

Marjorie N. Sauber, Project Officer, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523-8021.

SUPPLEMENTARY INFORMATION:

Background

The Hawaii Occupational Safety and Health plan was approved under Section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter called the Act) and Part 1902 of this Chapter on January 4, 1974 (39 FR 1010). Part 1953 of the Chapter provides procedures for the review and approval of State change supplements by the Assistant Secretary for Occupational Safety and Health (hereinafter called the Assistant Secretary).

Hawaii's change supplement regarding variance regulations was submitted in response to Federal review of Hawaii's previous temporary variance submission. Federal OSHA objected to the previous regulation, which was comparable to neither the Federal temporary nor permanent variance regulations.

Federal regulations allow for temporary variances only before the effective date of a standard, and require the applicant to state when he will comply with the standard. Federal regulations allow for permanent variances only if the employer provides equivalent protection. The previous Hawaii regulation appeared to allow for variances after the effective date of a standard without requiring the employer to provide equivalent protection. To address this Federal concern, Hawaii offered an assurance that a temporary variance would be granted only under specified conditions when it would provide employee protection equivalent or superior to that afforded by the standard, and when it would be the safest feasible solution after all relevant factors had been considered. This change supplement amends the Hawaii variance regulations to incorporate this assurance.

Description of Supplements

A. Recordkeeping Regulation. In August 1977, January 1978, August 1978 and August 1979, Hawaii amended its regulations on recording and reporting occupational injuries and illnesses (chapter 103 of the Hawaii occupational safety and health standards, rules and regulations). These amendments, which reflect changes to the comparable Federal regulations (29 CFR Part 1904), include access to records by employees, former employees and their

representatives, and changes in recordkeeping forms.

B. Variance Regulations. In August 1979, the State amended its rules of practice for variances (chapter 104 of the Hawaii occupational safety and health standards, rules and regulations) to clarify the criteria for granting short-term variances. These variances will only be granted under specified conditions, where they will provide protection equivalent or superior to that afforded by the standard, and when approved procedure will be the safest feasible solution after all relevant factors have been considered.

Location of the Plan and Its Supplements for Inspection and Copying

A copy of the supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, 3rd and Constitution Avenues NW., Room N-3613, Washington, D.C. 20210; Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11321, San Francisco, California 94102; and the Department of Labor and Industrial Relations, 825 Mililani Street, Room 308, Honolulu, Hawaii 96813.

Public Participation

Under § 1953.2(c) of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any good cause which may be consistent with applicable laws. The Assistant Secretary finds that the Hawaii plan supplements described above are consistent with State plan regulations generally, and with 29 CFR Part 1902 Subpart B, particularly. Good cause is therefore found for approval of the supplements without public comment and notice.

Decision

After careful consideration, the Hawaii plan supplements described above are hereby approved under Part 1953 of this chapter. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

In accordance with this decision, Subpart Y of 29 CFR 1952 is amended by adding a new section and paragraph as follows:

§ 1952.315 Changes to approved plans.

(a) In accordance with Subparts C and E of Part 1953 of this Chapter, the following plan change supplements, effective August 1979, were approved by

the Assistant Secretary on November 13, 1980.

(1) Hawaii amended its regulations on recordkeeping and reporting of occupational injuries and illnesses to allow access to records by employees, former employees and their representatives, and also to change its recordkeeping forms.

(2) Hawaii amended its variance rules to clarify the fact that temporary variances will only be granted under specified conditions, where equivalent or superior protection is assured and where the variance is the safest feasible solution.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 13th day of November 1980.

Eula Bingham,
Assistant Secretary of Labor.

[FR Doc. 80-36462 Filed 11-20-80; 8:45 am]
BILLING CODE 4510-26-M

29 CFR Part 1952

Approval of Supplements to Virginia State Plans

AGENCY: Occupational Safety and Health Administration.

ACTION: Final rule.

SUMMARY: Various supplements to the Virginia State Plan are approved. Supplements representing completion of developmental steps include: posters for private and public sector workplaces; initiation of a voluntary compliance program which includes on-site consultation services for the public sector; full staffing of the on-site consultation program; the enforcement of fire standards by the Virginia Department of Labor and Industry; the institution of an automated Management Information System; and the inclusion of the Directors of Industry and Construction Safety Divisions under the State merit system.

EFFECTIVE DATE: November 21, 1980.

FOR FURTHER INFORMATION CONTACT: Peter Schultze, Project Officer, Office of State Programs, Occupational Safety and Health Administration, Room N-3613, 200 Constitution Ave. NW., Washington, D.C. 20210, (202) 523-8085.

SUPPLEMENTARY INFORMATION:

Background

Part 1953 of Title 29, Code of Federal Regulations, provides procedures under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) for review of changes and progress in the

development and implementation of State plans which have been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On September 28, 1976, notice was published in the Federal Register (41 FR 42655) of the approval of the Virginia Plan and the adoption of Subpart EE containing the decision and describing the Plan. By letters dated February 18, 1977, and March 31, 1977, from Edmond M. Boggs, Commissioner of the Virginia Department of Labor and Industry, and by letters dated May 4, 1977, September 12, 1977, January 4, 1978, March 1, 1978, and August 15, 1978, from Robert F. Beard Jr., Commissioner of the Virginia Department of Labor and Industry, to David H. Rhone, Regional Administrator, the State of Virginia submitted State-initiated and developmental change supplements. Following regional review, the supplements were forwarded to the Assistant Secretary for Occupational Safety and Health (hereinafter called the Assistant Secretary) for determination as to whether they should be approved. The supplements are described below.

Description of the Supplements

1. *Enforcement of Fire Standards.* In accordance with the requirement of the developmental step set forth in 29 CFR 1952.373(b), the State of Virginia was to develop a plan for delegation of authority to the State Fire Marshal for fire standards development and enforcement, to be completed by December 31, 1976, with necessary legislative action and program implementation by July 1, 1978. By a letter dated February 18, 1977, the State requested an extended deadline of April 1, 1978, for completion of an agreement with the State Fire Marshal's Office. In the interim, the Department of Labor and Industry would conduct inspections and enforcement of fire standards. By an additional letter dated August 15, 1978, the State announced that it was unable to arrive at an agreement with the State Fire Marshal acceptable to OSHA and therefore asked that the State Fire Marshal Agreement be deleted from the State Plan. The responsibility for enforcing fire standards would remain with the Department of Labor and Industry.

2. *State Posters.* In accordance with the requirements of the developmental step set forth in 29 CFR 1952.373(c), the State was to have developed and distributed posters informing public and private employees of their rights and responsibilities. On May 4, 1977, the State submitted a poster which is required to be posted in all private

workplaces. A poster for public employees was submitted on September 12, 1977. The posters contain, among other things, provisions notifying employees of their obligations and rights under the Virginia Occupational Safety and Health Law, their right to request workplace inspections and their right to remain anonymous, their protection against discharge and discrimination for the exercise of their rights under Federal and/or State laws, and their right to file complaints concerning the administration of the State program with the Occupational Safety and Health Administration.

3. *Voluntary Compliance Program.* In accordance with the requirement of the developmental step set forth in 29 CFR 1952.373(d), the State was to have developed and initiated a program to encourage voluntary compliance by employers and employees, including provision for on-site consultation services, which program will not detract from its enforcement program. By a letter dated March 31, 1977, the State announced that a voluntary compliance program, which included on-site consultation, had become operative on March 15, 1977. On October 1, 1977 the State entered into an agreement under Section 7(c)(1) of the Act with the U.S. Department of Labor for on-site consultation services in the private sector. By a letter dated March 1, 1978, the State announced that on-site consultation services for the private sector were no longer provided for by the voluntary compliance program of the State Plan. Safety and health education and training activities, as well as on-site consultation for the public sector, were retained under the voluntary compliance program of the State Plan.

4. *On-Site Consultation Program Staffing.* In accordance with the requirement of the developmental step set forth in 29 CFR 1953.373(f), both safety and health consultation programs were to be fully staffed by Fiscal Year 1979. As mentioned above, on-site consultation in the private sector was covered by a Section 7(c)(1) agreement between the State and the U.S. Department of Labor as of October 1, 1977. The State plan did retain, however, provisions for on-site consultation in the public sector. Monitoring by OSHA has verified that the State's public sector on-site consultation program is fully staffed.

5. *Management Information System.* In accordance with the requirement of the developmental step set forth in 29 CFR 1952.373(g), the designee was to have developed and implemented an automated Management Information

System within 6 months of plan approval. By a letter dated January 4, 1978, the State announced that its Management Information System had become fully operational on July 1, 1977. Monitoring activities conducted by OSHA have verified the system's completion. The Court reporting system, also included in 29 CFR 1952.373(g), is not approved by this notice.

6. *Merit System Coverage.* In accordance with the requirement of the developmental step set forth in 29 CFR 1952.373(1), Virginia was to bring the positions of Director of the Industry Safety Division and Director of the Construction Safety Division in the Department of Labor and Industry under the State merit system. By a letter dated February 18, 1977, the State announced that the two positions had been under the State merit system as of September 1, 1976. The U.S. Civil Service Commission, by a letter dated March 23, 1977, verified that the State had fulfilled this commitment.

Location of the Plan and Its Supplements for Inspection and Copying

Copies of the supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Director of Federal Compliance and State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3613, 3rd and Constitution Avenue, NW., Washington, D.C. 20210; Technical Data Center, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-2439, 3rd and Constitution Avenue, NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Room 2100, Gateway Center, Philadelphia, Pennsylvania 19104; and, the Office of the Commissioner, Department of Labor and Industry, 205 North Fourth Street, Richmond, Virginia 23241.

Public Participation

Under § 1952.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the Virginia Plan supplements described above are consistent with commitments contained in the approved plan, which was previously made available for public comment. Accordingly, it is found that further public comment and notice is unnecessary.

Decision

After careful consideration, the Virginia plan supplements outlined above are approved under 29 CFR Part 1952. This decision incorporates the requirements of the Act and implementing regulations applicable to State Plans generally. In addition, Subpart EE of 29 CFR Part 1952 is amended to reflect the completion of six developmental steps by adding a new section as follows:

§ 1952.374 Completed developmental steps.

(a) In accordance with 29 CFR 1952.373(b), Virginia was to develop a plan for delegation of authority to the State Fire Marshal for fire standards enforcement. The State has since announced that the authority for fire standards enforcement will rest with the Department of Labor and Industry, which has been enforcing fire standards since plan approval. This action is judged to have sufficiently fulfilled the commitments of this step.

(b) In accordance with 29 CFR 1952.373(c) and 1952.10, Virginia's safety and health posters for public and private employers were approved by the Assistant Secretary on November 13, 1980.

(c) In accordance with 29 CFR 1952.373(d), Virginia initiated a voluntary compliance program which includes on-site consultation services on March 15, 1977. (The State subsequently arranged for on-site consultation activities for the private sector to be covered by an agreement with the U.S. Department of Labor under Section 7(c)(1) of the Act).

(d) In accordance with 29 CFR 1952.373(f), the State had met its developmental commitment for the staffing of its on-site consultation program in the public sector by fiscal year 1979. On-site consultation in the private sector is covered by a Section 7(c)(1) agreement with the U.S. Department of Labor.

(e) In accordance with the relevant part of 29 CFR 1952.373(g), Virginia met its developmental commitment of developing and implementing an automated Management Information System on July 1, 1977.

(f) In accordance with 29 CFR 1952.373(1), the Directors of the Industry and the Construction Safety Divisions have been placed under the State merit system as of September 1, 1976.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C., this 13th day of November 1980.

Eula Bingham,
Assistant Secretary of Labor.

[FR Doc. 80-36463 Filed 11-20-80; 8:45 am]

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29 CFR Part 1960

[Docket No. F-002]

Basic Program Elements for Federal Employee Occupational Safety and Health Programs; Final Rule

Correction

In FR Doc. 80-32769, appearing at page 69796, in the issue of Tuesday, October 21, 1980, make the following corrections:

1. On page 69804, § 1960.26(c)(2), first column, in the thirteenth line from the bottom of the page, the reference not reading "paragraph (c)(1)(iii) of this section" should read "paragraph (c)(2)(iii) of this section".

2. On page 69808, second column, the section now reading "§ 1960.37 Committee formation" should read, "§ 1960.38 Committee formation."

3. On page 69811, § 1960.71, in the second column, paragraph (e), the third line, the word "of" at the end of the line should be removed.

4. On page 69812, § 1960.80, first column, paragraph (a), third line the last word now reading "evaluation" should read "evaluating".

5. In that same section, second column, paragraph (c), second line, the word "and" should read "the".

6. On page 69818, the FR Doc. number in the next to the last line now reading "FR Doc. 80-22769" should read "FR Doc. 80-32769".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

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

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

ACTION: Final rule.

SUMMARY: On February 19, 1980, the State of Arkansas submitted to the Department of the Interior its proposed

permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of the submission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII.

After providing opportunities for public comment and a thorough review of the program submission, the Secretary of the Interior has determined that the Arkansas program meets the minimum requirements of SMCRA and the federal permanent program regulations, except for minor deficiencies discussed below under "Secretary's Findings." Accordingly, the Secretary of the Interior has conditionally approved the Arkansas program.

A new Part 30 CFR 904 is being added to 30 CFR Chapter VII to codify this decision.

EFFECTIVE DATE: This conditional approval is effective November 21, 1980. This conditional approval will terminate as specified in 30 CFR 904.11, adopted below, unless the deficiencies identified below have been corrected in accordance with 30 CFR 904.11.

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

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

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106.
Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72219.
Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240; telephone: (202) 343-4728.

SUPPLEMENTARY INFORMATION:

General Background on the Permanent Program

The environmental protection provisions of SMCRA are being implemented in two phases—the initial program and the permanent program—in accordance with Sections 501-503 of SMCRA, 30 U.S.C. 1251-1253. The initial program became effective on February

3, 1978, for new coal mining operations on non-federal and non-Indian lands which received state permits on or after that date, and was effectuated on May 3, 1978, for all coal mines existing on that date. The initial program rules were promulgated by the Secretary on December 13, 1977, under 30 CFR Parts 710-725, 42 FR 62639, *et seq.*

The permanent program will become effective in each state upon the approval of a state program by the Secretary of the Interior or implementation of a federal program within the state. If a state program is approved, the state, rather than the federal government, will be the primary regulator of activities subject to SMCRA.

The federal regulations for the permanent program, including procedures for states to follow in submitting state programs and minimum standards and procedures for approval, are found in 30 CFR Parts 700-707 and 730-865. Part 705 was published October 20, 1977 (42 FR 56064), and Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published March 13, 1979 (44 FR 15312-15463). Errata Notices were published March 14, 1979 (44 FR 15485), August 24, 1979 (44 FR 49673-49687), September 14, 1979 (44 FR 53507-53509), November 19, 1979 (44 FR 66195), April 16, 1980 (45 FR 26001), June 5, 1980 (45 FR 37818), and July 15, 1980 (45 FR 47424). Amendments to the regulations were published October 22, 1979 (44 FR 60969), and September 4, 1980 (45 FR 58780-58786) as corrected December 19, 1979 (44 FR 75143), December 19, 1979 (44 FR 75303), December 31, 1979 (44 FR 77440-77447), January 11, 1980 (45 FR 2626-2629), April 16, 1980 (45 FR 25998-26001), May 20, 1980 (45 FR 33926-33927), June 10, 1980 (45 FR 39446-39447), August 6, 1980 (45 FR 52306-52324) and August 7, 1980 (45 FR 52375). Portions of these regulations have been suspended, pending further rulemaking. See 44 FR 67942 (November 27, 1979), 44 FR 77447-77454 (December 31, 1979), 45 FR 6913 (January 30, 1980) and 45 FR 51547-51550 (August 4, 1980).

General Background on State Program Approval Process

Any state wishing to assume primary jurisdiction for the regulation of coal mining under SMCRA may submit a program for consideration. The Secretary of the Interior has the responsibility to approve or disapprove the submission.

The federal regulations governing state program submissions are found at 30 CFR Parts 730-732. After review of the submission by OSM and other

agencies, as well as an opportunity for the state to make additions or modifications to the program, and an opportunity for public comment, the Secretary may either approve the program; approve it conditioned upon the correction of minor deficiencies in accordance with a specified timetable; or disapprove the program in whole or in part. If the program is disapproved, the state may submit revisions to correct the items that need to be changed to meet the requirements of SMCRA and the applicable federal regulations. If the revised program is also disapproved, SMCRA requires the Secretary of the Interior to establish a federal program in that state. The state may again request approval to assume primary jurisdiction after the federal program has been implemented.

As a result of litigation in the U.S. District Court for the District of Columbia, in which the deadline for states to submit proposed programs was extended from August 3, 1979, to March 3, 1980, 30 CFR 732.11(d) was amended to provide that program submissions that do not contain all required and fully enacted laws and regulations by the 104th day following program submission be disapproved pursuant to the procedures for the Secretary's initial decision in Section 732.13 (45 FR 33927, May 20, 1980). The 104th day following Arkansas' submission was June 2, 1980.

The Secretary's rules for the review of State programs implement his policy that industry, the public, and other agencies of government should have a meaningful opportunity to participate in his decisions. The Secretary also has a policy that a State should be afforded the maximum opportunity possible to change its program, when necessary, to correct any deficiencies in it.

The Secretary, in reviewing state programs, is utilizing the criteria of Section 503 of SMCRA (30 U.S.C. 1253) and 30 CFR 732.15. In reviewing the Arkansas program, the Secretary has followed the federal rules as cited above under "General Background on the Permanent Program," and as affected by decisions of the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation*.

Because of that litigation, the court issued its initial decision in two "rounds." The Round I opinion, dated February 26, 1980, denied several generic attacks on the permanent program regulations, but resulted in suspension or remanding of all or part of twenty-two specific regulations. The Round II opinion, dated May 16, 1980, denied additional generic attacks on the regulations, but remanded some 40

additional parts, sections or subsections of the regulations. The court also ordered the Secretary to "affirmatively disapprove, under Section 503 (of SMCRA), those segments of a state program that incorporate a suspended or remanded regulation" (Mem. Op., May 16, 1980, p. 49). However, on August 15, 1980, the court stayed this portion of its judgment. The effect of this stay is to allow the Secretary to approve state program provisions equivalent to remanded or suspended federal provisions in the three circumstances described in paragraph 1, below. Therefore, the Secretary is applying the following standards to the review of state program submissions.

1. The Secretary need not affirmatively disapprove state provisions similar to those federal regulations which have been suspended or remanded by the district court where the state has adopted such provisions in a rulemaking or legislative proceeding which occurred either (a) before the enactment of SMCRA or (2) after the date of the Round II District Court decision, since such state regulations clearly are not based solely upon the suspended or remanded federal regulations. (3) The Secretary need not affirmatively disapprove provisions based upon suspended or remanded federal rules if a responsible state official has requested the Secretary to approve them.

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

3. A state program need not contain provisions to implement a suspended

regulation and no state program will be disapproved for failure to contain a suspended or remanded regulation.

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

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

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

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

A list of the regulations suspended or remanded as the result of the Round I and Round II litigation was published in a previous *Federal Register* notice (45 FR 45604, July 7, 1980). A proposed list of Arkansas provisions incorporating the suspended or remanded federal regulations was published at 45 FR 50820-50823 (July 31, 1980).

To codify decisions on state programs, federal programs, and other matters affecting individual states, OSM has established a new Subchapter T of 30 CFR Chapter VII. Subchapter T will consist of Parts 900 through 950. Provisions relating to Arkansas will be found in 30 CFR Part 904.

Background on the Arkansas Program Submission

On February 19, 1980, OSM received a proposed regulatory program from the State of Arkansas. The program was submitted by the Arkansas Department of Pollution Control and Ecology (DPCE), the agency designated as the primary regulatory authority under the proposed Arkansas permanent program. Notice of receipt of the submission initiating the program review was published in the February 27, 1980, *Federal Register* (45 FR 12918-12919) and in newspapers of general circulation in Arkansas. The announcement invited public participation in the initial phase of the review process as it related to the regional director's determination of whether the submission was complete.

On March 31, 1980, the regional director held a public review meeting in Little Rock, Arkansas, on the program submission and its completeness. The public comment period on completeness began on February 27, 1980, and closed March 31, 1980.

On April 9, 1980, the regional director published notice in the *Federal Register* announcing that the Arkansas program submission had been determined to be complete (45 FR 24210-24211).

On May 30, 1980, the Arkansas DPCE submitted to OSM numerous revisions to the Arkansas permanent program submission. A number of the revisions were minor in nature such as corrections of typographical errors, incorrect references to section numbers in the Arkansas Act and proposed regulations, dropped lines and other items of clarification. These minor modifications will not be discussed or summarized in this notice. However, the significant modifications to the February 19, 1980, Arkansas program submission are listed below:

Regulations

1. Arkansas modified Section 705.21(b) to provide that the Director of the Arkansas DPCE file his or her appeal in conflict of interest proceedings, in writing, with the OSM Director.

2. Arkansas added language at Section 764.17(a) prohibiting cross-examination of witnesses at hearings on petitions to designate lands unsuitable and required that a transcript be made of all such hearings.

3. Arkansas modified Section 780.15 making mandatory the inclusion of a fugitive dust control plan in a mine permit application.

4. Arkansas revised Sections 784.13 and 784.23 to include references to require specific information for underground mine operation plans.

5. Arkansas added language to Section 784.14 to provide that reclamation plans for underground mining include a description of measures to insure the protection of water quality.

6. Arkansas deleted a provision found at Section 785.17(e) that allowed exceptions based on the size of prime farmland acreage.

7. Arkansas revised the definition of "willful violation" in Section 786.5(b) to include violations of federal laws.

8. Arkansas modified Section 786.11(c) to require that written notification of the filing of a permit application be sent to the United States Environmental Protection Agency and other federal and local governmental agencies as identified by the permit applicant.

9. Arkansas deleted language in Section 786.11(d) regarding the approval of specific portions of a permit application within sixty days.

10. Arkansas added the words "Secretary or the" to Section 786.27(b) requiring a permit applicant, as a condition of the permit, to allow federal inspectors on the applicant's premises.

11. Arkansas modified Section 788.12(a)(1) to specify parameters for determining what changes constitute significant departures in the revision of a mining permit.

12. Arkansas modified Section 807.11 so that objectors to a bond release are not required to seek an adjudicatory hearing until after a decision by the Director.

13. Arkansas modified Section 842.14 to require a response to inspection complaints within fifteen days of receipt.

14. Arkansas modified Section 845.12(a) to provide specific authority to the Director to suspend underground coal mining, without civil penalty, upon a finding of imminent danger to the inhabitants of urbanized areas.

15. Arkansas submitted a new part, "Part 1000 Effective Date," which addresses (a) the effective date of the regulations, (b) the status of Part 850 (Blaster Certification), (c) the status of the Abandoned Mine Reclamation Program and (d) the identification of regulations that have been suspended or remanded as a result of litigation involving OSM's permanent program regulations, together with a statement of the status of such regulations in the Arkansas program.

16. Arkansas added provisions at Part 900 establishing administrative hearing procedures including filing of pleadings, discovery, intervention, award of costs and expenses, including attorneys' fees, and the appointment of presiding officers.

Program Narrative

1. Section 731.14(b). Arkansas added specific provisions of the Arkansas Rules of Civil Procedure (ARCP).

2. Section 731.14(c). Arkansas revised the section-by-section comparison to include Ark. Stat. Ann. Sections 41-2801, 41-2807, 41-901, and 41-1101 that provide for the protection of state employees. Also submitted for inclusion in the section-by-section comparison was information to (a) show that Section 23 of the Arkansas Act is as stringent as Section 516(c) of SMCRA as it pertains to the issuance of cessation orders under conditions of imminent danger to the public, and (b) explain how 761.11(c) and 761.12(f) are consistent with Section 522(e)(3) of SMCRA and 30 CFR Part 761

regarding approval to mine on certain federal, public and private lands.

3. Section 731.14(g)(4). Arkansas provided that the State will notify the regional director whenever a citizen initiates civil action under Section 29 of the Arkansas Act.

4. Section 731.14(i). Arkansas submitted additional position descriptions covering fish and wildlife ecology, hydrology, and civil engineering.

5. Section 731.14(j). Arkansas submitted additional information to document further the adequacy of staff to administer the program.

6. Section 731.14(l). Arkansas submitted a revised budget and indicated that permit fees will be used in funding the permanent program.

Additional Amendments

On July 2, 1980, the Arkansas DPCE submitted to OSM some additional material to its permanent program submission. The material included some minor modifications which will not be summarized in this notice. The significant revisions to the program, as submitted July 2, 1980, are listed below:

1. Section 807.11 (f) and (g). Procedures for public participation in the release of a performance bond.

2. Section 786.11(c). Public notice of filing of permit applications, specifically, the written notification to government agencies.

3. Part 1000 that had been submitted on May 30, 1980 was further revised as follows:

(a) Part 1000 (10)—Section 785.17(a). This regulation is suspended to the extent that it limits the prime farmland exemption from reconstruction requirements to persons with permits issued on mining plans approved prior to August 3, 1977.

(b) Part 1000 (22)—Section 816.103(a)(1). This regulation is suspended to the extent that it does not allow treatment as an alternative to covering coal and acid- or toxic-forming materials.

(c) Part 1000 (30)—Part 779. The term "mine plan area" as it appears in this Part is suspended. The Pollution Control Commission suggested that the term "permit area" be substituted, with the exception of the determination of probable hydrologic consequences that must be measured both on and off the mine site.

4. Section 816.65(e)(2). 100 Hz was revised to 200 Hz for the measurement of frequency responses of airblasts.

5. Section 940.1(a)(2). Criteria for granting temporary relief were added.

6. Section 940.3(b). A procedure was added for expedited review of temporary relief proceedings.

In addition to these program modifications, OSM received on July 2, 1980, a letter from Arkansas DPCE Director Jarrell Southall requesting that the Secretary consider and evaluate the Arkansas regulations which would be fully enacted on July 25, 1980. This letter is discussed below under "Elements Upon Which the Arkansas Program is Being Evaluated for This Decision."

On June 6, 1980, the regional director published notice in the *Federal Register* (45 FR 38088-38090) and in newspapers of general circulation within the State that the revisions to the Arkansas permanent program were available for public review and comment. The notice also set forth procedures for the public hearing and comment period on the substance of the Arkansas program.

On July 8, 1980, the regional director of OSM and the Director of the Arkansas DPCE held a joint public hearing on the Arkansas submission in Fort Smith, Arkansas. The public comment period on the Arkansas permanent regulatory program ended on July 16, 1980.

On July 18, 1980, the regional director submitted to the Director of OSM his recommendation that the Arkansas program be approved in part and disapproved in part, together with copies of the transcripts of the public meeting and public hearing, written presentations, exhibits, copies of all public comments received and other documents comprising the administrative record.

On July 30, 1980, the Director published notice in the *Federal Register* (45 FR 50616) that the views of federal agencies concerned with or having a special interest in the Arkansas program were available for public review.

On July 31, 1980, the Director announced in the *Federal Register* (50820-50823) the reopening of the public review period on the Arkansas regulatory program to allow public comment on the following: (1) program revisions submitted to OSM on July 2, 1980; (2) DPCE Director Southall's July 2, 1980, letter to OSM requesting that regulations enacted on July 25, 1980 be considered as part of the program submission (discussed below under "Elements Upon Which the Arkansas Program is Being Evaluated For This Decision"); (3) the accuracy of a proposed list of Arkansas' regulations to be affirmatively disapproved pursuant to the U.S. District Court opinion on state provisions comparable to suspended or remanded federal

regulations (See "General Background on the Permanent Program").

On August 14, 1980, Arkansas also submitted a letter:

(1) requesting that the Secretary approve the civil penalty system described in Section 845.13 of the Arkansas regulations;

(2) explaining that Arkansas Stat. Ann. Section 52-612, which prohibits women from working in underground mines, appears unconstitutional; and

(3) describing a proposed amendment to Section 786.19(h) of the Arkansas Code concerning payment of reclamation fees prior to approval of a permit application.

On August 22, 1980, the Director of OSM, by telegram, asked Arkansas if there were provisions in its program based on suspended or remanded federal rules which the State does not want the Secretary to affirmatively disapprove in accordance with the court order. Arkansas has not yet replied, although, as noted above, on August 14, 1980 Arkansas asked that the civil penalty provisions be approved (Administrative Record No. AR-110).

On October 1, 1980, the Administrator of the EPA concurred in the Secretary's approval of those provisions of the Arkansas program relating to air and water quality standards being approved today.

On September 8, 1980, the Director of OSM submitted his recommendation to the Secretary that the Arkansas program be conditionally approved.

Elements Upon Which the Arkansas Program Is Being Evaluated for This Decision

In this section, the Secretary discusses the elements of the proposed Arkansas program upon which the findings and decisions below are being made.

(a) The statutes and program narrative received on February 19, 1980, and the revisions to the program narrative submitted on May 30, 1980, have been evaluated. The revisions were announced to the public on June 6, 1980, prior to the required public hearing, held July 8, 1980, and could have been commented on up to a week after the public hearing as well as at the public hearing.

(b) The regulations fully enacted on July 25, 1980.

On July 2, 1980, Arkansas DPCE Director Jarrell Southall requested that the Arkansas regulations, which would become enacted on July 25, 1980, be evaluated as a part of the program although they had not been enacted by the 104th day after the program was submitted. Director Southall stated he made this request because the public

had full opportunity to comment on the proposed regulations throughout the review process and public comment periods. The Secretary grants the request by Director Southall because:

1. The State of Arkansas did enact its proposed regulations on July 25, 1980. The regulations as fully enacted are identical to the regulations as proposed and submitted to the public for review, with two minor differences.

2. The Secretary solicited public comment regarding Arkansas' request for a waiver of the 104 day rule (FR 50820-50823, July 31, 1980). Therefore, the public was given notice that the proposed, but not fully enacted, regulations may be considered as elements upon which the decision-making would be based.

3. No public comments were received as a result of the Federal Register notice of July 31, 1980, and the Secretary interprets this to mean that no members of the public object to the waiver being granted.

4. Adequate time has been provided to the public to comment on the fully enacted regulations of the proposed program. Thus, the Secretary believes that the purpose of the 104 day rule has been fulfilled.

Secretary's Findings

1. In accordance with Section 503(a) of SMCRA, the Secretary finds that Arkansas has, subject to the exceptions in Finding 1(b), 4(c), 4(h) and 4(p), the capability to carry out the provisions of SMCRA under the Arkansas Surface Coal Mining and Reclamation Act (ASCMRA) and to meet its purposes in the following ways:

(a) The Arkansas Surface Coal Mining and Reclamation Act (ASCMRA) provides for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal land in Arkansas in accordance with SMCRA;

(b) The ASCMRA provides sanctions for violations of Arkansas laws, regulations or conditions of permits concerning surface coal mining and reclamation operations, and these sanctions meet the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, withholding of permits, and the issuance of cessation orders by the Arkansas DPCE or its inspectors with the following exception: A substantial difference in the penalties exists between those provided in Section 704 of SMCRA and those provided in Arkansas Stat. Ann. 41-2801, 41-901 and 41-1101. Section 704 of SMCRA establishes a fine of not more than \$5,000, or imprisonment for not more than one year, or both, for persons

interfering with government employees in the performance of duties pursuant to SMCRA. The Arkansas statutes provide for a maximum fine of \$100 or \$1,000 and a maximum imprisonment of 30 days or one year depending on whether force is used or threatened in the obstruction of governmental functions. The Secretary finds that this deficiency is minor because the history of state and coal industry relations in Arkansas indicates that state employees will not likely be either significantly deterred in performing their duties or subject to violence or harassment during the time this deficiency is being corrected.

(c) The Arkansas DPCE has sufficient administrative and technical personnel and sufficient funds to enable Arkansas to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA;

(d) The ASCMRA provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands within Arkansas;

(e) Arkansas has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA, 30 U.S.C. 1272;

(f) Arkansas has established, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other federal and state permit processes applicable to the proposed operation;

(g) Arkansas has regulations consistent with regulations issued pursuant to SMCRA, as required by Section 503(a)(7) of SMCRA, 30 U.S.C. 1253, subject to the exceptions discussed in findings 4(c), 4(h) and 4(p).

2. As required by Section 503(b)(1)-(3) of SMCRA, 30 U.S.C. 1253(b)(1)-(3), and 30 CFR 732.11-732.13, the Secretary has, through OSM:

(a) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other federal agencies concerned with or having special expertise pertinent to the proposed Arkansas program;

(b) Obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Arkansas program being approved today that relate to air or water quality standards promulgated under the authority of the Federal Clean Water Act as amended, (33 U.S.C. 1151-1175), and the Clean Air

Act as amended, (42 U.S.C. 7401 *et seq.*), and;

(c) Held a public review meeting in Little Rock, Arkansas, on March 31, 1980, to discuss the completeness of the Arkansas program submission and subsequently held a public hearing in Fort Smith, Arkansas, on July 8, 1980, on the substance of the program submission.

3. In accordance with Section 503(b)(4) of SMCRA, 30 U.S.C. 1253(b)(4), the Secretary finds that the State of Arkansas has the statutory authority and qualified personnel necessary for enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII.

(4) In accordance with 30 CFR 732.15, the Secretary finds, on the basis of information in the Arkansas program submission, including the section-by-section comparison of the Arkansas law with SMCRA, public comments, testimony and written presentations at the public meeting and hearing, and other relevant information, that:

(a) The Arkansas program provides for Arkansas to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII with the exceptions noted in findings 1(b), 4(c), 4(h) and 4(p), and that Arkansas has not proposed any alternative approaches to the requirements of 30 CFR Chapter VII pursuant to 30 CFR 731.13. This finding is made under 30 CFR 732.15(a).

(b) The Arkansas DPCE has the authority under its laws and regulations to implement, administer and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K, and the Arkansas program includes provisions to do so. This finding is made under 30 CFR 732.15(b)(1).

(c) The Arkansas DPCE has, except as noted below, the authority under Arkansas laws and regulations and the Arkansas program includes provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G and to prohibit surface coal mining and reclamation operations that do not have a permit issued by the regulatory authority, except that, in order to comply with 30 CFR 786.19(h), Arkansas must revise its regulation Section 786.19(h) to reference federal law rather than state law regarding proof of payment of all reclamation fees before permit approval. The failure of Arkansas regulation 786.19(h) to accurately require proof of payment of past due federal reclamation fees as a criterion for granting a permit is a minor problem because the language used is identical to 30 CFR 786.19(h), and, by letter of August 8, 1980 (A.R. 170) the ADPCE's

chief counsel committed Arkansas to an interpretation of its Section 786.19(h) consistent with the interest of 30 CFR 786.19(h) until the rule can be formally amended. These provisions are contained in Parts 770-795 of the Arkansas regulations and in Section 13 of the ASCMRA. This finding is made under 30 CFR 732.15(b)(2).

(d) The Arkansas DPCE has authority under Arkansas laws and regulations to regulate coal exploration consistent with 30 CFR Part 776 and 30 CFR Part 815 and to prohibit coal exploration that does not comply with 30 CFR Part 776 and Part 815. This finding is made under 30 CFR 732.15(b)(3).

(e) The Arkansas DPCE has authority under Arkansas laws and regulations to require that persons extracting coal incidental to government-financed construction maintain information on-site consistent with 30 CFR Part 707. This finding is made under 30 CFR 732.15(b)(4).

(f) The Arkansas DPCE has the authority under Arkansas laws and regulations to enter, inspect and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-federal lands within Arkansas consistent with Section 517 of SMCRA and 30 CFR Chapter VII, Subchapter L. This finding is made under 30 CFR 732.15(b)(5). The Arkansas counterparts to the above provisions are contained in Sections 10, 16, and 17 of ASCMRA and Subchapter L of Arkansas' regulations.

(g) The Arkansas DPCE has the authority under Arkansas laws and regulations to implement, administer, and enforce a system for performance bonds and liability insurance, or other equivalent guarantees, consistent with 30 CFR Chapter VII, Subchapter J. This finding is made under 30 CFR 732.15(b)(6). The above provisions are at Subchapter J, Parts 800-809 of the Arkansas regulations.

(h) In accordance with 30 CFR 732.15(b)(7), the Secretary finds that the Arkansas DPCE has authority under the ASCMRA and ADPCE's regulations to provide for civil and criminal sanctions for violations of the Arkansas law, regulations and conditions of permits and exploration approvals including civil and criminal penalties in accordance with Section 518 of SMCRA (30 U.S.C. 1268) and consistent with 30 CFR Part 845 including the same or similar procedural requirements, except as noted below. The provisions are contained in Sections 18, 19, 20, 21, 29, and 30 of the ASCMRA and Part 845 of the Arkansas regulations.

The exception is that there is no constraint on the length of time that will

be taken in the process of administrative adjudication of proposed civil penalties under Section 29 of ASCMRA and regulation Section 845.19. Although an operator seeking a hearing must make his request within 30 days of receiving the proposed assessment (Section 845.19(a)) and the hearing officer must render his decision within thirty days after holding a hearing (Section 29(1) of ASCMRA), there is no limit on the time in which a hearing must be held. It is important to both operators and the public that the adjudication process not be unreasonably delayed. Under the OSM assessment conference procedure (30 CFR 845.18) no more than 150 days will normally elapse between the initial proposal of a penalty and the conclusion of this first level of administrative review. At that time, an operator wishing further review must request a formal adjudicatory hearing and place the full amount of the proposed penalty in escrow. The escrow provision is required by Section 518(c) of SMCRA.

Arkansas has chosen to omit an assessment conference procedure in favor of a formal administrative hearing as its first step in review of a proposed assessment. Because this hearing is sequentially similar to the OSM assessment conference, the Secretary agrees that the escrow requirement can be deferred to the second level of review as it is under OSM procedure. In Arkansas the second level of review is judicial review, and Arkansas has a functional equivalent to the escrow requirement in the nature of a required penalty bond plus ten percent per annum interest that must be posted at the time judicial review is requested (Section 30(b) of ASCMRA). The problem is that under its present provisions the second level of review may be unreasonably delayed.

Therefore, the Secretary will require, as a condition of the approval announced today, that Arkansas, by regulation or policy commitment in an amendment to the program submission, place a reasonable limit on the amount of time a hearing officer may take to hold a hearing under Section § 45.19 after one is requested.

The failure by Arkansas to place a limit on the time within which administrative hearings on proposed civil penalties must be held is a minor problem because Arkansas has agreed to promulgate such a limitation by January 1, 1981, which will be accomplished before any unreasonable delay could possibly occur even if a civil penalty hearing were requested very early in the permanent regulatory program.

On August 14, 1980, Arkansas submitted a letter requesting that the Secretary approve the civil penalty point system described in Section 843.13 of the Arkansas regulations. (See Administrative Record No. AR-110). Because of this request, the Secretary does not have to affirmatively disapprove Arkansas' point system in accordance with the district court's August 15, 1980 order. The Secretary finds that the Arkansas point system is consistent with Section 518 of SMCRA and is therefore approved.

(i) The Arkansas DPCE has the authority under Sections 22, 23, 24, and 25 of the ASCMRA and regulations to issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders in accordance with Section 521 of SMCRA (30 U.S.C. 1271) and with 30 CFR Chapter VII, Subchapter L including the same or similar procedural requirements. This finding is made under 30 CFR 732.15(b)(8). These provisions are at Parts 842 and 843 of the Arkansas regulations.

(j) The Arkansas DPCE has the statutory authority under the ASCMRA in Section 26 and regulations to provide for designation of areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F. This finding is made under 30 CFR 732.15(b)(9). The above provisions are contained in Parts 760-764 of the Arkansas regulations.

(k) The Arkansas DPCE has authority under the ASCMRA and regulations to provide for public participation in the development, revision and enforcement of Arkansas regulations and its program consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. This finding is made under 30 CFR 732.15(b)(10). The Secretary further finds that the public has had a meaningful opportunity to participate in the development of the State's program submitted to OSM based on the information in the Administrative Record and the public hearings Arkansas held on the adoption of regulations pursuant to the ASCMRA on April 30, 1979 in Fort Smith, Arkansas; on July 25, 1979 in Fort Smith, Arkansas; on July 26, 1979, in Little Rock, Arkansas; on July 26, 1979, in Camden, Arkansas; and on July 8, 1980, in Fort Smith, Arkansas.

(l) The Arkansas DPCE has authority under the ASCMRA and regulations, and the Arkansas program includes provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Arkansas DPCE consistent with 30 CFR

Part 705. This finding is made under 30 CFR 732.15(b)(11). The above provisions are contained in Part 705 of the Arkansas regulations.

(m) The Arkansas DPCE has authority under the ASCMRA and regulations to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA. Arkansas has proposed regulations in Part 850 on training programs for blasters and members of blasting crews and certification programs for blasters. This finding is made under 30 CFR 732.15(b)(12). The Secretary finds that the State is not required to implement regulations governing such training, examination and certification until six months after federal regulations for these provisions have been promulgated. Federal regulations have not been promulgated as of this time. However, when OSM issues final rules on this subject, Arkansas will be required to have regulations consistent with them.

(n) The Arkansas DPCE has authority under Section 5 of ASCMRA and regulations to operate a small operator assistance program consistent with 30 CFR Part 795. This finding is made under 30 CFR 732.15(b)(13). The Arkansas regulations on this subject are at Part 795.

(o) The Arkansas DPCE does not have statutory provisions to protect its employees consistent with Section 704 of SMCRA. See finding 1(b).

(p) The Arkansas DPCE has authority under Sections 30 and 31 of the ASCMRA and regulations to provide for administrative and judicial review of state program actions in accordance with Sections 525 and 526 of SMCRA and 30 CFR Chapter VII, Subchapter L with one exception. This finding is made under 30 CFR 732.15(b)(15). The exception is that Section 940.1(a)(2), as presented to the public during the extended comment period, failed to list one of the three criteria for temporary administrative relief required by Section 525(c) of SMCRA. The requirement that temporary relief can be granted only after a hearing in the locality of the permit area in which all parties were given an opportunity to be heard, was in fact enacted by the Arkansas commission on July 25, 1980, but the program before the public did not reflect that rule. The letter of August 8, 1980, to the Regional Director (AR 170) submitted the correct version of Section 940.1(a)(2) for the first time.

Therefore, the Secretary finds that the program submitted for his review did not comply with Section 525(c)(1) of SMCRA. As a condition of the approval

granted today, Arkansas will have to resubmit Section 940.1(a) of its regulations for further public comment and review by the Secretary.

The failure of Arkansas rule 940.1(a) to include as a criterion for temporary relief in enforcement proceedings that a hearing be held in the locality of the permit area and that all parties be given an opportunity to be heard is a minor problem because temporary relief proceedings are not probable within the time it will take to correct the rule and ADPCE's chief legal counsel has committed ADPCE to instructing its hearing officers not to grant or deny temporary relief without having had such a hearing. See telephone memo of September 25, 1980 (Administrative Record No. AK-199).

(q) In accordance with 30 CFR 732.15(b)(16), the Secretary finds that the Arkansas DPCE has authority under Arkansas laws and the Arkansas program contains provisions to cooperate and coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. This authority is contained in Section 5(b) of ASCMRA.

(r) In accordance with 30 CFR 732.15(c), the Secretary finds that the ASCMRA and the ADPCE's regulations and the other laws and regulations of Arkansas do not contain provisions that would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII. See Response to Comments, No. 19.

(s) In accordance with 30 CFR 732.15(d), the Secretary finds that the Arkansas DPCE and other state agencies having a role in the program have sufficient legal, technical and administrative personnel and sufficient funding to implement, administer and enforce the provisions of the program, the requirements of 30 CFR 732.15(b), and other applicable state and federal laws.

Disposition of Comments

1. The Mine Safety and Health Administration (MSHA) noted that Arkansas has adopted the language of the Secretary's regulation in Section 816.92(b) of its regulations, allowing drainage diversions to be designed to the 100-year, 24-hour precipitation event while MSHA guidelines recommend design to a 100-year, 6-hour precipitation event. The Secretary will not require the State to adopt the MSHA guideline. Since the State's regulation is in compliance with 30 CFR 816.92(b), which is more stringent than the MSHA recommendation and since the Secretary of Labor concurred in the

adoption of that rule, adoption of the recommended change is not required.

2. The U.S. Geological Survey (USGS) recommended that Arkansas be made aware of the existing Bureau of Land Management (BLM), USGS, and Office of Surface Mining (OSM) Memorandum of Understanding (MOU) on the management of Federal coal. Arkansas has been provided a copy of the joint MOU.

3. The USGS recommended that Arkansas include in its program procedures for processing proposed mine plans or permits that include Federal lands. Such processing procedures need not be included in the state plan because: (1) in States without a cooperative agreement with the Department of the Interior, the Secretary has sole responsibility for review and approval of permit applications on Federal lands, and (2) in States with a cooperative agreement, the Secretary has joint responsibility with the state. Arkansas' procedures for processing mine plans or permits would be identified in the cooperative agreement if the State chooses to execute such an agreement. Therefore, no change is required.

4. The USGS recommended that Arkansas be apprised of exploration requirements on Federal lands and that a reference to those requirements be included in the permanent program. Exploration responsibilities are explained in the BLM, USGS, and OSM Memorandum of Understanding provided to Arkansas. They do not need to be restated in the program submission because Arkansas will have no jurisdiction on Federal lands unless a cooperative agreement is approved by the Secretary. Therefore, no change is required.

5. The Fish and Wildlife Service (FWS) requested involvement in all pre-application conferences where there are known or potential conflicts with FWS statutory responsibilities. The Secretary believes that Section 786.10(c)(4) of the Arkansas rules adequately provides for FWS involvement in pre-application conferences. (See also Sections 731.14(g) (1), (9), and (10) of Arkansas' program narrative.) The FWS and other Federal agencies have additional opportunity to comment on proposed operations once an application is filed under Sections 786.12 and 786.13.

6. The FWS recommended modifications to several forms Arkansas included in the narrative of its program. The modifications were forwarded to Arkansas for consideration; however, the Secretary is not basing his decision on any forms submitted as part of the State program package. Forms will be

discussed with the State as part of the Secretary's monitoring function.

7. The FWS suggested that Section 731.14(g)(3) of the program narrative be modified to include a provision for notifying the FWS of bond releases on areas for which the FWS has statutory responsibilities. The FWS also requested it be invited to participate in the inspection and evaluation of the reclamation work. The Secretary believes that the program narrative complies with the Federal regulations and contains adequate provisions for Federal agencies to be informed of, and to participate in, bond release proceedings. Furthermore, in the circumstance envisioned, FWS would get direct notice under the provisions of Section 807.11 (a) and (d) of the ADPCE regulations.

8. The FWS requested that Section 731.14(g)(4) of the program narrative be revised to include procedures for handling inspection requests from the FWS and other Federal agencies. Neither SMCRA nor the regulations adopted thereunder require that the regulatory authority conduct inspections at the request of Federal agencies other than OSM. The Secretary assumes that if information provided to Arkansas by a Federal agency other than OSM alleges a violation, Arkansas will conduct an inspection, on the same basis as it would for any citizen making such an allegation. If a Federal agency is not satisfied with the State's response, it can inform the Secretary, who can initiate an inspection under Section 521(a)(1) of SMCRA; therefore, no change is required.

9. The FWS and the National Park Service requested that Section 731.14(g)(10) of the program narrative be revised to include language providing for the notification of a permit application to all Federal agencies having statutory responsibilities. The Secretary agreed with this comment and OSM advised the State to revise Section 786.11(c) of the proposed regulations to require the Arkansas DPCE to notify Federal agencies having jurisdiction over or an interest in the area of the proposed operations. The program amendments received on July 2, 1980, revised Section 786.11(c) accordingly. The Secretary believes that the revisions to Section 786.11(c) now fully enacted, make revising the narrative unnecessary because the regulations have the force of law and are binding on the ADPCE.

10. The FWS recommended that a formal agreement be developed to specify coordination and consultation responsibilities between the Arkansas DPCE and the Arkansas Game and Fish

Commission. The FWS is concerned that it may be impracticable for the Game and Fish Commission to respond satisfactorily to demands from the surface mining program for certain services. Arkansas Stat. Ann. 82-1903(c) requires other agencies to assist the Arkansas DPCE only when assistance is "practicable." The Secretary agrees that if the Arkansas DPCE intends to rely upon assistance from other agencies, formal agreements would be appropriate. However, with the possible exception of assistance with the blaster certification program, Arkansas does not plan to rely on assistance from other agencies for the administration of its program. The Secretary cannot require formal agreements unless other state agencies have been identified as having mandatory duties in the state program.

11. The FWS, in its biological opinion pursuant to Section 7 of the Endangered Species Act, found the Arkansas surface mining program, as proposed, unlikely to jeopardize the continued existence of endangered or threatened species, or result in adverse modification or the destruction of critical habitats. In addition to the non-jeopardy opinion, the FWS also commented on the following concerns: (1) the need for revising 30 CFR Chapter VII to provide for consultation between federal agencies pertinent to the protection of species proposed for listing and/or being proposed for critical habitat, (2) a current inability to assess FWS manpower requirements for its participation in the permit reviewing process, and (3) the direction to be taken by OSM to comply with the requirements of 30 CFR Part 733, "Maintenance of State Programs and Procedures for Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs." The Secretary finds that while these concerns are important, and has taken them under advisement, they are not comments on whether the Arkansas program complies with the existing standards for the Secretary's approval of state programs. Therefore, they require no response in this rulemaking.

12. The FWS suggested that Arkansas be required to reword Section 786.11 of the proposed state regulations, as amended, to delete the reference to Section 783.20. The FWS contended that Arkansas Section 783.20 is analogous to 30 CFR 779.20 which was remanded by the U.S. District Court for the District of Columbia and which, therefore, would have to be disapproved by the Secretary (See court opinion, February 26, 1980, pp. 38-39). The FWS suggested that

deletion of the reference to Arkansas Section 783.20 would avoid a possible reference to a disapproved rule. While this comment may have merit, the Secretary is not requiring states to delete references to suspended or remanded regulations. The decision to make such revisions will be left to the State's discretion.

13. The National Park Service (NPS) requested that Sections 731.14(g)(9) and (10) of the program narrative be revised to include a procedure for the Arkansas DPCE to notify the appropriate NPS regional director before a decision is made to approve or deny exploration or mining and reclamation permits in areas that may have the potential to affect the resources of national park units in Arkansas. The Secretary's regulations do not require notice of exploration operations that will remove less than 250 tons of coal. However, 30 CFR 776.12(b) requires a general public notice of exploration proposals that would remove more than 250 tons, and any person with an interest that might be adversely affected, including the NPS, is free to comment. Therefore, while the Secretary urges Arkansas to cooperate with the NPS by directly notifying it of exploration activities near NPS jurisdictional units, he will not require the Arkansas DPCE to do so under the federal regulations.

14. The NPS requested the opportunity to (1) be involved in setting bond amounts for surface mining and reclamation activities that may have an impact on NPS units, (2) be allowed to participate in inspections prior to the release of those bonds, and (3) be allowed to participate in inspections conducted in response to a petition or notice of violation that may affect an NPS unit. The Secretary believes that Arkansas' regulations are consistent with 30 CFR 780.18(b)(2), 800.13 and 805.11 and with Section 509 of SMCRA concerning the determination of the performance bond amount. The NPS and other federal agencies, like private citizens, have the right to comment on proposed mining operations including the proper amount of bond. (See Arkansas Sections 786.12, 786.13, and 786.14.) Under the Secretary's regulations in 30 CFR Parts 805 and 806, which have been adopted by Arkansas, the State will have authority to set the terms and amounts of the performance bond on non-federal and non-Indian lands. Federal agencies also have an opportunity to comment on proposed bond releases for areas for which they may have a concern under Part 807 of the Arkansas regulations. However, OSM advised the Arkansas DPCE to

amend proposed Section 807.11 to clarify the rights of those who object to bond releases (See letter of April 18, 1980, Administrative Record No. AK-92). Program revisions received May 30 and July 2, 1980, have revised Part 807 to accommodate NPS's concerns about bond releases.

15. The NPS requested the opportunity to participate in developing criteria for designating lands unsuitable for surface coal mining near NPS units and to be allowed to participate in the protection of all resources on lands under its jurisdiction from mining in adjacent areas. Arkansas' regulation Section 762.11 identifying the criteria for developing lands as unsuitable, is consistent with 30 CFR 762.11. The petition process included in Arkansas' regulation 764.13 would provide the opportunity for any person having an interest that is or may be adversely affected to petition to have an area designated as unsuitable for mining. This approach provides the NPS with the opportunity it seeks to protect lands in the National Park System. The Secretary has instructed the Park Service not to seek criteria in State programs which would establish "buffer zones" adjacent to National parks as automatically unsuitable for coal mining, unless these lands meet one or more of the other specific criteria for designation. On June 4, 1979, the Secretary made final decisions on the Federal Coal Management Program. Included in those decisions were numerous changes in the proposed unsuitability criteria for federal lands. The Secretary chose to delete the automatic "buffer zone" language for national parks and certain other federal lands from the first criterion (43 CFR 3461.1(a)). Instead, he stated lands adjacent to a national park should only be found unsuitable if they are covered by one of the other specific criteria (43 CFR 3461.1(b)-(i)). This instruction to the Park Service assures that that Agency's approach to State unsuitability criteria will be compatible with the Secretary's policy on federal unsuitability criteria.

16. The NPS and the Bureau of Mines commented that the Arkansas regulations did not include a section comparable to 30 CFR Part 740—General Requirements for Surface Coal Mining and Reclamation Operations on Federal Lands. 30 CFR Part 740 provides rules for OSM to administer a federal lands program for federal lands, and does not directly apply to a state. Section 5(c)(15) of the Arkansas Surface Coal Mining and Reclamation Act of 1979 contains authority for the State to enter into a

cooperative agreement with the Secretary enabling the State to regulate surface coal mining on federal lands. Arkansas has not enacted regulations for a federal lands cooperative agreement because it does not anticipate that surface mining operations will be conducted on federal lands within Arkansas in the near future.

17. The NPS commented that the environmental information should be consolidated into a special section of the final program document emphasizing Arkansas' environmental requirements and documentation procedures. The Secretary's regulations do not require this revision. Therefore, no change is necessary.

18. The NPS noted that the applicable air quality portions of the Arkansas Water and Air Pollution Control Act should be included in the program. The air quality portion of the Arkansas Water and Air Pollution Control Act is included in Section 731.14(b) of the program narrative.

19. The Bureau of Mines (BOM) commented that Sections 52-612 and 52-625 of the Arkansas statutes are discriminatory and in violation of federal law. Section 52-612 prohibits females from working in coal mines and Section 52-625 requires separate bath houses for blacks and whites. The Secretary agrees that such laws probably violate the federal constitution. On August 14, 1980, OSM received an opinion of the chief legal counsel of the ADPCE explaining that Section 52-625 of the Arkansas statutes was repealed by 1973 Arkansas Acts No. 253 Section 5, and that Arkansas Section 52-612 is unconstitutional (see Administrative Record Document No. AK-170). The Secretary believes that the opinion received from Arkansas satisfactorily resolves these issues and that no change is necessary to the proposed program. Even if Section 52-612 were enforced, it would not directly interfere with the implementation of SMCRA. Although it was submitted with other laws in the program package to comply with 30 CFR 731.14(b), the Secretary believes that it is not a law "directly affecting the regulation of coal exploration and surface coal mining and reclamation operations" and that it is not part of the program upon which today's decision is based.

20. The BOM requested clarification of a time schedule of permit reviews as shown on a flowchart on page 204 of Volume 1. The Secretary finds that the review process will require a minimum of 90 days and a maximum of 270 days, based on the regulations in Part 786. The

Secretary's decision today is not based on the accuracy of the diagram on p. 204 of the program narrative.

21. The BOM and the Department of Energy commented that Section 731.14(g)(13) of the program narrative pertaining to the content of the proposed training criteria for use in training, examining, and certifying blasters was incomplete. These comments pertain to a part of the Arkansas program that is not required until six months after the federal regulations on training, examining, and certifying blasters are promulgated. The federal regulations have not yet been promulgated (See 30 CFR 732.15(b)(12)). The narrative provided by the Arkansas Department of Pollution Control and Ecology is used only as a guideline for inspectors and course development and does not impose training or safety requirements on operators. Upon adoption of federal regulations Arkansas will be required to adopt regulations consistent with those regulations.

22. The BOM expressed concern that there is no requirement to allow exploration or underground mines in Arkansas. Arkansas' proposed regulations governing such activities have been included in the program submission at Parts 782-784 for underground mining and Part 776 for exploration activities. The Secretary finds that those regulations comply with SMCRA and 30 CFR Chapter VII.

23. The BOM made several comments on the statistical information presented in Section 731.14(h) of the program narrative, specifically information related to projections and trends in mining production and a possible discrepancy in tonnage when compared to past mining production. Inasmuch as the tonnage identified in Section 731.14(h)(8) is a projection only, the Secretary is satisfied that the statistical information as presented is adequate to meet the requirements of 30 CFR 731.14(h).

24. The BOM commented that Arkansas did not include regulations equivalent to 30 CFR 760.3, 760.4, 764.11, 765 and 769. The Secretary has determined that state programs do not need provisions comparable to 30 CFR parts 760, 765 and 769 because these parts are not applicable to a state program submission. 30 CFR 764.11 requires a state to establish a process for designating lands unsuitable for mining. Arkansas' regulations Part 764 establish such a process, which is further described in Section 731.14(g)(11) of the program narrative.

25. The BOM commented that Arkansas did not include regulations comparable to 30 CFR 810.3, 820, 822 and

825, and that Arkansas combined 30 CFR Parts 816 and 817 of the federal rules into Part 816 of its rules and added Sections 816.121, 816.122, 816.124, and 816.126 addressing underground mining. The Secretary finds that the Arkansas program does not need to include regulations equivalent to 30 CFR 810.3, 820, 822 and 825, because 30 CFR 810.3 applies to the Secretary and 30 CFR Parts 820, 822 and 825 cover special performance standards not necessary in Arkansas (anthracite mines in Pennsylvania, alluvial valley floors west of the 100th meridian and special bituminous coal mines in Wyoming, respectively). The Secretary finds that in its regulations, Arkansas has acceptably combined those regulations that apply to both surface and underground mining. It was, however, necessary to add Sections 816.121-816.126 to cover standards unique to underground mining. Therefore, no changes are necessary.

26. The BOM commented that Section 816.74 refers to a safety factor of 1.1 for earthquake conditions and suggested that the factor may be low for fill embankments. The Secretary finds the Arkansas regulation is equivalent to 30 CFR 816.74 and the State cannot be required to adopt a more stringent regulation.

27. The BOM noted that the Arkansas Statute (ASCMRA) does not have provisions comparable to Sections 502(e), 502(f), 503, 504, 505, 507(b)(7)-(17), 507(c)-(g), 508(a)(6)-(14), 508(b), 510(b)(5), 510(c), 510(d), 515(b)(3) (a portion of), 515(b)(4)-(25), 515(c), 515(d), 515(e), 516(b)(5)-(10), 516(c), 516(d), and 529 of SMCRA. The Secretary finds that Arkansas is not required to include provisions equivalent to those Sections of SMCRA for the following reasons: (1) Section 502(e) provides the authority for a federal enforcement program during the interim period, not a permanent program which is the subject here; (2) Section 502(f) addresses the interim period between the disapproval of a state program and the implementation of a federal program or a federal lands program and is inapplicable once a state program is approved; (3) Section 503 describes the submission of state programs, an activity which occurs at the federal level only; (4) Section 504 provides the authority for implementing a federal program which applies only to the Secretary; (5) Section 505 prohibits state laws or regulations that are inconsistent with the provisions of SMCRA or regulations issued pursuant thereto; that law will be implemented by the Secretary's decision today; (6) the provisions of Sections 507(b)(7)-(17) and

507(c)-(g) are adequately covered by Arkansas' regulations in Sections 778.13, 778.14, 778.21, 780.11, 778.15, 778.17, 779.16, 779.18, 779.25, 779.14, 786.15 and 779.27(d); (7) the provisions of Section 508(a)(6)-(14) and 508(b) concerning reclamation plan requirements are covered by Arkansas' regulations in Sections 779.22, 780.23, 780.18, 780.21, 780.13, 780.14 and 786.16; (8) Section 510(b)(5) is applicable only to areas west of the 100th meridian west longitude, whereas Arkansas is east of the 100th meridian; (9) Sections 510(c) and 510(d) are covered by Section 28 of the Arkansas Act; (10) the Secretary finds that it is not necessary for the Arkansas statute to have provisions comparable to the omitted portions of Section 515 of SMCRA as long as the performance standards are covered by enforceable regulations promulgated pursuant to general statutory authority; (11) similarly, the provisions of Section 516 are covered by Arkansas' regulations Part 816; and (12) the Secretary finds that Arkansas does not need a provision comparable to Section 529 because it did not have a law in existence prior to August 3, 1977, that established environmental protection standards for anthracite surface coal mining.

28. The Advisory Council on Historic Preservation (ACHP) sought additional information to determine the extent that Arkansas' proposed regulatory program is in compliance with Section 106 of the National Historic Preservation Act (NHPA). The information requested concerns the requirement of NHPA for written comments from the State Historic Preservation Officer (SHPO) and an independent determination by OSM's regional director as to the likelihood that the state program will adversely affect properties included, or eligible for inclusion, on the National Register of Historic Places. The Secretary believes that the proposed Programmatic Memorandum of Agreement between OSM and ACHP (See 45 FR 41988, June 23, 1980) when signed and implemented will satisfy compliance with Section 106 of NHPA.

29. The ACHP and the Heritage Conservation and Recreation Service (HCERS) expressed concern that historic, archaeological, and other cultural resources could be destroyed or lost unless steps in the permitting process are taken to ensure adequately the identification of such resources. The Secretary believes that the Arkansas rules provide all the consideration of historic, archaeological and other cultural resources currently required by the federal rules in 30 CFR Chapter VII.

30. The Environmental Protection Agency (EPA) suggested that surface mining control programs, including the Arkansas program, should require all mines to quantify all emissions, including fugitive dust particulates, that are associated with their operations and to make the information readily accessible for input into Prevention of Significant Deterioration (PSD) air quality models. To avoid conflict with the Clean Air Act program for prevention of significant deterioration and protection of non-attainment areas, the Secretary has decided not to require separate demonstrations of compliance with those clean air programs beyond the requirements of Sections 508(a)(9) and 515(b)(4) of SMCRA. Arkansas' proposed regulations were not originally consistent with 30 CFR 780.15 because the fugitive dust control plan was not made mandatory. That problem has been corrected under the revisions received from the Arkansas DPCE on May 30, 1980. The regulations, now fully enacted, are also consistent with 30 CFR 816.95, but Section 816.95 must be affirmatively disapproved to the extent indicated below under "Arkansas Regulations That Must Be Disapproved" to comply with the May 16, 1980, opinion of the U.S. District Court for the District of Columbia (pp. 27-29).

31. The EPA commented on the lack of enforceable conditions in the sample permit in Section 731.14(g)(1) of the program narrative to ensure that the conditions of the permit are met, particularly with respect to the control of discharge to surface waters. The comment was forwarded to Arkansas for consideration. However, the Secretary is not basing any part of his approval decision on forms submitted with a state program document. Forms will be discussed with Arkansas as part of the Secretary's monitoring function during the permanent program.

32. The EPA and the Department of Energy commented that the narrative description of the means of administering and enforcing the permanent program performance standards required by 30 CFR 731.14(g)(6) had been omitted. Arkansas addresses the various aspects of administering and enforcing the permanent program performance standards in Sections 731.14(g)(1), 731.14(g)(4), and 731.14(g)(5) of the program narrative. The Secretary has determined that inclusion of the same material in Section 731.14(g)(6) is not necessary.

33. The EPA and the Soil Conservation Service (SCS) suggested that in developing criteria for

designating lands unsuitable for surface mining, consideration be given to the President's Executive Orders 11900 (Wetland Protection) and 11988 (Flood Plain Management). Arkansas' regulation Section 762.11(b)(2), which is consistent with 30 CFR 762.11(b)(2), states that upon petition an area may be designated as unsuitable for certain types of surface coal mining operations if the operation will affect fragile lands and could result in significant damage to important natural systems. The Secretary believes the State is not obligated to comply with E.O. 11900 and 11988, but encourages Arkansas and other states to consider applying the criteria of those orders when reviewing operations that may affect wetlands or floodplains.

34. The EPA commented that the Arkansas scheme for determining the amount of the civil penalty to be assessed would potentially result in more lenient penalties than the federal regulations. The U.S. District Court for the District of Columbia in its decision of February 26, 1980, and in its subsequent clarification of May 26, 1980, found that the Secretary may not require the state to impose penalties as stringent as those in 30 CFR 845.15. Therefore, the Secretary cannot require changes to the Arkansas civil penalty system as long as the state scheme uses the four criteria in Section 518(a) of SMCRA. The Arkansas regulations use those criteria.

35. The Department of Energy (DOE) commented that the cost of reviewing permit applications should be specifically addressed in the submission. Arkansas' regulation Section 771.25 requires a \$500 fee for a permit review. Section 507(a) of SMCRA and 30 CFR 771.25 require a permit review fee that can be less than, but may not exceed, the actual cost of reviewing a permit application. The Secretary finds that a \$500 fee will be less than the actual cost for adequately reviewing a permit. Therefore, no change is required.

36. The DOE commented that Section 731.14(g)(11) of the program narrative concerning the designation of lands as unsuitable for mining should be addressed in more detail. The Secretary believes that the program narrative, although brief, is sufficient to comply with 30 CFR 731.14(g)(11).

37. The DOE commented that the submission should make explicit the penalties associated with the willful violation of the conflict of interest provision. The Secretary finds that specific criminal penalties are authorized under Section 17(a) of the Arkansas Act and that specific

regulatory penalties are imposed under authority of Section 705.6(b) of Arkansas' regulations.

38. The DOE commented on Section 731.14(h)(8) of the program narrative regarding the absence in the coal production data of a distinction between surface and underground mining activities. Arkansas projects in Section 731.14(h)(8) of its program narrative that, unless there is an increase in underground operations, the trend of surface mining activities, as currently established, will hold true for some time into the future. Arkansas does provide a map, referenced in Section 731.14(h)(8) and found at 731.14(h)(4) of the program narrative, that identifies existing surface and underground mining activities. The Secretary believes that the information contained in the narrative is sufficient and does not require change.

39. The DOE commented on Sections 731.14 (i) and (j) of the program narrative pertaining to staffing requirements. The commenter suggested that a biologist, ecologist, hydrologist, and a wildlife management specialist be added to the staff and that the State explain how calculations determining adequate staffing and allocation of staff time were made. In revisions to the program submitted May 30, 1980, the Department of Pollution Control and Ecology revised Section 731.14(j) of the program narrative to demonstrate that the Arkansas DPCE will have adequate staff to administer the program, including the staff identified by the commenter.

40. The DOE commented on Section 731.14(l) of the program narrative relative to the budget. The commenter felt that the information submitted did not adequately explain the cost of administering the permanent program, nor did it include sufficient fiscal information relating to the Department of Pollution Control and Ecology. On May 30, 1980, the Department of Pollution Control and Ecology revised this part of the program narrative and submitted new budget information. The Secretary believes that the budget information submitted is consistent with the requirement of 30 CFR 731.14(l).

41. The DOE commented on Section 731.14(m) of the program narrative regarding physical resources, suggesting that additional detail be incorporated into the section. On May 30, 1980, the Department of Pollution Control and Ecology submitted revisions to this part of the program narrative including additional information pertinent to physical resources. The Secretary believes that the physical resources information is consistent with the requirement of 30 CFR 731.14(m).

42. The Soil Conservation Service (SCS) suggested that Arkansas provide other government agencies the opportunity to review notices of intent to explore on Federal lands in the same manner as permit applications are reviewed. The commenter stated that the Forest Service would need this information before permits could be issued on national Forest lands. Arkansas has not made provisions for a Federal lands cooperative agreement in its permanent program submission because it does not anticipate that surface mining operations will be conducted on Federal lands within Arkansas in the near future, and thus will not be processing notices to explore within the boundaries of a national forest. Arkansas does have authority under its Act to administer a Federal lands program in the State if such a program becomes necessary in the future. Therefore, no change is required.

43. The SCS suggested the addition of designated wilderness areas to either Section 779.24(i) or Section 779.24(k) of Arkansas' proposed regulations. The additions would require that maps included with permit applications identify wilderness areas. Arkansas' regulations 779.24(i) and 779.24(k), are consistent with 30 CFR 779.24 (i) and (k) and the Secretary cannot require the State to adopt additional criteria.

44. The SCS suggested additional language be added to Arkansas' proposed regulation Section 780.15 to require an air quality monitoring program if the map required under proposed Section 779.24(k) shows an area with Class I air quality. Such a regulation is not mandatory for States east of the 100th meridian, such as Arkansas, under 30 CFR 780.15. If there is a need for more specific air quality data, the Director of the DPCE can require it under Section 779.18. Therefore, no change is required.

45. The SCS suggested that Arkansas' proposed regulation Section 780.18(b)(5) be revised to require measures, such as fencing, be taken to protect newly revegetated areas. The Secretary believes that Sections 816.111 through 816.117 would provide adequate controls to assure the prompt establishment of an effective and permanent vegetation cover. A permittee is not relieved of the responsibility to use whatever methods are necessary, including fencing, to achieve successful revegetation of the disturbed area.

46. The SCS suggested that the Forest Service will need to review and approve a completed application before it can issue a special use permit for surface use on national forest land. Arkansas has not made provisions for a Federal

lands cooperative agreement in its program submission. Therefore Arkansas will not be processing any applications for surface coal mining on Federal land within a national forest boundary. See response to comment number 42 above.

47. The SCS suggested that Arkansas should add requirements to give detailed descriptions of post mining use or obliteration of transportation facilities. Arkansas' regulations Sections 816.156, .166, and .176 track the language of 30 CFR 816.156, .166, and .176. Therefore, Arkansas' rules are consistent with the Secretary's regulations.

48. The SCS felt that Class I road grade in excess of eight percent will result in excessive erosion and surface stability problems unless the road surface and ditches are paved. Arkansas' regulation Section 816.152(a) is consistent with the Secretary's regulations. It should be noted, however, that as a result of the district court's May 16, 1980 decision, 30 CFR 816.152 has been remanded. The parallel Arkansas regulation will have to be affirmatively disapproved.

49. The SCS proposed amending 30 CFR Chapter VII to include a new Section 30 CFR 780.28 entitled "Reclamation Plan: Reclamation Research and Demonstration of Reclamation Technology." The Director of OSM could consider the proposed rule change if it is submitted pursuant to 30 CFR 700.12. No change is required now, nor does this comment affect the Secretary's decision on the Arkansas program at this time.

Background on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. The Act calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and safety and for the secretary to assist the States in becoming the primary regulators under the Act. To enable the States to achieve that primacy, the Secretary has undertaken many activities of which several are particularly noteworthy.

The Secretary has worked closely with several State organizations such as the Interstate Mining Compact Commission, the Council of State Governments, the National Governors association and the western Interstate Energy Board. Through these groups OSM has frequently met with State regulatory authority personnel to discuss informally how the Act should be administered, with particular reference to unique circumstances in individual States. Often these meetings have been a way for OSM and the

States to test new ideas and for OSM to explain portions of the Federal requirements and how the States might meet them. Alternative State regulatory options, the "State window" concept, for example, were discussed at several meetings of the Interstate Mining Compact Commission and the National Governors Association.

The Secretary has dispensed over \$6.9 million in program development grants and over \$37.6 million in initial program grants to help the States to develop their programs, to administer their initial programs, to train their personnel in the new requirements, and to purchase new equipment. In several instances OSM detailed its personnel to States to assist in the preparation of their permanent program submissions. OSM has also met with individual States to determine how best to meet the Act's environmental protection goals.

Equally important, the Secretary structured the state program approval process to assist the states in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each state program to identify needed changes and to allow them to be made without penalty to the state. The Secretary adopted a special policy to insure that communication between him and the states remained open and uninhibited at all times. This policy was critical to avoiding a period of enforced silence with a state after the close of the public comment period on its program and has been a vital part of the program review process (see 44 FR 54444, September 19, 1979).

The Secretary has also developed in his regulations the critical ability to approve conditionally a state program. Under the Secretary's regulations, conditional approval gives full primacy to a state even though there are minor deficiencies in a program. This power is not expressly authorized by the Act; it was adopted through the Secretary's rulemaking authority under 30 U.S.C. 201(c), 502(b), and 503(a)(7).

The Act expressly gives the Secretary only two options—to approve or disapprove a state program. Read literally, the Secretary would have no flexibility; he would have to approve those programs that are letter-perfect and disapprove all others. To avoid that result and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to approve conditionally a program.

Conditional approval has a vital effect for programs approved in the Secretary's initial decision: it results in the implementation of the permanent program in a state months earlier than

might otherwise be anticipated. While this may not be significant in states that already have comprehensive surface coal mining regulatory programs, in many states that earlier implementation will initiate a much higher degree of environmental protection. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands as unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the state's willingness to make good faith efforts to effect the necessary changes. Without the state's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulations says, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by the Act and these regulations" (44 FR 14961). That is, a state must be able to operate the basic components of the permanent program: the designation process; the permit and coal exploration systems; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be used.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular state in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities through attorney general's opinions, revised regulations, policy statements, changes in the narrative or the side-by-side.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow meaningful public participation in the permitting process. Although this would not render the permit system incomplete because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of the Act that the deficiency would most likely be major.

The use of a conditional approval is not and cannot be a substitute for the adoption of an adequate program. Section 732.13(i) of Title 30 of the regulations gives the Secretary little discretion in terminating programs where the state, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional authority power is to assist, not excuse, states from achieving compliance with SMCRA.

Conditional Approval

As indicated above under Secretary's findings 1(b), 4(c), 4(h) and 4(p), there are four minor deficiencies in the Arkansas program which the Secretary requires to be corrected. In all other respects, the Arkansas program (excluding those provisions that must be disapproved to comply with the order of the U.S. District Court for the District of Columbia, May 16, 1980) meets the criteria for approval.

The deficiencies are:

1. As indicated in finding 1(b), the substantial difference in penalties for persons interfering with ADPCE employees in the performance of duties as provided in Arkansas Stat. Ann. 41-2801, 41-901 and 41-1101, compared to the penalties of Section 704 of SMCRA.
2. As indicated in finding 4(c) the need for Arkansas to revise regulation Section 786.19(h) to reference federal law rather than state law regarding proof of payment of all reclamation fees before permit approval pursuant to 30 CFR 786.19(h).
3. As indicated in finding 4(h), the need for Arkansas, by regulation or policy commitment in a program amendment, to place a limit on the time within which adjudicatory hearings on proposed civil penalties will be held.
4. As indicated in finding 4(p), the need for the Arkansas regulations, Section 940.1(a), to provide all the criteria for temporary relief during administrative review consistent with Section 525(c) of SMCRA.

Given the nature of these deficiencies and their magnitude in relation to all the other provisions of the Arkansas program, the Secretary has concluded they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i), because:

1. The deficiencies are of such a size and nature as to render no part of the Arkansas program incomplete since all other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII and these deficiencies, which will be promptly corrected, will not directly affect environmental

protection performance standards at coal mining operations;

2. Arkansas has initiated and is actively proceeding with steps to correct the deficiencies; and

3. Arkansas has agreed, by letters dated October 2, 1980 and October 23, 1980, to correct deficiency number 1 by April 15, 1981, and deficiencies 2, 3 and 4 by January 1, 1981.

Accordingly, the Secretary is conditionally approving the Arkansas program. This approval shall terminate if regulations or policy commitments correcting deficiencies 2, 3 and 4 are not enacted and submitted by January 1, 1981 and if state legislation correcting deficiency number 1 is not enacted and submitted by April 15, 1981.

This conditional approval is effective November 21, 1980. Beginning on that date, the Arkansas Department of Pollution Control and Ecology shall be deemed the regulatory authority in Arkansas and all Arkansas surface coal mining and reclamation operations on non-federal lands and all coal exploration on non-federal lands in Arkansas shall be subject to the permanent regulatory program.

On non-federal lands in Arkansas, the permanent regulatory program consists of the state program conditionally approved by the Secretary.

On federal lands, the permanent regulatory program consists of the federal rules made applicable under 30 CFR Chapter VII, Subchapter D, Parts 740-745. Arkansas and the Department of Interior may enter into a cooperative agreement to apply the requirements of the approved Arkansas permanent regulatory program to federal lands under 30 CFR Part 745.

The Secretary's approval of the Arkansas program relates at this time only to the permanent regulatory program under Title V of SMCRA.

The approval does not constitute approval of any provisions related to implementation of Title IV under SMCRA, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884, Arkansas may submit a State Reclamation Plan now that its permanent program has been conditionally approved. At the time of such a submission, all provisions relating to abandoned mined lands reclamation will be reviewed by officials of the Department of the Interior.

Additional Findings

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 USC 1292(d), no environmental impact statement need be prepared on this conditional approval.

Note.—The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR part 14, and no regulatory analysis is being prepared on this approval.

Dated: November 14, 1980.

Joan M. Davenport,

Assistant Secretary of the Interior.

Part 904 is added to Title 30 of the Code of Federal Regulations to read as follows:

PART 904—ARKANSAS

Sec.

904.1 Scope.

904.10 State regulatory program approval.

904.11 Conditions of State program approval.

Authority: Pub. L. 95-87, 30 U.S.C. 1253.

§ 904.1 Scope.

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

§ 904.10 State regulatory program approval.

(a) The Arkansas program as submitted on February 18, 1980 and amended on May 29, 1980 and July 2, 1980 and clarified on July 29, 1980, August 8, 1980, August 14, 1980 and August 29, 1980, is conditionally approved, effective November 21, 1980. Copies of the approved program together with copies of the letter from the Arkansas Department of Pollution Control and Ecology agreeing to the conditions of 30 CFR 904.11 are available at:

1. Office of Surface Mining Reclamation and Enforcement, Region IV, Fifth Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106; telephone: (816) 374-2193.
2. Arkansas Department of Pollution Control and Ecology, Mining Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72219; telephone: (501) 371-2130.
3. Office of Surface Mining Reclamation and Enforcement, Room 153, Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; telephone: (202) 343-4728.

(b) *Arkansas Regulations That Must Be Disapproved:* In accordance with the May 16 and August 15, 1980 decisions of the U.S. District Court for the District of Columbia *In Re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79-1144, the Secretary hereby affirmatively disapproves the following Arkansas regulations to the extent indicated:

- (1) Section 701.5. The definition of "mine plan area," and the use of the term in sections 779, 780, 783 and 784,

regarding requirements of information outside the permit area.

(2) Section 701.11(c) (i) and (ii), relating to exemptions for existing structures to the extent that the exemptions are not mandatory after the appropriate findings are made.

(3) Section 761.5. The definition of "public road."

(4) Section 761.5(a)(2)(i). The definition of "valid existing rights" to the extent it does not allow recognition of such rights an operator may claim by having made a good faith effort to obtain all permits before August 31, 1977.

(5) Sections 761.11(c) and 761.12(f)(1) to the extent that they prohibit or restrict mining near places eligible for listing on the National Register of Historic Places, and the words "or a statutory or regulatory responsibility for" in § 761.12(f)(1). Further, both rules to the extent that they apply to privately owned places listed on the National Register of Historic Places in addition to publicly owned places.

(6) Sections 776.11(b) (3) and (5), relating to the requirements for maps of proposed exploration areas and a showing of the legal basis for entering exploration areas when the surface is owned by a person other than the operator, for lack of statutory authority.

(7) Sections 779.20 and 780.16, requiring a permit application to contain a study of fish and wildlife and to include a fish and wildlife reclamation plan.

(8) Section 779.21 to the extent it requires a soil survey for lands other than those which a reconnaissance inspection suggests may be prime farmland.

(9) Section 783.14(a)(1) insofar as it requires a geologic description of the strata down to and immediately below any coal seam for areas to be affected only by "surface operations and facilities" and where no removal of overburden down to the level of the coal seam will occur.

(10) Section 779.25 (c), (h) and (i) to the extent applicable to underground mining permit applications concerning coal seam and overburden description, location of existing and previously mined areas, and location of waste disposal and impoundments.

(11) Section 785.17(a) concerning the prime farmland grandfather clause, pending OSM's promulgation of new requirements.

(12) Sections 785.17(b)(3) and 823.14(c) concerning excessive soil compaction, pending OSM's promulgation of a standard for soil compaction.

(13) Section 785.17(b)(8) to the extent that it requires prime farmland

reclamation target yields to be based on estimated yields under a high level of management rather than a level of management equivalent to that used on prime farmlands in the surrounding area.

(14) Section 788.5(b) to the extent that "or has not been" is part of the definition of "irreparable damage to the environment."

(15) Section 805.13(d) to the extent that the regulatory authority could grant an exception from the revegetation requirements of Part 816.

(16) Sections 806.12(e)(6)(iii) and 806.12(g)(7)(iii) to the extent they require cessation of operations upon the insolvency of a surety.

(17) Section 808.12(c) to the extent that it limits bond liability to protection of the hydrologic balance.

(18) Section 808.14(b) to the extent it allows the regulatory authority to forfeit and keep the entire amount of a bond where the entire amount is not needed to complete the reclamation.

(19) Sections 816.42(a)(1) and (7) to the extent they apply effluent standards to the reclamation phase of a surface coal mining operation.

(20) Section 816.42(b) relating to effluent standard exemptions during major storm periods, pending OSM's promulgation of new storm exemption regulations.

(21) Section 816.46(b) concerning sediment storage volume in sediment ponds.

(22) Section 816.46(c) concerning detention time for water in sediment ponds.

(23) Section 816.46(d) to the extent it requires dewatering devices to have a discharge rate to achieve and maintain the theoretical detention time for sediment ponds.

(24) Section 816.46(h) concerning sediment removal from sediment ponds.

(25) Section 816.65(f) requiring special approval prior to blasting within 1,000 feet of certain buildings and 500 feet of other facilities to the extent it restricts blasting at distances greater than 300 feet.

(26) Section 816.83(a) concerning coal processing waste banks, to the extent it precludes a possible exemption from the underdrain requirement where the operator can demonstrate that an alternative would ensure structural integrity of the waste bank and protection of water quality.

(27) Section 816.95 concerning air resources protection to the extent it applies to air pollution not caused by erosion.

(28) Section 816.103(a)(1) to the extent it does not provide operators the option of treating acid-forming and toxic-

forming material in lieu of covering such materials.

(29) Section 816.115 to the extent it requires an operator who proposes range or pasture as the post-mining land use to actually use the land for grazing for the last two years of bond liability.

(30) Sections 823.11(c), 823.15(b) and 823.15(c) to the extent they require an operator on prime farmland to actually return the land to crop production.

(31) Section 816.116(b), to the extent it states that the period of responsibility for successful revegetation is not commenced until the vegetation reaches 90 percent of the natural cover in the area.

(32) Section 816.133(b)(1) to the extent it does not allow restoration of lands to the conditions they were capable of supporting prior to any mining.

(33) Sections 816.133 (c)(4) and (c)(9) to the extent they require an operator to provide "letters of commitment" for proposed land use changes or for proposed cropland use.

(34) Section 701.5. The definition of "roads" and its use in Sections 816.150-176.

(35) Sections 816.150-176 concerning performance standards for three classes of roads.

(36) Section 816.52(a)(1), as it applies to underground mining, to the extent that it requires monitoring to determine the effects of underground mining activities on the recharge capacity of reclaimed lands.

(37) Section 816.54, to the extent it applies to underground mining.

(38) Sections 816.101(b)(1) and 816.102, as they apply to underground mining, to the extent that there is no provision for some flexibility from AOC requirements for settled, stabilized, and revegetated fills at underground mines.

(39) Part 823 concerning underground mining operations on prime farmland to the extent it does not have an exemption for surface facilities actively used over extended periods, but which affect minimal amounts of land.

§ 904.11 Conditions of State program approval.

The approval of the State program is subject to the following conditions:

(a) The approval found in § 904.10 will terminate on April 15, 1981 unless Arkansas submits to the Secretary, by that date, copies of fully enacted program provisions that are as stringent as those in Section 704 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), relative to providing protection to employees of the Department of Pollution Control and Ecology performing their duties, or

otherwise amends its program to accomplish the same result;

(b) The approval found in § 904.10 will terminate on January 1, 1981 unless Arkansas submits to the Secretary, by that date, program provisions that are the same or similar to those in 30 CFR 786.19(h) relating to proof of payment of all reclamation fees prior to permit approval;

(c) The approval found in § 904.10 will terminate on January 1, 1981 unless Arkansas submits to the Secretary, by that date, program provisions that are the same or similar to those in 30 CFR 845.18 relative to the time limitations placed on conducting adjudicatory hearings on proposed civil penalties, or otherwise amends its program to accomplish the same result;

(d) The approval found in § 904.10 will terminate on January 1, 1981 unless Arkansas submits to the Secretary, by that date, program provisions that are the same or similar to those in Section 525(c) of SMCRA, relative to identifying the criteria for temporary relief during administrative review.

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30 CFR Part 925

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

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

ACTION: Final rule.

SUMMARY: On February 1, 1980, the State of Missouri submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of the submission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the government regulatory program regulations, 30 CFR Chapter VII.

After providing opportunities for public comment and a thorough review of the program submission, the Secretary of the Interior has determined that the Missouri program meets the minimum requirements of SMCRA and the federal permanent program regulations, except for the deficiencies discussed below under "Secretary's Findings." Accordingly, the Secretary of the Interior has conditionally approved the Missouri program. A new Part 30

CFR 925 is being added to 30 CFR Chapter VII to codify this decision.

EFFECTIVE DATE: This conditional approval is effective November 21, 1980. This conditional approval will terminate as specified in 30 CFR 925.11, adopted below, unless the deficiencies identified below have been corrected in accordance with 30 CFR 925.11.

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

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

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106
Missouri Land Reclamation Commission, 1026-D, NE., Drive, Jefferson City, Missouri 65101
Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Building, 1951 Constitution Avenue NW., Washington, DC 20240
Telephone: (202) 343-4728

SUPPLEMENTARY INFORMATION:

General Background on the Permanent Program

The environmental protection provisions of SMCRA are being implemented in two phases—the initial program and the permanent program—in accordance with Sections 501-503 of SMCRA, 30 U.S.C. 1251-1253. The initial program became effective on February 3, 1978, for new coal mining operations on non-federal and non-Indian lands that received state permits on or after that date, and on May 3, 1978, for all coal mines existing on that date. The initial program rules were promulgated by the Secretary on December 13, 1977, under 30 CFR Parts 710-725 and 795, 42 FR 62639, *et seq.*

The permanent program will become effective in each state upon the approval of a state program by the Secretary of the Interior or implementation of a federal program within the state. If a state program is approved, the state, rather than the federal government, will be the primary regulator of activities subject to SMCRA. The federal regulations for the permanent program, including procedures for states to follow in submitting state programs and minimum standards and procedures the state programs must include to be

eligible for approval, are found in 30 CFR Parts 700-707 and 730-865. Part 705 was published October 20, 1977 (42 FR 56064), and Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published March 13, 1979 (44 FR 15312-15463). Errata notices were published March 14, 1979 (44 FR 15485), August 24, 1979 (44 FR 49673-49687), September 14, 1979 (44 FR 53507-53509), November 19, 1979 (44 FR 66195), April 16, 1980 (45 FR 26001), June 5, 1980 (45 FR 37818) and July 15, 1980 (45 FR 47424). Amendments to the regulations were published October 22, 1979 (44 FR 60969) and September 4, 1980 (45 FR 58780-58786), as corrected December 19, 1979 (44 FR 75143), December 19, 1979 (44 FR 75302-75303), December 31, 1979 (44 FR 77440-77447), January 11, 1980 (45 FR 2626-2629), April 16, 1980 (45 FR 25998-26001), May 20, 1980 (45 FR 33926-33927), June 10, 1980 (45 FR 39446-39447), August 6, 1980 (45 FR 52306-52324) and August 7, 1980 (45 FR 52375). Portions of these regulations have been suspended pending further rulemaking. See 44 FR 67942 (November 27, 1979), 44 FR 77447-77454 (December 31, 1979), 45 FR 6913 (January 30, 1980), and 45 FR 51547-51550 (August 4, 1980).

General Background on State Program Approval Process

Any state wishing to assume primary jurisdiction for the regulation of coal mining under SMCRA may submit a program for consideration. The Secretary of the Interior has the responsibility to approve or disapprove the submission. The federal regulations governing state program submissions are found at 30 CFR Parts 730-732. After review of the submission by OSM and other agencies, an opportunity for the state to make additions or modifications to the program, and an opportunity for public comment, the Secretary may either approve the program unconditionally; approve it conditioned upon minor deficiencies being corrected in accordance with a specified timetable; or disapprove the program in whole or in part. If any part of the program is disapproved, the state may submit revisions to correct the items that need change to meet the requirements of SMCRA and the applicable federal regulations. If the revised program is also disapproved, SMCRA requires the Secretary of the Interior to establish a federal program in that state. The state may again request approval to assume primary jurisdiction after the federal program has been implemented.

The procedure and timetable for the Secretary's review of state programs