

is found during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

(g) Accomplishment of an open-hole high frequency eddy current (HFEC) inspection, in accordance with Boeing Alert Service Bulletin 747-54A2172, dated February 23, 1995, or Boeing Service Bulletin 747-54A2172, Revision 1, dated January 4, 1996; and either paragraph (g)(1) or (g)(2) of this AD, as applicable; constitutes terminating action for the requirements of this AD.

(1) If no discrepancy is found during the HFEC inspection, prior to further flight, rework the fastener holes and install new fasteners, in accordance with Figures 6 and 7 of Boeing Alert Service Bulletin 747-54A2172, dated February 23, 1995, or Boeing Service Bulletin 747-54A2172, Revision 1, dated January 4, 1996.

(2) If any cracking is found during the HFEC inspection, prior to further flight, replace any cracked spring beam support fitting with a new support fitting, in accordance with Part IV. of the Accomplishment Instructions specified by Boeing Service Bulletin 747-54A2172, Revision 1, dated January 4, 1996.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(j) Except as provided by paragraph (f), (g), (g)(1), and (g)(2) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747-54A2172, dated February 23, 1995, and Boeing Service Bulletin 747-54A2172, Revision 1, dated January 4, 1996, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on March 16, 1999.

Issued in Renton, Washington, on February 1, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-2723 Filed 2-8-99; 8:45 am]

BILLING CODE 4910-13-P

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: By interim rule published June 26, 1998 (63 FR 34808), the Agency adopted a fee sufficient for it to recover the full cost of its administrative processing of requests for waiver of the two-year return to the home country requirement set forth in section 212(e) of the Immigration and Naturalization Act (8 U.S.C. 1182(e)). Such interim rule is hereby adopted as final without change.

EFFECTIVE DATE: March 11, 1999.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, United States Information Agency, 301 4th Street, SW., Washington, DC 20547; telephone, (202) 619-6531.

SUPPLEMENTARY INFORMATION: The Agency has determined that its review of and recommendation regarding requests for the waiver of the two-year return to the home country requirement imposed by 8 U.S.C. 1182(e) confers a specific benefit to the requesting individual. Accordingly, a fee sufficient to recoup the costs of conferring this specific benefit is appropriate. The Agency identified all administrative tasks associated with the administrative processing of a waiver application and determined that the per unit cost of processing a waiver application is \$136.

In publishing its interim rule the Agency provided a thirty day public comment period and received four comments. All comments were well reasoned and suggested that the fee should vary according to the statutory basis upon which the application was presented. The assumption underlying these comments was that significantly more or less work is involved in the review and recommendation of waiver cases depending upon the basis of the application. The Agency has examined this suggestion and determines that all waiver review and recommendations require that the Agency receive the

waiver application, record the fee, input the application data, manage assorted records, adjudicate the application, prepare outgoing correspondence, and respond to various inquiries regarding the application. Accordingly, the administrative cost associated with the processing of these various requests varies little if at all and the \$136 unit cost is the appropriate fee for all waiver applications.

A second common theme to the comments received regarded the segregation of the fee monies collected for use by the administrative processing unit responsible for waiver applications. As explained in the interim rule, the Government may recoup the full cost of administrative processing, but not more. Pursuant to statute and Executive Branch directive, the fee collected must be used to pay the costs of the administrative unit responsible for the processing of the applications.

Finally, the comments suggested that the Agency clarify that no fee is required for an advisory opinion request. The Agency does not anticipate imposing a fee for advisory opinions and does not consider an advisory opinion to confer a specific and identifiable benefit upon an individual for which a fee may be lawfully imposed.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs.

Les Jin,

General Counsel.

Accordingly, the interim rule amending 22 CFR Part 514, published at 63 FR 34808 on June 26, 1998 is adopted as a final rule without change.

[FR Doc. 99-3013 Filed 2-8-99; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL-094-FOR]

Illinois Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving amendments to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The

Illinois Department of Natural Resources (Department) sent us revisions to the Illinois statutes pertaining to definitions and areas unsuitable for surface coal mining operations. The Department also proposed revisions to and additions of regulations concerning a definition for "previously mined area," areas unsuitable for surface coal mining operations, permitting, violation information, impoundments, explosives, revegetation, prime farmland, bonding, administrative and judicial review, and blasters certification. The amendments are intended to revise the Illinois program to be consistent with the corresponding Federal regulations and SMCRA, to clarify existing regulations, and to improve operational efficiency.

EFFECTIVE DATE: February 9, 1999.

FOR FURTHER INFORMATION CONTACT:

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204-1521. Telephone: (317-226-6700. Internet:

INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Illinois Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the June 1, 1982, **Federal Register** (47 FR 23883). You can find later actions concerning the Illinois program at 30 CFR 913.15, 913.16, and 913.17.

II. Submission of the Proposed Amendment

By letter dated March 28, 1996 (Administrative Record No. IL-5020), the Department notified us of revisions to the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act) that were enacted through House Bill (HB) 965 and signed into law by the Governor of Illinois on February 7, 1996. These revisions primarily address changes brought about by the July 1, 1995, reorganization and name change of the Illinois regulatory authority. Revisions were made to 225 ILCS 720/1.03, Definitions; 225 ILCS

720/7.03, Procedures for designation of areas unsuitable for mining operations; and 225 ILCS 720/7.04, Land Report.

By letter dated February 26, 1998 (Administrative Record No. IL-5009), the Department submitted a proposed amendment to revise its regulations at Title 62 of the Illinois Administrative Code (62 IAC). The amendment responded to letters dated January 6, 1997, and June 17, 1997 (Administrative Record Nos. IL-1951 and IL-2000, respectively), that we sent to Illinois in accordance with 30 CFR 732.17(c). It also responded to required program amendments at 30 CFR 913.16(w) and (y). In addition, the Department amended the Illinois program to clarify existing regulations and to implement the statutory changes made by HB 965.

We announced receipt of the amendments in the April 6, 1998, **Federal Register** (63 FR 16719). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on May 6, 1998. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment dated February 26, 1998, we identified concerns relating to 62 IAC 1773.15(c)(11), written findings for permit application approval; 62 IAC 1778.14(c), required information in permit applications; 62 IAC 1816.116 and 1817.116, revegetation standards; 62 IAC 1816.117(c)(3) and 1817.117(c)(3), tree and shrub vegetation; 62 IAC 1847.3(g), burden of proof for permit hearings; 62 IAC 1847.9(g), burden of proof for bond release hearings; and editorial errors in various regulations. We notified the Department of these concerns by fax on June 2, 1998 (Administrative Record No. IL-5019). By letter dated November 5, 1998 (Administrative Record No. IL-5025), the Department sent us additional explanatory information and revisions to its program amendment.

Based upon the additional explanatory information and revisions, we reopened the public comment period in the November 16, 1998, **Federal Register** (63 FR 63628). The public comment period closed on December 1, 1998.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

A. Revisions to Illinois' Regulations That Are Not Substantive

1. Throughout the amended regulation sections discussed below, the Department corrected typographical errors, punctuation, citation references, and other editorial-type errors; made minor wording changes; simplified its use of numbers; changed specific references of the "Illinois Department of Mines and Minerals" to the "Illinois Department of Natural Resources" to reflect a reorganization change which was effective July 1, 1995; changed its citation references of the "Ill. Rev. Stat. 1989, ch 96½, pars. 7901.01 *et seq.*" to "225 ILCS 720" to reflect recodification of the Illinois Surface Mining Land Conservation and Reclamation Act that occurred in 1992; and changed all references of the "Soil Conservation Service" to the "Natural Resources Conservation Service" to reflect that Federal agency's name change. The Department also made some of the same types of corrections and changes in 62 IAC 1764.13, 1773.11, 1774.11, 1816.117, 1817.117, 1823.14, 1840.1, and 1850.16.

The above proposed revisions do not alter the requirements of the previously approved provisions in the Illinois regulations. Therefore, we find that they will not make the Illinois regulations less effective than the Federal regulations.

2. **62 IAC 1761.12, Procedures for Areas Designated by Act of Congress.** At subsection (b)(1), the Department removed the reference to section 1761.11(f) or (g). In subsection (b)(2), the Department replaced the reference to "Section 1761.11(a), (f) or (g)" with a reference to "Section 1761.11(a)(6) and (7)." At subsection (c), the Department replaced the reference to "Section 1761.11(d)(2)" with a reference to "Section 1761.11(a)(4)(B)."

We find that the revised regulation references at 62 IAC 1761.12(b) and (c) are consistent with the counterpart Federal regulation references at 30 CFR 761.12(b) and (d).

3. **62 IAC 1774.13, Permit Revisions.** At subsection (b)(3), references to "62 Ill. Adm. Code 1773.13, 1773.19(b)(1) and (3) and 1778.21" were replaced by references to "62 Ill. Adm. Code 1773.13, 1773.19(a)(3)(A) and (C) and 1778.21."

We find that the revised regulation references at 62 IAC 1774.13(b)(3) are consistent with the counterpart Federal regulation references at 30 CFR 774.13(b)(2).

B. Revisions to Illinois' Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

The State regulations listed in the table below contain language that is the

same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are not substantive.

| Topic | State regulation 62 IAC | Federal counterpart regulation—30 CFR |
|--|---------------------------------------|---------------------------------------|
| Definition of Previously Mined Area | 1701.Appendix A | 701.5 |
| Violation Information | 1778.14(c) | 778.14(c) |
| Prime Farmlands | 1785.17(e)(5) | 785.17(e)(5) |
| Definition of Other Treatment Facilities | 1816.46(a)(3) and 1817.46(a)(3) | 701.5 |
| Prime Farmland: Scope | 1823.1 | 823.1 |
| Prime Farmland: Applicability | 1823.11 | 823.11 |

Because the above revised regulations are identical in meaning to the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

C. Revisions to Illinois' Statutes and Regulations That Reflect Organizational Changes

1. *225 ILCS 720/1.03, Definitions; 225 ILCS 720/7.03, Procedure For Designation; and 225 ILCS 720/7.04, Land Report.* Illinois proposed revisions to 225 ILCS 720/1.03, 7.03, and 7.04 of the Surface Coal Mining Land Conservation and Reclamation Act to reflect the merging of the Department of Energy and Natural Resources and the Department of Mines and Minerals into the Department of Natural Resources. The revisions include changes in the responsibility for preparing the Land Report that is required when processing a petition to designate an area as unsuitable for surface coal mining operations.

a. *225 ILCS 720/1.03, Definitions.* At section 1.03(a)(4), Illinois changed the definition for the term "Department" from the "Department of Mines and Minerals" to the "Department of Natural Resources." At section 1.03(a)(8), Illinois removed the definition of the term "Department of Energy."

b. *225 ILCS 720/7.03, Procedure for designation.* At section 7.03(b), the language "refer it to the Department of Energy for preparation of" was replaced by the word "prepare" in the phrase "the Department shall refer it to the Department of Energy for preparation of a Land Report." At section 7.03(c), Illinois changed the phrase "Such a hearing shall be held not less than 30 days after the Department of Energy files a Land Report with the Department" to the phrase "Such a hearing shall be held not less than 30 days after the Land Report has been prepared by the Department."

c. *225 ILCS 720/7.04, Land Report.* At section 7.04(a), Illinois replaced the

term "Department of Energy" with the term "Department." The language "and referred by the Department to the Department of Energy for a Land Report" was removed from the end of the first sentence. Illinois revised the last sentence to read: "Each Land Report shall be completed not later than eight months after receipt of the petition." Illinois removed section 7.04(c), which required the Department of Mines and Minerals and the Department of Energy to enter into contracts for all or part of the costs of preparing land reports.

On July 11, 1995, we approved the merger of the Illinois Department of Mines and Minerals into the Illinois Department of Natural Resources (60 FR 35696). On March 1, 1995, the Governor of Illinois signed Executive Order Number 2 (1995) that authorized this organizational change. Part IV(F) of the Executive Order required the Department of Natural Resources to adopt under the Illinois Administrative Procedures Act those rules necessary to consolidate and clarify the rules that will be administered by the merged departments. We find that the revisions to the State Act are consistent with this requirement. We also find that the revised requirements of 225 ILCS 720/7.03 and 7.04 are no less stringent than the requirements of section 522 of SMCRA for designating areas as unsuitable for surface coal mining.

2. *62 IAC Part 1764, State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations.* The Department proposed revisions to its regulations at 62 IAC 1764.15 to reflect the merging of the Department of Mines and Minerals and the Department of Energy and Natural Resources into the Department of Natural Resources and to implement the changes that were made to the State Act relating to the responsibility for preparing the Land Report.

In section 1764.15(a), the Department added the heading "Processing of Petitions"; and in section 1764.15(c),

the Department added the heading "Land Report and Public Comment." The language in the first sentence of section 1764.15(c)(1) was replaced by the language "After the petition is determined to be complete the Department shall prepare a Land Report."

The Department revised section 1764.15(c)(2) as follows:

The Land Report shall state objectively the information which the Department has, but shall not contain a recommendation with respect to whether the petition should be granted or denied. Each Land Report shall be completed not later than eight months after the petitioner has been notified the petition is complete under subsection (a)(1).

At section 1764.15(c)(3), the term "Department" replaced the term "Department of Energy and Natural Resources" and the term "Land Reclamation Division" replaced the term "Department."

We find that the types of revisions made to 62 IAC 1764.15 will not make the requirements of the Illinois regulation less effective than the requirements of the counterpart Federal regulation at 30 CFR 764.15, relating to state processes for designating areas as unsuitable for surface coal mining operations.

D. 62 IAC Part 1773.15, Review of Permit Applications

The Department added the following provision for written findings at 62 IAC 1773.15(c)(13):

(13) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 62 Ill. Adm. Code 1816.116(a)(2)(B) or 1817.116(a)(2)(B), the site of the operation is land eligible for remining as defined in 62 Ill. Adm. Code 1701. Appendix A.

In the November 27, 1995, **Federal Register** (60 FR 58489), we stated that we interpret 30 CFR 816/817.116(c)(2)(ii) and (c)(3)(ii) as requiring an existing permit to obtain a permit revision to qualify for a reduced

revegetation responsibility period. This permit revision would require a finding that the permit covers land eligible for re-mining. This finding is in accordance with the State's counterpart to 30 CFR 773.15(c)(13)(i). States would also need to make this permit finding for new permit applications that cover land eligible for re-mining. Since the Department had added reduced revegetation responsibility counterparts to its regulations at 62 IAC 1816.116(a)(2)(B) and 1817.116(a)(2)(B), this requirement would apply to the Illinois program. In a letter dated October 30, 1997 (Administrative Record No. IL-2002), we notified the Department that it needed to revise its regulation at 62 IAC 773.15(c) to add a counterpart to 30 CFR 773.15(c)(13)(i). We find that the new provision at 62 IAC 773.15(c)(13) meets the Federal requirement discussed by us in the November 27, 1995, **Federal Register**. Also, for the purpose specified, it is no less effective than the Federal regulation at 30 CFR 773.15(c)(13)(i).

E. 62 IAC 1800.40, Requirement to Release Performance Bonds

At subsection (b)(2), the Department is requiring the permittee, the municipality and county in which the surface coal mining operation is located, the surety, or other persons with an interest in bond collateral who have requested notification under section 1800.21(e), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, to be notified in writing of its final administrative decision to release or not to release all or part of the performance bond.

The counterpart Federal regulation at 30 CFR 800.40(b)(2) also requires the same persons, with the exception of the municipality, to be notified in writing. The Federal regulation at 30 CFR 800.40(e) requires the municipality in which the surface coal mining operation is located to be notified by certified mail. We notified the Department of this requirement on December 9, 1998 (Administrative Record No. IL-5032). By letter dated December 18, 1998, the Department stated that it will send the municipality in which the surface coal mining operation is located written notification by certified mail at least 30 days before the release of all or a portion of the bond (Administrative Record No. IL-5035).

Therefore, we find that the revised regulation, combined with the Department's letter dated December 18, 1998, is no less effective than the Federal regulations at 30 CFR 800.40(b)(2) and 800.40(e).

F. 62 IAC Parts 1816 and 1817, Permanent Program Performance Standards for Surface and Underground Mining Activities

The Illinois permanent program regulations for surface mining activities at 62 IAC Part 1816 and underground mining activities at 62 IAC Part 1817 are discussed below. Since most of the surface mining and underground mining regulations are identical, we are combining the revisions for discussion purposes, unless otherwise noted.

1. *62 IAC 1816.49 and 1817.49, Impoundments.* At sections 1816.40(a)(3)(B) and 1817.49(a)(3)(B), the Department replaced the term "U.S. Soil Conservation Service" with the term "U.S. Natural Resources Conservation Service" and changed the date of Practice Standard IL 378, "Ponds" from April 1987 to June 1992.

The U.S. Soil Conservation Service changed its name to the U.S. Natural Resources Conservation Service on November 9, 1994, and made revisions to Practice Standard IL 378 in June 1992. Therefore, we find that these revisions will not make the Illinois regulations less effective than the Federal regulations at 30 CFR 816.49 and 817.49.

2. *62 IAC 1817.61, Use of Explosives: General Requirements.* The Department revised section 1817.61(a) by adding the language "that are within 50 vertical feet of the original ground surface" to the end of the existing provision to define the extent of the initial rounds of slope and shaft development. The revised provision reads as follows:

Section 1817.61 through 1817.68 apply only to surface blasting activities incident to underground mining, including, but not limited to, initial rounds of slopes and shafts that are within 50 vertical feet of the original ground surface.

The counterpart Federal regulation at 30 CFR 817.61(a) does not define the extent of "initial rounds of slopes and shafts." We added section 817.61 to our regulations to protect the lives and property of the public, underground mines, and ground and surface waters outside of the permit areas where surface blasting is required in the development and support of underground mining operations (43 CFR 41780). We found in a technical review of the revised Illinois regulation that 62 IAC 1817.61(a) is essentially the same as the Federal counterpart at 30 CFR 817.61(a) except that the State defines the extent of the initial rounds of slope and shaft development as those "that are within 50 vertical feet of the original ground surface." Neither the Federal rule nor the associated preambles (43 FR

41780 and 44 FR 15269) directly include or address the vertical extent of the initial blasting rounds in slope and shaft development. We clearly intended that section 817.61 through 817.68 apply only to surface blasting activities incident to underground mining, including construction of initial rounds of slopes and shafts. It was our "intent not to regulate blasting performed underground, because this activity is adequately controlled by MSHA" (44 FR 15269). Considering this intent and the generally small amount of blasting activities associated with slope and shaft development, the 50-foot vertical extent proposed by the Department is a reasonable interpretation of "initial blasting rounds of slope and shaft development" and is adequate to protect the public from the adverse effects of these blasts. Therefore, we find that the revised Illinois regulation at 62 IAC 1817.61(a) is no less effective than the Federal counterpart regulation at 30 CFR 817.61(a).

3. *62 IAC 1817.62, Use of Explosives: Pre-Blasting Survey.* In the first sentence of section 1817.62(d), the Department replaced the language "published scheduled beginning" with the language "planned initiation." The revised sentence reads as follows:

Any surveys requested more than ten calendar days prior to the planned initiation of blasting shall be completed by the operator before the start of blasting.

The revised Illinois provision at 62 IAC 1817.62(d) is substantively the same as the counterpart Federal regulation at 30 CFR 817.62(e). Therefore, we find that 62 IAC 1817.62(d) is no less effective than the counterpart Federal regulation.

4. *62 IAC 1816.64, Use of Explosives: Public Notice of Blasting Schedule.* a. The Department added the following sentence to the end of 62 IAC 1816.64(b): "Unscheduled blasting does not include nighttime blasting, which is prohibited at all times." The Department proposed this language to emphasize its restriction of nighttime blasting and to clarify that blasting is not allowed after sunset.

The counterpart Federal regulation at 30 CFR 816.64(a)(3) does not contain this clarification, but 30 CFR 816.64(a)(2) allows discretionary authority to the regulatory authority relating to nighttime blasting and time periods for blasting. Therefore, we find that the revised Illinois regulation at 62 IAC 1816.64(b) is no less effective than the counterpart Federal regulation.

b. At 62 IAC 1816.64(c)(1), the Department requires publication of a blasting schedule at least ten days, but

not more than 30 days, before beginning a blasting program in which blasts that use more than five pounds of explosive or blasting agent are detonated. The currently approved language requires that operators publish the blasting schedule at least 30 days but not more than 60 days before blasting starts.

We find that the revised regulation requirements at 62 IAC 1816.64(c)(1) are consistent with and no less effective than the 10-day and 30-day requirements at 30 CFR 816.64(b)(1).

c. At 62 IAC 1816.64(c)(3), the Department requires operators to revise and republish blasting schedules at least 10 days, but not more than 30 days, before blasting in areas not covered in the current schedule or if the actual blasting times differ from the time periods listed in the current schedule for more than 20 percent of the blasts fired. The currently approved language requires that operators republish the blasting schedule at least 30 days but not more than 60 days before blasting in the specified areas.

We find that the revised regulation requirements at 62 IAC 1816.64(c)(3) are consistent with and no less effective than the 10-day and 30-day requirements at 30 CFR 816.64(b)(3).

d. The Department revised 62 IAC 1816.64(d) by changing the subsection introductory sentence to "The blasting schedule shall contain at a minimum"; removing existing paragraphs (1) and (2); and redesignating paragraphs (2)(A) through (2)(E) as paragraphs (1) through (5).

We find that the revised Illinois regulation at 62 IAC 1816.64(d) is consistent with and no less effective than the counterpart Federal regulation at 30 CFR 816.64(c).

5. *62 IAC 1816.66 and 1817.66, Use of Explosives: Blasting Signs, Warnings, and Access Control.* a. In the second sentence of 62 IAC 1817.66(b), the Department replaced the language "blasting schedule" with the language "blasting notification required in Section 1817.64." The Department proposed this revision in order to ensure consistent terminology and wording throughout its regulations.

We find that the revised regulation language at 62 IAC 1817.66(b) is consistent with and no less effective than the counterpart Federal language at 30 CFR 817.66(b).

b. At sections 1816.66(d)(2) and 1817.66(d)(2), concerning blasting prohibitions, the Department added the language "unless a waiver is obtained from the owner of the facility and submitted to the Department prior to blasting within 100 feet" at the end of

these provisions. The revised provisions read as follows:

Blasting shall not be conducted within 100 feet of facilities including, but not limited to, disposal wells, petroleum or gas storage facilities, municipal water storage facilities, fluid-transmission pipelines, or water and sewage lines unless a waiver is obtained from the owner of the facility and submitted to the Department prior to blasting within 100 feet.

The proposed revisions allow the owner of a utility to waive the set-back distance of 100 feet. There are no Federal counterparts to the previously approved blasting prohibitions at 62 IAC 1816.66(d)(2) and 1817.66(d)(2). However, the Federal regulations at 30 CFR 816.64(a) and 817.64(a) allow the regulatory authority to limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare. We find that the addition of a waiver clause to the Illinois regulations at 62 IAC 1816.66(d)(2) and 1817.66(d)(2) will not make them less effective than the Federal requirements for blasting.

6. *62 IAC 1816.67 and 1817.67, Use of Explosives: Control of Adverse Effects.* a. The Department restructured the provisions of 62 IAC 1816.67(c)(1) and 1817.67(c)(1), concerning air blast monitoring, by moving the language of paragraphs (1)(A) and (1)(B) to paragraph (1).

The revised provision at section 1816.67(c)(1) reads as follows:

When the cube root scaled distance, as defined in subsection (c)(2), to the nearest dwelling, public building, school, church, or commercial or institutional structure has a value less than 350 and when the burden to hole depth ratio is greater than 1.0, or the top stemming height is less than 70% of the burden dimension, the air blast produced by that blast shall be measured, recorded, analyzed, and reported pursuant to subsection (g) and section 1816.68(b). This subsection shall not apply to horizontal blast holes drilled from the floor of the pit.

The revised provision at section 1817.67(c)(1) reads as follows:

When the cube root scaled distance, as defined in subsection (c)(2), to the nearest dwelling, public building, school, church, or commercial or institutional structure has a value less than 350 and when the burden to hole depth ratio is greater than 1.0, or the top stemming height is less than 70% of the burden dimension, the air blast produced by that blast shall be measured, recorded, analyzed, and reported pursuant to subsection (g) and section 1817.68(b).

We find that the proposed revisions to 62 IAC 1816.67(c)(1) and 1817.67(c)(1) are editorial in nature and do not change the meaning of the previously approved language.

b. At 62 IAC 1816.67(e) through (h) and 1817.67(e) through (h), concerning ground vibrations, the Department numbered the existing provision in subsection (e) as subsection (e)(1); redesignated subsection (f) as subsection (e)(2); redesignated subsections (f)(1) and (f)(2) as subsections (e)(2)(A) and (e)(2)(B); and redesignated existing paragraphs (g) and (h) as paragraphs (f) and (g). Minor wording changes were made to redesignated subsection (e)(2), and the revised provision reads as follows:

Blasting shall be conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area. Ground vibration limits, including the maximum peak particle velocity limitation of subsection (e)(1), shall not apply at the following locations:

We find that the reformatting of 62 IAC 1816.67(e), (f), and (g) and 1817.67(e), (f), and (g), is editorial in nature. The proposed language changes to redesignated subsection (e)(2) clarify the intent of this previously approved provision. Therefore, we find that the revised provisions at 62 IAC 1816.67(e)(2) and 1817.67(e)(2) are no less effective than the counterpart Federal provisions at 30 CFR 816.67(a) and (e) and 817.67(a) and (e).

7. *62 IAC 1816.83 and 1817.83, Coal Mine Waste: Refuse Piles.* The Department revised 62 IAC 1816.83(c)(4) and 1817.83(c)(4) by adding the following new provision at the end of each:

The Department shall require the addition of neutralization material to be added to the coal mine waste if, based on physical and chemical analyses, this material is needed to prevent acid mine drainage. This subsection is also applicable to the reclamation of fine coal waste (slurry) not meeting the definition of refuse piles.

The new provision was added to clarify that the Department has the authority to require acid neutralization before the waste is covered with four feet of the best available material and that coal waste deposited in slurry ponds is subject to treatment and/or coverage requirements. The counterpart Federal regulations at 30 CFR 816.83(c)(4) and 817.83(c)(4) do not contain the proposed language. However, we determined that the requirement to add neutralization material for the prevention of acid mine drainage is consistent with the Federal regulation requirements at 30 CFR 816.81(a)(1) and 817.81(a)(1) to minimize adverse effects of leachates on surface and ground water quality. Therefore, we are approving the new

provision at 62 IAC 1816.83(c)(4) and 1817.83(c)(4).

8. 62 IAC 1816.116 and 1817.116, *Revegetation: Standards for Success.*

a. 62 IAC 1816.116(a)(2)(F) and 1817.116(a)(2)(F), *Success of Revegetation: Augmentation.*

In response to the required amendment at 30 CFR 913.16(w), the Department deleted its provisions at 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i) that allowed deep tillage without restarting the five-year period of responsibility on pasture, hayland, and grazing land areas where the operator had met the revegetation success standards.

We disapproved these provisions and required the Department to remove them from the Illinois regulations on May 29, 1996 (61 FR 26801). We find that the removal of these provisions is a satisfactory response to the required amendment codified at 30 CFR 913.16(w), and we are removing the required amendment from the Illinois program.

b. 62 IAC 1816.116(a)(2)(G) and 1817.116(a)(2)(G), *Success of Revegetation: Other Management Practices.*

The Department added the following new revegetation provisions at 62 IAC 1816.116(a)(2)(G) and 1817.116(a)(2)(G): (G) Other Management Practices

The Department shall approve the use of deep tillage for prime farmland and high capability land as a beneficial practice that will not restart the 5 year period of responsibility, if the following conditions are met:

(i) The Permittee has submitted a request to use the practice and has identified the field that will be deep tilled;

(ii) One or more hay crops, or other acceptable row crops, have been grown or will be grown to dry out the subsoil prior to deep tilling the field; and

(iii) The Department has determined that the use of deep tillage will be beneficial to the soil structure and long term crop production of the field and the benefits will continue well beyond the responsibility period.

The Department shall notify the permittee in writing of its decision. Such written notice shall be in the form of an inspection report or other document issued by the Department.

By letter dated June 15, 1998 (Administrative Record No. IL-5024), the Department submitted both legal rationale explaining why the Department believes the amendment is approvable and technical rationale, with supporting documentation, explaining why the amendment would promote better reclamation by encouraging a beneficial practice at optimum timing. The technical rationale will be discussed first.

The technical rationale addresses two aspects, the beneficial nature of deep tillage with long lasting benefits and the timing of deep tillage. The Department provided the following explanation of why it believes that deep tillage is a beneficial practice with long lasting results.

In Illinois, in areas of a cropland postmining land use, the normal practice after topsoil replacement is to plant the land into wheat then hay or directly into hay. This practice is the initial planting of areas of long-term intensive agriculture which also includes crop rotations with corn and soybeans, and historically has been considered the beginning of the responsibility period.

The Department believes that the enclosed technical data demonstrates that deep tillage is a beneficial practice, its benefits are increased after one or more hay crops, and its benefits are long lasting. Deep tillage is universally accepted within the scientific and mining community as beneficial for soil structure. Also, these benefits are long lasting beyond any responsibility period. In the event that an operator has made successful yield(s) prior to deep tillage, the operator and landowner should not be penalized for going beyond the performance standards and improving the soil within the responsibility period. The Department is submitting a publication "Deep Tillage Effects on Compacted Surface-Mined Land," Soil Sci., Soc. Am. J. 59:192-199 (1995) and supplemental information "Long Term Effects of Deep Tillage" (Second Annual Report, SIU, U of I Cooperative Reclamation Research Station, March 1996, used with permission from the author). The data reveals that the positive effects of deep tillage, reduced soil strength and improved yields, have persisted up to eight years to date. The data also revealed no disproportionate increase in yield the first year after deep tillage compared to the following years. A tour of the study area this year, indicates this trend will likely continue. A second report "Profile Modification of a Fragiudalf to Increase Production" Soil Sci. Soc. Am. J. Vol 41, 1997, pp 127-131, concluded that even after 16 years there was no reformation of the original soil density or soil strength problems which had been removed by a form of deep tillage and mixing.

The technical documents that the Department submitted successfully demonstrate that a one-time application of deep tillage is beneficial to reconstructed mined soils by increasing water movement and aeration and eliminating high soil strength, with a resulting increase in crop yields. We agree with the Department's assessment that the publication "Deep Tillage Effects on Compacted Surface-Mined Land," Soil Sci., Soc. Am. J. 59:192-199 (1995) and supplemental information "Long Term Effects of Deep Tillage" (Second Annual Report, SIU, U of I Cooperative Reclamation Research Station, March 1996) prove that the

positive effects of deep tillage, reduced soil strength and improved yields, persisted through the first eight years of the study. We also find that the data show no unusual increase in yield the first year after deep tillage compared to the following years. This study showed that deep tillage significantly affected crop yield, soil strength, and net water extracted by growing crops. It showed that average soil strength decreased with increasing tillage depth and that corn and soybean yields increased with increasing tillage depth within and across years. The 1995 publication documented that crop yields comparable to the undisturbed site were achieved on the deepest tilled sites in 5 out of 6 years for corn and 4 out of 4 years for soybeans for the years 1988 through 1993.

The Department provided further explanation of why the benefits are maximized if soils are deep tilled after one or more hay crops, or other acceptable row crops, are grown.

The practice of hay cropping the cropland in advance of deep tillage is a typical management practice on most mined ground. This practice is promoted in "Deep Tillage Effects on Mine Soils and Row Crop Yields," Proc. 1987, Lexington, Dec. 7-11, 1987, p. 181. An additional citation on this issue includes "Compaction Related to Prime Farmland Reclamation," AMC conference April 29-May 3, 1984, by D.S. Ralston. The initial hay cropping helps to dry the subsoil down in order to increase the effectiveness of the shattering effect of the deep tillage. In addition, this concept was promoted at the 1998 Prime Farmland Interactive Forum, in Evansville, Indiana.

The referenced technical publications document that planting and managing hay crops, or other acceptable row crops, after reclamation to allow some initial settling and to obtain a drier subsoil should be done before deep tilling the soils. One publication considered it essential that the reclaimed soil be dry for good shattering action of the rooting media. On the study areas referenced in the 1995 publication, alfalfa was seeded and managed during 1986 and 1987 before tilling the various test plots in the late summer of 1987.

The Department provided the following legal rationale to support its belief that the proposed provision is approvable under SMCRA:

Section 515(b)(20) outlines the initiation of the responsibility period as "after the last year of augmented seeding, fertilizing, irrigation, or other work: Provided, that when the regulatory authority approves a long-term intensive agricultural postmining land use, the applicable five- or ten-year period of responsibility for revegetation shall commence at the date of initial planting for

such long-term intensive agricultural postmining land use."

A reading of the above wording leads us to conclude that under a cropland postmining land use, the responsibility period starts at the time of initial planting and is independent of any augmentative seeding, irrigation, etc., use to facilitate the establishment of the permanent vegetative cover required under section 515(b)(19).

This interpretation is further clarified by a reading of the Illinois statute, Surface Coal Mining Land Conservation and Reclamation Act, which was approved by the Secretary as no less stringent than the Federal statute, SMCRA. In the Illinois statute, Section 3.15(b) identifies the start of the responsibility period as after the last year of augmented seeding, fertilizing, irrigation, or other work. A separate Section 3.15(c) clarifies the responsibility period for long-term intensive agricultural areas starts at the date of initial planting for the agricultural use.

Historically, deep tillage has been considered an augmentative practice. Under 30 CFR 816.116(c) and counterpart state regulations, augmentative practices restart the liability period for cropland. With the above explanation, the Department is taking the position that the question of whether or not deep tillage is augmentative is irrelevant because the limitation on augmentative practices in SMCRA and State law does not apply to lands with a long-term intensive agricultural postmining land use. In its letter, the Department did state that it "will ensure that all other management, e.g., seeding, fertilizing, etc., are at comparable levels as the surrounding agricultural lands." This statement is consistent with the Illinois regulations at 62 IAC 1823.15(b)(3), 62 IAC 1816.116(a)(3)(C), and 1817.116(a)(3)(C).

The criteria for judging proposed state regulations is that they be no less effective than the Federal regulations and no less stringent than SMCRA. Based on the Department's technical rationale discussed above, we find that the proposed rule is no less effective than the Federal regulations and no less stringent than SMCRA. The Department has provided clear rationale for why deep tillage is a beneficial practice and why it is best to delay deep tillage until after one or more crops have been harvested. Therefore, we agree that the issue of augmentation is not relevant to the deep tillage provision proposed in this rulemaking. The Department has provided sufficient technical documentation to support the practice of deep tillage when implemented under the conditions imposed in the proposed regulations at 62 IAC 1816.116(a)(2)(G) and 1817.116(a)(2)(G).

The Department's expressed purpose for the proposed provision is "the

allowance for the use of productivity data which was obtained prior to deep tillage on cropland." The Department explained why it believes that operators should be allowed to use productivity data that was obtained before deep tillage on cropland:

The existing concept of deep tillage restarting the responsibility period is a significant deterrent to this universally beneficial reclamation practice in that it discourages operators from implementing it at the most efficient time, or from implementing it at all, if they are successful in achieving productivity on one or more crops and don't want to start over.

The Department believes the above proposal provides the maximum benefit toward reclaiming the land as soon as practical, and is in fact more effective than the Federal regulations and no less stringent than the Federal statute because it will encourage rather than impede a beneficial practice. The above also meets the intent that long-term probability of productivity on cropland is being achieved and that land is reclaimed as contemporaneously as possible.

We have historically recognized that deep tillage alleviates compaction (30 CFR 823.14(d); 48 FR 21452, 21457, May 12, 1983). The Department has now demonstrated and we agree that deep tillage of the reclaimed soils of Illinois, under the conditions discussed above, is a beneficial practice that should not restart the responsibility period.

Because it will not restart the responsibility period, deep tillage will not affect the collection of crop production data. Therefore, successful yields of hay crops or other acceptable row crops that are obtained during the responsibility period, even when they are obtained before deep tillage, may be counted toward achieving productivity on prime farmland and high capability land.

OSM has always maintained that the primary responsibility for regulating surface coal mining and reclamation operations should rest with the States. The Federal regulations for revegetation were specifically written to allow States to account for regional diversity in terrain, climate, soils, and other conditions where mining occurs.

Based on the above discussions, we find that the proposed revegetation requirements at 62 IAC 1816.116(a)(3)(G) and 1817.116(a)(3)(G) will not make the Illinois regulations less stringent than the requirements of section 515 of SMCRA or less effective than the requirements of 30 CFR Parts 823, 816, and 817 of the Federal regulations for revegetation of mined lands. Therefore, we are approving the Department's proposed regulations.

c. 62 IAC 1817.116(a)(3)(E), *Success of Revegetation: Pasture and/or Hayland or Grazing Land*.

At 62 IAC 1817.116(a)(3)(E), the Department removed the language "Production for proof of productivity purposes shall also be determined in accordance with Section 1817.117(a)(2)."

Section 1817.116(a)(3)(E) concerns standards for revegetation success for areas designated as pasture and/or hayland or grazing land. Section 1817.117(a)(2) concerns the use of trees and shrubs populations in determining the success of revegetation for areas to be developed for fish and wildlife habitat, recreation, or forest products land uses. Therefore, we find that the removal of this reference to the Department's tree and shrub vegetation standards for fish and wildlife habitat, recreation, or forest products land uses will not make the Illinois regulation less effective than the counterpart Federal regulation at 30 CFR 817.116(b)(1) concerning standards for revegetation success for grazing land or pasture land.

d. 62 IAC 1816.116(a)(4)(ii), *Success of Revegetation: Use of the Agricultural Lands Productivity Formula*.

In response to the required amendment at 30 CFR 913.16(y), the Department deleted the following language from 62 IAC 1816.116(a)(4)(ii):

The Department may approve a field to represent non-contiguous areas less than or equal to four acres of the same capability if it determines that the field is representative of reclamation of such areas. These areas shall be managed and vegetated in the same manner as the representative field.

We disapproved this provision and required the Department to remove it from the Illinois regulations on May 29, 1996 (61 FR 26801). We find that the removal of this provision is a satisfactory response to the required amendment codified at 30 CFR 913.16(y), and we are removing the required amendment from the Illinois program.

G. 62 IAC 1823.12, *Prime Farmland: Soil Removal*

The Department added a new provision at 62 IAC 1823.12(c) that allows the B and/or C horizons to be left in place for surface disturbance areas if the Department determines the soil capability can be retained.

By letter dated June 17, 1997 (Administrative Record No. IL-2000), we notified the Department of changes made to the Federal regulation at 30 CFR 823.12(c)(2). The Federal regulation allows the regulatory authority to approve exceptions from the requirement to remove B and C soil

horizons where they would not otherwise be removed by mining activities and where soil capabilities can be retained. We find that the proposed Illinois regulation is no less effective than the counterpart Federal regulation.

H. 62 IAC 1825.11, High Capability Lands: Special Requirements

The Department added the following requirement at section 1825.11(c): "Measurement of success of revegetation shall be initiated within ten (10) years after completion of backfilling and final grading on high capability land." The Department proposed this revision to require operators to initiate crop testing on high capability land under the same time frame requirements as prime farmland because to their similarities.

There are no direct Federal counterparts to the Illinois high capability land provisions. However, we find that this proposal is not inconsistent with the Federal requirements for revegetation and restoration of soil productivity on prime farmland at 30 CFR 823.15(b)(1) or the Federal requirements for revegetation at 30 CFR 816.116 and 817.116.

I. 62 IAC 1840.11, Inspections by the Department

The Department clarified its inspection requirements by proposing revisions to subsections (a) and (b). Subsection (a) was revised to require the Department to conduct an average of at least one partial inspection per month at each active surface coal mining and reclamation operation. Subsection (b) was revised to require the Department to conduct an average of at least one complete inspection per calendar quarter at each active or inactive surface coal mining and reclamation operation.

The counterpart Federal regulation at 30 CFR 840.11(a) requires the State regulatory authority to conduct an average of at least one partial inspection per month at each active surface coal mining and reclamation operation under its jurisdiction. The counterpart Federal regulation at 30 CFR 840.11(b) requires the State regulatory authority to conduct an average of at least one complete inspection per calendar quarter at each active or inactive surface coal mining and reclamation operation under its jurisdiction. Therefore, we find that the revised Illinois requirements at 62 IAC 1840.11 (a) and (b) are consistent with the Federal requirements for inspections by State regulatory authorities at 30 CFR 840.11 (a) and (b).

J. 62 IAC 1847, Administrative and Judicial Review

1. *62 IAC 1847.3, Hearings.* Section 1847.3 provides procedures for hearings on exploration applications, new permits, permit revisions, permit renewals, permit rescissions or transfers, assignments, or sales of permit rights. The procedures also apply to conflict of interest hearings, valid existing right determinations, exemption determinations, formal reviews of decisions not to inspect or enforce, hearings for permits for special categories of mining, and challenges of ownership or control links. At subsection (g), the Department replaced its existing burden of proof provision with the following provisions:

(1) In a proceeding to review a decision on an application for a new permit:

(A) If the permit applicant is seeking review, the Department shall have the burden of going forward to establish a prima facie case as to the failure to comply with the applicable requirements of the State Act or regulations or as to the appropriateness of the permit terms and conditions, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the permit or as to the inappropriateness of the permit terms and conditions.

(B) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion by a preponderance of the evidence that the permit application fails in some manner to comply with the applicable requirements of the State Act or regulations.

(2) In all other proceedings held under this Section, the party seeking to reverse the Department's decision shall have the burden of proving by a preponderance of evidence that the Department's decision is in error.

The proposed Illinois provision at 62 IAC 1847.3(g)(1) is consistent with and no less effective than the Federal burden of proof provision for new permits at 43 CFR 4.1366(a). The proposed Illinois provision at 62 IAC 1847.3(g)(2) for all other proceedings covered by this section is consistent with the Federal burden of proof provisions at 43 CFR 4.1366, 4.1374, 4.1384, and 4.1394 for permit actions, ownership and control determinations, and valid existing right determinations. All of these expressly or in other language provide for a preponderance of the evidence standard. Therefore, we are approving 62 IAC 1847.3(g).

2. *62 IAC 1847.9, Bond Release Hearings: Burden of Proof.* At subsection (g), the Department revised its burden of proof provision by requiring that "the party seeking to reverse the Department's proposed release of bond shall have the burden of providing by a

preponderance of evidence that the Department's decision is in error."

The traditional Federal burden of proof for civil or administrative proceedings is proof by a preponderance of the evidence. As discussed in the above finding, administrative hearings under 43 CFR Part 4 expressly or in other language provide for a preponderance of the evidence standard. Therefore, we are approving the revision to 62 IAC 1847.9(g).

3. *62 IAC 1847.9(j) and (k), Bond Release Hearings: Written Exceptions.* The Department revised 62 IAC 1847.9(j) and (k) to clarify that the final decision of the Department in administrative review hearings for bond release is made by the hearing officer and not the Director of the Department of Natural Resources. The Department also proposed to change the time limits for filing and responding to written exceptions from 15 to 10 days and the time limits for issuance of a final administrative decision by the hearing officer from 15 to 10 days if no written exceptions are filed. Specifically, the Department proposed the following changes:

At section 1847.9(j), the Department is allowing each party to the hearing to file written exceptions with the hearing officer within ten days after service of the hearing officer's proposed decision. All parties shall then have ten days after service of written exceptions to file a response with the hearing officer.

At section 1847.9(k), the Department revised the existing provision to read as follows:

If no written exceptions are filed, the hearing officer's proposed decision shall become final ten days after service of such decision. If written exceptions are filed, the hearing officer shall within 15 days following the time for filing a response thereto, either issue his final administrative decision affirming or modifying his proposed decision, or shall vacate the decision and remand the proceeding for rehearing.

The Federal regulations specify general adjudicatory provisions that States must include in their administrative review hearing procedures, but allow the States discretion in how to implement these provisions. This would include the determination of who shall make final administrative hearing decisions. Therefore, we find that the designation of a hearing officer to make final administrative hearing decisions does not make the Illinois regulations less effective than the Federal regulations. The Federal regulations contain no comparable provisions to those being revised concerning filing of written exceptions to a hearing officer's

decision, time limits for filing written exceptions and responses to exceptions, and time limits for issuance of a final administrative decision. However, we find that the proposed regulations at 62 IAC 1847.9(j) and (k) add clarity and specificity to the State program and are not inconsistent with SMCRA or the Federal regulations.

K. 62 IAC Part 1850, Training, Examination and Certification of Blasters

1. At section 1850.13(a), the Department may also provide the necessary training required for blaster certification. This change allows the Department or the operator or his representative to conduct blasters training.

The counterpart Federal regulation at 30 CFR 850.13(a) requires the regulatory authority to provide training for persons seeking to become certified as blasters. The Federal regulation allows the regulatory authority to establish the procedures to implement this requirement. Therefore, we find that the revised Illinois regulation at 62 IAC 1850.13(a) is no less effective than the Federal regulation at 30 CFR 850.13(a).

2. At 62 IAC 1850.14(a) and (b), the Department is revising its provisions for scheduling examinations and reexaminations for certification. Specifically, sections 1850.14(a) and (b) were revised to read as follows:

(a) Written examinations for blaster certification shall be administered on dates, times, and at locations announced by the Department via direct communication with operators and individuals who request in writing to be so notified. All persons scheduled for a regular examination session will be so notified at least one week prior to the scheduled exam date.

(b) Reexaminations shall be scheduled, if needed, for those persons who do not pass the regularly scheduled examination. The Department shall also allow for examination at this time of those persons who have newly applied for certification. All persons scheduled for examination or reexamination during the reexamination session will be so notified at least one week prior to the scheduled reexamination session.

The Federal regulations at 30 CFR 850.14 require the regulatory authority to ensure that candidates for blaster certification are examined. The Federal regulations at 30 CFR 850.13 require the regulatory authority to establish the procedures to implement this requirement. We find that the Department's proposed procedures will ensure candidates for blaster certification are examined as required by the Federal regulations. Therefore, we are approving the revisions at 62 IAC 1850.14(a) and (b).

3. The Department revised section 1850.15(a), concerning application and certification, to read as follows:

Each applicant shall submit a completed application for certification on forms supplied by the Department. Any applicant whose completed application has been received, reviewed and accepted by the Department prior to a regularly scheduled examination session shall be scheduled for that session. The following documents shall be included with the completed application form:

The Federal regulations at 30 CFR 850.15 require the regulatory authority to certify candidates for blaster certification. The Federal regulations at 30 CFR 850.13 require the regulatory authority to establish the procedures to implement this requirement. We find that the Department's procedures at 30 CFR 850.15 will ensure candidates for blaster certification are certified as required by the Federal regulations. Therefore, we are approving the revisions to 62 IAC 1850.15(a).

IV. Summary and Disposition of Comments

Public Comments

In **Federal Register** notices dated April 6 and November 16, 1998, we requested public comments on the proposed amendment and revisions to the amendment (63 FR 16719 and 63 FR 63628, respectively).

By letter dated April 10, 1998, we received comments regarding the Illinois regulation at 62 IAC 1778.14 (Administrative Record No. IL-5013). Then, by letters dated April 30 and May 6, 1998, we received comments concerning the Illinois regulations at 62 IAC Part 1847 for administrative hearings (Administrative Record Nos. IL-5016 and IL-5017, respectively).

The first commenter objected to the proposed revisions to 62 IAC 1778.14(c), concerning violation information, that were included in the February 26, 1998, proposed amendment. The commenter objected because the revised regulation did not limit the violation information requirements to operations owned or controlled by the applicant. The commenter stated that the language proposed is identical to the language of the Federal rules struck down by the United States Court of Appeals for the District of Columbia Circuit in *National Mining Association v. U.S. Dept. of Interior*, 105 F 3d 691 (D.C. Cir. 1997). The commenter also noted that the proposed language appeared to be missing pertinent punctuation and language. In its November 5, 1998, revised amendment, the Department changed its proposed regulation at 62

IAC 1778.14(c) to limit the violation information requirements to operations owned or controlled by the applicant and added applicable missing punctuation and language. As noted in finding III.B., the revised Illinois regulation is substantively identical to the counterpart Federal regulation at 30 CFR 778.14(c).

One commenter objected to the Department's proposed burden of proof provision at 62 IAC 1847.3(g)(1) that provides different burdens for the permit applicant and the non-permit applicant for administrative review of new permits. As discussed in finding III.J.1., the proposed provision is no less effective than the counterpart Federal regulation provision at 43 CFR 4.1366(a), which also provides different burdens for the permit applicant and the non-permit applicant for administrative review of new permits.

Two commenters objected to the Department's burden of proof provisions at 62 IAC 1847.3(g)(2) and 1847.9(g) that provided for a "clearly erroneous" standard for administrative review of a variety of hearing actions and bond release actions, respectively. In its November 5, 1998, revised amendment, the Department changed the burden of proof to a "preponderance of evidence" standard in both of these provisions (Administrative Record No. IL-5025). As discussed in findings III.J. 1. and 2., both provisions are now consistent with the Federal burden of proof standards at 43 CFR Part 4 for administrative hearings.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Illinois program (Administrative Record Nos. IL-5010 and IL-5026).

On April 2, 1998, the U.S. Natural Resources Conservation Service commented that the reference to the "U.S. Natural Resources Conservation Service Practice Standard 378, 'Pond,' April 1987" in 62 IAC 1816.49(a)(3)(B) and 1817.49(a)(3)(B) should be changed to "Practice Standard IL 378 'Ponds,' June 1992" (Administrative Record No. IL-5011).

As discussed in finding III.F.1., the Department made this change in its November 5, 1998, revised amendment.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get the written consent of the EPA for those provisions of the program amendment that relate to air or water quality standards published under

the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that the Department proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not request the EPA's consent.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendments from the EPA (Administrative Record Nos. IL-5010 and IL-5026). The EPA did not respond to either request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On March 27 and November 6, 1998, we requested comments from the SHPO and ACHP on the Illinois amendments (Administrative Records Nos. IL-5010 and IL-5026, respectively), but neither responded to our requests.

V. Director's Decision

Based on the above findings, we approve the amendments submitted by the Department on March 28, 1996, and February 26, 1998, and as revised on November 5, 1998.

We approve the regulations and statutes that the Department proposed with the provision that they be placed in force in identical form to the regulations and statutes submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 913, which codify decisions concerning the Illinois program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Illinois to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have

a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 25, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 913 is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

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

2. Section 913.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§913.15 Approval of Illinois regulatory program amendments.

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---------------------------------------|---------------------------|--|
| | | |
| March 28, 1996 and February 26, 1998. | February 9, 1999 | 225 ILCS 720/1.03, 7.03, and 7.04; 62 IAC 1701. Appendix A; 1761.12; 1764.13 and .15; 1773.11 and .15; 1774.11 and .13; 1778.14; 1785.17; 1800.40; 1816.46, .49, .64, .66, .67, .83, .116, and .117; 1817.46, .49, .61, .62, .66, .67, .83, .116, and .117; 1823.1, .11, .12, and .14; 1825.11; 1840.1 and .11; 1847.3 and .9; 1850.13, .14, .15, and .16. |

§ 913.16 [Removed and reserved]

3. Section 913.16 is removed and reserved.

[FR Doc. 99-3129 Filed 2-8-99; 8:45 am]

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DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 948**

[WV-077-FOR]

West Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving with certain exceptions an amendment to the West Virginia permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises both the West Virginia Surface Mining Reclamation Regulations and the West Virginia Surface Coal Mining and Reclamation Act. The amendment mainly consists of changes to implement the standards of the Federal Energy Policy Act of 1992. The amendment is intended to revise the State program to be consistent with the counterpart Federal provisions.

EFFECTIVE DATE: February 9, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

- I. Background on the West Virginia Program
- II. Submission of the Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval can be found in the January 21, 1981, **Federal Register** (46 FR 5915-5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated April 28, 1997 (Administrative Record Number WV-1056), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program pursuant to 30 CFR 732.17. By letter dated May 14, 1997 (Administrative Record Number WV-1057), WVDEP submitted some revisions to the original submittal. The amendment contains revisions to § 38-2-1 *et seq.* of the West Virginia Surface Mining Reclamation Regulations [Code of State Regulations (CSR)] and to § 22-3-1 *et seq.* of the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA). The amendment mainly consists of changes to implement the standards of the Federal Energy Policy Act of 1992, and is intended to revise the State program to be consistent with the counterpart Federal provisions.

On October 10, 1997, OSM provided the State a list of concerns regarding the proposed amendment (Administrative Record Number WV-1073). By letter dated April 27, 1998 (Administrative Record Number WV-1085), the State submitted its final response to OSM's comments on the amendments.

An announcement concerning the initial amendment was published in the June 10, 1997, **Federal Register** (62 FR 31543-31546). A correction notice was published on June 23, 1997 (62 FR 33785), which clarified that the public comment period closed on July 10, 1997. No one requested an opportunity to speak at a public hearing, so none was held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the West Virginia program. Minor wording changes and other non-substantive changes are not identified.

A. Surface Coal Mining and Reclamation Act—§ 22-3-1 *et seq.***Definitions**

1. *Sec. 22-3-3(u) Definition of "surface mine."* This definition is amended at subsection 3(u)(2) by adding three examples of activities that are not encompassed by the definition of "surface mine" under the WVSCMRA. The three exceptions are: (1) Coal extraction pursuant to a government financed reclamation contract; (2) coal extraction authorized as an incidental part of development of land for commercial, residential, industrial, or

civic use; and (3) the reclamation of an abandoned or forfeited mine by a no cost reclamation contract.

Sec. 22-3-3(u)(2)(1): Coal extraction authorized pursuant to a government financed reclamation contract. Section 528(2) of SMCRA provides an exemption from the requirements of SMCRA for coal extraction incidental to government-financed highway or other construction under regulations established by the regulatory authority. The WVDEP has explained that the proposed amendments are intended to clarify that the reclamation of abandoned sites is government-financed construction that is consistent with the provisions of section 528(2) of SMCRA and, therefore, not subject to SMCRA.

OSM is in the process of amending the Federal regulations at 30 CFR 707 and 874 concerning the financing of Abandoned Mine Land reclamation (AML) projects that involve the incidental extraction of coal (63 FR 34768; June 25, 1998). The first Federal revision would amend the definition of "government-financed construction" at 30 CFR 707.5 to allow less than 50 percent government funding when the construction is an approved AML project under SMCRA. The second revision would add a new section at 30 CFR 874.17 which would require specific consultations and concurrences with the Title V regulatory authority for AML construction projects receiving less than 50 percent government financing. The revised final Federal regulations will be published soon, and will likely affect our decision on the West Virginia amendments that concern government financed construction on abandoned mine lands. Therefore, OSM is deferring its decision on these amendments until after the publication in the **Federal Register** of the final amendments to 30 CFR Parts 707 and 874.

Sec. 22-3-3(u)(2)(2): Coal extraction incidental to development of land for commercial, residential, industrial, or civic use. As stated above, Section 528(2) of SMCRA, and § 22-3-26(b) of the WVSCMRA provide an exemption from the requirements of SMCRA for coal extraction incidental to government-financed highway or other construction under regulations established by the regulatory authority. However, no provision currently exists which provides an exemption from the requirements of SMCRA for coal extraction incidental to privately financed development of land for commercial, residential, industrial, or civic use.

Section 701(28) of SMCRA, the definition of "surface coal mining