

Finding No. 6, Rule 2.03.6(1), concerning contents of permit applications pertaining to an applicant's legal right to enter a proposed permit area;

Finding No. 7, Rule 2.07.5(2)(c), concerning notice and hearing procedures for persons seeking and opposing disclosure of confidential information;

Finding No. 8, Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E), concerning findings which must be made by the State regulatory authority prior to approval of applications for permits and permit revisions;

Finding No. 9, Rule 2.07.6(2)(d)(iv), concerning public notice and opportunity for public hearing regarding proposed (1) operations located within 100 feet, measured horizontally, of a public road or (2) operations which require closure or relocation of a public road;

Finding No. 10, Rule 2.07.7(9), concerning permit conditions requiring continuous bond coverage;

Finding No. 11, Rules 2.08.4 (1) through (4), concerning permit revisions and permit revision application requirements;

Finding No. 12, Rules 2.08.4(6)(b) (i) and (ii), concerning public hearing and notice requirements for technical revisions;

Finding No. 13, Rule 3.03.1(5), concerning release of bond coverage for liability associated with temporary drainage and sediment control facilities;

Finding No. 14, Rules 4.02.2(2) (a) through (c), concerning information required on identification signs;

Finding No. 15, Rules 4.03.1(d) (i) and (ii) and 4.03.2(f) (i) and (ii), concerning an engineer's certification of the construction or reconstruction of haul and access road;

Finding No. 16, Rules 4.05.2(7), 5.03.3(1)(a), 5.03.3(2)(a) (i) and (ii), and 5.03.3(2)(b), concerning (1) compliance with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR part 434 and (2) enforcement procedures concerning violations of effluent limitations;

Finding No. 17, Rule 4.08.3(2)(b)(i), concerning blasting areas;

Finding No. 18, Rules 5.02.5(1), 5.02.5(1)(a), and 5.02.5(1)(b)(i), concerning inspections based upon citizens' requests; and

Finding No. 19, Rules 5.02.2(8) (a) through (c), concerning inspection frequency at abandoned sites, and Rule 5.03.2(3), concerning enforcement procedures at abandoned sites.

The Federal regulations at 30 CFR part 906, codifying decisions concerning

the Colorado program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

#### IV. Procedural Determinations

##### 1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

##### 2. 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 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 Tribe or State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe or State, not by OSM. Decisions on proposed Tribe or State AMLR plans and revisions thereof submitted by a Tribe or State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

##### 3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed Tribe or State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

##### 4. 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.*).

##### 5. 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 Tribe or State submittal which is the subject of this rule is based upon 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. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the Tribe or State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

##### 6. Unfunded Mandates Reform Act

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

#### List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1996.

Richard J. Seibel,

*Regional Director, Western Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

#### PART 906—COLORADO

1. The authority citation for Part 906 continues to read as follows:

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

2. Section 906.15 is amended by adding paragraph (u) to read as follows:

##### § 906.15 Approval of amendments to the Colorado regulatory program.

\* \* \* \* \*

(u) The Director approves the proposed revisions submitted by Colorado on November 20, 1995, and revised on February 16, 1996.

3. Section 906.16 is amended by removing and reserving paragraph (a) to read as follows:

##### § 906.16 Required program amendments.

\* \* \* \* \*

(a)–(c) [Reserved.]

\* \* \* \* \*

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#### 30 CFR Part 913

[SPATS No. IL–089–FOR]

#### Illinois 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 and additional requirements, a proposed amendment to the Illinois regulatory program (hereinafter referred to as the "Illinois program") under the Surface Mining Control and Reclamation act of 1977 (SMCRA). Illinois proposed revisions to and additions of regulations pertaining to termination of jurisdiction, permit fees, definitions, coal exploration, permitting, environmental resources, reclamation plans, special categories of mining, small operator assistance, bonding, performance standards, revegetation, inspection, enforcement, civil penalties, administrative and judicial review, and certification of blasters. The amendment is intended to revise the Illinois program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by recently revised Federal regulations, clarify ambiguities, and improve operational efficiency.

**EFFECTIVE DATE:** May 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Roger W. Calhoun, 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.

**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. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982, Federal Register (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913.16, and 913.17.

**II. Submission of the Proposed Amendment**

By letter dated February 3, 1995 (Administrative Record No. IL-1615), Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed

amendment in response to an August 5, 1993, letter (Administrative Record No. IL-1400) that OSM sent to Illinois in accordance with 30 CFR 732.17(c), in response to required program amendments at 30 CFR 913.16(s), (t), and (u), and at its own initiative. Illinois proposed to revise or add provisions to the following parts or sections of its program: 62 IAC 1700, general; 62 IAC 1701, Appendix A, definitions; 62 IAC 1761.11, areas where mining is prohibited or limited; 62 IAC 1772, requirements for coal exploration; 62 IAC 1773, requirements for permits and permit processing; 62 IAC 1774.13, permit revisions; 62 IAC 1778.15, right of entry information; 62 IAC 1779, surface mining permit applications—minimum requirements for information on environmental resources; 62 IAC 1780.23, reclamation plan—premining and postmining information; 62 IAC 1783, underground mining permit applications: minimum requirements for information on environmental resources; 62 IAC 1784.15, reclamation plan—premining and postmining information; 62 IAC 1785, requirements for permits for special categories of mining; 62 IAC 1795, small operator assistance; 62 IAC 1800, bonding and insurance requirements for surface coal mining and reclamation operations; 62 IAC 1816, permanent program performance standards—surface mining activities; 62 IAC 1817, permanent program performance standards—underground mining activities; 62 IAC 1825.14, high capability lands—soil replacement; 62 IAC 1840, department inspections; 62 IAC 1843, state enforcement; 62 IAC 1845.12, when penalty will be assessed; 62 IAC 1847, notice of hearing; and 62 IAC 1850, training, examination and certification of blasters.

OSM announced receipt of the proposed amendment in the February 27, 1995, Federal Register (60 FR 19522), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on March 29, 1995. A public hearing was requested and was held on March 24, 1995, as scheduled.

During its review of the amendment, OSM identified concerns relating to 62 IAC 1701, Appendix A, definition of wetlands; 62 IAC 1773.20, general procedures for improvidently issued permits; 62 IAC 1773.23, review of ownership of control and violation information; 62 IAC 1773.24, procedures for challenging ownership or control shown in the Applicant Violator System; 62 IAC 1774.13(d)(6), incidental

boundary revisions; 62 IAC 1785.17, prime farmlands; 62 IAC 1816/1817.13 and 1816/1817.46(e)(2), siltation structures; 62 IAC 1816/1817.116(a)(3)(F) and 62 IAC 1816(a)(4)(A)(ii), revegetation standards for small isolated areas; 62 IAC 1816.116(a)(4)(D), revegetation standards for hay production; 62 IAC 1816.116(a)(4)(D), revegetation standards for hay production; 62 IAC 1816/1817.116(a)(5), wetlands revegetation; 62 IAC 1816/1817.116(c), revegetation reference areas; and 62 IAC 1816, Appendix A, permit specifics yield standards. OSM notified Illinois of the concerns by letters dated April 28 and August 3, 1995 (Administrative Record Nos. IL-1649 and IL-1660, respectively).

By letter dated November 1, 1995 (Administrative Record No. IL-1663), Illinois responded to OSM's concerns by submitting additional explanatory information and revisions to its proposed program amendment. Based upon the additional explanatory information and revisions to the proposed program amendment submitted by Illinois, OSM reopened the public comment period in the December 5, 1995, Federal Register (60 FR 62229) and provided an opportunity for a public hearing on the adequacy of the revised amendment. The public comment period closed on January 4, 1996. The public hearing scheduled for January 2, 1996, was not held because no one requested an opportunity to testify.

**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.

**A. Revisions to Illinois' Regulations That Are Not Substantive in Nature**

Revisions not specifically discussed in this final rule concern nonsubstantive wording changes, corrected typographical errors, or revised cross-references and paragraph notations to reflect organizational changes within the amended regulations.

Throughout its revised regulations, Illinois proposed to change specific references of the "Illinois Department of Mines and Minerals" to the "Illinois Department of Natural Resources, Office of Mines and Minerals" in order to reflect a reorganization change which was effective July 1, 1995; to change 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 Coal Mining Land

Conservation and Reclamation Act (State Act) that occurred in 1992; and to change its references of the "Soil Conservation Service" and "S.C.S." to the "Natural Resources Conservation Service" and "NRCS" to reflect that Federal agency's change in name.

The above proposed revisions do not alter the substance of the previously approved provisions in the Illinois regulations. Therefore, the Director finds that they will not render the Illinois regulations less effective than the Federal regulations.

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

#### 1. Revisions to Existing Regulations and New Regulations

62 IAC 1700.11(f), Termination of jurisdiction (30 CFR 700.11(d)); 62 IAC 1701.Appendix A, Definition of "Applicant Violator System or AVS" (30 CFR 773.5); 62 IAC 1701.Appendix A, Definition of "Federal violation notice" (30 CFR 773.5); 62 IAC 1701.Appendix A, Definition of "Historic lands" (30 CFR 762.5); 62 IAC 1701.Appendix A, Definition of "Land eligible for re-mining" (30 CFR 701.5); 62 IAC 1701.Appendix A, Definition of "Ownership or control link" (30 CFR 773.5); 62 IAC 1701.Appendix A, Definition of "State violation notice" (30 CFR 773.5); 62 IAC 1701.Appendix A, Definition of "Substantially disturb" (30 CFR 701.5); 62 IAC 1701.Appendix A, Definition of "Violation notice" (30 CFR 773.5); 62 IAC 1761.11(a)(4)(B), Areas where mining is prohibited or limited (30 CFR 761.11(d)(2)); 62 IAC 1773.15(b)(1) and (b)(2), Review of violations (30 CFR 773.15(b)(1) and (b)(2)); 62 IAC 1773.20(b), Improvidently issued permits review criteria (30 CFR 773.20(b)); 62 IAC 1773.20(c)(4), Improvidently issued permits remedial measures (30 CFR 773.20(c)(2)); 62 IAC 1773.21(a), Automatic suspension and rescission (30 CFR 773.21(a)); 62 IAC 1773.22, Verification of ownership or control application information (30 CFR 773.22); 62 IAC 1773.23, Review of ownership or control and violation information (30 CFR 773.23); 62 IAC 1773.24(a), procedures for challenging ownership or control links shown in the Applicant Violator System (30 CFR 773.24(a)); 62 IAC 1773.25, Standards for challenging ownership or control links and the status of violations (30 CFR 773.25); 62 IAC 1780.23(a)(1)-(2), Reclamation plan premining information for surface mining permit applications (30 CFR 780.23(a)(1)-(2));

62 IAC 1780.23(b) and (c), Reclamation plan postmining information for surface mining permit applications (30 CFR 780.23(b) and (c)); 62 IAC 1784.15(a)(1)-(2), Reclamation plan premining information for underground mining permit applications (30 CFR 784.15(a)(1)-(2)); 62 IAC 1784.15(b) and (c), Reclamation plan postmining information for underground mining permit applications (30 CFR 784.15(b) and (c)); 62 IAC 1795.4(b), Definition of "Qualified laboratory" (30 CFR 795.3); 62 IAC 1795.6(b), (b)(1), and (b)(2), Small operator assistance—eligibility for assistance (30 CFR 795.6(a)(2), (a)(2)(i), and (a)(2)(ii)); 62 IAC 1795.9(b)(1)-(b)(5), Small operator assistance—program services and data requirements (30 CFR 795.9(b)(1)-(b)(5)); 62 IAC 1795.12(a)(2), Small operator assistance—applicant liability (30 CFR 795.12(a)(2)); 62 IAC 1816.79, Protection of underground mining (30 CFR 816.79); 62 IAC 1816.97(b), Endangered and threatened species—surface mining (30 CFR 816.97(b)); 62 IAC 1817.97(b), Endangered and threatened species—underground mining (30 CFR 817.97(b)); 62 IAC 1840.11(g) and (h), Inspections by the Department—abandoned sites (30 CFR 840.11(g) and (h)); 62 IAC 1843.13(a)(3), Suspension or revocation of permits (30 CFR 843.13(a)(3)); 62 IAC 1843.13(a)(4)(B), Suspension or revocation of permits (30 CFR 843.13(a)(4)(ii)); 62 IAC 1843.13(b), Suspension or revocation of permits (30 CFR 843.13(d)); and 62 IAC 1843.23, Enforcement actions at abandoned sites (30 CFR 843.22).

Because the above proposed revisions and/or additions are identical in meaning to the corresponding Federal regulations, shown in brackets, the Director finds that Illinois' proposed regulations are no less effective than the Federal regulations.

#### 2. Deletions of Existing Regulations

62 IAC 1773.21(c), Improvidently issued permits—appeals of rescission notices (30 CFR 773.21(c), 59 FR 54306, October 28, 1994); 62 IAC 1779.22, Surface coal mining application requirements for premining land use information (30 CFR 779.22, 59 FR 27932, May 27, 1994); 62 IAC 1779.25(a)(11), Surface coal mining application requirements for premining slope measurements (30 CFR 779.25(a)(11), 59 FR 27932, May 27, 1994); 62 IAC 1783.22, Underground coal mining application requirements for premining land use information (30 CFR 783.22, 59 FR 27932, May 27, 1994); and 62 IAC 1783.25(a)(11), Underground coal mining application requirements for premining slope

measurements (30 CFR 783.25(a)(11), 59 FR 27932, May 27, 1994).

The above proposed deletions are consistent with OSM's repeal of the Federal counterpart regulations, shown in brackets. Therefore, the Director finds that the proposed deletions will not render the Illinois regulations less effective than the Federal regulations.

### *C. Revisions to Illinois' Regulations That Are Substantive in Nature*

#### 1. 62 IAC 1700.16(a) Fees

Illinois proposed a revision to 62 IAC 1700.16(a) that requires fees collected under the provisions of the Surface Coal Mining Land Conservation and Reclamation Act (State Act) be deposited in the Coal Mining Regulatory Fund instead of the general revenue fund. This revision implements the requirements at 225 ILCS 720/9.07 of the State Act that OSM approved on November 21, 1994 (59 FR 59918). The Coal Mining Regulatory Fund was established to receive money for administration of the Illinois program. There is no direct Federal counterpart to 62 IAC 1700.16(a). However, the proposed amendment is not inconsistent with the general requirements for permit fees at section 507(a) of SMCRA and 30 CFR 777.17 of the Federal regulations. Therefore, the Director finds that the proposed revision to 62 IAC 1700.16(a) is not inconsistent with the requirements of SMCRA or the Federal regulations.

#### 2. 62 IAC 1701.Appendix A Wetland Definition

Illinois proposed to add the definition of "wetland" from the Illinois Interagency Wetland Policy Act of 1989 (20 ILCS 830/I-6(a)) to its regulations at 62 IAC 1701.Appendix A. Illinois proposed the definition because it had proposed standards for wetland revegetation in its regulations at 62 IAC 1816/1817.116(a)(5). Illinois defined wetland to mean "land that has a predominance of hydric soils (soils which are usually wet and where there is little or no free oxygen) and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation (plants typically found in wet habitats) typically adapted for life in saturated soil conditions. Areas which are restored or created as the result of mitigation or planned construction projects and which function as a wetland are included within this definition even when all three wetland parameters are not present."

In its letter dated April 28, 1995 (Administrative Record No. 1649), OSM requested Illinois to provide a statement which explains the meaning of the last sentence of the "wetlands" definition (Areas which are restored or created as the result of mitigation or planned construction projects and which function as a wetland are included within this definition even when all three wetland parameters are not present). At the May 31, 1995, meeting (Administrative Record No. 1654), Illinois explained that generally the "hydric" soil profile may not be fully developed in a newly created wetland. This concept is consistent with the U.S. Army Corps of Engineers (Corps) Wetlands Delineation Manual, Technical Report Y-87-1 (Administrative Record No. IL-1616). In the manual, the Corps states that "Although wetland indicators of all three parameters (i.e. vegetation, soils, and hydrology) may be found in some man-induced wetlands, indicators of hydric soils are usually absent. Hydric soils require long periods (hundreds of years) for development of wetness characteristics, and most man-induced wetlands have not been in existence or a sufficient period to allow development of hydric soil characteristics \* \* \*."

The Federal regulations at 30 CFR Chapter VII do not contain a counterpart wetland definition. However, the Illinois definition is not inconsistent with the provisions of section 515(b)(24) of SMCRA or the Federal regulations at 30 CFR 816/817.97(f) pertaining to wetlands and habitats of unusually high value for fish and wildlife. These provisions require the operator to minimize disturbances and adverse impacts to fish and wildlife and to enhance wherever practical or restore habits or high value for fish and wildlife, including wetlands.

Based on the above discussion, the Director finds that Illinois' proposed definition of wetland is not inconsistent with SMCRA or the Federal regulations.

### 3. 62 IAC 1772.11(b)(5) Notice Requirements for Exploration Removing 250 Tons of Coal or Less

At 62 IAC 1772.11(b)(5), Illinois proposed to clarify that forms OG-7 and OG-8 are required to be submitted with a coal exploration notice only if such forms are required by the Department's Oil and Gas Division.

There is no direct Federal regulation counterpart. However, the Director finds the proposed regulation is not inconsistent with the general provisions governing coal exploration notice requirements at 30 CFR 772.11.

### 4. 62 IAC 1772.12(d)(2) Decision on an Application for Exploration Removing More Than Two Hundred and Fifty (250) Tons of Coal

Illinois proposed to revise 62 IAC 1772.12(d)(2) by replacing the word "operation" with the word "permit" in the phrase "application for a coal exploration operation." The Director finds the revised language is substantively identical to the language in the Federal counterpart regulation at 30 CFR 772.12(d)(2); and it is, therefore, no less effective than the Federal regulation.

At 62 IAC 1772.12(d)(2)(C), Illinois proposed to delete its reference to the "agency with jurisdiction over State Historic Preservation" and replace it with the name of the agency, "Illinois Historic Preservation Agency," that has jurisdiction over cultural and historical resources in Illinois. The Director finds that referencing the actual agency that has jurisdiction adds clarity to this provision and does not render the previously approved regulation less effective than the Federal counterpart regulation at 30 CFR 772.12(d)(2)(iii).

### 5. 62 IAC 1773.15(a)(1) Review of Permit Applications

Illinois offers the opportunity for both an informal conference and a public hearing on the decision to issue deny, or modify a permit application. Illinois is proposing to revise 62 IAC 1773.15(a)(1) by removing reference to its informal conference at section 1773.13(c) and adding a reference to its public hearing at section 1773.14. This is consistent with the Illinois Attorney General's legal opinion dated June 13, 1980, which was required by OSM in accordance with 30 CFR 731.14(c) prior to State program approval. In the Illinois Attorney General's opinion, the public hearing at 62 IAC 1773.14 met the requirements of the informal conference in the Federal regulations at 30 CFR 773.13(c). Illinois' informal conference at section 1773.13(c) was considered an optional, additional step for public participation in permit processing. Therefore, the Director finds that the Illinois regulation at 62 IAC 1773.15(a)(1), as amended, is no less effective than the counterpart Federal regulation at 30 CFR 773.15(a)(1).

### 6. 62 IAC 1773.24 Procedures for Challenging Ownership or Control Shown in the Applicant Violator System

Illinois proposed new provisions at 62 IAC 1773.24 (b) through (d) that provide procedures for challenges concerning the status of State violations to which persons shown on the Applicant

Violation System (AVS) have been linked. These proposed procedures are substantively identical to the procedures in the Federal regulations at 30 CFR 773.24 (b) through (d) for challenges concerning an ownership or control link shown in the AVS or the status of a Federal violation. Therefore, the Director finds that Illinois' regulations at 62 IAC 1773.24 (b) through (d) for challenging the status of State violations are no less effective than 30 CFR 773.24 (b) through (d) of the Federal regulations for challenging the status of Federal violations.

### 7. 62 IAC 1774.13 Application Requirements and Procedures for Permit Revisions

a. *Section 1774.13(b)(2)(E)*. At subsection (b)(2)(E), Illinois is proposing that a significant revision be required for land use changes involving greater than 5 percent of the "Total permit acreage" instead of the "original total permit acreage." This proposed change in language allows adjustment to the previously approved 5 percent cumulative total limitation. The proposed addition of subsection 1774.13(b)(2)(E)(i) would allow the accumulation of the 5 percent limit to restart upon issuance of a significant revision that addresses all previous land use changes approved via insignificant revisions. The proposed addition of subsection 1774.13(b)(2)(E)(ii) would allow acreage added by incidental boundary revisions to be included in the total permit acreage used to determine the 5 percent limit if the acreage has been addressed previously in a significant revision. Changing the land use on more than an accumulated 5 percent of the permit area through the insignificant revision process without giving the public an opportunity for review and comment through the significantly revision process would still not be allowed under the proposed revision. It is also noted that Illinois requires all alternative land use revisions, both significant and insignificant, to comply with its postmining land capability requirements at 62 IAC 1816.133 or 1817.133 and requires consultation with the landowner or the land management agency with jurisdiction over the lands before approval of either type of revision.

The Federal counterpart regulation for permit revisions at 30 CFR 774.13(b) requires the regulatory authority to establish guidelines for the scale or extent of revisions for which all the permit application requirements will apply. OSM determined in the September 28, 1983, Federal Register

948 FR 44344) that this requirement provided flexibility to the regulatory authority to establish guidelines suitable to the operation of individual State programs. Therefore, the Director finds that the proposed revisions represent a reasonable application by Illinois of the requirement in 30 CFR 774.13(b) and that 62 IAC 1774.13(b), as amended, is no less effective than the counterpart Federal regulation for permit revisions.

b. *Section 1774.13(d)(6)*. Illinois is proposing to amend its regulations pertaining to incidental boundary revisions as a partial response to an August 5, 1993, letter (Administrative Record No. IL-1400) that was sent to Illinois in accordance with 30 CFR 732.17(c) and (e)(3). OSM had determined that Illinois' administration of its incidental boundary revision regulations appeared inconsistent with the approved regulatory program. At subsection (d)(6), Illinois originally proposed to require public notice and a ten-day comment period for incidental boundary revision applications which propose new surface acreage or planned subsidence shadow area to the original permit (Administrative Record No. IL-1615). During a May 31, 1995, public meeting (Administrative Record NO. 1654), Illinois and OSM discussed reducing the comment period from ten days to seven days because of time restrictions in processing incidental boundary revisions (90 days). Subsequent to this meeting, Illinois submitted revised language which reduced the comment period to seven days. Illinois had previously submitted a letter dated September 14, 1993 (Administrative Record No. IL-1402), that specified the internal control and management practices implemented to identify potential patterns of incidental boundary revision abuse and to prevent abuse.

The Director finds that the proposed amendment to Illinois' regulations at 62 IAC 1774.13(d)(6) to allow public involvement in this incidental boundary revision review and approved process is consistent with the Federal regulations at 30 CFR 774.13(d). Furthermore, Illinois' proposed amendment and its implementation of internal management control measures for its incidental boundary revision review and approval process resolves the issues associated with OSM's August 5, 1993, 30 CFR part 732 action.

#### 8. 62 IAC 1778.15 Right of Entry Information

a. *Section 1778.15(a)*. At subsection (a), Illinois is proposing to remove the requirement for underground coal mining applications to contain a

description of the documents upon which the applicant bases his or her legal right to enter and begin surface coal mining and reclamation operations in the shadow area, including the right to subside within the shadow area. Right of entry information would still be required to enter and begin surface coal mining and reclamation operations in the permit area. The language in the revised provision is substantively identical to the counterpart Federal provision at 30 CFR 778.15(a), which requires such a description only for the permit area. On April 5, 1983 (48 FR 14814), OSM revised the definition of "permit area" and associated terms to exclude areas overlying underground workings (shadow area). Therefore, the Director finds 62 IAC 1778.15(a), as revised, is no less effective than the counterpart Federal regulation.

b. *Section 1778.15(e)*. At subsection (e), Illinois is proposing to clarify that underground mining applications in which the applicant claims to have valid existing rights to conduct planned subsidence operations within an area where mining is prohibited or limited, contain the necessary information and meet the requirements of 62 IAC 1778.16. (Relationship to Areas Designed Unsuitable for Mining) and 62 IAC 1761.12 (Procedures for determining whether mining operations are limited or prohibited). The existing provision specified this information for applications to conduct surface coal mining operations only. The Federal regulations at 30 CFR 778.15 pertaining to right of entry information contain no comparable requirement. However, the proposed additional requirement at 62 IAC 1778.15(e) is not inconsistent with the Federal regulation provisions at 30 CFR 761.12 pertaining to procedures for determining whether mining operations are limited or prohibited, § 778.16 pertaining to the proposed permit area relationship to areas designed unsuitable for mining, or § 784.20 pertaining to the requirement for an underground mining application to contain a substance control plan. Therefore the Director finds that the revised provision at subsection (e) does not render the Illinois regulations at 62 IAC 1778.15 less effective than the counterpart Federal regulations at 30 CFR 778.15, and he is approving it.

c. *Section 1778.15(f)*. Illinois is proposing to add new subsection (f) to require applications for underground mining area (shadow area) to contain a notarized statement by a responsible official of the applicant attesting that all necessary mining rights, including the right to subside, if applicable, have been or will be obtained prior to mining. The

Federal regulations at 30 CFR 778.15 pertaining to right of entry information contain no comparable requirements for underground mining shadow area. However, the proposed requirements at 62 IAC 1778.15(f) are not inconsistent with the Federal regulation provisions at 30 CFR 78.10 pertaining to the requirement for subsidence control plans for undergrounds mining applications. Therefore, the Director finds that the new provision at subsection (f) does not render the Illinois regulations at 62 IAC 1778.15 less effective than the counterpart Federal regulations at 30 CFR 778.18, and he is approving it.

#### 9. 62 IAC 1780.23(a)(3) and 62 IAC 1784.15(a)(3) Reclamation Plan: Premining Information

Because the cited regulations governing surface mining permit application requirements at 62 IAC 1780.23(a) are identical to counterpart regulations governing underground mining permit application requirements at 62 IAC 1784.15(a), the discussion of changes are consolidated.

Illinois is proposing to add new subsection (a)(3) at 62 IAC 1780.23 and 1784.15. This is a recodification of the provisions deleted from existing 62 IAC 1779.25(a)(11)(D) for surface mines and 1783.25(a)(11)(D) for underground mines with one minor exception. The recodified provisions pertain to a requirement for a premining soils map or contoured aerial photo of the proposed permit area. Both the current provisions and the recodified provisions, as originally proposed (Administrative Record No. IL-1663), require "a solid map of medium intensity" to be submitted with the permit application, while the revised recodified provisions require "an intensive soil map" to be submitted. This change in language was proposed because of a comment from the Natural Resources Conservation Service, during the State's own rulemaking process, that the terminology "medium intensity" was not consistent with the terminology of the National Cooperative Soil Survey for the State of Illinois. There are no Federal counterpart provisions. However, the Director finds that the addition of these previously approved requirements, including the change in terminology at 62 IAC 1780.23(a)(3) and 1784.15(a)(3), is not inconsistent with the Federal regulations.

#### 10. 63 IAC 1785.17(a) Prime Farmlands

In subsection (1)(1), Illinois is proposing to delete the following language: "Nothing in this Section shall

apply to any permit issued period to the date of enactment of the Federal Act, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to the date of enactment of the Federal Act, as determined by the Department prior to September 29, 1981. For lands for which a request for exemption was initially made or pending on or after September 29, 1981." Illinois also proposed to delete existing subsections (a)(5) and (a)(6) pertaining to an acreage limitation on the amount of exempted prime farmland and (a)(7)(B) pertaining to a preliminary exemption review. Illinois proposed to redesignate existing subsection (a)(1) to (a)(2)(A); (a)(2) to (a)(2)(B); (a)(3) to (a)(2)(C); (a)(4) to (a)(3); and (a)(7)(A) to (a)(4).

The Federal regulations do not contain counterpart provisions to the deleted language in subsections (a)(1), (a)(5), (a)(6), and (a)(7)(B). The proposed revisions at 62 IAC 1785.17(a) render Illinois' regulation requirements substantively identical to the counterpart Federal regulation requirements at 30 CFR 785.17(a) with one exception. At redesignated subsection (a)(4), Illinois retained an additional requirements for a scale map of the area proposed to be exempted. Therefore, the Director finds the revised provisions of 62 IAC 1785.17(a) are no less effective than the Federal regulation provisions at 30 CFR 785.17(a).

**11. 63 IAC 1785.23 Minor Underground Mine Facilities Not at or Adjacent to the Processing or Preparation Facility or Area**

Illinois originally adopted section 1785.23 to take into account the distinct differences between surface and underground mining. This category of facilities, which includes air shaft, fan and ventilation buildings, small support buildings or sheds, access power holes, and other small structures and associated roads, 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. There is no Federal counterpart to these previously approved provisions. In this amendment, Illinois proposed to clarify the public notice and opportunity to comment provisions at subsection (d) by revising paragraph (3) to require written comments from persons with an interest which is or may be adversely affected be filed within the 30-day public comment period and by revising paragraph (4) to require the Interagency Committee to submit review comments within 30 days

of the date of receipt of the application. A proposed revision to subsection (e)(1) requires the Department to make its final decision to approve, deny, or modify the complete application for a permit within 20 days, rather than 10 days, following the close of the public comment period. Subsection (g)(1) is proposed to be amended to require the Department to notify persons who filed comments or objections to the application of its final decision, to replace the word "disapprove" with the word "deny" for consistency with other sections of the Illinois regulations dealing with approval and denial of permit applications, and its final action. Subsection (g)(2) is proposed to be revised by correcting the administrative and judicial review regulation citation.

While there are no direct Federal counterparts to these proposed revisions, the Director finds that the proposed revisions to 62 IAC 1785.23 will enhance the public participation and review process provisions for a minor underground mine facility permit application and that the proposed revisions are not inconsistent with the public participation and review provisions of section 510(a) of SMCRA and 30 CFR 773.13 and 773.15(a) of the Federal regulations.

**12. 62 IAC 1795 Small Operator Assistance Program**

On November 5, 1990, and October 24, 1992, the President signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508 and the Energy Policy Act of 1992, Public Law 102-486, respectively. Included in these laws were amendments to the Small Operator Assistance Program (SOAP) authorized at section 507(c) of SMCRA. On May 31, 1994 (59 FR 28136), OSM published a final rule to amend the Federal regulations at 30 CFR part 795 to reflect these amendments.

In this amendment, Illinois proposed changes to its regulations to be consistent with and incorporate the additional flexibility afforded by the revised provisions of SMCRA and the Federal regulations. Illinois had previously proposed enabling statutory revisions pertaining to its SOAP at 225 ILCS 720/2.02 of the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act), and these revisions were approved by OSM on November 21, 1994 (59 FR 59918). The Illinois SOAP regulations that contain revised provisions substantively identical to the counterpart Federal regulations are noted in finding B.1., and those that contain revised provisions that are not substantively

identical to the counterpart Federal regulations are discussed below.

**a. Section 1795.1 Scope and Purpose**

Illinois proposed to amend the purpose statement at subsection (b) to reference the new and enhanced technical permitting services that can be provided to eligible operators under its SOAP program. Although the purpose statement in the counterpart Federal regulation at 30 CFR 795.1 was not changed to reflect these new and enhanced technical permitting services, the Federal regulation at 30 CFR 795.9(b) does list the specific technical services authorized for the SOAP by the Energy Policy Act of 1992. Therefore, the Director finds that the revised purpose statement at 62 IAC 1795.1 is no less effective than the counterpart Federal regulation purpose statement at 30 CFR 795.1.

**b. Section 1795.9 Program Services and Data Requirements**

At 62 IAC 1795.9(b)(6), Illinois proposed substantively identical language to that contained in the counterpart Federal regulation at 30 CFR 795.9(b)(6), including the listing of its counterpart regulation citations at 62 IAC 1780.16 and 1784.21, but also authorized the collection of information and production of plans for the information required under its regulations at 62 IAC 1779.19 and 1783.19. Sections 1779.19 for surface mines and 1783.19 for underground mines require a permit application to contain a map or aerial photograph that delineates existing vegetative types and a description of the plant communities within the proposed permit areas that include sufficient adjacent areas to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under 62 IAC 1780.16 and 1784.21, respectively. The Federal regulation at 30 CFR 795.9(b)(6) authorizes the collection of site-specific resources information and production of protection and enhancement plans for fish and wildlife habitats required by 30 CFR 780.16 and 784.21 and information and plans for any other environmental values required by the regulatory authority under SMCRA.

Since the counterpart Federal regulation at 30 CFR 795.9(b)(6) allows a regulatory authority to authorize assistance for the collection of information and production of plans for any other environmental value required under SMCRA, the Director finds the revised provisions of 62 IAC 1795.9(b)(6) are no less effective than the Federal regulation provisions.

*c. Section 1795.12 Applicant Liability*

At 62 IAC 1795.12(a)(3), Illinois proposed language which is substantively identical to the language in the Federal regulation at 30 CFR 795.12(a)(3) with the following exceptions. Illinois is requiring reimbursement if the "original permittee's and transferee's" total actual and attributed production exceeds 300,000 tons during the specified 12-month period, while the Federal regulation requires reimbursement if the "transferee's" total actual and attributed production exceeds 300,000 tons during the specified 12-month period. Illinois further clarified its requirement by proposing the following additional language. "If the permit is transferred during the twelve (12) month period immediately following the permit issuance date, the determination of adherence to the twelve (12) month-300,000 tons limit shall be performed by combining the actual and attributed production of both parties for the twelve (12) month period immediately following the date of original permit issuance." Both the Illinois and Federal regulations contain the provision that holds the applicant and its successor jointly and severally obligated to reimburse the regulatory authority. The Director finds that since the attributed tonnage in Illinois' proposed revision does not exceed the 300,000 ton limit for the same time period specified in the Federal regulation, the revised regulation at 62 IAC 1795.12(a)(3) is no less effective than the counterpart Federal regulation.

At 62 IAC 1795.12(b), Illinois proposed to delete its definition of good faith. There is no Federal counterpart to this definition. Therefore, the Director finds this deletion is not inconsistent with the Federal regulations.

13. 62 IAC 1800 Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations

*a. Section 1800.5 Definitions*

Illinois proposed to revise subsection (b)(4) to allow acceptance of irrevocable letters of credit from banks organized or authorized in other states and from banks organized or authorized in the United States by national charter rather than from only those organized or authorized to transact business in Illinois. Illinois is requiring a confirming bank be designated with an office in Illinois that is authorized to accept, negotiate, and pay the letter upon presentment in Illinois if the bank does not have an office for collection in Illinois. This is consistent with the

Federal regulation at 30 CFR 800.5(b)(4) which requires the banks to be organized or authorized to transact business in the United States. Therefore, the Director finds the revised regulation at 62 IAC 1800.5(b)(4) is no less effective than the counterpart Federal regulation.

*b. Section 1800.20 Surety Bonds*

Illinois is proposing to remove subsections (b)(2) through (b)(5), which contained surety bond conditions. The counterpart Federal regulation at 30 CFR 800.20(b) does not contain the provisions proposed for removal. Therefore, the Director finds the removal of these provisions is not inconsistent with the Federal regulations.

*c. Section 1800.21 Collateral Bonds*

Illinois proposed to revise subsection (b)(1) to clarify that irrevocable letters of credit may be issued by banks organized or authorized to do business in Illinois, in another state of the United States or in the United States by national charter. Illinois is requiring a confirming bank be designated with an office in Illinois that is authorized to accept, negotiate, and pay the letter upon presentment in Illinois if the issuing bank does not have an office for collection in Illinois. This is consistent with the Federal regulation at 30 CFR 800.21(b)(1) which requires the banks issuing letters of credit to be organized or authorized to transact business in the United States. Therefore, the Director finds the revised regulation at 62 IAC 1800.21(b)(1) is no less effective than the counterpart Federal regulation.

14. 62 IAC 1816 and 62 IAC 1817 Permanent Program Performance Standards for Surface and Underground Mining Activities

The Illinois permanent program performance standard regulations for surface mining activities at 62 IAC 1816 and underground mining activities at 62 IAC 1817 that contain revised provisions substantively identical to the counterpart Federal regulations are noted in finding B.1., and those that contain revised provisions that are not substantively identical to the counterpart Federal regulations are discussed below. Since most of the surface mining and underground mining regulations are identical, the revisions are being combined for discussion purposes, unless otherwise noted.

*a. Sections 1816.22(b) and 1817.22(b) Topsoil and Subsoil: Substitutes and Supplements*

Illinois is proposing to remove subsection (b)(2) to eliminate the requirement that topsoil plans for substitutes or supplements be considered a significant revision unless specified circumstances apply. Existing subsection (b)(1) is redesignated subsection (b) because of the removal. The counterpart Federal regulations at 30 CFR 816.22(b) and 817.22(b) do not contain the removed language, and the revised provisions in 62 IAC 1816.22(b) and 1817.22(b) are substantively identical to these Federal counterparts. Therefore, the Director finds the removal of subsection (b)(2) will not render Illinois' regulations at 62 IAC 1816.22(b) and 1817.22(b) less effective than the Federal counterpart regulations.

*b. Sections 1816.41(c) and 1817.41(c) Hydrologic Balance Protection: Ground Water Monitoring*

At 62 IAC 1816.41(c)(2) and 1817.41(c)(2), Illinois proposed to revise subsection (c)(2) by specifying that the ground water monitoring reports, that are required to be submitted every three months, shall be submitted by the first day of the second month following the reporting period, unless the Department specifies an alternative reporting schedule. The Federal counterpart regulations at 30 CFR 816.41(c)(2) and 817.41(c)(2) require reports to be submitted every three months or more frequently as prescribed by the regulatory authority without specifying exact reporting schedules. Since Illinois has retained its requirement that ground water monitoring data be submitted every three months or more frequently if necessary, the Director finds the addition of a specific reporting schedule will not render the Illinois regulations at 62 IAC 1816.41(c)(2) and 1817.41(c)(2) less effective than the counterpart Federal regulations.

*c. Section 1816.41(e) and 1817.41(e) Hydrologic Balance Protection: Surface Water Monitoring*

Illinois proposed to revise subsection (e)(2) by removing the requirement to send NPDES reports to the Department concurrently with those sent to the Illinois EPA and adding the requirement that NPDES reports are to be sent to the Department by the first day of the second month following the reporting period. The Federal counterpart regulations at 30 CFR 816.41(e)(2) and 817.41(e)(2) require surface water monitoring reports to be submitted

every three months or more frequently as prescribed by the regulatory authority without specifying exact reporting schedules. Since Illinois has retained its requirement that surface water monitoring data be submitted every three months or more frequently if necessary, the Director finds the addition of a specific reporting schedule for submitting Illinois' required NPDES report will not render the Illinois regulations at 62 IAC 1816.41(e)(2) and 1817.41(e)(2) less effective than the counterpart Federal regulations.

*d. Sections 1816.46(e) and 1817.46(e) Hydrologic Balance: Siltation Structures: Exemptions*

Illinois proposed to revise the language in subsection (e) and incorporate the language from existing subsection (e)(1) to read as follows: "Exemptions to the requirements to pass all drainage from disturbed areas through a siltation structure may be granted if the disturbed drainage area within the total disturbed area is small . . ." Illinois added an additional exemption provision at new subsection (e)(1) that will allow the use of the alternate sediment control measures described in §§ 1816.45(b) and 1817.45(b) instead of siltation structures in instances where the disturbed drainage area within the total disturbed area is small and the permittee demonstrates that siltation structures are not necessary for drainage to meet the effluent limitations and water quality standards for the receiving waters. Sections 1816.45 for surface mining activities and 1817.45 for underground mining activities require that sediment control measures be designed, constructed, and maintained using the best technology currently available (BTCA). Furthermore, Illinois stated in the comment section of its revised amendment submitted dated November 1, 1995 (Administrative Record No. IL-1663), that "the Department will require that any alternative sediment control measures be shown to be the best technology currently available."

The Federal regulations do not contain a counterpart to the proposed exemption at 30 CFR 816.46(e)(1) and 817.46(e)(1). However, the Federal regulations at 30 CFR 816.45(a)(1) and 817.45(a)(1) require that BTCA be used to "prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area." Also, the Federal regulations at 30 CFR 816.46(b)(2) and 817.46(b)(2) which required all surface drainage from a disturbed area be passed through a siltation structure

were remanded by the District Court in 1985 in *In re: Permanent Surface Mining Regulation Litigation (III)*, 620 F. Suppl. 1519 (D.D.C. 1985). Subsequently, OSM suspended these rules on November 20, 1986 (51 FR 41957). The effect of this suspension is that State regulatory authorities may determine on a case by case basis what is BTCA rather than requiring, in every situation, that drainage be passed through siltation structures. The use of BTCA is required by sections 515(b)(10)(B) and 516(b)(9)(B) of SMCRA. In the preamble of the 1986 suspension notice (51 FR 41957-41958), OSM stated that "in situations where sediment control measures other than siltation structures are determined as BTCA, the performance standards of §§ 816.45 and 817.45 will control." The referenced sections are the Federal counterparts to Illinois regulations at 62 IAC 1816.45 and 1817.45. Therefore, since Illinois requires alternate sediment control measures be designed, constructed, and maintained using BTCA, the Director finds the proposed revisions will not render 62 IAC 1816.46(e) and 1817.46(e) less effective than the Federal regulations for sediment control for small disturbed drainage areas.

*e. Sections 1816.116(a)(2)(B) and 1817.116(a)(2)(B) Revegetation Standards for Success: Success of Revegetation*

The State Act was amended at 225 ILCS 720/3.15 to change the revegetation responsibility period from five years to two years for areas eligible for re-mining consistent with section 515(b)(20)(B) of SMCRA. At sections 1816.116(a)(2)(B) for surface mining and 1817.116(a)(2)(B) for underground mining, Illinois proposed to implement this statutory provision by revising the first sentence of each section to read: "The period of extended responsibility shall continue for a period of not less than five (5) full years, except that on lands eligible for re-mining, the period of responsibility (until September 30, 2004) shall be two (2) full years." The counterpart Federal regulations at 30 CFR 816.116(c)(2) and 817.116(c)(2), as amended on November 27, 1995 (60 FR 58480), require the period of responsibility for lands eligible for re-mining included in permits issued before September 30, 2004, or any renewals thereof, to continue for a period of not less than two full years. The amended Federal regulations also require that "to the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of

the last year of the responsibility period." Illinois' counterparts to 30 CFR 816.116(b)(5) and 817.116(b)(5) at sections 1816.116(a)(3)(A) and 1817.116(a)(3)(A) require re-mined areas to meet the specified standards in those sections during the last year of the responsibility period. Therefore, the Director finds that the revised regulations at 62 IAC 1816.116(a)(2)(B) and 1817.116(a)(2)(B) are no less effective than the counterpart Federal regulations.

*f. Sections 1816.116(a)(2)(F) and 1817.116(a)(2)(F) Revegetation Standards for Success: Augmentation*

(1) Existing provisions at subsection (a)(2)(F)(i), (ii), and (iii) concerning augmentation requirements for high capability land areas are proposed to be deleted. Illinois' provisions for high capability lands, including the provisions proposed for deletion, have no direct Federal counterparts. Therefore, the Director finds the deletion of these provisions is not inconsistent with the Federal regulations concerning revegetation success standards.

(2) Illinois is proposing to add the following augmentation provision for pasture, hayland, and grazing land at new subsection (a)(2)(F)(i): "The five (5) year period of responsibility shall not recommence after deep tillage on areas where the operator has met the revegetation success standards of subsection (a)(3)(E) below." Subsection (a)(3)(E) pertains to the revegetation success standards for pasture, hayland, and grazing land areas. Illinois' proposed provision would allow augmentation, in the form of deep tillage, without restarting the period of extended responsibility for revegetation success and bond liability. The Federal regulations at 30 CFR 816.116(c)(1) and 817.116(c)(1) do not allow augmentation without restarting the period of extended responsibility. Although the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) allow regulatory authorities to approve selective husbandry practices without extending the period of responsibility for revegetation success and bond liability, they must first obtain approval for the practices from OSM. The regulatory authorities must provide proof that the proposed practices are normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed areas. Illinois has neither proposed nor obtained approval for use of deep tillage as a normal husbandry practice in Illinois. Therefore, the Director finds the

proposed provisions at 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i) are inconsistent with and less effective than the Federal regulation requirements at 30 CFR 816.116(c)(1) and 817.116(c)(1), and he is not approving them. Furthermore, he is requiring Illinois to remove 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i) from its program.

(3) Illinois proposed to add augmentation provisions for wetlands at new subsection (a)(2)(F)(ii). A portion of the proposed provisions identify and clarify those actions which constitute augmentative practices. Augmentative practices include significant alterations to the size or character of the watershed, pumping used to maintain water levels, and applying neutralizing agents, chemical treatments or fertilizers to the wetland area. The Director finds that the augmented practices proposed by Illinois that would restart the period of extended responsibility for successful revegetation and bond liability on wetlands are not inconsistent with the Federal regulations at 30 CFR 816.116(c)(1) and 817.116(c)(1).

The proposed provisions also identify and clarify those actions which constitute non-augmentative (normal husbandry) practices and management techniques for wetland areas. Non-augmentative practices and management techniques include normal agricultural husbandry practices, such as routine liming and fertilization, and wetlands managed as wildlife food plot areas and water management using permanent water control structures.

On September 3, 1993 (Administrative Record No. IL-1219), OSM approved Illinois' designation of the agricultural practices described in the Illinois Agronomy Handbook (Administrative Record No. IL-1192A) and those practices which are a part of an approved conservation plan subject to the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 1421 *et seq.*) as normal agricultural husbandry practices for the State of Illinois. The approved practices include normal routine liming and fertilization of lands used for the production of food and/or forage. Therefore, in the State of Illinois, these approved agricultural practices would be used for the management of wildlife food plot areas.

Illinois in its submission dated February 3, 1995 (Administrative Record No. IL-1615), addresses the use of permanent water control structures as a normal husbandry practice to manage water levels in wetlands. Illinois supports this designation by citing two publications which indicate that this type of water level management is

necessary to create suitable aerobic/anaerobic conditions for the germination of hydrophytic plants.

As shown above, the information and literature contained in the Illinois administrative record provide adequate documentation that agricultural techniques, such as routine liming and fertilization, are normal husbandry practices in the State of Illinois for lands used in the production of food and/or forage and that the use of permanent water control structures for managing the water levels of wetlands is a normal husbandry practice. These proposed practices should assist in ensuring the effectiveness of fish and wildlife management areas by providing regulation and guidelines for the enhancement of wetland and riparian vegetation areas as required by 30 CFR 816.97(f) and 817.97(f) of the Federal regulations. The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) allow the regulatory authority to approve selective husbandry practices with prior approval from OSM. Therefore, the Director finds the proposed regulations at new 62 IAC 1816.116(a)(2)(f)(ii) and 1817.116(a)(2)(F)(ii) are no less effective than the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4).

*g. Sections 1816.116(a)(3)(E) and 1817.116(a)(3)(E) Ground Cover and Production for Pasture, Hayland, and Grazing Land*

In response to the required amendment at 30 CFR 913.16(s), subsection (a)(3)(E) is proposed to be amended to clarify that pasture and/or hayland or grazing land on non-previously disturbed areas are subject to a 90 percent ground cover standard for a minimum of any two years of a ten (10) year period prior to the release of the performance bond, except the first year of the five (5) year extended responsibility period. The counterpart Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1) require that for areas developed for use as grazing land or pasture land, ground cover and production of living plants on the revegetated area meet certain success standards approved by the regulatory authority. With Illinois' proposed revision, 62 IAC 1816.116(a)(3)(E) and 1817.116(a)(3)(E) now contain both ground cover and production success standards for pasture, hayland, and grazing land. Therefore, the Director finds the proposed regulation provisions pertaining to production and ground cover success standards for pasture, hayland, and grazing land are no less effective than the counterpart Federal

regulations, and he is removing the required amendment at 30 CFR 913.16(s).

Illinois proposed to revise subsection (a)(3)(E) by removing the provision that limited the substitution of corn production for hay production on high capability pasture land to one attempt. The Federal regulations at 30 CFR 816.116 and 817.116 do not contain specific standards for high capability pasture land. However, the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters for production. The Illinois administrative record contains sufficient proof that high capability land is suitable for cropland and that crop/hay rotations are common practices in cropland areas surrounding mines (Administrative Record Nos. IL-1164 and IL-1192A). Therefore, since corn production standards are generally accepted to be more difficult to meet than hay production standards, the Director finds that the removal of this limitation provision will not render 62 IAC 1816.116(a)(3)(E) and 1817.116(a)(3)(E) less effective than the Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1).

Illinois also proposed to revise subsection (a)(3)(E) to allow one year substitution of crops in lieu of hay on limited capability land, provided the Department determines that the practice is proper management in accordance with its regulations at 62 IAC 1816.116(a)(2)(C) and 1817.116(a)(2)(C). The Illinois regulations at subsection (a)(2)(C) contain provisions pertaining to normal husbandry practices. In the amendment submittal dated February 3, 1995 (Administrative Record No. IL-1615), Illinois noted that it has required limited capability land to be returned to a land use other than cropland as a normal practice. However, Illinois explained that some operators have reclaimed limited capability land to a higher quality when all prime and high capability land acreage obligations have been met. The capabilities described in the Illinois program include limited capability (non-cropland capable land), high capability (cropland capable land), and prime farmland (cropland capable land). Therefore, the Director interprets the reference Illinois made to "a higher quality" to mean that the limited capability land had been reclaimed to either prime farmland or high capability standards. To the extent that Illinois will consider the quality of the soils when making its determination and will restrict its approval to limited capability

lands that are reclaimed to a higher quality, the Director finds the proposed provision does not render the Illinois regulations less effective than the Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1).

*h. Section 1816.116(a)(3)(F) and 1817.116(a)(3)(F) Revegetation Success Standards for Non-Contiguous Areas Less Than or Equal to Four Acres*

Illinois proposes to add new subsection (a)(3)(F) as follows: "Non-contiguous areas less than or equal to four acres which were disturbed from activities such as, but not limited to, signs, boreholes, power poles, stockpiles and substations shall be considered successfully revegetated if the operator can demonstrate that the soil disturbance was minor, i.e., the majority of the subsoil remains in place, the soil has been returned to its original capability and the area is supporting its approved postmining land use at the end of the responsibility period."

Although OSM recognizes the practicality to excluding the need to test for revegetation success for small areas such as signs, boreholes, powerpoles, and other small and minimally disturbed areas, this proposal cannot be approved. The provision does not limit the type of disturbance that could occur on such areas. It does not clarify the type of demonstration the operator is to make at the end of the responsibility period to prove that the soil has been returned to its original capability and to prove that the postmining land use has been achieved. Illinois' proposed revision would allow bond release without adequate proof of productivity on disturbed areas of four acres or less.

In order for OSM to approve this type of proposal, Illinois would need to provide additional regulatory language which would more closely correlate the maximum acreage to the types of activities which would qualify for the exemption. Illinois would also have to provide additional regulatory language as to what would constitute a satisfactory demonstration of minimum disturbance, achievement of original capability, and achievement of postmining land use. Absent this information, the Director finds that the proposed regulations at 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F) are less effective than the Federal regulations at 30 CFR 816.116(a) and 817.116(a), and he is not approving them. Furthermore, he is requiring Illinois to remove these regulations from its program.

*i. Section 1816.116(a)(4)(A)(ii) Use of the Agricultural Lands Productivity Formula, Section 1816.Appendix; Fields*

Illinois proposed to add the following provision at subsection (a)(4)(A)(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. The small isolated areas shall be managed and vegetated in the same manner as the representative field."

This proposal would allow the approval of the success of revegetation for non-contiguous disturbed areas based on the testing of a representative field of the same soil capability that had also been disturbed. The current Illinois program requires that fields of four acres or less be sampled in their entirety with yields determined by harvest weight. The Federal regulations at 30 CFR 816/817.116(a)(1) require that revegetation standards for success and statistically valid sampling techniques for measuring success be utilized by the regulatory authority and that the sampling techniques for measuring success use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha level). The Federal regulation at 30 CFR 823.15(b)(2) requires that prime farmland soil productivity be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the reference crop determined under paragraph (b)(6) of this section. It also requires that a statistically valid sampling techniques at a 90 percent or greater confidence level be used as approved by the regulatory authority in consultation with the U.S. Natural Resources Conservation Service.

Illinois has not provided sufficient regulatory language as to how the determination that a field is representative of the small areas to be exempt from testing would be made and what information would be needed for a satisfactory demonstration of representation. Therefore, the Director finds that the proposed provisions at 62 IAC 1816.116(a)(4)(A)(ii) are less effective than the Federal regulations at 30 CFR 823.15, 816.116, and 817.116, and he is not approving them. Furthermore, he is requiring Illinois to remove these regulations from its program.

*j. Section 1816.116(a)(4)(D) Use of the Agricultural Lands Productivity Formula, Section 1816.Appendix; Crops*

Illinois is proposing to add oat crops to the list of crops that may be grown

on prime farmland and other cropland areas to prove productivity. The Federal regulations at 30 CFR 823.15(b)(6) pertaining to prime farmland requires reference crops for proving soil productively be selected from the crops most commonly produced on the surrounding prime farmland. The Federal regulations at 30 CFR 816.116(a) and 817.116(a) pertaining to other cropland areas require the use of criteria representative of unmined lands in the area being reclaimed. Proof exists in the Illinois administrative record that oats is a commonly grown crop in Illinois and that it is one of the crops that is rotated with corn on unmined cropland areas. This use is described in a section of the Illinois Agronomy Handbook concerning crop rotations. Therefore, the Director finds the revised regulation requirement is not inconsistent with the Federal regulations.

*k. Sections 1816.116(a)(5) and 1817.116(a)(5) Wetland Revegetation Success Standards*

Illinois proposed to add provisions at subsection (a)(5)(A) that specify the criteria and sampling procedures in the U.S. Army Corps of Engineers Wetlands Delineation Manual which will be used to determine wetland revegetation success. New subsection (a)(5)(B) further requires that areas designed to support vegetation in the approved plan have a minimum areal coverage of 30 percent. The testing procedures in Sections 1816.117(d) (1) through (3) and 1817.117(d) (1) through (3) shall be used to evaluate the extent of cover in conjunction with other specified procedures. In OSM's letter to the State dated April 28, 1995 (Administrative Record No. IL-1649), Illinois was asked to provide a statement and technical support which justifies why a minimum areal coverage of 30 percent for wetlands will be consistent with the revegetation standards for ground cover for areas to be developed for fish and wildlife habitat at 30 CFR 816.116(a)(3) and 817.116(a)(3). As technical support for the 30 percent standard, Illinois provided a copy of a Michigan State University study (Journal of Wildlife Management 45(1):1-15) that compared dabbling duck and aquatic macroinvertebrate responses to manipulated wetlands under 30:70, 50:50, and 70:30 percent of cover to percent of water treatments and a U.S. Fish and Wildlife Service, Biological Services Program, publication on the qualitative values of wetlands with various degrees of emergent vegetation at the 20 percent to 70 percent levels (Administrative Record Nos. IL-1650B and IL-1653). Illinois provided a

statement that indicated the Michigan State University study determined that the 50:50 treatment was the most desirable vegetative cover. However, with the recognition that the percent of vegetative cover increases with time as open water decreases during wetlands development, Illinois determined use of the 30:70 as a minimum standard would provide more incentive for the industry to create wetlands.

There are no direct counterpart Federal regulations at 30 CFR 816.116 and 817.116 for determining wetland revegetation success. However, OSM's internal policy and procedures for construction of wetlands to supplement and enhance fish and wildlife habitat as a postmining land use (Directives System No. TSR-14, Transmittal Number 828) provide that wetland areas must meet the Federal definition of a wetland as defined by the U.S. Army Corps of Engineers Wetlands Delineation Manual prior to bond release. Illinois' requirement that the wetland vegetation criteria in the U.S. Army Corps of Engineers Wetlands Delineation Manual be achieved as proof of productivity should assure that the wetland areas meet the Federal definition of a wetland as defined by the Corps. Therefore, the Director finds that 62 IAC 1816.116(a)(5) and 1817.116(a)(5) are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3) for areas to be developed for fish and wildlife habitat.

*l. Sections 1816.117(a)(1) and 1817.117(a)(1) Revegetation: Tree and Shrub Vegetation; Lands Eligible for Remining*

Illinois proposed to revise subsection (a)(1) by requiring the period of responsibility (until September 30, 2004) be two full years for trees and shrubs on lands eligible for remining. Also, until September 30, 2004, trees and shrubs planted on lands eligible for remining need not have been in place for three years prior to bond release and shall not be counted in determining success during the same calendar year in which they were planted.

The counterpart Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) do not contain the proposed provisions. However, the Federal regulations at 30 CFR 816.116(c)(2)(ii) and 817.116(c)(2)(ii) were amended November 27, 1995 (60 FR 58480), to require a period of responsibility of two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. This responsibility period requirement

would apply to all applicable postmining land uses, including areas to be developed for fish and wildlife habitat. Also, a two year responsibility period effectively eliminates the requirement that trees and shrubs be left in place for three years. Therefore, the Director finds the Illinois regulations at 62 IAC 1816.117(a)(1) and 1817.117(a)(1), as revised, are no less effective than the counterpart Federal regulations.

*m. Sections 1816.117(a)(3) and 1817.117(a)(3) Revegetation: Tree and Shrub Vegetation; Erosion Control Structures*

Illinois proposed to amend subsection (a)(3) to clarify that erosion control structures, including pond embankments within an approved land use of fish and wildlife, forest, or recreation shall not require the planting of trees and shrubs. A herbaceous ground cover will be required, and the ground cover requirements of subsection (a)(2) are still applicable to erosion control structures. Illinois determined that tree and shrub growth on embankments is detrimental to their maintenance, and submitted an Illinois Department of Transportation (IDOT) booklet entitled "Guidelines and Forms for Inspection of Illinois Dams" to support this determination (Administrative Record No. IL-1617). The Director finds that prudent engineering practices dictate that large rooted plants should not be planted on erosion control structures because they can cause instability. Illinois has provided adequate support for its exemption of erosion control structures from the planting of trees and shrubs for the State of Illinois. Therefore, Illinois' proposed regulation provisions at 62 IAC 1816.117(a)(3) and 1817.117(a)(3) are not inconsistent with the Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii).

*n. Sections 1816.117(b) and 1817.117(b) Revegetation: Tree and shrub Vegetation; Woody Plants*

Illinois proposed to revise subsection (b) to clarify that planting arrangements such as hedgerows, border plantings, clump plantings, shelterbelts, and open herbaceous areas which increase diversity and edge effect within wildlife areas may be approved by the Department on a case-by-case basis prior to planting such areas. The Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) require minimum stocking and planting arrangements be specified by the regulatory authority on the basis of local and regional conditions. Therefore, the Director finds

that the proposed revision will not render Illinois' regulations at 62 IAC 1816.117(b) and 1817.117(b) inconsistent with the Federal regulations.

*o. Sections 1816.117(c)(1),(c)(7) and 1817.117(c)(1),(c)(7) Revegetation: Tree and Shrub Vegetation; Sampling Procedure*

Illinois proposed to revise subsection (c)(1) to establish a field system for trees and shrubs similar to that already adopted for agricultural areas by replacing the word "area" with the word "field." This subsection is also revised by adding a requirement that once field boundaries are established in a submittal, the boundaries shall not be changed unless the Department approves a request in accordance with its permit revision regulations at 62 IAC 1774.13. At subsection (c)(7), Illinois proposed to remove the reference to "Illinois Department of Conservation" and change the word "conduct" to "administer." The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that the regulatory authority select statistically valid sampling techniques for measuring success and include them in its program. The Director finds that the revised provisions at 62 IAC 1816.117 (c)(1) and (c)(7) 1817.117 (c)(1) and (c)(7) will not render Illinois' previously approved sampling procedures for measuring tree and shrub vegetation less effective than the Federal regulations.

*15. 62IAC 1817.121(c)(3) Subsidence Control; Water Replacement*

Illinois proposes to add new subsection (c)(3) to require operators to promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation operations permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

The proposed language is consistent with section 720(a)(2) of SMCRA, which was added October 24, 1992, by the Energy Policy Act. It is also consistent with the counterpart Federal regulation provision at 30 CFR 817.41(j), with one exception. The Federal provision specifies "underground mining activities conducted after October 24, 1992." Whereas the Illinois provision will apply to activities conducted after adoption. However, by letter dated April 25, 1995 (Administrative Record No. IL-1533), Illinois indicated that its current regulations codified at 62 IAC 1817.121(c)(2) require repair or

compensation for subsidence-related material damage, including damage from activities conducted after October 24, 1992, to any structures or facilities, and this would include repair of or compensation for damage to water delivery systems such as wells, cisterns, and water lines. Furthermore, on July 28, 1995 (60 FR 38677), OSM announced its decision on initial enforcement of the water replacement requirements for Illinois for activities conducted after October 24, 1992. It was decided that initial enforcement of the water replacement requirements in Illinois is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. Therefore, the Director finds 62 IAC 1817.121(c)(3) is no less effective than the Federal counterpart provision for subsidence-related water replacement.

However, it should be noted that the July 28, 1995, decision addressed only the initial enforcement schemes for water replacement (30 CFR 817.41(j)) and subsidence damage repair/compensation (30 CFR 817.121(c)(2)) provided for under section 720 of SMCRA, as amended by the Energy Policy Act of 1992, Pub. L. 102-486, 106 Stat. 2776 (1992). In addition to the basic water supply replacement requirement and the related subsidence damage repair requirement, the implementing Federal regulations that became effective March 31, 1995, contain other related supporting and permitting provisions. OSM anticipates that these other requirements will become effective in the same way as other revisions to the permanent program regulations; i.e., in primacy states such as Illinois, upon adoption of counterpart State regulatory program provisions (60 FR 16722). This process will be initiated separately by OSM under the provisions of 30 CFR 732.17(d).

#### 16. 62 IAC 1816.151 and 1817.151 Primary Roads

At subsection (a), Illinois proposes to specify that the certification of the construction or reconstruction of primary roads shall be submitted within 30 days after completion of construction. Illinois defines "completion of construction" to mean that the road is being used for its intended purpose as determined by the Department. The counterpart Federal regulations at 30 CFR 816.151 and 817.151 do not set a time for submittal of primary road construction certifications or define "completion of construction." However, the Director finds that the proposed revisions to 62

IAC 1816.151(a) and 1817.151(a) clarify the existing provisions and do not render the Illinois regulations less effective than the Federal counterparts.

#### 17. 62 IAC 1816.190 (a), (b) and (c) and 1817.190 (a), (b) and (c) Affected Acreage Map

At subsection (a), Illinois proposed to require submittal of reports and maps of affected areas to the Department only by removing the phrase "and to the county clerk." At subsection (b), Illinois is requiring the permittee to submit two copies of the reports and maps, plus an additional copy for each county in which the permit is located, which the Department will then forward to the county clerks. Illinois is also requiring that one of the copies contain the original signature of a company official. Also, statutory citations are being updated in subsections (b) and (c). There are no direct counterpart Federal regulations pertaining to an annual submittal of affected acreage reports and maps. However, the Director finds the proposed revisions to 62 IAC 1816.190 (a), (b), and (c) and 1817.190 (a), (b), and (c) would clarify and simplify the administration of Illinois' requirements for these annual submittals and would not render the Illinois regulations inconsistent with SMCRA or the Federal regulations.

#### 18. 62 IAC 1816. Appendix A Agricultural Lands Productivity Formula—Permit Specifics Yield Standard

a. Illinois proposed revisions to the two existing paragraphs and reorganized them into subsections (a) and (b), respectively. Language is proposed at redesignated subsection (a) to clarify that yield standards must be calculated for each capability class in the disturbed area in the pit and that high capability and limited capability lands will be calculated in a manner similar to prime farmland. At redesignated subsections (a) and (b), Illinois proposed to replace the terms "permit area and/or mining permit area" with the term "pit."

Illinois has proposed to substitute the term "pit" for "permit area" in determining specific crop yield standards. The change proposed would alter the specific land area that would be included in the computation of the target yield utilizing the Illinois Agricultural Lands Productivity Formula (Illinois Productivity Formula). The counterpart Federal regulation for the establishment of yield standards on prime farmland is 30 CFR 823.15(b)(5). It requires that restoration of soil productivity shall be considered achieved when the average yield during

the measurement period equals or exceeds the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

OSM initially had a major concern with the proposed revisions pertaining to how the "pit" area was to be utilized in calculations of the Illinois Productivity Formula. This concern was raised in public meetings held on May 31 and August 16, 1995. During these meetings representatives of Illinois explained how the area of the "pit" would be determined in a variety of circumstances. During the August 16, 1995, public meeting, Illinois stated that it would submit further clarification to OSM. Based on the State's clarification in the public meetings held on May 31 and August 16, 1995 (Administrative Record Nos. IL-1654 and IL-1662), and the subsequent submittal to OSM of additional clarification, including maps defining pit areas (Administrative Record No. IL-1663), the Director finds that the proposed revisions are no less effective than the Federal regulations and is approving the revisions.

This approval is based upon Illinois defining the use of the term "pit" in the following circumstances:

(1) Single pit within a single permit—The pit area is the same as the permit area.

(2) Multiple pits within a single permit—Each pit area will be clearly marked on the permit map that has been subjected to public review prior to approval.

(3) Single pit within several permits that have been consolidated into a single permit—The pit area will be the same as the area of the consolidated permit.

(4) Multiple pits within several permits that are consolidated into one permit—Each pit area will be clearly marked on the consolidated permit map that has been subjected to public review prior to approval.

In all circumstances, Illinois must assure that the crop yield standard is representative of the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

b. New subsection (c) was added and reads as follows:

After mining operations have ceased, the Department shall recalculate the yield standards for the pit based solely on the soils which were disturbed. Recalculated targets shall be applicable to all areas tested for productivity subsequent to the recalculation.

Approved significant revisions after permanent cessation of mining shall cause the targets to be recalculated and applied to productivity fields tested after the recalculation.

This proposal provides that after mining has ceased in any pit, the yield standard would be recalculated for the pit utilizing only those soils actually disturbed. These recalculated yield standards would be applicable only to those areas not already tested. Again, the standard to which OSM must compare the change is the Federal requirement that the yield standard be developed from lands representative of the lands mined and reclaimed. This proposal should improve the accuracy of the calculated yield standard as it represents the soils actually disturbed by mining. Therefore, the Director finds that the proposed revisions are no less effective than the Federal regulations.

19. 62 IAC 1816. Appendix A  
Agricultural Lands Productivity  
Formula; Sampling Method

Illinois proposed a revision to the sampling method section of its productivity formula to require the Department and the Illinois Department of Agriculture to jointly request the operator to verify yields by harvest weight for specified reasons, including but not limited to verification of random sampling results and availability of sample enumerators. Prior to this revision, only the Department could make this request. However, as referenced in other sections, the Illinois Department of Agriculture works with the Department in implementing the Illinois Productivity Formula. Therefore, the Director finds the revision is not inconsistent with the Federal regulations.

20. 62 IAC 1825.14 High Capability  
Lands: Soil Replacement

Illinois added new subsection (e)(1)(E) to specify that excessive compaction is also indicated by other diagnostic methods approved by the Department, in consultation with the Illinois Department of Agriculture and the U.S. Department of Agriculture, Natural Resources Conservation Service. At subsection (e)(2), Illinois is proposing an additional method for the Department to evaluate excessive compaction. The permittee will have a choice between the existing provision and the new provision which specifies that compaction alleviation is required unless the permittee can demonstrate that the requirements of 62 IAC 1816.116 or 1816.117, as applicable, have been met without compaction alleviation on areas reclaimed in a

similar manner. A second new provision in subsection (e)(2) requires the Department to retain sufficient bond at the time of Phase II bond release if it determines that compaction alleviation may be needed to achieve the revegetation success requirements.

There are no direct counterpart Federal regulations to Illinois' regulations for high capability lands at 62 IAC 1825. However, the Director finds that the revisions proposed at 62 IAC 1825.14(e) pertaining to soil compaction alleviation do not adversely affect other aspects of the Illinois program and are not inconsistent with the topsoil and subsoil provisions of the Federal regulations at 30 CFR 816.22 and 817.22.

21. 62 IAC 1840.17 Review of Decision  
Not to Inspect or Enforce

Illinois proposed to revise subsection (a) by allowing affected persons to request from the "Director or his or her designee" a review of a decision not to inspect or enforce. The Director finds that the proposed language at 62 IAC 1840.17(a) is consistent with the counterpart Federal regulation language at 30 CFR 842.15(a).

Illinois also proposed to revise subsection (a) by adding a new provision that requires the request for review to be submitted within 30 days from the date the citizen is notified of the decision and that specifies failure to file a request for informal review within this time period would result in a waiver of the right to such review. Although the counterpart Federal regulation at 30 CFR 842.15(a) does not include a deadline for filing a review request, the Illinois requirement at 62 IAC 1840.17(a) that such requests be filed within 30 days of the State's decision is not unreasonable. Using this approach, Illinois can ensure administrative efficiency by setting a firm deadline for appeals, without undue prejudice to the interest of citizens who may be adversely affected by the decisions not to inspect or enforce. Illinois affirmed that persons will be notified of this requirement via certified mail as part of the decision documents. Therefore, the Director finds the State's requirement that requests be filed within a specified time period ensures administrative efficiency in a manner that is not inconsistent with SMCRA or the Federal regulations. However, this approval is made with the understanding that notification of the 30-day time period within which to request, or else waive, the right to informal review will be included in the notice of decision not to inspect or enforce and that failure to include the

notification will not limit the right for review.

Subsection (b) is proposed to be amended by changing the reviewing official for reviews of the authorized representative's decision not to inspect or enforce from the "Supervisor of the Land Reclamation Division" to the "Director or his or her designee." This change is in line with a recent reorganization of the Illinois regulatory authority into a Department of Natural Resources, and it elevates the review level to the Director of the Department of Natural Resources. The Director finds the revised language at 62 IAC 1840.17(b) is consistent with the counterpart Federal regulation language at 30 CFR 842.15(b).

Subsection (c) is proposed to be amended to reference 62 IAC 1847.3 of the Illinois regulations for formal review, rather than Section 8.07 of the State Act. The Director finds that 62 IAC 1847.3 is the correct citation since this section contains the State's procedures for seeking administrative and judicial review of formal decisions not to inspect or enforce under 62 IAC 1840.17.

22. 62 IAC 1843.13 Suspension or  
Revocation of Permits

At existing subsections (a)(1), (a)(3) and (b) language was deleted in order to eliminate the mandatory determination that a pattern of violations exists under specified conditions and to eliminate an exception which allowed Illinois to decline to issue a show cause order if it determined that to issue the order would be "demonstrably unjust." Existing subsections (c), (d), (e), and (f) were redesignated as (b), (c), (d), and (e), respectively. The Director finds that the deletion of the mandatory determination and exception provision language at 62 IAC 1843.13 (a)(1), (a)(3), and (b) is consistent with changes made to the counterpart Federal regulations at 30 CFR 843.13 on August 16, 1982 (47 FR 35630).

23 62 IAC 1845.12 When Penalty Will  
Be Assessed

As required by 30 CFR 913.16(t), Illinois proposed to amend subsection (d) by adding language which assures that the Department will consider the factors set forth in Section 1845.13 in determining whether to assess a penalty below \$1,100. Illinois also proposed to codify its long-standing policy of assessing a penalty when a violation is the permittee's second or more related violation within a 12-month period. The director finds that the proposed language is not inconsistent with the intent of the counterpart Federal

regulation at 30 CFR 845.12(c), and he is removing the required amendment at 30 CFR 913.16(t).

#### 24. 62 IAC 1847 Administrative and Judicial Review

##### *a. Section 1847.3 Hearings*

(1) At subsection (a), Illinois is specifying that administrative review under this section also applies to decisions not to inspect or enforce under 62 IAC 1840.17, to decisions on minor underground mine facility permit applications pursuant to 62 IAC 1785.23, and to decisions on challenges to ownership or control links at 62 IAC 1773.24. The regulations at 62 IAC 1847.3 consolidate the procedures for most of the formal reviews provided for in the Illinois program. The proposed revision clarifies what additional portions of the Illinois program are covered under the administrative review procedures at 62 IAC 1847.3.

The Federal regulations provide for administrative hearings at 43 CFR 4.1360–1369 for permitting issues and at 43 CFR 4.1380–1387 for challenges to ownership or control links. The Federal regulations at 30 CFR 842.15 do not provide for a formal adjudicatory administrative hearing for decisions pertaining to review of decisions not to inspect or enforce, but do provide for a right of appeal under 43 CFR 4.1280–1286. The Director finds the regulations at 62 IAC 1847.3 are consistent with 43 CFR part 4 for purposes of administrative hearings on minor underground mine facility permit applications and challenges to ownership or control links. He also finds that allowing a formal adjudicatory administrative hearing for decisions pertaining to review of a decision not to inspect or enforce is not inconsistent with the Federal regulations at 30 CFR 842.15.

(2) Illinois is proposing revisions at subsections (f), (i), and (j) to clarify that the final decision of the Department in administrative review hearings held under 62 IAC 1847.3 is made by the Hearing Officer. At subsection (f), Illinois is replacing the word “Director’s” with the word “final.” At subsection (i), Illinois is changing the time period from 15 to 10 days for filing of written exceptions and responses and requiring exceptions to be filed with the hearing officer instead of the Director. At subsection (j), Illinois is specifying that if no exceptions are filed pursuant to the hearing officer’s proposed decision, the decision becomes final within 10 days rather than 15 days. The revision also adds language which provides that the hearing officer can

affirm or modify his proposed decision or remand and rehear the issue in response to any exceptions filed.

The Federal regulations relative to appeals of a variety of administrative decisions, including 30 CFR 775.11 for decision on permits, require that administrative hearings under Federal programs be governed by 43 CFR part 4, which requires requests for review be filed with the Office of Hearings and Appeals, U.S. Department of the Interior. An Administrative Law Judge is assigned by the Office of Hearings and Appeals and he or she issues a written decision. A petition for discretionary review of the written decision can then be filed with the Board of Land Appeals. States do not have the same hierarchy available to them and must attempt to create an appeal process which is as effective as that provided in the Federal regulations. 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, the Director finds that the designation of a hearing officer to make final administrative hearing decisions does not render 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, the Director finds that these proposed revisions will not render the regulations at 62 IAC 1847.3 inconsistent with SMCRA or the Federal regulations.

(3) In response to a required amendment, Illinois proposed to revise 62 IAC 1847.3(1)(2) to specify that judicial review of an administrative review decision may be requested if the hearing officer or the Department fail to act within specified time limits. The Federal regulations at 30 CFR 775.13(a)(2) also require that judicial review be granted if the regulatory authority or the hearing officer for administrative review fail to act within applicable time limits. Therefore, the Director finds that Illinois’ revised regulation is no less effective than the counterpart Federal regulation, and he is removing the required amendment at 30 CFR 913.16(u).

##### *b. Section 1847.4 Citation Hearings*

Illinois is proposing revisions at subsections (g), (j), and (k) to clarify that the final decision of the Department in administrative review hearings pertaining to citations is made by the Hearing Officer. At subsection (g), Illinois is replacing the word “Director’s” with the word “final.” At subsection (j), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director. At subsection (k), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming or modifying or vacating the proposed decision if written exceptions are filed. These revisions are substantively identical to those proposed for 62 IAC 1847.3 (f), (i), and (j). Therefore, the Director is approving the proposed revisions at 62 IAC 1847.4 (g), (j), and (k) for the same reasons discussed in finding C.24.a.(2) for 62 IAC 1847.3 (f), (i), and (j).

##### *c. Section 1847.5 Civil Penalty Assessment Hearings*

Illinois is proposing revisions at subsections (j), (m), and (n) to clarify that the final decision of the Department in administrative review hearings pertaining to civil penalty assessments is made by the Hearing officer. At subsection (j), Illinois is changing the reference from the decision of the Director to the final decision. At subsection (m), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director. At subsection (n), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming, modifying, or vacating the proposed decision if written exceptions are filed. These revisions are substantively identical to those proposed for 62 IAC 1847.3 (f), (i), and (j). Therefore, the Director is approving the proposed revisions at 62 IAC 1847.5 (j), (m), and (n) for the same reasons discussed in finding C.24.a.(2) for 62 IAC 1847.3 (f), (i), and (j).

*d. Section 1847.6 Show Cause Hearings*

Illinois is proposing revisions at subsections (i), (k), and (l) to clarify that the final decision of the Department in administrative review hearings pertaining to show cause orders is made by the hearing officer. At subsection (i), Illinois is replacing the word "Director's" with the word "final." At subsection (k), Illinois is proposing to change the time period from 15 to 10 days for filing to written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director. At subsection (l), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming, modifying, or vacating the proposed decision if written exceptions are filed. These revisions are substantively identical to those proposed for 62 IAC 1847.3 (f), (i), and (j). Therefore, the Director is approving the proposed revisions at 62 IAC 1847.6 (i), (k), (l) for the same reasons discussed in finding C.24.a.(2) for 62 IAC 1847.3 (f), (i), and (j).

*e. Section 1847.7 Bond Forfeiture Hearings*

Illinois is proposing revisions at subsections (h), (j), and (k) to clarify that the final decision of the Department in administrative review hearings pertaining to bond forfeiture is made by the hearing officer. At subsection (h), Illinois is replacing the word "Director's" with the word "final." At subsection (j), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director. At subsection (k), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming, modifying, or vacating the proposed decision if written exceptions are filed. These revisions are substantively identical to those proposed for 62 IAC 1847.3 (f), (i), and (j). Therefore, the Director is approved the proposed revisions at 62 IAC 1847.7 (h), (j), and (k) for the same reasons discussed in finding C.24.a.(2) and 62 IAC 1847.3 (f), (i), and (j).

25. 62 IAC 1848.5 Notice of Hearing

Illinois proposed new subsection (f) to implement a July 7, 1993, amendment to Section 2.11 of the State Act pertaining to permit hearing notices. If the hearing concerns review of a permit decision under 62 IAC 1847.3, a notice containing specified information in a specified format shall be published in a newspaper of general circulation published in each county in which any part of the area of the affected land is located. The notice cannot be placed where legal notices and classified advertisements appear. The Federal regulations at 30 CFR 775.11 for administrative review hearings of permitting actions do not contain this specific requirement for a public notice. However, the Director finds that the addition of this new provision will not render 62 IAC 1848.5 less effective than the Federal regulations.

26. 62 IAC 1850 Training, Examination and Certification of Blasters

*a. Section 1850.14 Examination*

Illinois proposed to amend subsections (a) and (b) to allow notification of examinations to be done by telephone in those cases where it is not possible to give such notice in writing within the time specified in the regulations by removing references to written notification and notification by letter. The Director finds that the counterpart Federal regulations at 30 CFR 850.14 do not contain any specific requirements for notification of blaster certification examinations and that the proposed revisions do not alter the effectiveness of Illinois' previously approved blaster examination provisions. Therefore, the revised regulations at 62 IAC 1850.14 and no less effective than the counterpart Federal regulations.

*b. Section 1850.15 Application and Certification*

Subsection (a) is proposed to be amended by shortening the deadline for receipt of applications for certification from 45 days to 30 days and by shortening the deadline for review of applications from 30 to 15 days. Illinois also proposed a revision that will allow the option of including any applicant with an application received less than 15 days before a regularly scheduled session in that session or in the next session. The counterpart Federal regulation at 30 CFR 850.15(a) does not contain specific procedures governing applications for certification. The Director finds the proposed revisions will allow Illinois more flexibility in scheduling and administering its blaster

certification examinations and will not alter the effectiveness of Illinois' previously approved provisions. Therefore, the revised regulations at 62 IAC 1850.15 are no less effective than the counterpart Federal regulations.

*c. Section 1850.16 Denial, Issuance of Notice of Infraction, Suspension, Revocation, and Other Administrative Actions*

Illinois proposed several nonsubstantive revisions at 62 IAC 1850.16: Subsection (b) is proposed to be entitled "Notice of Infraction" and subsection (c) is proposed to be entitled "Notice to Show Cause; at subsections (b)(1) (A) and (D), various regulatory and statute citations are corrected, including the reference to SMCRA; and it subsections (b)(3) and (c)(2) and (c)(3), the hearing regulation reference is corrected to reference the State's new section for administrative review of blasting infractions at 62 IAC 1847.4 (e) and (g) through (p).

Subsection (b)(3) is proposed to be revised by clarifying the blaster is to file a request for review and hearing of a notice of infraction with the Department. The specific address listed in this subsection is removed since it is subject to change. The blaster's request for review is simplified by removing a requirement to include specified information, which would already be available to the Department. In subsections (b) and (c), the hearings for a notice of infraction and a notice to show cause are proposed to be held at one of the Department's offices, and the existing language, which limited the hearings to two locations, is removed. These changes will provide for greater opportunity to hold hearings in the locale of the requestors. The Director finds that the proposed revisions at 62 IAC 1850.16 simplify, clarify, and strengthen the Illinois provisions for administrative review of blaster certifications and are not inconsistent with the Federal regulations at 30 CFR 850.15.

*d. Section 1850.17 Judicial Review*

Illinois proposed to repeal 62 IAC 1850.17 concerning judicial review for final administrative decisions on blaster certifications. The Director finds that since the provision for judicial review of these administrative decisions is contained in previously approved 62 IAC 1847.4(p) and section 1847.4 is referenced in all applicable sections of 62 IAC 1850, this repeal will not render the Illinois blaster certification regulations less effective than the counterpart Federal regulations.

#### IV. Summary and Disposition of Comments

##### Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment on two separate occasions. A public hearing was held on March 24, 1995, in Galesburg, Illinois (Administrative Record No. IL-1636). Comments on the proposed revisions to Illinois' regulations were received from Janis King, President of the Citizens Organizing Project; Dennis Sullivan, Vice-president of the Sauk Trail Organization for Preservation; Roger Holmes, President of the Knox County Farm Bureau; Robert L. Masterson, Zoning Administrator for the Knox County Zoning Department; Helen Pence; Anna Johnson and Patrick D. Shaw, Citizens Organizing Project; Tom Fitzgerald, Director of the National Citizens' Coal Law Project (NCCLP); Robert G. Darmody, Associate Professor of Pedology, University of Illinois, and Keith Shank.

Following is a summary of the substantive comments received on the proposed amendment. Comments identifying errors of a purely typographical or editorial nature, comments voicing general support or opposition to the proposed amendment but devoid of any specific statements, and comments which do not specifically relate to requirements in the proposed regulations are not discussed. The summarized comments and responses to the comments are organized by the section of the amended regulations to which they pertain.

##### 62 IAC 1700.11(f) Termination of jurisdiction

*Comment:* To the extent that the requirements of 62 Ill. Code 280 incorporate all of the counterpart 30 CFR Subchapter B interim program performance standards and other requirements, the proposed adoption of the termination of jurisdiction regulations appear to conform to 30 CFR 700.11(d).

*Response:* The Illinois regulations at 62 IAC 280 incorporate by reference the applicable provisions of subchapter B of the Federal regulations.

##### 62 IAC 1701.Appendix A Definition of Wetland

*Comment 1:* Two commenters expressed concern that not requiring all three of the wetland parameters to be present prior to bond release could result in environmental damage and incomplete reclamation.

*Response:* As discussed in finding C.2, Illinois' explanation that the hydric soil profile may not be fully developed in an artificial wetland is consistent with the U.S. Army Corps of Engineers' determination that indicators of hydric soils are usually absent in man-induced wetlands. Furthermore, as discussed in finding C.14.k, Illinois proposed and the Director approved wetland revegetation regulations at 62 IAC 1816.116(a)(5) and 1817.116(a)(5) that require the use of the wetland vegetation criteria and sampling procedures specified in the U.S. Army Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1. Therefore, reclaimed areas must meet specified revegetation success standards prior to bond release.

*Comment 2:* One commenter expressed concern regarding the requirement that a mitigated wetland area function as a wetland to be considered wetlands, and recommended that it be deleted because of the possible difficulties in applying the requirement. The commenter expressed the belief that all mitigation areas should be protected regardless as to whether they exhibit tangible wetlands functions.

*Response:* The proposed definition does not conflict with any existing Federal regulation. OSM interprets the requirement for a functioning wetland to be applicable to areas reclaimed as planned wetlands which have attained that land use as determined by a trained professional of the State's staff, but may not clearly meet each of the three parameters contained in the definition. As discussed in finding C.2, the U.S. Army Corps of Engineers recognizes that man-induced wetlands (restored or created wetland) may not contain all three parameters.

Pre-existing wetlands mitigation requirements and conditions relating to surface coal mining activities are determined by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. In accordance with section 702(a)(3) of SMCRA, Federal and State program requirements cannot supersede, amend, modify, or repeal requirements under section 404 of the Clean Water Act, including mitigation plans for those wetlands which existed in the premining landscape and are being replaced in accordance with a Section 404 permit. If mitigation of pre-existing wetlands is required, the mine operator must meet the requirements and conditions of the U.S. Army Corps of Engineers.

However, section 515(b)(24) of SMCRA requires surface coal mining operations "to the extent possible using the best technology currently available, minimize disturbances and adverse

impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable." Furthermore, the Illinois program implements this SMCRA requirement at 62 IAC 1816.97 and 1817.97 by requiring the protection of fish, wildlife, and related environmental values, including wetlands.

*Comment 3:* One commenter believed that the State should be requested to commit to permit, require bonds, and apply all reclamation to wetland mitigation areas.

*Response:* As discussed above, mitigation of pre-existing wetlands is conducted under the authority of the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. Pursuant to the requirements of section 702(a)(3) of SMCRA, OSM does not have the authority to require States to permit, require bonds, and apply all reclamation standards to off-site wetland mitigation areas. Furthermore, on-site wetland mitigation areas are subject only to those requirements of a Federal or State program that do not supersede, amend, modify, or repeal requirements under Section 404 of the Clean Water Act.

##### 62 IAC 1701.Appendix A Definition of Violation Notice

*Comment:* Two commenters were concerned that the definition of violation notice would not include violations involving underground mining operations because of its reference to "surface coal mining operations" only.

*Response:* Illinois' defines "surface coal mining operations" at 62 IAC 1701.Appendix A to mean "activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 of the Federal Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce, or the operations of which directly or indirectly affect interstate commerce." Therefore, the proposed definition of "violation notice" requires Illinois to consider violations in connection with both surface and underground coal mines.

##### 62 IAC 1761.11(d)(12) [Recodified 1761.11(a)(4)(B)] Areas Where Mining is Prohibited or Limited

*Comment:* Two commenters were concerned with the deletion of the phrase "including surface areas impacted by planned subsidence" from this provision. One commenter believed that the deletion "could be construed to mean an intent to prohibit any planned

subsidence within 100 feet of a public road, or an intent to completely eliminate from consideration the location of planned or unplanned subsidence relative to public roads." This commenter supported the application to public roads." This commenter supported the application of the 30 CFR 761.11 prohibitions to underground mining that has the potential to cause direct or indirect surface impacts, and believed that unless it can be demonstrated that material damage will not occur from the underground operation (planned or room and pillar), the permit should not be issued.

*Response:* The language in the revised regulation at existing 62 IAC 1761.11(d)(2) [recodified 1761.11(a)(4)(B)] is substantively identical to the corresponding Federal regulation at 30 CFR 761.11(d)(2); and, therefore, is not inconsistent with the Federal requirements.

#### 62 IAC 1773.15(b) *Review of Violations*

*Comment 1:* Two commenters were concerned that the phrase "surface coal mining and reclamation operations" restricted the provision at 62 IAC 1773.15(b)(1) for evaluating violator status of permit applicants to violations in connection with surface coal mines.

*Response:* Illinois' definition of "surface coal mining and reclamation operations" at 62 IAC 1701.Appendix A includes its definition of "surface coal mining operations." As discussed above, under 62 IAC 1701.Appendix A, definition of "violation notice," Illinois must consider violations in connection with both surface and underground coal mines.

*Comment 2:* One commenter objected to the provision at 62 IAC 1773.15(b)(2) that allows a permit to be conditionally issued if an outstanding violation is in the process of being corrected.

*Response:* The proposed regulation at 62 IAC 1773.15(b)(2) is substantively identical to the Federal regulation at 30 CFR 773.15(b)(2), and, therefore, is not inconsistent with the Federal requirements.

*Comment 3:* One commenter acknowledged that the State rule and the Federal rule are identical, but expressed the opinion that both rules are inconsistent with the Federal Act.

*Response:* The appropriateness of the Federal rule is not at issue in this rulemaking.

#### 62 IAC 1773.24 (b) *Through (d) Procedures for Challenging Ownership or Control Links Show in the AVS*

*Comment:* It is not clear from the proposed revision to 62 IAC 1773.24 (b) through (d), that the phrase "other person" in the context of who beyond the applicant may appeal a decision concerning whether an ownership and control link has been demonstrated or rebutted, includes persons (such as neighbors of the proposed mining operation) who have an interest which is or may be adversely affected by the decision to lift an ownership and control link and permit block.

*Response:* The Illinois regulation at 62 IAC 1773.24(b), as revised on November 1, 1995, specifically states that the "other person" must be eligible under the provisions of subsection (a)(3). To be eligible under the provisions of subsection (a)(3). To be eligible under the provisions of subsection (a)(3), the "other person" must be shown in the AVS in an ownership or control link to any person cited in a state violation notice.

#### 62 IAC 1773.25(c)(1)(B) *Standards for Challenging Ownership or Control Links*

*Comment:* How can a person who "owns or controls" not have authority to determine manner in which surface mining operations are conducted? The criteria for exclusion from responsibility for a violation is contrary to the liability of ownership.

*Response:* Illinois' regulation at 62 IAC 1773.25(c)(1)(B) is substantively identical to the Federal regulation at 30 CFR 773.25(c)(1)(ii). These regulations refer to a person who is subject to a presumption of "ownership or control." This presumption is refutable under the definition of "owned or controlled" or "owns or controls" at 30 CFR 773.5.

#### 62 IAC 1774.13(b)(2)(E) *Permit Revisions*

*Comment 1:* The proposed change in this rule, to the extent that it allows an increase in the acreages for which the postmining land use may be changed without public notice and comment, is opposed as being arbitrary and inconsistent with the purpose of the Act of enfranchising the public in permitting matters.

The proposal would allow a "rolling" 5% limit, that would restart whenever the prior land use changes had been subject to public review, rather than cumulating such changes. The concern is that a 5% limit is unrelated to the significance of the land use change, which, depending on the type of land and pre- and post-mining land use,

could be locally significant (i.e. high quality farmland to hayland/pasture, agricultural to industrial or commercial, etc.) The NCCLP suggests that an abbreviated public comment period should be provided in all cases where the post-mining land use is to be changed, as is apparently provided with all incidental boundary revisions.

*Response:* Neither SMCRA nor the Federal regulations require a public comment period for all postmining land use changes. Section 511(b)(2) of SMCRA and the Federal regulations at 30 CFR 774.13(b) require the regulatory authority to establish guidelines for the scale or extent of revisions for which all the permit application requirements will apply, including public notice. As discussed in finding C.7.a, the Director found that the proposed change represents a reasonable application by Illinois of this requirement.

Since Illinois requires all alternative land use revisions, both significant and insignificant, to comply with 62 IAC 1816.133 or 1817.133, the concern that Illinois would approve a proposal to allow a disturbed area to be restored to a lower or a lesser land use is unfounded. These sections of the Illinois program pertain to postmining land capability requirements, including the requirement that the disturbed areas be restored to a condition capable of supporting prior uses or higher or better uses. Illinois also requires consultation with the landowner or the land management agency with jurisdiction over the lands before approval of either type of revision.

*Comment 2:* One comment questioned whether Illinois had a definition for "insignificant change" with relation to its proposed provisions for land use changes.

*Response:* Illinois does not have a specific definition for "insignificant change" in its regulations at 62 IAC 1774.13. However, subsections 1774.13(b)(2) (A) through (E) specify departures from the methods or conduct of mining or reclamation operations which would not be considered significant, including changes in land use. Subsection 1774.13(b)(2)(E) contains the criteria used to determine whether a land use change is significant or insignificant. This final determination must be made on a case-by-case basis. As discussed in finding C.7.a, the Federal counterpart regulation for permit revisions at 30 CFR 774.13(b) requires the regulatory authority to establish guidelines for the scale or extent of revisions.

**62 IAC 1774.13(d)(6) Incidental Boundary Revisions**

*Comment:* The NCCLP further cautions against increasing the acreage that can be added to permits under IBRs without full-scale public review as would attach to a permit or permit amendment, since the use of IBRs on the scale contained in the existing Illinois state program is arguably inconsistent with the federal Act. The commenter believed that the addition of as much as 20 acres of area to existing permits under the State's incidental boundary revision regulations went beyond the intent of Congress.

*Response:* The Director previously approved the existing Illinois provisions pertaining to the size and scope of incidental boundary revisions, and no changes to these provisions are proposed in this amendment. As discussed in finding C.7.b, the Director is approving a new provision at subsection (d)(6) that requires public notice and comment for all additions to permit areas and planned subsidence areas that are requested pursuant to Illinois' incidental boundary revision regulations at 62 IAC 1774.13(d).

**62 IAC 1778.15 Right of Entry Information**

*Comment:* The proposal to delete the requirement of right-of-entry information for areas overlying underground workings is inconsistent with the federal Act and Secretary of Interior's regulations and the original requirement must be reinstated. The requirement, hardly a "burdensome" matter, is a mandate for all areas within the permit area, and the Secretary's regulations require that areas overlying tunnels, shafts and underground operations, be bonded, thus those areas are within the permit area under 30 CFR 701.5. The commenter provided additional argument in support of the belief that areas overlying underground shafts, tunnels and operations should be subject to right-of-entry requirements, should be included within the permit area, and should be bonded (Administrative Record No. IL-1643).

*Response:* As discussed in finding C.8.a, OSM revised the Federal definition of "permit area" and associated terms to exclude areas overlying underground workings (48 FR 14814, April 5, 1983). Also, the preamble to the July 19, 1983, revisions to the Federal bonding rules clarifies that no bond is needed for areas overlying underground workings (48 FR 32947-48). Therefore, the Federal regulation at 30 CFR 778.15(a) does not require a description of right-of-entry

documents for areas overlying underground workings (shadow area). The Illinois regulation at 62 IAC 1778.15(a) is substantively identical to the Federal counterpart, and, therefore, is not inconsistent with the Federal requirements.

**62 IAC 1785.17(a) Prime Farmlands**

*Comment:* Three commenters objected to the proposed deletion of provisions that required a preliminary prime farmland exemption review and that limited the amount of prime farmland to be exempted in the State.

*Response:* The Federal regulations do not contain counterpart provisions to the language deleted from the State regulations. As discussed in finding C.10, the revised regulation provisions at 62 IAC 1785.17(a) are substantively identical to the counterpart Federal regulation provisions at 30 CFR 785.17(a), and, therefore, they are not inconsistent with the Federal requirements.

**62 IAC 1785.17(d)(1) Consultation With the State Conservationist**

*Comment:* Four commenters objected to the proposed deletion of the phrase "The State recognizes that the permit cannot be issued without the required consultation with the USDA" from 62 IAC 1785.17(d)(1).

*Response:* Illinois withdrew its proposed deletion, and reinstated the phrase at the end of 62 IAC 1785.17(d)(1).

**62 IAC 1795.6(b) Eligibility for Assistance**

*Comment:* Eligibility for "Small Operators Assistance Program" is based on yearly productivity from an operation covered by a single permit as per the wording of the proposed rule. The proposed 300,000 Tons per year eligibility should be reduced to 100,000 Tons. The reason for this is that 300,000 Tons is too close to the following productivity as per the Department's 1993 Statistical Report: ASARCO Knox County—428,546 Tons, Freeman-United Industry, McDonough County—431,103 Tons, and Consolidated Burning Star #2—324,555 Tons. Surely, not any of these companies need assistance.

*Response:* The commenter has misinterpreted the proposed rule. As described in 62 IAC 1785.6 (b)(1) through (b)(4), coal produced by other mines and other companies in which the applicant has an interest must be added to the applicant's anticipated production. The revised regulation is substantively identical to the Federal regulation at 30 CFR 795.6(a)(2).

**62 IAC 1795.12(b) Applicant Liability**

*Comment:* The elimination of the objective standard for what constitutes "good faith" for purposes of waiver of the reimbursement obligation makes it unclear whether the standard will be one of reasonable prudence or "good heart, empty head."

*Response:* The Federal regulation at 30 CFR 795.12(b) does not contain a definition of "good faith." Therefore, the proposed deletion does not render the State regulation less effective than the Federal counterpart. The phrase "good faith" can be reasonably applied within its normal meaning, and a definition is not needed.

**62 IAC 1800.5(b)(4)/1800.21(b)(1) Irrevocable Letter of Credit**

*Comment:* The proposal to allow irrevocable letters of credit to be posted by institutions chartered outside of Illinois must retain the requirement that there be a bank within the state authorized to pay the letter on presentation, since under the "full faith and credit" doctrine, courts in sister states will entertain defenses to penal judgments obtained from a court or agency in another state.

*Response:* Both 62 IAC 1800.5(b)(4) and 1800.21(b)(1) contain a requirement for a designated confirming bank with an office in Illinois that is authorized to accept, negotiate, and pay the letter upon presentment in Illinois.

**62 IAC 1800.20(b) Surety Bonds**

*Comment:* By removing required conditions for surety, you are removing standards by which to determine whether corporate surety is "good and sufficient" as required by the Surface Coal Mining Land Conservation and Reclamation Act. 225ILCS 720/6.01(a). This increases the chance that the Illinois taxpayers will be the ones ultimately required to pick up the tab if reclamation is not completed.

*Response:* The counterpart Federal regulations do not contain the provisions proposed for deletion. Therefore, the proposed removal of 62 IAC 1800.20(b) (2) through (5) does not render the State regulations inconsistent with the Federal regulations at 30 CFR 800.20(b).

**62 IAC 1816/1817.13 and 1816/1817.15 Casing and Sealing of Exposed Underground Openings**

*Comment:* The requirement to "backfill" drilled holes and exposed underground openings is less protective than casing, sealing and otherwise managing the holes. Depending on the circumstances, the backfilling of a hole with porous material can allow

migration of contaminants. On its face, the requirement is less protective than 30 CFR 816.13, 14 and 15.

*Response:* Illinois withdrew its proposed revision to these sections.

**62 IAC 1816/1817.22 Topsoil and Subsoil**

*Comment:* Three commenters expressed concern regarding the removal of the provisions at 62 IAC 1816(b)(2) and 1817(b)(2) that require topsoil plans for substitutes or supplements for prime farmland be considered a significant revision subject to public review. Their major concern was that Illinois would allow the use of non-prime soil for substitutes or supplements for prime farmland soils.

*Response:* As discussed in finding C.14.a, the counterpart Federal regulations at 30 CFR 816.22(b) and 817.22(b) do not contain the removed language. However, the Director notes that prime farmland reclamation plans, including topsoil plans, must meet the special environmental protection reclamation standards for prime farmland soils at 62 IAC 1823. This includes the requirement at § 1823.12(a) that reconstructed soils have equal or greater productive capacity than what existed before mining.

**62 IAC 1816/1817.41(c)(2) Ground Water Monitoring**

*Comment:* To submit groundwater monitoring data every three months is not often enough to allow remedial action to a problem.

*Response:* As discussed in finding C.14.b, the Illinois regulations are consistent with the Federal counterpart regulations at 30 CFR 816.41(c)(2) and 817.41(c)(2) that require reports to be submitted every three months or more frequently as prescribed by the regulatory authority.

**62 IAC 1816/1817.41(e)(2) Surface Water Monitoring**

*Comment:* Keep requirement that NPDES reports be sent to the Department concurrent with those sent to Illinois EPA.

*Response:* The Federal regulations do not require that National Pollutant Discharge Elimination System (NPDES) reports be submitted to State regulatory authorities. Therefore, the proposed revisions to this section are not inconsistent with the Federal regulations at 30 CFR 816/817.41(e)(2). As discussed in finding C.14.c, Illinois has retained its requirement that surface water monitoring data be submitted every three months or more frequently if necessary.

**62 IAC 1816/1817.46(e)(1) Siltation Structures; Exemptions**

*Comment:* Two commenters expressed concern regarding the new exemption at 62 IAC 1816.46(e)(1) and 1817.46(e)(1) that would allow use of the alternative sediment control measures described in 62 IAC 1816.45(b) and 1817.45(b) in lieu of a siltation structure for control of drainage from disturbed areas. One commenter expressed the belief that "the use of siltation structures remains the BTCA for the coal mining point source category, and allowing alternative sediment control measures in lieu of siltation structures for areas defined only as 'small' is not consistent with the Secretary's regulations." One commenter questioned: "When is the use of straw bales to filter pit pumpage better than a sediment pond?"

*Response:* As discussed in finding C.14.d, the Federal regulations at 30 CFR 816.46(b)(2) and 817.46(b)(2) which require all surface drainage from a disturbed area to be passed through a siltation structure were suspended on November 20, 1986 (51 FR 41957-41958). Therefore, State regulatory authorities may determine on a case-by-case basis what is BTCA rather than requiring that drainage be passed through siltation structures in all cases. As discussed in the referenced finding, Illinois is requiring permittees to demonstrate that drainage from the disturbed area will meet effluent limitation and water quality standards without the use of siltation structures and will require that any alternative sediment control measures be shown to be the BTCA.

**62 IAC 1816/1817.97 Protectio of Fish, Wildlife, and Related Environmental Values**

*Comment:* Four commenters expressed concern that the elimination of the reference to the Illinois Endangered Species Protection Act (520 ILCS 10/1) would remove state-listed species from protection. Two of the commenters were concerned that elimination of the reference would violate the State Act and "would be misleading as to the obligations of mining operations."

*Response:* Section 505(a) of SMCRA provides that: "No State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any regulation issued pursuant thereto except insofar as such State law or regulation is inconsistent with the provisions of this Act." Therefore, if

mining operation activities are covered under the Illinois Endangered Species Protection Act (520 ILCS 10/1), the removal of the reference will not affect an operator's obligations under this Act. Furthermore, the State regulations at 62 IAC 1816.97(b) and 1817.97(b) and the Federal counterpart regulations at 30 CFR 816.97(b) and 817.97(b) still require the operator to report any state- or federally-listed endangered or threatened species within the permit area and require consultation with appropriate State and Federal fish and wildlife agencies before allowing the operator to proceed with mining activity. Therefore, state endangered species are still protected under the Illinois program.

**62 IAC 1816/1817.116(a)(2)(B) Success of Revegetation; Extended Responsibility Period**

*Comment:* In the OSM publication of the Surface Mining Act which includes all revisions through December 31, 1993, there is at section 515(b)(20)(B) of the Federal Act a note that this section was added October 24, 1992. However, in that 1993 addition there is no mention of the date September 30, 2004. Hence, the year 2004 should be eliminated from the proposed rule.

*Response:* The commenter is correct that in section 515(b)(20)(B) of SMCRA the date September 30, 2004, is not mentioned. However, section 510(e) of SMCRA specifies that the authority of section 515(b)(20)(B) shall terminate on September 30, 2004. Therefore, the date should not be eliminated from the proposed regulation.

**62 IAC 1816/1817.116(a)(2)(F) (i), (ii), and (iii) Success of Revegetation; Augmentation; High Capability Land**

*Comment:* Two commenters were concerned that the deletion of the provisions concerning augmentation of high capability land areas would lower the State's standards for reclamation of high capability cropland areas.

*Response:* The deletion of these provisions does not alter the requirement that reclaimed high capability cropland areas meet the success of revegetation standards set forth in 62 IAC 1816/1817.116(a)(3)(C) and (a)(4).

**62 IAC 1816/1817.116(a)(2)(F)(i) Success of Revegetation; Augmentation; Pasture and Hayland**

*Comment:* Two commenter expressed concern with the proposed language in this section which stated that the period of responsibility shall not recommence after deep tillage on areas where the

revegetation success standard has been met.

*Response:* OSM is not approving the proposed language. Deep tillage has not been approved as a normal husbandry practice in Illinois. Therefore, its use would restart the responsibility period as required by 30 CFR 816.116(c)(1).

**62 IAC 1816/1817.116(a)(3)(E)**  
*Revegetation Success; Ground Cover and Production for Pasture, Hayland, and Grazing land*

*Comment 1:* One commenter disagreed with the proposed deletion of the provision that limited the substitution of corn production for hay production on high capability land to one year.

*Response:* As discussed in finding C.14.g, the Illinois administrative record contains sufficient proof that high capability land is suitable for crops and that crop/hay rotations are common practices in cropland areas surrounding mines.

*Comment 2:* One commenter disagreed with the proposed provision that would allow the substitution of one year of crop production for hay production on limited capability land. He was concerned that there would be no available yield data that could be factored into the State's productively formula to project a reliable yield standard for grain crops grown on limited capability lands.

*Response:* As discussed in finding C.14.g, Illinois indicated in the preamble to its February 3, 1995, amendment (Administrative Record No. IL-1615) that the proposed provision would be applied to those limited capability land areas that were reclaimed to a higher quality (such as prime farmland or high capability standards). As noted in the referenced finding, the Director approved this provision to the extent that Illinois restricts its approval to limited capability lands that are reclaimed to a higher quality.

**62 IAC 1816/1817.116(a)(3)(F)**  
*Revegetation Success; Non-Contiguous Areas Less Than or Equal to Four Acres*

*Comment:* Two commenters objected to the language in this section which would exempt, under certain conditions, areas up to four acres from any type of testing for revegetation success.

*Response:* OSM is not approving the proposal. The merit of some type of exemption for small areas is recognized by OSM. However, the Illinois proposal lacks the requirements OSM believes are necessary to implement such a proposal (see finding C.14.h).

**62 IAC 1816.116(a)(4)(A)(ii)**  
*Success of Revegetation; Field to Represent Non-Contiguous Areas Less Than or Equal to Four Acres*

*Comment:* Six commenters objected to the Illinois proposal in this section which would exempt non-contiguous areas up to four acres in size from any type of revegetation success testing if the Department determines that another larger field is representative of the smaller four acre or less area.

*Response:* OSM is not approving this proposal. The Federal regulation at 30 CFR 816.116(a)(2) requires a statistically valid sampling technique for assessing the success of vegetation for all areas. Illinois has not demonstrated that its proposal would provide a statistically valid representative test field at a 90 percent confidence interval.

**62 IAC 1816/1817.116(a)(5)**  
*Success of Revegetation; Wetlands*

*Comment:* "Aerial coverage" for measurement of success of wetland revegetation is undefined. The success criteria for revegetation of wetlands should be identified in the post-mining land use plan, and should be sufficient to demonstrate the area is functioning as a wetland, (not merely a final cut impoundment) including the full range of functions and values sought to be replicated or restored for that wetland. The bond should not be released without coordination with the US Army Corps of Engineers, and an areal coverage of 30% is remarkably low, leaving 70% of the area either unvegetated or containing possibly incompatible species. Particularly where the wetland is a bottomland hardwood or other intermittently-inundated land, the vegetative success criteria should be comparable to the cover and revegetation requirements for other land uses.

*Response:* Use of the term "aerial coverage" is consistent with its usage in the U.S. Army Corps of Engineers Wetlands Delineation Manual. Although, "aerial" is a misspelling and it has been corrected to "areal." In the past, Illinois determined the success for those fish and wildlife land use reclamation plans that contained wetland areas on a case-by-case basis. Illinois is proposing to replace the case-by-case approach with a consistent wetland reclamation standard. Most final-cut impoundments would not meet the criteria for a wetland, as these areas are considered deepwater habitat. However, the edges of final-cut impoundments where water is shallow can be developed as wetland areas.

Wetland areas intended to mitigate pre-existing wetlands must meet the conditions of the U.S. Army Corps of Engineers' 404 permit. Pursuant to the requirements of section 702(a)(3) of SMCRA, Federal and State program requirements cannot supersede, amend, modify, or repeal requirements under Section 404 of the Clean Water Act, including mitigation plans for those wetlands which existed in the premining landscape and are being replaced in accordance with a Section 404 permit. Therefore, the revegetation standards for wetlands proposed by the State would not pertain to wetlands constructed to mitigate pre-existing wetlands. They would pertain only to those wetlands constructed to supplement and enhance a postmining land use of fish and wildlife habitat. The Federal regulations at 30 CFR 701.5, 780.25, 816.46, and 816.49 (Impoundments); 816.84(b)(1) (Coal Mine Waste Impounding Structures); 816.97 (Protection of Fish and Wildlife); 816.102 (Backfilling and Grading); 816.111 and 816.116 (Revegetation); 816.133 (Postmining Land Use) allow for the construction of wetlands that supplement and enhance fish and wildlife habitat.

Coordination with the U.S. Army Corps of Engineers prior to bond release of wetlands that are not under the jurisdiction of the Corps is not required by SMCRA or the Federal regulations. As discussed in finding C.14.k, Illinois submitted adequate support for its use of a minimum 30 percent areal coverage standard.

**62 IAC 1816/1817.116(c)**  
*Success of Revegetation; Reference Area*

*Comment:* Six commenters objected to the use of reference areas in lieu of Illinois' Agricultural Lands Productivity Formula Sampling Method for determining the success of revegetation for cropland and hayland. Extensive comments were submitted in support of this objection.

*Response:* Illinois withdrew its proposed regulations at 62 IAC 1816.116(c) and 1817.116(c) pertaining to use of a reference area for determining the success of revegetation for cropland and hayland.

**62 IAC 1816/1817.117(a)(3)**  
*Tree and Shrub Vegetation on Erosion Control Structures*

*Comment:* One commenter was concerned that operators will not be required to plant trees and shrubs on erosion control structures, including pond embankments.

*Response:* As discussed in finding C.14.m, the planting of trees and shrubs

on the embankments of erosion control structures is not a sound engineering practice. A herbaceous ground cover will be required for these areas.

*62 IAC 1816/1817.117(b) Tree and Shrub Vegetation, Woody Plants*

*Comment:* One commenter was concerned that the new provision pertaining to a case-by-case approval of planting arrangements for wildlife areas would eliminate the requirement that an operator must plant trees and shrubs on areas to be developed for fish and wildlife habitat or recreation areas.

*Response:* Illinois' regulation at 62 IAC 1816/1817.117(b) still requires that these areas have a minimum population of 250 trees or shrubs per acre. The new provision allows operators to request approval for optional planting designs rather than requiring uniform planting arrangements for all mined wildlife and recreation areas.

*62 IAC 1816/1817.190(a) Affected Acreage Map*

*Comment:* This change would eliminate sending maps and reports on affected acreage to county clerks. We object to deletion of the phrase "and to the county clerk." This deletion would further deny local government its role in protecting natural resources, a role already deeply invaded by the fossil fuel preemption.

*Response:* Illinois' proposed revision at subsection (b) requires the operator to submit an additional copy of the affected acreage report and maps for each county in which the permit is located and requires the Department to forward those additional copies to the county clerk(s). Therefore, Illinois is now assured that a copy of the affected acreage report and map goes to the county.

*62 IAC 1816/1817.190(b) Affected Acreage Map*

*Comment:* What do words, "Also, statutory citations are being updated in subsection (b)" as found in the Federal Register mean?

*Response:* Citations to and titles of statutes have been updated to reflect Illinois' new statutory codification system.

*62 IAC 1816. Appendix A Agricultural Lands Productivity Formula Permit Specific Yield Standard; Subsections (a), (b), and (c)*

*Comment 1:* One commenter raised the concern that the proposed change from permit area to pit area will need to be "fine turned" and that the issue when a pit lies in more than one county should be addressed.

*Response:* OSM has determined that the State's proposal to utilize pit area instead of permit area will meet the requirements of 30 CFR 823.15 in providing a representative standard. Existing Illinois regulations require the State to utilize data from the county in which the area being tested is located.

*Comment 2:* One commenter expressed several concerns with the Illinois proposal to utilize only the lands disturbed within the pit area in the Illinois productivity formula once mining has ceased. These concerns included the proposal not to apply the recalculated standard to areas previously tested.

*Response:* The requirement under the Federal regulations is to obtain the most representative sample of the mined and reclaimed areas. OSM believes the Illinois proposal meets that requirement. Because the Illinois formula results in annual targets based upon year-specific climatological data and yield data, it would not be appropriate to apply the recalculated standard retroactively.

*Comment 3:* One commenter raised the issue of landowner comment opportunities in relation to the change from permit area to pit area. The concern was that the target yields could change because of the recalculation at the time of cessation of mining and the landowner would not be offered the opportunity to comment at the time of the change.

*Response:* OSM required Illinois to clarify how the pit area would be defined under a variety of circumstances. This was done to assure that the pit area was not only truly representative of the mined and reclaimed area, but also to assure the pit area was always a clearly defined area. Illinois provided the information needed to resolve these concerns. In finding C.18, OSM made it clear that Illinois must interpret the rule in a manner which assures the use of representative areas and results in a clear and consistent delineation of the pit area. The possible circumstances for which OSM sought clarification and the associated opportunities for public comment are listed below.

(1) *Single pit within a single permit.* The pit area would be the same as the permit area, and thus the change from permit to pit would not affect the opportunity to comment.

(2) *Multiple pits within a single permit.* Each pit area will be clearly marked on the permit map, and will be subject to public comment as part of the permitting process.

(3) *Single pit within several permits that have been consolidated into a*

*single permit.* Public review will occur at the time of consolidation.

(4) *Multiple pits within several permits that are consolidated into one permit.* Each pit area will be clearly marked on the consolidated permit map that will be subject to public review prior to approval.

Thus the opportunity to comment should be available whenever a change in the pit area is made.

*Comment 4:* One commenter was concerned with the provision at subsection (c) that requires yield targets to be recalculated if a significant revision is proposed after permanent cessation of mining. She wanted to know why Illinois would allow a "significant revision" after permanent cessation of mining.

*Response:* Illinois' regulations at 62 IAC 1774.13(b)(2) require significant revisions to a permit be obtained for changes in reclamation operations when such changes constitute a significance departure from the method contemplated by the original permit. Since reclamation operations are ongoing after permanent cessation of active coal mining, significant revisions to reclamation plans may be proposed.

*62 IAC 1816. Appendix A Agricultural Lands Productivity Formula Permit Specifics Yield Standard; Subsections (d) and (f)*

*Comment:* Extensive comments were received from five commenters opposing proposed provisions to be added at subsection (d) that required annual target yield adjustments to be based on the county with the greater permit acreage if a mining pit was present in more than one county and subsection (f) that allowed Illinois to consolidate prime farmland and high capability target yields.

*Response:* These proposed provisions were withdrawn.

*62 IAC 1817.121(c)(3) Subsidence Control*

*Comment:* Subsidence from underground mining requires operators to supply any residential, etc. water lost from underground mining but for how long the operator is obligated for water replacement is not stated.

*Response:* Although the Illinois regulation does not specifically state that its requirement is for permanent water replacement, the word "replace" within the regulation indicates permanency. OSM's definition of "Replacement of water supply" at 30 CFR 701.5 clarifies that permanent water replacement is required. "Replacement of water supply means, with respect to protected water supplies

contaminated, diminished, or interrupted by coal mining operations, provisions of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies." (60 FR 16722, March 31, 1995).

As noted in finding C.15, primacy states, including Illinois, will be notified pursuant to the provisions of 30 CFR 732.17(d) of the additional Federal water supply replacement requirements and related subsidence damage repair requirements that are not currently contained within their programs. This will include notification of a requirement for a definition consistent with the Federal definition at 30 CFR 701.5 pertaining to water replacement.

*62 IAC 1840.11(h)(2) Inspections by the Department; Abandoned Site*

*Comment:* One commenter believed that Illinois should provide written notice to the county clerk(s) of the counties affected at the time public notice was provided of an alternate inspection frequency for an abandoned site.

*Response:* The counterpart Federal regulations at 30 CFR 840.11(h)(2) do not contain specific provision for written notice to the county clerk(s). However, both the Federal regulations at 30 CFR 840.14(c) and the Illinois regulations at 62 IAC 1840.14(c) provide that copies of all records, reports, inspection materials, and other subject information or a description of the information will be made available for public inspection at a Federal, State or local government office in the county where the mining is occurring. Illinois has historically sent this type of information to the county clerk(s).

*62 IAC 1840.17(a) Review of Decision Not To Inspect or Enforce*

*Comment 1:* The inclusion of a 30-day period in which to file a request for informal review of a decision not to inspect or enforce is more restrictive of the right of the public to administrative review procedures at the state level than is provided by the Secretary's regulations, and must be disapproved.

*Response:* To require that requests for a review be filed within a specified time period assures administrative efficiency in a manner that is not inconsistent with SMCRA or the Federal regulations. Using this approach, Illinois can ensure administrative efficiency by setting a firm deadline for appeals, without

undue prejudice to the interests of citizens who may be adversely affected by decisions not to inspect or enforce.

*Comment 2:* In order for this waiver to be fair, an addition to this section should be added which requires that the citizen be informed by certified mail that the right to appeal to the director for informal review must be made within 30 days or that right is waived. Without this requirement, the citizen could lose a right without that citizen knowing that their right was lost.

*Response:* The 30 day period begins when the citizen is notified of Illinois' decision, which is done by certified mail. Illinois has indicated that this notification will include language informing the recipient of the 30-day time period within which to request, or else waive, the right to informal review. As discussed in finding C.21, the proposed revision is being approved with the understanding that notification of the 30-day time period will be included in the notice of decision not to inspect or enforce and that failure to include the notification will not limit the right for review.

*62 IAC 1840.17(c) Review of Decision Not To Inspect or Enforce; Formal Review*

*Comment:* Two commenters were concerned how the reference to formal review under 62 IAC 1847.3 would relate to formal review of a decision not to inspect or enforce since the current provisions of § 1847.3 pertained to permitting actions. They recommended that the subsection be rewritten without reference to specific provisions.

*Response:* Illinois proposed a revision to its regulations at 62 IAC 1847.3 that provides for administrative review of decisions not to inspect or enforce under 62 IAC 1840.17 (see finding C.21).

*62 IAC 1843.23 Enforcement Actions at Abandoned Sites*

*Comment:* This provision does not promulgate a responsive action to the problems of violators who abandon mining sites. It appears geared towards allowing the Department to refrain from doing a useless thing, but does not state the Department's policy in enforcing violations of State and Federal law at abandoned sites.

*Response:* The proposed regulation is substantively identical to the counterpart Federal regulation at 30 CFR 843.22.

*62 IAC 1847.3 Administrative and Judicial Review; Hearings*

*Comment:* The inclusion of formal review of decisions not to inspect or enforce in section 1847.3 is of concern

because the section is triggered by notice to the permit applicant rather than notice to the party who requested the inspection and enforcement action. The right to informal and formal review of such decisions, as well as all other actions of the agency, are triggered by notice to the party rather than the applicant.

*Response:* Section 1847.3 is not necessarily triggered by notice to the permit applicant. The Illinois regulation at 62 IAC 1840.17(b) requires the Director or his or her designee to inform the person, in writing, of the results of an informal review of an authorized representative's decision not to inspect or enforce. OSM has verified several times over the past years, through its oversight activities, that these letters are mailed via certified mail to the person who requested the action. It is the receipt of this decision which triggers the 30-day time limit within which to request formal review under the provisions of section 1847.3, as authorized by 62 IAC 1840.17(c).

*62 Ill. Adm. Code 1847.3(i), (j); 1847.4(j), (k); 1847.5(m), (n); 1847.6(k), (l); and 1847.7(j), (k) Hearing Officer's Proposed Decision*

*Comment 1:* Two commenters were concerned that written exceptions to the hearing officer's proposed decision are to be filed with the hearing officer instead of the Director and that written exceptions and responses to exceptions are to be filed within 10 rather than 15 days.

*Response:* As discussed in finding C.24.a.(2), 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. The Federal regulations contain no comparable provisions for filing of written exceptions to a proposed decision, filing of responses to written exceptions, or time limitations for these filings. However, the proposed revisions are not inconsistent with SMCRA or the Federal regulations.

*Comment 2:* One commenter was concerned that the Illinois regulatory authority might be absolved of the responsibility for administrative decisions if a hearing officer was allowed to make the decisions.

*Response:* The Illinois regulations at 62 IAC 1847 provide that the hearing officer's decision is the Department's final administrative decision. Pursuant to 62 IAC 1847, final administrative decisions are subject to judicial review in accordance with the Illinois

Administrative Review Law (735 ILCS 5/3).

*62 IAC 1848.5(f) Notice of Hearing*

*Comment 1:* One commenter was in agreement with the proposed provisions that would require certain specifications for legal notices of hearings, but questioned the prohibition in this proposed subsection against inclusion of hearing notices among other legal notices in the paper.

*Response:* The prohibition against inclusion of these hearing notices in that portion of the paper where legal notices appear is a statutory prohibition which was requested by Knox County citizens when section 2.11(c) of the Surface Coal Mining Land Conservation and Reclamation Act, 225 ILCS 720, was amended in 1993. Neither SMCRA nor the Federal regulations specify the portion of the newspaper wherein the public notice of a hearing must appear.

*Comment 2:* One commenter believed that § 1848.5(f) should include a provision for notification of the county clerk of the county affected.

*Response:* Neither SMCRA nor the Federal regulations require that a separate notice of an administrative hearing be sent to the county clerk of the county affected.

*Comment 3:* One commenter objected to the last sentence of the provision that was proposed in the original amendment: "Any deviations from the requirements of this subsection attributable to the publishing newspaper shall not be grounds for postponement of continuance of the hearing, nor will such errors necessitate that the notice be republished."

*Response:* In the revised amendment dated November 1, 1995, Illinois removed this sentence from § 1848.5(f).

*Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Illinois program (Administrative Record Nos. IL-1618 and IL-1664). The Natural Resources Conservation Service (NRCS) commented on March 15, 1995 (Administrative Record No. IL-1631), that the State should withdraw its proposal to remove the language "The state recognizes that the permit cannot be issued without the required consultation with USDA" from section 1785.17(d)(1). OSM notes that Illinois withdrew this proposed revision, and the indicated language was retained.

On June 7, 1995 (Administrative Record No. IL-1657), and July 20, 1995 (Administrative Record No. IL-1661),

the Natural Resources Conservation Service (NRCS) offered comments on the following three sections:

*62 IAC 1816/1817.116(a)(3)(E)* NRCS commented that the Service did not object to the substitution of one year of crop production for one year of hay production on limited capability lands if the Department determines the practice is proper management. OSM notes that Illinois included language in this section which requires such determination before the substitution can be made.

*62 IAC 1816.116(a)(3)(F)* NRCS believed the proposed revision was not specific enough as to the types of activities which would qualify under this section, the maximum area of disturbance should be specified, and the term minimal soil disturbance should be defined. NRCS also commented that they concurred with the State's objective in proposing the rule. OSM is not approving this rule because it would exempt areas as large as four acres from any type of revegetation success testing. OSM does not agree that it would be possible to list all of the activities that may occur on these small areas. Should the State of Illinois resubmit language limiting the exemption to a smaller area, the demonstration required by the operator will have to be more thoroughly addressed. NRCS also commented that deep tillage should be required for any areas exempted under this section. OSM believes that the requirement for deep tillage should be made on a case by case basis. The State regulatory Authority would make the decision as part of its determination pertaining to the operator's demonstration.

*62 IAC 1816.116(a)(4)(A)(ii)*. NRCS affirmed its support for the proposal to include small areas with representative larger fields if the terms "representative," "small," and "isolated" are better defined. The Service also pointed out the importance of a reliable sampling method. OSM is not approving this rule because Illinois has not demonstrated that the test plot would provide a statistically valid sample at a 90 percent confidence interval.

*62 IAC 1816. Appendix A* NRCS raised the issue as to whether the proposal to base yield calculations on pit areas rather than permit areas would allow operators to "shop" for the best standard in terms of meeting the required yield. OSM had the same concern initially, but determined that, at any one time, the pit area will be a finite area defined by specific boundaries and that is the only area upon which calculations can be based. There can be

no shopping. OSM is approving the change to pit area.

*Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated 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 Illinois proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record Nos. IL-1618 and IL-1664. EPA responded on February 24, 1995, that "\* \* \* the definition of hydric soils in the wetland definition can be interpreted, by some readers, to mean being inundated greater than 50 percent of the time. It would be clearer to adopt the definition used by the National Technical Committee on Hydric Soils and the Food Security Act Manual, Third Edition: 'A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.' This would also be consistent with the definition of hydric soils in the 1987 Corps Wetland Delineation Manual." (Administrative Record No. IL-1623).

As discussed in finding C.2, OSM found that the proposed definition is not inconsistent with SMCRA or the Federal regulations. Illinois clarified its meaning of hydric soil in the comment section of its November 1, 1995, revised amendment (Administrative Record No. IL-1663): "The explanation of hydric soil appearing in the wetlands definition is intended only as a supplemental explanation of the term 'hydric soil' in layman's terms and is not intended to be a legal definition of the term. Any determination of hydric soils would be in accordance with the technical guidelines of the 1987 Corps Manual \* \* \* \*"

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

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. IL-1618 and IL-1664). The SHPO responded on

March 3, 1995, that "In our opinion, this amendment is consistent with section 106 of the National Historic Preservation Act, as amended, and its implementing regulations 36 CFR part 800, Protection of Historic Properties" (Administrative Record No. IL-1624(A).

#### V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, the proposed amendment as submitted by Illinois on February 3, 1995, and as revised on November 1, 1995.

With the requirement that Illinois further revise its regulations, the Director does not approve, as discussed in: finding No. C.14.f.(2), 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i), concerning augmentation of pasture, hayland, and grazing land; finding No. C.14.h, 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F), concerning the revegetation success standards for non-contiguous areas less than or equal to four acres; and finding No. C.14.i, 62 IAC 1816.116(a)(4)(A)(ii), concerning approval of the success of revegetation for a representative field being used in determining the success of revegetation on non-contiguous areas less than or equal to four acres.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 913.16 that, within 60 days of the publication of this final rule, Illinois must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Illinois' established administrative procedures.

The Federal regulations at 30 CFR Part 913, codifying decisions concerning the Illinois program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

#### Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. In the oversight of

the Illinois program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Illinois of only such provisions.

#### VI. Procedural Determinations

##### Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) 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 such 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 proposed 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

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed 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. Accordingly, this rule will ensure that existing requirements previously promulgated 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

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

##### List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 10, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations 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 by adding paragraph(s) to read as follows:

##### § 913.15 Approval of regulatory program amendments.

\* \* \* \* \*

(s) With the exception of 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i), concerning augmentation of pasture, hayland, and grazing land; 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F), concerning the revegetation success standards for non-contiguous areas less than or equal to four acres; and 62 IAC 1816.116(a)(4)(A)(ii), concerning use of a representative field to determine success of revegetation on non-contiguous areas less than or equal to four acres, the amendment submitted by Illinois to OSM by letter dated February 3, 1995, and as revised and supplemented with explanatory information on November 1, 1995, is approved effective May 29, 1996.

3. Section 913.16 is amended by removing and reserving paragraphs (s),

(t), and (u) and by adding paragraphs (w), (x), and (y) to read as follows:

**§ 913.16 Required program amendments.**

\* \* \* \* \*  
(s)-(u) [Reserved]  
\* \* \* \* \*

(w) By July 29, 1996, Illinois shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to remove the regulation provisions at 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(f)(i), concerning the authority to approve augmentative practices without restarting the period of extended responsibility for revegetation success and bond liability for pasture, hayland, and grazing land, from Chapter I, Title 62 of the Illinois Administrative Code.

(x) By July 29, 1996, Illinois shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to remove the regulations at 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F), concerning the revegetation success standards for non-contiguous areas less than or equal to four acres that would not require statistically valid sampling techniques be used to evaluate success of revegetation, from Chapter I, Title 62 of the Illinois Administrative Code.

(y) By July 29, 1996, Illinois shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to remove the provision at 62 IAC 1816.116(a)(4)(A)(ii), concerning revegetation success for a larger field being representative of the revegetation success of a non-contiguous reclaimed area less than or equal to four acres, from Chapter I, Title 62 of the Illinois Administrative Code.

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BILLING CODE 4310-05-M

**30 CFR Part 931**

[SPATS No. NM-036-FOR]

**New Mexico Regulatory Program**

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

**ACTION:** Final rule; approval of amendment with one exception and additional requirements.

**SUMMARY:** Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with one exception and additional requirements, a proposed

amendment to the New Mexico regulatory program (hereinafter referred to as the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). New Mexico proposed revisions to and/or additions of rules pertaining to definitions; procedures for designating lands unsuitable for coal mining; permit application requirements concerning compliance information, the reclamation plan, and the subsidence information and control plan; procedures concerning permit application review; criteria for permit approval or denial; procedures concerning improvidently issued permits; permit conditions; requirements concerning ownership and control information; and performance standards for coal exploration, hydrologic balance, permanent and temporary impoundments, coal processing waste, disposal of noncoal waste, protection of fish, wildlife, and related environmental values, revegetation success, subsidence control, and roads. The amendment was intended to revise the New Mexico program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

**EFFECTIVE DATE:** May 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: (505) 248-5070.

**SUPPLEMENTARY INFORMATION:**

**I. Background on the New Mexico Program**

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, Federal Register (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

**II. Proposed Amendment**

By letter dated January 22, 1996, New Mexico submitted a proposed amendment to its program (administrative record No. NM-766) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment at its own initiative and in response to the required program amendments at 30

CFR 931.16 (a), (c), (d), (f) through (p), and (n)(2) through (s) (55 FR 48841, November 23, 1990; 56 FR 67520, December 31, 1991; and 58 FR 65907, December 17, 1993).

OSM announced receipt of the proposed amendment in the February 1, 1996, Federal Register (61 FR 3625), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM-767). Because no one requested a public hearing or meeting, none was held. The public comment period ended on March 4, 1996.

During its review of the amendment, OSM identified concerns relating to the certain provisions of the proposed amendment. OSM notified New Mexico of the concerns on March 13, 1996 (administrative record No. NM-774).

New Mexico responded on March 13, 1996, that it would not submit revisions to the amendment and that OSM should proceed with the publishing of this final rule Federal Register notice (administrative record No. NM-774).

**III. Director's Findings**

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with certain exceptions and additional requirements, that the proposed program amendment submitted by New Mexico on January 22, 1996, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves, with one exception, the proposed amendment and adds additional requirements.

**1. Nonsubstantive Revisions to New Mexico's Rules**

New Mexico proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial changes or recodification (corresponding Federal regulation provisions are listed in parentheses):

Coal Surface Mining Commission (CSMC) Rule 80-1-11-20(d) (30 CFR 773.20(c)), concerning remedial measures for improvidently issued permits, to recodify existing CSMC Rule 80-1-11-20(c) as CSMC Rule 80-1-11-20(d);

CSMC Rule 80-1-20-41(e)(3)(i) (30 CFR 816.41 (c)(3) and (e)(3) and 817.41 (c)(3) and (e)(3)), concerning general performance standard requirements for protection of the hydrologic balance, to correctly reference CSMC 80-1-20-41(e)(2)(i); and

CSMC Rule 80-1-20-82(a)(4) (30 CFR 816.71(h) and 817.71(h)), concerning inspections of coal processing waste banks, to correctly reference "Part 9" of New Mexico's rules.

CSMC Rule 80-1-20-89(d)(2) (30 CFR 816.89(b)), concerning disposal of noncoal