to be deemed a determination of VER, thus depriving interested persons of the right to appeal such an order; (3) it authorizes exemptions for VER for property rights which came into existence after August 3, 1977; (4) it authorizes exemptions for VER for operations under construction or in existence at the time a designation becomes effective; (5) it is not clear what a "taking" is or what the measure of damage should be; (6) to the extent the Illinois definition conflicts with the OSM definition it is ineffective; and (7) the term "valid existing rights" appears nowhere in the Illinois statute and is therefore unauthorized in the Illinois rules. The Secretary has considered these arguments and has concluded that the Illinois definition is consistent with SMCRA and the Federal rules. See Finding 30.2 above.

24. *Rule 1705.11.* KCB (ARN ILL–0402) recommended that all "contractual" employees who are not regular employees of the State or the IDMM should be required to file a statement of employment and financial interest. The Illinois definition of "employee" in 1701.5, which is identical to its Federal counterpart at 30 CFR 705.5, includes "consultants" who perform any function or duty under the Act, if they perform decisionmaking functions for the State Regulatory Authority under the authority of State law or regulations. Consultants would certainly include contractual employees who were hired to perform functions or duties under the Act if they perform decisionmaking functions. The Illinois rule is therefore consistent with the Federal conflict-of-interest provisions.

25. *30 CFR 760.4(c).* ISP (ARN ILL–0412) commented that the Illinois program fails to require that the regulatory authority integrate as closely as possible decisions to designate lands unsuitable with land use planning. The Secretary disagrees, finding the requirement to integrate land use planning decisions is provided in the Illinois statute 7.02(d) and in the narrative description in Volume R2, Tab K.

26. *Rules 1761.11(c) and 1761.12(e)(1).* ISP and VOC (ARN ILL–0412 and 0404) commented that Illinois prohibits mining only on publicly owned places on the National Register of Historic Places, while the Federal rule prohibits mining on any places listed on the National Register. Similarly, the Federal regulations require that a copy of the permit application be transmitted to the agency having jurisdiction over any places listed on the National Register, while Illinois limits this requirement to publicly owned places. The Federal regulations, 30 CFR 761.11(c) and 761.12(f)(1), were suspended on November 27, 1979, insofar as they applied to privately owned places listed on the National Register. Therefore, the Secretary cannot require Illinois to include these provisions.

27. *Rules 1761.11(e).* ISP (ARN ILL–0412) objected that, while 30 CFR 761.11(e) prohibits mining within 300 feet of an occupied dwelling without the written consent of the owner, Illinois' regulation prohibits such mining only with respect to dwellings in existence, under construction, or contracted for at the time of public notice of a permit application. The Illinois rule is intended to address a situation in which an individual moves a mobile home or trailer onto or near the permit area after public notice, thus possibly preventing mining. As stated in the February 23, 1982 letter to Illinois (ARN ILL–0430), OSM does not construe its regulation to allow ongoing mining to be halted by building or moving a dwelling within 300 feet of the permit area, so Illinois' concept is consistent with the Federal rule.

28. *Rule 1761.11(h).* ISP (ARN ILL–0412) requested clarification of this rule to insure that no mining or reclamation activities are conducted on designated lands. The Secretary finds that the Illinois rule is consistent with Section 522(e) of SMCRA. See Finding 22.2 above.

29. *Rule 1761.11(i).* ISP (ARN ILL–0412) asked for explanation of this rule, which provides that possession of a permit on an area designated as unsuitable does not bar the applicability of the designation provisions. Illinois has explained that the rule is a notification to operators that despite having a permit to mine, all coal lands are still subject to the relevant unsuitability provisions.

30. *Rule 1762.11(a).* Illinois rule 1762.11(a) provides that an area shall be designated as unsuitable if the IDMM finds that reclamation is not technologically and economically feasible under the State Act and these regulations. VOC (ARN ILL–0404) requested clarification of whether Illinois' addition of the term "under the State Act" limits the application of the rule on designations for technical and economic infeasibility. The State rule is identical to its Federal counterpart, 30 CFR 762.11(a), except that Illinois substitutes "State Act" for "the Act". Because the State statute is in accordance with SMCRA, the Secretary finds that the phrase does not make the State's rule inconsistent with SMCRA.

31. *Rule 1764.13(a).* KCB (ARN ILL–0402) commented on standing to petition, recommending an amendment to specify that a county unit of government has standing. The Illinois rule gives standing to all "interested parties" in the unsuitability designation process, which would include a county unit of government.

32. *Rule 1764.15(a)(3).* KCB (ARN ILL–0402) requested a definition of the term "frivolous", a criterion for rejection of an unsuitability petition. The Federal rules also use the term frivolous without defining it, and the Secretary cannot require the State to do so. The Secretary relies on the exercise of good judgment by the State to determine what is frivolous.

33. *Rules 1764.15(b) and 1764.17(e).* ISP (ARN ILL–0412) commented that the Illinois regulations require preparation of both a "Land Report" and a "detailed statement" to meet the requirement of a detailed statement in Section 522(d) of SMCRA, and requested clarification of the need for and use of these two reports. Illinois rule 1764.15(b) requires that a Land Report be prepared by the Institute of Natural Resources. Rule 1764.17(e) requires the IDMM to prepare a detailed statement prior to designating any land areas as unsuitable for surface coal mining operations. Rule 1764.19(a) requires the IDMM to reach a decision using, among other things, "the Land Report prepared under Section 1764.17(e)". The Land Report and the detailed statement are thus the same document.

34. *Rule 1764.15(b)(4).* ISP (ARN ILL–0412) objected to the absence of a requirement to publish a notice of receipt of a petition in the *Illinois Register.* The *Illinois Register* does not allow publication of notices other than rulemaking notices. The Illinois rule requires publication in a regional newspaper of general circulation in the locale of the area covered by the petition. Thus, the Secretary finds that the Illinois rule is no less effective than the Federal rules in providing notice to the public that a petition has been filed because persons having an interest in coal mining are generally located in the coal fields or rely on information reported in local newspapers.

35. *Rule 1764.15(e)(1) and (2).* ISP (ARN ILL-0412) commented that the Illinois rule on deferral of unsuitability petitions obstructs petitioners' rights and encourages deferral until actual conflict between development and preservation groups is present. ISP also commented that Illinois rule 1764.15(e)(2) authorizing the regulatory authority to "prioritize" petitions is unnecessary given the requirement of Section 522(c) that decisions be made within one year of receipt of the petition. The Secretary believes that Illinois has set forth a practical procedure for processing petitions within the mandates of SMCRA. See Finding 22.3 above.

36. *Rule 1764.17.* ISP (ARN ILL-0412) objected that the Illinois rule provides for adjudicatory hearings on petitions. The Secretary has found that the Illinois procedures for hearings on petitions to designate an area as unsuitable are consistent with the Federal rules and SMCRA. See Finding 22.5 above.

37. *Rule 1764.17(c)* VOC (ARN ILL-0404) commented that the notice of the public hearing on a petition should include the location where copies of the application may be reviewed and obtained. The Illinois rule is identical to its Federal counterpart, 30 CFR 764.17(c). The VOC suggestion, while useful, is not required.

38. *Statute 2.01 and Rules 1771.11(a) and 1771.21(a)(1).* ISP (ARN ILL-0412) commented that Illinois provisions are inconsistent with SMCRA 506(a) of SMCRA because "complete application" is defined as "* * * an apparent good faith effort * * *." The Secretary finds that the use of the modifier "apparent" does not limit a good faith effort and is consistent with OSM policy (See ARN ILL-0443). He notes that the American Heritage Dictionary defines "apparent" to mean "readily seen * * * plain or obvious." The Illinois provision is consistent with SMCRA and no less effective than the Federal regulations.

39. *Rule 1771.11(a)(2).* AMAX (ARN ILL-0403) requested clarification that the "initial decision" referred.to in this rule relates to the approval or denial of the permit application. The Secretary certainly understands the phrase "initial decision" to refer to approval or denial of the permit application.

40. *Rule 1771.21(b)(1).* ISP (ARN ILL-0412) observes that Illinois does not include the word "complete" as a modifier for a permit application. However, Illinois rule 1771.23 does require that a complete application be filed.

41. *Rule 1776.11(b)(3).* ISP (ARN ILL-0412) commented that Illinois does not require a map of the exploration area and that this omission could hamper citizen participation. The corresponding Federal requirement, 30 CFR 776.11(b)(3), was suspended insofar as it required a map. Therefore, Illinois is not presently required to include this provision.

42. *Rule 1778.13(d) and 1782.13(d).* ISP (ARN ILL-0412) commented that a five-year cut-off date on permitting information on previous coal mining permits held by the applicant is not as effective as the Federal rules since they require information on permits subsequent to 1970. Illinois rule 1778.14 is identical to 30 CFR 778.14, which requires information on any permits suspended or revoked in the last five years. The Secretary finds, therefore, that Illinois rule 1778.13(d) requiring information on permits held during the previous five years is no less effective than the Secretary's regulations in meeting Section 507(b) of SMCRA.

43. *Rules 1778.14(d) and 1782.14(b)(6).* ISP (ARN ILL-0412) commented that Illinois requires applicants to provide information on their current financial condition which would provide assurance that no further bond forfeiture will occur. ISP noted that the Federal rules do not require this information and believes Illinois will use irrelevant information to make a decision on a permit application. Illinois requires this information only from applicants who have had a permit suspended or revoked, or a bond forfeited. As such, it is an additional requirement that is not inconsistent with the Federal regulations or Section 507(b)(5) of SMCRA.

44. *Rules 1778.16(c) and 1782.16(c).* ISP (ARN ILL-0412) commented that the rules contain typographical errors in that the references to 1761.12(e) should be to 1761.12(d). This information has been furnished to the State.

45. *30 CFR 778.19 and 782.19.* ISP (ARN ILL-0412) commented that the State fails to include a requirement for listing all other licenses and permits needed by the permit applicant. Illinois is not required to include a counterpart to these regulations so long as it demonstrates that it has provided for coordinating the review of other permits and licenses, as required by Section 503(a)(6) of SMCRA. The Secretary finds that Illinois has adequately provided for coordinating the review of other permits and licenses, as demonstrated in its legal opinion, volume R5, page 42 (ARN ILL-0384), and in its rule 1770.12 which requires the IDMM to coordinate the review and issuance of other permits and licenses.

46. *Rules 1779.5, 1780.5, 1783.5 and 1784.5.* ISP (ARN ILL-0412) expressed its concern about the possible hampering of public review by the manner in which Illinois allows applicants to incorporate data by reference in permit applications. These Illinois rules allow permit applicants to comply with the requirements of Parts 1778–1780 and 1782–1784 by relying on accurate data already in the possession of the applicant or the IDMM through incorporating such data by reference into permit applications. ISP requests that such data be explicitly cited by volume, page, etc. The IDMM requires that incorporated data be publicly available under Sections 507 and 513 of SMCRA and 30 CFR Part 786. The Secretary believes Illinois has provided appropriate safeguards to see that data so incorporated is available to the public.

47. *Rules 1779.7 and 1783.7.* ISP (ARN ILL-0412) commented that the Illinois rules allow permit applicants to comply with the requirements for information on seasonal variability of certain hydrologic and climatological data without collecting data over twelve months if accurate statistical procedures, as approved by the IDMM, are used to extrapolate from data collected in less time. The Secretary finds that because the IDMM must approve any alternative statistical procedures, the Illinois rule is as effective as the Federal rule.

48. *30 CFR 779.18 and 783.18.* ISP (ARN ILL-0412) objected to the absence of counterparts to the Federal rules which enable the regulatory authority to request certain climatological data. Because the Federal rules provide that requesting such data is discretionary, the State does not need to include these rules in its program.

49. *Rule 1779.27(d).* VOC (ARN ILL-0404) suggests that this rule should be revised to require a new soil survey if a current survey is not available. The Illinois rule is identical to its Federal counterpart, which requires a survey to be made if no soil survey exists.

50. *Rules 1780.12 and 1784.12.* Federal regulations at 30 CFR 780.12 and 784.12 set permit application requirements for preexisting structures, including a showing that the structure meets the interim or permanent program performance standards and a compliance plan if the structure must be modified. ISP [ARN ILL-0412] commented that the Illinois rules are ineffective because they require no specific showing as to compliance with performance standards, contain no mandatory requirements for compliance plans, and discuss plans for dams and embankments, which are expressly excluded from the existing structure

exemption at 30 CFR 701.11(d)(2) and Illinois rule 1700.11(d)(2).

The Secretary has examined the Illinois rules and notes the following: (1) Illinois rules 1780.12(a)(1) and 1784.12(a)(1) require the applicant to submit a description of each structure including sufficient information for the IDMM to determine if the structure *meets the performance standards.* This requirement is the functional equivalent of the "showing" required under 30 CFR 780.12 and 784.12; (2) Illinois rules 1780.12(b) and 1784.12(b) require that for each non-conforming structure to be modified or reconstructed, a compliance plan and schedule shall be submitted which should include sufficient detail to show that each non-conforming structure will be modified to meet the performance standards within the specified time-frame. In addition, rule 1786.21 provides that no permit application may be approved unless the IDMM finds that modification or reconstruction of a non-conforming structure will bring the structure into compliance with the design and performance standards of Parts 1810–1828 no later than six months after issuance of the permit, the risk of harm to the environment or public health or safety is not significant and that the applicant will monitor the structure to ensure compliance with the performance standards. These Illinois provisions, taken together, are virtually identical to the Federal counterparts at 30 CFR 780.12, 784.12, and 786.21; (3) contrary to the commenter's assertion, dams and embankments are not expressly excluded from the existing structure exemption at 30 CFR 701.11(d)(2). Rather, 30 CFR 701.11(d) provides only that the exemptions of 30 CFR 701.11(d)(1)(i) and (d)(1)(ii) are not applicable to dams and embankments. That is, dams and embankments must meet both the performance standards and design criteria of the permanent program. The Illinois rules 1780.12(a)(2) and 1784.12(a)(2) require the applicant to provide sufficient information for the IDMM to determine whether the structure meets the performance standards and design standards. If the structure does not meet these standards, rule 1780.12(b)(2) requires the structure to be reconstructed to meet these standards. This requirement is identical to that in 30 CFR 701.11(d)(1)(iii), (d)(1)(iv), 780.12(b), and 786.21(a)(2)(ii).

Therefore, the Secretary finds that the Illinois rules on permit application information for preexisting structures are no less effective than the Federal rules.

51. *Rule 1780.13.* ISP (ARN ILL–0412) asserts that the State has omitted certain requirements for data in an applicant's blasting plan and is thus less effective than the Federal rules.

Specifically, ISP noted that the Illinois rule fails to require that the permit application contain information on the types and amounts of explosives and a description of the blasting procedures that will be followed. Without this information, ISP asserted that the IDMM will be unable to ascertain whether the blasting plan will prevent damage to surrounding structures, especially old, plaster or lathe, or poorly constructed structures which are protected by Section 515(b)(15)(C) of SMCRA.

Illinois does not require all the detailed information required by the Federal rules. The Illinois rule does require, however, that the applicant explain how compliance with the performance standards will be achieved, and also requires information on notification to the public of blasting schedules and the availability of pre-blast surveys, a copy of the blasting log form, the anticipated minimum square root scaled distance to the nearest structure, a description of supervisory duties of persons responsible for blast preparation, and a description of unavoidable hazardous conditions for which deviation from the blasting schedule will be needed. Therefore, the Secretary finds that the State rule requires sufficient information in the blasting plan for the IDMM to determine that the operator will meet the performance standards of Section 515(b)(15) of SMCRA no less effectively than under its Federal counterpart.

52. *Rule 1780.15.* VOC (ARN–ILL–0404) commented that Illinois omits a counterpart to 30 CFR 780.15 (Air pollution control plan). The Federal rule has been suspended and Illinois is not required to include this provision until final Federal rules are promulgated.

53. *Rules 1780.21(c) and 1784.14(c).* ISP (ARN ILL–0412) commented that the Illinois rules track the corresponding Federal rules which require reclamation plans to include a determination of the probable hydrologic consequences of the proposed mining activities, except that Illinois substitutes "permit area" for "mine plan area." The use of the term "mine plan area" in the Federal rules was suspended and the term "permit area" was substituted on August 4, 1980. The Illinois rules are thus identical to their Federal counterparts.

54. *Statute 3.08(b) and Rule 1780.25.* ISP (ARN ILL–0412) states that Illinois' omission of a statement that permanent impoundments (last-cut lakes) "will not be allowed except as authorized in the mining and reclamation plan" renders the Illinois rule less effective than the Federal rule. The Federal rule, 30 CFR 780.25, does not contain this statement. The Secretary has approved the practice of leaving last-cut lakes. See Finding 14.2.

55. *Rule 1780.38.* ISP (ARN ILL–0412) commented that this rule, requiring the permit application to contain a rehabilitation design plan for siltation structures, diversions, impoundments and treatment facilities, provides a general exemption from design standards for these structures. Illinois (ARN ILL–0443, page 4, item 8) has explained that this provision is an additional requirement which assures State control over changes in the original design of siltation structures, before rehabilitation is allowed and the permit area abandoned. Based on this assurance, the Secretary finds the Illinois provision consistent with the Federal rules.

56. *Rule 1782.15(a).* ISP (ARN ILL–0412) commented that the State rule requiring a showing that the underground mine permit applicant has a right of entry excludes from the requirement areas which are not disturbed by surface activities but merely overlie underground workings. The State requires a description of the legal right to enter for the permit and shadow areas, including areas where subsidence is planned. The Secretary finds that this provision is no less effective than 30 CFR 782.15, which requires such a showing only for the permit area.

57. *Parts 1783 and 1784.* ISP (ARN ILL–0412) commented that these parts, concerning permit application requirements for underground mining, are less effective than the Federal rules due to the Illinois definitions for "permit area", "affected area", "adjacent area", and "shadow area" because they appear to exclude from the requirements "land or water which is located above undergound mine workings." The Secretary does not agree. See Findings 30.4 and 30.5 above.

58. *Rules 1783.12(b)* AMAX (ARN ILL–0403) suggested that the operator should have to identify cultural and historic resources only if they are to be "affected" by the mining operation. The Illinois rule is identical to the Federal rule, which requires that the permit list and describe these resources in order for the regulatory authority to determine whether they will be affected by the mining operation. Thus, the State's rule is no less effective than the Federal rule.

59. *Rule 1783.15(c).* ISP (ARN ILL–0412) commented that Illinois rule 1783.15, requiring the permit application to contain information on ground water, including aquifers, has a provision allowing an applicant to claim that no significant aquifer exists and therefore avoid the requirements of subsections (a) and (b). The Secretary has addressed this concern in comment number 13 above.

60. *Rule 1783.16(b)(2)(v).* ISP (ARN ILL–0412) pointed out a typographical omission of the word "in", which should appear before the word "milligrams". This comment has been furnished to the State.

61. *30 CFR 783.17.* ISP (ARN ILL–0412) commented that Illinois incorrectly omits a counterpart to 30 CFR 783.17, which requires the permit applicant to identify the extent to which mining activities may result in contamination or interruption of water supplies and identify alternative sources of supply, on the basis that 30 CFR 817.54, requiring replacement of water supply, was suspended. The Secretary finds that the omission of a counterpart to 30 CFR 783.17 does not make the State program inconsistent with the Federal rule because Illinois requires virtually the same information in rule 1784.14 on protection of the hydrologic balance.

62. *Rule 1783.19.* ISP (ARN ILL–0412) commented that the Illinois rule allows the permit applicant to wait until two years before revegetation begins to submit information on vegetative types and plant communities if reference areas will be used to determine the success of revegetation, while the Federal rule requires this information in the permit application. The Federal rule provides that the regulatory authority *may*, but is not required to, request a description of plant communities and vegetative types. Thus, the Illinois rule is consistent with 30 CFR 783.19.

63. *Rule 1783.24.* ISP (ARN ILL–0412) pointed out a typographical error in which the phrase "boundaries *and* land" should read "boundaries *of* land." This information has been provided to the State (ARN ILL–0443).

64. *Rule 1784.16.* ISP (ARN ILL–0412) pointed out that Illinois has inadvertently omitted from its resubmission a counterpart to 30 CFR 784.16(a)(2), containing design criteria for various kinds of impoundments. Illinois agreed in the March 18 and 19, 1982 meeting, that the provision in question was inadvertently omitted from the resubmission printing of its rules, but pointed out that it was adopted on September 16, 1980 and never repealed. Based on this assurance, the Secretary finds that the Illinois rules do contain this provision. (See ARN ILL–0443).

65. *Rule 1784.18(a).* ISP (ARN ILL–0412) commented that Federal rule 30 CFR 784.18(a) requires that permit applications address situations where approval to conduct underground mining activities within 100 feet of a road is sought, while Illinois requires such information only for the surface activities related to underground mining. However, Illinois rule 1786.19(d)(4) provides that the IDMM may not approve a permit where the permit area is within 100 feet of the outside right-of-way line of any public road. This requirement is identical to 30 CFR 786.19(d)(4). Therefore, the Secretary finds the Illinois rule no less effective than the Federal rule in complying with Section 522(e)(4) of SMCRA.

66. *Rule 1784.20.* ISP (ARN ILL–0412) commented that Illinois rule 1784.20, on subsidence control information, is not as effective as the Federal rule because due to the Illinois definitions of permit area, shadow area, affected area, and adjacent area, the pre-subsidence survey will not be conducted on all areas located above underground mine workings. Furthermore, ISP notes that certain environmental resources information is not included in 1784.20(e). The Secretary does not agree that Illinois rule 1784.20 is less effective than its Federal counterpart. See discussion under Findings 15.3 and 30.4.

67. *Rule 1784.20(e).* Old Ben (ARN ILL–0405) commented that this rule requires that the same information be submitted in two different places in the permit application: once in the body of application and once in the subsidence control plan. Old Ben recommends that the alternative of cross-referencing should be allowed. The Secretary finds that the suggestion has merit, but cannot be required of the State. However, the suggestion has been furnished to the State.

68. *Rule 1785.13 (b) and (e)(2).* ISP (ARN ILL–0412) commented that the Illinois rule authorizes experimental practices for agricultural postmining land uses, which is allegedly inconsistent with Section 711 of SMCRA and 30 CFR 785.13. Section 711 of SMCRA authorizes use of experimental practices to encourage advances in mining and reclamation practices, or to allow postmining land use for industrial, commercial, residential, or public use (including recreational facilities). Postmining land uses for non-commercial agricultural use are not authorized.

However, under Illinois rule 1785.13(h), Section 711 of SMCRA, and 30 CFR 785.13(d), the Secretary (through the Director, OSM) must approve any experimental practice. Unless all the criteria of Section 711 and 30 CFR 785.13 are met, permit approval will not be granted. Therefore, the Director, OSM, would be unable to approve any experimental practice which would allow a non-commercial agricultural postmining land use.

69. *Rule 1785.17.* ISP (ARN ILL–0412) commented that the Illinois rule on grandfathering of prime farmland deprives citizens of their right to have input into the grandfathering decision because Illinois has bifurcated the grandfather exemption decision from the permitting decision. Illinois rule 1786.19(1) provides that no permit shall be approved unless the IDMM finds that the applicant has, with respect to prime farmland, obtained a negative determination or satisfied the requirements of 1785.17. The applicant's claim that the operation is grandfathered (negative determination) would be subject to public comment during the permit application review period. These Illinois requirements are identical to their Federal counterparts at 30 CFR 785.17(a) and 786.19(1). The Secretary thus finds the Illinois rule no less effective than the Federal rules.

70. *Rule 1785.17.* ISP (ARN ILL–0412) commented that, despite the recent adoption by OSM of final rules establishing standards for exemptions from complying with the prime farmland requirements of the Act (46 FR 47722, September 29, 1981), Illinois has adopted only the vague language of Section 510(d) of SMCRA.

There has been extensive litigation over the "grandfather clause." The original Federal rule at 30 CFR 785.17(a) was suspended on December 31, 1979. Revised rules were promulgated on January 23, 1981, but the effective date was postponed several times to August 15, 1981. Illinois submitted its proposed regulatory program in March 1980 and promulgated final rules on September 12, 1980.

The State could not have anticipated the adoption of the final OSM rule on September 29, 1981. Furthermore, as stated in the October 31, 1980 initial decision on Illinois under "Effect of Litigation of the Federal Permanent Regulatory Program" (45 FR 72469): "* * * 3. A State program need not contain provisions to implement a suspended regulation and no State program will be disapproved for failure to contain a counterpart to a suspended regulation. 4. A State must have authority to implement all permanent program provisions of SMCRA, including those provisions of SMCRA

upon which the suspended regulations were based. 5. A State program may not contain any provision that is inconsistent with a provision of SMCRA * * *".

Illinois implements the statutory language of Section 510(d) of SMCRA in Rule 1785.17(a) in a manner consistent with SMCRA. Illinois will be afforded an opportunity to amend its regulations, as appropriate, under the provisions of 30 CFR 732.17, if necessary to make its program consistent with the September 29, 1981 rule.

71. *Rule 1785.17(b), 1785.17(d)(4) and 1823.11(a).* ISP (ARN ILL-0412) commented that Illinois appears to limit the scope of the prime farmland permitting requirements by imposing requirements only on "surface mining activities," rather than "surface coal mining and reclamation operations". Illinois rule 1785.17(d)(2) does not allow issuance of a permit unless the requirements of 1785.17(b) are met. Rule 1785.17(b) requires detailed permit application information and a plan for mining and restoration of the prime farmland to be affected. Rule 1785.17(b) is identical to its Federal counterpart, 30 CFR 785.17(b). Rule 1785.17(b) requires this information for land within the proposed permit area identified as prime farmland under 1779.27 or 1783.27. Illinois rule 1783.27 requires an investigation of areas affected by surface operations or facilities. This requirement is identical to its Federal counterpart, 30 CFR 783.27(a). The Secretary therefore finds the Illinois rules no less effective than the Federal rules.

72. *Rule 1785.17 (b)(6) and (d)(3).* KCB (ARN ILL-0402) commented that one of the application requirements for prime farmland is available agricultural school studies or other scientific data that demonstrates that the proposed method of reclamation will achieve, *within a reasonable time,* equivalent or higher levels of yield after mining as existed before mining. KCB commented that the phrase "within a reasonable time" should be defined or general parameters set. The Illinois rules are identical to their Federal counterparts, 30 CFR 785.17 (b)(7) and (d)(3). The Secretary cannot require the State to provide more stringent requirements than the Federal regulations.

73. *Rule 1785.17(e).* ISP (ARN ILL-0412) commented that this Illinois rule exempts certain surface facilities of underground mines from the prime farmland standards when the applicant demonstrates that: (1) No non-prime farmland is reasonably available for the surface facilities; (2) the ultimate land use will not have an adverse effect on surrounding prime farmlands; and (3) the applicant will use BTCA. ISP objected that this is an incorrect interpretation of the District Court ruling which remanded 30 CFR Part 823 as an across-the-board application of prime farmland standards to underground mines, but upheld the Secretary's authority to apply prime farmland standards to some underground mines. The Federal rule was suspended (45 FR 51547, August 4, 1980) and Illinois is not required to include it.

74. *Rules 1786.11(a), 1786.12(b), and 1786.17(a).* ISP (ARN ILL-0412) expressed concern about the possible inadequacy of time allowed by Illinois for public review and comment on a revision to a pending permit application. Illinois rule 1786.11(a)(6) allows permit applications to be revised until 20 days following the last newspaper notice that an application has been filed. The newspaper notice informs the public that such a revision may be filed. Comments on the application must be filed within 30 days after the last newspaper publication. Thus, according to ISP, the public may have as little as 10 days to review and comment on any revisions.

The Federal regulation, 30 CFR 786.11(d)(2), allows revisions, but does not provide any specific provision for notifying the public that a revision has been filed, nor does it provide for public comment. Therefore, the Illinois rule is no less effective than the Federal rule in meeting the requirements of Section 513(a) of SMCRA.

75. *Rule 1786.16.* KCB (ARN ILL-0402) pointed out a typographical error in that the reference to Section 1781.11(a) should be corrected to read Section 1786.11(a). This comment has been furnished to the State.

76. *Rule 1786.17(c)(2). KCB* (ARN ILL-0402) noted that the last sentence of subparagraph (c)(2) is incomplete. The words "are satisfied" were inadvertently omitted from the resubmission printing of the Illinois rules but are contained in the official version of the rules dated January 4, 1982 (ARN ILL-0444).

77. *Rule 1788.12(a).* ISP (ARN ILL-0412) commented that the Illinois rule allows too much flexibility in permit revisions, especially in the parameters for what changes constitute "significant departures" from the method of mining originally contemplated. Rule 1788.12(a)(1) defines "significant departures" as any changes in the method or conduct of mining and reclamation operation except: (1) Changes of direction of mining or location of mining equipment within the permit area; (2) substitution of mining equipment designed for the same purpose, the use of which is not detrimental to achievement of final reclamation; (3) for underground mines, any change in direction or location of mining within the permit area, in response to unanticipated events; (4) any other change described in writing which the IDMM approves in writing after determining that the described change will have no significant potential adverse impact on the achievement of final reclamation plans or upon the surrounding area; (5) any alteration in the reclamation plan which does not involve significant delay or any change in land use described in writing and excused by the IDMM; and (6) any temporary change in operation or reclamation plans necessitated by unanticipated and unusually adverse weather conditions, act of God, strikes, or other causes beyond the reasonable control of the permittee, after review and approval by IDMM. The Secretary finds that these exceptions are reasonable and that Illinois has adequately provided for permit revisions consistent with 30 CFR 788.12.

78. *Rule 1788.12(b)(5).* ISP (ARN ILL-0412) commented that this rule allows for such significant boundary changes without the need to apply for a new permit that it is inconsistent with Section 511(a)(2) of SMCRA and 30 CFR 788.12(a). As an example, ISP states that under Illinois rules a 101 acre site could be extended by 20 acres without obtaining a revised permit. The Secretary believes ISP has misread the Illinois rule. Rule 1788.12(b)(5) *requires* that an application for a revised permit be filed for *all* incidental boundary revisions. All other boundary revisions are subject to the requirements for new permits in Parts 1778–1785.

79. *Rule 1806.11.* AMAX (ARN ILL-0403) commented that Illinois should allow self-bonding. While self-bonding is authorized by Section 509(c) of SMCRA, the State is not required to provide for self-bonding.

80. *Statute 6.07 and Rule 1806.12(c).* ISP (ARN ILL-0412) commented that the Illinois statute appears to authorize discretionary authority to forfeit bonds rather than the mandatory authority provided by 30 CFR 808.11(a). The Secretary disagrees, finding that the Illinois statute, as implemented by 1808.11(a), is consistent with SMCRA. ISP also commented that the Illinois statute limits the amount of bond forfeiture to the amount for the area where the violation occurred, rather than for the entire permit area as required in Section 509 of SMCRA. The Secretary disagrees, finding that the

Illinois statute, as implemented by 1806.12(c), is consistent with SMCRA.

81. *Rule 1807.11(d).* ISP (ARN ILL–0412) commented that the Illinois rule, contrary to 30 CFR 807.11(d), does not allow the owner, agent or lessee to participate in the bond release inspection. The Secretary agrees that this is a problem which must be corrected (ARN ILL–0443, page 6, item 16) and Illinois has agreed to do so. See Finding 19.2.

82. *Rule 1816.11.* VOC (ARN ILL–0404) objected to the rule deleting certain perimeter requirements for signs and markers on blasting. Illinois has simplified the requirements set forth in the Federal rules. The Federal rule, 30 CFR 816.11, requires that conspicuous signs which state "Warning! Explosives in Use" must be placed at all entrances to the permit area from public roads or highways. Illinois omits this requirement but requires that "Blasting Area" signs be posted along the edge of any blasting area that comes within 100 feet of any road. The signs must explain the blast warning and all clear signals. Before any person could approach close enough to the blasting area to be harmed, he would see the warning signs near the roads in the blasting area. The Secretary, therefore, finds that the Illinois rules provide equivalent protection and thus are no less effective than the Federal rules.

83. *Rules 1816.21(a) and 1817.21(a).* ISP (ARN ILL–0412) pointed out that the word "moved" should be changed to "removed", in the general rule on topsoil removal. The Secretary disagrees that use of the word "moved" renders the Illinois rule any less effective than the Federal rule and notes that Illinois rule 1816.22, the substantive topsoil provision, requires all topsoil to be "removed".

84. *Rule 1816.22.* ISP (ARN ILL–0412) commented that Illinois appears to be exempting previously mined lands from topsoil removal requirements by introduction and definition of the term "placeland." The Secretary has addressed this concern in Finding 14.6.

85. *Rule 1816.23(b)(1)(i).* ISP (ARN ILL–0412) commented that the State rule is less effective than the Federal rule because it would allow the use of annual plants alone, rather than a mixture of annuals and perennials, on a stockpile of topsoil which will be in place one year or less. The Secretary, disagrees, because the Illinois rule in allowing annuals alone will provide for at least as much biomass and root growth as would occur from a mixture. Section 515(b)(5) of SMCRA states that stored topsoil must be covered by "quick growing plant or other means" to preserve from wind and water erosion. Should unexpected circumstances result in a stockpile being in place more than one year, the IDMM may require additional measures to prevent stockpile erosion. Therefore, the Secretary finds the Illinois rule is no less effective than the Federal rule.

86. *Rule 1816.42(a).* AMAX (ARN ILL–0403) requested that intercepted, non-affected drainage, when combined with mine drainage should not result in the operator meeting standards any more stringent than those which existed prior to mining. The Illinois rule is consistent with the Federal rules and in accordance with SMCRA.

87. *Statute 3.08 and Rules 1816.42(a), 1816.46 and 1816.47.* ISP (ARN ILL–0412) commented that the best technology currently available (BTCA) for siltation control is a sedimentation pond and as directed in 30 CFR 816.42(a)(1) all "surface drainage * * * shall be passed through "such structures". As set forth in Finding 14.7, the Secretary has required that the State propose a program amendment or experimental practice before allowing any exceptions or alternatives to sediment ponds (ARN ILL–0443).

88. *Rules 1816.42(a)(1) and 1817.42(a)(1).* The Illinois Environmental Protection Agency (ILL EPA) (ARN ILL–0401) commented that the term "siltation structure" is not defined in the regulations and recommended either deleting the term and substituting "sedimentation pond" or clarifying what the term "siltation structure" means and adding general requirements for siltation structures.

Illinois Rule 1701.5 defines "siltation structure" as "a device, or devices, used to remove, collect or otherwise control runoff so that resulting outflow will meet applicable effluent standards." The Illinois definition of "sedimentation pond" as "a primary sediment control structure * * *" makes it clear that a siltation structure includes, but is not limited to, sediment ponds. Illinois uses the same term ("siltation structure") employed in Section 515(b)(10) of SMCRA. The Secretary has advised Illinois that at the present time, the requirement to use the "best technology currently available" can be met only by using sedimentation ponds. Illinois has agreed not to approve any other siltation structures until it has submitted the proposal to OSM for review and approval. See Finding 14.7 above.

89. *Rules 1816.42(a)(1) and 1817.42(a)(2).* ILL EPA (ARN ILL–0401) commented that the Illinois rule requires siltation structures to be maintained, in part, until the untreated drainage from the disturbed area meets the applicable State and Federal water quality requirements for the receiving stream. ILL EPA recommended that the requirement be limited to only effluent limitations. The Secretary finds that the Illinois rule is identical to its Federal counterpart, 30 CFR 816.42(a)(2) and therefore consistent with it.

90. *Rule 1816.42(b), 1816.42(c), 1817.42(b), and 1817.42(c).* ILL EPA (ARN ILL–0401) commented that these rules refer to the effluent limitations of this section, implying that there are applicable effluent standards other than those set forth by Federal or State laws and regulations, and that these references are confusing unless Illinois intends to promulgate minimum standards. The Secretary interprets these references to allow, at a future date, for Illinois to include its own minimum standards. Until that time however, Illinois incorporates the applicable Federal effluent limitations at 40 CFR Part 434.

91. *Rule 1816.42(b).* ISP (ARN ILL–0412) commented that the Illinois rule contains no effluent standards comparable to 30 CFR 816.42(a)(7). Illinois incorporates by reference existing State and Federal effluent limitations and water quality standards in 1816.42.

92. *Rule 1816.43(h).* ISP (ARN ILL–0412) commented that the hydraulic conveyance rule for diversion of overland flow is ineffective because it allows for use of channels, banks and flood plains when the terrain can accommodate the precipitation event "without endangering health or the environment." In view of the precautionary phrase, the Secretary finds the State procedure acceptable, allowing use of natural flood conveyance and storage areas, rather than constructing artificial drainage ways—which may be far more disruptive of the ecology and local use in the Illinois landscape.

93. *Rules 1816.46 and 1817.46.* ISP (ARN ILL–0412) commented that Illinois omits from these rules what limited design parameters for sediment ponds remain after suspension of many of OSM's rules on design criteria for sediment ponds. ISP specifically cites requirements for theoretical detention time (30 CFR 816.46(c)), dewatering devices (30 CFR 816.46(d)), sediment removal (30 CFR 816.46(n)), and emergency spillways (30 CFR 816.46 (g) and (i)).

Illinois rule 1816.46(b) provides that sediment pond design criteria shall be published as technical guidelines and "shall be no less stringent than current criteria of U.S. Environmental Protection

Agency and Office of Surface Mining". Because so many Federal design standards had been suspended, Illinois apparently determined to simply incorporate whatever Federal criteria were currently in effect, rather than have to amend its rules frequently as the Federal regulations are revised. Therefore, the Secretary finds the Illinois rules on sediment pond design consistent with the Federal rules.

94. *Rules 1816.46(h) and 1817.46(g).* ISP (ARN ILL–0412) objected to the retention of sediment ponds as permanent structures after mining. The Federal rules, 30 CFR 816.46(u), provide for retention of ponds if compatible with the postmining land use. In addition, Illinois has included requirements for proper rehabilitation of such structures (Rule 1780.38). The Secretary finds that retention of ponds is consistent with the Federal rules.

95. *Rule 1816.49(c).* ISP (ARN ILL–0412) commented that the Illinois rule on perimeter slopes for permanent impoundments is less effective than the Federal rule because, unlike the 50% gradient slopes required in 30 CFR 816.49(c), Illinois allows angle or repose slopes. The Secretary has approved this provision with the understanding that any slopes approved by Illinois under the rule will be stable and consistent with the intended use of the impoundment. The controlling factors are suitability for intended use and protection of the environment. See Finding 14.2 above.

96. *Rule 1816.49(c)(iii).* ISP (ARN ILL–0412) commented that this rule provides that topsoil replacement will not be required on angle of repose slopes, although it does require that topsoil substitute material be placed on angle of repose slopes. ISP objects that topsoil substitute material may not be equivalent to topsoil, and that no practical method exists to place any soil medium on angle of repose slopes. As noted in Finding 14.2 above, the Secretary has approved the Illinois rule on permanent impoundments with the understanding that any slopes approved by Illinois will be stable and consistent with the intended use of the impoundment. Illinois rule 1816.49(c)(iii) does require that topsoil substitute material be placed on these slopes. The Secretary assumes that Illinois will not authorize permanent impoundments unless slope protection is provided that is adequate to minimize surface erosion, as required by Illinois rule 1816.49(d).

97. *Rule 1816.62(a).* ISP and KCB (ARN ILL–0412 and 0402) commented that Illinois should not require a written request for a pre-blast survey because the preamble to the Federal rule expressly rejected requiring that the request be in writing. The Secretary finds that the Act does not specify the form of the request, and accordingly, Illinois is not inconsistent with Section 515(b)(15)(E) of SMCRA.

98. *Rule 1816.64(a)(2).* ISP (ARN ILL–0412) commented that the Illinois rule is less effective than 30 CFR 1816.64(a)(2) because the applicability of the notification requirement is based on one-half mile from the *blasting area* rather than the *permit area*, as required by 30 CFR 816.64(a)(2). The Secretary finds, however, that Illinois rule 1816.64(a)(2) is no less effective than the Federal rule in meeting the requirements of the Act because Section 515(b)(15)(A) requires that copies of the schedule be mailed to residents living "within one-half mile of the proposed blasting *site*" (emphasis added).

99. *Rule 1816.64(a).* ISP and KCB (ARN ILL–0412 and 0402) objected to the Illinois rule allowing use of 25 pounds of explosives before public notice of blasting is required. The Federal counterpart rules impose the more stringent limit of 5 pounds. The Secretary agrees and has requested Illinois to correct this deficiency as a condition of approval. See Finding 14.3.

100. *Rule 1816.64(b)(2)(ii).* ISP (ARN ILL–0412) asserted that Illinois' omission of a limitation on blasting to "an aggregate of 4 hours in any one day" renders the State rule less effective than its Federal counterpart, 30 CFR 816.64(b)(2)(ii). However, the four-hour time limit in 30 CFR 816.64 is not necessarily related to the prevention of damage, but rather related to local public convenience. The IDMM has the authority under 1786.27 and 1786.29 to specify permit conditions, including limitations on blasting time, as appropriate for the locale. The Secretary is confident that Illinois will exercise its authority in a reasonable manner.

101. *30 CFR 816.64(b)(2)(v).* ISP (ARN ILL–0412) commented that Illinois omits a counterpart to this Federal rule requiring that blasting schedules include a description of unavoidable hazardous situations which require unscheduled detonation.

The types of situations requiring unscheduled detonation include unusual weather conditions or unavoidable delays that would threaten operator or public safety. Because 1816.65(a) requires advance authorization for unscheduled blasting, including public notice requirements, the Secretary finds that the omission of this provision from the blasting schedule does not render the Illinois rule less effective than the Federal rule in protecting the public from the effects of blasting.

102. *30 CFR 816.64(c)(2).* 30 CFR 816.64(c)(2) provides that if there is a substantial pattern of non-adherence to the published blasting schedule, the regulatory authority may require preparation of a revised blasting schedule. ISP (ARN ILL–0412) asserted that because Illinois omits a counterpart to this rule it is thus less effective. Illinois stated in its legal opinion (Volume R5) that it omitted this requirement because it is redundant. Illinois stated that since subsection (b)(1) states a requirement, it is unnecessary to adopt a rule—subsection (b)(2)—that says if you don't meet the requirement, then you must do what is necessary to meet the requirement. The Secretary agrees that such a requirement is unnecessary, given Illinois' authority to impose restrictions on the permittee (see comment number 100).

103. *30 CFR 816.65(a)(1) and 817.65(b)(1).* ISP (ARN ILL–0412) commented that Illinois omits counterparts to these Federal rules allowing the regulatory authority to specify more restrictive blasting periods to protect the public from adverse noise. The Secretary believes that Illinois has the authority and means to restrict periods of blasting without this particular provision, given its authority to impose permit terms and conditions under 1786.27 and 1786.29.

104. *Rules 1816.65(a) and 1817.65(b).* ISP (ARN ILL–0412) commented that the Illinois rules omit a requirement found in 30 CFR 816.65(a)(2)(ii) to provide oral notices to persons within one-half mile of the blasting site if blasting is to be conducted between sunset and sunrise. ISP noted that Illinois justifies this omission on the basis that it has not received any requests to blast between sunset and sunrise in the past three years. ISP submitted a copy of a request to blast at night dated March 10, 1980.

Illinois justifies its rule by explaining (in Volume R5) that special authorization by the IDMM is required before night blasting will be allowed, and such authorization will not be granted except when the public or mine employees will be endangered if the blast is not fired. This requirement is in contrast to the Federal rule which does not require advance approval for night blasting. ISP noted that OSM has found that oral notices are necessary to prevent abuses of the nighttime blasting provisions. However, no reference was provided to support this statement. The preamble to the Federal rules (44 FR 15187, March 13, 1979) states that controls must be imposed to ensure that the public is adequately warned of an

emergency blast. Illinois has stated that neighbors and/or local public safety agencies will be required to be notified, as circumstances warrant. Thus, Illinois has the authority to require oral notices if necessary. Moreover, operators are required under 1816.65(b) and 1817.65(c) to give warning and all-clear signals that are audible within one-half mile of the point of blast. Therefore, the Secretary finds that the requirements of advance authorization and warning signals and the authority to require oral notices makes the Illinois rule no less effective in meeting the requirements of the Act.

105. *Rule 1816.65(e) and 1817.65(f).* ISP and KCB (ARN ILL–0412) commented that the Illinois rule fails to protect "people living at a mine permit perimeter" from flyrock because the State rule would contain flyrock on the permit area, not restricting its occurrence to half the distance to the nearest dwelling, as required by 30 CFR 816.65(g). The Secretary does not agree that the Illinois rule is less effective. Illinois rule 1816.65(d) provides that blasting shall not be conducted within 300 feet of a dwelling unless waived by the owner, and Illinois rules 1816.65(c) and (f) require that blasting shall be conducted to prevent injury to persons and damage to property.

106. *Rule 1816.65(g).* ISP (ARN ILL–0412) commented that Illinois omits an air blast permissible limit of 109 decibels, C-weighted, slow response. The Secretary assumes that by deleting this standard, Illinois would not allow use of the C-weighted scale, which is the least accurate of the standards set forth in either the Federal or Illinois rule. The Illinois rule is therefore no less effective than its Federal counterpart, which allows use of this standard.

107. *Rule 1816.65(n).* ISP (ARN ILL–0412) objected to the Illinois rule because it omits authority to require reduction of maximum peak particle velocity because of special geologic and hydrologic conditions or age and type of structures in the area. The Secretary notes, however, that the Illinois language, although dissimilar in wording, nevertheless authorizes the IDMM to reduce the maximum peak particle velocity to enable the protection of property, people and natural resources.

108. *Rule 1816.68.* ISP (ARN ILL–0412) commented that the Illinois rule on blasting records omits requirements to include information on weather conditions and number of persons in the blasting crew. Although the Secretary agrees that the inclusion of such information in the record would facilitate post-blast investigations, its inclusion is not mandatory. Section 515(b)(15)(B) requires that records be maintained detailing the location of the blast, the pattern and depth of the drill holes, the amount of exposives used per hole, and the order and length of delay in the blasts. Therefore, the Secretary finds that the Illinois rule, which contains these requirements, is as effective as the Federal rule.

109. *Rule 1816.71.* ISP (ARN ILL–0412) objected to the classification of box-cut spoil as excess spoil and its inclusion in the Illinois excess spoil rule. ISP, apparently, wishes the box-cut spoil to be placed in the final cut—thus effecting a nearly complete return of the minesite to original contour. This request ignores the conventional and practicable area-mining method used in Illinois, in which the box cut and the last cut may be separated many miles in distance and years of time. The Secretary believes that the environmental performance standards of the Act are met, and can be met in the future, in this type of mining. The Illinois rule is consistent with SMCRA and is as effective as the Federal rules.

110. *Rule 30 CFR 816.83(a).* ISP (ARN ILL–0412) commented that 30 CFR 816.83(a) requiring coal processing waste banks to include a subdrainage system was suspended only to the extent that it failed to provide an exemption if the operator can demonstrate that an alternative will ensure structural integrity of the waste bank and protect water quality. ISP states that Illinois has omitted this rule in its entirety. However, the Secretary finds that Rule 1816.83(d) supplies the necessary control and is identical to 30 CFR 816.83(a).

111. *Statute 3.25(a) and (b) and Rules 1816.100 and 1817.100.* ISP (ARN ILL–0412) commented that these Illinois provisions, concerning extension of time for reclamation, conflict with Section 102(e) of SMCRA and 30 CFR 816.100 and 817.100 which require reclamation as contemporaneously as practicable. The Secretary finds that extensions of time are consistent with 30 CFR 816.101, which expressly authorizes them, and the Illinois provisions are thus consistent with SMCRA and the Federal regulations.

112. *Rule 1816.101(a)(3)(ii).* ISP (ARN ILL–0412) comments that this rule "affords operators a blanket exemption from contemporaneous reclamation requirements for as long as 26 months" and, furthermore, fails to assure erosion control on the fill during the interim period before final grading. The Secretary finds that the concept of separating rough and final grading is acceptable and that erosion can be controlled under the Illinois rule, if the State administers the rule to require reclamation to be as "contemporaneous as practicable" (SMCRA 515(b)(16)). It is noteworthy that SMCRA uses the term *practicable* not *possible*. The rules of Illinois to evaluate and to enforce this standard are as effective as the Federal rule.

113. *Rule 1816.102.* ISP (ARN ILL–0412) asserts that this Illinois rule is less effective than Federal rules because it allows a highwall remnant to remain (unreduced to 50 percent gradient, as is the above-water strata) below the mean low water line. The Secretary disagrees, because the limnological characteristics of almost any water body can be improved by a deep water zone. The most efficient place in the artificial water body to provide storage and depth is on the highwall side of the lake. Such a condition would be subsurface and therefore not a highwall, *per se*. This interpretation is supported by the water quality and water use criteria of SMCRA 515(b)(8).

114. *Statute 3.11(c) and Rule 1816.103.* ISP (ARN ILL–0412) expresses several concerns about the Illinois rule allowing the covering of the pit floor and the highest coal seam with four feet of water. The Secretary has examined the professional literature thoroughly and has concluded that, if Illinois wishes to allow this practice it must assure that at least 33 feet (not 4 feet) of water cover the coal seam at all times. This depth will allow thermal stratification so that deep water in contact with acid-forming materials will be generally unsuitable for acid formation. the Secretary has directed OSM to work with Illinois to review the literature and develop a proposal which is consistent with the Federal provisions. See Finding 14.4 above, which conditions approval of the Illinois program on a revision to this rule.

115. *Rule 1816.105(b)(7).* ISP (ARN ILL–0412) commented that "reference to final cut impoundments is improper . . . and should be disapproved." The Secretary disagrees, calling attention to language in the preamble allowing for last-cut lakes on prime farmland (44 FR 15087, March 13, 1979). See Finding 14.2 above.

116. *Rule 1816.115.* AMAX (ARN ILL–0412) commented on postmining land use as pasture, stating that the narrative requirement of actual "grazing" in Volume R2 is inconsistent with Rule 1816.115, which provides that the reclaimed land *may* be used for grazing but at a minimum must be restored to a condition *capable* of supporting the approved postmining land use of range

or pasture. This comment has been furnished to the State.

117. *Rule 1816.116(a)(3) and 1817.116(a)(3).* ISP (ARN ILL–0412) expressed concern that Illinois does not require consultation with other appropriate State and Federal agencies before approval of a revegetation technique and that the rule equates 90% ground cover with equal productivity. ISP also commented that Illinois deletes, the reference to productivity in the underground mining rule. The Secretary finds that the Illinois rules will provide for consultation on techniques to measure the success of revegetation, as such techniques are developed, and further finds that Illinois Rules 1816.116(a)(3) and 1817.116(a)(3) are identical to their Federal counterparts, 30 CFR 816.116(b)(3) and 817.116(b)(3).

118. *Rule 1816.116(b)(3).* AMAX (ARN ILL–0403) commented on revegetation standards for success, suggesting that this rule be rewritten to change the reporting date from September to January and to begin the report period when the five-year period of responsibility begins. The Secretary finds that the suggestion, while it may be helpful, is not required of the State. The comment has been furnished to the State.

119. *Rule 1816.117(c).* ISP (ARN ILL–0412) commented that rules for tree and shrub stocking are inconsistent with Federal standards and must be disapproved. The Secretary finds that Illinois, by requiring a minimum stocking of 250 trees or shrubs per acre, has provided for the use of stocking patterns that will achieve the desired edge effect and aesthetics when revegetating for wildlife management, recreation, and shelter belts, and that the minimum stocking does not preclude requiring more plants when necessary. Therefore, the Illinois rule is no less effective than the Federal rule.

120. *Rule 1816.117(d).* ISP (ARN ILL–0412) commented that the rule establishes a vegetation sampling procedure to measure revegetation which shows an unwillingness to measure productivity as well as ground cover, and thus Illinois will be unsuccessful in measuring revegetation. Productivity of forest, wildlife, shelter belts, and recreational areas is assumed to be achieved when proper tree and shrub stocking and ground cover have been achieved. The Secretary finds that the Illinois rule is therefore no less effective than the Federal rule.

121. *Rule 1816.133.* ISP (ARN ILL–0412) objected to the lack of specific criteria for approving postmining land uses that are found in 30 CFR 816.133(c). ISP also commented that 1816.133(a)(2), which provides that the regulatory authority will make the determination of consistency with land use policies and plans, deletes references to local land use policies. ISP also objected to the Illinois rule, which provides that the proposed use must not be a hazard or threat or be impractical or unreasonable, rather than requiring a detailed description of postmining land use achievement, as required by Section 508(a)(4) of SMCRA. ISP stated that Illinois' proposed procedure to determine capabilities of affected lands through SCS classifications will be ineffective for mined lands because the system fails to address land use type issues except in a slope and soil type framework which is not appropriate for a mining situation with changes of land configuration, the inclusion of non-agricultural type uses and the creation of new soil types with no SCS classifications. ISP also pointed out the Flannery decision upholding the majority of the Federal rules at 30 CFR 816.133 and the need for Illinois to comply with these regulations. ISP ended the discussion of the objection to the State's rule 1816.133 with specific details on Illinois' past practice in allowing alternative land uses and the impacts on local land use. ISP stated that the Illinois rule as proposed is insufficient to meet the requirements of the Federal program as it requires insufficient information to evaluate postmining land use, fails to provide the consultation with land owner or land management agency, does not require a written statement of the views of authorities with statutory responsibility for land use policies and plans and the professional certifications. Finally, ISP stated that the use of SCS handbooks for determining land capabilities for mined lands is also without technical support. The Secretary has addressed these concerns in Finding 14.8.

122. *Rule 1817.101(b).* ISP (ARN ILL–0412) commented that this rule is less effective than 30 CFR 817.101(b) because it omits a requirement that affected surface areas be returned to approximate original contour. ISP also noted that 1817.101(b)(4) requires only that reclamation must "support" the postmining land use, which is less effective then the Federal rule. The Federal rule, 30 CFR 817.101(b)(2) uses the same word. The Federal counterpart, 30 CFR 817.101(b)(1), was suspended and Illinois is not required to include this provision until a final Federal rule is promulgated.

123. *Rule 1817.111.* ISP (ARN ILL–0412) asserted that this rule deletes the requirement that underground mining areas designated as prime farmlands must comply with the standards of Part 1823; and that it omits the term "native" plants from the permanent vegetative cover standard. The Secretary disagrees that an exemption has been effected. In Illinois Rule 1784.20 all surface effects of underground mining are subjected to the prime farmland standards. On the subject of "native" plants; the use of an acceptable vegetative cover will be assured by Illinois through the permitting process. Therefore, the deletion of the word "native" is not considered critical.

124. *Rule 1817.112.* ISP (ARN ILL–0412) commented that Illinois does not require field trials for introduced species, as does 30 CFR 817.112. The Secretary finds that sufficient review is afforded permit applications to insure that the use of introduced species will be monitored judiciously.

125. *Rule 1817.116(a)(3).* ISP (ARN ILL–0412) commented that Illinois has eliminated the productivity reference for equivalency of revegetation, improperly allowing a comparison of ground cover and productivity of the affected area with only the ground cover of the reference area. ISP stated that "Illinois must require that operators compare the productivity of the affected area with the productivity of a reference area or other reliable productivity data." The Secretary believes that standards of success for revegetation can best be developed on a State level and that the Illinois rule is supported by SMCRA 515 (b)(6) and (b)(19). See also responses to comments 117, 119 and 120.

126. *Rule 1823.1.* ISP (ARN ILL–0412) commented that Illinois exempts the applicability of prime farmland standards to underground mining operations and activities and to surface effects of underground mining that do not involve drilling, blasting, or mining. The District Court in *In re Permanent Surface Mining Regulation Litigation,* No. 79–1144 (D.D.C. 1980) remanded 30 CFR Part 823 to provide an exemption for surface facilities actively used over extended periods of time but which affect a minimal amount of land. Based on this remand, the Secretary finds that the Illinois rule is no less effective than the Federal rules.

127. *Rule 1823.11(a).* ISP (ARN ILL–0412) commented that this rule limits the applicability of prime farmland permitting standards to prime farmlands due to alleged inadequacies in definitions. The Secretary believes that Illinois need not employ the same terms so long as they are equivalent to the Federal definitions. Viewed as a whole the Illinois terms and standards (as explained in Findings 30.4 and 30.5)

provide consistent coverage no less effective than the Federal rules.

128. *Rule 1823.14(c).* KCB (ARN ILL–0412) commented that the term "excessive compaction" is not defined as it is in the Federal rule, 30 CFR 1823.14(c). The Federal rule was suspended insofar as it established a "moist bulk density" standard to define excessive compaction. Therefore, the Illinois rule is consistent with the existing Federal rule. Compaction as well as other soil reconstruction standards are to be developed by the Soil Conservation Service and the regulatory authority within each State.

129. *Rule 1823.15(b).* ISP and KCB (ARN ILL–0412) objected to several differences in the Illinois rule as compared to the Federal rule: Adoption of the phrase "plant with common crops" in place of "use for common crops"; the use of final grading in lieu of rough grading; and options given to operators for determination of productivity measures. The Secretary disagrees, finding the Illinois rules different but no less effective in protecting prime farmland. See responses to Comments 119 and 120 and Findings 30.4 and 30.5

130. *Rules 1825, 1825.11, and 1825.14.* ISP (ARN ILL–0412) raises many questions about the Illinois rule on high capability lands (for which there is no Federal counterpart). The Secretary finds that the explanations in resubmittal documents R5 (page 157) and R7 (page 322) demonstrate that the Illinois rule is no less effective than the Federal rules.

131. *Statute 8.02 and Rule 1840.2.* ISP (ARN ILL–0412) alleged that the Illinois rule undermines the requirement in Section 517(b)(1) that the regulatory authority impose monitoring and reporting obligations on the permittee by limiting the obligations to those instances where the Department deems it reasonable and necessary. The Secretary disagrees, finding that the Illinois rule in no way diminishes its authority or renders inconsistent or ineffective monitoring and reporting obligations of operators.

132. *30 CFR 842.11(b)(1)(i).* ISP (ARN ILL–0412) commented that Illinois omits a counterpart to 30 CFR 842.11(b)(1), which requires an authorized representative of the Secretary to immediately conduct an inspection if there is reason to believe that a violation exists. The Secretary believes that 30 CFR 842.11(b)(1)(i) applies to Federal and not State inspections. First, Part 842 is entitled "Federal Inspections" while Part 840 is entitled, "State Regulatory Authority Inspection and Enforcement." 30 CFR 840.15 incorporates only the public participation provisions of Part 842 into Part 840. Second, 30 CFR 842.11(b)(1)(i) requires an immediate *inspection* when there is reason to believe that a violation exists rather than immediate issuance of a notice of violation or cessation order. The commenter failed to read this subsection in conjunction with subsection (ii), which subsection refers to the other preconditions that must exist prior to conducting an immediate Federal inspection. These preconditions are: (1) Federal enforcement in the State under the permanent program, (2) failure of the State to take action after a 10-day notification period has expired or (3) adequate proof that an imminent danger exists. These preconditions are clearly those where OSM is either enforcing the permanent program in a State, or overseeing the State's enforcement of its approved program. 30 CFR Parts 840, 843 and 845 contain the required inspection and enforcement aspects of a State program, and Illinois has demonstrated that the provisions of its program are no less effective than the Federal regulations.

133. *Rule 1843.12(a)(1).* ISP (ARN ILL–0412) commented that 30 CFR 843.12(a)(1) prescribes those circumstances for which a notice of violation must be issued, including violations of "any condition of a permit or exploration approval imposed under (the State) program," and that the corresponding Illinois rule omits this language. However, Rule 1843.12(a)(1) does require issuance of a notice of violation for "a violation of the (Federal) Act, the State Act, or these regulations." Rule 1771.19 requires that "all persons shall conduct surface coal mining and reclamation operations under permits issued pursuant to Sections 1770–1778 of these regulations and *shall comply with the terms and conditions of the permit* and the requirements of the State Act, and these regulations, and the regulatory program." (Emphasis added.) Therefore, violation of a permit condition would mean violation of Rule 1771.19 and a notice of violation must be issued under 1843.12(a)(1). The Secretary finds the Illinois rule is no less effective than 30 CFR 843.12(a)(1) in meeting the requirements of Section 521(a)(3) of SMCRA.

134. *Rule 1843.12(a)(2).* ISP and Old Ben (ARN ILL–0412) commented that the rule is confusing, as it appears to apply to Federal inspections. The Secretary has advised Illinois (ARN ILL–0443) that the provisions pertaining to Federal inspections are not required in the State rules and Illinois has agreed to delete this requirement. (ARN ILL–0451).

135. *Rule 1843.12(f).* ISP (ARN ILL–0412) objected to the Illinois rule on extension of abatement beyond 90 days in enforcement actions. The Secretary has addressed this concern in Finding 21.3.

136. *Rule 1843.16(c).* ISP (ARN ILL–0412) observed that the Illinois reference to paragraph (4) should be to paragraph (a). This comment has been furnished to the State.

137. *Rule 1843.17.* Old Ben (ARN ILL–0405) asked for clarification on whether the hearing on temporary relief may be combined with any hearing held under 1843.16 or 1845.19. The Secretary interprets the Illinois rules as not allowing a combining of hearings under 1843.17(1) and 1843.16 or 1845.19.

138. *Rule 1843.22.* Old Ben (ARN ILL–0405) stated that 1843.22(e)(1)(B) should be amended by adding "other" to the phrase "any proceeding" to clarify that subsection (B) does not encompass subsection (A). The Secretary does not believe that clarification is needed, as subsection (A) and (B) are separated by a semicolon and the disjunctive word "or".

139. *Rules 1843.22(e) and (f).* ISP (ARN ILL–0412) commented that the Illinois program does not contain counterparts to Federal rules 43 CFR 4.1294(b) and 4.1295(b) providing for: (1) The award of costs and expenses "to any person other than a permittee or his representative from OSM, if the person initiates or participates in any proceeding under the Act upon a finding that the person made a substantial contribution to a full and fair determination of the issues," and (2) the award of costs incurred in seeking the award. Illinois rule 1843.22(e) provides that any person may be awarded costs from the permittee if the person made a substantial contribution to a full and fair determination of the issues. The Secretary therefore finds that the public will have access to award of costs that is no less effective than the Federal rules.

140. *Rule 1845.15(b)(2).* ISP (ARN ILL–0412) commented that Illinois has omitted a provision for alternative enforcement after the 30-day penalty period has expired. The Illinois provisions for alternative enforcement were inadvertently omitted from the resubmission. However, the Illinois rule amendments dated January 4, 1982 (ARN ILL–0444) do provide for alternative enforcement action consistent with 845.15(b)(2).

141. *Narrative Volume R1, Tab B.* ISP (ARN ILL–0412) recommended that Illinois be required to certify the accuracy of current statutory references because of the time that has passed

since Illinois' original submission. The Secretary believes that Illinois has made a good faith effort to provide correct citations and a certification is not necessary.

142. *Narrative Volume R1, Tab E.* ISP (ARN ILL–0412) commented that under Section 554 of the Administrative Procedures Act, an employee who presides at a formal administrative hearing may not supervise an employee engaged in the performance of investigative or prosecuting functions for an agency. ISP objected that under the Illinois procedure, the attorneys for the IDMM would be reviewing the decisions of their supervisor, the head of the Land Reclamation Division. However, the Secretary finds that Illinois has adequately explained its administrative review procedures in Volume R2, Tab O.

143. *Narrative Volume R1, Tab F.* ISP (ARN ILL–0412) commented that Illinois had not submitted key interagency agreements under the permanent program. These agreements were submitted on April 13, 1982 (ARN ILL–0451) and OSM reopened the public comment period on them.

144. *Narrative Volume R1, Tabs I and J.* ISP (ARN ILL–0412) expressed concern that Illinois lacks an adequate inspection staff. The Secretary finds that the number of employees available to conduct inspections is adequate based on the number of inspectable units in Illinois.

145. *Narrative Volume R1, Tabs D and J.* ISP (ARN ILL–0412) commented that Illinois lacks the necessary staff to inspect and enforce water quality standards and has failed to specify procedures for the reporting of data to the IDMM by the Illinois EPA. The Secretary finds that the IDMM has adequate staff to inspect and enforce water quality standards (see comment No. 144 above) and has specified procedures in the interagency agreement with the Illinois EPA (ARN ILL–0451).

146. *Narrative Volume R2, Tab G.* ISP (ARN ILL–0412) commented that the description of proposed procedures on civil penalties is inconsistent with the Federal law because it fails to provide for a maximum $5,000 penalty for each violation. However, Illinois rule 1845.14(a) provides for maximum penalties of $5,000, in accordance with Section 518(a) of SMCRA. Accordingly, the Secretary finds that the Illinois provision is consistent with the Federal regulations.

147. *Narrative Volume R1, Tab J.* ISP (ARN ILL–0412) stated that for the price the State is paying for outside legal counsel, the IDMM could hire four to six in-house legal counsel which would respond to the Secretary's original concern that Illinois in-house legal services were inadequate. The Secretary has found that Illinois will have adequate legal counsel and it is a matter of State discretion whether to use the services of outside legal counsel.

148. *Statute 1.03(25).* ISP and KCB (ARN ILL–0412 and 0402) stated that the use of definitions for both "toxic conditions" and "toxic materials," is confusing and that the weaker definitions for toxic materials should be deleted. Illinois rule 1701.5 defines both "toxic conditions" and "toxic materials" as those which will not support plant or animal life. The Secretary finds that the Illinois rule definition is no less effective than the Federal definitions.

149. *SMCRA 707.* ISP (ARN ILL–0412) commented that Illinois lacks a counterpart to Section 707 of SMCRA which is a severability clause that if any part of SMCRA is held invalid, preserves the remainder. The Secretary finds that the lack of such a clause is not significant, based on the explanation in the Attorney General's opinion (Volume 7 of the original submission) the Illinois State law provides that the remainder of a statute stands unless it is clear that the legislature would not have passed the statute without the stricken provision because it is such an integral part of the statute. (See ARN ILL–0103 and 0304).

150. *SMCRA 704.* ISP (ARN ILL–0412) commented that Illinois has failed to provide for protection for State employees. The Secretary disagrees, based on the information submitted by Illinois. See Finding 27.

151. *Statute 3.04.* ISP (ARN ILL–0412) commented that because the definition of "affected land" excludes surface over underground mine workings, Section 3.04 requiring backfilling and grading of "affected land" is inconsistent with Section 515(b)(3) of SMCRA. The Secretary has examined the definition and use of all terms relating to underground coal mining to ensure conformance with 30 CFR and SMCRA. See Findings 30.4 and 30.5 above. In this context the difference in definition of "affected land", and certain related terms, renders the Illinois rule no less affective than the Federal rules.

152. *Statute 3.04(c).* ISP (ARN ILL–0412) commented that the Illinois statute broadens the exemption from approximate original contour requirements of Section 513(b)(3) of SMCRA in order to treat overburden as excess spoil and allow last-cut lakes. The Secretary has approved the Illinois practice of leaving last-cut lakes. See Findings 14.2 and 14.4.

153. *Statute 3.15(b).* ISP (ARN ILL–0412) objected to the Illinois rule not conditioning the starting of the five-year period on the date of initial planting. The Secretary disagrees and finds the Illinois statute consistent with SMCRA. (See Comments on rules 1816.117(d), 1817.116(a)(3), and 1825).

154. *Statutes 3.15(b) and 7.01(b).* ISP (ARN ILL–0412) requested that the Illinois law be construed such that Section 3.16(b) which appears to authorize mining within 100 feet of a road, "does not override Section 7.01(b), which requires an opportunity for a public hearing and a written finding before mining may take place within 100 feet of a road." The Secretary has already found the Illinois statute to be consistent (See Finding 22.1 of the October 31, 1980 **Federal Register**).

155. *Statute 9.01(h).* ISP (ARN ILL–0412) commented that the Illinois statute provides that adopted rules shall be effective 30 days after filing of a rule unless a later date is specified, but no provision is made for compliance with 30 CFR 732.17, which requires submission to and approval by OSM before amendments are effective. The Secretary finds that express reference to compliance with 30 CFR 732.17 is not an element required to be included in a State program.

156. *Statute 9.01(h).* ISP (ARN ILL–0412) states that the Illinois statute is inconsistent with SMCRA because it prohibits the adoption of retroactive rules. The Secretary disagrees after careful review of this subject with Illinois (ARN ILL–0443). Illinois explained that the provision means that Illinois rules are effective prospectively and will be applicable to all permittees. Based on this assurance, the Secretary finds that the Illinois provision is consistent with SMCRA.

157. *Statute 8.05(c) and 8.07(f).* ISP (ARN ILL–0412) commented that Sections 8.05(c) and 8.07(f) authorizing awarding costs and expenses on the basis of the importance of the proceeding and participation of the parties in the efficient and effective enforcement of the Act is inconsistent with SMCRA. However, the Secretary finds that Illinois rule 1843.22 provides for award of costs in accordance with SMCRA and the Federal regulations. See comment number 139.

158. *Statute 8.04(e).* ISP (ARN ILL–0412) commented that the criminal sanctions of Section 8.04(e) are inconsistent with Section 518(e) of SMCRA, because they omit sanctions for violations of court orders. In addition, the Secretary notes that several Illinois cases, *In re Baker,* 71 Ill.

2d 480 (1978), and *People ex rel Chicago Power Assn.* v. *Barasn,* 21 Ill. 2d 407 (1961), have held that criminal contempt penalties are discretionary with the court and may include imprisonment and fines. These penalties are consistent with Section 518(e) of SMCRA. Therefore, the Secretary finds Section 8.04(e) of the Illinois statute is in accordance with SMCRA.

159. *Statute 8.05.* ISP (ARN ILL–0412) commented that Illinois must include a right of intervention in citizen suits consistent with Section 520(b)(1)(B). However, Section 520(b)(1)(B) provides that no citizen suit may be commenced "if the Secretary or the State has commenced and is diligently prosecuting a civil action *in a court of the United States or a State* to require compliance with the provisions of this Act, or any rule, regulations order, or permit issued pursuant to this Act, *but in any such action in a court of the United States any person may intervene as a matter of right.*" (emphasis added). The Secretary finds that Congress by specifying a right of intervention in Federal court, did not intend to require intervention in State courts.

160. *Statute 8.06(b) and (c).* ISP (ARN ILL–0412) commented that the Illinois statute is inconsistent with SMCRA because it provides that an operator may seek immediate injunctive relief from enforcement action without first exhausting administrative remedies. The Secretary has addressed this concern in Finding 28.2.

161. *Statute 8.07(a).* ISP (ARN ILL–0412) commented on administrative review of enforcement actions, noting that "This problem appears to have been resolved by Illinois' rules at 1843.16(a) * * *" The Secretary agrees.

162. *Statute 9.06.* ISP (ARN ILL–0412) commented that the Illinois statute applies the conflict of interest provisions of Section 517(g) only to employees of the IDMM, although other State employees have duties under the Act. ISP notes that Illinois states that it requires all employees exercising duties under the State Act to file financial interest statements, but ISP requests further assurances that the definition of employee in 1701.5 and penalties for violation be specified in the program. The Secretary finds that Section 9.04 and 9.06 of the Illinois statute, when taken together, are consistent with SMCRA. Section 9.04 provides that the IDMM may delegate to or contract with other State agencies to perform duties under the State Act. Section 9.06 provides that no person employed by the IDMM shall have a direct or indirect financial interest in mining operations in violation of the Federal Act. Further, rule 1701.5 defines employee as any person employed by the IDMM who performs any duty or function under the Act. This definition is identical to the definition of employee in 30 CFR 705.5. Therefore, the Secretary finds that Illinois applies the conflict of interest provisions of Section 517(g) of SMCRA consistent with the Federal requirements in 30 CFR Part 705.

E. Background on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. SMCRA 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 SMCRA. 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 discuss informally how SMCRA 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.

The Secretary has dispensed over $8.5 million in program development grants and over $54.8 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 SMCRA's environmental protection standards.

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 (44 FR 54444; September 19, 1979). This policy was critical to avoiding a period of enforced silence between OSM and a State after the close of the public comment period on its program and has been a vital part of the program review process.

The Secretary has also developed in his regulations the critical ability to conditionally approve a State program. Under 30 CFR 732.13 of 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 SMCRA; it was adopted through the Secretary's rulemaking authority under 30 U.S.C. 201(c), 501(b), and 503(a)(7).

SMCRA expressly gives the Secretary only two options—to approve or disapprove 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 conditionally approve a program.

Conditional approval has a vital effect for States whose programs are approved. It results in the implementation of the permanent program in a State months earlier than might otherwise be anticipated. It also avoids the costly and cumbersome problem of implementing Federal programs where the State submittal was deficient in only minor respects. While this may not be significant in States that already have comprehensive surface mining regulatory programs, in many States 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 states, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems

required by SMCRA and these regulations" (44 FR 14961; March 13, 1979). 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 granted.

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.

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 SMCRA that the deficiency would probably be major.

The granting of conditional approval is not and cannot be a substitute for the adoption of an adequate program. The purpose of the conditional approval authority is to assist States in achieving compliance with SMCRA, not to excuse them from compliance.

F. The Secretary's Decision

As indicated above under "Secretary's Findings," there are minor deficiencies in the Illinois program which the Secretary requires be corrected. In all other respects, the Illinois program meets the criteria for approval. The deficiencies identified in prior findings are summarized below and an explanation is given to show why the deficiency is minor, as required by 30 CFR 732.13(i).

1. As discussed in Finding 14.3, Illinois rules allow up to 25 pounds of explosives to be detonated before requiring publication of an operator's blasting schedule or before requiring notice to surface owners of any surface blasting event during underground mining operations. This deficiency is minor because few blasts of less than 25 pounds are detonated. Also, during the interim period until Illinois can amend these regulations, most operations will be operating under permits issued under the interim regulatory program which requires a blasting schedule be published in which blasts using more than 5 pounds of explosives are to be detonated and requires surface owners to be notified of any surface blasting event associated with underground mining operations.

2. As discussed in Finding 14.4, the Illinois regulations allow for covering the pit floor and highest coal seam with four feet of water. This deficiency is minor because during the period until Illinois can amend these regulations most operators will be operating under permits issued under the interim regulatory program, which does not allow for covering with water. Furthermore, Illinois has agreed not to use its authority to approve covering with less that 10 meters of water.

3. As discussed in Finding 14.7, Illinois regulations would allow variances from the requirement of a sedimentation pond if an operator demonstrates that the best technology currently available in a given situation is a siltation structure other than a sedimentation pond. This deficiency is minor because Illinois has agreed to send any such proposal to OSM for review and approval pending revision of the program.

4. As discussed in Finding 19.2, the Illinois regulation does not expressly guarantee the right of the surface owner to accompany the IDMM inspector on the bond release inspection. This deficiency is minor because during the short period before the regulation is amended, the Illinois rules do provide that the landowner must be notified of the application for bond release and by registering a written objection and requesting a hearing, the IDMM may arrange for access to the mining area.

5. As discussed in Finding 21.3, Illinois regulations on extensions of the 90-day abatement period on violations are inconsistent with the Federal rules. This deficiency is minor because Illinois rules 1843.12(f)(1) and (f)(6), among other provisions, require that extensions can be granted only when abatement within 90 days would: (1) Clearly cause more environmental harm than it would prevent; or (2) create an imminent danger or be expected to cause imminent environmental harm. The Secretary knows of no situation where more environmenal harm would be created by abatement except when abatement would be affected by climatic conditions. Furthermore, extensions are not mandatory and the Secretary is confident that Illinois will not grant any extensions that would be inconsistent with the Federal regulations.

Given the nature of the deficiencies set forth in the Secretary's findings and their magnitude in relation to all the other provisions of the Illinois program, the Secretary of the Interior 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 Illinois program incomplete;

2. All other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII;

3. These deficiencies, which will be promptly corrected, will not directly affect environmental performance at coal mines;

4. Illinois has initiated and is actively proceeding with steps to correct the deficiencies; and

5. Illinois has agreed, by letter dated May , 1982, to correct three of the regulation deficiencies by December 1, 1982. Two other deficiencies, one of which relates to a policy interpretation of the IDMM only, will be corrected by June 1, 1983.

Accordingly, the Secretary is conditionally approving the Illinois program. If the deficiencies are not corrected by the above dates, the Secretary will take appropriate steps under 30 CFR Part 733 to terminate the State program. This conditional approval is effective on June 1, 1982. Beginning on that date, the Illinois Department of Mines and Minerals shall be deemed the regulatory authority in Illinois and all Illinois 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 Illinois shall be subject to the permanent regulatory program.

On non-Federal and non-Indian lands in Illinois, the permanent regulatory program consists of the State program approved by the Secretary. Following this approval, in accordance with Section 523(c) of SMCRA, Illinois 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.

The Secretary's approval of the Illinois 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 under SMCRA, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884, Illinois has submitted a State

reclamation plan. Now that its permanent program has been approved, all provisions relating to abandoned mined lands reclamation will be reviewed by officials of the Department of the Interior.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), the Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Therefore, 30 CFR Chapter VII is amended by adding a new Part 913 as set forth herein.

Dated: May 17, 1982.

James G. Watt,

Secretary of the Interior.

PART 913—ILLINOIS

Secs.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§ 913.1 Scope.

This part contains all rules applicable only within Illinois that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 913.10 State regulatory program approval.

The Illinois State program, as submitted on March 3, 1980, as amended and clarified on June 16, 1980, as resubmitted on December 22, 1981, and clarified in a meeting with OSM on March 18 and 19, 1982, in material submitted April 13, 1982, and in the letter to the Director of OSM, is conditionally approved effective June 1, 1982. Beginning on that date, the Department of Mines and Minerals, Division of Land Reclamation shall be deemed the regulatory authority in Illinois for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Illinois permanent regulatory program. Copies of the approved program, together with copies of the letter of the Department of Mines and Minerals agreeing to the conditions of 30 CFR 913.11, are available at:

Illinois Department of Mines and Minerals, Division of Land Reclamation, 227 South 7th Street, Suite 204, Springfield, Illinois 62706

Illinois Department of Mines and Minerals, Division of Land Reclamation, Southern District Field Office, Route 6, Box 140A, Marion, Illinois 62959

Office of Surface Mining, Federal Building and U.S. Courthouse, Fifth Floor, Room 510, 46 East Ohio Street, Indianapolis, Indiana 46204

Office of Surface Mining, Administrative Record, Room 5315, 1100 "L" Street, NW., Washington, D.C.

§ 913.11 Conditions of State regulatory program approval.

The approval of the Illinois State program is subject to the State revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statute, the regulations, the program narrative, or the Attorney General's opinion. This Section indicates, for the general guidance of the State, the component of the program to which the Secretary recommends the change be made.

(a) The approval found in § 913.10 will terminate unless Illinois submits to the Secretary by December 1, 1982, copies of promulgated regulations or otherwise amends its program to: (1) Allow only five pounds of explosives or less to be detonated without publishing notice of the operator's blasting schedule as required in 30 CFR 816.64(a)(1); and (2) require that surface owners or residents be notified of any surface blasting event as required by 30 CFR 817.65(a).

(b) The approval found in § 913.10 will terminate unless Illinois submits to the Secretary by June 1, 1983, copies of promulgated regulations or otherwise amends its program to require a cover of the pit floor and highest coal seam with a minimum of ten meters (33 feet) of water. Furthermore, pending completion of the above, Illinois may not use its authority to approve covering with less than 10 meters of water or the approval will terminate immediately.

(c) The approval found in § 913.10 will terminate unless Illinois submits to the Secretary by June 1, 1983, a policy statement or otherwise amends its program to the effect that Illinois understands that at the present time, the best technology currently available for sediment control is sedimentation ponds and should Illinois wish to approve any other technology, the State will first send the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above, Illinois may not use its authority to approve siltation structures other than sedimentation ponds or the approval will terminate immediately.

(d) The approval found in § 913.10 will terminate unless Illinois submits to the Secretary by December 1, 1982, copies of promulgated regulations or otherwise amends its program to guarantee the surface owner the right to participate in the inspection prior to bond release.

(e) The approval found in § 913.10 will terminate unless Illinois submits to the Secretary by December 1, 1982, copies of promulgated regulations or otherwise amends its program to provide more than 90 days for abatement of violations in accordance with 30 CFR 843.12(f) and 843.12(j).

[FR Doc. 82-14022 Filed 5-28-82; 8:45 am]

BILLING CODE 4310-05-M